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"Where Angels Fear to Tread": Cemetery Preservation Efforts by the Massachusetts Historical Commission

Cover Page Footnote

Helpful comments on drafter versions of this article were provided by Mary C. Beaudry, James C. Garman, Cassandra Michaud, Paul Robinson, and Brona Simon. Pierre Beaudet wrote the French translation of the abstract. The views expressed in this commentary are min, and do not necessarily reflect those of the MHC or the Secretary of the Commonwealth of Massachusetts.

COMMENTARY—

"Where Angels Fear to Tread": Cemetery Preservation Efforts by the Massachusetts Historical Commission

Edward L. Bell

Professional archaeologists assist in the preservation of historical cemeteries that may be impacted by private or public projects. While historical cemetery preservation efforts in Massachusetts are strong, current laws are not effective in compelling archaeological intervention in all cases. Despite the problematic legal situation, the Massachusetts Historical Commission (MHC) has successfully advocated for preservation solutions through consultation and negotiation, based on professional archaeological and historic preservation standards. In the case of the Harwich United Methodist Church (HUMC) Expansion Project, however, the proponents were unable and unwilling to comply fully with MHC's recommendations to mitigate unavoidable impacts to graves through systematic archaeological data recovery. Archaeological survey identified both marked and unmarked graves in the impact area. Unmarked graves were avoided and preserved in situ by reducing the originally proposed construction impact area, but 17 graves with associated grave markers were fully impacted during exhumation efforts by a funeral director with no attendant archaeological observation. Despite the loss of significant historical and archaeological information from the marked graves, preservation of the unmarked graves must be regarded as an accomplishment given the circumstances. As a case study, MHC's review of the HUMC Expansion Project instructs preservationists to be sensitive to the implications of case-by-case decisions that can adversely affect the viability of preservation programs.

Des archéologues professionnels aident à préserver les cimetières historiques voués à être touchés par des travaux privés ou publics. Même si les efforts exercés au Massachusetts pour assurer la préservation des cimetières historiques sont énergiques, les lois actuelles ne sont pas pleinement efficaces pour ce qui est d'obliger à procéder à une intervention archéologique dans tous les cas. Malgré la situation juridique problématique, la Commission historique du Massachusetts préconise avec succès des solutions de préservation qui font appel à la consultation et à la négociation et qui sont fondées sur des normes professionnelles de préservation archéologique et historique. Dans le cas du projet d'expansion de l'Harwich United Methodist Church, cependant, les promoteurs se sont montrés incapables et peu enclins à se conformer entièrement aux recommandations de la Commission concernant l'atténuation d'impact sur les sépultures par une collecte systématique de données archéologiques. Une reconnaissance archéologique a identifié des sépultures marquées et anonymes dans l'aire d'impact du projet. Les sépultures anonymes ont été évitées et préservées in situ par la réduction de l'aire d'impact de la construction projetée à l'origine; pour leur part, les dix-sept sépultures comportant une marque ont été pleinement touchées par les travaux d'exhumation accomplis par un directeur de funérailles sans qu'il s'y fasse de la surveillance archéologique. Malgré la perte d'importantes données historiques et archéologiques quant aux sépultures marquées, il faut considérer comme un accomplissement la préservation des sépultures anonymes surtout dans le cadre des circonstances particulières de réalisation du projet. L'examen du projet d'expansion de l'HUMC par la Commission enseigne aux préservationnistes à être sensibles aux implications de décisions à la pièce pouvant nuire à la viabilité d'un programme de préservation.

Introduction

Religious and social mores that regard burial places as inviolate regularly conflict with motivations to appropriate cemetery land for uses incompatible with sepulture.

Although cemeteries are held by many cultures to be sacred space, reserved as cities of the dead, shifting priorities and practical requirements for land have allowed historical cemeteries to be seized for other uses (Linden-Ward 1989: 152; Sloane 1991: 7). Historical

cemeteries pose a significant challenge for the preservation community:

historic burying grounds are a quiet constituency, a matter which underscores the difficulties many communities face in trying to preserve and maintain small publicly-owned historic burial grounds with no family interests and no perpetual care fund in the face of other social and political priorities. Maintenance is down, vandalism is up, and deterioration is omnipresent (Kottaridis 1994: 44).

Nevertheless, historical cemeteries enrich the social and cultural landscape and their constituency is increasingly broader and more vocal than their occupants.¹

Foremost a reverential memorial to the departed, historical cemeteries provide comfort and instruction to those who visit the graves of ancestors and historical personages and thereby continue to have a role in contemporary mortuary ritual (Jackson 1977; Stannard 1980). Historical cemeteries located in urban areas provide valuable open space and quiet recreational opportunities in an increasingly crowded world (Cheatham, Cheatham, and Cheatham 1970). Cemeteries are an important character-defining element of historic districts and significant components of cohesive historical landscapes (Potter and Boland 1992). A range of scholars, including art historians, geographers, genealogists, and demographers, study grave markers, mausoleums, and the cultural landscape of cemeteries (Meyer 1989). Archaeologists have investigated historical cemeteries, giving attention both to the surviving sample of funerary monuments as well as the contents of graves. Archaeological investigations of historical cemeteries provide important information for a wide range of historical and scientific inquiries. When properly undertaken, archaeological removal of graves, in contrast to exhumation by funeral directors or laborers, has the advantage of systematically collecting

and documenting remains and associated artifacts (Sprague 1989). Archaeological methods of recovery and analysis address research interests and contribute information otherwise unavailable to an expanding data bank on the cultural and biological past of historical populations (Bell 1994).

Despite seemingly strong legal protection for historical or "ancient" cemeteries in Massachusetts and efforts of the Massachusetts Historical Commission (MHC) to advocate for the preservation of these resources, it is sometimes not possible to protect burial places from impact by new construction projects. Likewise, it is sometimes not even possible to require archaeological intervention to mitigate impacts to graves by systematically excavating, analyzing, and documenting grave contents. Existing statutes do not always compel the proponents of projects that may impact cemeteries to consult with the MHC or to follow our recommendations, though consultation does provide many benefits. Consultation with a staff of professional archaeologists with expertise in cemetery archaeology and historic preservation planning can assist in identifying the locations of graves in a project area so that feasible alternatives to disturbing burials can be considered. When it is not feasible to avoid impacting graves, rigorous archaeological treatment through a systematic archaeological data recovery program should be implemented. Stronger and more explicit state and local laws are required to compel the protection and preservation of historical cemeteries in Massachusetts; increased funding is needed to expand and implement cemetery preservation programs of state and local governments.²

The previous article by James C. Garman (this volume) presented a case study of two privately-funded projects that impacted historical cemeteries and in each case archaeological

¹ The Association for Gravestone Studies is one major non-profit organization that advocates historical cemetery study, appreciation, and preservation. But *constituency* here is meant far more broadly and encompasses local, state, and national government agencies, historic preservation organizations; historic preservation professionals; and the interested public.

