

**Town of Gilmanton, NH**

**Cemetery Trustees**

**Abandoned Burial Grounds Proposal**

**October 25, 2004**

# NEGLECTED BURIAL GROUNDS PROPOSAL

Cemetery Trustees  
Gilmanton, NH 03237-0056

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Gilmanton, NH Cemetery Trustees

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**A. Proposal**

The Gilmanton Cemetery Trustees propose to assume all of the authorization and rights of the natural lineal descendants of persons buried within Burial Grounds determined to be neglected within the Town of Gilmanton.

**1. Purpose**

The purpose of this action is to assure that the Town has standing to administer rules that would protect neglected burial grounds from intentional or inadvertent damage.

**2. Statutory Authority**

NH RSA 289:19, 20 and 21 sets the standards for determining the status of a burial ground as it relates to neglect, defines the process to be followed in making the finding of neglect, and sets out the rights and responsibilities of the municipality in making that finding.

**3. Interested Parties**

Gilmanton Board of Selectmen	Burial Site Abutters	Lineal Descendants
Gilmanton Historical Society	Gilmanton Cemetery Trustees	

**4. Consequences**

Upon a finding of abandonment, a burial ground shall become a municipal cemetery for management purposes. It shall be managed by the cemetery trustees, who shall assume all the authorization and rights of natural lineal descendants.

The requirements for the care of burial grounds determined to be abandoned is that the municipality *may* raise and appropriate sufficient funds to provide suitable care. As all of the burial grounds contained within this proposal are currently being maintained, or are awaiting restoration under the care of the Trustees, no additional duties or costs will directly result from the abandonment finding.

No change occurs in the underlying property rights. No change occurs in subject or abutting property valuation.

All of the burial grounds contained within this proposal are old and records as to burial space ownership and use are limited or nonexistent. There is no intent to sell plots or to allow additional burials except those for which adequate proof of burial rights and available space exists.

The cemetery trustees shall review and amend as applicable the existing Town of Gilmanton Cemetery and Burial Site Ordinance to address the specific needs of the sites under their management.

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At the conclusion of this process, a copy of the completed report shall be filed with the Town Clerk to become a permanent record. Subsequent amendments shall also be placed on file.

**5. Burial Grounds Identification**

The data provided in this report comprises the results of current research and records on the sites included. No formal burial records exist for any of the sites. Information has been developed using early and current inventories of legible stones and other available data. It is evident at most sites that many additional burials occurred. However, marked stones were not used for those particular burials, or the stones are no longer legible, or the stones have been destroyed or removed. All attempts have been made to provide accurate and complete information given these limiting factors. The Trustees encourage anyone with additional information to share such information to provide a more complete record for historic and genealogical purposes. Information on family burial records, property plans of adjacent lots that might show the boundaries of the burial grounds, early pictures, property deeds and other information would be gratefully accepted. The Trustees will arrange for copies to be made of original documents for this purpose.

**6. Process**

<b>STEP</b>	<b>RESPONSIBILITY</b>	<b>ACTION</b>	
1	Selectmen	Authorize the Cemetery Trustees to publish notice of the Town's intent with other required information including the date for public hearing on the proposal.	
2	Trustees	Publish required notice in Citizen and Sun.	
3	Trustees	Provide public handout of relevant information and answer inquiries regarding the proposal.	
4	Selectmen	Read the notice and hold a public hearing on the proposal at a regularly scheduled Selectmen's meeting held not less than 60 days or more than 90 days after publication of the notice.	
5	Selectmen	Upon agreement of any descendants located, or if no descendants are located, then, after the public hearing, declare burial site(s) abandoned as applicable.	
6	Trustees	a.	Provide formal record of determination for Town Records including the name and location of all sites determined to be abandoned and coming under the jurisdiction of the Trustees.
		b.	Provide sufficient information to plot abandoned sites on the Town's tax maps.
		c.	Amend current Cemetery Regulations as necessary to address protection and preservation of abandoned sites.
		d.	Provide protection and preservation for abandoned sites; undertake restoration as applicable; provide signs, fencing and/or gates as necessary.

