

CHRONOLOGY OF EFFORTS TO RESTORE THE OLD FRENCH CEMETERY LOCATED ON LAND PARCEL 258-45 AT 743 BOROUGH ROAD, PEMBROKE, NEW HAMPSHIRE

January 10, 2001 The Cemetery Commission submitted a warrant article to receive up to \$8,000 from the Town Trust Funds to improve the French Cemetery on Borough Road. This will appear as Article 13 on the warrant for the March 2001 town meeting.

April 11, 2001 The town meeting approved the warrant article to appropriate up to \$8,000 from the Town Trust Funds to improve the French Cemetery on Borough Road. Mr. Peter [Gary] Foster, on whose land the cemetery stands, wrote a letter to the Cemetery Commission stating that Foster would require a release from anyone who would be working on Foster property, protecting the Fosters from any liability for injuries suffered by workers while on the property, asking to be notified of dates when work would be done, and requesting a meeting with the Cemetery Commission to review restoration plans. Howard Robinson, chair of the Cemetery Commission, will call Mr. Foster to say that the Commission will inspect the French Cemetery on May 5 and will be glad to begin discussions with Mr. Foster at that time. (Cemetery Commission Minutes)

May 9, 2001 The Cemetery Commission discussed the standards for cleaning the Old French Cemetery that were proposed by Mr. and Mrs. Foster. The Commission will try to locate a contractor to perform the entire contract, including restoration of the gravestones and the stone cemetery wall. Commission Secretary James Garvin will draft specifications for the job. (Cemetery Commission Minutes)

June 13, 2001 The Cemetery Commission discussed draft specifications for cleaning Old French Cemetery and agreed to compile a list of contractors who might bid on the job. (Cemetery Commission Minutes)

July 11, 2001 The Cemetery Commission discussed the draft specifications and the list of potential bidders. Because Mr. and Mrs. Foster are requesting minimal tree and brush removal in the cemetery and because of the protective nature of the Fosters' dogs, the Commission agreed to begin by soliciting expressions of interest in the job. The Commission will then invite any who express interest to inspect the cemetery, with the Fosters invited. (Cemetery Commission Minutes)

August 8, 2001 The Cemetery Commission has mailed Invitations to Bid and Specifications for cleanup of Old French Cemetery to 12 landscaping contractors and stone wall builders. (Cemetery Commission Minutes)

October 31, 2001 Only one bid for cleanup of Old French Cemetery was submitted: that of Daniel Stafford of Stafford's Stonemaster in Loudon, for \$3,300. Secretary James Garvin will write to Mr. Stafford accepting his bid and enclosing the specification that

the Commission drafted. Since Mr., Stafford requests a payment of one third of the contract price at the beginning of work, Secretary Garvin will instruct Mr. Stafford to contact Town Administrator David Stack to request the initial payment. (Cemetery Commission Minutes)

November 29, 2001 Mr. Foster wrote to the Cemetery Commission stating, in part, "The idea was put forward to remove all the trees[,] which I was opposed to but said I would compromise and allow the brush to be removed. I also requested a waiver to be completed to release me of any injury which may occur by the contractor or people in his employment while they are on my property and that the contractor responsible and repair any damage to my property which may occur. Upon receiving a copy of the contract between the Town & Contractor I was somewhat puzzled when reading paragraph two[,] Items 1, 2 and 3[,] which are unacceptable to me. Also to find no mention of a release or agreement to repair damage to my property." (Letter, Foster to Cemetery Commission, November 29, 2001)

December 15, 2001 The Cemetery Commission replied to Mr. Foster by letter on December 15, 2001, informing him that "the Commission feels that the responsible expenditure of public funds for cemetery restoration requires the removal of interfering or damaging vegetation. We feel that our standards for restoration of the cemetery, which focus on preventing further damage to graves and gravestones from tree roots and falling trees, are incompatible with the requirements you have outlined. We will therefore not proceed with work that requires crossing your property at this time. The Commission wishes to thank you for the earlier work you did to remove fallen trees from the cemetery enclosure." (Cemetery Commission Minutes of January 9, 2002, and attached correspondence)

