



SWAN CREEK CEMETERY CO. a/k/a POTTER CEMETERY TRUST & FRIENDS of
POTTER CEMETERY ASSOCIATION
30066 Marr Street, Gibraltar, Michigan 48173
734-675-5162 or 734-693-0902
E-mail: cemeterylady1@comcast.net
March 15, 2012

Good Morning Chairman Ouimet and Committee Members:

My name is Sue Donovan. I am a resident of Gibraltar in Wayne County and I am here today representing the Trustees of the Potter Cemetery Trust and the Friends of Potter Cemetery Association (hereafter known as "Friends") in support of House Bill 5404. I am the spokesperson and secretary for both groups. With me today is trustee and long time member of "Friends" Doris Blessing of Allen Park. Doris is the President of the Genealogical Society of Monroe County (GSMC); Rev. Lew Carlson of Dearborn, my former Pastor and member of "Friends"; and Sandy Meeks of Blissfield, also a member of "Friends".

The Friends of Potter Cemetery Association was established in 1998 by five family members, is incorporated in the State of MI and is a 501(c)(3) organization with the IRS. We now have approximately seventy members in Michigan and around the country. The Potter Cemetery Trust was established on February 28, 2001 by Judge John A. Hohman after seven of us petitioned the Monroe County Probate Court to be appointed successor trustees to the original trustees of Swan Creek Cemetery Company (the name of the cemetery before it became commonly known as Potter Cemetery). Ash Township reserved the right to appoint a township resident to our board. As trustees we are considered owners of the cemetery and therefore carry a \$1,000,000 liability insurance policy on it.

Both groups were established with one goal: to restore, maintain and preserve Potter Cemetery in Section 25, Ash Township, Monroe County, Michigan. The cemetery, which is 1.056 acres, was a disgrace, having been landlocked for a number of years. It holds the remains of six Civil War veterans, twenty of my husband's ancestors, ancestors of other

members, the earliest settlers and prominent families of the area, and children and is considered a historical cemetery. Our list has 83 names on it but we have heard there could be as many as 200 interments. There will be no future burials at the cemetery.

Until December 2010 the cemetery was landlocked for a number of years. This occurred because an ingress/egress was not recorded when Royal Potter and John Flint each deeded one half acre in 1860 to form the cemetery. This left the cemetery surrounded by private lands and fields on the east and west. For years access was through the old Potter property on the west or on the east via Flint property (which changed hands many, many times) along a tractor path. This tractor path became a private drive in 1996 when the land was split and sold to four homeowners, with the full knowledge of Ash Township that the cemetery was at the end of this tractor path, now private drive. This decision landlocked the cemetery for future visitors. A copy of the Ash Township attorney's letter regarding this matter is in your packet. However, after discussions with the homeowners our group had limited access from May 1999-August 2000. It was then closed to us. From that time until December 2010 no one, not even veterans, could visit the cemetery. Thus we embarked on a lengthy journey to get a permanent access restored to Potter Cemetery.

After numerous unsuccessful discussions with Ash Township and the property owners we sued Ash Township for disinterment under Section 128.31 of the Michigan Compiled Laws in the hope this would force Ash Township to take action to seek ingress/egress. That process took numerous hours of negotiations and time spent in court. However, after two years we prevailed and Ash Township was able to secure an agreement with the landowners on the west side to sell a portion of their land to establish a 3/4 mile long, 12' wide permanent easement. Ash Township was responsible for the clearing of trees, installation of culverts, etc. Access is still limited but there is now a permanent ingress/egress for family, genealogists, historians, veterans groups, civic groups and alike. Since December 2010 we have cleared trees and brush, located headstones underground, hired a landscape architect, had an Eagle Scout candidate help us and the Sons of Union Veterans of the Civil War (SUVCW) as well. The Carleton American Legion, Post 66, was able to place GAR holders and flags on the CW graves last Memorial Day. It's been many, many hours of hard work but we take pride in what we've accomplished and look forward to the day the restoration is complete.

I am telling you all this so you will understand why this legislation to prevent landlocking of any other cemeteries in Michigan is so important. We are a grassroots organization. we raise our money through spaghetti dinners, car washes, sales of candy, nuts, pretzels, cookbooks, hats and shirts, commemorative pins, donations, dues, collection canisters, and historical events we participate in. We have spent thousands of dollars to re-establish access to a cemetery that never should have been allowed to be landlocked (in 1996) in the first place. We believe had a law existed in Michigan at that time this would not have happened.

No other family or concerned citizens group should have to fight for thirteen years (since

1998) to visit the final resting place of their ancestors, veterans and numerous others. The folks in Potter Cemetery came from foreign lands and other parts of America to clear the land, some having gotten their patents from President Andrew Jackson in 1833/34, and thus raise their children. These were hardworking, God fearing people, many of whom served their country. They were real and without them some of us would not be here today. The same I'm sure is true for other cemeteries around our state.

All cemeteries, big or small, historic or not, public or private are sacred and deserve to have an access so they can be cared for and the deceased honored and remembered. Therefore, on behalf of all the Trustees of Potter Cemetery and members of Friends of Potter Cemetery Association we are here today in support of House Bill 5404.

Thank you Ladies and Gentlemen for your time and attention this morning.

Sincerely,



Sue A. Donovan

Potter Cemetery Trust

Friends of Potter Cemetery

17 Royal S. Potter & Mary Ann Potter

County of Monroe
Recd for Record February 29
A.D. 1864 at 3.00 cts. P. in.
Thomas Doyle Register.

was intended, make on record any of
done in the year of our Lord one thousand
Eight hundred and sixty between Royal
S. Potter and Mary Ann Potter his wife of Ark
in the County of Monroe and State of Michigan
of the first part and The Director of the Loan

and of the County of Monroe, and for purposes of the said County of
Monroe of the County of Monroe, Michigan, that the said party of the first part,
found in consideration of the sum of Five Dollars to them in hand paid
by the said party of the second part, do by these presents grant, bargain, sell,
convey, release, release and confirm unto the said party of the second
part, and to their successors in office from and after their death, peace of
land, tenements in said County of Ark, and upon the same being of the
said part, quarters of Section Number Twenty five (25) in Town Five
North of Range Five East, which is described as follows, to wit: Beginning
in the North side of a Section being standing on the town of Keweenaw
Mr. Potter and running thence West Fifty five feet & 8 inches, thence
South Eight Rods to a post, thence East Sixty feet Rods to the East line
of said West half of said East quarter of Sec 25. thence South Thirteen
Rods on said line to a post, thence West Sixty feet Rods to a post, thence
South Five Rods to the termination of the first line West from the West
line, containing Eighty four & 1/2 square Rods more or less. They do
with all and singular the hereunto more and appurtenances them to
belonging or in any wise appertaining; and the heirs, assigns and successors
of the said party of the second part, heirs, assigns and profits forever and all
the heirs, assigns, heirs, assigns, claims and demands, whatsoever of the said party
of the first part, either at Law or in equity, if in and to be now bargained
promised with the said heirs, assigns and appurtenances; to have and
to hold the said premises as above described, unto the appointed heirs unto
the said party of the second part, and to their successors forever. And the
said Royal S. Potter for himself, his heirs, assigns and administrators
does covenant and agree, to hold with the said party of the second part
& their successors then at the time of the executing and delivery of these
presents he is well seized of the premises at on conveyed, us of good, law
ful, absolute and indefeasible estate of inheritance in the same in
fee simple; that the said lands and premises are free from all incum-
brances whosoever, and they, their heirs, executors, administrators
and assigns, shall warrant and defend the same against all lawful
claims whosoever. In Witness whereof the said party of the first part have
hereunto set their hands and seal the day and year first above written,
signed, sealed and delivered in presence of

How. Morris, At. Wm. Nelson

Royal S. Potter (Seal)
Mary A. Potter (Seal)

State of Michigan, on this Twenty second day of May in the year one
thousand Eight hundred and sixty before
me the undersigned a Notary Public for said County personally appeared
Royal S. Potter & Mary Ann Potter known to me to be the same persons
described in and who executed the within instrument who solemnly
acknowledged the same to be their free act and deed: And the said Mary
Ann Potter wife of the said Royal S. on a private examination by me
separated and apart from her said husband acknowledged that she
executed the same freely and without any fear or compulsion from
any one
How. Morris Notary Public.

John D. Plins + Wif

Trustees of Iron Works Company
Recd: for Bond February 29th
A.D. 1861 at 3.00 ces. P.M.
Thomas Doyle Register.

This Indenture, made this sixteenth day of June
in the year of our Lord one thousand eight hundred
and sixty between John D. Plins and Margaret
Plins of Ark in the County of Monro and State
of Mississippi of the first part, and the Trustees of
the Iron Works Company for the

uses and purposes of a Public Ranging Ground of the second part, Witness
that the said party of the first part for and in consideration of Five
Dollars to them in hand paid by the said party of the second part, do by
these presents grant, bargain, sell, demise, release alien and confirm
unto the said party of the second part, and to their Successors in office

forever. All that certain piece of Land situate in said Town of Ark
and upon the East half of the South East quarter of Section Number
Twenty five (25) in Town Five South of Range Nine East and bounded
as follows, to wit: Beginning at the South East corner of a piece
of Land this day deeded by Royal L. Potter and wife to the aforesaid
Trustees and running thence East Six $\frac{1}{2}$ Rods to a post, thence North
Thirteen Rods to a post, thence West Six $\frac{1}{2}$ Rods to the West line of
said East half of South East quarter of Section Twenty five thence South
on said line to the place of beginning containing Eighty four
and one half Square Rods of Land more or less. Together with all and

Singular the hereditaments and appurtenances thereto belonging or in
anywise appertaining; and the tenement and tenements, remainders
and remainders, rents, issues and profits thereof, and all the estates,
rights, titles, interests, claim or demand, whatsoever of the said party
of the first part, either at Law or in equity, of, in and to the above
bargained premises with the said hereditaments and appur-
tenances: To have and to hold, the said premises as above described,
with the appurtenances, unto the said party of the second part, and
to their Successors forever: And the said John D. Plins for himself
his heirs, executors and administrators does covenant and agree
to and with the said party of the second part and their Successors that
at the time of the executing and delivery of these presents he is well
seized of the premises above conveyed, as of a good, true, perfect
absolute and indefeasible Estate of Inheritance in the Law: in
fee simple: that the said Lands and premises are free from all
incumbrances whatever, and they will and their heirs, executors,
administrators and assigns, shall warrant and defend the same
against all lawful claims whatever.

At Witness whereof, the said party of the first part have hereunto
set their hands and seals the day and year first above
written, sealed and delivered in presence of: John D. Plins,
John D. Gregory & Henry D. Manley. Margaret Plins.

State of Mississippi on this Eighteenth day of June in the year
of our Lord one thousand eight hundred and sixty be-
fore and the presence of a Notary Public in & for said County, per-
sonally appeared John D. Plins and Margaret Plins to one known
to be the same persons described in, and who executed the within
instrument who severally acknowledged the same to be their free
act and deed: and the said Notary Public being of the said State

on a private examination by me, separate and apart from her said
husband acknowledged that she executed the same freely and without
any fear of or compulsion from any one.
John D. Gregory & Henry D. Manley Notary Public Monro Co. Miss.



John Engler, Governor

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

Cemetery Regulation
P. O. Box 30018
Lansing, MI 48909
Telephone: (517) 241-9252
TDD: (517) 373-7489

February 25, 1999

Dolores Burnett Benson
8103 East Southern, #114
Mesa, AZ 85208

Dear Ms. Benson:

Thank you for your recent letter concerning Swan Creek Cemetery in Monroe County.

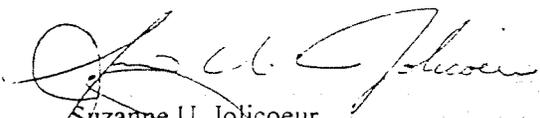
In 1968, when the Cemetery Act was enacted, a survey of county clerk's offices was performed by the Cemetery Commission to determine the location of all of the cemeteries in the State of Michigan and to identify which cemeteries would be regulated by the Commission. A search of those records does not show a Swan Creek Cemetery in Ash Township. We do, however, show a listing for a Potter Cemetery in Ash Township. Since the copy of the Fiduciary Deed, which you submitted with your letter, refers to Potter Farm and the location of the property is in Section 25 as is Potter Cemetery, I must conclude that Swan Creek Cemetery and Potter Cemetery are one and the same. Our records show that Potter Cemetery was "inactive" at the time of the survey and that the ownership was unknown.

