

COMMENT

DESERTING GOD'S ACRE: THE PROBLEM OF ABANDONED CEMETERIES IN NORTH CAROLINA

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In Cameron Village, North Carolina, there is a small plot of land behind a luxury apartment building near Oberlin Road that appears to be an untouched, wooded area from the satellite view above.¹ In this “twisted secret garden,” however, there are makeshift shelters for the homeless, a massive tree branch that has fallen across the land, and tall fences erected around the property.² There are also fallen, cracked, and crumbling headstones for the deceased who are fortunate enough to have some grave marker left at all.³

Out of the estimated 600 people who found their final resting places in this cemetery, “in the middle of bustling semi-urban development, complete with businesses, thoroughfares and multi-family housing,” only 145 graves have a formal or informal grave marker.⁴ While it is known to be one of the four historically black cemeteries in Raleigh, it remains unclear whether this cemetery was primarily dedicated to former slaves and what kind of story its inhabitants have yet to tell.⁵ What is certain is that Oberlin, a neighborhood with deep roots as a place where

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1. Heather Leahwood, *Abandoned Cemetery for Emancipated Slaves Hidden in Cameron Village*, CANDID SLICE (Sept. 2, 2013), <http://www.candidslice.com/abandoned-cemetery-for-emancipated-slaves-hidden-in-cameron-village/>.

2. *Id.*

3. *Id.*

4. Ariella Monti, *Oberlin Cemetery Has Important but Mysterious Past*, RALEIGH PUB. REC. (Feb. 27, 2013), <http://raleighpublicrecord.org/news/2013/02/27/oberlin-cemetery-has-important-but-mysterious-past/>.

5. *Id.*

emancipated slaves found their homes,⁶ is missing out on a valuable piece of its history as a once sacred ground is overwhelmed by overgrowth, decay, and indifference.⁷

I. INTRODUCTION

*The sentiment of all civilized peoples, since earliest Biblical times, has held in great reverence the resting places of the dead as hallowed ground.*⁸

Cemeteries in North Carolina enjoy little in the way of statutory protection or functioning mechanisms of property law. With 31,666 cemeteries spread across the one hundred counties of North Carolina,⁹ the abandonment of these properties affects residents all over the state, if for no other reason than the public blight that a neglected, overgrown piece of property causes a community. Even the smallest county in North Carolina, which is home to just over ten thousand residents, still has sixty-six

6. *Id.* Oberlin Village “was one of the first communities of freed African Americans after the Civil War.” FRIENDS OF OBERLIN, <http://www.friendsofoberlin.org/> (last visited Nov. 3, 2014).

7. Gravesites serve both “as hallowed places of permanent rest” and a way to “reveal how our ancestors lived and offer insights into our current way of life.” Michael T. Olexa, Tracey L. Owens & Nancy C. Hodge, *No Grave Like Home: Protecting the Deceased and Their Final Resting Places from Destruction Without Going Six Feet Under*, 11 DRAKE J. AGRIC. L. 51, 52 (2006). “Without protection, the loss of these archaeological or historic sites and artifacts will result in the loss of irreplaceable information of the past.” *Id.* at 52–53.

8. *Mills v. Carolina Cemetery Park Corp.*, 242 N.C. 20, 27 (1955).

9. FIND A GRAVE, <http://www.findagrave.com/cgi-bin/fg.cgi?page=cs> (last visited June 27, 2015). The number of cemeteries in North Carolina per county is as follows: Alamance, 134; Alexander, 125; Alleghany, 364; Anson, 301; Ashe, 1054; Avery, 233; Beaufort, 374; Bertie, 212; Bladen, 500; Brunswick, 342; Buncombe, 417; Burke, 315; Cabarrus, 180; Caldwell, 335; Camden, 211; Carteret, 349; Caswell, 363; Catawba, 206; Chatham, 312; Cherokee, 161; Chowan, 153; Clay, 67; Cleveland, 336; Columbus, 443; Craven, 292; Cumberland, 332; Currituck, 237; Dare, 258; Davidson, 320; Davie, 135; Duplin, 738; Durham, 261; Edgecombe, 329; Forsyth, 349; Franklin, 313; Gaston, 245; Gates, 218; Graham, 102; Granville, 331; Greene, 262; Guilford, 290; Halifax, 268; Harnett, 261; Haywood, 226; Henderson, 199; Hertford, 200; Hoke, 76; Hyde, 202; Iredell, 218; Jackson, 221; Johnston, 1183; Jones, 144; Lee, 106; Lenoir, 267; Lincoln, 207; Macon, 145; Madison, 522; Martin, 253; McDowell, 199; Mecklenburg, 263; Mitchell, 252; Montgomery, 253; Moore, 246; Nash, 693; New Hanover, 107; Northampton, 322; Onslow, 429; Orange, 269; Pamlico, 180; Pasquotank, 180; Pender, 363; Perquimans, 239; Person, 412; Pitt, 529; Polk, 96; Randolph, 312; Richmond, 315; Robeson, 689; Rockingham, 492; Rowan, 194; Rutherford, 337; Sampson, 982; Scotland, 121; Stanly, 269; Stokes, 583; Surry, 495; Swain, 323; Transylvania, 113; Tyrrell, 66; Union, 298; Vance, 156; Wake, 614; Warren, 167; Washington, 170; Watauga, 358; Wayne, 423; Wilkes, 524; Wilson, 464; Yadkin, 205; Yancey, 767. *Id.*

cemeteries.¹⁰ Old churchyards are some of the most likely sites to be neglected or abandoned¹¹ and are overlooked in favor of larger, perpetual care cemeteries with open gravesites.¹² When cemeteries become unattended or abandoned, they are not recycled back into the property system in the same way that any other property might be.¹³ In the absence of clear statutory authority to resolve these problems, “the only reasonable thing to do about the problem [of abandoned cemeteries] is to wait and hope.”¹⁴

II. ROADMAP

Part III addresses the various issues that arise with abandoned cemeteries, such as lack of litigation and guidance from the courts, upholding community standards, and imprecise statutory language. Part IV explains the current legal status of abandoned cemeteries in North Carolina and brings attention to the shortcomings of the relevant statutory provisions. Part V and its subsections explain the possible courses of action—whether it is through government action or through the work of individuals in the community—and identifies the issues that arise with each.

III. WHY DO WE CARE?

There is a uniquely American interest in the rights of decedents to their final resting place.¹⁵ According to the theory of dedication, a community as a whole shares an ownership interest in cemeteries.¹⁶ North Carolina courts have explicitly stated that there is a legitimate state interest in the preservation of the

10. *Id.*; N.C. OFFICE OF STATE BUDGET AND MANAGEMENT, *County Estimates 2014*, http://www.osbm.state.nc.us/ncosbm/facts_and_figures/socioeconomic_data/population_estimates/demog/countygrowth_bysize_2014.html (last visited July 16, 2015) (listing Tyrrell as the smallest county by population).

11. C. Allen Shaffer, *The Standing of the Dead: Solving the Problem of Abandoned Graveyards*, 32 CAP. U. L. REV. 479, 482 (2003).

12. *Id.* at 498.

13. *See* 14 C.J.S. *Cemeteries* § 1 (2015).

14. Shaffer, *supra* note 11, at 494. “Eternal resting places are under threat and the dead are finding that eternity is not forever after all.” Olexa et al., *supra* note 7, at 52.

15. Shaffer, *supra* note 11, at 486.

16. *Id.*

sanctity of the grave.¹⁷ Despite this interest, there are practical problems with maintaining cemeteries that may increase the likelihood of abandonment.¹⁸ “For example, mowing cemeteries created in irregular patterns and the lack of local expertise in the maintenance of cemetery monuments and the options for exhumation and relocation are but two of the unique problems that add to the expense of these sites.”¹⁹ The properties themselves can be expensive to maintain,²⁰ but it remains an important interest for people in the community to be able to visit their loved ones.

One of the reasons that this issue has not received much attention from the legislature is the lack of litigation in this area. Legal channels to compel action regarding a cemetery are “often unavailable because few interested parties have or can gain standing to bring suit.”²¹ Many abandoned cemeteries are in such a state because they have lacked space for new burials for some time now, and relatives of the deceased have long since moved away without notice of their standing.²²

It is also more difficult to ascertain when a cemetery has been abandoned than it may be for other types of properties. When a school is abandoned, there are no class sessions held, no cars parked on the property, and no sporting events played. An abandoned church will no longer be filled with a pulsating congregation. Cemeteries are unique in that they are being “used” by decedents in perpetuity. The common law has tried to create bright line characteristics to determine whether or not a cemetery has been abandoned:

As long as a cemetery is kept and preserved as a resting place for the dead, with anything to indicate the existence of graves, or so long as it is known or

17. See *Massey v. Hoffman*, 184 N.C. App. 731, 735 (2007) (“Our Courts have long held that preservation of the sanctity of grave sites is a proper exercise of police power by the State of North Carolina.”); *Strickland v. Tant*, 41 N.C. App. 534, 537 (1979) (“It is undisputed that the State has a legitimate interest in the disposition of dead bodies and the preservation of the sanctity of the grave.”).

18. Shaffer, *supra* note 11, at 494.

19. *Id.*

20. *Id.* at 493.

21. *Id.* at 494.

22. *Id.*

recognized by the public as a cemetery, it is not abandoned. However, a cemetery may be said to be abandoned where . . . the cemetery has been so neglected as entirely to lose its identity as such, and is no longer known, recognized, and respected by the public as a cemetery.²³

There are still difficult questions that remain—what constitutes the identity of a cemetery and how can a community be defined to include decedents' loved ones—to gauge whether a community recognizes a property as a cemetery. Furthermore, vague and inadequate language compounds the many gaps in the common and statutory law. Since this law is not often challenged through litigation, its shortcomings remain unaddressed.

IV. LEGAL BACKGROUND

The North Carolina General Assembly has attempted to address the issue of abandoned cemeteries.²⁴ The Abandoned and Neglected Cemeteries statute first sets out to define terms that may otherwise be ambiguous: abandoned, cemetery,²⁵ neglected, and public cemetery.²⁶ Abandoned is defined as “[c]eased 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.”²⁷ There are several issues that this definition raises. First, it is unclear which persons have “legal right” to own or use the property as a licensee. Second, the definition is triggered by the intent of these unidentified persons, which is difficult to measure from both a practical and a legal standpoint. Finally, the relevant time period of abandonment has been defined as “the foreseeable future,”²⁸ which is particularly

23. 14 C.J.S. *Cemeteries* § 19 (2015).

24. Abandoned and Neglected Cemeteries, N.C. GEN. STAT. § 65-85 to -113 (2013).

25. Cemetery is defined as being “[a] tract of land used for burial of multiple graves.” N.C. GEN. STAT. § 65-85 (2013). A grave is peculiarly defined as “[a] place of burial for a single decedent.” *Id.* It appears that the drafters of this language did not closely scrutinize the implication of their choice of words, as graves that are reserved for the purpose of keeping families together after death would not be considered graves for the purpose of these statutes.

26. *Id.*

27. *Id.*

28. *Id.*

problematic when the property at issue is one that has likely been used for dozens or hundreds of years and will presumably be used for perpetuity. “Neglected” is defined as “unattended or uncared for through carelessness or intention and lacking a caretaker.”²⁹ This standard is a little more clear since it might be apparent that a piece of property has been unattended if there is overgrown grass or an excess of litter. Unfortunately, most of the statutory language refers to abandoned cemeteries, not neglected cemeteries.³⁰

Furthermore, parts of the North Carolina General Statutes authorize or give permission to individuals or entities to assume control of or enter the abandoned cemetery, but do not require any action on the part of either individuals or the government. For example, a descendant who reasonably believes that a loved one’s remains are in the abandoned cemetery, or “any other person who has a special personal interest,” may enter in order to “discover, restore, maintain, or visit” a grave with the permission of the landowner.³¹ The county commissioners are also “authorized to oversee” abandoned public cemeteries in order to, among other things, “preserve them from encroachment.”³² It is noteworthy that these are only authorized powers rather than duties mandated by statute.³³ This is not an uncommon problem among states that address cemetery maintenance; such requirements are “often muddled by statutory language of permission rather than obligation.”³⁴ If county commissioners, in their discretion, decide to oversee an abandoned public cemetery, they are “authorized to appropriate from the general fund of the county whatever sums may be necessary from time to time” in furtherance of such oversight.³⁵

29. *Id.*

30. *See* N.C. GEN. STAT. § 65-101, -102, -111, -113 (2013).

31. *Id.* § 65-101.

32. *Id.* § 65-113.

33. The Department of Cultural Resources is also granted authority to take “appropriate measures” to record and preserve “information of significant historical genealogical or archaeological value” when this information is in “imminent danger of loss or destruction because of the condition or circumstances of the cemetery.” *Id.* § 121-8. There is no duty here imposed by the statute, but simply an express authorization of power should the department choose to use it.

34. Shaffer, *supra* note 11, at 491.

35. § 65-113. The statute also states, in relevant part: “[t]he boards of county commissioners of the various counties may appoint a board of trustees not to exceed five

While the Act does impose duties and obligations on government actors, the statute does not cast a wide net. County commissioners are given responsibilities in reference to three types of cemeteries: rural, abandoned, and public.³⁶ These duties and responsibilities are limited to keeping records of the properties and the “persons in possession and control” of the properties must submit records to the office of the register of deeds and to the Department and the Publications Divisions in the Department of the Secretary of State.³⁷ The subsequent subsections of the article address county commissioners in their care of abandoned, public, rural cemeteries, but impose no further duties.³⁸ If the “local governing body of the institution which owns the cemetery” raises two-thirds of the expense of “beautifying” the property, the board of county commissioners is authorized to appropriate the remaining one-third from the general fund of the county.³⁹ Without the help of the institutional owner of the cemetery (if there is one at all), the county commissioners are granted the option of overseeing “that the boundaries and lines are clearly laid out, defined, and marked” by taking “proper steps to preserve [the property] from encroachment.”⁴⁰ In such cases, the commissioners are authorized to take “whatever sums may be necessary from time to time” in order to exercise this control over an abandoned cemetery.⁴¹

In short, the only duties or obligations imposed upon state actors in North Carolina appear to be limited to the

in number and to serve at the will of the board . . . and such trustees may accept gifts and donations for the purpose of upkeep and beautification of such cemeteries.” *Id.*

36. N.C. GEN. STAT. § 65-111 (2013).

37. *Id.* When the Department and the Publications Division in the Department of the Secretary of State receives this list, it may “furnish to the boards of county commissioners, for the use of the persons in control of such cemeteries, *suitable literature*, suggesting methods of taking care of such places.” *Id.* (emphasis added).

38. *Id.*

39. *Id.* § 65-112. The statute seeks to encourage persons to “take proper care of and to beautify such cemeteries, to mark distinctly their boundary lines with evergreen hedges or rows of suitable trees, and otherwise to lay out the grounds in an orderly manner.” *Id.* The statute goes on to shock the modern conscience in stating that “the amount appropriated by the board of commissioners [is] in no case to exceed fifty dollars (\$50.00) for each cemetery.” *Id.* These might be adequate funds to purchase flowers for some forgotten graves, but are surely inadequate for any significant repair or restoration of the property.

40. *Id.* § 65-113.

41. *Id.*

recordkeeping of abandoned, public, rural cemeteries, leaving the other expressly authorized powers at the discretion of the county commissioners. The problematic statutory definition of “abandoned” aside, “rural” cemeteries are not defined for the purpose of this article.⁴² Public cemeteries are defined as having “no qualification to purchase, own, or come into possession of a grave in that cemetery.”⁴³ Deciding which cemeteries belong in the public sphere may be difficult because a church, a non-profit organization, or a private or commercial company may have varying ownership interests in cemetery properties. While many private properties may have been set apart for burial purposes, the current laws of North Carolina do not reach any of these properties, and give neither authority nor responsibility to any persons or agencies regarding this property.⁴⁴ It is unclear just how many of the 31,666 cemeteries in North Carolina would be considered either public or private, but the laws (or lack thereof) addressing both are inadequate. Action is discretionary⁴⁵ and these properties may sit and become overgrown, magnets for crime, or simply just eyesores for the community.

Other states have similarly attempted statutory solutions to this problem.⁴⁶ Looking to our neighbors to the south, South Carolina seems to share an interest in preserving the final resting

42. In fact, the North Carolina General Statutes do not appear to attempt to define the word “rural” at all for the purposes of statutory interpretation. “The Census does not actually define ‘rural.’ ‘Rural’ encompasses all population, housing, and territory not included within an urban area. Whatever is not urban is considered rural.” Defining the Rural Population, HEALTH RESOURCES & SERVICES ADMIN., http://www.hrsa.gov/ruralhealth/policy/definition_of_rural.html (last visited Oct. 1, 2014).

43. N.C. GEN. STAT. § 65-85 (2013). “A cemetery, though privately owned or maintained, may be deemed a public cemetery if it is open, under reasonable regulations, to the use of the public for burial of the dead.” 14 C.J.S. *Cemeteries* § 1 (2015).

44. See generally N.C. GEN. STAT. § 65-85 to -113 (2013).

45. See *id.* § 65-101 (2013) (authorizing certain classes of persons to enter cemeteries for the purpose of maintenance, but not imposing a legal obligation or duty on a particular party).

46. See 53 PA. CONS. STAT. ANN. § 66536 (West 1995). The Pennsylvania statute uses some language that imposes an obligation and some that creates an exercisable power. See *id.* When a cemetery is abandoned, the board of supervisors “may give notice to the owner directing the removal of weeds, refuse and debris from the cemetery within thirty days.” *Id.* If this removal is not completed, then the board “shall provide for the removal” at the expense of the township. *Id.* (emphasis added). This blurs the line between obligation and authority. Oddly enough, the statute also provides that the associated costs will be assessed against the owner of the property. *Id.* It seems counterintuitive that there would be a readily identifiable owner of an abandoned piece of property.

places of its inhabitants.⁴⁷ However, just as the North Carolina statutes are underdeveloped and impose no real duty to maintain, South Carolina statutes similarly “authorize” counties and municipalities to expend public funds and to use inmate labor to ensure the preservation and protection of their cemeteries.⁴⁸ However, this protection seems ineffective when there are no incentives or penalties associated with the effort to maintain them.⁴⁹

Several states provide detailed statutes about when exactly a cemetery is “abandoned” by its previous owner and how the process of assigning this label works.⁵⁰ Attempts to create a bright line rule can seemingly exclude the unique factual circumstances that surround these pieces of land.⁵¹ Juxtaposed against this idea that a cemetery is abandoned after it has been left alone for some period of time is the American idea that the deceased are entitled to a final resting place in a grave for perpetuity.⁵²

While it is rare, some families are willing to bring legal action when the sanctity of ancestral gravesites is compromised.⁵³

47. See S.C. CODE ANN. § 6-1-35 (1989).

48. *Id.*

49. See *id.*

50. See, e.g., MO. ANN. STAT. § 214.209 (West 2001) (providing that a cemetery shall be abandoned “after a period of seventy-five years since the last recorded activity on a burial site and after a reasonable search for heirs and beneficiaries”); CAL. HEALTH & SAFETY CODE § 8136 (West 2004) (authorizing a city to maintain a proceeding to have a cemetery declared abandoned if “the present owner of the plot is unknown to the city and a period of at least 50 years has passed since any portion of the plot has been used for interment purposes”); 13 TEX. ADMIN. CODE § 22.1 (2010) (defining an “abandoned cemetery” as “a non-perpetual care cemetery containing one or more graves and possessing cemetery elements for which no cemetery organization exists and which is not otherwise maintained by any caretakers”).

51. See S.C. CODE ANN. § 27-43-40 (2014). This statute in South Carolina, entitled “Evidence of Abandonment,” states that the conveyance of a piece of land on which a cemetery or burial ground is situated is evidence of abandonment, in and of itself, if that cemetery or burial ground is not reserved. *Id.* This language fails to address what seems to be a more common situation of abandonment, where an old churchyard or small cemetery plot is no longer performing active burials and the property becomes overgrown due to neglect.

52. See Shaffer, *supra* note 11, at 486.

53. See Tim Saunders, *Judge Denies Bank's Request to Move Bedford County Cemetery*, WDBJ7 (Oct. 1, 2014, 10:20 PM), <http://www.wdbj7.com/news/local/lynchburg-bedford/judge-rules-that-lowry-family-cemetery-should-be-preserved-in-place/28359030>. Here, the Bank of James owned a piece of property that contained a cemetery off the shoulder of a busy highway. *Id.* The Lowry family opposed moving the graves to an established cemetery in favor of maintaining the sanctity of the original burial site. See *id.* To fund future protection of the site, the family “plans to set up a trust to preserve the cemetery as a

The importance of cultural beliefs in the sanctity of gravesites becomes apparent when courts are willing to invade the precious right to privacy to allow an interested party to maintain an existing gravesite.⁵⁴ In *Massey v. Hoffman*, petitioner Rethea Massey sought access to respondent Doug Hoffman's property "for the purpose of restoring, maintaining, and visiting the gravesites of her relatives."⁵⁵ The North Carolina Court of Appeals noted that even if the person seeking access cannot get the permission of the landowner, that person can get an order allowing entrance from the clerk of the superior court.⁵⁶ In addition to being "a descendant of the deceased" or a person with "special interest" in the grave, the petitioner need only establish that entry onto the property "would not reasonably interfere with the enjoyment of the property by the landowner" in order to gain access through a court order.⁵⁷ The court goes on to reject the argument that access to land for "discovering, restoring, maintaining, or visiting a grave" could be considered a taking without just compensation.⁵⁸ Rather, the North Carolina statutes were interpreted to implement a "proper exercise of a police power."⁵⁹ This case aside, the North Carolina statutes remain underdeveloped due to the lack of litigation on cemetery matters; this lack of court intervention perpetuates legislative underdevelopment.⁶⁰

V. TAX LIENS: REDUCE, RE-USE, RECYCLE

Generally, when the owner of a piece of real property is delinquent on real estate or property taxes, a lien will attach to the

permanent memorial." *Id.* Thus, the sanctity of the original burial grounds was so important to the family that they would rather expend significant amounts of their own money in order to preserve and maintain the property, rather than have the bodies moved to a cemetery that is established, currently maintained, and ready for visitors.

54. *Massey*, 184 N.C. App. at 731.

55. *Id.*

56. *Id.* at 734. The clerk of court can grant this order when there are "reasonable grounds to believe" either that the cemetery is located on the property or it is "reasonably necessary" to enter the property in order to access the cemetery. *Id.* at 735.

57. *Id.*

58. *Id.* at 736.

59. *Id.*

60. See Shaffer, *supra* note 11, at 480–81. There is "a stalemate between the rights of the dead and the wishes of the living. . . . The usual adversarial system fails because there is no one . . . to represent the dead." *Id.*

property to secure the payment.⁶¹ A tax lien only exists where there is a “debt or obligation secured.”⁶² If taxes remain unpaid, the government can offer the property at a tax sale or auction of the property in order to recover the delinquent real property tax.⁶³ In this way, abandoned property is recycled. The collection of property taxes in the form of a sale or auction of the property serves as a sort of recycling mechanism, whereby neglected property returns to the live property market.⁶⁴ The local or state government serves as a facilitator of this recycling process and executes an important public interest in preventing valuable property from becoming a public blight.⁶⁵

Like some other categories of property, cemeteries are exempt from property tax.⁶⁶ This means that cemeteries do not enjoy the protection of the recycling mechanism that property taxes might provide, and, once abandoned, do not have a clear channel through which they may return to the active property market.⁶⁷ This makes abandoned cemeteries a unique problem that would be better addressed by more clearly worded statutes that impose duties on persons or government actors instead of simply authorizing discretionary powers.

VI. WHAT ARE THE ALTERNATIVES?

The statutes addressing abandoned cemeteries in North Carolina provide neither incentive for action nor consequences for inaction other than a failure to prepare and keep on record a list of all abandoned public cemeteries in the office of the register of deeds.⁶⁸ Two schools of thought provide diametrically opposed solutions to the problem of abandoned cemeteries.

