



Broad & Gales Creek Community Association, Inc.

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<http://broadandgalescreekca.org/>

Tony Bello, President
Steve Phifer, Vice President

Sallie Salter, Secretary
Jeff Batten, Treasurer

Minutes of the Special Meeting February 8, 2022

Meeting was called to order at 6:30PM

Board Members Present:

Tony Bello, Steve Phifer, Robert Lewis, Missy Rhodes, Dusty Desteunder

Community Members Present: Melinda Ward, BJ Reed, Mr. & Mrs. Henry Garcia, Milon Morton, Chuck Kitchen (Board Attorney)

President:

1. Pledge of Allegiance
2. Roll Call
3. Agenda verbally presented.
 - a. Q&A session with Board Attorney Chuck Kitchen

New Business:

1. Tony Bello expressed the concern of the board and community members on the status of keeping sales of cemetery plots "On Hold" due to legal considerations pending further guidance.
 - a. The board cannot prevent anyone from being buried in plots that have been purchased during terms of previous boards.
 - b. Sallie Salter has expressed interest in the possibility of her church "Compassion Ministries" taking ownership of the cemetery, pending further information. They are a 501(C)3 nonprofit organization. No decision has been made yet.
2. Chuck Kitchen expressed that in order for a business or association to operate a public cemetery in North Carolina they must be licensed.
 - a. One issue is money that is involved.
 - i. \$1,600.00 application filing fee with the state board. Only initial, not yearly.
 - ii. A perpetual care trust fund with an initial deposit of \$50,000.00 is also required.
 - iii. Exemptions for both the application fee and trust are government entities like the county, or a church.
 - b. If a church were to take over, the community association could not run the operation of the cemetery, however, individuals could volunteer for the church and operate under those stipulations.
 - c. Violation is a Class I Felony for operating a cemetery without a license from the state of North Carolina. The board members of an association could be held liable for a Class I Felony. It is very serious.
 - d. The only other exception that Mr. Kitchen has found that was exempt is a fraternal organization that has been operating a cemetery since 1925.
3. Steve Phifer mentioned that if the association goes the route of paying the application filing fee and \$50,000.00 trust, yearly reports are required by the state.
4. Robert Lewis asked Mr. Kitchen if he knows of any person or association that has been cited for operating a cemetery that was not licensed. Mr. Kitchen responded that he did not know of any but was not willing to ask the state pending an investigation. He did express that every day that the cemetery

was in operation without a license is a separate offense (365 felony charges per year). He doesn't think that would happen, but it could be an option.

5. Mr. Kitchen expressed that the only litigation with the operation of cemeteries dealt with embezzlement, not operation. He suggested that since operating a cemetery without a license is such a serious offense, it is rarely done. Even though a Class I felony is the lowest felony, it is still a felony.
6. Steve Phifer mentioned that he spoke with a funeral home to see if they were interested in taking over the cemetery, however, they declined. They did mention to him that there was an exemption if plots were not sold but donations were accepted for upkeep, however, documentation could not be produced.
 - a. Mr. Kitchen expressed that you would not find this documentation simply because it does not exist. Bottom line, if you operate a cemetery, you must be licensed.
7. Robert Lewis referred to the original cemetery and questioned how they operated that cemetery without a license.
 - a. Milon Morton mentioned that years ago, there was a church on the property that operated the original cemetery. Unsure of who it is currently deeded.
8. Mr. Kitchen recommended that a church take over and volunteer for the church and it would not appear any different to the community. He recommended that if a church does take it over, they would need to obtain commercial liability insurance, 1-2 Million dollar policy or enough to pay the attorney fees. This would cover any injuries to individuals that may happen.
 - a. Milon Morton questioned if a sign was posted "No Trespassing" if that would cover them.
 - b. Mr. Kitchen expressed that in North Carolina, this would not be the case. The law was changed several years ago that disregarded postings. They could be charged with trespassing, however, that does not regard injury or negligence.
9. Tony Bello mentioned a few questions that Sallie Salter had, since she was unable to attend the meeting.
 - a. Cost? This was addressed since churches are exempt
 - b. Churches are exempt from property taxes but may have to apply each year.
10. Robert Lewis asked how many plots have been sold over the past two years (Current board).
 - a. Tony Bello and Steve Phifer expressed that there have been no plots sold.
11. Robert Lewis inquired about "Brokerage" exemption with 5 plots a year or less that were sold.
 - a. Mr. Kitchen expressed that the association would not qualify for that since it is a public cemetery operated by an association, not a brokerage.
12. Melinda asked for the general statute location
 - a. Mr. Kitchen expressed that it is under NC General Statute, Article 65-47 (scope).
13. Mrs. Garcia asked if there was any liability for anyone that had purchased plots and were buried.
 - a. Mr. Kitchen expressed that there is no liability since the individual owns the plot that was filed with the register of deeds.
 - b. The issue at hand for plot owners is "Who will operate the cemetery in the future."
14. Mr. Kitchen referenced the "That's the way it has always been" philosophy. Scenario: This would not work in case a whistleblower or disgruntled fire department employee files a complaint with the state in order to get back at the association.
 - a. This situation could spawn an investigation.
15. Steve Phifer mentioned that the board has done it's due diligence over the past two years by ceasing all plot sales until a church would take it over.
16. According to Mr. Kitchen, there would be a minimal attorney fee to transfer the deed to an incorporated church then they could operate immediately.
17. Tony Bello stated that he would assign the standing cemetery committee the duty of actively seeking out local churches, including Sallie's ministry, about taking over the cemetery. He recommended that concerned community members need to work with the committee and take part in the communication.
 - a. Robert Lewis mentioned that the Broad Creek Church of God owns property adjacent to the cemetery.

