

Minutes of Meeting
Board of Funeral, Cemetery and Consumer Services
December 3, 2008 - 10:00 A.M. to 5:00 P.M.
Betty Easley Conference Center
4075 Esplanade Way, Room 152
Tallahassee, FL 32399

I. Call to Order and Roll Call

Mr. Greg Brudnicki, The Chair, called the meeting to order at 10:00 am.

Mr. Doug Shropshire, Executive Director, requested to make the usual prefatory comments for the record and then take the role.

As a preliminary matter, let me state for the record that my name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. This is a meeting of the Board of Funeral, Cemetery, and Consumer Services. Today is December 3, 2008. The meeting is occurring in the Betty Easley Conference Center in Tallahassee, FL.

Notice of this meeting has been duly published in the FAW. An agenda for this meeting has been made available to interested persons. My Assistant, Ms LaTonya Bryant, is recording these proceedings.

At this time I will take the role and Board members will please respond with "aye" or "present" when I call their name:

PRESENT:

Greg Brudnicki, Chairman
Jody Brandenburg, Vice-Chairman
Justin Baxley
Powell Helm
Ken Jones
Gail Thomas-DeWitt
Catherine Zippay

ALSO PRESENT:

Doug Shropshire, Executive Director
Anthony Miller, Assistant Director
Allison Dudley, Board Counsel
Mary K Surles, Department Counsel
James Gellepis, Department Staff
LaTonya Bryant, Department Staff

ABSENT:

Nancy Hubbell
Tracy Huggins

Mr. Chair, we have a quorum for the business before the Board.

II. Action on the Minutes

A. October 1, 2008

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on October 1st.

Ms. Deborah Loucks stated that Diane Guillemette was Board counsel for that meeting.

MOTION: Mr. Ken Jones moved to adopt the minutes of the meeting with the recommended amended. Mr. Powell Helm seconded the motion, which passed unanimously.

B. November 5, 2008 - Teleconference

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on November 5th.

MOTION: Ms. Gail Thomas-Dewitt moved to adopt the minutes of the meeting. Mr. Justin Baxley seconded the motion, which passed unanimously.

III. Disciplinary Proceedings

A. Abbey Affordable Cremation and Funeral Service: Case No. 87262-08-FC

The Department recommends approval of the Settlement Stipulation for Consent Order assessing the Respondent a \$2000 fine; imposing a 6 month period of probation; and agreeing not to sell preneed funeral contracts in the future without obtaining a preneed funeral license.

Mr. Baxley stated the fine is a bit light for 52 offenses.

Ms. Mary K Surles stated these were allegedly facilitated by a third party, where Abbey Affordable was listed in the revocable death benefits section. The Department therefore stands behind the recommendation of the Settlement Stipulation.

Mr. Jody Brandenburg stated the customers are his concern. The customers entered into contracts that are not valid.

Ms. Surles stated that the customer does have a right to change to another funeral provider if they do wish. Some have done so based on the representation by the attorney representing in this case. Out of the 52, 10 – 15 have already selected other funeral providers.

Mr. Brandenburg questioned whether all the consumers have been contacted.

Ms. Surles responded that she could not confirm whether they had been.

The Chair responded that all the consumers should be contacted and advised of their right to change.

Ms. Surles questioned whether the Department should contact the consumers.

The Chair responded yes, but Abbey needs to incur any expenses associated with contacting these consumers.

Ms. Allison Dudley questioned whether the request for Abbey to incur the cost would be a counter offer to add on to the settlement. The Board may not be able to enforce that stipulation if it is not a part of the settlement as it is right now. The Board has the option to reject the current Settlement Agreement and make a counter offer to Abbey.

MOTION: Mr. Helm moved to reject the order. Mr. Brandenburg seconded the motion, which passed unanimously.

2nd MOTION: Mr. Helm moved to submit a counter offer to include the costs incurred for contacting the consumers. Ms. Catherine Zippay seconded the motion, which passed unanimously.

B. E.A. Stephens Funeral Home: Case No. 86080-08-FC

The Department recommends approval of the Settlement Stipulation for Consent Order assessing the Respondent a \$1000 fine and imposing a 6 month period of probation.

MOTION: Mr. Brandenburg moved to approve the order. Mr. Jones seconded the motion, which passed unanimously.

C. South Dade Palms Memorial Park: Case No. 89173-08-FC

The Department recommends approval of the Settlement Stipulation for Consent Order assessing the Respondent a \$1000 fine and imposing a 6 month period of probation.

Mr. Brandenburg questioned whether the Order was against the funeral establishment or the cemetery.

Ms. Lisa Lyons Coney stated that the Order was against the cemetery for installing a marker late.

MOTION: Mr. Brandenburg moved to approve the order. Mr. Jones seconded the motion, which passed unanimously.

D. Veterans Funeral Care, Inc.: Case No. 85502-06-FC

The Department recommends approval of the Settlement Stipulation for Consent Order assessing the Respondent a \$2000 fine and \$500 for costs.

Mr. Jones questioned why there was no probation imposed.

Ms. Wendy Wiener stated that this case originated years ago. The allegations were discussed in detail. The entity guilty of violating the preneed law is no longer doing business. The current business currently trusts with FSI and is Board compliant. Probation would not serve any purpose. The owner actually checked with Board Staff and examiners who all advised that the way he was doing business using registration forms and not entering into contracts was valid. Ultimately, it was determined that he was violating the letter of the preneed law but with no intent.