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7. **Public Notice**

**At least 60 days prior to Public Hearing:**

**Published in Citizen on Wednesday, August 25, 2004**

**Published in Suncook Sun on Tuesday, August 31, 2004**

**Posted at Academy, Post Offices (GIW & Corners) August 25, 2004**

Town of Gilmanton  
Board of Selectmen  
Cemetery Trustees  
Public Hearing  
Monday, October 25, 2004 – 6pm  
Town Offices - Gilmanton Academy – 503 Province Road

To determine the status of/declare the following burial grounds abandoned under RSA 289:19-21 whereby neglected burial grounds shall become municipal cemeteries for management purposes and shall be managed by the cemetery trustees, who shall assume all the authorization and rights of natural lineal descendants. Direct descendents and other interested parties may contact the Cemetery Trustees, c/o Selectmen's Office, P.O. Box 550, Gilmanton, NH 03237, (603) 267-6700 with comments or for further information. *Sites listed by known information (site name, tax map/lot number, earliest stone name/date if available, road location).*

Clough, 60/75, Mrs. C, Old Stage Rd Copp, 25/14, Abigail Eastman, Province Rd Edgerly (1), 60/49/2, 1832, Old Stage Rd Edgerly (2), 60/58, David Edgerly 1785, Hatch Rd Emerson, 64/28, William Emerson 1841, Geddes Rd Foss, 64/12, Dr. George P. Foss 1831, Pine Hill Road French, 63/57, Joseph Brown 1800, French Rd Guinea Ridge, 15/1/03, Josiah Nelson 1819, Guinea Ridge Rd Harrison Carr, 65/03, John Carr 1838, Upper City Rd Hatch Rd, 60/73, unmarked stones, Geddes Rd Hatie Smith Rd, 29/4/11, unmarked stones, Hatie Smith Rd Hilliard, 57/17, William Flanders, Thistle Rd Leavitt Road, 13/2/12, Elizabeth Page 1806, Leavitt Rd Levi Hutchinson, 8/7, Levi Hutchinson 1823, Middle Rte	Lougee, 31/2, Gilman Lougee 1818, Crystal Lake Rd Merrill, 63/80, Paul Merrill 1849, Pancake Hill Rd Mudgett, 56/31, Scribner Mudgett 1831, Loon Pond Rd Osgood, 57/5, Dudley Osgood 1835, Loon Pond Rd Page, 13/16/2, Reuben Page 1816, Middle Rte Parsons, 64/10, William Parsons 1796, Province Rd Plummer, 8/7, Elizabeth Hutchinson 1846, Sawyer Lake Rd Sanborn, 8/2, Lydia Sanborn 1828, Middle Rte Sawyer Lake, 9/3, Lydia Leavitt 1819, Sawyer Lake Rd Sleeper, 64/22, Benjamin Sleeper, Old Stage Rd Tibbetts, 51/52, Mary Colby 1810, Route 140 Wicka, 56/14, Stanley Wicka 1979, Meadow Pond Rd Wilson Hill, 65/1, Samuel Kelly 1796, Upper City Rd
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**B. Burial Grounds Identification**

**(See summary document)**

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**C. Additional Burial Sites, Burial Grounds and Cemeteries located within Gilmanton, but not included in this proposal:**

- Beech Grove (Private Association)
- Besse (Private Maintained Burial Ground)
- Buzzell (Private Association)
- Friends (Municipal)
- Hillside (Municipal)
- Pine Grove (Private Association)
- Smith Meeting House (Private Association)

**D. Additional Historic Sites Maintained by Cemetery Trustees, but not included within this proposal:**

- Mary Butler Home Site
- Town Pound Site
- Mudgett Home Site

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**TITLE XXVI  
CEMETERIES; BURIALS; DEAD BODIES**

**CHAPTER 289  
CEMETERIES**

**Definitions**

**289:1 Definitions.** – In this chapter, unless the context clearly requires otherwise:

- I. "Burial ground" means a private cemetery on private property and not available for use by the public.
- II. "Burial space" means a lot in any cemetery as designed and intended for the interment of a human body or bodies, but presently not used for such purpose.
- III. "Cemetery" means any cemetery owned, managed, or controlled by any municipality within this state or owned and managed by any cemetery corporation chartered by the state.
- IV. "Cemetery association" means a cemetery corporation, the voting members of which are the owners of burial spaces in the cemetery owned and operated by the association.
- V. "Cemetery corporation" means a corporation organized for the purpose of operating a cemetery.
- VI. "Cemetery trustees" means town cemetery trustees elected pursuant to the provisions contained in this chapter.
- VII. "Corporate officer" means the elected or appointed managing officer of a corporation established to operate a cemetery for public interment.
- VIII. "Owner" means any person or persons owning or possessing the privilege, license, or right of interment in any burial space, as determined under RSA 290:24.

