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MICHAEL A. SIRAGUSA  
ERIE COUNTY ATTORNEY

## COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE  
DEPARTMENT OF LAW

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

February 12, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Sheridan Park, Inc. and Amigone Funeral Home, Inc. v. Erie County Legislature and County of Erie</i>
Document Received:	Verified Petition
Names of Petitioners:	Sheridan Park, Inc. and Amigone Funeral Home, Inc.
Claimant's attorney:	Lippes Mathias Wexler Friedman LLP 665 Main Street, Suite 300 Buffalo, NY 14203-1425

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

MAS:dld

Enc.

Comm. 4D-14  
Page 1 of 133

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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SHERIDAN PARK, INC.  
2598 Sheridan Drive  
Tonawanda, New York 14150

and

AMIGONE FUNERAL HOME, INC.  
2600 Sheridan Drive  
Tonawanda, New York 14150

Petitioners,

Against

ERIE COUNTY LEGISLATURE  
92 Franklin Street  
Buffalo, NY 14202

and

COUNTY OF ERIE  
95 Franklin St., Suite 1634  
Buffalo, NY 14202

Respondents.

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**NOTICE OF VERIFIED  
PETITION**

Index No. I-2015000026

Assigned Judge:  
Hon.

This paper received at the  
Erie County Attorney's Office  
from Don Garvasion  
the 12 day of Feb, 2015  
at 10<sup>45</sup> a.m./p.m.

**FILED**  
ACTIONS & PROCEEDINGS  
FEB 12 2015  
ERIE COUNTY  
CLERK'S OFFICE

Kenneth B. Kelly  
Assistant County Attorney

**PLEASE TAKE NOTICE**, that upon the annexed Verified Petition, verified February 11, 2015 and the exhibits annexed thereto, and upon all proceedings had herein, application and petition will be made to this Court by and on behalf of SHERIDAN PARK, INC., and AMIGONE FUNERAL HOME, INC. (collectively the "Petitioners") at the Erie County Court Building located at 25 Delaware Avenue, Buffalo, New York 14202, on the \_\_\_\_ day of \_\_\_\_\_, 2015, at \_\_\_\_\_ or as soon thereafter as counsel can be heard for an order and judgment, pursuant to Article 78 of the NY CPLR, as follows:

(a) a determination that the Erie County Legislature acted in violation of CPLR §7803(2) without or in excess of its jurisdiction when it passed the October 16, 2014 resolution rescinding its consent to the Petitioner's acquisition of cemetery lands; and

(b) a determination that the October 16, 2014 resolution passed by the Erie County Legislature is void as its passage was arbitrary and capricious in violation of CPLR § 7803(3); and

(c) a declaratory judgment pursuant to CPLR § 3001 that the Erie County Legislature was without authority to pass the October 16, 2014 resolution to rescind or revoke the consent issued on October 18, 1990, and that because of the absence of authority the Legislature's October 16, 2014 resolution is void; and

(d) a declaratory judgment pursuant to CPLR § 3001 limiting the scope of the October 16, 2014 resolution to a rescission of consent to the acquisition of cemetery lands that has no impact on the continued operation of a crematorium on cemetery lands lawfully acquired before the consent to acquisition was rescinded.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to CPLR § 7804, answering affidavits or motions, if any, are to be served upon the undersigned at least five (5) days prior to the return date of this petition.

Erie County is designated as the venue for this proceeding pursuant to CPLR § 506 on the basis that Erie County is located within the Judicial District where Respondents made the determination complained of herein.

Dated: Buffalo, New York  
February 11, 2015

**LIPPES MATHIAS WEXLER FRIEDMAN L.L.P.**

By:

  
Dennis C. Vacco, Esq.  
Stacey L. Moar, Esq.  
*Attorneys for Petitioners*  
665 Main Street, Suite 300  
Buffalo, NY 14203-1425  
Tel: (716) 853-5100  
Fax: (716) 853-5199

To: Erie County Legislature  
92 Franklin Street  
Buffalo, NY 14202

Michael A. Siragusa, Esq.  
Erie County Attorney's Office  
95 Franklin St., Suite 1634  
Buffalo, NY 14202

Mark C. Poloncarz  
Erie County Executive's Office  
Edward A. Rath County Office Building  
95 Franklin Street, 16th Floor  
Buffalo, New York 14202

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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SHERIDAN PARK, INC.  
2598 Sheridan Drive  
Tonawanda, New York 14150

and

AMIGONE FUNERAL HOME, INC.  
2600 Sheridan Drive  
Tonawanda, New York 14150

Petitioners,

For a Declaratory Judgment Pursuant to Article  
30 of the Civil Practice Laws and Rules

Against

ERIE COUNTY LEGISLATURE  
92 Franklin Street  
Buffalo, NY 14202

and

COUNTY OF ERIE  
95 Franklin St., Suite 1634  
Buffalo, NY 14202

Respondents.

**SUMMONS**

Index No. *I 2015-000026*

Assigned Judge:  
Hon.

**FILED**  
ACTIONS & PROCEEDINGS  
FEB 12 2015  
ERIE COUNTY  
CLERK'S OFFICE

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**TO THE ABOVE NAMED RESPONDENTS:**

**YOU ARE HEREBY SUMMONED** to answer the Petition in this action, and to serve a copy of your answer, or, if the petition is not served with a summons, to serve a notice of appearance, on the Petitioners' attorney(s) within 20 days after the service of this summons, exclusive of the day of service, or within 30 days after completion of service where service is

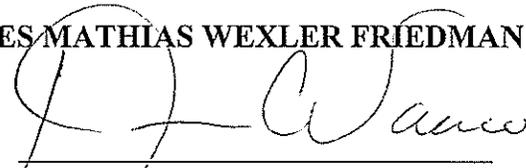
made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment may be taken against you by default for the relief demanded in the Petition.

Erie County is designated as the venue for this proceeding pursuant to CPLR § 506 on the basis that Erie County is located within the Judicial District where Respondents made the determination complained of herein.

Dated: Buffalo, New York  
February 11, 2015

**LIPPES MATHIAS WEXLER FRIEDMAN L.L.P.**

By:



Dennis C. Vacco, Esq.

Stacey L. Moar

*Attorneys for Petitioners*

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Buffalo, NY 14203-1425

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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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2598 Sheridan Drive  
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Buffalo, NY 14202

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COUNTY OF ERIE  
95 Franklin St., Suite 1634  
Buffalo, NY 14202

Respondents.

**VERIFIED PETITION**

Index No. *I 2015 000826*

Assigned Judge:  
Hon.

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ERIE COUNTY  
CLERK'S OFFICE

FILED  
ACTIONS & PROCEEDINGS  
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ERIE COUNTY  
CLERK'S OFFICE

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The Petitioners, SHERIDAN PARK, INC. and AMIGONE FUNERAL HOME, INC. by and through their attorneys, LIPPES MATHIAS WEXLER FRIEDMAN LLP as and for their Verified Petition herein, comes forth and allege as follows:

1. Anthony P. Amigone, Sr. is the Chairman of the Board of Amigone Funeral Home, Inc. ("Amigone").
2. Amigone is a New York State Business corporation formed in 1958.
3. Amigone is a "funeral entity" as defined under New York law. Pursuant to New

York Not-For-Profit Corporation Law "funeral entity" is defined as:

a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services; or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or an officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

4. Anthony P. Amigone, Sr. is also the President of Sheridan Park, Inc. ("Sheridan Park").

5. Sheridan Park is a New York State corporation organized in 1991 pursuant to Article 15 of the New York Not-For-Profit Corporation Law which provides for the regulation of cemeteries and crematoriums in New York State.

6. Venue is proper under CPLR § 506 because the events given rise to this Petition occurred within Erie County and the action complained of herein was taken by the Erie County Legislature.

7. Pursuant to Article 15, all cemeteries and crematoriums are regulated by the New York State Department of State's Cemetery Board ("Cemetery Board"), the New York State Department of Environmental Conservation ("NYS DEC"), and the New York State Department of Health.

8. Sheridan Park has legally operated the crematorium since 1991.

9. The address of the crematorium is: 2600 Sheridan Drive, Tonawanda, New York, 14150. It is located on a commercial street that abuts a residential neighborhood.

10. Sheridan Park is one of seven (7) crematoriums in Erie County as listed on the Cemetery Board's "NY Crematory Listing." A copy of the list is attached hereto as **Exhibit A.**<sup>1</sup>

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<sup>1</sup> Forest Lawn Cemetery is listed as having an on-site crematory, however, there is no crematory located on the Forest Lawn grounds. Rather, Buffalo Cremation Company, which is located across the street from Forest Lawn,

11. The Erie County Legislature (“Legislature”) is a municipal body organized and operated pursuant to New York County Law and the Charter of the County of Erie.

12. Erie County is an administrative division of the State of New York subject to the Laws of the State of New York and the Charter of Erie County.

13. On October 18, 1990, in accordance with New York Not-For-Profit Corporations Law §1506 the Legislature passed a resolution (the “1990 Resolution”) providing its consent for Sheridan Park to acquire land on Sheridan Drive that would be designated as having cemetery status by the Cemetery Board.

14. New York Not-For-Profit Corporations Law § 1506 specifically requires that consent of the legislative body of the Erie County be obtained before a cemetery corporation acquires property within the County. Specifically, New York Not-For-Profit Corporations Law §1506(c) provides:

Cemeteries in Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam and Erie counties. A cemetery corporation shall not take by deed, devise or otherwise any land in the counties of Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam or Erie for cemetery purposes, or set apart any ground therefor in any of such counties, unless the consent of the board of supervisors or legislative body thereof, or of the city council of the city of New York, in respect to Kings or Queens county, be first obtained . . .

15. New York Not-For Profit Corporation Law § 1506 further provides “[s]uch consent may be granted upon such conditions and under such regulations and restrictions as the public health and welfare may require.”

16. Not-For Profit Corporation Law § 1506 also states “[i]f such consent is granted the corporation may take and hold the lands designated therein.”

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handles all of its cremations. It is important to note that Buffalo Cremation Company sits directly behind a residential neighborhood, is in close proximity to Hutch’s restaurant, and provides cremation services seven days a week from 6:30 a.m. until 6:30 p.m.

17. The consent provided by the Legislature in the 1990 Resolution, permitted Sheridan Park to acquire land that was intended to be designated and used as cemetery land as is defined under New York law.

18. The Legislature's consent to the acquisition of the land, which allowed the Cemetery Board to issue the designation of cemetery land status, was a condition precedent to the lawful operation of a crematorium on Sheridan Drive.

19. In relevant part the resolution stated: "Resolved, that the application of the Sheridan Park, Inc., [for legislative consent designate land on which a crematory shall be constructed as cemetery land] should be granted and that such application does not adversely affect public health and welfare. . ." A copy of the 1990 Resolution is attached hereto as **Exhibit B**.

20. The text of the 1990 Resolution has language indicating that the Legislature was giving consent to operate a crematory rather than simply stating that its consent was for acquisition of land intended for cemetery purposes. The Legislature did not have authority and does not have authority to allow or prohibit operation of a crematory- its sole ability under New York Not-For-Profit Law § 1506 was to permit the acquisition of land to be used for cemetery purposes. Regardless of the imperfect nature of the language used, in the subsequent resolution that purports to revoke consent the Legislature specifically refers to the consent to acquire property- not to operate a crematory.

21. As evidenced by **Exhibit B**, the consent granted by the Legislature was without restrictions or conditions.

22. A review of Article 15 of the New York Not-For-Profit Corporations Law shows that there is no language allowing for consent provided under § 1506 to be revoked, rescinded, or

modified after the initial grant of consent to acquire land is given by the Legislature.

23. Moreover, there is no evidence in the resolution that the Legislature or any municipal agency retained the right to revoke the consent or take any regulatory action related to the Sheridan Park crematory.

24. The consent merely allows the cemetery corporation to acquire property. Once the property is acquired, the entire transaction is completed. Therefore, even if the Legislature was legally permitted to revoke consent it logically follows that the revocation must occur prior to the acquisition of property. Otherwise it would undermine and/or usurp the authority of the Cemetery Board.

25. Under New York law the Legislature has no authority to regulate cemeteries or crematoriums. The sole authority provided to the Legislature is to grant or deny an application to acquire land that will be designated as "cemetery land." The Legislature has no continuing supervisory powers or regulatory authority over not-for-profit cemeteries or crematories.

26. The regulatory authority over the operation of cemeteries and crematories rests exclusively with the Cemetery Board, NYS DEC, and the Department of Health.

27. As a non-profit corporation, the entity responsible for the crematory may also be overseen, to a limited degree, by the New York State Office of Attorney General.

28. Since the Legislature gave its consent in 1990, Sheridan Park acquired property, received approval from the Cemetery Board, incurred significant expense to construct the crematory, and obtained all of the permits necessary to operate a crematory at its Sheridan Drive location.

29. Indeed, the Legislature's approval of Sheridan Park's acquisition of property to be designated as "cemetery land" conferred upon Sheridan Park a property right which has since

vested and has been enjoyed for over two (2) decades without interference from the Legislature.

30. The crematorium has complied with all NYS DEC and Cemetery Board rules, regulations, and requirements since it began operating in 1991.

31. The NYS DEC, which has repeatedly reviewed the crematory while in operation, has only issued one single notice of violation to Sheridan Park. The violation related to the opacity of smoke coming from its chimney.

32. Beginning in September of 2014, the Legislature turned its attention to the crematorium and began holding hearings seeking to rescind its original consent to acquire land.

33. At the urging of Legislator Kevin Hardwick, on October 16, 2014, the Legislature passed a Resolution (the "2014 Resolution") rescinding its consent to Sheridan Park's acquisition of property to be designated as cemetery land. The 2014 Resolution reads, in relevant part:

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.

REFERENCE: INTRO. 18-4 (2014)

A copy of the 2014 Resolution is attached hereto as **Exhibit C**.

34. The 2014 Resolution was passed by the Legislature on October 16, 2014.

According to the language in the 2014 Resolution the intended effect of the Resolution was to immediately revoke consent given by the Legislature in 1990 for Sheridan Park to acquire land.

35. As a result of the passage of the 2014 Resolution, Sheridan Park, Inc. and Amigone Funeral Home, Inc. (together "Petitioners") bring this Petition on behalf of Sheridan Park and Amigone requesting that the action taken by the Erie County Legislature be declared arbitrary and capricious as well as void.

36. This Petition is brought pursuant to New York CPLR § 7803(2) and CPLR § 7803(3) based on the absence of any statutory or regulatory power that would allow the Legislature to rescind the 1990 Resolution as well as the arbitrary and capricious nature of the Legislature's actions in passing the 2014 Resolution.

37. Specifically, Petitioners respectfully request a determination under CPLR § 7803(2) that the Legislature acted in excess or outside the scope of the statutory authority conferred on the Legislature by New York Not-For-Profit Law § 1506.

38. Petitioners also request a determination that the 2014 Resolution passed by the Legislature purporting to rescind the consent to acquire property granted by the Legislature in 1990 was arbitrary and capricious in violation of CPLR § 7803(3) and must be rescinded or declared void.

39. Furthermore, as an alternative to CPLR § 7803(2) Petitioners respectfully request a Declaratory Judgment under CPLR § 3001 that the 2014 Resolution passed by the Legislature purporting to rescind the consent to acquire property granted by the Legislature in 1990 was beyond the authority of the Legislature and as such is void ab initio and without effect.

40. Finally, Petitioners request a Declaratory Judgment under CPLR § 3001 that the sole scope and effect of the 2014 Resolution passed by the Legislature is to withdraw consent for

the acquisition of property by Sheridan Park and that the scope of the 2014 Resolution does not extend to or prohibit Sheridan Park from operating a crematory on lands acquired in 1990 in compliance with New York Not-For-Profit Law § 1506.

### FACTUAL BACKGROUND

41. As part of this litigation an understanding of the crematory/cemetery industry and the multiple regulatory agencies responsible for overseeing crematories/cemeteries is necessary.

42. To legally construct and operate a crematory in connection with the Amigone funeral business a portion of the property located at 2600 Sheridan Drive had to be acquired by/transferred to Sheridan Park so that it could be designated as “cemetery land” by the Cemetery Board as required under New York Not-For Profit Corporation Law § 1506.

43. Today, pursuant to anti-combination laws passed in 1998 the affiliation between Sheridan Park and Amigone would not be permitted. However, because Amigone and Sheridan Park existed and operated prior to the passage of the anti-combination laws, the Sheridan Park crematory is permitted to operate under a grandfathered status.

44. As stated above, Article 15 of the New York Not-For Profit Corporation Law sets forth regulations for non-profit cemeteries and crematories.

45. According to the Declaration of Policy in New York Not-For Profit Corporation Law § 1501: “This article is determined as an exercise of the police powers of this state to protect the well-being of our citizens, to promote the public welfare, and to prevent cemeteries from falling into disrepair and dilapidation and becoming a burden upon the community...”

46. Under New York Not-For Profit Corporation Law § 1503, crematories are expressly included as within the jurisdiction of and subject to inspection by the Division of Cemeteries.

47. New York Not-For Profit Corporation Law § 1504 provides for the establishment of the “Cemetery Board” and endows the Cemetery Board with the duty of administering all of the provisions of Article 15 as they related to cemetery corporations, except those operated by a municipality or religious organization.

48. In New York State there are forty-seven (47) crematories, forty-four (44) of which operate under Article 15 as not-for-profit corporations. The remaining three (3) are either owned/operated directly by a municipality or a religious organization.

49. In 1990, Sheridan Park followed all required legal steps and received consent from the Legislature to acquire land at the Sheridan Drive location that it could then have designated as “cemetery land” by the Cemetery Board.

50. After the Legislature gave its consent to the acquisition of property, Sheridan Park applied for and received the designation of cemetery land status as well as approval from the Cemetery Board for the construction and operation of a crematory on Sheridan Drive in the Town of Tonawanda.

51. The Sheridan Park crematory is subject to New York State air pollution regulations as administered and enforced by the NYS DEC.

52. Sheridan Park obtained a New York State Air Facilities Registration Permit in 1991 as required and has maintained the permit throughout the existence of the crematory.

53. The NYS DEC has periodically inspected and tested the crematory as required by law.

54. Sheridan Park operates the crematory in conjunction with Amigone Funeral Homes, Inc. and has done so continuously since 1991 until it temporarily ceased operations in 2012 after being notified of an investigation by the New York State Attorney General.

55. The decision to temporarily cease operations during the investigation was a decision driven by Sheridan Park's desire to be a good corporate citizen and neighbor and find a pathway to resolution of the issues raised in the investigation, but was not an admission of liability or wrongdoing.

#### **NEW YORK STATE ATTORNEY GENERAL'S ACTION**

56. Sheridan Park operated the crematory for more than twenty (20) years in the same location without any informal, formal, or adverse action taken by either the Legislature or any governmental agency in New York State.

57. Admittedly, over the years some neighbors have filed complaints or called the Town of Tonawanda Police about noise and odors allegedly caused by the crematory operations.

58. However, no notices of violation or citations were ever issued and no action was even taken by the Tonawanda Police. It is also important to note that some of the complaints were falsely made alleging violations on days or at times when the crematory was not even operating.

59. Sheridan Park has always responded and tried to work with the neighbors, the NYS DEC and the Town of Tonawanda to address any complaints.

60. Until 2012, no Notice of Violation was ever issued by the NYS DEC with respect to the crematory.

61. In 2012 the NYS DEC issued a document entitled "Notice of Violation" issued related to the opacity of smoke alleged to have been emitted from the Sheridan Park crematory, but the document did not have an entitlement to a hearing or a request for a submission of evidence. In fact, the document was more akin to a warning than an actual notice of violation.

62. No hearings on the Notice of Violation were ever held and no final determination

was ever issued. To be clear, whether an actual violation occurred has never been adjudicated.

63. Rather, the NYS DEC appears to have referred the matter to the New York State Attorney General's Office ("AG") in July of 2012.

64. In July of 2012, the AG's Office requested to meet with Sheridan Park and informed it that the AG's Office was opening an investigation based on complaints about its operations.

65. In response to the threat of protracted and expensive litigation, Sheridan Park, without admitting any liability, negotiated an Interim Assurance of Discontinuance ("Interim AOD") with the New York State Attorney General. A copy of the Interim AOD is attached hereto as **Exhibit D**.

66. Sheridan Park maintains that its crematory is compliant with all New York regulations.

67. Sheridan Park also maintains that its crematory operates with similar to or better technology than the other five (5) operational crematories in Erie County. It is also significant to note that many of the other crematories operate in neighborhoods or are adjacent to restaurants and grocery stores which abut residential neighborhoods. In fact, even the crematories operated within actual cemeteries are in close proximity to residential neighborhoods.

68. To date, Legislature has taken no action against any of the other crematories operating near residential neighborhoods, including crematories that have histories of NYS DEC violations.

69. While Sheridan Park contests the alleged violations, consistent with its desire to be a good corporate citizen and neighbor and as part of the Interim AOD, Sheridan Park explored the potential to relocate the crematory as well as the potential to upgrade the technology used to

operate the crematory.

**Application To The New York State Cemetery Board For Relocation Of The Crematory**

70. Any relocation of the crematory would require, consistent with Article 15 of the Not-For-Profit Law, approval by the New York State Cemetery Board.

71. At the time that Sheridan Park and the AG entered into the Interim AOD, it was clear that the ability to relocate was not a forgone conclusion.

72. As such the Interim AOD contemplated and specifically established a pathway for the Sheridan Park crematory to reopen.

73. The Interim AOD required that Amigone provide two (2) weeks' notice to the Attorney General prior to reopening at the Sheridan Drive location.

74. The Interim AOD required that Amigone submit a consultant report establishing the proposed changes in equipment and operations at least one (1) week prior to reopening.

75. Section 4 of the Assurance of Discontinuance specifically states:

**4. Notice.** The operator will provide two weeks' actual written notice to the Attorney General advising of any plan to renew operations of the crematory at the current location. The notice will include notice of the anticipated start date. Sheridan Park will not recommence operations of the crematory any sooner than seven days after DEC's and the Attorney General's receipt of the recommendations and proposed implementations described in Section 3 herein."

76. Section 3 specifically contains a requirement at 3(b) that

"the Operator (Amigone) will retain a reputable third-party consulting firm with expertise in crematory operations to determine the validity of and develop recommendations for on-site operational changes that will address the residents' concerns regarding odors, soot, and noise, and further assure compliance with the law."

**Request to the Cemetery Board to Relocate**

77. Five days after signing the Interim AOD on July 30, 2012, Sheridan Park

requested a determination from the New York State Cemetery Board as to Sheridan Park's ability to relocate.

78. In response, some months later, the Cemetery Board stated that Sheridan Park could not operate at another location without violating the anti-combination law due to its affiliation with Amigone.

79. While Sheridan Park was grandfathered, under the 1998 statute a newly designated cemetery/crematory needed to comply with the anti-combination law restriction.

80. Sheridan Park challenged the Cemetery Board's decision in an Article 78 proceeding in Erie County Supreme Court. The Judge in that case upheld the Cemetery Board's determination.

81. Sheridan Park's appeal from that decision was denied by the Appellate Division, Fourth Department.

82. Sheridan Park sought permission to appeal the denial to the New York Court of Appeals. That Motion was also denied.

83. Sheridan Park has sought permission directly from the Court of Appeals to appeal the Fourth Department's denial. A decision is still pending.

84. Because Sheridan Park is not able to move the crematory, it will continue to suffer substantial economic hardship and loss if it does not take steps to re-open at its Sheridan Drive location as permitted under the Interim AOD.

#### **Application To The New York State Department Of Environmental Conservation**

85. Under the Interim AOD, Sheridan Park retained the right to re-open after it proposed technical and engineering changes sufficient to address any possibility of harm to the health or environment.

86. Upon denial of permission to move the Crematory Sheridan Park submitted a draft application to the NYS DEC as required to construct and operate a modified crematory at the current location. A copy of the draft application is attached hereto as **Exhibit E**.

87. Because Sheridan Park received consent of the Legislature to acquire land with the understanding that it would be designated as “cemetery land” over twenty (20) years ago, it is not obligated to seek consent from the Legislature prior to re-opening.

88. To re-open, Sheridan Park is only obligated to obtain permission from the Cemetery Board to modify the existing crematory and approval from the NYS DEC of an application for an Air Permit following the upgrade of the technology.

89. However, because the Legislature purported to revoke its consent to the acquisition of property by Sheridan Park, the NYS DEC has refused to take any action on Sheridan Park’s application.

90. The Legislature has no power to interfere with the application and has no right to be heard with respect to the application as it does not have the power to regulate not-for profit crematories operating in New York State.

91. The only governmental entities that possess regulatory power over not-for-profit crematories rests with the NYS DEC, the Cemetery Board, the Department of Health, and the Office of the Attorney General.

#### **ERIE COUNTY LEGISLATURE ACTION**

92. As set forth above, the Legislature gave its consent in 1990 to allow property to be acquired by Sheridan Park with the understanding that it would be designated as cemetery lands and that Sheridan Park would open and operate a crematory on the property.

93. In 1998, the Legislature’s counsel, Mark Matthew Jasen, Esq., provided a

memorandum to Erie County Legislator Lynn Marinelli explaining the limited power of the Legislature as it relates to the ability to regulate the Sheridan Park crematory:

The consent of the board of supervisors or legislative body thereof [quoting language in Not-For-Profit Law § 1506] is not the same as regulatory powers possessed by the State and Town authorities, after “consent” is granted by the County to acquire the land. The regulation or enforcement of existing State regulations or Town Code “noise” or “odor” requirements is not a County function.

A copy of the memorandum is attached hereto as **Exhibit F**.

94. Prior to the 2014 Resolution the Legislature had not taken any action to regulate or rescind the rights bestowed upon Sheridan Park on October 18, 1990.

95. In September of 2014, Legislator Hardwick introduced a proposed resolution with regard to Sheridan Park that sought to revoke or rescind the consent to acquire property given on October 18, 1990.

96. Upon learning of the proposed resolution, counsel for Sheridan Park reached out to Legislator Hardwick to address the serious impropriety of the proposed action. A copy of a September 22, 2014 letter from Sheridan Park’s counsel to the entire Legislature is attached hereto as **Exhibit G**.

97. The letter seeks to address numerous errors and factual misstatements in the proposed resolution. Specifically, the letter explains that the Legislature has no authority to take the proposed action and explained that any rescission of the 1990 Resolution would constitute a taking in violation of the law.

98. The letter further calls into question the accuracy of the resolution in so far as it states “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.”

99. In refuting the above statement, Sheridan Park relied on a decision issued by the

Supreme Court that dismissed a request for a preliminary injunction and penalties sought by the Attorney General. A copy of the decision issued by Supreme Court Justice Henry J. Nowak is attached hereto as **Exhibit H**.

100. The Attorney General, despite having executed an Interim AOD which set forth an explicit pathway to re-opening of the crematory, sought the permanent injunction to permanently prevent the crematory from re-commencing operations. In doing so it attempted to rely on out dated and unproven allegations and complaints.

