

**CEMETERY SYSTEM BOARD OF TRUSTEES  
CITY OF FORT LAUDERDALE  
CITY HALL 8TH FLOOR CONFERENCE ROOM  
THURSDAY, MARCH 11, 2010  
3:30 p.m.**

<u>Chair</u>	<u>Attendance</u>	<u>Cumulative Attendance</u> 2/2010 through 1/2011	
		<u>Present</u>	<u>Absent</u>
Victoria Mowrey, Chair	P	1	0
Damon Adams	P	1	0
William Cooke	A	0	1
Cameron Mizell	P	1	0
Larry Ott	P	1	0
Jonathan Pearson	P	1	0
Dolores Sallette	P	1	0
Larry Sherman	P	1	0
John Sykes	P	1	0
Susan Telli [until 4:45]	P	1	0

**Also Present**

Julius Delisio, Cemetery Board Liaison  
John Banas, Carriage Services [4:05]  
Trevor Jackson, Carriage Services  
Lisa Slagle, City of Fort Lauderdale  
Johnny Miller, U.S. Trust  
Penelope Blair, U.S. Trust  
D.J. Williams-Persad, Assistant City Attorney  
Dwayne Spence, Assistant City Attorney  
J. Opperlee, Recording Secretary

**Communication to the City Commission**

By unanimous consensus, the Board revisited and reaffirmed support of the current investment policy.

The meeting was called to order by Chair Mowrey at 3:30 pm.

**1. Minutes Approval**

o **January 2010 Meeting**

[This item was taken out of order]

The Board noted corrections to the minutes.

**Motion** made by Mr. Ott, seconded by Mr. Pearson, to approve the minutes of the Board's January 2010 meeting as amended. In a voice vote, the motion passed unanimously.

**2. New Business**

**A. 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 nine members were present for a quorum.

**B. Nomination/Election of Vice Chair**

Mr. Mizell stated he accepted his nomination and election in January.

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

The Board agreed to discuss this item at the end of the meeting.

When the Board returned to this item, they agreed by consensus to state that they wished no changes be made to the current Investment Policy, since they were currently in compliance with the State Statute. Ms. Williams-Persad stated they *needed to be* in compliance with the State Statute. At the time the Investment Policy was approved, the finance director had determined they were, but they probably needed a financial adviser to tell them if they were still in compliance or if any revisions were required.

Chair Mowrey pointed out that if the State Statute had not changed and the policy had not changed, then the status had not changed. Ms. Williams-Persad said an argument could be made that the market had changed, and even when the original Investment Policy was approved, the City had "never said, 'Yes, you're in compliance' what we said is you have to be in compliance and the Commission and the Finance Director thought that you were so you may or may not still be." Mr. Adams remarked that they Policy should work no matter what the market did.

Mr. Sykes said this issue continued to confuse him. Mr. Delisio said they were being challenged by the City Auditor that the Investment Policy was too aggressive and did not comply with State Statute under the Auditor's interpretation of the word safety. Mr. Sykes asked if it was the Board's responsibility to defend the policy or if it was a legal issue. Mr. Delisio said a financial adviser would give his or her opinion of the definition of the word "safety", but would not touch the State Statute. Mr. Delisio said his department would draft a background of what had occurred, and what their opinion was, to present to the City Commission. Their opinion was that they wanted the Investment Policy to stay the way it was.

#### **D. U.S. TRUST Bank of America Trust Fund Review**

Ms. Blair had prepared responses to some of the statements made by City Auditor at the previous Board meeting.

When Mr. Herbst was discussing the authority of the City Auditor's office to examine the Trust Funds, he had 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." Ms. Blair wanted the Board to be aware that on page 9 of the Investment Policy Municipal Cemetery System. Perpetual Care Trust Fund revision effective April 2004, the notation was included that the Investment Policy had been approved and adopted by the City of Fort Lauderdale Cemetery System Board of Trustees on March 18, 2004 and approved by the City of Fort Lauderdale Commission on April 20, 2004.

Ms. Blair said Mr. Herbst had indicated 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. Blair wanted the Board to be aware that Bank of America, as trustee of the Municipal Cemetery System Perpetual Care Trust, was governed by the terms and conditions of the amended and restated Declaration of Trust dated January 30, 2004 executed on behalf of the City of Fort Lauderdale by its then Mayor and acting City Manager and approved as to form by the City Attorney. Article 3 of the declaration of trust provided that the trust shall be invested in accordance with the Investment Policy of the Cemetery Board of Trustees, in accordance with the Code of Ordinance of the City of Fort Lauderdale, Florida. Ms. Blair said the trust had been invested in accordance with the Investment Policy. Development of the Investment Policy was the responsibility of the Board of

Trustees. If the Board of Trustees changed the Investment Policy, the Trust investments would change accordingly.

