



REQUEST FOR BOARD ACTION

ITEM NO. 26.

DATE OF MEETING: July 23, 2012

REQUESTED BY: Benjamin Andrea, Planner II, Planning & Community Development

SHORT TITLE: Resolution Requesting Approval to Disinter Graves, Located off Watts Landing Road.

BACKGROUND: Robert and Marianne Orr, property owners, are requesting the consent of the Pender County Board of Commissioners to disinter forty-six marked and two unmarked graves within a 0.08 acre cemetery located on the property identified by Pender County PIN 4225-90-3854-0000. The subject property is located off of Watts Landing Road in the Topsail Township.

The property owners are seeking the consent of the Pender County Board of Commissioners pursuant to the requirements set forth in North Carolina General Statute § 65-106 (emphasis added):

§ 65-106. Removal of graves; who may disinter, move, and reinter; notice; certificate filed; reinterment expenses; due care required.

(a) The State of North Carolina and any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any church, electric power or lighting company, or any person, firm, or corporation may effect the disinterment, removal, and reinterment of graves as follows:

(1) By the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, when it shall determine and certify to the board of county commissioners in the county from which the bodies are to be disinterred that such removal is reasonably necessary to perform its governmental functions and the duties delegated to it by law.

(2) By any church authority in order to erect a new church, parish house, parsonage, or any other facility owned and operated exclusively by such church; in order to expand or enlarge an existing church facility; or better to care for and maintain graves not located in a regular cemetery for which such church has assumed responsibility of care and custody.

(3) By an electric power or lighting company when it owns land on which graves are located, and the land is to be used as a reservoir.

(4) By any person, firm, or corporation who owns land on which an abandoned cemetery is located after first securing the consent of the governing body of the municipality or county in which the abandoned cemetery is located.

North Carolina General Statute § 65-85 defines what constitutes an abandoned cemetery (emphasis added):

§ 65-85. Definitions.

As used in this Article, the following terms mean:

- (1) Abandoned.*** – ***Ceased from maintenance or use by the person with legal right to the real property with the intent of not again maintaining the real property in the foreseeable future.***
- (2) Cemetery.*** -- ***A tract of land used for burial of multiple graves.***
- (3) Department.*** – ***The Department of Cultural Resources.***
- (4) Grave.*** – ***A place of burial for a single decedent.***
- (5) Neglected.*** – ***Left unattended or uncared for through carelessness or intention and lacking a caretaker.***
- (6) Public cemetery.*** – ***A cemetery for which there is no qualification to purchase, own, or come into possession of a grave in that cemetery. (2007-118, s. 1.)***

The property owners have contracted with an archaeological consulting firm, Of Grave Concerns, Inc. to assist in evaluating the proposed disinterment, movement, and reinterment of the subject graves. The firm's principal, John W. Clauser Jr., has prepared a report (attached) that further overviews the research, field investigation, historical significance evaluation, planning options, and how the proposal would adhere to the additional provisions of North Carolina General Statute § 65-106.

This item was tabled from the May 21, 2012 meeting.

SPECIFIC ACTION REQUESTED: To consider the approval of a request to disinter graves located within a cemetery on property owned by Robert and Marianne Orr identified by Pender County PIN 4225-90-3854-0000.

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby (approved, modified, denied) a request to disinter graves, as described herein. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS _____

YEA VOTES: Brown ___ Rivenbark ___ Tate ___ Ward ___ Williams ___

George R. Brown, Chairman 7/23/12
Date

ATTEST 7/23/12
Date

Relevant North Carolina General Statutes

§ 65-74: Repealed by Session Laws 2007-118, s. 6, effective July 1, 2007, and applicable to all trusts created on or after that date.

§ 65-75: Repealed by Session Laws 2007-118, s. 6, effective July 1, 2007, and applicable to all trusts created on or after that date.

§ 65-85. Definitions.

As used in this Article, the following terms mean:

- (1) Abandoned. – Ceased from maintenance or use by the person with legal right to the real property with the intent of not again maintaining the real property in the foreseeable future.
- (2) Cemetery. – A tract of land used for burial of multiple graves.
- (3) Department. – The Department of Cultural Resources.
- (4) Grave. – A place of burial for a single decedent.
- (5) Neglected. – Left unattended or uncared for through carelessness or intention and lacking a caretaker.
- (6) Public cemetery. – A cemetery for which there is no qualification to purchase, own, or come into possession of a grave in that cemetery. (2007-118, s. 1.)

§ 65-101. Entering public or private property to maintain or visit with consent.

Any of the following persons, with the consent of the public or private landowner, may enter the property of another to discover, restore, maintain, or visit a grave or abandoned public cemetery:

- (1) A descendant of the person whose remains are reasonably believed to be interred in the grave or abandoned public cemetery.
- (2) A descendant's designee.
- (3) Any other person who has a special personal interest in the grave or abandoned public cemetery. (1987, c. 686, s. 1; 1991, c. 36, s. 1; 2007-118, s. 1.)

§ 65-102. Entering public or private property to maintain or visit without consent.

(a) If the consent of the landowner cannot be obtained, any person listed in G.S. 65-101(1), (2), or (3) may commence a special proceeding by petitioning the clerk of superior court of the county in which the petitioner has reasonable grounds to believe the grave or abandoned public cemetery is located for an order allowing the petitioner to enter the property to discover, restore, maintain, or visit the grave or abandoned public cemetery. The petition shall be verified. The special proceeding shall be in accordance with the provisions of Articles 27A and 33 of Chapter 1 of the General Statutes. The clerk shall issue an order allowing the petitioner to enter the property if the clerk finds all of the following:

- (1) There are reasonable grounds to believe that the grave or abandoned public cemetery is located on the property or it is reasonably necessary to enter or cross the landowner's property to reach the grave or abandoned public cemetery.
- (2) The petitioner, or the petitioner's designee, is a descendant of the deceased, or the petitioner has a legitimate historical, genealogical, or governmental interest in the grave or abandoned public cemetery.

