

**Wyuka Cemetery
Special Evaluation Summary**

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APA Summary of Evaluation Procedures

The Auditor of Public Accounts (APA) began the evaluation on October 16, 2007, regarding Wyuka Cemetery (Wyuka), Wyuka Historical Foundation (Foundation), and Wyuka Historical Foundation Auxiliary (Auxiliary).

Wyuka Background

Established in 1869, Wyuka was declared a public charitable corporation by the Nebraska Legislature in 1927. Neb. Rev. Stat. §§ 12-101 – 12-105 govern the operations of Wyuka. General control and management of the affairs of the cemetery are vested in the board comprised of three trustees appointed by the Governor, pursuant to Neb. Rev. Stat. § 12-101(1). This statute designates the Board of Trustees as a corporate body known as Wyuka Cemetery with the “power to sue and be sued, to contract and to be contracted with, acquire, hold, and convey both real and personal property for all purposes consistent with the provisions” of law pertaining to Wyuka. In addition, they may exercise the power of eminent domain.

The trustees have also been given power to prescribe all needful rules and regulations for the government of Wyuka. One of their duties is to set aside part of the purchase price of each burial lot sold, for the permanent maintenance of said cemetery, to be invested in accordance with the statutory “prudent investor rule.” The “prudent investor rule” is found at Neb. Rev. Stat. §§ 30-3883 to 30-3889. Neb. Rev. Stat. § 12-103 further states, “No part of the principal of this fund shall be used except for investment purposes as aforesaid. Each investment shall be approved by the unanimous vote of the board of trustees and entered upon the records of Wyuka Cemetery. The trustees shall appoint a treasurer to have custody of its funds who shall give a surety company bond in a sum not less than the amount of cash in his hands, conditioned for the safekeeping of such funds.” These funds are commonly referred to as the “perpetual care funds.”

Being statutorily designated as a “public charitable corporation,” Wyuka operates as a political subdivision of the State.

The current Wyuka Trustees are Michael Tefft (since 2000), Jeffrey Schumacher (since 2005), and Faye Osborn (since 2007). Wyuka currently employs Marty Miller, President, and Mike Williams, Funeral Director. Todd TerMaat was employed by Wyuka from August 1998 through January 18, 2008. He functioned as the Accountant for the last several years.

Wyuka’s management history is as follows. Please note these individuals all held the same position at Wyuka; however, their titles were different.

- Marty Miller was hired on November 1, 2006, as President.
- Bryan Block was promoted to and held the position of Co-Director from April 2004 through October 2006.
- Michael Hutchinson was Chief Executive Officer from 1995 through March 2004.

Foundation Background

Per Articles of Incorporation of Wyuka Historical Foundation, on September 8, 1997, the non-profit Wyuka Historical Foundation was created exclusively for charitable, religious, education, scientific, and literary purposes. **See Exhibit A.** The Foundation’s purpose is to solicit, receive, administer, transfer and distribute monies, gifts, legacies, devises and conveyances of real and personal property for the development, improvement and rehabilitation of the facilities and lands

of Wyuka. The Articles indicate the affairs of the Foundation shall be managed by a board of directors and the corporation shall not have members. All of the Wyuka Trustees serve as directors for the Foundation. The 2007 Nonprofit Corporation Biennial Report filed with the Nebraska (NE) Secretary of State states the nature of business as, “To accept endowment funds for capital projects at Wyuka Cemetery.” The Foundation Officers and the Board of Directors are also listed on this report. **See Exhibit A-1.**

According to its own literature on the Wyuka website, “The preservation and restoration efforts for monuments and buildings here at Wyuka is [sic] a principle focus of the Foundation.”

A Wyuka Historical Foundation document entitled “Proposed Policy regarding the Disposition of Donations,” dated June 17, 2004, disclosed that Wyuka “subsidized all personnel and program expenses for the Foundation until 2003.” Similarly, this document sets out the following organizational plan: **See Exhibit B.**

“That the Foundation will set a goal to cover in year one (2005) -33% of such operating expenses; year 2006- 66% of such operating expenses; and in year three (2007) 100% of such expenses of foundation overhead, all being reimbursed to WYUKA Cemetery through a mutually agreed upon budget approved by the Foundation Board of Directors and the WYUKA Cemetery Board of Trustees.”

Auxiliary Background

According to the Auxiliary rosters, the Foundation created a sub-committee called the Wyuka Historical Foundation Auxiliary. The purpose of the Auxiliary is to promote interest and support for the Wyuka Historical Foundation and Wyuka Cemetery through educational and fund-raising activities. This is a membership committee with annual dues. The Auxiliary maintains a directory of all its members. The President of the Auxiliary is also a Director on the Foundation Board.

APA Procedures

Our evaluation included the following procedures and summaries:

1. Obtained and evaluated the organizational structure for Wyuka Cemetery, the Wyuka Historical Foundation, and the Wyuka Historical Foundation Auxiliary to understand how all components function together.
2. Obtained an understanding of the internal controls over the financial operations of Wyuka, including disbursements, receipts, payroll, and sales procedures.
3. Obtained and examined financial information for Wyuka and the Foundation for January 2005 through December 2007.
 - a. Examined certain financial statements, bank statements, audit reports, general ledgers, and check registers for Wyuka.
 - b. Examined certain financial statements, bank statements, audit reports, and general ledgers for the Foundation for items relating to Wyuka.
 - c. Examined certain payroll ledgers and W-2s.
 - d. Examined certain credit card statements and support for the payments.

4. Obtained and examined the ownership of spaces at Wyuka and contracts related to those spaces. These included spaces at Wyuka Cemetery and Fairview Cemetery (The Fairview Cemetery is owned by Wyuka).
 - a. Evaluated ownership of spaces by all individuals who have served on Wyuka Trustees from 2002 to the present and other contracts related to those spaces owned by the Trustees.
 - b. Evaluated ownership of spaces by all individuals who have served on the Foundation's Board of Directors from 2002 to the present and other contracts related to those spaces owned by these individuals.
 - c. Examined all current Wyuka employees' names and determined which ones owned spaces. Selected 5 current employees and examined in detail their contracts for space ownership and other contracts related to those spaces.
 - d. Selected 5 prior employees of Wyuka and examined in detail their contracts for space ownership and other contracts related to those spaces.
 - e. Arbitrarily selected 8 individuals with spaces at Wyuka and 9 individuals with spaces at Fairview to examine in detail their contracts for space ownership and other contracts related to those spaces. These individuals were not Wyuka employees or Board members of any Wyuka organizations.
 - f. Traced payments for contracts to deposits into Wyuka bank accounts.
 - g. Examined sales contracts written during the time of the former Chief Executive Officer, which was from 1995 until March 2004.
5. Examined supporting documentation for the purchase of private mausoleums and other goods or services in exchange for donations.
6. Obtained and evaluated trustee minutes and other information regarding Wyuka, including applicable Statutes and policies and procedures.
 - a. Examined Trustees minutes.
 - b. Examined applicable State Statutes.
 - c. Examined Bylaws.
 - d. Examined policies and procedures.
 - e. Examined Employee Handbook.
7. Obtained and examined personnel files, criminal background information through the Judicial User System To Improve Courtroom Efficiency (JUSTICE) and Court Case records for Directors and financial employees of Wyuka.
8. Examined issues noted regarding pre-need sales and perpetual care funds.
9. Examined application and information regarding a grant to be received from the NE Department of Roads for the restoration of the Wyuka stable.

APA Summary of Evaluation Results

The overall summary of our evaluation noted:

1. Wyuka Alleged Embezzlement

The APA obtained and examined accounting records and bank statements as provided by the Wyuka Accountant for the time period January 1, 2005 through December 31, 2007. After examining such information and finding suspicious activity, the APA then received the original Wyuka bank statements directly from Pinnacle Bank for the same time period. Discrepancies were noted when comparing the Accountant's bank statements to those provided by Pinnacle Bank.

A comparison of the bank statements appeared to indicate the following:

- The Accountant wrote checks to himself from the Wyuka bank account and did not record them on the Wyuka accounting system.
- The Accountant received the monthly bank statements from Pinnacle Bank and altered them.
- The Accountant created and altered bank reconciliation reports so the Wyuka bank account appeared to balance each month to the Wyuka check book.

The APA confronted the Accountant, on January 18, 2008, with photocopies of two of the improper checks, and he admitted to his embezzlement scheme. The APA notified the NE State Patrol and the Wyuka Trustees of the alleged embezzlement. The APA verified at least \$42,240 in inappropriate checks paid directly to the Accountant. **See Exhibit O.** Evidence exists suggesting the possibility of additional financial impropriety and the APA is continuing its investigation of this matter.

We recommend the Wyuka Trustees pursue all available legal remedies to identify and recover the losses.

2. Wyuka Accountant Investigation

A routine search of Lancaster County District Court records conducted by the APA revealed the Wyuka Accountant was found guilty in 1997 of two separate felony thefts which occurred between 1995 and 1997 from clients of the CPA firm at which the Accountant was previously employed. He was sentenced to three years probation. **See Exhibit D.** This information was not disclosed or documented in the Accountant's personnel file or on any Wyuka records. The Wyuka attorney and the current Wyuka Trustees were unaware of the Accountant's criminal history. The Wyuka application completed by the Accountant did not ask questions regarding criminal history or require the disclosure of it. The Accountant started at Wyuka in August 1998, while he was on probation. The Accountant's probation was terminated in December 2000.

Throughout our examination of Wyuka, individuals interviewed referred to the Accountant as the "person to get answers from" and the person who "handles the finances." The Accountant maintained the financial records for both Wyuka and the Foundation. While some controls had been put in place, there were numerous occasions where the controls were overridden. As an example, on occasion pre-signed blank checks were provided to the

Accountant and the Accountant had sole responsibility for reconciling the bank statements. This practice increased the risk of fraudulent checks not being detected by another individual. Other internal control issues are noted below.

Although the Accountant was not authorized to sign checks, there was a significant lack of segregation of duties over the accounting and bank records at Wyuka. The Accountant had complete control of the accounting records. Neither the President nor the Wyuka Trustees appropriately monitored financial activity to identify fraud or other errors or irregularities.

The Accountant was not required to record his time worked or leave used. The APA noted numerous instances where the Accountant received significant amounts of overtime and vacation pay although there were no records to support his claim of time worked. Between 2005 and 2007 the payroll register indicated four instances where the Accountant received two pay checks dated the same day.

Pre-numbered receipts were not issued for monies collected by Wyuka. Therefore, the APA was unable to verify all money received by Wyuka was deposited or accounted for on Wyuka records.

We recommend the Wyuka Trustees ensure discovery and disclosure of any criminal history during the hiring process, particularly for staff involved in the accounting of financial transactions. We also recommend the Trustees perform background checks of all staff involved in financial transactions. These issues should be documented in the employee's personnel files and on their applications. We also recommend the Trustees implement procedures to ensure an adequate segregation of duties exists over financial transactions. Checks should not be signed in advance or without being completely filled out. The individual signing the checks should ensure there is appropriate documentation for each check signed. Invoices should be attached to each accounts payable check and should be approved by someone other than the Accountant. Payroll timecards should be used to support each payroll check. Pre-numbered receipts should be used to account for all monies collected by Wyuka. The Wyuka Trustees and President should take an active role in monitoring financial transactions.

3. Wyuka Cemetery President's Mausoleum Purchase

The APA examined the contract for the purchase of the current Wyuka President's private mausoleum. This purchase occurred prior to his employment at Wyuka and while Wyuka was under the direction of the former Chief Executive Officer. The total amount paid by the President for his mausoleum was \$158,000. The payment schedule was as follows: \$25,000 was paid May 2001; \$5,000 was paid July 2001; \$49,000 was paid January 2002; \$30,000 was paid January 2003; and \$49,000 was paid in February 2004. All of the deposits were traced to Wyuka Cemetery's bank accounts and not the Wyuka Foundation's bank accounts. The APA found no corresponding donations whatsoever from the President to the Foundation for these dates. The money received was for the purchase of a mausoleum and is not tax deductible.

The Federal and State tax codes make it clear individuals cannot claim a charitable deduction for the cost of purchases that result in personal benefit.

The President received two letters signed by Wyuka's former Chief Executive Officer for donations made to Wyuka. As noted above, the APA found no donations from the President to Wyuka during this time; however, the amounts directly agree with the payments made for his private mausoleum.

- The first letter was dated July 19, 2001, on Wyuka Cemetery letterhead thanking the current President for a generous \$30,000 donation for the on going support and restoration work at Wyuka with reference that the Wyuka Foundation is a 501c (3) not-for-profit corporation. **See Exhibit C.**
- The second letter was dated March 25, 2003, on Wyuka Historical Foundation letterhead thanking the current President for a charitable contribution of \$49,000 for the on going support and restoration work at Wyuka with reference that the Wyuka Foundation is a 501c (3) not-for-profit corporation. **See Exhibit C-1.**

The APA contacted the NE Department of Revenue regarding this issue and to obtain clarification on tax deductions for donations. The NE Department of Revenue is aware the amounts reflected in the letters were for an actual purchase and were not for any donation. The NE Department of Revenue will proceed with actions they determine appropriate.

The APA questioned the President in the presence of Wyuka Trustee Jeff Schumacher regarding the improper tax deductions. The President indicated he would get copies of his tax returns to determine if he took the deduction or not.

- On November 29, 2007, Dana F. Cole and Company, LLP, the President's tax preparer, issued a letter confirming the President had deducted \$72,000 for donations to Wyuka Foundation on his taxes during 2001-2004. The tax preparer also calculated that the process of amending the Federal and State tax returns to remove the previous deductions would require the payment of \$6,979 of Federal taxes and interest and \$2,509 of State taxes and interest. **See Exhibit C-2.** Jeff Schumacher informed the APA the current President has now made payments to the tax authorities. Dana F. Cole and Company, LLP conducted audits of the annual financial statements for Wyuka and the Wyuka Historical Foundation for these years.
- Other Wyuka employees informed the APA that additional letters thanking cemetery patrons who made purchases for their "donations" may have been issued. However, Wyuka was unable to provide or locate copies of any other specific letters.