Ownership of abandoned or inactive cemeteries does not revert to the State of Michigan nor does it revert to the local unit of government. Unfortunately, abandoned cemeteries stay abandoned until someone petitions the circuit court to take one over. It is rare for a township or city to volunteer to maintain an abandoned cemetery because public opinion is generally against it. The argument is that public funds should be used for other purposes. While some civic groups may show an interest in maintaining an old cemetery, this is also rare unless the cemetery has a historical significance to the area. Since cemeteries are exempt from paying property taxes, it is impossible to trace ownership from that angle.

Since you are interested in maintaining the cemetery and have established a corporation to do so, I suggest that you petition the Monroe County Circuit Court to take over the cemetery. While I am not personally familiar with the procedure for doing this, I can refer you to a cremation company in the Grand Rapids area that did the same thing a few years ago. The company was having problems obtaining zoning approval to establish a crematory so they petitioned the circuit court to obtain possession of an abandoned cemetery and established the crematory on the cemetery property. It was a win-win situation for everyone involved because the township got rid of an abandoned cemetery, the company was able to establish a crematory and the families of persons buried in the cemetery were pleased because the graves of their relatives would be maintained. I'm sure Ash Township would be more than willing to help you to this end.

I hope this information is of assistance to you. If you would like to pursue petitioning the circuit court, please feel free to contact me for a referral.

Sincerely,



Suzanne U. Jolicoeur
Cemetery Commissioner

topozone



VIEW MAPS GET DATA MY TOPOZONE WEB SERVICES ABOUT US

UTM 17 309031E 4655315N (WGS84/NAD83)

USGS Flat Rock Quad

View TopoZone Pro aerial photos, shaded relief, street maps, interactive cc and elevation data

- Map/Photo Info
- Topo Download
- Photo Download

USGS Topo Maps

- 1:24K/25K Series
- 1:100K Series
- 1:250K Series

Map Size

- Small
- Medium
- Large

View Scale

1 : 50,000

Update Map

Coordinate Format

UTM

Coordinate Datum

WGS84/NAD83

Show target

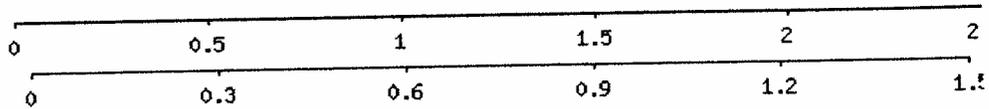
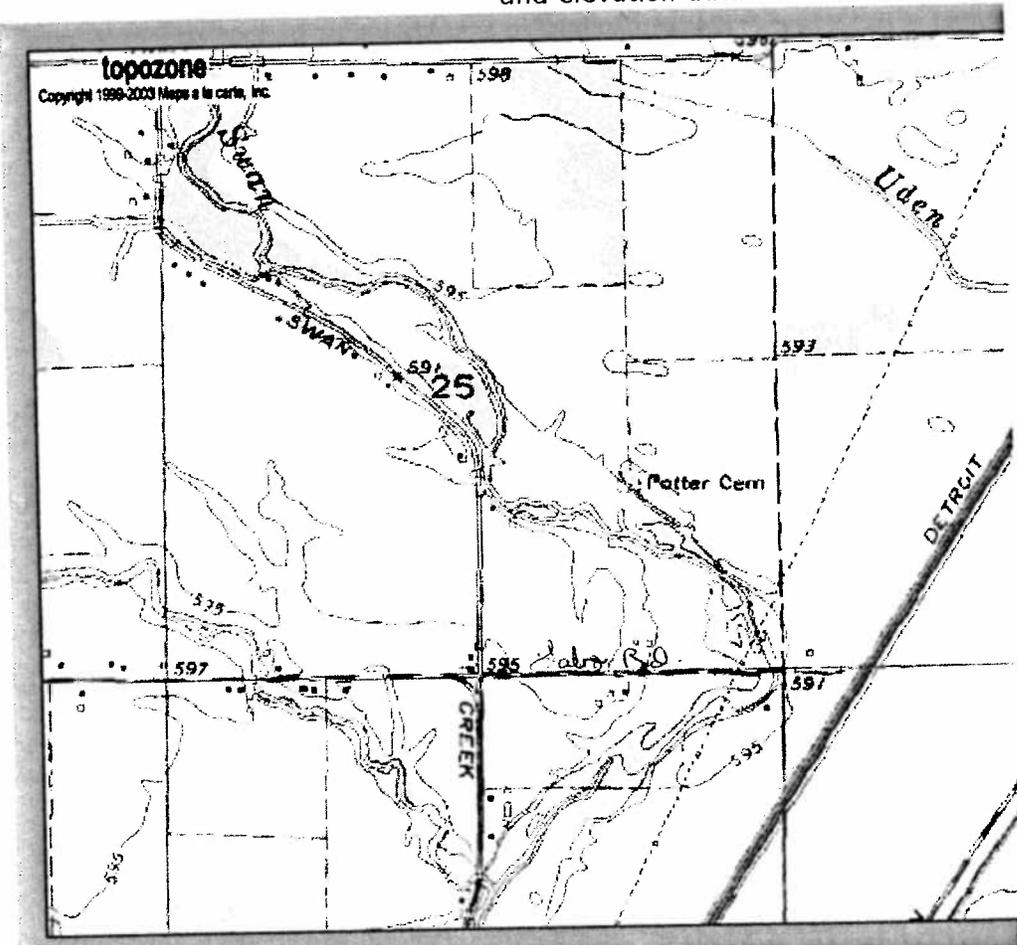
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FOR: JOHN & RUTH PHILLIPS

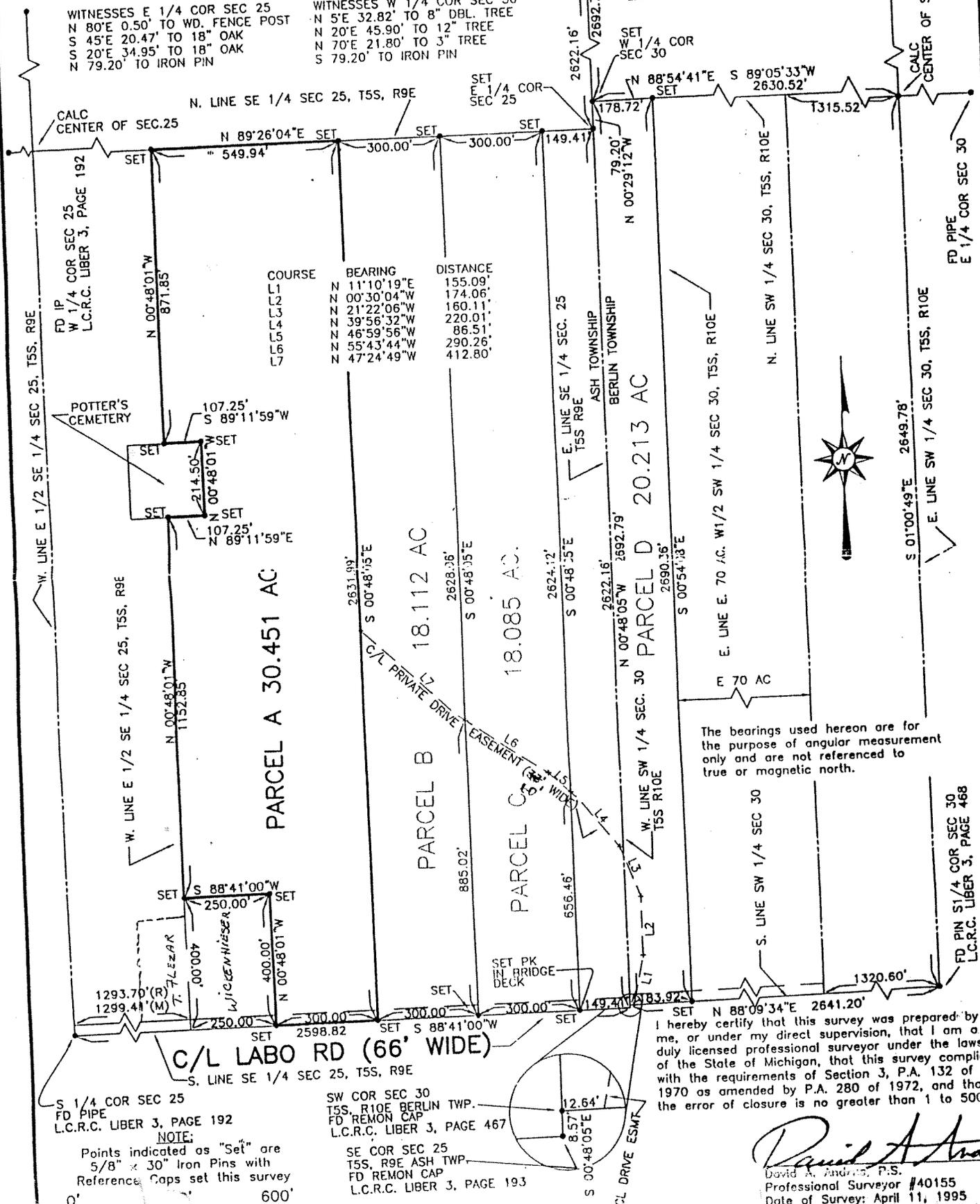
S 60°W 358.79' TO E. COR TOWER
N 75°W 206.61' TO NAIL IN P. POLE

FD MON BOX
N 1/4 COR SEC 25
L.C.R.C. LIBER 3, PAGE 193

WITNESSES E 1/4 COR SEC 25
N 80°E 0.50' TO WD. FENCE POST
S 45°E 20.47' TO 18" OAK
S 20°E 34.95' TO 18" OAK
N 79.20' TO IRON PIN

WITNESSES NW COR SEC 30
S 149.83' TO PIPE
S 40°E 129.95' TO E END PIPE
S 45°E 119.70' TO E END PIPE
S 50°E 102.75' TO W END PIPE
E 2,620.26' TO MON BOX

WITNESSES W 1/4 COR SEC 30
N 5°E 32.82' TO 8" DBL. TREE
N 20°E 45.90' TO 12" TREE
N 70°E 21.80' TO 3" TREE
S 79.20' TO IRON PIN



| COURSE | BEARING | DISTANCE |
|--------|--------------|----------|
| 1 | N 11°10'19"E | 155.09' |
| 2 | N 00°30'04"W | 174.06' |
| 3 | N 21°22'06"W | 160.11' |
| 4 | N 39°56'32"W | 220.01' |
| 5 | N 46°59'56"W | 86.51' |
| 6 | N 55°43'44"W | 290.26' |
| 7 | N 47°24'49"W | 412.80' |



The bearings used hereon are for the purpose of angular measurement only and are not referenced to true or magnetic north.

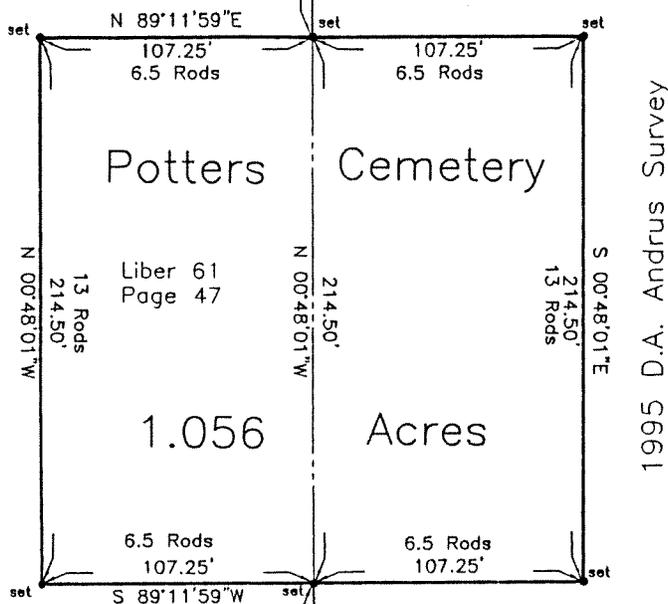
I hereby certify that this survey was prepared by me, or under my direct supervision, that I am a duly licensed professional surveyor under the laws of the State of Michigan, that this survey complies with the requirements of Section 3, P.A. 132 of 1970 as amended by P.A. 280 of 1972, and that the error of closure is no greater than 1 to 5000.

David A. Andrus
 David A. Andrus, P.S.
 Professional Surveyor #40155
 Date of Survey: April 11, 1995
 Survey Number: 95S-7597

A Boundary Survey Of
Potters Cemetery Being
Part Of Section 25, Town
5 South, Range 9 East,
Ash Township, Monroe
County, Michigan

For: Friends Of Potters Cemetery

The bearings used hereon are for
the purpose of angular measurement
only and are not referenced to
true or magnetic north.