January 9, 2002 Cemetery Commission chair Howard Robinson reported that the contract with Stafford Stonemaster has been canceled by mutual agreement. The restrictions placed on the project by landowner Pete [Gary] Foster included full compensation for any damage to the Foster property and replacement of trees cut in the cemetery with nursery-grown stock. (Cemetery Commission Minutes)

July 10, 2002 Cemetery Commission secretary "James Garvin distributed a draft of a letter he had written to the Board of Selectmen at the earlier request of selectman Brian Tufts, asking them [the Board of Selectmen] to institute proceedings to declare the Old French Cemetery (French-Dearborn Cemetery) off Borough Road an abandoned burial ground for the purposes of municipal management. On a motion by Bill Stanley, seconded by Ken Fowler, the Commission unanimously voted to send the letter as written. Chairman Robinson signed the letter, and noted that he could supply the names of some of the oldest burials in the cemetery for the public notice that is required under RSA 289:20 I." (Cemetery Commission Minutes).

July 10, 2002 Communication sent from Cemetery Commission to Board of Selectmen requesting Board to take necessary action to declare French-Dearborn

Cemetery as “Abandoned” under the provisions of NH RSA 289 (David Stack Memorandum, March 3, 2003)

July 10, 2002 *Letter from the Pembroke Cemetery Commission to the Board of Selectmen of the Town of Pembroke*

Gentlemen:

By this letter, the Pembroke Cemetery Commission requests that the Board of Selectmen begin proceedings to declare the Old French Cemetery, located off Borough Road, an abandoned burial ground under the provisions of RSA 289:19-20.

The Old French Cemetery is presently in extremely neglected condition. Its boundary walls are in disrepair, a number of its headstones have toppled, and the entire enclosure is overgrown and not accessible by any direct pathway from Borough Road.

Designation of the French Cemetery as an abandoned burial ground will permit the Town of Pembroke, acting through its Board of Selectmen and Cemetery Commission, to manage, preserve, maintain, or restore the cemetery as a municipal cemetery.

At its annual meeting in March 2001, the town voted to raise and expend a sum not to exceed \$8,000 to restore the Old French Cemetery, and to withdraw such sum from the Cemetery Maintenance Capital Reserve Fund for this purpose.

The town did not, however, precede this vote with the actions necessary to declare the Old French Cemetery an abandoned burial ground under New Hampshire law. The absence of this designation for the cemetery allowed the owner of surrounding land to place burdensome demands on the Cemetery Commission and on the contractor who submitted a bid for restoration. Ultimately, the Cemetery Commission was forced to cancel the restoration contract out of fear of exposing the town and the contractor to unacceptable levels of liability.

The correct procedure to declaring a cemetery abandoned and making it a municipal cemetery for management purposes is given in RSA 289:20. It is as follows:

- 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 descendant 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 interest 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.

289:21 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.

RSA 289:4 further states that

Every municipality may raise and appropriate annually a sufficient sum to provide for the suitable care and maintenance of deserted burial grounds and cemeteries which have been declared abandoned in accordance with RSA 289:19-21.

The Cemetery Commission therefore requests that the Board of Selectmen begin this procedure in order to give the town the proper authority to manage and restore the Old French Cemetery in the future.

July 22, 2002 At the next meeting of the Board of Selectmen, the Board voted to move forward with proceedings to declare the French-Dearborn Cemetery as "Abandoned." Cemetery Commissioner Jim Garvin was to enter into discussion with the property owners (Mr. and Mrs. Gary Foster) regarding access; and the Town Administrator was to consult with Town Counsel regarding the establishment of a right-of-way (David Stack Memorandum, March 3, 2003).

July 25, 2002 Town published notice of intent to declare French-Dearborn Cemetery as "Abandoned." Per the statute, any direct descendants of the French or Dearborn families are asked to contact the Board to notify the Town of their intent to grant or deny their permission for this action by October 25, 2002. (David Stack Memorandum, March 3, 2003).