MOTION: Ms. Zippay moved to approve the order. Mr. Jones seconded the motion, which passed unanimously.

IV. Application to Acquire an Existing Cemetery Company

A. Deland Memorial Gardens, Inc. to acquire Deland Memorial Gardens (Deland)

The Department received the application on November 3, 2008 from Deland Memorial Gardens, Inc. for authority to acquire control via asset purchase of Deland Memorial Gardens. Deland Memorial Gardens, Inc. is a holding of Lohman Family Properties. Deland Memorial Gardens was formerly owned by Northstar Cemetery Services of Florida, LLC.

A completed background check of all officers revealed no criminal history. The Applicant principals are: Lowell Lohman, Nancy Lohman, Ty Lohman, and Victor Lohman.

The Applicant's financial statement is in the name of Deland Memorial Gardens, Inc., current as of October 30, 2008 reflect the following:

Required Net Worth	= \$	50,000
Reported Net Worth	= \$	50,000

The Division recommends approval of the application.

MOTION: Ms. Thomas-Dewitt moved to approve the application. Mr. Baxley seconded the motion, which passed unanimously.

V. Application(s) for Preneed Sales Agent

A. Informational Item - See 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.

Mr. Brandenburg disclosed his affiliation with SCI Funeral Services of Florida, Inc.

The Chair disclosed his affiliation with CFS Funeral Services, Inc.

B. Recommended for Approval (Criminal History)

1. Grimmert, Pamela J (Appointing Entity: The Simplicity Plan)

During the evaluation of Ms. Grimmert's application it was determined that she previously held a temporary preneed sales agent licensure with Northstar Cemetery Services of FL LLC d/b/a Page – Theus Funeral Home which expired without being convert to permanent licensure.

Ms. Grimmert included a letter of recommendation from Mr. Rediske, her manager, with Page – Theus Funeral Home acknowledging her high standards of professionalism when meeting with families during her temporary employment with their entity. The Division recommends approval of the application.

MOTION: Mr. Brandenburg moved to approve the application. Mr. Helm seconded the motion, which passed unanimously.

DISCUSSION: The Chair pointed out that there were conflicting records presented pertaining to Ms. Grimmett's date of birth and requested that the Department determine whether her birth year was 1963 or 1973.

Mr. Shropshire advised that the Staff would look into this.

2. Sternstein Zucker, Marilyn E (Appointing Entity: SCI Funeral Services of Florida)

On the application received by the Department on October 29, 2008, the applicant answered "Yes" to Section 4, (3) Qualification Questions. Ms. Sternstein Zucker disclosed on the adverse licensing action history form that she had been reprimanded by the New Jersey Bar. The New Jersey Bar had a requirement that New Jersey attorneys had to have "a bona fide office" in New Jersey, with a sign out front and legal files inside. New Jersey Bar officials found that at one point her New Jersey office failed to have a sign in front or files in the offices. Applicant was "Admonished" to get into compliance and did. Ms. Sternstein Zucker provided documentation that as of November 6, 2008 she is in good standings with the New Jersey Bar.

There is no inaccuracy in Ms. Sternstein Zucker application for licensure such as indicates that she is untrustworthy.

The Department assessment is that if issued a preneed sales agent license, Ms. Sternstein Zucker would not pose an unreasonable risk to members of the public who might deal with her in preneed transactions. See Florida Statutes, section 497.466(5)(c). The Division recommends approval of the application.

MOTION: Mr. Helm moved to approve the application. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

C. Recommended for Denial

1. Anderson, Karin J (Appointing Entity: Rolling Oaks Cemetery, Inc.)

On the application received by the Department on August 13, 2008, the applicant answered "Yes" to Applicant Background Questions.

The criminal history includes three counts of Filing False Income Tax Returns relating to an incident in 1988, which occurred in Arizona. Ms. Anderson was not charged for this incident until 1993. As a result of the incident date, Ms. Anderson was required to disclose this offense on her application. Upon request Ms. Anderson submitted all supporting documentation.

The Department assessment is that the supporting documentation indicates that Ms. Anderson is untrustworthy. It is the Division's belief that if issued a preneed sales agent license, Ms. Anderson would pose an unreasonable risk to members of the public who might deal with her in preneed transactions. See Florida Statutes, section 497.466(5)(c)(2). The Division recommends denial of the application.

MOTION: Ms. Thomas-Dewitt moved to deny the application based on the criminal history. Mr. Jones seconded the motion, which passed unanimously.

VI. Application(s) for Preneed License

A. Recommended for Denial

1. Marvin C. Zanders Funeral Home, Inc. (Apopka)

Mr. Shropshire stated that the agenda represented that the application was recommended for approval. However, the Division is recommending denial and the applicant has been notified of this.

This application was denied at the April 2, 2008 Board Meeting on the grounds that the applicant failed to disclose a disciplinary action resulting from violation of Ch 497, Florida Statutes for unlicensed activity in the sale of preneed contracts.

The Department received the new application for Preneed License on October 14, 2008. No deficiencies were noted on the application. A funeral establishment license was obtained on December 1, 2004. The applicant previously held a Preneed License which expired on June 30, 2006 due to the applicant not renewing.

The Applicant's financial statements as of December 31, 2007 reflect the following:

Preneed Contracts	= \$	46,289
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	809,145

The Division recommends denial of the application.

