Ohio | Department of Commerce

Division of Real Estate
& Professional Licensing

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THE OHIO CEMETERY DISPUTE RESOLUTION COMMISSION MEETING MINUTES

Division of Real Estate & Professional Licensing
77 S. High Street, 22nd Floor, Hearing Room **March 21, 2019**
Columbus, OH 43215-6133 **10:00 a.m.**

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

EXCUSED: Scott Harmon, Holly Hollingsworth and Kirk Roberts

I. Preliminary Matters

Roll Call: Chairperson Rufus Slade called the meeting to order with the record reflecting all members of the Ohio Cemetery Dispute Resolution Commission present except for Scott Harmon, Holly Hollingsworth and Kirk Roberts who were excused.

Approval of Minutes: The minutes from the December 6, 2018, Ohio Cemetery Dispute Resolution Commission meeting were reviewed. Jack Lee-Harris moved to approve the minutes. Jay Russell seconded the motion, which passed unanimously.

Superintendent's Report: Superintendent Petit began her report noting that the total number of registered cemeteries has hit 4,200. Superintendent Petit then discussed the updated reporting of audits under Commission Statistics. It was also announced that Holly Hollingsworth submitted her resignation from the Commission due to her appointment as Director of Communications for Ohio Attorney General Yost. The Superintendent moved on to the inquiries being received about the cemetery grant program. The Commission was informed that the proposed grant administrative rules were approved by the Ohio Common Sense Initiative Office and have been filed with the Joint Committee on Agency Rule Review.

II. Old Business

Case No. 2018-667 Claude Smelser vs. Batavia Union Cemetery
Claude Smelser appeared before the Commission. The Commission heard Mr. Smelser's testimony and reviewed the documents submitted by both parties. The Commission noted that the cemetery has the right to trim branches that are over their property line without going onto the other property, that there appears to be dead trees not on the cemetery's property that could be hazardous and it could be a liability for the cemetery. Robert Winter then moved to recommend that the cemetery does have the right to trim tree branches that overhang the cemetery's property; that the cemetery trim those trees as soon as possible without damaging the base of the trees; and inform the Trust that the cemetery would like to remove the dead

trees that are not on the cemetery's property. C. Thomas Pfeifer seconded the motion, which then passed unanimously. Jack Lee-Harris moved to continue the case to the June meeting. Jay Russell seconded the motion, which passed unanimously.

Case No. 2018-131 Carlton & Michelle Randall vs. Fairmount Cemetery
Mr. and Mrs. Randall appeared before the Commission. Attorney Kentner appeared on behalf of the cemetery. The Commission heard testimony from the Randalls and Attorney Kentner and reviewed the documents submitted. Discussion covered some of the steps the cemetery has taken since the last meeting, potential issues with the endowment care trust and looking at maintenance in the coming spring and summer months. Robert Winter moved to continue the case to the June meeting and ordered External Auditor Kelly Neer to conduct an audit prior to the June meeting of the endowment care trust from 2014 forward. C. Thomas Pfeifer seconded the motion, which passed unanimously.

Jack Lee-Harris recused himself from the meeting.

Case No. 2018-551 Elizabeth Harper vs. Resthaven Memory Gardens
Mr. and Mrs. Harper appeared before the Commission. Mr. Pat Richey appeared on behalf of the cemetery. The Commission heard testimony from the Harpers and Mr. Richey and reviewed the case documents. There was discussion of the three contracts, how much was paid versus the refund being offered and the finance charges. Robert Winter then moved to close the case with the recommendation that any funds contained in the trust should be refunded to Mrs. Harper and that the Superintendent refer any potential violations of the consumer sales practice act concerning finance charges and interest on the contracts to the Ohio Attorney General's Office. Thomas Thompson seconded the motion, which passed unanimously.

Jack Lee-Harris returned to the meeting.

