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the BROADCASTER

Spring 2021

UPCOMING EVENTS

April 13 and April 20, 2021

6th Annual Metropolitan
Cemetery Association &
New York State Association
of Cemeteries Cemetery
Exposition via ZOOM

June 15, 2021

Government & Legal Affairs
Seminar via ZOOM

September 26-29, 2021

93rd Annual NYSAC Fall
Conference at the Turning
Stone IN PERSON

***Dedicated to the furtherance of
effective cemetery management
and operation for better
community service.***

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Cemetery Mergers: Fixing A Problem That Didn't Exist

By David Fleming, Jr.

In recent years, New York has been impacted by the abandonment of more than 100 non-profit regulated cemeteries. This is an evolving crisis not just for the families we serve, but for the local governments that are required to assume the operation and maintenance of these abandoned cemeteries.

Outmigration, insufficient income from investments, and the rise in cremation rates, have all compounded the challenges of running a cemetery in 2021.

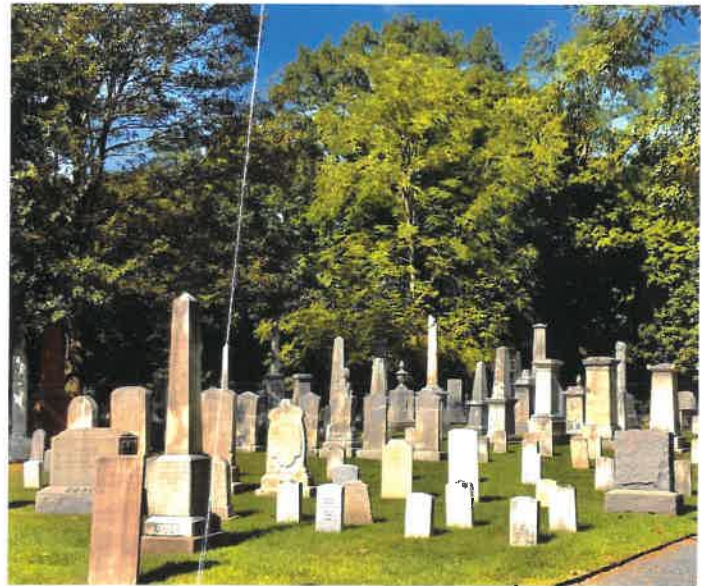
At the heart of these challenges, however, is New York's antiquated and burdensome regulatory system that unintentionally promotes cemetery abandonment rather than supports these vital public service operations.

A prime example of these challenges was recently addressed by the State Legislature. As it turns out, this only happened because NYSAC chose to act and enlist the support of dedicated state legislators to right a tragic wrong.

For many decades, regulators have assisted cemeteries in mergers of operations to create stronger entities. There are many cemeteries across New York where clusters of cemetery mergers have created healthy merged organizations that serve communities.

This merger tool had been effective in keeping cemeteries run by cemeteries and preventing their abandonment to towns. However, despite decades of approving mergers, this all changed in a stunning and unexpected policy statement by the State Cemetery Board in the fall of 2019.

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Cemetery Mergers

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At that time, the Board formally accepted a legal opinion that there was nothing in state law that authorized them to approve cemetery mergers.

This is a complete reversal of state regulatory policy by the State Cemetery Board and has come at a critical moment when perhaps fifty or more cemeteries across New York are on the edge of abandonment.

NYSAC immediately responded. We took the State Cemetery Board's decision and formulated a legislative fix, addressing every one of the concerns expressed by regulators. That bill rapidly passed both houses of the Legislature in a unique way – unanimously.

However, as usually happens in Albany, as the bill hit the Governor's desk in December 2020 and was about to become law, the Department of State objected to the bill and an entirely new statutory process began. As negotiations continued during the December 2020 holidays, it was understood that the Governor would sign the unanimously passed bill (Chapter 359 of 2020) and a new revised bill would be negotiated to take its place. This type of bill is referred to as a "Chapter Amendment." While such Chapter Amendments are usually just technical changes to a new law, an entirely new set of policy issues were quickly debated, rejected and eventually, accepted. This new bill was then passed in January 2021 just after the new session began. The final version of the "Mergers Bill" may now be found in Chapter 8 of the Laws of 2021.

Despite the challenges of the process and the protracted negotiations, the Legislature ultimately passed a comprehensive bill that permits mergers and provides a road map to approving them. The new law also provides further clarification on land purchases for cemeteries.

While the new law still presents hurdles recommended by the state, these obstacles have been greatly limited thanks to the advocacy of NYSAC.

In seeking a legislative fix, NYSAC first wanted to guarantee that all mergers having already been approved by the Cemetery Board would be validated and not have their previous approvals voided. While this may seem logical to those outside government it was an open issue in Albany. Tragically, the 2019 legal opinion presented to and accepted by the State Cemetery Board at the beginning of this legislative tale, indicated that this was an issue that was open to future regulators to consider. This uncertainty would have lingered for cemetery operations across the state as they would have faced the potential unwinding of mergers going back decades.

Working with our Assembly and Senate advocates, NYSAC was able to make sure that this issue was clearly resolved in the new law and all previously approved mergers were validated.

In order to address other policy changes presented by the Cemetery Board in 2019, the new law also included allowances for cemeteries to acquire land: not adjacent to their operations, lands that would

result in a cemeteries holding more than 200 acres, and allow the merger of a cemetery with other cemetery entities not adjacent to each other.

These land purchase guidelines generally require:

- a demonstration that a purchase will benefit the cemetery corporation and lot owners;
- demonstration that the cemetery has adequate funds and operational ability to take on the acquisition;
- verification that the cemetery corporation fully investigated the available land in proximity to the existing cemetery and that the proposed purchase is prudent; and
- verification that the local municipalities have been notified of the proposed purchase.

Mergers or consolidations of cemeteries were further dealt with by adding a new section 1506-d to the Not-for-Profit Corporation Law. These new requirements include:

- demonstration that the merger/consolidation is economically feasible and financially responsible;
- demonstration that the surviving cemetery corporation will have adequate financial resources to continue its mission;
- verification that the merger/consolidation does not harm the interests of the state, cemetery corporations, lot owners, and the localities;
- notification to the municipalities where the cemeteries are located of the planned merger/consolidation;
- a proposal for the management of financial assets of the surviving cemetery;
- a plan for equitable maintenance of all cemetery locations;
- a notice of the lot owners meeting to approve the plan of merger or consolidation which may not be served via publication; and
- documentation of compliance with posting requirements at the entrance to each cemetery location and prominently on the website of each constituent cemetery informing lot owners and the public of the proposed merger.

Ultimately, NYSAC's efforts resulted in fixing an aspect of broken state policy to the benefit of cemeteries of every size and across the regional diversity of New York. Ironically, it was a state policy that even the Legislature didn't think was broken.

Once again, we witnessed a powerful example of NYSAC taking a stand to fundamentally change state policy to help struggling cemeteries.

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