

**MINUTES**  
**BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES**  
**December 5, 2013 - 10:00 A.M.**  
**Department of Financial Services**  
**2020 Capital Circle SE, Alexander Bldg #230**  
**Tallahassee FL 32301**

**1. Call to Order, Preliminary Remarks and Roll Call**

Mr. Jody Brandenburg, The Chair, called the meeting to order at 10:00 am.

Mr. Doug Shropshire made the following prefatory comments for the record:  
My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is December 5, 2013; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting has been made available to interested persons. The meeting is occurring in the Alexander Building in Tallahassee FL. My Assistant, Ms LaTonya Bryant, is recording the meeting and will be preparing minutes of the meeting.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. Participants are requested to keep in mind the necessary protocol that only one person may speak at a time.

Mr. Shropshire took the roll and the following members were present:

Joseph "Jody" Brandenburg, Chairman  
Jean Anderson  
James Davis  
Lewis "Lew" Hall  
Powell Helm  
Ken Jones  
Keenan Knopke  
Richard "Dick" Mueller  
Vanessa Oliver

**ABSENT:**

Andrew Clark

Mr. Shropshire advised the Chair that there was a quorum present and the Board may proceed to address the matters on the agenda.

**Also noted as present:**

Deborah Loucks, Board Legal Advisor  
Anthony Miller, Assistant Director  
LaTonya Bryant, Department Staff  
Linje Rivers, Department Counsel  
Mary K Surles, Department Counsel  
Jasmin Richardson, Department Staff  
LaShonda Morris, Department Staff  
Jim Deason, Department Staff  
James Folker, Department Staff  
Kawanzasis Henderson, Department Staff

The Chair welcomed the three (3) newest Board members: Vanessa Oliver, a consumer member, who lives in Punta Gorda, has a law degree from the University of Florida and was also a visiting law student at Florida State Law School, General Counsel and Compliance Officer at Ambulance Management Services d/b/a Ambitrans; Jim Davis, CPA consumer members, who lives

in Tallahassee, has degrees from the University of Florida and Florida State University, owner of Jim Davis CPA in Tallahassee; and Keenan Knopke, industry member, who lives in Temple Terrace and is a Florida licensed funeral director and embalmer, President & CEO of Curlew Hills Memory Gardens in Palm Harbor. The three (3) members thanked the Chair.

Also, the Chair confirmed that the Board members had received their packets in a timely manner.

## 2. Action on the Minutes

### A. November 7, 2013

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meetings held on November 7, 2013.

**MOTION:** Mr. Dick Mueller moved to adopt the minutes of the meeting. Mr. Keenan Knopke seconded the motion, which passed unanimously.

## 3. Old Business

### A. Disciplinary Proceedings - Material Facts Not Disputed (Section 120.57(2) Hearings)

#### (1) Work & Son Related Cases (Probable Cause Panel B)

- (a) *Work & Son-Sarasota Memorial, Inc. d/b/a Sarasota Memorial Park (F039746): Case Nos. 123568-12-FC, 124590-12-FC, 129488-12-FC, 129904-12-FC, 130906-12-FC; Division Nos. ATN-17270, ATN-17015, ATN-17049, ATN-17065, ATN-17090, ATN-17091, ATN-18883, ATN-19301, ATN-19638*
- (b) *Work & Son-Royal Palm Acquisition, Inc. d/b/a Royal Palm Cemetery (South) (F039669): Case Nos. 124587-12-FC, 129910-12-FC, 130918-12-FC; Division Nos. ATN-17795, ATN-17796, ATN-19417, ATN-19610*
- (c) *Work & Son-Osiris, Inc. d/b/a Royal Palm Cemetery (North) (F039668): Case Nos. 124486-12-FC, 129489-12-FC, 130917-12-FC; Division Nos. ATN-18944, ATN-18945, ATN-19609*
- (d) *Bradenton Funeral Home (F041688): Case Nos. 129510-12-FC, 129906-12-FC, 130912-12-FC, 130915-12-FC; Division Nos. ATN-18492, ATN-18948, ATN-19738, ATN-19568*

These are a related series of disciplinary proceedings concerning Work & Son Licensees.

Ms. Jean Anderson recused herself as she served on Probable Cause Panel B.

Mr. Knopke recused himself as he spoke publicly with a TV reporter in Tampa prior to being appointed to the Board.

Mr. Linje Rivers stated that the Licensees are currently licensed to operate as a funeral establishment and cemeteries in the State of Florida. I want to begin just by giving a little background information on the case. From 2005 to 2010 the Department conducted multiple inspections and investigations at the Licensees establishments. The Department received numerous complaints alleging violations of the Funeral, Cemetery and Consumer Services Act by the Licensee. As a result of the investigations and inspections, a Probable Cause Panel found probable cause against all the Respondent's establishments. Based on those findings the Department filed a seven (7) Administrative Complaints and based on the alleged violations, Work & Son agreed to a global settlement that represented past and outstanding violations that were discovered during the course of the inspections and investigations. The Licensee and its retained legal counsel reviewed the Settlement Stipulation and both determined that all the requirements and timelines that are provided in the Settlement Stipulation were reasonable under the facts and circumstances and the Licensee would be able to adhere to all the time limitations. The authorized agent, Cliff Work entered into the Settlement Stipulation on June 11, 2011.

On June 23, 2011, the Settlement Stipulation was presented before the Board for final action. Specifically, Work & Son agreed to correct all violations indicated in the Settlement Stipulation within sixty (60) days after the execution of the Consent Order, unless otherwise provided in the Settlement Stipulation. The Licensees agreed to pay an administrative fine of \$35,000 and the full amount was to be paid within five (5) years after the execution of the Consent Order, with an initial first payment of \$5000 due thirty (30) days after the execution of the Consent Order. Additionally the Licensees agreed to pay a minimum of \$7000 to the Division annually to satisfy the remaining balance of the administrative fine. The Respondents were also placed on five (5) years probation with the condition that if the Licensees pay the full amount of the administrative fine within thirty-six (36)

months and is in compliance with all the requirements of the Consent Order, the Licensees would be eligible for early probation termination. The Licensees further agreed to biennial inspections of all of his licensed establishments and agreed that failure to pay the administrative fine or make the necessary corrections would result in the immediate suspension of the license of that respective cemetery or funeral establishment and the suspension would last until the Licensees had come to compliance as determined by the Board.

On or about August 4, 2011 the Consent Order was executed and filed in an attempt to resolve all the outstanding matters. Subsequent to the execution of the Consent Order, the Division once again received several complaints from consumers against all of the licensed establishments. These complaints ranged from failure to timely refund preneed contracts, failure to maintain the cemetery grounds and failure to maintain accurate burial records, just to name a few. Based on these complaints, the Division staff conducted complaint investigations and inspections at all of the licensed locations. The Division discovered multiple violations at every location. Based on the allegations and violations the Department presented an Administrative Complaint to the Probable Cause Panel, the investigations and inspections in the form of a seven (7) count Administrative Complaint. On or about February 19, 2013, that Probable Cause Panel found probable cause to charge all of the Licensees with violations of the Act. On February 26, 2013, an Administrative Complaint was filed with the Division and delivered to the Licensee and the Licensee's counsel. The Licensee disputed the factual findings of the Department and requested a formal hearing at the Division of Administrative Hearings (DOAH). Before a hearing was conducted pursuant to s. 120.57, F.S., the Licensee stipulates to all the factual findings as set forth in the Administrative Complaint. These include:

Royal Palm North – The Licensee admitted to failing to correct the leaks and rotten wood on the mausoleum roofs, failing to correct the pavement, failing to correct the numerous potholes in the pavement on the grounds, failing to sod and seed the cemetery grounds, failing to repair the upper devotion niches and failing to repair the broken irrigation system.

Sarasota Memorial – The Licensee admitted to failing to maintain the cemetery grounds in a reasonable condition, failing to place grass in the cemetery and failing to repair multiple mausoleums.

Royal Palm South – The Licensee admitted to failing to correct the leaks and rotten wood on the mausoleum roofs, failing to repair the pavement and numerous potholes throughout the cemetery, failing to maintain an operational sprinkler system and failing to keep accurate burial records of every burial at the cemetery.

Bradenton Funeral Home – The Licensee admitted to failing to refund cancelled preneed contracts within the statutory timeframes.

Based on these admissions, DOAH relinquished jurisdiction to the Department to conduct a s. 120.57(2), F.S. hearing, material facts not disputed. The Department believes that at this time it is appropriate for the Chair to entertain a motion adopting the allegations of fact in the Administrative Complaint.

**MOTION:** Mr. Powell Helm moved to adopt the Findings of Fact. Mr. Lew Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department contends that the Board's Findings of Fact support a finding of violation of Florida Statutes as charged in the Administrative Complaint. At this time, it is appropriate for the Respondents to address the Board.

Ms. Wendy Wiener representing the Respondents stated that there is one important fact that Mr. Rivers inadvertently left out. The allegations in the Administrative Complaint were that the Respondents failed to make those corrections within the sixty (60) days contemplated in the Consent Order, not that they failed to make those corrections at all. In fact, as you will see set forth in the memorandum regarding mitigating factors that was presented in anticipation of the October Board meeting and which appears in nearly every file in the Board packet, there were significant mitigating circumstances that prevented complete compliance with the Consent Order. We are not here this morning to dispute that the Respondents failed to make all of the required corrections within the sixty (60) days, absolutely not, we admit to that. We are here to present to the Board evidence regarding why those things were not done and also evidence which would go to mitigate any penalty to be imposed against the Respondents based upon the facts and circumstances that occur. The role for the Board, as your legal counsel probably has and will advise you, is to determine what discipline is appropriate in a circumstance such as this. As I referred to, I provided the memorandum regarding mitigating factors which I hope you have all had an opportunity to review. It included several exhibits, photographs and attachments. Just very briefly to highlight the mitigating factors relevant in this case. Firstly, there has been at this point in time substantial compliance with nearly all of the conditions of the Consent Order and even as the Administrative Complaint filed by the Division most recently about which we are here today highlights there are only a certain number of things that continue to be outstanding and in a few moments Mr. Work will testify about the current condition of the corrections of the violations. Secondly, Mr. Rivers referred to the obligation to pay certain

administrative fines. All of those fines have been timely paid. Most of the violations in addition predate the ownership of the cemeteries by Mr. Work. The cemeteries are old, old cemeteries dating back to the 20s and the 40s. When Mr. Work acquired the cemeteries from the bankruptcy of what was then known as Loewen, the cemeteries were in a horrible condition. We presented to the Board, at the last meeting, photographs and they are also in your Board packet of what the cemeteries looked like when Mr. Work acquired them and it cannot be argued validly that they are not in much, much better condition today. In addition, as Mr. Work will testify in a few moments, he continues to correct those violations every single day. Seven (7) days a week, Mr. Work is working at the cemeteries and with regard to the funeral establishments to correct the violations. The goals of the Licensee and the goals of the Department are the same; compliance with the Chapter and service of the public. Mr. Work does not want to have cemeteries that continue to have violations or cemeteries that do not serve the public well. Mr. Work is working everyday to come into compliance with the Chapter and to correct all of those violations. Notwithstanding that about a year into the Consent Order timeframe, which had a two (2) year timeframe for certain violations to be corrected, Mr. Work was shot by an FHP Officer completely in error and lost about six (6) months worth of work that Mr. Work personally was doing to correct the violations at the cemeteries. Ms. Wiener asked Mr. Work to come forward and be sworn in and to provide some testimony to the Board regarding the status of the three (3) significant items that remain to be corrected pursuant to the Consent Orders and those issues are: the growth of grass at Sarasota Memorial Park, the status of the mausoleum repairs and the status of the pavement repairs.

Mr. Shropshire requested that Mr. Work raise his right hand to be sworn in. "Do you solemnly swear the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Clifford Frank Work responded, "It is." Mr. Work went over the three major items still left starting with the grass at Sarasota. We got a turf report that was requested from a conference call with the Division. We followed that turf report. The park is 100% better than what it was in 2001 when I acquired it. At the last Board meeting a couple a months ago, we showed photographs of where I was trying to appease one certain family member by putting down eight (8) pallets of sod. We are maintaining that grass and are still following the turf report, which stated that it would take two (2) to three (3) years and I think we are well ahead of that with what we are doing. We are fertilizing and taking care of it. With that being said, at Sarasota Memorial Park, the majority of it is covered by shade. It has huge live oak trees so you cannot expect plush grass everywhere as it is difficult to maintain in that kind of condition. Consumers should take that into account when selecting their locations for burial. We are doing everything we can to maintain the grass and it looks beautiful there. The complaints we got about this grass were all formulated from one family and that is it. We have not had any complaints from anyone else about the grass."

Mr. Work stated that at Royal Palm North there are no outstanding Consent Order items except maybe some blue scrolls from the 80s that need to be tightened down. "Hundreds of markers and potholes were fixed. The mausoleum roofs were fixed so that they do not leak and the mausoleum is being totally refurbished.

The other two items are at Royal Palm South, the potholes. There are three (3) miles of roads in there. It is a continuing issue with the potholes. We are constantly filling in potholes, which is done when we have time to do it. Right now, the majority of the staff is taking care of consumer burials, marker installations, mowing/weed eating and also fixing the mausoleum. We have three (3) mausoleums there. Mausoleums 1 and 2 are from the 70s and 80s. I totally repainted them and the roofs are 99% fixed. I consider them 99% fixed because they are flat roofs and they leak when we have heavy rain. The roof is designed to hold about two (2) inches of water before it even gets to the scuppers and it is a flat pitch roof. So when that happens, we find some drips. There are no leaks on the inside of the chapel and right now I think I may have possibly two (2) or three (3) places that might be dripping on the outside of the overhang and I have gone up and patched and torched down new asphalt on it but with water, it is just a matter of getting another heavy rain to find out. The mausoleum has been repainted. The only thing I still have to do on Mausoleums 1 and 2 is I took up the carpet in Mausoleum 2 and I am putting down new carpet. I have acquired new furniture for Mausoleum 2 and a few roof tiles were cracked so I have to put the new ones up and they have all been repainted. Regarding Mausoleum 3, I was required by St. Petersburg to have a licensed building contractor do that because there were some structural issues. I have hired a professional roofing company and they have come in and put a whole new roof on Mausoleum 3, even though this was not in the Consent Order. The only thing left to do now is the actual overhang on about a third of the mausoleum. The roofs that were put in by the previous owners rotted out. About a month ago I found out that some of the structural supports in the parapet wall around the top have some rotten wood so I have to contract another building contractor to come out and fix this. Other than that, we are moving along good."

Ms. Wiener stated that she would like to point out another very significant mitigating factor that was not contemplated in the memorandum that was prepared and presented prior to the October Board meeting because it occurred after the October Board meeting. Mr. Shropshire mentioned at the last meeting that there were ongoing trust examinations of the Licensees. In order to properly respond to those examinations as well as to conduct an assessment of the financial condition and the business operations from a financial and business perspective of Respondent's businesses, the Licensee has retained the services of former Board member and former SunTrust trustee Jim Atwood. Mr. Atwood has already been working with Mr. Work to really prepare a global assessment of the business situation at Work & Son to make sure that Respondents are doing what they can with what they have and if they are not doing the best job to help implement some changes and to help perhaps to structure some of the unusual trust situation referred to in the memorandum that I provided. There are a significant amount of the care and maintenance trust funds that are invested in life insurance policies which of course generate no income for the cemetery maintenance and in fact cost money because the trustee has to be paid to maintain those assets in trust. That is a significant amount of the trust funds associated with Sarasota Memorial Park. In the memorandum and in Mr. Work's affidavit we actually said it was 100% of the Sarasota trust which is not actually accurate. Once the Division began doing its examination of Sarasota we determined that in fact there is a little bit of the trust corpus that is not in insurance but the majority of it is in insurance. So what would normally be provided to the cemetery on a monthly basis for maintenance is not provided to the cemetery on a monthly basis for maintenance. Ms. Wiener asked that Mr. Atwood come up and very briefly address the Board on his very recent visit to one of the cemeteries and to the scope of what he is doing to provide assistance to the Respondents in this case.

Mr. Helm questioned how many miles of asphalt Mr. Work stated was in the cemetery.

Mr. Work responded that there is about three (3) miles worth of roads at Royal Palm South.

