



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

June 19, 2005
10:00 a.m.

PRESENT: Stephen E. Bittner, Chairman; Gerald Werner, Vice Chairman; Avanelle B. Oberlin, Secretary; Richard D. Finn; Thomas A. Kayati; Tawana Lynn Keels; Gerald D. Wantz; James Wright; Daniel Roberts, Deputy Division Legal Counsel; Doug White, Director; Kelly Davids, Superintendent; Theodore J. Hornyak, Investigator.

ABSENT: Robert R. Shenefield

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 Robert Shenefield.

Approval of Minutes: The minutes of the March 10, 2005 meeting of the Ohio Cemetery Dispute Resolution Commission were reviewed and discussed. Avanelle Oberlin moved to approve the minutes. Richard Finn seconded the motion, which passed unanimously.

Greetings from Director Doug White: Ohio Department of Commerce Director Doug White addressed the Commission.

Superintendent's Report: Director White and Superintendent Kelly Davids presented outgoing Commissioners Gerald Werner and Gerald Wantz with certificates acknowledging their service with the Ohio Cemetery Dispute Resolution Commission.

Theodore Hornyak reported that the Ohio Attorney General's civil case against Robert Merkle/Wesleyan Cemetery, the City of Cincinnati and Hamilton County is scheduled for trial tomorrow, June 20, in Hamilton County Common Pleas Court.

The civil case initiated by former complainant Doug McMullan, and others, against The Way International in Shelby County Common Pleas Court concluded last month. The judge ruled that TWI could restrict access of non-relatives to the property. A copy of the judge's Decision and Order was supplied to the Commission members.

The Division approved travel for Theodore Hornyak to attend the conference and meeting of the North American Cemetery Regulators Association in New Orleans, Louisiana from July 30 through August 3, 2005.

II. Old Business:

Cemetery Legislative Initiatives

The Commission reviewed the list of initiatives. Richard Finn moved to approve the *Cemetery Legislative Initiatives*. Avanelle B. Oberlin seconded the motion, which passed unanimously.

Chairman Bittner suggested that, in the future and aside from the current list of legislative initiatives, the Commission consider discussing Commission member term limits and the possibility of the religious Commission appointments be recommended by the Ohio Catholic Cemetery Association.

Cemetery Maintenance Guidelines

The Commission reviewed the final draft of the updated *Cemetery Maintenance Guidelines*. Tawana Keels moved to approve the *Cemetery Maintenance Guidelines*. Thomas A. Kayati seconded the motion, which passed unanimously.

2004 Annual Report

The Commission reviewed the 2004 Annual Report that was prepared by the Division. The report was created per Ohio Revised Code Section 4767.06(D). Richard Finn moved to approve the report. Tawana Keels seconded the motion, which passed unanimously.

Director White left the meeting for another appointment.

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

Donna Abrams presented her complaint concerning the results of the mausoleum fund audit. Attorney Thomas Wilson spoke on behalf of the cemetery operator.

Gerald Werner moved to discuss the complaint in Executive Session. Gerald Wantz 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 three points to pass on:

1. We believe that the audit provided by the Diocese of Steubenville seemed to be very much intact and indicates to us, in our opinion, no impropriety and does state that there are two identifiable care funds.
2. The Commission feels that there are no state statute violations concerning cemetery care and maintenance.
3. The Commission recommends that the Diocese of Steubenville try to establish an even more efficient line of communication with their lot, crypt, and niche owners concerning their goals for the future upkeep of those properties and buildings as well as the improvements to those properties and buildings.

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

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

The Commission previously 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, the Commission decided to leave the complaint open pending cemetery registration.

Theodore Hornyak reported that the cemetery operator registered the cemetery with the Division pursuant to ORC Section 4767.02(A). The cemetery operator also created an Endowment Care Trust in accordance with ORC Section 1721.21.

Richard Finn moved to close the case with no further action. Gerald Werner seconded the motion, which passed unanimously.

III. New Business:

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 Joel Seale, Director of Finance for Memory Gardens Management Corporation, advised that the trust funds have not been audited. However, Mr. Seale provided the Division with a package containing trust documents. 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.

