

CEMETERY BOARD MEETING

MINUTES

October 12, 2004

The Cemetery Board met on October 12, 2004, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. The following members were present:

Kenneth R. Bell, Chairman
Mike Doherty
David Mark Farris, II
Diane Munn
Anton Stelly

Board members not present:

Carol Black
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
Camille C. Palmer, Administrative Assistant

Eric Gregory, Assistant Attorney General from the Office of the Attorney General, was present for the meeting.

Mr. Bell **called the meeting to order** at 9:37 a.m.

Call to Order

No one addressed the Board during the **Public Comment** period.

Public Comment

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

Agenda

A motion was made by Mr. Farris and seconded by Mr. Doherty to approve the **minutes of the June 14, 2004, Informal Fact-Finding Conference**. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Farris, Munn, and Stelly. There were no negative votes.

Minutes

A motion was made by Mr. Bell and seconded by Mr. Doherty to approve the **minutes of the June 15, 2004, Board Meeting**. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Farris, Munn, and Stelly. There were no negative votes.

A motion was made by Mr. Doherty and seconded by Mr. Bell to approve the **minutes of the June 15, 2004, Informal Fact-Finding Conference**. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Farris, Munn, and Stelly. There were no negative votes.

A motion was made by Mr. Stelly and seconded by Mr. Doherty to approve the **minutes of the July 9, 2004, Informal Fact-Finding Conference**. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Farris, Munn, and Stelly. There were no negative votes.

A motion was made by Mr. Doherty and seconded by Mr. Farris to approve the **minutes of the September 22, 2004, Informal Fact-Finding Conference**. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Farris, Munn, and Stelly. There were no negative votes.

Chairman Bell opened the floor for nominations of Chairman and Vice-Chairman. A motion was made by Mr. Doherty and seconded by Mr. Stelly to nominate Mr. Farris as Chairman. The motion passed unanimously. Mr. Farris was elected Chairman. Members voting "Yes" were Bell, Doherty, Farris, Munn, and Stelly. There were no negative votes.

Election of Officers

A motion was made by Mr. Doherty and seconded by Mr. Stelly to nominate Mr. Bell as Vice-Chairman. The motion passed unanimously. Mr. Bell was elected Vice-Chairman. Members voting "Yes" were Bell, Doherty, Farris, Munn, and Stelly. There were no negative votes.

In the matter of **File Number 2004-03345, Virginia Memorial Gardens, Inc.**, the Board reviewed the record which consisted of the Consent Order. Louis Herrink, respondent, was present and addressed the Board. A motion was made by Mr. Bell and seconded by Mr. Stelly to ratify the proposed Consent Order, which states that Virginia Memorial Gardens, Inc., neither admits nor denies a violation of 18 VAC 47-20-190.13 of the Board's regulations and imposes no monetary penalty. However, pursuant to the terms of the Consent Order, HCS Holding Company, LLC, agrees to purchase and install the memorials for the Kinsinger, DiSante, Gabel, and Smith families. In addition, HCS Holding Company, LLC, agrees that if evidence acceptable to the Board is presented that the memorials have been properly installed by December 15, 2004, the cases involving the memorials for the Kinsinger, DiSante, Gabel, and Smith families will be closed with findings of no violation. If the memorials have not been installed by December 15, 2004, Virginia Memorial Gardens, Inc.'s license will be suspended until evidence acceptable to the Board is presented that the memorials have been properly installed. The motion passed unanimously. Members voting "Yes" were Bell, Farris, Munn, and Stelly. There were no negative votes. Mr. Doherty, who conducted the Informal Fact-Finding Conference, did not participate in the discussion or vote in this matter.

File Number 2004-03345,
Virginia Memorial
Gardens, Inc.

In the matters of **File Numbers 2004-03346, HCS Holding Company, LLC; 2004-03912, HCS Holding Company, LLC; and 2004-03914, Virginia Memorial Gardens, Inc.**, the Board reviewed the records which consisted of a Consent Order for each file. There was no representative present. A motion was made by Mr. Bell and seconded by Ms. Munn to ratify the proposed Consent Orders. The Consent Order for **File Number 2004-03346**, which states that HCS Holding Company, LLC, neither admits nor denies a violation of 18 VAC 47-20-190.13 of the Board's regulations, imposes no monetary penalty. However, pursuant to the terms of the Consent Order, HCS Holding Company, LLC, agrees to purchase and install the memorials for the Kinsinger, DiSante, Gabel, and Smith families. In addition, HCS Holding Company, LLC, agrees that if evidence acceptable to the Board is presented that the memorials have been properly installed by December 15, 2004, the cases involving the memorials for the Kinsinger, DiSante, Gabel, and Smith families will be closed with findings of no violation. If the memorials have not been installed by December 15, 2004, HCS Holding Company, LLC's license will be suspended until evidence acceptable to the Board is presented that the memorials have been properly installed.

