



Ohio Department of Commerce
Division of Real Estate & Professional Licensing

615 West Superior Avenue • 12th Floor
Cleveland, OH 44113-1801
(216) 787-3100 FAX (216) 787-4449
www.com.state.oh.us

Bob Taft
Governor

Doug White
Director

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 West B and C
Columbus, Ohio 43215-6133

March 10, 2005
10:00 a.m.

PRESENT: Stephen E. Bittner, Chairman; Gerald Werner, Vice Chairman; Avanelle B. Oberlin, Secretary, Richard D. Finn; Thomas A. Kayati; Robert R. Shenefield; Gerald D. Wantz; James Wright; William Leber, Division Chief Legal Counsel; James N. Turner, Interim Superintendent; and Theodore J. Hornyak, Investigator.

ABSENT: Tawana Lynn Keels

I. Preliminary Matters:

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

Approval of Minutes: The minutes of the December 9, 2004 meeting of the Ohio Cemetery Dispute Resolution Commission were reviewed and discussed. Chairman Bittner noted that the minutes should be amended to reflect that James Wright was in attendance at the last meeting. Avanelle Oberlin moved to approve the minutes as amended. Richard Finn seconded the motion, which passed unanimously.

Superintendent's Report: Theodore Hornyak informed the Commission that, since the last meeting, former Ohio Senate President Doug White replaced Lieutenant Governor Jennette Bradley as Director of the Ohio Department of Commerce. Bill Leber replaced Kristen Rosen as the Division's Chief Legal Counsel. Anne Petit's last day as the Superintendent of the Division was March 4. James Turner, Chief Legal Counsel for the Ohio Department of Commerce, is serving as Interim Superintendent. Mr. Turner briefly addressed the Commission.

Mr. Hornyak reported that the civil complaint filed by the Ohio Attorney General's office in Hamilton County Common Pleas Court against Robert Merkle/Wesleyan Cemetery, the City of Cincinnati and Hamilton County was scheduled for trial on March 4. On that day, Robert Merkle, through a settlement agreement, agreed to dissolve the corporation and step away from cemetery ownership within 90 days, or face a fine of \$250 per week for violating the agreement. A trial will be scheduled for a later date if the city doesn't agree to take over the cemetery pursuant to Ohio Revised Code Section 759.08.

II. Old Business:

Updated Cemetery Legislative Initiatives

Mr. Hornyak related that the eleventh item was added to the list of *Cemetery Legislative Initiatives*. Chairman Bittner suggested that each Commission member share the list of initiatives with their respective organizations for further input or questions. No Commission members had questions at this time.

Donna Strussion Abrams vs. Mt. Calvary Cemetery (Steubenville Catholic Diocese) – Case No. 2004-000481 – Belmont Co. – Registration 983146

The Commission previously reviewed the facts of this matter and found that the cemetery's attorney, Thomas Wilson, agreed to have the mausoleum fund audited and provide the audit results to the Division of Real Estate and Professional Licensing. The Commission decided to review the status of this matter at today's Commission meeting.

Theodore Hornyak reported that the audit report became available to the parties three days ago. The complainant requested that her complaint remain open for time to review the audit results. Thomas Kayati moved to leave this case open for further review. Gerald Wantz seconded the motion, which passed unanimously.

Larry Freshcorn vs. Vinton Memorial Cemetery - Case No. 2004-000624 – Gallia Co. – Not Registered – Pending Registration

At its meeting on December 9, 2004, the Commission found that the complainant was satisfied that the cemetery operator provided evidence that the complainant's family graves were not sold and remained in the name of the complainant's family. However, because the cemetery was not registered with the Division of Real Estate and Professional Licensing, the Commission voted unanimously to leave the complaint open pending registration.

Theodore Hornyak reported that he recently spoke with the cemetery operator's attorney who related that the cemetery board members are meeting this Saturday to sign the Endowment Care Trust Agreement and other documents. The registration application will be forwarded to the Division soon thereafter.

Robert Shenefield moved to leave the complaint open pending the cemetery's registration with the Division of Real Estate and Professional Licensing. Richard Finn seconded the motion, which passed unanimously.

III. New Business:

Review of Cemetery Maintenance Guidelines

The Commission reviewed the *Cemetery Maintenance Guidelines* that were established by the Commission in 1999 pursuant to Ohio Revised Code Section 4767.06(H). The Commission reviewed and discussed suggestions to update the list of guidelines.

Gerald Wantz moved to let William Leber and Theodore Hornyak draft a new list of guidelines for review and approval at the next Commission meeting. Thomas Kayati seconded the motion, which passed unanimously.

Endowment Care and Preened Merchandise/Services Trust Audit of Royal Oak Memorial Gardens, Montgomery County, and Heritage Hills Memory Gardens, Warren County, Pursuant to ORC Section 4767.02(B)(8)

Theodore Hornyak reported that Joel Seale, Director of Finance for Memory Gardens Management Corporation, advised that the audits are not yet complete. Ansure Mortuaries of Indiana, LLC was created in December and is now the parent corporation of Memory Gardens Management Corporation. The sale that transferred the stock of the cemeteries to the new corporation closed on December 23, 2004.