² A similar observation on "closed urban churchyards in England and Wales" noted that responsible cemetery management, and oversight for that responsibility, were difficult to establish and maintain (Mytum, Dunk, and Rugg 1994: 111). In parts of the United Kingdom, local civic authorities are required to care for closed graveyards three months after receiving notice from ecclesiastical authorities. Mytum, Dunk, and Rugg (1994) recognize that cemetery preservation needs to be addressed locally and legislatively, a suggestion that could be applied on this side of the Atlantic as well.

investigation was involved. He argued that archaeological intervention in these cases had in fact assisted in the destruction of historical cemeteries. While I would not deny that archaeological practice (praxis) operates in a contemporary sociopolitical and economic context, I find his conclusion to be too self-critical and disempowering. Garman's involvement with the project as a professional consultant has led him to conclude that he was, at least partially, responsible for the impacts to the cemeteries. I was involved with the Harwich case in a professional capacity as a preservation planner with the state agency that advocated to the Harwich proponents that they avoid or mitigate impacts to the historical cemetery. Although frustrated and only partially successful, archaeologists provided invaluable planning assistance that allowed the proponents to consider alternatives that would avoid impacting the cemetery. In balance, the Harwich case would have turned out much worse had my agency and my professional colleagues not been involved.

Archaeologists should not feel that they are a handmaiden—or worse, a dupe—for anyone. We have many important roles in cemetery preservation efforts, including skilled technician and analyst, advisor, consultant, negotiator, and educator. Not coincidentally, these are all the qualities of effective historic preservation professionals. Archaeologists can contribute technical expertise to identify, meticulously excavate, and preserve burial sites and funerary objects; provide "biohistories" of individuals and populations whose remains we handle; draw upon our anthropological roots when encountering the beliefs, interests, and sociopolitical actions of interested groups; and encourage our constituencies to ask questions about their past (Bell 1994: 4–6).

Informed consultation and decision-making to assess and ameliorate impacts to historical cemeteries often require systematic archaeological survey to locate graves and other significant features within proposed impact areas. Consulting archaeologists need to ensure that their methods are effective and suitable for the job and that the data are accurately and adequately presented. The consulting archaeologists provide the information

on the significance of the resource that enables interested parties to make wise decisions on the management and treatment of these sites. When new construction projects cannot be redesigned to avoid impacting historical cemeteries, archaeological mitigation programs—if adequately designed and implemented—are an acceptable "preservation treatment." Archaeologists need to stop emphasizing that their excavation methods are destructive (Beaudet and Elie 1991). That argument is good only for discouraging audiences with untrained hands from looting sites. Systematic archaeological data recovery retrieves and preserves information through archaeological documentation, analysis, and reporting. In mitigating impacts through archaeological data recovery, archaeological consultants also have a significant opportunity to provide both professional and public service. Beyond addressing scholarly research questions, data recovery programs at historical cemeteries can incorporate a rare opportunity for student training in bioarchaeology and are typically required by public agencies to include some public educational component.

Another frustration addressed by Garman, which I share, is that archaeological resources may deserve more than law compels or funding provides. To understand what the MHC can and cannot require of a project proponent proposing to impact a cemetery, it is necessary first to understand the basis of historic preservation law under which the MHC operates. In many cases, when there is no state or federal linkage to a project (such as a government permit or funding), MHC has no authority to review the project.

Yet, even in cases where MHC has no jurisdiction, the MHC may advocate for appropriate treatment of threatened historic resources. In such cases, the success of MHC's efforts requires the cooperation of the project proponent. A vocal constituency that supports preservation efforts can often be paramount in compelling such cooperation. Moreover, archaeology programs at universities and non-profit organizations may choose to intervene in such cases as a public benefit, for student training, or for professional development. Professional obligation and interest in professional development may permit research

teams to address research issues beyond the original scope or budget of a project, especially when participation offers the promise of publications beyond the required technical field report and other public educational initiatives. Consulting archaeologists may be able to renegotiate with clients for funding additional, necessary research; in any case, archaeologists are especially creative in leveraging funding.

In the following sections of this article, I present the scope of the existing and complex statutory framework for historical cemetery preservation efforts in Massachusetts so that the reader can understand the legal basis for MHC review of projects that may impact historical cemeteries in general and the Harwich case in particular. I discuss how the MHC advocates for appropriate preservation treatment of historical cemeteries in cases where the law disappoints us. Finally, I sketch out MHC's efforts during technical review and advocacy in the Harwich United Methodist Church Expansion Project. As a case study in itself, MHC's review will be instructive to consulting archaeologists who may not fully appreciate the role and context of their investigations in broader preservation efforts. Other preservation agencies may also find the circumstances of the case to be, if not familiar, then possibly helpful if faced with a similar predicament. I conclude that because the success of advocacy efforts requires cooperative parties as a basic premise, the Harwich project could have been far more successful had the congregation been more cooperative.

The MHC's Role in Historic Preservation Planning

The MHC was established in 1963 to assist in protecting and preserving the state's significant historic and archaeological resources. The passage of the National Historic Preservation Act (NHPA) in 1966 created a broad, national historic preservation program and directed each state to appoint a State Historic Preservation Officer (SHPO), who is responsible for implementing the provisions of the NHPA at the state level; for coordinating local, state, and federal preservation efforts; and for developing a comprehensive, statewide historic preservation plan. In Massachusetts, the SHPO

is the Executive Director of the MHC. In carrying out its mandates under both state and federal law, the MHC has developed a number of historic preservation programs including compiling and maintaining a statewide inventory of historic and archaeological resources; nomination of significant properties to the National Register of Historic Places; technical preservation assistance to municipalities, to state and federal agencies, and to the public; involvement in environmental review and historic preservation planning for state- and federally-assisted projects; grants-in-aid programs for historic preservation activities; and a broad public information program.

The MHC is also the Office of the Massachusetts State Archaeologist, who issues permits under the provisions of Massachusetts General Laws (MGL) c. 9, ss. 26A and 27C (950 Code of Massachusetts Regulations [CMR] 70) for archaeological investigations on public lands or other lands in which the Commonwealth has an interest, such as projects under review by municipalities, counties, and state and federal agencies. The permit process is designed to encourage the conservation of archaeological resources and the highest quality of archaeological research. The State Archaeologist reviews permit applications for archaeological investigations to evaluate the qualifications of the research team and the soundness of the archaeological research design. The State Archaeologist also responds to the accidental discovery of human remains believed to be 100 years old or older pursuant to MGL c. 9, s. 27C and c. 38, s. 6B, and assists in the preservation of ancient burial places under MGL c. 7, s. 38 and c. 114, s. 17. The State Archaeologist's role in protecting burial places and the scope of these laws as they pertain to cemeteries are discussed in more detail later in this article.