- (3) The entry on the property would not unreasonably interfere with the enjoyment of the property by the landowner.
- (b) The clerk's order may state one or more of the following:
 - (1) Specify the dates and the daylight hours that the petitioner may enter and remain on the property.
 - (2) Grant the petitioner the right to enter the landowner's property periodically, as specified in the order, after the time needed for initial restoration of the grave or abandoned public cemetery.
 - (3) Specify a reasonable route from which the petitioner may not deviate in all entries and exits from the property. (1987, c. 686, s. 1; 1991, c. 36, s. 1; 1999-216, s. 12; 2007-118, s. 1.)

§ 65-106. Removal of graves; who may disinter, move, and reinter; notice; certificate filed; reinterment expenses; due care required.

- (a) The State of North Carolina and any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any church, electric power or lighting company, or any person, firm, or corporation may effect the disinterment, removal, and reinterment of graves as follows:
 - (1) By the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, when it shall determine and certify to the board of county commissioners in the county from which the bodies are to be disinterred that such removal is reasonably necessary to perform its governmental functions and the duties delegated to it by law.
 - (2) By any church authority in order to erect a new church, parish house, parsonage, or any other facility owned and operated exclusively by such church; in order to expand or enlarge an existing church facility; or better to care for and maintain graves not located in a regular cemetery for which such church has assumed responsibility of care and custody.
 - (3) By an electric power or lighting company when it owns land on which graves are located, and the land is to be used as a reservoir.
 - (4) By any person, firm, or corporation who owns land on which an abandoned cemetery is located after first securing the consent of the governing body of the municipality or county in which the abandoned cemetery is located.
- (b) The party effecting the disinterment, removal, and reinterment of a grave containing a decedent's remains under the provisions of this Part shall, before disinterment, give 30 days' written notice of such intention to the next of kin of the decedent, if known or subject to being ascertained by reasonable search and inquiry, and shall cause notice of such disinterment, removal, and reinterment to be published at least once per week for four successive weeks in a newspaper of general circulation in the county where such grave is located, and the first publication shall be not less than 30 days before disinterment. Any remains disinterred and removed hereunder shall be reinterred in a suitable cemetery.
- (c) The party removing or causing the removal of all such graves shall, within 30 days after completion of the removal and reinterment, file with the register of deeds of the county from which the graves were removed and with the register of deeds of the county

in which reinterment is made, a written certificate of the removal facts. Such certificate shall contain the full name, if known or reasonably ascertainable, of each decedent whose grave is moved, a precise description of the site from which such grave was removed, a precise description of the site and specific location where the decedent's remains have been reinterred, the full and correct name of the party effecting the removal, and a brief description of the statutory basis or bases upon which such removal or reinterment was effected. If the full name of any decedent cannot reasonably be ascertained, the removing party shall set forth all additional reasonably ascertainable facts about the decedent including birth date, death date, and family name. The fee for recording instruments in general, as provided in G.S. 161-10(a)(1), for registering a certificate of removal facts shall be paid to the register of deeds of each county in which such certificate is filed for registration.

(d) All expenses of disinterment, removal, and acquisition of the new burial site and reinterment shall be borne by the party effecting such disinterment, removal, and reinterment, including the actual reasonable expense of one of the next of kin incurred in attending the same, not to exceed the sum of two hundred dollars (\$200.00).

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(e) The Office of Vital Records of North Carolina shall promulgate regulations affecting the registration and indexing of the written certificate of the removal facts, including the form of that certificate.

(f) The party effecting the disinterment, removal, and reinterment of a decedent's remains under the provisions of this Part shall ensure that the site in which reinterment is accomplished shall be of such suitable dimensions to accommodate the remains of that decedent only and that such site shall be reasonably accessible to all relatives of that decedent, provided that the remains may be reinterred in a common grave where written consent is obtained from the next of kin. If under the authority of this Part, disinterment, removal, and reinterment are effected by the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any electric power or lighting company, then such disinterment, removal, and reinterment shall be performed by a funeral director duly licensed as a "funeral director" or a "funeral service licensee" under the provisions of Article 13A of Chapter 90 of the General Statutes.

(g) All disinterment, removal, and reinterment under the provisions of this Part shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county where the disinterment, removal, and reinterment take place. If reinterment is effected in a county different from the county of disinterment with the consent of the next of kin of the deceased whose remains are disinterred, then the disinterment and removal shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of the disinterment, and the reinterment shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of reinterment. Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for reintering such remains. Due care shall also be taken to remove, protect, and replace all tombstones or other markers, so as

to leave such tombstones or other markers in as good condition as that prior to disinterment. Provided that in cases where the remains are to be moved to a perpetual care cemetery or other cemetery where upright tombstones are not permitted, a suitable replacement marker shall be provided.

(h) Nothing contained in this Part shall be construed to grant or confer the power or authority of eminent domain, or to impair the right of the next of kin of a decedent to remove or cause the removal, at his or their expense, of the remains or grave of such decedent. (1919, c. 245; C.S., ss. 5030, 5030(a); Ex. Sess. 1920, c. 46; 1927, c. 23, s. 1; c. 175, s. 1; 1937, c. 3; 1947, cc. 168, 576; 1961, c. 457; 1963, c. 915, s. 1; 1965, c. 71; 1971, c. 797, s. 1; 1977, c. 311, s. 1; 2001-390, s. 3; 2007-118, s. 1.)