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M E M O R A N D U M

TO: Brooke Trentham Popp, Treasurer
Crystal Lake Township **VIA EMAIL**

FROM: Bryan E. Graham

DATE: November 5, 2020 *BEW*

SUBJECT: Review of proposed cemetery ordinance

I have now had the opportunity to review the proposed cemetery ordinance and the notes you sent to me. I will address the notes and make comments concerning the ordinance not covered by any notes, if appropriate.

1. The first paragraph of the ordinance and Section II are legally different and should each be maintained.
2. While I agree that a single term can be used throughout the ordinance for consistency and clarity, it is always important to read the provision in context to be certain that the particular term is appropriate.
3. The various sections of the ordinance are incorrect. Section I relates to the title of the ordinance, Section II relates to the purpose and intent of the ordinance, and the next section related to definitions should be Section III. Obviously, the remaining sections must then be renumbered. In addition, please be sure that you review the ordinance carefully because some references may need to be changed due to the renumbering.
4. Your notes refer to Section II, which would be the new Section III. I will address your comments as follows:
 - a. Concerning the definition of "Abandoned," as indicated below, I do not understand the last portion of the definition.
 - b. Concerning the definitions of "Board," "Township Board," and "Township," the term Township should be its own definition and not included with the terms Board or Township Board.

- c. I have no objection to deleting the term Ashes from the definition of “Cremains.”
 - d. I have no objection to deleting the term Gravesite from the definition of “Grave.”
 - e. I have no objection to deleting the terms Memorial and Stone from the definition of “Marker.”
 - f. I have no objection to deleting the term Burial Right Owner from the definition of “Owner.”
 - g. The terms Township Board and Township are not redundant. The term Township refers to your township as a legal entity. The term Township Board or Board refers to the elected officials that govern the Township. If the terminology is not appropriately used in the ordinance, then you should make the appropriate changes.
5. Concerning Section III, there are inconsistencies concerning the formatting of the definitions. In addition, the various definitions should not have lettered subsections. It has been my experience that if the cemetery ordinance must be amended in the future to add definitions, then those new definitions can be placed in their appropriate alphabetical locations without the need to re-letter the subsections. It is therefore my recommendation that the following formatting be used:

SECTION III: DEFINITIONS As used in this Ordinance,

“Abandoned Lot” or “Abandoned Burial Space” means any Lot or Burial Space that has been unused for a term of not less than 50 years. [The balance of this definition does not make sense to me.]

“Board” or “Township Board” means the Crystal Lake Township Board.

“Cemetery Administrator” means the person designated by the Board for cemetery management.

“Crypt,” “Mausoleum” or “Tomb” means the above ground . . .

“Green Burial” means a burial where the interment . . .

“Lot” or **“Plot”** means the area . . . for a Full Burial, measuring approximately one-quarter or less of those dimensions for Cremains, and having an assigned . . .

“Marker” or **“Monument”** means any substantial . . .

“Ordinance” [DELETE DEFINITION]

“Planting” means the organic . . .

“Sexton” means the person employed by the Township Board to look . . .

“Township” means Crystal Lake Township.

“Vault” means the underground . . .

6. Concerning Section III (C) [the new Section IV], I suggest the following language:

The Township Board shall from time to time by separate resolution establish the price for a Burial Right and the fee for transferring any Burial Right under the terms and conditions of this Ordinance.

7. Concerning Section III (D) [the new Section IV], if the township continues with the Cemetery Administrator, then the written request in subsection (D) and the green burials accommodations in Section V (L) [the new Section VI] should also be to the Cemetery Administrator. Please understand, however, that the township board can specify the official, as it deems appropriate.
8. Concerning Section III (F) [the new Section IV], the reference to Township should specify the official who will issue and execute the Certificate.
9. Concerning Section III (H) [the new Section IV], the specifics you state in your notes should be stated in the ordinance. This is not a legal issue, but a policy choice by the township board. I also agree the ordinance should specify procedures for the reversion of the Burial Rites to the township. I will provide suggested language later in this memo.

10. Concerning Section III (I) [the new Section IV], the reference to Township should specify the official who will approve the retaining walls. If the retaining walls are authorized by the ordinance, then the township board have responsibility to maintain those retaining walls. Because I do not know the topography of your cemetery, I am in no position to know whether retaining walls are necessary.
11. Concerning Section IV [the new Section V], I suggest that this section be rewritten as follows:
 - (A) The ownership of a Burial Right is nontransferable, except by inheritance.
 - (B) Upon the written request of the original purchaser of a Burial Right or a person inheriting the Burial Right, the Township shall repurchase the Burial Right from the owner at the original price paid to the Township, less an administrative fee as determined by resolution of the Township Board.
 - (C) If a Burial Right has not been used for more than fifty (50) years [THE TOWNSHIP SHOULD CONSIDER A SHORTER TIME PERIOD] after the Burial Right was purchased, the Cemetery Administrator shall send by certified mail, return receipt requested, to the last owner of record a written notice informing him or her that the fifty (50) year period has expired and that the Burial Right shall be forfeited to the Township, unless within sixty (60) days of the date of mailing the notice, he or she affirmatively indicates in writing to the Cemetery Administrator his or her desire to retain the Burial Rights.
 - (D) If the Cemetery Administrator receives no written response within sixty (60) days after mailing the notice required to be sent pursuant to subsection (C) above, the Burial Right identified in the notice shall revert to the Township free and clear from any claims of that original purchaser or any person who inherited the Burial Right. The Cemetery Administrator shall then cancel in the official cemetery records the Burial Right issued and indicate in those records that the Burial Right is eligible for resale under the terms and conditions of this Ordinance.
12. Concerning Section V(D) [the new Section VI], the reference to Township should specify the official who will reference to Township should specify the official who will approved the burial position. It seems to me this should be the Cemetery Administrator.
13. Concerning Section V(F) [the new Section VI], the phrase “the direct supervision of the Sexton” has sufficient clarity. Please remember that the Sexton is a township employee, subject to direction by the township board. I am not sure what other language you believe would be more specific in the ordinance.

14. Concerning Section V(G) [the new Section VI], please see my comments above.
15. Concerning Section V(J) [the new Section VI], I do not understand why the township would want to delete this provision. Clearly, it is in the township's best interest to have all fees paid prior to the burial. If the current practice is not to enforce this provision, then it is my recommendation that administrative changes be made to ensure the required payments.
16. Concerning Section V(K) [the new Section VI], the reference to Township should specify the official who will make the approval. It seems to me this should be the Cemetery Administrator.
17. Concerning Section V(L) [the new Section VI], the reference to Township should specify the official who will make the Green Burial approval. It seems to me this should be the Cemetery Administrator. In addition, if the ordinance will provide the Cemetery Administrator with discretion concerning variations in the ordinance for Green Burials, then the ordinance must provide standards that will govern this discretion. Otherwise, the township may be subject to liability for discriminatory applications of the variance powers.
18. Concerning Section V(O) [the new Section VI], the reference to Township should specify the official who will grant the permission. It seems to me this should be the Cemetery Administrator.
19. Concerning Section V(Q) [the new Section VI], the reference to Township should specify the official who will approve the work. It seems to me this should be the Cemetery Administrator.
20. Concerning Section V(S) [the new Section VI], the two references to Township should specify the official who will refuse interment and provide the refund. It seems to me this should be the Cemetery Administrator. Finally, the ordinance should provide that the administrative fee will be determined by resolution of the township board.
21. Concerning Section VI(A) [the new Section VII], the failure to keep the marker in good repair would not be a basis to consider the burial right abandoned. Remember, the burial right will have been used when the marker is installed. Concerning what constitutes good repair, the township has the ability to define that term. If the township would like to define what constitutes good repair, then I suggest the following be added at the end of the subsection:

For purposes of this subsection, "good repair" means _____.

22. Concerning Section VI(B) [the new Section VII], the reference to Township should specify the official who will provide the instructions. It seems to me this should be the Cemetery Administrator.
23. Concerning Section VI(C) [the new Section VII], the reference to Township should specify the official who will grant the exceptions. It seems to me this should be the Cemetery Administrator. In addition, if the ordinance will provide the Cemetery Administrator with discretion concerning what exceptions to make, then the ordinance must provide standards that will govern this discretion. Otherwise, the township may be subject to liability for discriminatory applications of the exception powers.
24. Concerning Section VI(F) [the new Section VII], the references to Township should specify the official who will take the specified actions. It seems to me this should be the Cemetery Administrator.
25. Concerning Section VI(G) [the new Section VII], the reference to Township should specify the official who will judge the markers. It seems to me this should be the Cemetery Administrator. In addition, if the ordinance will provide the Cemetery Administrator with discretion concerning what markers are offensive or improper, then the ordinance must provide standards that will govern this discretion. Otherwise, the township may be subject to liability for discriminatory applications of the powers.
26. Concerning Section VI(J) [the new Section VII], the reference to Township should specify the official who will determine when new markers are required and when that expense will be paid by the owner or the township. It seems to me this should be the Cemetery Administrator. In addition, if the ordinance will provide the Cemetery Administrator with discretion concerning these matters, then the ordinance must provide standards that will govern this discretion. Otherwise, the township may be subject to liability for discriminatory applications of the powers.
27. Concerning Section VIII(C) [the new Section IX], the word “are” should be inserted after the word “that” in line 2. This is merely a typo.
28. Concerning Section VIII(D) [the new Section IX], while I understand the desire to mark the graves of veterans with the American flag, I question whether the township truly desires to limit the American flag to only veterans graves. (“ . . . only U.S. veterans only . . .”). If a family is particularly patriotic, that family may want to mark the grave of their family member with the American flag, even if the individual interred did not serve in the United States military. Therefore, I would recommend the township reconsider this provision.