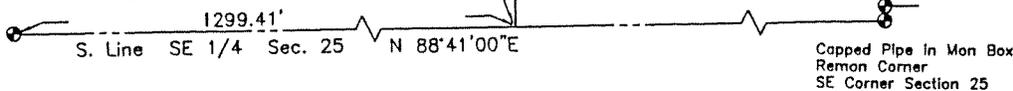


1995 D.A. Andrus Survey

Note: The Drawing Size does not
Comply with the Requirements of
Section 3, P.A. 132 of 1970 as
Amended by P.A. 280 of 1972.



Fd Pipe
S 1/4 Corner Sec. 25
L.C.R.C. Liber 3, Page 192



Capped Pipe in Mon Box
Remon Corner
SE Corner Section 25

I hereby certify that this survey was prepared by
me, or under my direct supervision, that I am a
duly licensed professional surveyor under the laws
of the State of Michigan, that this survey complies
with the requirements of Section 3, P.A. 132 of
1970 as amended by P.A. 280 of 1972, and that
the error of closure is no greater than 1 to 5000.

NOTE:
Points indicated as "Set" are
5/8" x 30" iron Pins with
Reference Cops set this survey

David A. Andrus
David A. Andrus, PLS.
Professional Surveyor #40155
Date of Survey: April 25, 2000
Survey Number: 00S-9681



| | |
|-------------|-------------|
| DRAWN BY: | DAA |
| PLOT DATE: | 04-25-00 |
| DWG NAME: | 00S9681.dwg |
| JOB NUMBER: | 00S-9681 |



J.C. ANDRUS & ASSOCIATES, INC.
ENGINEERS - SURVEYORS - PLANNERS
445 10th STREET TOLEDO, OHIO 43624-1541
(419) 248-3737 (800) 669-5315 FAX: (419) 248-1000

| REVISIONS: | |
|------------|--|
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| | |
| | |



J. C. ANDRUS & ASSOCIATES, INC.

ENGINEERS - SURVEYORS - PLANNERS
445 - 10TH STREET TOLEDO, OHIO 43624
(419) 248-3737 • (419) 246-0201 • (734) 243-5877
FAX (419) 248-1099 • 1-800-669-5315
WEB: www.jcandrus.com

October 2, 2000

Survey Number: 00S-9681

Friends of Potters Cemetery
1.056 Acre Parcel

A parcel of land being part of Section 25, Town 5 South, Range 9 East, Ash Township, Monroe County, Michigan, and being more particularly described as follows:

Commencing at a pipe marking the South quarter corner of Section 25;

thence North $88^{\circ} 41' 00''$ East, on the South line of the Southeast quarter of Section 25, a distance of 1299.41 feet to a point;

thence North $00^{\circ} 48' 01''$ West, on the West line of the East one-half of the Southeast quarter of Section 25, a distance of 1552.85 feet to a typical $5/8$ inch diameter by 30 inch long capped iron pin set at the **TRUE POINT OF BEGINNING** of the parcel herein described;

thence South $89^{\circ} 11' 59''$ West, a distance of 107.25 feet to a typical capped iron pin set;

thence North $00^{\circ} 48' 01''$ West, a distance of 214.50 feet to a typical capped iron pin set;

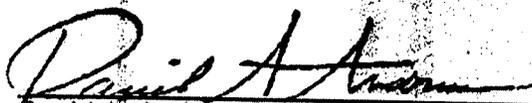
thence North $89^{\circ} 11' 59''$ East, a distance of 107.25 feet to a typical capped iron pin set on the West line of the East one-half of the Southeast quarter of Section 25; thence continuing North $89^{\circ} 11' 59''$ East, a distance of 107.25 feet to a typical capped iron pin set;

thence South $00^{\circ} 48' 01''$ East, a distance of 214.50 feet to a typical capped iron pin

set;

thence South 89° 11' 59" West, a distance of 107.25 feet to the **TRUE POINT OF BEGINNING** of the parcel herein described, said parcel containing 1.056 acres of land, more or less, subject to all easements, zoning restrictions of record and legal highways.

The bearings used herein are for the purpose of describing angles only and are not referenced to true or magnetic North.



David A. Andrus, P.S.
Professional Surveyor #40155

Royal, I. Potter & wf Mary Ann
to
Trustees of Swan Creek Cemetery.

26 W-61-47-4
June-16-1860
Feb-29-1864
\$5.00

SE*

All that crtn pce of ld situated in the twp of Ash upon the $W\frac{1}{2}$ of the SE of sec 25-5-9, which is descb as follows:- Beg at the S side of a tomb stone standing at the grave of Rosella M Potter and rung th W 55 ft and 5 inches; th S $8\frac{1}{2}$ rods to a post; th E $6\frac{1}{2}$ rods to the E line of sd $W\frac{1}{2}$ of the SE of sec 25; th N 13 rods on sd line to a post; th W $6\frac{1}{2}$ rods to a post; th S 5 rods to the termination of the first line W from the tomb stone contg $84\frac{1}{2}$ sq rods m or l.

John D Flint & wf Margaret
to
Trustees of Swan Creek Cemetery.

27 WD-61-49
June-16-1860
Fe-b-29-1864
\$5.00

SE*

Twp of Ash. *Pc of ld*
Being on the $E\frac{1}{2}$ of the SE of sec 25-5-9 and bd as follows:- Beg at the SE cor of a pce of ld this day deeded by Royal L Potter and wf to the afsd trustees and rung th E $6\frac{1}{2}$ rods to a post; th N 13 rods to a post; th W $6\frac{1}{2}$ rods to the W line of sd $E\frac{1}{2}$ of SE of sec 25; th S on sd line to the place of beg contg $84\frac{1}{2}$ square rods of ld m or l.

This record from the files at Monroe County Abstract & Title
Obtained by Sue Donovan 11/20/00

Reasement Dec 2010

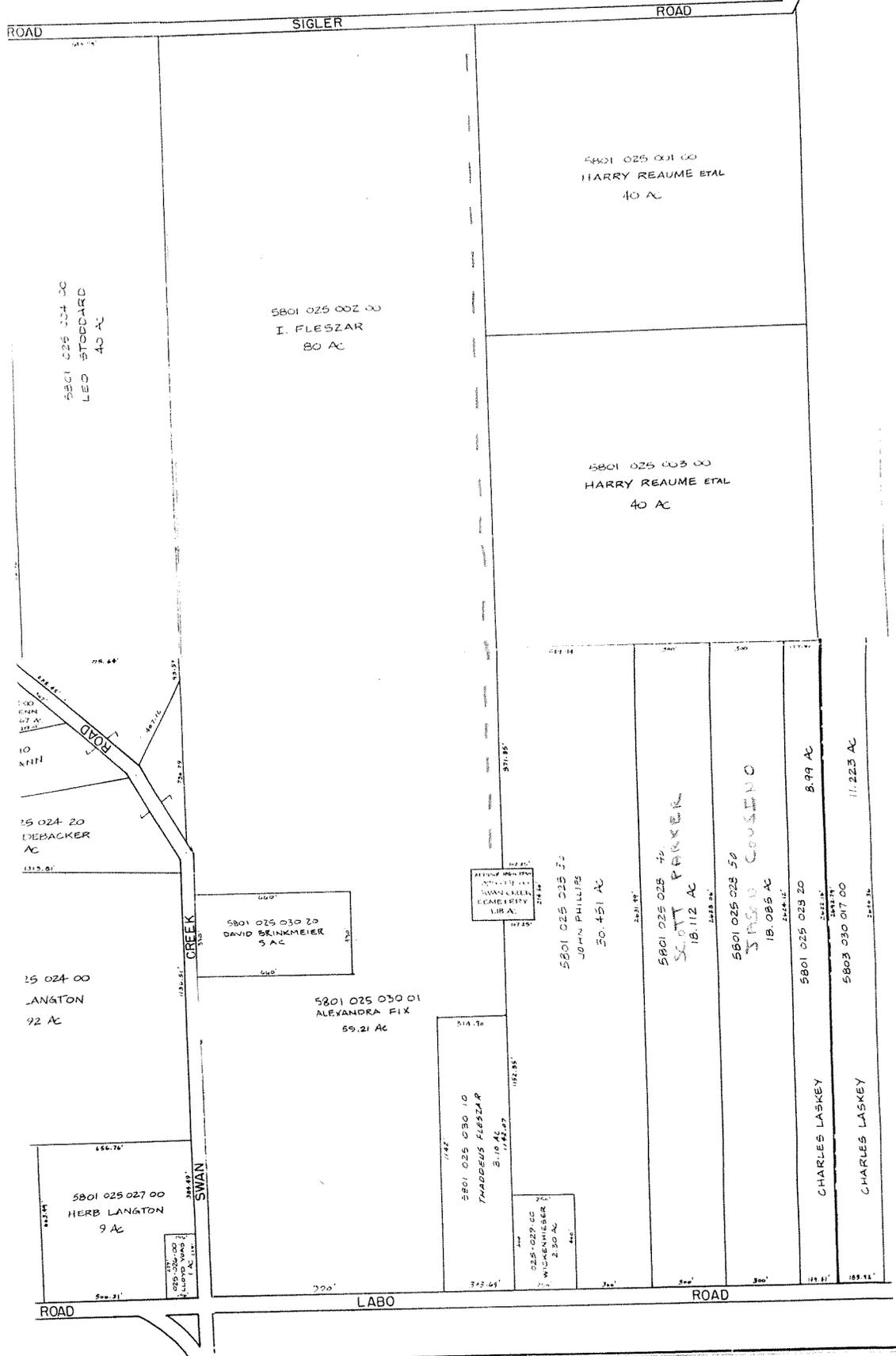
SCALES 1" = 400'
1" = 300'
1" = 150'

ACREAGE BY GOV'T SURVEY

MONROE COUNTY EQUALIZATION DEPARTMENT

ASH TOWNSHIP

N.E. 1/4 SECTION 25



ROAD

SIGLER ROAD

ROAD

5801 025 004 00
LEO STODARD
43 AC

5801 025 002 00
I. FLESZAR
80 AC

5801 025 001 00
HARRY REAUME ETAL
40 AC

5801 025 003 00
HARRY REAUME ETAL
40 AC

5802 024 20
DEBACKER
AC

5801 025 030 20
DAVID BRINKMEIER
3 AC

5802 024 00
LANGTON
92 AC

5801 025 030 01
ALEYANDRA FIX
59.21 AC

5801 025 027 00
HERB LANGTON
9 AC

5801 025 030 10
THADDEUS FLESZAR
3.10 AC

5801 025 029 00
WILKENHIEBER
2.30 AC

5801 025 025 72
JOHN PHILLIPS
30.451 AC

5801 025 025 72
SCOTT PARKER
18.112 AC

5801 025 025 50
COUSINO
18.085 AC

5801 025 028 20
CHARLES LASKEY
8.99 AC

5803 030 017 00
CHARLES LASKEY
11.223 AC

ROAD

LABO ROAD

ROAD

see page 2
VI

Czeryba and Godfroy, P.C.
Attorneys at Law

Dennis J. Czeryba
William P. Godfroy
Dennis F. Martini
Christopher M. Hills
Wesley J. McKee

19 East Front Street
P.O. Box 587
McNroe, Michigan 48161

Of Counsel: John Burcham

Telephone: (313) 242-3434
Fax: (313) 242-4526

June 12, 1996

Jim Duffy
Box 387
Carleton, MI 48117

RE: Noel Property

Dear Jim:

When I discussed this matter with you on the phone on June 12th, you had requested that I set forth in writing the legal position that I would advocate on behalf of Ash Township in the above captioned matter. There are two main issues involving this property. The first issue involves road frontage and the second issue involves either a private easement or private road to access three of the four parcels. I would address each issue separately.

Issue #1 - Road Frontage

The property has been surveyed with an idea that the road frontage for each lot was 300 feet. It appears that the surveyor, J.C. Andrus, as well as the property owner and developer were told that a 300 foot road frontage was sufficient for a buildable lot in Ash Township. Apparently this was told to all individuals by our former building official, Bill Grainger.

The Ash Township Zoning Ordinance requires 330 road foot frontage. If there is less road frontage than that, a variance would have to be obtained through the Zoning Board of Appeals of Ash Township. Historically, Mr. Grainger has issued building permits on lots that have been less than 330 feet. There are a number of lots that were built on recently that had 300 feet frontage and apparently one that had a 290 foot frontage. Mr. Grainger issued these building permits under a belief that he could waive or deviate by 10% off of the road front footage ordinance requirement. I do not believe he had any basis to do that.

Jim Duffy
Page 2
June 12, 1996

It would be my legal opinion that the Zoning Board of Appeals grant a variance for a 300 foot road frontage based on the prior actions of the building official as well as the building official's verbal representations made to the developer, their agents and the surveyor. Henceforth, the building department should be strictly informed to enforce the 330 foot road frontage requirements and that no building permit shall be issued for road frontage less than 330 feet without prior ZBA approval.

