

When Your Board Has to Make That Big Decision

by Daniel M. Isard, MSFS

THE CEMETERY HAS BEEN IN OPERATION FOREVER. You have been on the board for a long time. But times are changing. Sales are impaired. Cash flow is tight. You need to reconfigure your master plan to be more cremation focused. Finding good management for day to day is worrisome. On top of that, there is going to need to be an infusion of capital and you can't find a bank to loan to your cemetery. What do you do to resolve this seeming impasse?

This conundrum is not limited to non-profit cemeteries. It is a similar matter for public cemeteries owned by municipalities. It is also an ongoing issue for church cemeteries. As you attend ICCFA meetings and see old friends, a few of them have chosen to try and sell their cemeteries. You now understand why they chose that decision.

You ponder ... who to sell to; when do you sell; how in the world do you sell; what are the economic terms of a possible sale; and what does your nonprofit corporation do with the proceeds of a sale? *Read on.*

Antiquated Thinking

In the past four decades, I have seen many nonprofit corporations sell their cemetery. The cemetery is simply an asset owned by the nonprofit entity. This asset produced income as well as fulfilled the beneficial intent for the nonprofit. That income in years past was more than sufficient to produce the funds for the nonprofit entity.

But as if the nonprofit owned a buggy whip plant 100 years ago, there was a time when the nonprofit board should have changed its underlying asset. The same holds true of cemetery nonprofits.

Pre-pandemic, we had almost 2.8 million deaths and with the pandemic almost 3.4 million deaths. However, due to cremation we have no more burials than we had in 1980!

If a cemetery has not redesigned its master plan to incorporate options for the inurnment of human remains, it is only speaking to half of the possible audience.

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All this takes leadership and money. It takes a sales team to make advance sales. Lacking this, for the sake of the nonprofit entity, your board should be prepared to take action or have an empty buggy whip factory on your hands.

Change Your Methodology

So how does the municipality or the nonprofit board take the steps to understand what and how to sell? The methodology is not very different from selling a cemetery owned by a for-profit enterprise.

First, have the cemetery business valued by a qualified appraiser. Do not use a local realty appraiser as this is not being sold as "land." It is being sold as a cemetery, which is a business. Use a qualified cemetery appraiser.

One key point on the valuation is the Perpetual Care (PC) or Endowment Care Fund. You might not have been required to have a PC trust either due to state exemption or the age of the cemetery predates the PC laws.

You probably have been funding the expenses of maintenance out of the general revenue of the business. However, this is going to be reducing the earnings since there is no trust fund income to offset some of these expenses.

Second, make sure your nonprofit is properly written. Have you ever seen an old church that is not being used by the congregation that built it? I have seen churches that were originally built as synagogues still engraved with Hebrew lettering in their structure. The original builders never perceived that building would be anything other than a synagogue, but times change.

Your nonprofit was probably created never anticipating that it would not own a cemetery. The lawyers are going to have to amend that. It can still be a nonprofit entity. But rather than getting income from cemetery operations, it will now and for the future be getting income from investments. The purpose of the nonprofit can still have a beneficial purpose, but how it fulfills that purpose needs to be reconfigured.

When soliciting for buyers, you need to make sure they have complete review of the property. There can be environmental issues, structural issues, or operating matters that you have learned to rejigger. You have to teach these things to the next owner. Your recordkeeping should be well-organized and computerized, not in 3"x5" cards in a shoe box held for safekeeping in various cabinets.

Post-sale, your board has two options:

- **Option 1.** Maintain the Charitable Purpose. You can continue to invest the money and distribute the earnings to various qualified charities. That will generally keep your organization within its nonprofit qualification.
 - **Option 2.** Merge the Nonprofit with another Nonprofit. The laws on nonprofits usually allow them to liquidate so long as their assets continue to be in the nonprofit world. This might be a time that you and your board merge your assets with another organization of similar purpose.
- For municipalities that want to get out of

owning a cemetery, it is less legally difficult but more politically difficult. You might need committees to meet, input from the community, and other steps; but the process is the same.

In reality, even with three million U.S. deaths, the cemetery need with a 50% plus (and rising) cremation rate means that almost all cemeteries will have a longer time to fill their inventory. What used to be 1,000 interments in an acre, could be 40,000 interments and inurnments in that same acre using ground and above-ground designs.

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