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05 Life and Death Matters

James Jones

West Chester University of Pennsylvania, JJONES@wcupa.edu

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Life and Death Matters

By Jim Jones

In early 2010, the West Chester Borough Council modified its ordinance on "Interments" (a.k.a. burials). Chapter 68 of the Borough Code prohibited "burial or interment of deceased persons ... in all locations within the Borough of West Chester." It is thanks to this ordinance that the Friends Burial Society have their cemetery on the south side of W. Rosedale Avenue; Greenmont, Chestnut Grove and Rolling Green cemeteries are all located east of Bolmar Street; and Oaklands, St. Agnes, Chestnut Grove Annex and Oaklands Friends cemetery are all located north of Goshen Road on what locals call "cemetery hill."



Chestnut Grove Cemetery at E. Gay St. & Garfield Ave.

All of them are located in West Goshen township, and none are located in East Bradford township, raising a question (why?) that will remain unanswered for now. This article addresses a different question -- why were burials prohibited within the Borough limits?

The earliest legislation on the subject was an ordinance passed on July 21, 1851. Beginning on August 20, it was no longer "lawful for any interment of the bodies of deceased persons to be made in all that part of the said Boro bounded on the North by Chestnut Street -- on the West by New Street -- on the South by Bernard (sic) Street -- and on the East by Matlack Street."

The minutes of Borough Council meetings were extremely brief in those days, but they mention a discussion at their May 19 meeting of a law passed by the state legislature in April which gave the Chief Burgess (a combination of our modern mayor and Borough Council president) the right to prohibit interments within a specified boundary in the municipality. Council appointed its Chief Burgess and Second Burgess (James H. Bull and J. Smith Futhey) to determine appropriate boundaries and to draft an ordinance. The following month, Chief Burgess Bull reported that they were working on an ordinance and intended to consult with the "Oaklands Cemetery Company and the catholics." Finally, on July 21, they "discussed, amended and approved" the new ordinance.

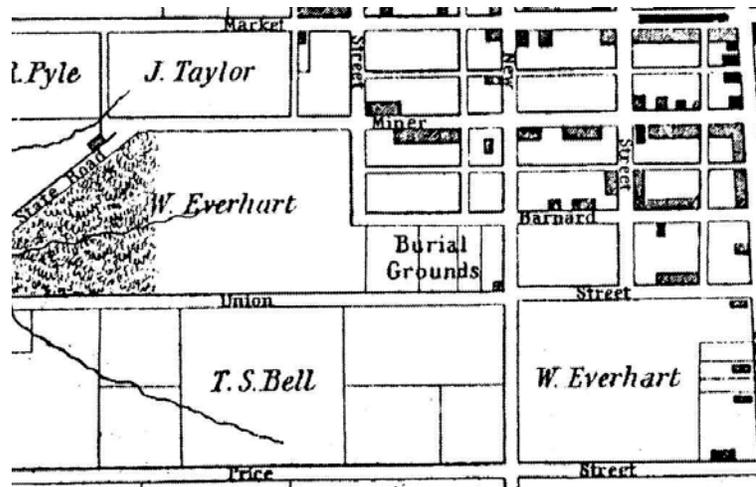
The state law which triggered all of this was the Act of April 3, 1851, known as the "General Borough Act." It laid out the powers permitted to borough governments all across the state, and

formalized the jurisdiction of state and local law in existing boroughs like West Chester. Among the powers it conveyed to a borough were the ability to "to prohibit within the borough the burial or interment of deceased persons, or within such partial limits within the same as they may from time to time prescribe."

The speed with which Borough Council began to discuss prohibiting burials -- one month after the passage of the Act -- suggests that burials were a source of concern in 1851. The Borough Council minutes are too sparse to provide any clues, but Charles E. Rosenberg's book, The Cholera Years (University of Chicago Press, 1987) suggests an explanation. On page 101, Rosenberg wrote that "Cholera, like revolution, had swept through Europe in 1848." By December of that year, a ship carrying immigrants lay at anchor near Staten Island while city health inspectors inspected the bodies of seven passengers who had died en route -- all from cholera. Despite efforts to hold the survivors in quarantine, the disease spread into the city itself, and the cold winter temperatures limited its spread. Other ships brought cholera to ports like New Orleans, where the mild winter weather enabled it to spread much more rapidly. With the beginning of spring, it began to move north until by the summer of 1849, the country was reeling before a full-blown epidemic.

Since the last major epidemic of cholera in 1832, the medical profession had not yet discovered an effective response. Medical knowledge of the time ascribed disease to "filth" ("germ theory" was still in the future), and proposed solutions that promoted "cleanliness" like street sweeping, prohibiting pigs from residing in towns, and eliminating stagnant water, as well as placing the sick in quarantine. But local laws were too weak to allow municipalities like West Chester to enforce such measures, and in Pennsylvania, where all authority resided with the state, it took an act of the state legislature to enable West Chester to respond. Preventing the burial of possibly cholera-infected corpses in the middle town was one such response. [For other responses in West Chester, read Charlotte Bridges's Report on the West Chester Board of Health from 1885-1960.]

In 1873, Borough Council revisited its burial ordinance. The minutes are especially opaque -- they report simply that at its August 19 meeting, "On motion it was resolved to promulgate an ordinance prohibiting internments of deceased persons within the Borough limits." The new ordinance copied most of the language from the 1851 ordinance but instead of boundaries, said simply "it shall not be lawful to inter the body of any deceased person within the limits of the Borough." That must have set off a scramble to move cemeteries out of the Borough -- evidently the legal principle of "grandfathering" did not



Burial ground on W. Barnard St. in 1847

apply -- because the following month, "Thomas Warrington and Benjamin Hoopes of the Friends Society appeared before Council to ask that the ordinance not go into effect until April 1st, 1874. Council agreed.

Over the years, the state legislature expanded on the laws governing burials, and occasionally even the State Supreme Court weighed in. For example, in a challenge to the burial law of the Borough of Yeadon, the judge quoted the decision in "Kincaid's Appeal" (66 Pa. 423, 5 Am. Rep. 377), to wit:

No one can doubt the power of the Legislature to prohibit all future interments within the limits of towns or cities. In ancient times, in Greece and Rome, such was the universal rule. It was one of the laws of the twelve tables *'hominem mortuum in urbe ne sepeliret neque vicinitate.'* It is much to be regretted that it was not adopted as our policy at an early period. This is no invasion of any right of property. Every right, from an absolute ownership down to a mere easement, is purchased and held subject to the restriction that it shall be so exercised as not to injure others. Though at the time it may be remote and inoffensive, the purchaser is bound to know at his peril that it may become otherwise, by the residence of many people in its vicinity, and that it must yield to laws for the suppression of nuisances. If conditions or covenants, appropriating land to some particular use, could prevent the Legislature from afterwards declaring that use unlawful, legislative powers necessary to the comfort and preservation of populous communities might be frittered away into perfect insignificance."

Such a power the state may exercise through municipalities. ...

As state law changed, so did the Borough's. The current version was adopted as part of a general reorganization of the Borough's ordinances in June 1973, and amended in 1989. On January 20, 2011, at the request of officials from Calgary Lutheran Church, Council amended the ordinance again to exempt cremated remains from the prohibition against burials within the Borough.