We recommend the Wyuka Trustees ensure employees are not providing letters or promises of tax deductibility to purchasers of funeral or cemetery services or products. We further recommend the Wyuka Trustees take appropriate action regarding the President's attempt to personally gain by claiming a tax deduction for an actual purchase.

4. Chief Executive Officer

During our examination of Lancaster County and District Court records for information regarding Wyuka employees, the APA noted that on October 5, 1995, charges were filed against the Wyuka former Chief Executive Officer for one count of theft by unlawful taking in excess of \$1,500 occurring on or between November 3, 1993, and October 26, 1994. On October 6, 1995, the case was dismissed at the expense of the former Chief Executive Officer because he agreed to participate in Diversion Services. **See Exhibit E.**

Further, the APA asked to examine the personnel file for the former Chief Executive Officer only to learn it was not available and had been missing since his departure. Record retention schedules on file with the NE Secretary of State's Records Management Division require records be maintained for specific periods of time. The APA also noted the personnel files were kept in a locked file cabinet; however, the cabinet was left unlocked and unattended on at least two occasions during the APA onsite visits. Additionally, the APA noted Wyuka did not require the disclosure of felony convictions on past applications or upon hiring, specifically for individuals with access to financial records.

We again recommend the Wyuka Trustees take action to ensure the appropriate discovery and disclosure of all criminal histories and be documented in all employee personnel files. Further, we recommend all employee personnel files be maintained and controlled at all times to comply with the record retention schedule titled "Local Agency General Records" - Schedule 24, which can be found on the NE Secretary of State's website.

5. Arkansas Land

In 2001, the former Chief Executive Officer, entered into an agreement with a customer to trade six cemetery spaces at Wyuka for a half-acre residential lot in Arkansas. At the conclusion of the trade, the Arkansas lot was deeded to the former Chief Executive Officer and his wife and not to Wyuka. **See Exhibit F.** The six cemetery spaces procured via the trade were exchanged in 2004 by the Wyuka customer for one space in a crematorium. The Wyuka customer later became a Wyuka employee but now works for the NE Department of Correctional Services. When interviewed, both parties to the trade assured the APA these transactions were considered "even trades" and no cash or any other consideration was exchanged between the parties. **See Exhibit F-1.**

The contracts for these spaces were never entered into Wyuka's software database, which is utilized to maintain information regarding Wyuka cemetery spaces. Wyuka uses HMIS Advantage funeral home management software, which is a browser based, totally integrated, revenue management solution covering all aspects of the cemetery and mortuary industry.

The APA conducted an internet search of property records in Arkansas and was able to find the appropriate land records for the residential lot located in Bella Vista (Benton County), Arkansas. Arkansas State Police assisted with the APA's research.

The land was deeded to the former Chief Executive Officer and his wife from the seller and his wife in April 2001. **See Exhibit F-2.** The first Wyuka purchase agreement was signed by

the Arkansas landowner on April 6, 2001, for six cemetery spaces. No deposit was found in the Wyuka bank statements for this purchase and the agreement was stamped paid in full.

Current Wyuka employees indicated they did not know how the purchase of the Wyuka spaces was completed as there is no evidence of payment in Wyuka's accounting records and no entries in Wyuka's contract software system.

On December 10, 2007, the former Chief Executive Officer and the customer changed their stories when the former Chief Executive Officer provided the APA with a piece of paper stating the original property exchange was not an even trade but also involved the payment of \$2,500 cash from the former Chief Executive Officer to the customer. **See Exhibit F-3.** No other proof of the alleged transfer of cash was provided. Records obtained from the Benton County Arkansas Assessor's office contradict the claim that \$2,500 cash was involved in the trade. The Arkansas records show the land was sold for \$1,000 in May 2001 and re-sold by the former Chief Executive Officer for \$9,000 in October 2005. **See Exhibit F-4.**

Again, no cash or any consideration was recorded in Wyuka's accounting records as part of this peculiar deal. On January 22, 2008, Wyuka's Chairman informed the APA Wyuka had received a check for \$10,275 from the former Chief Executive Officer as reimbursement for this transaction.

We recommend the Wyuka Trustees review these transactions and take the appropriate action to ensure funds due Wyuka are collected for the spaces sold. We further recommend this information be entered into the database maintained for Wyuka contracts.

6. Perpetual Care Funds

Neb. Rev. Stat. § 12-103 states, "The trustees shall have power to prescribe all needful rules and regulations for the government of said cemetery. The trustees shall set aside a part of the purchase price of each burial lot sold, for the permanent maintenance of said cemetery, to be invested in any of the investments authorized by the provisions of section 30-3201. No part of the principal of this fund shall be used except for investment purposes as aforesaid. Each investment shall be approved by the unanimous vote of the board of trustees and entered upon the records of Wyuka Cemetery." Neb. Rev. Stat. § 30-3201 refers to the prudent investor rule.

Wyuka has made interest free loans from the perpetual care fund as noted in their audited financial statements. Per the 2006 Wyuka audited financial statements, the total Due from Other Funds to the Perpetual Care Fund totaled \$1.48 million. **See Exhibit M.**

The Lincoln Police Department undertook an investigation in October 2006. They observed the withdrawal of perpetual care funds to cover current operating expenditures was in conflict with Neb. Rev Stat. § 12-103; however, this section of statute provides no penalty. They did not acknowledge the Wyuka Trustees and their legal counsel as public servants subject to Neb. Rev. Stat § 28-924, which provides criminal sanctions for official misconduct. The APA will refer this matter to the appropriate authorities for further legal

review. The APA noted two of the current Wyuka Trustees, Jeff Schumacher and Faye Osborn, were not involved in the withdrawal of perpetual care funds.

The perpetual care fund should be maintained and invested in accordance with statutes. As of the 2006 Wyuka audited financial statements, the Perpetual Care Fund only has investments of \$234,492. The 1999 Wyuka audited financial statements showed the Perpetual Care Fund had investments of \$1,809,684. **See Exhibit N.**

The APA contacted Paul Elvig, President of the International Cemetery, Cremation and Funeral Association (ICCFA) to discuss perpetual care funds and loans. After our conversation, Mr. Elvig provided us with a letter of his official responses to our inquiries. Mr. Elvig stated, "Throughout my long career in the cemetery business, I have never seen an endowment care fund spent down legitimately in the way that you have described to me. Unfortunately, what I have seen under similar circumstances is gross mismanagement and blatant ineptitude that has resulted, at times, in both civil and criminal sanctions." **See Exhibit L.**

The Perpetual Care Funds should not be used as interest free loans to subsidize the general operations of Wyuka. It is highly doubtful this type of loan would comply with the prudent investor rule, and therefore, is likely not allowable under Neb. Rev. Stat. § 12-103.

We recommend the Wyuka Trustees comply with Neb. Rev. Stat. § 12-103 to invest the funds pursuant to the prudent investor rule. Wyuka should develop a plan to repay the Perpetual Care Fund as soon as possible.

7. Pre-need Trust Fund

The Pre-need Trust Fund is used to account for pre-need sales contracts. Wyuka holds the funds in a trust capacity until the death of the purchaser. Sales are for the purchase of a burial or funeral merchandise (casket, vault, monument, etc.) prior to the time of death. The APA noted the following in regards to pre-need sales:

- Stewart Enterprises operated the Funeral Home from 2001 until Wyuka took the operations back from Stewart in 2003. The pre-need trusts held by Stewart were then transferred to Wyuka. During the process, the actual amounts of the pre-need trusts transferred from Stewart did not agree with the amounts of the opening balances of the trust accounts established by Wyuka. As a result, the pre-need trust accounts held by Wyuka were under-funded. All funds transferred from Stewart were deposited into Wyuka's bank account; however, they were not properly applied to the pre-need trust accounts. The Accountant was working with the NE Department of Insurance to resolve this issue and get the balance to the appropriate amount. Per Wyuka Proposed Action Plan to the NE Department of Insurance, there is a shortage of \$26,271 to be restored to the Pre-need Trust Fund or refunded to Great Western Insurance policies. Wyuka is uncertain of why there is a shortage.
- The former Chief Executive Officer purchased pre-need services in February 2003, and his wife purchased pre-need services in March 2003. These purchases were done during the time when Wyuka was converting pre-need trusts into pre-need insurance policies with Great Western Insurance. These purchases totaled \$12,054 and were not paid at the

time of sale; however, the payment sent to Great Western Insurance by Wyuka included the total amount. In April 2004, the Wyuka Co-Director discovered payments were never received from the former Chief Executive Officer or his wife. The former Chief Executive Officer paid the amount owed in full on April 28, 2004.

We recommend the Wyuka Trustees take appropriate action to ensure the Pre-need Trust Funds are restored, refunded, and adequately maintained. Further, we recommend the Wyuka Trustees attempt to determine whether the Accountant was involved with the shortage.

8. Open Meetings

The Wyuka Trustees quarterly meeting notices are only publicized on Wyuka's website. Wyuka's method of posting the meeting on the website appears to meet the requirements set forth in Neb. Rev. Stat. § 84-1411(1). However, the statute does require the public body to record in the minutes of each meeting the method used to publicize the meeting. Per examination of Trustees meeting minutes, this was not documented.

The meeting agenda was not included on Wyuka's website nor was there mention of the availability of the agenda for the public to examine prior to the meeting. This is required by Neb. Rev. Stat. § 84-1411(1).

Additionally, during our examination of trustees meeting minutes, the APA noted multiple "special meetings" were called. Wyuka did not have documentation of the publicized notice of these meetings.

The APA legal counsel completed two memos regarding advanced publication notices and compliance with Neb. Rev. Stat. § 84-1411(1). These memos include additional information regarding specific meetings examined and the conclusion that Wyuka has failed to comply with certain provisions of Neb. Rev. Stat. § 84-1411(1). **See Exhibit G and G-1.**

We recommend the Wyuka Trustees ensure all meetings held comply with Neb. Rev. Stat. § 84-1411(1). The method used to publicize the meeting should be documented and the agenda should be adequately disclosed and available to the public prior to the meeting dates. Additionally, the Wyuka Trustees should ensure compliance with Neb. Rev. Stat. § 84-1411 for any "special meetings" held by the Trustees.

9. Internal Controls

After evaluating Wyuka's internal controls, the APA determined internal controls were inadequate or lacking. The APA noted numerous weaknesses:

- a. The Accountant was involved in and provided guidance on all aspects of financial operations; therefore, there was a lack of segregation of duties. Without an adequate segregation of duties over financial operations, there is an increased risk for fraud or errors to occur and not be detected.

- b. All inquiries made by the APA, were uniformly directed to the Accountant as the person who directly handles all financial information. No one else at Wyuka was able to address any financial related questions.
- c. Wyuka's policy was to not sign checks in advance. However, there were occasions in which blank checks were signed in advance and provided to the Accountant with no documentation of subsequent examination of these payments to ensure all payments were for authorized purchases. In instances when the individual authorized to sign checks was going to be gone for a period of time, he signed blank checks prior to his absence.
- d. Only one individual was involved in opening the mail. Therefore, there was an increased risk that all funds received in the mail were not properly deposited and accounted for.
- e. Responsibilities of the President include examining all payments to vendors, payroll, sales commission, and funeral home purchases; however, there was no documentation or initials to ensure this review was being completed.
- f. The Trustees are responsible for establishing the prices and standard discounts associated with spaces, markers, monuments, etc. The price list changed in 2004, 2005, and 2006. Per Wyuka employees, the prices have not changed since 2006. Only the 2004 price list was actually approved by the Trustees and documented in the minutes. Discounts applied at the time of sale are supposed to be approved by the President; however, this approval was not documented. The Accountant, rather than the President, had been signing the purchase agreements.
- g. Per Wyuka employees, the Trustees receive a copy of the contract for each deed they approve, which is how the Trustees would be made aware of all sales, discounts, and terms made for space sales. The Trustees approve the deeds for the spaces purchased at each quarterly Trustees meeting. Per the Trustees minutes, deeds were approved; however, the minutes did not detail which deeds were approved and no listing was maintained to ensure all deeds were approved by the Trustees, as only the Chairman signed the deeds.
- h. Pre-numbered receipts were not issued for monies collected by Wyuka. Therefore, the APA was unable to verify all money received by Wyuka was deposited or accounted for on Wyuka records.
- i. Wyuka's records were not adequately maintained. Some records could not be found at all, while some records took a substantial amount of time to locate. The records at Wyuka are in substantial need of organization and retention.

We recommend the Wyuka Trustees implement proper controls over the financial operations of Wyuka. Controls should be implemented to account for the lack of segregation of duties surrounding the Accountant. Documented reviews should be performed by someone other than the Accountant to ensure the integrity of financial transactions. Checks should never be pre-signed for any reason. If possible, two employees should be involved in opening the mail to decrease the risk of loss or misuse of funds and to ensure all funds received are appropriately deposited. Prices, discounts, and all sales should be properly approved, reflected, and documented by the Trustees. Pre-numbered receipts should be issued for all monies collected and should be properly recorded. Further, we recommend all of Wyuka's records be maintained and

controlled at all times to comply with the Secretary of State's Record Managements' "Local Agency General Records" - Schedule 24.