Mr. Marvin Zanders stated that the Board previously denied his application as he was not present. Mr. Zanders advised he received a letter indicating he was short of two statements within his report that he failed to disclose. The Orange County judge inadvertently stated that Mr. Zanders embezzled money. Mr. Zanders states that was not true and requested that the Board accept information that confirms his statement. Mr. Zanders stated that he paid the fine and completed the probation imposed for misplacing funds, but did not steal any money. The money was not placed in the trust fund. There was more than enough money to pay off the clients. There were no complaints filed.

The Chair questioned why the information was not previously submitted to the Department.

Mr. Zanders responded that it was.

The Chair questioned whether the Division has access to the records Mr. Zanders is referring to.

Mr. Shropshire stated that he does not know what Mr. Zanders has in his packet. The Division has been in contact with Mr. Zanders and his attorney frequently over the past month requesting more information. Everything that was offered up until last week was included in the Board's packet. Mr. Zanders makes reference to a criminal charge of aggravated assault with a deadly weapon. That was in the criminal rap sheet, but did not appear in the Division's rationale for recommending denial.

Mr. Shropshire stated if the Board would like to pass on this item, Mr. Jim Gellepis would go outside with the applicant and look through the package to ensure what the applicant has, the Division has received.

The Chair stated that the item would be held in abeyance until the information has been reviewed.

Mr. Helm stated that Item #3 on the Division's remark sheet concerns him more than anything else. Mr. Helm questioned whether Mr. Zanders was recently disciplined.

Mr. Shropshire responded that in August 2007, Mr. Zanders was fined \$2500 upon allegations that in February 2006 he embalmed a body and caused it to be stored without refrigeration in the funeral home's garage area, and that upon inspection by Division staff, the body had insects on it and mold growing on it.

Mr. Baxley questioned whether the Department's recommendation of denial is based adverse license history.

Mr. Shropshire added that it is also based on the one criminal matter where Mr. Zanders pled guilty to felony violation of s. 497.495, F.S. by sale of preneed contracts without a valid certificate of authority in the period 1996 – 2001 in Circuit Court, Orange County, Florida.

The Chair questioned whether there would be anything Mr. Zanders' packet to refute #2.

Mr. Shropshire stated that he did not believe there would be, but would like the item tabled until Mr. Gellepis and Mr. Anthony Miller review the information.

MOTION: Mr. Jones moved to table the application until later in the meeting. Mr. Baxley seconded the motion, which passed unanimously.

A. Recommended for Approval

1. Vieira Funeral Homes, LLC d/b/a Beach Funeral Homes & Cremation Services (Indian Harbour Beach)

The Department received the application on October 13, 2008 and all deficiencies were resolved by November 5, 2008. Applicant is filing for application of licensure as a Preneed Main due to a change in ownership of the existing funeral establishment from David Molineaux of Molineaux Funeral Home, Inc. to Manuel and Isabel Vieira of Vieira Funeral Homes, LLC.

A new funeral establishment license was issued on August 8, 2008 and a completed background check of all officers revealed no criminal history. Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (SouthTrust Estate & Trust Co.) and pre-arranged funeral agreement. The Applicant's financial statements as of September 30, 2008 reflect the following:

Preneed Contracts	= \$	2,079,722
Required Net Worth	= \$	100,000
Reported Net Worth	= \$	1,648,134

The Division recommends approval of the application.

MOTION: Ms. Zippay moved to approve the application. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

VII. Application(s) for Preneed License Branch

A. Recommended for Approval - See Addendum B

The Division recommends approval of the application(s).

Mr. Brandenburg stated that the cities were reversed on the addendum.

Mr. Shropshire stated that the Division would make the change.

MOTION: Mr. Helm moved to approve the application(s). Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

VIII. Application(s) for Florida Laws and Rules Examination

A. Recommended for Approval - Addendum C

1. *Funeral Director and Embalmer - by Internship*
 - a. *Gross, Michael J*
 - b. *Kelly, Kathleen J*
 - c. *Macon, Richard E*
 - d. *Watkins, Danielle L*
2. *Funeral Director and Embalmer- by Endorsement*
 - a. *Crowder, Anthony J*
 - b. *Velez, Jr., Eusebio*
3. *Funeral Director-by Endorsement*
 - a. *Bouchard, Robert L*
 - b. *Trifone, Edward A*
4. *Direct Disposer*
 - a. *Pezzimenti, Paula M*

The Division recommends approval of the application(s).

MOTION: Mr. Baxley moved to approve the application(s). Mr. Jones seconded the motion, which passed unanimously.

IX. Application(s) for Internship

A. Recommended for Approval – See Addendum D

1. *Funeral Director and Embalmer*
 - a. *Brown, Jamal M*
 - b. *Chang, Susana E*
 - c. *Jackson, Antonio K*
 - d. *Johnson, Arthur D*
 - e. *Robins, Glen*
 - f. *Spates, Charles A*

The Division recommends approval of the application(s).

MOTION: Mr. Brandenburg moved to approve the application(s). Mr. Helm seconded the motion, which passed unanimously.

X Application(s) for Embalmer Apprentice

A. Recommended for Approval – See Addendum E

1. *Baldwin, Leola L*
2. *Wilson, Ralph E*

The Division recommends approval of the application(s).

MOTION: Mr. Helm moved to approve the application(s). Mr. Jones seconded the motion, which passed unanimously.

XI. Application(s) for Continuing Education Course Approval

- A. *Recommended for Approval – See Addendum F*
 - 1. *Florida Funeral Directors Association, Inc. #75*
 - 2. *Florida Morticians Association, Inc. #133*
 - 3. *FuneralCE #43*
 - 4. *Hospice Foundation of America #76*
 - 5. *Independent Funeral Directors of Florida Inc #135*
 - 6. *International Cemetery & Funeral Association #74*
 - 7. *McKissock, LP #7803*
 - 8. *National Funeral Directors Association #136*
 - 9. *Pinellas County Funeral Home Association #58*

The Continuing Education Committee and the Division recommends approval of the application(s).