Mr. Shropshire requested that Mr. Atwood raise his right hand to be sworn in. "Do you solemnly swear the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. James "Jim" Williams Atwood answered, "Yes I do." Mr. Atwood stated that he has been retained by Mr. Work to work with him on his various properties to deal with the issues specifically related to trust, some of the investments in trust and his business operations. Mr. Atwood stated that he had the opportunity earlier this week to spend several hours with Mr. Work, visited the Royal Palm North location and Mr. Work does have issues regarding the mausoleum repairs. What you do not know is that not only is Mr. Work trying to repair the things that are noted as problems, but he is trying to do other repairs also. Mr. Work has a plan, a multi-year plan to have the locations working well, doing what they need to do. Mr. Work has cash flow issues because of the life insurance that is in the various trusts. Mr. Work understands what he is trying to do and is making decisions based on the facts that he has. This is a business and Mr. Work has to take care of his clients, his customers, taking care of burials and so forth. It is a very old cemetery and has been there sixty (60) years. There are repairs that need to be done. I am amazed that the mausoleum is as straight as it is. Some parts have slipped a little bit but it is actually very good structure. The number of issues and things are simply because of age. If you look at the mausoleum you can see that when it was done originally it was not done right so Mr. Work has to fix those things and it is a matter of two (2) things, time and money. Mr. Work is working very hard to do that.

Ms. Wiener asked that the Board members take into account very seriously all of the mitigating factors. Not only those discussed today but those that are set forth in the materials provided previously. The Board members that have been around for a while have seen many Licensees come before you, some of whom thumb their nose at the agency and essentially at the Board. Mr. Work is not one of those Licensees as he is trying hard to get these cemeteries into total compliance with the statute and I hope that you will take that into consideration in meeting out reasonable discipline.

Mr. Rivers stated in making your determination for the penalty phase, it is necessary for the Board to consider aggravating factors. Pursuant to Florida Administrative Code, in the presence of aggravating or mitigating circumstances which is supported by clear and convincing evidence, the Board shall be entitled to deviate from the guidelines in imposing discipline upon the Licensee. In aggravating or mitigating circumstances they may include but are not limited to the following: the severity of the violation, the degree of harm to consumer or public, the number of times the violation previously has been committed by the Licensee, the disciplinary history of the Licensee and the status of the Licensee at the time the violation was committed. The Department contends that several of the circumstances are present in this case and given the pervasiveness of the violations, the disciplinary history of the Licensee and the current probationary status of the Licensee, clear and

convincing evidence exist in the form of direct evidence from site inspections performed by Division field examiners. The Division field examiners determined that at Sarasota Memorial, the above-ground irrigation system continues to malfunction and that many of the sprinkler heads were not functioning properly. There continues to be areas without grass in several areas of the cemetery. At Royal Palm North, the cemetery grounds continue to not be maintained in a reasonable condition and that damaged markers were not replaced at the respective burial spots. Vault encroachments remain unresolved and some of the mausoleums have missing granite fronts. The roll-out sprinkler was not functioning at the time of the site inspection. At Royal Palm South, the mausoleum roofs were not repaired including missing and leaking roof tiles, mold and mildew, missing and stained carpet, missing windows and there was paint on numerous bronze memorials. The potholes continue to be a problem at Royal Palm South as indicated by Mr. Work and numerous dead trees were found throughout the gardens and the cemetery did not have a functioning roll-out sprinkler.

Mr. Rivers stated that the Department believes that at this time it is appropriate to entertain a motion finding that the Respondent is in violation of the Florida Statutes as charged in the Administrative Complaint and based on the evidence as presented by the Department and the Licensee's counsel.

**MOTION:** Mr. Helm moved to adopt the Conclusions of Law. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department recommends the following penalty to the Board: a \$2500 administrative fine, completion of all the outstanding violations with 180 days of the execution of the Final Order, Division inspections of the cemeteries every two (2) months and submission of status progress reports monthly by Mr. Work to the Division. The Department feels that is an adequate and fair resolution in this case.

Mr. Helm questioned whether the \$2500 covered all the cases.

Mr. Rivers concurred.

Mr. Hall stated that we keep going back to the fact that these were old, bad properties. Mr. Hall questioned whether the Licensee viewed the properties prior to purchasing them.

Ms. Wiener stated that this was an issue that was raised at the last meeting. The conditions of the cemetery were significantly worst. What is interesting is that the State had taken no action against the former owner even though the conditions of these cemeteries had existed for years and years and years. A lot of the things that are being required to be corrected, if you will, are things that are difficult to correct like realigning markers in rows that have been in place for 60 or 80 years or more. At the time of the acquisition, I do not believe it was reasonable for the current owner to realize that the State would require many of these longstanding corrections to be corrected. Notwithstanding that, Mr. Work has taken on the obligation to correct them and is doing so.

Mr. Hall stated that he cannot be held accountable for what was done at the cemetery years ago or what actions the Division or Board took. All I can be accountable for is today, so when I look at this, it has been going on for ten (10) years and no one forced them to purchase this. They looked it, decided they wanted it and now it has been going on for ten (10) years. Two and a half (2.5) years ago we had a stipulation agreement that said all corrections would be made in sixty (60) days and I questioned at that meeting whether the Respondent could make all the corrections within sixty (60) days when they have not been fixed in ten (10) years. The comment made was, "Yes, money is not the issue. It is just time and we have to get it done." Mr. Hall stated that there is nothing wrong with Mr. Work doing the maintenance on his own but if there is a substantial amount of work that needs to be done, third-party vendors need to be brought in to get it done. Regarding the previous Order, if the corrections were not complete within sixty (60) days, the license was supposed to be suspended.

Ms. Wiener stated that the suspension had to do with the payment of the fine.

Mr. Hall stated that the minutes indicated, "...payment of fine or the work being completed."

Ms. Wiener concurred.

Mr. Hall questioned if the completions were not done within sixty (60) days what assurance does the Board have that they will be done in 180 days.

Ms. Wiener stated that she would let Mr. Work speak to that. Ms. Wiener added that Mr. Work should be realistic because part of Mr. Work's problem is that he thinks he can get things done that he is not always able to do.

Mr. Work stated that they had two years in some of the situations. Realigning the markers even when we agreed on it, I did not know if I could do it within two (2) years because 70% of the markers are not even my markers. I have to contact the families to come back in and have their monument companies do it. Regarding the other outstanding issues, I am 99% done. I am literally looking at before the end of the year having Mausoleums 1 and 2 totally refurbished although that was not required by the Board but I just went in and did the whole thing from the ground up. Mausoleum 3 is going to be dependent on my contractors. They assure me that they can turn it around within four (4) to five (5) days working, but I am going to have to pull another permit to do the structural outside of the wall, something that we did not see initially when we got out there. The potholes could be fixed within a week or two (2) if I pulled all my guys off other stuff from what they are doing. Royal Palm North was done within three (3). There literally is light at the end of the tunnel.

Mr. Hall stated that the fact that Mr. Work brought Mr. Atwood in is encouraging. The fact that they waited a week before the meeting is not. This has been going on all this time and you just met with Mr. Atwood a week ago to try and resolve this.

Ms. Wiener stated that that just happens to be when they met with him in regards to the trust examinations. We have only had the trust examination reports for about a month.

Mr. Hall stated that is encouraging because he believes Mr. Atwood can help. Mr. Hall questioned whether Mr. Work would be receptive to having a contract with a company to come in and do sales and marketing and the interments, etc. to help take that load of so that Mr. Work could concentrate on the maintenance agreements.

Mr. Work stated that he does not feel that is necessary as he is right at the point of being done with this. I literally have one (1) year left on my bank loan for all of the nine (9) properties purchased and my cash flow has tripled. The Consent Order items are within weeks of getting done with the exception of Mausoleum 3, which I do not have any control of.

Mr. Hall questioned the number of employees Mr. Work has maintaining 132 acres.

Mr. Work stated that in the three (3) cemeteries alone there are about fifteen (15) employees.

Mr. Hall questioned whether the employees are in charge of the maintenance of the lawns and grass as well as interments, etc.

Mr. Work concurred. Mr. Work stated that now is the season to where the grass is not growing so much, the parks are all trimmed up and they all look nice so we are focusing on other projects.

Mr. Hall, in looking at the contract from the grass company, questioned whether the company ever recommended some winter rye. It would come out in about three (3) weeks and at least provide some coverage.

Mr. Work stated he was not exactly sure but thought it may have been St. Augustine or Bahia, but it has taken and the soil is sterile. When our guy came in back in 2001 it was a sea of brown and dirt, but now we have grass growing in 95% of the cemetery. I drive through other cemeteries, I drove through some cemeteries in Tampa and there are patches everywhere. The only reason this came to light is because this consumer got on the campaign and we have bent over backwards to appease her.

Ms. Wiener stated that Mr. Hall's concern is if the Board agrees to discipline as recommended by counsel for resolution of all of the Consent Order items within 180 days whether the Board is setting itself up to hear this again in 190 days.

Mr. Hall stated that there was a conversation ten (10) years ago, another conversation two and a half (2.5) years ago, there have been some hefty fines and still nothing has been taken care of. Some adjustments were made but when I looked at the pictures from the last Board meeting, a lot of that is green weed from the rain that we had. That is why some winter rye with

some coverage for the Bahia would have gotten you through that period and probably satisfied the consumer as that would have popped up in three (3) weeks. The testimony back then I had written down was two (2) pallets of sod was brought but today Mr. Work said eight (8). A pallet of sod covers 400 square feet and an acre is 43k square feet and you have 138 acres.

Mr. Work stated that is not respective of the whole cemetery.

Mr. Hall stated when you look at the pictures of it, in satisfying the consumer with the bench, it looks like a quilt patch. It appears you took care the people around the bench to hush them up but there was nothing done around that.

Mr. Work stated that was not true. We worked on the whole area and we worked on areas that are not in the complainant's area.

Mr. Hall stated if you look at the pictures provided by the Respondent, that is what it shows, great St Augustine grass up until that point and then the Bahia, which creates another challenge for you because now you cannot use the same fertilizers and chemicals on the two different grasses. Again, my concern is from the management perspective I do not feel there has been adequate management there for the last ten (10) years. So if the Board agrees to this, what assurance will we have since it has been two and a half (2.5) years and we still are not there. The Respondent is the one who agreed to the sixty (60) and agreed it could be done within that timeframe. The only thing the Board wants is for the corrections to be made. We do not want to see the dead trees, the other issues or the problems with the mausoleum.

Mr. Work stated that Mr. Rivers stated there are dead trees at Royal Palm South. What he did not state is that the Wildlife Protection will not let us take those down because they are eagle perches. I would love to have a letter from the Board advising me to take down the dead trees so that I could take them down without getting in trouble from the Wildlife Protection people. There are about seven (7) or eight (8) trees that they will not let us take down because it is a protected area where the eagles perch.

Mr. Hall questioned whether Mr. Work had letters to that effect.

Ms. Wiener stated that the Eagle Conservation folks have been in touch with her about the trees. Mr. Work would love to take down those trees.

Mr. Hall questioned whether there are nest in those trees.

Ms. Wiener responded, "No, they are perching trees." So if eagles come by and perch in a dead tree that tree stays. The Conservation folks have been in touch with my office. They spent a long time talking to my paralegal, me and Mr. Work. Mr. Work would love to take those trees down but that is simply not doable.

Mr. Work stated that Mr. Hall stated nothing has been done in ten (10) years, but of the 240 items there are only three (3) left so that is an unfair statement.

Mr. Jones stated that Mr. Work indicates that the deficiencies are 99% completed. Mr. Jones questioned whether Mr. Work feels he can complete the other 1% within the 180 day timeframe so that this does not come before the Board again.

Mr. Work stated that he could with the exception of one of the items in the Consent Order that calls for realigning all the markers, which is such a broad statement. I have taken sections of the cemetery. The cemeteries were not pinned or surveyed. I resurveyed them. The maps are wrong so I have been doing new maps on everything. I literally have a month of work as long as my contractors can get their end done.

Mr. Jones questioned whether Mr. Work can do everything but one (1) item.

Mr. Work stated that he is not allowed to do that one (1) item. The City of St. Petersburg requires that to be conducted by a licensed contractor.



Ms. Wiener stated those are two (2) different things. The item that Mr. Work said is probably not doable in six (6) months or is absolutely not doable in six (6) is realigning all of the markers. A lot of that is because you have to contact families in a lot of situations and these cemeteries have existed some of them since the 20s.

Mr. Jones questioned what can be done, the exception and the timeline.

Ms. Wiener questioned whether Mr. Work feels that every item in the Consent Order can be completed, other than straightening the markers, within six (6) months.

Mr. Work responded, "Absolutely."

Mr. Mueller stated that Mr. Work made reference to his cash flow and questioned whether Mr. Work indicated it tripled or was a dribble.

Mr. Work responded, "It's a dribble. I am up to this December to my loan getting extended and I only have a couple of \$100k left on a \$2 million loan. So I will have another \$16k-\$18k that I have never had since I have been here."

Mr. Helm questioned the reason for the consumer's refund request being denied at Bradenton Funeral Home.

Mr. Work stated that there was a miscommunication. One of them wanted the caskets refunded and we refunded the service portion. The caskets per Florida State law were not refundable but I refunded them anyway. A couple of them just slipped through the crack. One of them was for Peterson and we happened to have two (2) Elaine Petersons that were refunds; one at Royal Palm South and one at Bradenton. That would be my fault because when Bradenton called inquiring whether Peterson was done, I responded yes but there were two (2). There was miscommunication but it was entirely our fault. I was working nonstop to try and get this stuff done but we did pay it.

Mr. Jones questioned whether the monthly inspections recommended by the Department are just during the 180 days.

Mr. Rivers concurred.

Mr. Jones questioned whether inspections are needed every two (2) or three (3) months within the six (6) month period.

Mr. Rivers stated that the Department feels that every two (2) months would be sufficient to determine whether Mr. Work is making progress.

Mr. Jones questioned whether there would be any inspections after the six (6) month period.

Mr. Rivers stated that the Division conducts inspections annually. Mr. Rivers added that after the 180 days this would come back before the Board to demonstrate whether there was compliance with the Final Order that will be issued. Mr. Rivers questioned Ms. Wiener's proposal for the markers that Mr. Work is unable to realign.

Ms. Wiener stated that this may be a situation where because Mr. Work would be submitting monthly status reports to the Division, we would be keeping the Division apprised of our efforts to get those straightened up. As you recall and I think we talked about this when the original Consent Order was agreed to, Mr. Work has three (3) huge parks. He started with the smallest park, Sarasota Memorial Park and he actually undertook the effort there to do a whole, huge marker straightening, leveling, fixing project. The Examiner, after that was done, said that this cemetery has never looked better with regards to those markers. They have the grass issue. The cemetery is covered in live oaks and is across the street from the beach. In terms of the markers they were able to get that done. Mr. Work was moving on to the next park, trying and then trying to get all of the Consent Order items done, then getting shot and so I think you ended up where you ended up. Ms. Wiener added that there are some that will not be able to be moved.

The Chair questioned whether the marker realignment consists of upright markers or flat markers.

Mr. Work stated that the majority are flat. There are quite a few monument sections but problem being is that a lot of those monuments are not ours and they were not installed by us. So now I am going out touching someone else's property who did not contract through us to fix it as we never put it down. At Royal Palm North where we straightened up all the rows, we sold 95% of all the markers. It is a different beast at Royal Palm South.

The Chair questioned whether Mr. Work would be able to track his progress in realigning markers and report on that via a monthly update to the Division.

Mr. Work stated that he could.

Mr. Mueller stated that Mr. Work indicated that his problem is that someone else installed the marker incorrectly years ago and Mr. Work is reluctant to fix the error they made.

Ms. Wiener stated that the realignment often deals with encroachment issues that involve contacting the families so it is not simply like the marker is leaning so straighten up the marker as that could be done by the cemetery. The issues were not simply aesthetic but things that would involve contacting families to make sure that the appropriate things could be done. That was actually addressed in the conversation with the Division following the Consent Order where there were encroachments that needed to be addressed, crypt lids were ajar and things of that nature.

Mr. Mueller questioned whether he was correct in his understanding that outside contracts installed consumer A's memorial on consumer B's space.

Mr. Work stated that has occurred but not on his watch. You are talking about globally going back and corrected four (4) decades of neglect. I am not saying that we have not messed up here and there but it is very seldom in putting down markers and we have 30k-40k burials.

**MOTION:** Mr. Jones moved for a penalty of a \$2500 administrative fine to be paid within 30 days of the execution of the Final Order, completion of all the outstanding violations within 180 days of the execution of the Final Order with the exception of completing all realignment and encroachment resolutions so long as the Division is kept up to date, inspections of the cemeteries every two (2) months by the Division and submission of status progress reports including an action plan monthly to the Division to extend beyond six (6) months. Mr. Mueller seconded the motion, which passed with one (1) dissenting vote.

Mr. Hall questioned whether the license would be suspended at the end of the six (6) months if the items are not completed as in the former stipulation agreement.

Mr. Rivers stated that statutorily that would be the case if the Final Order is violated.

