



**Department
of Commerce**

Division of Real Estate
& Professional Licensing

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sheryl Maxfield, Director

The Ohio Cemetery Dispute Resolution Commission Meeting Minutes

**Division of Real Estate & Professional Licensing
77 S. High Street, 22nd Floor, Hearing Room
Columbus, OH 43215-6133**

**Dec. 6, 2018
10:00 a.m.**

PRESENT: Robert Winter, Vice-Chair; Scott Harmon, Jack Lee-Harris, C. Thomas Pfeifer, Kirk Roberts, Thomas Thompson, Anne M. Petit, Superintendent; Laura Monick, Registration and Resolution Section Chief; Kelly Neer, External Auditor; and Christie Limbert, Assistant Attorney General.

EXCUSED: Rufus Slade, Holly Hollingsworth and Jay Russell

I. Preliminary Matters

Roll Call: Vice Chairperson Robert Winter called the meeting to order with the record reflecting all members of the Ohio Cemetery Dispute Resolution Commission present except for Rufus Slade, Holly Hollingsworth and Jay Russell who were excused.

Approval of Minutes: The minutes from the September 13, 2018, Ohio Cemetery Dispute Resolution Commission meeting were reviewed. Scott Harmon moved to approve the minutes. Thomas Thompson seconded the motion, which passed unanimously.

Superintendent's Report: Superintendent Petit began her report discussing the total number of registered cemeteries. Superintendent Petit then discussed the new mail-in audit procedures being implemented to help comply with the 5-year audit cycle arising from Substitute House Bill 168. It was logical to layout the audits and cemeteries with smaller endowment care trusts and no preneed trusts being done via mail-in audit. The Division held a second stakeholder meeting to discuss the grant program created by the bill on October 31st. The Superintendent also noted that the Division has worked on the transition documents and is awaiting word from the Governor-elect.

II. Old Business

Jack Lee-Harris recused himself from the meeting.

Case No. 2018-5 Susan Farrar vs. Crown Hill Cemetery

Laura Monick presented the case to the Commission. The Commission reviewed the information from both complainant and the cemetery and noted neither party provided additional information. C. Thomas Pfeifer then moved to close the case with the recommendation that should additional issues arise in the future another complaint can be filed. Kirk Roberts seconded the motion, which passed unanimously.

Jack Lee-Harris returned to the meeting.

Case No. 2018-386 Mark Bellamy vs. Saint Joseph Cemetery

Richard Finn appeared on behalf of the cemetery. There was not a quorum for the case and therefore the matter was continued to the March 21, 2019 Commission meeting.

Athens Memory Gardens

Kelly Neer presented the audit to the Commission. The Commission discussed the findings and recommendations of the auditor and the actions taken by the cemetery to come into compliance. C. Thomas Pfeifer then moved to close the audit. Scott Harmon seconded the motion, which passed unanimously.

CMS East

Kelly Neer presented the audit to the Commission. The Commission discussed the findings and recommendations of the auditor and the actions taken by the cemetery to come into compliance. C. Thomas Pfeifer then moved to close the audit. Kirk Roberts seconded the motion, which passed unanimously.

III. New Business

Case No. 2018-521 Wayne Clark vs. Salem Cemetery

Wayne Clark appeared before the Commission. Darlene Weaver and the township trustees appeared on behalf of the cemetery. The Commission heard testimony from the complainant and cemetery representatives. The parties discussed the size of the plot, placement of the existing burials and the current runner with installed memorials. The Commission discussed three possible options: moving the 14" runner; trench and slide the existing burials into the proper position as the cemetery can legally fix interment errors and this would not be an exhumation; or conducting two future interments vertically and a third future interment in the 36" space in the upper left corner of the lot. Kirk Roberts then moved to close the case with the recommendation that the cemetery conduct two future interments vertically and a third future interment in the 36" space in the upper left corner of the lot and ensure that cemetery records are marked accordingly. Thomas Thompson seconded the motion, which passed unanimously.