**Source.** 1994, 318:2, eff. Aug. 7, 1994. 2000, 95:1, eff. Apr. 27, 2000.

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**TITLE XXVI  
CEMETERIES; BURIALS; DEAD BODIES**

**CHAPTER 289  
CEMETERIES**

**Abandoned Burial Grounds**

**289:19 Neglected Burial Ground.** – Whenever a burial ground within the boundaries of the town has been neglected for a period of 20 years or more, the municipality may declare it abandoned for purposes of preservation, maintenance or restoration.

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

**289:20 Procedure.** – To declare a burial ground abandoned:

I. The municipality shall place an advertisement in at least one newspaper having general distribution in the municipality and surrounding area. The advertisement shall state the intent of the municipality, identifying the burial ground by name, if known, and by names and dates of the oldest stones in the burial ground, with a request for any direct descendent to contact the town selectmen's office, the town manager, or mayor, as applicable. If the burial ground contains no stones with legible inscriptions, the site may be identified by a detailed description of its location.

II. Not less than 60 days nor more than 90 days after the notice of the intent has been published, the notice shall be read at a regularly scheduled selectmen's meeting or in the case of a city, a city council meeting.

III. If any descendants were located and grant permission, or if no descendants were located, then, after a public hearing, the municipality may declare the burial ground abandoned by a majority vote of the selectmen or city councilmen present and voting.

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

**289:21 Rights and Responsibilities.** – Any burial ground declared abandoned under these provisions shall become a municipal cemetery for management purposes and shall be managed by the cemetery trustees, who shall assume all the authorization and rights of natural lineal descendants.

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

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**Cemetery, Burial Ground and Historic Site Map Key**

- 1 Carr Burial Ground
- 2 Page Burial Ground
- 3 Guinea Ridge Burial Ground
- 4 Buzzell Burial Ground
- 5 Wilson Hill Burial Ground
- 6 Mary Butler Home Site
- 7 Copp Burial Ground
- 8 Friends Burial Ground
- 9 Sleeper Burial Ground
- 10 Tibbetts Burial Ground
- 11 Hillside Cemetery
- 12 Plummer Burial Ground
- 13 Levi Hutchinson Burial Site
- 14 Sanborn Burial Ground
- 15 Leavitt Road Burial Ground
- 16 Pine Grove Burial Ground
- 17 Beech Grove Burial Ground
- 18 Smith Meetinghouse Burial Ground
- 19 Merrill Burial Ground
- 20 French Burial Ground
- 21 Hilliard Burial Ground
- 22 Osgood Burial Ground
- 23 Mudgett Burial Ground
- 24 Wicka Burial Site
- 25 Lougee Burial Ground
- 26 Edgerly Burial Ground (1)
- 27 Edgerly Burial Ground (2)
- 28 Foss Burial Ground
- 29 Parsons Burial Ground
- 30 Emerson Burial Ground
- 31 Hatch Rd Burial Ground
- 32 Sawyer Lake Burial Ground
- 33 Hatie Smith Road Burial Ground
- 34 Besse Burial Site
- 35 Clough Burial Ground
- 36 Town Pound
- 37 Mudgett House Site

# TOWN OF GILMANTON

## CEMETERY AND BURIAL SITE

(Existing)

## ORDINANCE

*March 14, 1992*

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**SECTION I. TITLE**

**A. PREAMBLE**

In pursuance of authority conferred by RSA 31:39 and in accordance with RSA 289 the Town of Gilmanton adopts the following Ordinance for the maintenance, administration and preservation of burial sites, burial grounds and cemeteries.

**B. ADOPTION**

This Ordinance was duly enacted by a vote of Town Meeting on March 14, 1992.