Thomas Kayati moved that the Commission must approve audits of the trust funds. Tawana Keels 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 the operator of the cemeteries, The Hamilton Group (aka Hamilton Funeral Services), merged with Keystone Group in March. The transfer of assets requires a trust audit pursuant to ORC Section 4767.02(B)(8). Mr. Hornyak spoke with Ohio Regional Manager Doug Miller. Mr. Miller related that the audits are not yet complete.

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

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

Theodore Hornyak reported that Complainant David Green, through his doctor, requested that this case be continued due to Mr. Green's illness. The Shalersville Township Trustees requested that that the complaint be continued due to the death of one of the township trustees.

Thomas Kayati moved to continue this case to the next Commission meeting. Richard Finn seconded the motion, which passed unanimously.

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

Lu Ann South presented her complaint to the Commission. The cemetery operator did not respond to the complaint or attend the meeting.

The Commission reviewed the facts of this matter and stated that Mr. Carter needed to review his cemetery's rules and regulations, particularly with regard to flowers. The Commission discussed this with him in the past and there has been no action taken on his part. The Commission requested that the Division send a copy of the Commission's *Cemetery Maintenance Guidelines* to Mr. Carter. If there is any further action needed, the Commission will respond at its next meeting.

Tawana Keels moved to leave the complaint open for review at the next Commission meeting. Gerald Werner seconded the motion, which passed unanimously.

Patricia Poncar vs. Crown Hill Burial Park – Case No. 2005-000140 – Trumbull Co. – Trumbull Co. – Registration 982680

Patricia Poncar presented her complaint to the Commission. The cemetery operator did not attend the meeting. He wrote a letter stating that he would not be attending the meeting on the advice of his attorney. The matter was a subject of civil litigation.

Gerald Werner moved to discuss the complaint 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 complainant that the Commission had two comments:

1. The standard practice in the cemetery industry is to have the burial transit permit given to the cemetery representative prior to any final disposition or burial.
2. Cooperation between the funeral home and cemetery is paramount to helping families through difficult times. Many cemeterians feel they are legally obligated the moment that the deceased and family drive through their gates and should be totally in charge from a legal standpoint in making sure the remains are handled properly. Working together avoids confusion and conflict in our death care industry and we hope that the cemeteries and funeral homes continue to move forward in that manner.

Tawana Keels moved to close the complaint with no further action. Gerald Werner seconded the motion, which passed unanimously.

Heather Cairns vs. Rose Hill Burial Park (Akron) – Case No. 2005-000163 – Summit Co. – Registration 981253

Theodore Hornyak presented Heather Cairns's complaint to the Commission. Neither party attended the meeting. Mr. Hornyak reported that the complainant wanted her experience with the cemetery's family service counselor to be a matter of record. The cemetery operator responded that the family service counselor's supervisor monitored her interaction with other families to make certain that additional coaching on communications was not needed.

Tawana Keels moved to close the complaint with no further action. Avanelle Oberlin seconded the motion, which passed unanimously. Gerald Werner and James Wright abstained from the vote.

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

Theodore Hornyak presented William Clawson's complaint to the Commission. Neither party attended the meeting. Mr. 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 prior to the Commission meeting.

Richard Finn moved to leave the case open for the next Commission meeting. Tawana Keels seconded the motion, which passed unanimously.

Ruth Imfeld vs. Woodside Cemetery Association – Case No. 2005-000205 – Butler Co. – Registration 982770

Theodore Hornyak presented Ruth Imfeld's complaint. She did not attend the meeting. Fred Wehr spoke on behalf of the cemetery operator. Mr. Wehr advised the Commission that he replaced the complainant's damaged monument with an equal quality granite at no cost. He also added an inscription at no cost.

Richard Finn moved to close the complaint with no further action. Tawana Keels seconded the motion, which passed unanimously.

Dr. Kenneth J. Campbell vs. Massillon Cemetery – Case No. 2005-000211 – Stark Co. – Registration 982373

Theodore Hornyak presented Dr. Campbell's complaint to the Commission. Neither party attended the meeting. Mr. Hornyak reported that the cemetery operator offered to provide the complainant \$75 for his interment right pursuant to the cemetery's rules and regulations.

James Wright moved to close the complaint with no further action. Tawana Keels seconded the motion, which passed unanimously.