10. Financial Information

- a. Wyuka maintains two bank accounts. The account at Pinnacle Bank is for the general operations of Wyuka. The account at Union Bank, referred to as "Funeral Home," is used by the Funeral Director for expenses incurred during a funeral such as paying the organist, clergy, etc. The Wyuka general operations bank account then transfers funds to the Funeral Home to replenish the Union Bank account. The Wyuka Historical Foundation maintains a separate account at Union Bank.
- b. Wyuka uses several credit cards. Some of the cards are: Visa, Wells Fargo, Chase, Phillips 66, & GE Money. Depending on the credit card, they are used by the groundskeepers for gas, salespersons for casket purchases, etc. These cards are accessible by most Wyuka employees and some extra cards are maintained in a desk drawer to be used by whoever needs them. Employees are allowed to periodically fill up their personal vehicles as a courtesy. Wyuka did not have a written policy in regards to the use, approval of use, or documentation to be provided for purchases made on the credit cards. Also, receipts were not maintained for all credit card transactions and were not attached to credit card invoices; therefore, the credit card invoices were not being verified to ensure the correct amounts were being paid.
- c. The APA noted Wyuka was covering expenses for the Foundation. For example, Wyuka paid on behalf of the Foundation \$20,903 in 2005 to offset the cost of six months of salary for Mr. Edward Holbrook, the Foundation's Development Director. Also, the Wyuka Historical Foundation document entitled "Proposed Policy regarding the Disposition of Donations," dated June 17, 2004, disclosed that Wyuka "subsidized all personnel and program expenses for the foundation until 2003." **See Exhibit B.** The APA noted numerous Wyuka expenditures over the years which were for Foundation purposes, such as the Firefighters' memorial and the utilization of the Accountant's services for maintaining the Wyuka Historical Foundation's financial records. Such transactions evoke questions regarding the propriety of Wyuka, a "public charitable corporation" created by statute and subject to governmental oversight, providing money and services to the Foundation, a private organization. Wyuka and the Foundation should operate and function as separate entities.
- d. The APA examined the Wyuka audited financial statements for the years 1995 through 2006 as well as the 2007 third quarter unaudited comparative financial statements. Based on the examination we noted:
 - Net Assets for Business-Type Activities (General, Funeral Home, and Memorial Care Funds) went from \$2,277,596 in 2001 to only \$779,483 in 2006. As noted in the audit reports, increases or decreases in net assets may serve as a useful indicator as to whether the financial position of Wyuka is improving or deteriorating. The net assets have deteriorated significantly over the last six years. **See Exhibit H.**
 - Wyuka has been operating with losses over the last 10 years. The losses have fluctuated from \$49,590 in 1997 to \$433,001 in 2002. In 2006, Wyuka received \$167,808 in contributions to help offset losses for the year. If Wyuka had not received those contributions, the loss for 2006 would have been \$425,297 rather than a loss of \$257,489. **See Exhibit H-1.**

- Wyuka’s 2006 audited financial statements disclosed Wyuka had notes payable (loans) with Pinnacle Bank in the amount of \$19,092 and Union Bank in the amount of \$1,109,383. The monthly payments on these loans are approximately \$10,000.
- e. The Union Bank loan was refinanced on January 19, 2007, and will come due February 25, 2008. It was for \$1,121,739. Wyuka had to pledge 3.25 acres of land at 45th and Vine Street, in addition to their building at 3600 O Street, as collateral for the loan. The interest rate on the loan increased from 7 % to 7.75%.
 - f. Per the Accountant, on December 12, 2007, Wyuka had outstanding accounts payable (amounts Wyuka owes) of \$181,443. The APA noted over \$74,000 was over 90 days old. This did not appear to include finance charges. The APA compared the listing to actual invoices and the finance charge noted on the invoice was not reflected in the Accountant’s total. During the examination of the actual invoices, the APA observed Wyuka had received a disconnect notice dated December 3, 2007, from Lincoln Electric System.
 - g. Responding to an inquiry from Governor Heineman, Michael Tefft, Chairman of the Wyuka Trustees sent a letter on October 31, 2006, to the Governor which stated, “There are many additional improvements that have been or are being made at Wyuka – all to accomplish the goal of serving the community while making the cemetery profitable.” The letter makes the unrealistic claim of expected profitability by year end 2006 or the first half of 2007. **See Exhibit I.** The APA studied the 2007 financial statements for the first three quarters and the long pattern of financial losses continues.

Wyuka is rapidly depleting its assets while operating at a loss. We recommend the Wyuka Trustees study their financial reports and take appropriate action to improve the financial position of Wyuka. Wyuka should evaluate their relationship with the Foundation to ensure it is financially beneficial to Wyuka. The Wyuka Trustees need to determine how to pay their old accounts. Over \$74,000 of the accounts payable were over 90 days old. All accounts payables should be current. Supporting receipts should be required for all credit card purchases and they should be appropriately approved, matched, and attached to the credit card invoices prior to payment. The credit cards should be securely maintained by Wyuka at all time. The Trustees should take steps to ensure all communications with the Governor and other government officials truly reflect the financial condition of Wyuka.

11. Federal Grant Award

Wyuka is to receive a \$500,000 Federal grant from the NE Department of Roads (NDOR) and will have to provide the match portion of the grant, currently estimated at approximately \$250,000. NDOR issued a press release on December 10, 2007, disclosing Transportation Enhancement Projects Awarded. **See Exhibit J-2.**

The APA contacted NDOR to get information on this grant. NDOR receives Federal government funding from U.S. Department of Transportation Federal Highway Administration. This program provides funding to local, state, and regional governmental entities to build and restore transportation infrastructure. NDOR provided the APA with a scoring summary of the applications by rank for the award. The summary includes the

projects selected for award, the conditional projects if additional funding is received, and projects not selected for award. **See Exhibit J-3.**

Wyuka's project is for the renovation of the Wyuka stable building. Some of the Federal requirements for the project are the restored building needs to be accessible to the public and needs to be located in a neighborhood with cultural diversity. Once the project has started, Wyuka will receive their grant money on a reimbursement basis. The contractor must be paid before Wyuka will receive the Federal funds. The invoice must be approved by Wyuka's architect and NDOR's contractor before it is approved for reimbursement. The total cost of the project is \$747,571, and the State and Federal match are 33% and 67% respectively. The Chairman of the Wyuka Trustees was required to sign a resolution confirming Wyuka's portion of the match will be met. If the project is not completed or the match cannot be met, Wyuka would be required to pay NDOR back for the grant funds already received.

The Wyuka Accountant informed us this was a Foundation project and he did not have information for it. The primary contacts listed on the application were a Foundation employee and a Foundation Director. The Chairman of the Trustees did sign the actual application form. This grant is awarded to Wyuka as a governmental entity; therefore, the financial activity (income, contracts, and expenditures) related to this grant must be processed and handled through Wyuka's financial records according to all Federal and State requirements. In addition, any donations or income generated to cover the matching portion for the grant will need to follow applicable Federal and State grant requirements. **See Exhibit J and J-1.**

We recommend the Wyuka Trustees ensure all correspondence and communication regarding the Federal grant flows through them since they are ultimately responsible for the grant and matching funds for the grant. This includes ensuring all financial records and information related to the grant are processed through and recorded in the Wyuka financial statements and bank accounts. All contracts, expenditures, and revenues related to the grant should be approved by the Wyuka Trustees. We further recommend the Wyuka Trustees evaluate their financial condition to determine whether they have adequate funding available to finance the match required of them by this grant and for the completion of the project.

12. Surety Bond

Neb. Rev. Stat. § 12-103 states, "The trustees shall appoint a treasurer to have custody of its funds who shall give a surety company bond in a sum not less than the amount of cash in his hands, conditioned for the safekeeping of such funds." The Wyuka Trustees appointed Marty Miller as Treasurer in 2007. Per the Accountant, the surety bond was done through their insurance company. On December 19, 2007, the APA contacted Wyuka's insurance agent, Ed Packard of UNICO Group, Inc. of Lincoln. Mr. Packard informed the APA Wyuka is covered for employee dishonesty only up to \$100,000. He indicated he had handled Wyuka's insurance for some ten years and had never been told of this statutory requirement. He did point out there is a difference between a "company surety bond" and insurance

coverage - although, if insured in a sufficient amount, the insurance might actually accomplish the same thing as a bond.

Per Wyuka, the current Perpetual Care Trust Balance is approximately \$244,000. The \$100,000 employee dishonesty insurance coverage did not fully cover the balance of the Perpetual Care Fund. Mr. Packard did call the APA back on December 19, 2007, to indicate he was increasing the employee dishonesty coverage limit to \$244,000. It should be noted this balance changes on a regular basis, and if Wyuka was to repay the funds owed to the Perpetual Care Trust Fund, \$1,481,524 at 2006, the level of coverage would need to be increased accordingly.

We recommend the Wyuka Trustees ensure compliance with Neb. Rev. Stat. § 12-103 and have the appropriate coverage at all times to provide safekeeping for the Perpetual Care funds.

13. Contractual Agreements

Individuals wishing to purchase spaces, markers, monuments and other items do so through contracts with Wyuka. The APA examined 63 contracts for Trustees, Foundation Board members, employees, and other individuals at Wyuka and Fairview cemeteries. Some contracts were cancelled and rewritten; however, the APA treated the cancelled contract and its rewrite as separate contracts.

- 38 of the 63 contracts tested involved the purchase of spaces. The following was noted during the testing of these contracts:
 - There was no consistency in the application of the price per space charged. Prices vary in different sections of the cemetery and prices change over time; the APA noted inconsistency of the prices charged even within the same time period.
 - Fifteen of the contracts were for purchases of reclaimed spaces. According to the President, burial spaces are considered abandoned and may be reclaimed and sold anew, if they have experienced no activity for one hundred years after the purchase. See number 15 below for further information on the reclamation of spaces process. Ten of these contracts had a time lapse of 82 to 130 years from the date of the last burial to the date of the purchase of the reclaimed spaces; therefore, this informal policy is not consistently applied.
 - Four contracts had burials on the spaces prior to reclaiming but no date was listed for the burial, so the time lapse between the last activity and the reclamation of the space could not be determined.
 - One space did not have any burials noted on the space prior to reclaiming and the APA could not determine when the original lot was purchased; therefore, we could not determine the time lapse between the last activity and the reclamation of the space.
- 36 of 63 contracts tested had at least one discount applied on the contract; however, the type or amount of the discounts were not consistently applied.
 - The Employee handbook states, “Employees with two (2) years of employment may purchase no more than two grave spaces by paying Perpetual Care cost only.” This was not consistently applied; as the APA noted, certain employees with less than two

- years of employment were given this discount and other employees were allowed to purchase more than two spaces paying only the perpetual care costs.
- The Employee handbook states “Employees are able to purchase monuments, markers, lawn crypts, mausoleums, and other merchandise at a discount of 35% (percent) off retail cost – for their use only.” This was also not consistently applied. The APA noted four contracts were purchased by employees without any discounts, one contract had a 25% discount applied, and three contracts had a 35% discount applied.
 - Head of household, professional, preconstruction, and prearrangement discounts were given without written authorization or policies regarding these discounts. One Foundation Board member received a \$500 head of household discount. An individual with no relationship with Wyuka received both a \$500 head of household discount and a \$300 preconstruction discount. The APA noted additional \$300 preconstruction and prearrangement discounts.
 - One contract included a 3% discount for paying in cash; however, there were other contracts paid in full at the time of purchase and this discount was not applied. There was no authorization or written policy regarding the cash discount.
 - The contracts contained language that indicated if the entire balance was paid within 365 days of the date of the agreement then finance charges would be waived. However, 5 of 63 contracts tested were not settled within 365 days of the date of the contract and no finance charges were applied.
 - The contracts also contained language requiring a late charge if payment is late – a minimum \$5 charge or 5% of payment. There were 6 of 63 contracts tested without late charges applied when payments were not received by the due dates or in agreed-upon amounts.
 - Payments made after 2000 were traced to the bank statements without exception. Payments made prior to 2000 could not be traced to bank statements, as Wyuka was not required to retain bank statements older than 3 years, provided an audit has been completed. Therefore, the APA was unable to verify payments for 17 contracts tested.
 - 5 of 63 contracts did not have an approval signature noted on the contract.
 - 2 of 63 contracts were never entered into Wyuka’s HMIS Advantage funeral home management software.

We recommend the Wyuka Trustees implement procedures to ensure the following:

- Prices charged for spaces are consistently applied.
- Policies regarding reclaimed spaces are consistently followed.
- Adequate documentation is maintained to support the dates of last activity of abandoned spaces.
- Discounts given on contracts are authorized by the Trustees and consistently applied.
- Finance charges and late charges are appropriately assessed and collected on past due payments.
- All contracts are signed by appropriate individuals.
- All contracts should be entered into Wyuka’s software database for recordkeeping.

14. Other Issues

During interviews with Wyuka employees, several unusual and questionable transactions were identified:

- In May 2000, Wyuka received a work order from a Foundation Board member to place a memorial bench at his parents' gravesite. Per APA inquiries with Wyuka, there was no documentation found regarding the purchase of this bench and there were no charges for setting the bench or any memorial care fees. Wyuka management thought the bench may have been purchased elsewhere. The APA did note the individual donated \$100 to the Foundation in 2000. Subsequent to the placement of the bench, the individual donated \$860 to the Foundation between 2001 and 2005. The APA was unable to determine if this transaction was appropriate due to lack of documentation. The APA was provided the Wyuka work order; however, it did not identify where the bench was purchased or the costs for setting the bench.
- Wyuka donated two spaces at Fairview Cemetery to be used at a Pheasants Forever auction. Pheasants Forever is a non-profit conservation organization dedicated to wildlife conservation in Nebraska. The former Chief Executive Officer was involved in Pheasants Forever and donated these spaces to be used at one of their fundraisers. There was no documentation of approval by the Trustees allowing this donation to Pheasants Forever.
- During 2002, the Wyuka Historical Foundation had an auction to raise money. Wyuka donated three spaces at Wyuka Cemetery to be auctioned. There was no documentation of approval by the Trustees for this donation to the Foundation.

