

BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA

IN THE MATTER OF:

RECODIFICATION OF 312 IAC 22.5,)
CEMETERIES AND BURIAL) Administrative Cause
GROUNDS; REGISTRATION AND) Number: 08-112H
MANAGEMENT) (LSA Document #08-534(F))

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULES

A. INTRODUCTION

For consideration is the final re-adoption of 312 IAC 22.5, which provides standards for the registration and management of cemeteries and burial grounds. The article includes:

312 IAC 22.5

Rule 1. Definitions

312 IAC 22.5-1-1 (Application of definitions); 312 IAC 22.5-1-2 (Cemetery defined); 312 IAC 22.5-1-3 (Development plan defined); 312 IAC 22.5-1-4 (Division defined); 312 IAC 22.5-1-5 (Human remains defined); 312 IAC 22.5-1-6 (State defined)

Rule 2. Disturbance of ground within 100 feet of a cemetery

312 IAC 22.5-2-1 (Application of rule for development plan at burial grounds); 312 IAC 22.5-2-2 (Requirement of a prior development plan); 312 IAC 22.5-2-3 (Application for approval of a development plan); 312 IAC 22.5-2-4 (Incomplete or inadequate applications and expiration); 312 IAC 22.5-2-5 (Completion of review and effective date of authorization); 312 IAC 22.5-2-6 (Conduct of activities and modifications).

The text of 312 IAC 22.5 can be accessed through the Legislative Services Agency website at <http://www.in.gov/legislative/iac/T03120/A00225.PDF>.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to recodifications. Where no amendments are proposed, and rules would be readopted in their current form, the Director of the Division of Hearings may approve preliminary action. The

standard practice would be to readopt by article. The Commission retained authority to take final action on recodifications.

No amendments were proposed to the rule article 312 IAC 22.5 and would be readopted in its current form. The Director of the Division of Hearings approved preliminary action. 312 IAC 22.5 is submitted for consideration as to final action.

B. READOPTION ANALYSES UNDER IC 4-22-2-3.1

On August 12, 2008, Jennifer Kane, James Glass, Director of the Department's Division of Historic Preservation and Archaeology provided analyses for the proposed readoption of 312 IAC 22.5 to consider potential impacts to small business. His analysis provided:

Memorandum

Subject: Small Business Impact Analysis for Recodification of Cemeteries and Burial grounds; Registration and Management (312 IAC 22.5); Administrative Cause No. 08-112H

From: James A. Glass, Director
DNR Division of Historic Preservation and Archaeology

To: Steve Lucas
NRC Division of Hearings

Dated: August 12, 2008

Purpose

The purpose of this memorandum is to provide the analysis anticipated by IC 4-22 with respect to the readoption of 312 IAC 22.5 pertaining to the Natural Resources Commission. 312 IAC 22.5 consists of rules 1 through 2.

Rule 1: Definitions

This rule provides definitions with applicability to IC 14-21-1, IC 8-1, and IC 14-8-2. The rule does not impose any requirements or costs on small businesses under IC 4-22-2.5-3.1.

Rule 2: Disturbance of Ground within 100 Feet of a Cemetery

This rule provides the standards for the submission, review, and implementation of a development plan for the erection, alteration, of repair of a structure within one hundred (100) feet of a cemetery in accordance with the authority and directives of IC 14-21-1-26.5, and with applicability to IC 14-21-1, IC 8-1, IC 14-9-4, and C 14-34. This rule explains that a development plan approved, received, and

complied with prior to disturbing the ground within one hundred feet of a cemetery to erect, alter, or repair a structure. Exceptions to the rule include a public utility (IC 8-1-2-1(a)), a corporation (IC 8-1-13), a municipally owned utility (IC 8-1-2-1 (b)), a surface coal mining and reclamation operation (IC 14-34), and a government entity other than the state.

The rule specifies what information needs to be included in the application for approval of a development plan, including a cover letter, who is conducting the project, the location and nature of the project, any ground disturbance in the area, mapping showing the location of the cemetery in relation to the project, descriptive information on the cemetery and its boundaries, description of the grounds within 100 feet of the cemetery, and landowner permission for the project. The rule specifies procedures when an application is incomplete or inadequate, completion of review and authorization of the plan, time frames for review of the development plan, and conduct of approved activities and modifications of those activities.

The rule does not impose any requirements or costs on small businesses other than mailing and paper costs, if they prepare and submit the plan themselves. If, for example, the boundaries of a cemetery are not known and must be determined, there may be an associated cost. In rare cases, there may be a special circumstance where, for example an archaeological site is present in the project area, and must be avoided or subjected to archaeological investigations—but, the landowner has choices in the alternative chosen.

Some savings and time savings can occur when the department has records on a cemetery or burial ground, and with efficient processing of the plans. The department does not impose unnecessary requirements on plans.

General Overview Concerning Comments and Complaints

In addition to the rule specific descriptions provided above, the following general overview is provided.

The continued need for the rule.

The rule is necessary for the continued implementation of the regulatory program concerning development plan requirements administered by the Department and authorized under the statutory authority of IC 14-21-1-26.5.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

An occasional comment is that sometimes a landowner or developer has a tight time frame for construction and they wish plans to be processed as soon as possible. Quick turnaround of plans is viewed favorably by the regulated community, including small businesses. There are occasional misconceptions or misunderstandings regarding plan requirements, but these are successfully addressed with brief explanations.

There have been some complaints that the statute does not afford enough protection for cemeteries and burial grounds. This has been addressed somewhat by recent additions to IC 14-21-1 by Senate Enrolled Act No. 1129 regarding excavating or covering over the ground within 100 feet of a burial ground, and the requirement of an archaeological plan to be part of a development plan if a burial ground is within an archaeological site.

The complexity of the rule, including any difficulties encountered by:

(a) the agency in administering the rule; or

Some difficulties encountered through the course of administering the rule have been addressed by recent amendments to the rule. As stated above, sometimes brief explanations regarding some of the required information to be submitted in the plan are necessary.

(b) small businesses in complying with the rule.

The rule has been in effect for a number of years, and the DNR has publicized the rule and conducted training sessions that include information on the rule. There is also a list of plan requirements on the DHPA website. Increasing numbers of agencies and commissions involved in building permits notify builders of the development plan requirement. Development plans are not complex and should not affect small businesses if they incorporate the process into their planning and development.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

The rule is unique to IC 14-21-1-26.5 in its requirements. The statute makes clear certain exemptions regarding utilities, corporations, and surface coal mining and reclamation.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

The rule has not been changed since 2002. Minor changes to the rule may be necessary to implement the recent SEA 1129 amendments to IC 14-21-1-26.5. Overall, the rule holds up well in specifying the range of information necessary to successfully gain approval of a cemetery development plan. The rule is reasonable and necessary to promote the preservation and protection of cemeteries and burial grounds, while specifying reasonable information requirements for obtaining an approved plan. . Current technological changes and economic conditions have not changed in a way that would warrant rule modifications at this time.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

A “Notice of Intent to Readopt” was posted to the Indiana REGISTER on July 2, 2008 as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 22.5 without changes. The notice provided that a person had 30 days to submit a written request to the Natural Resources Commission seeking to have a particular section of the rules be readopted separately from the general recodification. If such a request is made, the Commission would be required to complete the full rule adoption process for the section. No written request has been received. Where no request is received, the Commission may either submit the rules for filing with the publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2.5. For the purposes of the readoption, retention of the current language is found to be appropriate.

The recommendation is for the Commission to approve submittal of the rule for filing with the Publisher.

Dated: August 14, 2008

Jennifer M. Kane
Hearing Officer