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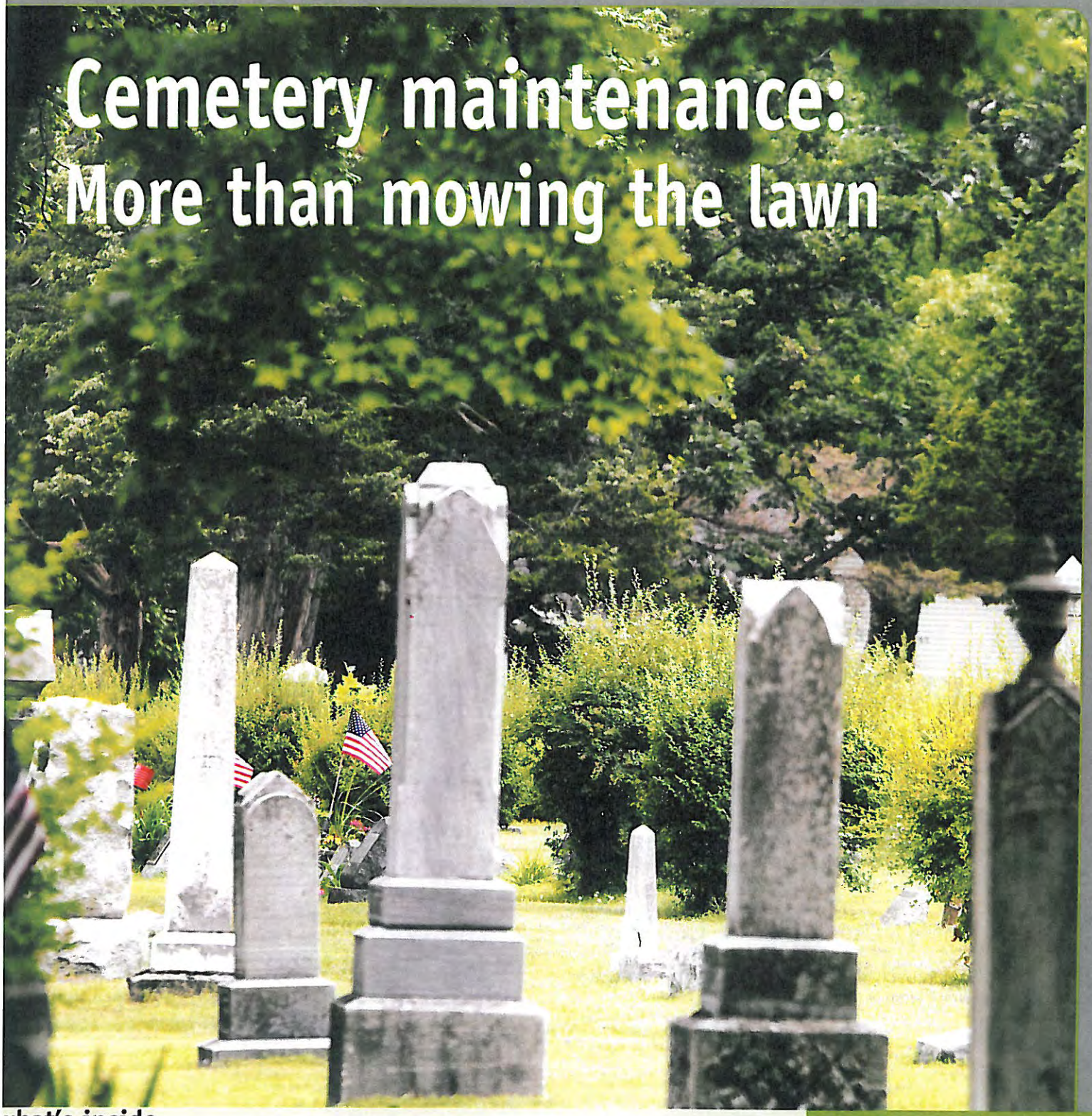

