

**CEMETERY SYSTEM BOARD OF TRUSTEES
CITY OF FORT LAUDERDALE
CITY HALL 8TH FLOOR CONFERENCE ROOM
THURSDAY, JANUARY 14, 2010
3:30 p.m.**

<u>Chair</u>	<u>Attendance</u>	<u>Cumulative Attendance</u> 2/2009 through 1/2010	
		<u>Present</u>	<u>Absent</u>
Victoria Mowrey, Chair	P	5	1
William Cooke	P	4	1
Cameron Mizell	A	2	3
Larry Ott	P	6	0
Jonathan Pearson	P	2	0
Jose Portela	A	3	3
Dolores Sallette	A	4	2
Larry Sherman [3:39]	P	6	0
John Sykes	P	1	0
Susan Telli	P	4	2

Also Present

Julius Delisio, Cemetery Board Liaison
 John Banas, Carriage Services
 Trevor Jackson, Carriage Services
 Lisa Slagle, City of Fort Lauderdale
 Chuck Horvath, Carriage Services
 Cole Copertino, City Auditor's Office
 Alexandra Woolweaver, City Auditor's Office
 John Herbst, City Auditor
 Dan Smith, Wells Capital Management
 J. Opperlee, Recording Secretary

Communication to the City Commission

None

The meeting was called to order by Ms. Mowrey at 3:33 pm.

1. Minutes Approval

- o **November 2009 Meeting**

Motion made by Mr. Ott, seconded by Mr. Pearson, to approve the minutes of the Board's November 2009 meeting. In a voice vote, the motion passed unanimously.

2. New Business

[This item was heard out of order]

A. Nomination/Election of Chair/Vice Chair

Mr. Ott nominated Ms. Mowrey for Chair, seconded by Ms. Telli. In a voice vote, motion passed unanimously.

Mr. Ott nominated Ms. Telli for Vice Chair. Ms. Telli declined the nomination and recommended Mr. Mizell.

Ms. Telli nominated Mr. Mizell [who was absent] for Vice Chair. In a voice vote, motion passed unanimously.

As Mr. Mizell was absent and had missed three meetings, the Board considered Mr. Mizell's election in question pending his reappointment by the City Commission for 2010.

B. City Ordinance No. C-09-05, Quorum Requirement

Currently, there were ten appointed Board members, so six members present would constitute a quorum. Chair Mowrey confirmed that six members were present for a quorum.

Mr. Sherman arrived at 3:39.

C. City Commission Action Items/Communication to the City Commission

Chair Mowrey explained this agenda item to new members.

D. Perpetual Care Trust Fund

Mr. Delisio reminded the Board of their discussion with Commissioner Rogers at their last meeting regarding the Trust Fund, when they agreed they should obtain outside advice. This had been a challenge, because everyone Mr. Delisio approached did not want to review the account unless it was theirs.

Mr. Delisio reported Morgan Stanley had agreed to review the account for \$500. Mr. Delisio referred to a spreadsheet he had prepared describing the account's performance from 1986 to 2009, comparing how the account would have performed if

invested in Treasury Funds versus the actual performance. He noted that in all but two years, the account performance had exceeded how it would have performed if invested in Treasury Funds. He drew the Board's attention to the account's compounding that had occurred, and pointed out that the cumulative affect would not have occurred if the account had been invested in Treasuries, which only paid interest.

Mr. Delisio drew the Board's attention to the second spreadsheet, which showed they were currently at 63% corpus and 37% capital gains. Mr. Delisio said based on history, they knew how much they would make for openings and closings each year and the interest dividends from maintenance reimbursement and opening/closing should cover maintenance costs. The needed annual return was \$873,157.

Mr. Delisio estimated that the City's cemetery properties would be sold out in 2026. He noted that as cremations continued to increase, service revenues would decrease. This spreadsheet information, and the services the City needed to provide, had been presented to Morgan Stanley for the analysis. Mr. Delisio distributed a sheet describing the scope of Morgan Stanley's analysis. He remarked that there was no expansion possible at any of the cemeteries because they were all blocked by residential properties.

Regarding capital improvement projects, Mr. Delisio explained that \$75,000 had been allocated to Lauderdale Memorial for paving, but the project would actually cost over \$400,000, so that could not be done this year. They would seek a new wrought iron fence at Sunset in 2011. He noted that Carriage would be contributing \$45,000 for a new entrance, so they should be able to construct the entrances and the fence with some of the capital money.