Regarding Mr. Herbst's discussion with a mediator from SIPC, Mr. Blair said the Securities Investor Protection Corporation dealt with restoring funds to investors with assets in the hands of bankrupt and otherwise financially troubled brokerage firms; SIPC was not applicable to this arrangement.

In general, Ms. Blair said they were following the terms of the Trust, and the terms of the Trust governed and stated that they were to follow the Investment Policy Statement that the Board of Trustees set, as approved by the City Commission. Ms. Blair said they were following the most recent Investment Policy Statement on hand; if this changed, they would change the method by which the funds were invested.

Mr. Adams asked if US Trust considered safety and liquidity as the first priorities, as stated by the policy, in their investing procedures. Ms. Blair and Mr. Miller concurred that US Trust did, and that yield was the third priority. Mr. Miller said in assessing safety, one looked at the portfolio as a whole, and how it would weather different market environments for the long term. He said as the equity in the account grew they "peeled off" the growth to rebalance the portfolio and invested in bonds to keep the bond income growing. After recent changes, Mr. Miller estimated the bond income would be \$600,000. He said the objective would be to provide enough income to fund the needs of the cemeteries without touching the equity portion of the portfolio.

Regarding a comparison of this portfolio to a pension portfolio, Mr. Miller said, "I'll assure you that you will be dead longer than you will be retired." This portfolio dealt with a much longer term than a pension plan, so there was a greater need for long-term growth, and this was far more conservative than the average pension plan.

Ms. Blair added that as a Trustee, they were held to the prudent investor rule, a very high fiduciary standard of investment.

Mr. Delisio remarked that the fund's corpus would never be liquid; per the ordinance, no cash that was deposited into the account was liquid and it could never be expended. He said if they did not make any interest or dividends they had nothing to liquidate to pay expenses.

Mr. Miller referred to the investment overview, and said they were in the repair phase of the economy. The two big numbers holding them up were unemployment and housing. He believed unemployment would recover quicker than most people thought. He said the snowstorms in the Northeast had

hampered the statistical data regarding unemployment, but once they got beyond the quarter, the numbers would jump back.

Mr. Miller said the previous day had been the one-year anniversary of the bottom of the market and the market was now up 68% on the S&P 500 from that point in time. Through this morning, they were up 2.7% on the S&P 500 for this year, and he believed they would see upwards of an 8 to 9% growth rate this year. He anticipated the GDP to be approximately 4%.

Mr. Miller said they had been buying stock when the market was at 6,500 or 7,000, and this had added much push to the portfolio. He had recently taken \$1 million of equity and put it into bonds at 5% to keep the income growing.

Mr. Miller drew the Board's attention to Tab 1, the Investment Performance Review, and stated last year the account was up 19% in value. Stocks were up 37%, while the S&P 500 had been up 26%. Their stocks had outperformed the S&P 500 by 50%.

Mr. Miller said they had begun the year with \$13,700,000; \$675,000 was put into the account from sales and \$507,000 had been taken out to pay the contractor. The account had made \$2.6 million in returns last year, bringing the portfolio to \$16,500,000 at the end of the year. As of today, the account was worth approximately \$17 million. At the account's high point in July 2008, it was worth \$17.2 million, so they had \$200,000 to \$300,000 to make back to meet that high water mark again.

Mr. Miller said the asset allocation was now stocks at 40%, the lowest weight the Investment Policy Statement would allow. Mr. Miller had reduced the international stock category to 0% the previous year but had maintained the emerging markets portion at 4 – 5 % in larger countries. He said he would reinvest in these larger countries in the coming weeks. Mr. Miller said the \$250,000 they had invested in the emerging markets the previous year had grown to over \$500,000 over a nine-month period. He had added \$200,000 to some sectors of the emerging markets, especially the commodity-driven economies such as Australia, Canada, Brazil, Mexico and Japan. He said the whole key to investing right now was re-inflationary assets.

Mr. Miller said he was buying only long-term bonds, trying to get as much yield as possible. He said they were getting good yields on the long-term bonds now. Mr. Miller was concerned that if interest rates were not raised inflation would damage the bond yield.

Ms. Telli wanted Ms. Blair's comments noted so that if the Board was ever questioned about its due diligence this would be on record. Chair Mowrey

referred to the Board's previous minutes, and Mr. Herbst's remark that "...nobody outside of this group was aware that there was a separate investment policy, separate and distinct from the City's overall funds." She said on the surface, this was "absolutely absurd" because the Board did not make decisions, they made recommendations. The Investment Policy had been approved and re-approved by the Fort Lauderdale City Commission and the Mayor, most recently on April 20, 2004.

