

ORDINANCE NO. 04-03

AN ORDINANCE RELATING TO THE PRESERVATION OF INACTIVE AND PRIVATE FAMILY CEMETERIES IN THE UNINCORPORATED AREAS OF MADISON COUNTY, KENTUCKY

WHEREAS, the Madison County Fiscal Court has the authority pursuant to KRS and KAR to enact ordinances to cause the preservation of inactive and private family cemeteries; and,

WHEREAS, there exists in areas of the unincorporated areas of Madison County, Kentucky, properties on which inactive and /or private family cemeteries exist. This ordinance is to establish guidelines for developing or dividing land with said cemeteries;

NOW, THEREFORE , be it ordained by the Fiscal Court of the County of Madison, Commonwealth of Kentucky, as follows:

I PRESERVATION: Ownership of Cemetery on Tract Proposed for Development

In preserving a cemetery, while at the same time developing or dividing a parcel, an applicant shall follow one (1) of the following options:

- a) Transfer the existing cemetery as part of a buildable lot. Ownership and maintenance of the cemetery would be left to the individual lot owner.
- b) Make the existing cemetery a separate lot. Ownership and maintenance of the cemetery would be assigned by written agreement with either the original owner of the cemetery, the subdivision homeowners association, the developer of a subdivision, or the Madison County Historical Society.

II Preservation: Maintenance

These requirements shall be followed if a developer or property owner wishes to preserve an existing cemetery, while at the same time developing or dividing their property. The regulations outlined below apply only to inactive and private family cemeteries. Any waiver of these regulations must be requested from the Planning Commission. Transfer of responsibility of cemetery maintenance to lot owner must be on the plat and deed restrictions. If a private cemetery exists on a parcel of land and the exact location of grave sites is not able to be determined, or if a cemetery is discovered during construction, a developer or property owner is advised to follow the procedures and guidelines stated in Section III a.b.c.

- a) Cemetery boundaries shall be established by the developer and submitted to the Madison County Planning and Development Commission for approval. Request for approval should include evidence of location such as fences, walls, grave stones, natural features or recorded documents. If sufficient evidence for location of cemetery boundary does not exist then the Madison County Planning and Development Commission may require developer(s) to have a professional archeologist view the site and make a determination as to the boundaries and potential number of grave sites.
 - 1) No new structure or building addition shall be built within 30 feet of an existing private family cemetery regardless of adjoining property lines or land ownership. This 30 foot limitation is also required regardless of whether the cemetery is part of a building lot or is conveyed as a separate lot. The 30 foot limitation shall be in the form of an exclusive cemetery easement.
 - 2) No grading, excavating, paving or land disturbance shall be allowed within thirty (30) feet of a cemetery.
- a) Developer shall repair or replace any existing cemetery fences or walls. Stone or masonry fences shall be replaced with the same type or suitable material. Existing cemetery fences or walls shall be repaired or replaced at the time of development or prior to the Final Plat or Final Development Plan approval.
- b) Developer shall be required to construct a new fence if one does not exist at the time of establishment of cemetery boundary. Fence material shall fit with the character of the proposed development. The following materials are acceptable: Stone, brick, ornamental iron, pressure treated wood (picket or plank constructed) with a quality of workmanship and material that guarantees a life expectancy of 20 years.
- c) At the time of construction of new fence, dead or decaying trees and heavy underbrush shall be removed from the cemetery. Remaining trees shall be pruned to a height to create a clear vertical view of 8 feet. Ground cover shall also be established at this time.
- d) A statement by the property owner, applicant or developer shall be made on the Development Plan or Division Plat regarding cemetery

ownership and maintenance.

- e) A Certificate of Land Use Restriction, Cemetery Easement and a Deed Restriction shall be recorded in the Madison County Clerk's office acknowledging the location, size, ownership and maintenance of a cemetery. This information shall also be recorded on the Final Development Plan, and the Final Plat for a subdivision if not yet recorded.
- f) Public or controlled access shall be provided by the developer or owner to the existing cemetery with a minimum five foot wide recorded ingress/egress pedestrian cemetery Access Easement accessible from a public or private street within the development. The recording of the Cemetery Access Easement shall follow the same guidelines in Section II.f.

III. Preservation: Relocation and Discovery Procedures

In order to assist property owners or developers in their cemetery preservation or relocation work, the following procedures and guidelines shall be followed. These procedures or guidelines are to be followed by each property owner or developer and shall be enforced by the Madison County Planning and Development Commission and the Administrative Official. The procedures are based upon either cemetery preservation or relocation plans.