File Number
2004-03346, HCS
Holding Company, LLC

The Consent Order for **File Number 2004-03912**, which states that HCS Holding Company, LLC, neither admits nor denies a violation of 18 VAC 47-20-190.13 of the Board's regulations, imposes no monetary penalty. However, pursuant to the terms of the Consent Order, HCS Holding Company, LLC, agrees to purchase and install the memorials for the Kinsinger, DiSante, Gabel, and Smith families. In addition, HCS Holding Company, LLC, agrees that if evidence acceptable to the Board is presented that the memorials have been properly installed by December 15, 2004, the cases involving the memorials for the Kinsinger, DiSante, Gabel, and Smith families will be closed with findings of no violation. If the memorials have not been installed by December 15, 2004, HCS Holding Company, LLC's license will be suspended until evidence acceptable to the Board is presented that the memorials have been properly installed.

File Number 2004-03912,
HCS Holding Company,
LLC

The Consent Order for **File Number 2004-03914**, which states that Virginia Memorial Garden neither admits nor denies a violation of 18 VAC 47-20-190.13 of the Board's regulations, imposes no monetary penalty. However, pursuant to the terms of the Consent Order, HCS Holding Company, LLC, agrees to purchase and install the memorials for the Kinsinger, DiSante, Gabel, and Smith families. In addition, HCS Holding Company, LLC, agrees that if evidence acceptable to the Board is presented that the memorials have been properly installed by December 15, 2004, the cases involving the memorials for the Kinsinger, DiSante, Gabel, and Smith families will be closed with findings of no violation. If the memorials have not been installed by December 15, 2004, Virginia Memorial Garden's license will be suspended until evidence acceptable to the Board is presented that the memorials have been properly installed.

File Number 2004-03914,
Virginia Memorial
Gardens, Inc.

The motion passed unanimously. Members voting "Yes" were Bell, Farris, Munn, and Stelly. There were no negative votes. Mr. Doherty, who conducted the Informal Fact-Finding Conference, did not participate in the discussion or vote in this matter.

In the matter of **File Number 2003-02425, Chancellorsville Memorial Gardens, LLC**, the Board reviewed the record, which consisted of the investigative file, transcript and exhibits from the Informal Fact-Finding Conference, and the Summary of the Informal Fact-Finding Conference by the presiding Board member. Akira Mendoza was present as representative of Chancellorsville Memorial Gardens, LLC. A motion was made by Mr. Bell and seconded by Mr. Stelly to accept the recommendation contained in the Summary of the Informal Fact-Finding Conference and find a violation of § 54.1-2324 of the Code of Virginia.

File Number 2003-02425,
Chancellorsville
Memorial Gardens, LLC

The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Munn, and Stelly. There were no negative votes. 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. Bell and seconded by Mr. Doherty to accept the recommendation of the presiding Board member for the violation of the statute and impose a monetary penalty of \$1000.00, as well as impose suspension of Chancellorsville Memorial Gardens, LLC's license until such time as they have correctly filed their 2001, 2002, and 2003 annual reports with the Board. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Munn, and Stelly. There were no negative votes. 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 2004-00261, Southern Memorial Sales, Inc., t/a Oaklawn Mausoleum and Memory Gardens**, the Board reviewed the record, which consisted of the investigative file, transcript and exhibits from the Informal Fact-Finding Conference, and the Summary of the Informal Fact-Finding Conference by the presiding Board member. Henry Willett, counsel for the respondent, was present and addressed the Board. 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 and close Count I with a finding of no violation. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Munn, and Stelly. There were no negative votes. Mr. Farris, who conducted the Informal Fact-Finding Conference, did not participate in the discussion or vote in this matter.

