



## Beyond The Structure

► Failure to perform proper due diligence can lead to scary discoveries when it is too late.

One of my favorite movies as a kid was “Poltergeist.” For those who have not seen the movie, the plot is essentially as follows: A suburban family lives in a home that, unbeknownst to them, is built on top of an old cemetery where the bodies were never exhumed and the house is haunted. Ghosts kidnap five-year-old Carol Anne Freeling via static on the television, and the rest of the film involves the family’s efforts to rescue her. Eventually they do, but the spirits go on a rampage.

“Poltergeist” is a due diligence nightmare. Assuming the developer unwittingly constructed the home and failed to exhume bodies in accordance with law, this could create quite a bit of liability both with the state and local government, as well as future homeowners. Yet this morass could have been avoided, or at least accounted for in the cost of project, with a bit of historical sleuthing.

The “Poltergeist” story is not complete fiction. In one example in Pennsylvania, in the late 1930s, a developer constructed a multifamily apartment building on top of a former cemetery. The structure stood for 30 years until it was demolished in the 1970s, at

which point it remained fallow for nearly 30 years. Recently, the same developer elected to redevelop the property on the previously existing footprint. Upon entry of the first shovel into the ground, it was found that over 30 tombstones and corpses had not been exhumed as part of construction of the prior development.

What lessons may be learned here? First, never assume that a prior owner – or even the same owner – properly performed due diligence. Second, using the same footprint does not guarantee proper soil conditions or a lack of geotechnical issues. Third, a review of title, specifically with respect to the owners before the present owner, may