Intent to Declare French-Dearborn Cemetery

**As Abandoned (NH RSA 289)
Town of Pembroke, NH**

Per the provisions of NH RSA 289:19-20, the Town of Pembroke intends to declare the Old French Cemetery, also known as the French-Dearborn Cemetery, as abandoned and make it a municipal cemetery for management purposes. The oldest markers in the cemetery contain the following names: 1) William French, d. Aug. 26, 1845, Hannah Lane French, his wife, d. Mar. 13, 1872, Joel French, their son, d. May 19, 1849, and Sidney French, their son, d. Jan. 8, 1842; and 2) Ebenezer Dearborn, d. Jan. 23, 1848, Anna Dearborn, his wife, d. Feb. 8, 1843, Their children: Ira Dearborn, d. Mar. 8, 1817, Harriet A. Dearborn, d. Nov. 5, 1839, and Ira P. Dearborn, d. Jan. 20, 1826. Any direct descendant of any of these persons is asked to contact the Town of Pembroke Board of Selectmen, 311 Pembroke Street, Pembroke NH 03275, to notify the Town of their intent to grant or deny their permission for this action, by October 25, 2002.

Board of Selectmen
Town of Pembroke, NH

August 14, 2002 Howard Robinson reported that the Board of Selectmen voted 2 to 0 to pursue the designation of the Old French Cemetery off Borough Road as an abandoned cemetery for the purposes of assuming municipal management of the cemetery. Chairman Robinson reported that he received many phone calls about the restoration of the cemetery following the publication of an article about the cemetery in the *Hooksett Banner* on July 25, 2002. (Cemetery Commission Minutes)

September 11, 2002 Howard Robinson distributed a copy of a legal notice declaring the town's intent to designate the Old French Cemetery off Borough Road as an abandoned cemetery for the purposes of assuming municipal management of the cemetery. See the notice, above. (Cemetery Commission Minutes)

October 9, 2002 The Commission noted that it will be important to ask the selectmen to declare a right-of-way from Borough Road to the cemetery gate in order to allow access to the enclosure for maintenance and brush cutting in the future. (Cemetery Commission Minutes)

October 28, 2002 Per statute, the notice to declare abandonment is read aloud at the Board meeting. Public hearing date of November 18, 2002 is announced. (David Stack Memorandum, March 3, 2003).

November 13, 2002 The Commission discussed the town's intent to designate the Old French Cemetery off Borough Road as an abandoned cemetery for the purposes of assuming municipal management of the cemetery. Ken Fowler reported that a public hearing on this proposal will be held at 6:30 p.m. on Monday, November 18, 2002, at the selectmen's meeting. Chairman Howard Robinson asked all Commission members to attend if possible. (Cemetery Commission Minutes)

November 18, 2002 Public hearing held on Town's intent to declare French-Dearborn Cemetery as "Abandoned." Before vote is taken to declare, Board votes to have Town Counsel perform a title search of the property to determine if a right-of-way exists. Item is tabled to December 2, 2002. (David Stack Memorandum, March 3, 2003).

December 2, 2002 Members of the Cemetery Commission met with the Board of Selectmen to discuss access issues. The Board had not yet received a report from Town Counsel. The Commission is also going to perform more research. Item tabled pending more information. (David Stack Memorandum, March 3, 2003).

December 11, 2002 Howard Robinson and James Garvin reported that they had both received telephone calls from *Concord Monitor* reporter Sydney Leavens regarding the town's intent to designate the Old French Cemetery off Borough Road as an abandoned cemetery for the purposes of assuming municipal management of the cemetery. Ms. Leavens is working on a story on the cemetery. (Cemetery Commission Minutes)

December 23, 2002 Town receives title search information from Town Counsel. Town Counsel determined that the Town would be entitled to enforce right of access to the cemetery to maintain it. (David Stack Memorandum, March 3, 2003).

January 6, 2003 Board reviews communication from Town Counsel at its meeting. Board votes to declare Cemetery as "Abandoned." Cemetery Commission is to declare appropriate location of the right-of-way access. A copy of the Town Counsel's opinion is included. Letter is sent and Mr. Foster is asked to respond before February 24, 2003. (David Stack Memorandum, March 3, 2003).

February 24, 2003 Mr. Foster and Howard Robinson, Cemetery Committee Chair, met with the Board of Selectmen to discuss access to the French-Dearborn Cemetery. The following plan was laid out at the meeting: 1) the Cemetery Commission will discuss a contractual agreement with Mr. Foster to have him maintain the Cemetery; 2) Mr. Foster will put in writing what he would like to avoid and what he would be willing to provide to accomplish the responsibilities that the Town has, with minimal disturbance to the land; 3) the Cemetery Commission will send Mr. Foster copies of all correspondence, releases, etc., relative to its previous attempts to gain access. The parties all agreed to meet again on March 17, 2003 to discuss the matter further. (David Stack Memorandum, March 3, 2003).