We recommend the Wyuka Trustees formally approve all donations and document this approval in the minutes of the Trustees meeting. Additionally, we recommend Wyuka maintain all documentation regarding the purchase or placement of merchandise to ensure the proper fees have been charged.

15. Reclamation of Cemetery Spaces

Both Wyuka's Bylaws and Rules and Regulations are silent on the matter of the Trustees' authority to reclaim previously sold cemetery spaces. In the minutes of the July 18, 2006, Wyuka Trustees meeting, the Trustees adopted an amendment to the Bylaws to allow Wyuka to resell spaces upon which payments have not been made for three years or more and to reclaim unused spaces when there has been no burial for a period of twenty years. Although more than a year has passed since the Trustees voted unanimously to approve the resolution, Article 15 of the Wyuka Bylaws has yet to be amended accordingly. Additionally, the standard purchase agreement form used by Wyuka provides the buyer with no knowledge of the reclamation process. To the contrary, the provisions indicated the buyer has an indefinite right to any burial space obtained.

The APA legal counsel completed a memo regarding the reclamation of burial spaces. It does not appear the Wyuka Trustees have explicit authority to reclaim or resell burial spaces. **See Exhibit K.**

We recommend the Wyuka Trustees amend the Bylaws and Rules and Regulations to accurately reflect Wyuka's reclamation policy, including establishing a formal procedure for initiating, implementing, perfecting, and documenting each case of reclamation. We also recommend Wyuka amend the standard purchase agreement form to provide the buyer with adequate notice of its reclamation policy. Finally, we recommend the Wyuka Trustees pursue legislative action to amend the relevant State Statutes to provide Wyuka with explicit authority to reclaim and resell burial spaces.

16. Auxiliary

Per Auxiliary members and Wyuka employees, the Auxiliary is a sub-committee of the Foundation and is based on memberships while operating on dues paid and donations they receive from their members. It has no official standing of its own. Per the Foundation Articles of Incorporation – Article 3, “the corporation shall not have members.” Based on this information, the Auxiliary is in violation of the Foundation's Articles of Incorporation.

We recommend the Wyuka Trustees and the Foundation take appropriate action to ensure the Auxiliary is legally operating in accordance with the Articles of Incorporation as established for the Foundation. The Foundation may need to amend their Articles of Incorporation or the Auxiliary may need to establish their own nonprofit corporation.

17. Burials Provided by Wyuka

Wyuka provided information indicating they average 243 burials a year. They occasionally provide burials for veterans, widows of veterans, infants, state wards, and state inmates for little or no charge. The limited frequency of these special burials is not viewed by the APA as a significant financial burden to Wyuka beyond what one would expect in this industry.

Wyuka's Rules and Regulations require veterans and their widows to receive spaces for free (a 10% fee for perpetual care is still charged). The opening and closing of the space and the setting fee for the headstone must be paid by the veteran. If the veteran qualifies for assistance through Lancaster County Veterans Services (LCVS), LCVS will pay \$3,000 to Wyuka for a traditional funeral service and \$990 for a cremation.

Wyuka also provides burials for infants free of charge including the funeral, burial (opening and closing), and the space. The parents of the infant are not required to pay the perpetual care charge. The APA asked the Accountant why the infants are buried free of charge. He said it was a requirement of Wyuka's State Charter; however, the APA found no documentation in the State Charter, Rules and Regulations, or State Statutes regarding infant burials, and Wyuka was unable to provide the same.

Per Wyuka, from January 2006 until September 2007, Wyuka performed 15 veteran burials and 30 infant burials. Some of the veteran burials received minimal funding provided by LCVS. According to the Accountant, Wyuka rarely provides a burial for a state ward or inmate. It is the understanding of the APA, the provision of free infant burials is not an

unusual practice in the cemetery industry as such burials are low cost and often accompanied later by more expensive purchases by the families of the infant.

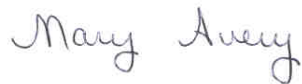
Wyuka operates in direct competition with for-profit cemeteries in Lincoln and elsewhere in the State. For example, Wyuka competes with Lincoln Memorial Mortuary and Cemetery (Lincoln Memorial) located in south Lincoln. Lincoln Memorial offers free or very low-cost infant burials as part of its range of services.

The expenses associated with a traditional burial are the opening and closing costs, two administrative labor hours, three to four maintenance labor hours, and two hours for the use of machinery. Infant burials are less costly.

We recommend the Wyuka Trustees ensure their Bylaws or Rules and Regulations clearly identify what types of burials are provided for little or no charge.

If you have any questions regarding the above information, please contact our office. The APA wishes to thank Wyuka for their cooperation and assistance.

Sincerely,

A handwritten signature in cursive script that reads "Mary Avery".

Mary Avery
Special Audits and Finance Manager
Auditor of Public Accounts Office
Room 2303, State Capitol
Lincoln, NE 68509
Phone: 402-471-3686
Cell: 402-326-3039
Mary.Avery@apa.ne.gov

Wyuka Cemetery
Wyuka Historical Foundation Articles of Incorporation on file at NE Secretary of State

SEP 08 1997

1575987

NE Sec of State John A Gale - CORP AP
0972200627 Pgs: 2
WYUKA HISTORICAL FOUNDATION
Filed: 09/08/1997 12:00 AM

ARTICLES OF INCORPORATION
OF
WYUKA HISTORICAL FOUNDATION

STATE OF NEBRASKA
SECRETARY'S OFFICE
Received filed and recorded on
film roll no. 07-22
at page 627
Secretary of State
By [Signature] 9/30/97

The undersigned acting as Incorporator of a nonprofit corporation under the Nebraska Nonprofit Corporation Act, adopts the following Articles of Incorporation:

ARTICLE 1
Name of Corporation

The name of the corporation shall be: Wyuka Historical Foundation.

ARTICLE 2
Public Benefit Corporation

The corporation is a public benefit corporation.

ARTICLE 3
Management of Corporation

The corporation's affairs shall be managed by a board of directors and the corporation shall not have members.

ARTICLE 4
Registered Agent and Office

The name and street address of the initial registered agent and registered office are: Michael C. Hutchinson, 3600 "O" Street, Lincoln, Nebraska 68510.

ARTICLE 5
Incorporator

The name and street address of the Incorporator are: James E. Gordon, Suite 400, Centre Terrace Building, 1225 "L" Street, Lincoln, Nebraska 68508.

ARTICLE 6
Initial Board of Directors

The initial Board of Directors shall be appointed by the Incorporator, upon direction from the Wyuka Cemetery Board of Trustees, to serve until their successors are duly appointed and qualified. Thereafter, the Board of Directors shall be elected and shall serve as provided in the bylaws of the Corporation.

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Wyuka Cemetery
Wyuka Historical Foundation Articles of Incorporation on file at NE Secretary of State

ARTICLE 7
Corporate Purposes

The corporation is organized exclusively for charitable, religious, education, scientific and literary purposes, including, but not limited to, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law (the "Code"), and to solicit, receive, administer, transfer and distribute monies, gifts, legacies, devises and conveyances of real and personal property for the development, improvement and rehabilitation of the facilities and lands of the Wyuka Cemetery, a public charitable corporation organized and operated under the authority of chapter 12 of the Nebraska Revised Statutes

ARTICLE 8
Prohibited Transactions

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its directors, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 7 hereof. The corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these Articles of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) or other provisions of the Internal Revenue Code.

ARTICLE 9
Distribution of Assets Upon Dissolution

In the event of dissolution of the corporation or winding up of its affairs, or other liquidation of its assets, the Board of Directors shall, after paying or making provision for payment of all of the liabilities of the corporation, distribute all of the remaining assets of the corporation to one or more exempt organizations within the meaning of Section 501(c)(3) of the Internal Revenue Code.

ARTICLE 10
Indemnification of Directors and Officers

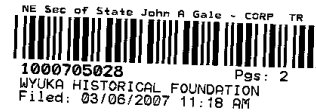
The corporation may indemnify its officers and members of the Board of Directors as provided in the Nebraska Nonprofit Corporation Act and the Bylaws.

Dated: September 8, 1997


James E. Gordon, Incorporator

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Wyuka Cemetery
Wyuka Historical Foundation Nonprofit Corporation Biennial Report
on file at NE Secretary of State



**NONPROFIT CORPORATION BIENNIAL REPORT
STATE OF NEBRASKA, SECRETARY OF STATE**

Report shall show exact corporate name, registered agent, location of registered office, officers and directors with street address of each.

FOR CALENDAR YEAR COMMENCING
JANUARY 1,
2007
DUE APRIL 1, 2007

WYUKA HISTORICAL FOUNDATION

1575987

MICHAEL C. HUTCHINSON
3600 O STREET
LINCOLN NE 68510

1. EXACT CORPORATE NAME (as stated in articles of incorporation or most recent amendment)
WYUKA HISTORICAL FOUNDATION

2. OFFICERS (complete name and address is required for each officer and director)
Names of all officers and directors should be those persons holding the office on the date the report is completed.

Name	Street Address	City	State	Zip
President: CHARLES PALLESEN Charles Pallesen	2209 WOODSDALE BLVD 233 South 13th #1900	LINCOLN NE 68502	Lincoln, NE	68508
Secretary: DANJA SIDERS	4900 N 14TH ST.	LINCOLN NE	NE	68521
Treasurer: DALE YOUNG Dale Young	PO BOX 30152 233 South 13th	LINCOLN NE 68502	Lincoln, NE	68508

3. Principal Office of Corporation: 3600 O ST LINCOLN NE 68510

4. Registered Office: 3600 O STREET LINCOLN NE 68510

5. Registered Agent: ~~MICHAEL C HUTCHINSON~~ Marty Miller (Change of Registered Agent Form was filed with your office on 2/21/07)

6. Nature of Business: TO ACCEPT ENDOWMENT FUNDS FOR CAPITAL PROJECTS AT WYUKA CEMETERY.

7. State or Country under whose laws the corporation is formed: Nebraska

8. The corporation (Check one): _____ has members does **NOT** have members

9. The corporation is a: (see instructions for definitions)
 Public Benefit Corporation Mutual Benefit Corporation Religious Corporation

10. If the pre-printed information above is correct for this year's report please check here _____

\$20.00 Fee

SIGN HERE

Signature of Officer

Charles Pallesen

Printed Name of Officer

DATE 2.22.07

**Wyuka Cemetery
Wyuka Historical Foundation Nonprofit Corporation Biennial Report
on file at NE Secretary of State**

NONPROFIT CORPORATION BIENNIAL REPORT Corporation#: 1575987
STATE OF NEBRASKA, SECRETARY OF STATE

11. DIRECTORS

PHYLLIS ACKLIE	2200 WOODSDALE BLVD	LINCOLN NE 68502
DIANE BARTELS	1801 MINDORO DR.	LINCOLN NE 68509
PETER BLEED	1315 NORTH 37TH STREET	LINCOLN NE 68503
DOUG EVANS	3335 SOUTH 31ST STREET	LINCOLN NE 68502
STEVE OLSEN	XXXXXX	LINCOLN NE 68502
JAMES E GORDON	PO BOX 81607	LINCOLN NE 68501
GINNY HANX	4800 SOUTH 15TH STREET	LINCOLN NE 68502
XXXXXXXXXXXX	XXXX XXXX XXXX	XXXXXXXXXXXX
MISS HASSELBALCH	3748 S 40TH STREET	LINCOLN NE 68506
ERIC HOLBROOK	1725 S 38RD	LINCOLN NE 68506
EARLENE KNOX	920 FIVE TREE LANE	LINCOLN NE 68521
XOBEKANK	XXXXXX	LINCOLN NE 68512
VERNA MAE LUTZ	3915 APPLE STREET	LINCOLN NE 68503
Sandra Fabry	7700 Yancy Drive	Lincoln, NE 68507
Vincent Goeres	8045 Arrow Ridge Road	Lincoln, NE 68506
Yale Gotsdiner	5701 Shadow Lane	Lincoln, NE 68516
Tim Keelan	P.O. Box 30552	Lincoln, NE 68503

12. If the pre-printed director information above is correct for this year's report please check here _____

Charles Pallesen	233 South 13th #1900	Lincoln, NE 68508
Cathie Petsch	1201 Fall Creek Road	Lincoln, NE 68510
Jeff Schumacher	132 South 13th #200	Lincoln, NE 68508
Danja Siders	4900 North 14th	Lincoln, NE 68521
Michael Tefft	8010 Waterford Circle	Lincoln, NE 68516
Dale Young	233 South 13th	Lincoln, NE 68508

SECRETARY OF STATE 1301 State Capitol P.O. Box 94608 Lincoln, NE 68509-4608

**Wyuka Cemetery
Wyuka Historical Foundation Proposed Policy Note**

WYUKA Historical Foundation
Proposed Policy regarding the Disposition of Donations
June 17, 2004

HISTORY: The Wyuka Historical Foundation was established as a 501 © (3) corporation in 1997. From 1997 until 2000 the Foundation had limited activity, which was directed by the President/CEO of Wyuka Cemetery. In October 2000, the Foundation became “operational” with the hiring of a part time director of development and the subsequent hiring of a Foundation assistant. The Cemetery subsidized all personnel and program expenses for the foundation until 2003.

In the wake of declining Cemetery revenues in 2003, the Foundation reduced the assistant position to part time, and started to meet many of its program expenses. In 2002 and 2003 the Foundation also through grants and funds designated for Cemetery improvement returned \$ 103,314 to Wyuka Cemetery for capital improvements and for various projects. All funds raised by the Foundation have been totally “restricted” for specific purposes. None, except for donations designated as “general” are available to assist with operations.

