

REQUEST FOR BOARD ACTION

MEETING DATE: MONDAY, January 3, 2005

SUBJECT: ORDINANCE REGARDING ABANDONED PUBLIC CEMETERIES

ATTACHMENTS: Draft Ordinance

SUMMARY OF REQUEST:

Attached for the Board's consideration is an ordinance proposed by staff to regulate abandoned public cemeteries, including outlining the Board's responsibilities with regards to these cemeteries, and to regulate the removal of graves from an abandoned cemetery. Staff suggests that this proposed draft be used by the newly established Henderson County Cemetery Committee in guiding their work.

This is a formal introduction of a proposed ordinance to serve as a first reading. In order to be adopted at the first reading, it must pass unanimously, with all commissioners voting. If it receives less than a unanimous vote, a second reading at the next regular meeting would be required at which time (or anytime within 100 days after the first reading) only a majority vote would be required.

COUNTY MANAGER'S RECOMMENDATION: I request that the Board of Commissioners vote on the attached draft at the first reading today, and that specific direction be given to the Cemetery Advisory Committee that the attached draft serve as their guideline in performing their duties as specified in the charter.

**ORDINANCE TO ENACT A NEW CHAPTER 76 OF THE HENDERSON COUNTY CODE
TO REGULATE ABANDONED CEMETERIES**

WHEREAS, citizens of Henderson County have reported to the Board of Commissioners that there are a number of abandoned cemeteries in Henderson County which are not receiving the proper care; and

WHEREAS, the North Carolina General Statutes, in particular N.C.G.S. Chapter 65, delegates to Henderson County certain authority and responsibility with regards to abandoned cemeteries; and

WHEREAS, the Henderson County Board of Commissioners is desirous of carrying out its authority and responsibility placed upon Henderson County by the North Carolina General Statutes with respect to abandoned cemeteries;

NOW, THEREFORE, be it ordained by the Henderson County Board of Commissioners as follows:

1. That there shall be added a new Chapter 76 to the Henderson County Code, entitled "Cemeteries". Chapter 76 of the Henderson Code as enacted by this Ordinance shall consist of two parts: part one to be entitled, "Part 1, Abandoned Public Cemeteries", and part two to be entitled, "Part 2, Removal of Graves". Chapter 76, Parts 1 and 2 of the Henderson County Code shall read as follows:

Chapter 76, Cemeteries

Part 1, Abandoned Public Cemeteries

Article I County to Assume Possession and Control of Abandoned Public Cemeteries

§ 76-1 Title. This Part 1 shall be referred to as the "Henderson County Ordinance Regulating Abandoned Public Cemeteries."

§ 76-2 Authority. This Part 1 is enacted pursuant to the authority of N.C.G.S. Chapter 65, Articles 1 and 10, N.C.G.S. § 153A-149, N.C.G.S. Chapter 153A, Article 16, and N.C.G.S. § 153A-169. This Part shall be interpreted in accordance with any sections of the North Carolina General Statutes which, by their terms, limit the authority or responsibility of Henderson County with respect to Abandoned Public Cemeteries.

§ 76-3 Jurisdiction. This Part 1 shall apply in the unincorporated areas of Henderson County.

§ 76-4 Definitions. The following definitions shall apply to this Part 1, but shall not apply to other Chapters, Parts, or Articles of the Henderson County Code unless specifically stated therein.

- (a) Abandoned Cemetery. An abandoned cemetery is a cemetery for which there is no ascertainable person or entity responsible for maintenance and care, and which has not actually been maintained or cared for so that it has fallen into a state of disrepair as evidenced by overgrown foliage, broken grave markers, loss of grave identity, or such other circumstances indicating neglect or abandonment.
- (b) Public Body. A public body is (i) a county, municipality, or other governmental entity; or (ii) a quasi-governmental entity established by a governmental entity such as an authority, a district, a public hospital, a county home, etc.

(c) Public Cemetery. A public cemetery is a cemetery that:

- (1) Is or was last owned or controlled by a public body without any relinquishment of ownership or control by said public body; or
- (2) Has been (i) dedicated for use by the public generally by an express or implied dedication, and (ii) accepted by the public expressly by an act of a public body or impliedly by the actual use of the cemetery by the general public.