February 24, 2003 *Minutes of the Pembroke Board of Selectmen, February 24, 2003.*

Pete [Gary] Foster met with David Stack, Howard Robinson, Chair, Cemetery Commission and the Board of Selectmen to discuss a potential right-of-way easement so the Cemetery Commission can perform maintenance at Old French's Cemetery. Chairman Belanger stated that the Cemetery Commission's intent is to gain access to perform maintenance twice a year, usually in spring and in fall. Old French's

Cemetery will not be used as an active cemetery. The Commission needs to replace 3-4 headstones, replace the gate and redo a portion of the stone walls. Mr. Foster stated that when the contractor approached him last year, he had three requests:

1. The contractor agrees to give a release to Mr. Foster to be on his property.
2. The town or contractor assures liability for any damage to Mr. Foster's property.
3. Mr. Foster is allowed some input as to what trees would be cut down.

Mr. Foster stated that when the contractor that the Cemetery Commission lined up to do the work contacted him, there was no paperwork in place. Mr. Foster stated [that] he never received the requested releases in writing.

Appropriate notice was posted and no family members came forward who would assume responsibility for the cemetery. David Stack noted that State statute obliges the town to take care of the cemetery, once it was declared an abandoned cemetery. By deed covenant of 1877 from Ozem Hurd to Elihu B. Robinson, there is a right-of-way to maintain the wall and cemetery. Howard Robinson stated that the Town can establish legal direct access to the cemetery for minimal use. Foster asked what the right-of-way access would look like. It would look like a path. It was discussed that there are existing stone walls along the road and bordering the cemetery. The ROW would be 12' wide and 150' long as proposed. Mr. Foster stated that the ROW as proposed would cross two separate parcels of land. Mr. Foster stated that according to a survey he had done, the property line is actually 12' back from where it is located on the plan. The proposed right-of-way affects Lot #743 (Foster) and Lot #749 (owner unknown at this time). Mr. Foster stated that he would be happy to show the Board and Cemetery Commission the boundaries.

Howard Robinson stated that the intent is to remove all the trees and roots from Old French's Cemetery with no seeding. Howard stated that nothing will be touched outside of the cemetery boundaries. Mr. Foster would prefer to leave a few trees along the stone wall that are inside the cemetery stone wall. In particular, Mr. Foster does not want to see a large maple tree at the corner of the cemetery removed. Howard Robinson stated that the requested releases were provided to Mr. Foster in the past.

The next step would be for the Town/Cemetery Commission to contact the property owner of Lot #749 to discuss the proposed right-of-way. David Stack stated that it would be helpful if Mr. Foster provided the Town with a copy of his survey so that the Town can adjust the tax map accordingly.

Discussion ensued on whether it was necessary to remove a 12' section of the stone wall at the road to gain access. Selectman Goff asked if the

work could be done with hand tools. Howard Robinson stated that the plan was to chip the brush. It was discussed that an alternative would be to bring the brush out of the cemetery to the roadside. Mr. Foster would like to avoid taking the 12' section out of the stone wall. Mr. Foster proposed an alternative that the contractor crosses the Foster lawn, driveway and leach field to access the cemetery. It was discussed that there is too much potential for damage with access across the driveway and leach field. Howard Robinson would prefer a ROW other than the Foster driveway and lawn. Per RSA 289:14 there is a method of obtaining a temporary right-of-way. In this instance, the Board of Selectmen may designate where the crossing will be to afford access. Selectman Goff stated that the right-of-way will not be a road. Right of entry by foot may also be an option for consideration. Selectman Goff stated that it is just as important to protect what is not in the cemetery as it is to maintain the cemetery. Howard Robinson stated that the Cemetery Commission['s] intent is to disturb the land as little as possible to accomplish the task. The Commission plans to cut trees that are 3" to 6" thick as necessary to get a pickup truck into the site. No gravel will be laid on the right-of-way. The propose[d] 12' cut in the stone wall would be on the other property owner's land and must be discussed with that property owner.

