

# DIVISION OF CEMETERIES

STATE OF NEW YORK  
DEPARTMENT OF STATE  
123 WILLIAM STREET  
NEW YORK, NY 10038  
TELEPHONE: (212) 417-5708  
FAX: (212) 417-2322  
WWW.DOS.NY.GOV

ANDREW M. CUOMO  
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO  
SECRETARY OF STATE  
CHAIR

LETITIA JAMES  
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER  
COMMISSIONER OF HEALTH

**DRAFT**

## Cemetery Board Minutes August 11, 2020 Via WebEx

### BOARD MEMBERS PRESENT:

Mark Pattison, Department of State, Chair  
Jill Faber, Office of the New York Attorney General  
Thomas Fuller, Department of Health

### OTHER ATTENDEES

Alicia Young, Division of Cemeteries	Andrew Hickey, Division of Cemeteries
David Jacobson, Dept of State	Lewis Polishook, Division of Cemeteries
Robert Vanderbles, Dep't of State	Brendon Stanton, Division of Cemeteries
Michael Seelman, Division of Cemeteries	John Fatato, Dep't of State
Joshua Beams, Dep't of State	
Antonio Milillo, Dep't of State, Counsel	

### GUESTS:

David Fleming, NYSAC, Featherstonhaugh, Wiley & Clyne  
Brendan Boyle, NYSAC, FWC  
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park  
Joe Dispenza, Forest Lawn Group  
Nate Romagnola, White Haven Memorial Park  
Matthew Simi

### Opening Remarks

Mr. Pattison gave an overview of how the meeting would proceed via WebEx.

Mr. Milillo explained that the meeting is operating pursuant to Executive Order 202.1, which suspends the requirement to appear in person. The notice was posted in accordance with law and notice, agenda, and materials were posted on the Division of Cemeteries website.

We take attendance; lobbyists must identify themselves and the entity they represent; speakers are asked to identify themselves.

### 20-08-A-47 Minutes of Previous Meeting

Motion was made, seconded, and unanimously adopted approving the minutes of the July 14, 2020 meeting as distributed.

### 20-07-B-48 Legislation and Regulations

## 1. Pending Legislation

Mr. Milillo provided the legislative report. He reported that both Houses of the Legislature have approved three bills:

### 1. A3429-A (A. Dilan) S4284-A (S. COMRIE):

This bill would create a cemetery disclosure form which would be posted in the cemetery corporation's office and given to every potential customer. The details of the form would be created by the State Cemetery Board and would provide a lengthy list of detailed information to consumers.

### 2. S7155 (S. COMRIE) A9089 (A. Paulin)

This bill would amend various provisions of N-PCL § 1506 and add a new § 1506-d to permit mergers of cemeteries that are within a 50 mile radius of the principal place of business of the surviving cemetery corporation. It exempts such mergers from the "continuous property" and maximum acreage limitations of Article 15. A cemetery may merge with such distant cemeteries if it has \$10 million or more in financial assets and if it provides the cemetery board with certain information and agreements. The bill would also ratify land acquisitions that occurred prior to 1/1/2020 regardless of proximity and total acreage.

### 3. A10782 (A. Barrett) S8791 (S. BROOKS)

This bill would amend the Executive Law to make it easier to establish a state veterans' cemetery. It eliminates a requirement for a study and eases funding requirements.

Mr. Milillo also reported on the introduction of another bill, S8873, concerning all not-for-profit corporations, adding a new paragraph (c) to N-PCL § 701 to prohibit not-for-profit corporations from accepting state funds unless they have boards of directors that reflect the ethnic demographics of the communities that they serve.

## 2. Rules and Regulations

### Abandonment Regulations

Mr. Polishook explained that the partial draft regulations prepared by the Division and the Board that has been shared with the Board would be shared with NYSAC today, to give stakeholders a preview of the proposed rules and elicit early feedback.

### Expiration of Emergency Regulation

The Board adopted an emergency rule on May 1 allowing, in essence, for cremations to be rerouted to crematories other than the one specified in the cremation authorization. That rule expired on July 29 or 30. At its June 9, 2020 meeting the Board directed counsel to explore making the rule permanent. This would have affected a very small number of cases because the Division authorization form adopted on April 30, 2020 allows the family to pre-authorize the funeral director to re-route to a new crematory as needed because of an emergency on notice to the family without signing a new form.

After further reflection and consideration, the Division and counsel recommend that the board reconsider. The emergency rule was needed when the pandemic led to a backlog of remains waiting to be cremated that had been authorized for cremation using the old form. The functional purpose of the emergency rule is now achieved through the form modification, which is presently in use. Consequently, there is no longer a need for extension of the emergency rule. There is some concern that the emergency rule allows for overriding the family's wishes, because the check box on the new form allows them to permit re-routing. The Division does not recommend starting a new rule making process to adopt this rule.

