



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 Street, 31st Floor, Hearing Room East B
Columbus, Ohio 43215-6133

June 28, 2007
10:00 a.m.

PRESENT: Marilyn Brandt, Chairperson; Gregory W. Roberts, Vice Chairperson; Richard D. Finn, Secretary; Thomas A. Kayati, Marguerite Cox Molk; Harold J. Wagner; James Wright; Holly Johnston-Cook, Division Chief Legal Counsel, and Theodore J. Hornyak, Investigator.

ABSENT: Stephen E. Bittner and Robert Shenefield

I. Preliminary Matters:

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

Approval of Minutes: The minutes of the March 15, 2007 meeting of the Ohio Cemetery Dispute Resolution Commission were reviewed and discussed. Thomas Kayati moved to approve the minutes with the recommendations to add Robert Shenefield to the list of Commissioners present and change the word “complaint” to “complainant” in the first sentence at Lemma Crafton vs. Jeffersonview Cemetery. Marguerite Molk seconded the motion, which passed unanimously.

Superintendent’s Report: The Division’s Cemetery Section handled 327 phone calls, ten email queries, and mailed twelve complaint forms since the last meeting on March 15, 2007.

The City of Cincinnati registered Wesleyan Cemetery after the First Appellate District Court of Appeals affirmed the decision of the Hamilton County Common Pleas Court.

Each Commissioner was provided with a copy of Senate Bill 175.

The Division received correspondence from the Counselor, Social Worker and Marriage & Family Therapist Board that it received a complaint that the cemetery industry uses the term “Counselor” or “Family Service Counselor” to describe persons selling interment rights or cemetery merchandise and services. The Commissioners were provided with a sample letter that was drafted by the Division that will be included in the next mailing of cemetery registration renewal applications and is currently being sent to particular cemetery operators.

FINANCIAL INSTITUTIONS	INDUSTRIAL COMPLIANCE	LABOR & WORKER SAFETY	LIQUOR CONTROL
REAL ESTATE & PROFESSIONAL LICENSING	SECURITIES	STATE FIRE MARSHAL	UNCLAIMED FUNDS

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Theodore Hornyak spoke about cemetery regulations and the OCDRC at events sponsored by the Funeral Consumers Alliance of Central Ohio on March 20 and the Auglaize County Historical Society on May 18. Mr. Hornyak is also scheduled for presentations at the conferences of the Ohio Association of Cemetery Superintendents and Officials on August 6 and the Catholic Cemeteries of Ohio on October 17. He will also be attending the conference and meeting of the North American Cemetery Regulators Association held from October 30 through November 2.

II. Old Business:

Lemma Crafton vs. Jeffersonview Cemetery – Case No. 2006-935 – Montgomery Co. – Registration 983065 - Closed

The Commission closed this complaint at its last meeting because the complainant reported that she was satisfied with the cemetery operator's response to her complaint. The Commission recommended that the cemetery operator create a document for a family or customer that would show the purchase of a particular grave space. The Commission also recommended that the operator clear up the trust agreements.

Theodore Hornyak reported that the cemetery operator created a Certificate of Interment Rights to be provided to purchasers and provided one to the complainant with a copy to the Division. The cemetery also provided the Division with copies of signed Trust Agreements.

Endowment Care and Preeed Cemetery Merchandise and Services Trust Audit of Rose Hill Burial Park, Butler County, pursuant to ORC Sections 4767.02(B)(8) and 4767.06(G) – Transfer from Service Corporation International to Gibraltar Remembrance Service (Indiana)

James Wright recused himself from the Commission meeting. Theodore Hornyak reported that Service Corporation International requested more time to prepare a response to the results of the trust audit. Richard Finn moved to continue the matter to the next OCDRC meeting. Gregory Roberts seconded the motion, which passed unanimously.

James Wright rejoined the meeting.