Samuel T. Long vs. Waldo Cemetery – Case No. 2005-000229 – Marion Co. – Registration 981076

Samuel Long presented his complaint to the Commission. The cemetery operator did not attend the meeting. Gerald Werner moved to close the complaint with no further action and direct the Division to send a letter to the Waldo Township Trustees recommending that Mr. Long and others like him be able to have upright monuments and be grandfathered in, since Mr. Long's father purchased the lots in 1959 and was under the impression that an upright monument could be placed.

Tawana Keels seconded the motion, which passed by a vote of 5 ayes and 3 nays.

James D. McFarland vs. Pineview Memorial Park – Case No. 2005-000246 – Trumbull Co. – Registration 983182

James McFarland and his attorney, Charles Ohlin, presented his complaint to the Commission. Kirk Roberts responded on behalf of the cemetery operator.

Gerald Werner moved to discuss the case in Executive Session. Richard Finn seconded the motion, which passed unanimously.

After meeting in Executive Session, the Commission restored the regular meeting. Chairman Bittner, on behalf of the Commission, issued three comments/recommendations:

1. Preinterment authorization, or having families come to the cemetery, is an acceptable industry policy that attempts to avoid confusion for the families.
2. Cemeteries and funeral homes should equally share responsibility to help all families whenever possible.
3. Power of Attorney can be used in our industry when acceptable by both parties.

Avanelle B. Oberlin moved to close the complaint with no further action. Thomas Kayati seconded the motion, which passed unanimously.

Maretta Cottrell vs. Ridgecrest Memory Gardens – Case No. 2005-000156 – Tuscarawas Co. – Registration 982973

Theodore Hornyak presented Maretta Cottrell's complaint to the Commission. Neither party attended the meeting. Mr. Hornyak reported that the complainant considered her complaint to be resolved because the cemetery operator assured her that another family would not go through the same experience.

Richard Finn moved to close the complaint with no further action. Tawana Keels seconded the motion, which passed unanimously.

Mr. and Mrs. Eugene Koon vs. Crown Hill Burial Park – Case No. 2005-000108 – Trumbull Co. – Registration 982680

Theodore Hornyak presented Mr. and Mrs. Koon's complaint to the Commission. Neither party attended the meeting. Mr. Hornyak reported that the complainants were satisfied that they reached an agreement with the cemetery operator providing them with a deed for two spaces, two concrete reinforced burial vaults, two 18 ga. caskets, and forgiveness of the \$2,915.76 balance from their contract.

Thomas Kayati moved to close the complaint with no further action. Richard Finn seconded the motion, which passed unanimously.

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

Theodore Hornyak presented Jeffrey Zucker's complaint to the Commission. Neither party attended the meeting. Mr. Hornyak reported that the complainant was satisfied that the cemetery operator provided him with a letter verifying that his mother owns one plot in the cemetery. Mr. Hornyak added that the cemetery is not registered with the Division of Real Estate and Professional Licensing, but the operator is currently working toward establishing an endowment care trust and registering the cemetery with the Division.

Richard Finn moved to leave the complaint open pending the cemetery's registration with the Division and the creation of an endowment care trust. Gerald Werner seconded the motion, which passed unanimously.

Sheila Manasco vs. Sunset Cemetery – Case No. 2005-000167 – Franklin Co. – Registration 983204

Theodore Hornyak presented Sheila Manasco's complaint to the Commission. Neither party attended the meeting. Mr. Hornyak reported that the complainant was satisfied that the cemetery operator provided her with a \$30.00 refund, a new vase, and an additional vase for the other side of the monument. The cemetery operator also purchased and replaced old benches.

Richard Finn moved to close the complaint with no further action. Thomas Kayati seconded the motion, which passed unanimously.

IV. OTHER BUSINESS:

The next regular Ohio Cemetery Dispute Resolution Commission meeting is scheduled for Thursday, September 15, 2005 at 10:00 a.m. in the Columbus Office of the Division of Real Estate & Professional Licensing.

V. ADJOURNMENT

Gerald Werner moved that the June 19, 2005 Ohio Cemetery Dispute Resolution Commission meeting be adjourned. The motion was seconded by Gerald Wantz, and passed unanimously.