Selectman Goff asked if what we want to accomplish could be done without a road, chipper, or pickup truck. David Stack will contact the owner of Lot #749, find out where the boundary lines are and see if that property owner will work with the Town to maintain the cemetery. It may be possible to develop a straight right-of-way into the cemetery, rather than on an angle.

The Cemetery Commission, Mr. Foster, and the Town will revisit this issue on 3/17/03. In the meantime, while the Town researches the boundaries and speaks with the new property owner of Lot #749, the Cemetery Commission may wish to negotiate an agreement in writing with Mr. Foster for Mr. Foster to maintain Old French's Cemetery to a certain level. David Stack will provide a summary of the concerns expressed, the timeline, the steps the Town has taken, and a summary of where we stand now.

Action Items: The Town Administrator will send a synopsis of the discussions to all interested parties. The Cemetery Commission will discuss a contractual agreement between the Cemetery Commission and Mr. Foster for maintenance of Old French's Cemetery. The Cemetery Commission will send Mr. Foster copies of prior correspondence and releases. Mr. Foster suggested that this should be sent by Certified Mail.

Action Items: The Cemetery Commission will put their proposal for the right-of-way and cemetery maintenance work in writing. Mr. Foster will

put in writing what he would like to avoid, and what he would be willing to provide to accomplish the responsibilities that the Town has with minimal disturbance to the land. The parties will meet to discuss this further on 3/17/03.

CITIZENS COMMENT — none

March 12, 2003 Jim Garvin passed around a copy of a newspaper story of December 19, 2002, by *Concord Monitor* reporter Sydney Leavens regarding the town's intent to designate the Old French Cemetery off Borough Road as an abandoned cemetery.

Chairman Howard Robinson reported on a series of meetings that he has attended with the board of selectmen regarding the French-Dearborn Cemetery. He distributed 1) copies of the minutes of the meeting of the board of selectmen of February 24, 2003, at which he was present, together with Mr. Gary (Pete) Foster; 2) copies of a memorandum dated 3/3/03, written by town administrator David Stack to sum up deliberations on the French-Dearborn Cemetery between July 10, 2002, and February 24, 2003; and 3) copies of plans indicating property boundary lines related to the cemetery. The plans make it clear that the cemetery lies within land owned by Mr. Foster, but that much of the length of a right-of-way extending from Borough Road to the date of the cemetery would cross land of another property owner, as yet unidentified. (Cemetery Commission Minutes)

Chairman Robinson reported that the board of selectmen will again take up the matter of the cemetery at their meeting on Monday, March 17, 2003. He asked that all members of the Commission attend the meeting if possible.

Chairman Robinson asked secretary James Garvin to prepare a request to the board of selectmen expressing the Commission's wish that the Commission be authorized to contract for the work. The request should include specifications for any future work to be done at the cemetery, adapted from the specifications that were sent to potential bidders in August 2001. The letter should ask that in the event the board of selectmen wish to authorize Mr. Foster to perform the needed work, the town shall require Mr. Foster to follow the Commission's specifications, permit annual or biannual inspections of the cemetery, and permit others to enter the cemetery for the purpose of repairing gravestones or carrying out needed maintenance and repairs. (Cemetery Commission Minutes)

**SPECIFICATIONS
FOR RESTORATION OF
THE FRENCH-DEARBORN CEMETERY
BOROUGH ROAD
PEMBROKE, NEW HAMPSHIRE
2003**

The Town of Pembroke, New Hampshire, has declared the French-Dearborn Cemetery off Borough Road to be an abandoned cemetery and has extended town jurisdiction over the cemetery for management purposes under the provisions of RSA 289:19-21.

The following specifications shall govern repairs and vegetative clearing in the French-Dearborn Cemetery:

STONE WALLS

1. Re-set stones where the walls have collapsed or have been damaged by falling trees.
2. Realign and plumb the stone gate posts so that the cemetery gate opens and latches properly.

3.

VEGETATIVE GROWTH WITHIN THE CEMETERY WALLS

1. Grub and remove all dead and fallen trees, tree stumps, and roots from the cemetery.
2. Grade and level soil where tree roots have been removed.
3. Cut at grade level and remove all trees and woody shrubs within the walls that have a caliper dimension (diameter) of four inches or less at a height of four feet above grade.

