



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 West B and C
Columbus, Ohio 43215-6133

September 15, 2005
10:00 a.m.

PRESENT: Stephen E. Bittner, Chairman; Marilyn Brandt, Vice Chair; Gregory W. Roberts, Secretary; Richard D. Finn; Thomas A. Kayati; Robert R. Shenefield; Daniel Roberts, Deputy Division Legal Counsel; Theodore J. Hornyak, Investigator.

ABSENT: Tawana Keels, Avanelle Oberlin and James Wright.

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, Avanelle Oberlin and James Wright.

Election of Officers: Thomas Kayati moved to nominate Stephen Bittner as Chairman of the Ohio Cemetery Dispute Resolution Commission. Marilyn Brandt seconded the motion, which passed unanimously.

Richard D. Finn moved to nominate Marilyn Brandt as Vice Chair of the Ohio Cemetery Dispute Resolution Commission. Robert Shenefield seconded the motion, which passed unanimously.

Richard Finn moved to nominate Gregory Roberts as Secretary of the Ohio Cemetery Dispute Resolution Commission. Thomas A. Kayati seconded the motion, which passed unanimously.

Approval of Minutes: The minutes of the June 19, 2005 meeting of the Ohio Cemetery Dispute Resolution Commission were reviewed and discussed. Richard Finn moved to approve the minutes. Robert Shenefield seconded the motion, which passed unanimously.

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

Superintendent's Report: Theodore Hornyak reported that the Ohio Attorney General's civil trial against Robert Merkle/Wesleyan Cemetery, the City of Cincinnati and Hamilton County was June 20, in Hamilton County Common Pleas Court. Assistant Attorney General Michael Rzymek advised that the judge is expected to rule on the case tomorrow.

Mr. Hornyak also related that the Assistant Attorney General shared that the judge in the civil case against St. Mary's Cemetery in Portage County Common Pleas Court issued a Summary Judgment in favor of the church.

The Division will be implementing a new database system within the next few weeks.

Theodore Hornyak attended the conference and meeting of the North American Cemetery Regulators Association that was held in New Orleans, LA from July 30 – August 3, 2006. He briefed the Commission on some of the conference activities. Mr. Hornyak was elected to NCRA's Executive Committee at the conference.

II. Old Business:

Term Limits: Chairman Bittner asked Division Legal Counsel Dan Roberts whether a Commission member who had already served two four year terms and had been off the Commission for one year could return as a member of the Commission. Mr. Roberts advised the Commission that a member could sit out a term and return to the Commission

Lu Ann South vs. Highland Memorial Gardens - Case No. 2005-000135 – Lawrence Co. – Registration 982945 – Pending

Neither party attended the meeting. Theodore Hornyak reported that the cemetery operator failed to respond to the meeting notice. Mr. Hornyak added that the cemetery operator also failed to provide the complainant with a copy of the cemetery's rules and regulations in spite of written requests.

Marilyn Brandt moved to issue a subpoena to the cemetery operator for a copy of the cemetery's rules and regulations. Richard Finn seconded the motion, which passed unanimously.

Jeffrey S. Zucker vs. Oakwood Cemetery – Case No. 2005-000254 – Sandusky Co. – Not Registered – Close Pending Registration

Neither party attended the meeting. The Commission found that the complaint was resolved at the last meeting, but the cemetery was not registered pursuant to ORC Section 4767.02. Theodore Hornyak reported that, although the operator stated in a telephone conversation that they were working on the registration, the Division had not received anything in writing regarding the registration. The Division provided the registration application to the cemetery operator in March.

Richard Finn moved to close the complaint and refer the violation of ORC Section 4767.02 to the Sandusky County Prosecutor. Thomas Kayati seconded the motion, which passed unanimously.

Endowment Care and Preneed 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 Harper & Pearson Company, P.C. provided the Division with a letter acknowledging that they entered into an agreement with Memory Gardens Management Corporation to audit the trusts. Harper & Pearson indicated that the audit should be completed by November 15.

Richard Finn moved to leave the matter open to the next Commission meeting. Marilyn Brandt seconded the motion, which passed unanimously.

Endowment Care and Preneed Merchandise/Services Trust Audit of Highland Memory Gardens, Lucas County, Restlawn Memorial Park, Wood County, and Greenlawn Memory Gardens, Sandusky County, Pursuant to ORC Section 4767.02(B)(8)

Theodore Hornyak reported that Keystone Group provided an audit report to the Division the afternoon before the Commission meeting. Mr. Hornyak noted that it appeared that some of the trusts were under funded and requested more time to review the results of the audit.