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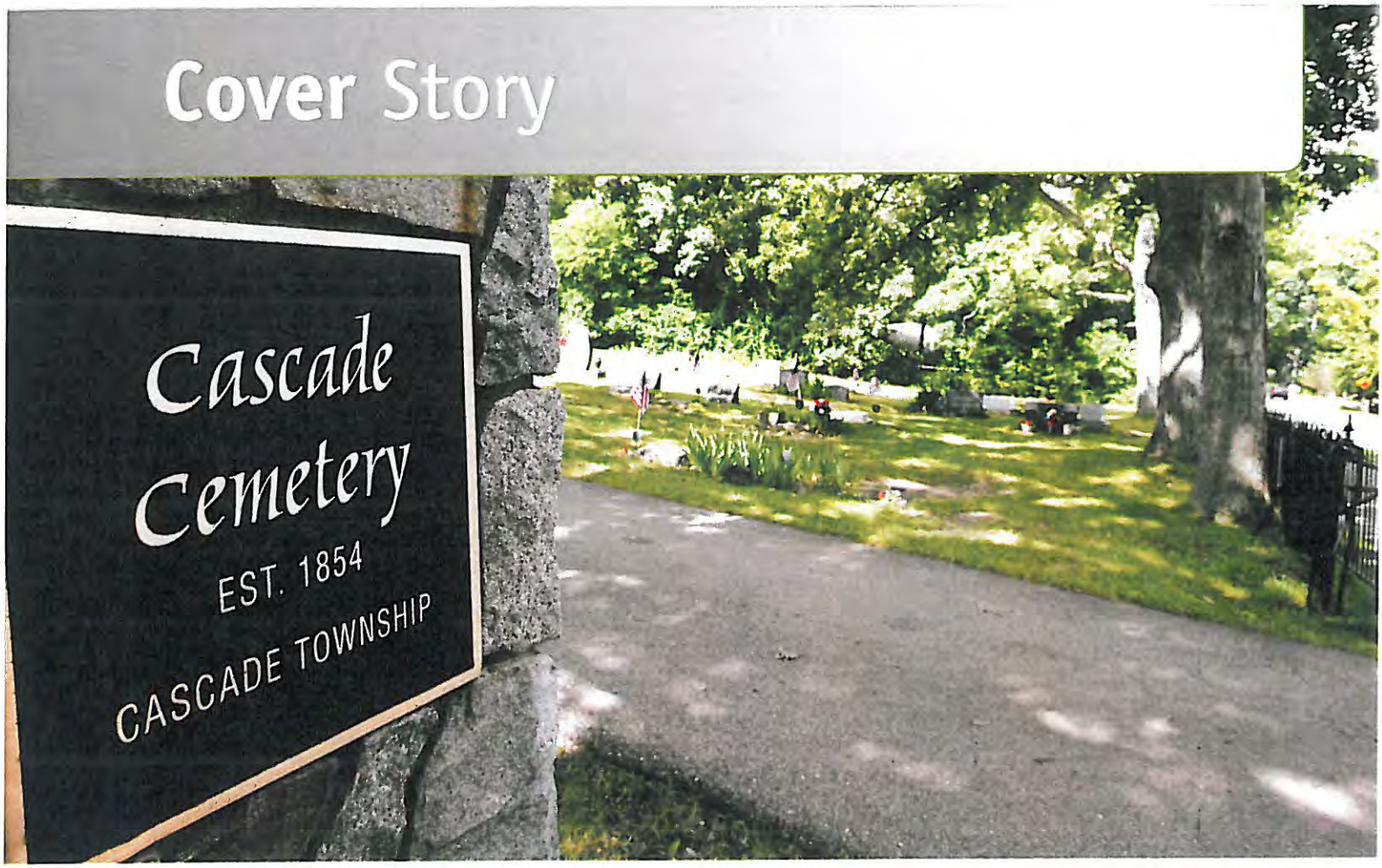
May 2012

SPECIAL INSERT: U.P. SUMMIT REGISTRATION BROCHURE



Cemetery maintenance:
More than just mowing the lawn

Virtually every township in Michigan has at least one township-owned cemetery. Some township officials, however, may not have a full grasp of the importance of this township service—and the value and comfort that it can offer to the community. Few township topics engender such great public emotion as township cemeteries, and safeguarding this important component of a township's history remains a critical tether to residents' connection to their township.