61. 53 C.J.S. *Liens* § 1 (2015).

62. *Id.* § 4.

63. *Id.* § 46.

64. *See id.*

65. *Id.*

66. N.C. GEN. STAT. § 105-278.2 (1987). “A cemetery, by its inherent nature, is not subject to the laws of ordinary property.” 14 C.J.S. *Cemeteries* § 1 (2015).

67. 14 C.J.S. *Cemeteries* § 1 (2015).

68. *See* N.C. GEN. STAT. § 65-111 (2013).

A. “*People All Over The World, Join Hands, Start a Love Train*”⁶⁹

One school of thought might suggest a departure from imposing a duty on the government in favor of allowing individuals and organizations to take on the responsibility of maintaining or otherwise making decisions about abandoned cemeteries.⁷⁰ Oberlin Cemetery in Raleigh, described at the beginning of this article, has been lucky enough to benefit from press exposure that raised public awareness about the plot of land.⁷¹ Oberlin Cemetery was fortunate to be surrounded by a gracious community invested in its history, and, as a result, the Friends of Oberlin organization was born in 2011.⁷²

Friends of Oberlin was started by “descendants of Oberlin Village founders, residents of the Oberlin community, residents of the City of Raleigh and other citizens who have a passion for stewardship.”⁷³ The group succeeded in taking tangible steps toward protecting the cemetery, such as obtaining a designation as a historical landmark for the cemetery.⁷⁴ In this way, the sacred grounds of ancestors have a living, breathing advocate—with no extra cost to the taxpayers of Raleigh, other than those who spend their time lending a helping hand to the community. The stated purpose of the organization is to “preserve the legacy and grounds of the Oberlin Cemetery” and to “document oral histories of persons laid to rest at the site.”⁷⁵

In a Rousseau-ian world, communities might come together on their own—without government intervention—to

69. THE O’JAYS, LOVE TRAIN (Phila. Int’l 1972).

70. See, e.g., Katie Bauer, *Family Hopes Others Will Help Preserve Abandoned Cemetery*, WAVE 3 NEWS (June 12, 2015), <http://www.wave3.com/story/29309122/family-hopes-others-will-help-preserve-abandoned-cemetery>.

71. See, e.g., Matthew Burns, *Raleigh Designates Oberlin Cemetery as Landmark*, WRAL (Feb. 19, 2013), <http://www.wral.com/raleigh-designates-oberlin-cemetery-as-landmark/12126119/>; Karl Larson, *Forgotten Oberlin Village Cemetery*, GOODNIGHT RALEIGH (July 30, 2008), <http://goodnightraleigh.com/2008/07/forgotten-oberlin-village-cemetery/>; Ariella Monti, *Oberlin Cemetery Has Important but Mysterious Past*, RALEIGH PUB. REC. (Feb. 27, 2013), <http://raleighpublicrecord.org/news/2013/02/27/oberlin-cemetery-has-important-but-mysterious-past/>; Ann Brook Raynal, *It Takes A Village*, WALTER (Oct. 31, 2013, 6:00 AM), <http://www.waltermagazine.com/it-takes-a-village/>.

72. FRIENDS OF OBERLIN, *supra* note 6.

73. *Id.*

74. *Id.*

75. *Id.*

protect and preserve the sanctity of cemeteries.⁷⁶ If each person—or even a portion of the population—were willing to donate a small amount of personal time, abandoned cemeteries could be cared for in perpetuity, without imposing a monetary expense on the citizens of North Carolina. Perhaps descendants or next of kin could be charged with dedicating some of their time and efforts to maintenance of cemeteries where their loved ones are buried.

There are several issues with a proposed solution along these lines. First, the current statutory language authorizing interested persons and other parties to maintain and care for abandoned cemeteries essentially provides this option already,⁷⁷ unfortunately, many citizens are not chomping at the bit to pay their dues in preserving history and sacred grounds.⁷⁸ Second, there is not a black and white line that can be drawn wherein this option would not “cost” anything to North Carolinians. There is a great cost associated with the loss of valuable and unique property,⁷⁹ as well as the effort expended by the people who take the time to individually clean up and maintain these cemeteries.⁸⁰ Finally, cemeteries and burial grounds often become abandoned because they are forgotten and overgrown or hidden in the back corner of an old farm.⁸¹ In a practical sense, leaving citizens to fend for themselves will likely result in inaction when the problem of abandoned cemeteries is weighed against the multitude of issues that individuals face in their communities on a daily basis.

76. See *Jean Jacques Rousseau and the Doctrine of the Social Contract*, 31 HARV. L. REV. 27, 27-28 (1917). In Rousseau’s theory of social contract, every “man is born free and independent,” but he must “abandon[] only those of his natural rights the loss of which is necessary to the maintenance of society.” *Id.* In return for this sacrifice of independence, “he acquires the guarantee of his rights.” *Id.*

77. See N.C. GEN. STAT. § 65-101 to -102 (2013).

78. See Stephanie Reitz, *Towns Grapple with Tidying Old, Abandoned Cemeteries*, DESERT NEWS (July 5, 2010, 9:00 PM) <http://www.deseretnews.com/article/700045827/Towns-grapple-with-tidying-old-abandoned-cemeteries.html?pg=all>.

