

CAUSE NO. 2021-34550

IN RE MCDANIEL STREET CEMETERY §
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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

55th JUDICIAL DISTRICT

ORDER GRANTING WESTCOTT CEMETERY ASSOCIATION'S

VERIFIED ORIGINAL PETITION

The Court, having considered Westcott Cemetery Association's ("WCA") Verified Original Petition (the "Petition"), all responses and replies, the arguments of counsel, and the Written Plan for the preservation and conservation of the historic McDaniel Street Cemetery, determines that, in accordance with Chapter 715 et seq. of Subtitle C, Title 8 of the Texas Health and Safety Code, (1) WCA, through its members and incorporators, has a religious, ethnic, historic, or cultural relationship to the cemetery; (2) the McDaniel Street Cemetery was established more than 75 years before the date this action was commenced; (3) a viable organization of plot owners of the McDaniel Street Cemetery does not exist; and (4) the McDaniel Street Cemetery threatens or endangers the public health, safety, comfort, or welfare. Accordingly, it is therefore,

ORDERED that the facts stated in WCA's Petition are true and correct.

It is further ORDERED that the Written Plan accompanying the Petition and this Order demonstrates WCA's ability to restore, operate, and maintain the McDaniel Street Cemetery.

It is further ORDERED that authorizing WCA to restore, operate, and maintain the McDaniel Street Cemetery is in the best interest of the public.

It is further ORDERED that WCA shall be authorized to research, document, restore, preserve, and maintain the McDaniel Street Cemetery.

It is further ORDERED that the Written Plan, attached hereto as Exhibit A, is wholly incorporated within this Order.

It is further ORDERED that this Order be binding upon all parties to the action.

It is further ORDERED that this Court will retain continuing jurisdiction to monitor and review WCA's compliance with this Order.

Signed this ____ day of _____, 2021.

Signed:
9/28/2021



JUDGE PRESIDING

EXHIBIT A

Westcott Cemetery Association, Inc.'s Written Plan

Pursuant to Section 715.005 of the Texas Health & Safety Code, Westcott Cemetery Association, Inc. ("WCA") prepared this Written Plan to accompany its Verified Original Petition and submits to the Court as follows:

1. Description of Actions to be Taken by WCA to Restore, Operate, and Maintain the historic McDaniel Street Cemetery.

The conditions within the McDaniel Street Cemetery, as in many abandoned historic cemeteries, are generally adverse. This burial ground is an Upland South Folk cemetery, meaning that it was not originally laid out with lots and blocks, interior paths or lanes, or formal landscaping. Many grave markers have been toppled, and some have been damaged. A few have been repaired in the past by amateur conservators whose work will be revised. The enclosures around all four family plots—one brick wall, one block wall, and two chain-link fences—have been damaged and will be repaired. One other plot is enclosed with a wire structure that may have been a *mortsafe* (a wire cage constructed to protect graves during the Victorian era). If that is the case, it would be a very rare historic resource (common in Scotland, but not the United States) and would be conserved and repaired by a professional. No curbing appears to surround other plots, although ground-penetrating radar or other remote sensing technologies may reveal the location of unmarked graves and curbing or markers that have subsided below the soil surface.

The condition of manmade and natural features within the cemetery will be assessed and documented, and treatment approaches recommended, in the Historic Cemetery Master Plan (HCMP) that will be prepared once WCA obtains judicial authorization to restore, operate, and maintain the cemetery. The HCMP will assess the condition of all grave markers and plot enclosures; cultural plantings, trees, turf, and other vegetation; and site conditions such as drainage and grave depressions. Recommended treatment approaches will follow the Secretary of the

Interior's Standards for the Treatment of Historic Properties. The HCMP will also recommend changes including the addition of a perimeter fence, to prevent vandals from driving into the cemetery, and a conceptual plan for the potential location of that fence, a parking area (if possible), potential walking paths for use by the neighborhood, and appropriate lighting (designed to meet Dark Sky standards and avoid disturbing surrounding neighbors). The HCMP will recommend that a Registered Professional Archaeologist must be on site during any excavation activities, in accordance with the Texas Antiquities Code and cemetery best practices. The HCMP will also include a sequence of activities, estimated costs, and best practice recommendations for maintenance operations, interpretation of the site, disaster planning, fundraising, heritage tourism, and other topics as identified during the development of that plan.