MHC reviews projects that require federal or state funding, licenses, permits, and approvals, under Sections 106 and 110 of the National Historic Preservation Act of 1966 as amended (16 US Code 470f and 470h-2, 1992) and its implementing regulations (36 Code of Federal Regulations 800), and MGL c. 9, ss. 26-27C as amended by c. 254 of the Acts of 1988 (950 CMR 71). This review process identifies historic and archaeological resources that may

be affected by new construction, demolition, and rehabilitation, and provides a formal consultation process that seeks alternatives to avoid, minimize, or mitigate impacts to significant cultural resources.

It is important to be cognizant of the different limitations of MHC's jurisdiction under federal and state historic preservation law and regulations, respectively. In MHC's review of projects with federal funding, permits, licenses, or other federal approval ("Section 106 review"), MHC can ask federal agencies or their applicants to locate and identify historic properties that may be affected by the proposed project. In other words, in order for the federal agency to determine whether a project will affect National Register-eligible properties, the agency is responsible for locating and evaluating historic properties, which often requires an archaeological or more generally a cultural resources survey. In review of projects with only state funding, permits, licenses, or other state approval ("Chapter 254 review"), MHC's jurisdiction is far more limited. MHC's purview is limited to reviewing the effects of state-assisted projects on historic properties listed in the State Register of Historic Places.³ Through an encouragement clause (950 CMR 71.07(2)(c)) in the regulations that implement Chapter 254 review, MHC can also encourage state agencies and the project proponent to consult with MHC to avoid adversely affecting properties included in MHC's Inventory of Historic and Archaeological Assets of the Commonwealth,⁴ but not listed in the State Register. Such cases reviewed under Chapter 254 may or may not require an archaeological or cultural resources survey, depending on the

level of available documentation for the location, boundaries, and other information for archaeological sites and other cultural resources in project impact areas.

Note especially that this review procedure is a consultative or advisory process; MHC does not "approve" or "veto" projects, nor does this consultation constitute a "permit." The distinction between MHC's consultative role and the state and federal environmental permitting process—required and implemented by other agencies—is important to keep in mind. MHC's role is to offer technical advice on avoiding, minimizing, or mitigating impacts to significant historic and archaeological resources. Other state and federal agencies actually issue permits or approvals for projects, and consultation with MHC is only one step in these agencies' approval process. This advisory role (a function of the legislation under which the MHC operates)—while reducing the MHC's actual authority or power—grants us more flexibility in our commenting capacities (as we are not locked into the alternatives of approval or veto) and can be a more congenial environment in which to negotiate preservation solutions. Yet, as Talmage (1991: 6-7-6-8) notes, "even advisory procedures, where no 'veto' power is held, . . . can be so compelling that good-faith attempts to preserve historic properties are required."

Although consultation with the MHC is only mandated for state- and federally-assisted projects, MHC also has a role in providing historic preservation assistance in cases when no formal review authority exists. This advocational or advisory role is indeed part of MHC's duties, as outlined in its enabling legislation (MGL c. 9, s. 26):

The commission shall encourage all governmental bodies and persons considering action which may affect a historical or archeological asset of the commonwealth to consult with the commission to avoid any adverse effect to such asset.

In practice, consultation when no formal review mechanism exists may occur when

³ The State Register of Historic Places contains a listing of (a) properties in the National Register of Historic Places or with formal Determinations of Eligibility from the Keeper of the National Register of Historic Places (36 CFR 63); (b) local historic districts established pursuant to MGL c. 40C or special legislation; (c) landmarks designated under local ordinances or by-laws; (d) structures or sites subject to preservation easements approved or held by the MHC pursuant to MGL c. 184, s. 32; (e) MA Historic or Archaeological Landmarks certified pursuant to MGL c. 9, s. 27; and (f) historic properties listed by MHC pursuant to MGL c. 9, s. 26D.

⁴ The Inventory of Historic and Archaeological Assets of the Commonwealth, compiled and maintained by the MHC pursuant to MGL c. 9, s. 26A, includes records of historic districts, buildings, sites, areas, structures, bridges, objects, specimens, burial grounds, streetscapes, parks, and land

scapes. The inventory is maintained in paper and computer files, maps, and ancillary reports. Currently, there are approximately 250,000 historic properties and 8,000 archaeological properties in the Inventory.

MHC's assistance is sought, for example, by a local historical organization concerned about a project's effects on a historic or archaeological property. Sometimes MHC is contacted directly by developers, sometimes in response to local concerns, and sometimes of their own volition, when they are genuinely interested in reducing their project's environmental impacts.

The MHC's Role in Cemetery Preservation: The Legal Framework

There is a nexus of laws that may be applied to assist in the preservation of historic or "ancient" cemeteries (defined in Massachusetts law as those cemeteries at least 100 years old). Typically, MHC is involved in historic cemetery preservation in two ways: reactively and proactively. First, MHC has been successful in reacting to the accidental discovery of unmarked graves (i.e., graves without grave markers) by following the established procedures under the Massachusetts Unmarked Burial Law (c. 659 of the Acts of 1983 and c. 386 of the Acts of 1989). The 1983 and 1989 laws amended several existing laws including those on ancient cemeteries, the State Archaeologist, Medical Examiners, and the Massachusetts Commission on Indian Affairs (MGL c. 7, s. 38A; c. 9, ss. 26A and 27C; and, c. 38, s. 6B; see Simon 1990).

The Massachusetts Unmarked Burial Law provides a process to follow when human remains are accidentally uncovered, such as during construction or agricultural activities. The law requires that whenever anyone discovers human remains, the police or Medical Examiner is to be contacted. The findspot is to be secured and protected (with the assistance of the police if necessary) until the police or Medical Examiner completes an investigation. If the remains are over 100 years old, the State Archaeologist investigates the site and, if the remains are Native American, contacts the Massachusetts Commission on Indian Affairs. The State Archaeologist consults with the landowner and other interested parties (including the Commission on Indian Affairs for Native burials) to determine whether burials can remain undisturbed. If after consultation it is determined that unmarked

graves cannot be protected, the graves may be excavated by the State Archaeologist, or by a consulting archaeological firm upon receiving a special permit (950 CMR 70.20) from the State Archaeologist. The State Archaeologist's permit regulations (950 CMR 70) provide the opportunity to review and comment on the qualifications of the research team and the suitability of the research design for background and documentary research, excavation, analysis, and reporting (Simon 1988, 1990, 1994a). Because MHC does not have the staff, funding, equipment, or facilities necessary to undertake major data recovery operations, professional archaeological firms have usually performed this work. Besides, the use of public funds for private projects—especially those of religious institutions—seems inappropriate.