101. In his March 15, 2014 Memorandum Decision and Order, Justice Nowak denied the Attorney General's request for a permanent injunction and penalties in its entirety. Justice Nowak determined that the Interim AOD was a settlement of all prior alleged violations, precluded any request for penalties based on alleged bad acts, and controlled the process by which the crematory could re-open.

102. Justice Nowak found that the Interim AOD remains in effect indefinitely. Furthermore, his decision expressly declares "There is no allegation of any violations after the [Interim] AOD was signed." *See Exhibit H* at p. 5.

103. Justice Nowak's decision finds that there is no basis for a nuisance claim and it astutely cites the fifth paragraph of the Interim AOD which characterizes the violations referenced in the Interim AOD as mere allegations- not proven facts.

104. A reading of Nowak's decision combined with the knowledge that the NYS DEC has only issued one Notice of Violation in the entire twenty-two (22) year period that the crematory was operational raises serious questions about the veracity of the language in the 2014 Resolution that "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."

105. The statement is patently false because at the time the statement was made there were no open allegations of any violations and all previous allegations were fully settled by the AG's Office through the execution of the Interim AOD.

106. Sheridan Park had also made a commitment in the Interim AOD to either relocate the crematory or to upgrade the technology used in its crematory.

107. The crematory did not operate following the execution of the Interim AOD in July of 2013, remained temporarily closed when Justice Nowak issued his March 15, 2014 decision, and did not recommenced operations at any time in 2014.

108. The crematory is still temporarily closed, thus it is impossible for any violations to have occurred between July of 2013 and the present day.

109. Additionally, Legislator Hardwick's own statements preclude any finding by the Legislature that the public's health and welfare was at issue. At the September 25, 2014 meeting of the Governmental Affairs Committee Legislator Hardwick in an exchange with members of the Clean Air Coalition explicitly stated "[t]here are no proven health issues related to the smoke from the crematory, are there? We're just talking about a nuisance." The representative from the Clean Air Coalition responded that it was a nuisance matter, not a public health issue. A transcript of the September 25, 2014 Governmental Affairs Committee Meeting is attached hereto as **Exhibit I**.

110. The Legislature has no power to regulate, correct, or take any action based on perceived nuisances. The 1998 memorandum provided by Mark Matthew Jasen, Esq. clearly demonstrates that the Legislature has no power to regulate nuisances- that power lies with the Town of Tonawanda.

111. Even more important is common sense precludes a finding that the crematory was

a nuisance because it was not operating at the time the 2014 Resolution was passed. Justice Nowak's decision also makes clear that there are no violations or nuisances that have occurred or can have been alleged to have occurred since Sheridan Park voluntarily ceased operations.

112. The Legislature's actions are not an attempt to address public health issues- rather the actions are an attempt to overstep its authority and in doing so effectuate a taking while driving a small local company out of business.

113. The Legislature's action constitutes disparate treatment and selective action taken against a crematory that operates in the same manner and in a similar residential/commercial hybrid location as many of the other operational crematories in Erie County.

114. As a follow-up to the September 25, 2014 Governmental Affairs Committee Meeting, Sheridan Park's counsel, in an attempt to correct the record and provide accurate and relevant information to the Legislature, submitted additional information in the form of a letter to the Legislature. A copy of the September 29, 2014 correspondence is attached hereto as **Exhibit J**

115. The September 29, 2014 correspondence outlined the legal impropriety of the Legislature's proposed action and further expounded upon Sheridan Park's plans to upgrade its technology consistent with the agreement reached with the NYS DEC and AG's Office in the Interim AOD.

116. Additional testimony was given by Sheridan Park at the October 9, 2014 meeting of the Governmental Affairs Committee. A copy of the meeting transcript, as transcribed by Sheridan Park, is attached hereto as **Exhibit K**.

117. At the time of the October 9, 2014 Governmental Affairs Committee meeting, the Legislature was aware that Sheridan Park was in the process of proposing modification of the

crematory technology and equipment to the NYS DEC, but that as of October 8, 2014 no action had been taken by the NYS DEC. A copy of correspondence from the NYS DEC to Legislator Hardwick dated October 8, 2014 is attached hereto as **Exhibit L**.

118. The testimony provided by Sheridan Park established that the new crematory technology intended to be installed following NYS DEC approval would be far more protective of the environment than other crematories operating the County of Erie and would in fact be the most state of the art crematory operating in the entire United States.

119. As recognized by Legislator Rath, the proposed advancements would create an “elaborate abatement system” with “five process/improvements when it came to the abatement system and three process/improvements with the discharge system”. All of this would allow Sheridan Park to operate one of the cleanest operating crematories in the United States. *See Exhibit K*, pp. 11-18.

120. Despite all of the positive testimony regarding the new system, the absence of any public health issues, and the willingness of the Amigone family to continue to invest in and work with the community, on October 16, 2014 the Legislature voted to “rescind” the prior consent to acquire land.

121. The 2014 Resolution was approved over opposition of legislators that raised concerns regarding the propriety of the action, the disparate treatment of Sheridan Park, the lack of evidence provided by the NYS DEC, and the Amigone family’s commitment to upgrade its crematory technology at significant expense and in compliance with its regulators- the NYS DEC and AG. Additionally, the 2014 Resolution does not even mention Justice Nowak’s Memorandum Decision and Order which clearly demonstrated that there were no open or ongoing issues, violations, or problems with the Sheridan Park crematory.

122. Ultimately the Legislature passed the 2014 Resolution and in doing so acted beyond the authority granted to it under New York Not-For-Profit Law § 1506 which only conferred authority to consent to acquisition of lands intended to be designated as cemetery lands by the Cemetery Board.

123. In passing the 2014 Resolution, the Legislature has attempted to take from Sheridan Park a vested property right that it has enjoyed and had made significant investments in for over twenty (20) years. A copy of the transcript of the October 16, 2014 legislative session, as transcribed by Sheridan Park, is attached hereto as **Exhibit M**; *see also Exhibit C* for a copy of the 2014 Resolution.

**FIRST CAUSE OF ACTION**  
**(Arbitrary and Capricious Action**  
**Taken in Violation of CPLR § 7803(3))**

124. Petitioners restate and re-allege Paragraphs 1-123.

125. The Legislature's action in passing the 2014 Resolution rescinding the consent to acquire land that the Legislature issued on October 18, 1990 was arbitrary and capricious.

126. Sheridan Park operated the crematory from 1991 through 2012 without any violations having been issued by its regulator, the NYS DEC.

127. Sheridan Park did not have any open complaints in 2014.

128. According to a Memorandum Decision and Order issued by Justice Nowak, there was no nuisance and no potential for a nuisance to exist as the crematory had temporarily ceased operations.

129. The crematory was permitted, by its regulator, the NYS DEC, to re-open so long as it complied with the requirements set forth in the Interim AOD.

130. The 2014 Resolution references public health as a basis for the decision to revoke

the Legislature's consent to the designation of Sheridan Park's property as cemetery land.

131. However, there is no evidence that the crematory had an adverse impact on public health; rather as Legislator Hardwick stated during the first Governmental Affairs Committee meeting: "There are no proven health issues related to the smoke from the crematory, are there? We're just talking about a nuisance." See **Exhibit I**.

132. The Legislature's hearings were a sham as they did not include: 1) any evidence of health issues from the NYS DEC or any other relevant agency, 2) information regarding the other five (5) operational crematories in Erie County that operate in similar residential/commercial hybrid neighborhoods with similar or worse technology, 3) any input from the Cemetery Board regarding the ability to rescind the consent issued in 1990, 4) any information from the Town of Tonawanda regarding past complaints and the validity or resolution of any and all complaints, 5) the basis on which Legislator Hardwick's resolution states that there is a public health issue, despite his statement and the Clean Air Coalitions admission that no public health issue exists, 6) an understanding of the issues addressed by the AG through the Interim AOD, 7) an understanding of the decision issued by Justice Nowak and the absence of any current unresolved issues, but did include 8) substantial hearsay statements from representatives of local residents regarding alleged issues and 9) substantial hearsay statement regarding operations of a crematory in Ontario, Canada, the accuracy of which was never verified by the Legislature.

133. The absence of all of the above information gave many legislatures pause and/or caused them to vote against the resolution.

134. Without the above information, the Legislature's decision to rescind a consent to acquire property that has already been acquired is illogical, uninformed, and without a sound

basis in reason or fact.

135. It is the duty of the Legislature to base its actions on facts and information sufficient to provide a sound basis in reason for the determination, decision, or action taken.

136. Here the Legislature singled out one single crematory for disparate treatment based on hearsay statements, incorrect information, and wrongfully failed to include or purposefully excluded all relevant regulatory bodies from providing necessary evidence on the crematories operations as compared to the other crematories and failed to permit or require the relevant regulators to weigh in on the new technology being proposed for installation before voting to rescind Sheridan Park's authority to acquire land intended to be designated with cemetery land status.

137. The Legislature's action ignores the authority and decisions issues by this Court as well as ignores the proper role of the Cemetery Board, the Attorney General's Office, and the Department of Environmental Conservation. The Legislature's action is arbitrary and capricious in violation of CPLR § 7803(3), or to state another way, is without sound basis in reason and must be declared void and without force and effect.

**SECOND CAUSE OF ACTION**  
**(Action Taken In Violation of CPLR § 7803(2))**

138. Petitioners restate and re-allege Paragraphs 1 - 137.

139. The Legislature acted outside the scope of its authority and in violation of CPLR § 7803(2) when it purported to rescind the 1990 Resolution that allowed Sheridan Park to acquire property which was subsequently designated as cemetery land by the Cemetery Board in accordance with Article 15 of the New York Not-For-Profit Law.

140. When consent to acquire lands is requested by a cemetery corporation the Legislature is charged by the Not-for-Profit Corporations law with the authority to :

- a. Withhold consent;
- b. Provide consent or
- c. Provide consent with conditions.

141. Once that consent is granted the Legislature and the land is acquired and receives the designation of cemetery land, the Legislature has no authority unless it specifically reserved authority when granting the initial consent. *See Exhibit F* Memorandum of Erie County Legislature attorney Mark Matthew Jasen, Esq.

142. In this matter, in passing the 1990 Resolution, the Legislature did not retain or preserve any continuing authority with respect to the land acquisition consent given to Sheridan Park.

143. Pursuant to CPLR § 7803(2), the Legislature cannot act beyond or outside the authority statutorily granted to it by the State Legislature.

144. In passing the 2014 Resolution, the Legislature ignored the specific express language of New York Not-For-Profit Law § 1506 which limited its authority to either granting or denying a cemetery corporation consent to acquire land within Erie County.

145. Its action violated CPLR § 7803(2) and should be declared void ab initio.

**THIRD CAUSE OF ACTION**  
**(Declaratory Judgment Pursuant to CPLR § 3001)**

146. Petitioners restate and re-allege Paragraphs 1- 145.

147. The Legislature acted outside the scope of its authority and in violation of the New York State law when it rescinded the consent granted to Sheridan Park to acquire property in the 1990 Resolution.

148. The consent given by the Legislature allowed Sheridan Park to acquire property in Erie County. The property acquired was designated as cemetery land by the Cemetery Board in

1991.

149. The consent to acquire property followed by the ultimate designation of cemetery land status by the Cemetery Board conferred a property right on Sheridan Park.

150. The consent given, once acted upon by the Cemetery Board could not be revoked by the Legislature unless the Legislature's consent contained a restriction or continuing conditions/obligations.

151. When consent to acquire lands is requested by a cemetery corporation the legislatures of certain counties enumerated in § 1506 of the Not-for-Profit Corporation law have the authority to :

- a. Withhold consent;
- b. Provide consent; or
- c. Provide consent with conditions.

152. Once that consent is granted and the property is used for either a cemetery or crematory, the legislature has no authority to regulate the operations of the cemetery corporation as it relates to the operation of the cemetery or crematory. *See Exhibit F* Memorandum of Erie County Legislature attorney Mark Matthew Jasen, Esq.

153. In this matter the Legislature did not have the statutory authority to rescind or revoke the consent provided in the 1990 Resolution by which Sheridan Park acquired cemetery lands over twenty (20) years ago.

154. The Legislature's consent, attached hereto as **Exhibit B**, contained no restrictions or continuing conditions/obligations that would permit the Legislature the ability to revoke, rescind, or otherwise modify its consent.

155. Moreover, once the land has been acquired by the cemetery corporation and

designated by the Cemetery Board as cemetery lands, as a practical matter, **the consented to act has already been completed and cannot be rescinded, revoked, or altered through a legislative resolution such as the 2014 Resolution.**

156. The action by the Legislature has caused Sheridan Park significant financial harm and damage because following the illegal revocation of its consent, the NYS DEC has refused to process the application submitted by Sheridan Park to modify the equipment utilized in the existing crematory.

157. The NYS DEC's refusal to take action leaves Sheridan Park unable to comply with the requirements set forth in the Interim AOD which permits Sheridan Park to re-commence operation of the crematory after consultation with the NYS DEC.

158. The Legislature's action should be declared as void because the action taken by the Legislature was beyond the scope of the authority conferred by New York Not-For-Profit Law § 1506.

**FOURTH CAUSE OF ACTION**  
**(Declaratory Judgment Pursuant to CPLR § 3001)**

159. Petitioners restate and re-allege Paragraphs 1- 158.

160. If this Court holds the Legislature acted within the scope of its authority in rescinding the 1990 Resolution, which Petitioner does not concede, then this Court should nevertheless declare that the scope of the 2014 Resolution is limited to rescission of the Legislature's consent to the acquisition of property intended to be designated as cemetery land, and has no effect on the continued operation of the Sheridan Park crematory.

161. The 2014 Resolution is limited by its own terms to the rescission of the Legislature's consent to the acquisition of property.

162. The Legislature's consent to the acquisition of property by Sheridan Park which

was intended to be designated and was in fact designated as cemetery land by the Cemetery Board in 1990 was in full force and effect in 1991 when Sheridan Park acquired the crematory lands.

163. Because the crematory lands have already been acquired in full compliance with § 1506 of the Not-for-Profit Corporation Law, including the consent of the Erie County Legislature, the 2014 Resolution simply has no legal effect on the continued operation of the Sheridan Park crematory.

164. The 2014 Resolution has caused Sheridan Park significant financial harm and damage because following the illegal revocation of its consent to acquire cemetery lands, the NYS DEC has refused to process the application submitted by Sheridan Park to modify the equipment utilized in the existing crematory.

165. The NYS DEC's refusal to take action leaves Sheridan Park unable to comply with the requirements set forth in the Interim AOD which permits Sheridan Park to re-commence operation of the crematory after consultation with the NYS DEC.

166. The scope of the Legislature's action should be declared as limited to a rescission of the Legislature's consent to the acquisition of lands to be designated by the Cemetery Board as cemetery lands and this Court should issue a declaratory judgment that the 2014 Resolution has no impact on the continued operation of Sheridan Park Crematory on cemetery lands lawfully acquired before the consent to acquisition was rescinded.

#### **RELIEF REQUESTED**

167. Petitioners respectfully request that the Court issue a determination that the 2014 Resolution passed by the Erie County Legislature is void as its passage was arbitrary and capricious in violation of CPLR § 7803(3).

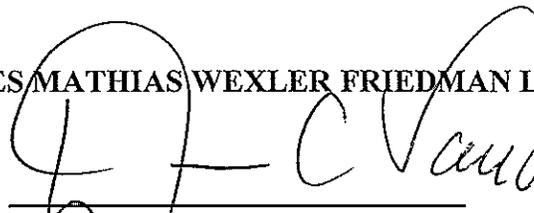
168. In addition, Petitioners respectfully request that the Court issue a determination that the 2014 Resolution passed by the Erie County Legislature is void as the Legislature's actions violate CPLR § 7803(2) because in purporting to rescind the consent to acquire property the Legislature acted beyond or outside of the authority granted to it by New York Not-For-Profit Law § 1506.

169. Petitioners also respectfully request that the Court issue a declaratory judgment that the Erie County Legislature was without authority under New York Not-For-Profit Law § 1506 to pass the 2014 Resolution to rescind or revoke the consent issued on October 18, 1990, and that because of the absence of authority the Legislature's 2014 Resolution is void.

170. Finally, Petitioners request a Declaratory Judgment under CPLR § 3001 that the sole scope and effect of the 2014 Resolution passed by the Legislature is to withdraw consent for the acquisition of property by Sheridan Park and that the scope of the 2014 Resolution does not extend to or prohibit Sheridan Park from operating a crematory on lands acquired in 1990 in compliance with New York Not-For-Profit Law § 1506.

Dated: February 11, 2015  
Buffalo, New York

**LIPPES MATHIAS WEXLER FRIEDMAN LLP**



\_\_\_\_\_  
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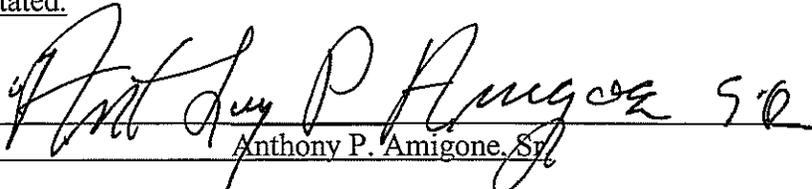
Mark C. Poloncarz  
Erie County Executive's Office  
Edward A. Rath County Office Building  
95 Franklin Street, 16th Floor  
Buffalo, New York 14202

VERIFICATION

ANTHONY P. AMIGONE, SR., being duly sworn, deposes and says:

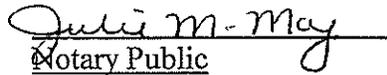
1. I am the Chairman of the Board of Amigone Funeral Home, Inc. and I am the President of Sheridan Park, Inc., the Petitioners identified in the attached Verified Petition.

2. I swear and verify under penalties of perjury that the facts stated in the attached Petition are true and accurate and reflect information of which I have personal knowledge or sufficient reason to believe as so stated.

  
\_\_\_\_\_  
Anthony P. Amigone, Sr.

STATE OF NEW YORK  
COUNTY OF ERIE

On the 11<sup>th</sup> day of February, in the year 2015, before me, the undersigned, a notary public, in and for said state, personally appeared ANTHONY P. AMIGONE, SR. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Verified Petition and acknowledged to me that he executed the same and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

JULIE M. McCREARY  
No. 01MC6258549  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires Mar. 26, 2016

NY Crematory Listing  
By County

COUNTY	NUMBER	NAME	STREET	CITY	STATE	ZIP	CEMETERY*
Albany	01001	Albany Rural Crematory	Cemetery Ave.	Albany	NY	12204	Y
Bronx	03002	Woodlawn Crematory	Webster at E. 233rd St.	Bronx	NY	10470	Y
Broome	04043	Twin Tiers Cremation Serv	511 E. Main St.	Endicott	NY	13760	N
Broome	04045	City Cremations Inc	273 Chenango St	Binghamton	NY	13901	N
Cattaraugus	05049	Olean Cremation Co	100 Homer St	Olean	NY	14760	N
Chautauqua	07065	Southern Tier Mem Crem	46 E. Falconer St.	Falconer	NY	14733	N
Chemung	08012	Southport Crematorium, Inc	PO Box 136	Pine City	NY	14871	N
Clinton	10024	Whispering Maples Mem Gd	5055 Rt. 11	Ellenburg	NY	12935	Y
Cortland	12023	Central Crematory Inc	11 Salsbury St	Cortland	NY	13045	N
Dutchess	14022	Poughkeepsie Rural Cem.	342 South Ave.	Poughkeepsie	NY	12602	Y
Erie	15005	Elmlawn Crematory	3939 Delaware Ave.	Kenmore	NY	14217	Y
Erie	15027	Forest Lawn Crematory	1411 Delaware Ave.	Buffalo	NY	14209	Y
Erie	15066	Mt. Calvary Crematory	Pine Ridge & Maryvale	Cheektowaga	NY	14225	Y
Erie	15073	Buffalo Cremation Co.	901 W. Delevan Ave.	Buffalo	NY	14209	N
Erie	15076	Cutler Cremation Co.	1800 Broadway Bldg 7A	Buffalo	NY	14212	N
Erie	15077	D. Tonken Corp.	417 Kenmore Ave.	Buffalo	NY	14223	N
Erie	15078	Sheridan Crematory	2600 Sheridan Drive	Tonawanda	NY	14150	N
Jefferson	23049	Brookside Crematory	1900 Watertown Ctr Loop	Watertown	NY	13601	Y
Jefferson	23053	Frederick Brothers Cremat	Rt 7, Box 46A	Theresa	NY	13691	N
Kings	24003	Green Wood Crematory	1 Hanson Place	Brooklyn	NY	11243	Y
Livingston	26035	Finger Lakes Crematory	21 Big Tree Rd.	Livonia	NY	14487	N
Madison	27037	Chenango Valley Crematory	3 Preston St.-Box 92	Earville	NY	13332	N
Monroe	28045	White Haven Memorial Park	210 Marsh Rd.	Pittsford	NY	14534	Y
Monroe	28047	Rochester Crematory, Inc.	72 O'Connor Rd.	Fairport	NY	14450	N
Monroe	28999	Mt Hope Crem of Rochester	1133 Mt Hope Ave	Rochester	NY	14620	Y
Niagara	32014	Niagara Falls Mem. Park	5871 Military Rd.	Niagara Falls	NY	14092	Y
Niagara	32017	Oakwood Crematory & Cremat	763 Portage	Niagara Falls	NY	14301	Y
Oneida	33068	Waterville Crematory	Osborne Ave, P O Box 305.	Waterville	NY	13480	Y
Onondaga	34034	Oakwood Cem of Syracuse	940 Comstock Ave	Syracuse	NY	13142	Y
Orange	36005	Cedar Hill Crematory	5468 Rt. 9W	Newburgh	NY	12550	Y

Orange	36042	Oxford Hills Crematory	139 Stage Rd.	Monroe	NY	10950	N
Oswego	38059	Traub Crematorium	11 North Main St.	Central Square	NY	13036	N
Otego	39050	Leatherstocking Crematory	22 Church St. Box 116	Cherry Valley	NY	13320	N
Otego	39052	Hillington Crem, Inc	106 Card St	Morris	NY	13808	N
Queens	41016	US Cremation Co. LTD	61-40 Mt. Olivet Crescent	Middle Village	NY	11379	N
Queens	41999	St Michaels Crematory	72-02 Astoria Blvd	East Elmhurst	NY	11370	Y
Rensselaer	42034	Troy Crematory	Head of 101st St.	Troy	NY	12180	Y
Schenectady	47009	Park View	P O Box 9154	Schenectady	NY	12309	Y
Schenectady	47011	Vale Crematory	907 State Street	Schenectady	NY	12307	Y
Steuben	51042	Rural CA of Hornellsville	PO Box 177	Hornell	NY	14843	Y
Suffolk	52015	Cemetery Gardens, Inc.	Canal Rd.	Coram	NY	11727	Y
Suffolk	52033	Mt Pleasant Cem Assoc	Old Cemetery Road	Center Moriches	NY	11934	Y
Suffolk	52068	Long Island Cremation Co	91 Eads St.	West Babylon	NY	11704	N
Suffolk	52069	Nassau-Suffolk Crem	132 Ronkonkoma Ave	Ronkonkoma	NY	11779	N
Tompkins	55033	Cayuga Crematory, Inc.	15 Evergreen St.	Dryden	NY	13053	N
Ulster	56037	Wiltwyck Rural Crematory	145 Pine Grove Ave.	Kingston	NY	12401	Y
Warren	57999	Pineview Crematory	21 Quaker Road	Queensbury	NY	12804	Y
Westchester	60006	Ferncliff Crematory	PO Box 217	Hartsdale	NY	10530	Y

\* Note: "Y" indicates crematory is located at a cemetery.

STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY

CLERK'S OFFICE

BUFFALO, N. Y., October 18 1990

TO WHOM IT MAY CONCERN:

I Herewith Certify, That at the 21<sup>ST</sup> Session of the Legislature of Erie County, held in the County Hall, in the City of Buffalo, on the Eighteenth day of October A.D. 1990 a Resolution was adopted, of which the following is a true copy:

RESOLUTION SUBMITTED BY LEGISLATOR LENIHAN

WHEREAS, that in accordance with the provision of Section 1506 (C) of the Not for Profit Corporation Law, this Honorable Body will consider the application of the Sheridan Park, Inc., for the consent to construct a crematory on the eighteenth day of October, 1990, at two o'clock in the afternoon of said day at its chambers on the 7th floor of 25 Delaware Avenue, Buffalo, New York, and

WHEREAS, the required notice of application for such consent shall be published, once a week for six (6) weeks, in a newspaper designated to publish the session laws, and

WHEREAS, at the public hearing the Sheridan Park, Inc., presented to the Clerk of this body, the duly executed affidavits of publication attesting to the required publication set forth above, and

WHEREAS, any and all persons interested in being heard on this matter were afforded the opportunity to do so, and

WHEREAS, it is the determination of this body that the application of the Sheridan Park, Inc., should be granted and that such application does not adversely affect the public health and welfare,

NOW, THEREFORE, BE IT

ATTEST

  
Clerk of the Legislature of Erie County

REFERENCE:



# STATE OF NEW YORK

## LEGISLATURE OF ERIE COUNTY CLERK'S OFFICE

**BUFFALO, N.Y., OCTOBER 16, 2014**

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 20th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the sixteenth day of October, 2014 A.D., a Resolution was adopted, of which the following is a true copy:

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

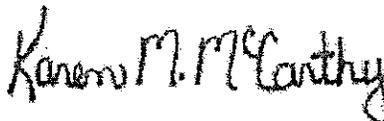
WHEREAS, in addition to individual complaints, six petitions or multiple signature letters were forwarded to governmental entities by neighborhood residents. There are a total of 215 signatures contained in the six documents. They describe the Crematory's noise, odor and soot emissions and express concerns 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

ATTEST



KAREN M. McCARTHY

Clerk of the Legislature of Erie County

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY

## CLERK'S OFFICE

*BUFFALO, N.Y., OCTOBER 16, 2014*

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, *That at the 20th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the sixteenth day of October, 2014 A.D., a Resolution was adopted, of which the following is a true copy:*

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 Honorable 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

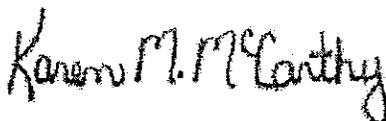
RESOLVED, that the invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision which shall remain in full force and effect; and be it further

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.

REFERENCE:     **INTRO. 18-4 (2014)**

ATTEST

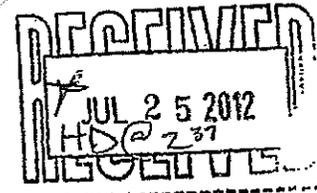


KAREN M. McCARTHY

*Clerk of the Legislature of Erie County* 4D-14

# 1 3/9/13 Mike G to P F

ATTORNEY GENERAL OF THE STATE OF NEW YORK



IN THE MATTER OF  
SHERIDAN PARK, INC.