Columbiana County Memorial Park
Daniel Wolfe and Roger Stanford appeared on behalf of the cemetery. Kelly Neer presented the audit to the Commission. The Commission discussed the findings and recommendations of the auditor and heard testimony from the cemetery representatives. Discussion concerned the $118,711.25 taken out of the endowment care trust principal for replacement of the cemetery's key landscaping cross feature and fees. The Association Board members discussed possible areas of revenue they could use to repay the trust over ten years. After extensive discussions, C. Thomas Pfeifer moved to continue the audit to the June meeting with the recommendation that the cemetery submit a written repayment plan to the Commission prior to the next meeting. Jay Russell seconded the motion, which passed unanimously. Robert Winter then moved that there be a time limit of 5-years for repayment. Thomas Thompson 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 and the steps taken by the cemetery to come into compliance. Jay Russell then moved to close the audit. C. Thomas Pfeifer seconded the motion, which passed unanimously.

III. New Business

Jack-Lee Harris recused himself from the meeting.

Case No. 2018-706 Mike Moyer vs. Kingwood Memorial
Mike Moyer appeared before the Commission. Mr. Pat Richey appeared on behalf of the cemetery. The Commission heard testimony from both parties and reviewed the case documents. Rufus Slade then moved to continue the case to the June meeting to allow Mr. Richey time to research the issue and look at possible ways to help resolve this matter. Jay Russell seconded the motion, which passed unanimously.

Case No. 2019-26 Nancy King vs. Resthaven Memory Garden
Nancy King appeared before the Commission. Mr. Pat Richey appeared on behalf of the cemetery. The Commission heard testimony from both parties, reviewed the case documents and the online petition. There was extensive discussion of the condition of the cemetery, steps already taken by the cemetery and their plans moving forward. Robert Winter moved to continue the case to the June meeting with the recommendation that the operator detail the drainage issue with an overall plan containing specifics explaining the progression of planned repairs; and that the operator post that plan at the office, on any social media sites the cemetery maintains and provide the plan to Ms. King and the Commission. Thomas Thompson seconded the motion, which passed unanimously.

Case No. 2019-50 Frankie Brown vs. Green Lawn Cemetery
Frankie Brown appeared before the Commission. Mr. Pat Richey appeared on behalf of the cemetery. The Commission heard testimony from both parties and reviewed the case documents. There was discussion on the unbuilt mausoleum and whether or not the cemetery has any other crypts that would meet Ms. Brown's needs. The Commission wanted to know whether the original crypt purchased on level 4 is still available. Mr. Richey requested time to review the cemetery's inventory. Jay Russell moved to continue the case to the June meeting to allow Mr. Richey time to see what inventory is currently available. Thomas Thompson seconded the motion, which passed unanimously.

Jack Lee-Harris returned to the meeting.

Case No. 2019-23 Sherry Hanes vs. Center Baptist Cemetery
Laura Monick presented the case to the Commission. Fiscal Officer Edward Wright appeared on behalf of the cemetery. The Commission heard testimony from the cemetery and reviewed the case documents and pictures. There was discussion on the width of the graves and locations of burials that have already occurred. The Commission believes there is a lot of space where the shrub is between headstones but there is not enough space for a full burial. The Commission also discussed with the cemetery whether or not there was an authorization for David Cramblett's headstone. The Commission provided that the heirs to the burial rights are required to authorize any headstones on their lots. Robert Winter moved to continue the case to the June meeting with the recommendation that the cemetery contact Mrs. Hanes and her brother David to find out if they want the headstone to remain or be removed; if the headstone is to be removed then the cemetery should do so and return it to Belinda Cramblett; and the cemetery should show the family the pins for the graves so they are aware of the exact location of the remaining grave. Jay Russell seconded the motion, which passed unanimously.

Case No. 2019-75 Alyson Crile vs. North Lawn Cemetery
Laura Monick presented the case to the Commission. The Commission reviewed the documents submitted by both parties. There was discussion on the events timeline and whether or not Ms. Crile sought further assistance from the Cemetery Association after the first employee did not provide her requested documents. Robert Winter moved to close the case and noted that Ms. Crile did not give the cemetery the opportunity to correct the employee's error and the Commission found no supporting evidence that the cemetery should owe Ms. Crile a refund of her attorney fee. Jay Russell seconded the motion, which passed unanimously.