Passage of the "Unmarked Burial Law" allowed, for the first time, archaeological intervention in preserving historical or "ancient" burial places. The original law protecting ancient cemeteries, first codified in 1880 (MGL c. 114, s. 17 was added by c. 153 of the Acts of 1880), recognized preservationist's ethics regarding historical cemeteries. The 1983 amendment to that law, however, recognized that the burial places of Native Americans and other ethnic and socio-economic groups often are not "marked" with a gravestone, and thus they may be misinterpreted as not being an ancient burial ground deserving of protection.⁵ The wording of this amendment created what I argue to be an artificial distinction between "unmarked" graves and "marked" graves, however. One reading of this law might conclude that it precludes "marked" graves from the same process (outlined in the duties of the State Archaeologist, Medical Examiners, and the Massachusetts Commission on Indian Affairs) that protects

⁵ The one instance of Massachusetts case law coming to this conclusion is *Town of Sudbury v. Department of Public Utilities* (1966) 218 N.E.2d 415, 351 Mass. 214: "That tract was the site of an old Indian settlement and that the skeleton of an Indian had been removed therefrom and that there was a possibility of other skeletons scattered throughout the tract did not make the tract an ancient 'burial ground' which must be preserved and did not prevent condemnation of tract." This case was one reason that MGL c. 114, s. 17 was amended in 1983.

"unmarked" graves.⁶ The portion of the Unmarked Burial Law (c. 659, s. 6 of the Acts of 1983) that amended the "Preservation of Ancient Burial Places" statute (MGL c. 114, s. 17), however, simply requires the preservation of "unmarked burial grounds known or suspected to contain the remains of one or more American Indian."

Second, MHC has been proactively involved in cemetery projects when a proposed, but not yet initiated, project may impact a cemetery—even in cases when, were it not for the presence of a historical cemetery, MHC would have no jurisdiction to review the project. Of course, the situation is considerably more straightforward when MHC already has jurisdiction to review and comment on a project under state and federal historic preservation law. In this latter case, MHC simply reviews impacts to historic cemeteries alongside other historic and archaeological resources located in a project area.

In proactive cases, MHC meets with a project proponent, reviews available documentary information on the cemetery, and offers technical assistance and recommendations. If the boundaries of a cemetery cannot be ascertained from documentary sources, an archaeological survey may be required to determine such boundaries and the locations of graves. One such case involved direct MHC assistance in 1989 to the Hudson Historical Commission. MHC staff archaeologists performed a survey to identify the boundaries of a 19th-century almshouse cemetery (Bell 1993). When MHC had a larger staff and budget, direct technical assistance was possible but still infrequent. More commonly, such projects are undertaken by professional archaeological consultants.

The results of archaeological investigation assist the MHC by providing accurate information on prudent and feasible alternatives to impacting unmarked graves. We consult using the "carrot and the stick approach" (Simon 1994b). We provide information on the advan-

tages of planning before construction proceeds, including positive tax benefits of establishing preservation easements (see MGL c. 184, ss. 31-33)⁷ and the goodwill of the community. We apprise them of the prohibition of deliberate cemetery destruction and advise them of the cost and scheduling implications and the negative reactions sure to arise from the media, descendants, and the local community if graves are impacted during construction.

Proactive cases involving unmarked or marked graves are more challenging because of the ambiguous nature of the existing cemetery laws in Massachusetts, some of which originally date to the 19th century. The appropriate preservation treatment applied to historical cemeteries—as a historical and archaeological resource—has to be determined on a case-by-case basis. Historical cemeteries vary in their historical significance, their integrity, and their archaeological value (e.g., Potter and Boland 1992). Approaches to preservation of historical cemeteries need to take into account the religious, sociopolitical, and legal interests of descendants and other interested constituent groups, as well as precedent in scholarship (see Bell 1994, 1997).

MHC would have both marked and unmarked graves treated identically, proactively, and in accordance with accepted historic preservation and archaeological standards, but the procedural involvement of the State Archaeologist does appear to be limited to reactive cases, once human remains are discovered. Recognizing the value of historical cemetery data and the attendant loss of information that occurs from exhumation of graves without archaeological documentation, MHC advocates the application of the same archaeological and historic preservation standards to both marked and unmarked graves. While ad hoc, the proactive process is solidly based in contemporary historic preservation practice and is consistent with accepted archaeological standards for the treatment of historic proper-

⁶ One can get caught up in a vicious circle defining a "marked" grave, and whether there are degrees of being "marked." Perhaps a rule-of-thumb might be that a grave is marked if it can be accurately deduced where a burial is located without having to resort to archaeological prospecting or testing, which would exclude cases where gravestones have been removed or relocated, and cases where graves have been incompletely exhumed.

⁷ A preservation easement is a legal agreement between a property owner and another party, usually a government agency or non-profit organization. It restricts or limits specific activities that are detrimental to the preservation of the historical characteristics of the property. Preservation easements are usually perpetual in duration and offer federal, state, and local tax benefits for the property owner.

ties (e.g., Advisory Council on Historic Preservation 1980; National Park Service 1983; Strangstad 1988). Nevertheless, the cemetery laws would need to be amended to explicitly provide a parallel process for proactive intervention by the State Archaeologist when historical marked graves are threatened, and to allow archaeological excavation, analysis, and documentation of significant historical graves to be impacted.

Several other Massachusetts laws may be applied to assist in preserving historical cemeteries: those that regulate appropriate treatment of burial places (found in MGL, c. 114, the cemetery statutes) and those that prohibit crimes against sepulchre (found in MGL, c. 272, the morals and good order statutes). These laws are prosecuted by the appropriate law enforcement authorities, which include local and state police, town counsels, district attorneys, and the Attorney General.

MGL c. 114, ss. 17 protects both marked and unmarked cemeteries that are over 100 years old. Towns shall not allow historic cemeteries to be used for other purposes, no bodies may be disinterred, no fences or monuments may be removed, and no portion shall be taken for public use without special legislative approval. Note the way that the statute is constructed, however. It is directed at Massachusetts towns and at public projects. "A town shall not alienate or appropriate" historical cemeteries; no portion of a cemetery may be "taken for public use" without special approval from the Massachusetts legislature (MGL c. 114, s. 17). This statute is effective for cases when a public project may affect an historical cemetery and possibly even when a private action, requiring approval by a town, would do the same. It could be argued that the granting of, for example, a subdivision approval, when the private project could foreseeably affect an historical cemetery, would in fact be an alienation by a town.

MGL c. 114, s. 45, requires a permit from a town Board of Health or Clerk to exhume bodies from graves, but requires a "satisfactory written statement containing the facts required by law," that is, the lawful purposes for such exhumation. In context, this statute was clearly written to prevent unauthorized exhumations by "resurrectionists" or body

snatchers and to protect the Commonwealth's citizens from health hazards during the transportation of human remains. The requirements within this statute for medical certifications of death to accompany the permit application are obviously related both to public health and medico-legal concerns. Read alongside MGL c. 114, s. 17, which prohibits "towns" from alienating or appropriating historical cemeteries, the issuance of a permit by a town Board of Health or Clerk for removal of historical graves would seem to be prohibited, unless the accompanying permit application showed that the exhumation was in compliance with the laws that protect historical graves. This interpretation of MGL c. 114, s. 45 prevents the inappropriate circumvention of the historical cemetery preservation statutes.

In some cases, historical graves may be impacted as a result of increasingly limited spaces for new interments within established cemeteries. Because of land shortages in many parts of the world, graves are not considered permanent resting places of the dead. In these cases, a decedent is interred in a plot for a limited time, then the remains are exhumed to allow the next awaiting decedent to be buried (Sloane 1991: 3). Cemeteries have come to be viewed as a real estate commodity, and occupied graves can be legally reused. Exhumation of existing graves—especially those for which the passage of time has not been sufficient to result in complete decomposition of soft tissue—can be an unseemly affair. Prior to 1990, Massachusetts law (MGL c. 114, s. 3A and 10A) allowed that graves not used for 50 years could be resold. In 1990, Massachusetts amended its cemetery statutes to limit the reuse of occupied graves (c. 288 of the Acts of 1990). The law now allows for the reuse of an occupied grave for burial of a relative or descendant if the original decedent remains in the grave (MGL c. 114, s. 3A and 10A). Again, consistent with cemetery preservation laws, the amended statute now requires that the contents of occupied graves are not to be disturbed, and local by-laws determine how occupied graves may be reused.⁸

⁸ "Unoccupied" graves (an unused burial plot), for which a deed or "license" has been previously issued, may be resold after 75 years (MGL c. 114, s. 3A and 10A).

Deliberate destruction of a cemetery is prohibited by laws directed against vandalism, grave robbing, and other kinds of desecration (e.g., MGL c. 272, s. 71 "Violation of Sepulchre;" s. 73 "Injuring or Removing Tombs, Graves, Memorials, etc.;" and s. 75 "Removal of Flowers, Flags, or Memorial Tokens from Burials"). Thus, anyone who proceeded to destroy a historical cemetery by disinterring human remains, removing or injuring grave markers, or any protective, ornamental, or memorial cemetery landscape feature (fences, railings, curbs, plantings, flowers, flags, and "memorial tokens" are some mentioned items) would be committing a felony; penalties include imprisonment and substantial fines.

Public ways, highways, canals, railroads, and other public easements are not allowed through public or private burial places without special approval from the state legislature or permission from the town or organization that controls the cemetery (MGL c. 114, s. 41 and c. 272, s. 76). Buildings cannot be constructed "upon any burial place belonging to a city," except with special approval from the state legislature or "with the prior consent of the city council" (MGL c. 114, s. 43).

Gravestone preservation projects may require the repair or temporary removal of gravestones. MGL c. 272, s. 73A (passed in 1973) allows removal of gravestones for "repair or reproduction by community sponsored, educationally oriented, and professionally directed repair teams." A permit is issued by the Secretary of the Commonwealth for these cemetery preservation projects after review of the project specifications by a preservation planner at the MHC (see 950 CMR 41, the regulations that implement the statute). This law was passed as a "home rule" provision, so a municipality needs to formally adopt it for it to be applicable within that town or city. MGL c. 114, s. 18 allows communities to "take charge . . . and keep . . . in good order" a neglected or abandoned cemetery and to appropriate funds to maintain and repair grave markers and monuments, fences, and other cemetery structures, "but no property rights shall be violated and no body shall be disinterred."

MHC frequently finds itself appealing not only to the letter of these laws, but to their

intent or "spirit"—a clear legislative mandate to protect historical cemeteries, despite the conflicting interpretations possible from a literal reading of the statutes. Since the 19th century, the Commonwealth has seen fit to protect the resting places of the dead and its historical cemeteries, and the clear preference is preservation in place, allowing for appropriation, alienation, or exhumation only under extraordinary circumstances, and with appropriate oversight by either local or state authorities. The Secretary of the Commonwealth and the MHC are the only state agencies with expertise and legal roles in historical cemetery preservation, so it is appropriate that the MHC provides technical assistance in reviewing projects that may impact historical cemeteries.

MHC Review of the HUMC Parish Hall Addition

MHC's review of the Harwich United Methodist Church (HUMC) Expansion Project⁹ began on November 21, 1991, when I received a telephone call from Mr. Forrest Eaton, a local funeral director who said he had been issued a permit by the Harwich Board of Health to relocate 25 to 30 bodies, some in unmarked graves, and that he wanted to begin the work the following week. Mr. Eaton had been hired by the church and wanted to determine if he needed MHC's permission for the exhumation. A check of MHC's Inventory located information on the historic church and

⁹ The primary source for information in this section of the article is the MHC review file (Project #RC.8325), available to researchers at the MHC, as well as my personal cognizance of the events. The review file, organized chronologically, contains copies of letters and other materials sent and received; written notes of telephone conversations, meetings, and research; copies of newspaper articles; the archaeological permit application and research design; and the fieldwork completion memorandum. Draft and final reports of the investigation (Garman 1992) are filed separately in MHC's collection of archaeological reports (MHC Archaeological Report #25-1245). Color slides from the December 2, 1991, field visit are filed separately in MHC's slide library. I am relating very recent events and observations that are documented and easily located in this file, and supplementing information through my recollections. I have therefore not found it necessary to provide citations to individual items when it would be apparent by reference to the review file where such information may be located. When I have directly quoted from a document, an individual citation is provided.

cemetery. As Garman (1992 and this volume) notes, the historic church and cemetery are significant elements of the historic landscape of East Harwich. Preliminary information on the history of the cemetery and the project suggested that impacts to unmarked graves and scattered human remains were likely, given the age of the cemetery and the 19th-century exhumations that had been performed. Gravestone scholars have documented commemorative markers erected several years prior to or years after death and removed, reused, recarved, replaced, rearranged, and restored gravestones: all a striking reminder of the dynamic nature of cemetery landscapes (Bell 1991). Grave markers may no longer accurately delineate the location of graves; exhumation efforts are typically incomplete; and unmarked interments are likely to be present in historical cemeteries. Harwich town officials were very interested in the expansion project and on minimizing impact to the historic cemetery. While no funds were appropriated for perpetual care, the Town of Harwich had cared for the cemetery landscape voluntarily.