Mr. Milillo asked that the Board be polled to confirm that it is comfortable with not making the rule permanent, given that it previously voted to make the rule permanent, with the understanding that should the need arise the Board can revisit the subject. All three board members agreed that there was no need to propose the former emergency rule as a new rule.

### **20-08-C-49 Division Report**

Mr. Polishook reported that the Division had started scheduling virtual meetings with NYSAC and cemeteries that did not fall behind in burials at the height of the pandemic to figure out why they did not fall behind and come up with best practices to share in case of a future surge in burials.

The Division has also studied cremation capacity and is trying to determine the best way to present this and what recommendations to make; the subject is still under internal discussion.

Finally, the Division reported that it is working on reorganizing the Board of Wrights' Settlement Cemetery in Rome, New York, probably via some type of management agreement.

### **20-08-D-50 Vandalism, Abandonment and Monument Repair or Removal Fund Report**

So far in the 2020 calendar year the Division has collected \$441,412 in vandalism funds. Assessment collections total \$253,401.

In the 2020 fiscal year, beginning April 1, 2020, vandalism funds collected total \$57,080, and assessment funds \$36,569.

\$758,956.81 remains unpaid from previous years' applications, leaving \$1,241,043.19 for new applications, based on \$2,000,000 in appropriation and cash..

We have paid \$17,392.46 from current appropriation for last year's applications and \$27,715.92 for this year's applications, totaling about \$45,000 paid in July

The Board has approved a total of \$246,715.25 in applications have been approved; \$101,658.15 goes before the Board this month.

Cemeteries have filed 1,213 annual reports this year, of which 30% were filed on time.

The Board discussed two vandalism fund applications, one for repair of hazardous monuments, the other for maintenance of an abandoned cemetery:

Lakewood Cemetery (39-016), requesting: \$47,407.73 for hazardous monuments.

Motion was made, seconded, and unanimously adopted approving this application, subject to availability of funds.

Town of Cicero (Cicero Cemetery, 34-008), requesting \$5,599.44 for maintenance of an abandoned cemetery.

Cicero Cemetery was struggling with funds and trustees. They met in 2018. Having advertised a reorganizational meeting, they failed to reorganize and voted to abandon the cemetery. They then used sample resolutions provided by the Division conveying the cemetery to the Town of Cicero. We did not know of the possible abandonment after it occurred.

The Town seeks \$5,599.44 for a mower to maintain the cemetery.

The Town has represented that it has not touched the funds received from the cemetery.

The Division believes that the cemetery was in fact abandoned in 2018 and recommends approval.

Mr. Milillo stated that the board of the cemetery met on October 16, 2018; the same day, the board adopted a resolution “that a town takeover is the only reasonable course of action to protect the cemetery and families buried in the cemetery.” The resolution does not use the word “abandoned.” Former trustee Jody Rogers used the term “voted to abandon” in an October 18, 2018 email to Michael Seelman.

In a subsequent resolution, the cemetery states that it had voted to convey its assets to the town and in November the town adopted a resolution voluntarily accepting the conveyance of the cemetery pursuant to Not-for-Profit Corporation Law section 1506(j).

Abandonment funds are controlled by State Finance Law section 97-r. That statute says what funds may be used for, referring to N-PCL section 1507(h), including “maintenance of an abandoned cemetery.” The funds may not be used for a voluntary takeover pursuant to N-PCL section 1506(j), which allows for conveyances to cities and villages, which cannot receive abandonment funds.

Mr. Milillo explained that the Division had been advised in 2011 not to use the resolutions of conveyance for an abandonment.

Mr. Polishook stated the Division’s concern that, absent a conveyance after abandonment, there could be issues as to the Town’s access to cemetery funds and ownership of the cemetery.

Ms. Faber stated a concern that an acting board decided to convey the cemetery to the Town and that their ability to meet and reach agreement to convey to the Town was indicative of the cemetery not being abandoned.

Mr. Polishook explained that the Division asks cemeteries to hold a reorganizational meeting and that the mere fact that a meeting can be convened cannot be a basis to conclude that the cemetery be abandoned.

Ms. Faber expressed concern that the cemetery followed the conveyance process and that this did not appear to be abandonment.

Mr. Fuller asked what the cemetery’s intent was. Mr. Polishook stated that the Division believed that the intent of the cemetery was abandonment because of lack of funds and trustees.

Ms. Faber and Mr. Milillo stated that they did not see sufficient facts to show that this cemetery is abandoned.

Discussion ensued as to whether cemeteries had been conveyed and abandoned.

