

PETITIONER seeks an order permitting removal of a body from a cemetery owned by Petitioner, for forensic and genetic testing to be performed on said remains for the purpose of public education on historical and genealogical matters in accordance with Petitioner's mission, and for reburial of said remains within said cemetery. The individual whose remains are sought to be removed, examined and reburied is a person of local historical interest known as the Leather Man.

2. Petitioner seeks to remove the body of an historical figure known as the Leather Man (the "Decedent") from a grave site located close to New York State Route 9, which site lies at least partially beneath a service road entering the cemetery. The Decedent had been interred in 1889 as an indigent person in a pauper's grave at the edge of the cemetery property at the expense of the County of Westchester. The remains of the Decedent after removal will be reburied by Petitioner in a gravesite in the main portion of the cemetery in a safer and more dignified setting.

3. Pursuant to Not-for-Profit Corporations Law Section 1510, the persons interested in this proceeding and who must consent in writing (except as otherwise noted) to the removal of the remains are (i) the cemetery owner (whose consent need not be in writing), (ii) the burial plot owners, (iii) the surviving spouse of the decedent, (iv) the children of full age of the decedent and (v) the parents of the decedent. Petitioner owns the cemetery and both burial plots. Upon information and belief, the Decedent died in 1889, was not married, had no children and the parents of the decedent are not living. See the affidavit of Dan W. Deluca (the "DeLuca Affidavit") attached as Exhibit 1 as support for Petitioner's contention that no other persons are interested in the within proceeding. Therefore, Petitioner is the sole person interested in this proceeding and Petitioner hereby consents to the removal and reburial of the remains.

4. The ground in which the Decedent is buried is not consecrated; the proposed plot for reburial is consecrated ground and is owned by Petitioner. Petitioner has no knowledge of any religious preference of the Decedent.

5. The location of the Decedent's grave is close to the busy state highway known as Route 9. Because of the popularity of the grave location as a site of local historical interest, the numerous persons who visit the grave site and its proximity to the highway, Petitioner cites the public health and safety as the primary basis for requesting an order permitting the relocation of the Decedent's remains. See the affidavit of Bernard Adler attached hereto as Exhibit 2 as support for Petitioner's allegation that the public health and safety would be served by removal of the Decedent's remains. See the affidavits of Cathy Crisfield and John Lee, attached respectively as Exhibits 3 and 4, as support for the allegation that the grave site is a site of local historical interest and is a popular stop on guided and self-guided tours of Sparta Cemetery.

6. The mission of the Society pursuant to its bylaws is to promote the public interest in historical and genealogical matters. Petitioner respectfully submits that such interest will be served by forensic and DNA testing of the Decedent's remains.

7. Upon removal, Petitioner would be a person authorized or under obligation to dispose of the body pursuant to Public Health Law Section 4301(h) and is permitted to make anatomical gifts which, in this instance, would consist of a small amount of bone tissue and/or a molar tooth. There are no living persons with a priority over Petitioner pursuant to said Section 4301 with respect to making or prohibiting any such anatomical gift from Decedent's remains. See the Deluca Affidavit at Exhibit 1 for the basis of Petitioner's belief that no persons have a prior right to Petitioner to make or prohibit such an anatomical gift. Petitioner has no knowledge that any such anatomical gift would be contrary to the religious or moral beliefs of the Decedent.

8. In fulfillment of its stated mission, Petitioner seeks to conduct various forensic and genealogical tests on the remains of Decedent and has engaged a prominent anthropologist and his team to perform such tests. Forensic testing will not result in any harm to the remains examined and largely will be conducted at the grave site, after which testing such remains will be reburied; DNA testing will result in the destruction of a small amount of tooth or bone tissue, estimated at four grams of mass, and will be conducted at a laboratory in conformity with Public Health Law Section 4302. See the affidavit of Dr. Nicholas Bellantoni attached hereto as Exhibit 5 for a description of the testing to be conducted. It is anticipated that the entirety of time for removal, testing, analysis and reburial may take up to one year. To ensure that the Petitioner complies with all legal requirements, Petitioner has assigned one of its members to oversee the proposed removal. Such member, George Camp of Dorsey Funeral Home of Ossining, New York, is a funeral director licensed by the State of New York and, as such, has the authority and the means to remove, store, transport and rebury the Decedent's remains.

WHEREFORE, Petitioner requests an order permitting and directing:

(1) the removal of the remains of the Decedent from his present burial location in Sparta Cemetery for the purposes of improving the public health and safety;

(2) for the purposes of expanding the historical record, testing including and limited to (a) forensic gross morphological evaluation of the biological life history of Decedent, to be performed within the cemetery without the destruction of remains, after which testing the remains will be reburied; (b) a CT scan of the skull for the purposes of three-dimensional imaging of the cranio-facial features for a reconstruction of the Decedent's face, without the destruction of the skull, after which testing the remains will be reburied; and (c) DNA testing of a molar and/or a fragment of large bone, preferable from the femur and weighing approximately 4 grams, which will involve the destruction of such dental and/or bone tissue submitted for testing, so as to determine the Decedent's ancestry; and (d) stable carbon isotope and trace

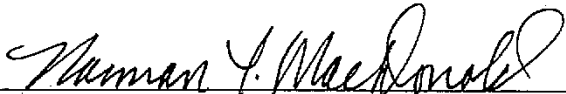
element analysis to determine the diet of the Decedent which will involve the destruction of such dental and/or bone tissue submitted for testing; and

(3) reburial of the remains at Sparta Cemetery in an appropriate location away from New York State Route 9;

with the foregoing to be completed within one year.

OSSINING HISTORICAL SOCIETY MUSEUM

October 13, 2010
Ossining, New York

By: 
NORMAN T. MacDONALD, President

From “Notice of Petition” 10/14/2010