Given the number of sometimes-perplexing issues that arise regarding township cemeteries, this article can only scratch the surface of the issues. But perhaps the most important thing that townships can do to safeguard prudent cemetery management is to have an effective, up-to-date township cemetery ordinance in place. A good ordinance will not only regulate all major aspects of a township cemetery, but will also serve as a guide for township officials and members of the public alike. Some townships may not even have a cemetery ordinance in place, while others haven't reviewed or updated their ordinance on a regular basis.

Generally, township cemetery ordinances are adopted as non-zoning, standalone police power ordinances. Comprehensive cemetery ordinances address issues that are common to cemeteries, and may include provisions such as:

- Ordinance name
- Purpose and intent sections
- Definitions
- Prohibited uses and activities
- Markers, monuments and headstones
- Burial rights and sales
- Qualification for burial plots (residents versus nonresidents)
- Fees
- Vaults and the burial process
- Cemetery hours
- Procedures for purchasing, transferring and repurchasing burial plots
- Flowers, urns and decorations
- Procedures for abandoning, forfeiting, or reclaiming unused or abandoned burial plots
- The role of the township sexton
- Interment and disinterment regulations
- Grounds maintenance
- Potter's fields (indigent burials)

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- Cemetery records
- Appeals
- Disclaimer of township liability and responsibility
- Exemptions from the ordinance
- Enforcement and penalties for violation of the ordinance
- Severability clause
- Officials who can enforce the ordinance
- Effective date of the ordinance

One of MTA's newest books, *Township Cemetery Management*, includes a model cemetery ordinance. *(See order form on page 22, or order online at www.michigantownships.org/books.asp.)*

OVERSEEING THE PROPERTY

Township cemeteries are publicly owned property and must be treated as such. Contrary to popular myth, the family of a deceased person does not obtain an actual title to the burial site. Rather, a person who purchases a burial plot receives only a license or right of use. For that reason, townships should not entitle burial plot documents "deed" or refer to transfer documents as a deed.

Further, because township cemeteries are public property, it is very important for townships to establish—in their respective cemetery ordinances—limits on the use of the property. For example, townships should limit or regulate the items that family members or visitors to the cemetery may place at or near burial plots. Some township officials throughout Michigan likely have had to contend with family members who have literally built shrines or installed trellises, benches, shrubs or other plantings, and statues at the grave of their loved ones. Such items can not only interfere with maintenance of the property, they can present an eyesore and a potential source of liability for the township.

A township cemetery ordinance may wish to prohibit private items or decorations except for specifically enumerated ones (such as flowers, certain types of flower containers and veterans' flags), and should also make clear that the township has the absolute right to remove and dispose of unlawful items. Although such restrictions may provoke strong emotions, issues stemming from excessive decoration of burial plots may worsen over time if they are not addressed—and enforced—by the township.

DEALING WITH FINANCIAL ISSUES

While townships can—and should—regulate the day-to-day operation and use of township cemeteries, townships must also be prepared to deal with the financial aspects of owning a cemetery. What is a township to do in these times of tight municipal budgets, given ever-increasing cemetery maintenance and related costs? There are a options available for townships to ensure that offering this service doesn't place a burden on the township—or its budget.

10 important rules when dealing with township cemeteries

1. Have in place (and periodically update) a good township cemetery ordinance.
2. A township cemetery is public property—treat it as such!
3. Ignorance is not bliss regarding township cemeteries—keep good burial records.
4. Stress to all township officials and employees who must deal with the public regarding cemeteries to be kind, responsive and understanding.
5. Township cemeteries are not often money-makers, but prudent policies can reduce cemetery costs.
6. Deal with cemetery issues promptly and reasonably—otherwise, such problems can only worsen (and can provoke negative emotions) over time.
7. Keep local funeral directors apprised of ordinances, ordinance amendments and policy changes regarding township cemeteries.
8. The old adage that "You cannot please everyone" is particularly true regarding township cemeteries!
9. "No good deed goes unpunished." Remember, if you bend the rules for someone, then others will want the same deal.
10. Read the *Township Cemetery Management* publication available through MTA! *(See page 22 for details.)*

A township cemetery ordinance may wish to prohibit all private items or decorations except for specifically enumerated ones (such as flowers, certain types of flower containers and veterans' flags).

