

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
 20TH JUDICIAL DISTRICT
 AT NASHVILLE
 PART II

FILED

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 DAVIDSON CO. CHANCERY CT.

STATE OF TENNESSEE,)
ex rel. JULIE MIX MCPEAK, solely in her)
 official capacity as Commissioner of)
 Commerce & Insurance,)
)
 Plaintiff,)
)
 v.)
)
 GALILEE MEMORIAL GARDENS,)
 JM&M SERVICES, INC.,)
 LAMBERT MEMORIAL CO., aka)
 LAMBERT MEMORIALS, INC.)
 LAMBERT & SONS, INC.)
 JEMAR LAMBERT, MARJE LAMBERT,)
 and MARY H. LAMBERT, and ALL)
 PERSONS ACTING IN CONCERT)
 WITH THEM,)
)
 Defendants.)

No. 14-102-II

SIXTH INTERIM REPORT OF THE SPECIAL DEPUTY RECEIVER
 FOR GALILEE MEMORIAL GARDENS

Pursuant to the Order Appointing Commissioner as Receiver for Galilee Memorial Gardens Cemetery and Granting Temporary Injunction (the "Order") entered by this Court on February 21, 2014, Julie Mix McPeak, Commissioner of the Department of Commerce & Insurance, as Receiver for Galilee Memorial Gardens (the "Cemetery"), through her appointed Special Deputy Receiver, David Kustoff, hereby files this Sixth Interim Report regarding the status of the receivership, including describing progress made since the Fifth Interim Report.

Progress Made Since the Fifth Interim Report

1. Pursuant to the priorities as filed with this Court in the Fourth Interim Report, the Receiver has concentrated efforts on completing the mapping of the Cemetery and on determining pre-need ownership interests. Both of these tasks have seen substantial progress since the last report. Other remaining priorities, as previously reported to this Court, are largely contingent on successfully completing these tasks. Further information on the status of these projects is provided below.
2. On September 10, 2015, Rob Moore, with Special Deputy Receiver Receivership Management, Inc. ("RMI"), received a call from Ms. Ann Arnett seeking to bury her father at the Cemetery next to her mother. Based on the on-site inspection, the spot marked by Ms. Arnett's father's stone was occupied. Ms. Arnett indicated that other arrangements would be made and inquired regarding a refund of the purchase price. She was informed that there were no operational funds from which such a refund could be made.
3. A fidelity bond held by the Cemetery was reviewed by the Receiver and Special Deputy Receivers. The bond was in the amount of \$50,000 per named employee in favor of the employer and issued on August 27, 2013. Upon review of the bond, which was for dishonest acts of the Lamberts as employees, it was determined that the amount of the bond precluded

meaningful net recovery, making pursuit under the bond economically infeasible for this Receivership.

4. On or about August 13, 2015, new locks were placed on both the gate to the Cemetery and on the office located at the back of the Cemetery, which contains a number of previously cut stones, some of which are not the sort which belong in the Cemetery. These stones will need to be inventoried and potential owners contacted.
5. In September 2015, Special Deputy Receiver Kustoff followed up with the Tennessee Board of Equalization regarding an application that had been filed with the Board to deem the property conveyed from the Fogelman Trust to the Receivership nontaxable. At that time, the Board office indicated that they would follow up with Special Deputy Kustoff if they needed any further information, but that the process could take six (6) to twelve (12) months.
6. Total costs for this Receivership as of September 24, 2015 total at or around \$351,444.36 for bills received through that date. Of this amount, as discussed in the Fifth Interim Report, \$21,450.00 was reimbursed for improvement care from the proceeds of the Improvement Care Trust. The remaining amounts have been paid from the Cemetery Consumer Protection Account. As of July 31, 2015 the Cemetery Consumer Protection Account is estimated to have a balance of approximately \$554,139.91.

Mapping and Probing

7. Mapping and probing has been completed on the entire Cemetery.

Findings regarding the Garden of Gethsemane were reported to the Court in the Fifth Interim Report. Findings for the remaining Gardens are noted below.