79. See Robert J. Goldstein, *Green Wood in the Bundle of Sticks: Fitting Environmental Ethics and Ecology into Real Property Law*, 25 B.C. ENVTL. AFF. L. REV. 347, 349 (1998).

80. See FRIENDS OF OBERLIN, *supra* note 6 (promoting community clean up events).

81. See Larson, *supra* note 71.

*B. “In This World Nothing Can Be Said To Be Certain,
Except Death And Taxes”⁸²*

The North Carolina General Statutes already allow for some funding of cemeteries through the current system of taxation.⁸³ The statutes provide a fairly extensive list of purposes for which a city may levy property taxes subject to some restrictions.⁸⁴ There are only a few exceptions that give a city the authority to levy property taxes without any restriction as to rate or amount.⁸⁵ Unfortunately, the subsection that refers to cemeteries is—demonstrating a theme in North Carolina cemetery statutes—short and vague.⁸⁶ The relevant statute states that a city may levy taxes “[t]o provide for cemeteries.”⁸⁷ It is unclear whether to “provide” for a cemetery is limited to the creation of new cemeteries or includes the preservation, care, and maintenance of existing cemeteries.⁸⁸

Even accepting the more expansive definition of this subsection, one lingering problem is that this decision is left up to individual cities in North Carolina.⁸⁹ The number of cemeteries per county varies drastically—ranging from sixty-six cemeteries in one county to 1,200 in another.⁹⁰ These numbers would also undoubtedly vary from city to city, which makes uniformity across

82. Letter from Benjamin Franklin to Jean Baptiste Leroy (Nov. 13, 1789), in 10 THE WRITINGS OF BENJAMIN FRANKLIN 69 (Albert Henry Smyth ed., 1907).

83. See N.C. GEN. STAT. § 160A-209 (2013).

84. *Id.*

85. Even though there are only three purposes for which a city can levy tax without restriction, these purposes are drafted broadly. See *id.* For example, a city may levy property tax without restriction to “pay the principals of and interest on all general obligation bonds and notes of the city.” *Id.* A city may also levy unrestricted property taxes to “supply an unforeseen deficiency in the revenue . . . when revenues actually collected or received fall below revenue estimates made in good faith . . .” *Id.*

86. See *id.*

87. *Id.* Relatedly, the statute also permits a city to levy property tax for the purpose of “undertak[ing] historic preservation programs and projects.” *Id.*

88. See generally *id.*

89. *Id.* Another statute provides that a city is authorized “to abandon any cemetery that has not been used for interment purposes within 10 years.” N.C. GEN. STAT. § 160A-343 (2013). If a city decides to exercise this power, then “all monuments, tombstones, and the contents of all graves within the cemetery *shall* be transferred at city expense to another city cemetery, or to a cemetery licensed by the State Burial Association Commissioner.” *Id.* (emphasis added). It is unlikely that a city will exercise this option, since there are mandatory costs assessed to the city upon transferring the graves.

90. See FIND A GRAVE, *supra* note 9 (select the county name to see the amount of cemeteries and the names of the cemeteries in that county).

the state nearly impossible. The interests of local government representatives are varied, and it would be difficult to see consistent action, particularly because the problem of abandoned cemeteries is not a highly profitable one nor does it plague the thoughts of the average North Carolina citizen.⁹¹

A practical solution might be to fund the maintenance of abandoned cemeteries at the state-level, thereby spreading the cost evenly throughout counties and municipalities. In this way, larger cities like Charlotte could defray the cost that the more rural, unpopulated areas (littered with old churchyards and spread-out acreage) would be left with if taxes were raised at the county level. The arguments against this approach would likely be analogous to those raised against property tax in general: the lack of return on the investment, slow growth of the tax rate in this area, and general public resistance to the idea that property should be taxed.⁹² However, the counter-argument stresses that property tax is a “necessary evil”⁹³ in order to “preserve the integrity and independence of American local government, and that might be a price worth paying.”⁹⁴ Additionally, the problem of abandoned cemeteries has more of a “bounded scope” than other problems requiring redress through state funding.⁹⁵ Larger, perpetual care cemeteries “will not devolve into neglect” in the same way that small churchyards or back corners of old farms might.⁹⁶

91. See Mark Schreiner, *State Lawmakers May Exhume Cemetery Issues*, STARNEWS ONLINE (Sept. 18, 2006, 5:46 AM), <http://www.starnewsonline.com/article/20060918/COLUMNIST20/609180410?p=1&tc=pg>.