Interim  
Assurance of Discontinuance

AOD # 12-072

Pursuant to New York State Executive Law § 63(12), and upon referral for enforcement of New York State's air quality regulations pursuant to Environmental Conservation Law ("ECL") § 71-2107 by the New York State Department of Environmental Conservation ("DEC" or "NYSDEC"), New York State Attorney General Eric T. Schneiderman has made inquiry into the operation of a crematorium by Sheridan Park, Inc. ("Crematory") ("Operator"); which is located at 2600 Sheridan Drive, Tonawanda, New York, and housed within the confines of a funeral home owned and operated by Amigone Funeral Home, Inc., and/or Amigone Enterprises, Inc.

#### FINDINGS OF THE ATTORNEY GENERAL

A. The Crematory is located on a commercial street in a densely populated neighborhood in the Town of Tonawanda. Residential housing is located closer than 100 feet on two sides of the facility and it is located less than 10 feet from the property line of residential yards on Werkley Road.

B. The Crematory, which began operations in August 1991, has been the object of long-standing complaints regarding odors, visible smoke and soot made by its nearby residential neighbors ("Residents"). The complaints describe the odors as offensive, lingering and particularly noticeable during the summer when neighbors are outdoors or have their windows open. Residents indicate they are forced indoors and required to cut short, or not plan outdoor activities and family functions.

C. Over the years, in response to government requests and demands, the Crematory Operators have tried various technical modifications, including raising and lowering the stack, installing sound panels, and removing plastic coverings from cremation caskets. On September 28, 2009, the Crematory emission stack was raised from 15 feet to 17 feet above the roof surface and the

#1 3/9/13

Crematory incinerator was replaced with the current Matthews Crematory Power Pack II. Nonetheless, the Residents' complaints regarding odors, visible smoke, and soot have persisted. In light of these longstanding problems and close proximity of the Crematory to the residences, the DEC and the Attorney General have significant concerns as to whether the Crematory can be operated at its current location without adversely impacting neighboring residents.

D. As a result of longstanding complaints about the Crematory from nearby residents, DEC referred the matter to the Attorney General for court enforcement of violations of 6 New York Codes Rules and Regulations ("NYCRR") Article 211; which prohibits the emission of odors, dust, or noise that unreasonably interfere with public health or comfort.

E. Residents have photographed many instances of visible smoke coming from the Crematory emission stack. On May 4, 2012, a day on which the Residents complained that black smoke was coming from the stack, the DEC sent a certified opacity observer to the location and determined the Crematory had been operated in a manner which resulted in smoke emissions with a 6-minute average opacity of 33 percent. The DEC issued a document titled Notice of Violation of 6 NYCRR § 219-4.5(a), which prohibits visible emissions having a 6-minute average opacity of 10 percent or greater.

F. Sheridan Park has cooperated with the Attorney General and in order to avoid the need for protracted litigation has agreed to cease operation of the Crematory effective July 22, 2012 for a period of six months, during which time the Operator will apply for the required approvals to move the Crematory to an alternative location or, should those approvals prove unobtainable, submit an approvable plan for the modified operation of the Crematory at the current location, as described below.

**THEREFORE**, without admitting or denying that there has been any violation of law or wrongdoing, Sheridan Park has agreed to enter into this Interim Assurance of Discontinuance ("Interim Assurance") with the Attorney General.

# 1 3/9/13

NOW, upon the consent of the undersigned counsel for the Attorney General and the Operator, it is hereby **STIPULATED** and **AGREED** pursuant to Executive Law § 63(15) as follows:

1. **Cessation of Crematory Operations.** The Operator will cease operating the Crematory for a period of six months, commencing upon July 22, 2012 through January 22, 2013.
2. **Relocation.** The Operator will promptly seek to secure an alternative location for the Crematory facility and upon finding a suitable location shall make application for all required state and local government approvals, including any required approval from the Cemetery Board and/or the Department of State.
3. **Approval for Continued On Site Operation.** If, after taking all reasonable steps, the Operator is unable to obtain required state and local government approvals for relocation, operations at the present location may recommence prior to January 23, 2013 upon meeting the following conditions:
  - a. The Operator will provide proof to the Attorney General of a final state or local government determination foreclosing the possibility of relocation; and
  - b. The Operator will retain a reputable third-party consulting firm with expertise in crematory operations to determine the validity of and develop recommendations for on-site operational changes that will address the Residents' concerns regarding odors, soot, smoke and noise and further insure compliance with the law.
  - c. The recommendations of said consultant, together with Sheridan Park's proposed implementation of those recommendations, must be submitted to DEC and the Attorney General for review. As part of this submission, the Operator may request DEC and Attorney General approval to re-commence operations prior to January 22, 2013, with such approvals to be solely within the discretion of DEC and the Attorney General.
4. **Notice.** The Operator will provide two weeks actual written notice to the Attorney General advising of any plan to renew operation of the Crematory at the current location. The notice

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will include notice of the anticipated start date. Sheridan Park shall not recommence operations of the Crematory any sooner than 7 days after DEC's and the Attorney General's receipt of the recommendations and proposed implementation described in ¶ 3 herein.

5. **Entire Settlement.** This Interim Assurance shall constitute the entire agreement of the parties with respect to settlement of the alleged violations specifically referenced herein and is in full satisfaction of all civil and criminal claims that were or could have been raised with respect thereto by the Attorney General and the New York State Department of Environmental Conservation.
6. **Execution of the Interim Assurance.** The signatories agree that this Interim Assurance may be executed in counterparts, and that the separate execution of the signatures shall not affect their validity. The effective date of this Interim Assurance shall be the date on which the last signature is executed.
7. **Notices.** All correspondence related to this Interim Assurance must reference the AOD number set forth in this Interim Assurance.

For the Attorney General:

AAG Jane Coleman Cameron  
Environmental Protection Bureau  
Office of the Attorney General  
Main Place Tower, Suite 300 A  
350 Main Street  
Buffalo, New York 14202  
716 853 8579  
jane.cameron@ag.ny.gov

For the NYSDEC:

Maureen A. Brady, Regional Attorney  
New York State Department of Environmental Conservation  
Region 9  
270 Michigan Avenue

#1 3/9/15

Buffalo, New York, 14203  
716 851 -7190

FOR SHERIDAN PARK, INC.:

Robert E. Knoer, Esq.  
The Knoer Group, PLLC  
424 Main Street  
Suite 1820  
Buffalo, New York 14202  
716 332 0032  
rknoer@knoergroup.com

8. **Binding Nature** The requirements of this Interim Assurance shall be binding on and apply to the Operator and to Amigone Funeral Home, Inc., and/or Amigone Enterprises, Inc. to the extent those entities may seek to undertake operations in relation to the Crematory and/or its relocation, to any individual or entity (e.g. officer, director, employee subsidiary, division, affiliate) through which the Operator may now or hereafter act; and any assignee or successor in interest of the Operator.
  
9. **Rights**. Nothing contained in this Interim Assurance shall be construed to limit the rights of a person or an entity who is not a party to this Assurance with respect to the matters contained herein. The terms of this Interim Assurance shall not be construed to prohibit the Attorney General from exercising his authority to prosecute any future violation of the law.

#1 3/9/13

10. Enforcement. It is understood by the Operator that proof of violation of this Interim Assurance shall have the legal effect described in Executive Law § 63(15).

IN WITNESS THEREOF, the undersigned subscribe their names.

Dated: Buffalo, New York  
July 25, 2012

Consented to:

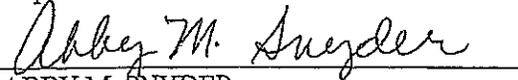
ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York

By:   
JANE C. CAMERON  
Assistant Attorney General  
Environmental Protection Bureau  
107 Delaware Avenue  
Buffalo, New York 14202  
716 853 8579

Dated: Buffalo, New York  
July 25, 2012

Consented to:

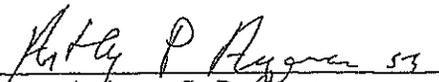
JOSEPH J. MARTENS  
Commissioner, New York State  
Department of Environmental Conservation

By:   
ABBY M. SNYDER  
Regional Director  
270 Michigan Avenue  
Buffalo, New York, 14203  
716 851 7200

Dated: Buffalo, New York  
July 27, 2012

Consented to:

SHERIDAN PARK INC.

By:   
Anthony Amigone, Sr, President

COPY



The Knoer Group, PLLC  
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(716) 332-0032  
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Robert E. Knoer, Esq.  
[rknoer@knoergroup.com](mailto:rknoer@knoergroup.com)

September 19, 2014

VIA EMAIL

[Antonio.Milillo@dos.ny.gov](mailto:Antonio.Milillo@dos.ny.gov)

Antonio Milillo,  
NY State Department of State  
Office of Counsel  
One Commerce Plaza  
Albany, New York 12231

Re: Amigone Funeral Home / Sheridan Park, Inc.  
2600 Sheridan Drive, Tonawanda, NY 14150  
Our File No.: 11-2289

Dear Mr. Milillo:

This office represents Sheridan Park, Inc. Sheridan Park, Inc. was organized in 1991 as a not-for-profit corporation pursuant to Article 15 of the Not-For-Profit Corporations Law. Sheridan Park has operated a crematory at 2600 Sheridan Drive in combination with Amigone Funeral Home since its organization. The crematory operations are governed by local law as well as Department of Environmental Conservation air facilities permits for construction and operation. Sheridan Park obtained the required local approvals. Sheridan Park obtained the required DEC permit approvals.

In response to neighborhood complaints Sheridan Park agreed to temporarily voluntarily cease operations pending a review of options. After consideration Sheridan Park has determined to add abatement equipment to the facility to address the specific complaints. Sheridan Park submits the attached application to add abatement equipment to the existing crematory. This will not require any additional land designation by the County. The manufacturer will work with the NYS DEC on approval for the additional equipment as part of the DEC permit process.

September 19, 2014  
Page 2 of 2

Please advise if you require additional information prior to adding this request for approval of this renovation to the next Cemetery Board meeting agenda.

I appreciate your assistance.

Sincerely,

THE KNOER GROUP, PLLC

*s/ Robert E. Knoer*

Robert E. Knoer

REK/ds

Enc.

CC: Sheridan Park, Inc.  
Maureen A. Brady, Esq., NYSDEC

# Application to New York State Cemetery Board

## By Sheridan Park Inc. to Add Abatement System

Sheridan Park Inc. is a not-for-profit Cemetery Corporation organized in 1992 pursuant to the laws of the State of New York. Sheridan Park Inc. operates a crematory on cemetery land, so designated at 2600 Sheridan Drive in the Town of Tonawanda, County of Erie. The crematory has been in operation since 1991.

Sheridan Park was approached by the New York State Attorney General's office with a request that Sheridan Park consider relocating the crematory to a less densely populated area in order to respond to air quality issues raised by neighbors of the current crematory location. Sheridan Park denied that the crematory is cause for any air quality issues. The crematory has operated since 1991 and until the latest controversy no citations had been issued from any government authority with regard to air quality issues. The New York State Department of Environmental Conservation in 2012 as part of the response to a neighbor's complaint issued a letter referencing a possible violation of the facility's opacity limits based on a single event.

The New York State Attorney General negotiated an agreement with Amigone Funeral Home and Sheridan Park Inc. under which Sheridan Park Inc. voluntarily agreed to suspend operations at its current location until January 22, 2013 and actively seek to relocate the crematory.

Sheridan Park identified a site to relocate the crematory and was prepared to spend the money necessary to dismantle and relocate the crematory to the new proposed location. The Cemetery Board by letter of October 17, 2012 denied the request for permission to move. Litigation and an appeal ensued.

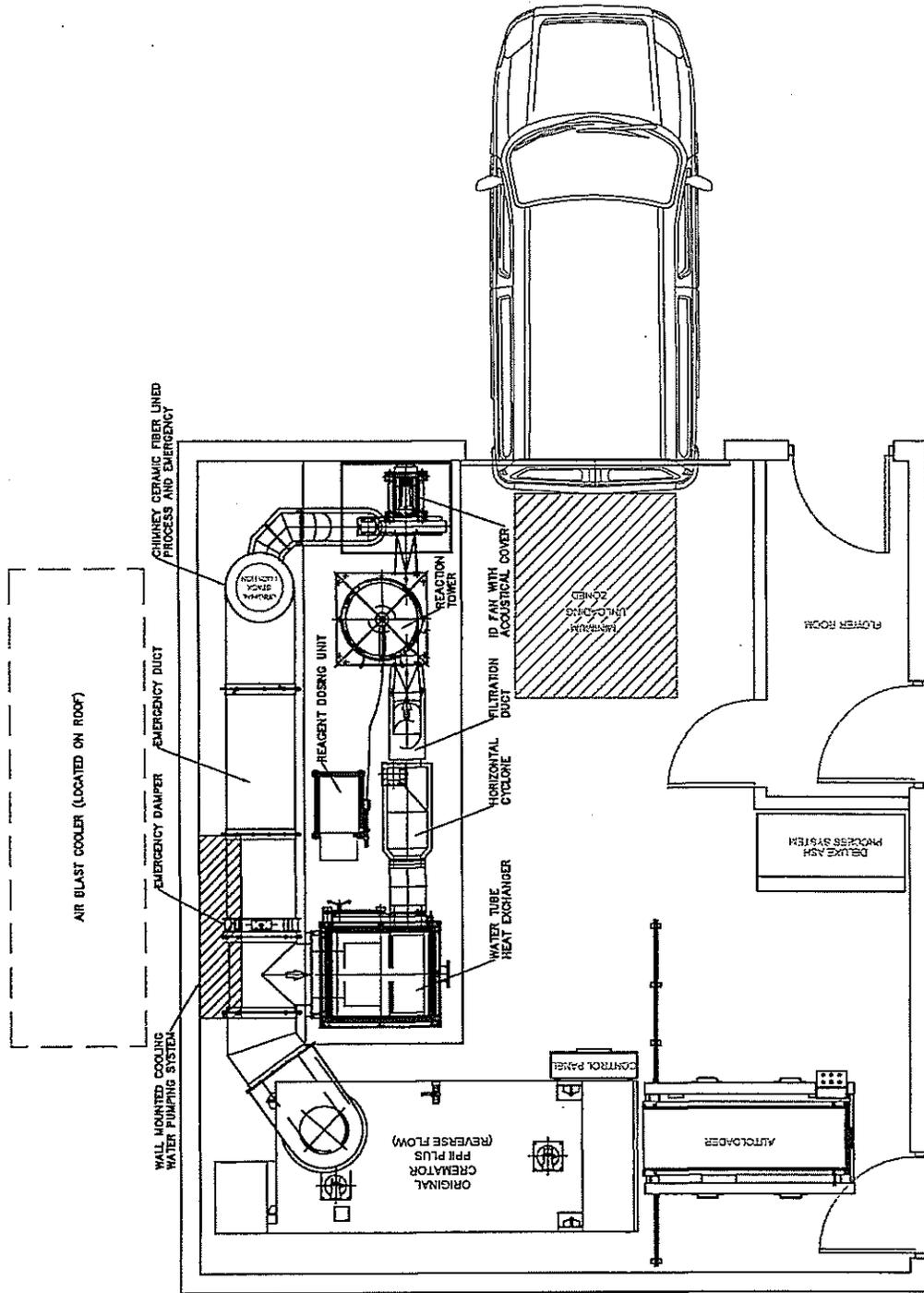
Sheridan Park has obtained a proposal from Matthews International - Cremation Division to add an abatement system to the existing crematory. A sketch of the proposed system is attached. The business arrangement and location of operations will remain the same. The addition of the abatement system is made in response to a directive and agreement from the State of New York Department of Environmental Conservation and Attorney General. The addition of the abatement system is permissible under the Board's previous determinations since Sheridan Park will not be expanding the crematory and would not be increasing its cremation capacity. It is further noted there are environmental benefits that will come from allowing Sheridan Park to modernize their equipment.

Sheridan Park, Inc. request, to the extent required by the Not-for-Profit Corporations Law and the laws rules and regulations governing and empowering the New York State Cemetery Board, that the Cemetery Board authorize the addition of the abatement system to the existing crematory.

Dated: Sept 16, 2014

  
Anthony Amigone, Sr.  
President, Sheridan Park, Inc.

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DRAWN BY:	JWG	DATE:	07.23.2014	REVISION:	
APPROVED BY:		DATE:			
SCALE:	1/16" = 1'-0"	SHEET:	DF		
DWG FILE:	AMIGONEFH-LAYOUTR3-0001172				
DWG NUMBER:	0001172 (10)				

AMIGONE  
AIR FILTRATION SYSTEM

**Mathews**  
CREMATION DIVISION  
2045 Sprint Boulevard  
Apopka, Florida 32703  
USA

ERIE COUNTY LEGISLATURE



25 Delaware Avenue  
Buffalo, New York 14202

MEMORANDUM

TO: Erie County Legislator Lynn Marinelli  
FROM: Mark Matthew Jasen, Esq.  
DATED: March 31, 1998  
RE: Crematory regulations

This memo is in response to Ronald LaBuda's letter to, regarding Erie County Legislature action to correct the noise/odor problem he claims exist by the operation of the Amigone crematory.

Background:

On October 18, 1990, the Erie County Legislature approved Intro 21-14, which granted the application of Sheridan Park, Inc. to acquire cemetery land for the purpose of constructing and operating a crematory. A public hearing on the application was held on the application prior to the granting of permission by the County (Intro 18-15).

Statutory Provisions:

N-PCL LAW §1506 states in relevant part:

"c) Cemeteries in Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam and Erie counties. A cemetery corporation shall not take by deed, devise or otherwise any land in the counties of Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam or Erie for cemetery purposes, or set apart any ground therefor in any of such counties, unless the consent of the board of supervisors or legislative body thereof, or of the city council of the city of New York, in respect to Kings or Queens county, be first obtained. Such consent may be granted upon such conditions and under such regulations and restrictions as the public health and welfare may require. ....If such consent is granted the corporation may take and hold the lands designated therein. .... Such board or body, from time to time, may make such regulation as to burials in any cemetery in the county as the public health may require.

The "consent of the board of supervisors or legislative body thereof" is not the same as the regulatory powers possessed by the State and Town authorities, after "consent" is granted by the County to acquire the land. The regulation or enforcement of existing State regulations or Town Code "noise" or "odor" requirements is not a County function.

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Where a State policy exists, a municipality (County or Town) may not ignore such policy unless it is specifically empowered to do so in terms clear and explicit.

6 NYCRR Subpart 219-4. INCINERATORS, CREMATORIES, copy of which is annexed hereto, is the New York State's Rules and Regulation concerning the Statewide Standard for incinerators by crematories.

I will assume the Amigone incinerators comply with the New York State Regulations, since Erie County cannot impose stricter requirements and has no authority to abrogate the general standard adopted by the state. Enforcement of a non compliant incinerator is by the State, and not the County.

The County's needed "consent" to Amigone to acquire the land for "crematory purposes", should not be translated into a grant of authority for the County to regulate zoning matters (noise and odor) which, in this case, is the Town of Tonawanda's jurisdiction.

The Town of Tonawanda already adopted various ordinances regarding noise and odor, and has fixed Town approved levels, based upon Residential, Commercial and Industrial land use. For example:

TONAWANDA TOWN CODE -NOISE

§ 133-6: Noise levels by land use.

It shall be unlawful for any person to operate or permit to be operated any stationary noise source in such a manner as to create a sound pressure level in dB(A)'s which exceeds the limits set forth for the receiving land use category in Table I when measured at the property boundary.

TABLE I: MAXIMUM PERMISSIBLE SOUND LEVELS  
BY RECEIVING LAND USE CATEGORY

Sound Source Land Use Category	Time Period	Receiving Land Use Category		
		Residential	Commercial	Industrial
Residential (First, Second and M-F)	7:00 a.m. to 11:00 p.m.	55	65	75
	11:00 p.m. to 7:00 a.m.	50	65	75
Commercial and Industrial	7:00 a.m. to 11:00 p.m.	65	65	75
	11:00 p.m. to 7:00 a.m.	50	65	75

B. The restrictions set forth in this section shall not apply to alarms as defined in § 133-5J of this chapter.

§ 133-8. Enforcement.

A. A sound-level meter conforming to ANSI (American National Standards Institute) Type II Standards shall be used and shall be calibrated prior to use. The calibrator shall be calibrated at least annually. Qualified personnel (Noise Control Officers) approved by

the Town Board shall operate, witness and read the sound-level meter(s) and related equipment. The wind velocity gauge shall conform to accepted standards and shall be checked periodically for accuracy.

B. Court appearance tickets shall be issued by a Noise Control Officer who shall be trained in community noise measurement by a certified instructor and confirmed by the Town Board.

**§133-9. Penalties for offenses.**

Any person violating any of the provisions of this chapter shall be guilty of an offense and subject to a fine of not more than \$250 or imprisonment for a period not to exceed 15 days for each such violation, or both. Unless otherwise provided, each day a violation occurs shall be deemed a separate violation for purposes of this chapter.

**TONAWANDA TOWN CODE -ZONING**

**§ 215-70.30...**

(3) Noise. Noise levels at the proposed facility must be controlled to prevent sound levels beyond the property line exceeding the ambient sound levels as shown in Table I. If back round sound levels, excluding any contributions from the proposed new proposed facility, exceed the limits in Table I, then the operations at the proposed facility must not cause a sound level exceeding the background.

Table I  
Noise Level Limits\*

Time Period	Receiving Land Use (decibels A)		
	Residential	Commercial	Industrial
7:00 a.m. through 11:00 p.m.	65	65	75
11 :0.0 p.m. through 7:00 a.m.	50	65	75

\*NOTE: Sound levels will be measured as Leq energy equivalent. The "Leq" is defined as the equivalent steady state sound level which contains the same acoustic energy as the time-varying sound level during a one-hour period exceeded no more 10% of the time. The noise levels must comply with measurements taken using a Type I general purpose sound level meter, Type 2 or corresponding special sound meters Type S1A or S2A. All sound-monitoring equipment shall comply with ANSI Standards S 1.4 - 1983, or the latest version thereof.

(4) Smoke. The density emission of smoke or any other discharge into the atmosphere during normal operations shall not exceed visible gray smoke of a shade equal to or darker than No. 2 on the standard Ringelmann Smoke Chart. (A Ringelmann Smoke Chart is a chart published by the United States Bureau of Mines, which shows graduated shades of gray for use in estimating the light-obscuring capacity of smoke.) These provisions applicable to visible gray smoke shall also apply to visible smoke of a different color but with an apparent equivalent capacity.

(5) Odor. No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable when diluted in the ratio of one volume of odorous air emitted to four volumes of clean air. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system so that control will be maintained if the primary safeguard system should fail. There is hereby established, as a guide in determining such quantities of offensive odors, in Table III, Odor Thresholds, in Chapter 5, the Air Pollution Abatement Manual, Copyright 1959, by the Manufacturing Chemical Association, Inc., Washington D.C., as said manual and/or table is subsequently amended.

As you can see, the Town of Tonawanda has already enacted specific local ordinances dealing with the various issues and concerns Mr. LaBuda raises (noise and odor).

The Town of Tonawanda, not the County, should adopted or enforce Town code provisions that either already apply or could be modified to address the Amigone situation.

#### Subpart 219-4. INCINERATORS, CREMATORIES

##### Historical Note

Subpart (§§219-4.1-219-4.11) filed Dec. 1, 1988 eff. 30 days after filing.

##### § 219-4.1 Definitions.

(a) For the purpose of this Subpart, the definitions of Subpart 219-1 and Part 200 of this Title apply.

##### Historical Note

Sec. filed Dec. 1, 1988 eff. 30 days after filing.

##### § 219-4.2 Applicability.

This Subpart applies to all new and modified (after the effective date of this Subpart [30 days after December 1, 1988]) facilities used for the cremation of human and animal bodies and body parts and for the incineration of associated animal bedding.

##### Historical Note

Sec. filed Dec. 1, 1988 eff. 30 days after filing.

##### § 219-4.3 Particulate emissions.

No person may cause or allow emissions of particulates into the outdoor atmosphere from any emission source located in a crematory facility in excess of 0.08 grains per dry standard cubic foot of flue gas, corrected to seven percent oxygen.

##### Historical Note

Sec. filed Dec. 1, 1988 eff. 30 days after filing.

##### § 219-4.4 Design requirements.

(a) Furnace design must provide for a residence time for combustion gas of at least one second at no less than 1,800°F. For a multichamber incinerator, these parameters must be met after the primary combustion chamber and the primary combustion chamber temperature must be maintained at no less than 1,400°F.

(b) Auxiliary burners must be designed to provide combustion chamber temperatures as described in subdivision (a) of this section by means of automatic modulating controls.

(c) Mechanically fed crematories must incorporate an air lock system to prevent opening the crematory to the room environment. The volume of the loading system must be designed so as to prevent overcharging to assure complete combustion of the charge.

##### Historical Note

Sec. filed Dec. 1, 1988 eff. 30 days after filing.

##### § 219-4.5 Operating requirements.

(a) No person may cause or allow emissions to the outdoor atmosphere having a six-minute average opacity of 10 percent or greater from any emission source subject to these requirements.

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- (b) No person may operate a crematory facility unless the temperatures described in section 219-4.4 of this Subpart are maintained at all times that waste is being burned.
- (c) The commissioner must be notified in writing at least 10 days prior to the commencement of operation of the crematory.

Historical Note

Sec. filed Dec. 1, 1988 eff. 30 days after filing.

§ 219-4.6 Other wastes.

- (a) Municipal solid waste may not be burned in a crematory.
- (b) Infectious waste (other than pathological waste and animal bedding) in excess of five percent of the total permitted hourly charging rate may not be burned in a crematory.
- (c) Radioactive waste, may not be burned in a crematory unless that crematory is exempt from or has been issued a permit pursuant to Part 380 of this Title.
- (d) Hazardous waste may not be burned in a crematory unless that crematory is exempt from or has been issued a permit pursuant to Part 373 of this Title.

Historical Note

Sec. filed Dec. 1, 1988 eff. 30 days after filing.

§ 219-4.7 Continuous emission monitoring.

- (a) Any person who owns or operates a crematory facility must install, operate and maintain in accordance with manufacturer's instructions, instruments meeting specifications acceptable to the commissioner for continuously monitoring and recording the following emission and operating parameters:
  - (1) primary combustion chamber exit temperature;
  - (2) secondary (or last) combustion chamber exit temperature.

Historical Note

Sec. filed Dec. 1, 1988 eff. 30 days after filing.

§ 219-4.8 Stack testing.

- (a) Each incinerator to be installed in a crematory facility must demonstrate compliance with the standards in this Subpart by either (1) onsite testing, or (2) submittal of a test report for an identical incinerator tested in New York and approved by the commissioner.
- (b) A test protocol, including the configuration of breeching, stack and test port locations and test methods must be submitted for the commissioner's approval at least 30 days prior to stack testing.
- (c) Witnessing of all stack tests by the commissioner's representative is required. Results of any stack test done in the absence of an approved protocol, or which is not witnessed, will not be accepted.
- (d) Three copies of the stack test report must be submitted by the permittee to the commissioner within 60 days after completion of the tests, in accordance with section 202.3 of this Title.