***B. Request(s) for Release of Terms of Stipulation and Consent Order***

***(1) Recommended for Declination***

- (a) Atlantic Mortuary & Cremation Service Inc d/b/a Atlantic Burial & Cremation Service (F054400)  
(Rockledge)***

This item was withdrawn from the Agenda by the Licensee.

**4. Disciplinary Proceedings**

***A. Request for Modification of Previous Final Order***

***(1) Recommended for Declination***

- (a) Cemetery Professionals, LLC (Atlantic Beach)***

Mr. Shropshire stated that this is a request by Cemetery Professionals, LLC ("Licensee") for relief from an Order of the Board of Funeral, Cemetery and Consumer Services ("Board"), that requires Cemetery Professionals, LLC to pay certain specified restitution to Riverview Memorial, Inc. in Cocoa, Florida.

Pursuant to the Final Order issued August 7, 2012 ("August 2012 Board Order") in Case Nos. 110156-10-FC & 110157-10-FC, the Board ordered Cemetery Professionals, LLC ("Licensee" or "Cemetery Professionals") to pay \$10,250 in fine and costs and pay \$38,859.57 ("administrative restitution") in monthly restitution payments to Riverview Memorial, Inc., Lic.#F039649. The final order was based on an eleven-count complaint, including allegations of misappropriation of funds from Riverview to the Licensee during the Division's preneed examination period, January 1, 2007 to February 28, 2009. The Licensee has paid the \$10,250 in fine and costs. The Licensee is current on its monthly restitution payments. A copy of the August 2012 Order is attached as Exhibit A in the Board material.

Stephen Kuzniar is a former principal of Cemetery Professionals, LLC and the former husband of a current principal of Cemetery Professionals, Amanda Kuzniar (subsequently remarried, now Amada Rayan). On May 23, 2013, Stephen Kuzniar pled guilty to grand theft, a second degree felony in *State v. Kuzniar*, Case No. 05-2009-044245-AXXX-XX, 8<sup>th</sup> Judicial Circuit in and for Brevard County, Florida. As part of the plea agreement, Mr. Kuzniar was ordered to pay \$38,000 ("criminal restitution") to Riverview, within a fifteen year period. A copy of the criminal plea documents is attached Composite Exhibit B in the Board material.

On or about June 10, 2013, counsel for Cemetery Professionals, LLC filed a Motion for Relief from the August 2012 Board Order. In that motion, counsel argues that Cemetery Professionals should only be required to pay \$859.57 in restitution payments, since Stephen Kuzniar in the separate criminal matter, was ordered to pay \$38,000 in criminal restitution to Riverview. The Licensee further requests the Board relieve the Licensee of any further obligation to pay restitution, and that the Licensee is repaid for restitution payments made to date or given appropriate credits. A copy of the Licensee's motion for relief is included in this packet, along with the Licensee's notice of filing the September 27, 2013 transcript of the criminal sentencing proceedings regarding Stephen Kuzniar. See Exhibits C & D, respectively in the Board material.

On June 18, 2013, the attorney representing Riverview filed a response to the Licensee's Motion for Relief. In that response, Riverview recommends that Cemetery Professionals' motion be denied. As grounds, Riverview argues that Stephen Kuzniar and Cemetery Professionals, LLC, combined, diverted funds well in excess of \$100,000 from Riverview. Therefore, Riverview asserts that the Licensee's request for relief should be denied. A copy of Riverview's response is attached Exhibit E in the Board material.

#### Division Findings and Recommendation

- (1) The combined total of the administrative and criminal restitution ordered to be paid to Riverview is \$76,859.57.
- (2) On or about July 9, 2013, Assistant Director Anthony Miller, contacted William J. Scheiner, the state attorney who prosecuted Stephen Kuzniar in the criminal case. Mr. Scheiner stated that prior to completing the criminal plea agreement with Mr. Kuzniar, Mr. Scheiner was aware of the administrative restitution amount the Board had already ordered Cemetery Professionals pay Riverview pursuant to the August 2012 Board Order. In fact, Mr. Scheiner advised that he took the administrative restitution amount in consideration before finalizing the final amount the State Attorney's Office agreed to have Mr. Kuzniar pay Riverview in criminal restitution. He further stated that, in this way, he wanted to ensure that Riverview did not "double dip". Mr. Scheiner thought that the total amount of misappropriated funds probably exceeded \$70,000, but since there were challenges in proving the actual misappropriated amount, the State Attorney's Office agreed to the \$38,000 in criminal restitution. He believed the \$38,000 in criminal restitution, when considered with the \$38,859.57 previously ordered by the Board to be paid, was a reasonable and fair amount. A copy of the follow-up letter from the Division to Mr. Scheiner, dated September 9, 2013 is attached as Composite Exhibit F in the Board material.
- (3) On or about July 10, 2013, Assistant Director Anthony Miller, contacted Andrew Reid, the public defender, representing Stephen Kuzniar in the criminal case. Consistent with Mr. Scheiner's statements, Mr. Reid stated that he also was fully aware of the administrative restitution amount the Board had previously ordered Cemetery Professionals pay Riverview based on the August 2012 Board Order. He estimated that the misappropriated funds in the criminal case totaled approximately \$100,000. He indicated that when the parties were negotiating the criminal restitution amount, both parties took into consideration the August 2012 Board Order and restitution amount Cemetery Professionals was required to pay Riverview pursuant to that order. In taking that previous amount ordered to be paid to Riverview into account, the amount negotiated in the criminal case was offset, and therefore, Mr. Kuzniar was ordered to pay \$38,000 as opposed to the full amount of the alleged misappropriated funds. He strongly felt that the criminal plea deal was fair and he believed that the amount of the criminal restitution when combined with the administrative restitution, would not lead to any unjust enrichment by Riverview. A copy of the

follow-up letter from the Division to Mr. Reid, dated September 9, 2013 is attached as Composite Exhibit F in the Board material.

Mr. W. Alan Winter, the requestor's attorney, thanked the Board for hearing their petition, which is very specific. Mr. Winter stated that he previously tried to file some materials that support their petition. The Final Order in this case was entered on August 7, 2012 and it incorporates the Settlement Stipulation that was dated May 22, 2012. I represent Amanda Rayan and there is a waiver in the file, so I can speak on her behalf. The cemetery is doing well now and Ms. Rayan is busy this week with services. Ms. Rayan's former name was Amanda Kuzniar and she was married to Stephen Kuzniar, and I will be speaking about Mr. Kuzniar as I discuss my motion for relief. What we are asking for in this case is we got a problem now that has solely to do with the restitution that was ordered in this case. When the Order was entered, the Department's recommendation of a fine was \$5000. That was objected to by one of the members of the Board, there was a discussion and it was actually increased to \$10,000. To resolve the matter, Ms. Rayan agreed to it. It is my understanding that those fines have been paid. That is not an issue and Ms. Rayan and Cemetery Professionals are seeking no relief as to those fines. All Ms. Rayan is asking the Board to do is address the issue of restitution and I will explain why.

Mr. Winter stated that the Amended Administrative Complaint that was filed in this case was dated January 5, 2012. Attached to the Motion for Relief, there is a one-page document called "Information." Now for those of you who are not information with criminal procedure, I am an ex-prosecutor from Duval County under Ed Austin. An "Information" is how you charge a Defendant. In this case, the "Information" is dated January 8, 2010. That is two (2) years prior to the Amended Administrative Complaint. In that "Information" which was brought in Brevard County, the State Attorney's Office was seeking a remedy against the Defendant that they identified in this case as Stephen Kuzniar, Amanda Rayan's ex-husband. They specifically identified him as the responsible defendant in that case on January 8, 2010. The point being is that State agency identified the theft of this money, \$38,000+, identified Mr. Kuzniar as the person responsible for it and did so in January 2010. Two (2) years later, the Division gets involved, there is an Administrative Complaint filed and Ms. Rayan, who stands alone now without Mr. Kuzniar, stipulated to the payment of restitution in the amount of \$38,859.57. Of course, Ms. Rayan signed the stipulation but I would parallel it to a plea of no contest. There are times when a business owner simply has to stipulate to move forward with their business and that was done in this case.

Mr. Winter stated that along with that restitution was the \$10,000 fine, which has been paid already. The "Information" was filed and for whatever reason the State Attorney down in Brevard County took a very long time to get to a disposition in the case. The case was disposed by a plea by Mr. Kuzniar. Under criminal procedure, there is a plea dialogue where the Defendant comes forward with his or her attorney, they are placed under oath and have to make certain acknowledgments. In this case, that was done. Unfortunately that plea did not occur until May 23, 2013, a year after Ms. Rayan came before this Board and accepted by stipulation the payment of the restitution. Mr. Winter stated that he received a letter from Mr. Duncan McKenzie's attorneys and they took a position that the restitution should have been higher. That is an allegation, a unilateral assertion of a potential fact. It is not a matter of record, it is not based under oath, no one testified to that and no one accepted that as a fact. Mr. Winter requested that the Board totally disregard that allegation. Mr. Winter stated that he brought two (2) things before the Board: Ms. Rayan's acknowledgment stipulating to the actual damages in this case as far as restitution; and Mr. Kuzniar going into a Brevard County Court and acknowledging \$38,000 in restitution. When I filed my motion a couple of months ago, Ms. Rayan had diligently paid the monthly restitution requirements. At that time, Ms. Rayan had already paid \$12,459.57 and it is my understanding that during the pendency, waiting for this to come before the Board, Ms. Rayan has continuously paid each month. There was a big argument about who the restitution should be paid to. Mr. Winter added that it was his hope that Ms. Rayan could pay the restitution through the Board, but it was in fact required that Ms. Rayan pay the restitution directly to Duncan McKenzie. The Board should remember that Riverview and Mr. McKenzie themselves were found to be in violation of Florida Statutes concerning the running of a cemetery, at about this same time, so Mr. McKenzie does not come before the Board with clean hands. That is why I am making this request on behalf of Ms. Rayan. We are confronted with two (2) legitimate State Orders, one from this Board and one from the State Attorney's office in Brevard County, requiring two (2) different people or entities to pay restitution that has been acknowledged at best at \$38,859.57 twice, to the same guy. That is not appropriate. The law of the State of Florida for restitution is "you should make the person whole." That is the law. You should not profit from restitution and that is what is about to happen here. Mr. Winter added that he has some suggestions about what the Board could do and that is what I am asking the Board to do. I am asking for some relief.

Mr. Winter stated that the transcript in this case is very specific because State Attorneys in most jurisdictions are very concerned about the victims and are always worried about whether the victims' rights are being protected. Page 12 of the transcript reads:

"THE STATE (F): And this is to Mr. Duncan McKenzie, who is in the courtroom today, from there.

THE COURT: Very well. Thank you, sir. Thank you for being here. Anything further from the State?

THE STATE (F): Not unless Mr. McKenzie wishes to speak to the court at all.

THE COURT: Do you wish to be heard, sir?

MR. McKENZIE: No."

Mr. Winter stated that if Mr. McKenzie had a problem with the amount of the restitution that would have been the time for him to address it. Mr. McKenzie did not as he affirmatively chose not to. So we are stuck with \$38,000+ in restitution. Ms. Rayan has in good faith followed the Order that she is under, she acknowledges that she did it. Mr. Winter stated that he is requesting that these two (2) Orders be reconciled. The Board cannot tell the Brevard County Circuit Court that they cannot accept restitution from Mr. Kuzniar who is under a 15-year probation to make these payments. If Mr. Kuzniar does not make these payments, he is in violation of probation and more difficult sanctions could be imposed. Mr. Kuzniar is currently out, but if he is in VOP one of the sanctions would be that he could be incarcerated so Mr. Kuzniar is certainly motivated to make these payments. Mr. Winter requested that the Board enter an Order modifying the requirement of Cemetery Professionals to either: (1) stay the payment of future restitution while the restitution is being paid to Mr. McKenzie and Riverview through the Clerk's Office down in Brevard County; (2) give Ms. Rayan credit for the monies that she has already paid because Mr. Kuzniar has to pay the entire \$38,000. There should be some form of an Order that recognizes that we now have a criminal defendant who has gone into a circuit court of law and acknowledged the debt that is owed to Riverview and that he is now obligated for it. That is the relief that we are requesting from the Motion.

Mr. Shropshire requested that the Board hear from Assistant Director Anthony Miller for the Division.

Mr. Anthony Miller stated that before he reiterates the Division's recommendation, which is clearly laid out in the packet, he would like to correct the record on one thing that Mr. Winter shared prior to allowing counsel for Riverview to come forward with a response. One thing that Mr. Winter expressed to the Board today was that there was confusion as to who payments were to be paid to. Mr. Winter's client entered into a stipulation prior to the Consent Order. The stipulation indicated that payments were to be paid to Riverview. It only became an issue after the Consent Order was issued. Mr. Miller added that he was involved on behalf of the Division and had to send a pointed letter to the Licensee reminding them to follow the Consent Order. The Consent Order did not specifically lay out the address to send the payment to so in our letter of clarification this was set forth. So it was very clear in the stipulation as it came before the Board.

Ms. Wiener, representing Riverview, stated that Mr. Winter indicated that Riverview does not come before the Board with clean hands. Riverview was disciplined because there was money not deposited to trust. As the owner of the cemetery, it was obligated to deposit certain monies to trust. That money was not deposited to trust because it was stolen by two (2) parties, Cemetery Professionals and Stephen Kuzniar. The Board was presented materials showing endorsed checks, some by Cemetery Professionals and some by Stephen Kuzniar. When Mr. McKenzie accepted responsibility for the discipline for failure to have those monies in trust, he did so willingly and deposited into trust all of the monies that were missing from trust. In total there were probably more than \$100,000 diverted from Riverview to the two (2) parties, Cemetery Professionals and Stephen Kuzniar. Mr. McKenzie did not object to the Restitution Order against Stephen Kuzniar because he was aware of the pre-existing Restitution Order against Cemetery Professionals, which in total brings the amount up to just slightly less than \$80,000 in restitution that Mr. McKenzie will receive. It is inappropriate for the Restitution Order against Cemetery Professionals to be lifted in the face of the overwhelming evidence that Cemetery Professionals and Stephen Kuzniar both victimized Riverview Memorial, so we would object strongly to any modification of the Restitution Order.

Mr. Miller stated that the Division, as part of its investigation into this matter, reached out to the State Attorney and the Public Defender separately. Both the State Attorney and the Public Defender involved in the criminal plea agreement stated that prior to them entering into that plea agreement, they knew of the Board's August 2012 Order as well as the amount and took that into consideration when they agreed to the criminal restitution. Therefore it is the Division recommends that the Board decline to reconsider or reopen this matter.

**MOTION:** Mr. Knopke moved to decline to reconsider or reopen this matter. Mr. Hall seconded the motion, which passed unanimously.

**B. Settlement Stipulation(s)**

**(1) CFS Funeral Services, Inc. d/b/a Fountains Memorial Park (F019491): Case No. 126252-12-FC, Division #ATN-18078 (Probable Cause Panel B)**

Ms. Anderson recused herself as she served on Probable Cause Panel B.

Mr. Rivers stated that the Division alleges that the Licensee failed to do the following: provide accurate work papers, make authorized withdrawals from the preneed trust fund, have accounts receivable in compliance with applicable statutes, make sufficient deposits to offset the preneed trust funds liability, and make timely deposits to the preneed trust fund. Initially, it was determined that the preneed trust deficit was \$317,542.68.

Subsequent to the completion of the examination, the Division was provided documentation from the Licensee that represents a current preneed trust deficit of \$30,086.69. The Licensee agreed to replenish the fund by shifting \$22,641.98 in unallocated trust amount, while depositing \$7,444.71 to satisfy the remaining deficit balance. The Licensee provided the Division with documentation to confirm the above referenced allocation and deposit. This allocation and deposit resolved the deficit issue.

CFS Funeral Services has agreed to a pay of fine of \$3500.

The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Mr. Helm questioned whether the decrease in the deficit was due to the Licensee providing additional paperwork to the Examiner.

Mr. Rivers stated that there was some disparity in the work papers that were not provided to the Division at that time but since then the Licensee, through counsel, has been able to provide the additional work papers.

Ms. Wiener stated that the particular location at issue was a location that was acquired by Carriage. Prior to its acquisition and then after its acquisition, it went through a whole reconciliation of paperwork, so the original paperwork that was provided was not as accurate as what they were later able to work up and get figured out. Actually, this was sort of an odd case because a lot of time you get your initial trust report back and then you send additional paperwork and there is a back and forth with the trust examiner and the Licensee. This was actually a situation where there had been a little bit of back and forth and then there was just sort of a huge dead space. The matter was dormant for a period of maybe over a year or even eighteen (18) months and then an Administrative Complaint was filed. So what we did was ask the Department to sort of stay that matter while we continued to engage in that back and forth and in doing that that is how we ultimately determined that the correct deficit was not \$317k but really \$30k and that has been replenished to the trust.