First, townships should charge a realistic fee for the sale of cemetery plots (also sometimes referred to as cemetery spaces, burial sites, burial plots or grave sites). In fact, the purchase price should be set high enough so that the township is able to build up a perpetual cemetery maintenance fund over time. Fees for other types of cemetery services should also be set sufficiently high to cover all relevant administrative and labor costs. Fees that townships typically charge with regard to cemeteries include:

- A fee for the initial purchase of a burial plot
- A transfer application fee (for when vacant cemetery plots are sold or transferred to someone other than the original purchaser of the plots)
- A disinterment permit application fee
- Burial fee (or grave opening and closing fee), including separate fees for holiday, weekend or late-day burials
- Winter burial or body storage fees
- Foundation placement fees
- Perpetual care fees
- Fines and penalties (if authorized by the township's cemetery ordinance)

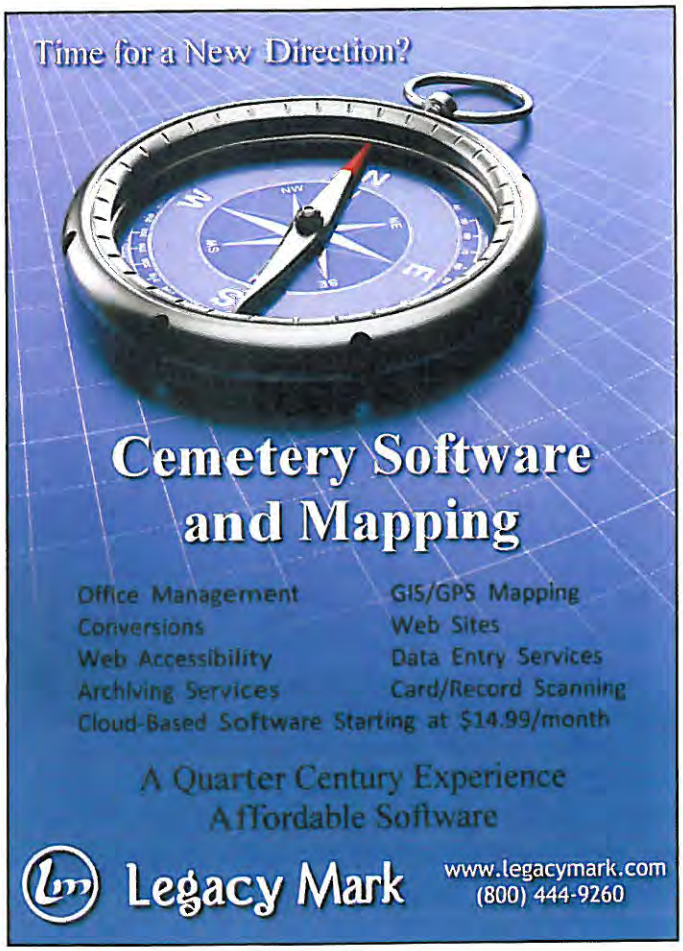
Unfortunately, many townships have kept cemetery plot prices artificially low over the years, and raising the prices or other cemetery fees significantly could be politically difficult. Reviewing the fees regularly, however, and setting them at realistic rates to cover all township costs is advisable.

Townships can also place cemetery millages on the ballot. To educate citizens about the financial obligation of maintaining township cemeteries and the need for a dedicated millage, some township officials have informed voters that without a dedicated cemetery millage, every township dollar that is spent on a township cemetery cannot be spent on services for the living. If a cemetery millage is not passed (or is passed and later not renewed), township officials can then justify a decision to move from maintaining a township cemetery in a park-like manner to performing minimal but reasonable cemetery maintenance based on the desire of the voters.

As an alternative to raising cemetery plot fees or submitting the question of a dedicated cemetery millage to the voters, or as a way to supplement those activities, townships can hold fundraisers for the maintenance of township cemeteries.

Townships can also set up programs whereby the family or friends of a deceased person buried in a township cemetery can purchase needed items for the cemetery (as designated by the township) and have the name of their loved one placed prominently on the item. Such items (to be chosen from a list approved by the township) could include benches, tree plantings, ornate fences, gardens and statues. This type of program not only reduces township expenses for needed cemetery items, but also provides grieving friends and families with an opportunity to honor a deceased family member or friend in a manner that is consistent with township regulations and can help to avoid any of the issues regarding clutter and undesirable items.

Townships can decrease cemetery costs by promoting cremation and providing areas in township cemeteries limited to cremains. A township that is running out of cemetery space could choose to forego a cemetery expansion or the creation of a



new cemetery in favor of creating a smaller new area reserved exclusively for cremains. This approach is consistent with the growing trend for individuals to choose cremation of their remains instead of burial.

HANDLING THE MONEY

Following proper financial procedures regarding a township cemetery is very important. All fees and monies attributable to a township cemetery must be handled by township officials. According to MCL 41.76, "The township treasurer *shall* receive and take charge of money belonging to the township, or that is by law required to be paid into the township treasury, and shall pay over and account for the money, according to the order of the township board or the authorized officers of the township." *(Emphasis added.)*

Generally, monies should not be paid directly from funeral homes or members of the general public to the township sexton or other township employees or contractors—such funds should first be deposited with the township. Township officials can then pay out monies appropriately so that proper recordkeeping occurs. The best method (and one that most enhances internal control) is for the township clerk to bill the funeral director for the interment fees and have payment made directly to the township treasurer. However, the township board may authorize, by policy, the sexton to receive fees, issue township receipts, and remit the money to the treasurer. In that case, the township should have the sexton bonded and should adopt a regular schedule for the sexton to turn the money over to the treasurer. Checks must not be made out to the township sexton or other township employee personally, but rather, only to the township involved.

RECLAIMING UNUSED PLOTS

What can a township do for dormant, unused or abandoned burial plots that are vacant? In general, there are two legal methods in Michigan for declaring vacant burial plots in township cemeteries abandoned or forfeited, so that the township involved can resell or transfer the burial plots at issue to another family. If a township had a specific abandonment or forfeiture ordinance provision or procedure in effect when the burial plots at issue were first purchased (and in particular, if the forfeiture or abandonment process was spelled out in the original document that granted or transferred the burial rights when purchased), the township can normally follow that abandonment or forfeiture procedure without instituting court action.

However, if a formal forfeiture or abandonment procedure was not in place (either by ordinance or formal rule) at the time when the burial plot at issue was first sold or granted by the township, the township will have to initiate a lawsuit in the local county circuit court to effectuate an abandonment or forfeiture of the vacant burial plot at issue, pursuant to MCLs 128.11 to 128.16, so that the township can reclaim or extinguish the burial right in order to be able to resell or transfer the unused burial plot to someone else. (Consult with your township attorney on this process.)

The following generally applies to the court procedure for statutory abandonment or forfeiture of a burial plot or right found in MCLs 128.11 to 128.16:

1. The procedures apply to vacant plots only.
2. The process can be initiated by a township if the vacant burial plot has not been maintained for seven years or more.
3. The township board adopts a forfeiture/abandonment resolution.
4. The resolution must be served on the owner of the vacant plot personally or by first-class mail to the last known address.
5. If the township does not receive a response within 30 days, the township may commence a forfeiture/abandonment action in the county circuit court.
6. The lawsuit must be served on the burial plot owner.
7. There are various hearing, hearing notice and other requirements associated with the circuit court action.
8. If the township prevails in court, the owner of the particular burial plot has up to two years to "redeem" (and keep) the vacant burial plot or plots by paying certain costs to the township. Otherwise, after two years, the township obtains the vacant burial plot or plots in question unencumbered to be reclaimed or resold by the township.