Issue # 2 - Driveway/ Private road

It is my understanding that the ZBA took the position that they desired a private road be constructed over the property and that if a private road were constructed on an angle, each lot would have sufficient road frontage on the private drive in the amount of at least 330 feet. Under those circumstances, the ZBA felt that they did not have to grant the variance for the 300 foot road frontage since there would be at least 330 foot road frontage on the private road.

In discussing this matter with the township planner, Debra Millhouse from Wade Trim, a private road does not appear to be a sound planning practice in this case. There would be no buildable lots to the south of this private road since the river dissects the property on an angle running basically northwest to southeast. Normally the private road would be constructed in a manner that lots would be served on both sides of the road. In this case only lots to the north of the road could be utilized.

When I discussed this matter with you on the phone, you were acutely aware of the location of Potter's Cemetery at the very edge of parcel A. I would suggest that we negotiate with the developer a private drive easement instead of a private road. As part of the private drive, we could negotiate the authority to have access over the private easement to get to Potter's Cemetery. Currently there is no access back there for family, friends or relatives of those buried there to visit gravesites. I am aware the township has not taken over this cemetery but we now have an opportunity to get access to it.

James Duffy
Page 3
June 12, 1996

I believe Debra Millhouse would concur in my suggestion that we proceed on a private driveway easement as opposed to a private roadway. I believe in the private driveway easement we can make sure that the driveway is constructed of sufficient material to bear the weight of fire and other emergency equipment. We can also make sure that the developer provides for adequate drainage of water north of the roadway to get to the creek.

I am supplying a copy of this letter to Debra Millhouse. If you would like to discuss this matter with Debra or myself, please feel free to do so.

Very truly yours,

CZERYBA and GODFROY, P.C.

A handwritten signature in black ink, appearing to read "William P. Godfroy". The signature is written in a cursive style with a long, sweeping underline.

William P. Godfroy
For The Firm

WPG:psg

cc: Debra Millhouse
Tom Mieli

MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
CORPORATION, SECURITIES AND LAND DEVELOPMENT BUREAU

Date Received
OCT 30 1998

Verified purpose - (FOR BUREAU USE ONLY)
This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

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ESTGER N ARMBRUSTER

5645
Total \$20.00

Corps Org & Filing & LLC

| | | |
|-----------------------------------|--------------------|--------------------------|
| Name Mark J. Armbruster | | |
| Address 757 Burroughs | | |
| City Plymouth | State MI | Zip Code 48170 |

Administrator
MI DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
CORPORATION SECURITIES & LAND DEVELOPMENT BUREAU

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759-694

ARTICLES OF INCORPORATION
For use by Domestic Nonprofit Corporations
(Please read information and instructions on the last page)

Pursuant to the provisions of Act 162, Public Acts of 1982, the undersigned corporation executes the following Articles:

ARTICLE I

The name of the corporation is:

Friends of Potter Cemetery

ARTICLE II

The purpose or purposes for which the corporation is organized are:

Restoration and maintenance of Potter Cemetery in Ash Township, Monroe County, MI

ARTICLE III

1. The corporation is organized upon a non stock basis.
(Stock or Nonstock)

2. If organized on a stock basis, the total number of shares which the corporation has authority to issue is _____ . If the shares are, or are to be, divided into classes, the designation of each class, the number of shares in each class, and the relative rights, preferences and limitations of the shares of each class are as follows:

JK

Use space below for additional Articles or for continuation of previous Articles. Please identify any Article being continued or added. Attach additional pages if needed.

I, (We), the incorporator(s) sign my (our) name(s) this 28th day of October, 1998.

Esther M. Armbuster

Mark Armbuster

Doan Hamilton

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
NONPROFIT CORPORATION INFORMATION UPDATE



2011

Due October 1, 2011 File Online at www.michigan.gov/fileonline

| | |
|--|--|
| Identification Number 759694 | Corporation name FRIENDS OF POTTER CEMETERY |
| Resident agent name and mailing address of the registered office MARK J ARMBRUSTER 33711 FLORENCE GARDEN CITY MI 48135 | |
| The address of the registered office 33711 FLORENCE GARDEN CITY MI 48135 | |

I certify that the board consists of 3 or more directors, and further certify that all directors' names and addresses are previously filed with the Department, and that no changes have occurred in required information since the last filed report.
If you checked the box, proceed to item 6.

| | |
|--|-------------------|
| 1. Mailing address of registered office in Michigan (may be a P.O. Box) | 2. Resident Agent |
| 3. The address of the registered office in Michigan (a P.O. Box may not be designated as the address of the registered office) | |

4. Describe the purpose and activities of the corporation during the year covered by this report:

| 5. | | NAME | BUSINESS OR RESIDENCE ADDRESS |
|--|----------------------|------|-------------------------------|
| If different than President | President (Required) | | |
| | Secretary (Required) | | |
| | Treasurer (Required) | | |
| | Vice President | | |
| Required 3 or more directors (3 different individuals) | Director (Required) | | |
| | Director (Required) | | |
| | Director (Required) | | |

6. Report due October 1, 2011.

Filing fee \$20.00.

If report is certifying no changes occurred, it must be signed by the chairperson or vice-chairperson of the board or the president or vice-president.

Please make your check or money order payable to the State of Michigan. Include payment with completed report in the same envelope.

Return to: Department of Licensing and Regulatory Affairs
Bureau of Commercial Services, Corporation Division
P.O. Box 30767
Lansing, MI 48909
(517) 241-6470

| | | | |
|--|--------------------|-----------------|------------------|
| Signature of authorized officer or agent <i>Mark J Armbruster</i> | Title President | Date 9/31/11 | Phone (Optional) |
|--|--------------------|-----------------|------------------|

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF MONROE

LETTERS OF AUTHORITY FOR
FOR TRUSTEES

FILE NO.
2000-0553

In the Matter of SWAN CREEK CEMETERY CO. TRUST a/k/a POTTER CEMETERY TRUST

TO THE FOLLOWING:

- | | | | |
|---|--|--|--|
| 1. Mark J. Armbruster 301 Blanche, Apt. 13 Plymouth, MI 48170 734/414-9980 | 2. Esther M. Armbruster 757 Burroughs Plymouth, MI 48170 734/416-9084 | 3. Sue A. Donovan 30066 Marr Gibraltar, MI 48173 734/675-5162 | 4. Rochelle Hamilton 301 Blanche, Apt. 13 Plymouth, MI 48170 734/414-9980 |
| 5. Dolores Burnett Benson 8103 E. Southern, #114 Mesa, AZ 85208 480/986-8708 | 6. Robert H. Boudrie 1962 Jackson Blvd. Highland, MI 48356 248/887-2093 | 7. Kathy Funkey 3021 Henhawk Troy, MI 48084 248/642-4612 | 8. James Duffy 10995 Grafton Rd. Carleton, MI 48177 734/654-6567 |

You have been appointed and qualified as trustees of the Potter Cemetery Trust on December 27, 2000. You are authorized to do and perform all acts authorized by law except as to the following:

- Real estate or ownership interests in a business entity excluded from your responsibilities in your acceptance of appointment.
- Restrictions: Trustees are prohibited from doing any of the following:

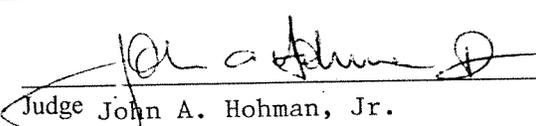
- 1. Authorizing any new burial at the Potter Cemetery.
- 2. Taking any action that would have a financial impact on Ash Township without approval of the court.

The Trustees must also notify Ash Township of any meeting of the trustees, maintaining the township as an "interested party". They are required also to give notice to the Cemetery Regulations Bureau of the State of Michigan.

These letters expire: _____
Date

February 28, 2001

Date


Judge John A. Hohman, Jr.

P33143

John F. Ready (P 27159)

Attorney name (type or print)

204 S. Macomb St.

Address

Monroe, MI 48161

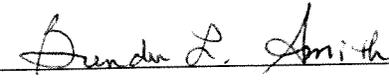
734/242-7600

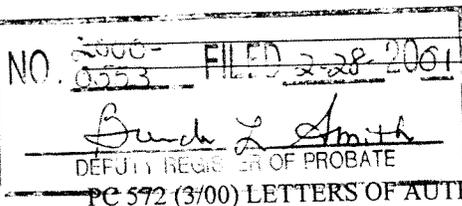
City, state, zip

Telephone No.

I certify that I have compared this copy with the original on file and that it is a correct copy of the original and that these letters are in full force and effect as of the date on the letters.

3-6-01
Date


Deputy register



MCL 700.3103; MSA 27.13103, MCL 700.3307; MSA 27.13307,
MCL 700.3414; MSA 27.13414, MCL 700.3504; MSA 27.13504,

MCL 700.3601; MSA 27.13601, MCR 5.202(A)

Trustees of The Potter Cemetery Trust As of April 21, 2010

Mark J. Armbruster (2001)
33711 Florence
Garden City, MI 48135
(734) 261-6108 Home
(248) 477-4253 Work
(248) 751- 7685 Cell

Rochelle Armbruster (2001)
33711 Florence
Garden City, MI 48135
(734) 261-6108 Home
(248) 318-6586 Cell
bussiesmama@comcast.net

Doris Blessing (2007)
14594 Moore Rd.
Allen Park, MI 48101
(313) 388-9114 Home
(313)930- 0019 Cell

Sue A. Donovan (2001)
30066 Marr
Gibraltar, MI 48173
(734) 675-5162
(734) 693-0902 Cell
e-mail: cemeterylady1@comcast.net

Kathy Funkey (2001)
3021 Henhawk
Troy, MI 48084
(248) 642-4612 Home
(800) 333-9167 Work
e-mail: Kfunkey@sbcglobal.net

Esther M. Perry (2001)
29280 Red Maple Dr.
Chesterfield, MI 48051
(586) 749-7308
e-mail: TPerry7308@comcast.net

Kevin Stepinski (2008)
3100 E. Labo Rd.
Carleton, MI 48117
(734) 586-2628 Home
(586) 2192438 e-mail:
e-mail: sewcrazy1951@charter.net

David Brinkmeier (Ash T'ship, 2010)
10292 Swan Creek Rd.
Carleton, MI 48117
(734)586- 8132 Home
(734)625-2871 Cell
e-mail: ddavid072@centurytel.net

MICHIGAN
COMPILED LAWS

Annotated

*Under Arrangement of the Official
Compiled Laws of Michigan*

Sections
128.1 to 144.End



WEST GROUP

VACATING CEMETERY IN TOWNSHIP

128.31

ESTABLISHMENT OF CEMETERIES

128.21. Repealed by P.A.1978, No. 368, § 25101, Eff. Sept. 30, 1978

Historical and Statutory Notes

The repealed section, which related to the establishment of cemeteries and the duties of local boards, was derived from:
P.A.1915, No. 55, § 1.
C.L.1915, § 5141.

C.L.1929, § 2656.
C.L.1948, § 128.21.
C.L.1970, § 128.21.
See, now, § 333.2458.

VACATING CEMETERY IN TOWNSHIP

Cross References

Cemetery held by board of health, sale by court order, see § 327.301.

Library References

M.L.P. Cemeteries § 1.

P.A.1895, No. 49, Eff. Aug. 30, 1895

AN ACT to provide for vacating cemeteries in townships.

The People of the State of Michigan enact:

128.31. Private township cemetery, proceedings to vacate

Sec. 1. When a complaint is made in writing to the board of trustees of a township in this state, by 10 or more residents of the township, setting forth the fact that a private cemetery within the bounds of the township should be removed for the reason that the cemetery has become commons, has become neglected or abandoned by its owner or owners, has become a public nuisance, or shall impede the growth of a city or village in the township, or when a private cemetery endangers the health of the people living in the immediate vicinity of the private cemetery, the township board of trustees immediately shall institute proceedings to vacate the cemetery in the manner provided in this act. The circuit court for the county in which the cemetery is located may vacate the private cemetery, or a part of the private cemetery, on petition made to the court as provided in this act.

Amended by P.A.1980, No. 367, § 1, Imd. Eff. Dec. 30, 1980.

Historical and Statutory Notes

Source:

P.A.1895, No. 49, § 1, Eff. Aug. 30, 1895.
C.L.1897, § 2387.
C.L.1915, § 2163.

C.L.1929, § 2657.
C.L.1948, § 128.31.
C.L.1970, § 128.31.

Cross References

Cemetery corporation, authority to sell and transfer rights, franchises and liabilities to municipal corporation, see § 456.181 et seq.