Mr. Delisio said they had tasked Morgan Stanley with examining the needs of the cemeteries and determining if the needed funds could be generated using the Cemetery Investment Policy versus using the City's Investment Policy. The Fund also required capital gains, and Mr. Delisio pointed out that capital gains would be impossible in interest-only vehicles, so they could no longer fund capital projects.

Ms. Telli suggested that if the cemeteries needed property in the future, perhaps the City could float an industrial bond, which would avoid encroaching upon the fund's corpus.

Mr. John Herbst, City Auditor, said in his conversations with the City Commission, they had indicated they had no intention of expanding the size of the cemeteries or of acquiring new cemetery property in the near future. Mr. Herbst stated it was the Mayor's intention to sell off all City surplus property.

Regarding the authority of the City Auditor's Office to examine the Trust Fund, Mr. Herbst said the City Charter granted the Auditor's Office "virtually unlimited authority to

examine any issue of City Business.” This was why the Auditor’s Office was investigating the Cemetery Investment Policy. Mr. Herbst stated, “To my knowledge, nobody outside of this group was aware that there was a separate investment policy, separate and distinct from the City’s overall funds.”

Chair Mowrey stated she was offended to hear Mr. Herbst say that no one outside this group was aware that there was a different investment policy being used. She said, “If they weren’t aware of it outside of this group, it’s because they were not paying any attention.”

Ms. Telli thought perhaps the Board members should have educated the new Commissioners regarding the Cemetery Trust Fund. She pointed out that City residents had voted for the Commissioners, but not for Mr. Herbst.

Mr. Herbst said he had not meant to offend anyone, but when he had approached the Commissioners, the Treasurer, the Finance Director and the Controller, they were all unaware of the Cemetery’ Investment Policy.

Mr. Herbst continued that he was concerned the Cemetery Investment Policy did not conform with Florida Statute 218.415, which stated that the investment activity of any unit of local government must be consistent with the written investment plan adopted by the governing body, and “such policies shall be structured to place the highest priority on the safety of principal and liquidity of funds.” The investment objectives of the funds shall include “safety of capital, liquidity of funds and investment income, in that order.”

Mr. Delisio pointed out that over a 20-year period, the principal of the fund had never been jeopardized. Mr. Herbst said this was irrelevant. Mr. Delisio stated it was relevant to operate the cemeteries in the future; the alternative was to make this the responsibility of taxpayers.

Mr. Delisio said the Statute allowed the City to adopt an investment policy, which the City had done. He said the Board wanted the City Commission to know that the account’s principal had always been safe. Mr. Herbst stated it was not just the corpus that must be protected; the entire portfolio must be protected. He said the statute did not differentiate between the principal and other funds; it referred to all funds.

Mr. Delisio said the policy must be structured to “place the highest priority on the safety of the *principal*.” Mr. Herbst said this referred to the “principal of the public funds...not the corpus... all the funds that are part of the City’s total dollars”

Ms. Telli said the City Attorney should give his opinion regarding this, and said she was not comfortable with Mr. Herbst’s approach.

Mr. Herbst said he had discussed the investment guidelines and the Cemetery Investment Policy with money managers at a Police and Fire Pension conference, and every manager had been “shocked” and remarked that this was a classic pension allocation. Mr. Herbst had also spoken with a mediator from the SIPC, who believed the City had a cause of action against the money management firm for not following the requirement to protect safety first.

Mr. Herbst had researched municipal cemetery investment policies and not found one that included the same requirements of safety, liquidity and portfolio returns that remotely resembled this policy.

Mr. Delisio said there was a different objective for this account. The cemeteries must pay for maintenance and capital improvements. He asked how the fund could pay for capital improvements without having capital gains. Mr. Herbst thought there were other ways to meet these challenges without being out of compliance with State law.

Ms. Telli wanted the City Attorney to give the Board his opinion on this, and for the Mayor or Commissioner Rogers to attend a meeting to better understand the history.

Mr. Delisio said they would provide the information to the City Commission to decide how they wanted to proceed. He remarked that the Statute did not define the word “safety” and this was therefore open to interpretation. Mr. Delisio clarified that this investment policy had been approved by the City Commission and City Attorney in 2004 and this issue must be resolved by the current City Attorney.

Mr. Pearson said they must consider if the Trust Fund would be enough to cover the needs of the cemeteries in perpetuity. Mr. Delisio remarked that taxpayers had never borne the cost of the cemeteries; prior to 1993 they were paid for by enterprise funds and since then had been taken over by the private sector. The cemetery users paid into the Fund. In the future, when there was no more revenue, the Fund must be sufficient to take care of the cemeteries in perpetuity.

Chair Mowrey stated it was the Board’s goal to see to it that the City’s cemeteries were taken care of in perpetuity. She acknowledged it was possible that they had been “slipping through a loophole” for 50 years and not following the State Statute to the letter, and that they must do whatever was necessary to comply. But until this was proven, Chair Mowrey said they should follow the current process.

Chair Mowrey apologized for the contentious tone of this discussion, but advised Mr. Herbst to change the manner in which he approached groups such as this Board.

Mr. Herbst said he was not attacking the Board. He stated there were many things done in the City that they discovered over time they had been doing wrong. Mr. Herbst said he did not care why something was the way it was; he only cared about what they

could do to make it better. He advised they should not ask why the investment policy was what it was or how well it had performed in the past. They must ensure they did what was required from a legal and compliance perspective.

Mr. Herbst thought that Commissioner Rogers had suggested at the last meeting that an outside source look at the account not to confirm that the rate of return was good but to determine how the investment policy should be structured to meet the goals of safety, liquidity and income per Florida Statute. Mr. Delisio said this was exactly why everyone he approached about the account did not want to touch it. He said they wanted to put the account management out to bid again to see what was out there. Mr. Delisio stated the evaluation would include how the investment policy should be rewritten.

Mr. Delisio said they would get the information from Morgan Stanley the first week in February and it would then be presented to the City Commission and the City Attorney.

Mr. Delisio stated they must have a certain amount of funds to maintain the cemeteries in perpetuity. They must consider that if they could not determine a way to obtain these funds, the cemeteries would become a burden to the taxpayers.

Mr. Herbst agreed to provide the Board with the results of his research. He explained that his research into municipal cemeteries' investment policies had revealed that those with rate of return as the primary goal were similar to the City cemeteries' investment policy. Policies with goals of safety, liquidity and then rate of return did not resemble the City cemeteries' investment policy.

Mr. Pearson asked if there was sufficient money in the fund now to maintain the cemeteries without using tax money. Mr. Delisio said there was now because of the contractor. He noted that the contractor's contribution was based on projected interest on the Trust Fund. He felt that the City would be in default with the contractor if the returns severely diminished. Mr. Delisio said there would also be legal issues if the City did not maintain the cemeteries using the Perpetual Care Trust Fund.

Mr. Herbst said the City Attorney had determined that the cemeteries must follow the City procurement policies, and that the Trust Fund monies were City funds because there was no separate legal entity for the City cemeteries. Mr. Herbst noted that the Community Redevelopment Agency was a separate legal entity and therefore did not have to follow the requirements of Statute 218.415. Mr. Herbst said this was one possible solution to address these issues. He agreed to provide the Board with a copy of the City Attorney's comments regarding his opinion that cemetery funds were City funds.

Chair Mowrey wanted the Board to meet prior to the City Commission meeting when the Trust Fund issue would be discussed. Mr. Delisio said there was a difference of opinion regarding the definition of certain words that the Statute did not specifically define, such

as “safety” and “principal” and the City Attorney and City Commission must come to agreement on a definition. The Morgan Stanley representative had indicated to Mr. Delisio that he could define the terms. Mr. Delisio disagreed with Mr. Herbst, and thought that the principal of the Trust Fund account was the corpus only, while Mr. Herbst felt the principal was the entire fund.

Chair Mowrey stated this discussion should take place with the Board and representatives from the City Attorney and City Auditor’s staff. Mr. Delisio doubted this item would go on the Commission’s agenda for their first meeting in March. If it were scheduled for the First meeting in March, Mr. Delisio said the Cemetery Board could hold a special meeting prior to the Commission meeting. Chair Mowrey insisted that the City representatives she had mentioned would be in attendance at that meeting, whenever it was held. This would ensure that any remarks Board members made at the Commission meeting were backed by someone in the City.

E. Capital Improvement Project Status

Chair Mowrey remarked that the new Lauderdale Memorial Park mausoleum and entrance was “like going to Atlantis.”