After discussion with the State Archaeologist on our role in historic cemetery preservation and agreeing that MHC should be involved in reviewing impacts to the historic cemetery, I telephoned Mr. Eaton and advised him not to proceed until MHC had the opportunity to meet with the congregation and discuss the project. On November 25, 1991, I spoke with the Rev. Harlow Doliber, the church's pastor, to get more information on the project, the kinds of impacts proposed from the parish hall addition and new parking lot, and to advocate for the church to avail themselves of MHC's technical assistance in archaeology and historic preservation. He had me contact Mr. George Tripp who was heading the committee working on the parish hall addition. Telephone discussions with Mr. Tripp on November 25 began badly. He asserted that he had contacted the MHC six months to a year ago and spoken with a woman who allegedly informed him that MHC had no interest in the project unless the graves were of Native Americans. (Mr. Tripp could not recall the name of this staff member or the date of the call, and inquiries among

MHC staff and an exhaustive search of MHC's files located no record of this call). He wanted to assure us that the church was not intending to undertake the exhumations covertly; that the church had contacted descendants, but that none were interested; that graves had been moved in the past; that MHC had not been involved before when an earlier expansion project laid a foundation wall across graves; and that the only possibility for the expansion was in the area of the graves. In balance, my impression from this conversation was that MHC's response was being perceived as obstructionist, when in fact our interests were not to stop the building addition, but to explore feasible alternatives toward a mutually acceptable solution to avoid, minimize, or mitigate impacts to the historical cemetery. I outlined MHC's concerns for impacts to the graves and the benefits of archaeological survey and avoidance. We agreed to meet at the church on December 2, 1991, with a representative from the Town of Harwich, to discuss the project further. Media interest in the review case began on November 25, 1991 with a call from a Cape Cod television station, and I had received reports that the *Cape Cod Times* had published an article about the potential effects of the project on the graves.

As stated to MHC, the purpose of the church expansion project was to provide additional space for a Sunday School, an office, and meeting space for events including wedding receptions, church breakfasts, the annual Cranberry Fair, Alanon meetings, and parking. The church recounted with pride that after having been nearly closed by the Southern New England Conference of the United Methodist Church for lack of attendance, the congregation had doubled in size since 1981. The lack of space meant that the church had difficulty scheduling events and was also forced to hold large events elsewhere. The church wanted all their activities to be held under one roof.

MHC's goal was to focus on the impacts to the historic cemetery, and in particular, whether unmarked graves would be impacted by the project. We sought the church's input in considering alternatives other than expansion into the cemetery, such as expanding in another direction, reconfiguring interior space,

adding a story vertically, excavating below the existing structure, or the use of pier and slab construction, which could have allowed the building addition to be elevated above graves. Any suggestion of alternatives that avoided moving the graves was summarily rejected.

My supposition is that the Harwich congregation, acting through their building committee, had made a psychological and moral shift to mediate the conflict posed by exhuming graves to build the parish hall addition. Having been benign caretakers of the cemetery and of the dead, they found themselves uncomfortable with the prospect of removing burials. Their discomfort was manifest and profound during meetings held to discuss the project, a discomfiture that was apparent to anyone present. The committee bristled at the suggestion to "consider alternatives" to the parish hall addition that would not impact graves. A broadsheet produced by the committee stated flatly that "every possible alternative has been examined" (Harwich United Methodist Church 1991), yet no alternative project designs were provided for MHC's review. Unrealized by me at the time, the members of the committee had likely thought long and hard about disinterring graves, and thus, quite understandably, had settled their minds and did not want to revisit the difficult decision they had already made. By focusing on the current needs of the living, the congregation assuaged the conflict of disinterring former church members for what they considered to be a higher purpose: the continuation of the living church's mission. Interestingly, the committee pointed to historical precedent to justify the proposed exhumation project: between 1884 and 1912, 78 graves were "removed" to Evergreen Cemetery. The church also applied modern technologies—a computerized database for grave markers—to exhibit their care of and attention to the cemetery. Such overt and seemingly contradictory applications of historical precedent for exhumations, appeal to the continuing mission of the living historic church, and the application of modern technology, all done by a select group—the building committee—acting for the congregation as a whole, were ritual means to legitimize the intentions of the congregation while assuaging the conflict of disin-

tering the graves of former parishioners (cf. Kelly and Kaplan 1990). All of this finally proved to be wholly distractive from the issue at hand: how the project would be implemented to avoid, minimize, or mitigate impacts to the historical cemetery.

At the December 2, 1991, meeting I again went over MHC's reasons for advocating an archaeological survey of the project impact area to provide a factual basis for decision-making: How many graves were present, and where were they located? The committee asserted that all the graves in the impact area were accounted for (i.e., that only 17 marked graves were present in the impact area, all of which were proposed to be relocated to a reinterment site elsewhere in the cemetery) based on their documentary research and computerized gravestone inventory. The methods and sources of the research, however, were only vaguely relayed, but appeared to be based on inscriptions from existing gravestones, some genealogical publications, and a lack of documentation. There were no church or other records of sales of individual lots; there was no historical plat of the cemetery showing where graves were located; the town records for burial locations were described as "weak" (only 7 of the 17 decedents in the marked graves had entries in town death records); and historical conveyance records for the county were said to have been destroyed in a fire. A printed copy of the gravestone inventory shown to me did not appear to possess even a basic apparatus of scholarly attribution. The funeral director, Mr. Forrest Eaton, had "dowsed" the impact area and had only sensed "hits" over marked graves. During the meeting, we walked over the impact area, and Mr. Eaton again demonstrated his dowsing. I respectfully disagreed that dowsing was a reliable method for determining the presence or absence of graves. I observed four sunken areas within the reinterment site, which looked suspiciously like graves. Mr. Eaton explained that the sunken areas were plots that had been prepared for burials but had not been used—a practice I had never heard of—yet he dowsed over the reinterment site and indeed, no hit was registered. (As it turned out, the results of the archaeological investigation showed that the dowsing survey was not

reliable. In particular, four unmarked graves were located in the reinterment area.) Needless to say, nothing was presented to me at that meeting that compelled me to accept the assertion that no unmarked graves were present in the impact area.

I outlined the alternative to following MHC's advice: the unseemly prospect of the church going ahead with the exhumation of the marked graves, which would undoubtedly be incomplete, leaving human remains and coffin parts behind to be impacted by the construction. Unmarked graves in the construction impact area would not be detected until already damaged. MHC would be forced to respond in a difficult situation, delaying construction until treatment of the unmarked graves were resolved in compliance with the Unmarked Burial Law. Such circumstances would be far more costly to the church in terms of scheduling delays, public perception, and the expenses that would be entailed by the church for professional excavation and analysis of unmarked graves that could not be avoided. I made the church aware of the significance of the specific and comparative historical and scientific data that could be gleaned from archaeological investigation of the cemetery in terms of local history and culture, material culture studies, health and morbidity, and demography and population dynamics. I provided examples of similar investigations, in particular, the investigations at the 19th-century Methodist Prospect Hill Cemetery in Newmarket, Ontario (Pfeiffer, Dudar, and Austin 1989).

I recalled at this time reading a now-misplaced newspaper article that reported that the United Methodist Church had signed an ecumenical letter that stated that the church and the state often have interests that overlap, interests that cannot be entirely separated. In this context, MHC appealed to the moral obligation of the living to protect the burial places of the dead. In the Harwich case, discussions with church officials frequently reached lofty realms: that society turns to the Church for moral guidance so it is incumbent upon the Church to set an example; that deceased parishioners believed in a literal resurrection, and their beliefs should be respected; while mainstream Christian theo-

logical scholars no longer believe in a literal resurrection, a permanent grave provides comfort to living survivors and an expectation of one's own fate. The now-familiar refrain that the church was for the living was first heard at the meeting, as was their position that the project was looking toward the future not dwelling in the past, and that the "spirit not the vessel" (i.e., the soul, not the mortal remains) was paramount in their minds. Arguing theology with theologians is unproductive and, if anything, caused more confusion in the Harwich case.