MOTION: Ms. Thomas-Dewitt moved to approve the application(s). Ms. Zippay seconded the motion, which passed unanimously.

XII. Application(s) for Registered Training Facility

- A. *Recommended for Approval – See Addendum G*
 - 1. *Funeral Directing and Embalming*
 - a. *E Dale Gunter Funeral Home and Cremation Service -F040665 (St Petersburg)*

The Division recommends approval of the application(s).

MOTION: Mr. Brandenburg moved to approve the application(s). Mr. Baxley seconded the motion, which passed unanimously.

XIII. Consumer Protection Trust Fund Claims

- A. *Recommended for Approval - See Addendum H*

The Division recommends approval of the claim(s).

MOTION: Mr. Jones moved to approve the claim(s). Mr. Baxley seconded the motion, which passed unanimously.

XIV. Application(s) for Monument Establishment Sales Agent

- A. *Informational Item – See Addendum I*

These are clean application(s) where there have been no disciplinary or criminal history noted. This addendum is an informational report. No Board action is needed. The Division has issued these licenses as the Statute requires.

XV. Application(s) for Monument Establishment Retailer

- A. *Recommended for Approval*
 - 1. *Faith Chapel Marble & Granite, Inc. (Cantonment)*

The Department received the application on June 26, 2008 and all deficiencies were resolved by November 13, 2008. The Department completed a background check of all officers which revealed no criminal history. The Division recommends approval of the application.

MOTION: Mr. Helm moved to approve the application. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

2. *Sumner Marble & Granite Works, Inc. (St Petersburg)*

The Department received the application on August 5, 2008 and all deficiencies were resolved by August 26, 2008. The Department completed a background check of all officers which revealed no criminal history. Applicant previously held a license as a Monument Establishment Retailer from October 19, 1995 until September 30, 2007 which expired due to applicant not timely renewing. The Division recommends approval of the application(s).

MOTION: Ms. Thomas-Dewitt moved to approve the application. Mr. Brandenburg seconded the motion, which passed unanimously.

XVI. Monument Retail Sales Agreements:

A. *Faith Chapel Marble & Granite, Inc. (Cantonment)*

The Division recommends approval of the agreement.

Mr. Helm questioned whether the number would change on every contract.

Mr. Shropshire stated that the Division's understanding is this would be the sequential agreement number and would change.

MOTION: Mr. Baxley moved to approve the agreement. Mr. Jones seconded the motion, which passed unanimously.

B. *Peace River Valley Monument Co. (Punta Gorda)*

The Division recommends approval of the agreement.

MOTION: Mr. Helm moved to approve the agreement. Ms. Zippay seconded the motion, which passed unanimously.

XVII. Application(s) for Funeral Establishment

A. *Recommended for Approval*

1. *Cardwell Funeral Home Inc (Port Orange)*

The application for a Funeral Establishment was submitted on November 3, 2008. The application was incomplete when submitted and a deficiency letter was sent out to the applicant. All deficient items were returned on November 14, 2008. The Funeral Director in Charge will be Nancy Lohman (F030295). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on November 13, 2008. The application is recommended for approval pending subject to the following condition: Proof of sale to the new owner.

Ms. Wiener stated as a point of clarification that the current owner is Northstar. The name of the applicant is Cardwell Funeral Home, Inc. This is an application for change of ownership.

Ms. Dudley questioned whether there was a time limit contemplated for when the proof of sale would be submitted to the Division.

Ms. Weiner stated that the statute does not contemplate a time limit for proof of sale but the applicant would provide proof within 30 days.

Mr. Helm questioned whether Nancy Lohman would be the funeral director in charge, as she is also the person who signed the refrigeration agreement.

Ms. Weiner stated that this property is owned by the Lohmans. Ms. Lohman is not the FDIC of Baggett and Summers. She is simply the owner and signed the letter noting that the refrigeration and embalming would be provided there. The letter does not have to be signed by the FDIC.

MOTION: Mr. Baxley moved to approve the application pending proof of sale within 30 days. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

2. DeGusipe Funeral Home LLC d/b/a DeGusipe Funeral Home & Crematory (Maitland)

The application for a Funeral Establishment was submitted on September 15, 2008. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on October 30, 2008. The Funeral Director in Charge will be Todd DeGusipe (F042811). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on October 30, 2008.

The Division recommends approval of the application. Within the last 2 weeks, the Department received information that the applicant had been advertising, via a website, the services and new facility prior to being licensed. The website says "Coming Soon", but it also had information regarding preneed. The application has signed a citation agreeing to pay a fine of \$200, which is the amount of fine indicated in the proposed and pending citation rule for misleading advertisements.

The Chair questioned whether the website had been taken down.

Mr. Shropshire responded yes.

Mr. Brandenburg questioned whether there is a crematory at the location.

Mr. Todd DeGusipe responded currently there is no crematory.

Mr. Baxley questioned whether there is an issue advertising that you have a crematory when you do not.

Ms. Wiener stated that there is nothing specific in Chapter 497 that addresses this issue. The intent is to install a crematory very soon, as this is a start up operation.

Mr. DeGusipe stated that he contacted Mr. Aldon Asher whether this was an issue and he advised that it was not.