CURRENT SITUATION: WYUKA Cemetery leadership has expressed an interest in seeing the Foundation become “independent” in its operations. Because it is difficult to develop a compelling case for raising support for operations, the Foundation staff, recommends the following policy for consideration.

That 20% of every dollar generated for specific purpose funding will be directed into an operational account to sustain the administrative and development functions of the Foundation.

- ❖ **That personnel assigned to carry out the work of the Foundation shall still be regarded as an employee(s) of the Cemetery-Funeral Home for benefit purposes;**
- ❖ **That the Foundation will set a goal to cover in year one (2005) –33% of such operating expenses; year 2006- 66% of such operating expenses; and in year three (2007) 100% of such expenses of foundation overhead, all being reimbursed to WYUKA Cemetery through a mutually agreed upon budget approved by the Foundation Board of Directors and the WYUKA Cemetery Board of Trustees;**
- ❖ **That the Foundation will also seek reimbursement from those support organizations such as the Auxiliary, the Swain Theater, and others for the percentage of foundation staff time and resources allocated to assist them in sustaining their operations.**

Wyuka Cemetery
Wyuka President's Donation Letter July 2001



July 19, 2001

Mr. Marty Miller
6740 Leesburg Court
Lincoln, NE 68516

Dear Mr. Miller,

On behalf of the Board of Directors of the Wyuka Historical Foundation, I would like to thank you for your generous donation of \$30,000.00 to Wyuka, for the ongoing support and restoration work at Wyuka Cemetery.

The Wyuka Historical Foundation is a 501 © (3) not-for-profit corporation. 47-0823689.

Thank you for your support.

Gratefully yours,

Michael C. Hutchinson
Chief Executive Officer

Cc: Edward Holbrook

3600 O Street

Lincoln, NE 68510

Ofc: (402) 474-3600

Fax: (402) 474-2650

Email: wyuka@navix.net

Wyuka Cemetery
Wyuka President's Donation Letter March 2003

WYUKA
HISTORICAL FOUNDATION

OFFICERS AND DIRECTORS

Phyllis Acklie, *President*

Doug Evans, *Vice President*

James E. Gordon, *Secretary*

Michael Hutchinson, *Chief
Operating Officer/Treasurer*

E. Edward Holbrook,
Development Director

Vera Mae Lutz, *Director*

Marie Pirsch, *Director*

Michael L. Tefft, *Director*

Peter Bleed, *Director*

Jinny Hand, *Director*

Tim Keelan, *Director*

Earlene Knox, *Director*

James Stuart, Jr. *Director*

Dale Young, *Director*

Mimi Wickless, *Director*

3600 "O" STREET

LINCOLN, NE 68510

Dir: (402) 474-3600

(402) 474-2650

Email: WHFA@wyuka.com

Website: www.wyuka.com

March 25, 2003

Mr. Marty Miller
6740 Leesburg Court
Lincoln, NE 68516

Dear Mr. Miller:

On behalf of the Board of Directors I would like to thank you for your charitable contribution of \$49,000 for the on going support and restoration work at Wyuka Cemetery.

The Wyuka Historical Foundation is recognized by the Internal Revenue Service as a 501 © (3) not- for-profit corporation, and this letter is a receipt for this donation.

Your donation will assist the Wyuka Historical Foundation in its mission to further the restoration, preservation, and education efforts we are making here at Wyuka for the benefit of our community. Again thank you for your most generous gift!

Most Sincerely yours,

Michael C. Hutchinson
Chief Operating Officer/Treasurer

**Wyuka Cemetery
Wyuka President's CPA Letter November 2007**

DANA F. COLE & COMPANY, LLP
CERTIFIED PUBLIC ACCOUNTANTS
1248 O STREET, SUITE 500
LINCOLN, NEBRASKA 68508

November 29, 2007

Mr. Marty Miller
6740 Leesburg Court
Lincoln, NE 68516

RE: Wyuka contributions

Dear Mr. Miller:

In accordance with your instructions we have recalculated your income tax liabilities for the tax years 2001, 2002, 2003 and 2004 without claiming the deduction for the amounts paid to the Wyuka Foundation. The following is a schedule showing the amounts paid to the Foundation by year, the amount allowed as a deduction for that year and the increase in tax and interest due if you were to amend these returns not claiming the deduction.

The amount allowed as a deduction each year is not always the same as the amount paid due to certain limitations on the amount of charitable contributions allowed each year. Any amount not allowed in a year was carried over to the next year until the amounts were used.

Nebraska

Kansas

Michigan

Minnesota

Missouri

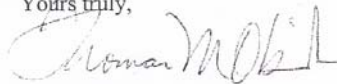
Wyoming

www.danacole.com

	2001	2002	2003	2004	Total
Amount paid	15,000	49,000	-0-	8,000	72,000
Amount deducted	7,076	15,000	31,613	18,306	72,000
Federal					
Tax	- 0 -	55	1,534	4,234	5,823
Interest	- 0 -	16	357	783	1,156
Total due	- 0 -	71	1,891	5,017	6,979
State					
Tax	- 0 -	112	687	1,251	2,050
Interest	- 0 -	37	181	241	459
Total due	- 0 -	149	868	1,492	2,509

If you have any questions, please let us know.

Yours truly,



THOMAS M. OBRIST
For the Firm

e-mail: obrist@danacole.com
direct line: 402-479-9324

TMO:laf

Enclosures

Principal Office:
1248 O Street, Suite 500
Lincoln, NE 68508
402/479-9300
Fax 402/479-9315

Wyuka Cemetery
Wyuka Accountant's Criminal History Records

SERVE AT: 4115 N 20TH, LINCOLN, NE
ARR: 7/23/97: 8:30 A.M., DC #2, CR97-5783

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, '97 JUL 21)
PLAINTIFF,)
VS.)
TODD M. TERMAAT,)
DEFENDANT.)

DOCKET: 695 PAGE: 205
Amended
INFORMATION
FOR:
I. Attempted THEFT BY UNLAWFUL TAKING:
28-511 F III (10649)
II. THEFT BY UNLAWFUL TAKING:
28-511 F III (10649)

JANICE LIPOVSKY, Deputy Lancaster County Attorney

authority of the State of Nebraska, comes here in person into Court
at this, the 1997 TERM, thereof, and for the State of Nebraska
gives the Court to understand and be informed that TODD M. TERMAAT
on or between July 9, 1995, through February 3, 1997, in the County
of Lancaster, and the state, aforesaid, contrary to the form of the
statutes in such cases made and provided then and there being, did Attempt
to take or exercise control over movable property belonging to METRO
FOOD MARTS, INC., with the intent to deprive the owner thereof,
said property having a value in excess of \$1,500.00,

II.

AND THAT TODD M. TERMAAT on or between July 31, 1996,
through October 31, 1996, in the County of Lancaster, and the
state, aforesaid, contrary to the form of the statutes in
cases made and provided then and there being, did take or exercise

OCT 23 97 0 0 3 2 8 9
CLERK DISTRICT COURT
LANCASTER COUNTY

JUL 21 97 0 0 3 2 4 5
CLERK DISTRICT COURT
LANCASTER COUNTY

cc'd. 7-22-97 NH

Wyuka Cemetery
Wyuka Accountant's Criminal History Records

control over movable property belonging to STOCKWELL PHARMACY with the intent to deprive the owner thereof, said property having a value in excess of \$1500.00.

THE STATE OF NEBRASKA, Plaintiff

GARY E. LACEY
COUNTY ATTORNEY

BY:

Janice Lipovsky
JANICE LIPOVSKY
DEPUTY COUNTY ATTORNEY

JANICE LIPOVSKY, Deputy County Attorney, being duly sworn according to law, says the facts stated in his/her foregoing information are true as he/she verily believes.

Janice Lipovsky
JANICE LIPOVSKY #16605
DEPUTY COUNTY ATTORNEY
555 SOUTH 10TH STREET
LINCOLN, NE 68508
(402) 441-7321

July SUBSCRIBED AND SWORN TO BEFORE ME this 21st day of _____, 1997.

Drainne E. Paul, Deputy
DEPUTY
CLERK OF THE DISTRICT COURT



Wyuka Cemetery
Wyuka Accountant's Criminal History Records

ORIGINAL

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

THE STATE OF NEBRASKA LANCASTER COUNTY

 Plaintiff)97 DEC 11 AM 52 Docket 695 Page 205

 vs)

TODD TERMAAT) **ORDER OF PROBATION**

 Defendant) DISTRICT COURT

THIS MATTER COMES ON FOR HEARING on this 9th day of December 1997. The State is represented by Andy Jacobsen (deputy) County Attorney of Lancaster County, Nebraska and the defendant is represented by Toney Redman.

THE COURT FINDS the defendant was found guilty on the 22nd day of October 1997 to the charge of Theft by Unlawful Taking and was therefore adjudged guilty of the offense.

IT IS THEREFORE ORDERED the defendant is sentenced to probation for a period of Three (3) years under the supervision of the Sixth Probation District under the following terms and conditions and subject to further order of the Court.

The defendant shall:

1. Refrain from unlawful or disorderly conduct or acts injurious to others.
2. Avoid social contact with those persons having criminal records, or on probation/parole except by special permission of the probation officer.
3. Report in writing and/or in person during the term of probation as directed by the Court or probation officer.
4. Truthfully answer inquiries of the probation officer and allow the probation officer to visit at all reasonable times and places.
5. Be employed, or provide proof employment is being sought, or attend school.
6. Reside in the County of Lancaster and obtain permission of the probation officer before any change of address or employment.

CRT

CLERK DISTRICT COURT
LANCASTER COUNTY

DEC 11 97 0 0 3 31

Wyuka Cemetery
Wyuka Accountant's Criminal History Records

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

THE STATE OF NEBRASKA)		
Plaintiff	)	Docket 695	Page 205
vs)		
TODD TERMAAT	)	ORDER OF PROBATION	
Defendant	)		Page 2

7. Not have in his/her possession any firearms or illegal weapons

8. Pay the following:

A. Court costs - All
B. Fine - ___

C. Restitution - \$_____
D. Other - ___

Satisfy the following additional conditions which are reasonably related to the rehabilitation of the defendant.

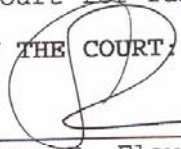
9. The defendant agrees to waive extradition from any other state or country to the State of Nebraska during the term of probation.

10. Shall perform 100 hours of unpaid community service work with a non-profit organization to be approved by the supervising probation officer.

11. During term of probation shall not increase debt beyond current debt other than in an emergency or necessary expenses as approved by the supervising probation officer.

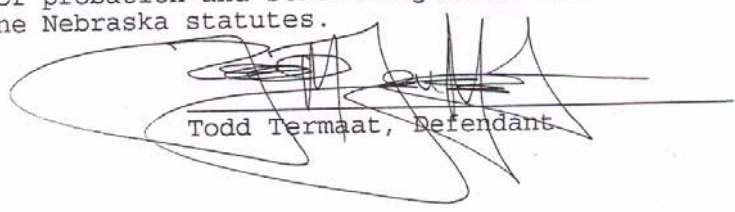
IT IS FURTHER ORDERED during the term of his probation, the Court, upon application of the Probation Officer or the Defendant, or upon its own Motion, may modify or eliminate any of the above conditions or add further conditions. Upon violation of any condition of probation, the defendant may be brought before this Court for further proceedings as provided by law.

BY THE COURT:



Karen B. Flowers, District Judge

RECEIVED a copy of the above Order on this 9th day of December 1997. I hereby accept probation and agree to abide by all the conditions set forth. I understand the violation by me of any of the above conditions is cause for revocation of probation and sentencing under the appropriate section of the Nebraska statutes.



Todd Termaat, Defendant

Wyuka Cemetery
Wyuka Accountant's Criminal History Records

(# 11130550)
2221001

LANCASTER COUNTY
IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

JAN -5 AM 8:31

THE STATE OF NEBRASKA,
Plaintiff,

CLERK OF
DISTRICT COURT

DOCKET 695 PAGE 205

vs.

EARLY RELEASE ORDER

TODD M. TERMAAT,

Defendant.

This matter came on to be heard upon the Court's own motion pursuant to 29-2264(1), R.R.S. 1943. The defendant has been listed by the Adult Probation Officer as one of those who should be discharged from probation prior to termination of the period thereof.

The Court finds that the defendant has, in fact, satisfactorily completed his probation.

IT IS THEREFORE ORDERED that the defendant is released from probation and the defendant's civil rights are hereby restored.

Signed this 4 day of January, ~~1999~~ ²⁰⁰⁰.

BY THE COURT

Judge Karen B. Flowers

Submitted by - Daniel Jarzynka
Date Submitted - December 14, 1999
Date Probation Terminates - December 9, 2000

Order not further

JAN 5 00 0 0 3 6 2 2
CLERK DISTRICT COURT
LANCASTER COUNTY

Wyuka Cemetery
Wyuka Chief Executive Officer's Criminal History Records

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,	)	CASE ID.: <u>CA95-10796</u>
)	
PLAINTIFF,)	
	)	COMPLAINT
VS.	)	FOR:
	)	THEFT BY UNLAWFUL
MICHAEL HUTCHISON,	)	TAKING: 28-511 F III
(7/11/59)	)	(10649)
DEFENDANT.)	

The complaint and information of JANICE LIPOVSKY, Deputy County Attorney of Lancaster, County aforesaid, made in the name of the State of Nebraska, before the undersigned, a Judge of the County Court, within and for said County, this 5th day of October, 1995, who, being duly sworn, on oath, says that MICHAEL HUTCHISON on or between November 3, 1993, through October 26, 1994, in the County and State aforesaid, then and there being, did take or exercise control over movable property belonging to GRAHAM TIRE, 2121 Cornhusker, in Lincoln, Nebraska, with the intent to deprive the owner thereof, said property valued in excess of \$1,500.00, contrary to the form of the Statutes in such cases made and provided, and against the peace and dignity of the State of Nebraska.