Mr. Delisio drew the Board’s attention to the “As of December 31, 2009” spreadsheet. He reminded the Board that they had moved some of the landscape money from Evergreen to Sunset to fix the irrigation, and that the 14 additional trees had been planted at Evergreen.

Regarding the road vacation, Mr. Delisio reported the Planning and Zoning Board had voted 7 – 2 in favor of the vacation. This would go on the City Commission’s agenda in February. Mr. Delisio advised Board members to send email to Commissioners stating their support for the vacation.

Mr. Delisio said the only remaining project was the maintenance building at Sunset. The plans had just been returned by the Building Department. Mr. Delisio remarked that the County water runoff issues were “an absolute nightmare.”

Mr. Delisio referred to the documents he had distributed regarding Sunset Memorial Gardens and the Lauderdale Memorial Park Cremation Gardens. Mr. Ott had visited Lauderdale Memorial recently, and was disappointed that there were 50 bushes that had died. Mr. Delisio stated there was an issue with the Cocoplums, and they were not certain if they were dead or just in shock. If they did not recover, they would be replaced.

Mr. Delisio requested one change to the Capital Improvement Plan: to reallocate \$10,000 from Lauderdale Memorial Park road resurfacing to put stamped concrete on the driveway near where the new gates would be and to reallocate \$65,000 from

Lauderdale Memorial Park road resurfacing for a fountain in the Cremation Garden. In two to three years, Mr. Delisio anticipated they would need to use capital for the paving project.

Chair Mowrey noted that these funds had come from Carriage, and she agreed with the reallocation. She suggested that instead of a circular fountain, they install a wall fountain. Mr. Delisio said they had already decided to use a wall-type fountain.

Motion made by Ms. Telli, seconded by Mr. Pearson, to reallocate \$10,000 from the Lauderdale Memorial Park road resurfacing to put stamped concrete on the driveway near where the new gates would be and to reallocate \$65,000 from the Lauderdale Memorial Park road resurfacing for a fountain in the Cremation Garden. In a voice vote, motion passed unanimously.

Mr. Delisio referred to the conceptual drawing he had distributed regarding the Sunset building, and explained the project would start in the second quarter of 2010. He noted this mirrored the building at Lauderdale Memorial Park. He agreed to return to the Board at a future meeting with a more concrete design plan.

Mr. Ott asked about the entrance to Lauderdale Memorial and Mr. Delisio explained that the planter had been removed and the landscaper would create a plan once the wall was up.

F. City Resident Discount Program

Mr. Banas referred to the Residential Discount Analysis he had created that described the location of the City cemeteries and the statistics for the percentage of contracts that used the City resident discounts. He pointed out that Sunset had a disproportionately high percentage of resident discount contracts – 75%. Mr. Banas stated this was not a coincidence – people were being coached to say, “Just say that is your brother that you’re purchasing this for” and they would be able to get the resident discount.

Mr. Delisio acknowledged that it was very difficult to prove a relationship when one person purchased for another. He said the reason this was happening was that most people had \$10,000 insurance policies, and the funeral director’s objective was to “make as much as he can.”

Ms. Telli was sad that people in the funeral home business were that desperate, and felt this was unacceptable. She suggested sending out a letter to funeral directors stating the City was disappointed to hear that the funeral home was informing people that they could get the additional discount when they were not entitled.

The only way Mr. Banas thought this could be handled was to require that the purchaser would only be given a 25% refund after proving the familial relationship. He pointed out

that many people in the immigrant population would not be able to obtain documentation.

Mr. Delisio confirmed that purchasers currently signed a document stating their relationship to the deceased.

Mr. Delisio agreed to bring a draft of a document to the Board's next meeting. This document would indicate the specific Statute that would be violated by claiming the discount falsely.

Mr. Banas stated when they proved the discount had been obtained falsely, the grave was not paid in full, and a marker would not be placed until the additional 25% was paid.

Ms. Telli offered to visit the funeral directors in question.

Mr. Banas agreed to research which relatives were being claimed and report his findings to the Board.

For the Good of the Cemeteries

Mr. Banas announced Board members would be receiving invitations to the ribbon cutting ceremony for the mausoleum and cremation garden.

Other Items

Ms. Slagle agreed to report to the City Clerk that the Board had elected a Chair and that the election of a Vice Chair was pending and would be resolved in March.

3. Adjournment

There being no further business to discuss, the meeting was adjourned at 5:30 p.m.