To date, WCA, neighborhood organizations, and individual volunteers have limited their activities to mowing and trimming. Resetting and repairing/conserving grave markers requires specialized equipment and training. A qualified cemetery conservator, such as Texas Cemetery Restoration Services, will be hired to perform those tasks, beginning with a comprehensive assessment of grave markers (in the HCMP) and a prioritized list of markers to be repaired, reset, or both. At this time, it appears that most of the markers which could be toppled have been knocked over by vandals. None of the remaining upright markers are leaning at an angle that suggests they are an imminent topple risk. However, if vandalism continues, we expect that the remaining markers are likely to be pushed over. One of the markers is quite large and would pose a safety risk to anyone attempting to topple it.

2. Anticipated Costs of Actions Described in Section 1.

Master Planning (2021–2022)

- \$54,000 Master Plan development (McDoux Preservation)
- \$ 5,000 Remote sensing (Cox McLain Environmental Consulting archeologist)
- \$ 3,000 Cemetery mapping (Texas Cemetery Restoration Services)

- \$11,500 Landscape design (Laura Knott ASLA)
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- \$73,500

Rehabilitation Work (2021–2024)

- \$67,000 Marker conservation (Texas Cemetery Restoration Services)
- \$60,000 Perimeter fence to secure the property
- \$15,000 Masonry repairs to damaged family plot enclosures
- \$9,400 – 18,000 Tree Survey and Removal
- \$5,000 Interpretive kiosk or panel
- \$75,000 Landscape improvements
- \$60,000 Project management
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- \$291,400 – 300,000

Ongoing maintenance

- \$4,500 per year Includes mowing and trimming

3. Anticipated Time Actions Described within Section 1 will be Commenced and Completed.

The initial condition assessments will begin as soon as WCA has finished raising the matching funds for a \$45,000 grant from the Fondren Foundation. The match must be raised by December 31, 2021, and to date WCA has raised nearly 40% of those funds through donations or pledges. Fundraising efforts are ongoing, focusing on a few grantmaking foundations, but primarily on descendants. The Summerlee Foundation in Fort Worth recently made a \$5,000 gift toward the match, and WCA has received several gifts of \$1,000 or more from individuals, with one \$10,000 donation from an ongoing supporter.

Following the assessment of current conditions and development of recommended treatment approaches, WCA will commence repair work based on the prioritized sequence of events outlined in the HCMP. The Fondren Foundation grant plus corresponding match is sufficient to pay for the HCMP and top-priority activities such as a perimeter fence, repair of plot enclosures, and removal of dead trees. These items should be completed within two years, but as with any restoration effort, may take longer.

The remote sensing survey of the cemetery and potential location of unmarked graves or subsided markers will be our next priority. WCA expects that as many unmarked graves as possible will eventually be marked, as descendants have begun sharing recollections and family maps showing the locations of known burials, and unidentified graves can be marked with a simple small granite block.

WCA does not have an exact target date for completing all of the grave marker conservation activities, as the scope of that work will depend on the condition assessments, which have not yet begun, and the resulting cost estimates. Any high-priority conservation work will commence right away, and then WCA will proceed in a stepwise fashion as funds are raised.

4. Description of Actions to be Taken by WCA for Proper Conduct of its Business and Protection of McDaniel Street Cemetery, Including the Principles, Plans, and Ideals on Which the Cemetery was Established.

As soon as WCA has secured conservatorship, it will hire a tree service company with Certified Arborists to clear dead or unsafe trees that create an immediate public safety hazard. Once a conceptual plan for the cemetery has been established in the HCMP, WCA will install a perimeter fence around the cemetery to prevent vehicular access. WCA will also install lighting and encourage area residents to use the cemetery as a passive greenspace, which will deter vandals from entering the cemetery.

WCA will not operate the cemetery as a business or permit additional burials.

McDaniel Street Cemetery was established by community members to meet the needs of the community. The 1893 dedication of the Westcott Cemetery (the largest of the enclosed plots) stated that it was to be used “for a neighborhood burying ground only.” In that spirit, WCA will maintain the cemetery as an asset for the neighborhood.

5. Description of the Records to be Maintained by WCA.

WCA will maintain and update all records of known burials and unmarked graves on an ongoing basis. A remote sensing/ground penetrating radar survey of the cemetery will use GPS (Global Positioning System) and GIS (Geographic Information System) to map the locations of known burials and unmarked graves. Additional information about each known marker will be added to the GIS geodatabase and can be used to create a public StoryMap that will help to engage descendants and conduct additional research. This will be supplemented by an informational cemetery survey, capturing inscriptions, epitaphs, marker types, etc., conducted in accordance with the best practices promoted by the Texas Historical Commission's Cemetery Preservation Program. To the extent possible, WCA will use nonproprietary open-source software for cemetery records to ensure that it remains accessible over time.