M.C.L.A. §§ 128.1 to 144. End—2

DRAFT Resolution on Potter Cemetery
Monroe County Planning Commission
(date)

Whereas, the Potter Cemetery, a privately owned parcel located near Labo and Swan Creek Roads in Ash Township, Monroe County, Michigan, has become landlocked, limiting or preventing public access; and

Whereas, this approximately one-acre parcel contains the remains of at least 79 persons including six Civil War veterans, and therefore carries a respectable degree of historical significance; and

Whereas, some of those buried in Potter Cemetery have living relatives who have a desire to visit the graves of their ancestors and to improve the condition of the grounds; and

Whereas, for nearly a decade, interested persons have worked tirelessly to increase access to the cemetery; and

Whereas, several property owners surrounding the cemetery have offered resistance to providing unrestricted public access to the cemetery; and

Whereas, conflicts have resulted; and

Whereas, the Friends of Potter Cemetery has enjoyed only limited success in seeking access to the grounds; and

Whereas, disinterment of the remains and reinterment of them at another location would not only require a lengthy legal process but would be prohibitively expensive for the Township, and furthermore highly disruptive to the surrounding residents and to the perceived sanctity of the graves; and

Whereas, improved access to the cemetery would be a more reasonable and acceptable solution; and

Whereas, interested persons have approached the Monroe County Planning Commission to seek its support in their quest for improved access to the Potter Cemetery; and

Whereas, the Monroe County Planning Commission is an advisory body only, and carries no legal authority to order any changes in land use for any public or private properties in Monroe County; and

Whereas, in the State of Michigan, local municipalities have jurisdiction and authority over the dispensation of land, and the Township of Ash has jurisdiction over the specific parcel of land in question;

Now, therefore be it resolved, that the Monroe County Planning Commission urges the Supervisor of Ash Township and the Ash Township Board to pro-actively investigate any and all avenues to creating a permanent public access to Potter Cemetery, including informal negotiation, utilization of private funds, working with other applicable units of government and public agencies that may have authority or resources in this matter, and seeking legal recourse if necessary, in solving this dilemma.

MONROE COUNTY HISTORICAL COMMISSION

126 South Monroe Street • Monroe, Michigan 48161-2275
Telephone (734) 240-7780 • FAX (734) 240-7788 • Toll Free (888) 354-5500 ext. 7780

RALPH J. NAVEAUX
Museum Director

Resolution

Whereas, the Monroe County Historical Commission was established and empowered, among other duties, to advance the knowledge and understanding of Monroe County residents in matters relating to the history of the county, and

Whereas, the Monroe County Historical Commission perceives that preservation and proper care of private historical sites, while outside the domain of the Commission, is a significant factor in maintaining the historical ambiance of the county, and

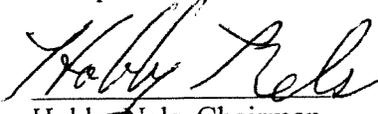
Whereas, historic cemeteries, more than most properties, invoke this positive ambiance and respect for the past, and

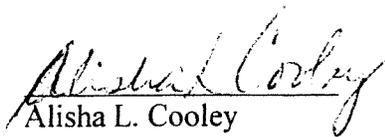
Whereas, the Potter Cemetery in Ash Township, Monroe County, is considered by the Historical Commission to be a significant historical location, and

Whereas, the Commission supports the Friends of the Potter Cemetery efforts to repair, preserve, protect, and obtain physical access to the Potter Cemetery,

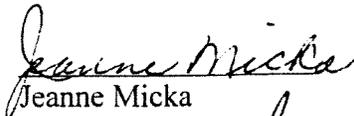
Therefore Be It Resolved, that the Monroe County Historical Commission supports the efforts of the Friends of the abandoned Potter/Swan Creek Cemetery by forwarding this resolution to the Monroe County Planning Commission for their investigation and to Ash Township for further consideration.”

Adopted December 20, 2006

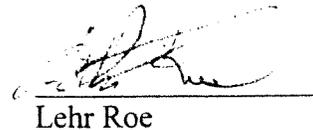

Hobby Nels, Chairman

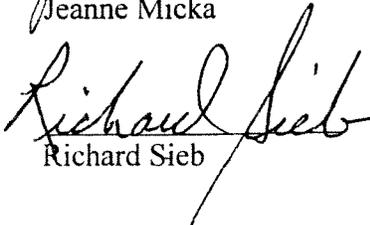

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Dorothy Heimen


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Lehr Roe


Richard Sieb


Yvonne Schlagheck


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Michigan Cemetery Preservation Law - Please let us know about additional current or pending Michigan cemetery protection laws.

- Michigan's Cemetery Regulations
Department of Consumer & Industry Services - Michigan State Cemetery Commission
- Michigan Cemetery Law Index
Enter "Cemetery" in the Full Text Search box for either Legislative Session Information or Michigan Compiled Laws Information.

Michigan State Government - Add Link

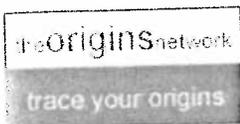
- Michigan State Website
- Michigan State Archives
- Michigan State and Local Government on the Net
Piper Resources

Michigan Law Enforcement - Add Link

- Law Enforcement Online - Michigan

Endangered Michigan Cemeteries - Submit a Endangered Cemetery Report

- Brighton Village Cemetery
Location: Brighton, Livingston County
- Carrier Cemetery
Location: Brookfield, Eaton County
- Garth Cemetery
Location: Rapid River, Delta County
- Higbee Cemetery
Location: Niles, Berrien County
- Johnson Cemetery
Location: Carleton, Monroe County
- Leonard Cemetery
Location: LaSalle, Monroe County



Recommended By



- Millar Cemetery
Location: Clinton Township, Macomb County
- Mooney Cemetery
Location: Comins Township, Oscoda County
- Northridge Cemetery
Location: Hazelton Township, Shiawassee County
- Oaklawn Cemetery
Location: Algonac, Saint Clair County
- Peck Academy Cemetery
Location: Constantine, St. Joseph County
- Pine Ridge Cemetery
Location: Bay City, Bay County
- Potter Cemetery
Location: Ash Township, Monroe County, Michigan
- Rumsey Cemetery
Location: Brownstown, Wayne County
- South Attica Cemetery
Location: Attica Township, Lapeer County
- Tobin Cemetery
Location: Glen Lake Narrows, Leelanau County
- Unknown Cemetery
Location: Lakeview, Mecosta County
- Unknown Cemetery
Location: Saginaw, Saginaw County, Michigan
Surnames:
- Upton Cemetery **Location:** Sandstone Township, Parma, Jackson County

Michigan Cemetery Index - Add Link

- Cemetery Transcriptions - Multiple Michigan Counties
- Cemetery Records Online - Michigan
- Tombstone Inscription State Page - Michigan
- I Dream Of Genealogy Cemetery Records - Michigan
- MTU Archives - Upper Peninsula County Cemetery Listing
- Kent County Michigan - Master Cemetery List

Cemetery Locating Services - Add Link

- The US GeoGen Project - Michigan

Cemetery Preservation Groups - Add Link

- michcem - Save Michigan's Historic Cemeteries
All over the country, historic graveyards are under threat from neglect, vandalism, theft, and development pressures. Michigan surely is no exception to this. However, unlike many other states, Michigan lacks a historic cemetery preservation advocacy

organization. This email group is intended to be a conversation about this.

- Friends of Old Mount Hermon Cemetery
Non-profit organization dedicated to the perpetual preservation, maintenance, and care of Old Mount Hermon Cemetery in Bedford County.
- Friends of the Potter Cemetery Association
- McCoy Cemetery Restoration Project
Buchanan, Berrien Co., Michigan. The project has been called off due to the fact that the owner of the cemetery, located on private property, no longer agrees to the restoration.

Cemetery Preservation Services - [Add Link](#)

- **Conservation of Artistic Stone Objects, Inc. (CASO-IMPEX)**
Gregory A.Ryl
320 E. Maple, suite 154
Birmingham, Michigan 48009
Tel. (248) 650-4330
Europe: 011 48 604 116-747
E-mail: tatratur@poczta.onet.pl
Cellular phone short message E-mail: tatra@eranet.pl

Other Michigan Preservation Groups - [Add Link](#)

- Michigan Historical Society
- Michigan State Historic Preservation Office

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Judge ponders landlocked Frankenmuth Township cemetery's future

Published: Wednesday, December 17, 2008, 6:11 AM Updated: Wednesday, December 17, 2008, 6:37 AM

By Stacey Henson | The Saginaw News
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The fight continues to unlock access to a Frankenmuth Township cemetery.

Frankenmuth

Several Bridgeport and Frankenmuth Township families, the Frankenmuth American Legion, the Historical Society of Bridgeport and Frankenmuth Township have filed a civil suit in Saginaw County Circuit Court to gain access to Olive Branch Cemetery and the former site of the Methodist Protestant Church of Southwest Frankenmuth.

The suit aims to transfer ownership of the property, about 2.5 acres with nearly 70 graves on Dixie between Townline and Curtis, to Frankenmuth Township from Saginaw attorney Joseph J. Trogan.

Lawyers for both sides have presented arguments to Circuit Judge Janet M. Boes, who is soon to decide whether to throw out the suit or allow the parties to litigate, said attorney Barbara J. Tomcal of Saginaw, who is representing Trogan and his son, Joseph J. Trogan II.

While Trogan agreed in the past that visitors could enter his land if "they merely serviced their own family plot and refrained from improving or maintaining anything else in the property," interactions between descendants and Trogan became increasingly ugly, the suit claims.

Each of the four groups has a unique claim to the land.

The families want to "continue to service and maintain the graves of their relatives and enjoy their ownership rights they exercised without interference prior to 1963-64," when Trogan acquired the cemetery and the former church site from James W. Allabaugh for \$2.

They claim Trogan effectively is abandoning the property, allowing "wild weed, bush and tree overgrowth" to dominate the graves.

American Legion Post 150 representatives note that the site hosts the graves of two Civil War veterans: Frank L. Lamphier, Company K, 17th New York Infantry; and William McIntyre, Company G, 5th Michigan Infantry.

"Trogan's recent years of neglect and deliberate efforts to abandon said cemetery are both insulting and unpatriotic," the Legion's portion of the suit reads.

Frankenmuth Township's entry in the joint lawsuit says the township would use the cemetery's

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remaining 200 empty burial plots to serve its residents.

The Historical Society of Bridgeport's tie to the cemetery stems from the township's past: Laid to rest in Olive Branch are many of Bridgeport's founding families, with headstones bearing names including Hinkley, Letterman, Keller, McCormick, Newvine, Smith and Trumble, families who served as "the first farmers, lumberjacks, builders of early schools and churches."

Augustus Letterman, born in England, settled in Birch Run in 1850 to work as a farmer. He died in 1905.

When his wife, Anna Letterman, died in 1921, she left 113 descendants. John C. McCormick, who was born in Taymouth Township in 1876, worked for the Saginaw Department of Public Works. He died in 1950. His wife, the former Bertha Nash, died in 1935.

The plaintiffs assert that there is no valid link between the cemetery's former governing body -- the Olive Branch Cemetery Association -- and Allabaugh, who died in 1978. He is buried in Saginaw's Forest Lawn Cemetery.

In the deeds, Allabaugh claimed he was the "sole remaining member and trustee of this private rural cemetery," but he was never a member of the association and the land was not his to give away, the suit says.

"Things might have went smoother from the beginning if someone just knocked on (Trojan's) door and asked if they could visit the property," Tomcal said.

"We've (investigated) this, and it surprised me to find out that the last time someone tried to get onto the property was in the 1990s, and now all of a sudden this lawsuit appears."

Tomcal said her clients are concerned about people who go on the property to hunt and walk around without asking for permission first. She said the father owns the cemetery, while his son owns the portion in front of it with a home.

Tomcal said she has walked through the cemetery. She believes there are 38 graves there, many unmarked and all in disrepair and not maintained.

Relatives of those buried at the cemetery said they did not want to comment, fearing their statements might jeopardize any chance of an agreement between the parties.

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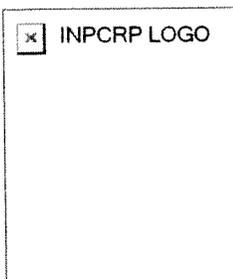
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The Indiana Pioneer Cemeteries Restoration Project was begun by Scott Satterthwaite in October 1997 as an effort to generate public awareness about the neglected pioneer cemeteries of Indiana.

The state of Indiana is home to thousands of abandoned or neglected pioneer cemeteries, the oldest of which now approach 200 years. The goal of this project is to restore and preserve as many of these cemeteries as possible.