Case No. 2019-76 Beth Wallace McNearney vs. Highland Memorial Gardens
Laura Monick presented the case to the Commission. The Commission reviewed the documents and pictures submitted by both parties as well as the pictures from the External Auditor's visit to the cemetery. There was discussion that the 72-hour burial notice policy is satisfactory as long as it is followed consistently. The Commission also discussed the condition of the mausoleum and the issue of timely burials raised in the complaint. Rufus Slade moved to close the case with the recommendation that the cemetery provide a copy of the rules and regulations to Ms. Wallace McNearney, create a back-up plan for equipment failure, improve on housecleaning and to look at the mausoleum roof and other areas for possible water damage. C. Thomas Pfeifer seconded the motion, which passed unanimously.

IV. Audits

Green Lawn Cemetery Outside Audit Review
Laura Monick presented a brief background to the Commission. Appearing before the Commission were Randel Rogers, President of Green Lawn Cemetery Association and Mr. Pat Richey on behalf of StoneMor Partners. The Commission reviewed the request to issue a new cemetery operator registration to Memorial Properties – Ohio, LLC for Green Lawn Cemetery. 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 report and approved the Superintendent to issue a new cemetery operator registration at the time management agreement rights are transferred. Jay Russell seconded the motion, which passed unanimously.

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

Bladensburg Cemetery
Kelly Neer presented the audit to the Commission. Richard Hill appeared on behalf of the cemetery. The Commission discussed the findings and recommendations of the auditor and heard testimony from Mr. Hill. The Commission discussed the cemetery's endowment care trust records and bank statements with Mr. Hill. C. Thomas Pfeifer then moved to continue the audit to the June meeting. Jay Russell seconded the motion, which passed unanimously.

V. Other Business

Review of Annual Report
Discussion began on the draft annual report. C. Thomas Pfeifer then moved to approve the draft annual report. Jay Russell seconded the motion, which passed unanimously.

Review of 5-year compliance audits
Laura Monick presented six completed 5-year compliance audits. Upon review, the Commission found that the cemeteries listed in the attached Exhibit A were audited by Division staff pursuant to Ohio Revised Code Section 4767.02(B)(11). Those audits are complete and no violations of ORC 1721.21 and/or 1721.211 currently exist. Based upon those findings, Jay Russell moved to close the audits listed in Exhibit A. Thomas Thompson seconded the motion, which passed unanimously.

Exhibit A

Case #	Type	Cemetery Name	CRC #	Cemetery Operator	CEO #	Date Completed
2018-691	In Person	Henry Warstler Cemetery	983385	Henry Cemetery Association	1725	12/26/2018
2018-702	Mail In	Brokensword Cemtery	982891	Brokensword Cemetery Society	1454	1/24/2019
2018-760	Mail In	Knollwood Cemetery	982922	Knollwood Cemetery Association	1501	1/15/2019
2019-18	Mail In	Yellow Creek Cemetery	2014005331	Yellow Creek Cemetery Assoc	2014005273	1/30/2019
2019-19	Mail In	Greenlawn Cemetery	2015001836	Wilmot Cemetery Association	2015001805	2/7/2019
2019-47	Mail In	Pike Run Cemetery	2015004771	Pike Run Cemetery Association	2015004672	2/12/2019

Failure to Obtain a New Registration
Laura Monick presented three cemeteries that have failed to properly register. Upon review, the Commission found that the cemeteries listed in the attached Exhibit A were contacted by Division staff about the cemetery registration requirements in Ohio and that those cemeteries have failed to register. Based upon those findings, Robert Winter 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. Jay Russell seconded the motion, which passed unanimously.

Exhibit A

Operator	Cemetery	County	1st Ltr	2nd Ltr	3rd Ltr	Cert Signed	Last contact
Hillside Chapel LLC	Hillside Chapel	Hamilton	4/2/2018	7/26/2018	11/6/2018	No	7/26/2018
Mount Union Cemetery Association	Mount Union Cemetery	Stark	4/10/2018	12/10/2018		Yes	10/31/2018
Imhoff Cemetery Association	Imhoff Cemetery	Ashland	6/11/2018	10/16/2018		Yes	8/23/2018

VI. Adjournment

Jay Russell moved to adjourn the meeting. Thomas Thompson seconded the motion, which passed unanimously.