8. In the Garden of Devotion, 305 spaces were probed and found vacant;

1,264 spaces were found occupied but not marked; 667 spaces were found marked, and 65 of those marked with dates of death were unoccupied; and 54 spaces were determined to be unusable. This garden was originally plotted to have 1,834 but has been expanded to 2,290 spaces, as described above. Of those, only 2,123 interments were recorded, but the recording itself is inaccurate. Of the spaces probed, 46 appear to be shallow enough to show movement upon being probed.

9. In the Garden of Hope, no original plat map has ever been found. The

process determined that there were 650 grave spaces in this garden. Of those, 67 spaces appear vacant, 531 are occupied but not marked, 45 are marked and occupied, and 7 are unusable due to dimensions. Two of the spaces were shallower than expected. While cemetery records indicate 288 interments in this garden, inspection found 576 used grave spaces, 288 more than recorded.

10. Originally thought to be located between the Garden of Gethsemane and the Garden of Paradise, The Garden of New Hope actually sits at the

western end of the Garden of Trinity. A tree and a marker indicate where the Garden of New Hope ends and the Garden of Trinity begins. The inspection of the Garden of New Hope revealed that a total of 269 grave spaces exist in the Garden of New Hope. Of these grave spaces, 69 spaces were probed and found vacant (one was not usable), 117 spaces were found occupied but not marked, 83 spaces were found marked. Of these marked spaces, 21 were vacant and two were shallower than expected. Because an engineer's drawing of the Garden of New Hope has not been found, it cannot be estimated what it was originally platted to hold. Based on an old undated/unstamped drawing found in the Cemetery records, it would appear there were expansion lots made along the southern border of the property, which would have added 44 more grave spaces than possibly originally mapped.

11. The Garden of Prayer directly adjoins the Garden of Devotion. Absent a section marker at the road, there would be no distinction of where the Garden of Devotion ends and the Garden of Prayer begins. A total of 1,901 grave spaces in the Garden of Prayer exist in the platted and non-platted areas, although it was originally platted for 1,548 grave spaces. Of these grave spaces, 107 spaces were probed and found vacant (9 of these are not useable), 1,198 spaces were found occupied but not marked, 44 were unusable, and 552 spaces were found marked. Of the 552 marked spaces, 34 were found marked with dates of death but appear vacant. Lots 41 to



45 and the extension to those lots are shallower than expected. In addition, this garden has an infant section, with all 88 spaces used, and at least seven of those spaces showing signs of shallowness. Cemetery records indicate 1,634 interments in this garden, 82 fewer than were actually observed.

12. In the Garden of Everlasting Life, 2,617 spaces were inspected, although it was originally platted for 2,296 spaces. Of those inspected, 337 were found vacant, 1,278 were occupied but not marked, 944 spaces were marked (73 of these had dates of death but appeared vacant), and 55 were unusable. There were 35 spaces found to be shallower than expected, and all platted walkways and border areas have been used for grave spaces. Further, it appears grave markers have been moved and not reset in their original places. The cemetery operator recorded 2,603 interments in the Garden of Everlasting Life. Inspection found 2,222 used grave spaces, 381 fewer graves than recorded, although the record of interments may include duplicate entries.

13. The Garden of Peace directly adjoins the Garden of Everlasting Life and was originally platted for 662 spaces, including four spaces that were shallower than expected. Inspection found 770 spaces. Of those, 177 spaces were vacant, 353 spaces were occupied but not marked, and 240 spaces were marked, although 31 of those spaces were marked with dates of death but appeared vacant. As in other gardens, it appears grave

markers have been moved and not reset in their original places. All platted border areas have been used for grave spaces. Inspection found 562 used grave spaces, 212 fewer graves than recorded, although the record of interments may include duplicate entries.

14. The Garden of Trinity is situated between the Garden of New Hope and the Garden of Paradise. The inspection of the Garden of Trinity revealed that a total of 821 grave spaces exist in the Garden of Trinity. Of these grave spaces, 258 spaces were probed and found vacant (three of those are not useable), 360 spaces were found occupied but not marked, 202 spaces were found marked, 57 of these marked spaces were vacant and 1 lot is unusable due to location. One grave space was found to be shallower than expected. In the cemetery materials was a map that had been sketched on graph paper of the Garden of Trinity indicating 623 grave spaces. Based on the inspections, the Garden of Trinity was expanded along its southern border and to the edge of the driveway on its northern border.