The meeting of December 2, 1991, concluded with my recommendation that the congregation seek competitive proposals for a locational archaeological survey. MHC offered to assist in preparing a request for proposals and to evaluate the proposals received for their technical adequacy in compliance with the State Archaeologist's permit regulations (950 CMR 70).

With the limited budget that the congregation said that they had for the construction project—no figures were ever disclosed—they were uneasy with the prospect of unanticipated costs for archaeological investigation. Rather than immediately seek these proposals to methodically adjudge the costs involved, the controversy began to reach politicians and the media: MHC began receiving calls from state legislators, and newspaper articles were appearing that contained incorrect information on the issues involved and wildly inflated figures for the archaeological survey. Two papers reported that the locational survey would cost \$50,000—probably in the order of a ten-fold exaggeration. Most troubling were reports in the newspaper articles that the congregation was considering seeking special legislative exemption¹⁰ from the cemetery preservation laws. Such an exemption would be an awful precedent, since the next well-heeled, politically-connected developer who intended to

¹⁰ Such "special laws" are introduced on behalf of politically-connected individuals by a sponsor in the legislature (the House and Senate in Massachusetts is called the General Court). The wording of such special laws typically begins "Notwithstanding any general or special law to the contrary . . ." which means that despite any state law or regulation violated by implementation of the action, no review or enforcement by the Commonwealth is available.

impact a historical cemetery would be sure to seek a special law, too.

On December 11, 1991, I received a call from Mr. Tripp asking about available funding for the survey from the MHC or other sources. Even if MHC's state grant program had not been eliminated by the state legislature by this time, it is doubtful that the project would have been competitive. In public environmental review and preservation planning, it is the responsibility of the party who is placing resources in jeopardy to bear the cost of technical environmental work (in this case, archaeological survey) to evaluate the impacts of the project. As noted above, the use of limited public funds for private projects—especially those of religious institutions—seems inappropriate. I referred Mr. Tripp to several alternative sources for grants and recommended that he could also seek to interest a university department with an archaeological program that would be willing to undertake the survey as part of a research project; contacts in several archaeological programs were given. I advised him, however, that as timeliness seemed to be an issue with the congregation, professional contract archaeology firms would be the most appropriate source to seek competitive proposals. I drafted a request for proposals that the church could use in seeking bids and sent it to Mr. Tripp that day. He inquired when the next meeting was scheduled of the full commission¹¹ of the MHC, presumably to appeal the staff's advice and recommendations. He was informed of the next meeting date, place, and time. I recommended that it would be helpful if we met first to attempt to resolve any disputes with the professional staff prior to requesting a hearing of the full commission. A formal request to appear before the full commission is made through the MHC's Executive Director, and since it was not clear that there was a dispute, nor had there been an attempt to resolve it, the matter would likely be remanded back to the professional staff for further consultation. He agreed and indicated that his inquiry on these matters was prelimi-

nary and that he was merely seeking information. I sent a letter to Mr. Tripp that day, outlining MHC's reasons for requesting the survey, with detailed technical advice on what to expect. We requested copies of project plans, any historical documentation on the cemetery, and copies of the proposals to offer our review.

On February 28, 1992, MHC received a letter from Bishop F. Herbert Skeete, the highest ranking member of the Southern New England Conference of the United Methodist Church, asking for an exemption from the survey and requesting a meeting with the MHC. We responded that MHC would be happy to have a meeting, but that we had not yet received information we had requested from the congregation in December, including any proposals received, project plans, and historical documentation. I left a series of phone messages with Bishop Skeete's office to arrange the meeting, which was finally scheduled for May 28, 1992.

In attendance at the May 28, 1992, meeting were myself, State Archaeologist Brona Simon, Bishop Skeete, several other church officials, and members of the HUMC. Again, the issue of money was raised, but the HUMC indicated that they were willing to do what was necessary within their means. George Tripp again went over the same issues discussed at the December 2, 1991 meeting: the history of the church; the present needs of the project; that local permits had been issued; that advertising for descendants had not received adverse reactions to the project; and so forth. We expressed our ire that the HUMC was considering a special legislative exemption to the Unmarked Burial Law, for it would be a novel and bad precedent: in the nine years of working with proponents under the Unmarked Burial Law, it had never been circumvented. We explained that the Unmarked Burial Law provided a process that in effect made the state the lead advocate for protecting unmarked graves, typically those of Native Americans, as well as people who were in the lower socio-economic classes, typically buried in unmarked graves. We again persuaded the HUMC to look at alternatives for the project that could avoid impacting unmarked graves, in particular, construction over the cemetery using a slab

¹¹ The MHC consists of an appointed commission of representatives from various organizations, state agencies, and interest groups, led by the Secretary of the Commonwealth. The day-to-day operations of the MHC are carried out by its professional staff.

and pier foundation that could avoid direct impact to graves. An archaeological survey was necessary in any case to determine where unmarked graves were located in the construction impact area.

The discussions seem to have been productive, since on June 18, 1992, I received word from George Tripp that the HUMC would send out proposals for the survey. UMass Archaeological Services was selected by the HUMC, and MHC received the permit application and research design for the survey on September 15, 1992. The research design was reviewed, and the State Archaeologist issued Permit #1258 on September 16, 1992, for the archaeological survey. Additional requests were made around this time by George Tripp, including another copy of the laws regarding cemeteries, which had first been given at the December 2, 1991, meeting; a list of the MHC commissioners (all sent on November 10, 1992); and copies of MHC inventory forms for the church and cemetery (sent on November 25, 1992). MHC received the draft archaeological report of the investigation on November 19, 1992, and the results of the archaeological survey are discussed by Garman (1992 and this volume). Review of the archaeological results suggested alternatives to avoid, minimize, or mitigate impact to the graves. Rather than having a full basement, the building addition could be placed on a slab foundation supported by judiciously placed concrete piers. Mitigation would be necessary only for those unmarked graves that would be directly impacted by the project; other graves could remain undisturbed, if inaccessible, beneath the slab foundation. The church could also utilize a full basement, but this would require archaeological data recovery of unmarked graves in the area that was to be excavated for the deeper foundation.

