

CEMETERY BOARD MEETING

MINUTES

January 28, 2004

The Cemetery Board met on January 28, 2004, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. The following members were present:

Kenneth R. Bell, Chairman
Carol W. Black
Mike Doherty
David Mark Farris, II
Randy Minter
Anton Stelly

Board member not present:

Marcietia S. Glenn

DPOR staff present for all or part of the meeting included:

Louise Fontaine Ware, Director
Karen W. O'Neal, Deputy Director
Christine Martine, Executive Director
Herbert Nichols, Investigator
Earlyne Perkins, Legal Assistant
Jennifer Kazzie, Assistant Director of Adjudication
Camille C. Palmer, Administrative Assistant
Mary Broz, Communications Director

Mr. Bell **called the meeting to order** at 9:10 a.m.

Call to Order

During the **Public Comment** period, Mr. Bell requested the public to introduce themselves to the Board.

Public Comment

A motion was made by Mr. Doherty and seconded by Mr. Farris to approve the **agenda**. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Farris, Stelly and Minter. There were no negative votes.

Agenda

A motion was made by Mr. Farris and seconded by Mr. Doherty to approve the **minutes of the October 6, 2003 IFF Conferences**. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Farris, Stelly and Minter. There were no negative votes.

Minutes

A motion was made by Mr. Doherty and seconded by Mr. Stelly to approve the **minutes of the November 12, 2003 Board Meeting**. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Farris, Stelly and Minter. There were no negative votes.

A motion was made by Mr. Doherty and seconded by Mr. Stelly to approve the **minutes of the December 23, 2003 IFF Conferences**. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Farris, Stelly and Minter. There were no negative votes.

Ms. Black arrived to the meeting at 9:15 a.m.

In the matter of **File Number 2003-00666, Glen Haven Memory Gardens, Inc.**, the Board reviewed the record which consisted of the Consent Order. There was no representative present. A motion was made by Mr. Doherty and seconded by Mr. Stelly to ratify the proposed Consent Order finding a violation of § 54.1-2319 of the Code of Virginia for Count I, imposing no monetary penalty; and finding a violation of § 54.1-2316 of the Code of Virginia for Count II. Glen Haven Memory Gardens, Inc. is required to deposit the appropriate funds to meet the required minimum in the irrevocable trust fund for perpetual care within 60 days of the effective date of the order. Glen Haven Memory Gardens, Inc. will provide proof of the deposit and balance to the Board, in a form acceptable to the Board, to demonstrate compliance. The motion passed unanimously. Members voting "Yes" were Black, Doherty, Farris, Stelly and Minter. Mr. Bell, who conducted the Informal Fact Finding Conference, did not participate in the discussion or vote in this matter.

File Number 2003-00666
Glen Haven Memory
Gardens, Inc.

In the matter of **File Number 2003-02248, Danville Memorial Gardens, Inc., t/a Danville Memorial Gardens, Inc., t/a Danville Memorial Gardens, Inc.**, the Board reviewed the record which consisted of the Consent Order. There was no representative present. A motion was made by Mr. Doherty and seconded by Ms. Black to ratify the proposed Consent Order finding a violation of § 54.1-2319 of the Code of Virginia for Count I, imposing a \$250.00 monetary penalty; and finding a violation of § 54.1-2325(A) of the Code of Virginia for Count II, imposing a \$250.00 monetary penalty. A total monetary penalty of \$500.00 is imposed. The motion passed unanimously. Members voting "Yes" were Black, Doherty, Farris, Stelly and Minter. Mr. Bell, who conducted the Informal Fact Finding Conference, did not participate in the

File Number 2003-02248
Danville Memorial
Gardens, Inc., t/a
Danville Memorial
Gardens, Inc.

discussion or vote in this matter.