Historical Note

Sec. filed Dec. 1, 1988 eff. 30 days after filing.

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**§ 219-4.9 Data and calculations.**

Each application for a permit to construct a source of air contamination for a crematory facility must include:

- (a) basic engineering data relative to the material to be burned, crematory design, combustion air, control devices and air cleaning devices; and
- (b) an impact analysis using procedures acceptable to the commissioner.

**Historical Note**

Sec. filed Dec. 1, 1988 eff. 30 days after filing.

**§ 219-4.10 Operator training and certification.**

- (a) No facility subject to this Subpart will be permitted to operate unless under the onsite direction of a person possessing an appropriate incinerator operator certification issued by the commissioner.
- (b) No person may operate a facility subject to this Subpart unless certified in writing by the holder of an incinerator operator certification, relative to:
  - (1) proper operation and maintenance of equipment at that facility; and
  - (2) knowledge of environmental permit conditions and the impact of plant operation on emissions for that facility.

**Historical Note**

Sec. filed Dec. 1, 1988 eff. 30 days after filing.

**§ 219-4.11 Inspection and reporting.**

Each owner or operator of a permitted crematory facility must annually inspect that facility and submit a report to the commissioner, certifying that the condition and operation of that facility, including the calibration of all instrumentation, meet manufacturer's specifications.

TOTAL P.09

000368



THE KNOER GROUP, PLLC

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Buffalo, New York 14202

EX-107 SEP 22 2014

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Robert E. Knoer, Esq.  
[rknoer@knoergroup.com](mailto:rknoer@knoergroup.com)

September 22, 2014

VIA HAND DELIVERY

Hon. Kevin Hardwick  
Eric County Legislator - District 4  
92 Franklin Street, 4<sup>th</sup> Fl.  
Buffalo, NY 14202

Re: Sheridan Park, Inc.  
Our File No. 11-2289

Dear Hon. Hardwick:

I am in receipt of your proposed resolution with regard to the Sheridan Park, Inc. crematory located at 2600 Sheridan Drive in the Town of Tonawanda. I would like to clarify some of the factual statements asserted in the resolution and discuss the process by which you are attempting to shut down the crematory.

The crematory was opened in August 1991. Over the nearly 25 years of operation there have been few "complaints" with regard to the facility. The complaints were either determined to be unfounded by local authorities or were isolated and Amigone responded appropriately. In response to a neighbor's complaint the New York State Department of Environmental Conservation in 2012 issued a letter referencing a *possible* violation of the facility's opacity limits based on a single event.

Your resolution correctly asserts that in July 2013, the New York State Attorney General brought a Petition seeking to enjoin Sheridan Park, Inc. from reopening or operating the crematory on the basis that the crematory was a "nuisance". Your resolution, however, fails to advise your fellow legislators or the public that the court *dismissed* Attorney General Schneiderman's request for relief. The Court noted that Sheridan Park, Inc. had been cooperating fully with the AG and the neighbors in attempting first to relocate the crematory to another location and then to find an appropriate engineering proposal (see Decision attached).

Amigone has done everything that has been requested of it, including voluntarily discontinuing its operations temporarily and spending significant money in an attempt to obtain permission to move. Their efforts to move included: seeking permission from the NYS Cemetery Board which was denied; bringing an Article 78 Petition requesting that an Erie

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Hon. Kevin Hardwick  
Erie County Legislator  
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County Supreme Court judge require the NYS Cemetery Board allow Sheridan Park, Inc. to move the crematory which was denied; appealing the denial of that request to the Supreme Court Appellate Division, Fourth Department. The Fourth Department denied the request for permission to move the crematory. We are waiting for a decision from the appellate court for permission to take their denial to the NYS Court of Appeals for a final review. Amigone has taken every step, at its expense, to address the issues raised by its neighbors.

When Amigone proposed to move the crematory, no one from the County Legislature took any steps to assist Amigone with obtaining approval from the Cemetery Board. The Attorney General, who sits on the NYS Cemetery Board, recused himself as opposed to championing the idea of granting permission to move the crematory from the current location.

Amigone recently, and prior to your proposed resolution, advised the neighbors and the Attorney General that they would be submitting a proposal for an abatement system to be added to the crematory. This abatement system is beyond any regulatory requirement and beyond anything currently in operation in the State of New York. Amigone's commitment to finding an appropriate resolution to the neighbors' complaints is without precedent.

Your resolution suggests that the Erie County Legislature resolution reference INT.21-114 is no longer "legally relevant". I disagree wholly. The temporary cessation of operations at Sheridan Drive has been in conformity with an agreement reached with the Attorney General and the NYSDEC. That agreement did not require any specific timeframe for Amigone to resubmit a proposal. This was confirmed by the Supreme Court in dismissing the Attorney General's request to find that the crematory constituted a nuisance. Amigone has sought solutions in every corner, visiting operations out of state and even in Canada. I hope that the Legislature does not use Amigone's persistence in making sure that they "get it right" against them.

Your resolution states "*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*". It is unclear what evidence you are referencing to support this statement. The Supreme Court, after a review of significant documentation and after hearing arguments from both the Attorney General and Amigone's counsel, reached a different conclusion in denying the Attorney General's request for a permanent injunction.

Finally, and perhaps most importantly for your fellow legislators and the taxpayers, you assert that your resolution will have no fiscal impact. That is incorrect. Sheridan Park, Inc. has vested rights in the operation of this crematory and in the designation of the land as cemetery land. I am not aware of any provision of law that allows a County to repeal a designation of cemetery land. This would be especially so for a designation that is almost a quarter of a century old. Your resolution would constitute a "taking" of that legal right that would require significant compensation under the US and New York State Constitutions. I note that the Court of Appeals, New York's highest court, has recently confirmed;

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*"{A} property owner obtains a vested right when "pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development" Glacial Aggregates, LLC v Town of Yorkshire. 14 N.Y.3d 127; 924 N.E.2d 785; 897 N.Y.S.2d 677; 2010 N.Y. LEXIS 29 (NY Court of Appeals 2010).*

Amigone has held this legally issued designation for over 20 years and invested significantly in the property. Your resolution would constitute a "taking" of their vested right triggering a significant obligation on the part of the County for substantial compensation.

It is my hope that the information provided to you and your colleagues by others will be considered in the context of this information. I urge you to seek a reasoned legal opinion as to the rights of the County Legislature to repeal this designation including and not limited to the financial obligations of the County, in the event a taking occurs. That would include any "temporary takings" that a failed resolution process may cause.

It is my hope that the County Legislators will take a realistic and fair review of the facts. I urge you to consider thoughtfully your legal basis and the limitation of your authority to repeal this designation. I urge you to recognize the financial jeopardy that you will be exposing Erie County taxpayers to. I urge you to allow the process to proceed as agreed to between the Attorney General, the New York State Department of Environmental Conservation and Amigone.

Respectfully, this resolution should not proceed out of committee.

Respectfully,

THE KNOER GROUP, PLLC

Robert E. Knoer

REK/ds

Enc.

CC: Hon. Barbara Miller-Williams (via mail and e-mail w/ enc.)  
Hon. Patrick B. Burke (via hand delivery w/ enc.)  
Hon. Betty Jean Grant (via mail and e-mail w/ enc.)  
Hon. Ted B. Morton (via hand delivery w/ enc.)  
Hon. Peter J. Savage, III (via mail and e-mail w/ enc.)  
Hon. Lynne M. Dixon (via hand delivery w/ enc.)  
Hon. Joseph C. Lorigo (via hand delivery w/ enc.)  
Hon. Thomas A. Loughran (via mail and e-mail w/ enc.)  
Hon. John J. Mills (via hand delivery w/ enc.)

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Hon. Edward A. Rath, III (via hand delivery w/ enc.)  
Erie County Comptroller Stefan I. Mychajliw (via hand delivery w/ enc.)  
Erie County Executive Mark Poloncarz (via hand delivery w/ enc.)  
Sheridan Park, Inc. (via mail w/ enc.)

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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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PEOPLE OF THE STATE OF NEW YORK,  
The NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, and  
JOSEPH J. MARTENS, COMMISSIONER OF  
THE NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, by  
ERIC T. SCHNEIDERMAN, Attorney General  
for the State of New York,

Petitioners,

vs.

AMIGONE FUNERAL HOME, INC.,  
AMIGONE VENTURES, L.P.,  
AMIGONE ENTERPRISES, INC., and  
SHERIDAN PARK, INC.,

Respondents.

---

HENRY J. NOWAK, J.S.C.  
Justice Presiding

I. CLAIMS BY THE PARTIES

Petitioners bring the instant petition for a permanent injunction and penalties pursuant to ECL § 71-2103. Specifically, petitioners claim that respondents violated 6 NYCRR §§ 211.1 and 219-4.5 (a), as well as their May 27, 2009 air facility registration that previously authorized operation of a crematory located at 2600 Sheridan Drive in Tonawanda, New York. Respondents move to dismiss the petition pursuant to CPLR § 404 (a), contending that a July 25, 2012 Interim Assurance of Discontinuance [hereinafter "AOD"] is a complete bar to the petition.

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MEMORANDUM DECISION  
AND ORDER

INDEX NO. I-2716-2013

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CLERK'S OFFICE

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## II. PAPERS CONSIDERED

In support of their petition, verified on September 23, 2013, petitioners submitted and the court considered the following:

- the affidavit of Alfred Carlacci, a regional air pollution control engineer for the New York State Department of Environmental Conservation, sworn to on September 20, 2013;
- the September 24, 2013 affirmation of Assistant Attorney General Jane C. Cameron, Esq.;
- the affidavit of Jennifer Nalbone, an Environmental Scientist employed by the New York State Attorney General's Office, sworn to on September 24, 2013;
- the affidavit of Rebecca Newberry, lead community organizer in the Town of Tonawanda for the Clean Air Coalition of Western New York, sworn to on September 23, 2013;
- the affidavits of Joseph Emminger, sworn to on September 12, 2013, and Lisa M. Chimera, sworn to on September 18, 2013, both members of the Town Board of the Town of Tonawanda;
- the affidavits of 43 people who live in the neighborhood adjacent to 2600 Sheridan Drive in Tonawanda, New York; and
- 127 exhibits submitted along with the affidavits.

In support of respondents' motion, the court considered:

- the affidavit of Robert E. Knoer, Esq., sworn to on October 28, 2013;
- the affidavit of Anthony P. Amigone, Sr., sworn to on October 28, 2013;
- the affidavit of Ernest Kassoff, national sales manager for Facultatieve Technologies, sworn to on October 25, 2013;
- the answer to the petition, verified on October 28, 2013; and
- eight exhibits submitted along with the affidavits.

In addition, the court considered oral argument by counsel for all parties on November 6, 2013, as well as memoranda of law submitted by counsel for all parties both before and after oral argument.

### III. SUMMARY OF POSITIONS

Petitioners bringing this action pursuant to Executive Law § 63 (12), which empowers the Attorney General to bring a special proceeding seeking injunctive relief whenever any person engages in repeated illegal acts or otherwise demonstrates persistent illegality in carrying on, conducting or transacting business. The illegal activities that petitioners allege are (1) that respondents caused or allowed emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which unreasonably interfered with the comfortable enjoyment of life or property, in violation of 6 NYCRR § 211.1; and (2) that respondents emitted visible emissions from their crematory with a six-minute average opacity of 10 % or greater, in violation of 6 NYCRR § 219-4.5 (a). Because respondents' May 27, 2009 air facility registration required compliance with application air pollution regulations, including the sections referenced above, petitioners claim that respondents violated the air facility registration as well.

Respondents do not dispute that neighbors have made complaints about the crematory during the time it was in operation from 1991 to July 2012, but point out that they have never been found in violation of any air pollution or noise limits. The basis for their motion, however, is that the AOD resolved all allegations of violations in the petition as well as all civil penalties that may be available to petitioners. In fact, respondents contend that the mere commencement of the petition is a breach of the AOD.

The AOD (Petitioners' Exhibit 100) contains ten specific stipulations of the parties. The first provides for an initial period for six months whereby respondent Sheridan Park, Inc. [referred to in the AOD as the "Operator"] would cease operating the crematory, from July 22, 2012 through January 22, 2013. The second stipulation requires respondents to take steps during that time to secure an alternative location for the crematory facility and apply for all required state and local government approvals. Petitioners do not contend that respondents failed to do so, and the record reflects extensive efforts by respondents to find an alternative location for the crematory.

The third stipulation permits respondents to recommence operation of the crematory within the six-month period, as long as three conditions are met:

- a. The Operator will provide proof to the Attorney General of a final state or local government determination foreclosing the possibility of relocation; and
- b. The Operator will retain a reputable third-party consulting firm with expertise in crematory operations to determine the validity of and develop recommendations for on-site operational changes that will address the Residents' concerns regarding odors, soot, smoke and noise and further insure compliance with the law; [and]
- c. The recommendations of said consultant, together with Sheridan Park's proposed implementation of those recommendations, must be submitted to DEC and the Attorney General for review. As part of this submission, the Operator may request DEC and Attorney General approval to re-commence operations prior to January 22, 2013, with such approval to be solely within the discretion of DEC and the Attorney General.

The fourth stipulation is entitled "Notice." It provides that respondents must give petitioners two weeks' written notice before reopening the crematory, and one week's notice of the consultant's report referred to in section "b" of the third stipulation, as set forth above.

Respondents contend that the notice provision remains in effect indefinitely and is not limited to

the six-month time period referred to in the first three stipulations. Petitioners agree with respect to the first part of the "Notice" provision; the petition alleges that "[i]f six months passed, as it has, and Amigone wished to reopen the crematory, it was required to serve two weeks' notice of same to the State" (September 23, 2013 Petition, ¶ 63). However, petitioners claim that the AOD did not impose a continuing obligation that respondents retain a third-party consultant and forward a plan showing operational and equipment changes to petitioners before re-opening at the present site. Respondent contends that it does.

The fifth paragraph of the AOD, entitled "Entire Settlement," provides:

This Interim Assurance shall constitute the entire agreement of the parties with respect to settlement of the alleged violations specifically referenced herein and is in full satisfaction of all civil and criminal claims that were or could have been raised with respect thereto by the Attorney General and the New York State Department of Environmental Conservation.

There is no dispute that the AOD references the same violations alleged in the petition. It is also stipulated that the day after the AOD was signed, respondents ceased operating the crematory on Sheridan Drive. There is no allegation of any violations after the AOD was signed.

#### IV. FINDINGS OF THE COURT

This court finds that the July 25, 2012 interim AOD remains in effect indefinitely. If respondents wish to open the crematory at the current location, they first must provide two weeks' actual written notice to the Attorney General advising of any plan to renew operation. Second, respondents must retain a reputable third-party consulting firm with expertise in crematory operations, to determine the validity of and develop recommendations for on-site operational changes that will address the residents' concerns regarding odors, soot, smoke and

noise and further insure compliance with the law. Third, at least seven days before recommencing operation, respondents must submit a report of such recommendations along with their proposed implementation to the DEC and the Attorney General.

This court further finds that pursuant to the "Entire Settlement" stipulation in the AOD, petitioners may not bring any civil or criminal claim referenced in the AOD, which include all of the claims alleged in the petition. That provision is not ambiguous, particularly when read in conjunction with the ninth stipulation of the AOD, which provides that the AOD "shall not be construed to prohibit the Attorney General from exercising his authority to prosecute any future violation of the law" (emphasis added). Accordingly, the petition is dismissed.

In regard to respondents' claim for attorney's fees based upon frivolous conduct, this court does not find that the petition was completely without merit. One of petitioner's claims sought injunctive relief, after counsel for respondents referred to the possibility of re-opening on July 30, 2013 (Petitioners' Exhibit 117A). Therefore, respondents will be responsible for their own attorney's fees.

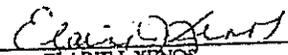
This decision constitutes the order of this court.

ENTER:

  
HENRY J. NOWAK, J.S.C.

**GRANTED**

MAR 24 2014

BY   
ELAINE J. XENOS  
COURT CLERK

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SEPTEMBER 25, 2014 ERIE COUNTY LEGISLATIVE'S  
GOVERNMENT AFFAIRS COMMITTEE MEETING

Leg. Hardwick: Call to order this meeting of the government affairs committee. Clerk will call the roll.

Clerk: Legislator Loughran?

Leg. Loughran: Here

Clerk: Legislator Miller-Williams?

Leg. Miller-Williams: Here

Clerk: Legislator Dixon?

Leg. Dixon: Here

Clerk: Legislator Hardwick?

Leg. Hardwick: Here

Clerk: Chair Mills?

Leg. Mills: Here

Clerk: Legislator Morton?

Leg. Morton: Here

Clerk: Quorum is present

Leg. Hardwick: Thank you. Also note the presence of Legislators Savage and Lorigo. OK Items # 1-4 on the 1<sup>st</sup> page of the agenda will remain on the table on my motion, as will items 5-8. That brings us to item # 9 a resolution I submitted repealing Sheridan Park, Inc.'s consent to acquire cemetery land. I've invited Erin Heaney of the clean air coalition, Bill Pilkington a neighbor and Carol Fritch to speak. I've also extended an invitation to the Amigone family; they are represented here today by their attorney Bob Knoer who's chosen just to listen. We also have Greg Kammer from the county attorney's staff sitting right in front of us. If you all would want to come on and take some seats, the closer the better. Erin as I understand it this would, currently the crematory operated by the Amigone's on Sheridan Drive, has been shut down for 2 years, there's been a voluntary moratorium. They could start up however on 2 weeks' notice, correct?

Ms. Heaney: That's my understanding

Leg. Hardwick: Ok. What was the reason for the moratorium in the first place?

Ms. Heaney: We were approached by a group of residents who are here today because of a number of quality of life issues in the neighborhood. Really disgusting odors, ash landing in their neighborhoods, people weren't able to use their properties and were concerned with their health so we joined with folks in the neighborhood in order to help improve the quality of life.

Leg. Hardwick: Ok thank you. Bill you live near the crematory?

Mr. Pilkington: I live at 85 Warclear Rd. which is about 3 houses down from the crematory.

Leg. Hardwick: What sort of problems have you experienced over the years?

Mr. Pilkington: Well, over the last 20 years we've had soot, dust, odors that are obnoxious that we've had to close our windows in our house; we can't have the windows open. The soot, we have to go out almost daily to clean the furniture in our backyard. Since the crematory's been shut down we don't have to do that anymore. We've had people over and without the worrying that this is going to start up and ruin our parties or whatever. There was one time that it was smoking so bad on our street that we thought a building was on fire and it was just a bad crematorium day I guess but it was disgusting. For the last 2 years and 2 months we've been blessed with a nice clean neighborhood.

Leg. Hardwick: So you have noticed a significant difference?

Mr. Pilkington: Definitely

Leg. Hardwick: And is this in your head because you know it's been shut down?

Mr. Pilkington: No, we know it's shut down. I mean we've sat in our family room with the windows open and we've had to shut them because it smelled so bad.

Leg. Hardwick: Carol, you live in the neighborhood also?

Ms. Fritch: I do, I live at the end of the block opposite Amigone

Leg. Hardwick: And what things have you experienced?

Ms. Fritch: When you're in the backyard and the crematory is going, if it's coming your way, which it usually comes my way, you'll find yourself having to run in the house because it's just that offensive, and of course when you get in the house you want to shut your windows, because once it gets in the house you can't get it out. As far as having outdoor—I

have a small house so I usually have outdoor parties in the summer, but I just gave that up because as Bill said you're in the middle of your party and they start up and it's horrible, you can't ignore it. Even in the winter when the air is more dense I have found personally that if I walk from my garage up the sidewalk to my house, one time it was extremely dense and I got in the house and I actually smelled like it. So, um, and again sleeping, on a good night you want to leave your windows open and it's just...

Leg. Hardwick: Have you noticed a change the last two years?

Ms. Fritch: Oh yes.

Leg. Hardwick: Give me some idea, I've been in the neighborhood but give the rest of the committee members an idea of what sort of neighborhood we're talking about and the proximity to this facility. I mean we're not out in the middle of the country.

Ms. Fritch: Oh no, it's, I mean its Parker and Sheridan, it's all homes, there's no...

Leg. Hardwick: How big are the lots there?

Ms. Fritch: Our lots?

Leg. Hardwick: Yeah, what's your frontage? 45, so you've got house, house, house, house and if you go in Ron LaBouda's backyard you're feet from the smokestack.

Mr. Pilkington: There's a lot of new neighbors coming in to the area. They were told that the crematory is definitely going to be shut down, and now we have new neighbors, young children, people that are pregnant, a lot of new children coming out, plus there's a lot of new kids, and we don't want that to happen.

Leg. Hardwick: Erin, I know your organization was huge in the fight against Tonawanda Coke. Is this a nuisance problem? There are no proven health issues related to the smoke from the crematory, are there? We're just talking about a nuisance.

Ms. Heaney: Yeah, we're talking about a nuisance issue and actually the campaign against Tonawanda Coke where folks were very concerned about benzene, the emissions from the plant, but also the quality of life issues: the smells, the soot, and the proximity of peoples' homes to Tonawanda Coke. So when we heard from folks who lived close to the crematory it was in some ways very similar, in that people were living very close to a source that was really causing quality of life issues. Zoning has a really important role to play in terms of protecting peoples' property and quality of life.

Leg. Hardwick: But are you, you're not alleging then any health related issues here?

Ms. Heaney: No, the nuisance case that the Attorney General has brought and has been kind of the basis for retiring the plant, or the temporary closure, has been just a nuisance case.

Leg. Hardwick: I'll open it up to my colleagues shortly for questions, but first I want to get Mr. Kammers opinion. Can you give us a bit of the legal background, why is the County Legislature even involved or why has it been involved in the past in the crematory issue?

Mr. Kammers: Sure, New York State Crematory Law requires that the local board of supervisors approve of an application for the acquiring of cemetery land. This was done in 1991 by this body and there was a determination made within the resolution and was required by the statute that indicated there would be no threat to the public health if the application was granted. Since then it appears that there have been issues that were unforeseen at the time. The resolution that is being introduced by Legislator Hardwick attempts to repeal that initial resolution, I think there is a rational basis to do so based on the community concerns, and that's kind of where we are right now.

Leg. Hardwick: Mr. Knoer, on behalf of Mr. Amigone sent a reply to that resolution. I actually sent a note to Mr. Amigone Sr. asking him if he or his representatives would like to come here the other day. Mr. Knoer replied, we've seen that reply. There are veiled threats of lawsuits and huge damages. In your opinion, would the passage of this resolution open the County up to huge damages?

Mr. Kammer: We could be sued for sure; we can be sued for any action we take. I think the outcome of any lawsuit, it's difficult to predict. However, from my conversation with the County Attorney we are willing to defend vigorously any suit brought against us, with respect to damages I don't see that any damages would be substantial if any.

Leg. Hardwick: Ok, thank you. Any questions? Legislator Miller Williams?

Leg. Miller-Williams: In reference to the comments that the gentleman just made, in the resolution it outlines that back in 1990 the application made, it was based on the determination that such application would not adversely affect the public health and welfare, recognizing the information that has been shared with us today it is definitely having an adverse effect on the public health and welfare. That being said, you still would basically think that a lawsuit would be possible? I mean, it's clear that it is definitely having an adverse effect on public health and welfare.

Mr. Kammer: We can be sued for anything; it doesn't mean that there is any substance behind the lawsuit

Leg. Miller-Williams: But there is still a chance?

Mr. Kammer: Absolutely.

Leg. Hardwick: Anyone else? Tom?

Leg. Loughran: Thank you Kevin. Boy, when they say the wheels of government move slowly, this is the case for it. I've dealt with this and I recognize a lot of the neighbors that I used to represent a portion of Tonawanda. With reapportionment I don't have the privilege of representing you. But we're coming to this, you mentioned zoning, I mean lets be rational. Lets be realistic. What are we talking about here? For this operation to exist, they had to rezone a parking space and make it a cemetery. So, any lawsuit I think take your chances. A rational person looking at this, to have a crematory in a residential area, you know for the residents, I don't know where it failed, in the Town of Tonawanda Zoning Board, or the Town Board, or whatever, but we've come to this point where, you know, if any of my colleagues, if any rational person wants to go over there and walk through this neighborhood and see if this is fair, that the gentleman said new people have moved in there that there's a moratorium and they were told it's not going to exist, so this is a remedy to a situation that wasn't right in the first place and, uh, Mr. Chairman, having said that, I would be honored to move this today and remedy the situation for the residents.

Leg. Hardwick: There is a motion, there will be further discussion, but there is a motion on the floor seconded by Legislator Miller Williams for approval. I would only say, I'll let my colleagues chime in, I would say, following up on what Tom just said, now Tom used to represent this area prior to reapportionment. Tom is a Democrat. I represent this area now. I am a Republican. We both stood in Ron LaBouda's backyard and looked up at the smokestack and said, I don't want to put words in your mouth but I think we both said, wow, how can this be? This resolution, if passed today, and ratified by the entire legislature next week, would remove literally and figuratively a huge black cloud from over that residential middle class neighborhood in the Town of Tonawanda, and I certainly would like to see it pass. Legislator Dixon?

Leg. Dixon: Thank you. I, um, I just today received the response, or read the response from Amigone's attorneys on this, and I'm still, I represent Hamburg, I live in the south towns, I can appreciate everything you've been through in your efforts, I feel personally, looking at this resolution and seeing you all here today and just having the opportunity to read the response from Amigone, that I would like to know, I would like to know a little more first before making a decision on this. I would like to go check out this piece of property we're talking about which was a parking lot and see what you folks have been dealing with before making a decision. I understand, I know you've fought this for a long time, but for me and the area I represent, for me to vote properly, to understand the issue, to make sure that I am weighing both sides, I would like to go out first and see the property, so I would prefer moving this in the next committee meeting just so I have an opportunity to do that, again I am just receiving some of this

information just before sitting down here today in committee to hear from you and to hear from Greg so, and thank you for coming Greg, and I wish the attorney for Amigone would speak because I think that I have some questions I would like to ask of him too

Leg. Hardwick: We can ask Mr. Knoer if you would like to join us and respond to Legislator...

Mr. Knoer: (Unintelligible)

Mr. Hardwick: I'm sorry?

Mr. Knoer: I'm just here to listen.

Leg. Hardwick: Ok, thank you. Legislator Morton?