GRAVESTONES

1. Plumb leaning stones by digging and resetting earth at their bases.
2. Carefully probe the ground surface to locate fallen and covered stones.
3. Re-set fallen stones that are unbroken and still retain a solid base for support.
4. Uncover broken stones and leave the pieces exposed to view in their original locations. *Mending of broken stones will be carried out by others under separate contract.*

(Cemetery Commission Minutes)

April 9, 2003 Chairman Howard Robinson reported on further developments on granting access to the French-Dearborn Cemetery off Borough Road. Gary Foster had called to cancel the scheduled discussion of the matter at the selectmen's meeting of March 17, 2003. The selectmen have not heard further from Mr. Foster. Town administrator David Stack has suggested that the Cemetery Commission approach Morris [Maurice] Regan, owner of the land that abuts the cemetery on the north, and ask if he will grant a right-of-way to the cemetery across his land.

Chairman Robinson asked Secretary Garvin to write to Mr. Regan, explaining the history of the declaration of the cemetery as abandoned under RSA 289:19-21 and asking if Mr. Regan will grant a right-of-way to permit initial cleaning of the cemetery, annual

inspections for damage, and spring and fall clean-up. The letter should stress that no new burials will be permitted in the cemetery. (Cemetery Commission Minutes)

April 21, 2003 *Minutes of the Pembroke Board of Selectmen, April 21, 2003.*

French-Dearborn Cemetery – Mr. Robinson reported that Jim Garvin had sent Mr. Foster, on whose property the cemetery sits, a packet of information including all previous correspondence on Old French's Cemetery. Mr. Regan no longer owns an alternative piece of land. The board reviewed a map that shows the small square lot near the cemetery is merged with the house lot. The Commission had sent a letter to Maurice Regan, who thought it was great idea to refurbish the French-Dearborn Cemetery, but unfortunately, he does not own the property any more. The entire parcel includes a little over an acre of land and belongs to a new owner, Mr. Sabin Alberts of Hooksett. The Cemetery Commission will write to Mr. Alberts to request access across his land. The Commission would still need to cross a small piece of Mr. Foster's land, about ten feet on the back side of the cemetery. The Town Administrator will call Mr. Foster to follow up.

April 23, 2003 Pembroke Cemetery Commission secretary James Garvin wrote to Sabine Alberts, P. O. Box 16007, Hooksett, NH, who had been identified as the owner of the land parcel at 749 Borough Road, a former schoolhouse lot, with the schoolhouse converted to a dwelling. The letter included a plan taken from the town tax maps. The letter asked

. . . if you would consider granting a right-of-way across your land to the cemetery. We would like to have such a right-of-way 1) to carry out the initial cleanup of the cemetery, repair of its walls and gates, and restoration of fallen and broken gravestones; 2) to permit an annual spring inspection for damage; and 3) to permit maintenance of the cemetery during regular spring and fall town-wide cemetery cleanup.

The Cemetery Commission has worked with the Board of Selectmen to declare the French-Dearborn Cemetery abandoned only to permit us to show the same respect and care to this cemetery that we extend to the other cemeteries in town. We have no intention of permitting future burials in the cemetery.

We would like to remove all trees and saplings in the cemetery that are under four inches in diameter. I am enclosing specifications that would guide the initial cleanup of the cemetery.

The Commission never received a reply to this letter.

August 20, 2003 The Commission reviewed the history of the Old French Cemetery cleanup with [newly appointed Public Works Director] Walter Norris. Howard Robinson noted that the Board of Selectmen sought a status report on the project. Mr. Robinson told town administrator David Stack that the Commission believes that the laying out of a right-of-way across private land to the cemetery is now a matter for the Selectmen to perform.

April 10, 2008 Sometime prior to this date, Ryan Cheney, formerly of Pembroke but then either serving in the United States Air Force or employed by the Strategic Air Command, contacted Cemetery Commission secretary James Garvin and identified himself as a descendant of some of the persons who are buried in the French-Dearborn Cemetery. Garvin photocopied and mailed to Mr. Cheney most of the documents that are cited on the preceding pages of the present chronology. In an e-mail message of April 10, Mr. Cheney asked,

From the Minutes of the Board of Selectmen, dated 24 February 2003, it stated that by deed covenant from the late 1800's from Herb to Samuel Robinson, there was a right-of-way to maintain the wall and cemetery. Was a copy of this deed covenant ever provided to either the Board of Selectmen or the Cemetery Commission for review? I haven't come across a copy while going through this paperwork [that you sent to me]. However, I did notice in the Concord Monitor article dated 19 December 2002, that the Town's attorney, Mr. Raymond[,] had uncovered a century-old deed that creates right-of-way from the road to maintain just the cemetery's wall. If the Selectmen's minutes and the article are referring to the same, there appears to be some discrepancy as to the contents of the deed. Who might I need to contact, in order to obtain a copy of the deed covenant?