Compliance at Crown Hill Cemetery – Summit County – Registration 980454

At its last meeting, the Commission closed Thomas Carl Flynn vs. Crown Hill Cemetery – Case No. 2006-1013 with the recommendation that Theodore Hornyak visit the cemetery for a compliance audit, make recommendations to the cemetery operator, and report back to the Commission.

Mr. Hornyak provided the Commission with a copy of the compliance results and reported that it appeared that the cemetery operator had a Custody Agreement with the reported Endowment Care Trust Trustee rather than a Trust Agreement. The operator will provide a new Trust Agreement to the Division. Mr. Hornyak will update the Commission at the next meeting.

Leslie Schottenheimer vs. East Akron Cemetery – Case No. 2006-646 – Summit Co. – Registration 980711

Neither party attended the meeting. Theodore Hornyak reported that the complainant requested that the Commission close her complaint. Richard Finn moved to close the complaint per the complainant's request. Thomas Kayati seconded the motion, which passed unanimously.

Leonard Mingus vs. Riverside Cemetery – Case No. 2006-880 – Erie Co. – Registration 981243

Neither party attended the meeting. Theodore Hornyak reported that both parties requested that the hearing of the complaint be continued to the next meeting.

Marguerite Molk moved to leave the complaint open to the next meeting at the request of the parties. Gregory Roberts seconded the motion, which passed unanimously.

III. New Business:

Endowment Care and Preeed Cemetery Merchandise and Services Trust Audit of Reed-Fairview Memory Gardens, Washington County, pursuant to ORC Sections 4767.02(B)(8) and 4767.06(G) – Transfer from Reed-Fairview Memory Gardens, Inc. to Leavitt Funeral Home of Ohio, Inc.

The Commission reviewed the audit report. Richard Finn moved to accept the results of the audit and direct the Division to issue a cemetery registration certificate to the new operator. Thomas Kayati seconded the motion, which passed unanimously.

Kevin Maher vs. Mt. Sinai Cemetery - Case No. 2007-33 - Cuyahoga Co. – Registration 983112

Neither party attended the meeting. Theodore Hornyak reported that the complainant requested that the hearing of his complaint be continued to the next meeting in order to give the cemetery operator more time to respond to his letter.

Thomas Kayati moved to leave the complaint open to the next Commission meeting. Marguerite Molk seconded the motion, which passed unanimously.

Steve and Carlee Fickenworth vs. Alexander Cemetery, Inc. - Case No. 2007-64 – Athens Co. – Registration 981000

Steve and Carlee Fickenworth presented their complaint to the Commission. The cemetery operator did not attend the meeting.

Gregory Roberts moved to close the complaint and recommend that Rudy Baumgartel contact the complainants by phone and meet with them, if they request, to answer their questions and further recommend that the Division send a copy of the Commission's Cemetery Minimum Maintenance Guidelines to the cemetery operator. James Wright seconded the motion, which passed unanimously.

Division Chief Legal Counsel Holly Johnston-Cook recommended that the Commission move to direct the Superintendent of the Division to issue a subpoena to compel the attendance of the cemetery operator if any issue regarding Alexander Cemetery is brought before the Commission in the future. Thomas Kayati moved to accept the recommendation of Ms. Johnston-Cook. Marguerite Molk seconded the motion, which passed unanimously.

Ryan C. James vs. Pineview Memorial Park - Case No. 2007-110 - Trumbull Co. - Registration 983182

Gregory Roberts recused himself from the Commission meeting.

Neither party attended the meeting. Theodore Hornyak reported that the complainant requested that the hearing of his complaint be continued to the next meeting. Thomas Kayati moved to leave the complaint open to the next Commission meeting. James Wright seconded the motion, which passed unanimously.

Gregory Roberts rejoined the meeting.

Phyllis Hammond vs. Rivercliff Union Cemetery - Case No. 2007-237 - Morrow Co. - Registration 983394

Neither party attended the meeting. Theodore Hornyak reported that the complainant was satisfied with the cemetery operator's response that her relatives will be able to be interred in her family's graves.