Mr. Shropshire stated that this situation is not unusual in the Division's experience. When we conduct an exam, it is not unusual that the Licensee, in some cases, does not really take our Examiner's requests for explanation seriously until they receive their report reflecting deficiencies and suddenly they become very focused and concentrate on showing us why we were wrong and often they do show us why we were wrong.

Mr. Helm stated that the Division was not wrong in this situation.

Mr. Shropshire agreed.

Mr. Knopke questioned the term "unallocated trust amount."

Ms. Wiener stated that when the trust was completely reconciled, there was money that probably should have been withdrawn as earnings on prior contracts. The money was just sitting unattached to any preneed contract and whether than

withdraw that earning they just put it back in. We actually conferred with the Division prior to making that choice to ensure that would be acceptable to the Division and they advised we do that and then deposit the remaining money and that was done.

**MOTION:** Mr. Helm moved to approve the Settlement Stipulation as recommended by the Department. Mr. Jones seconded the motion, which passed unanimously.

**(2) Moore, James Shane (F048319): Case No. 130463-12-FC, Division #ATN-19021 (Probable Cause Panel A)**

Mr. Knopke recused himself as he served on Probable Cause Panel A.

Mr. Rivers stated that the Division alleges that the Licensee failed to ensure the following: that the monument contract contained all the necessary information; that all of sales agent's licenses were active; that the establishment's license was active at the time of execution of the contract; that the monument establishment's fictitious name was active with the Florida Department of State, Division of Corporations; that the merchandise ordered was delivered in a timely manner; and that the merchandise sold conformed to the rules and regulations of the cemetery.

James Moore has agreed to a pay of fine of \$750 and be placed on one year of probation.

The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Ms. Deborah Loucks questioned whether Mr. Moore or anyone representing him was present. There was a negative response.

**MOTION:** Mr. Mueller moved to approve the Settlement Stipulation as recommended by the Department. Mr. James Davis seconded the motion, which passed unanimously.

**(3) Smoore Enterprises, Inc. d/b/a Superior Design Monument Company (F037835): Case No. 130462-12-FC, Division #ATN-19021 (Probable Cause Panel A)**

Mr. Knopke recused himself as he served on Probable Cause Panel A.

Mr. Rivers stated that the Division alleges that the Licensee failed to ensure the following: that the monument contract contained all the necessary information; that all of sales agent's licenses were active; that the establishment's license was active at the time of execution of the contract; that the monument establishment's fictitious name was active with the Florida Department of State, Division of Corporations; that the merchandise ordered was delivered in a timely manner; and that the merchandise sold conformed to the rules and regulations of the cemetery.

Smoore Enterprises Inc. has agreed to a pay of fine of \$750 and be placed on one year of probation.

The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

**MOTION:** Mr. Mueller moved to approve the Settlement Stipulation as recommended by the Department. Mr. Hall seconded the motion, which passed unanimously.

**(4) Woodlawn Park Cemetery Company d/b/a Woodlawn Park Cemetery South (F039450): Case No. 136638-13-FC, Division #SR1-597137291 (Probable Cause Panel A)**

Mr. Knopke recused himself as he served on Probable Cause Panel A.

Mr. Rivers stated that the Division alleges that the Licensee failed to allow the installation of a purchaser's ledger marker. The consumer and the monument company relied upon the initial approval of Woodlawn Park, resulting in the fabrication of the marker. Subsequently, the Licensee prohibited the installation of the marker.

Woodlawn Park Cemetery has agreed to pay a fine of \$500. Respondent agrees and to allow placement of the complainant's memorial at Woodlawn Park Cemetery South.

The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Ms. Loucks questioned whether there was anyone representing Woodlawn Park Cemetery present. There was a negative response.

**MOTION:** Mr. Helm moved to approve the Settlement Stipulation as recommended by the Department. Mr. Hall seconded the motion, which passed unanimously.

**5. Application(s) for Preneed Sales Agent**  
*A. Informational Item (Licenses Issued without Conditions) – Addendum A*

The application(s) presented are clean and have been approved by the Division. This item is informational only and does not require Board action.

**6. Application(s) for Continuing Education Course Approval**  
*A. Recommended for Approval without Conditions – Addendum B*  
*(1) Education Workers Group #11208*  
*(2) Florida Morticians Association, Inc #133*  
*(3) Independent Funeral Directors of Florida Inc #135*  
*(4) Miami-Dade College Funeral Service Dept #114*  
*(5) National Funeral Directors Association #136*

The majority of the Continuing Education Committee and the Division recommends approval of the course(s) for the number of hours indicated on the Addendum.

**MOTION:** Mr. Mueller moved to approve the application(s). Mr. Hall seconded the motion, which passed unanimously.

**7. Application(s) for Florida Law and Rules Examination**  
*A. Informational Item (License Issued without Conditions) – Addendum C*  
*(1) Direct Disposer*  
*(a) Haltaman, Martha L*  
*(2) Funeral Director and Embalmer – by Internship and Exam*  
*(a) England, David A*  
*(b) Gambino, Joseph C*  
*(c) Jewell, Kristin L*  
*(d) Marcelin, Saraita*  
*(e) Parsons, Christina D*  
*(f) Pucino, Jesika L*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

The Chair stated he feels it is important for the new Board members to understand what the Board has done in the delegation of clean applications that come through with no criminal history and no disciplinary action taken. Instead of waiting for the next Board meeting to routinely approve them, the Division is able to approve the applications to get the Applicants to work and on the job quicker.



**8. Application(s) for Internship**

**A. Informational Item (Licenses Issued without Conditions) – Addendum D**

- (1) *Funeral Director Intern*
  - (a) *Mashburn, Troy (F076836)*
  - (b) *Raph-Bowie, Rebecca (F076653)*
- (2) *Funeral Director and Embalmer*
  - (a) *Archer, Kaleb (F076751)*
  - (b) *Lowther, Ryan S (F076689)*
  - (c) *Sisk, Emily S (F076688)*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

**B. Recommended for Approval with Conditions (Criminal History)**

- (1) *Funeral Director and Embalmer*
  - (a) *Foster, Amos J*

An application for a Concurrent Internship license was submitted on September 9, 2013. The application was incomplete when submitted. All deficient items were returned on September 21, 2013. The Applicant's fingerprint submission was returned with criminal history

In 1998 Applicant pled no contest to a Third Degree Felony of Utterance of Forged Check. He was sentenced to 1 day credited jail time and probation for one year, six months. The Division is recommending approval subject to the terms and conditions of the stipulation for licensure (12 month probation).

Mr. Mueller advised the new Board members that this application was submitted with the other applications that were just approved, but this application is being presented separately as the Applicant has criminal history.

The Chair questioned whether the Applicant was present.

Mr. Shropshire requested that the Applicant raise his right hand to be sworn in. "Do you solemnly swear the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you?"

Mr. Amos Jerome Foster, Jr. answered, "I affirm." Mr. Foster questioned whether he would still be on probation after his internship is complete.

Mr. Shropshire stated that the internship is for 12 months so the probation should be for 12 months. At the completion of the internship, if Mr. Foster has not gotten into any trouble then he would apply to take the Law and Rules exam and would be routinely approved if there has been no more trouble.

Mr. Foster questioned whether he would have to wait until the end of the 12 months to take the Law and Rules exam, as he has been studying for it.

Mr. Shropshire responded, "No."

The Chair stated that the 12 months is the probationary period and advised that Mr. Foster could still take the exam.

Mr. Shropshire added that Mr. Foster could not be licensed after taking and passing the exam until after the 12 month internship is completed.

Mr. Foster indicated that he understands.

Mr. Shropshire stated that Mr. Helm pointed out that the coversheet indicates the Division is recommending approval without conditions whereas in fact we do recommend a condition of the stipulation.

Mr. Knopke questioned whether the probation is 12 months and not 24 months as indicated on the coversheet.

Mr. Shropshire stated that the probation is for 12 months as the 24 months indicated on the coversheet was an error on the Division's part.

Ms. Vanessa Oliver questioned whether Mr. Foster was adjudicated guilty or if adjudication was withheld.

Mr. Foster stated that adjudication of guilt was withheld.

**MOTION:** Mr. Helm moved to approve the application subject to the terms and conditions of the stipulation for licensure which calls for 12 months probation. Mr. Hall seconded the motion, which passed unanimously.

*(b) Phillips, Candice*

An application for a Concurrent Internship license was submitted on September 13, 2013. The application was complete when submitted. The Applicant's fingerprint submission was returned with criminal history

Applicant was found guilty of possession of cocaine in September 2002, in state court in Hillsborough County. Applicant indicates that she was stopped by police while driving with another woman in her car; that the other woman gave a fake name and was arrested; that the cocaine belonged to the other woman and when the other woman got out of the car, the other woman left the cocaine in the car; and that when police searched the car they found the cocaine, and they attributed the cocaine to Applicant, since it was her car. Applicant was sentenced to Probation and to pay costs of \$592. Applicant has successfully completed the court-ordered probation. Applicant has not been convicted or charged with a crime since 2002.

The Applicant previously submitted an application to become a Direct Disposer and it was presented to the Board at the October 7, 2010 Board meeting. The Board approved the application subject to 24 months probation, however the Applicant was not issued a Direct Disposer license and the probation portion was not fulfilled because Ms. Phillips chose instead to complete the Associate in Funeral Service degree in order to pursue a full Funeral Director and Embalmer License.

The Division is recommending approval subject to the terms and conditions of the attached stipulation for licensure (12 month probation).

The Chair questioned whether the Applicant was present. There was a negative response.

**MOTION:** Mr. Jones moved to approve the application subject to the terms and conditions of the stipulation for licensure which calls for 12 months probation. Mr. Mueller seconded the motion, which passed unanimously.

**9. Application(s) for Embalmer Apprenticeship**

*A. Informational Item (Licenses issued without Conditions) – Addendum E*

*(1) Carroll, Kenya D (F076678)*

*(2) Eggert, Trina (F076577)*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

**10. Notification(s) of Change of Location**

*A. Informational Item – Addendum F*

*(1) Gendron Funeral & Cremation Services LLC (F065944) (Fort Myers)*

This item is informational only and does not require Board action.

**11. Consumer Protection Trust Fund Claims**

*A. Recommended for Approval without Conditions – Addendum G*

The Division recommends approval of the claim(s) for the amounts indicated on the Addendum.

**MOTION:** Mr. Hall moved to approve the claim(s). Ms. Anderson seconded the motion, which passed unanimously.

The Chair requested that Mr. Shropshire explain the process of the Consumer Protection Trust Fund to the new Board members.

Mr. Shropshire stated that in the 1990s the Legislature enacted a statute that established a so called Consumer Protection Trust Fund for consumers who purchase preneed contracts and by the time they go to have the contract fulfilled, cancelled or seek a refund, the preneed Licensee who sold the contract is no longer in existence or has not made adequate provisions to have the contract fulfilled so the consumer cannot get the contract fulfilled or get a refund. Pursuant to statute, they are allowed to file a claim with the Division and the Division requires a copy of the preneed contract and proof of payment. The Division processes the claim which is submitted under oath, an affidavit on a claim form. The Division has a series of controls that we go through to try and make sure the claim is legitimate. Ultimately, when we find that it is legitimate in our opinion, we submit it to the Board for approval. Sometimes we reduce the amount and include a reduction code.

Mr. Davis questioned whether most of the defaulting entities are the same company.

The Chair stated that is the case in this particular instance, but not necessarily. The Chair added that he does not know the number of defaulting companies, but from time to time we do see others. This is quite unusual. If you notice at the top the very first one is Grossberg and all the others just happen to be American Family Cremation.

Mr. Shropshire stated that particular firm, American Family Cremation, did a lot of business before they went belly up. They do appear frequently on these reports but as the Chair indicated, on other months you may see others and sometimes a lot more American Family Cremation.

**12. Application(s) for Monument Establishment Sales Agents**  
**A. Informational Item (Licenses issued without Conditions) – Addendum H**

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

**13. Application(s) to Organize a New Cemetery Company**  
**A. Recommended for Approval with Conditions**  
**(1) Heartwood Preserve Conservation Cemetery, LLC (New Port Richey)**

Heartwood Preserve Conservation Cemetery, LLC (Heartwood Preserve) herein submits an Application to Organize a New Cemetery Company for the above named cemetery property located at: 4100 Starkey Blvd, New Port Richey FL 34655.

S. 497.263, Florida Statutes, provides that "(1) No person may operate a cemetery without first obtaining a license under this section, unless specifically exempted from this chapter.

The application was received by the Division on October 8, 2013 and no deficiencies were noted on the application. A completed background check of all owners revealed no criminal history. This application is being filed by Heartwood Preserve for a cemetery for natural or green burials within a 30-acre wooded conservation sanctuary. The Founder, Executive Director, and Managing Member of the LLC will be Laura Starkey (majority owner) along with minority owners: Frank Starkey, Project Manager, and Freddie Johnson, Operations Director, and a Board of Advisors which will consist of staff employees.

As outlined in the attached proposed business plan for Heartwood Preserve, the majority of sales is expected to be generated from cremated remain dispositions with full burials comprising the remainder of sales (please refer to Applicant's attached proposed Business Plan). If this Application to Organize a New Cemetery Company is approved, the Applicant will operate under the name Heartwood Preserve Conservation Cemetery, LLC, as above noted. The Applicant's financial statement projected as of December 31, 2014 reflects the following (please refer to Applicant's attached Proposed Financial Plan):

Required Net Worth = \$ 50,000

Reported Net Worth = \$930,404

An application for a license for a new cemetery is processed in two separate phases. In Phase 1 the Board looks to determine if the Applicant meets the following statutory criteria (from 497.263(2) Florida Statutes):

(2) APPLICATION PROCEDURES.—

- (a) A person seeking a cemetery license under this section shall apply for such licensure using forms and procedures prescribed by rule.
- (b) The Applicant shall be a corporation, a partnership, or a limited liability company.
- (c) The application shall require the name, principal place of business, date of formation, and federal tax identification number, of the Applicant.
- (d) The application shall require such historical sketches and audited or unaudited financial statements concerning the Applicant and each principal of the Applicant, as the licensing authority may require by rule.
- (e) The application shall state any and all names under which the cemetery may do business if licensed, if different from the Applicant's name.
- (f) The application shall state the exact location of the proposed cemetery.
- (g) The proposed cemetery must contain at least 30 contiguous acres. The application shall state the exact number of acres in the proposed cemetery.
- (h) The Applicant must have a net worth of \$50,000, as attested to by a sworn statement signed by all officers of the Applicant. Such net worth must be continually maintained as a condition of licensure.
- (i) The application shall be accompanied by such description of the proposed financial structure of the cemetery as the licensing authority may require by rule.
- (j) The application shall be accompanied by a legal description of the cemetery.
- (k) The application shall be accompanied by such maps or surveys of the proposed cemetery, and maps showing the location of the proposed cemetery in the local area, as the licensing authority may require by rule, and the licensing authority may by rule require such maps or surveys of the cemetery to be prepared by a licensed Florida professional surveyor.
- (l) The application shall include such description of the development plans for the proposed cemetery as the licensing authority may require by rule.
- (m) The Applicant shall be required to make disclosure of the Applicant's criminal records, if any, as required by s. 497.142.
- (n) The application shall require the Applicant to disclose whether the Applicant or any principal of the Applicant has ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied, or otherwise acted against or disciplined by the licensing authority of any jurisdiction. The licensing authority may require by rule additional information to be provided concerning any affirmative answers. A licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license. The licensing authority may require by rule additional information to be provided concerning any affirmative answers.
- (o) The Applicant shall submit fingerprints in accordance with s. 497.142.
- (p) The Applicant shall demonstrate by clear and convincing evidence that the Applicant has the ability, experience, financial stability, and integrity to operate a cemetery, and that its principals are of good character.
- (q) The application shall be signed in accordance with s. 497.141(12).
- (r) The application shall be accompanied by a nonrefundable application fee of \$5,000.
- (s) The licensing authority may establish by rule requirements for the appearance before the licensing authority of the Applicant and the Applicant's principals, to stand for oral interview by the licensing authority at a public licensing authority meeting, before the application shall be deemed complete.