Chair Mowrey asked Assistant City Attorney Williams-Persad about this issue. Ms. Williams-Persad said the City Attorney's position was that Florida Statute 218.415 absolutely applied. The second point was that the City Commission had approved the revised Investment Policy in 2004. At that time, the City Commission was aware that the Statute applied, and the Finance Director at the time had prepared a memo stating the reasons they were revising the policy so that it was in compliance with the Statute.

Ms. Williams-Persad stated they acknowledged that the Cemetery and the City could have two different Investment Policies. She stated it was not necessarily a legal question to determine whether the Investment Policy was in accordance with the Statute; this should be determined by a financial adviser.

Ms. Williams-Persad thought that perhaps one of Mr. Herbst's points was that "maybe at that time it was in compliance, but maybe it needs to be revisited at this time" in response to changes in the market since 2004. The City Attorney's position was that the Cemeteries could have a separate and different investment policy as long as it was in compliance with the Statute.

Ms. Williams-Persad said this particular statute had not changed since 2002. Mr. Adams concluded that the Investment Policy still complied. Mr. Delisio said the problem was that a financial advisor could not define what the word "safety" meant in the context of that Statute. He said the word safety meant different things to different people depending upon the duration of the investment. Mr. Adams remarked that this put it in the realm of opinion. Mr. Sykes asked about the definition of "principal." Mr. Delisio said Mr. Herbst defined it as the total fund. The Trust Agreement defined corpus as the original deposits plus all deposits made from sales. He felt this represented a weakness in the State Statute.

Chair Mowrey said they were proceeding along with the State Statute as they always had it until such time as it was proven that they were not in compliance with the State Statute. She remarked that, "how much safer, could our money be than the fact that we don't get to touch any of it and nobody else can either."

Mr. Banas arrived at 4:05.

#### **E. Morgan Stanley Smith Barney Trust Fund Review**

Mr. Delisio said they were not going to utilize Morgan Stanley Smith Barney's services. The next step was to take the numbers staff had provided and create projections to satisfy questions from the City Commission regarding future need. Mr. Delisio said they would not meet their needs based on interest; they must have a diversified portfolio with some equity, bonds, and perhaps some other vehicles. He anticipated bringing this to the City Commission conference meeting on April 20. He advised Board members to contact their appointing Commissioners to express their feelings on this.

Mr. Delisio advised Mr. Pearson that the projections had been included with the Board's package. He said they could anticipate revenue they would need in the future, and this could be covered by the Trust Fund, based on its growth for the past 30 years, or the taxpayers would be responsible for upkeep of cemeteries. Mr. Delisio reminded the Board that the cemeteries had never been a burden on taxpayers.

#### **F. Annual General Price List Review**

Mr. Delisio said every year, they reviewed their prices compared to other local cemeteries. He said there was really only one cemetery that competed with Fort Lauderdale's and that was Central, which competed with Sunset. Mr. Delisio reported all of the properties had increased by \$100; openings and closings had increased \$100 for interments and entombments. Disinternments increased \$1,000. He noted they were very competitive with other local cemeteries. Mr. Delisio said the new prices would be approved by the City Commission, and would go into effect June 1.

Mr. Ott said he knew of families that had family plots with spaces that would go unused. He wondered if it would be worthwhile to contact these families to see if they would be interested in selling the spaces back to the cemetery. Mr. Delisio explained that State Statute dictated that only property where no one was buried could be taken back in 50 years. But if someone was buried in just one of the spaces they could not take the property back. Mr. Delisio said none of the property at Sunset was unused. Evergreen had a lot of property issues because from 1915 until the 1940s the City required the purchase of six spaces. He anticipated they had 10-15 years worth of spaces at Evergreen. He thought the inventory at Lauderdale would last another 20 years. Mr. Delisio said they might consider buying back some spaces in the future.

Mr. Delisio stated there was a nonprofit group to which one could donate spaces to be provided to someone who could not afford a space. The donor could then take a tax deduction based on current value. Ms. Sallette asked Mr. Banas if he

had people going door-to-door canvassing residents about living wills. Mr. Banas said they were going door to door in all communities offering to provide people with living wills free of cost. He explained to Mr. Mizell that the living wills are being supplied on Carriage's behalf, but they were not industry or location specific. He offered to provide them to Mr. Mizell for his funeral home. Mr. Banas said the sales team from the cemetery used it as a sales tool to discuss pre-purchasing cemetery spaces. Mr. Mizell was concerned that the City was employing a company that was not only operating a funeral home, but was also sending people door-to-door with living wills as a sales tactic.