Case No. 2018-535 Jeane Bentley Jr. vs. Pierce Township Cemetery

Laura Monick presented the case to the Commission. The Commission reviewed the information received from the complainant and cemetery representative. It was noted that Mr. Bentley, Jr. is now satisfied that his paperwork provides the proper authorization for interment in the lots indicated. Scott Harmon then moved to close the case. Thomas Thompson seconded the motion, which passed unanimously.

Case No. 2018-536 Diana Lynn Becker vs. Preston Cemetery

Diana Lynn Becker appeared before the Commission. Prosecuting Attorney Bailey and the township trustees appeared on behalf of the cemetery. The Commission heard testimony from the complainant and cemetery representatives. The parties discussed family lineage, case law and whether a descendent, Mary Ann Kearns, that sold interment rights to Ms. Becker's father was able to transfer those lots. There was also discussion about the burials in the current section, how many interments have been confirmed and how many open graves are guaranteed available in that section due to unknown burials and existing burials that may encroach on other spaces. The Commission noted that based on the information provided by both sides, Mary Ann Kearns did not have the right to sell the spaces because there was another surviving sister. Kirk Roberts moved to close the case with the recommendation that the cemetery deed the four spaces originally

offered to Ms. Becker and if other spaces are deemed available that Ms. Becker be able to purchase those. Scott Harmon seconded the motion, which passed unanimously.

Jack-Lee Harris recused himself from the meeting.

Case No. 2018-525 Bonnie Volk vs. Resthaven Memory Gardens

Cindy and Christine Volk, Bonnie Volk's daughters, appeared before the Commission. The Commission heard testimony from the complainant's daughters and reviewed the documents from both Mrs. Volk and the cemetery. The Commission noted that based upon the information this appeared to be a straightforward case where a full refund should be issued. C. Thomas Pfeifer moved to continue the case with the recommendation that the cemetery issue a refund of the remaining money within 30 days of this order and include an explanation of the \$1,195.00 refund check already issued by the cemetery. Kirk Roberts seconded the motion, which passed unanimously.

Case No. 2018-551 Elizabeth Harper vs. Resthaven Memory Gardens

Elizabeth and John Harper appeared before the Commission. The Commission heard testimony from the complainant and reviewed the documents from both Mrs. Harper and the cemetery. The Commission discussed whether the contracts were irrevocable, the amounts paid on each contract prior to them going into default and what the cemetery has offered to resolve this matter. After discussion, Kirk Roberts moved to continue the case with the recommendation that the cemetery provide proof of Lisa Harper's separate signed acknowledgment of her waiver of the right to revoke, pursuant to ORC 1721.211(I), for each of the contracts executed or if the cemetery is unable to produce such proof, the Commission then recommended that the cemetery provide a detailed proposed resolution to help Mrs. Harper complete the interment and memorialization of Lisa Harper. Thomas Thompson seconded the motion, which passed unanimously.

Case No. 2018-550 Patricia Hart vs. Resthaven Memory Gardens

Mr. & Mrs. Hart appeared before the Commission. The Commission heard testimony from the Harts and reviewed the documents from both Mrs. Hart and the cemetery. The Commission discussed the drainage issues in their section of the cemetery, Divine Promises; and that their marker is about four inches below grade and no longer straight. After discussion, Robert Winter moved to continue the case with the recommendation that the Division review Mrs. Hart's 2015 complaint to try and identify where drainage was installed at that time; that the Division's External Auditor meet with the Harts to tour the cemetery and that the cemetery raise and straighten the Harts' marker. C. Thomas Pfeifer seconded the motion, which passed unanimously.

Case No. 2018-574 Amber Mjolnir vs. Resthaven Memory Gardens

Laura Monick presented the case to the Commission. The Commission reviewed the documents from both Mrs. Mjolnir and the cemetery. After discussion, Kirk Roberts moved to close the case with the recommendation to Ms. Mjolnir that the cemetery's policy requiring vaults for urns is in order with current standards and practices in the industry particularly for the type of material chosen. C. Thomas Pfeifer seconded the motion, which passed unanimously.

