

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: 6 June 2005

SUBJECT: Application for county control of an abandoned public cemetery (lower section, Mill Pond Cemetery)

ATTACHMENT(S): (1) Application as received (lower section, Mill Pond Cemetery)
(2) Part 1, Chapter 76 of the Henderson County Code

SUMMARY OF REQUEST:

Henderson County has received an application from Jay Jackson, Chair of the Henderson County Cemetery Advisory Committee, for Henderson County to assume possession and control of an abandoned public cemetery. The cemetery is described as being “[a]t the corner of Highway 191 and Rugby Road”, with Henderson County PIN 0096409780045, and is known as “lower section, Mill Pond Cemetery”.

Under your ordinance:

- 1) The Board must “assume possession and control” of all abandoned public cemeteries. (Code §76-6)
- 2) “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.” (§76-4(a))
- 3) “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.” (§76-4(c))

The only substantial issue identified by staff as a concern with this application is the location of the boundaries of the “lower section, Mill Pond Cemetery”. As under §76-6, the Board is responsible to insure that the cemetery “boundaries and lines are clearly laid out, defined and marked, and shall take proper steps to preserve them from encroachment”, the location of these boundaries is required information. This is especially true as the remainder of Mill Pond Cemetery is well cared for, and clearly not an abandoned cemetery of any sort.

COUNTY MANAGER RECOMMENDATION/BOARD ACTION REQUESTED:

The County Manager supports this proposal, subject to a direction to County staff to locate the boundaries of the cemetery on the ground, working with representatives of those who care for the remainder of Mill Pond Cemetery and with members of your Cemetery Advisory Committee.

The applicant will present further information on this matter.

SUGGESTED MOTION:

If the Board is so inclined, the following motion is suggested:

I move that the Board assume and exercise possession and control of the lower section of Mill Pond Cemetery as an abandoned public cemetery pursuant to Chapter 76 of the Henderson County Code, subject to the location of its boundaries. I further move that Henderson County staff be directed to work with its Cemetery Advisory Committee and those who care for the remainder of Mill Pond Cemetery to locate the boundaries of the lower section of Mill Pond Cemetery, and provide a reasonable and workable description of the boundaries to this Board within forty-five days of this date.

TO ASSUME POSSESSION AND CONTROL OF AN ABANDONED PUBLIC CEMETERY

Applicant Name

Jackson/ Chair of Henderson County Cemetery Advisory Committee

Applicant Street Address

PO Box 945

Applicant City, State, Zip

Hendersonville, NC 28793

Telephone

(828) 693-4261

E-Mail

jacksnfs@brinet.com

I, the above named applicant, hereby transmit to the County Manager of Henderson County the following request of the Board of Commissioners of Henderson County to take possession of the below-described abandoned public cemetery. I understand that that for the Board of Commissioners of Henderson County to take possession of any such cemetery, the cemetery must meet the definitions of both an "abandoned cemetery" and a "public cemetery" (as both are defined under §76-4 of the Henderson County Code). If Henderson County takes possession of an abandoned public cemetery, its responsibilities are set out in §76-6 of the County Code, below.

Abandoned cemetery: 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.

Public cemetery: A cemetery that:

- A. Is or was last owned or controlled by a public body without any relinquishment of ownership or control by said public body; or
- B. Has been dedicated for use by the public generally by an express or implied dedication, and 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.

§76-6 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.

The cemetery for which County control is sought is described as follows:
At the corner of Highway 191 and Rugby Road

The parcel identification number for the cemetery as shown on the Henderson County Graphical Information System ("GIS") is as follows: (NOTE: A copy of the GIS map of this property must be attached.)

PIN00964097800455

The undersigned applicant has the following special relationship to the deceased, if any:

NONE/ CEMETERY COMMITTEE REQUEST

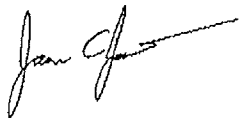
The name of last person or entity owning or controlling the property on which the abandoned public cemetery is located is as follows:

MILL POND CEMETERY/ LOWER SECTION

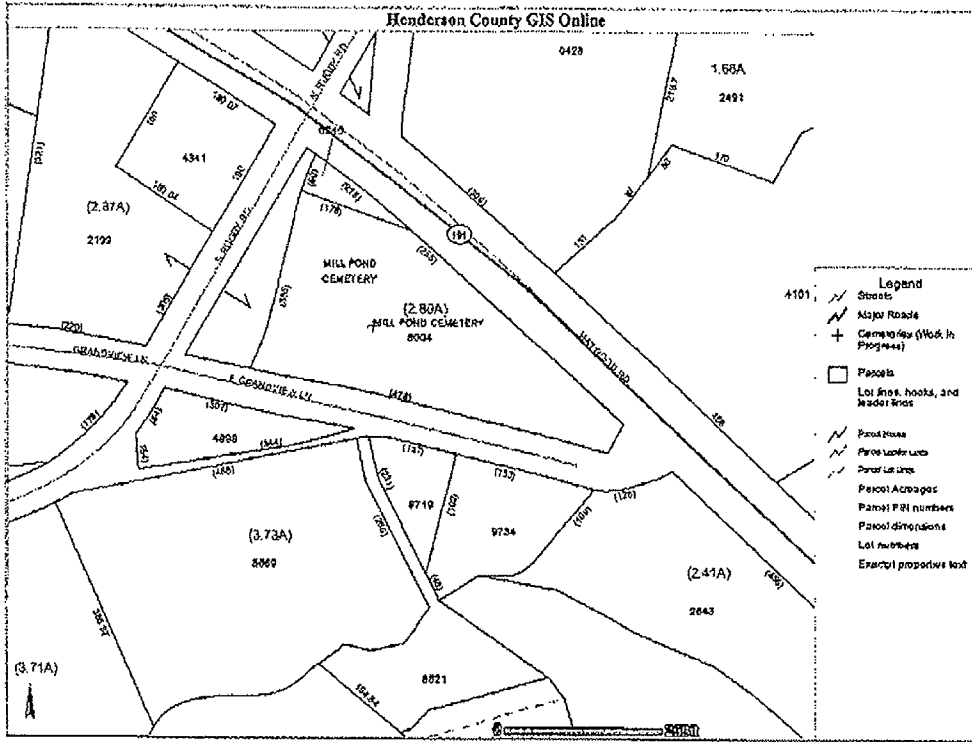
The following is the basis upon which the undersigned urges the Board of Commissioners to find that the cemetery which the Board is requested to assume possession and control over is an abandoned public cemetery:

CEMETERY WAS CLEANED UP BY THE SONS OF CONFEDERATE VETERANS AND VOLUNTEERS ON FEBRUARY 05, 2005 AND HAS GROWN BACK UP. THE SCV HAS CLEANED SEVERAL CEMETERIES IN THE PAST FEW MONTHS AND HAVE INDICATED THAT THIS WAS ONE OF THE HARDEST TO CLEAN DUE TO THE THICK GRASS THAT GROWS THERE. THEY SUGGESTED WEED KILLER BE SPRAYED TO CONTROL IT. THE UPPER SECTION OF THIS CEMETERY IS KEPT CLEAN BY THE COMMUNITY AND DESCENDANTS OF THE PEOPLE BURIED THERE. SINCE THE LOWER SECTION WAS AN OLDER SECTION, POSSIBLY PAUPERS AND SLAVES THERE IS NOBODY CLEANING IT. I WOULD PERSONALLY BE GLAD TO ASSIST WITH THIS CEMETERY IN WHATEVER WAY I AM ABLE.

Signature:



Date: May 12, 2005



**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 25th day of January, 2005.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____

William L. Moyer, Chairman

ATTESTED BY: _____

Elizabeth W. Corn
Elizabeth W. Corn, Clerk to the Board

[COUNTY SEAL]



**APPLICATION FOR HENDERSON COUNTY
TO ASSUME POSSESSION AND CONTROL OF
AN ABANDONED PUBLIC CEMETERY**

Applicant Name

Applicant Street Address

Applicant City, State, Zip

Telephone

E-Mail

I, the above named applicant, hereby transmit to the County Manager of Henderson County the following request of the Board of Commissioners of Henderson County to take possession of the below-described abandoned public cemetery. I understand that that for the Board of Commissioners of Henderson County to take possession of any such cemetery, the cemetery must meet the definitions of both an "abandoned cemetery" and a "public cemetery" (as both are defined under §76-4 of the Henderson County Code). If Henderson County takes possession of an abandoned public cemetery, its responsibilities are set out in §76-6 of the County Code, below.

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A. Is or was last owned or controlled by a public body without any relinquishment of ownership or control by said public body; or

B. Has been dedicated for use by the public generally by an express or implied dedication, and 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.

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The cemetery for which County control is sought is described as follows:

The parcel identification number for the cemetery as shown on the Henderson County Graphical Information System ("GIS") is as follows: (NOTE: A copy of the GIS map of this property must be attached.)

The undersigned applicant has the following special relationship to the deceased, if any:

The name of last person or entity owning or controlling the property on which the abandoned public cemetery is located is as follows:

The following is the basis upon which the undersigned urges the Board of Commissioners to find that the cemetery which the Board is requested to assume possession and control over is an abandoned public cemetery:

Signature:

Date:
