

October 9, 2014

GOVERNMENT AFFAIRS COMMITTEE
REPORT NO. 12

ALL MEMBERS PRESENT.

CHAIR MILLS PRESENT AS EX-OFFICIO MEMBER.

1. INTRO. 18-4 (2014)

HARDWICK

WHEREAS, on October 18, 1990, in accordance with the provisions of Section 1506(c) of New York State Not for Profit Corporation Law (“NFPL”), this Honorable Body considered the application of Sheridan Park, Inc., for consent to acquire cemetery lands for the purpose of constructing a crematory (“Crematory”) at or around the property located at 2600 Sheridan Drive in the Town of Tonawanda; and

WHEREAS, on October 18, 1990, by resolution referenced (Int. 21-14), this Honorable Body granted the referenced application made by Sheridan Park, Inc., based on its determination that such application would not adversely affect the public health and welfare; and

WHEREAS, the resulting crematory began operations in August 1991; and

WHEREAS, Erie County government, as well as the New York State Department of Environmental Conservation (“DEC”) and other state and local governmental entities, began to receive complaints of offensive odors and noise from neighborhood residents at the time the Crematory opened; and

WHEREAS, the Office of the New York State Attorney General (“AG”) has maintained a file in relation to the Crematory which includes 112 resident complaints about offensive odors, 61 descriptions of Crematory-caused quality of life impacts (being driven indoors, forced to keep windows closed, giving up gardening etc.) and physical symptoms (eye and throat irritation, nausea, etc.); 74 reports of visible smoke from the Crematory stack; 53 complaints about excessive noise, and 18 reports of Crematory soot deposits on residential property; and

WHEREAS, in addition to individual complaints, six petitions or multiple signature letters were forwarded to governmental entities by neighborhood residents. There are a total of 215 signatures contained in the six documents. They describe the Crematory’s noise, odor and soot emissions and express concerns regarding health and environmental impacts. 84 people signed a November 1991 letter and petition to the Town of Tonawanda; 14 people signed a January 1997 letter to Erie County; 15 people signed a July 7, 2009 letter to U.S. Senator Charles Schumer; 689 people signed an August 8, 2009 petition to the Town of Tonawanda, 23 people signed a November 17, 2009 letter to the New York State Attorney General; and 11 people signed a 2010 letter to both Tonawanda and Erie County government; and

WHEREAS, in 2012 residents worked with the Clean Air Coalition of Western New York and gathered at least 639 petition signatures and postcards regarding the Crematory’s nuisance impacts by going door to door in the neighborhood and attending local meetings, and

WHEREAS, as a result of the longstanding complaints about the Crematory from nearby residents, the DEC referred the matter to the AG for court enforcement of violations of 6 New York Codes Rules and Regulations Article 211, which prohibits the emission of odors, dust, or noise that unreasonably interfere with public health or comfort; and

WHEREAS, in order to attempt to avoid the need for protracted litigation, Sheridan Park, Inc., and the AG agreed to an Interim Assurance of Discontinuance in which Sheridan Park, Inc., agreed to cease operation of the Crematory effective July 22, 2012 for a period of at least six months, during which time they would apply for the required approvals to move the Crematory or, should those approvals be unobtainable, submit an approvable plan for the modified operation of the Crematory at the current location; and

WHEREAS, the Crematory has not operated since July 22, 2012, approvals to relocate have not been granted, and no plans have been submitted to the AG; and

WHEREAS, in response to Sheridan Park, Inc., public statements of their intent to reopen the Crematory on or about July 2013, the AG brought a petition, which sought to enjoin Sheridan Park, Inc., from reopening or again operating the Crematory anywhere on their Sheridan Drive location. In support of such petition, the AG filed 43 sworn Affidavits collected from neighborhood residents in 2013 which describe significant life disruptions and/or physical symptoms caused by the Crematory’s noise and emissions. Residents were driven indoors by offensive odors and/or noise, had gardening activity, backyard pool use and neighborhood walks disrupted; and

WHEREAS, the Affiants further described suffering physical symptoms such as nausea (including dry heaves and choking), respiratory system and eye irritation, and the taste of Crematory soot in their mouth; and

WHEREAS, the DEC has conducted sampling to verify that Crematory operations result in human particulates being deposited in the neighborhood and found that samples collected from residents properties matched ash collected from the Crematory and therefore concluded that Crematory ash was being deposited on residents properties; and

WHEREAS, Erie County Legislative Resolution Reference (Int. 21-14), which approved the application of Sheridan Park, Inc., to acquire cemetery land, is no longer legally relevant since Sheridan Park, Inc., has not operated the Crematory located at 2600 Sheridan Drive since July 22, 2012; and

WHEREAS, it has been clearly established that the public's health and welfare has been and will continue to be negatively affected should the Crematory recommence operations; and

WHEREAS, NYS NFPL permits for the consent by this Honorably Body for a cemetery corporation to acquire cemetery land only to the extent that it does not negatively affect the public health and welfare.

NOW, THEREFORE, BE IT

RESOLVED, that pursuant to New York State County Law Section 153(6), and any other applicable provisions of law, the October 18, 1990 Erie County Legislative Resolution Referenced by Int. 21-14 which purported to provide consent to Sheridan Park Inc., to acquire cemetery land on and around property located at 2600 Sheridan Drive in the Town of Tonawanda is hereby repealed in its entirety and such consent is hereby rescinded; and be it further

RESOLVED, that the invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision which shall remain in full force and effect; and be it further

RESOLVED, that copies of this resolution are to be forwarded to the Erie County Attorney and to the Sheridan Park, Inc., and be it further

RESOLVED, that this resolution shall take effect immediately.
(4-2) Legislators Dixon & Morton voted in the negative.

KEVIN R. HARDWICK
CHAIR