THE STATE OF NEBRASKA, Plaintiff

GARY E. LACEY
COUNTY ATTORNEY

ARR: 10/12/95 2:30 P.M.

BY: *Janice Lipovsky*
JANICE LIPOVSKY
DEPUTY COUNTY ATTORNEY

SUBSCRIBED in my presence and sworn to before me this
____ day of October, 1995.

JUDGE OF THE COUNTY COURT

LPD:ne

Wyuka Cemetery
Wyuka Chief Executive Officer's Criminal History Records

LANCASTER COUNTY COURT
Third District
FILED
OCT 06 1995

IN THE COUNTY OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,
Plaintiff,
vs
MICHAEL C. HUTCHINSON
Defendant,

CASE ID CR 95-10790
DOCKET _____ PAGE _____

MOTION TO DISMISS
AT DEFENDANT'S COST

The State of Nebraska and the above entitled Defendant request that this case be dismissed at the Defendant's cost for the reason that the Defendant wishes to participate in DIVERSION SERVICES' Diversion Program.

Defendant hereby acknowledges that the County/City Attorney reserves the right to refile this matter in the event the Defendant does not complete or voluntarily withdraws from the Diversion Program.

[Signature]
Attorney for the State of Nebraska
[Signature]
Defendant

Felony theft

LA 458005

10-12-95
~~10-12-95~~
2:30
#12

Wyuka Cemetery
First Purchase Agreement from Arkansas Land Trade

WYUKA CEMETERY 3600 "O" Street, Lincoln, Nebraska 68510 - 474-3600
Date 1-17-01
FAIRVIEW CEMETERY Contract No. C 6862

PURCHASE AGREEMENT
This Agreement made by and between the WYUKA / FAIRVIEW CEMETERY, hereinafter called "SELLER" and
Ashenbach Address: 3400 S.W. 73 First City: Lincoln State: NE Zip: 685-32

hereinafter called "PURCHASER," the PURCHASER agrees to buy and the SELLER agrees to sell to the PURCHASER, in accordance with the terms hereof, the following item, or items:
FOR THE BENEFIT OF: Samie -

Name Address City State
BURIAL SPACE: Lot(s) 207 Section 40 Grave Space(s) 1, 2, 3, 4, 11, 12 5, 7, 10
Other Goods and/or Services hereinafter described: 50% Discount \$ 2850
Total Cash Price \$ 2850

Table with 4 columns: ANNUAL PERCENTAGE, FINANCE CHARGE, Amount Financed, Total of Payments, Total Sale Price. Includes handwritten values for finance charge and total price.

Table with 3 columns: Number of Payments, Amount of Payments, When Payments are Due. Shows 1 payment of 2850.

You have the right to receive at this time an itemization of the Amount Financed.
I want an itemization I do not want an itemization

Security: You are giving a security interest in the goods or property being purchased. Late Charge: If a payment is late, you will be charged a \$5.00 Minimum charge or 5% of the payment.
1. THE PURCHASER AGREES: to pay to the SELLER the "TOTAL SALE PRICE" shown above. Upon full payment, SELLER will convey to the PURCHASER title to the above described lot, or lots.
2. THE SELLER AGREES:
a. That if for any reason this burial space is not satisfactory to the PURCHASER, it may be exchanged at any time before there is an interment thereon or before the issuance of the deed, for any available lot in the cemetery of the same or greater size, and of the same or greater price, based on the schedule of prices in force at the time of transfer, and all sums paid under this Agreement shall be credited to the account of the new burial space selected by the PURCHASER.
b. That upon payment in full of the above total by PURCHASER, the SELLER binds itself to deliver to PURCHASER the item(s) described above, or in the alternative to provide PURCHASER with a document of title to the item(s) described above as provided in the Nebraska Burial Pre-Need Sales Act.
c. In the event that the Nebraska Burial Pre-Need Sales Act ("the Act") shall apply to any item(s) purchased hereby, the Company agrees to abide by all of the terms and conditions contained therein. The trust account shall be established for the Purchaser and the required portion of the total purchase price of any item(s) covered by the Act, when paid, shall be placed in the trust account. The trust account shall be considered irrevocable. The principal payments made by the Purchaser under this Agreement shall be applied first to the purchase price of the above described lot, or lots, and then to the purchase price of any memorial and/or marker hereby, second to the purchase price of any memorial and/or marker hereby, and then to the purchase price of any other goods and/or services described herein.
d. The lot covered by this Agreement may be used for interment purposes at any time after the section in which said lot is located has been opened for interment purposes, provided however:
(i) That at the time of such interment the payments are not in arrears.
(ii) THAT NOT LESS THAN THE TOTAL SALE PRICE OF THE SPACE TO BE USED HAS BEEN PAID.
(iii) If prior to the opening of said section for interment purposes, the PURCHASER finds it necessary to use said lot for interment of a member of his immediate family, the SELLER will permit the exchange of the lot covered by this Agreement, without an increase in price, for a lot of the same number of grave spaces, to be selected by the PURCHASER in a section open for interment purposes at a price equal to or greater than the price of the lot originally selected.
e. In the event of the death of the person for whose benefit the pre-need sale of a crypt or niche is made prior to the completion of construction of a mausoleum, columbarium, or lawn crypt, then:
(i) Alternate burial will be provided until the completion of the construction; and
(ii) Within a reasonable time after completion of construction, the body of the decedent will be moved in a dignified manner from the alternate burial place to the crypt or niche so purchased at the expense of the SELLER.

3. THE PURCHASER AGREES:
a. To comply at all times with the rules and Regulations providing for the operation, care and control of the Cemetery.
b. That all permanent grave markers used on this lot shall be as provided in the Rules and Regulations.
c. ALL LOTS ARE SOLD WITH ENDOWED CARE WITH THE RIGHT OF INTERMENT ONLY FOR THE BENEFIT OF THE LOT OWNER, INCLUDED IN THE PURCHASE PRICE, AND SUBJECT TO THE RULES AND REGULATIONS OF THE SELLER.
4. PURCHASER AND SELLER MUTUALLY AGREE:
a. Should any of the covenants or agreements herein contained remain unperformed by the PURCHASER for a period of thirty (30) days after the same should have been performed under the Agreement, then this Agreement shall become null and void at the option of the SELLER, and all payments made by PURCHASER shall revert to and remain the property of the SELLER.
b. In this event PURCHASER shall fail to perform any of PURCHASER'S promises or agreements herein, SELLER may waive such failure, and SELLER'S waiver shall not be a waiver of any other or future failure to perform or breach by PURCHASER.
c. That in the event of war, riot, act of insurrection, act of God, restrictions, or for any cause beyond the control of the SELLER, it should be impossible to deliver and/or provide Other Goods, and/or Services, at the times specified in the Agreement, the SELLER shall be excused from the performance of the same. PURCHASER will accept delivery as soon as it shall be reasonably possible for the SELLER to perform same.
d. All provisions, and agreements, listed above shall apply to the purchase of Cemetery Property, and Other Goods and/or Services, where applicable.
e. PURCHASER may approve lot reservation at any time. However, if lot is unselected after ninety (90) days from the date of this agreement, the SELLER will assign a lot to the PURCHASER of the same value as contracted for in this Agreement.
f. The SELLER reserves the right to correct any errors listed above by mailing a corrected copy to the PURCHASER.
g. Time is of the essence in this contract.
h. This agreement contains the full contract of the parties and no other agreements will be recognized.
i. If you pay the entire unpaid balance within 365 days of the date of this Agreement, the entire finance charge will be waived and any finance charges paid by you will be refunded to you.

5. CANCELLATION - NOTICE TO PURCHASER:
a. You, the Purchaser, may cancel this Agreement and transaction at any time prior to midnight of the third business day after the date of this Agreement. See the attached Notice of Cancellation form for an explanation of this right.
b. In the event that you cancel this Agreement after the three (3) day period described above with respect to pre-need merchandise or services described herein, prior to payment and delivery of such merchandise or services, your rights of credit and/or refund are governed by the Nebraska Burial Pre-Need Act. * Final Dates are not included in Purchase Price

6. PURCHASER'S ACKNOWLEDGMENTS:
PURCHASER acknowledges receipt of a completed copy of all written instruments signed by PURCHASER and also two copies of the "Notice of Cancellation" form as required by the Federal Trade Commission. PURCHASER acknowledges receipt of all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Any holder of this Consumer Credit Contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder. It is further understood by the parties hereto that the secretary of the Board of Trustees of WYUKA / FAIRVIEW CEMETERY has been made an authorized agent to bind said Board by signing any Agreement and that this Agreement is not valid and binding until accepted by the Board of Trustees of said WYUKA / FAIRVIEW CEMETERY or their authorized agent. IN WITNESS WHEREOF, the parties have executed this agreement this date.

Purchaser: [Signature] Social Security Number:
By: [Signature] Secretary-Treasurer
Purchaser: [Signature] Social Security Number: Representative

Wyuka Cemetery Second Purchase Agreement from Arkansas Land Trade

WYUKA CEMETERY 3600 "O" Street, Lincoln, Nebraska 68510 - 474-3600
 FAIRVIEW CEMETERY Contract No. R0862
 Date 2-19-04
 PURCHASE AGREEMENT
 This Agreement made by and between the WYUKA / FAIRVIEW CEMETERY, hereinafter called "SELLER" and James Initial
Ashenbach Address: 3400 S. W. 73rd City: Lincoln State: NE Zip: 68532

hereinafter called "PURCHASER," the PURCHASER agrees to buy and the SELLER agrees to sell to the PURCHASER, in accordance with the terms herof, the following item, or items:
 FOR THE BENEFIT OF: James Ashenbach
 Name Address City State
 BURIAL SPACE: Lot(s) 256A Section 40 Grave Space(s) Cremation Room on west side
 Other Goods and/or Services hereinafter described:
includes name plate, space, & final \$ 1,495.00
Death Data - & opening closing \$
tradition spaces sec 40, lot 207 \$ (1,495.00)
1, 2, 3, 4, 11, 12 \$
 Total Cash Price ... \$ 0-

ANNUAL PERCENTAGE The cost of your credit as a yearly rate %	FINANCE CHARGE The dollar amount the credit will cost you \$	Amount Financed The amount of credit provided to you or on your behalf \$	Total of Payments The amount you will have paid after you have made all payments as scheduled \$	Total Sale Price The total cost of your purchase on credit including your down payment of \$ \$
---	---	--	---	--

You have the right to receive at this time an itemization of the Amount Financed.
 I want an itemization I do not want an itemization

Security: You are giving a security interest in the goods or property being purchased. Late Charge: If a payment is late, you will be charged a \$5.00 Minimum charge or 5% of the payment. Prepayment Penalty: If you pay off early, you will not have to pay a penalty. Read the following paragraphs for any additional information about nonpayment, default, the right to accelerate before maturity, and required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. **THE PURCHASER AGREES:** to pay to the SELLER the "TOTAL SALE PRICE" shown above. Upon full payment, SELLER will convey to the PURCHASER title to the above described lot, or lots. Special payment instructions, if any:
 The SELLER will install all other Goods of such merchandise on or in PURCHASER'S grave(s) described above, or such other grave(s) as directed by PURCHASER. PURCHASER hereby consents that such installation or delivery may be made without further notice, and further consents that SELLER may then receive payment of all trust funds paid on account of such Goods from SELLER'S Master Trust Account.

2. **THE SELLER AGREES:**
 a. That if for any reason this burial space is not satisfactory to the PURCHASER, it may be exchanged at any time before there is an interment thereon or before the issuance of the deed, for any other available lot in the cemetery of the same or greater size, and of the same or greater price, based on the schedule of prices in force at the time of transfer, and all sums paid under this Agreement shall be credited on the new burial space selected by the PURCHASER;
 b. That upon payment in full of the above total by PURCHASER, the SELLER binds itself to deliver to PURCHASER the item(s) described above, or in the alternative to provide PURCHASER with the document of title to the item(s) described above as provided in the Nebraska Burial Pre-Need Sales Act;
 c. In the event that the Nebraska Burial Pre-Need Sales Act ("the Act") shall apply to any item(s) purchased hereby, the Company agrees to abide by all of the terms and conditions contained therein. Pursuant to the Act, a trust account shall be established for the Purchaser and the required portion of the total purchase price of any item(s) covered by the Act, when paid, shall be placed in the trust account. The trust account shall be considered irrevocable. The principal payments made by the Purchaser under this Agreement shall be applied first to the purchase price of the Right of Interment in the cemetery space covered hereby, second to the purchase price of any memorial and/or marker covered hereby, third to the purchase of any cemetery services (including but not limited to opening and closing), and fourth to the purchase of any other goods and services covered hereby.
 d. The lot covered by this Agreement may be used for interment purposes at any time after the section in which said lot is located has been opened for interment purposes, provided however:
 (i) That at the time of such interment the payments are not in arrears.
 (ii) THAT NOT LESS THAN THE TOTAL SALE PRICE OF THE SPACE TO BE USED HAS BEEN PAID.
 If prior to the opening of said section for interment purposes, the PURCHASER finds it necessary to use said lot for interment of a member of his immediate family, the SELLER will permit the exchange of the lot covered by this Agreement, without an increase in price, for a lot of the same number of grave spaces, to be selected by the PURCHASER in a section open for interment purposes with lots of a price equal to or greater than the price of the lot originally selected.
 e. In the event of the death of the person for whose benefit the pre-need sale of a crypt or niche is made prior to the completion of construction of a mausoleum, columbarium, or lawn crypt, then:
 (i) Alternate burial will be provided until the completion of the construction; and
 (ii) Within a reasonable time after completion of construction, the body of the decedent will be moved in a dignified manner from the alternate burial place to the crypt or niche so purchased at the expense of the SELLER.