This application is before this Board for the Phase 1 determination. If the Board determines that the above quoted Phase 1 statutory criteria are met, the FCCS Division will notify the Applicant to that effect, and the Applicant then has 12 months to come back before the Board and demonstrate that it has by then complied with the following statutory criteria, set forth in section 497.263(3), which provides as follows:

- (3) ACTION CONCERNING APPLICATIONS.—If the licensing authority finds that the Applicant meets the criteria established in subsection (2), the Applicant shall be notified that a license will be issued when all of the following conditions are satisfied:

- (a) The establishment of a care and maintenance trust fund containing not less than \$50,000 has been certified by a trust company operating pursuant to chapter 660, a state or national bank holding trust powers, or a savings and loan association holding trust powers as provided in s. 497.458, pursuant to a trust agreement approved by the licensing authority. The \$50,000 required for the care and maintenance trust fund shall be over and above the \$50,000 net worth required by subsection (2).
- (b) The Applicant files with the licensing authority an opinion or certification from a Florida attorney in good standing, or a Florida title company, in a form acceptable to the licensing authority, that the Applicant holds unencumbered fee simple title to all land identified in the application.
- (c) The Applicant obtains approval of the local zoning authorities regarding the cemetery, and files with the licensing authority evidence satisfactory to the licensing authority of such approval, or if no approval by local zoning authorities is required, such approval of residents adjacent to the proposed cemetery as the licensing authority may require by rule.
- (d) The licensing authority determines that the Applicant has designated as general manager of the cemetery a person of integrity, who has 3 years of cemetery management experience as defined by rule of the licensing authority, and who has the ability to operate a cemetery.
- (e) Evidence satisfactory to the licensing authority that the Applicant has fully developed not less than 2 acres for use as burial space, such development to include a paved road from a public roadway to the developed section.
- (f) Regarding the cemetery land identified in the application, the Applicant has recorded, and provides the licensing authority with a written attestation of such recording signed by a licensed Florida attorney, in the public records of real estate in the county in which the cemetery land is located, a notice which contains the following language:

NOTICE

The property described herein shall not be sold, conveyed, leased, mortgaged, or encumbered without the prior written approval of the Department of Financial Services, as provided in Chapter 497, Florida Statutes. Such notice shall be clearly printed in boldfaced type of not less than 10 points and may be included on the face of the deed of conveyance to the Licensee or may be contained in a separate recorded instrument which contains a description of the property.

The Division recommends approval subject to the conditions as follows:

- 1) That Applicant establish a care and maintenance trust fund containing not less than \$50,000, certified by a trust company operating pursuant to Chapter 660, F.S., a state or national bank holding trust powers, or a savings and loan association holding trust powers, pursuant to a Board approved trust agreement.
- 2) Receipt by the Division an opinion or certification from a Florida title company or a letter signed by Applicant's attorney, certifying that the Applicant holds unencumbered fee simple title to all land as described to the Board in the materials provided to the Board herewith.
- 3) Receipt by the Division from Applicant or Applicant's attorney of evidence of approval of local zoning authorities, if approval is required. If no approval is required, Applicant may provide evidence of approval from residents adjacent to the proposed cemetery location.
- 4) That Applicant provides to the Division satisfactory evidence that it has fully developed at least 2 acres for use as burial space, and such development includes a roadway(s) to the developed section(s) within the first 12 months of operation.
- 5) That Applicant provides notification to the Division of the designated general manager of the cemetery who has 3 years of cemetery management experience, and the ability to operate a cemetery.
- 6) Receipt by the Division from Applicant's attorney, a written and signed attestation that the cemetery land identified in the application has been recorded in the public records of real estate in the county in which the cemetery land is located. Such notice must be clearly printed in at least 10-point type on the face of the deed or in a separate document containing a description of the property, the following language: *"The property described herein shall not be sold, conveyed, leased, mortgaged, or encumbered without the prior written approval of the Department of Financial Services, as provided in Chapter 497, Florida Statutes."*

Ms. Wiener representing the Applicant stated that Mr. Johnson's role is not to supply the necessary cemetery management. Mr. Johnson's role is primarily to consult regarding the conservation cemetery aspects. As required by the statute, cemetery management acceptable to the Division and to the Board will be provided and that evidence will be available for the next step where that is actually a requirement so that would address that concern. Regarding the concern regarding the ability to locate the interments, there will be ground-level identification. There is a great deal of information that will be set out regarding the

marking of the spaces in the cemetery's bylaws which will be presented also as part of Phase 2 of the application. At that point, the Board will have ample information to assure that the interments will be properly identified and can be located in the future as need be and of course we will provide the necessary attestation of net worth at that time. Laura Starkey, principle, is also present and available to answer any questions.

Mr. Shropshire requested that the Applicant raise her right hand to be sworn in. "Do you solemnly swear the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you?"

Ms. Laura Lynn Starkey responded, "I do."

Mr. Knopke stated that on Page 37 of the packet regarding low density of the burials and so forth and questioned whether there would be a paved road from the main road into the property.

Ms. Starkey indicated that there would be.

Mr. Knopke stated that on Page 44, it is not considered a survey but it looks like a survey. This is identified, or somewhere close to this, as Phase 1.

Ms. Starkey concurred.

Mr. Shropshire stated that regarding the survey Mr. Knopke referred to, it was the Division's understanding that it shows 30.364 acres and that is all of the acreage that they intend to have, so that is not just Phase 1 acreage.

Mr. Knopke stated that he understands. When I go to Page 49 where it says Phase 1, shaded in dark there are roads or trails and so forth which matches up to the same thing on Page 44. The cemetery entrance from the main road is not on properties owned by the Applicant or that is part of the cemetery. In the future it would appear if that land is sold to someone else, the people in the cemetery could not get in.

Ms. Starkey stated that they will own all 30.364 acres of the property, which will be licensed for the cemetery then there is an additional eleven (11) or so acres that is part of that whole parcel where if everything goes well and we add more, we will add that in as cemetery. It will be part of Heartwood Preserve as a whole project. There will be an easement regardless when we record that land. We will put an easement for that driveway to the cemetery.

Mr. Knopke questioned whether the easement would be made prior to the cemetery opening not in the future.

Ms. Starkey concurred.

Mr. Helm questioned who owns the land.

Ms. Starkey stated that her family currently owns the land collectively and she would be purchasing the whole 40 acres from her family, 30 of which would be the cemetery and the remaining would be the future Phase 2.

Mr. Hall questioned whether the property on Page 38 was once used for mining and a sludge operation.

Ms. Starkey stated at one time there was a field dirt permit on it, but the permit has expired so there is a possibility that down the road that would be renewed but it would be a future lake possibility. At this time we are not presuming that to be the case that we will have the field dirt operation happen there. If we do it will be as a one-time excavation as opposed to an ongoing mining operation of the dirt. Right now we are not addressing it.

Mr. Hall questioned if the property is approved for a cemetery there would be no further sludge spreading or mining.

Ms. Starkey stated that there would be no sludge spreading as that is very old. That was historic and my family has owned this property as a cattle ranch since the 1930s.

Mr. Knopke stated that on Page 62 where capital costs, operational costs and contributions are quoted. In year one (1), the Applicant is projecting a loss of \$169,596. Then in year two (2), a Net profit of \$227, 892 and year three (3) a Net profit of \$792,021. It looks like from year one (1) to year two (2), you are anticipating your revenue to double and then double again from year two (2) to year three (3). Based upon the sales prices provided and the Applicant indicated that the majority of the revenue would come from placement of cremated remains, so I took 50% of \$570k of revenue, divided it in half then divided it by the \$425 selling price for a cremated remains burial. That tells me that you are going to do at least 670 cremated remains placements in year two (2). That just seems almost impossible from an industry standpoint. I know this is a non-industry type cemetery but still from a realistic stand point that would be a hard number to get to.

Ms. Starkey stated that those summary numbers refer off of the spreadsheets which should have been included with the application.

Mr. Knopke stated that he could not get them to match all the way through.

The Chair stated that they were not all cremains as there were some full body burials.

Mr. Hall stated that if you took the full body burials and the cremains it still does not even come close.

Mr. Knopke stated that none of the numbers add up anywhere along the way. Mr. Knopke added that was just a comment and a concern about the numbers being projected at this point.

Mr. Hall stated that off the full body and the cremains it came up to about 150 with the hopes that some additional revenue would come off of preneed.

Ms. Wiener stated that would be the idea and the Applicant will be applying for a preneed license as well.

Ms. Starkey stated that the numbers of the cremains, when I say the majority would be the number of burials as opposed to dollar numbers of the revenue because the full body burials are going to be more expensive and will be bringing in a larger dollar number than the cremations.

Ms. Wiener stated that just below the charts on Page 63 entitled "Revenue Expectations" is a little more of a breakdown in terms of it.

Mr. Knopke stated that if you take the numbers there based upon your numbers, the 200 cremation sales would be \$85k, 100 at-need burials would be \$350k and 200 preneed sales would be \$640k. If you add those together you come up with \$1,075,000, not \$1,140,000 so those numbers do not come together yet either.

Mr. Hall questioned whether there is data from Mr. Johnson's Prairie Creek project that would help substantiate maybe what the possibilities are.

Ms. Starkey stated that the projections were based on a combination of what they have been able to sell, but again they are not the same type of operation as we are in terms of they are an exempt, non-licensed cemetery.

Mr. Hall questioned whether there interment numbers would be helpful to the Board to determine how many cremains, full-body, etc that would help substantiate some numbers.

Ms. Starkey stated that she did anecdotally use their numbers as well as the numbers of other Conservation cemeteries in the region, one in South Carolina (Ramsey Creek) as well as a monastery in Conyers GA and some others that were further out regionally. I did use those numbers and considering that we would have the ability to sell preneed and that we would have a sizable marketing program which some of these other cemeteries do not have because they are operating as a nonprofit.

Mr. Hall stated that it could be helpful for the next step if that information is provided.

Ms. Starkey stated that she went into some detail in the business plan but would be willing to go into more detail if need be.

Mr. Hall stated that the business plan shows what the plan is but it would be good to see results of another operation similar to this to validate what the numbers are actually going to be.

Mr. Knopke stated that on Page 62, under Expenses year one (1), obviously you have your startup expenses at \$454,596. Year two (2) they drop to \$342,108 yet your sales go up. In year three (3) they rise slightly to \$347,979 and again the revenue goes up substantially. Mr. Knopke questioned whether the Applicant accounted for deposits to the care fund.

Ms. Starkey stated that she is counting that 10% deposit amount separate from those costs. Again, I will say I am learning this as I go and I am studying as fast as I can and will be bringing someone on board who does have extensive experience as a cemetery manager. My plans were for those projections was the Revenue was based at year one (1) being 25% of my full sales pace, year two (2) 50% and year three (3) full sales pace, which is not extravagant. The expenses in year one (1) are higher because we have a lot of the startup that is put into the development expenses. Year two (2) to year (3) I did just a basic 10% ramp up, just a slight increase in expenses. That was just based on general business.

Mr. Knopke stated that logically the more activity you have, whether it is in selling contracts or doing burials, the expense is going to go up. I would think that the care fund would be a part of that as far as from an expense standpoint because it is an expense you are going to incur no different than an electric bill. Mr. Knopke stated that he did have lots of questions regarding Mr. Johnson but would wait on those as Mr. Johnson is just giving guidance.

Ms. Starkey stated that Mr. Johnson is coming in an advisory capacity and is listed as principle as an individual who is going to be investing some of his personal money into the company. Mr. Johnson is not coming in an official capacity for Prairie Creek Conservation Cemetery/Conservation Burial Inc., the organization that runs Prairie Creek. That organization while they have been helpful with the conservation cemetery idea and those types of things, they are not officially associated with this project.

Mr. Knopke stated on Page 82 under the Competitive Analysis, Prairie Creek Conservation Cemetery, 78 acres in Gainesville, opened July 2010 and performed twenty-six (26) burials the first year. That is substantially different from what the Applicant is proposing to perform. Mr. Knopke stated that as Mr. Hall indicated if the cemetery would provide that information it would be interesting to see how much they have grown even though they are different. It would be interesting to see what kind of exceptions there is there in activity of the cemetery as well.

Mr. Helm stated that there would only be a three (3) inch marker and trees would be allowed. If you have trees planted anywhere around you will not be able to find that three (3) inch marker. That is a great concern because unless you are planning to have markings on the ground, I do not know how anyone would ever find where their loved one is located.

Ms. Starkey stated there will be a rebar connected underneath the three (3) inch marker. We will have rebar markers in the grave below the ground level that would be identifiable. We are working on this process as we are having concerns about it but we will have location with GIS coordinates. The grave itself will be identified with permanent metal markers within the ground. They are not as dense as a normal cemetery. There would be a maximum of 500 full-body burials per acre as opposed to 1200.

Mr. Helm questioned how he would find a grave after the cemetery has been open for five (5) years.

Ms. Starkey stated there would be a mapping system. Once a body is interred that location would be identified through GPS/GIS coordinates, we will have that marked on a map very clearly. The family would be given that map with the identification of that location. So that mapping system would show where each of these sites are on a grid system. We will have the 200 foot grid and the 100 foot that was addressed to make sure we are covering that for the open burial areas. The concept of this cemetery is that eventually the people who are interested in this type of interment and project are interested in really "ashes to ashes, dust to dust" back to nature. We will have memorial opportunities through pavers, pieces of art or sitting benches that have opportunities for people to put a memorial in for their loved ones. The place of the actual gravesite will be understood to blend in with nature. So, as far as what needs to be in case of a need for disinterment for something or identification from a legal aspect, it would not be as obvious in the future to the person passing by. The marker will be on a grid system on a map so that the loved ones can find the location. Additionally we would be able to identify through GPS/GIS coordinates and the rebar in the graves would be identifiable through metal detection. There would be several ways of doing



this but it will not be as clear after five (5) to ten (10) years as things grow back in. We will open up one area for burials and then later on go into another area. The understanding with all of the clients of this project is that this is a back to nature type project.

Ms. Wiener added that in that regard that would be very clearly stated in the bylaws of the cemetery. The cemetery is not going to be the kind of place where you expect to come out and see a marker, go to it and stand at it for perpetuity. The people that buy in this cemetery will understand that that is not going to be the case. All of the legal requirements will be met, strict compliance with Chapter 497, F.S., but it will be more of a situation where people understand that they are not going to be going to that particular space five (5) to ten (10) years from now.

Mr. Helm questioned whether the cemetery is a place for someone to bury their loved one and forget about them.

Ms. Wiener stated that is absolutely not the case. This is going to be one of the most beautiful places for a cemetery based on what I have seen that you can imagine. It is the kind of place that you would be able to go and enjoy as a park, there is going to be an amphitheater. It is going to be a lovely place.

Mr. Helm stated that it looks like woods on the pictures he has seen.

Ms. Wiener stated that it is a lot of woods. It is not going to be a pasture cemetery. That is absolutely not the concept. The point is that in order to comply with the Chapter, the cemetery has to be able to properly identify and locate the human remains which will absolutely be done and it would be made very clear to the consumers. Before we submitted the application we met with Mr. Shropshire and he made us even more mindful of the importance of the bylaws in this particular type of cemetery so that people who come to buy here are on notice of exactly what it is that they are getting into.

Mr. Helm questioned if he went to the cemetery would he be able to find anything on his own.

Ms. Starkey stated Mr. Helm could find what he was looking for as he would be given a map with the location identified. There would be a system of trails, walking paths that people could walk to as you would in any other cemetery. Instead of seeing headstones, you would see grasses, shrubs and trees. Instead of walking through wet fields like a cemetery, you are walking through wet fields more like a nature preserve in which loved ones are buried. There will be a possibility, a way, a form to find your loved one. After a number of years, most people do not continue to go back to their loved ones as I understand from everyone that I have spoken to. There are some people who do continue to visit after five (5) – seven (7) years, but the majority of people do not continue to go back but for the first few years it is critical that we have a place where everyone feels welcome to come back and wants to come back to see where their loved one was buried. So there will definitely be a way to find your loved one's site.

Mr. Hall questioned whether the Applicant would be bringing someone in with cemetery experience since Mr. Johnson is not going to be a full-time employee.

Ms. Wiener responded, "Absolutely."

Ms. Starkey stated that Mr. Johnson was not brought in as an employee at all. Mr. Johnson was brought in as an investing principle of the company and will continue to advise on the conservation cemetery aspect.

Mr. Knopke stated that he would like to echo a little from Mr. Helm in regards to Ms. Starkey's comments about people not coming back. The business that I am associated with now, in their early days, they focused on cremation scattering in the cemetery. While we have markers that delineate who is there, their survivors are struggling now with the fact of where their loved ones are. We are getting a little grief about it and there is not much we can do as we did everything to comply with it. This issues will not be brought to the Board ten (10) of fifteen (15) years from now when those consumers that did not clearly understand, meaning the survivors and the reality of that person's grandchild coming in to see where grandma is and finding that there is nothing there other than a metal marker. In many people's mind that may be beautiful but on the other side of that is those people that do not. That is the challenge that cemetery would have.

Mr. Davis requested that Mr. Shropshire explain what a vote for Phase 1 would mean.