A NEW TREND

"Green burials" are a fairly new trend in U.S. cemetery management, and any township considering allowing green burials—either in newly established or existing township cemeteries—should specify in the township cemetery ordinance where and under what circumstances green burials are permitted. What is a "green burial"? Depending on your perspective, a green burial is a new alternative for disposing of bodies after death—or an old tradition in keeping with how most bodies were interred until the late 19th century.

A green burial is generally understood to be a low-impact, environmentally friendly burial of human remains, and is also known as "natural" or "low-impact" burial.

With a green burial, there is generally no embalming of the deceased, no metal casket, and no burial vault. Because no Michigan statute requires the use of vaults for burials (although vaults can be required by the township cemetery ordinance), green burials may be an attractive alternative to the traditional burial or cremation. With a green burial, the body is enclosed in a biodegradable container, such as a wood or cardboard box, a wicker basket or Ecopod, a natural-fiber shroud, or even a favorite blanket or quilt. A flat memorial stone may be used, or a grave marker may consist of a tree or other planting (often in combination with some form of computer chip for GPS mapping). The deceased is buried at a depth of four feet or so to permit access by aerobic bacteria to enhance decomposition. Cemeteries allowing green burials are often more natural, with a meadow-like feel and walking paths, which also cuts down on the township's maintenance costs.

THE EMOTIONAL SIDE

Adding to the aspects of the regulation, maintenance and financing of a township cemetery is the human and emotional aspect that is inherent in dealing with cemeteries. Any township official in Michigan who has dealt with a township cemetery knows that there are few local governmental issues that can be as emotional for families and individuals as policies and matters related to the local cemetery. It is not uncommon, particularly in rural townships, for the local township cemetery to contain the earthly remains of many generations of a particular township resident's family. The local township cemetery is often considered holy ground, even by those who are not particularly religious.

Cemeteries allowing green burials are often more natural, with a meadow-like feel and walking paths, which also cuts down on the township's maintenance costs.

A poignant hypothetical can illustrate the emotions and strong feelings associated with township cemeteries. Paul Hatfield was an army sergeant who was killed in a recent war. During the year of his death, Blue Sky Township was in the process of expanding its only cemetery. The expanded portion of the cemetery was not quite completed when Sergeant Hatfield's body was shipped home. Given that no burials had yet occurred in the expanded part of the cemetery, the Blue Sky Township Board adopted new ordinance provisions governing new headstones within the expanded part of the cemetery. Since Blue Sky Township had nearly depleted its general fund on increasing maintenance costs for the existing older portion of the cemetery, the newly amended cemetery ordinance provided that all headstones in the expanded portion of the cemetery would have to be flush with the ground. A copy of the ordinance amendment governing headstones in the expanded portion of the cemetery was promptly sent to all local funeral directors.

When Sergeant Hatfield's body had arrived back in Blue Sky Township, the Hatfield family asked whether his remains could be interred in the new expanded portion of the cemetery. Blue Sky Township officials declined, as the new portion of the cemetery was not quite finished. After both positive and negative pressure from the Hatfields, township officials relented and allowed Sergeant Hatfield to be interred early in the expanded portion of the cemetery. Township officials believed that they had done the Hatfield family a favor. About two months later, a new monument appeared at Sergeant Hatfield's burial site. The monument was very large—parts of it stood six feet tall. It was a military-style monument, complete with patriotic symbols, sculptures and Paul's name. Township officials were stunned. The memorial was purchased through the local

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funeral director. It is unclear whether the funeral director forgot about the ordinance provision governing the new portion of the cemetery or simply disregarded the regulation. Township officials contacted the Hatfield family, told them about the ordinance provision prohibiting large monuments in the new portion of the cemetery, indicated that it was unfortunate that the funeral director had not told the Hatfield family about the ordinance regulations, and informed the family that the oversized monument would have to be removed.