Garvin replied that the Cemetery Commission had never been given a copy of the deed or deeds that create a right-of-way from the road to the cemetery, and provided to Cheney instructions on how to search for the deed or deeds at the Merrimack County Registry of Deeds.

April 17, 2008 Ryan Cheney located the relevant deeds at the Merrimack County Registry of Deeds and e-mailed scans to secretary Garvin. The relevant deeds and their language regarding the deeded rights with respect to the cemetery are summarized here:

Chauncey Cofran French and Abiah R. French to Ozem Hurd, January 24, 1874 (Book 216, page 387), 19 acres and 7 square rods on Borough Road, "reserving the Burying ground of the French family and the privilege of repairing the fence around the same."

Ozem or Osem Hurd to Elihu B. Robinson, October 10, 1877 (Book 237, pp. 215-216A), 6½ acres "Reserving the Burying ground of the French family and the privilege of repairing the fence around the same."

Elihu B. Robinson to Samuel D. Robinson, March 28, 1902 (Book 349, page 61), 6½ acres “Reserving the Burying ground of the French family and the privilege of repairing the fence around the same.”

May 29, 2009 Ryan Cheney contacted Pembroke town administrator David Jodoin asking for information, apparently pertaining to the supposed right-of-way to the cemetery. On May 30, 2009, Cemetery Commission secretary James Garvin promised to deliver “minutes of [former] Commission meetings and other records of a proposal to clean and repair the landlocked cemetery and (after this was met with objections by the owner of the surrounding land) to declare the cemetery “abandoned” so that the town could assume official custody of the parcel.”

April 19 [misdated June 19] 2020 Gary Foster wrote a letter of Cemetery Commission chair Ellen Paulsen, stating “If you are still interested in maintaining the French cemetery located on my property I will allow that to happen provided I have written assurance that I will not be held responsible for any injury that may occur on my property. I would like to keep vehicles and equipment off my lawn and driveway.”

April 27, 2020 After consulting with other members of the Commission, Cemetery Commission secretary James L. Garvin wrote to Gary Foster stating

We need to review our records to determine whether the legal process of declaring the cemetery an “abandoned burial ground” under RSA 289:19-20 was fully completed.

If this legal process was completed, the town would be authorized to assume responsibility for maintenance of the cemetery if the current Board of Selectmen and the current Pembroke Cemetery Commission are willing to vote to take that responsibility and work to appropriate necessary funding.

Future clean-up and repair work in the cemetery would require access to the cemetery for the purpose of removing vegetation and possibly for light equipment for stone wall and monument repair. Under RSA 289:19-20, the Board of Selectmen would be authorized to lay out a right-of-way across your land with your permission. Such a right-of-way presumably could pass through your wooded tract. To avoid your lawn and driveway, it appears that such a right-of-way would also need to cross land of Mr. Victor Racicot at 749 Borough Road.

As soon as we can meet, the Commission will review old documentation and discuss possible further steps. In the meantime, we would be grateful if you could consider the possibility of access through your woods.

May 4, 2020 Gary Foster wrote to the Pembroke Cemetery Commission:

With the town’s permission I will remove all the brush and debris from the cemetery.

I do not agree with the town building a road across my property, a path would be acceptable and I would allow foot traffic across my lawn.

Repairing the gravestones would be the town's responsibility, however I would repair the gate.

May 20, 2020 The Pembroke Cemetery Commission met and discussed Mr. Foster's letter. The Commission authorized secretary James Garvin to respond, as follows:

May 22, 2020

The Pembroke Cemetery Commission met on May 20 and discussed your letter of May 4. In that letter, you offered to remove all the brush and debris from the Old French Cemetery with the town's permission, and to repair the cemetery gate.