This project was founded on the belief that we owe our pioneer ancestors a better monument than a forgotten grave amid bramble and thicket.

CEMETERY PROTECTION IN OTHER STATES

- **Alaska:**
 - Alaska Archaeological Laws
- **Arizona:**
 - Arizona's law on Disturbing human remains or funerary objects
 - Arizona's Archaeology & Laws
- **Arkansas:**
 - Benton County Cemetery Preservation Group
 - State Laws Pertaining to Archeology
- **California:**
 - Amador County's Pioneer Cemeteries
 - California Archaeological Laws
 - Commission for the Preservation of Pioneer Jewish Cemeteries and Landmarks
 - Management and control of Gold Rush "pioneer" cemetery (a California Attorney General Opinion)
- **Colorado:**
 - Columbia Cemetery Volunteer Corp.
- **Connecticut:**
 - Connecticut Gravestone Network
 - State Assistance for Historic Cemeteries
- **District of Columbia:**
 - District of Columbia Landmark and Historic Preservation Act
- **Florida:**
 - Florida State Task Force on Abandoned and Neglected Cemeteries
 - FINAL REPORT of Task Force on Abandoned and Neglected Cemeteries
 - Search Florida Statutes for Cemetery Law
 - Florida Statute 497.345 -- Abandoned cemeteries; immunity
 - Florida Statute 704.08 -- Cemeteries; right of ingress and egress for visiting or maintenance
 - Florida Statute 872.02 -- Injuring or removing tomb or monument; disturbing contents of grave or tomb
 - H 3763: Cemetery Preservation & Consumer Act of 1998
- **Georgia:**
 - Cemetery Law -- Georgia Code 36-72-1
 - Saving Southern Cemeteries
- **Idaho:**
 - Idaho's abandoned cemetery statutes
 - Idaho Archaeological Laws
- **Illinois:**

- Compilation of Illinois Cemetery Care and Burial Trust Statutes
- **Indiana:**
 - Native American Graves Protection and Repatriation Act -- Update of Compilation of INDIANA Repatriation, Reburial and Grave Protection Laws (July 1997)
- **Iowa:**
 - Iowa Cemetery Conference (June 19, 1999)
 - Iowa General Assembly
 - Iowa State Archaeologist -- Protection of Human Remains in Iowa
 - State Association for the Preservation of Iowa Cemeteries
 - State Cemetery Law (in PDF format: *free Adobe Acrobat Reader* required)
- **Kentucky:**
 - Pending 2000 Kentucky Legislation:
 - Up-to-minute status of House Bill 433 (to make the violation of a grave a Class D felony by amending KRS 525.115)
 - Text of House Bill 433 (in Adobe Acrobat PDF format)
 - Kentucky Historical Society
 - **GRANTS available** from KHS for Kentucky cemetery preservation
 - Contact: Kathy Jones, KHS Local History Program Coordinator, at Kathy.Jones@mail.state.ky.us
 - Contact: Karla Nicholson, Historical Confederation of Kentucky Coordinator, at karla.nicholson@mail.state.ky.us
 - U of L Archaeologist Phil DeBlasi's Website:
 - Kentucky Revised Statutes relating to cemeteries
 - Opinions of the Kentucky Attorney General relating to cemeteries
 - Regulations for Moving Burials from a cemetery
 - "Dead Men Do Tell Tales: Comments on the Kentucky Transportation Cabinet's Grave Relocation Procedures"
- **Louisiana:**
 - Save Our Cemeteries
 - National Cemetery Conservation Foundation (no website yet)
- **Maine:**
 - Act to Permit the Temporary Removal of Gravestones from Cemeteries for the Purpose of Repair
- **Maryland:**
 - Coalition to Protect Maryland Burial Sites
- **Michigan:**
 - Michigan Cemetery Page
- **Minnesota:**
 - Minnesota Statutes relating to "abandoned cemeteries"
- **Missouri:**
 - Missouri Cemetery Statutes
 - Boone County, Missouri Cemetery Project
- **Nevada:**
 - Nevada Archaeological Laws
- **New York:**
 - New York Statute on Historic Preservation
- **North Carolina:**
 - North Carolina Cemetery Statutes
 - North Carolina Cemetery Survey
 - Summary of Federal and NC State Statutes Affecting Archaeological Resources
- **Ohio:**

Indiana Pioneer Cemetery Restoration Project

- Frederick Cemetery Restoration Project
- Ohio Genealogical Society's "Lost and Forgotten Cemeteries" Project
- Ohio Chapter - National Association for Cemetery Preservation, Inc.
- Ohio Cemetery Preservation Society
- **Oregon:**
 - Oregon Historic Cemeteries Association, Inc.
 - Oregon Archaeological Laws
 - Pioneer cemeteries put Metro [Portland] in quandry
- **Pennsylvania:**
 - Historic Burial Places Preservation Act
 - Grave Concern, Inc.
- **Rhode Island:**
 - Rhode Island Cemeteries Database
- **South Carolina:**
 - Chicora Foundation, Inc.
- **Tennessee:**
 - Tennessee Cemetery Statutes
 - Cub Scouts Help Restore the Historic Elisha W. Harris Family Cemetery
- **Texas:**
 - Save Texas Cemeteries
 - Texas Historical Commission
- **Vermont:**
 - Vermont Old Cemetery Association
- **Virginia:**
 - Virginia Cemetery Code
- **Washington State:**
 - Washington State Cemetery Legislation Signed by the Governor 5/17/1999
 - Washington State Archaeological Laws
 - Washington State Cemetery Association
 - Washington State Cemetery Protection Legislation
- **Wisconsin:**
 - Wisconsin's Abandoned Cemeteries Statutes
 - Section 157.115 Abandonment of cemeteries and cemetery lots.
 - Section 157.70 Burial sites preservation

Federal Issues and National Efforts:

- African American Heritage Preservation Foundation, Inc.
- The Association for Gravestone Studies:
 - AGS 23rd Annual Meeting and Conference (Brown University, Providence, Rhode Island, Thursday, June 22 through Sunday, June 25, 2000)
- CEMETERY List on Rootsweb -- An "Old Bones" mailing list for people interested in the many aspects of family graves from caring for the grave of one ancestor to the restoration and preservation of the family cemetery. Areas of discussion will center around the restoration, preservation, and recording of small cemeteries and will include cleaning and repairing broken headstones and recording headstone inscriptions, how to better read old headstones, and determining where ancestors are buried. This is not a list for cemetery lookups. To join CEMETERY-L, send a one-word e-mail message consisting of "SUBSCRIBE" to CEMETERY-L-REQUEST@rootsweb.com.
- National Historic Preservation Act -- 16 USC 470

- o Native American Graves Protection and Repatriation Act (1990)
- o NAGPRA -- Update of Compilation of State Repatriation, Reburial and Grave Protection Laws (July 1997)
- o National Cemetery Conservation Foundation:
 - NCCF E-mail Contact
- o Savings Graves
- o Saving Southern Cemeteries - "Saving Graves supports and encourages the protection, restoration, and preservation of endangered American cemeteries."
- o Save America's Cemeteries
- o Tombstone Traveller's Guide
- o U.S. Tombstone Transcription Project

SEND!

Let us know about other states' laws and preservation/protection

efforts.

Send e-mail to sjsattert@earthlink.net.

**Do not copy or redistribute this information without permission of the author or a representative of
The Indiana Pioneer Cemeteries Restoration Project.**

This page is maintained by Scott Satterthwaite.

Web Space provided courtesy of genealogy's best friend, Rootsweb.

Thanks for your concern for saving Indiana's endangered pioneer cemeteries.
Last modified: June 12, 1999

Select Year: 1998

The 1998 Florida Statutes

Title XL
REAL AND PERSONAL PROPERTY

Chapter 704
Easements

[View Entire Chapter](#)

704.08 cemeteries; right of ingress and egress for visiting or maintenance.--The relatives and descendants of any person buried in a cemetery shall have an easement for ingress and egress for the purpose of visiting the cemetery at reasonable times and in a reasonable manner. The owner of the land may designate the easement. If the cemetery is abandoned or otherwise not being maintained, such relatives and descendants may request the owner to provide for reasonable maintenance of the cemetery, and, if the owner refuses or fails to maintain the cemetery, the relatives and descendants shall have the right to maintain the cemetery.

History.--s. 36, ch. 80-238.

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Preservation of Historic Cemeteries: Summary of Applicable Laws and Appropriate Actions

(Summary compiled by the Coalition to Protect Maryland Burial Sites, Inc. February 8, 1997; updated July 2003)

A. Applicable Laws in the Annotated Code of Maryland and the Maryland Rules

(unless so noted, references are from the Annotated Code)

1. To protect a cemetery against vandalism:

CR Article (Par. 10-404) provides for a fine of up to \$10,000 and/or imprisonment for up to 5 years for anyone convicted of wilfully destroying, mutilating, defacing, injuring or removing any tomb, monument, gravestone, or other structure placed in a cemetery or any building, wall, fence, railing or other work for the use, protection or ornamentation of any cemetery.

In the CR Article (Par. 807), it is also provided that the judge may issue an "order of restitution" for the "victim", which, in the case of cemetery vandalism, the law defines as "the owner of the burial site and an individual related by blood or marriage to the individual buried in the burial site". Such an order of restitution can apply if the property of the victim is "stolen, damaged, destroyed, converted, unlawfully obtained, or its value substantially decreased as a direct result of the crime."

The CR Article (Par. 10-404) provides for a fine of up to \$500 and/or imprisonment for up to 2 years for anyone convicted of wilfully destroying, cutting, breaking or removing any tree, plant or shrub in a cemetery, or who is found guilty of indecent or disorderly conduct within said limits. ◇

2. To protect a cemetery against unlawful removal of human remains:

CR Article (Par. 10-402) states that it is a misdemeanor offense, punishable by a fine of up to \$10,000 or imprisonment in the penitentiary for up to 5 years, or both, for anyone convicted of removing or

attempting to remove human remains from any burial site in Maryland, unless such person or persons have received prior authorization, in writing from the State's Attorney for Baltimore City or for the county in which the burial site is located.

In addition, the law further requires, in the Health-General Article, Section 4-215, that anyone who wishes to disinter and re-inter human remains must first obtain a permit from the Department of Health and Mental Hygiene. The Department is required to maintain a record of all such permits issued. ◊

3. To lawfully relocate human remains from an "abandoned cemetery":

CR Article (Par. 10-402) states that a State's Attorney from Baltimore City or from a county may authorize in writing the removal of human remains from a burial site specifically for 1) the ascertaining the cause of death of the person whose remains are to be removed, 2) determining whether the human remains were interred erroneously, 3) for the purposes of reburial, and 4) for medical or scientific examination or study, as permitted by law.

Except for the four purposes stated above, a State's Attorney for Baltimore City or a county shall require a person requesting authorization to permanently relocate human remains from a burial site to publish a notice of the proposed relocation in a newspaper of general circulation in Baltimore City or in the county where the burial site is located.

The notice shall be published one time, shall be paid for by the person requesting authorization to relocate the human remains, and shall contain four things: 1) a statement that authorization is being sought from the State's Attorney to remove human remains from a burial site, 2) the purpose for the relocation, 3) the location of the burial site (including tax map and parcel number or liber and folio number), and 4) all known pertinent information about the burial site (including names of those buried there, if known).

For good cause, the State's Attorney may authorize the temporary relocation of human remains from a burial site notwithstanding the notice requirements. If the person requesting the authorization thereafter intends to permanently relocate the remains, the person shall promptly publish the notice as required.

After receiving proof of the publication, the 15 days having expired after the date of publication, the State's Attorney may authorize the removal of human remains from the burial site. For a known, but not necessarily documented, unmarked burial site, the person requesting authorization to relocate the human remains has the burden of proving, by archaeological or other means, the precise location and boundaries of the burial site.

There are two other requirements: 1) No human remains can be removed from a burial site without a permit from the Department of Health and Mental Hygiene as required under Sec. 4-215, and 2) human remains removed from the burial site must be re-interred as follows: a) in a permanent cemetery that provides perpetual care or in a place other than a permanent cemetery with the agreement of, or at the request of, a person in interest as defined in Sec. 14-121(A)(4) of the Real Property Article, and b) in the presence of a mortician, professional cemeterian, or other person qualified in the interment of human remains; a minister, priest, or other religious leader; or a trained anthropologist or archaeologist.

4. To lawfully relocate human remains from an "abandoned cemetery":

The CR Art. 10-404(e) states that human remains or any associated funerary objects can be removed from an "abandoned" cemetery ONLY if (a) prior consent in writing of the State's Attorney of the

county or of Baltimore City has been obtained and (b) that such human remains or associated funerary objects are placed in "an accessible place in a permanent cemetery".