At the request of the HUMC, on December 28, 1992, State Archaeologist Brona Simon and I met with the HUMC and James C. Garman, the Project Archaeologist. The HUMC expressed their position that all the features identified as grave shafts during the archaeological investigation were in fact exhumations and did not contain bodies. The archaeologists present gave their professional opinion that only Feature 7 was likely to have been an

exhumed grave, that the remaining features interpreted as grave shafts appeared to be intact. HUMC then suggested that rather than follow our recommendations for proactive treatment of the graves, that they would follow the Unmarked Burial Law notification procedure: when construction started and bones were uncovered, the State Archaeologist would be contacted. MHC staff indicated that in that case, the entire contents of the graves would be damaged and that that alternative was not an efficient planning approach to the budget and schedule for the project. MHC suggested again that a university might be willing to excavate the remains for the church and offered to contact several archaeological programs on behalf of the church. The HUMC then argued MHC's legal jurisdiction, whether the cemetery met the definition of "site" or "significant" as defined in MGL, c. 9 (referring to c. 254 review, see above), and we patiently explained again that the unmarked burial law process was in a different section of the law—MGL c. 9, s. 27C and was in this case unrelated to the c. 254 review process. The HUMC insisted it wanted a full basement and that it would begin the exhumation process of marked graves in April. MHC said that if a university were to undertake mitigation, June or July would be a better time, since that is the usual time for field schools in Massachusetts.

Then, well into this long meeting, after having argued for months that no alternative was available, after insisting that the HUMC would not modify plans, after spending countless hours arguing against the professional archaeologists' interpretations, legal jurisdiction, and recommendations, and after MHC staff had spent considerable time to assist the HUMC through the planning process, the HUMC finally showed their hand. To our shock, a committee member placed on the table in front of us a sketch plan for a new building footprint that avoided all the unmarked graves. Rather than having disclosed at the outset of the meeting that the new plans were available, the committee had withheld the information, extending the discussions apparently for no other purpose than to express their displeasure at the process. After having in front of us a feasible alternative, we quickly concluded the meeting with

our recommendations: place a fence or some other delineation between the unmarked graves and the construction zone, and shore up the excavation to prevent the unmarked graves from collapsing. Our recommendations were written up and sent the next day.

Conclusions

Finally provided with a feasible alternative to avoid unmarked graves and aware that the congregation might seek to have a special law passed to allow it to proceed with the project—and it was only because of extensive negotiation that they did not—MHC negotiated using a strict interpretation of the law. Unmarked graves would be treated under the Unmarked Burial Law, with archaeological survey to locate and avoid unmarked graves. The marked graves would be treated as the church saw fit, having already been granted a permit by the Harwich Board of Health. The treatment of marked graves in established cemeteries has traditionally been determined by the private or public corporation that cares for the cemetery. Thus, while the unmarked graves were avoided and preserved, the marked graves were fully impacted by exhumation with no attendant archaeological observation. The HUMC wanted no further involvement in systematic archaeological mitigation of the marked graves, or even voluntary archaeological observation.

To our dismay, we wonder whether the exhumation effort for the marked graves was completely successful. A newspaper report (Lantz 1994) sent to our office indicated that human bones were found in construction backdirt from the impact area where marked graves were located. Three alternative scenarios are suggested by the discovery. First, it may be that incomplete exhumation left bone in place to be impacted during construction and subsequently found in backdirt trucked off the site. Second, if intrusion occurred in the areas that were to be fenced and avoided during construction, the work may have dislodged bone from unmarked graves. Third, it is possible that unmarked graves were not located during the survey and hence were impacted during construction, but the extensive mechanical stripping and shovel-skim-

ming that located features smaller than grave shafts suggests that this third scenario is unlikely. Archaeological examination of cemeteries where exhumations have occurred documents incomplete removal of human remains and associated artifacts (e.g., Mangan 1995). While the removal of a modern casket encased in a concrete vault is a simple matter, funeral directors are not equipped to ensure adequate recovery of historical graves containing fragile bone, delicate artifacts, and the remnant soil stain of the decomposed burial container. Such recovery requires the special skills of an archaeologist who also provides adequate analysis and documentation of the material. In any case, newspaper reports of the discovery of human remains during construction led to inquiries at the MHC by the Native American community, upset at reports of skeletal remains being dumped offsite with construction backdirt. The adverse publicity that attended the whole sorry affair put the treatment of the cemetery by the HUMC in an unkind light.

The congregation's difficult attitude and often unyielding posture during this review did not create a suitable atmosphere for negotiation and problem-solving. In such a milieu, it is not surprising that the Harwich case ended as it did. I believe that a large problem with this case was, in a word, money. The congregation was not willing or able to appropriate the funding to undertake the technical archaeological work necessary to adequately mitigate the graves that could not be avoided. The issue is far more complex than money, however. The congregation was unwilling to do anything beyond what was strictly required by law. Note especially Garman's point that the congregation was unwilling to allow even voluntary archaeological observation during exhumation of marked graves. And, despite MHC's recommendation to seek assistance from researchers who could have performed this work as a professional service, this opportunity was never pursued. Seventeen "marked" graves were impacted by exhumation with no accompanying archaeological analysis or documentation of the remains and associated artifacts. Based on a newspaper account, the results of the archaeological investigation, and comparative exam-

ples of similar exhumation efforts, exhumation may not have been complete. Human remains were found in backdirt trucked off the site, and lacking archaeological observation there is no way to determine from which grave these remains originated. As I also point out, however, the review could have gone worse—much worse. In particular, the congregation threatened to seek a special legislative exemption that would have created an awful precedent allowing any other politically-connected project proponent to play the same hand. MHC could have also found itself the subject of a lawsuit. An unfavorable judicial interpretation of the existing statutory framework would have implications for future efforts and may well have curtailed our advocacy forever. Such a scenario would allow the uncontrolled destruction of significant historical resources, deserving of preservation, when legal protections are notwithstanding. Thankfully, none of these unfavorable turns of events occurred. Instead, an archaeological survey was performed that gathered significant information on the historical cemetery landscape, mortuary behavior, and the early history of the church (Garman 1992). As a direct result of the archaeological survey, 14 unmarked graves were identified, and the congregation eventually, if begrudgingly, planned for their avoidance and protection through redesign of the church addition.

Attentive to the limitations of the Massachusetts cemetery preservation laws and mindful of the alternative for the complete, uncontrolled destruction of cemeteries, MHC chooses to enjoin parties through negotiation. Alexander Pope's admonition that "fools rush in where angels fear to tread" rings true here. Wise preservationists may choose their battles, but the wiser ones completely avoid antagonism through respectful diplomacy and negotiation. An added muddle is that government agencies operate in a political arena, answering to a range of constituents who typically have solely personal interests and agendas they want met. For whatever services an agency provides, it had better have the flexibility to succeed in individual cases while fulfilling its broader mission to society. The ultimate implication of prolonged or repeated conflicts, unresolved and unsuccessful, can be

unwanted attention by lawmakers who may gut an entire program. In her ironic "found" poem, "Building a Tree House," Annie Dillard (1995: 65) posed "a comical question for boys": "Which would you rather do or go fishing?" Indeed, half a preservation, so to speak, is better than none at all. To maintain a preservation program that enjoys broad official and public support, one does well to consider what one can do, what one cannot, and hope for the wisdom to know the difference.

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