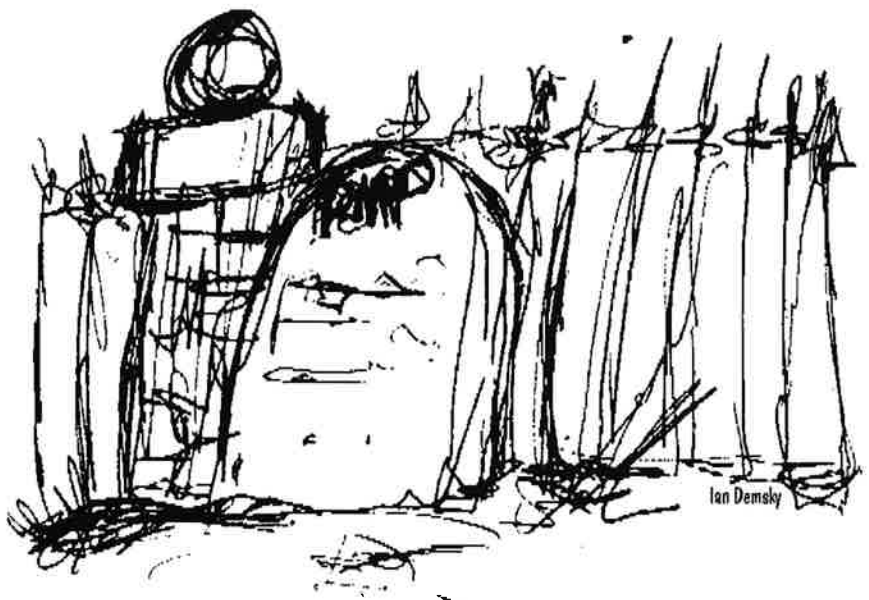


ACQUISITION OF RIGHT OF WAY INVOLVING CEMETERIES

BY PHILIP J. DiBLASI

Small rural family or community grave yards can represent a significant logistical problem to the individual charged with



acquiring land for today's large scale developments. Worse yet, is the scenario that involves "accidental discovery" with the edge of a bulldozer blade. In each state they are covered by a patchwork of laws intended to protect these small poorly marked cemeteries. The intent of this article is to assist you in understanding specific information about cemetery placement and traditions that will aid in avoiding them prior to inception of your projects. And hopefully, to avoid exposing someone's great, great grandfather with a D-9.

My expertise is within the states of the eastern United States and I would remind those of you from other states to check your individual state laws concerning the protection of small family grave yards and the mechanisms for dealing with them. Also, each state has a usually small and under funded agency responsible for cemetery protection. In Kentucky, this agency is found within the Office of the Attorney General. However, in other states, it can be found within the insurance community or within the funeral industry. A telephone call to a local funeral director asking them what agency regulates their activities will usually get the name and address of a contact who can provide copies of all the necessary laws and regulations.

Another avenue for information concerning the laws and regulations would be to contact a state agency such as the state department of transportation. Typically, they have a staff of individuals who are responsible for dealing with cemeteries. And in many cases have established a set of internal guidelines that they would be willing to share with you.

But these groups mentioned above, do not provide information about where grave yards can be found, they can only provide information on how you can legally deal with them.

LOOKING THROUGH THE RECORDS

The recent upsurge in interest in genealogy can actually be of some help to you and it can also result in considerable hindrance to project completion. Many states have genealogical and historical societies that preserve cemetery information. You should be aware that the data held by state genealogical and historical societies is difficult to access because of the manner in which it is stored.

Usually these data are organized by county and, if kept on maps, are on county maps that provide only general location information. Frequently, the data was collected years ago and properties are described by their, then current, landowners. Individual county genealogical and historical societies can also provide location information concerning local grave yards.

Be forewarned, however, that as soon as you contact the local societies; that the word will spread and local opposition to moving a grave yard will swell. In many states, if descendant's permission is not obtained, it is nearly impossible to move a grave yard.

Recently, regulation changes have now allowed for the inclusion of family and rural graveyards on the National Register of Historical Places. The NRHP was initially designed to preserve sites (both historic and pre-historic) from destruction by federal activity. Typically, standing structures are what most people think about when they think about NRHP sites.

Because of these recent changes to the NRHP regulations, records concerning the location and composition of cemeteries have been kept by State Historic Preservation Officers and State Archaeologists. Should you be working in a state where either of these two agencies are actively collecting cemetery information, you will find their level of record keeping very useful (Sites are recorded using Universal Transverse Mercator and Longitude and Latitude and usually marked on 7.5 minute U.S. Geological Survey topographic quadrangles). The problem with these agencies is that they have been keeping their records for only a short period of time and as a result their databases will be small and incomplete.

So where does the state of the records leave you, when you can't find any cemeteries within the proposed project area? Let's say you've searched all of the records and files of the groups listed above and have not found a cemetery. What are your next steps?

GET SOMEONE TO LOOK FOR YOU

The easiest next step would be to have someone else do the work for you. If the proposed project requires an archaeological assessment under Section 106 of the National Historic Preservation Act, you can get the archaeologists to do the work and find the cemeteries.

If your project is being completed with federal funds or with a federal

permit or license, it will require an archaeological assessment under Section 106. Should this be the case, all you would have to do is add the requirement that all cemeteries be reported by the archaeological assessment of the impact area.

Since archaeologists are trained to locate all areas of human activity (called sites) and will be walking over the entire project area at proscribed intervals; they can be required to report the cemeteries as they would any other site within the project area.

If however, your project is not covered under Section 106, yet you are still concerned about cemeteries an archaeologist can be hired to locate them for you. If your budget does not allow for hiring archaeologists and the problem of finding and delineating the cemeteries falls upon your shoulders then, here are a few guidelines that will help you.

First, is a "complete" deed search for all the properties that will be impacted by the proposed project. When I say complete, I do not mean what is currently accepted as a deed search—usually 10 or 20 years or the last four or five owners which ever comes first. Deed searches of this nature, usually provide a covenant that states "except any and all easements present." This type of deed search is nearly useless for finding cemeteries.

When I say a complete deed search; I mean a deed search that examines deeds that date to at least the mid-19th century or late 18th century. Frequently, in deeds from this period there is a special note of a deed exception to the transfer of land that specifically mentions the family grave yard. Family grave yards are frequently mentioned when property is sold outside the family. The intent of mentioning them in deeds is to restrict the new landowner from using the grave yard and allowing future descendants access and use of the cemetery.

If all of the above mentioned means still do not provide information on the location of cemeteries, the last resort is to physically examine the proposed project area for signs of a cemetery or the criteria used by people historically for the placement of family grave yards.