5. To protect a cemetery from illegal looting of human remains and associated funerary objects:

CR Article 10-403 provides that any person who knowingly buys, sells or transports for sale or profit, or who offers to do the same, any unlawfully removed human remains or associated funerary object is guilty of a misdemeanor and on conviction can be fined up to \$5,000 and/or imprisoned for up to 1 year. Certain exceptions are made for those acting in the course of licensed medical, archaeological, educational or scientific studies or for licensed morticians or other professionals in carrying out their duties and responsibilities. The law defines associated funerary object as "an item of human manufacture or use intentionally placed with human remains at the time of interment in a burial site or later as part of a death rite or ceremony of a culture, religion, or group". (Basically, this law was enacted to stop the trading of unlawfully removed human remains such as skulls and grave goods including Indian artifacts and Civil War relics.)

6. To develop land that contains a cemetery:

Article 66B, Section 5.03 of the Zoning and Planning Article provides that regulations governing the subdivision of land shall require that an appropriate easement be provided for any burial site located on the land subject to the subdivision plat for ingress and egress to the burial site by persons related by blood or marriage or persons in interest, as defined in Section 14-121 of the Real Property Article. (Other related provisions are contained in Section 7.03 of Article 66B.)

7. To gain access to a cemetery located on private property:

To facilitate access to a cemetery, Section 14-121 of the Real Property Article provides that any person in interest (as defined in the Section) may request the owner of a burial site or of the land encompassing a burial site, that has been documented or recognized as a burial site by the public or any person in interest, to grant reasonable access to the burial site for the purpose of restoring, maintaining, or viewing the burial site. An access agreement form can be executed similar to the one that is printed in the text of the law. The law provides that except for willful or malicious acts, the owner of a burial site or of the land encompassing a burial site is not liable for damages in a civil action to a person who enters on the land for injury to person or property.

8. To rehabilitate or preserve a cemetery:

Section 14-122 of the Real Property Article provides that any county or municipal corporation may, upon request of or with the permission of the owner of the burial site, maintain and preserve the burial site for the owner. In order to do this, including the repair or restoration of fences, tombs, monuments, or other structures located in a burial site, a county or municipal corporation may appropriate money, solicit donations, provide incentives for charitable organizations or community groups to donate their services, and develop a community service program through which individuals required to perform community service hours, under a court sentence or as students, may satisfy their requirements.

9. To sell a cemetery:

See BR Article, Par. 5-505 and 506; Rule 14—401, Rule 14—501 and 502; and Rule 12—201 through 206.

B. Appropriate Actions to Preserve a Cemetery

State Association for the Preservation of Iowa Cemeteries

This site is dedicated to the Preservation of Cemeteries in the State of Iowa.



Meet the winners of the Robert Carter Award

2007 SAPIC Cemetery Conference

The 2007 Cemetery Conference, sponsored by SAPIC, is scheduled for Saturday, April 21, at Stoney Creek Inn, Johnston, Iowa. One the sessions will be a panel discussion about how to form county pioneer cemetery commissions. When on I-80 & 35 going around the north of Des Moines, get off at Exit #129 (86th Street). After exiting, go north to the first stop light and turn right (east) and go about a block, then look for the motel to the left. Watch for a schedule that will arrive by mail in a few weeks. If you are not on the SAPIC mailing list and would like to make sure you get a notification, contact Linda Zintz <thee_z@hotmail.com> or Larry Davis <LD2mstone@aol.com>

January 2007 Meeting

The State Association for the Preservation of Iowa Cemeteries met Saturday, January 13, 2007, at the Urbandale Public Library. Membership is 155.

Legislative Priorities for 2007: State Rep. Jeff Kauffmann of Wilton has indicated interest in introducing a bill that would include stronger penalties for cemetery vandalism. SAPIC President said there would be support for such a bill and encouraged Kaufmann to include language requiring scrap iron dealers to get identification of persons attempting to sell bronze veterans markers from graves and cemeteries.

SAPIC will hold its July 2007 meeting in Buchanan County.

A SAPIC member donated funds to set up a "Keith Street Memorial" for the purpose of establishing a scholarship in his name for needy youth who have worked in cemeteries. Action and discussion on this project was tabled until further details are available.

Members were reminded to submit the name(s) of deserving cemetery workers for the Robert Carter Award.

October 2006 SAPIC Meeting



Priscilla Reisner of Chickasaw County, above, demonstrated her method of repairing cracks and missing areas of gravestones after the Oct. 14 SAPIC meeting at New Hampton.

The Chickasaw County Pioneer Cemetery Commission hosted a successful and informative meeting of the State Association for the Preservation of Iowa Cemeteries on October 14, 2006, in New Hampton, Iowa. Topics discussed were the development of a reporting form for neglected cemeteries, presentation of certificates of appreciation to legislators who supported our efforts to allow access to landlocked burial sites, election of officers for 2007, providing grants for cemetery preservation, and organizing a cemetery conference in April, 2007.

Following the meeting, Priscilla Reisner demonstrated her method of repairing cracks and missing areas of gravestones by pulverizing stone fragments, mixing them with epoxy, and using the mixture to fill in cracks and holes. The group also visited the Garden of Memories Cemetery southeast of New Hampton that is being restored by the Chickasaw County Pioneer Cemetery Commission members.

Find the latest news at: [Repair and County updates](#)

OUR CEMETERY CONCERNS "Pioneer Cemeteries"

Iowa law defines a "Pioneer Cemetery" as one in which there have been six or fewer burials

- I O W A -
HISTORIAN

The Iowa Historian is a monthly publication of the State Historical Society of Iowa. If you would like to subscribe, please send us a blank e-mail.

SAPIC Aims to Save Iowa's Historic Cemeteries

For nearly a decade, SAPIC, or the State Association for the Preservation of Iowa Cemeteries, has worked alongside various State of Iowa officials to protect and preserve Iowa's cemeteries.

The group provides support and coordination to restoration efforts at pioneer cemeteries, which are scattered across the state, said SAPIC president Pat Shaw.

"I usually say there's an average of 30-35 (pioneer cemeteries) in each county," Shaw said. "They turn up all the time."

A pioneer cemetery is a site where six or fewer burials have taken place in the last 50 years.

To protect these sites, the group has lobbied legislators to make the preservation of cemeteries a priority. Shortly after its founding in 1996, the group won support for legislation that allows each Iowa county to form a commission to oversee and restore its pioneer cemeteries—a step Shaw said roughly a quarter of Iowa counties have taken.

And, this spring, the group supported legislation that passed the Iowa legislature and should ensure easier access to landlocked cemeteries—sites where volunteers had to cross landowners' property to reach the gravesites.

Shaw said occasional difficulties with landowners allowing access prompted the push for the legislation.

"Landowners become more cooperative when they realize that SAPIC volunteers aren't the kind of people who vandalize," she said.

Specifically, Shaw said, the legislation allows the county's board of supervisors or township's trustees to appoint a specific local group as the official maintenance organization for the area's cemeteries. Under the new law, the designated group would then be guaranteed access to the sites it maintains.

In the past, Shaw said, only direct descendants had this right.

Working for passage of the law made for an exciting legislative session, Shaw said.

"It flew through the senate but it got stopped in committee in the house—and we did not expect that," she said. After being added to a separate measure, she said, the cemetery legislation finally passed on the last day of the session.

The legislation will ensure that restoration projects performed by a number of groups across the state can continue unhindered.

"They're sort of quiet people who go out and do their thing," Shaw said of the restoration volunteers. "They don't usually get much fanfare."

She said that, often, retired individuals take on much of the task of preserving the sites.

"We're always looking for young, active, physically able people," she said.

For more information on getting involved with SAPIC's efforts, Shaw said interested individuals can send her an email at patshaw@netins.net, visit the group's website at <http://www.rootsweb.com/~iasapc/>, or contact their local genealogical society to see what local groups are involved in cemetery restoration projects.

[« back to top](#)

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SAVE OUR OKLAHOMA CEMETERIES

Concerns for Abandoned, Historic and Pioneer Cemeteries.

Recommendations for changes in cemetery laws of Oklahoma.

I. Definitions:

1. "Historic" or "Pioneer" cemetery shall refer to any cemetery or burial ground, whether on public or private land, that has human remains interred before the date of November 16, 1907, the date of Statehood for Oklahoma.
2. "Abandoned" shall refer to any cemetery or burial ground in which the interment of human remains has not been made for fifty years. This shall not mean any cemetery or burial ground in which grounds maintenance has not been performed or may be overgrown.

II. Proposed Amendments to existing Oklahoma Cemetery laws:

1. The Oklahoma Historical Society shall create and maintain a register for ALL Oklahoma cemeteries or burial grounds, with exact location, in which the earliest interred human remains are dated before November 16, 1907, whether on public or private land, whether known or unknown.
2. That responsible parties such as Historical, Archeological, School or Cemetery associations shall have the right, at reasonable times and upon request, enter private or public land for the purpose of registering or mapping the graves of the interred in Pioneer, Historical or Abandoned cemeteries.
3. That owners of private lands on which a Pioneer, Historical or Abandoned cemeteries, be forbidden from removing, or causing to be removed, any fence or part of a fence from around any cemetery or grave.
4. That no building may be erected within 100 feet of a Pioneer, Historical or Abandoned cemetery or grave, whether on public or private land, other than a building erected for the maintenance of such cemetery by a responsible party such as a government entity, cemetery association or historical society.
5. That no person shall intentionally, whether on private or public land, remove, injure or

otherwise cause to be damaged, or through negligence, any tombstone, grave marker, fence, or monument, or to create any situation that would cause livestock, machinery or farm implements to injure said monuments or cemetery, in a Pioneer, Historical or Abandoned cemetery.

6. That any responsible group, individual or family member shall, upon request and at reasonable times and weather conditions, enter any Pioneer, Historical or Abandoned cemetery for the purpose of performing maintenance such as placing grave markers, repairing grave markers, removing brush, mending fences, installing fences, cutting grass and weeds or other necessary maintenance, and have the right to bring such equipment and supplies as needed by motor carrier across private or public land, by the most direct route, for the purpose of performing such maintenance.

7. That a paragraph shall be placed in the sales contract, and land abstract, by the seller, or of any land transferred by public or private sale, notifying the buyer that there exists a Pioneer, Historical or Abandoned cemetery on said property and that the laws of this section apply to said cemetery.

8. No part of this section shall have any reference to or be binding on any city, county or state cemetery that is currently maintained by said government bodies or any cemetery in which the earliest interment of the remains of human beings shall date after November 16, 1907.

9. Violation of any part of this section shall be punishable by a fine of not less than \$100 or more than \$5,000, or a jail term of up to six months or both, for each offense.

10. Land owners who have an above described cemetery on their property shall have the tax burden of the state or county, for that amount of land, stricken from their property tax record.

Please invest 37 Cents & contact by paper mail, as emails make no impression on these people now:

Representative Danny Hilliard
Oklahoma House of Representatives
442 State Capitol Building
2300 North Lincoln
Oklahoma City, OK 73105
Phone: 405-557-7412 or 580-622-2124
hilliardda@lsb.state.ok.us

Please ask him to push forward laws to protect our cemeteries. Oklahoma has already lost many to destruction by landowners. Let's not loose anymore.

I wrote all these laws and there is no one to blame but me if it doesn't pass.



Oklahoma Cemetery Statutes

OS-21-1167 Injury to Cemetery or Tomb

Title 21 Oklahoma Statutes 2001, section 1167.

Injury to cemetery or tomb.

Every person who shall willfully with malicious intent destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure placed in any cemetery or private burying ground, or any fence, railing, or other work for the protection or ornament of any such cemetery or place of burial of any human being, or tomb, monument or gravestone, memento, or memorial, or other structure aforesaid, or of any lot within a cemetery, or shall willfully or with malicious intent destroy, cut, break, or injure any tree, shrub or plant, within the limits thereof, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment.

R. L. 1910, section 2462; Laws 1989, c. 193, section 2, effective Nov. 1, 1989; Laws 2001, c. 386, section 1, effective July 1, 2001

OS 8-187 Visitation Rights

§8-187.

Abandoned cemetery on privately owned land -

Visitation rights. Any relative of the deceased who wishes to visit an abandoned cemetery which is completely surrounded by privately owned land, for which no public ingress or egress is available, shall have the right to reasonable ingress or egress for the purpose of visiting such cemetery. This right of access to such cemeteries extends only to visitation during reasonable hours and only for purposes usually associated with cemetery visits. For the purposes of this section, "abandoned cemetery" means any place where human skeletal remains are buried and which no body has been interred for at least twenty-five (25) years and where such site is readily identifiable as a cemetery by an inspection of the property. Any relative of the deceased who wishes to visit an abandoned cemetery shall make a good faith effort to notify the owners and tenants, if any, of said property prior to visiting the cemetery. This section shall not be interpreted to allow the creation of an easement or claim of easement nor a right of ownership or claim of right of ownership to an abandoned cemetery.