Leg. Morton: Thank you Mr. Chairman, and I want to thank all the citizens who took time out of your day to appear here today. I know it's not easy, middle of the day and sometimes you have to leave work or family responsibilities, so you're showing up is important, it means a lot to us whether we're up here or colleagues on the sidelines. I agree with two things that I heard from colleagues. First of all, my colleague Tom Loughran about the importance of government, sometimes moving slowly. Sometimes it's very frustrating when it moves slowly, but I do think that a business that was approved in 1990, for us to vote possibly today to shut it down, or to start the process of doing that, I don't know if that's the proper thing. I'm not saying I don't agree with you the citizens that live there, I'm not saying that at all, but the other thing is I do agree with my colleague Dixon, Legislator Dixon, I just received this a few minutes before we walked into this room. There is a lot of information from both sides of the argument, and again I appreciate everything you folks do, and I'm not doubting what you're saying in terms of living there, but it is frustrating to have to make a decision of this importance this quickly. The other thing I am disappointed in is the fact that we've heard from one side of the argument and not the other side. I would hope that we could reconvene in two weeks and the other side, the Amigone Corporation and or their attorney would let us ask questions. One of the questions I have is, because I know from what I've received here since I think July of 2012 they've had this moratorium. Well they want to restart up, one of the questions I have is since they started in 1990 has the technology changed? Is there technology out there today that exists today to possibly upgrade their facility and make it a place that could be something where the residents can find acceptable. I certainly don't know that answer, and quite honestly we're not getting the other side of this story. Again I appreciate everything you folks are going through here, but from my perspective it's very frustrating that the corporation and or their attorney, or whomever, has chosen not to speak. Again, when we vote, perhaps in a few minutes, I'm going to cast a no vote. Not that I don't agree with your plight, it's just that I don't think we've had enough time to fully

analyze the situation, and when it does come to a vote on the floor at some point in the future I could easily be a yes vote for what you want, but right now I feel we haven't had enough time.

Leg. Hardwick: Thank you. Legislator Mills?

Leg. Mills: Thank you. I thought this was a dead issue (chuckling) I sat here with Tom Loughran, how many years ago was it now, three? And I guess I'm just kind of shocked I'm looking at this document now because I thought Amigone as a good citizen would reevaluate their situation with the neighbors and all this going on and just leave it alone, but I guess it's at our front door again. I don't know why it's at our front door again, if they're going to start up again, but I'm looking at the DEC's involvement in this and I haven't heard anything from the DEC, I don't remember their testimony back three or four years ago when we addressed this issue. I think it's appalling that we have to deal with this thing again. I was out there believe it or not on Monday or Tuesday it was and I know right where Parker and Sheridan is and I guess I'm appalled by the fact that they even consider starting this up, but I do agree with Legislator Morton and Legislator Dixon that I'd like to hear DEC on this, what their take is on this, what they did to do this, because it is a business, I am a business man, I don't agree with what they want to do if they want to do it but I haven't heard Amigone say anything that they want to restart this. But I do agree that some closure should be done with this so that the neighborhood which is being impacted and certainly the business understands very clearly that if the case is shut down, its shut down forever, so let's not revisit this in twenty years when the technology changes. I would like to table this for one committee meeting and then address it at that committee meeting so I can satisfy some of my questions.

Leg. Hardwick: Erin, do you want to, Thank you Legislator Mills. Erin, do you want to address the question of the position of the state on this?

Ms. Heaney: Sure, I guess I just want to lift up that the action, if the body today does decide to take action, you'd be joining a number of other government agencies that have already taken action on this and other legislative bodies. You wouldn't be acting kind of differently from many other agencies. For example, the US Attorney General Eric Schneiderman has taken action against the plant, this is a New York State official elected across the state and he has stood by his commitment to protecting the neighborhood. The Town of Tonawanda has also passed resolutions supporting stopping cremations as well. The DEC has worked in collaboration with the Attorney General's Office to collect over 43 affidavits from folks in the neighborhood, so 43 people who live in the neighborhood have sworn and given sworn testimony, so I guess I just want to say that the county is joining a large body of other elected officials that have already said publicly and taken votes that say that they believe that this shouldn't belong there and residents shouldn't be subjected to this.

Leg. Hardwick: The original motion was by Miller Williams, correct? Legislator Loughran seconded. My understanding is that it looks as though from the way I size things up that we would have three no votes and three yes votes which would mean a tie, which would mean that this would fail today. Legislator Loughran, if you'd like to withdraw your motion, we can put it back on the table, have all the experts here, have the fair hearing my colleagues are calling for, and we could deal with it.

Leg. Loughran: Mr. Chairman I would not and I'll tell you, the situation here, there's many components, but what enabled this to exist in the first place was zoning, and I don't know if any of the neighbors here have a picture, but maybe you could show my colleagues a picture of the parking space that is a cemetery. It's ridiculous. It's absolutely, the premise is ridiculous. So you're not, you don't need to get the DEC here to tell you well we don't know for sure if its toxic or whatever, it's just um, I forgot your name, as you stated that there are other government agencies. This deserves a vote; the residents of this community deserve some action. John, you recall how many committee meetings and they played pass the buck, that the state wasn't involved it was the county commissioner, and the commissioner said well I didn't issue that permit, so here we are. This is not a difficult decision. If we could take a vote today, you know, by our meeting next Thursday, would give plenty of time to go look at a parking space that they have designated as a cemetery. The premise is ridiculous, and you know, I think, I think that the people here would like a vote, I think they deserve one. Thank you.

Leg. Hardwick: Legislator Dixon?

Leg. Dixon: Thank you Chair Hardwick. To Legislator Loughran's point, I think that exactly, you bring up some issues that are exactly why I need to... and we took a vote in this body towards the end of last year when we heard a bunch of helpful and useful information from one side, we didn't get the other side, we had asked to get the other side's point of view just so we could make an educated vote, I don't think anyone in this room would want us to cast a vote without knowing all the information. That happened toward the end of last year, and it was very frustrating for some of us who want to do the right thing but want to be armed with the knowledge before we do it. Again, I don't know if my colleagues read the letter that we just received from the attorney for Amigone that was taking issue with some of the issues that have been brought up from the resolution that is before us today, and as Legislator Morton said, I think it's wonderful that everybody came out here today, that you are so passionate about this issue, and that you're fighting a good cause. I know you're frustrated, there are issues in the town I live in that we wonder why, that I know about that you may not have all of the information about, I think that for me to vote on this I need to get all the information first, and it's not, I'm not here to say that I'm going to vote differently than you would like me to, but I need to see the site, which I will do between now and the next time, I need to talk to Amigone or their attorney which I plan on doing before now and the next time, and I would love to talk, to speak with any

of you. I started getting phone calls in my office this morning which was the first time I found out we were even voting on this today, and I think you would agree that that's not good government either. And so I want to get all the information first and I think that you would be happy with me making an informed decision rather than an uninformed decision, so thank you.

Leg. Hardwick:     Legislator Savage?

Leg. Savage:        Thank you Mr. Chairman, I also have the privilege of representing the Town of Tonawanda, although this is obviously in your district Mr. Hardwick, and although I'm not a member of this committee I do support the passage of this resolution, and I guess what I would say to my colleagues with questions and concerns is that if this were an issue that were in your district, you certainly would want the members of this body to defer to your judgment, your expertise, your experience, and I think that in this instance we have residents here that have come in support, we have the sponsor who represents the district closest to the heart of this issue, we have the former representative of that area, and I would just say I think we all have issues in our district, we all have issues that are difficult, but in those instances I think great deference should be unto that individual who represents that area, so I would encourage you to maybe think about that a little bit.

Leg. Hardwick:     Alright, I, Yes?

Leg Loughran:     Just for the record, you did state that Amigone was invited to this meeting?

Leg. Hardwick:     Yes, I did send a letter to Mr. Amigone a week ago, a week ago Monday, and their attorney is present.

Leg. Loughran:     Yeah, but they chose not to be here and their attorney chooses not to speak. I think that's very important for the argument of delaying this. There was ample opportunity to address this issue, that the neighbors have been here many, many times over the last decade, so in all fairness I think that to delay this or not, you know, not take the opportunity to remedy a situation that is so clearly wrong.

Leg. Hardwick:     So you are not withdrawing your motion? Alright, well, I bring this to a conclusion, thank you everyone for being here today. Um, I think that the onus should be removed from the residents to prove that there is a problem. I mean, I think that the onus should be put back on the crematory to prove that it is safe, to prove that there is no nuisance, I think that if that were the case this would be a moot point. A motion has been made and duly seconded, however we have not called for the vote, so on my motion I am going to put this back on the table, this will remain on the table, my intent however is to move for the discharge of this at next Thursday's full session. I hope I'll get a second and I hope that the full legislature can

consider it. In the meantime, I would ask that all my colleagues do whatever research is necessary. Mr. Kammer, are you going on vacation in the next few days?

Mr. Kammer: Yes.

Leg. Hardwick: Mr. Kammer is here, Mr. Knoer is in the back

Mr. Kammer: Mr. Chairman, point of order, point of order

Leg. Hardwick: Yes?

Mr. Kammer: Parliamentary procedure, I don't believe that you have the authority to table.

Leg. Hardwick: I, my understanding.

Unknown Speaker: The motion is seconded.

Leg. Hardwick: I understand that, but before, my understanding of the rules of our legislature is that until a vote has been called the Chair can still move to put it back on the table.

Mr. Kammer: Could I have a ruling, can I get a ruling from the parliamentarian?

Leg. Hardwick: Is our Clerk here?

Mr. Kammer: We have legal counsel here.

(Unintelligible discussion)

Leg. Hardwick: The Clerk of the legislature, where is the Clerk of the legislature? Oh, yes, clerk of the legislature, what do our rules say sir.

Mr. Kammer: No, I think a legal...

Clerk: (no microphone, somewhat unintelligible) we go by Roberts Rules of Order and Practice....at the Chairs discretion on a motion...kept things on the table before the final vote.

Leg. Hardwick: Before the final vote, the final vote was not tallied; the final vote was not called for. So, go ahead

Mr. Kammer: Can you set a precedent of that? I've been here ten years, I've never seen it.

Leg. Hardwick: Absolutely not.

(Unintelligible discussion)

Mr. Kammer: I would challenge the Chair.

Leg. Hardwick: Yes, is there a second?

Leg. Miller-Williams: Second.

Leg. Hardwick: Second, the chair's motion to let the item remain on the table has been challenged. Clerk will call the roll.

Clerk: On the motion to challenge the Chair, Legislator Loughran?

Leg. Loughran: Yes.

Clerk: Legislator Miller-Williams?

Leg. Miller-Williams: Yes.

Clerk: Legislator Dixon?

Leg. Dixon: No.

Clerk: Legislator Hardwick

Leg. Hardwick: No.

Clerk: Chair Mills?

Leg. Mills: Yes.

Clerk: Legislator Morton?

Leg. Morton: No.

Leg. Hardwick: I'm sorry what was it? It's a tie? The motion therefore fails. OK, so...

Mr. Kammer: Did the Chair vote?

Leg. Hardwick: The Chair did vote, it was three to three. So, we're back to where we were. It will remain on the table; I will be moving to discharge at next Thursday's meeting.

Mr. Kammer: Wait, wait, if it failed...

Leg. Hardwick: I hope that everyone will avail themselves of the opportunity to talk to Mr. Knoer, to talk to Mr. Kammer, to call the DEC, I'm sure the residents are available. I'm sure Mr.

LaBouda would make his backyard open to anybody that wants to see the proximity of this thing to a residential neighborhood. Is there any further business before the committee? I do not believe there is, I'll entertain a motion to adjourn. Motion by Legislator Morton, second by Legislator Dixon. All in favor? Any opposed? We are adjourned.





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SENT SEP 29 14 01 30

September 29, 2014

**FAX COVER PAGE**

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FAX NO. 858-2281

FROM: Robert E. Knoer

RE: Sheridan Park, Inc.

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OUR FILE #: 11-2289

NUMBER OF PAGES INCLUDING THE COVER PAGE: 6

NOTES:

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**The Knoer Group**

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September 29, 2014

**VIA HAND DELIVERY AND E-MAIL**

Hon. Kevin Hardwick  
92 Franklin Street  
Fourth Floor  
Buffalo, NY 14202

Re: Sheridan Park, Inc.  
Our File No. 11-2289

Hon. Hardwick:

Sheridan Park, Inc. and Amigone Funeral Home appreciate the opportunity extended to speak at the Government Affairs Committee meeting on September 25, 2014. Sheridan Park had expressed their position in the letter submitted to all legislators prior to the meeting. It was expected that there would be a discussion at the hearing of what authority the Erie County Legislature was exercising in "withdrawing" the designation. I am not aware of any avenue in the Not-for-Profit Law to "withdraw" a cemetery land's designation. As stated previously, Amigone will consider any such action as an exercise of inverse condemnation for which compensation is due.

Copies of the letter outlining Sheridan Park's position were hand delivered to each of the legislators on Monday, September 22, 2014 in advance of the Thursday hearing. It was clear that some of the legislators present had not reviewed Sheridan Park's position prior to your hearing. In fact, one legislator noted on the record that she was unaware that a vote would be taken until she arrived at the chamber on the afternoon of the hearing. As such I want to follow up on a few comments made at the hearing.

***The Prior System Will Not Be Re-Started***

The New York State Department of Environmental Conservation (NYSDEC), the regulatory body charged with protecting health and the environment, has monitored the Amigone facility since it began operations in 1990. Despite that constant monitoring the NYSDEC found only one potential violation of the facility permit. Amigone was advised of that potential violation just months before it voluntarily discontinued the operations temporarily. Sheridan Park agreed with the Attorney General that they would seek to move the crematory operations. If that

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request was opposed by the Cemetery Board then Sheridan Park agreed to propose technical solutions to address any concerns that the neighbors raised with the old facility. That is where the issue stands as of now.

Sheridan Park has proposed an abatement/filtration system that will eliminate any unacceptable discharge from the facility. The new proposal now being considered by the NYSDEC includes moving the emission point away from the neighbors. The information presented by the neighbors as to the possibility of contamination, pollution, soot, smoke, or noise all were in reference to the former facility and location.

The Supreme Court denied the application by Attorney General Schneiderman for a determination that the crematory is a "nuisance" under law. The court recognized that until Amigone made a proposal of what it intended to do to address the neighbors' concerns, it is impossible to know whether any future operations could cause similar complaints or be a nuisance.

Sheridan Park informed the Clean Air Coalition on September 15, 2014 by email that a proposal was being made for NYSDEC review. This notice was provided as a matter of courtesy even though such notice was not required by the Stipulation with the Attorney General. However instead of an inquiry as to the components of the new system the response was your call for a hearing on the resolution to revoke the twenty plus year old cemetery land designation.

In order for Amigone to restart the crematory it must receive permission from the New York State Department of Environmental Conservation. As I advised in my letter of September 22, 2014, Amigone has *"submitted a proposal for an abatement system to be added to the crematory. The abatement system is beyond any regulatory requirement and beyond anything currently in operation in the State of New York. Amigone's commitment to finding an appropriate resolution to the neighbors' complaints is without precedent."*

Legislators referenced the health issues expressed by the neighbors and emphatically advised they would support the resolution on that basis. Again, the new proposed facility has a state of the art abatement/filtration system. To vote in support to a resolution based on outdated facts seems inappropriate.

There seemed to be some confusion as to why anyone would designate a "parking space" as a "cemetery." I am also baffled by many of the laws of the State of New York and the seemingly irrational connection between those laws and the protection of the public's interest. However it was determined long ago that crematories could only be operated on land designated as "cemetery land". A designation of cemetery land requires the approval of the county legislature in certain counties, including Erie. Over 20 years ago Sheridan Park received that unconditional designation for a portion of the Amigone Funeral Home building.

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***The County Legislature Should Wait Determinations by the Regulatory Bodies Charged with These Regulating Issues***

I am not clear as to the authority that the County Legislature is looking to exercise in "withdrawing" a 20 year old designation. The New York State Department of State, Division of Cemeteries has authority to regulate the business operations of cemetery corporations like Sheridan Park, Inc.

The New York State Department of Environmental Conservation has the ability and duty to protect public health and the environment. To do that they administer the Clean Air Act permit requirements under a State Implementation Plan accepted by the Environmental Protection Agency. Sheridan Park cannot operate without DEC approval. They are in the process of reviewing the new proposed facility.

It would seem prudent and appropriate to await their review and expert determination as to any adverse health impacts the new facility may pose prior to taking any action on your resolution.

I am happy to meet with you or any of the County Legislators individually to answer any questions they may have. I would welcome Erin Heaney as head of the Clean Air Coalition to meet with us at the same time. It would be helpful to hear the same information at the same time so that everyone is having the same conversation.

Sheridan Park, Inc. is grateful for the rational process that the legislature took in reaching a determination that it is best to have full information on these issues prior to taking a position.

Very Truly Yours,

THE KNOER GROUP, PLLC



Robert E. Knoer

REK/cmk

CC: Hon. Barbara Miller-Williams  
Hon. Patrick B. Burke  
Hon. Betty Jean Grant  
Hon. Ted B. Morton  
Hon. Peter J. Savage, III

(via mail and e-mail)  
(via hand delivery and e-mail)  
(via mail and e-mail)  
(via hand delivery and e-mail)  
(via mail and e-mail)

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Hon. Lynne M. Dixon	(via hand delivery and e-mail)
Hon. Joseph C. Lorigo	(via hand delivery and e-mail)
Hon. Thomas A. Loughran	(via mail and e-mail)
Hon. John J. Mills	(via hand delivery and e-mail)
Hon. Edward A. Rath, III	(via hand delivery and e-mail)
Michael Siragusa, Erie County Attorney	(via hand delivery and e-mail)
Sheridan Park, Inc.	(via e-mail)

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21-14

RECEIVED  
ERIE COUNTY  
LEGISLATURE

RESOLUTION TO BE SUBMITTED BY LEGISLATOR

OCT 16 10 55 AM '90

RE: CEMETERY LAND

WHEREAS, that in accordance with the provision of Section 1506 (C) of the Not for Profit Corporation Law, this Honorable Body will consider the application of the Sheridan Park, Inc., for the consent to construct a crematory on the fourth day of October, 1990, at two o'clock in the afternoon of said day at its chambers on the 7th floor of 25 Delaware Avenue, Buffalo, New York, and

WHEREAS, the required notice of application for such consent shall be published, once a week for six (6) weeks, in a newspaper designated to publish the session laws, and

WHEREAS, at the public hearing the Sheridan Park, Inc., presented to the Clerk of this body, the duly executed affidavits of publication attesting to the required publication set forth above, and

WHEREAS, any and all persons interested in being heard on this matter were afforded the opportunity to do so, and

WHEREAS, it is the determination of this body that the application of the Sheridan Park, Inc., should be granted and that such application does not adversely affect the public health and welfare,

NOW, THEREFORE, BE IT

RESOLVED, that the application of the Sheridan Park, Inc., for legislative consent to acquire cemetery land is granted and the corporation may take and hold the lands designed in their application, and be it further

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RESOLVED, that copies of this resolution are to be forwarded to the Erie County Attorney and to the Sheridan Park, Inc., c/o Casey, Sanchez, Jones, Amigone & Kelleher, Buffalo, New York 14202.

---

LEONARD R. LENIHAN

FISCAL IMPACT: To Be Determined



OCTOBER 09, 2014 ERIE COUNTY LEGISLATIVE'S  
GOVERNMENT AFFAIRS COMMITTEE MEETING

Leg. Hardwick: Call to order this meeting of the government affairs committee. Clerk will call the roll.

Clerk: Legislator Loughran?

Leg. Loughran: Here

Clerk: Legislator Miller-Williams?

Leg. Miller-Williams: Here

Clerk: Legislator Dixon?

Leg. Dixon: Here

Clerk: Legislator Hardwick?

Leg. Hardwick: Here

Clerk: Chair Mills?

Leg. Mills: Here

Clerk: Legislator Morton?

Leg. Morton: Here

Clerk: Quorum is present

Leg. Hardwick: I'd also like to recognize Legislators Lorigo, Grant, Burke and Savage. Concerning the agenda, items number 1-4 on page 1 shall remain on the table, as will items 5, 6, 7, 8 on page 2. Also page 10, I'm sorry, number 10 page 2 will remain on the table and the entire back page, number 11 and 12 will remain on the table. We have two items before us, one is item number 9 concerning the Sheridan Park Crematory but before that, even though item number 7 will remain on the table this concerns term limit legislation. I've invited Mr. Paul Wolf who has written extensively on this to talk to us for about 5 minutes. Mr. Wolf what would be your title today?

Mr. Wolf: In support of term limits

Leg Hardwick: In support of term limits. OK. You have the floor sir.

Mr. Wolf: Thank you. As Mr. Hardwick said my name is Paul Wolf, I'm an attorney, I'm also the founder and President of a non-profit organization called the center for re-inventing government. I wanted to speak just for a few minutes today in support of term limits, an item that Mr. Hardwick has purposed. The history of term limits is actually very interesting. In Greek and Roman times, elected officials were limited to one year. They thought it was important to rotate people in positions to give a variety of people the opportunity to serve. In our own countries history, the Articles of Confederation which was the first Constitution adopted in 1781, there was a limit of congressional members for three years and that language came from Thomas Jefferson. He was a big proponent of limiting terms. Jefferson was very fearful that without term limits people would stay in office too long, become too powerful and his and

Stopped at 2:29. More transcript was not transcribed by Mr. Wolf

Started at 8:52

Leg Hardwick: We'll turn now to item number 9 concerning Sheridan Park Crematory. We're joined here today by Mr. Knoer, the attorney for Sheridan Park, two Mr. Amigone's and a representative from the company that you're dealing with to put in the new unit, if there is a new unit. Before we start however, and Mr. Knoer I'll turn to you and you can present this however you want before we bring up the folks from the neighborhood. I did have a conversation with Mr. Saragusa from the law department yesterday. He indicated that he would not be here today; he submitted a letter at my request and the letter I shall read it. It's been clocked in.

Dear Legislator Hardwick, As discussed today, please be advised that the law department will not be represented at the government affairs committee meeting scheduled for Thursday October 8. Should the Amigone resolution be adopted, litigation will likely follow as such. It is not in the counties best interest to discuss litigation, posture in a public forum. We remain committed to the defense of any suit brought in connection with the repeal of Erie County Legislative Resolution reference intro 2114 and are available to discuss with the Legislators within the contest of the attorney client privilege. Very truly yours, Michael Saragusa.

He did my college, he did stress to that he would be willing to meet with anybody or talk to anybody on the phone from Legislature. Also I have reached out to the folks, I had a long conversation, a couple of conversations, with an attorney from DEC. She indicated she would not be here also, but did submit a letter very similar to Mr. Saragusa's. That letter has also been clocked in if anybody wants to see it. With that, Mr. Knoer the floor is yours.

Mr. Knoer: Thank you.

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Leg. Hardwick: If you turn that on the red light should go on. That's technology for you. Anyway. There you go.

Mr. Knoer: You're good. Thank you Mr. Hardwick, and I would echo Mr. Saragusa's concern about trying a piece of litigation in public and that was why I chose to send a letter to the Legislature, including Mr. Saragusa in expressing our opinions and did not express our opinions in a public forum, in the news media. I didn't think that's appropriate. But I am here because there were some questions asked by Legislators and I was asked to appear here and the Amigone's were somewhat chastised for not appearing in this public forum last time you gave the opportunity, so I felt appropriate. But I will defer to Mr. Saragusa and I will not get into the details of the legal suit. I think you're well represented by the county attorney but I will touch on a couple things in response to questions that Legislators have asked. First, I really want to express my appreciation, I note that not only the entire committee is here but the entire Legislature. I took a quick headcount and all members are here and we appreciate that because this is an important issue obviously to the neighbors and it's an important issue to the Amigone's. Mr. Amigone Sr. is here with me, Mr. Amigone Jr. is here with me and Mr. Paul Rayhill is here from Matthews, the company we've been dealing with to try to find a solution. I just want respond to the questions that were asked and then I will turn it over to Mr. Amigone and he will introduce Mr. Rayhill. The big question we were asked, I guess, was what is this interim insurance and discontinuance? What does this mean? I hear this and I don't know what it means. In response to that I did provide a copy and am happy to provide a copy, but essentially the Attorney General came to us at one point and said, you know were having a problem with the neighbors and we'd like you to shut down. And we said, well we don't think we have to shut down but we do want to do the right thing and we came to an agreement eventually to discontinue operations and take two paths. One was to move, and I say that with pause because frankly the resolution that would be most helpful from this board would be a resolution encouraging the Attorney General to take the leadership in trying to find a way to convince the Cemetery Board to allow us to move and Amigone has made every effort in trying to move. They asked the Cemetery Board, they asked the Supreme Court to overrule the Cemetery Board, they asked the 4<sup>th</sup> Department to overrule the Supreme Court and we are now making a motion to the Court of Appeals, the highest court in New York to allow us to move. Something that I think the neighbors would appreciate, I'm sure you would appreciate; I know the DEC would appreciate and it was something we thought was the appropriate resolution the Attorney General was seeking. Unfortunately that's not legally possible, so instead we had path two and this was all part of the assurance on discontinuance, this was all part of an agreed to contracted for, signed stipulation with the Attorney General and the DEC. And part two was, come to us with a technical, come to us, come to the Attorney General, come to the DEC with a new idea and that's what we're doing now and that's really what has invoked this response from the Legislature. In fact, the day that I e-mailed the Clean Air Coalition and the DEC saying that we have new

proposal, we're going to be putting it out, it may take 4-6 weeks for the DEC to review it but I'm just letting you know. Now that's not required under the assurance on discontinuance but we felt it appropriate to communicate with the neighbors and I invited them to communicate with us if they had questions. The response was the next day in the mail we received this resolution. So I want you to understand that we are not hiding and running, we are trying to do the right thing. The second part of the assurance on discontinuance was an agreement with the Attorney General and the DEC that we be allowed a process, we be allowed the process of presenting a proposal, having the DEC who are the experts make a determination whether it works, whether it addresses the issues if any. Now after that assurance of discontinuance was signed, that's what Amigone did. They started the pathway of trying to move, still trying, doing everything possible. They started the pathway of trying to find a solution and they didn't grab the first thing that someone put out of the box. They talked to different manufacturers, they went to different sites, they've looked, they've tried and now we have the proposal that Matthews has given us which we think is appropriate, that they have already submitted to the DEC to start that review and as we were doing all that, as we were looking around, the Attorney General decided to sue and get a permanent shut down, get a permanent determination that this is nuisance and in response to that suit we said to the Supreme Court, wait a minute, we are a good corporate citizen here, we have come to an agreement with you, we have tried to do the right thing, you're trying to back out of an agreement that we've reached. What does that say to other businesses when other neighborhoods have problems? Does that say don't deal with the government; don't come to agreements with the government because they're not going to hold them up. We went to the Supreme Court and we said you know what, this petition is wrong; this petition is a violation of the agreement and more importantly from a practical stand point because this isn't about legal niceties, we're looking ahead. The petition, the complaints, the historic issues are in the past from machines that we have already agreed that we would try to do something different. So all of that information, all of that is in the past and the Supreme Court said, and I submitted a copy of the order in my letter of September 29, the Supreme Court said you're right, dismiss the Attorney General's petition and said you agreed to a pathway for this company to reopen if, if, if the appropriate government officials decide that what they're proposing is protective of the health of the environment. Amigone is doing everything that they were asked, everything that they can and my concern and my objection, frankly, to this resolution is pretty clear. We're a government of enumerated powers; I know Mr. Hardwick understands this from his educational background. This body, although you do great work in other areas, this is not the area that you've been given authority over. This body's been given authority to consent to the acquisition of a piece of real property, not to continue to regulate the use of that real property, that's not within your purview. And I say that with all respect but I say it very sincerely and I just want to say that sometimes it's best to hear when it's somebody who's not on this side. And so, if I could just read something which I will introduce into the record, the consent of the board of supervisors or legislative bodies thereof, referencing Article 15 of the non-for-profit law, is not

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the same as the regulatory powers possessed by the state and town authorities after consent is granted by the county to acquire the land, the regulation or enforcement of existing state regulation or town code noise or odor requirements is not a county function. That's a memo to this body in 1998 from your attorney. So I ask you to please consider before you act the fact that there are other government powers, the DEC, the Attorney General, already involved in and proceeding with a process that everybody agreed to, that the Supreme Court has stamped its approval and agreement on and don't act on this resolution. Acknowledge that you have many great things to offer your constituents but that this particular power is not within your per vie. And so with that I will answer any questions you may have

Leg. Hardwick: Before you move, let me ask you a few questions. You talk about the decision to move a couple years ago and your attempt to move and you say the appropriate resolution would have been to support that, do you recall a conversation you and I had, a phone conversation where I offered to submit such a resolution and you told me no it's in the hands of the court, it really wouldn't help, do you recall?

