



Administration

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MEMO

TO: County Commission
FROM: Robert W. Wilson
Date: August 15, 2023
Subject: Cass County Cemeteries Briefing

Responsibility for maintenance and upkeep of abandoned cemeteries within a county is a statutory responsibility of that county. A copy of the applicable statute (NDCC 23-06-30) is attached. Required maintenance includes mowing once a year, restoring gravestones to their original placement (markers can settle over time), and *"..... perform any other general maintenance necessary to maintain the dignity and appearance of the grounds."* The statute also describes a process for newly discovered abandoned cemeteries to be registered with the state and become the responsibility of the county.

For years former Auditor/Finance Director Mike Montplaisir, Cass County Cemetery Sexton Jeff Baer (a role he has held since the early 1990's) and Buildings and Grounds Supervisor Gene Gartner coordinated maintenance of Cass County's known abandoned cemeteries.

Prior to his retirement Mr. Montplaisir shared with me the information he had about the County's known abandoned cemeteries. Mr. Montplaisir, Mr. Gartner, County Coroner Kriste Ross and I also visited Springvale to follow up on reports that some grave markers had sunk into the ground, trash was accumulating, and several grave markers were becoming cluttered due to family members leaving increasing numbers of mementos and other items on grave sites. The Commission also approved Mr. Montplaisir's recommendation to increase the salary and maintenance budget for the County Sexton. That allowed Mr. Baer to make needed repairs and generally spruce up Springvale Cemetery.

As a reference, the following is a list of cemeteries Cass County has or previously maintained:

- **Springvale Cemetery**, 32nd Ave. N. 01-3500-01209-040. Springvale is not abandoned. It is county-owned and operating – and the location of county indigent burials.
- **Rose Valley Cemetery**, 42-0000-06010-000. 2-142-51 Gunkel Township, 6 miles W. and 1.5 miles S. of Gardner. County mows. North of 52nd Ave. N
- **Addison Evangelical Cemetery**, Addison Township – County recently found out about this. We paid to have cemetery graves located. Township is doing some work on the cemetery; they may ask for some reimbursement.
- **Cass County Central Cemetery**, not owned by Cass County. It was owned by a couple who is buried in the cemetery. They are the only occupants as far as we know. Someone mows the SE corner where the graves are located. Ayr Township 23-141-54

- **Troolwood Cemetery** This cemetery is no longer utilized. Cass County purchased land (county cemetery) in 1985, moving 360 graves from Trolwood Cemetery to Springvale. This was mostly due to issues with erosion.
- **Small cemetery on County Highway 17** north of West Fargo in road right-of-way. Gene trims trees occasionally.
- **Golliet Cemetery**. 22-143-50 Kinyon Township. A farmer takes care of this.
- Mention of **Shyanne Pioneer Memorial Cemetery** (10-26-89 Authority Board meeting)
- (former) **Gethsemane Cemetery** - graves moved to Springvale in 1991.

The work required to maintain county owned/abandoned cemeteries has remained somewhat stable, however recently new questions of maintenance and allowable activities at the County-owned cemetery (Springvale) may support standing up a policy committee. Additionally, while Mr. Baer has not announced any timeframe for stepping away from his role as County Sexton, Cass County should develop broader knowledge of the role and responsibilities of the position.

There are records of a Cass County Cemetery Authority meeting between 1985 – 1995. The County Sexton chaired this Board. The Board was dissolved by the Commission on June 19, 1995 because it is not required and the County was having trouble filling positions.

Recently Ms. Ross, Mr. Baer and I met again to review needs of Cass County cemeteries. One of the outcomes was a consensus that a County Cemetery Board would be helpful. Board responsibilities would include establishing and enforcing general cemetery rules and oversight of needed property maintenance.

Potential Board representation may include:

- County Cemetery Sexton
- County Coroner
- Buildings and Grounds Supervisor
- Commissioner (Coroner Portfolio Holder)
- Administrator/Asst. Administrator
- Local Funeral Director
- Community Representative

My recommendation is that the Commission receive this information as a briefing at the meeting on August 21, 2023 and consider action to appoint a County Cemetery Board at the meeting on September 4th. Both Ms. Ross and Mr. Baer will be available to answer questions at the meeting on the 21st.

these situations the disinterred human remains and burial goods must be studied and reinterred pursuant to rules adopted by the department of health and human services and the state historical society.

23-06-28. Arresting or attaching dead body - Penalty.

Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever, or who detains or claims to detain it for any debt or demand or upon any pretended lien or charge, is guilty of a class B misdemeanor.

23-06-29. Penalty for violating provisions relating to dissections and general penalty.

Every person who violates any provision of this chapter relative to the dissection of dead bodies of human beings, or who makes or procures to be made any dissection of the body of a human being except by authority of law or in pursuance of permission given in accordance with the provision of this chapter, is guilty of a class B misdemeanor. Every person who violates any provision of this chapter for the violation of which another penalty is not specifically provided is guilty of an infraction.

23-06-30. Abandoned cemeteries to be maintained by counties.

The board of county commissioners of each county may provide for the identification, cataloging, recording, and shall provide for the general maintenance and upkeep of each abandoned cemetery located within such county using revenues derived from its general fund levy authority. The board shall, at least once each year, proceed to have the weeds and grass cut, restore gravestones to their original placement, and perform any other general maintenance necessary to maintain the dignity and appearance of the grounds. For the purposes of this section, a cemetery means any tract of land used as a burial plot and which is filed with the recorder of the county as a public burying place. The board of county commissioners of each county shall provide for the registration, with the department of health and human services, of each abandoned cemetery within such county unless such cemetery has been previously registered. Such registration must take place within one year of notification being made to the board, by any interested party of the existence of such abandoned cemetery.

23-06-31. Cremation or other lawful disposition of a body - Authorization document - Immunity.

1. A legally competent adult may prepare a written statement directing the cremation or other lawful disposition of that adult's own remains pursuant to section 23-06-03. The written statement must be signed and dated by the legally competent adult and may be part of the legally competent adult's will.
2. A document that conforms to this section authorizes a crematorium or funeral establishment to carry out the instructions of the legally competent adult who is the subject of the document. It is not necessary for a crematorium or funeral establishment to obtain the consent or concurrence of any other person when the crematorium or funeral establishment cremates or otherwise provides for the lawful disposition of a body pursuant to instructions contained in a document that conforms to this section.
3. This section does not mandate that a crematorium or funeral establishment cremate or otherwise provide for the lawful disposition of a body pursuant to the document unless the legally competent adult who executed the document articulated and funded in a pre-need funeral service contract the legally competent adult's instructions as expressed in the document.
4. A crematorium or funeral establishment that cremates or otherwise provides for the lawful disposition of a body in good-faith reliance upon instructions of a decedent or an individual to whom the crematorium or funeral establishment reasonably believes is entitled to control final disposition pursuant to section 23-06-03 or on an apparently genuine document executed pursuant to this section is not subject to criminal prosecution, civil liability, or professional discipline. The decision of a crematorium or funeral establishment to cremate or otherwise provide for the lawful disposition of a