



Ohio Department of Commerce
Division of Real Estate & Professional Licensing

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MINUTES OF THE MEETING OF THE
OHIO CEMETERY DISPUTE RESOLUTION COMMISSION

Division of Real Estate & Professional Licensing
77 S. High St., 31st Floor, Hearing Room East B
Columbus, Ohio 43215-6133

September 14, 2006
10:00 a.m.

PRESENT: Marilyn Brandt, Chairperson; Gregory W. Roberts, Vice Chairperson; Richard D. Finn, Secretary; Stephen E. Bittner; Thomas A. Kayati, Marguerite Cox Molk; Robert R. Shenefield; Harold J. Wagner; James Wright; Daniel Roberts, Deputy Division Legal Counsel; and Theodore J. Hornyak, Investigator.

ABSENT: None.

I. Preliminary Matters:

Roll Call: Chairperson Stephen Bittner called the meeting to order with the record reflecting all members of the Ohio Cemetery Dispute Resolution Commission present except Marilyn Brandt.

Election of Officers: Thomas Kayati moved to nominate Marilyn Brandt as Chairperson, Gregory W. Roberts as Vice Chairperson, and Richard D. Finn as Secretary of the Ohio Cemetery Dispute Resolution Commission. Robert R. Shenefield seconded the motion, which passed unanimously.

Approval of Minutes: The minutes of the June 15, 2006 meeting of the Ohio Cemetery Dispute Resolution Commission were reviewed and discussed. Richard Finn moved to approve the minutes. James Wright seconded the motion, which passed unanimously.

Superintendent's Report: The Division's Cemetery Section handled 264 phone calls, four email queries, and mailed thirteen complaint forms since the last meeting on June 15, 2006.

Theodore Hornyak is scheduled to give a presentation on cemetery regulations and sit on a panel at the annual meeting and conference of the Ohio Historical Society and Ohio Association of Historical Societies and Museums in Columbus on October 6.

Mr. Hornyak attended the conference and meeting of the North American Cemetery Regulators Association that was held in Seattle, WA from July 23–26, 2006. Ted gave a presentation on handling cemetery complaints and was voted President-Elect. He briefed the Commission on some of the conference activities.

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The Division's Legal Section, with help from the Ohio Historical Society, created a retention schedule for cemetery registrations and renewals and related documents, which includes trust reports and documents concerning the selling of interment rights. The retention schedule will be that the hardcopy is imaged, indexed, and then destroyed. The images will be retained permanently.

Marilyn Brandt joined the meeting.

II. Old Business:

None.

III. New Business:

Massillon Cemetery Association (1470) - Massillon Cemetery, Registration 982373 – Stark Co. - Violations of ORC Sections 1721.21 and 1721.211

The Commission reviewed the status of Massillon Cemetery's Endowment Care Trust and Preeved Cemetery Merchandise and Services Trust. The Commission found that Massillon Cemetery Association failed to create an Endowment Care Trust, in violation of ORC Section 1721.21, or a Preeved Cemetery Merchandise and Services Trust, in violation of ORC Section 1721.211, despite repeated attempts by the Division to achieve compliance.

Richard Finn moved to refer the violations to the Stark County Prosecutor. Robert Shenefield seconded the motion, which passed unanimously.

Brenda Gothard vs. Floral Hills Memorial Gardens – Case No. 2006-341 – Ross Co. – Registration 980717

Neither party attended the meeting. Theodore Hornyak presented Ms. Gothard's complaint to the Commission. Mr. Hornyak reported that the parties agreed that, prior to each installation of a marker at the complainant's plots by a third party installer, the complainant would pay a reduced inspection fee of \$125.00 for each installation.

Thomas Kayati moved to close the complaint with a recommendation that the cemetery operator revisit their rules and regulations and update them to get rid of inconsistencies. Stephen Bittner seconded the motion, which passed unanimously.

Sandra Ries vs. St. James White Oak – Case No. 2006-364 – Hamilton Co. – Registration 982989

The complainant did not attend the meeting. Theodore Hornyak presented her complaint. Gary Raffel and Attorney Daniel Reitz spoke on behalf of the cemetery operator.

The Commission reviewed the facts of this matter and decided that determining reimbursement was out of the scope of its authority. Richard Finn moved to close this complaint pending the receipt of a copy of a letter to the complainant from St. James White Oak Cemetery, or counsel, which will address the issues stating that they will grandfather placing memorials as described in the agreement and diagram. Harold Wagner seconded the motion, which passed unanimously.

Robin Hasenfratz vs. Ottawa Hills Memorial Park - Case No. 2006-408 – Lucas Co. – Registration 981250

James Wright recused himself from the Commission meeting. Robin Hasenfratz presented her complaint to the Commission. Judy Coaster spoke on behalf of the cemetery operator.

Gregory Roberts moved to leave the complaint open to the next Commission meeting to give the cemetery operator time to construct a balance sheet that shows items purchased and payments made. Stephen Bittner seconded the motion, which passed unanimously.

James Wright rejoined the meeting.

Richard Finn excused himself from the meeting.

Louise Branstetter vs. Woodland Cemetery Assoc. of Dayton, Inc. – Case No. 2006-433 – Montgomery Co. – Registration 980899

Neither party attended the meeting. Theodore Hornyak presented the complaint to the Commission. Stephen Bittner moved to leave the complaint open to the next Commission meeting to give the parties additional time to resolve the complaint. Gregory Roberts seconded the motion, which passed unanimously.

Pearl Miller vs. Sunset Cemetery – Case No. 2006-491 – Franklin Co. – Registration 983204

James Wright recused himself from the Commission meeting. Neither party attended the meeting. Theodore Hornyak presented Ms. Miller's complaint to the Commission. Mr. Hornyak reported that the parties agreed that the cemetery operator would provide the complainant with a \$975.00 refund pending the signatures of Ben Miller, Jr. and Ben Miller, Sr.

Robert Shenefield moved to close the complaint. Thomas Kayati seconded the motion, which passed unanimously.

James Wright rejoined the meeting.

Deloris Jackson vs. Evergreen Memorial Gardens – Case No. 2006-545 – Washington Co. – Registration 981016

Gregory Roberts recused himself from the Commission meeting. Neither party attended the meeting. Theodore Hornyak reported that the complainant requested that her complaint be continued to the next Commission meeting.

Robert Shenefield moved to leave the complaint open to the next Commission meeting. James Wright seconded the motion, which passed unanimously.

Gregory Roberts rejoined the meeting.

Terry Hanlon vs. Arlington Memorial Gardens – Case No. 2006-580 – Hamilton Co. – Registration 981855

Terry Hanlon presented his complaint to the Commission. Attorney Timothy C. Long spoke on behalf of the cemetery operator. Stephen Bittner moved to discuss the complaint in Executive Session. Harold Wagner seconded the motion, which passed unanimously.

Chairperson Brandt restored the regular meeting after the Commission discussed the complaint in Executive Session.

Gregory Roberts moved to close the complaint after noting four points:

1. Ohio law allows cemeteries to set their own rules and regulations.
2. Arlington Memorial Gardens has a rule and regulation that requires a certain percentage of alloy for the markers that are permitted in the cemetery.
3. Trigard has not provided detailed information in regards to percentage of alloy with their product, so at this time Arlington can enforce their rules and regulations.
4. Arlington has offered to continue to work with the complainant regarding a marker and the Commission suggests that the complainant might want to consider a dialogue with them regarding this offer.

Harold Wagner seconded the motion, which passed unanimously.

Phoebe Mayle vs. Jackson Cemetery – Case No. 2006-683 – Mahoning Co. – Not Registered

Neither party attended the meeting. Theodore Hornyak reported that the cemetery is not registered with the Division, in violation of ORC Section 4767.02(A). Stephen Bittner moved to refer the violation to the Mahoning County Prosecutor. James Wright seconded the motion, which passed unanimously.

Howard Zuercher vs. Sherwood Memorial Gardens – Case No. 2006-330 – Wayne Co. Registration 982356

Gregory Roberts recused himself from the Commission meeting. Neither party attended the meeting. Theodore Hornyak presented Mr. Zuercher's complaint to the Commission. Mr. Hornyak reported that the complainant was satisfied that the cemetery operator provided him with an \$80.00 reimbursement.

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Stephen Bittner moved to close the complaint. James Wright seconded the motion, which passed unanimously.

Gregory Roberts rejoined the meeting.

Mary and Kathleen Hogan vs. Crown Hill Cemetery – Case No. 2006-478 – Summit Co. – Registration 982356

Neither party attended the meeting. Theodore Hornyak presented the complaint to the Commission. Mr. Hornyak reported that the complainants were satisfied that the cemetery operator cancelled their contract.

Thomas Kayati moved to close the complaint. Robert Shenefield seconded the motion, which passed unanimously.

Jean Mastrilli vs. Green Lawn Cemetery – Case No. 2006-594 – Franklin Co. – Registration 982676

Neither party attended the meeting. Theodore Hornyak presented Ms. Mastrilli's complaint to the Commission. Mr. Hornyak reported that the complainant was satisfied that the cemetery operator removed an old tree stump next her family's plot.

Thomas Kayati moved to close the complaint. Gregory Roberts seconded the motion, which passed unanimously.

IV. OTHER BUSINESS:

The next Ohio Cemetery Dispute Resolution Commission meeting is scheduled for Thursday, December 14, 2006 at 10:00 a.m. in the Columbus Office of the Division of Real Estate & Professional Licensing.

V. ADJOURNMENT

Stephen Bittner moved to adjourn the September 14, 2006 meeting of the Ohio Cemetery Dispute Resolution Commission. Gregory Roberts seconded the motion, which passed unanimously.