Mr. Knoer: I do recall, yes, I do recall at that time having that discussion and I also recall that there was a litigation pending at that time and the answer was appropriate and now the litigation is at a stage into the appellate process where if this body wanted to take that action, I don't think they would be, there would be opposition to it.

Leg Hardwick: So, you told me no, that resolution isn't appropriate a couple years ago but now it is?

Mr. Knoer: I don't recall the exact conversation Mr. Hardwick but I don't deny the conversation was had and I do also repeat that when you're in litigation there are certain things that are unappropriated.

Leg. Hardwick: Your contention also that this resolution was introduced right after notice was given that you were going to proceed, you know you're hinting at a cause and effect relationship and I think there may be a cause and effect relationship but maybe in a different way. Last year, or last week at the caucus in the room across the way you talked about that and you said that the day after we said we were going to go ahead, the resolution was introduced, then you caught yourself and you said, I've got it here someplace, you said something to the effect of, no let me check that we heard that it was going to be introduced. And my question to you is, who did you hear that from because there were only a couple of Legislative staff that I told that to, so somehow the word got back to you and I was wondering because it was ready to go the Thursday before I introduced it.

Mr. Knoer: Sure, I heard it from you, you sent a letter to Amigone, the letter was dated September 15, received September 16, my e-mail was dated September 15 so the day after the e-mail was sent Amigone received the letter, that's what I was referring to.

Leg. Hardwick: I see, I see, I'm just telling you the resolution was ready to go the Thursday before I had a discussion with some staff members, I wasn't sure if there was a cause and effect, so I guess in my mind since I know we've been working on this since this summer, that the go ahead was given, contingent on the weekend, I wanted to think it over one last time the Thursday before, that it was just a massive coincidence. With that I will turn it back to you and whoever else would like to speak.

Mr. Knoer: OK

Leg Hardwick: Oh, I'm sorry, I'm sorry, were there other questions? Mr. Legislator Lorigo, then Mills, the Dixon.

Leg. Lorigo: Thank you Mr. Chair. I would just like to point out, you said in the beginning of the meeting that your college would have all seen these letters, the letter from the county attorney and the letter from the DEC. Maybe you saw that they were clocked in at 10:00am this morning, so we did not see these.

Leg. Hardwick: They came in my e-mail this morning, so they were e-mailed, actually I think one was hand delivered so I got them this morning.

Leg. Lorigo: I'm just saying, we haven't seen them yet until this morning, until right now.

Leg. Hardwick: Thank you, Legislator Lorigo. Legislator Mills, Chair Mills? OK very good. Legislator Dixon?

Leg Dixon: Thank you. So the DEC letter basically says that in response to your inquiry, Amigone Sheridan Park has submitted information regarding modifications to the existing crematory unit, the information is preliminary, the department has not commented, has not made any determinations and once the department has a complete application we will evaluate it for compliance with applicable laws and regulations to determine whether to issue a permit or deny the application. I think one of the challenges on issues like this is to try to come in with an open mind and to try to gather the facts and make a decision based on the facts and I am wondering what the purview is of the county legislature in making determinations like this. I'm also wondering, I know there's a crematory on Delavan which is near a neighborhood and also one on Kenmore Avenue or Englewood that's also by a neighborhood and I'm wondering if anybody's ever received any complaints regarding those crematories and I will also note that there was an article in the Buffalo News commenting on how more and more people are

choosing cremation, so again and this goes back to what we talked about in caucus last week, this, more and more people are choosing this so obviously this is going to be a choice for people going forward so how do we resolve this in the best manner possible. So, statements mixed in there with questions but whether it's our purview, what comments or concerns have we ever heard on those other two crematories that are also near residential areas, that's to start with.

Leg. Hardwick: Is there a question? I'm sorry.

Leg. Dixon: Are we aware of any, is there any case law, is there anything that would indicate that there have been prior complaints at these other locations?

Mr. Knoer: I am not aware; I cannot speak to that directly. I think the DEC would probably be the one, they do regulate the operations if there are any complaints I would imagine the DEC would have that information.

Leg. Dixon: And it's my understanding too that Erie County would be hiring outside counsel for this litigation, is that correct?

Leg. Hardwick: I, that is not my understanding. I don't think that that's the case but I can't, again, the county attorney encourages everybody to talk to him. I think you'll get a different perspective on this. He said that they would defend this, I would assume from my discussions I get the impression that we would do that in house but again talk to the county attorney on that. Legislator Dixon are you finished?

Leg. Dixon: I am thank you.

Leg. Hardwick: Legislaure Burke I will come to in a minute I think Legislator Lorigo would like to respond to that. Legislator Lorigo?

Leg Lorigo: Thank you Mr. Chair. On that point on hiring outside counsel I spoke with Mr. Saragusa last week at caucus and after caucus and he did advise that if litigation did ensue that they would need to hire outside counsel on this.

Leg. Hardwick: Thank you. :Legislator Burke, followed by Legislator Miller-Williams

Leg. Burke: (Unintelligible Conversation)

Mr. Knoer: Yes, if you look at the record and we'd be happy to provide you. I have the FOIL record from the DEC. It's about that thick. There have been issues and complaints over the course of the time and each time the Amigone's responded and did whatever the DEC asked, they adjusted the stack, they took other measures, they changed operational times, they did whatever was asked of them over that period of time. It wasn't until 2012 that the DEC made a

request to actually shut down and at that point we came to assurance on discontinuance. So yes, I do think there has been a good faith response to any government action that was brought.

Leg. Burke: (Unintelligible Conversation)

Mr. Knoer: Yes I believe they did, over the course of time, yes.

Leg. Hardwick: Legislator Miller-Williams?

Leg. Miller-Williams: Yes. In reference to Legislator Dixons question and concerns about the crematories in Erie County (unintelligible) and I just tried to check to see what kinds of crematories we have throughout Erie County and from what I can gather and I'm just pulling it initially, there is the Buffalo Niagara Cremation Service 580 South Park, the Erie County Cremation Service 873 Abbott Road, Forest Lawn Cemetery 1411 Delaware, Tonken Crematory 417 Kenmore, Buffalo Cremation Limited at 901 West Delavan and sitting here at this point in time to my knowledge and as far as I know I have not received any concerns or any kind of citizen input in reference to these existing crematories so we do have at least these crematories as listed in Erie County but as I indicated to my knowledge we haven't received any kind of concerns or complaints from the constituents of the community in those areas. If there are concerns they just have not been brought to my attention at this point in time. So I don't know what they may have done or they're doing differently than the crematory situation we have here in front of us. Thank you.

Leg. Hardwick: Thank you Legislator Miller-Williams. Anyone else before we ask Mr. Knoer to pass the baton to... Mr. Logrin?

Leg. Logrin: Thank you Mr. Chairman. Mr. Knoer, you seem to, your presentation that the county has a limited role in this proceeding.

Mr. Knoer: Yes.

Leg. Logrin: Is that your argument?

Mr. Knoer: That is.

Leg. Logrin: Well, the thing is, is could you operate a crematory without being designated as a cemetery?

Mr. Knoer: No.

Leg. Logrin: And who provided that relief?

Mr. Knoer: The consent of the county was required at that time.

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Leg. Logrin: What about the relief for the neighbors for 20 years that in their back yards when they go entertain in the summer and they say what's that noise, that's the crematory, that's burning bodies and I just think that, that the intent of designating a parking space as a cemetery was wrong from the beginning and these arguments of, you know, proper engineering, I mean, I'm sure that the incinerator process can be improved on but it really doesn't get to the heart of the matter here which is providing relief for the residents that a crematory was put in a residential area and from my colleagues that, you know, what's appropriate, we talk about appropriate, is to represent our constituents and when you do that just ask yourself if that was your back yard and that was your friends and family and neighbors coming over and they say what's that noise, would you want that in your backyard in a residential area? Thank you.

Leg. Hardwick: Anyone else before. Legislator Morton

Leg. Morton: Thank you Mr. Chairman, just responding to my colleague's last comments. I find it interesting that Legislator Miller-Williams brought up 3 or 4 other locations within residential neighborhoods where there appears not to be any complaints so when you hear about NIMBY, Not in my back yard, and on the face of it having a crematory in your back yard does not seem to be a good thing and yet if every one of those residents in a residential neighborhood were here complaining that would say something. What says to me is perhaps the technology that they've been using needs to be improved or has been improved since they put there's in twenty-some years ago but if we have actual cases within this county of crematory and residential neighborhoods where there are no complaints I think that says a lot and to stop, to allot this resolution to go through without fully examining what can be done to make it as good or better than these other ones I think is wrong. Thank you Mr. Chairman.

Leg. Hardwick: Thank you Legislator Morton. Legislator Burke?

Leg. Burke: Amigone is handling this by *(unintelligible)*

Leg. Hardwick: OK. If my colleagues are ok we'll pass it back to Mr. Knoer and he can hand off the baton to one of our other guests.

Mr. Knoer: Thank you. Thank you Mr. Hardwick and thank you all for your questions and if you do need further information as we've said we are available. You have my number, I've sent you all letters. I'd like to turn it over to Anthony Amigone Jr. to speak very briefly and then introduce Mr. Rayhill to talk about specifically the technology that's being proposed.

Mr. Amigone Jr.: Thank you and for those of you who have may not have been here last week I just wanted to point out that we are sensitive to our neighborhood whether they would like to believe that or not. We are a family business, we've been in operation since 1926 and we can't survive without the community appreciating what we do for them or having a relationship

with the neighborhood. If I may, I think we're doing our best to try and do the right thing. We've raised the bar very high for ourselves, higher than what we know is expected of other crematories around the state. In particular our location, and Barbara Miller-Williams is.... Your honor if I may, some of the names that you mentioned the reason that you may not have complaints from them is that they aren't actually operating a crematory. They are businesses licensed as funeral homes that use cremation in their names to suggest that they do that process. Some of those that you mentioned are operating crematoria. Some of them are operating the same equipment that we're now utilizing without the advancement of our equipment. We recognize that there are complaints from the neighborhood. We've seen the data, we've seen the photographs but I do believe that we have an agreement with the Attorney General and we do believe that if there's going to be a decision made that we're in violation of any sort that it's up to them plain and simple. We're trying to do everything to abate the problem in the neighborhood and come up with the best technology solution which everyone should question and we've questioned it. And last week we promised that we'd have Mr. Rayhill here this week. He's come in from Orlando, Florida. He's President of Matthews International Cremation Services worldwide. They have a hundred installations in Europe. Our abatement system would be one of the first in North America. It's designed to be not used in our typical solution; we're rather low volume compared to what happens around the world. The system that he'll explain is designed to abate rather large volume operators so it's something that's been designed to hopefully address the issues of our neighborhood, our community and our state and the people and those interested in clean air. So at this point I'll turn it over to Mr. Rayhill or if anybody has any questions for me prior to that.

Leg. Hardwick: Does anybody? Legislator Dixon?

Leg. Dixon: I just, if on a couple things. Mr. Amigone first what about the claim by Legislator Burke that you didn't hold up your end of the bargain?

Mr. Amigone Jr.: Obviously we haven't because they're not happy. I think we're doing our best to come to some form of resolution now. The dialogues that we've had in the past, I mean you start down a road and then its finger pointing and rather than having a shouting match you choose not to discuss it any further, so, and I said that in last week's meeting. I said this is all based on faith and trust and there's a lack of that going in both directions.

Leg. Dixon: You have not operated since 2012? Is that correct?

Mr. Amigone Jr. It hasn't been opened and operated in 2 years plus.

Leg. Dixon: If and then I'm wondering from the residents if, if the facility or the technology that you're about to tell us about is clean and doesn't admit the I guess the ashes or

odor whatever it was that was troubling the neighborhood, would that then be acceptable to the residents that they operate?

Leg. Hardwick: We'll be bringing some neighborhood representatives up here shortly so perhaps that question is appropriate, hold off on that question. Any other questions for Mr. Amigone before we move to Mr. Rayhill? Ok. Hearing none, Mr. Rayhill. Thank you for being here.

Mr. Rayhill: Good morning. Thank you for allowing me to speak. Just a little background on Matthews, Matthews International is a publicly owned company; it was started in 1850 so it's been around a little while. We currently operate business units in over 30 countries worldwide, so we are a global business. We've been engaged in the cremation part of the industry since the 1960's and that's when we've previously been engaged in the cemetery and funeral side and then became engaged in the cremation part of that business in the 1960's. I personally joined the company in the mid 70's so I've been focused my entire career on cremation systems and development so it's something I have some familiarity with. Since we, when we began our venture into this business back in the 60's we took a track of serving the funeral directors. Cremation was in single digits at that point but it was destined to grow based on our ancestors in Europe and the trends they had gone through so we began to focus on the funeral home aspect of providing cremation services rather than historical cemetery providing it. As a result, U.S. and Canada have followed that track in 46 of 50 states, funeral directors own and operate crematories and funeral homes are located in the types of communities we see with Amigone. It's very typical; actually their location might be a little more commercial than what we typically see because of the large commercial avenue we have in front. So that's a very typical application for what we see. We've done over 3,000 installations worldwide and 60% over 60% of these are in funeral homes, that's a very typical application. The systems that we've designed, even going back to the 60's we designed with the funeral home application in mind, at that time we did very different things compared to the rest of the industry. We did things like we put in large after chambers which re-burn, which clean all the gasses. That was not done at that time. We also put in opacity monitors and controls in the chimney's to watch what's going out because we knew that these were located in residential and light commercial areas so they were quite revolutionary at the time, even to this day a lot of our competitors still don't do those types of things but we have continued it. With over 3,000 installations worldwide, the installation at Amigone is very typical and these work very well. They're not perfect but they do work very well and that's what's brought us here today. The Amigone's contacted us, asked us to do an evaluation of the existing system to find out where there were areas of improvement, where there were areas that may have caused some of the concerns they and some of the neighbors have had and then after that's all done then put together and propose some solutions to them. So that's what we've done. We've done the evaluations, we've read a lot of the documentation, we've

gone over all of their recording charts that they provide to the DEC, so we've done a lot of homework to try to understand what some of the issues are so we can propose a proper solution. What I'd like to do, if I can, is provide a handout that might make it easier for what I'm about to talk about. So when we first started the process in trying to determine where we needed to go, we came up with some objections and that's on the first page. So the objections when we started this process to review and redesign their cremation plant was to eliminate the incidents of smoke and odor. Again we reviewed a lot of chart information which logs all their previous cremations so we review that information and tried to get an understanding of what went well, what went wrong and what we could do about it. We had an objective to reduce the internal and external noise generation. There's only a few things on the cremation systems that would cause noise, that would be the fans that would provide oxygen to the burners and then the burners themselves have some noise to them. This generates some amount of noise within the room and some amount of noise could go to the outside through the chimneys, so we took a look at both of those areas. We also had an objective to have a more controlled cremation process. Not getting too technical, cremations are not all the same. There has to be some judgment calls made depending on body sizes, temperatures, container types that the families choose, there's a lot of decisions that have to be made and the operators go through a matrix of decision making matrix to try to set the system up for the proper operation. Most of the times they do a great job and that's mostly how it's mostly done but what we have one of the much bigger machines is we have a control system called an empire control system that basically asks the operator 4 basic questions and then it calculates all the errors, the fuels, the timing and all of that. So we wanted a more controlled cremation process with fewer operator decisions. We also thought if we were going down this route that we might provide an option for some additional admissions reductions. Things that aren't even regulated by the State of New York but we thought if we're going down this route shouldn't we consider that as well, so that's something we'll talk about. And then the last objective we had was to locate the final exhaust point on the roof further away from the property lines for two reasons; to reduce the site of it, some people view chimneys as an eyesore and I understand that so we wanted to visually move it away and also any noise that would come out of the chimney we wanted to get that as far away from the property lines as possible. So those were the objectives that we agreed upon when we started this evaluation. So we had two areas to deal with; the first one was the cremation system itself, what's existing there now, what could be done with that to improve it, to add features to it and basically what we decided to do was we would keep the steel structure and some of the insulation but everything else we're going to take out and replace. So what we decided we would want to do is to add an advanced air injection system. Cremation is combustion and it's all about good combustion to reduce smoke and odor and particles outside so that the better job we could do of the process the less impact it will have on the environment. So we proposed to put in one of our advanced air injection systems that's tied into the computer controls that regulates that, takes that away from the operator decision. The second item on the cremation system itself is to replace the thermal lining

and add to it, so the whole interior of a cremation unit is lined with fire, brick and very high temperature linings. We wanted to reconstruct all of that because of the air systems and this required us to replace the thermal lining plus we're adding to it. So, the way the process works is the cremation takes place in all of the gasses created all of the smoke and admissions created from the cremation process are taken into what they call a secondary chamber which is a thermal after burner where we reheat them and clean them. So that's the second process, we cremate it and then we clean it. So what decided to do was while we're replacing the thermal lining we would go ahead and add to that secondary chamber volume, we would add sheer volume to it to allow more exposure to the cleaning process. Between that and the control system we would actually increase the retention time. Now, retention time is something that's required by most states and the state of New York is as well, that they want us to hold those gasses for a certain period of time to allow for complete cleaning or as good combustion as possible. What we're proposing is to increase that by 50% over what they have now, so between the additional secondary chamber, the additional controls on the air and burners, will increase that retention time 50% beyond what the state of New York requires. And the last item was on door seals, it's a minor issue but we felt it needed to be done. On the next page, more on the empire control system, that's a, again that's a computer control system that makes a lot of the decision, reduces the need for operator input and allows for factory monitoring, so this system whenever it's operating goes to a central monitoring station just like a security system would in your home and there are technicians, service technicians, monitoring these systems. It's real time, it's web based, it's real time. If there is an issue the service technicians will see it and it actually pulls up a box on their screens, but at the same time it will send a note, if there is an issue, it will send a note to the designee of the owner so they can receive an e-mail, text or phone call regarding any kind of issue that pops up. So it is real time monitoring and there are diagnostics ability, we can troubleshoot the system and we can make some adjustments to error and gas via the web. The last item, there is the draft and suction controls. One of the things that we run into and certainly have on the Amigone instillation as it is now, is as we make changes to the chimney, all of those changes impact the draft of the chimney and we've probably had gotten to a point where we'd done us more harm than good to keep adding to the chimney and keep changing directions. So what we are proposing to do on this is put a modulating fan that controls the chimney draft all the time so it measures it, monitors and controls the chimney draft so we get a constant flow through the cremation system and the abatement system all the time, regardless of stack height, stack direction, outside temperature, humidity or any of those other factors. In addition, some of the things we talked about were to provide some new technology which was mentioned in the assurance of discontinuance. The Amigone's requested that we look at technology beyond all of this so all of this is great and all of this will have a positive impact as I have noted but they said, what else can we do, is there something else we can do? And of course they're aware that we do systems all over the world and in our installations in the United Kingdom of Europe we commonly do municipal, in the UK you all would be running the crematory locally, it would be a

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municipal activity, it generally is done by a government body. And so they have large crematories doing high volumes of cremations in densely populated areas and because of that we do have different systems. There are more filtration and abatement systems that go on in those crematories, so what we said to the Amigone's is, sure we have this other technology and we could look at putting that in your location and see what we could do for that. So they had asked us to go ahead and take a look at that and include that in the proposal back to them and that's what we have done. As its proposed and I can say this with confidence, as it is proposed, as we'll go through it here in a minute, this would be the cleanest operating crematory in the United States because no others have this type of filtration system in the United States. So if we go to the green and yellow, blueprint on the next page, I know blueprints are very difficult things for most of us to go through so we kind of color coated this a little bit, but if you look at everything green and yellow are things we would be adding external to the cremation unit itself, so we're doing all the changes inside, the air system, the empire control system, increasing the secondary chamber, increasing the retention time, that's all a part of the cremation unit. Everything else is that we're showing there is external so this is all the additional abatement systems that we're talking about. The first item that we would run it through from the crematory would be the heat exchanger and I'll explain the purpose of that, it then goes from the heat exchanger to a horizontal cyclone and a cyclone is a device that actually spins the gasses trying to separate out as many particles, flying particles, as it possibly can. So we go from the heat exchanger to a horizontal cyclone and then we go into a filtration duct which that's just an air balancing item and then the next item is what's called the reaction tower. It's the big square item to the right. That's another cyclone but its vertical and what that does is that spins the gasses again but we then mix it with a powder of sodium bicarbonate an activated carbon and this is the additional admissions treatment I talked about. We've never done this in the United States. We've done this in Europe a lot of times but we've never done a system like this. The purpose of adding the sodium bicarbonate an activated carbon is to reduce HCl admissions, hydrogen chloride admissions and reduce metal admissions like mercury and lead and so forth. So again we commonly do this, probably about 90% of our installations in Europe, we've never done it in North America, except we are, I say we haven't but we're installing a system identical to this right now for another client so we'll have another one operating here soon but this is very new to this market and certainly never done in New York. The last item there is the induction fan. That's the item that I mentioned would keep a constant steady flow through the system. Then all the way down to the bottom of the page is what's referred to as a deluxe ash processing system. One of the concerns or comments that the Amigone's shared with me is there is a belief that some of the particles from the ash processing function were making their way outside and what I said is that we'll propose a system, we have these systems that have a self-contained fan and filter so it doesn't vent outside at all. It just recirculates the air through filters inside. So that's the last item there that we are proposing as a part of this. Now I'll kind of walk through them just very briefly just one of a time because I know that this is just a little too eggy for most of us

but the, on the next page the heat recovery unit, the sole purpose of that is to cool the exhaust. The exhaust comes out of the cremation unit at about 1800 degrees Fahrenheit and we need to cool it down to about 400-500 degrees Fahrenheit to treat it properly with these abatement chemicals and so to do that we run it through our heat exchanger, this takes the heat out of it and cools it down so we can take it to the next stage of treatment. The next step is the horizontal cyclone which I mentioned spins the gasses, separates a lot of the particles out so it's just a great device to help remove any particles that make it through the cremation process and then the air balance and control, again it's all about air balance. On the next page we talk about the reagent addition. Reagent is this powder that I'm talking about, we would inject about 100 grams of this material and it's a mixture of sodium bicarbonate an activated carbon and it reduces atowax, HCl and mercury and again these are items that are not regulated in New York or any other state for crematories but we thought while we're doing this we would make the proposals to the Amigone's and see if they were interested and to see if the DEQ was interested in this. The last item is the reaction tower and that's the vertical cyclone and again that's where we inject the powder, we spin it, it gets a very intimate contact so we adhere to as much of the HCl and the mercury as possible that falls out and is disposed through the proper waste channels. If we look at the discharge system, I've talked about that modulating induction fan, again that's just a real important part of the system to maintain a constant flow through the abatement system. The vertical line chimney we would replace the existing chimney. Right now that's an unlined chimney which is very typical for that type of machine in the type of installation but because we're cooling these gasses down to about 400 degrees Fahrenheit we want to maintain that temperature in the chimney, we want to keep them warm so we're lining that chimney all the way up to the top to the roof and then at the roof we would propose coming instead of coming straight up 15 feet or so as it does now we would propose elbowing it and running it horizontal towards the center of the building and then we would turn it up vertical from there. Our preliminary walk around showed that you probably couldn't see it very well from the property lines where we're proposing to put it and by putting it there, even though the going through the system noise would be much less anyways, putting it there whatever noise does come out would be more difficult to hear from the property lines. As I mentioned we've had quite a bit of previous experience with abatement systems but in North America they are not very common. We did install, we have installed a system in New York back in the late 70's in Woodlawn in the Bronx, it was a different system than this. It wasn't an abatement system; it was a water based system which was very common at the time. It was approved and it's been operating ever since, we still maintain it for that client. We hope to replace it at some point. Interesting enough, we petitioned the state of New York to allow us to do installations without that water scrubbing abatement and we went through a trial process with them providing an alternative solution which they approved and ever since then we've been able to put in just thermal afterburners for them but that system in Woodlawn the Bronx still operates today. Again, not what we're talking about putting in here, it's very crude by comparison because it's over 30 years old but it does work.

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We've done some cyclones up in Canada but again not as sophisticated as this. Currently we have over 100 cremators operating under abatement systems and what we're proposing here far exceeds what's required by the New York State DEC. If we look to the next page we can, I've done just a rough comparison standards, on the left hand column is the typical performance standards with abatement system as its proposed and on the right hand column is the current New York DEC requirements which I confirmed, of course this was part of the Amigone's permit but I actually confirmed it today and it's still that level, so that's still current for today for New York State. So what we're proposing is to not only reduce the particulate matter by over 30% but also reduce the Hcl and mercury as well, again not requirements but we just figured while we're doing it if the Amigone's and the DEC were interested in that. A system like this is of course not something that they would want to maintain themselves so it would be accompanied by a service contract. They'd have service technicians come up and do the diagnostics check, the calibrations, the tune ups on the burners and check the abatement system. They'd do that twice a year. In addition of course we have the ongoing monitoring of the system which we can look at, at any time. The crematory operators will be instructed and trained on performing some minor maintenance like keeping the lenses clean on the flame detectors and the stack scanners but those are just small items that they're quite capable of doing. So that's really where we're at. The key points are, we're proposing a pretty significant upgrade to the basic cremation system itself. We're proposing adding a fairly elaborate abatement system to address not only the issues that have been mentioned but also issues that nobody's ever mentioned that might be interesting for those who are truly interested in clean air and again this would be the most advanced crematory operating in New York certainly if not the United States as well.