- a) **Preservation of Existing Cemetery:** If a property owner desires to preserve an existing cemetery while developing or dividing his or her own property, then the property owner shall state his or her intent to the Madison County Planning and Development Commission in writing and follow the lot and maintenance requirements as stated in the regulations.
- b) **Relocation of Existing Cemetery:** If a property owner desires to relocate an existing cemetery with advice from the Madison County Planning and Development Commission, then the property owner shall state his or her intent to said commission in writing and follow the requirements for relocation per Kentucky Revised Statutes and Kentucky Administrative Regulations. Copies of all required state and local applications and permits during the relocation procedure shall be submitted to the Planning Commission. The Madison County Coroner's Office shall be involved in the relocation of a cemetery.
- c) **Discovery of an Unknown Cemetery:** If a property owner or developer unintentionally discovers a cemetery during construction, which was previously unknown, all work in the area shall cease immediately. The

property owner or developer shall be responsible to report this disclosure to the Madison County Planning and Development Commission. As a result, the following steps should be taken:

- 1) The property owner or developer has the option of stating in writing to the Planning Commission whether he or she will preserve the cemetery in accordance with these and state regulations or relocate the cemetery in accordance with state law. Either option will result in a submittal to the Planning Commission a revised subdivision plat, development plan and/or permit to be reviewed and approved by the Planning Commission. The Planning Commission shall be available to advise the property owner or developer of the benefits of cemetery preservation versus relocation.
- 2) If a property owner or developer decides not to report the presence of a cemetery that is previously unknown and attempts to conceal any evidence that a cemetery ever existed and discovery of this fact is presented to the Planning Commission or Fiscal Court, then the Planning Commission shall notify the property owner or developer in writing to stop construction work in the area surrounding the cemetery. At the next regularly scheduled Planning Commission meeting, the property owner or developer must be present to discuss the matter and offer a solution. This solution shall include the following:
 - a) The boundaries of the cemetery shall be identified by a Professional (Kentucky Registered) archaeologist at the expense of the owner or developer.
 - b) The cemetery fence (if it exists) shall be repaired, replaced or reconditioned at the owner or developer's expense. The cemetery's condition shall be returned to its natural state and maintained per Section II b.c. and ownership shall be established per Section I.b.
 - c) Inspection of the cemetery preservation work shall be done periodically by the Planning Commission Administrative Official to insure the work is completed in a reasonable amount of time.

IV COUNTY CEMETERY BOARD

A county acting under this ordinance will create a county cemetery board that may apply to the department for local government for grants to restore and maintain non-profit cemeteries that do not receive perpetual care funds.

This board shall consist of five members that shall meet 3 times annually with no more than 3 representing the same political party. Members shall be appointed by the Fiscal Court.

The appointment term of each county board member shall be 4 years, except for initial appointment terms. Initial appointment terms shall be as follows: 2 members appointed to 1 year term; 2 members appointed to 2 year terms; and 1 member appointed to a 3 year term.

V. Land Use Regulations

The Land Use Regulations for Madison County, Kentucky shall reference this ordinance in Section 407.

That the County Clerk cause this ordinance to be published in accordance with the appropriate Kentucky Revised Statues.

This Ordinance No. _____ shall become effective on the date of the second reading and adoption.

DATE OF FIRST READING: Jan 27, 2004

MOTION BY: William Tudor

SECONDED BY: Roger Barger

VOTE: YES NO

JUDGE, KENT CLARK ✓
MAGISTRATE LARRY COMBS ✓
MAGISTRATE ROGER BARGER ✓
MAGISTRATE WILLIAM TUDOR ✓
MAGISTRATE BILLY RAY HUGHES ✓

DATE OF SECOND READING: Feb 10, 2004

MOTION BY: William Tudor

SECONDED BY: Roger Barger

VOTE: YES NO

JUDGE, KENT CLARK ✓
MAGISTRATE LARRY COMBS ✓
MAGISTRATE ROGER BARGER ✓
MAGISTRATE WILLIAM TUDOR ✓
MAGISTRATE BILLY RAY HUGHES ✓

[Signature]
MADISON COUNTY JUDGE EXECUTIVE

Attest:
[Signature]
MADISON COUNTY CLERK