Mr. Shropshire stated that Phase 1 is s. 497.263(2), F. S., sub paragraphs (a) thru (s). S. 497.263(3), F. S., states "If the licensing authority finds that the Applicant meets the criteria established in subsection (2), the Applicant shall be notified that a license will be issued when all of the following conditions are satisfied:" so the Board has to make that finding of whether the Applicant meets the criteria established in s. 497.263(2), F. S., sub paragraphs (a) thru (s).

Mr. Shropshire stated that the Board could approve or approve conditionally. The Division recommends that the Board approve conditionally with the conditions being a further showing to the Board's satisfaction on the three (3) items that the Division has indicated it has concerns about and then also perhaps the Board may want to condition it that as indicated here that the Board feels that the capitalization is rather thin because the revenue projections are optimistic and the expense projections may be a little optimistic. The Board may also want to condition that on a further showing regarding actual data from similar cemeteries. An alternative would be to ask the Applicant if they would just like to rather than getting that kind of conditional approval whether they would like to reschedule and come back for the Phase 1 review and make an additional showing and try to get an unconditional approval.

Ms. Wiener stated that because this is a two-step process that obviously does not occur overnight, I think a conditional approval would actually be preferable. It allows the potential Licensee to move forward. I do not think there is any basis in s. 497.263(2), F. S., as I do not think that the Applicant has failed to comply with any of the conditions set for in this section. Ms. Wiener requested that the Board grant this approval at this point in time. The additional cemetery management issue is going to come back in Phase 2 and the Board is going to have an opportunity to review that and address that. The location issue will be clearly defined in the bylaws and we will do whatever it takes to make the Board members comfortable that loved ones can be identified. This concept is a little bit different so everyone has to look at it from the perspective of it is a much different situation than a traditional cemetery. Ms. Wiener requested that the Board approve Phase 1 with whatever conditions are appropriate.

Mr. Shropshire there is a related issue that in fairness to the Applicant and I mentioned it to Ms. Wiener on the phone, the issue of Prairie Creek and its licensure status has come up, whether it is really exempt and the Division will look into that.

Ms. Wiener stated that Prairie Creek and Conservation Burial Inc. have nothing whatsoever to do with this application other than the gentleman that runs Conservation Burial Inc is going to invest some of his personal funds and has been advising regarding conservation burial issues, there is no relationship between that cemetery and this Applicant.

Mr. Shropshire added that except that if Prairie Creek should have been licensed and Mr. Johnson was a principle, then for him to be a principle of this organization could affect considerations relating to his integrity, ability, experience.

Ms. Wiener stated that to the extent that that becomes an issue in the future then we can certainly address that and make whatever adjustments necessary. I do not think that would be a deal breaker one way or the other in terms of this potential Licensee. This is a company that wants to be a Chapter 497 fully compliant Licensee providing a beautiful alternative to families in the State of Florida and the Southeast who are not looking for a pasture burial or a traditional cemetery but are looking instead for a truly back to nature experience where their loved ones, instead of coming and spending time at a marker, come and spend time in a park and enjoy the afternoon.

Mr. Hall stated that he thinks that when the Applicant obtains the information from Prairie Creek, it may be helpful to see the amount of sales they had on these benches, as he is trying to get a grasp on how does that tie into the atmosphere the Applicant is trying to create. Mr. Hall questioned whether there would be a lot of bench sales because it does not seem to fit with what the Applicant is trying to accomplish by going out into the middle of a pasture and there is a granite bench there. Mr. Hall stated that the numbers are very aggressive but it is not the Board's responsibility to decide the Applicant's business plan. If you go to Prairie Creek's website, the caskets shown on the website are not going to be compliant to what is being requested as they are not leak-proof but wicker type. There are things on there that do not apply to us with caskets draped with a flag with multiple items piled on top of the flag. There are some strange things on that site, to me, that you would not normally see at a normal cemetery. The flag does not affect us. I do not agree with it and it is not right but as far as the casket goes, it would not comply with the requirements of the statute.

Mr. Knopke requested that the motion include an amendment to require the dedication of an entrance area, prior to as part of Phase 1, so that the public can have access to the site because right now, the Board could approve this to go forward but the

public still does not have access to the site based upon where they decided to put the entrance and also, a further showing of the financial aspects of this, the real deal on the sales and so forth. The Applicant kind of described it a little bit, but I would like to see it in more detail because realistically it does not add up. If it is not financially solvent to begin with it will never get financially solvent so they have to be able to project that realistically in my mind.

Mr. Hall questioned whether this would have to be done prior to the approval of Phase 2.

Mr. Knopke stated that his concern is like a lot of things, the Board puts these conditions on them and they get so far into them that it is almost impossible to turn them down when they get to Phase 2 or Phase 3, whether it be something like this or even in disciplinary actions.

Ms. Wiener stated that there is no longer a need or a need type analysis in the State of Florida for a cemetery. If the cemetery meets the requirements of the statute, then the Board is obligated to license it. Their business projections, while a condition of and will be considered by the Board at the next Phase are important, it is a different world now than the last time a cemetery was before the Board of Funeral and Cemetery Services, even before this Board was constituted, where there was more of a need type of an analysis in place. So, if the Applicant makes the showings that are required by the Board to meet the statutory requirements then a license would be issued.

Mr. Knopke stated that he would argue that just from a discussion standpoint that the financial side of it is part of that. It has nothing to do with the need. The numbers in the proposal does not add up at this point.

The Chair questioned whether there is a statutory reason for Mr. Knopke's statement.

Mr. Knopke stated that it is good business sense, not a statutory reason. I would think it was somewhere in the statute, and if need be by the next meeting I will go find it, or the Department itself need to know whether it is going to be a viable project or not. We ask for a net worth and in this case there is no doubt in my mind that Ms. Starkey could put together the net worth in about a couple of hours if not quicker. With that being said, if you are going to do a business plan, then the business plan should make since and the numbers should tie together, but they do not.

The Chair stated that he is just concerned about overreaching and overriding the statute.

Mr. Knopke stated that in this case he would rather the Board err on the side of caution rather than erring on the side of being too lenient and then being told that we should have required this stuff.

Mr. Shropshire stated that it is very much this Board's proper subject topic and topic of consideration as to whether the business plan is viable from an economic since because if the Applicant presents a business plan that the Board deems economically not viable then I do not know how the Board could find that the Applicant has demonstrated by clear and convincing evidence that they have the ability, experience and financial stability to operate a cemetery. It ties in that way and I am very comfortable on that but I recommend approval subject to conditions but I think the Board clearly has jurisdiction to inquire about the financial and economic liability of the cemetery.

Ms. Wiener concurred and added that she is not disagreeing at all with the condition that is sought to be imposed pursuant to Mr. Hall's motion and to Mr. Knopke's friendly amendment that the Board require further analysis before final approval is given on the numbers so that you can meet your statutory obligations. I am not suggesting that at all. I was trying to caution against getting away from too much of a sort of "Big Brother" need based analysis as used to be the case in our industry.

Mr. Hall stated that Mr. Knopke appears to be saying that the Applicant should be respectful of the money that they are going to spend to get to that point. It is not up to the Board to decide how much the Applicant wants to make on its investment. Mr. Hall questioned whether the additional eleven (11) acres that is going to be tied to this belongs to Ms. Starkey's family.

Ms. Starkey answered, "Yes."

Mr. Hall questioned whether the eleven (11) acres is where the Applicant is proposing the pet cemetery.

Ms. Starkey stated that if and when they do the pet cemetery, which would be later, it would be outside of the thirty (30) acres and would be within the eleven (11) acres.

Mr. Hall questioned whether the Applicant has a problem with the amendment guaranteeing the easement to the property.

Ms. Wiener stated that she was not clear on what Mr. Knopke was getting at.

Ms. Starkey stated that the driveway is coming through the eleven (11) acres of Phase 2 onto the cemetery property. The property is all owned collectively by the family.

Ms. Wiener questioned whether Mr. Knopke would like the easement from the public road to the cemetery prior to the approval of Phase 2.

Mr. Knopke answered, "Yes."

Ms. Wiener stated that would absolutely be in place no matter what.

**MOTION:** Mr. Hall moved to approve Phase 1 of the application subject to the conditions recommended by the Division along with a dedication of an entrance area so that the public can have access to the site and a further showing of the financial aspects. Mr. Davis seconded the motion, which passed with one (1) dissenting vote.

**14. Application(s) for Funeral Establishment**  
**A. Recommended for Approval with Conditions**  
**(1) *Broward Funeral Choices Inc (Oakland Park)***

An application for a Funeral Establishment was received on November 8, 2013. The application was complete when submitted. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge for the establishment will be Jason Fuller (F071606).

The establishment is recommended for approval subject to the condition that the establishment passes an on-site inspection by a member of Division Staff.

**MOTION:** Mr. Knopke moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of Division Staff. Mr. Hall seconded the motion, which passed unanimously.

**(2) *Gloria J Chandler d/b/a Chandler's Funeral Home (Sarasota)***

An application for a Funeral Establishment was received on October 24, 2013. The application was incomplete when submitted. All deficient items were returned on November 19, 2013. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge for the establishment will be KaTina Davis (F045169).

Subsequent to the materials being sent to the Board, the Division became aware that there already was a funeral establishment at this location. The Division has received a written agreement from the license holder of the existing funeral establishment that if the Board approves this application that Applicant will surrender their license.

Ms. Jasmin Richardson concurred.

With that condition, the establishment is recommended for approval subject to the condition that the establishment passes an on-site inspection by a member of Division Staff.

**MOTION:** Mr. Knopke moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of Division Staff and that the current license holder of the existing funeral establishment shall surrender their license. Mr. Jones seconded the motion, which passed unanimously.

***B. Recommended for Approval without Conditions***

***(1) Arcelays Funeral Service LLC (Opa-Locka)***

An application for a Funeral Establishment was received on September 5, 2013. The application was incomplete when submitted. All deficient items were returned on October 1, 2013. The Funeral Director in Charge will be Andres Arcelay (F044288). The fingerprint cards for all principals were returned with criminal history for one of its principals, Andres Arcelay. The establishment passed its inspection on October 16, 2013.

In 1997, Mr. Arcelay pled guilty to Armed Battery, Forced Sexual Assault, Kidnap-False Imprisonment and Sexual Battery. He was sentenced to Seven Years Probation, DIP Program, a Parenting Course and Psychiatric Evaluation.

Mr. Arcelay has disclosed this criminal history in both his Concurrent Intern application that was granted on February 6, 2006 and also his application to take the Florida Law and Rules Examination and be issued a Combination Funeral Director and Embalmer License at the April 11, 2007 Board meeting. This criminal history was also disclosed on the application for Signature Funeral Home LLC that was approved by the Board at the June 27, 2013 Board meeting.

The establishment is recommended for approval without conditions.

**MOTION:** Mr. Knopke moved to approve the application. Ms. Oliver seconded the motion, which passed unanimously.

**15. Application for Preneed Main License**

***A. Recommended for Approval without Conditions***

***(1) Anderson-Hence Funeral Home, Inc. (Wildwood)***

The Department received the application on June 20, 2013 and a deficiency letter was sent to the Applicant as of June 25, 2013. Applicant responded to all deficiencies and the application was completed as of October 16, 2013. A completed background check of all officers revealed no criminal history. The sole principal and owner will be James P. Anderson. Applicant obtained its current qualifying funeral establishment license as of December 2000 and will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement.

The Applicant's financial statements as of June 30, 2013 reflect the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	62,517

The establishment is recommended for approval without conditions.

**MOTION:** Mr. Mueller moved to approve the application. Mr. Davis seconded the motion, which passed unanimously.

***(2) Elijah Bell's Funeral Services, LLC (Lauderdale Lakes)***

The Department received the application on June 28, 2013 and deficiencies were noted on the application. A deficiency notice was sent to the Applicant on July 3, 2013, and Applicant responded to all deficiencies and the application was completed as of October 19, 2013. A completed background check of all officers revealed no criminal history and the sole principal and owner will be Elijah E. Bell.

The Applicant previously held a preneed license (F047494) as of February 2008 until June 30, 2012. Applicant failed to renew the license as of June 30, 2012, and voluntarily surrendered the license, and agreed to trust 100% of all existing preneed contracts written under preneed license number F047494 and to honor them on an at-need basis. Applicant obtained its current qualifying funeral establishment license as of June 2007 and will sell both insurance-funded and trust-funded preneed through the pre-approved Great Western Insurance Company and Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company), respectively, and will use their approved pre-arranged funeral agreements.

The Applicant's financial statements as of June 30, 2013 reflect the following:

Outstanding Preneed Contracts	= \$	5,820
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	178,162

The establishment is recommended for approval without conditions.

Mr. Helm questioned whether the license fee is \$505.

Ms. Lashonda Morris replied, "Yes."

Mr. Helm questioned what would have been the amount of the Applicant's late fee.

Ms. Morris stated that the Applicant did not renew the license.

Mr. Helm questioned the late fee amount had the Applicant renewed his license.

Ms. Morris stated that would have been determined by the date the license was renewed as it is calculated on a slighted scale, but the maximum is \$1000.

**MOTION:** Mr. Knopke moved to approve the application. Ms. Anderson seconded the motion, which passed unanimously.

**16. Request(s) for Board Approval of Proposed Treatment of Certain Funds Deposited in a Care & Maintenance Trust Account**

**A. Evergreen Cemetery Association (Jacksonville)**

This is in effect a request by Evergreen C., F039440, for recognition by the Board that certain funds that have ended up in a trust account related to the cemetery's care and maintenance trust, are not in fact care and maintenance trust funds, and for permission to transfer those excess funds to a different account that is not subject to the restrictions on Care and Maintenance Trust funds.

The cemetery advises that over many years it deposited into its care and maintenance trust fund amounts well in excess of the minimum amounts required by statute. This Division's examinations have found that in years past, the Licensee was depositing to the care and maintenance trust fund 40 percent of the purchase price for interment rights and 20 percent of the purchase price for crypts and niches.

As to the excess deposits the cemetery now seeks approval to: 1) invest the excess without the investment limitations to which care and maintenance trust funds are subject; and 2) to withdraw and use some or all of the excess principle.

The issue in this matter is set forth more specifically by the Licensee in the letter of its General Manager, Michael Ondina, dated August 15, 2012 (**Attachment A**), which reads in pertinent part as follows:

I have recently taken over as general manager of Evergreen Cemetery in Jacksonville. In reviewing the cemetery's financial statements I have discovered that the cemetery's permanent care fund balance reported to the state appears to be incorrect. The amount reported is the total of what we call our "General Maintenance Fund" and our "Perpetual Care Fund." Only the state required permanent care fund, which is our "Perpetual Care Fund", should have been reported.

From the inception of the state mandate, Evergreen has made all deposits required under the law to our "Perpetual Care Fund" and is in total compliance in regard to its funding. However, in addition to the state required permanent care fund, Evergreen's Board of trustees had the foresight to establish an additional fund separate of the state required fund, which is our "General Maintenance Fund." This fund was established to be used at Evergreen's discretion for the general maintenance of the cemetery and should not be subject to the state's restrictions on distributions from the state required permanent care fund.

Deposits to the general maintenance fund started in the late 1950s prior to state mandated deposits and it has always been accounted for separately from the permanent care fund in our annual financial reports. I have been asked by our Board of

trustees to request that your office confirm that our "General Maintenance Fund" is not subject to the state's restrictions on distributions from the state required permanent care fund.

The FCCS Division conducted a routine periodic examination of this cemetery in December 2012. A copy of the report is attached (**Attachment B**). The Examiner found that substantially all amounts required by statute to be deposited to the Care and Maintenance Trust had in fact been deposited, and that certain additional amounts had also been deposited. The Examiner stated his findings as follows in the report, concerning this issue:

The Licensee has over 16 million dollars in their Car and Maintenance Trust Fund account. On their financial statement this amount is separated into two accounts. One is Perpetual Care and one is General Maintenance. Prior to July 2003 the Licensee was depositing more than the required 10 percent into their Care and Maintenance account. The Licensee was depositing 40 percent of the purchase price for interment rights and 20 percent of the purchase price for crypts and niches. The Licensee did separate the amounts on their financial statement and in their accounting records. When the Licensee made deposits they informed the trustee as to what amount went to Perpetual Care and what amount went to General Maintenance. Unfortunately, the Licensee showed it separated, but everything was deposited in to the Care and Maintenance account. Therefore, if the Licensee wishes to withdraw what they believe is General Maintenance out of the Care and Maintenance account it would probably take Board approval.

An earlier 2002 exam report also found that this cemetery had been depositing 40% of the price of all in-ground interment rights sold. Therefore, the Division finds that the evidence supports the Licensee's assertion that it has deposited into its Care and Maintenance Trust well in excess of minimum amounts required by statute.

