

**MINUTES OF THE MEETING OF THE  
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room  
Columbus, OH 43215-6133

June 6, 2014  
9:30 a.m.

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**I. Preliminary Matters**

Co-chair Petit called the meeting to order.

**Roll Call:** Laura Monick conducted roll call.

Present: Stephen George, Dr. John N. Low, Hon. Cory Noonan, Anne M. Petit, Patrick Piccininni, Jay Russell, David Snyder, James Turner, James Wright

Excused: Daniel Applegate, Hon. Keith G. Houts

**Review of Meeting Minutes:** Co-Chair Petit opened the floor for discussion of the minutes of the May 16, 2014 meeting of the Ohio Cemetery Law Task Force. There being no discussion Mr. Turner moved to approve the minutes of the May 16th meeting. Mr. Piccininni seconded the motion. The motion passed unanimously.

**II. Old Business**

Co-Chair Noonan opened the floor for discussion of old business. Discussion began on the new draft language for ORC 4767.09 and 4767.12. Mr. Turner noted a few changes to the draft as handed out. Mr. Turner moved to accept the corrected amendments of ORC 4767.09 and 4767.12 into draft form for the final recommendation. Mr. Russell seconded the motion. The motion passed unanimously.

ORC 4767.09

(D) Cemeteries dedicated as a nature preserve or cemeteries, including sections within a cemetery, that are specifically designed and established as natural burial sites and are intended to be maintained in a natural condition at the visible surface grade of the facility are not subject to the maintenance requirements of this section. Reasonable maintenance and repairs by the owner or person responsible for the operation of the registered cemetery shall be done in accordance with the rules and regulations of the cemetery, an independent conservation plan, or the cemetery master plan.

ORC 4767.12 Cemetery ceasing to operate, abandoned cemetery, division's duties.

When the division has information that the owner or person responsible for the operation and maintenance of a registered cemetery has ceased operation and is no longer reasonably maintaining the cemetery, the division may investigate the cemetery to determine the cemetery's current status and to determine whether the cemetery has been abandoned. If the division finds substantial evidence that the cemetery has ceased operation, is abandoned, and a municipality or township has not taken control of such cemetery, the division may apply to the appropriate court of common pleas probate division to have the cemetery declared to be abandoned and for appointment of a temporary receiver or trustee. The order appointing the temporary receiver or trustee shall order the trustee or trustees of the endowment care trust of the cemetery to make distributions in accordance with this section. Upon the termination and winding-up of the temporary receivership or trusteeship the receiver or trustee shall transfer the cemetery and its assets and records to the new owner or operator if one is named. If there is no new owner or operator at the time of winding-up then the court shall distribute such assets as may remain in its discretion and shall cause the records of the former cemetery to be delivered to the Ohio Historical Society for archival or other purposes as the Society may deem appropriate pursuant to its authority as set forth in Chapter 149 of the Revised Code.

The receiver shall be compensated by the owner or person responsible for the operation of the cemetery as indicated in Division records. If the owner or person responsible for the operation of the cemetery has no assets available to pay the receiver, the receiver shall only be paid from the income of interest and dividends in the endowment care trust being held pursuant to section

1721.21 of the Revised Code. The receiver may not invade the principal or capital gains of the trust.

When the owner or person responsible for the operation or maintenance of a cemetery has, either by choice or circumstance, ceased operation and has allowed the cemetery to be declared a nuisance as defined by applicable law, then that cemetery has been “abandoned” for the purpose of this chapter.

The task force then moved onto the requested information provided by Foxfield Preserve – the cemetery’s Rules and Regulations and the restrictive covenant. Discussion commenced on registered cemeteries with natural sections comingled with an existing cemetery that is maintained as manicured; the liability of a cemetery maintained as a nature reserve or natural area and the determination that the appropriate place to address liability should be by the cemetery in their Rules and Regulations as well as cemetery signage. There was a brief discussion on the Ohio Department of Natural Resource’s nature preserve cemeteries.

The task force began discussion of natural burials as the term is used in the proposed amendment to ORC 4767.09(D). After the discussion, Mr. Turner moved that the task force use Foxfield Preserve’s definition of natural burial as a working draft as well as using the restrictive covenants as a guide. Mr. Russell seconded the motion. The motion passed unanimously.

At the conclusion of old business Co-chair Noonan moved that the written testimony of Kathy Flayler, Manager of the WillowView Cemetery Association, and of Fredric C. Lynch, Past Department Commander of the Sons of Union Veterans of the Civil War, Department of Ohio, Veterans’ Monuments and Memorials Preservation Task Group, be admitted into record. Mr. Turner seconded the motion. The motion passed unanimously.

### **III. New Business**

Co-chair Petit brought the task force into new business and discussion began on preservation/protection of historical cemeteries. The task force deliberated on current criminal statutes that could apply; whether those penalties should be increased; whether penalties should include volunteer service in the cemetery where the crime occurred; who has standing to bring criminal charges when a cemetery is on private property and civil liability for entities that desecrate cemeteries for development purposes. The task force also revisited the interested party testimony that touched on increasing criminal penalties and whether the criminal statutes can be amended to create specific language concerning veterans’ graves and veterans’ memorials.

The task force also discussed at length whether due process currently exists where economic development may occur at the site of a historic cemetery; ownership of land versus owning the burial right and whether the mere existence of a cemetery creates an encumbrance regardless of whether the cemetery is noted on the deed. The task force also touched on the trade and display of human remains; mounds and earthworks and whether to develop a process similar to NAGPRA for when ancestral remains are found.

Finally, the task force concluded that a tenet in the recommendations should be that all burial sites and human remains, regardless of historic period or culture, receive the same level of protection and respect.

**Mr. George excused himself from the meeting at 12:00 pm.**

#### **Next Meeting Dates:**

June 27, 2014 at 9:30am.

### **IV. Adjournment**

Co-chair Petit moved to adjourn. Mr. Russell seconded the motion. The motion passed unanimously.