In the matter of **File Number 2003-03420, Patrick Memorial Gardens, Inc.**, the Board reviewed the record which consisted of the disciplinary file, transcript, exhibits from the IFF, and the proposed Consent Order. There was no representative present. A motion was made by Mr. Doherty and seconded by Ms. Black to ratify the proposed Consent Order finding a violation of § 54.1-2319 of the Code of Virginia for Count I, imposing a \$200.00 monetary penalty and that Patrick Memorial be placed on probation for a period of thirty (30) days. During the thirty (30) day probationary period, Schedules A and C of the annual reports for 2001 must be refiled. Further, a deposit of \$945.15 must be made to the perpetual care trust fund. Patrick Memorial must provide documentation to the Board, in a form acceptable to the Board, showing the amount deposited and the date the deposit was made to the perpetual care trust fund, within the thirty (30) day probationary period to show compliance with the Board's regulations and statutes; finding a violation of § 54.1-2322 of the Code of Virginia for Count II, imposing a \$500.00 monetary penalty and that Patrick Memorial be placed on probation for a period of thirty (30) days. During the thirty (30) day probationary period, Schedules A and C of the perpetual care trust fund annual reports for 2001 must be re-filed. Further, payment in the amount of \$29,283.81 must be made to the perpetual care trust fund within sixty (60) days of the effective date of the Order. Failure to make payment to the perpetual care trust fund will result in the suspension of its license until proof of repayment is provided to the Board. In addition, Patrick Memorial must provide to the Board, in a form acceptable to the Board, the requested revised reports within the thirty (30) day probationary period to show compliance with the Board's regulations and statutes; finding a violation of § 54.1-2325(A) of the Code of Virginia for Count III, imposing a \$500.00 monetary penalty; and that Patrick Memorial be placed on probation for a period of thirty (30) days. During the thirty (30) day probationary period, Schedules A and B of the preneed trust fund annual reports for 2001 must be refiled. Schedule A must include documentation and an explanation of the \$8,209.38 amount deducted on line 6 and Schedule B must include documentation of a deposit of the \$6,171.62 amount shortage. Patrick must provide documentation to the Board in a form acceptable to the Board, of the appropriate reports and deposits made within the thirty (30) day probationary period to show compliance with the Board's regulations and statutes, finding a violation of § 54.1-2333(A)(1) of the Code of Virginia for Count IV, imposing a \$200.00 monetary penalty; and finding a violation of 18 VAC 47-20-190(4) for Count V, imposing a \$1,000 monetary penalty. A total monetary penalty of \$2,400.00 is hereby imposed. The motion passed unanimously. Members voting "Yes" were Black, Doherty, Farris, Stelly and Minter.

File Number 2002-03420
Patrick Memorial
Gardens, Inc.

Mr. Bell, who conducted the Informal Fact Finding Conference, did not participate in the discussion or vote in this matter.

In the matter of **File Number 2003-00664, Gardner Enterprises, Inc. t/a Greenlawn Memorial Gardens**, the Board reviewed the record which consisted of the disciplinary file, transcript, exhibits from the IFF, and the presiding Board member's summary. There was no representative present. A motion was made by Mr. Doherty and seconded by Mr. Minter to accept the recommendation contained in the Summary of the Informal Fact Finding Conference finding three (3) violations of § 54.1-2319 of the Code of Virginia for Count I. The motion passed unanimously. Members voting "Yes" were Bell, Black, Doherty, Stelly and Minter. Mr. Farris, who conducted the Informal Fact Finding Conference, did not participate in the discussion or vote in this matter.

File Number 2003-00664
Gardner Enterprises,
Inc. t/a Greenlawn
Memorial Gardens

A motion was made by Mr. Doherty and seconded by Mr. Stelly to accept the recommendation contained in the Summary of the Informal Fact Finding Conference finding three (3) violations of § 54.1-2325(A) of the Code of Virginia for Count II. The motion passed unanimously. Members voting "Yes" were Bell, Black, Doherty, Stelly and Minter. Mr. Farris, who conducted the Informal Fact Finding Conference, did not participate in the discussion or vote in this matter.