Mr. Shropshire questioned whether the applicant would be willing to strike “and Crematory” from the d/b/a name until such time as the crematory is installed.

Ms. Wiener stated that there is nothing in the law that prohibits this.

Mr. Shropshire stated that there is something in Chapter 497 that prohibits false and misleading advertisement. To suggest, in the name, that you have a crematory when in fact you do not could be viewed as misleading.

Ms. Wiener stated that this is a particularly frustrating situation. In this situation, as with the website situation, the applicant checked off with the State prior to getting this sign up and ready to go.

Mr. DeGusipe stated that through the entire process he tried calling to ensure he was in compliant. Mr. DeGusipe stated that he spoke with Ms. Jasmin Richardson and Ms. Crystal Grant. Ms. Grant even went so far as to open the website up and advised there would not be a problem since “Coming Soon” was included. Then Aldon Asher showed up to the location and advised of the complaints regarding the mentioning of preneed sales on the website. Mr. DeGusipe stated he also spoke with Timothy Wheaton. Mr. Asher also indicated there was not a problem with having “Crematory” in the name.

Mr. Shropshire questioned whether Mr. DeGusipe was under the impression that he had an understanding with Mr. Asher regarding the website as well.

Mr. DeGusipe responded no, because he had the understanding with Ms. Richardson and Ms. Grant.

Mr. Shropshire questioned when Mr. DeGusipe spoke with Ms. Grant.

Mr. DeGusipe stated he spoke with Ms. Grant about 2.5 months ago. Then Mr. Wheaton called and advised that the issue regarding “Coming Soon” on a website has not come up before. During their conversation, Mr. Wheaton questioned whether the applicant had submitted an application for preneed sales. Mr. DeGusipe responded that he did not and that was the reasoning behind “Coming Soon” and questioned whether he would need to have an application in prior to using “Coming Soon” and Mr. Wheaton then advised he did not have the answer to that.

Ms. Wiener stated obviously this is a gray area and this issue has continued to come up over the course of the last several meetings. At this point in time, there are no particular specific laws addressing the use of “Coming Soon” in advertisements. Ms. Wiener questioned when the crematory would be installed.

Mr. DeGusipe stated that the crematory has already been purchased, but they are still waiting for some permits.

Ms. Wiener questioned whether it would satisfy the Board if the applicant filed the application for the crematory within 30 days.

The Chair questioned how long has it been since the applicant requested the permits, as this is sometimes a lengthy process.

Mr. DeGusipe stated he is just waiting for the approval from the County.

Mr. Shropshire stated that the Division would continue in its recommendation that the application be approved subject to counsel's agreement that if the crematory is not installed within 60 day, the applicant will strike "and Crematory" from the d/b/a name.

Mr. DeGusipe requested 90 days.

Mr. Shropshire agreed.

MOTION: Mr. Baxley moved to approve the application with the condition that "and Crematory" would be removed from the d/b/a name if the crematory has not been completed within 90 days. Mr. Brandenburg seconded the motion, which passed unanimously.

DISCUSSION: Ms. Thomas-Dewitt requested that Board counsel research the statute pertaining to advertising, as "Coming Soon" appears to be a form of advertisement.

Ms. Dudley stated she would do the research and report back at the next meeting.

3. Dwight D. Bootle d/b/a Dwights Funeral Home (Miami)

The application for a Funeral Establishment was submitted on September 3, 2008. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on November 21, 2008. The Funeral Director in Charge will be Dwight Bootle (F045241). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on November 21, 2008. The Division recommends approval of the application.

MOTION: Mr. Helm moved to approve the application. Ms. Zippay seconded the motion, which passed unanimously.

4. Eric Antonio Brown I d/b/a Eric A. Brown & Son Funeral Home (Jasper)

The application for a Funeral Establishment was submitted on September 18, 2008. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on November 13, 2008. The Funeral Director in Charge will be Eric Brown (F043072). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on November 13, 2008. The Division recommends approval of the application.

MOTION: Ms. Thomas-Dewitt moved to approve the application. Ms. Zippay seconded the motion, which passed unanimously.

5. Paradise Memorial Funeral Home LLC

The application for a Funeral Establishment was submitted on September 8, 2008. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on November 19, 2008. The Funeral Director in Charge will be Vincent Brown (F044192). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on November 17, 2008. The Division recommends approval of the application.

MOTION: Mr. Jones moved to approve the application. Mr. Brandenburg seconded the motion, which passed unanimously.

6. Valerie Panciera Funeral Home Inc (Hollywood)

The application for a Funeral Establishment was submitted on November 7, 2008. The application was complete when submitted and a deficiency letter was not sent to the applicant. The Funeral Director in Charge will be Kevin Rieth (F028016). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on November 10, 2008.

There are complications regarding this application. Last week, the Division received information from the applicant's brother that the applicant had been operating as a funeral establishment without licensure. There is a civil dispute between the applicant and her brother. The complainant has submitted some materials to document the alleged unlicensed activity and the Division will look into that material and investigate and report to the Board as appropriate. In view of the late eleventh hour nature of the information and the context in which the information came to us, the Division contacted the applicant to advise that the recommendation would be that the Board table the matter to allow the Division to look into the matter, but that the applicant may want to appear if they felt that would be unfair.