Leg. Hardwick: Thank you, I'll open it up to my colleagues in a moment. Thank you Mr. Rayhill, you have now made this body the most informed Legislature in the world on crematory practices and thank you for that. You mentioned that you put in a facility in Woodlawn 30 years ago; obviously that's not the technology. If I wanted to see and you mentioned that this isn't, I can't see it in New York State and probably not in the United States, it's common over in Europe, I don't think my colleagues would approve of adjunct ant (*somewhat unintelligible*) over to Eupore for any of us but if I wanted to see this technology in practice where would I have to go or how close, how close?

Mr. Rayhill: Well as I mentioned, we're in the process of installing one in Florida right now. We've actually installed the crematory and it actually started operating this week. The abatement system will be complete within about 90 days.

Leg. Hardwick: So again the Woodlawn technology...

Mr. Rayhill: Wouldn't even recommend...

Leg Hardwick: What about this Mount Pleasant, where's that?

Mr. Rayhill: Mount Pleasant is in the Toronto area. It's a different manufacturer but it's a very similar concept. They are doing secondary, it's the same thing, they are doing a secondary chamber, particulate removal and they are treating for HCl and mercury.

Leg Hardwick: So it's similar technology?

Mr. Rayhill: Similar but not the same.

Leg Hardwick: And their technology and their unit isn't around any place closer than Toronto.

Mr. Rayhill: That would be the closest one I know of. That would be the only one with abatement that they have.

Leg Hardwick: Thank you. At Mount Pleasant. Great name by the way. Anyway Legislator Rath, you had a question?

Leg. Rath: Thank you Mr. Chairman and thank you Mr. Rayhill for coming in and informing us and I wanted to concur with the Legislator and Chairman that we now know more about cremation and filtration systems that we probably ever would have to know. Your testimony is very well thought out and very, very informative. I have a number of comments and questions. I think my first thing goes back to what you said partway through your testimony, you said the Amigone's came to you and said, so what else can we do? Ladies and gentleman we just heard what else the Amigone Funeral Home is willing to do. The expense they are willing to incur and the incredible, incredible investment and leadership with this abatement system that they're willing to accomplish to meet concerns and the needs of the residents. And you called it an elaborate abatement system and I counted five processes/improvements when it came to the abatement system and three processes/improvements with the discharge system. So we're talking about eight new state of the art type of processes and improvements that they will be utilizing. How does that compare to what had been done in the past and what the standards are in New York by the way of abatement and discharge processors?

Mr. Rayhill: Great question. What the Amigone's have now is what is standard in the United States. The system that they own and operate currently without any of this is what is standard in the United States and as I mentioned we have over 3,000 installations, probably 2,000 of those are in the United States and 60% of those are in funeral homes just like theirs and those installations would either be a similar to what they have or one less sophisticated and as we rank that against most of my competitors, we're at the high end, we're at the nicer end of the scale. So if you consider what they have as a typical as compared to most funeral directors in the

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United States, they're at the higher end of that. So they're already at the high end of the scale without any of this, but that's how they rank.

Leg. Rath:            Ok, and a follow up to that, you talked about a service and maintenance arrangement between Matthews and the Amigone Funeral Home. Twice a year, is that what you had said was the offer for when you would come in to retest and reassure and guarantee that these standards are being maintained and continuously operated?

Mr. Rayhill:           Right, there is ongoing monitoring, so that's every day is the monitoring service, so there would be a technician on call monitoring the system every day. As far as the physical presence of a technician, service engineer coming up, recalibrating, checking, just monitoring, going through their 96 point checklist that they have, that would be twice a year

Leg. Rath:            And is it fair to say that this would be by far the cleanest operating crematory in the United States?

Mr. Rayhill:           It would be. It depends on who is first, either Florida or this one, but they're going to be the same because they're the same type units. We're proposing an identical system to this, or we've been installing an identical system to this in Florida.

Leg. Rath:            Ok, thank you Mr. Chairman.

Leg. Hardwick:        Thank you Legislator Rath. Legislator Dixon?

Leg. Dixon:            Thank you for being here Mr. Rayhill. To sort of boil some of this down, what can you tell me about, would there be an odor, would there be emissions, ash, the appearance of that stack which understandably has some residents upset, the way you described it as going down and up, those three things that I think are the biggest concern obviously of the residents. What can you tell me about, would there be an order, would there be ash coming out, and obviously you've addressed the stack issues.

Mr. Rayhill:           Great questions. All of the things we're talking about are to improve the combustion process. So, if we have an incidence of smoke or odor that's because of incomplete combustion. It means something wasn't right, either the operator didn't set up the machine correctly, the machine malfunctioned, something went wrong to cause that because that's not what we want, that's not normal. So all of the items we've talked about, the control system, the air controls, additional secondary chamber, additional retention time, all of that is to address the issues of smoke and odor. They go hand in hand typically, if you have one you probably have the other. Will it improve that? Absolutely it will improve that. If you're asking me if there is ever anything coming out the stack, of course there is. Any device that burns anything, any device that moves air has particulates coming out, so it's not an absolute but its far better than what is required and far better than what they have now. As far as the stack movement, right now the stack goes up fifteen or twenty feet, and it's got some sort of screen around it. What we're talking about is coming out of the top with a nice looking elbow pointing away from the

neighborhoods, so it would go horizontally across the deck towards the center of the building and then just stub up. It should be quite an improvement visually for the neighbors.

Leg. Dixon: And where you install these now in the United States, I know in Europe you said they're in densely populated areas, but in the US where are most of these being installed? Are you finding them primarily in cemeteries, are you finding them in business areas, industrial, where?

Mr. Rayhill: Sixty to sixty five percent go into funeral homes, and funeral homes are typically in residential-like commercial areas, like we see with the Amigones. Twenty or twenty five percent go in cemeteries, and the balance would be either private businesses or cremation societies or vault companies, and they're typically in commercial areas, not industrial.

Leg. Dixon: This is new, the ones that you've installed recently within the last two years. Have you received the kind of complaints that we've been getting here?

Mr. Rayhill: We have not. We have not. Not to deny that there is a basis for the complaints, because they've shared with me some of the photographs and documentation, so obviously something was wrong, there is no question about that. Typically we hear about resistance at zoning meetings is typically where we would hear any sort of resistance from neighbors, but even then it's not, not that kind. We do about, in the United States we do about 150 projects a year in the United States.

Leg. Hardwick: Thank you Legislator Dixon. Anyone else? Thank you Mr. Ray--I'm sorry. Chairman Mills?

Leg. Mills: Thank you Chairman. Before I ask the question I want to thank you for coming in, I want to thank the Amigones for spending a lot of time with me discussing this. I've got to tell you, I served for 31 years in the Sewer District Board of Managers out in Lakeshore here, which you may or may not be familiar, and of course the purpose of that plant is to extract waste and put it back as clean as possible back in the lake, so I'm familiar with scrubbers and pollution control, and I can tell you we work very hard out there to make things positive for the residents and fortunately the plant, except for Woodlawn Beach which is right next door, the rest of the residential area is away from the plant, three four five hundred yards, so that is a positive thing, but in all the years I've been there it is very difficult to continue to contain the odor. It's just almost impossible even with the technology we have today, as far as cleaning up what goes back in the lake, we've made a lot of strides in that, and we do burning, we started burning out there, we have incinerators and things, so it's not exactly what you have here but the background is similar. A couple of questions: what is the estimated price of this unit would you say, going in to Amigone, put in and constructed and up and running?

Mr. Rayhill: If we were to, well the best way to compare it is to tell you the one we're installing for the other client because it's similar. You're looking at, for the abatement system alone you're looking at \$400,000 to \$450,000. For the crematory, if they were to, well as we're

replacing it if they were to buy that new it would probably be close to \$175,000, so you're probably looking at \$600,000 all told.

Leg. Mills: Lets back up on this maintenance and upkeep situation. This is going to be monitored basically by computer systems?

Mr. Rayhill: Its web based, but there are live people. It's all Matthews technicians monitoring on the other end.

Leg. Mills: So it would be a total service program, twice yearly?

Mr. Rayhill: It would be an on-site service and inspect and preventive maintenance plan executed twice a year on site and then they'll have a monthly program on the monitoring and that's a technician on demand, so if they needed to ask a question there is actually a help button on the screen. So if the operator was being asked to perform a cremation he wasn't quite sure about he could just press the help button if there was some question he had about it, so they have that ability to communicate in real time with a technician. All of our technicians are experienced in all the trades, the combustion trade, but they are also experienced performing cremations, so they actually do cremations and training as well, so they're experienced in the full service.

Leg. Mills: So Amigone personnel would be trained by your company?

Mr. Rayhill: Yes.

Leg. Mills: To operate the machinery that is there?

Mr. Rayhill: He'll be trained to operate the machinery, he'll be trained on the monitoring system, and he'll be trained on the basic maintenance we expect him to perform on a daily or weekly basis.

Leg. Mills: So if something goes wrong with the operation of that unit, someone flies in from Florida to troubleshoot it?

Mr. Rayhill: It could be. We have technicians based all over the world, so it could be that someone comes in from Pittsburgh, or the Northeast, or from Florida. I'm not sure where they would come from but it would be one of our people.

Leg. Mills: Tell me about, maybe a little bit about; maybe Mr. Amigone can answer this question, but two parts. Number one, I think we mentioned to be some like cremations maybe five or six hundred a year anticipated at this unit, what is the capacity of the unit as far as cremation?

Mr. Rayhill: We have clients with that same model doing 1500 to 1700 a year.

Leg. Mills: So what I'm getting at here is I'm looking down the road, if crematories and cremation is more and more a popular thing getting on. So the volume for the Amigone family will increase and so there will be more of the cremations taking place over the coming years, it does two things, it really puts the burden and responsibility on this unit and the Amigone family to make sure it performs correctly, and then the more you use it like any piece of equipment the better the chances of a breakdown. So I'm just throwing these things out, and you fellas know what I'm talking about so I'm preaching to the choir here, but some of the background information I've accumulated over the years, I mean the unit and the operation look pretty sound to me, but some of the things I'm concerned about I just expressed plus the fact we don't have a lot of these things operating in the US of A, so we don't have someplace to reach out to Amigone Sr. and asked him if there was a similar operation in the technology in Toronto I guess but nothing that you could drive out to the facility and see what was going on, so, thank you.

Leg. Hardwick: Thank you Chair Mills. Anyone else before we move on and let the residents... yes, Legislator Miller-Williams?

Leg. Miller-Williams: Just very quickly, I first, well I want to commend the Amigone family for attempting to work with your neighbors, not only by your actions but by just looking to come up with the substantial financial investment as well, so I thank you for that and I also want to just recognize and thank the Amigone family for being in the Western New York community for over 80 years. One thing however I'm still concerned about is the, hearing everything that's been put out, it would be wonderful to have the technology and to be the first and to have a, to provide services to those who are looking for the type of crematory services that would be made available. Has the door been shut to finding another location to actually open up the crematory service? Number one, has the door been closed, is that not an option at this point, and number two, I still remain concerned because even hearing with the reporting etcetera, there's a lot of discussion occurred about reducing, but I didn't hear the elimination of smoke, odors, particles, chemicals, etc. I would not want to be living near anywhere there is a reduction, I would want to be living someplace where there is an elimination of smoke, odor, particles, chemicals, so that concerns me, that I'm hearing about reduction not elimination, and has the door been shut, is there a possibility to open the crematory in another location?

Mr. Knoer: I think I'm probably best equipped to answer that question about moving. The process is, at this point, we were denied at the Cemetery Board; we were denied at the Supreme Court; we were denied at the 4<sup>th</sup> department. In order to take it to the Court of Appeals, which is the final court of relief in New York; they have to give us permission. We are making a motion; I believe the date is the 29<sup>th</sup> of October, to ask them to allow us to continue our challenge of the Cemetery Board's denial of the right to move. That's one part of it. The Cemetery Board says we can't move anywhere based on the anti-combination law. If the Cemetery Board somehow, if the Court of Appeals allows us to make the motion and if we are successful in overturning their denial, then we would have to actually identify a location, and when we identify a location, if it's in this county or whatever county, we would have to get the

approval of either the local municipality or the county. There is a process, but the ability to even invoke that process is limited by what the Court of Appeals might decide in the somewhat near future. This has been a two year process to get through all these appellate levels; I have no idea when they might come back. Obviously it's the last of the last requests so we have to prepare for the fact that they may not allow us.

Leg. Hardwick: Thank you Legislator Miller-Williams. Legislator Dixon?

Leg. Dixon: Mr. Knoer, who denied you the, um, I know there was, it was an industrial designated industrial area, right? Who denied you that? Was that the Cemetery Board?

Mr. Knoer: Well it's a two part response. We withdrew that request. No one denied that specific location, because the neighbors there expressed concern and it seemed it didn't make a lot of sense to move from one place to another, and we appreciate Legislator Hardwick's assistance in that process to try and find a place, and I think it was the appropriate step to withdraw that request. But generically, the Cemetery Board has the ultimate determination. How they interpret the anti-combination law, they've interpreted it to say that we cannot move anywhere at all.

Leg. Hardwick: Thank you Legislator Dixon. Anybody else? Legislator Lorigo?

Leg. Lorigo: Thank you Mr. Chair. I'm not sure whether or not this is going to be coming up for a vote today, but I think the fact that the Amigone's have been here twice, have flown someone in from Orlando to speak and presented this great presentation as to what the new system is capable of doing, if this were to go to a vote today and pass, we are ignoring a number of different things. I don't have a vote on this committee, so I don't get to choose whether to vote yes or no. I would vote no however. We would be ignoring the fact that potential litigation is coming, that the County is going to have to refer out for to defend, costing us money in outside legal fees. We're ignoring the fact that we are not the determining body as to whether or not they can operate this crematory. The DEC is clearly the body that determines that. We are neglecting the investments of the Amigone family, the investments in their legal fees with the Cemetery Board, New York State Supreme Court, the Appellate Division, and the attempts to bring it up to the Court of Appeals. We're ignoring the investment they made to bring Mr. Rayhill up from Orlando, the investment of their time, the investment they've made in this community for the past decades. Voting on this today, and passing it, completely negates everything that they've done and have tried to do. I understand the residents' concerns, but before we vote on something like this, maybe they should have the opportunity to hear from the DEC, the body that actually has that authority. Thank you.

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Leg. Hardwick: Thank you Legislator Lorigo. Anyone else before we hear from the residents? Legislator Loughran?

Leg. Loughran: Thank you Mr. Chairman. Mr. Rayhill, you said that in the past year 150 installations that you were involved in?

Mr. Rayhill: We have over 3,000 installations worldwide, of systems that have abatement on them we have over a hundred. I'm not sure the exact amount but I know it's well over a hundred.

Leg. Loughran: And do you get involved in the rezoning process?

Mr. Rayhill: We do get involved in zoning processes. A lot of the time our team is called on to speak to bodies like this or P&Z boards to present information to planning and zoning boards, so we do get involved in that process.

Leg. Loughran: Can you give any examples of rezoning where this installation—that they designated a parking spot to provide a cemetery?

Mr. Rayhill: Actually as I mentioned in my remarks, out of the fifty states there are only four states that encumber funeral directors on owning and operating crematories, its New York, New Jersey, Massachusetts, and Michigan. All the other states allow funeral directors to own and operate crematories without the designation of a cemetery or that sort of encumbrance. It's more common that a funeral home would not have to do that than do that, but they would have to comply with local zoning requirements.

Leg. Loughran: In those four states, could you, does anything come to mind that's similar?

Mr. Rayhill: Generally the zoning is before an installation is done, the zoning question is—I've never seen one where its after like this.

Leg. Loughran: Mr. Chairman, I just restate, you know the meetings that, you know, the ball was dropped at so many levels. The planning board in Tonawanda, the Town Board in Tonawanda, the Erie County Legislature, that, um, um, you know, I think the issue before us, and I would think we're going to have a vote on this today

Leg. Hardwick: I would welcome a motion after we hear from the residents.

Leg. Loughran: Right. Ok, I'll wait, thank you.

Leg. Hardwick: We'll see whether we get a motion in a second. Legislator Rath wanted, I hope the final comment.

Leg. Rath: Thank you Mr. Chairman, I have to excuse myself in a minute, I have a lunchtime obligation, but I want to make a few points here before I leave and echo some of the comments that were made by Legislator Lorigo. In the County Legislature we are a deliberative body. We are an organization that prides itself on the due diligence we do when we analyze and we study issues. We have to do that in a thoughtful process, we have to do that in a measured way, and we have to have all of the information and all of the variables as we are making a

decision. Right now I believe that we don't have all of the variables at our disposal, and what I mean by that is the fact that the DEC has a critical role in this process and in analyzing this process. Right now we have not heard from the DEC. We have not come to understand their role, to understand what set of responsibilities they have here. As such, to vote on this today I believe would be extremely, extremely premature. We would not be making a decision based on assessing all of the facts of the case, so to speak. I believe in 1990 the County Legislature played its only role with regard to this approval when it did allow for this cemetery designation to be approved. At that point we were done. I don't think there is anything else we can do here because its outside of our scope, as Mr. Knoer very clearly stated. So if we were to vote on this today it does open ourselves up to a lawsuit which will cost significant expense to the residents of Erie County, and we will be reminded eventually that we did something that was untimely, improper, and outside of our scope of authority. Thank you Mr. Chairman.

Leg. Hardwick: Thank you Legislator Rath. Anybody else before we invite the residents up here? Legislator Loughran.

Leg. Loughran: Just one comment. You know, I've been here for ten years, and I can't think of any other issue that has been before us, I can't think of any other group that has appeared before us more than the residents of this neighborhood. This process has gone on for almost ten years and I think that, you know, the reason they're here today is they're looking for relief. Thank you Mr. Chairman.

Leg. Hardwick: Thank you Legislator Loughran. Seeing no other hands I would thank you gentlemen. Mr. Amigone, if you could hit that button please.

Mr. Amigone Sr.: First, thank you for your indulgence with us, all of you. Mr. Loughran, it's been ten years that people have brought this issue up as Legislator Williams said, all the other areas no one has ever brought it up, and they're using the same exact equipment that we have. I feel there is a little prejudice as far as we're concerned. We have met in the neighbor's houses and yards and tried to change things. One of the big problems we had is that we acquiesced to their request to raise the stack. The company that installed it said the stack should have been about three feet. The draft that the fifteen foot chimney caused may have caused a reaction where we had smoke at times they talked about. As far as there never being smoke or smell, my whole family works in that building day and night. My grandchildren, my children, my sisters, everyone is there. It hasn't affected us in one way. And it isn't a moneymaker as everyone might think. It's a convenience to the families we serve. I totally, completely believe that it is our responsibility as caretakers to be able to finish the process. It's no different than from when they request us to embalm a body, or to cremate it. Personally I do not like cremation as a final disposition. It's nothing; it's against my family background. But we do it because people have asked. In the last ten years the attitude of people all over the country has been a desire for cremation. I have had hundreds of people want to come up here and testify for us that it's something that they think we're being unjustly persecuted. We didn't want a fiasco up hear, or bring more people than they have, but we could have. In one night I could have three or four hundred people up here. I'm not doing that. What I think we're trying to do is clean the air, really

clean the air, have crematories all over the country learn from our experience that if the crematories do have smoke once in a while, or do have odor once in a while, if this process can correct it and the money we're going to spend to act as a trendsetter, once we put it in the DEC will have to look at it for every other crematory in the other neighborhoods you looked at. I'm just asking you people to give us a chance to continue our effort to have clean air. If the Clean Air Coalition is really interested in clean air, they would not oppose what we are trying to do. Thank you.

Leg. Hardwick: Thank you Mr. Amigone, and with that we thank you gentlemen again for being here. If we could ask the residents to come up, I think that Ms. Newberry from the Clean Air Coalition has a few people. We've spent probably an hour and a half so, I can tell you we aren't going to take another hour and a half to get the other side. Again, I think that we're the best informed legislature in the world on this. Yes Mr. Amigone?

Mr. Amigone Sr.: *(Unintelligible)*

Leg. Hardwick: Could you, yes thank you.

Mr. Amigone Sr.: I would just like to make a point. Whatever is going to be brought up is history. We're talking about the future and a change. We acknowledge whatever they're going to say, we're not going to argue about it.

Leg. Hardwick: So your interest is in the new technology.

Mr. Amigone Sr.: We're interested in changing and spending the money to make the change.

Leg. Hardwick: Thank you. Thank you. Uhhh, Ms. Newberry, how would you like to proceed? You've got some guests here.

Ms. Newberry: If it's OK with everyone, I'll introduce our three residents and I'll just wrap it up afterwards. Is that OK with you?

Leg. Hardwick: Certainly.

Ms. Newberry: Thank you again for having us here. For folks that don't know me, my name is Rebecca Newberry, I'm staff at the Clean Air Coalition. Again, we appreciate this opportunity to speak again. For folks who don't know who we are, we're a membership based organization whose members live and work in Erie County. We work to pass and enforce policies that protect public health, the quality of life, the environment, and advance equity in our region. So we've been active supporting the homeowners in the very densely populated community adjacent to Amigone's Tonawanda location for the last three years. Stated two weeks ago, the families, a few of which are here today, in this neighborhood, their quality of life and welfare has been impacted by the crematory since the early 90's. There was a joke somebody made earlier today, I was actually in middle school when the crematory opened up, just to give a

frame of reference. So today you'll listen to three residents and again I'll wrap up afterwards. The folks that you hear from today will be new voices who did not speak at the last committee meeting. Again I encourage everyone to really listen to the horror that the people in this room have had to endure for the past twenty years. Over this time period, and I won't get into the technical piece because I think that was covered quite well today, this crematory has made numerous technical adjustments. To summarize, the facility had updated their stack in 1991 and again in 1995, and then twice in 2009. As of 2012, when the crematory ceased operations, or suspended operations, they had operated a Matthews crematory power pack 2. The representatives here today are from Matthews, which replaced an older unit of the same type in 2009. So the residents will demonstrate today despite the changes in the equipment the smells and the smoke have continued. The first speaker will be Geraldine Pilkington, followed by Neil Hodson, and then Rose Sickler.

Mr. Pilkington: Hi, I'm Gerry Pilkington, I live at 85 Werkly, and I am giving...I'm very nervous...I'm speaking for, um, Tom Flash who lives at 122 Werkly and he has lived at this address for 62 years, and I am reading now what he has written: My parents have raised 10 children at this address. Item number one, numbers the Amigone family has owned sixteen funeral homes. Only one funeral home has a crematory. The other fifteen funeral homes will send their cremation customers to one location. That location is at Parker and Sheridan Drive in Tonawanda, which is where I live. Amigone's crematory operates ten feet from a residential neighborhood. With the popularity and low cost of cremations the cremations done at this site will only increase. That crematory will run all day every day. Item number two, home resale values. Who will want to buy our homes once they find out there is a crematory operating next to our neighborhood? While the crematory has been shut down for the past two years, realtors have told prospective home buyers that the crematory has been closed permanently. Imagine the shock and anger that these new homebuyers felt when they found out that Amigone is planning to restart his crematory. A TV news reporter asked one of our neighbors, why would you buy a house next to a crematory? The neighbor replied, I lived here long before Amigone started up his crematory. The reporter didn't know what to say. Item number three, incinerators. The Clean Air Act of 1990 shut down almost all incinerators due to their levels of pollution being discharged from their stacks. At that time, most hospitals and nursing homes incinerated their medical waste and body parts. Schools burned their garbage; the garbage pickup in the Town of Tonawanda was taken to an incinerator near the Sheridan golf course to be burned. The only incinerator that was exempt from that law was the crematory. If you look at the permit issued to crematories, you will find the word "incinerator" written at the top of the permit. Incinerators pollute. No manufacturer of crematory equipment will guarantee that only clean air will come out of the stack during cremation. Item number four. I believe that the sole purpose of the cemetery zoning for crematories was to make sure they located in the middle of a cemetery, far away from residential neighborhoods. I can't believe that government officials who are elected to represent us would allow a funeral home to have a small room in a funeral home designated as a cemetery. This crematory was installed without any prior notification to the neighbors. No impact study was done. No public hearing was afforded the neighborhood, and no consideration was given to the neighbors for their quality of life and welfare. We had no input. Item five, customers. Amigone says he wants to take care of his customers. Since his crematory has been shut down

for the last two years, his customers are being serviced by other crematories. A memorial service for his customers will still be done at his funeral homes. I see no reason why this arrangement can't be continued. Item six, request. I am asking this honorable body to correct the injustice that has been done to our neighborhood since October 16, 1990. That is the date Amigone was given his crematory zoning by the Erie County Legislature. Our neighborhood has been subjected to smoke, odors, soot, and noise for over 20 years. We are real people, families young and old, who want our neighborhood back. We have a right to breathe clean air. Thank you.

Leg. Hardwick: Thank you Ms. Pilkington. I would suggest colleagues that we hold all questions until we hear from everybody. We're running a little late, so back to you Ms. Newberry.

Mr. Hodson: My names Neil Hodson. I am a resident at 40 Fries, which is about two hundred feet, two hundred and fifty feet from the crematory I've been a resident for fifteen years there. I knew the neighbors were fighting this for twenty years, but I couldn't get involved because at that time I was a county employee and I am a retired county employee, I retired six years ago from the Erie County Medical Examiner's office. We had a meeting at St. Bart's and Mr. Amigone and Mr. Knoer expressed we had community meeting. The meeting at St. Bartholomew's church, he had the audacity to say the smells we were smelling was burning cardboard from other incinerators or car and truck fumes. Well I'm here to tell you the medical examiner's office in the old Meyer Hospital had a retort, or an incinerator. ECMC had an incinerator. That's human ash that we're smelling. That's human fumes that we're smelling. That's not cardboard, that's not truck fumes. And we're getting all these pollutants on our swing sets and our backyards, wherever we have to be. They alluded to the fact that the legislative body has no recourse that it's not in their domain. Mr. Lorigo said it's not the County's policy. Well if this body didn't pass the resolution to designate Amigone's funeral home a part of his parking lot as a cemetery, we wouldn't be here today, and from day one that resolution stated there is not supposed to be any pollutants. No noise, no smoke, and no soot. And from day 1 this neighborhood for twenty years, which most of you were in college, that's how long they're fighting this, this is, this, you know, to give some relevance here, saying well, we don't want it in our backyard. It's not like somebody buying a house next to a dairy farm and then complaining about the farm smell. We were here first. We want quality of life in our neighborhoods. We want their permit withdrawn. Mr. Knoer talked about there were two other crematories. There is one on Englewood in Kenmore. The third one is Delaware Park Crematory. That was there before the neighborhood was there. There was no houses there when that crematory was put in, so whatever they had, they're fighting the dairy aspect of it. We want the resolution that was passed in 1990 withdrawn. Thank you.

Leg. Hardwick: Thank you Mr. Hodson.

