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Hon. Casey Toof at ctoof@leg.state.vt.us
Hon. Michael McCarthy at mmcarthy@leg.state.vt.us
Hon. Randy Brock at rbrock@leg.state.vt.us
Hon. Robert Norris at rnorris@leg.state.vt.us
Hon. Eileen Dickinson at edickinson@leg.state.vt.us

Re: St. Albans Cemetery Association

Dear Casey, Mike, Randy, Bob and Lynn:

Please be advised that I represent the St. Albans Cemetery Association, which was incorporated under Act 108 of the Vermont Acts of 1852 and owns and operates Greenwood Cemetery on South Main Street in the City of St. Albans. Attached is a copy of the Act to Incorporate. As you will see, Section 2 of the Act, the Association was incorporated to acquire land not exceeding forty acres "to be held and occupied for a cemetery for the burial of the dead and for no other use or purposes" and to "hold personal property not exceeding two thousand dollar, and [to] use or sell the same and apply the proceeds to promote the objects of the association." Pursuant to the Act, in 1901, the Association acquired additional land on Upper Gilman Street in the City of St. Albans, which land remains unimproved and has not yet been "surveyed and laid out for lots, avenues, walks, alleys and open areas," but which land could be conveyed as lots "expressly for burial purposes," all as authorized by Section 5 of the Act.

The Association is running low on funds to maintain the cemetery and needs to do something. The Association wants to sell the land on Upper Gilman Street and to use the proceeds from the sale to increase the perpetual care fund (which is greater than the limitation of \$2,000 set forth in Section 2 of Act 108) and to use the fund for the exclusive purposes authorized by 18 V.S.A. § 5435.

Furthermore, Section 7 of the Act states, "Every person who shall be a proprietor of a lot in the cemetery of the corporation, or if there be more than one proprietor of any such lot, then such one of such proprietors as the majority of the joint proprietors shall designate to represent such lot, may vote ant the meetings of the corporation." There are over 5,000 lots/graves in Greenwood Cemetery, most of which are occupied by the persons who purchased the lot or their family members. In Section 11, the lots are declared to be owned by the proprietor in fee simple. As a result, according to Act 108, title to the 5,000+ lots will have passed from the original proprietors to their heirs, the

vast majority of which are unknown to the directors (in the Act, directors are called "trustees") of the Association. The proprietors and their heirs are supposed to elect directors and to amend the bylaws of the Association. Since this is unworkable, the Association would also like the Legislature to eliminate membership in the Association.

How does the Association accomplish these goals?

18 V.S.A. § 5435 is part of Chapter 121, Cemeteries, Subchapter 3, Cemetery Associations. 18 V.S.A. § 5431 states, "Every cemetery established after June 1, 1933 that is not owned and operated by a town or by a religious or ecclesiastical society shall be established, owned, and operated by a corporation as prescribed in this subchapter." Since Greenwood Cemetery was established long ago, at least as early as 1802, well before June 1, 1933, it would appear to be ineligible for treatment under Subchapter 3. (However, while 18 V.S.A. § 5303 states, ". . . [T]his chapter is not intended to apply to any agency . . . operating a cemetery prior to June 1, 1933 Insofar, however, as the provisions do not violate any vested rights, so acquired, it shall apply to all such agencies.") Therefore, the Association would like the Vermont Legislature to amend Act 108 of the Laws of 1852 to read as follows:

Sec. 1: St. Albans Cemetery Association is hereby constituted as a corporation regulated by Subchapter 3 of Chapter 121 of Title 18 of the Vermont Statutes Annotated, even though it was established prior to June 1, 1933, and to be governed and controlled under the provisions of Title 11B, Nonprofit Corporations, of the Vermont Statutes Annotated.

Sec. 2: To be consistent with the requirements of 11B V.S.A. Section 2.02 and with said Subchapter 3, the articles of incorporation shall hereafter provide as follows:

- (a) The name of the Association shall hereafter be St. Albans Cemetery Association, Inc.
- (b) The Association is a public benefit corporation.
- (c) The sole purposes of the Association are to acquire land to be added to Greenwood Cemetery located at 147 South Main Street in the City of St. Albans, to maintain Greenwood Cemetery, and to perform such acts as are necessary to enable the Association to do so, including the rights to make rules and regulations, to acquire by gift, devise or otherwise land and property to be held in trust as perpetual care funds, to deposit funds in banks chartered by the State of Vermont or in national banks, to invest funds consistent with 18 V.S.A. Section 5309, to make plats and file them with the St. Albans City Clerk, to maintain burial records open to the public at all reasonable times, to sell lots, crypts and niches, to sell land determined by the directors of the Association to be unsuitable for the permanent disposition of human remains, and to apply the proceeds from such sales to general cemetery purposes.

- (d) The street address of the Association's registered office as of the date of this amendment is 87 South Main Street, St. Albans, Vermont 05478, and the name of the registered agent at said address is Raymond Heald.
- (e) The names and addresses of the directors of the Association as of the date of this amendment are:
1. James Shepard, 29 Upper Gilman Street, St. Albans, VT 05478
 2. Richard Thomas, 5 Calo Court, St. Albans, VT 05478
 3. Sally Tarr, 6 Wiley Place, St. Albans, VT 05478
 4. Gina Clark, PO Box 332, St. Albans Bay, VT 05481
 5. Richard Morton, 124 Honeysuckle Lane, Williston, VT 05495
 6. Raymond Heald, 87 South Main Street, St. Albans, VT 05478
 7. William Crocker, 2825 Georgia Shore Road, St. Albans, VT 05478.
- (f) The number of directors shall be no fewer than three and may be increased to more than three by amendment to the Articles of Incorporation or to the Association's bylaws.
- (g) The Association will not hereafter have members. Hereafter, the directors shall be elected by the Board of Directors.
- (h) As required by 18 V.S.A. Section 5439, upon dissolution, all lands then owned or held by the Association and all perpetual care funds, trust funds, and all other property held or owned by the Association, less dissolution expenses, shall be transferred to the City of St. Albans, which shall maintain such lands as public burial grounds and which shall hold the perpetual care funds and trust funds in trust for the care, improvement and embellishment of the lots in the cemetery.
- (i) Hereafter, these Articles of Incorporation may be amended pursuant to 11B V.S.A. § 10.02.

Please let me know what questions or concerns you may have.

Ideally, the Association would like to have this proposed act passed and to become effective before March 15, 2024. Please let me know whether or not this is feasible.

Sincerely yours,



Michael S. Gawne

MSG:m
Enc.