Mr. Milillo added that 1. A cemetery’s board cannot vote to be abandoned; 2. Towns may not want to take title to a cemetery because caselaw says that this will prevent the town from being liable unless the Town is conducting burials; 3. If a town receives abandonment funds, it is permanently abandoned; if not, it can become a not-for-profit cemetery again; 4. Mr. Milillo suggested that the final audit by the Division, if performed, might further inform the issue; Mr. Polishook responded that he did not know whether one was done but that one should have been done.

Mr. Pattison stated that he views this as an uninformed transaction and that the cemetery thought it was abandoning it. Mr. Pattison stated that it does not make sense for a cemetery to be in worse shape vis-à-vis its options if it has conversations with the town than if it does not have those conversations. Mr. Pattison added that it does not make sense to conclude that the Town intended to accept a voluntary conveyance, thereby depriving it of abandonment funds, and then seek funds.

Mr. Pattison recommended that the matter be tabled so that the Division could attempt to gather additional finds. Motion made, seconded, and unanimously adopted tabling this application to September.

**20-08-E-51 Pinelawn Memorial Park (52-044) Lawn Crypt Application**

Pinelawn Memorial Park in Suffolk County seeks approval for 700 new lawn crypts. The cemetery has a proven track record of selling lawn crypt spaces and anticipates a return of \$3.843 million on the project. Mr. Polishook explained that the cemetery had new calculations as to soil percolation and a new certification by the manufacturer but the technical specifications of the lawn crypts were unchanged since its previous application.

After discussion, motion was made, seconded, and unanimously adopted that the Board had no objection to the application.

#### **20-08-H-54 Pinelawn Memorial Park (52-044) Major Renovation: Roads**

Pinelawn Memorial Park in Suffolk County seeks approval of two road-related projects: the repaving and addition of drainage of Merritt Avenue and the paving of a 150-foot stretch of road connecting a mausoleum section under construction to an existing road. The cost of each project, respectively, is \$186,000 AND \$111,160.

After discussion, motion was made, seconded, and unanimously adopted approving the applications.

#### **20-08-F-52 Fort Plain Cemetery (29-008) – Columbarium**

Fort Plain Cemetery in Montgomery County seeks approval of a small, 16-unit prefabricated columbarium for a total cost of \$17,875. This small project is the first columbarium for the cemetery and it believes it needs to offer this type of product. The Division believes that the project will be profitable for the cemetery.

Mr. Milillo noted that the posted sign lacked a contact phone number, as required by the regulations (but did have an address and email) and that the Division should ensure that signs comply in all respects.

Motion was made, seconded, and unanimously adopted approving the application.

#### **20-08-G-53 Woodlawn Cemetery (34-053) – New Retort**

Woodlawn Cemetery in Syracuse seeks approval to add a second retort to its crematory. Mr. Polishook noted that the cemetery originally applied for approval for two retorts when it built its crematorium in 2015 but, after discussions with the Division, decided to limit its application to one retort.

Now, the cemetery seeks to add an additional retort, both because at busy times the existing retort approaches or is at capacity and because of the need for backup capacity in case of a surge in demand or repairs to the existing retort.

Mr. Polishook explained that the Division had surveyed capacity at crematories in the region. The region has seen a slow but steady increase in demand for cremation. The Division was concerned when Woodlawn opened its crematory about possible negative impacts on Oakwood Cemetery, also in Syracuse, but Oakwood had suffered no more than a 10 percent decline in cremation volume after Woodlawn opened, but had largely recovered, and adding a retort should not significantly increase the number of cremations that shift from Oakwood to Woodlawn. Mr. Polishook distinguished a situation where a grandfathered standalone is legally prohibited from adding capacity.

Mr. Milillo added that the cemetery can afford the investment and identified no issues with the cemetery's finances. Mr. Milillo noted that Michael Seelman had identified certain problems with crematory operations and that the Division should ensure that they address those issues.

Mr. Milillo referred to N-PCL section 1505-a and suggested that those factors might inform the Board's consideration of the application. Mr. Milillo indicated that he thought Oakwood should be given notice of this application.

Finally, Mr. Milillo added that the project would not make money, at least not initially.

Mr. Fleming noted that Woodlawn had exceeded normal operations for one retort in a year and needs backup capacity. He added that Woodlawn assisted during the height of the pandemic in standing ready to handle remains from the downstate region.

Ms. Faber asked about the fact that the cemetery initially sought two retorts but only received approval for one.

Mr. Polishook clarified that the Board did not restrict the number of retorts, but rather that was the subject of negotiating with the Division.

Motion was made, seconded, and unanimously adopted approving the application.

**Public Comment**

None.

Motion made, seconded, and carried to adjourn the meeting at 11:40 a.m.

The next Board meeting is scheduled for September 8, 2020 at 10:30 AM, via Webex and, circumstances permitting, possibly in person.