15. The Garden of Paradise begins at the eastern border of the Garden of Trinity and extends to the eastern border of the Cemetery. It stretches across a narrow piece of the cemetery to border the Garden of Gethsemane to its north. Based on a map sketched onto graph paper, the Garden of Paradise was platted to hold 1,000 graves but appeared to have been expanded to 1,688. The inspection of the Garden of Paradise uncovered a total of 2,025 grave spaces exist in the Garden of Paradise. Of these grave

spaces, 351 spaces were probed and found vacant (nine of those are not useable), 1,233 spaces were found occupied but not marked, 438 spaces were found marked, 61 of these marked spaces were vacant, and 3 lots are unusable due to location. One of those grave spaces was shallower than expected. The cemetery operator recorded 1,673 interments in the Garden of Paradise. As indicated above, inspection found 1,610 grave spaces occupied.

16. An area adjacent to the office at the rear of the Cemetery was platted and probed for 84 potential grave spaces and appeared to be unused.

17. Based on the above information, it may be impossible to determine the exact location of persons buried in unmarked graves. As indicated, these spaces make up the majority of the Cemetery. Further, there are a substantial number of spaces marked with dates of death which appear to be vacant. While it is possible that these mark the place of cremains, it appears more likely that these markers were placed without knowledge of the actual burial location of the persons indicated. Placing of further markers would be based on guesswork based on the location of currently marked and occupied graves and the records of the Cemetery, but – given the overall inaccuracy of these records - there is no guarantee that the deceased are where we believe them to be.

Claims Process

18. While there are 1,970 vacant useable and platted grave spaces in Galilee Memorial Gardens, ownership of these spaces is unknown, as the process of reviewing grave space claims is beginning at this time. Further, many of these spaces are not recorded as vacant in existing Cemetery records, further complicating the Cemetery records.

19. As of August 21, 2015, RMI has received 278 responses to its request for claims for ownership in spaces at the Cemetery. This process is ongoing.

20. The next step of this process will be to analyze and review these claims.

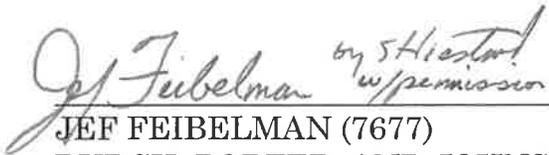
Once such process is completed, a recommendation and report will be filed with this Court regarding the claims process.

Conclusion

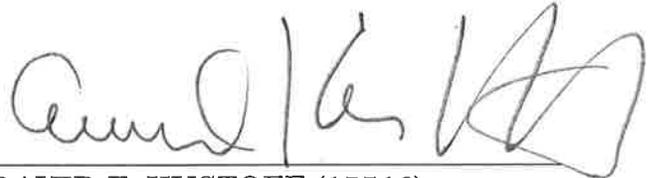
There continues to be work to be completed at the Cemetery. However, substantial progress has been made in completing the audit of the Cemetery, and attention should soon shift to analyzing the claims that have been filed with RMI and reporting to this Court regarding that process. In the future, it may be necessary to coordinate zoning issues regarding the property transferred by the Fogelman Trust to the Receivership in order to ensure that the land is appropriately designated and combined with the existing Cemetery land and the decision of the Board of Equalization regarding the taxability of the land is still outstanding at this time. As such, the Special Deputy Receiver would respectfully request that the next report be set for December 18, 2015. At that time, the Special

Deputy Receiver hopes that sufficient information will be available to provide thorough information to this Court regarding the claims process.

Respectfully submitted,

 *by S. Hiestand
w/permission*

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Sixth Interim Report of the Special Deputy Receiver has been mailed First Class Postage prepaid to the following interested parties and attorneys requesting notice and transmitted via email this 30th day of September, 2015:

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