Added by Laws 1992, c. 214, § 1, effective Sept. 1, 1992.

Oklahoma Saving Graves Home

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Oregon

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

February 19, 2001
 8:00 a.m.

Hearing Room 357
 Tapes 17 - 18

MEMBERS PRESENT: Rep. Cherryl Walker, Chair
 Rep. Vic Backlund
 Rep. Lowe
 Rep. Ringo
 Rep. Lane Shetterly

STAFF PRESENT: Andrea Shartel, Counsel
 Shannon Reed, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2386 Public Hearing**
 HB 2594 Public Hearing
 HB 2339 Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

| TAPE/# | Speaker | Comments |
|--------------------------------------|-------------------|---|
| TAPE 17, A | | |
| 004 | Chair Walker | Calls the meeting to order at 8:09 a.m. and opens the public hearing on HB2386 concerning garnishment laws. |
| <u>HB 2386 PUBLIC HEARING</u> | | |
| 009 | Rep. Max Williams | House District 9 Testifies in support of HB 2386 concerning garnishment laws revisions. Explains the bill would streamline the statute from four separate forms of garnishment to one, and clarifies understanding of the rights, obligations and responsibilities of the people involved. Mentions that there are a few issues waiting to be resolved and suggests waiting to move the bill to full committee until the issues are resolved. |
| 107 | Chair Walker | Recesses the public hearing on HB 2386 and opens a public hearing on HB 2594 concerning pioneer cemeteries and conditions for use. |
| <u>HB 2594 PUBLIC HEARING</u> | | |
| 116 | Counsel Shartel | Introduces HB 2594 which establishes access to certain pioneer cemeteries throughout Oregon, and sets conditions for their use. |
| 142 | Charlotte Benz | Heritage Cemetery Group, Inc. Submits testimony and testifies in support of HB 2594 (EXHIBIT A) . States that the purpose of requesting this legislation is to facilitate |
| 162 | Karen Wells | access to landlocked cemeteries and burial sites by descendants and cemetery property owners. Submits testimony and testifies in support of HB 2594 (EXHIBIT B) . |

71st OREGON LEGISLATIVE ASSEMBLY--2001 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 1355

House Bill 2594

Sponsored by Representative WILLIAMS (at the request of Charlotte Benz and Karen Wells)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Establishes way of necessity to certain pioneer cemeteries.
Sets conditions for use.

A BILL FOR AN ACT

Relating to ways of necessity to pioneer cemeteries; amending ORS 376.197.

Whereas the care accorded human remains of deceased persons reflects respect and regard for human dignity as well as cultural, spiritual and religious values; and

Whereas human remains and burial objects are a part of the finite, irreplaceable and nonrenewable cultural and historical heritage of the people of the State of Oregon; and

Whereas the equal and innate dignity of every human being is promoted by the respectful treatment of human remains consistent with the identifiable ethnic, cultural and religious affiliations of the deceased individual; now, therefore,
Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 376.197 is amended to read:

376.197. { + (1) + } Notwithstanding any other provision of ORS 376.150 to 376.200, a way of necessity for nonmotorized conveyance is established to any parcel that meets the criteria described in ORS 308A.125.

{ + (2)(a) Notwithstanding any other provision of ORS 376.150 to 376.200, a way of necessity is established to a pioneer cemetery listed in accordance with the provisions of ORS 97.782.

(b) The way of necessity established under paragraph (a) of this subsection shall:

(A) Be designated by the owner of the land over which the way of necessity passes; and

(B) Be accessible, at least once each calendar quarter for visitation, maintenance or research purposes, to the owner of the pioneer cemetery, to descendants of those persons buried in the pioneer cemetery and to persons interested in historical research. + }

71st OREGON LEGISLATIVE ASSEMBLY--2001 Regular Session

Enrolled

House Bill 2594

Sponsored by Representative WILLIAMS (at the request of Charlotte Benz and Karen Wells)

CHAPTER

AN ACT

Relating to ways of necessity to pioneer cemeteries; amending ORS 376.197.

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{ + (2)(a) Notwithstanding any other provision of ORS 376.150 to 376.200, a way of necessity is established to a pioneer cemetery listed in accordance with the provisions of ORS 97.782.

(b) The way of necessity established under paragraph (a) of this subsection shall:

(A) Be designated by the owner of the land over which the way of necessity passes; and

(B) Be accessible, at reasonable times to be designated by the property owner for visitation, maintenance or research purposes, to the owner of the pioneer cemetery, to descendants of those persons buried in the pioneer cemetery and to persons interested in historical research. The reasonableness of the times designated by the property owner shall be based on the need of the property owner to make use of the property and the need of the pioneer cemetery visitors for family visitation, maintenance or research access to the pioneer cemetery. + }



Texas Genealogy & History

"...the people of Texas do now constitute a free, Sovereign, and independent republic..."
- from the Texas Declaration of Independence, 2 March 1836

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Ever Been Denied Cemetery Access?

The Texas Historical Commission needs your help with a very important issue concerning access to historic cemeteries.

Under the existing Texas Health and Safety Code 711.041, access to cemeteries is granted to:

- (a) Any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds. This right of access extends only to visitation during reasonable hours and only for the purposes usually associated with cemetery visits; and
- (b) The owner or owners of the land surrounding the cemetery or private burial grounds may designate the routes of reasonable ingress and egress.

The Texas Funeral Service Commission has been given the authority to write rules under this section of the Health and Safety Code. We are asking if you know of any cases where access has been denied (locked gate, oral or written denied access by surrounding landowner, no response from surrounding landowner on route to the cemetery, law enforcement declines to get involved). Please provide a written description of the situation and send one copy to the Texas Historical Commission and one to the Texas Funeral Service Commission, O.C. Robbins, Executive Director, P. O. Box 12217, Austin, Texas 78711. This subject will be discussed at their next board meeting on June 17, 2008, so they need this information as soon as possible.

Other links for cemetery laws, etc.

[Cemetery Law In Texas](#)
[Tombstones - Lost & Found](#)
[Preserving Historic Cemeteries](#)
[Cleaning Gravestones](#)
[How To Read A Graveyard](#)
[How To Do Tombstone Rubbings](#)

You may notice a message beside the county listing indicating it is available for adoption. This means that we are looking for someone to take it over on a permanent basis. If you would like to adopt a web page for one of these counties, please contact Shirley Cullum - State Coordinator. The assistant state coordinators are Elaine Martin and Jane Keppler.

Page Design by: Kimm Antell
 Graphic Design by: Terri Brown

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§ 57-27.1. Access to cemeteries located on private property; cause of action for injunctive relief; applicability.

A. Owners of private property on which a cemetery or graves are located shall have a duty to allow ingress and egress to the cemetery or graves by (i) family members and descendants of deceased persons buried there; (ii) any cemetery plot owner; and (iii) any person engaging in genealogy research, who has given reasonable notice to the owner of record or to the occupant of the property or both. The landowner may designate the frequency of access, hours and duration of the access and the access route if no traditional access route is obviously visible by a view of the property. The landowner, in the absence of gross negligence or willful misconduct, shall be immune from liability in any civil suit, claim, action, or cause of action arising out of the access granted pursuant to this section.

B. The right of ingress and egress granted to persons specified in subsection A shall be reasonable and limited to the purposes of visiting graves, maintaining the gravesite or cemetery, or conducting genealogy research. The right of ingress and egress shall not be construed to provide a right to operate motor vehicles on the property for the purpose of accessing a cemetery or gravesite unless there is a road or adequate right-of-way that permits access by a motor vehicle and the owner has given written permission to use the road or right-of-way of necessity.

C. Any person entering onto private property to access a gravesite or cemetery shall be responsible for conducting himself in a manner that does not damage the private lands, the cemetery or gravesites and shall be liable to the owner of the property for any damage caused as a result of his access.

D. Any person denied reasonable access under the provisions of this section may bring an action in the circuit court where the property is located to enjoin the owner of the property from denying the person reasonable ingress and egress to the cemetery or gravesite. In granting such relief, the court may (i) set the frequency of access, hours and duration of the access and (ii) award reasonable attorney fees and costs to the person denied such access.

E. The provisions of this section shall not apply to any deed or other written instrument that creates or reserves a cemetery or gravesite on private property.

(1993, c. 713; 2004, c. 831; 2008, c. 390.)

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CHAPTER 831

An Act to amend and reenact § 57-27.1 of the Code of Virginia, relating to access to cemeteries located on private property; injunctive relief.

[H 162]

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 57-27.1 of the Code of Virginia is amended and reenacted as follows:

§ 57-27.1. Access to cemeteries located on private property; cause of action for injunctive relief; applicability.

~~After reasonable notice to the property owner at his last known address, representatives of local historical commissions may enter upon the land of a private or family cemetery for the purpose of conducting official business, unless the property owner objects.~~ *A. Owners of private property on which a cemetery or graves are located shall have a duty to allow ingress and egress to the cemetery or graves by (i) family members and descendants of deceased persons buried there; (ii) any cemetery plot owner; and (iii) any person engaging in genealogy research, who has given reasonable notice to the owner of record or to the occupant of the property or both. The landowner may designate the frequency of access, hours and duration of the access and the access route if no traditional access route is obviously visible by a view of the property. The landowner, in the absence of gross negligence or willful misconduct, shall be immune from liability in any civil suit, claim, action, or cause of action arising out of the access granted pursuant to this section.*

B. The right of ingress and egress granted to persons specified in subsection A shall be reasonable and limited to the purposes of visiting graves, maintaining the gravesite or cemetery, or conducting genealogy research. The right of ingress and egress shall not be construed to provide a right to operate motor vehicles on the property for the purpose of accessing a cemetery or gravesite unless there is a road or adequate right-of-way that permits access by a motor vehicle and the owner has given written permission to use the road or right-of-way of necessity.

C. Any person entering onto private property to access a gravesite or cemetery shall be responsible for conducting himself in a manner that does not damage the private lands, the cemetery or gravesites and shall be liable to the owner of the property for any damage caused as a result of his access.

D. Any person denied reasonable access under the provisions of this section may bring an action in the circuit court where the property is located to enjoin the owner of the property from denying the person reasonable ingress and egress to the cemetery or gravesite. In granting such relief, the court may set the frequency of access, hours and duration of the access.

E. The provisions of this section shall not apply to any deed or other written instrument that creates or reserves a cemetery or gravesite on private property.

Landlocked Cemetery Under Dispute in Gloucester, Virginia

> [EMail This Post](#) < | by Leland Meitzler | [permalink](#) | 6/10/2004 |

GLOUCESTER [Virginia] — The headstone of Rev. Winder G. Walker reports that he died in 1885 and that the “grave of a departed Christian is a bed of rest ...”

But Walker’s headstone now endures weeds, the occasional creeping vine, and a land squabble resulting in a civil suit that’s the root of all the overgrowth.

Walker’s grave is in the Rowe family cemetery that’s tucked away in Gloucester’s Guinea. Now the old rural practice of burying the dead in the back corner of the family lot butts against the demands a growing population has for land.

Henry Walker said he spent years as the unofficial groundskeeper of a portion of the cemetery where his relatives are buried, among them Winder Walker.

“My family part was always kept cleaned up,” Walker said. “There was some that was not as well cleaned as ours.”

Walker’s weeding and mowing came to a halt in 2001. Walker said he was run off the property by Bena resident Graham Blake. The Rowe cemetery plot is surrounded by land owned by Blake, but there is an access road to it.

Neither Blake nor his attorney returned calls seeking comment. But according to Gloucester Circuit Court documents, Blake said that Walker has no rights to the cemetery because a 1911 deed reserved a half-acre for a cemetery but didn’t transfer ownership of that property to a subsequent buyer.

Walker said he has tried to settle the issue with Blake, twice hiring a surveyor to map out the half-acre that’s listed in the 1911 deed and mentioned in subsequent deeds. But those attempts have been foiled by Blake because he won’t cooperate, Walker said.

A court hearing is scheduled in July. Walker’s attorney, C. Flippo Hicks, said the case is unusual because, “Usually people want to get rid of a cemetery because it’s been abandoned.”

A House of Delegates bill passed this year and signed by Gov. Mark R. Warner allows descendants of a deceased person and even people conducting genealogy research access to family cemeteries after giving notice to the property owner. But the bill also allows the property owner to set the frequency and duration of the access.

Read the full story in the June 10, 2004 edition of the [Daily Press](#).

Filed: under: [General](#).

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