

BEFORE THE ARKANSAS CEMETERY BOARD

IN THE MATTER OF

GABRIEL HEIGHTS
MEMORIAL GARDENS, INC.
NORTH LITTLE ROCK, ARKANSAS

Order Approving Change
of Ownership Application
Pursuant to Ark. Code
Ann. § 20-17-1012

ORDER NO. C-06-024-06-OR01

ORDER

A meeting of the Arkansas Cemetery Board (“Board”) was held on June 7, 2006.

Considered at the meeting was a request by Mr. Stephen Whitwell to ratify a proposed agreement transferring ownership interests in Gabriel Heights Memorial Gardens, Inc. (“licensee”) to Mr. Stephen Whitwell (“purchaser”).

FINDINGS OF FACT

1. The licensee owns and operates a perpetual care cemetery at North Little Rock, Arkansas, within the meaning of the Cemetery Act for Perpetually Maintained Cemeteries, Act 352 of 1977, as amended (“Act”), and is subject to the Act and Board.
2. On May 11, 2006, the licensee and purchaser filed an application with the Board for a change of ownership in the licensee. On May 12, 2006, and May 16, 2006, the purchaser filed amendments to the application.
3. The application contained information and documents required in Ark. Code Ann. § 20-17-1012 (2)(A) through § 20-17-1012 (2)(M). The application contained information and documents required in Rule 8.01 (A)(1) through 8.01 (A)(9) and Rule 11.05 (A)(1) through 11.05 (A)(4).

4. The application did not contain a consolidated balance sheet and a profit and loss statement prepared by an independent certified public accountant showing the financial condition of the purchaser as of thirty (30) days before the filing of the application as required by Rule 8.01 (10). The purchaser provided an affidavit stating a net worth in excess of one hundred thousand dollars (\$100,000).
5. The Circuit Court of Pulaski County, Arkansas, Probate Division, 17th Division, held in Case No. PDE96-753 that one hundred percent (100%) ownership interest in Gabriel Heights Memorial Gardens, Inc. shall be transferred to Mr. Stephen Whitwell.
6. No protest to the application was filed.

CONCLUSIONS OF LAW

7. Ark. Code Ann. § 20-17-1012 and Rule 11 require that when any cemetery company subject to the provisions of the Act is to be sold or the ownership otherwise transferred, or a controlling interest in same is sold or so transferred, the cemetery company to whom the current permit is issued or the cemetery company proposing to purchase shall file an application for the issuance of a new permit with the Board, and the Board shall approve the application before a new permit is issued.
8. Ark. Code Ann. § 20-17-1012 and Rule 11 require that an application for change of ownership of a cemetery that is subject to the Act contain certain specific information and documents.

9. Rule 11.02 (A) gives the Board discretion to waive one or more of the filing requirements set forth in Rule 8.01 (A)(1) through Rule 8.01 (A)(10) upon proper showing by the purchaser.

OPINION

10. The affidavit of net worth provided by the purchaser provides sufficient grounds for waiver of the financial statements set forth in Rule 8.01 (A)(10).
11. The licensee and the purchaser have satisfactorily filed the information and documents required by the Act and Rules of the Board to be made a part of an application for a change of ownership of a perpetual care cemetery.

ORDER

IT IS THEREFORE ORDERED that the change of ownership application shall be approved as filed.

IT IS FURTHER ORDERED that the Trust Agreement dated December 21, 1960, as amended, shall continue as the current Perpetual Care Trust Agreement for the Cemetery, and Stephen Whitwell shall be the Trustee of the Cemetery's Perpetual Care Trust Fund pursuant to this Trust Agreement.

DATED THIS 22nd DAY OF JUNE, 2006.

ARKANSAS CEMETERY BOARD


BETTY FINLEY
Chairperson


MICHAEL B. JOHNSON
Secretary