92. Michael L. Young, *America's Most Hated Tax*, BUS. WEEKLY (Mar. 27, 2012), <http://businessweekly.readingeagle.com/americas-most-hated-tax/>. The pool of money that accumulates from collecting property tax is not a deep source of revenue that the government can dip into; it can be more accurately understood as “chipping in” to the costs that states and municipalities incur. See *id.* Furthermore, “[p]roperty taxes generate ferocious resistance among taxpayers.” *Id.*

93. *Id.* Property tax has:

[B]een around so long we have come to depend on it, even with all of its defects . . . [it] exists and persists because it has become the only significant source of income local government can raise for itself. Without property taxes, there would be no local government as we know it.

Id.

94. *Id.*

95. Shaffer, *supra* note 11, at 498.

96. *Id.* “Once the property rights of these pioneer decedents have been assured, the tax scheme itself can be laid to an honorable rest.” *Id.*

Were the State to maintain these properties, the main cost would likely be keeping the grass and plants on the property from becoming overgrown, and preventing the area from being a public eye sore to the community.⁹⁷ The main argument against imposing this tax—the immediate monetary cost to taxpayers in the state—is paired with a hearty counterargument. Property is unique in character and thus “warrants distinctive treatment.”⁹⁸ Its value is both innate and economic.⁹⁹ Thus, the loss or waste of this property is also an expense that society incurs.¹⁰⁰ While this expense might be less tangible, since taxpayers’ wallets are none the lighter, it is just as real of an expense as a tax. Arguably, it is more serious than a tax increase because real property is a physical medium, whereas tax and currency systems can be constantly reworked. If viewed in a vacuum of short-term consequences, property tax increases may seem unnecessary, but when considering both short- and long-term consequences, the preservation of real property (and its inherent value) is of paramount importance for North Carolina and all of the states in this country.

C. Envisioning a Solution

This Comment advocates for a solution that includes three separate modifications to the current statutes addressing abandoned cemeteries in North Carolina.

First, the definition of “abandoned” should lean further toward a bright line rule than the current definition, which seeks to measure intent “in the foreseeable future.”¹⁰¹ Instead, the status of abandonment should be triggered by the passing of a substantial number of years (fifty or seventy-five, for example)

97. See *Mingledorff v. Crum*, 388 So. 2d 632, 636 (Fla. Dist. Ct. App. 1980) (stating that upkeep is “confined to conventional maintenance of the burial sites and grave markers, beautification in the planting and cultivating of flowers, shrubs and grasses and controlling of weeds and other unsightly growth” as well as removing “dead flowers and stagnant water in floral containers”).

98. Goldstein, *supra* note 79, at 349.

99. *Id.* at 386.

100. *See id.*

101. N.C. GEN. STAT. § 65-85 (2013).

wherein the owner is no longer identifiable and there has been no activity at the burial site.¹⁰²

Second, abandonment statutes should not be limited to cemeteries that are both public and rural.¹⁰³ Revised statutes should address “abandoned cemeteries” in general, without limiting the scope. The current limitation creates a lack of statutory guidance for cemeteries that are located in populated, urban areas, where public eye sores might be more easily viewed from crowded streets and where criminals might be looking for a secluded, tucked away piece of land in the city. Furthermore, private companies who have since dissolved or are no longer able to be found after a reasonable search and inquiry should not be exempt from these laws.

Third, abandonment should trigger an obligation that is imposed upon the counties of North Carolina to take action regarding the cemetery. This obligation should extend well past preparing and keeping on record a list of abandoned cemeteries in the office of the register of deeds.¹⁰⁴ The statute should state, in part:

Upon abandonment, the county *shall* provide for the maintenance and repair of the abandoned cemetery, expenses to be assessed to the county. If a county does not provide for such maintenance and repair of the property, the county *shall*, at its own expense, transfer the graves that are located in the abandoned cemetery to an established and currently maintained cemetery.

The statutes should give the state authority to impose a tax on its residents that will be shared equally among counties in order to defray this cost. This minimal increase in cost for taxpayers would have a dramatic impact on the protection of gravesites, the protection of future property interests, and the preservation of history in North Carolina.

102. As a model statute, see CAL. HEALTH & SAFETY CODE § 8136 (West 2004) (authorizing a city to maintain a proceeding to have a cemetery declared abandoned if “the present owner of the plot is unknown to the city and a period of at least 50 years has passed since any portion of the plot has been used for interment purposes”).

103. See N.C. GEN. STAT. § 65-111 to -113 (2013).

104. *Id.* § 65-111.

VII. CONCLUSION

Throughout North Carolina, the deceased who have been laid to rest in old and forgotten cemeteries are without advocates among the living. The common law provides little protection, and few individuals are willing to spend the money to initiate court proceedings when there is very little tangible return for the petitioner. The statutes addressing abandoned cemeteries are sparse, vague, and do not impose any responsibilities, but instead only authorize parties to exercise optional powers over the properties. Improving the quality of the statutory language addressing abandoned cemeteries can provide a channel through which these uniquely valuable and historically relevant properties may be protected to preserve the sanctity of burial grounds in North Carolina.