The Commission appreciates your offer. We authorize you to remove brush and debris from the cemetery at your discretion.

The cemetery gate is a hand-forged wrought iron gate, probably made by a local blacksmith. At present, the gate is in generally good condition, but its latch does not link with the catch on one of the granite posts.

If you can re-plumb the post to a degree that the latch catches properly, we would approve such a repair. We ask, however, that you not attempt to alter the iron gate, latch, or catch. If re-plumbing the granite post cannot make the gate latch, we ask that you leave the gate in unlatched condition until more extensive repairs can be made to the cemetery at some future time.

The Pembroke Cemetery Commission appreciates and thanks you for your offer to improve the Old French Cemetery.

2020

Periodic inspections showed no visible work having been done on the cemetery during the summer and fall months of 2020.

May 25, 2021

Inspection during the placement of flags for Memorial Day revealed that the cemetery had been cleared of all vegetation. Some of the tree stumps were beginning to sprout, but virtually all trees and shrubs had been removed.

Inspection also showed what appears to be a change in property boundaries between Lot 258-0045 (Foster, Gary and Kimberly; 743 Borough Road) and Lot 258-0046 (Labrecque, Guy and Shawna, 749 Borough Road; formerly Victor P. Racicot; previously others).

A new northerly bound for Lot 258-0045 (Foster) on Borough Road appears to have been established well north of the old bound on Borough Road, which was close to Mr. Foster's driveway. The new bound is marked by a drill hole in a stone in the roadside stone wall, highlighted with red paint. Another bound, marked by a pin of rebar and a flagged wooden stake, both marked by red paint, appears to have been established on Foster's old diagonal lot line near the cemetery. This change has the effect of removing a triangular point of Lot 258-0046 and merging that triangular parcel with Lot 248-0045 (Foster).

Mr. Foster has cleared some trees on this parcel and has planted two young cedar trees near the stone wall along Borough Road; he is watering these trees by a hose from his house. At two or three locations, both near the road and on a pathway to the cemetery, groups of three shallow holes about one foot in diameter and perhaps a foot in depth, have been dug for unknown purposes.

As of May 26, 2021, this changed boundary is not shown on the Pembroke town tax maps, nor has a deed of sale been located in the online index at the Merrimack County Registry of Deeds.

July 8, 2021

Following Garvin's report to the Cemetery Commission of the observations described above, Garvin wrote a letter of thanks to Mr. Foster for the clearing work that he had done.

At the Cemetery Commission meeting on July 8, it was disclosed that Mr. Foster had written and mailed a report on his work in clearing the cemetery, which was reviewed at the meeting.

July 24, 2021

James Garvin replaced the two plastic flag holders with metal holders and met with Mr. Gary Foster. We reviewed the work that Mr. and Mrs. Foster had done in the cemetery, thanking them for their efforts.

Mr. Foster confirmed that he had purchased land from the former schoolhouse lot and verified the new boundary markers described above. He intends to plant evergreen trees near the new boundary line to screen the neighbor's henhouses from his view.

Mr. Foster reiterated his wish that the town hire a stump grinder to clear the sprouting stumps in the cemetery. Garvin explained that the cemetery remains a private burying

ground and that the town does not have clear legal authority to maintain it. Garvin noted that under law the town could assume responsibility for maintaining the cemetery by declaring it abandoned. Mr. Foster reviewed old discussions he had had around 2001-2003 with the proposed contractor and with Cemetery Commission members regarding access to the cemetery and stated that he did not wish to pursue the declaration of abandoned status under state statute (RSA 289:19). He did, however, hope for cooperation with the town in further cleaning up the cemetery and preventing further sprouting of the hardwood stumps.

Garvin informed Mr. Foster that the Cemetery Commission would continue to explore ways of cooperating with him in maintaining the cemetery in respectable condition. Garvin also promised to send Mr. Foster a list of known burials in the cemetery from the 1945 inventory by the Daughters of the American Revolution as well as the deeds of 1874, 1877, and 1902 that mention a family right-of-way to the cemetery.

Garvin wrote Mr. and Mrs. Foster a letter reiterating the Commission's thanks for the Fosters' former work, pledging to continue discussion the cemetery at future Commission meetings, and enclosing the burial list and deeds mentioned above.