§ 76-5 List of Abandoned and Public Cemeteries. The Board of Commissioners shall prepare and maintain a list of all public cemeteries in Henderson County located outside of the limits of any incorporated towns and cities and not established and maintained for the use of an incorporated town or city, together with the names and addresses of the persons in possession and control of the same. To such list shall be added a list of those public cemeteries identified which are also abandoned.

§ 76-6 Possession, Control and Maintenance of Abandoned Public Cemeteries. The Board of Commissioners shall assume possession and control of all cemeteries identified as abandoned public cemeteries in the list prepared and maintained pursuant to § 76-5 above or which are found by the Board to be abandoned public cemeteries pursuant to an application filed in accordance with § 76-7 below. The Board of Commissioners shall cause to be taken all appropriate actions to care for and maintain all abandoned public cemeteries for which possession and control is assumed pursuant to this Part 1, shall see that their boundaries and lines are clearly laid out, defined and marked, and shall take proper steps to preserve them from encroachment. Upon the assumption of possession and control of an abandoned public cemetery by the Board of Commissioners, no further burials shall be allowed in such cemetery.

§ 76-7 Identification of Abandoned Public Cemeteries. Any person or entity may make application to the Board of Commissioners requesting that the Board of Commissioners assume possession and control of an abandoned public cemetery located in the unincorporated areas of Henderson County. Such application shall be made on a form approved by the Board of Commissioners, but shall, at a minimum, include the following information:

- (a) Name of Applicant
- (b) Special Relationship to any of the deceased buried in the abandoned public cemetery or other special interest, if any.
- (c) Location of abandoned public cemetery, including address, parcel identification number as shown on the Henderson County Geographical Information System (GIS), and a GIS map showing approximate location of the abandoned public cemetery on the parcel identified.
- (d) Name of last person or entity owning or controlling the property on which the abandoned public cemetery is located.
- (e) Sufficient evidence to support a finding by the Henderson County Board of Commissioners that the cemetery which the Board is requested to assume possession and control over is an abandoned public cemetery as defined by this Part 1.

Article II. Access To Abandoned Public Cemeteries In The Possession And Control Of Henderson County.

§ 76-8 Access to Abandoned Public Cemeteries in the Possession and Control of Henderson County.

- (a) Any of the following persons may request access to any property owned or controlled by Henderson County to discover, restore, maintain, or visit an abandoned public cemetery:
 - (1) A descendant of the person whose remains are reasonably believed to be interred in the grave;
 - (2) A descendant's designee; or
 - (3) Any other person who has a special interest in the grave or abandoned public cemetery.
- (b) Such request shall be made to and may be granted by the County Manager, or his/her designee.

§ 76-9 Denial of Access to an Abandoned Cemetery in the Possession and Control of Henderson County. In the event a request made in accordance with § 76-8 above is denied by the County Manager or his/her designee, the person making the request shall proceed in accordance with N.C.G.S. § 65-75. There shall be no appeal to the Henderson County Board of Commissioners, and the County Manager, or his/her designee, shall be authorized to appear on behalf of Henderson County in any proceeding brought in accordance with N.C.G.S. § 65-75.

§ 76-10 Duties and Responsibilities of the Henderson County Manager. The Henderson County Manager, or his/her designee, shall have the following duties and responsibilities pursuant to this Part 1:

- (a) Receive applications submitted pursuant to § 76-7.
- (b) Review and make a recommendation to the Board of Commissioners regarding whether the cemetery which the Board of Commissioners is requested to assume possession and control over is an abandoned public cemetery as defined by this Part 1.
- (c) Submit to the Board of Commissioners for addition to or deletion from, as appropriate, the list prepared and maintained pursuant to § 76-5 above any cemeteries which are required by § 76-5 to be added to such list.
- (d) Submit the list, and additions to or deletions from the list prepared and maintained pursuant to § 76-5 to the North Carolina Secretary of State on behalf of the Board of Commissioners.
- (e) Receive and respond to requests for access to abandoned public cemeteries which are in the possession and control of Henderson County pursuant to § 76-8; participate on behalf of Henderson County in proceedings brought under N.C.G.S. § 65-75.