File Number 2004-00261,
Southern Memorial
Sales, Inc., t/a Oaklawn
Mausoleum and Memory
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 and close Count II with a finding of no violation. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Munn, and Stelly. There were no negative votes. 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 2004-01749, Temple Hill Corporation, t/a Temple Hill Memorial Park**, the Board reviewed the record, which consisted of the investigative file, transcript and exhibits from the Informal Fact-Finding Conference, and the Summary of the Informal Fact-Finding Conference by the presiding Board member. Henry

File Number 2004-01749,
Temple Hill Corporation,
t/a Temple Hill Memorial
Park

Willett, counsel for the respondent, was present and addressed the Board. A motion was made by Mr. Bell and seconded by Mr. Stelly to accept the recommendation contained in the Summary of the Informal Fact-Finding Conference and find a violation of 18 VAC 47-20-190.11 of the Board's regulations. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Munn, and Stelly. There were no negative votes. 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. Bell to accept the recommendation of the presiding Board member and impose a monetary penalty of \$300.00 for the violation of the Board's regulation. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Munn, and Stelly. There were no negative votes. 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 2004-03333, Heritage Family Cemetery, Inc.**, the Board reviewed the record, which consisted of the investigative file, transcript and exhibits from the Informal Fact-Finding Conference, and the Summary of the Informal Fact-Finding Conference by the presiding Board member. No representative was present. A motion was made by Mr. Bell and seconded by Mr. Doherty to accept the recommendation contained in the Summary of the Informal Fact-Finding Conference pertaining to Count I and find Heritage Family Cemetery, Inc., in violation of § 54.1-2319 of the Code of Virginia (6 violations). The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Munn, and Stelly. There were no negative votes. Mr. Farris, who conducted the Informal Fact-Finding Conference, did not participate in the discussion or vote in this matter.

File Number 2004-03333,
Heritage Family
Cemetery, Inc.

A motion was made by Mr. Bell and seconded by Mr. Doherty to accept the recommendation contained in the Summary of the Informal Fact-Finding Conference pertaining to Count II and find Heritage Family Cemetery, Inc., in violation of § 54.1-2325 of the Code of Virginia (6 violations). The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Munn, and Stelly. There were no negative votes. 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. Bell and seconded by Mr. Doherty to accept the recommendation of the presiding Board member and impose no sanction for the violations cited in Count I. The motion passed

unanimously. Members voting "Yes" were Bell, Doherty, Munn, and Stelly. There were no negative votes. 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. Bell and seconded by Mr. Doherty to accept the recommendation of the presiding Board member and impose no sanction for the violations cited in Count II. The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Munn, and Stelly. There were no negative votes. 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 2003-03134, SCI Funeral Services, Inc., t/a Parklawn Memorial Park**, the Board reviewed the record, which consisted of the investigative file, transcript and exhibits from the Informal Fact-Finding Conference, and the Summary of the Informal Fact-Finding Conference by the presiding Board member. Jack Wilson, counsel for respondent, and James Stuart, compliance agent for respondent, were present. A motion was made by Mr. Doherty and seconded by Ms. Munn to reject the Summary of the Informal Fact-Finding Conference as to the facts pertaining to Count I and close the file with a finding of no violation as the affected contracts were signed prior to 2000. Members voting "Yes" were Doherty, Farris, and Munn. Member voting "No" was Bell. The motion passed with a majority vote. Mr. Stelly, who conducted the Informal Fact-Finding Conference, did not participate in the discussion or vote in this matter.

File Number 2003-03134,
SCI Funeral Services,
Inc., t/a Parklawn
Memorial Park

In the matter of **File Number 2004-01683, Shenandoah Memorial Park, Inc.**, the Board reviewed the record which consisted of the Consent Order. James Givens, complainant, was present and addressed the Board. Henry Willett, counsel for the respondent, was also present. A motion was made by Mr. Bell and seconded by Mr. Doherty to ratify the proposed Consent Order, which cites a violation of § 54.1-2339 of the Code of Virginia and imposes a monetary penalty of \$750. Additionally, the following terms, as agreed to in the Consent Order, must be met:

File Number 2004-01683,
Shenandoah Memorial
Park, Inc.

"Shenandoah agrees to start construction of the mausoleum within 30 days of the effective date of the Consent Order and complete the mausoleum within 3 months of the start of construction.

"Additionally, Cornerstone Family Services ("Cornerstone"), owners of

Shenandoah, for those contracts outside of statutory period for completing construction, will notify the purchaser that construction of the mausoleum is not complete within 30 days of the effective date of the Consent Order and give the purchaser the option, within 30 days of receipt of said notice, to rescind the contract and receive a refund of the money paid, with interest at the legal rate. If construction of the mausoleum is completed prior to expiration of the 30 day notice period, no such notice shall be required. Cornerstone agrees to provide to the Board, in a form acceptable to the Board, certification of any notice and refunds made.

"Cornerstone agrees to conduct a review of all mausoleum contracts for its Virginia cemeteries and to report to the Board any instances where its cemeteries are outside of the statutory period for starting or completing construction within 30 days of the effective date of the Consent Order. If Cornerstone determines that construction of mausoleums will not be started or completed within the statutory requirements, Cornerstone will notify the purchaser of this within 30 days of the effective date of the Consent Order. If construction of the mausoleum is completed prior to the expiration of the 30 day notice period, no such notice shall be required. Where such a notice is necessary, Cornerstone agrees to offer a refund of the money paid for these contracts, with interest at the legal rate, to the purchaser.