Richard Finn moved to review this matter at the next Commission meeting. Robert Shenefield seconded the motion, which passed unanimously.

Correspondence – Catholic Cemeteries, Diocese of Toledo

Theodore Hornyak reported that Superintendent Anne Petit received a letter from John W. Hoeflinger, Diocesan Director of Catholic Cemeteries for the Diocese of Toledo, asking support to oppose any expansion of state regulations to Catholic cemeteries as the Federal Trade Commission considers revising the Funeral Rule, 16 CFR Part 453. Mr. Hornyak read Superintendent Petit's response which encouraged Mr. Hoeflinger to contact his federal representatives and engage them on the issue. Superintendent Petit forwarded the correspondence to Chairman Bittner, as the Commission may determine that it wishes to send a letter explaining its position with regard to contemplated revisions to the Funeral Rule.

Avanelle Oberlin moved to close the matter at this time. James Wright seconded the motion, which passed unanimously.

David Green vs. Riverside Cemetery (Shalersville Township) - Case No. 2004 - 000562 – Portage Co. – Registration 982708

Theodore Hornyak reported that the complainant requested that the Commission continue this case to the next Commission meeting. Richard Finn moved to continue this case to the next Commission meeting. Thomas Kayati seconded the motion, which passed unanimously.

Vicky Smith vs. Sunset Cemetery - Case No. 2004-000808 – Franklin Co. – Registration 983204

Neither party attended the meeting. Theodore Hornyak reported that the complainant was satisfied that the cemetery operator agreed to waive the normal charges for a second right of interment and the opening and closing of the grave, which would otherwise total \$1,545.

Thomas Kayati moved to close the case without taking any further action. Robert Shenefield seconded the motion, which passed unanimously.

Interim Superintendent James Turner left the meeting.

Robert & Eleanor Drugan 2005-000002, Eddie Grodecki 2005-000003, John Plough 2005-000005, Orlando & Rose Mary Reyes 2005-000006, Mary Dean 2005-000040, Eddie Prisby 2005-000041, Latti Berry 2005-000042, Mary Ryan 2005-000046, Tammie Miller 2005-000136, Norman and Patricia Mack 2005-000138, and Susan Dvett 2005-000177 vs. St. Mary's Cemetery (Immaculate Conception Church) – Portage Co. – Registration 982596

John Plough, Eddie Grodecki, and Norman Mack presented their complaints against St. Mary's Cemetery. Robert and Eleanor Drugan, Orlando and Rose Mary Reyes, Mary Dean, Eddie Prisby, Latti Berry, Mary Ryan, and Tammi Miller did not appear. Attorney Kevin Poland, Father John-Michael Lavelle, and Joseph Kun appeared on behalf of the cemetery operator.

Thomas Kayati moved to take a short break. Richard Finn seconded the motion, which passed unanimously.

The Commission and the parties returned and continued discussing the complaints. Gerald Werner moved to discuss the complaints in Executive Session. Avanelle Oberlin seconded the motion, which passed unanimously.

After meeting in Executive Session, the Commission restored the regular meeting. Chairman Bittner advised the parties that the Commission had four points to pass on to the parties:

1. The Commission found no basis for any violation of Ohio Revised Code Chapter 4767.
2. The Commission found no basis for any violation to refer the matter to any prosecutor.
3. It appeared from the Commission's viewpoint that there was no middle ground between the parties that would help them resolve any matter before the Commission.
4. The Commission recommended that when a final plan is in print, the cemetery operator make it available to the lot owners of St. Mary's Cemetery to keep the open lines of communication moving forward for everyone's benefit.

Robert Shenefield moved to close the case without taking any further action. Gerald Werner seconded the motion, which passed unanimously.

Richard and Elaine Sopko vs. St. Mary's Cemetery (Immaculate Conception Church) – Case No. 2005-000004 - Portage Co. – Registration 982596

The complainants did not attend the meeting. Theodore Hornyak reported that the complainants withdrew their complaint.

Frances Moore vs. Germantown Union Cemetery (Germantown Village & German Township) - Case No. 2004-000484 – Montgomery Co. – Registration 982328

Neither party attended the meeting. Theodore Hornyak reported that, although the specific grave of the complainant's uncle remains undetermined, the complainant was satisfied that the cemetery operator is working with her to place his birth and death years and name on the original family stone.

Richard Finn moved to close the case without taking any further action. Gerald Werner seconded the motion, which passed unanimously.

IV. OTHER BUSINESS:

The next regular Ohio Cemetery Dispute Resolution Commission meeting is scheduled for Thursday, June 16, 2005 at 10:00 a.m. in the Columbus Office of the Division of Real Estate & Professional Licensing.

V. ADJOURNMENT

Thomas Kayati moved that the March 10, 2005 Ohio Cemetery Dispute Resolution Commission meeting be adjourned. The motion was seconded by James Wright, and passed unanimously.