Richard Finn moved to leave the matter open to the next Commission meeting. Thomas Kayati seconded the motion, which passed unanimously.

III. New Business:

David Green, Case No. 2004-000562 and Joann Fisher, Case No. 2005-000180 vs. Riverside Cemetery (Shalersville Township) – Portage Co. – Registration 982708

Neither complainant attended the meeting. Theodore Hornyak presented the complaint to the Commission. Township Trustee Frank Ruehr and Township Clerk Dorothy Caldwell spoke on behalf of the cemetery operator.

Thomas Kayati moved to discuss the complaints in Executive Session. Marilyn Brandt seconded the motion, which passed unanimously.

After meeting in Executive Session, the Commission restored the regular meeting.

Marilyn Brandt moved to close David Green's complaint and express that David Green had prior knowledge of the cemetery operator's past practices concerning the placement of monuments and he disregarded that information. Richard Finn seconded the motion, which passed unanimously.

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Marilyn Brandt moved to close Joann Fisher's complaint with the recommendation that the township work with the complainant to find an appropriate location, for the bench, that followed the cemetery's current rules and regulations. Gregory Roberts seconded the motion, which passed unanimously.

Louise Smith vs. Hillside Memorial Park - Case No. 2005-000307 – Summit Co. – Registration 982219

Neither party attended the meeting. Theodore Hornyak reported that the complainant was satisfied that the cemetery operator agreed to provide her with an \$800.00 refund.

Richard Finn moved to close the complaint. Tawana Keels seconded the motion, which passed unanimously.

Rosalie Dowler vs. Franklin Hills Memory Gardens – Case No. 2005-000315 – Franklin Co. – Registration 982818

Rosalie Dowler and her daughter, Cherie Miller, presented the complaint to the Commission. Rick Ford spoke on behalf of the cemetery operator.

Marilyn Brandt moved to discuss the complaint in Executive Session. Thomas Kayati seconded the motion, which passed unanimously.

After meeting in Executive Session, the Commission restored the regular meeting.

Chairman Bittner moved to close the complaint and recommend that the cemetery operator and the family try to resolve the matter as quickly as possible, while noting that the operator made an initial offering of a no charge disinterment and reinterment to a new location with an upgrade charge. The offer may be a starting point to start working toward resolving the complaint. If the family and cemetery is unable to resolve the complaint, the family is within their rights to pursue legal advice. Robert Shenefield seconded the motion, which passed unanimously.

Jenny Di Domenico vs. Evergreen Cemetery – Case No. 2005-000325 – Lake Co. – Registration 980554

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

Marilyn Brandt moved to continue this case to the next Commission meeting. Robert Shenefield seconded the motion, which passed unanimously.

Kirsten Sparks vs. Marion Cemetery – Case No. 2005-000327 – Marion Co. – Registration 980465

Neither party attended the meeting. Theodore Hornyak reported that the complainant failed to respond to phone messages and the notice to attend the Commission meeting.

Richard Finn moved to close the complaint. Thomas Kayati seconded the motion, which passed unanimously.

Dennis and Diane Morris vs. Miami Valley Memory Gardens – Case No. 2005-000451 – Warren Co. – Registration 983067

Neither party attended the meeting. Theodore Hornyak presented the complaint to the Commission. Mr. Hornyak reported that, because trees were planted in place of four statues around the perimeter of the cemetery, the cemetery operator offered the complainants two prime burial spaces next to the statue in the center of the cemetery.

Gregory Roberts moved to close the complaint with the recommendation that the complainant pursue the options or recommendations that were presented by the cemetery operator. Marilyn Brandt seconded the motion, which passed unanimously.

David Eddy vs. Brooklyn Heights Cemetery Association – Case No. 2005-000452 – Cuyahoga Co. – Registration 980910

Neither party attended the meeting. Theodore Hornyak reported that the complainant was satisfied that the cemetery operator provided his father with a refund in the amount of \$842.40.

Marilyn Brandt moved to close the complaint. Richard Finn seconded the motion, which passed unanimously.

Albert Gibbons vs. Bet Olam Cemetery – Case No. 2005-000473 – Cuyahoga Co. – Registration 982971

Neither party attended the meeting. Theodore Hornyak presented Mr. Gibbons's complaint to the Commission.

Gregory Roberts moved to close the complaint with the recommendation that the parties try to work out a resolution that is satisfactory to both parties or pursue other avenues. Robert Shenefield seconded the motion, which passed unanimously.