A motion was made by Mr. Doherty and seconded by Mr. Stelly to accept the recommendation contained in the Summary of the Informal Fact-Finding Conference for Count I, imposing a \$50.00 monetary penalty for each violation (3 violations) of § 54.1-2319 of the Code of Virginia, for a monetary penalty of \$150.00. The motion passed unanimously. Members voting "Yes" were Bell, Black, Doherty, Stelly and Minter. Mr. Farris, who conducted the Informal Fact Finding Conference, did not participate in the discussion or vote in this matter.

A motion was made by Mr. Doherty and seconded by Mr. Stelly to accept the recommendation contained in the Summary of the Informal Fact-Finding Conference for Count II, imposing a \$50.00 monetary penalty for each violation (3 violations) of § 54.1-2325 (A) of the Code of Virginia, for a monetary penalty of \$150.00. The total monetary penalty imposed is \$300.00. The motion passed unanimously. Members voting "Yes" were Bell, Black, Doherty, Stelly and Minter. Mr. Farris, who conducted the Informal Fact Finding Conference, did not participate in the discussion or vote in this matter.

In the matter of **File Number 2002-03797, Kenbridge Heights Cemetery, Inc. t/a Kenbridge Heights Cemetery, Inc.**, the Board reviewed the record which consisted of the disciplinary file, transcript, exhibits from the IFF, and the proposed Consent Order. There was no representative present. A motion was made by Mr. Bell and seconded by Mr. Farris to defer this matter to the June meeting of the Cemetery Board in order for the cemetery company to make application to the Internal Revenue Service for non-profit status, and to provide the Board with a copy. The motion passed unanimously. Members voting "Yes" were Bell, Black, Doherty, Stelly and Farris. Mr. Minter, who conducted the Informal Fact Finding Conference, did not participate in the discussion or vote in this matter.

File Number 2002-03797
Kenbridge Heights
Cemetery, Inc. t/a
Kenbridge Heights
Cemetery, Inc.

In the matter of **File Number 2004-01818, Carver Memorial Park Cemetery**, the Board reviewed the record which consisted of the Informal Fact-Finding Referral Memorandum, transcript and exhibits. An Informal Fact Finding Conference was conducted and included the following participants: Paul Applewhite, President of Carver Memorial Park Cemetery, Vincent D. Newby, Sr., Vice President of Carver Memorial Park Cemetery, Abraham Applewhite, Jr., James G. Vicalis, City of Suffolk, Assistant City Manager, and David Freeman, City of Suffolk, Director of Neighborhood Development. The Board considered its Regulations 18 VAC 47-20-130(A), 18 VAC 47-20-30(C)(2), 18 VAC 47-20-180, 18 VAC 47-20-190(3), 18 VAC 47-20-190(6), 18 VAC 47-20-190(8), 18 VAC 47-20-200(E) and other applicable law: §§ 54.1-2311, 54.1-2314(1), 54.1-2314(3), 54.1-2315 and 54.1-2324. A motion was made by Mr. Bell and seconded by Mr. Minter to deny the Cemetery Company license application based upon the testimony before the Board on January 28, 2004, which is inconsistent and conflicting with the information provided on the October 29, 2003 application and at the November 12, 2003 IFF convened before the Board. In addition, the information on the October 29, 2003 application pertaining to the company officers and directors which is inconsistent and conflicting with the information obtained from the State Corporation Commission as of December 22, 2003, and the testimony provided at both the November 12, 2003 and January 28, 2004 Informal Fact-Finding Conferences. Also, the information on the October 29, 2003 application is inconsistent and conflicting with the testimony provided at the January 28, 2004 Informal Fact-Finding Conferences. The motion passed unanimously. Members voting "Yes" were Bell, Black, Doherty, Farris, Minter, and Stelly.

File Number 2004-01818
Carver Memorial Park
Cemetery

The Board recessed at 11:10 a.m. and reconvened at 11:20 a.m.

Recess

Mr. Stelly left the meeting at 11:15 a.m.

By consensus, the Board added an additional Board meeting for 2004. Administrative Matters
The meeting will be held on April 21, 2004.