29. Concerning Section VIII(E) [the new Section IX], the reference to Township should specify the official who will determine when upright markers as specified will be permitted. It seems to me this should be the Cemetery Administrator. In addition, if the ordinance will provide the Cemetery Administrator with discretion concerning these markers, then the ordinance must provide standards that will govern this discretion. Otherwise, the township may be subject to liability for discriminatory applications of the matter.
30. Concerning Section VIII(G) [the new Section IX], the word “pot” in line 2 should be plural.
31. Concerning Section VIII(H) [the new Section IX], the reference to Township should specify the official who will determine when substantial planting will be allowed. It seems to me this should be the Cemetery Administrator. In addition, if the ordinance will provide the Cemetery Administrator with discretion concerning these plantings, then the ordinance must provide standards that will govern this discretion. Otherwise, the township may be subject to liability for discriminatory applications of the matter.
32. Concerning Section VIII(J) [the new Section IX], all but the last reference to Township should specify the official who will determine when plantings must be removed.
33. Concerning Section VIII(M) [the new Section IX], the reference to Township should specify the official who will determine when other surfaces will be permitted. It seems to me this should be the Cemetery Administrator. In addition, if the ordinance will provide the Cemetery Administrator with discretion concerning these surfaces, then the ordinance must provide standards that will govern this discretion. Otherwise, the township may be subject to liability for discriminatory applications of the matter.
34. Concerning Section IX(C) [the new Section X], the word “and” in line should be deleted. In addition, the two references to Township should specify the official who will determine other dates for burials. It seems to me this should be the Cemetery Administrator.
35. Concerning Section IX(D) [the new Section X],
 - a. I suggest that subsection 2) be deleted from the ordinance. If there is willful destruction or vandalism, then such action should be prosecuted under state law, where the penalties can be much more severe than under the township ordinance.
 - b. Your notes indicated a desire to omit subsection 9) “to reduce township liability.” I do not understand how the elimination of this subsection would

reduce township liability. The subsection currently prohibits the “possession or consumption of alcohol or similar intoxicating substances.” By eliminating this subsection, then individuals would be permitted to possess or consume alcohol or similar intoxicating substances within the cemetery. I believe this is exactly the opposite of what you are intending to accomplish.

36. Concerning Section IX(E) [the new Section X], this subsection should be deleted in its entirety. The ordinance should provide a penalty provision. As a result, any violation of the ordinance would be subject to those penalty provisions.
37. Concerning Section X(B) [the new Section XI], the phrase “parking shall be to not block” should be changed to “parking shall not block.”
38. Concerning Section XII(A) [the new Section XIII], I suggest that this subsection be written in its entirety as follows:

(A) The Township shall maintain records relating to the township cemetery operations, and it shall allow public inspection and/or disclosure of those records pursuant to the terms and conditions of the Michigan Freedom of Information Act.

There is no need to list each particular record. Like all other public records maintained by the township, those public records are subject to disclosure and/or inspection under the FOIA.

39. Concerning Section XII(B) [the new Section XIII], I have no objection to deleting the public inspection portion of this subsection. You are correct that it is covered in subsection (A).
40. Concerning Section XII(D) [the new Section XIII], I will defer to the township auditor concerning these financial matters.
41. Concerning Section XII(E) [the new Section XIII], I agree with the removal of this subsection. If a family desires to donate funds to the township to help maintain the cemetery, then this donation can be accepted by the township board and placed in the appropriate cemetery fund.
42. Concerning Section XIII(A) [the new Section XIV], the first reference to Township should be changed to the Township Board. The second reference to Township should be changed to the Cemetery Administrator.
43. Concerning Section XIII(B) [the new Section XIV], the last reference to Township should be changed to the Township Board.

- 44. Concerning Section XIV(B) [the new Section XV], this subsection should be rewritten as follows: “. . . made payable to Crystal Lake Township, deposited with the Crystal Lake Township Treasurer, and addressed . . .”
- 45. The two sections related to the repeal of the prior cemetery ordinances and the effective date of the new cemetery ordinance should be in separate sections of the ordinance. I suggest the following:

SECTION XVII REPEAL

All prior Township Cemetery Ordinances, as amended, including Ordinance No. 2014-09-9, are hereby repealed in their entirety.

SECTION XVIII EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days after being published in a newspaper of general circulation within the Township.

- 46. At the end of the ordinance, I suggest the following enactment and certification provisions:

Ordinance No. _____ of 2020 was adopted on the _____ day of _____, 2020, by the Crystal Lake Township Board as follows:

Motion by: _____
 Seconded by: _____
 Yeas: _____
 Nays: _____
 Absent: _____

 Sue Sullivan, Clerk

 Amy Ferris, Supervisor

I certify that this is a true copy of Ordinance No. _____ of 2020 that was adopted at a regular meeting of the Crystal Lake Township Board on _____, 2020 and published in the _____ on _____, 2020.

Dated: _____

 Sue Sullivan, Clerk

47. The cemetery ordinance you have provided consists of 9 pages of single-spaced and small font. It is, perhaps, the most detailed and complex cemetery ordinances I have reviewed. While the township has the legal ability to enact this type of an ordinance, it may not be necessary to include all of these provisions. That decision, however, is purely a policy choice by the township board.

If there are questions concerning any of my comments, please do not hesitate to contact me.

BEG

cc Amy Ferris, Supervisor (via email)
Sue Sullivan, Clerk (via email)