Mr. William "Bill" Furlow, representing the applicant, urged the Board to grant the application. The Board is capable of drawing its own conclusions. The applicant has met all the statutory requirements for licensure. The complaint was not a consumer complaint, but a competitor's complaint who happens to be the applicant's brother. The Division has a policy and procedure for investigating and prosecuting complaints and the applicant requests that the procedure be followed. The Board may want to consider the effect of delaying the decision on this application. It is inappropriate at this time to talk about the merits of what is in the complaint. The applicant will cooperate fully with the Division to ensure both sides of the story are heard and the Board would be able to make a considered decision once that information is available. In the meantime, if the application is delayed and tabled, the applicant would never be able to recoup the time the business has not been allowed to operate.

Mr. Helm questioned whether the applicant has been operating.

Mr. Shropshire stated that the Division had received material in the complaint making allegations of unlicensed activity. The legal advisory may caution that the Board can not get into the details of the allegations because it could come before the Board subsequently.

Mr. Helm stated when the Board receives this type of information it does derail things because the allegations have to be checked out.

Mr. Furlow stated that the policies and procedures are to orderly intake complaints and based on the investigation, take certain actions. That is all the applicant is requesting in this case. If just an allegation of improper conduct is going to derail the licensure process, it is going to result in a very disorderly process. If the applicant has done anything of the sort of these allegations that would be brought to the Board's attention and what ever action deemed appropriate at that time would be taken. This is the way the normal license disciplinary process is meant to operate.

The Chair stated that if there is something illegal going on prior to the time someone is licensed, the Board has no knowledge of these actions. The Chair requested to hear the allegations.

Ms. Wiener stated that Mr. Panciera left the premises. His license was gone, but his sister and her husband have continued to conduct business there as if it were a licensed facility. There is evidentiary documentation in front of this Board that there is a lot of unlicensed activity occurring at that location by the applicant.

Mr. Furlow objected as the Board would be tainted with the material that should not be exposed before the Division has had the opportunity to determine what the facts truly are.

Ms. Wiener stated that the Division Director has been provided with allegations of significant unlicensed activity. The Board should not establish a precedence of rejecting the Division Director's request to table this matter while he conducts an investigation to determine if the applicant does meet the statutory requirements for licensure. Fitness to practice is a statutory requirement for licensure. At this point, with the allegations that have been provided to the Division Director, it does not appear that this Board is capable of determining that this applicant has met the statutory requirements.

The Chair questioned the Division's interpretation of this matter.

Mr. Shropshire stated that the Division has looked at the information submitted. In the experience of the Director and Division staff, whom the allegations have been discussed with, these allegations are not the type of allegations that the Board typically denies applications for. The Division is very sensitive to the possibility that the authority vested by statute and the Board or the Division could be used by any third party to furtherance of their private agendas and that is very much a consideration in the Division's mind at this time. If the Board were to overrule the Division's recommendation to table this item and proceed and approve this application and if counsel for the applicant were on the record to agree that the approval of the application would not be seen as a waiver of any past unlicensed activity in the right of the Division and Board to rule on that. In that case, the approval of the application would be entirely appropriate and would be a sound exercise of the Board's authority.

Mr. Furlow stated that the applicant would put on the record that this would not be considered as any type waiver and would encourage staff to investigate these allegations.

Ms. Wiener questioned whether if in fact there is proof that the applicant has been conducting a funeral establishment business at a location without any license that is not sufficient grounds for denial of the application for licensure.

Mr. Shropshire stated that the materials presented do not draw that picture.

Ms. Wiener disagreed. Much of the information presented is public record for anybody to see i.e. obituaries, yellow page advertisement, hospice advertisement, etc. That, in and of itself, is sufficient grounds for denial of the application if the allegations are proven correct.

Mr. Furlow stated that is the key.

Mr. Brandenburg questioned the deemer date of this application.

Mr. Shropshire stated that the deemer, as calculated by Division staff, is March 9, 2009.

Ms. Dudley stated there is a provision in 497.141(5) – "The Board may refuse to rule on an initial application for licensure by any applicant who is under investigation or prosecution in any jurisdiction

for an action which there is reasonable cause to believe would constitute a violation of this Chapter if committed in this state until such time as such investigation or prosecution is completed and the results of the investigation or prosecution are reviewed by the Board.”

Mr. Baxley questioned whether the allegations are of a civil matter or of a funeral practice matter.

Mr. Shropshire stated that there is an allegation of improper use of the complaint’s business name and there also allegations of unlicensed activity.

Ms. Wiener stated that the civil matter is actually being addressed in the Circuit Court. The complainant is simply making the Division aware because it has to do with the name of the business.

Ms. Zippay questioned whether the civil matter has been filed.

Ms. Wiener responded yes. It was set for hearing tomorrow. Unfortunately, the Courthouse is flooded.

Ms. Zippay questioned whether based upon the application that was submitted and the procedure that is usually followed the Board should not take into account what has been filed with the Division as matters that would come up before the Probable Cause Panel and whether this would be addressed by the Panel if this were an establishment that was already licensed. Right now the allegations are just muddying up what is being presented and the Board is now considering something that may or may not come before the Board.

Mr. Shropshire stated this is correct in the sense that if the Division assumes the allegations are considered baseless or if it is submitted to Probable Cause and it is considered that a citation is appropriate.

Ms. Wiener stated that the statute cited by Ms. Dudley contemplates the prelicensure investigation. The Division routinely attempts to make a determination as to whether or not licensees or applicants are fit to practice and significant violations of Chapter 497 would weigh heavily on this Board’s determination as to whether the applicant is appropriate for licensure.

Mr. Shropshire agreed and added that would continue to be the Division’s practice. The unique circumstances of this case are somewhat troubling to the Division.

