

Cemeteries Technical Paper

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TUG HILL COMMISSION TECHNICAL PAPER SERIES

TUG HILL COMMISSION

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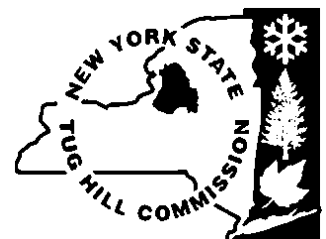


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The Tug Hill Commission *Technical and Issue Paper Series* are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The *Technical Paper Series* provides guidance on procedures based on questions frequently received by the Commission. The *Issue Paper Series* provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission at the address and phone number on the cover.

In New York State, there are two major types of cemeteries: those run by cemetery corporations, and those that are not. Cemeteries owned and operated by cemetery associations/not-for-profit cemetery corporations fall under the jurisdiction of the New York State Department of State's Division of Cemeteries, which administers § 1501 et seq. of the Not-for-Profit Corporation Law; local governments have no jurisdiction or obligation to such cemeteries. The NYS Division of Cemeteries oversees ONLY not-for-profit cemetery corporations. For the most part, these are public, non-sectarian cemetery associations, governed and operated by lot owners themselves through their votes at annual meetings. The Division of Cemeteries DOES NOT have jurisdiction over religious, municipal, national, or private/family cemeteries.

This paper addresses ONLY those cemeteries that fall outside NYS Division of Cemeteries jurisdiction. Questions regarding cemeteries within NYS Division of Cemeteries jurisdiction should be addressed to that office: www.dos.state.ny.us/cmtty/cemetery.html, Richard D. Fishman, Director New York State Department of State Division of Cemeteries, 41 State St., Albany, NY 12231-0001 E-mail: cemeteries@dos.state.ny.us (518) 474-6226.

NYS Town Law § 291 recognizes three classes of cemeteries:

1st class cemetery – title to which has been vested to town by virtue of its use by town residents for 14 years.

- Requirements for fencing/mowing: maintained fence encircling cemetery required, mowing at least three times per year.

2nd class cemetery – by whatever ownership (other than private), control is not vested by a corporate body.

- Fencing/mowing: fence in front of cemetery required, mowing at least twice per year.

3rd class cemetery – any other than a private burial ground, which is abandoned or not controlled by any interest and no endowment or funds exist for its upkeep.

- Fencing/mowing: either front only or encircling fencing, depending on discretion of the board and referendum requirements*, no particular mowing requirements.

** “If the expenditure for such improvements is in excess of \$300 and it is to be paid by taxes levied in the fiscal year in which the expenditure is to be made, or paid from the proceeds of obligations, the town board resolution is subject to a permissive referendum in a town of the first class, or a mandatory referendum in a town of the second class.” (1995 Ops. St. Compt. 10)*

The town board is under a duty to care for all cemeteries located in the town except those presently controlled by an existing board or corporate body (1967 Ops St Compt File #706). On the other hand, a “town may not care for a cemetery which is either a private cemetery or a cemetery control of which is vested in trustees or other corporate body” (1946 Ops St. Compt 353). State law requires that title to abandoned public cemeteries reverts to the town in which the cemetery is located and that the town to which title has so reverted must maintain the cemetery.

There are several zoning issues to consider with respect to cemeteries. Most cemeteries predate existing zoning laws, and may be grand fathered in, that is, exempted from zoning through nonconformities provisions where a cemetery would not otherwise be permitted. When zoning for cemeteries, it is common to permit them in rural or low intensity use areas. It is common to establish minimum lot size requirements for cemeteries, with minimums that are well above those allowable for other uses in the zone, depending on the intensity of the other permitted uses. It is also common to establish larger yard requirements, particularly where accessory uses and structures such as mausoleums and columbaria are included on the site. Communities often require the screening of cemeteries from adjacent residences by fences or vegetation. Cemeteries should be sited well away from potable water supplies, and out of wetland and floodplain areas. It is good policy to require gravesites to be within reasonable distances of access roads, and access roads should remain private, undedicated drives. Cemetery plots may be subject to community subdivision requirements unless specifically exempted.

You may have heard about government programs to help repair vandalized cemeteries, however these programs are only open to Not-for-Profit Cemetery Corporations, not municipal, private or family cemeteries.

Town Law, § 291:

1. **[1st class cemetery:]** The title to every lot or piece of land which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years shall be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the town board. In any town the town board may adopt regulations for the proper care of any such cemetery and burial ground and regulation the burial of the dead therein. It shall be the duty of the town board to remove the grass and weeds from any such cemetery or burial ground in any such town at least three times in each year, and to erect and maintain suitable fences around such cemetery or burial ground. **[2nd class cemetery:]** The town board of any town must also provide for the removal of grass and weeds at least twice in each year from any cemetery or burial ground, by whomsoever owned, in such town, where such control is not vested by other provisions of law in the town or in trustees or other corporate body, and provide for the preservation, care and fencing of any such cemetery **[3rd class cemetery:]** and the town board of any town must also provide for the removal of grass and weeds from all cemeteries, other than private burial grounds, which are abandoned or not controlled by any existing board or body and for the care of which there exists no special fund or endowment and such duties shall be performed under the supervision of the town board, or a person whom the town board may designate; provided, however, that such duties shall not be exercised in respect to any private ground or particular lot or lots therein after the true owner or owners thereof file written objections thereto with the town clerk. The cost and expenses of any officer or person in performing any duties under or pursuant to the provisions of this section shall be a town charge, and the town board shall appropriate and provide annually the moneys necessary for carrying out the provisions of this sections, and make the same available for the

proper officer or persons by whom the moneys are required to be expended. The town board may also receive and execute any trust for the care of lots in any such cemetery.

2. Burial grounds and cemeteries of which the title is vested in or the care or control is charged upon any town, by virtue of this section, shall not be taxed or assessed for any local improvement or other purpose whatsoever by any village, and action shall be maintained against any town to recover ownership or care of such burial grounds, the provisions of any special, local or general statute whatsoever to the contrary notwithstanding.

3. Upon the adoption of a resolution therefore, the town board may construct and maintain permanent improvements in any one or more of the classes or cemeteries described herein and may acquire, by purchase or condemnation, additional lands for cemetery or burial ground purposes, whenever in the judgment of the town board it is necessary or advisable that such improvements be made or additional lands be acquired. If the expenditure for such improvements or acquisition is in excess of three hundred dollars and is to be paid by taxes levied for the fiscal year in which such expenditure is to be made, or paid from the proceeds of town obligations, the adoption of any such resolution or resolutions shall be subject to a permissive referendum in the case of towns of the first class and to a mandatory referendum in the case of towns of the second class. The improvements so made or the lands so acquired shall be used only for the purposes authorized by this article but such cemeteries or burial grounds so improved or enlarged shall not be subject to conveyance or transfer pursuant to section two hundred ninety-two of this chapter. The expense of such improvements and/or the acquiring of such lands may be financed in the manner provided in article fifteen of this chapter for the financing of general improvements.

"Show me your cemeteries, and I will tell you what kind of people you have."

Benjamin Franklin

(1706 - 1790)