However, the Division determined that some of the contracts with the cemetery's customers contained language by which Evergreen agreed to deposit in trust the amounts in excess of what is statutorily required, thus creating a reasonable expectation by those customers that the excess amounts would be subject the statutory restrictions applicable to Care and Maintenance Trust trusts. The following language is provided as illustrative of language used in some of the contracts under which the excess amounts were deposited. The language is from a section of the contract simply entitled "Trust Deposits":

For all interment rights sold, Florida law requires that 10% of the purchase price paid be placed into trust; provided no deposit shall be less than twenty-five (\$25.00) dollars per interment right. However, Evergreen agrees to place into trust forty (40%) percent of the purchase price paid for ground interment rights and to place into trust twenty (20%) percent of the purchase price paid for crypt/niche interment rights.

The FCCS Division advised Evergreen that we could not recommend approval of Evergreen's request with the matter in that posture. Evergreen has now advised that Evergreen has been able to identify the particular contracts that contained the type of language referred to above. See Evergreen letter dated 9-18-2013 (**Attachment C**). Evergreen advises that \$545,270.42 was paid in under contracts that contained the type of language quoted above. Evergreen has agreed that as to those contracts, the excess will be treated as care and maintenance trust funds. But as to amounts paid in under contracts that did not make any representations as to the use of the excess deposits, Evergreen has renewed its request for recognition that such amounts are not Care and Maintenance Trust funds.

Evergreen cemetery advises as follows: As of 12-31-2012, the Care and Maintenance Trustee reported a total principal balance in the trust of \$16,613,192. The Licensees asserts that said amount consisted of \$10,115,311 as care and maintenance trust funds calculated at the amounts required by statute to be deposited. Adding to that \$10,115,311 figure the \$545,270.42 in excess funds paid in under language of the type as quoted above, results in a total 12-31-12 true C&M Trust principal balance of \$10,660,581.42. The difference between the \$10,660,581.42 figure and the \$16,613,192 figure, is \$5,952,610.58, and is what the Licensee refers to as the "General Maintenance Fund." Evergreen herein requests Board recognition and permission to treat the \$5,952,610.58 figure as not part of the cemetery's care and maintenance trust fund, and not subject to the statutory restrictions on care and maintenance trust funds.

#### Applicable Statutes

Section 497.268(1), Florida Statutes, provides in pertinent part as follows:

- 1) Each cemetery company shall set aside and deposit in its care and maintenance trust fund the following percentages or amounts for all sums received from sales of burial rights:

- a) For burial rights, 10 percent of all payments received; however, for sales made after September 30, 1993, no deposit shall be less than \$25 per grave. For each burial right which is provided without charge, the deposit to the fund shall be \$25.
- b) For mausoleums or columbaria, 10 percent of payments received.
- c) For general endowments for the care and maintenance of the cemetery, the full amount of sums received when received.

Section 497.267, Florida Statutes, provides in pertinent part as follows:

The net income of the care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery, including maintenance of monuments, which maintenance shall not be deemed to include the cleaning, refinishing, repairing, or replacement of monuments; for reasonable costs of administering the care and maintenance; and for reasonable costs of administering the trust fund. At the time of making a sale or receiving an initial deposit, the cemetery company shall deliver to the person to whom the sale is made, or who makes a deposit, a written instrument which shall specifically state the purposes for which the income of the trust fund shall be used.

Section 497.266, Florida Statutes, provides in pertinent part as follows:

- 3) No person may withdraw or transfer any portion of the corpus of the care and maintenance trust fund without first obtaining written consent from the licensing authority.
- 4) The trustee of the trust established pursuant to this section may only invest in investments and loan trust funds, as prescribed in s. 497.458.

Section 497.458, Florida Statutes, provides in pertinent part as follows:

- 1) (h) In no event may trust funds be loaned, directly or indirectly, to any of the following persons: the preneed Licensee; any entity under any degree of common control with the preneed Licensee; any employee, director, full or partial owner, or principal of the preneed Licensee; or any person related by blood or marriage to any of those persons. In no event may trust funds, directly or indirectly, be invested in or with, or loaned to, any business or business venture in which any of the following persons have an interest: the preneed Licensee; any entity under any degree of common control with the preneed Licensee; any employee, director, full or partial owner, or principal of the preneed Licensee; or any person related by blood or marriage to any of those persons.

The Division recommends that:

- 1) The Board finds that all of the representations of Evergreen Cemetery to the FCCS Division and the Board, in relation to this matter, are material to the Board's decision herein;
- 2) The Board finds that the proper principal amount of Evergreen's Care and Maintenance Trust as of December 31, 2012, was \$10,660,581.42;
- 3) That Evergreen may treat the December 31, 2012 trust principal in excess of the \$10,660,581.42, specifically, \$5,952,610.58, as an amount available for the general maintenance and improvement of the cemetery, but not part of the cemetery's care and maintenance trust fund, and not subject to the statutory restrictions on care and maintenance trust funds. Said \$5,952,610.58 may be used for such purposes as purchases of mowers and other cemetery maintenance equipment, and capital improvements such as but not limited to re-paving roads within the cemetery, and re-roofing mausoleums and other structures within the cemetery. In no event shall any of said \$5,952,610.58 be directly or indirectly used for any purposes other than the general maintenance and improvement of the cemetery.

Mr. Mueller proudly disclosed his 37 year affiliation with the Evergreen Cemetery Association and advised this would not interfere with his ability to render a fair and impartial opinion about this or any other matter.

The Chair stated that in addition to the Division's recommendation he would like to add his recommendation for approval of the Division's recommendation as the factual information provided to the Board clearly evidences all the best intentions at Evergreen Cemetery. The trustees of Evergreen are outstanding people with impeccable reputations in the Jacksonville community, many of whom I am personally acquainted.

Ms. Wiener questioned whether Evergreen Cemetery is an exempt cemetery.

Mr. Shropshire stated that Evergreen is not an exempt cemetery.



Ms. Wiener questioned whether the approval would be over-trusting of the Care and Maintenance and those funds could be transferred to a general maintenance fund and utilized at the discretion of the cemetery.

Mr. Shropshire stated the funds would be utilized strictly for general maintenance and improvement of the cemetery.

Mr. Mueller stated that there is a representative of Evergreen present who could address the issue.

Mr. Helm questioned Mr. Mueller's thoughts on what is being presented to the Board.

Mr. Mueller stated that he is proud of his 37 year affiliation with Evergreen. The trustees of the Evergreen Cemetery Association nor I would ever be associated with anything immoral, unjust or unethical in anyway and I fully support approval of this request.

Mr. William Robinson Frazier III, resident of Jacksonville stated that he has been co-trustee of the Evergreen Cemetery Association for approximately the last 30 years. I am also outside general corporate counsel for the Cemetery Association. Quite frankly the sole reason for this request is to allow us to reduce the risk in our investment portfolio. As your records on the cemetery will indicate, we have had a steady increase in the size of our Perpetual Care Trust Fund of the cemetery over the last certainly 30 years since I have been involved. That is a function of prudent investing and in the last 20 years prudent investing has been a much simpler proposition mainly because we were not in an era, which we are now, of financial repression. I do not need to tell anyone here that our federal reserve and generally speaking all global central banks are in the process of holding interest rates down to zero (0). Those of you that invest in certificated of deposit or buy treasury bonds, you know that interest rates are low and lower when you try to renew CDs and that sort of thing. In our case, we attempt, in our Perpetual Care Trust Fund, which as of the end of last year as your records will indicate the synopsis of our request shows our Perpetual Care Trust Fund at approximately \$16.6 in it. Of that the true blue statutory permanent care fund was more on the order of \$10+ million. Then there is an excess amount which in years past has not mattered because we have always been able in the bond portfolio to get a return of approximately 5% but in recent times, in the last decade particularly, the bond portion of our portfolio, in order to get anything approaching 5% these days, you have to take in an ordinate amount of interest rate risk. Good bond management today, because of the bubble in the bond market, would dictate that you reduce the duration of your bond portfolio. Standing here with me is Mike Ondina our new general manager, successor to our esteem Dick Mueller. Being the new kid on the block Mr. Ondina had an opportunity to look over everything and it dawned on him that we probably were overstating our statutory required permanent care fund. So really it is an accounting issue and in separating the two (2), it will allow the Cemetery Association to invest this approximately \$6 million component, which the trustees still view as part of our permanent care fund. That is our endowment on a total return basis. That would allow us to invest in equities other than large cap equities producing a dividend. For instance, there is the midcap and small cap space that we are effectively locked out of. Today, as I am speaking to you, our Perpetual Trust Fund, because of the rising stock market, is up to somewhat over \$18 million. So we have grown approximately 10% since year end last year and we could have done better if we had been able to shorten our bond duration and also invest in other areas of the market, the mid cap space and small cap space on a prudent fashion. Our fund is professionally managed by approximately a dozen different managers represented by that many different mutual funds and so our goal is to grow our permanent care trust fund just generically as big as possible because down the road it is going to take increasing amounts to maintain our cemetery and we fully recognize that. This is not a "raid on the cookie jar." All we are trying to do is to facilitate more sensible investing and not be in a straightjacket. The culprit of course is s. 497.266(3), F.S., which is sited in your materials and it limits withdrawals of corpus. Again what we are attempting to do is invest on a total return basis and be able to withdraw capital gains. That is the first component of the Staff's recommendation pointing out that we are seeking approval to invest the excess without investment limitations to which care and maintenance funds are subject. The sole purpose is to enable us to own that part of the portfolio to be a little freer to invest prudently and to reduce the interest rate risk in our fixed income portfolio.

Mr. Hall stated that the \$10 million is what was required statutorily but the association put in substantially more of that. Mr. Hall questioned whether that was all in one (2) fund or if there two (2) separate funds.

Mr. Frazier stated that it was invested as one (1) fund. On our financial statements, we have audited annual financial statements by an outside accounting firm, they were separated. We denominated the excess as our general maintenance fund and then the true blue statutory permanent care fund, which we refer to internally as our Perpetual Care Trust Fund, was accounted for separately and has been consistently over the years.

Mr. Hall stated if the cemetery went above and beyond and put another 30-40% into a fund to protect themselves, why would the \$6 million not be theirs, period. Mr. Hall questioned why the cemetery would be required to use it for maintenance because that was not statutory.

Mr. Shropshire stated that the Division believes that the inference to the consumer was that it would be used somehow for general improvement, general maintenance.

Mr. Hall questioned whether the cemetery would still be subject to that on the balance where that verbiage was not included.

Mr. Shropshire responded that it would be. Mr. Shropshire added that the Division never really had to address that question because their request as postured to us said that they only requested that they be allowed to use it for general maintenance.

Mr. Hall stated that he understands but what he is trying to figure in his mind is if a firm sets aside some money to take care of that then the firm needs to be careful how they tag that.

The Chair stated this is a condition of their request.

Mr. Shropshire stated it was very important to the Division that it was established that they over the years had consistently separately accounted for this excess money treating it not as part of the statutory Care and Maintenance Trust Fund. It just got mixed into that fund by happenstance almost apparently.

Mr. Knopke stated that, with no disrespect to Mr. Mueller or Evergreen, his biggest concern is the precedent that is being set here in that the Board has never allowed anything to be taken from the Care and Maintenance Trust Fund unless you became a non-licensed entity. The precedent is being set here, even though the cemetery's books and records reflect that it has been accounted for separately and audited by an outside party. I just wonder from a consumer standpoint what the customers of Evergreen have been told over the years and again by whether there would be different sales people or just the representations that more money is being trusted than required because it is a great sales tool. It just worries me to know end that we are going to have a line of people in the future addressing the Board with a similar request.

Mr. Frazier stated that they have a fairly unique situation. First of all, we are to my knowledge Florida's only not for profit licensed cemetery and what we are talking about here is a technical characterization issue. We are not asking for a withdrawal of corpus from our statutory permanent care fund. What we are asking affirmation of is the "unscrambling of the eggs" if you will on our part where we have mashed the two (2) together administratively from the standpoint of investing and here is the critical point on the statutory reporting, reported the combined "scrambled eggs" as permanent care and that is not the case.

Mr. Knopke questioned whether the corpus that is being described includes earnings from the beginning or is it just the amount that the cemetery has historically deposited with no gross.

Mr. Frazier stated that he could not say off the top of his head how much of it represents original contributed principal because over the years we have very ably managed a great deal of it. Probably the vast majority is retained capital gains.

Mr. Knopke stated that he is concerned about the initial required deposits and the earnings that those deposits would have made up until now versus the amount that is in there, not how much was over trusted. If the earnings are supposed to stay in there or be paid out, whatever it is supposed to be. I want to make sure before I vote for or against it that I understand that that has been clearly detailed, the Department is comfortable with it from the exam standpoint not based upon their certified audit but based upon actually looking at it.

Mr. Shropshire stated that the Division is very sensitive to the point raised by Mr. Knopke. Traditionally, if by accident you over-deposit into your Care and Maintenance Trust, you cannot withdraw it but you can take credit for it. Our analysis, because for years they had separately accounted for this and even in CPA audits, it never really was care and maintenance money. That is the distinction that we see here as they always accounted for it separately and it just got poured into the pot with the care and maintenance funds. They were very cautious and they came to the Division and now to the Board to ask for approval to remove it. I do not even know frankly that they needed to do that because they had accounted for it separately and they could show that it was not required care and maintenance money and they had not accounted for it that way. I have

analyzed it in terms of the amount of money we are talking about in terms of principal and not earnings. I think Mr. Knopke's point is well taken as he questions how much excess of the \$15 million is principal and how much is earnings and the Care and Maintenance Fund should keep its fair amount of the accumulated earnings realized or unrealized. I think that is a fair point. Mr. Shropshire requested that Mr. Frazier address that point.

Mr. Frazier stated from a GAAP standpoint, the two (2) separate funds on our books and records represent a combination of two (2) items. One (1) is original principal dollars that went in, the contributed amount and in fact the percentage of the sale price of the lots, crypts and so on coupled with from a fiduciary accounting standpoint the capital gains on that. As the Board knows, true fiduciary accounting income, which is to say dividends and interest net of fees, has been withdrawn over the years and helps us to maintain the cemetery and that is absolutely permitted of course under the statute. To answer Mr. Knopke's question and concern, since we invest as a common fund, it's a simple proration matter based on our books and records, which again the foundation as always, the starting point that is, is the amount contributed statutorily. In fact we have contributed more than that over the years and have separately accounted for that as a side fund. The error of our ways was to report them together as the statutorily required permanent care fund. Again, just to make it clear and of course the Division's recommendation makes this clear, this is not a case of returning any funds to any one private person's pocket. This is a not for profit cemetery. These funds are going to remain in the segregated fund and I can assure you that we as the trustees view this as a sacred duty to keep the cemetery going forever and ever on end. What we will withdraw, in terms of principal, is just whatever minimal amount of principal that is constant with a prudent, sustainable withdrawal rate from that side fund keeping in mind that we are constrained on the other to just simple fiduciary accounting income which in today's investment environment, you have to take undue risk to get that return up and the whole effort here is to get away from risk and thereby increase the long-term stability of our endowment fund.

**MOTION:** Mr. Helm moved to approve the request(s) subject to the conditions recommended by the Division. Mr. Hall seconded the motion, which passed unanimously.

17. **Contract(s) or Other Related Form(s)**  
A. **Recommended for Approval with Conditions**  
(1) **Arte Bronze Monuments, Inc. (F037832) (Miami)**  
(a) **Monument Retail Sales Agreement**

Arte Bronze Monuments, Inc (F037832) submits a monument retail sales agreement for approval. If the form is approved, it is to be used for the sale of monuments through its licensed monument retailer establishment. The agreements are recommended for approval subject to the condition(s) that two full sized print-ready copies of each contract are received by the Department within 60 days of this Board meeting.

**MOTION:** Ms. Anderson moved to approve the agreement subject to the condition that two full sized print-ready copies of each contract are received by the Department within 60 days of this Board meeting. Mr. Hall seconded the motion, which passed unanimously.

- (2) **Forethought Life Insurance Company (Batesville, IN)**  
(a) **Funeral Planning Agreement (Form A4000-03-FL)**  
(b) **Price Estimate Only for Funeral Planning Agreement (Form A3078-02-FL)**

Forethought Life Insurance Co (Forethought) submits the attached preneed sales agreement forms for approval: Funeral Planning Agreement (Form A4000-03-FL), Statement of Funeral Goods and Services (Form A1002-13), Price Estimate Only for Funeral Planning Agreement (Form A3078-02-FL), and Statement of Funeral Goods and Services Selected (Form A3079-02). If the forms are approved, they are to be used for the sale of insurance-funded preneed contracts through licensed various preneed establishments and branches.

The agreements are recommended for approval subject to the condition that two full sized print-ready copies of each contract are received by the Department within 60 days of this Board meeting.