Richard Finn moved to close the complaint. Gregory Roberts seconded the motion, which passed unanimously.

Rebecca Mercer vs. Vine Street Hill Cemetery - Case No. 2007-285 - Hamilton Co. - Registration 980692

Neither party attended the meeting. Theodore Hornyak reported that that the complainant was satisfied with the written response and her conversation with the cemetery operator regarding the transfer of her mother's interment rights.

Thomas Kayati moved to close the complaint. Marguerite Molk seconded the motion, which passed unanimously.

Vivian Konkle vs. Grandview Memorial Park – Case No. 2007-303 - Portage Co. – Registration 982684

Vivian Konkle, and her sister Jenny Sheely, presented her complaint to the Commission. Sheridan Rinehart spoke on behalf of the cemetery.

The parties agreed to the Commission's recommendation that, within 30 days, the cemetery operator move the complainant's father from the current crypt to a crypt on the first level on the opposite side of the mausoleum along with the memorial on the front of the crypt at no charge to the complainant,. The cemetery operator agreed to provide the complainant's family with a new deed or certificate for the new and permanent interment space. The Commission also recommended that the cemetery operator be mindful of his contract language specifying building names and preconstruction terms.

Richard Finn moved to close the complaint. Gregory Roberts seconded the motion, which passed unanimously.

Ray Asik vs. Elmwood Cemetery – Case No. 2007-309 - Lorain Co. – Registration 982917

Ray Asik presented his complaint to the Commission. The cemetery operator did not attend the meeting. Gregory Roberts moved to close the complaint and recommend that the complainant pursue the City of Lorain with his legal recourse. Harold Wagner seconded the motion, which passed unanimously.

Diane Anderson vs. North Royalton Cemetery – Case No. 2007-310 - Cuyahoga Co. – Registration 980790

Diane Anderson, with her sisters Sharon Grafmiller and Linda Kelley, presented her complaint to the Commission. The cemetery operator did not attend the meeting.

Richard Finn moved to continue the case to the next meeting with the recommendation that the City of North Royalton contact the complainant within thirty days to discuss the family's wishes regarding the city's June 25 letter offering to repair the headstone and try to work out an agreement regarding the headstone. If the issue is not resolved, the complainant can bring back her complaint to the Commission at its next meeting. Gregory Roberts seconded the motion, which passed unanimously.

Case Nos. 2007-107 Bertie Trester, 2007-124 Kathleen Demougin, 2007-349 JB Whitt, 2007-350 Aileen Whitt, 2007-377 Hazel Honaker, 2007-378 Ruth Slavin, 2007-380 Blair Fisher, 2007-404 Jean Earl, 2007-426 Dorothy Flohr, 2007-427 Nancy Whitford, 2007-465 Janie Jeans, 2007-491, Robert R. Whitford Sr., and 2007-492 Christy Cocklin vs. Mt. Pisgah Cemetery – Clermont Co. – Not Registered

Complainants Bertie Trester, Kathleen Demougin, JB Whitt, Aileen Whitt, Dorothy Flohr, Nancy Whitford, and Robert R. Whitford, Sr. attended the meeting. Aileen Whitt spoke on behalf of the complainants. Ken and Eric Oetzel spoke on behalf of the cemetery.

Richard Finn moved to close the complaint and refer a violation of Ohio Revised Code Section 4767.02(A) to the Clermont County Prosecutor because the cemetery was not registered with the Division of Real Estate and Professional Licensing. Gregory Roberts seconded the motion, which passed unanimously.

IV. Other Business

The next Ohio Cemetery Dispute Resolution Commission meeting is scheduled for Thursday, September 13, 2007 at 10:00 a.m. in the Columbus Office of the Division of Real Estate & Professional Licensing.

V. Adjournment

Gregory Roberts moved to adjourn the June 28, 2007 meeting of the Ohio Cemetery Dispute Resolution Commission. Harold Wagner seconded the motion, which passed unanimously.