§ 76-11 through 76-20. Reserved.

Part 2. Removal Of Graves

Article III: Removal Of Graves From An Abandoned Cemetery

§ 76-21. Title. This Part 2 shall be referred to as the Henderson County Ordinance to Regulate the Removal of Graves from an Abandoned Cemetery.

§ 76-22 Jurisdiction. This Part 2 shall only apply in the unincorporated areas of Henderson County.

§ 76-23. Scope. This Part 2 is enacted in order to comply with the provisions of N.C.G.S. § 65-13 with regards to a request for the removal of any grave by any person, firm, or corporation in accordance with N.C.G.S. § 65-13(a)(4) only. This Part 2 shall not affect the ability of any person not covered by N.C.G.S. § 65-13(a)(4) to remove any grave.

§ 76-24 Definitions. The following definition(s) shall apply to this Part 2, but shall not apply to another Chapters, Parts, or Articles of the Henderson County Code unless specifically stated therein.

Abandoned Cemetery or Burying Ground. An abandoned cemetery or burying ground is a cemetery or burying ground:

- (a) Which is no longer kept and preserved as a resting place for the dead and is without anything to indicate the existence of graves;
- (b) In which all graves have been removed; or
- (c) Which has been so neglected as to entirely lose its identity as such, and is no longer known, recognized and respected by the public as a cemetery.

§ 76-25 Consent Required

- (a) Before any person, firm, or corporation, which owns land on which an abandoned cemetery or burying ground is located may effect the disinterment, removal, and reinterment of any grave(s) or grave markers within the abandoned cemetery or burying ground, such person, firm or corporation must obtain the prior consent of the Henderson County Board of Commissioners. The Board of Commissioners may consent to such a request for the disinterment, removal and reinterment of a grave or grave marker if the following is demonstrated by the applicant:
 - (1) The cemetery or burying ground is an abandoned cemetery or burying ground as defined by § 76-24.
 - (2) The applicant demonstrates a readiness to comply with the requirements of N.C.G.S. § 65-13.
- (b) Any person, firm, or corporation requesting consent of the Board of Commissioners pursuant to this § 76-25 and/or N.C.G.S. § 65-13(a)(4) must make application to the Board of Commissioners. Such application shall be made on a form approved by the Board of Commissioners, but shall, at a minimum, include the following information:
 - (1) Name of Applicant
 - (2) Location of abandoned cemetery or burying ground, including address, parcel identification number as shown on the Henderson County Geographical Information System (GIS), and a GIS map showing approximate location of the abandoned public cemetery or burying ground on the parcel.

- (3) Evidence that Applicant is the owner of the property upon which the abandoned cemetery or burying ground is located.
- (4) Sufficient evidence to support a finding by the Henderson County Board of Commissioners that the cemetery or burying ground in which the grave(s) or grave marker(s) are located is an abandoned cemetery or burying ground as defined by this Part 2.

(c) Upon receipt of the consent of the Board of Commissioners if given, the applicant shall proceed in accordance with N.C.G.S. § 65-13.

§ 76-26 Other Laws. Nothing in this Part 2 shall limit the ability of or replace the duties and obligations of any person, firm, or corporation in effecting the disinterment, removal and reinterment of a grave or grave marker pursuant to other applicable laws; however if the terms of this Part 2 apply, compliance with this Part 2 shall be required in addition to the requirements of such other applicable laws.

§ 76-27 Violations. Any person violating any provision of this Part 2 shall be subject to the penalties set forth in Chapter 1, General Provisions, Article II.

- 2. That this Ordinance shall take effect immediately upon its adoption. If this Ordinance passes unanimously with all members present at its first reading, it shall be presumed to be adopted at that time. If this ordinance is not voted upon at its first reading, or this Ordinance passes by a majority of the members voting but not by all members of the Board at its first reading, then a second reading shall be required at the next regular meeting. At the second reading, or any other meeting within 100 days of the first reading, a majority of the votes cast shall be required to adopt this Ordinance.

THIS the _____ day of _____, 2005.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

Elizabeth W. Corn, Clerk to the Board

[COUNTY SEAL]