Michael Robinett vs. Chapel Heights Memory Gardens – Case No. 2005-000525 – Marion Co. – Registration 981111

Neither party attended the meeting. Theodore Hornyak reported that based on the evidence provided by the cemetery operator (Cemetery Rules and Regulations), outside installers can install monuments and markers at the cemetery.

Robert Shenefield moved to close the complaint. Richard Finn seconded the motion, which passed unanimously.

Robert Smith vs. Butler County Memorial Park – Case No. 2005-000533 – Butler Co. – Registration 982946

Neither party attended the meeting. Theodore Hornyak presented Robert Smith's complaint to the Commission. Mr. Hornyak reported that the cemetery operator replaced the necessary equipment to conduct graveside services.

Gregory Roberts moved to close the complaint with the recommendation that someone from the StoneMor corporate office make a physical inspection of the location, specifically in regard to the condition of the roads. Thomas Kayati seconded the motion, which passed unanimously.

Mary Jane Cremeans vs. Fairview Memorial Park – Case No. 2005-000559 – Delaware Co. – Registration 982685

The complainant did not attend the meeting. The complainant's son, presented his mother's complaint to the Commission. Sheridan Rinehart and Harmon Pearson responded on behalf of the cemetery operator.

Marilyn Brandt moved to discuss the complaint in Executive Session. Robert Shenefield seconded the motion, which passed unanimously.

After meeting in Executive Session, the Commission restored the regular meeting.

Stephen Bittner moved to close the complaint with the following recommendations/comments:

1. Fairview Cemetery should develop a procedure to make sure families are informed if any glitches occur.
2. The cemetery operator should follow standard maintenance and procedural guidelines regarding the backfilling of graves and removal of boards. A grave should be filled all the way to the top the day the funeral occurs. Boards and dirt should be removed in a timely fashion.
3. The cemetery operator can step forward to try to rebuild the relationship with the complainant since it has been somewhat broken at this time due to a lack of communication.

Marilyn Brandt seconded the motion, which passed unanimously.

Rosalind Howard vs. Western Reserve Mausoleum Company – Case No. 2005-000406 – Trumbull Co. – Not Registered

Neither party attended the meeting. Theodore Hornyak reported that that the complainant and cemetery operator reached an agreement regarding the complainant's mother's crypt decorations. Mr. Hornyak added the cemetery operator recently registered the cemetery pursuant to ORC Section 4767.02.

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

William Clawson vs. Crown Hill Cemetery – Case No. 2005-000206 – Summit Co. – Registration 980454

Neither party attended the meeting. At the last Commission meeting on June 19, Theodore Hornyak reported that the cemetery operator agreed to refund the complainant \$2,024 for a cancelled contract for interment space in a mausoleum not yet built. However, the complainant had not received the refund. The Commission decided to leave the complaint open to the next meeting.

At today's meeting, Theodore Hornyak reported that the complainant was satisfied that he received the \$2,024 refund. Marilyn Brandt moved to close the complaint. Robert Shenefield seconded the motion, which passed unanimously.

James Valentine vs. Sugar Grove Cemetery Association – Case No. 2005-000300 – Clinton Co. – Not Registered

Neither party attended the meeting. Theodore Hornyak reported that that the complainant was satisfied that the cemetery operator poured a new foundation and reset the monument. Mr. Hornyak added that the cemetery trustees were meeting during the week to sign a trust agreement and cemetery registration documents in order to provide the Division with the cemetery registration application.

Gregory Roberts moved to closed the case but refer a violation of ORC Section 4767.02 to a local prosecutor if the operator fails to register the cemetery by the next Commission meeting. Marilyn Brandt seconded the motion, which passed unanimously.

Robert L. Moore vs. Baltimore Pike Cemetery Association – Case No. 2005-000379 – Hamilton Co. – Registration 981269

Neither party attended the meeting. Theodore Hornyak reported that the complainant was satisfied that the cemetery operator restored the grave site to its original condition.

Richard Finn moved to close the complaint. Robert Shenefield seconded the motion, which passed unanimously. Chairman Bittner recused himself from the vote.

Ella Fuhrman vs. Rose Hill Burial Park (Hamilton) – Case No. 2005-000558 – Butler Co. – Registration 981256

Neither party attended the meeting. Theodore Hornyak reported that that the complainant was satisfied that the cemetery operator provided her with a refund of \$190.80.

Robert Shenefield 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 15, 2005 at 10:00 a.m. in the Columbus Office of the Division of Real Estate & Professional Licensing.

V. ADJOURNMENT

Robert Shenefield moved that the September 15, 2005 Ohio Cemetery Dispute Resolution Commission meeting be adjourned. The motion was seconded by Gregory Roberts, and passed unanimously.