"Cornerstone agrees to provide to the Board, in a form acceptable to the Board, certification of any notice and refunds made."

The motion passed unanimously. Members voting "Yes" were Bell, Doherty, Farris, and Munn. There were no negative votes. Mr. Stelly, who conducted the Informal Fact-Finding Conference, did not participate in the discussion or vote in this matter.

The Board recessed for a break at 11:00 a.m. to 11:10 a.m.

Break

Eric Gregory, Board counsel, introduced himself to the Board. He then began training on the Conflict of Interests Act to the Board members and various Department staff. As an appointment had been scheduled previously regarding File Number 2003-02252, training was suspended so that the Board could consider this matter.

Training on Conflict of Interests Act

In the matter of File Number 2003-02252, Tidewater Cemetery Corporation, t/a Colonial Grove Memorial Park and Chesapeake Memorial Gardens, the Board reviewed the record, which consisted of the investigative file, transcript and exhibits from the Informal Fact-

File Number 2003-02252, Tidewater Cemetery Corporation, t/a Colonial Grove Memorial Park

Finding Conference, and the Summary of the Informal Fact-Finding Conference by the presiding Board member. Kenneth W. Stolle, counsel for the respondent, and Louis R. Jones, respondent, were present and addressed the Board. A motion was made by Mr. Bell and seconded by Mr. Stelly to reject the Summary of the Informal Fact-Finding Conference and instead enter into a Consent Order agreement with Tidewater Cemetery Corporation with the following terms: Tidewater Cemetery Corporation acknowledges its understanding of the regulations and/or statutes and that Tidewater Cemetery Corporation is currently in compliance with the regulations and/or statutes and will remain in compliance in the future. The motion passed unanimously. Members voting "Yes" were Bell, Farris, Munn, and Stelly. There were no negative votes. Mr. Doherty, who conducted the Informal Fact-Finding Conference, did not participate in the discussion or vote in this matter.

Mr. Gregory concluded the training on the Conflict of Interests Act.

Henry Willett, counsel for **File Number 2004-01683, Shenandoah Memorial Park, Inc.**, requested that the Board reconsider this matter and, specifically, consider amending the Consent Order previously adopted. A motion was made by Mr. Bell and seconded by Mr. Farris to not amend the Consent Order as previously adopted. Members voting "Yes" were Bell and Farris. Members voting "No" were Doherty and Munn. The motion failed due to lack of a majority vote.

After further discussion, a motion was made by Mr. Doherty and seconded by Ms. Munn to modify the Consent Order by increasing the notification provision from 30 days to 60 days. Members voting "Yes" were Doherty and Munn. Members voting "No" were Bell and Farris. The motion failed due to lack of a majority vote. As there was no majority vote on these motions, the original decision of the Board was upheld.

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

The Board members were provided with draft emergency regulations for consideration. After discussion, a motion was made by Mr. Stelly and seconded by Mr. Bell to adopt the emergency regulations as proposed and to authorize staff to make minor changes as needed, in consultation with the Chair, in order to obtain the necessary approvals from the appropriate agencies.

and Chesapeake
Memorial Gardens

Training on Conflict of
Interests Act

Reconsideration of File
Number 2004-01683,
Shenandoah Memorial
Park, Inc.

Consider Adoption of
Emergency Regulations

There was no Old Business

Old Business

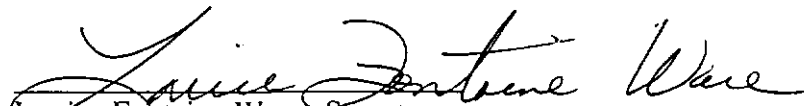
The Board members discussed § 54.1-2342 of the Code of Virginia. After discussion, the Board expressed its support of legislation to modify § 54.1-2342 in order to clarify the existing language.

New Business

The meeting adjourned at 1:13 p.m.

Adjourn


David M. Farris, II, Chairman


Louise Fontaine Ware, Secretary

**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: _____

None

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

Dated: October 12, 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: October 12, 2004

Signature: _____

Mike H. Doherty

**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: October 12, 2004

Signature: _____



**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: October 12, 2004

Signature: _____


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

TRANSACTIONAL DISCLOSURE STATEMENT

1. Name: Diane Munn
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:

October 12, 2004

Signature:

Diane W. Munn