Mr. Delisio said it was very clear that the two businesses would not be co-mingled; Carriage employees were funeral people and the cemetery people were cemetery people. One was not selling the other. Mr. Banas pointed out that the City did not employ Carriage; they paid the City to be here. He said this was about getting the message out to the community in advance to encourage pre-planning and to sell their property to the members of the community so they could afford to stay and maintain the cemeteries.

Mr. Banas informed Ms. Telli that if a family asked a representative if he or she knew of a funeral home, they would answer yes. He said he had never issued a decree telling the sales people what funeral home to suggest. Mr. Banas said in the past, they advised people of homes in their area. But now, he said, "We were wise enough to purchase funeral homes that are in everybody's area."

Mr. Delisio said most inquiries regarding funerals came to him. If someone needed something "quick and fast" he sent them to Barbara Falowski because he knew her personally and knew she was the least expensive person in town. If an individual had money issues, she would help him out. Mr. Delisio believed most people would go where it was most convenient.

Mr. Mizell said this appeared to be a slippery slope because the management company had the ability to "direct money into their company" with the door-to-door sales. Mr. Delisio pointed out that all funeral home had the opportunity to go door-to-door as Carriage was. Mr. Mizell said this was true, but he did not have an agreement with the City to manage their cemeteries.

Mr. Delisio said there was no mention in the contractor that the management company could not also own funeral homes. He noted the cemeteries had a fixed price list.

Ms. Sallette said she had brought this up because she had been approached by people in the neighborhood who had been offended that someone had knocked on their doors to discuss a living will. Mr. Banas said it was impossible to telephone people anymore, and this was a way to reach them.



Ms. Telli left the meeting at 4:45.

Mr. Adams asked that next year, Mr. Delisio provide the Board with a list of the actual price increases so they would not need to compare two years.

In response to problems they had experienced with the resident discount, Mr. Delisio said they currently had no recourse when someone committed fraud and claimed a resident discount to which they were not entitled. He distributed an addendum to the cemetery contract that a purchaser must sign that specified the rules and requirements for utilizing the resident discount. He asked Ms. Williams-Persad what recourse the City would have if an agreement were violated. She agreed to look at this and provide an opinion.

**Motion** made by Mr. Adams, seconded by Mr. Pearson, to accept the updated price list. In a voice vote, the motion passed unanimously.

#### **G. Quarterly Maintenance Reimbursement Oct – Dec 2009**

Mr. Delisio remarked there was nothing unusual about the period.

**Motion** made by Mr. Adams, seconded by Ms. Sallette, to approve the maintenance reimbursement. In a voice vote, the motion passed unanimously.

#### **For the Good of the Cemeteries**

Mr. Delisio distributed a list of capital improvement projects for 2010. He reported the maintenance building at Sunset was being constructed and they were performing site planning for the mausoleum. He said they were working with engineering to address the runoff issue at the property, and were considering a drainage area on the west side.

At Evergreen, Mr. Delisio stated the 500 spaces would be pinned the following week.

Mr. Delisio said the entrance structure at Lauderdale was completed and they were waiting for electric to connect timers to the irrigation system.

Mr. Delisio presented a rendering of the fountain the Board had authorized for the cremation garden at Lauderdale Memorial Gardens.

Mr. Banas pointed out an error on a spreadsheet. He said it now included non-contract capital items to make the Board aware of things Carriage did that were not included in the contract. He mentioned that the \$20,500 listed for the

cremation garden irrigation was actually from last year so it should be removed from the spreadsheet.

Mr. Delisio said they had taken on another project: resetting markers that were sinking.

Mr. Banas reported the new cremation building at Sunset would have niches that went up half way instead of 12 levels high. He also planned to ask Carriage for extra capital to develop something else there that he would discuss with Mr. Mizell.

### **Other Items**

Chair Mowrey said her remark at the previous meeting that the new mausoleum was like the Atlantis was meant as a compliment; she thought it was a beautiful building.

Chair Mowrey advised Board members to contact their Commissioners regarding the Investment Policy situation.

Mr. Banas invited Board members to the Memorial Day celebration. Mr. Delisio asked for volunteers to work on the celebration.

### **3. Adjournment**

There being no further business to discuss, the meeting was adjourned at 5:17 p.m.

Next meeting: May 13, 2010

[Minutes prepared by: J. Opperlee, Prototype Services]