**SECTION II. ADMINISTRATION**

**A. CEMETERY RECORDS**

The Town of Gilmanton or other body charged with the responsibility of operation and administration of any cemetery, shall keep a record of every burial in any cemetery under their control, showing the date of burial and the name of the person buried, when these particulars can be obtained, and the plot, or part of such plot, in which the burial was made.

Such records shall also be kept of every private burial site within the Town of Gilmanton. In cases where cremation is used it shall be so stated on any or all records.

A copy of such record, duly certified, shall be furnished to any person on demand and payment of a fee of \$0.50 (50 cents). The fee shall be for the use of the Town of Gilmanton.

**B. CEMETERY CONTROL**

Any cemetery laid out by an individual or corporation in which all lots have been sold and for the care of which trust funds are held by the Town, shall be under the control of the Selectmen.

**C. CEMETERY FUNDS**

1. Abandoned Cemeteries

The Town of Gilmanton may raise and appropriate annually a sufficient sum to provide for the suitable care and maintenance of deserted and abandoned cemeteries within its confines which are not otherwise provided for including private burial sites and burial grounds where there are no surviving descendents. Such appropriation shall be expended under the direction of the Trustees of Cemeteries.

2. Public Cemeteries

The Town of Gilmanton shall raise and appropriate sufficient funds by taxation to provide for the suitable care and maintenance of the public cemeteries within its confines which are not otherwise provided for and to provide and maintain around all such cemeteries a good

and sufficient fence, and to supply same with necessary gates.

3. Trust Funds

Cemetery corporations and the trustee of the Town, or other officers having lawful charge of cemeteries, may take and hold funds in trust, to apply the income thereof to the improvement, watering, or embellishment of the cemetery, or to the care, preservation, or embellishment of any lot or its appurtenances.

**SECTION III. LOCATION OF CEMETERIES BURIAL SITES**

**A. CEMETERIES**

No cemeteries shall be laid out within one hundred (100) feet of any dwelling house, school house or school lot, store or other place of business without the consent of the owner of same, or any enlargement of existing cemeteries within fifty (50) feet, except that such enlargement may not be laid out within fifty (50) feet of the Right-of-Way of all classifications of highways.

**B. BURIAL SITES**

Burials on private property, unless in an existing burial ground, shall comply with all Town of Gilmanton Ordinances. Such burial sites shall comply with the following:

1. All burial site(s) shall be not less than one hundred (100) feet from the Right-of-Way of any Town of Gilmanton Class V or VI road, State of New Hampshire Class I, II or III road, or any privately owned road.
2. All burial site(s) shall be not less than one hundred (100) feet from an existing dwelling.
3. All burial site(s) shall be not less than thirty five (35) feet from any existing septic system, to include, but not limited to, septic tank, leach field, trenches and drywells, etc.
4. All burial site(s) shall be not less than fifty (50) feet to any existing or known source of water.
5. All burial site(s) shall be recorded in the Deed to the property and carried in such Deed upon transfer of said property to another person, company or corporation etc. All sites shall be recorded on Town of Gilmanton Tax Maps.
6. The Gilmanton Planning Board may require additional information, make additional restrictions where deemed necessary, in order to preserve and safeguard against any violation(s) of this, and other Ordinances and/or Regulations of the Town of Gilmanton.
7. All burial site(s) after being declared "abandoned" by the Gilmanton Board of Selectmen, in accordance with Section VII, may be maintained by the Town of Gilmanton at its discretion. The Town shall have access onto said site(s) for the sole purpose of repair and maintenance of any and all burial site(s).

**C. ACCESS**

Any person wishing to have a temporary right of entry over private land in order to enter a private burial site, burial ground or cemetery enclosure to which there is no public right of way may apply in writing to the selectmen stating the reason for such request and the period of time for which such right is to be exercised. Said applicant shall also notify in writing the owner or occupier of the land over which the right of way is desired. The selectmen may, in the exercise of discretion, issue a permit for such temporary right of entry designating the particular place where said land may be crossed. The owner or occupier of said land may recommend said place of crossing which, if reasonable, shall be the place so designated by the selectmen.

