Addendum 1 to Cemetery Regulations: Private Burial Grounds

Approved: 11 July 2013

This addendum is intended to assist Durham residents in complying with state statutes regarding burial grounds. The law which governs burial grounds is found in NH RSA Chapters 289 and 290.

By RSA 289:1, a “burial ground is a private family or religious institution's cemetery, mausoleum, or columbarium on private property and not available for use by the public.”

Specific location requirements for burial grounds are laid out in RSA 289:3, along with the requirement to comply with local zoning regulations:

**289:3 Location. –** All cemeteries and burial grounds shall be laid out in accordance with the following requirements:
 I. No cemetery shall be laid out within 100 feet of any dwelling house, schoolhouse or school lot, store or other place of business without the consent of the owner of the same, nor within 50 feet of a known source of water or the right of way of any classification of state highway. (Remainder of paragraph is not applicable and is omitted.)

II. Burials on private property, not in an established burial ground, shall comply with local zoning regulations. In the absence of such regulations, such burial sites shall comply with the requirements in paragraph I. The location of the burial site shall be recorded in the deed to the property upon transfer of the property to another person.

 RSA 289:3 also requires that the plot location of the burial site, and the lot location of each burial within the plot, shall be recorded in the deed to the property upon transfer to a new owner. RSA 289:5 requires that the owner of land containing a burial site shall keep records of the date of burial, name of person buried, and the plot or lot in which the burial was made, and a requirement that this information be reported to the Cemetery Trustees. It is important to consider carefully who is to be buried in the site so that the size of the site plot will accommodate planned burials. Each lot (or burial space) within the plot should be 4 feet by 8 feet for a whole body burial, and 2 feet by 2 feet for a cremains burial. A 2 foot buffer should be provided around each 4-lot grouping. Once the planned capacity of the plot has been reached, no further burials may take place in that plot without taking specific steps to enlarge the plot.

It is the expectation of the Cemetery Trustees that when a private burial ground is established it is the intent of the land owner of the plot to provide for the management of the burial ground in perpetuity. This purpose should be explicated in the deed to the property as required in RSA 289:3. While the surface of a burial plot could become undetectable over time, the skeletal remains in a grave could remain for many decades. If the remains are inadvertently exposed because the site is not known, a police investigation will be required to determine the identity and cause of death of the remains. Careful documentation at the time of burial will prevent the need for such intrusive action Specific provisions must be included in the deed to assure that someone is named to be responsible for each burial made in a private burial ground. This would be especially important for the second to die of a married couple, or the last to die of a family.

If there are easements or use restriction covenants on the property containing the plot the party(ies) holding the easement or restriction should provide written permission for the establishment of a burial ground on the property. A copy of this permission should be furnished to the Trustees.

Written and signed final wishes of the person(s) buried will be under the administration of the person having custody and control of the remains as provided in RSA 290:20.

The following checklist is provided to assist in the process of establishing and reporting a burial ground:

1. Check the RSAs to be sure there are no recent changes to the law which are not provided for in the planning.
2. Check with the Code Enforcement Officer to be sure that there are no zoning issues.
3. Check to be sure that the location conforms to RSA 289:3.
4. Prepare a detailed and referenced (GPS coordinates if possible) plot plan of the burial ground location and burial sites within the plot. This plot should be recorded in the deed along with a covenant to manage the site in perpetuity. A copy of the deed is to be forwarded to the Trustees. If there are written and signed final wishes a copy of these should also be forwarded to the Trustees.
5. After a burial occurs, report the date and name of the person buried and verify plot and site information to the Cemetery Trustees.
6. Check to be sure that all required permits are obtained and required reports are made (RSA 290:5).