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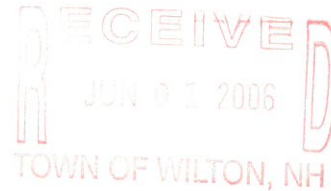
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May 31, 2006

Ms. Joanna K. Eckstrom  
14 Laurel Hill Road  
Wilton NH 03086

Ms. Joanna K. Eckstrom  
Zoning Board of Adjustment  
Town of Wilton  
P O Box 83, Main St.  
Wilton, NH 03086

Re: Cemetery Trustees



Dear Ms. Eckstrom:

At the meeting with the Zoning Board on Tuesday night, Mr. Tuttle raised the question of the authority of the cemetery trustees. New Hampshire Revised Statutes Annotated Chapter 289 mandates the office of cemetery trustee within the town to manage both the trust funds received for perpetual maintenance of graves and to manage the cemetery or cemeteries within the town. Among the specific powers granted to the cemetery trustees in Section 7 of RSA Chapter 289 is the authority to adopt by-laws and regulations for the transaction of business and for the establishment and management of all municipal cemeteries within the responsibility of the cemetery trustees. This grant of power is the statutory source for the cemetery trustees to take a position relative to the excavation occurring on abutting property.

I also mentioned a statute which prohibits excavation within twenty-five (25) feet of the boundaries of an established burial ground or cemetery. That provision in the statutes is found at RSA Chapter 289, Section 3, III.

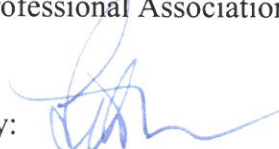
I am enclosing a copy of RSA Chapter 289, Section 7 and RSA Chapter 289, Section 3.

If you have any further questions, please let me know.

Very truly yours,

Fernald, Taft, Falby & Little  
Professional Association

By:



Silas Little

*Direct line: 603-924-3364 X14*

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may establish. In the absence of regulations established by vote of the legislative body, the cemetery trustees may establish such regulations pursuant to RSA 289:7, I(a). The operation and maintenance of all cemeteries owned and maintained by the municipality shall be in the charge of the cemetery trustees.

## HISTORY

Source. 1994, 318:2, eff. Aug. 7, 1994.

## CROSS REFERENCES

Power of towns to make bylaws relating to public cemeteries, see RSA 31:39.  
Trust funds held by towns for care of cemeteries, see RSA 31:20, 21, 22-a.

## ANNOTATIONS

**Appeals, 1****Distance from dwelling, 3****Eminent domain, 2****1. Appeals**

From the decision of the selectmen establishing or enlarging a public cemetery in any town, an appeal lies by any person aggrieved by such decision as well as by the landowner from the assessment of his land damages. *Page v. Keene* (1870) 49 N.H. 535. (Decided under prior law.)

**2. Eminent domain**

The provision that no cemetery may be laid out within a certain distance of a dwelling house does not prohibit the taking for cemetery purposes of a dwelling house and the land on which it stands. *Crowell v. Londonderry* (1884) 63 N.H. 42.

This provision is a limitation, not of the private right of voluntary purchase and sale of land or the private right of using land, but of the authority conferred by this section to exercise the public right of compulsory purchase of private property for public use. *Carter v. Moulton* (1877) 58 N.H. 64.

**3. Distance from dwelling**

The mischief sought to be restrained by the limitation in this section as to the distance from a dwelling house affects all public cemeteries alike, whether established by voluntary or compulsory purchase of the land. *Stevens v. Manchester* (1885) 63 N.H. 390.

## LIBRARY REFERENCES

**CJS**

Cemeteries § 1 et seq.

**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. Existing cemeteries which are not in compliance with the above set-back requirements may be enlarged, provided that no portion of the enlargement is located any closer to the above-listed buildings, water sources or highways

than the existing cemetery, and provided further that no such enlargement shall be located within 50 feet of any classification of state highway.

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.

III. New construction, excavation, or building in the area of a known burial site or within the boundaries of an established burial ground or cemetery shall comply with local zoning regulations concerning burial sites, burial grounds or cemeteries, whether or not such burial site or burial ground was properly recorded in the deed to the property. In the absence of such regulations, no new construction, excavation, or building shall be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established burial ground or cemetery, whether or not such burial site or burial ground was properly recorded in the deed to the property, except when such construction, excavation, or building is necessary for the construction of an essential service, as approved by the governing body of a municipality in concurrence with the cemetery trustees, or in the case of a state highway, by the commissioner of the department of transportation in concurrence with the cemetery trustees.

IV. Nothing in this section shall be construed to conflict with RSA 290, local ordinances, or cemetery rules concerning burials and disinterments of human remains.

#### HISTORY

Source. 1994, 318:2, eff. Aug. 7, 1994.

#### ANNOTATIONS

##### 1. Eminent domain

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#### LIBRARY REFERENCES

##### CJS

Cemeteries §§ 15, 16.

##### ALR

Zoning regulations in relation to cemeteries. 96 ALR3d 921.

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**289:7 Powers and Duties.**

1. Except in those municipalities in which other provisions have been made by a general or special act of the legislature, all cemetery trustees in the state shall:

(a) Adopt bylaws and regulations for their transaction of business and for the establishment and management of all municipal cemeteries within their responsibility.

(b) Prepare an annual budget indicating what support and maintenance of the municipal public cemeteries will be required out of public funds for submission to the appropriate agency of the municipality. A separate budget request shall be submitted for planning and establishment of a new public cemetery and for capital improvements or expansion of an existing public cemetery.

(c) Expend all moneys raised and appropriated by the municipality for cemetery purposes. Such funds shall be maintained in the general fund and paid in the same manner that funds of other municipal departments are paid.

(d) Expend income from all trust funds for cemetery purposes in accordance with the conditions of each donation or bequest accepted by the municipality. Such trust funds shall be held in the custody and under the management of the trustees of trust funds. The trust income shall be transferred to the cemetery trustees by the trustees of trust funds in response to vouchers executed by the cemetery trustees, if the requested funds are available. Such trust fund income shall not be commingled with the moneys raised and appropriated by the municipality.

(e) Prepare deeds of cemetery lots for the governing body to sign.

II. Cemetery trustees may appoint a cemetery custodian or sexton who shall not be a trustee and who shall be responsible to the cemetery trustees for supervising work done in the cemeteries.

## HISTORY

Source. 1994, 318:2. 1995, 62:3, eff. July 8, 1995. Amendments—1995. Paragraph I: Added subpar. (e).

## CROSS REFERENCES

Power of towns to make bylaws relating to public cemeteries, see RSA 31:39.

**289:8 Enforcement.** Any person designated as a cemetery trustee failing to comply with the provisions of RSA 289:7 shall be guilty of a violation. Any other person who violates this chapter or any regulation established under the authority of this chapter shall be guilty of a violation.

## HISTORY

Source. 1994, 318:2, eff. Aug. 7, 1994.