The Hatfield family erupted. The family commenced an unrelenting campaign against township officials to allow the large monument to stay. Clearly, the Hatfield family forgot (or would not acknowledge) that township officials had done the family a favor by allowing Paul to be buried in the new portion of the cemetery in the first place. Successive township board meetings were packed with people who were sympathetic to the Hatfield family and who spoke out emotionally in their favor. Many of the supporters of the Hatfield family at those meetings were from Blue Sky Township, but others came from quite some distance away to show solidarity with the Hatfields. The township board finally "caved" and its members voted 3-2 to rescind the ordinance provision limiting monument size in the new portion of the cemetery so that Paul Hatfield's oversized monument could stay. That was not the end of the matter, however. The Hatfield family commenced a recall campaign against the two members of the township board who voted against rescinding the ordinance provision. At a special recall election, those two township board members were voted out of office.

Does this all sound far-fetched? It isn't, as situations similar to this hypothetical have occurred on more than one occasion in Michigan. Similar scenarios have occurred where two different families claim the same vacant burial plot, it is discovered that someone is buried in the wrong plot, or a burial plot cannot be located.

While there is no surefire way to prevent emotional township cemetery events, the risk can be minimized by adopting, enforcing, and periodically updating a reasonable cemetery ordinance. In addition, risks associated with township cemeteries can be minimized by following appropriate procedures, consulting with the township's attorney where prudent, and hiring (and properly training) qualified cemetery employees or contractors. ■

Cliff Bloom, President
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Contact Bloom at (616) 965-9340 or email cbloom@bsmlawpc.com. The firm's website is www.bsmlawpc.com.

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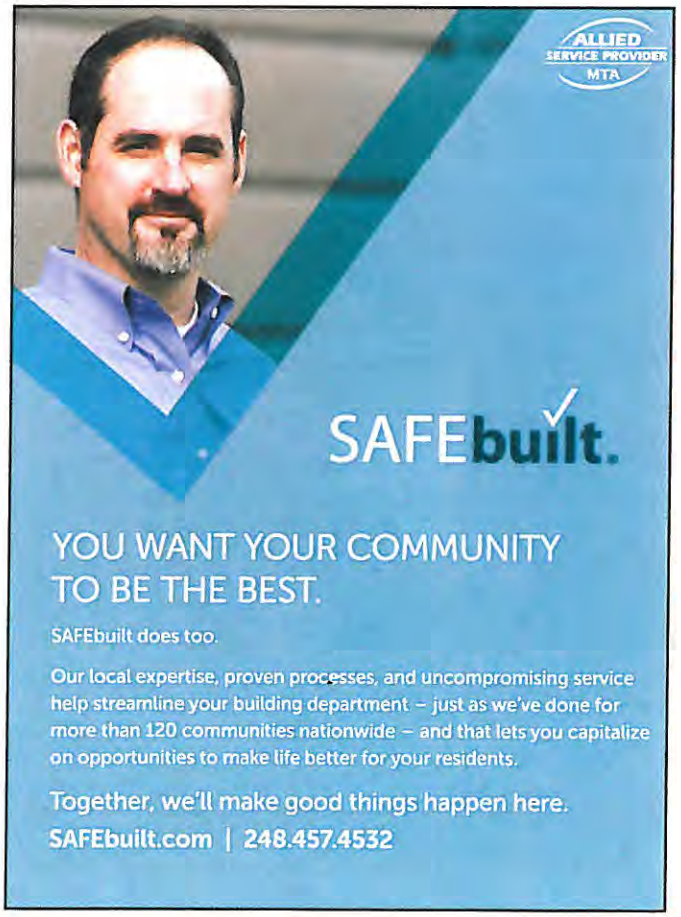

Township Cemetery Management

A source of comfort for families and friends, township cemeteries provide a final resting place for the departed, serve as a historical record and are a tangible remembrance of individuals' lives. Why do townships provide this personal service to their residents, and how can the township board and employees properly manage this important aspect of the community?

From a review of statutes that govern township authority over cemeteries, to the financial aspects of this valuable service, MTA's publication, *Township Cemetery Management*, serves as a guide to assist local units of government in carrying out this important function.

For more information about this and other MTA publications, or to order online, visit www.michigantownships.org/books.asp.

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