Jack Lee-Harris returned to the meeting.

Case No. 2018-603 Ersie Jean Smith vs. Mount Zion Shoup Cemetery

Laura Monick presented the case to the Commission. The Commission reviewed the information received from both parties and was informed that the matter had been resolved. C. Thomas Pfeifer then moved to close the case. Kirk Roberts seconded the motion, which passed unanimously.

Case No. 2018-628 Therese Van Meter Brunton vs. Rosehill Cemetery

Therese Van Meter Brunton appeared before the Commission. The Commission heard testimony from the Complainant and reviewed the information received from both parties. The Commission discussed that the cemetery has approximately 150 spaces available and that expansion of a new section can be expensive and it may be at least a year before the cemetery considers expansion. It was also discussed that the Village cannot be forced to open a new area. Robert Winter then moved to close the case with the recommendation that if a new section opens at the cemetery the complainant be given the first offering in the new section at the prices in effect at that time. Thomas Thompson seconded the motion, which passed unanimously.

IV. Audits

Rose Hill (Hamilton) Outside Audit Review

Beth Wagner appeared before the Commission. The Commission reviewed the outside audits of the endowment care trust and preneed merchandise and services trust performed by an outside certified public accountant as required by ORC Chapter 4767. Upon review of all the information presented, Robert Winter moved to accept the independent auditor's reports and approved the Superintendent to issue a new cemetery operator registration. Scott Harmon seconded the motion, which passed unanimously.

Union Cemetery (Louisville)

Kelly Neer presented the audit to the Commission. The Commission discussed the findings and recommendations of the auditor. Scott Harmon moved to continue the audit to the March meeting to allow time for Union Cemetery Association to comply with the audit recommendations. Jack Lee-Harris seconded the motion, which passed unanimously.

Kirk Roberts recused himself from the meeting.

Columbiana County Memorial Park

Kelly Neer presented the audit to the Commission. The Commission discussed the findings and recommendations of the auditor and the Association's request for a continuance. C. Thomas Pfeifer moved to continue the audit to the March meeting. Thomas Thompson seconded the motion, which passed unanimously.

Kirk Roberts returned to the meeting.

Evergreen Cemetery (Wellston)

Kelly Neer presented the audit to the Commission. The Commission discussed the findings and recommendations of the auditor and the actions taken by the cemetery to come into compliance. C. Thomas Pfeifer then moved to close the audit. Scott Harmon seconded the motion, which passed unanimously.

V. Other Business

Review new/revised O.A.C. rules:

The Commission reviewed the proposed changes and additions to Ohio Administrative Code 1301:01 that were provided by Laura Monick. Kirk Roberts moved to approve the proposed changes and additions in Ohio Administrative Code 1301:01 as provided by the Division and to

have the Division move forward with the rule review process. Jack Lee-Harris seconded the motion, which passed unanimously.

Failure to Obtain a New Registration

Laura Monick presented two cemeteries that have failed to properly register. Upon review, the Commission finds that the cemeteries listed in the attached Exhibit A have been contacted by Division staff about the cemetery registration requirements in Ohio and that those cemeteries have failed to register. Based upon those findings, Kirk Roberts moved that pursuant to Ohio Revised Code Section 4767.08(A), the Commission requests that the prosecuting attorney of the county in which the alleged violations of R.C 4767.02(A) occurred initiate such proceedings as are appropriate. C. Thomas Pfeifer seconded the motion, which passed unanimously.

Exhibit A

Operator	Cemetery	County	1st Ltr	2nd Ltr	Cert Signed	Last contact
Pine Grove United Methodist Church	Pine Grove UMC Cemetery	Jefferson	5/8/2018	8/9/2018	Yes	None
Jackson Cemetery Association	Jackson Cemetery	Mahoning	2/27/2018	8/9/2018	Yes	4/12/2018

VI. Adjournment

Robert Winter moved to adjourn the meeting. Scott Harmon seconded the motion, which passed unanimously.