**SECTION IV. SUBSURFACE EXCAVATION AND/OR DEVELOPMENT**

- A. No excavation or development shall be conducted within thirty five (35) feet of any known or proposed burial site, burial ground or cemetery whether or not such burial site, burial ground or cemetery was properly recorded in the Deed to the property.
- B. Any proposed Subdivision or Site Plan containing a burial site, burial ground or cemetery shall separate said site from the remainder of the subdivision or site plan by means of a fence or stone wall. This fence shall be placed not less than twenty five (25) feet from any grave, monument, tomb or other burial site indicator.
- C. All existing or planned burial site(s) or cemetery(s) shall be shown on any new subdivision or site plans as separate lot(s), which may be deeded to the Town of Gilmanton, and as such, shall be under the care of, and responsibility of the Town of Gilmanton, at its discretion. Access for maintenance shall also be shown on the subdivision or site plan(s).
- D. Any person who leaves debris in any cemetery as a result of a logging operation shall be guilty of a violation.

**SECTION V. DISTURBANCE OF GRAVESTONES, BURIAL SITES AND BURIAL SITE ITEMS**

- A. No person, without the written authorization of the owner of a burial plot, or the lineal descendent of the deceased, if such owner or lineal descendent is known or the written authorization of the Town of Gilmanton if the owner or lineal descendent is unknown, shall:
  - 1. Purposely or knowingly destroy, mutilate, injure or remove any tomb, monument, gravestone, marker, or other structure, or any portion or fragment thereof, placed or designed for a memorial of the dead, or any fence, railing, gate, curb, or plot delineator or other enclosure for the burial of the dead.
  - 2. Purposely or knowingly disturb the contents of any tomb or grave in any cemetery, burial ground or burial site.
- B. The Town of Gilmanton shall not grant approval for the removal or disturbance of a tomb, monument, gravestone, marker, or plot delineator without first giving thirty (30) days notice,

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together with a report of the full circumstances, that such approval has been requested. The Town of Gilmanton shall maintain a record of the date, circumstances, and disposition of the request for removal or disturbance.

- C. No person shall make gravestone rubbings in any cemetery without first obtaining the permission of the selectmen or cemetery trustees.

## **SECTION VI. UNLAWFUL POSSESSION OR SALE OF GRAVESTONES AND GRAVESITE ITEMS**

In accordance with RSA 635, no person shall possess or sell, offer for sale or attempt to sell, or transfer or dispose of any monument, gravestone, marker, or other structure, or any portion or fragment thereof, placed or designed for a memorial of the dead, or any fence, railing, gate, plot delineator, or curb, knowing or having reasonable cause to know that it has been unlawfully removed from a cemetery, burial ground or burial site.

## **SECTION VII. ABANDONMENT**

- A. Private Family Burial Sites

Whenever a private family burial site within the boundaries of the Town has been neglected for a period of twenty (20) years, the Town may declare it abandoned for purposes of maintenance or restoration.

- B. Cemeteries

The Town shall place an advertisement in at least one (1) newspaper having general distribution in the Town and surrounding area. The advertisement will state the intent of the Town, identifying the cemetery by name (if known), and by names and dates of the oldest stones in the cemetery, with a request for any direct descendant to contact the Selectmen's office. If the cemetery contains no stones with legible inscriptions, the site may be identified by a detailed description of its location.

Not less than sixty (60) days nor more than ninety (90) days after the notice of intent has been published it will be read at a regularly scheduled meeting of the Board of Selectmen.

If any descendants were located and grant permission, or if no descendants were located, then the Town may declare the cemetery abandoned by a majority vote by those Selectmen present and voting.

Any cemetery declared abandoned under the provisions of this Ordinance shall be under the care of the Town through its Board of Cemetery Trustees.

## **SECTION VIII. DEFINITIONS**

**Burial Site** - A site proposed to contain or containing one grave.

**Burial Plot** - A section of a burial ground or cemetery, owned in its entirety for the purpose of containing

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one or more graves.

**Burial Ground** - A private area, containing one or more burial site(s) and/or burial plot(s).

**Cemetery** - A public area, containing one or more burial site(s) and/or burial plot(s).

**Gravestones** - Stones of any shape or size, marked or unmarked, used to identify or bound a burial site or burial plot.