Ms. Wiener stated that unfortunately, Mr. Panciera was unaware of the appropriate mechanism to bring this to the attention of the state so he contacted Ms. Wiener.

Mr. Brandenburg questioned whether the establishment passed inspection on November 10, 2008.

Mr. Shropshire answered yes.

The Chair questioned whether there had been any funerals performed since then.

Mr. Furlow stated that no illegal activities have occurred and it is really inappropriate to discuss this because it taints the Board. There is zero validity in any of these complaints.

Mr. Mark Panciera stated there have been full service funerals in the building since he left.

Ms. Dudley requested to conclude the discussion of the allegations of the complaint.

Mr. Baxley questioned whether one month period would be sufficient time for the Division to investigate the complaint.

Mr. Shropshire responded yes.

MOTION: Mr. Helm moved to defer the application to the next meeting. Ms. Thomas-Dewitt seconded the motion, which passed with one dissenting vote.

*****BREAK*****

*** **ITEM HELD IN ABEYANCE** ***

VI. Application(s) for Preneed License

A. Recommended for Denial

1. Marvin C. Zanders Funeral Home, Inc. (Apopka)

Mr. Shropshire stated that during the break, Division staff consulted with Mr. Zanders and reviewed the material Mr. Zanders brought with him. The only change that the materials make in our presentation, but it is a significant change, is that on our page 3 of the packet where we summarize the title of the offense as being Embezzlement – Failure to deposit/remit preneed contract monies, the word “Embezzlement” should be struck because it was not used in the court papers. The other materials that Mr. Zanders had related to an explanation on the charge of aggravated assault with a deadly weapon, but you will note that the Division has not put any weight whatsoever on that matter as being grounds for denial, as it is not relevant.

The Division continues in its recommendation for denial. If it pleases the Board, the Division could take Mr. Zanders material and if the Board wants to table the matter and Mr. Zanders is willing to waive any applicable deemer and make an additional packet to include all the materials he wants submitted to the January meeting.

Mr. Brandenburg questioned Mr. Zanders’ current vehicle for selling preneed.

Mr. Zanders stated that he currently is shut down and is not selling any preneed.

Mr. Helm questioned whether Mr. Zanders is disputing #3 on the Division’s Remarks.

Mr. Zanders stated he was fined and put on probation for one year.

Mr. Helm questioned whether Mr. Zanders has completed his probation.

Mr. Zanders answered yes and stated that the fine had been paid. Mr. Zanders stated that the reason he does not have a preneed license is his secretary failed to mail the renewal in on time.

The Chair questioned the last time Mr. Zanders sold preneed.

Mr. Zanders stated that he has not sold any preneed since his license expired.

Mr. Shropshire stated that the Division's records indicate that the applicant had been twice previously licensed to sell preneed. One license issued in May 1995, which was not renewed, expired in May 1996. Mr. Zanders subsequently applied and was issued a license in or about June 2003, which expired June 2006.

Mr. Zanders stated that the latter was the renewal his secretary failed to submit in time.

Mr. Shropshire stated that this would be Mr. Zanders' third preneed licensure.

The Chair stated that the Board would have to allow the Division to accept the additional information should the applicant waive the deemer or would have to go along with the Division's recommendation to deny the application.

Ms. Dudley stated that by statute, the application is required to be addressed by the Board and have a ruling on it within 90 days. The 90 days will have passed between now and the next Board meeting in January. The Board is contemplating taking in additional information from the applicant but can not do so unless Mr. Zanders agrees to waive the 90 day clause, as if the Board does not act within 90 days, the applicant would automatically receive a license.

Mr. Zanders agreed to waive his 90 day rights. Mr. Zanders questioned when he would be required to submit the additional information.

Ms. Dudley stated that the additional information would have to be submitted for the next Board meeting. The Board could still deny the application in January.

Mr. Zanders questioned what additional information is needed.

Mr. Gellepis stated that Mr. Zanders has already provided the information.

Ms. Dudley stated that the Board has a packet but does not have copies for each Board member to examine.

MOTION: Ms. Thomas- Dewitt moved to defer the application to the next meeting. Mr. Brandenburg seconded the motion, which passed unanimously.

XVIII. Application(s) for Removal Facility

A. Recommended for Approval

1. D&L Removal and Transport Inc (North Port)

The application for a Removal Service was submitted on October 22, 2008. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on November 14, 2008. The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on November 14, 2008. The Division recommends approval of the application.

MOTION: Mr. Jones moved to approve the application. Mr. Baxley seconded the motion, which passed unanimously.

XIX. Contract(s) or Other Related Form(s)

A. Atlantic Coast Life Insurance Company (Charleston, SC)

1. Preneed Funeral Agreement and Assignment - PN-10-FL

The Division recommends approval of the agreement pending Department receipt of two print-ready agreements within 60 days.

MOTION: Mr. Brandenburg moved to approve the agreement pending Department receipt of two print-ready agreements within 60 days. Mr. Jones seconded the motion, which passed unanimously.

B. Lincoln Heritage Life Insurance Company

1. Statement of Goods and Services FC-FL-08

The Division recommends approval of the agreement pending Department receipt of two print-ready agreements within 60 days.

MOTION: Mr. Helm moved to approve the agreement pending Department receipt of two print-ready agreements within 60 days. Mr. Jones seconded the motion, which passed unanimously.

C. Security National Life Insurance Company

1. Statement of Funeral Goods and Services SFGS (09/08) - FLC-FL-08

The Division recommends approval of the agreement.