**MOTION:** Mr. Hall moved to approve the agreement subject to the condition that two full sized print-ready copies of each contract are received by the Department within 60 days of this Board meeting. Mr. Knopke seconded the motion, which passed unanimously.

- (3) *Foundation Partners of Florida, LLC (Includes all related cemetery and funeral and cemetery preneed branches for Foundation Partners Group locations, collectively as "FPG Florida, LLC") (Auburndale) (F060727 and F071788)*
  - (a) *Trust Transfer Request and Trust Agreements*

FPG Florida, through Justin Wilson, of Regions Bank, N.A., seeks approval of two proposed trust agreements, and approval of certain proposed trust asset transfers, and approval of appointment of a successor trustee, all as more specifically set forth in Mr. Wilson's letter dated October 17, 2013.

#### Background

On September 6, 2012, this Board approved the acquisition by FPG Florida, LLC d/b/a Foundation Partners of Florida, LLC of 6 funeral establishment locations which operate as preneed branches under its preneed main license (F060727), and an acquisition of 1 cemetery location, Highland Memorial Park Association, Inc. (F071788). FPG acquired all of the assets and liabilities for the cemetery and preneed for these locations. (See **Attachment 1** hereto, minutes from the September 6, 2012 Board meeting). The funeral establishments and cemeteries had been selling preneed and operating prior to that FPG acquisition, most recently as branches under the Highland Memorial Park Association, Inc. d/b/a Hiers-Baxley Funeral Services preneed main license (F019225) and cemetery license (F039463). FPG assumed liability for the outstanding preneed liability.

#### Item 1) The Proposed New Trust Agreements

FPG seeks approval of the following two new trust agreements:

**Attachment 2** is a proposed new preneed trust agreement entitled "*FPG Florida, LLC Preneed Funeral and Cemetery Merchandise and Services Trust Agreement.*" **Attachment 3** hereto is a proposed new cemetery care and maintenance trust agreement, entitled "*FPG Florida, LLC Cemetery Care and Maintenance Trust Agreement.*"

#### Item 2) Approval of Successor Trustee

FPG seeks approval of appointment of Regions Bank as successor trustee for the Kersey Funeral Home Trust, to replace Forethought Federal Savings Bank (FFSB) as trustee, under the preneed trust entitled "Forethought Federal Savings Bank Funeral Planning Master Trust Agreement" (**Attachment 4** hereto); Regions Bank will be the successor trustee only as regards the assets in the trust that relate to FPG's preneed obligations. FFSB shall continue as trustee for all other assets in said trust.

#### Item 3) Proposed Trust Transfers

FPG seeks approval of transfer of trust assets from certain existing trusts (**Attachment 5**), to different trusts (that is, the trusts that are Attachments 5, 6, 7, and 8 hereto) wherein Regions Bank is or will be trustee, all as more specifically set out in the letter from Mr. Wilson, dated October 16, 2013.

Subject to the conditions set forth below, the FCCS Division recommends:

- a) Approval of the two proposed new trust documents in Item 1 above; and
- b) Approval of the successor trustee in Item 2 above; and
- c) Approval of the proposed trust transfers identified in Item 3 above.

Conditions recommended by FCCS Division:

- 1) That the representations of FPG, through Justin Wilson of Regions Bank (Regions), as set forth in Mr. Wilson's letter dated October 16, 2013, copy attached hereto, be deemed material to the Board's decisions herein.
- 2) That within 90 days of this Board meeting Regions provide the FCCS Division (ATTN: LaShonda Morris), the effective date of the transfer and certifications, stated as following:
  - a) That Regions provides a letter signed and dated by one of its officers, certifying that it meets one or more of the applicable criteria in s. 497.266(1), and s. 497.458(1)(b), to act as trustee of the trusts to be transferred to Regions pursuant to Mr. Wilson's letter dated October 16, 2013.
  - b) A letter from Regions, signed and dated by one of its officers, stating:

- That Regions provides a certificate stating the dollar amount of trust assets being transferred as identified in “Exhibit A” of Mr. Wilson’s attached letter dated October 16, 2013.
  - That Regions provides acknowledgement of receipt of the amount of trust assets being transferred as specified under the former trust, as identified in “Exhibit A” of Mr. Wilson’s attached letter dated October 16, 2013.
- 3) Fully executed copies of the trust agreements identified in Item 1 above.
  - 4) That the Board's executive director, for good cause shown, may extend the compliance time for the above specified conditions, an additional 90 days.

**MOTION:** Mr. Knopke moved to approve the request(s) subject to the conditions recommended by the Division. Mr. Jones seconded the motion, which passed unanimously.

**18. Executive Director’s Report**

**A. Proposed Rule Amendment, Rule 69K-20.001 (Action)**

- 1) In the 2013 legislative session, the legislature amended section 497.384 as follows:

497.382 Reports of cases embalmed and bodies handled.—

(1) Each funeral establishment, direct disposal establishment, cinerator facility, and centralized embalming facility shall ~~record monthly report~~ on a form prescribed and furnished by the licensing authority the name of the deceased and such other information as may be required by rule with respect to each dead human body embalmed or otherwise handled by the establishment or facility. Such forms shall be signed monthly by the embalmer who performs the embalming, if the body is embalmed, and the funeral director in charge of the establishment or facility or by the direct disposer who disposes of the body and shall be maintained at the business premises of the establishment or facility for inspection by Division staff. The licensing authority shall prescribe by rule the procedures for preparing and retaining in-mitting such forms documentation. ~~Reports required by this section shall be filed by the 20th day of each month for final dispositions handled the preceding month.~~

(2) Funeral directors performing disinterments shall record monthly on the form specified in section (1) and pursuant to report, using a form and procedures prescribed specified by rule, the name of the deceased and such other information as may be required by rule with respect to each dead human body disinterred.

History.—ss. 1, 5, ch. 79-231; s. 339, ch. 81-259; ss. 2, 3, ch. 81-318; s. 1, ch. 89-8; ss. 29, 122, ch. 93-399; s. 74, ch. 94-119; s. 8, ch. 98-298; s. 87, ch. 2004-301.

Note.—Former s. 470.029.

- 2) You will note that under revised s. 497.382, licensees are no longer required to file monthly Bodies Handled Reports (BHRs) with the Department of Financial Services. Instead, the licensees prepare the BHR each month, and files the report each month in the licensee's records at their licensed place of business. The BHRs will be available for review at the licensed premises, by Department inspectors, upon request by the inspector.
- 3) Existing rule 69K-20.001 contemplates the licensees filing the reports each month with the Department. The rule must be changed to mesh with the revised statutory language.
- 4) On 10-4-13 the FCCS Division received a letter (copy attached) from the Chief Attorney of the legislature's Joint Administrative Procedures Committee (JAPC), advising that the above referenced legislative amendment gave rise to mandatory rulemaking that must result in a proposed rule within 180 days of the effective date of the legislative amendment. The 180th day would be 12-31-2013. Accordingly, we must proposed a rule by 12-31-2103.
- 5) The FCCS Division has been working with the Dept of Health to develop a rule that would allow information entered into DOH's Electronic Death Registration System (EDRS) to serve as a licensed establishment's BHR report. That work continues, but will not be completed by the deadline for mandatory rulemaking.



6) Accordingly, the FCCS Division recommends that the Board approve the attached rule modification, to satisfy the mandatory rulemaking requirement, while work on a rule that will tie into the EDRS system continues.

7) The attached proposed rule would merely conform the existing rule to the revised statute by recognizing that licensee no longer sends the monthly BHR to the FCCS Division offices, and instead keeps the BHRs on file at the licensee's business premises. Also, the rule would provide that the licensee is only required to keep the monthly BHR for 36 months from the month the BHR relates to, and can then dispose of the BHR.

#### **69K-20.001 Report of Cases Embalmed or Bodies Handled.**

(1) This rule implements s. 497.382, Florida Statutes.

(2) Each funeral establishment, direct disposal establishment, cinerator facility, and centralized embalming facility, shall each month complete the form identified in (3) below, as pertinent to its category of licensure. The Licensee shall retain each such completed form in its records at its licensed business premises, for inspection by Division staff, for 36 months after the month to which the form relates.

(3) Forms.

B. Funeral establishments shall utilize form DFS-N1-1751, "Funeral Establishment/Monthly Report of Cases Embalmed or Bodies Handled," Rev. 10-06, which is incorporated by reference in Rule 69K-1.001, F.A.C.

C. Direct disposal facilities shall utilize form DFS-N1-1752, "Direct Disposal Establishment/Monthly Report of Cases Embalmed or Bodies Handled," Rev. 10-06, which is incorporated by reference in Rule 69K-1.001, F.A.C.

D. Cinerator facilities shall utilize form DFS-N1-1753, "Cinerator Facility/Monthly Report of Cases Embalmed or Bodies Handled," Rev. 10-06, which is incorporated by reference in Rule 69K-1.001, F.A.C.

E. Centralized embalming facilities shall utilize form DFS-N1-1754, "Centralized Embalming Facility/Monthly Report of Cases Embalmed or Bodies Handled," Rev. 10-06, which is incorporated by reference in Rule 69K-1.001, F.A.C.

~~(1) Each funeral establishment licensed pursuant to Chapter 497, F.S., on a monthly basis shall submit reports to the Department which shall contain the following information:~~

~~(a) The number of bodies handled;~~

~~(b) The name of each deceased person;~~

~~(c) The date and county of death;~~

~~(d) Date embalmed and name of embalmer, if applicable;~~

~~(e) Method of disposal;~~

~~(f) Name, location and license number of cinerator facility, if method of disposal was by cremation;~~

~~(g) The names, license numbers and signatures of the Licensees responsible for final disposition, including the funeral director in charge;~~

~~(h) The burial transit number;~~

~~(i) The name, location and license number of facility where bodies are refrigerated;~~

~~(j) The name, location and license number of facility where bodies are embalmed; and~~

~~(k) The name, location and registrant number of the removal service.~~

~~(2) Each direct disposal facility licensed pursuant to Chapter 497, F.S., on a monthly basis shall submit reports to the Department which shall contain the following information:~~

~~(a) The name of each person cremated;~~

~~(b) The date and county of death;~~

~~(c) Date of cremation;~~

~~(d) License number of cinerator facility;~~

~~(e) The names, license numbers, and signatures of the Licensees responsible for final disposition, including the registered direct disposer in charge;~~

~~(f) The name, location and registrant number of the removal service; and~~

~~(g) The name, location and license number of the facility where bodies are refrigerated.~~

~~(3) Each cinerator facility licensed pursuant to Chapter 497, F.S., on a monthly basis shall submit reports to the Department which shall contain the following information:~~

~~(a) The name of each person cremated;~~

~~(b) Date and county of death;~~

- (c) Type of container used to hold the body during cremation;
  - (d) The name of each person supervising each cremation;
  - (e) The date of cremation;
  - (f) The funeral home or direct disposal facility from which the deceased was received;
  - (g) The burial transit number;
  - (h) The names, license numbers and signatures of the Licensees responsible for final disposition including the registered direct disposer or licensed funeral director;
  - (i) The name, location and license number of the facility where bodies were cremated; and
  - (j) The name, location and registrant number of the removal service.
- (4) Failure to keep or timely furnish such reports to the Department by the 10th day of the subsequent month shall subject the Licensee or registrant to disciplinary action.

Rulemaking authority Specific Authority 497.103, 497.382, ~~497.606~~ FS. Law Implemented 497.382, ~~497.606~~ FS. History—New 11-11-79, Formerly 21J-20.01, 21J-20.001, Amended 3-2-95, 10-12-98, \_\_\_\_\_. Formerly 61G8-20.001.

**MOTION:** Mr. Knopke moved to approve the proposed amendment to Rule 69K-20.001. Mr. Hall seconded the motion, which passed unanimously.

Ms. Loucks stated that there are a couple of questions the Board needs to answer regarding statement of estimated regulatory costs on the Rule changes. Ms. Loucks questioned whether the proposed Rule amendments have an adverse impact on small business or will the proposed Rule amendments be likely to directly or indirectly increase costs to any regulatory agency including the government in excess of \$200,000 in the aggregate in Florida within one (1) year after the implementation of the Rule.

Mr. Shropshire stated since the Rule would eliminate the requirement that Licensees send the reports to the Division, it would actually decrease their costs.

**MOTION:** Mr. Knopke moved to approve that the proposed Rule amendments would not have an adverse impact on small business nor would the proposed Rule amendments be likely to directly or indirectly increase costs to any regulatory agency including the government in excess of \$200,000 in the aggregate in Florida within one (1) year after the implementation of the Rule. Mr. Hall seconded the motion, which passed unanimously.

Ms. Loucks stated that the Board would need to make a motion regarding whether a statement of estimated regulatory costs is required.

**MOTION:** Mr. Jones moved that a statement of estimated regulatory costs is not required. Ms. Oliver seconded the motion, which passed unanimously.

**F. Report: Payment of Disciplinary Fines and Costs (Informational)**

Monthly Report of Fine and Costs Assessed and Paid  
 Division of Funeral, Cemetery and Consumer Services  
 December 5, 2013 Board Meeting  
 Report Updated as of November 21, 2013

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Stanley Gunter-Butler	Jun-12	117958-11-FC	\$2,750	8/20/2012	NO; See Note A	Monthly payments are late. \$500 was rec'd 9/13/13 and two recent payments of \$200 each were rec'd 9/20/13 and 9/28/13, respectively. The remaining balance to pay in full is \$250. The Notice of Intent to enter Emergency Order of Suspension was issued in DFS Case No. 136325-13-FC, against the licensee on 8/27/13 for failure to make the required payments.

Cemetery Professionals, LLC dba Beaches Memorial Gardens and Cemetery Professionals, LLC dba Beaches Memorial Park	Jun-12	110156-10-FC & 110157-10-FC	\$5,250 \$5,000 38,859.57	9/6/2012 12/7/2012 35 mo pymts	YES YES See Note E	Monthly restitution payments are current.
Alliance Monument & Marble Co, Inc.	Apr-13	129485-12-FC	\$1,000	9/2/2013	No; See Note A	Licensee currently suspended, based on Emergency Order of Suspension issued 11/8/12 for failure to comply with consent order in a different administrative action taken against licensee in Case No. 128348-12-FC; file sent to Legal on 9/20/13 for failure to pay fine and submit monument sales agreement as required by the final order issued 5/2/13 in Case No. 129485-12-FC.
Flagler Palms Cemetery LLC dba Flagler Memorial Gardens	Aug-13	133741-13-FC	\$2,750	9/9/2013	Yes	
Global Mortuary	Aug-13	122746-11-FC	\$800 \$7,200	9/19/2012 9 mo pymts	Yes No; See Note A	Monthly payments are late. October and November monthly payments are past due. Division sent file to Legal on 11/19/13 for failure to make payments.
Tony Tanner Funeral Services, Inc.	Oct-13	128096-12-FC	\$2,750	11/15/2013	No; See Note A	License is currently suspended pursuant to the consent order issued 10/16/13.
Flagler Palms Cemetery LLC	Oct-13	133742-13-FC	\$2,750	11/15/2013	Yes	
<p>A. When payment in full becomes past due, the FCCS Division works with the DFS Legal Division to enforce payment.  B. Once fines and costs are paid in full, licensee kept on this report 3 months, showing Paid in Full, and then dropped off report; also licensee dropped off report after disciplinary action filed due to nonpayment of the fine and costs.  C. The Order re this case is still in process, so no Due date is yet established.  D. Due date has not passed, as of the date of this report.  E. As of the date of this report, monthly payments were current.</p>						<p><i>OPM Dec Bd Mtg</i></p> <p><i>DAS Dec Bd</i></p>

**19. Chairman's Report (Oral)**

The Chair questioned the date of the next meeting.

Ms. LaTonya Bryant stated that the January 2<sup>nd</sup> meeting would be a Teleconference and the February 6<sup>th</sup> meeting will be held in Tallahassee.

Mr. Shropshire introduced James Folker, a new field staffer. Mr. Folker worked for the Division for several years as an OPS employee and is in training to be a field staffer. Mr. Shropshire also introduced Kawanzasis Henderson who is much newer than James. Ms. Henderson is being trained to specialize on exams. Ms. Henderson came to the Division from a bank where she was an internal bank auditor and she also has a Masters Degree. We are very much looking forward to getting her out doing exams.

Mr. Helm stated that the Division did a marvelous job of summarizing the packet.

**20. Office of Attorney General's Report (Oral)**

None

**21. Administrative Report**

The Administrative Report was provided to the Board via the Agenda.

**22. Disciplinary Report**

The Disciplinary Report was provided to the Board via the Agenda.

**23. Adjournment**

The meeting was adjourned at 12:57 p.m.