3. **THE PURCHASER AGREES:**
 a. To comply at all times with the rules and Regulations providing for the operation, care and control of the Cemetery.
 b. That all permanent grave markers used on this lot shall be as provided in the Rules and Regulations.
 c. ALL LOTS ARE SOLD WITH ENDOWED CARE WITH THE RIGHT OF INTERMENT ONLY FOR THE BENEFIT OF THE LOT OWNER, INCLUDED IN THE PURCHASE PRICE, AND SUBJECT TO THE RULES AND REGULATIONS OF THE SELLER.

4. **PURCHASER AND SELLER MUTUALLY AGREE:**
 a. Should any of the covenants or agreements herein contained remain unperformed by the PURCHASER for a period of thirty (30) days after the same should have been performed under the Agreement, then this Agreement shall become null and void at the option of the SELLER, and all payments made by PURCHASER which are governed by the Nebraska Burial Pre-Need Sales Act shall be disposed in accordance with said Act, and all other payments shall revert to and remain the property of the SELLER.
 b. In the event PURCHASER shall fail to perform any of PURCHASER'S promises or agreements herein, SELLER may waive such failure, and SELLER'S waiver shall not be a waiver of any other or future failure to perform or breach by PURCHASER.
 c. That in the event of war, riot, act of insurrection, act of God, restrictions, or for any cause beyond the control of the SELLER, it should be impossible to deliver and/or provide Other Goods, and/or Services, at the times specified in the Agreement, the PURCHASER will accept delivery as soon as it shall be reasonably possible for the SELLER to perform same.
 d. All provisions, and agreements, listed above shall apply to the purchase of Cemetery Property, and Other Goods and/or Services, where applicable.
 e. PURCHASER may approve lot reservation at any time. However, if lot is unselected after ninety (90) days from the date of this agreement, the SELLER will assign a lot to the PURCHASER of the same value as contracted for in this Agreement.
 f. The SELLER reserves the right to correct any errors listed above by mailing a corrected copy to the PURCHASER.
 g. Time is of the essence in this contract.
 h. This agreement contains the full contract of the parties and no other agreements will be recognized.
 i. If you pay the entire unpaid balance within 365 days of the date of this Agreement, the entire finance charge will be waived and any finance charges paid by you will be refunded to you.

5. **CANCELLATION - NOTICE TO PURCHASER:**
 a. You, the Purchaser, may cancel this Agreement and transaction at any time prior to midnight of the third business day after the date of this Agreement. See the attached Notice of Cancellation form for an explanation of this right.
 b. In the event that you cancel this Agreement after the three (3) day period described above with respect to pre-need merchandise or services described herein, prior to payment and delivery of such merchandise or services, your rights of credit and/or refund are governed by the Nebraska Burial Pre-Need Act.*

PURCHASER'S ACKNOWLEDGMENTS:
 PURCHASER acknowledges receipt of a completed copy of all written instruments signed by PURCHASER and also two copies of the "Notice of Cancellation" form as required by the Federal Trade Commission. Any holder of this Consumer Credit Contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.
 It is further understood by the parties hereto that the secretary of the Board of Trustees of WYUKA / FAIRVIEW CEMETERY has been made an authorized agent to bind said Board by signing any Agreement and that this Agreement is not valid and binding until accepted by the Board of Trustees of said WYUKA / FAIRVIEW CEMETERY or their authorized agent.
 IN WITNESS WHEREOF, the parties have executed this agreement this date.

Purchaser: James Ashenbach
 Social Security Number: _____
 By: Michael C. Hutchison Secretary-Treasurer
 Representative
 Purchaser: _____
 Social Security Number: _____

Wyuka Cemetery
Warrant Deed for Arkansas Land Trade

WARRANTY DEED

FOR BELLA VISTA VILLAGE or HOT SPRINGS VILLAGE
01065708

KNOW ALL MEN BY THESE PRESENTS:

That James M. Ashenbach and Betsy L. Ashenbach

hereinafter called Grantor(s), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, in hand paid by Michael C. Hutchinson and Wanda M. Hutchinson

the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said Michael C. Hutchinson and Wanda M. Hutchinson, Wros, Husband and Wife, as tenants by the entirety, 7821 South Street, Lincoln, NE 68506

hereinafter called Grantee(s), and unto Their heirs, successors and assigns, forever, the following lands lying in the County of Benton, State of Arkansas, to wit:

Lot 6, Block 3, Watson Subdivision
Bella Vista Village

per recorded plat or plats, and subject to the notes and other indicated restrictions, if any, on said plat or plats and subject to the covenants, reservations, easements, charges and liens reflected in the Declaration and Supplemental Declaration filed in connection therewith in the office of the Circuit Court Clerk and Ex-Officio Recorder of said County and State.

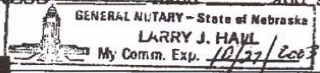
To have and to hold the same unto the said Grantee(s), and unto Their heirs, successors and assigns forever, with all appurtenances thereunto belonging.

And Grantor(s) hereby covenant with said Grantee(s) that we will forever warrant and defend the title to the said lands against all claims whatever, save and except, however, as to utility easements, if any, and as to mineral reservations, if any, and exceptions in the above description.

And I, Betsy L. Ashenbach, wife of the said owner, for and in consideration of the said sum of money, do hereby release and relinquish unto the said Grantee(s) all my right of dower and homestead in and to the said lands.

And I, James M. Ashenbach, husband of the said owner, for and in consideration of the said sum of money, do hereby release and relinquish unto the said Grantee(s) all my right of curtesy and homestead in and to the said lands.

WITNESS hand and seal this 5 day of April, 2001.



(L.S.) Larry J. Hall (L.S.)



(L.S.) FILED FOR RECORD AT 9:02 O'Clock A.M.

ACKNOWLEDGMENT

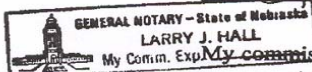
STATE OF Arkansas)
COUNTY OF Lincoln) SS.

MAY 15 2001
SUE HODGES
Clerk and Recorder
Benton County, ARK.

BE IT REMEMBERED, That on this day came before me, the undersigned, a Notary Public within and for the County and State aforesaid, duly commissioned and acting, JAMES M AND Betsy L. ASHENBACH, to me well known as the Grantor(s) in the foregoing Deed, and stated that THEY had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal this 5 day of April, 2001.

I certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument.



Notary Public

Michael C. Hutchinson
Grantor/affiant or agent

My commission expires: 10-27-2003

9334

BHW02
0A98

RETURN TO:

THIS FORM PREPARED BY
Cooper Communities, Inc.
Legal Dept.
Bella Vista, Arkansas

**Wyuka Cemetery
Information for Arkansas Land Trade**

April 5, 2001

Receipt for Bella Vista property purchase.

Received from Michael Hutchinson, 7821 South Street, Lincoln, NE 68506 \$2,500.00 cash, for the purchase of property at Bella Vista Arkansas. Lot 6, Block 3 Watson subdivision, Bella Vista Village per record and plats.

James M. Ashenbach

James M. Ashenbach 4-5-01

Mr. Mike Foley

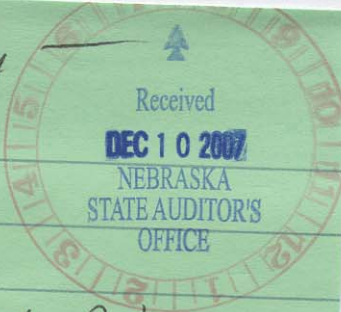
Mike,

Here is what I have

in regards to the

property in Arkansas -

Mike Hutchinson



Wyuka Cemetery Summary Information for Arkansas Land

ARCountyData - Benton County

Page 1 of 1



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PARCEL DETAILS

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Basic Information

Parcel Number: 16-38459-000
Ownership Information: NATIONAL RECREATIONAL PROPERTIES OF BV LLC
 BELLA VISTA, AR
[Map This Address](#)
Billing Information: NATIONAL RECREATIONAL PROPERTIES OF BV LLC
 PO BOX 50490
 IRVINE CA 92619-0490
Total Acres: 0.00
Timber Acres: 0.00
Sec-Twp-Rng: 31-21-30
Lot/Block: 6/3
Subdivision: WATSON SUB-BVV
Legal Description:
School District: CBV6 Bentonville (Bella Vista City)
Homestead Parcel?: No
Tax Status: Taxable

Land Information

Land Divisions:	Land Type	Quantity	Front Width	Rear Width	Depth 1	Depth 2	Quarter
	VAC	1 lots	0	0	0	0	

Valuation Information

	Appraised	Assessed
Land:	6,000	1,200
Improvements:	0	0
Total Value:	6,000	1,200
Taxable Value:		780
Millage:		0
Estimated Taxes [?]:		\$0.00
Assessment Year:		2007

Sales History

Date	Price	Grantor	Grantee	Book	Page	Deed Type
10/17/2005	9,000	HUTCHINSON	NRP	2005	56241	WD (WARRANTY DEED)
5/15/2001	1,000	ASHENBACH	HUTCHINSON	2001	65708	WD (WARRANTY DEED)
10/7/1988	8,000	COOPER	ASHENBACH	695	313	WD (WARRANTY DEED)



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Wyuka Cemetery

Legal Counsel Memo – Advanced Publicized Notice

To: Mike Foley, State Auditor
From: Lance Lambdin, Legal Counsel
Sent: November 30, 2007

Issue: Is newspaper publication necessary in order to comply with the “reasonable advance publicized notice” requirement found at Neb. Rev. Stat. § 84-1411(1)?

Conclusion: No. Newspaper publication is not required in order to comply with the “reasonable advance publicized notice” requirement found at Neb. Rev. Stat. § 84-1411(1).

Analysis

This state’s Open Meetings Act (“Act”) is found at Neb. Rev. Stat. §§ 84-1407 to 84-1414. Within the Act, Neb. Rev. Stat. § 84-1411(1) states, in relevant part:

“Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public.”

Rather than mandating that notice of a meeting be given in a particular way or through a specified medium, this section of law requires only that such notification be “reasonable,” “advance,” and “publicized.” This combination of words is defined neither in the Nebraska statutes nor by relevant case law. As a result, the phrase must be given its plain and ordinary meaning – rendering inappropriate the effort to read into that statutory language any unspoken requirement, including that of newspaper publication.

Newspaper Publication under the Act

One section of the Act does, in fact, require that notice of certain meetings by a public body be published in a newspaper. That section, Neb. Rev. Stat. § 84-1412(6)(g), allows such meetings to be held “outside of this state” if “[t]he public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.” As the statutory language makes clear, though, this particular publication requirement pertains only to meetings that take place outside of Nebraska.

General Statutory Guidelines

It should be pointed out that Neb. Rev. Stat. § 25-2228 creates general publication guidelines that are applicable to a wide variety of Nebraska statutes – but not to Neb. Rev. Stat. § 84-1411(1). According to Neb. Rev. Stat. § 25-2228:

“All legal publications and notices of whatever kind or character that may by law be required to be published a certain number of days or a certain number of weeks shall be legally published when they have been published in one issue in each week in a daily, semiweekly, or triweekly newspaper . . . All legal publications and all notices of whatever kind or character that may be required by law to be published a certain number of days or a certain number of weeks, shall be and hereby are declared to be legally published when they shall have been published once a week in a weekly, semiweekly, triweekly, or daily newspaper for the number of weeks, covering the period of publication . . .”

Neb. Rev. Stat. § 84-1411(1) does not specify that the “reasonable advance publicized notice” be either published or made for any specified number of days or weeks prior to the meeting. As a result, Neb. Rev. Stat. § 25-2228, which applies only to notices “that may be required to be published a certain number of days or a certain number of weeks,” has no bearing upon that section of the Act.

Wyuka Cemetery

Legal Counsel Memo – Advanced Publicized Notice

Specific Statutory Guidelines

While the Act does not generally mandate newspaper publication, other sections of state statute do require that meetings of specific public bodies be so publicized. For instance, Neb. Rev. Stat. § 16-707 directs notices for meetings by municipal boards of equalization to be published in a newspaper:

“The mayor and council shall meet as a board of equalization on the first Monday in June of each year and at such other times as they shall determine to be necessary, giving notice of any such sitting at least ten days prior thereto by publication in a newspaper having general circulation in the city.”

Likewise, Neb. Rev. Stat. § 2-253 sets out distinct newspaper publication requirements for notices of annual meetings by county agricultural societies:

“The board of directors of the county agricultural society shall give notice of the annual meeting in a newspaper of general circulation within the county once at least five days before the scheduled annual meeting.”

These, and other similar statutory mandates, are germane only to their respective public bodies and serve to supplement the provisions of the Act. In the absence of such specific directives, only the “reasonable advance publicized notice” requirement of Neb. Rev. Stat. § 84-1411(1) applies.

