

ABANDONED OR NEGLECTED? SOME LAWS CONCERNING CEMETERIES

By Betsy Couzins

Article was originally published in the Old Buncombe County Genealogical Society's quarterly journal "A Lot of Bunkum" (ALOB) Vol. 39, No. 4, November 2018, page 8.

I'm a newcomer to OBCGS and plenty happy to be here, especially since Sandy Samz has found me a really interesting task on which to spend my volunteer hours--indexing the Buncombe County cemetery files for the digital catalog. After a few months I have slowly made my way to the G's (third file drawer down) and I have learned so much about this area and all the families who have made it what it has become.

My family and I have lived in Asheville for 16 years but I'm originally from Ohio and so are all of my kin. So I come to Buncombe County with a little knowledge of the physical locality but not too much knowledge of the beginnings of the region, the families and people who created WNC and fashioned it into what it is today. The cemetery files have turned out to be a great place to start learning about all of those things. Names, places, relationships...it's all there!

Our cemetery files are a wonderful example of the kind of product achieved with much hard work and dedication over a long period of time. Ruth Dilling, former OBCGS President, working with a team of OBCGS volunteers including Charles Haller and others, must have spent countless hours physically examining countless cemeteries in Buncombe County, researching the land plats and filling out surveys with the knowledge they had gleaned. They really dedicated themselves to creating a complete list of the cemeteries of Buncombe County. And the result is terrific--well organized and thorough. I highly recommend a perusal next time you are at the library.

My small contribution these past few months has been to enter the name of each cemetery into the digital catalog along with its location and a representation of the most common surnames of the families buried there. Sometimes that's an impossible task (I'm not especially anxious to start working on Riverside Cemetery, for example.) But other times it's just one or two names, perhaps a family group with a daughter who married out; two sisters who found a place for mom and dad on the farm and then joined them with their families when that time came.

It's these small, private cemeteries that have consistently caught my attention. I think a lot of us who are interested in family history are really in search of the stories of our ancestors and these resting places are very evocative. Generational relationships show themselves through the birth and death dates on the stones. Ties

of kinship are laid out for us to examine and imagine. These cemeteries are often quite old, although North Carolina still has no statewide statute prohibiting the burial of human remains on private property¹. Some are listed in their files as abandoned or neglected, many are overgrown or inaccessible due to changing land ownership.

I wanted to know more about these small cemeteries and the role they play as our region underwent fairly rapid change over the past decades. As genealogists, we consult primary sources whenever possible so I spent some time digging around in the North Carolina state statutes concerning cemeteries². Of interest to me was the distinction drawn between abandoned (defined as “Ceased 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”) and neglected (defined as “Left unattended or uncared for through carelessness or intention and lacking a caretaker.”)³. I’m no lawyer but the distinction between the two seems to be ownership. Properties (in our case cemeteries) can only be legally “abandoned” by the person “with legal right to the real property”--in other words, the owner.

In bigger cemeteries, the owner is the corporation owning the land that the cemetery occupies. When a person buys a burial plot from the corporation, he or she is actually only buying a license or easement to be interred there, not the land itself.⁴ (To be clearer--you couldn’t build a tiny house on a burial plot and live there.) Bundled within the price of the plot is a maintenance agreement--what the corporation will do to keep the grave site accessible and looking good. Deep within the paperwork “the contract and the bylaws do delineate the rights and the ability of the cemetery to be altered, to close, or to move one’s loved ones.”⁵ In other words, the contract details the situations that might legally allow one’s rest to be less than eternal. (“The moral of this story is read the fine print!” says my father gleefully)

As family farms have been broken up and land sold off, descendants often are no longer the owners of the properties on which their ancestors are buried. And though North Carolina state laws decree that descendants shall have reasonable access to these graveyards⁶ insisting on that access while a shotgun is pointed at you may not be realistic or appealing. Small private cemeteries have also suffered from the wider distribution of the family. As younger generations move further away to seek their fortunes, they are not available for regular upkeep to the grounds and gravestones. However “ a cemetery is not abandoned as long as it is kept and preserved as a resting place for the dead with anything to indicate the existence of graves, or as long as it is known and recognized by the public as a graveyard. The fact that for some years no new interments have been made and that the graves have been neglected does not operate as an abandonment and authorize the desecration of the graves, where the bodies interred in a cemetery remain therein and the spot awakens sacred memories in living persons.”⁷

Evidence of these principles and struggles in action can be found in our own OBCGS cemetery files. There are several which contain emails, letters and newspaper clippings about conflicts between descendants of those buried in these small private graveyards and real estate developers or new property owners. It isn't inherently unreasonable that this is happening, given the rapid development of previously rural areas but that makes it no less heartbreaking to those with an emotional stake in the cemetery remaining intact in its original location.

In the next installment of this article, I will examine a few relevant cases that have happened in Buncombe County in the last forty years including the removal of the Jeremiah Green cemetery in Lower Hominy and the ongoing situation of the Baker Family Cemetery in Avery's Creek. I will also examine several cases of new owners or developers who chose to go a different direction with the cemeteries they discovered on the land they bought, such as the case with the Asheville Area Habitat for Humanity development. I hope to speak with some of our own OBCGS members who have considerable expertise on these subjects--knowledge that needs to be written down and passed along. If you would like to share your knowledge with me please email me at betsycouzins@gmail.com or find me at the OBCGS library on Tuesdays. I would love to hear your thoughts and stories.

Notes for Abandoned or Neglected:

1 Shae Irving, J.D., "Burial and Cremation Laws in North Carolina" (<https://www.nolo.com/legal-encyclopedia/burial-cremation-laws-north-carolina.html>: accessed 3 Oct 2018).

2 "North Carolina General Assembly Statutes," database, Chapter 65: Cemeteries. (https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_65.html: 30 September 2018)

3 "North Carolina General Assembly Statutes, "database, Chapter 65: Cemeteries, Article 12 Abandoned and Neglected Cemeteries, Part 1 General §65-85 Definitions.

4 "The Basic Laws Pertaining to Cemeteries," Law Offices of Stimmel,Stimmel and Smith, articles. (<https://www.stimmel-law.com/en/articles/basic-laws-pertaining-cemeteries>: accessed 1 October 2018).

5 "The Basic Laws Pertaining to Cemeteries," "Conclusions and Practicalities."

6 "North Carolina General Assembly Statutes, " database, Chapter 65: Cemeteries, Article 12 Abandoned and Neglected Cemeteries, part 12 Abandoned and Neglected Cemeteries §65-101 and §65-102.

7 "The Basic Laws Pertaining to Cemeteries," in reference to *Dangerfield v. Williams*, 26 App. D.C. 508 (D.C. Cir. 1906) (accessed via <https://babel.Hathitrust.org> "Reports of cases adjudged in the Court of Appeals of the District of Columbia v.026 yr.1905-06." : accessed 7 October 2018).