Ms. Sickler: Hello, I'm Rose Sickler, and I'm here on behalf of my parents Lilian and Joe LaBouda who live at 63 Werkly directly where the crematory exists. When I went back on September 25 and told my mother of the meeting here, she, uh, was very concerned that some of the legislators were still confused as to the issues. My parents are 91 and 96 and unable to be

here. My mom then asked me if it would be a good idea to write another letter, and she felt compelled to do so, so I said go ahead and she decided to write the letter to Lynne Dixon, and I'm going to read the letter so that you get her side of this story. This letter was written September 28, 2014.

"Hello Lynne. My husband Joe and I are grateful that you are taking the time to look at our situation regarding the Amigone crematory. The last three summers have been wonderful since we can have picnics and relax in our backyard. We open our windows and I only wish I could hang out clothes like years ago. We can do these things because the industrial incinerator has been shut down. We hope it remains like this, but we have heard otherwise. My husband is 96 years old and a World War II veteran. Since retiring, he enjoys playing his keyboard and woodworking in the backyard. The issues with the crematory have disrupted his activities many times. The crematory was allowed to run from 7 a.m. to 11 p.m. daily. Some days, it started at 6am until the authorities were notified. The noise could be heard inside and outside our home. Our neighbors have had similar problems because a higher stack was installed to avoid a downdraft of smoke and odors in our yard. This allowed the problem to affect a larger area. We are classified A1 residential so certain restrictions apply. We feel a parking lot that has been rezoned as cemetery land, although there are no grave sites, only an industrial incinerator, should not be permitted. You can view pictures in the Attorney General's public nuisance case by contacting Greg Cammer, the Erie County Attorney. We are asking that you review the facts and vote to revoke the cemetery status on Thursday October 2, 2014. Sincerely, Lillian J. LaBouda.

Leg. Hardwick: Thank you Mrs. Sickler.

Ms. Newberry: And I have one more letter I'd like to share with everyone. This letter was sent to me yesterday, its dated today, October 9, 2014, and it's from Lorraine Timsley who is a resident of Toronto, Ontario who lives adjacent to the Mount Pleasant Crematory.

"Dear Erie County Legislature: My name is Lorrain Timsley. I reside at 131 Heath Street East, Toronto, Ontario, Canada, and I live near the Mount Pleasant Crematory in the city. Mount Pleasant group of cemeteries has operated a crematorium in our neighborhood 16.5 meters, or 54 feet, from existing adjacent houses since 1972. Complaints from families in our neighborhood for several decades ranged from terrible burnt flesh metallic odors to gas smells, invisible, white and black smoke. Children in our neighborhood can now tell the difference between steak on a barbeque and a burning human body. We live day to day not knowing what the next day will bring in terms of smell, smoke, and the very real possibility of an industrial accident next to our schools, homes, and playgrounds. Local residents in the surrounding neighborhood have repeatedly raised concerns with our legislature and the company about smoke, odors, and emissions from the aging cremation equipment. When the corporation announced that they would adopt technology from Europe, we were told it eliminates 99% of emissions, and there would be no smoke and no foul odors. We were told that this state of the art technology would meet all our concerns even though it had never been tested in North America under local conditions. In the spring of 2014, Mount Pleasant began operating new equipment at the site. Residents began complaining about smells and smoke shortly after the crematory restarted operations. We've been following the news regarding Amigone Crematory in Erie County, NY. It is our understanding that the residents in Tonawanda, NY have some protection that we do not

have in Toronto, including a legislative body that has the power to protect its constituency from the negative quality of life impacts caused by the startup and operations of high risk industrial incinerators in residential areas. I urge the Erie County Legislature to learn from our neighborhood in Toronto. Crematories should not be allowed to operate next to homes and families. These are industrial facilities that belong in industrial zones adequately separated from vulnerable populations. Please take action on this issue and protect the people, and especially the children who live next to the Tonawanda facility, from further harm. Sincerely, Lorraine Timsley.

I have copies of this letter for the record or for anyone.

Leg. Hardwick: If you could later give them to the clerk and Ross if you could...

Ms. Newberry: And so to conclude, we appreciate your time today, and I just want to leave you with this. And I know the County Attorney has stated this, but the County Legislature controls the ability for this crematory to operate particularly in this location, and residents you've heard from today, these are people who have been impacted for the last twenty years by human ash and smells. They deserve rest and they deserve peace of mind. Our organization supports these folks because the burning of bodies should not take place in anyone's backyard, and families, many of whom have lived in this neighborhood far before the crematory began operations, deserve to know where each legislator stands on this issue. Clean Air calls on you to vote on this resolution today, introduced by Kevin Hardwick. We deserve to know where each one of you stands. Thank you for your time.

Leg. Hardwick: Thank you. Questions? Legislator Dixon?

Leg. Dixon: Thank you. I don't know, has the County Attorney made that opinion? I don't know if he has stated that opinion, he has not to us. He hasn't, he's just said he was prepared

Unknown Speaker: Well I think, I've talked to him, I mean the County Attorney's office helped craft that resolution, and we talked to people in his office who said, yeah, you can do this. And I would encourage you as he does in his letter to seek out his opinion on that.

Leg. Dixon: So, um, I guess, I know I had asked the question earlier when you were sitting over there, but if Amigone was able to show the DEC that this facility making this investment that there would not be the odor and the emissions that are concerning to the residents, would that be OK with you?

Ms. Newberry: To answer your question, we looked into the technology that, you know, that the company has presented today. That's why we did outreach to folks who use similar technology in other neighborhoods, particularly Mount Pleasant which was mentioned before, and this community, we've had lots of conversations about it, we've had open minds about it, and this community is not convinced that the technology will cause any kind of relief. The issue here is location. This company is in the wrong, this activity is in the wrong location, and that's

why we're appealing to you at this point, because we understand that you don't control technology, you're not the DEC, you don't have engineers on staff, but what you do have power over is this location.

Leg. Dixon: Were you opposed to, when they tried to put it in an industrial location in Tonawanda, were you opposed to that?

Ms. Newberry: Our office received a call from Bob and Patty Parker who actually were present last week. The location that they were looking at which I think Mr. Knoer, you know feel free, I don't know where Bob went, why they were, removed that, it was about 15 feet from a child's swing set. It was again a very similar location adjacent to a densely populated neighborhood and I believe that's why they retracted that.

Leg. Dixon: If it was designated as an industrial location would you be opposed to that?

Ms. Newberry: Other communities have done zoning ordinances that look into buffer zones, for example in Pennsylvania there are certain municipalities that designate a 300 foot buffer zone. We are definitely interested in buffer zones, that's something the residents have talked about, granted that it is far enough away from residents.

Unknown Speaker: If I might interject here, as the legislator representing both of these neighborhoods, you know, the Amigone family did try to do the right thing, that area, the second location, was zoned industrial, the problem was it was contiguous, it was the last property in an industrial zone contiguous to a residential neighborhood, which was not as densely populated as where we're talking about. Werkly, the street we're talking about, the street that is of concern here, much more densely populated than that other residential neighborhood, but there were still a lot of houses within a short distance. The new location, the new location they found in my mind was much better but not good enough. I mean, there are plenty of industrial zones around here where this activity could take place. I'm sorry; you want to follow up with a question?

Leg. Dixon: Mr. Knoer, when you designate something cemetery land, is it for cemetery? When this was designated in 1990, 91, what was the intent? When you designate something cemetery land what does that mean?

Mr. Knoer: Well, not to try to interpret the purpose of the legislation when it was passed, but I can tell you the policy as we understand it and as it was explained to me. Cemeteries are something that the public becomes responsible for because when you intern bodies its permanent, its forever. So there is a special policy of the State of New York and I think most states that deal with cemetery land, lands designated to that purpose. What has happened is, cremations back in the 50's and earlier were not as big, and they got pushed into the Cemetery Board, it's not called the Cemetery and Crematory Board, it's the Cemetery Board, they got pushed into that. As laws were being passed, the idea of having a cremation was connected very closely with the idea of end of life, and so the legislature said in order to be a crematory you

must be a not-for-profit cemetery corporation, it's a special kind of corporation. I think personally at this point there should be a relook as to whether these are the same thing, but if you are a not-for-profit cemetery corporation in New York, in order to acquire land to own, because of this idea that we don't want it to someday become a burden on the public to maintain for perpetuity, in order to acquire land to own it is necessary to get certain consents. In certain counties, including Erie, that consent comes from this body. So it's really about the fact that it's a cemetery corporation, it's not a designation of a place to do cremations, it's about ownership of land by a not-for-profit corporation under the cemetery law.

Leg. Hardwick: Thank you. Legislator Morton?

Leg. Morton: Thank you Mr. Chairman. First I want to say to the residents and some of my colleagues that it appears what you're asking us to do is to right a perceived wrong from 1990. I'm not sure we have the legal right to do that, ok, that's number one. Number two, the other thing is when the crematory was allowed to go in in 1990, New York State, what they considered allowable limits, might have been OK in the middle of nowhere, but in a residential area it appears it was not right. Over the years they've had very few DEC legal issues against them, so they have for the most part been within the legal limits, but it appears living next door those legal limits are far too high. Having heard the new technology, quite honestly I was hoping for elimination, I guess that's not possible, so according to my calculator a 37% reduction in the potential. Whether that's enough or not, I don't know. I don't live anywhere near where you folks live. The thing I'm going to ask the Chairman to do, because the Amigone Corporation and family seem to be sincerely trying to move the location, that if we delay this vote until after October 28 when they are going to find out about their appeal, if they find out the appeal is successful, this is a moot issue. Why are we forcing something now that could be a moot issue in the weeks ahead? Was I correct in that October 28 date?

Mr. Knoer: As much as I appreciate the sentiment, I don't want to have any misinformation out there. October 28 or 29 is the return date of the motion, that's when we present it to the Court of Appeals. When they will actually make a decision on it is frankly up to them and probably would be several months.

Leg. Morton: OK, but is it your intention to start putting in the technology, the new technology, before you know definitively on the potential of moving?

Mr. Knoer: No. The technology, the process will probably be six to eight weeks of the DEC reviewing in more detail, asking for more information, a formal application being submitted and process, I imagine there will be a lot of take back and forth during that time. WE cannot, and I want to emphasize this, we cannot flip the switch on the crematory without DEC approval to construct and operate, without giving two weeks' notice to the Attorney General under the Assurance of Discontinuance to allow the Attorney General at that point to decide should I bring another action, the supreme Court said if we propose something and the Attorney General and their experts feel it is inappropriate, the Attorney General can re-bring the petition that was brought before. There is a whole long process, but the motion date is simply the return

date and I don't know when the Court is going to respond and if they allow us to appeal it could be quite a while before we actually get through the appeal process.

Leg. Morton: And does the Amigone Corporation plan on restarting their existing facility?

Mr. Knoer: We cannot, under no circumstances...

Leg. Morton: OK, so as far as I can see, there will be no cremations done at that location?

Mr. Knoer: Not without DEC approval.

Leg. Morton: OK, again, I will ask the Chair to hold the vote because I think we're putting the cart before the horse.

Leg. Hardwick: I think Mr. Amigone wanted to weigh in on this.

Mr. Amigone Jr.: Yes, I had a couple questions for Ms. Newberry and the neighborhood, and again I'm expressing our concern about our neighbors who are concerned about our community. In the case of Mount Pleasant and the letter surprises me but that is part of due diligence and I respect the neighborhood and the Clean Air Coalition for going out and finding out whatever information they can. Has there been a complaint filed by the neighborhood, and if that is the Ministry of Health in Ontario is going to weigh in on that, that's one part of the question, which we're subject to, should we reopen even with new technology? So I'm interested in what's going on up there. The other thing, in these Pennsylvania areas where there is a buffer zoning, has it impacted existing crematoria where they're forced to move if they're not in a buffered zone?

Leg. Hardwick: My colleagues, I know we have a protocol in these committee meetings where everything goes through the chair and whatnot, but I think those are good questions and I'll permit a little give and take here, I think we all have questions and I think that that should take precedence over any protocol.

Mr. Amigone Jr.: I would ask then that the Chair...

Leg. Hardwick: No, you asked a question, and Ms. Newberry, if you'd like to answer that, it would be appropriate.

Ms. Newberry: It's my understanding that 43 affidavits were filed with the Ministry of Health this year regarding the technology, and I'm not that familiar with parliamentary procedure or Canadian zoning laws so I can connect you to the woman who is the representative in Parliament for that neighborhood if you'd like. I can send that information through Bob. I'm not sure if there was a grandfather clause with the 300 feet.

Leg. Hardwick: It certainly appears the best informed legislature in Erie County is about to become better informed in all aspects of Canadian law perhaps. Sure, Mr. Hodson.

Mr. Hodson: I'd like to address Legislator Dixon's question, are the neighborhoods OK with the new technologies going in. We've got over, we meet a lot. We've got over two hundred residents, and we're talking in one voice that we don't want the crematory there. Its location. We don't care what kind of technology is going to be there, you always have the stuff and we've already seen from Mount Pleasant. We just want the crematory out. We have nothing against the Amigone funeral homes. They've been in our area forever. They do a good business. It's the crematory that we're against, and to a person we will not agree to vote to take anything in the neighborhood unless it changes and gets the crematory out of our neighborhoods.

Leg. Hardwick: Thank you Mr. Hodson. Colleagues, are there any more questions for anybody? Hearing none, what is your pleasure?

(unintelligible)

Leg. Hardwick: You would move? Ok, move to approve by Legislator Loughran. Is there a second? Second by Legislator Miller-Williams. Any discussion on the motion to approve? Hearing none I'll call for a roll call vote.

Clerk: Introduction 18-4, Legislator Loughran?

Leg. Loughran: Yes.

Clerk: Legislator Miller-Williams?

Leg. Miller-Williams: Yes.

Clerk: Legislator Dixon?

Leg. Dixon: No.

Clerk: Legislator Hardwick?

Leg. Hardwick: Yes.

Clerk: Chair Mills?

Leg. Mills: Yes.

CLERK: Legislator Morton?

MORTON: No.

CLERK: Motion passes.

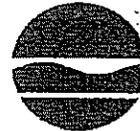
CHAIR: Motion passes. Thank you all for coming here today, I'm sure we'll revisit this issue on the floor of the legislature next week. I would entertain a motion to adjourn. Moved by Legislator Dixon, seconded by Legislator Miller-Williams, all in favor? We are adjourned.

**New York State Department of Environmental Conservation  
Office of General Counsel, Region 9**

270 Michigan Avenue, Buffalo, New York 14203-2915

Phone: (716) 851-7190 • Fax: (716) 851-7296

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Joe Martens  
Commissioner

October 8, 2014

The Honorable Kevin Hardwick  
Erie County Legislator  
Old Erie County Hall  
92 Franklin Street  
Fourth Floor  
Buffalo, N.Y. 14202

Re: Amigone/Sheridan Park Crematory

Dear Mr. Hardwick:

In response to your inquiry, Amigone/Sheridan Park has submitted information regarding modifications to its existing crematory unit for pre-application review but has not submitted a formal permit application. As this information is preliminary, the Department has not commented and has not made any determinations. Once the Department has a complete application, we will evaluate it for compliance with applicable laws and regulations and determine whether to issue a permit or deny the application.

Please contact me if you have any other questions.

Very truly yours,

Maureen A. Brady  
Regional Attorney

Comm. 20M-3  
Page 1 of 1





OCTOBER 16, 2014

ERIE COUNTY LEGISLATURE MEETING

Leg. Mills: Good afternoon. Welcome to the Erie County Legislature Session Number 20.  
October 16, 2014. Madam Clerk will you please take the roll call?

Clerk: Legislator Burke?

Leg. Burke: Here

Clerk: Legislator Grant?

Leg. Grant: Here

Clerk: Legislator Loughran?

Leg. Loughran: Here

Clerk: Legislator Miller-Williams?

Leg. Miller-Williams: Here

Clerk: Legislator Savage?

Leg. Savage: Here

Clerk: Legislator Dixon?

Leg. Dixon: Here

Clerk: Legislator Hardwick?

Leg. Hardwick: Here

Clerk: Legislator Lorigo?

Leg. Lorigo: Here

Clerk: Charman Mills?

Leg. Mills: Here

Clerk: Legislator Morton?

Leg. Morton: Here

Clerk: And Legislator Rath?

Leg. Rath: Here

Clerk: Quorum is present.

Transcript not transcribed

Started at 8:47

Leg. Mills: Number 12, Government Affairs, Legislature Hardwick?

Leg. Hardwick: Thank you Mr. Chair. I move for immediate consideration and approval.

Leg. Loughran: Second

Leg. Mills: Move by Hardwick. I didn't catch the second by Legislator Loughran.  
On the question, Legislator Lorigo?

Leg. Lorigo: Thank you Mr. Chair. As everyone knows the Government Affairs Committee Report includes one item. That item is the resolution to revoke the Amigone's Funeral Homes designation as a cemetery so they can no longer operate their crematory on Sheridan Drive in Tonawanda. There's been much discussion on this at the Government Affairs Committee, our legislative caucus two weeks ago and again I'd like to point out the facts and what we're dealing with and why I think this should be voted down to that. There are alleged problems with the crematory operating on Sheridan Drive. For 24 years, the first time the DEC found anything wrong, the Amigone family voluntarily decided to shut down the crematory. It's been shut down for over two years. In that time they have tried to get a designation from the New York Cemetery Board to move the crematory. They were denied that. They then brought an Article 78 proceeding to Supreme Court, which they lost. They appealed that to the 4<sup>th</sup> Department Appellate Division, they lost there and now they're trying to bring this to the Court of Appeals. Additionally, the Amigone family has sought to implement an abatement system that we heard about last week Thursday that would alleviate all of the problems associated with the crematory. This crematory, if that abatement system were to be put in would become the best and cleanest crematory in the State of New York if not the entire country. Additionally, I do not believe that the Erie County Legislature is the body that should be voting on this. The New York State DEC regulates the crematories. It's their decision as to whether or not the crematory can operate. Voting on this today and approving this today would be an abuse of the Legislatures discretion. We heard from residents who we certainly all can sympathize with and understand but the residents are fighting the fight on the previous crematory not the abatement system the

Amigones are trying to implement. We heard from Mr. Rayhill from Orlando who came here and gave us a great presentation on what this new abatement system would intel, would accomplish and why this system would make the Amigone crematory superior to anything else operating today. Additionally, if we vote on this today and it passes, we are setting the Legislature and Erie County up for litigation challenging determination. Litigation that the County Attorney himself has said we would have to refer out for outside counsel costing possibly tens of thousands of dollars. There is no reason to approve this today. The Amigone's have not sought to re-open the crematory as is. They are still waiting on DEC approval of their abatement system and once they get that approval, if, if they get that approval, that's when they'll be seeking to re-open. They sat here and told us we want to help the residents, we want to work with the residents but we heard when the residents were asked if this abatement could eliminate any type of emission, any smoke, any odor, any emissions whatsoever would you ok it? They said no. So this isn't about whether or not the Amigone Crematory can operate successfully and can operate cleanly, this is about shutting down the business. Small business is the backbone of our community and voting on this today revokes their opportunity to operate their crematory that they've been operating legally for 24 years and telling them we don't want your business in Erie County, we don't want you to operate here. The legislature gave that designation back in 1991. It is not a continuing authority for us to be able to say, you can continue to operate as a crematory, you can continue to be a cemetery designation. Once that designation was made by the Legislature in 1991, that was it. We don't have the authority to revoke that right. And again the most important thing is the facts. We got a letter that many Legislators found very persuasive from someone in Toronto who we don't know if that person wrote the letter, we didn't hear that person testify here. We have no idea who that person even is. Now this morning or yesterday we suspended in some information from the Toronto Star rebutting everything that women had said and the comments on the Toronto Star article, it says, the crematories done 300 cremations and we didn't even know it was back up and running, it's that clean. Additionally, there's the results of the emissions test. The emissions test shows that everything that could possibly be a problem was well, well, well below standard levels. And this system isn't even the system that the Amigone's are trying to put in. The system that the Amigone's are trying to put in is better. The system in Toronto's been there for several months or years. This, we heard Mr. Rayhill testify that the system the Amigone's want to put in is better than that system. Voting on this today abuses our discretion as the Legislature, takes away an opportunity for a private business that's done nothing but good in the community to continue and is completely and totally premature. I urge everybody to vote now.

Leg Mills:                    Legislature Rath?

Leg Rath:                    Thank you Mr. Chairman, I'd like to echo the comments of Legislature Lorigo and rise in opposition to this resolution for many reasons. When we have looked at this

issue and we have looked at this issue very closely through several committee meetings as well as some testimony before the majority caucus. We have come to realize one very important point about this which supersedes everything else. Which organization is the one that is responsible for regulating this crematorium and which organization is the one that is responsible for potential closure of this crematorium. From everything that I have heard and from all the research that I have done and other people have done, that autonomy and that authority resides within the Cemetery Board of New York State and the Department of Environmental Conservation. In 1991 when we designated this as cemetery land, the work was done on the County Legislature. We can't undertake something that isn't within our authority or within our scope of autonomy. It is very clear, it opens us up to a lawsuit and a lawsuit that we have heard will have to be outsourced. It will not be conducted within the Erie County Attorney's office, it will outsource to Environmental Law experts. That sounds very expensive to me and that's money we do not have to spend, money we do not have to allocate and that's money that we can avoid by not approving this today. This legislature is a deliberative body. We are a thoughtful organization that takes its time on the important issues and in so doing, I can't encourage my colleagues enough to think very carefully to think about what they are doing here today because we are going to be subject to a lawsuit and it's a lawsuit we are not going to win. Also I want to echo the comments of Legislator Lorigo when it comes to the dangerous precedent that we are setting with regards to small businesses here in Erie County. We are stepping forward here and potentially regulating a small business, regulating a small business in a way that we don't have the authority to do that. What on earth are we saying to other businesses across Erie County if for some reason in the future they do something that might not be popular with the issue of the day before the legislature? Small business is three quarters of our economic engine in Erie County and across the country creating tens of thousands of jobs. We cannot regulate what we cannot control and we cannot control this Mr. Chairman. Lastly, the Amigone's are honorable people. The Amigone's are people who have been involved in this community, providing jobs, creating opportunity and investing in our community for decades. They have been good citizens on this issue. For the past 26 months they have not conducted any cremations at their crematorium, listening to the concerns of the residents and trying to do everything that they can to address their concerns. They didn't have to do that because they have not been cited for anything. They voluntarily closed down their operation because they're concerned about the residents and now they're proposing to institute the most advanced air filtration system in North America. This will be an incredible precedent for other crematoriums across the country and across our region for air filtration, out of their own accord, out of their own choice. They're doing everything right here and this is how we're going to reward them for doing everything right, as being good citizens in that community by passing this resolution and then eventually losing in a lawsuit which we're bound to lose in. I'm sorry but that's the wrong type of reasoning and for those reasons Mr. Chairman I think we absolutely have to vote against this resolution.

Leg. Mills:                   Legislature Hardwick?

Leg Hardwick:           Thank you Mr. Chairman. People before profits, people before politics, put people first. Now these are all campaign slogans that we are all familiar with. They look great on a bumper sticker because they talk about people and we're in the people business here. You know the Supreme Court of the United States now says that corporations are now people. Well call me old fashioned but I think that people are people and people that I know value certain things. Certainly they value their health, they love their health, they love their families and they cherish their homes, I know I do. I'm still on the home, the starter home that my wife and I bought 25 years ago, that's a big part of our life. You know I look out in the back yard of that little house on Frederick Road in the City of Tonawanda and it conjures up memories. I can see dogs long dead, romping with my children as they grew up. I can see memories of countless whiffle ball games including of course several World Series of whiffle balls, all of which I lost to my kids. I have enjoyed my back yard that last 25 years. Unfortunately Mr. Chairman, during that same period of time the residents of Werkly Road and a nice neighborhood in the Town of Tonawanda have not had that same luxury because they have had to contend with noise and odor from a corporations crematory and you know it's been shut down for the last two years voluntarily and there's talk of starting up with new technology and the residents are assured that this new technology is going to be fantastic, better than anything but you know you go back to that original resolution in 1991 that allowed for the placement of a crematory literally feet from people's backyards and that notes of a meeting between the corporation and some of the neighbors, notes kept by an aid to the then County Legislature and then a memo dated September 6, 1991. The memo talks, the aids recollection of that meeting, the promises made, you know, that committed to the wellbeing of the neighborhood convinced that the operation of the crematory would not produce any danger or inconvenience to the neighbors. No emissions, no odors, technology, fantastic! And you can understand why the neighbors would be a little bit skeptical of the current assurances. We have an opportunity today by voting for this resolution to right that wrong of 1991. Now be sure that the corporation will probably sue us and I asked everybody at the Government Affairs Meeting last week to get the opinion of the County Attorney. I called the County Attorney Tuesday morning and I asked the County Attorney, and I asked him if anyone has called him, and he said no. Now perhaps some people have called him since then. I said, what's all this, what's all this about farming it out, about outside counsel, tens of thousands of dollars? He said I don't know, maybe there's a misunderstanding because his intent is to handle this in the house, not with environmental expert lawyers or whatever but with people who we already have here in the County Law Department. So that's the reason you're opposing this, because you think we're going to be spending all this money on outside counsel, I would encourage you in the next few minutes to call the County Attorney and verify that plan. You know as i said earlier, we have a right; we have an opportunity here to right that wrong of so many years ago. So what I would encourage all of you to do is to do what you know is right, do

the right thing, put people before profits, people before politics, put people, real people first. Thank you Mr. Chairman.

Unknown Speaker: Roll call Mr. Chairman.

Leg. Mills: Anyone else want to speak on the issue here? Before I call for roll call called by Legislator Logrin, I want to thank the residents and I want to thank the Amigone family for all their hard efforts to bring forth all the information that we've heard over the last couple of weeks and this is a very passionate argument to both the residents and the Amigone family, so I wanted to thank everyone. Legislator Grant?

Leg. Grant: Yeah are we voting on the committee report or are we voting on a specific item?

Leg. Mills: We're voting on the committee, it's the only item on the committee report so yeah.

Leg. Grant: OK

Leg. Mills: To answer your question we are on the report. OK we have a roll call vote called by Legislator Logrin. Madam Clerk.

Clerk: Legislator Burke?

Leg. Burke: Yes.

Clerk: Legislator Grant?

Leg. Grant: Yes

Clerk: Legislator Loughran?

Leg. Loughran: Yes

Clerk: Legislator Miller-Williams?

Leg. Miller-Williams: Yes

Clerk: Chair Savage?

Leg. Savage: Yes

Clerk: Legislator Dixon?

Leg. Dixon: No

Clerk: Legislator Hardwick?  
Leg. Hardwick: Yes  
Clerk: Legislator Lorigo?  
Leg. Lorigo: No  
Clerk: Legislator, Charman Mills?  
Leg. Mills: Yes  
Clerk: Legislator Morton  
Leg. Morton: No  
Clerk: And Legislator Rath  
Leg. Rath: No  
Leg. Mills: Sorry legislator  
Clerk: Oh sorry, Legislator Grant?  
Leg. Grant: Yes ~~X~~  
Clerk: Thank you. Seven I's and four no's.  
Leg. Mills: Seven I's four no's, it passes.