MOTION: Mr. Baxley moved to approve the agreement. Ms. Zippay seconded the motion, which passed unanimously.

XX. Performance Bond(s)

A. CFS Funeral Services, Inc. d/b/a: Evergreen Memorial Gardens (Panama City)

Chapter 497.472 (3), Florida Statutes, states that a cemetery company which plans to offer for sale a space in a section of a mausoleum shall establish a preconstruction trust fund, into which the total amount to be deposited shall be the total cost of the project plus 10% of the cost.

Chapter 497.472 (8) specifies that in lieu of payments to a preconstruction trust fund, the cemetery company may deliver to the department a performance bond in an amount acceptable to the department. Rule 69K-7.005, F.A.C. states such bond shall be in lieu of the payments outlined in 497.472 (3). It further states that the amount of such bond shall be determined by the Board.

The Department has historically required, and the Board has approved, such performance bonds to be in the amount of 110% of the cost of a given project. As the cost of this project is estimated at \$162,603, the Department recommends approval of the performance bond pending a rider to the bond that increases its amount to a minimum of \$178,863, which is 110 % of the estimated cost of the project.

Mr. Jones questioned whether the cost and bond amount should be the same. There is a \$1000 difference.

Mr. Gellepis answered no. The bond amount stated is what was submitted. The Department recommends that it be increased to 110% which is the minimum of \$178,863. This has already been submitted.

MOTION: Mr. Helm moved to approve the agreement pending Department receipt within 45 days of two print-ready agreements. Mr. Brandenburg seconded the motion, which passed unanimously.

XXI. Chairman's Report (Oral)

The Chair stated that he did not have a report. However, Mr. Jones will report on the status of the Electronic Death Registration System.

Mr. Jones stated that the Department of Health is working on an Electronic Death Registration System. The requested Legislative Authority for this fiscal year was not granted. The Department is moving forward with the development of the system, which is basically 90% developed and is in the testing phase now. There is a legislative budget request in for FY 09/10. Hopefully, it goes through and would be used for training dollars. If it goes through, in the summer of 2009, a pilot will be started with the Electronic Death System in Duval County and look at rolling out from there. If it does not go through, it would hamper the roll out plans. The system is being tested and looks good.

XXII. Executive Director's Report

A. Finance Committee (verbal report re initial meetings)

The Finance Committee of the Board met in November and will meet again in December, but the date has not been determined. The notice will be published and an email will be sent out to interested parties. Mr. Shropshire anticipates working with the Committee Chair, Les Klein, to make a report and recommendation at the January 2009 Board meeting concerning fee increases. The Board is currently scheduled to meet by teleconference on January 7, 2009. However, due to the urgent nature of the budget situation Mr. Shropshire advises the Board that it is necessary to meet in person to receive the report and recommendation from the Finance Committee concerning fee increases to discuss same and to have the Board make a determination regarding fee increases, which would then result in rule making activity to put the fee increases in place.

The Board could meet on any day within the first 2 weeks, as all the dates have been noticed, which is January 2 thru 14 inclusive, or any day within the last week, January 26 thru 30 inclusive. The Board could not meet on January 15 thru 21 inclusive as Mr. Klein has an irrevocable conflict for that period of time.

Mr. Shropshire emailed the Board members on this subject on November 18th suggesting January 14th and 15th and asking the Board members to email back if there was a conflict. Mr. Baxley was the only member who has replied to date that he had a conflict with those dates. It would appear that the best option would be to either stick with the January 7th date or January 14th, both in person and in Tallahassee.

Mr. Helm questioned whether Mr. Baxley could make the meeting on the 7th.

Mr. Baxley answered yes.

Mr. Brandenburg questioned whether there would be ample time to have the meeting of the 7th published.

Mr. Shropshire stated that the date has already been published.

The Board agreed to meet in person on January 7th in Tallahassee.

B. Legislative matters (verbal report)

The Division's package of proposals has been published on the website for two months. Mr. Shropshire stated that he received word from Mr. Carlson, the Department's Legislative Affairs Coordinator, that the CFO has approved moving forward with the packet, but there are no details regarding who is sponsoring it.

C. 2009 Proposed Meeting Schedule (January thru June) (see attachment)

The 2009 Proposed Meeting Schedule, thru June 24th was presented to the Board. Customarily, a schedule for the entire year is done, but due to the budget situation, there are more meetings in Tallahassee. In the January Board packet it is anticipated that the Board would be provided with the results of a study done which documents that overall, meeting in Tallahassee is less expensive to the Board. Although, the Division would prefer meeting in Orlando in April as that is a fairly central location.

Mr. Brandenburg questioned whether the intent was to have a conference call and an in person meeting in June.

Mr. Shropshire answered yes. The June conference call would be routine business and the June 24th meeting would be for preneed renewals.

The Board agreed with the proposed schedule.

D. Report from Richard Baldwin, Examiner for Menorah Gardens, Aug. '08 – Sept. '08 (see attachment)

The Board members received a copy of the report from Richard Baldwin for the month(s) of August '08 - September '08. Mr. Baldwin continues to assist consumers.

XXIII. Office of Attorney General's Report (Oral)

Ms. Dudley advised that she did not have a report.

XXIV. Administrative Report

The Administrative Report was submitted to the Board on the Agenda.

XXV. Disciplinary Report

The Disciplinary Report was submitted to the Board on the Agenda.

XXVI. Adjournment

At 11:44 a.m., the meeting was adjourned.