The Board discussed House Bill 268, which provides that no regulation of the Cemetery Board shall require a cemetery company to provide an accounting of trust funds more often than quarterly. The bill also authorizes the use of the income from the perpetual care trust fund for any capital improvements to the cemetery deemed necessary by the cemetery company. A motion was made by Mr. Doherty and seconded by Mr. Farris to oppose HB 268. The Board opposed HB 268 for the following reasons: 1. Capital Improvement is already covered by the current language. 2. Capital Improvement money may be funneled back to the cemetery companies and not be used for perpetual care of the cemetery 3. The language, "as deemed necessary by cemetery company" is too broad. The language allows cemetery companies to use the money for anything such as paying back taxes. Old Business

The motion passed unanimously. Members voting "Yes" were Bell, Black, Doherty, Farris, and Minter.

The Board also discussed HB 857, HB 162, and SB 303. No Board action was necessary.

At 12:05 p.m., a motion was made by Mr. Doherty and seconded by Mr. Farris to **adjourn** the meeting. The motion passed unanimously. Adjourn
Members voting "Yes" were Bell, Black, Doherty, Farris and Minter.



Kenneth R. Bell, Chairman



Louise Fontaine Ware, Secretary

Copy Teste:

Custodian of the Records

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT

1. Name: Anton J. Stelly
2. Title: Member - Virginia Cemetery Board
3. Agency: Department of Professional and Occupational Regulation
4. Transaction: Board Meeting
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

(a) I am a member of the following business, profession, occupation, or group, the members of which are affected by the transaction: _____

N/A

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Dated: January 28, 2004

Signature: Anton J. Stelly

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT

1. Name: Mike Doherty
2. Title: Member - Virginia Cemetery Board
3. Agency: Department of Professional and Occupational Regulation
4. Transaction: Board Meeting
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

(a) I am a member of the following business, profession, occupation, or group, the members of which are affected by the transaction: _____

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Dated: January 28, 2004

Signature: _____

Mike H. Doherty

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT


1. Name: Kenneth R. Bell
2. Title: Chairman - Virginia Cemetery Board
3. Agency: Department of Professional and Occupational Regulation
4. Transaction: Board Meeting
5. Nature of Personal Interest Affected by Transaction: _____
-

6. I declare that:

(a) I am a member of the following business, profession, occupation, or group, the members of which are affected by the transaction: _____

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Dated: January 28, 2004

Signature: 

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT

1. Name: David Mark Farris, II
2. Title: Vice-Chairman - Virginia Cemetery Board
3. Agency: Department of Professional and Occupational Regulation
4. Transaction: Board Meeting
5. Nature of Personal Interest Affected by Transaction: _____

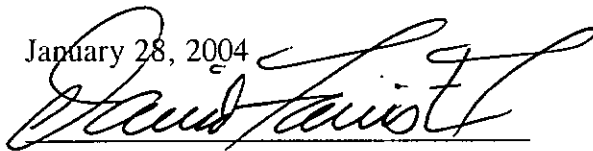
6. I declare that:

(a) I am a member of the following business, profession, occupation, or group, the members of which are affected by the transaction: _____

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Dated: January 28, 2004

Signature: _____



**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT

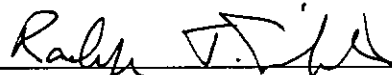
1. Name: Randy Minter
2. Title: Member - Virginia Cemetery Board
3. Agency: Department of Professional and Occupational Regulation
4. Transaction: Board Meeting
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

(a) I am a member of the following business, profession, occupation, or group, the members of which are affected by the transaction: _____

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Dated: January 28, 2004

Signature: 

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT

1. Name: Carol W. Black
2. Title: Member - Virginia Cemetery Board
3. Agency: Department of Professional and Occupational Regulation
4. Transaction: Board Meeting
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

(a) I am a member of the following business, profession, occupation, or group, the members of which are affected by the transaction: _____

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Dated: January 28, 2004

Signature: _____

Carol W. Black