Relevant Case Law

As pointed out already, nothing in either the Nebraska statutes or relevant case law provides specific parameters for what constitutes “reasonable advance publicized notice” pursuant to Neb. Rev. Stat. § 84-1411(1). However, one Nebraska Supreme Court (“Court”) case does indicate that, whatever those nebulous parameters may be, they do not include mandatory newspaper publication. In *Banks v. Board of Ed. of Chase County High School Dist. No. 15*, 202 Neb. 717, 277 N.W.2d 76 (1979), the Court ruled on a complaint by residents and taxpayers of Chase County High School District No. 15 that, among other things, the board of education for that district had failed to comply with the Act by allegedly neglecting to provide adequate notice of a meeting held to discuss a proposed architectural contract. The court rejected the assertion that the Act had been violated, stating:

“The plaintiffs next argue that the meeting, at which the architectural contract was let, violated Nebraska's public meetings law. Section 84-1411, R.R.S.1943, contains the relevant provisions of the public meetings lawIn this case, the board meeting which authorized the approval of the contract with Wilson & Company was held on December 11, 1975. Notice of the meeting was posted at the high school, the courthouse, and the post office on December 9, 1975. The notice stated that the agenda for the meeting could be obtained at the office of the superintendent. The agenda included notice of a ‘discussion’ with John Smutz of Wilson & Company. It stated that the discussion ‘should result in determining whether we want this company or not.’ The language may not be a model of clarity, but did inform the public that an agreement with the architect was to be discussed and possibly entered. The contention is without merit.”¹

The Court’s decision to uphold the manner of publicizing the meeting in question focused solely upon the content of the agenda. By taking for granted the sufficiency of merely posting the notice two days prior to the meeting, the Court implicitly acknowledged that compliance with Neb. Rev. Stat. § 84-1411(1) does not necessitate newspaper publication.

¹ 202 Neb. 717, 722-723, 277 N.W.2d 76, 80.

**Wyuka Cemetery
Legal Counsel Memo – Advanced Publicized Notice**

Nebraska Attorney General

No formal opinions issued by the Nebraska Attorney General address the issue of mandatory newspaper publication pursuant to Neb. Rev. Stat. § 84-1411(1). Nevertheless, in a recent telephone conversation, Assistant Attorney General Dale Comer confirmed the conclusion of the present analysis.² Mr. Comer added that, in the opinion of the Nebraska Attorney General, the sufficiency of “reasonable advance publicized notice” would depend upon the nature of the meeting being held. For instance, a meeting of a small, local governing board could reasonably be publicized by way of a simple posting. Notice of a meeting of a larger agency, such as the Department of Education, Mr. Comer offered as a contrasting example, should probably be published in a newspaper of statewide circulation. Because Neb. Rev. Stat. § 84-1411(1) provides no definite criteria, such a decision must be based upon the type of meeting anticipated.

Summary

Neb. Rev. Stat. § 84-1411(1) contains no language explicitly requiring that the compulsory “reasonable advance publicized notice” of a meeting by a public body be accomplished through newspaper publication. Though certain state statutes do mandate newspaper publication, they apply only to certain types of notice requirements or specifically designated public bodies. While not establishing specific parameters for the acceptable manner of such publication, at least one ruling of the Court has established implicitly that newspaper publication is not necessary for compliance with Neb. Rev. Stat. § 84-1411(1). The Nebraska Attorney General agrees that, in and of itself, Neb. Rev. Stat. § 84-1411(1) does not mandate newspaper publication; however, such publication may be warranted depending upon the nature of the meeting to be held.

Therefore, unless compelled to do so by a supplementary statutory provision or by the nature of a given meeting, a public body is not required to publish notice of its meetings in newspapers in order to comply with Neb. Rev. Stat. § 84-1411.

² The telephone conversation with Mr. Comer took place on the afternoon of November 29, 2007, at (402) 471-2940.

Wyuka Cemetery

Legal Counsel Memo – Compliance with Neb. Rev. Stat. § 84-1411(1)

To: Mike Foley, State Auditor
From: Lance Lambdin, Legal Counsel
Date: December 12, 2007

Issue: Has Wyuka Cemetery failed to comply with Neb. Rev. Stat. § 84-1411(1)?

Conclusion: Wyuka Cemetery has failed to comply with certain provisions of Neb. Rev. Stat. § 84-1411(1).

1. Neb. Rev. Stat. § 84-1411(1) requires:
 - A) *“Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes.”*

Wyuka does not record in its minutes the method designated for providing the required advance public notice.

- B) *“Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours.”*

Wyuka’s public notices, which have been made by postings on the cemetery’s web site, contain neither an agenda nor the alternative statement that such an agenda will be made available.

- C) *“Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.”*

Certain of Wyuka’s meetings had no formal agenda at all – as noted in the minutes. A typical notation in the minutes states: “Note: There was no formal agenda. The numerical references preceding the following items simply indicate the order in which they were considered.”

Such meetings occurred on:
May 14, 1998
May 31, 1998
June 9, 1998
June 23, 1998

Wyuka Cemetery

Legal Counsel Memo – Compliance with Neb. Rev. Stat. § 84-1411(1)

June 25, 1998

October 21, 1998 (“Three items not on the agenda were discussed first.”)

2. In addition to its annual and quarterly meetings, Wyuka’s Board of Trustees has held a number of “special meetings.” It is not apparent from their minutes whether those “special meetings” were publicized beforehand or run from a formal agenda pursuant to Neb. Rev. Stat. § 84-1411(1).

As with those of both the annual and quarterly meetings, however, the minutes of the “special meetings” did not record the method of providing public notice.

These “special meetings” occurred:

March 2, 1998

March 16, 1998

September 2, 1999

December 10, 1999 (“*This Special Meeting of the Board of Trustees of Wyuka Cemetery was held pursuant to required notice given to all Trustees, in the Conference Room of the law offices of Demars, Gordon, Olson, and Shively.*”)

February 22, 2000

August 15, 2000

September 6, 2000

June 4, 2001

September 7, 2001

June 19, 2001

June 12, 2002

September 23, 2004

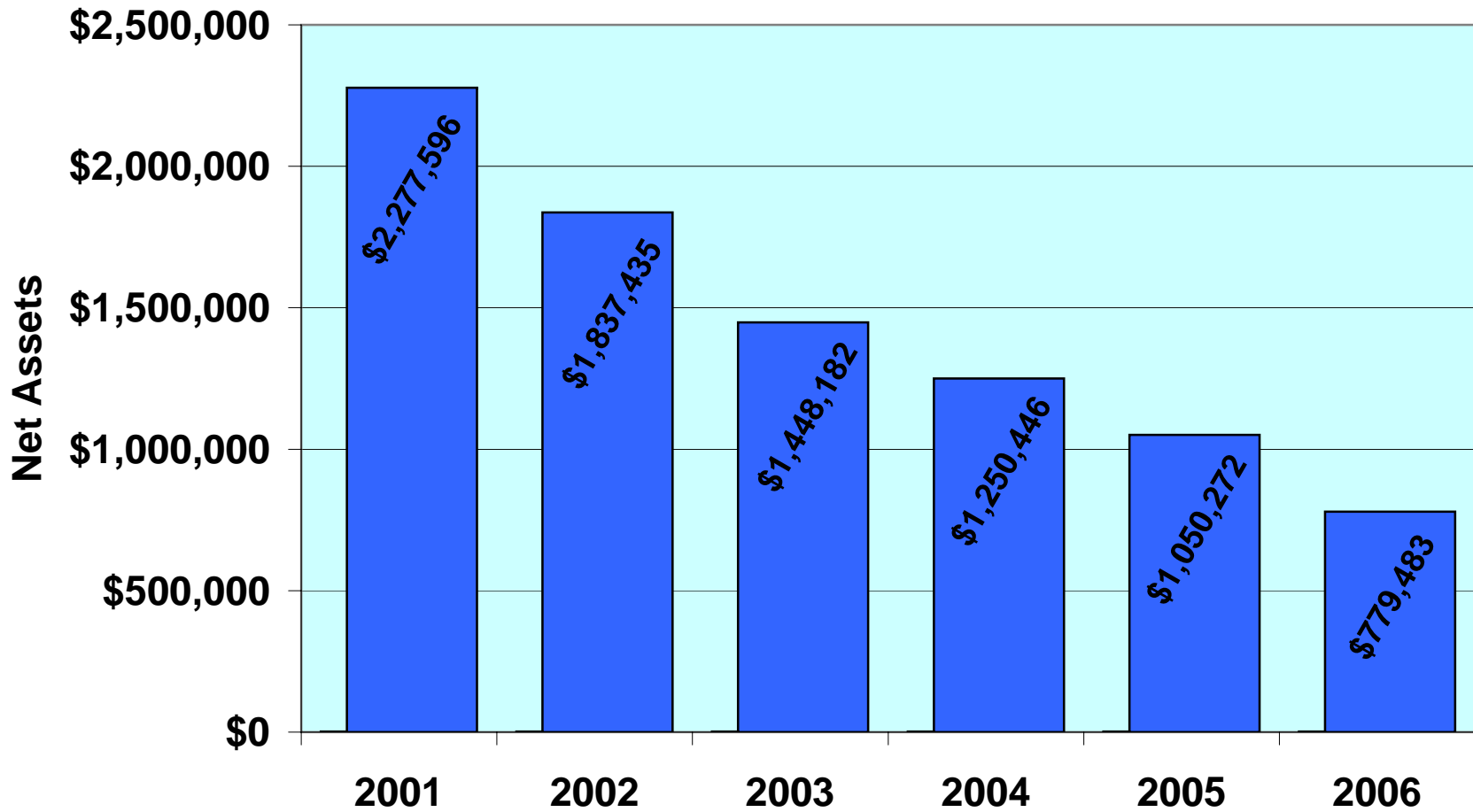
Note: There is a difference between a “special meeting,” which is held pursuant to the notice requirements of 84-1411(1), and an emergency meeting, as provided for in 84-1411(5):

“When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.”

3. Wyuka Emergency Meeting held on November 18, 2005 (to discuss publicity surrounding the Caisson Project)

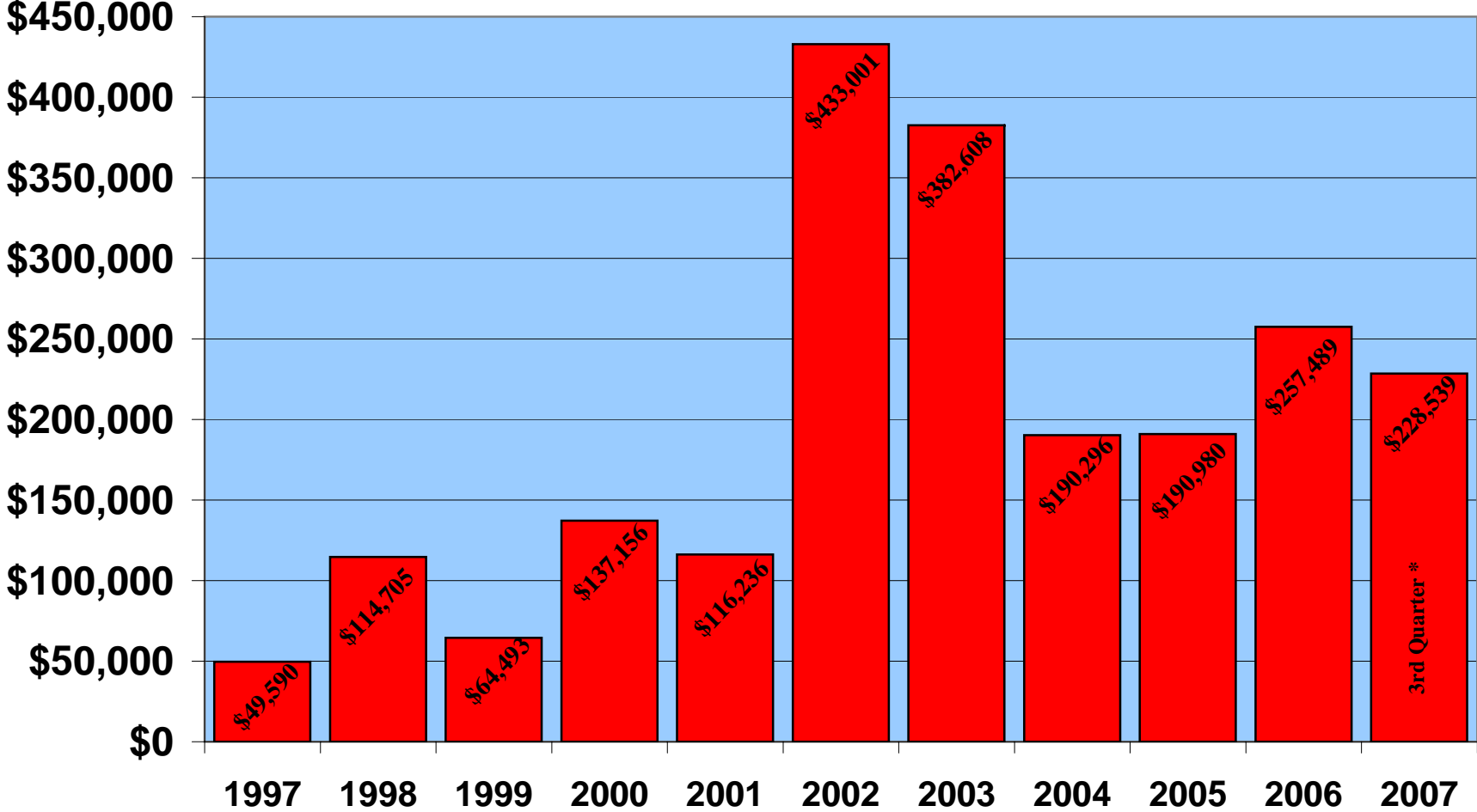
(Was this *really* a qualifying “emergency” under 84-1411(5)? Subsequent quarterly meeting minutes refer to it as only a “special” meeting.)

Wyuka Cemetery - Business-Type Activity Net Assets - Six Year Trend



Note: These figures are the Net Assets for the General Fund, Funeral Home Fund, and Memorial Care Fund only. Numbers were taken from Wyuka's Audited Financial Statements.

Wyuka Cemetery Annual Business-Type Activity Operating Losses



Note: The figures were taken from Wyuka's audited financial reports. These figures represent the day-to-day operations in the General, Funeral Home, and Memorial Care Funds only. Inter fund transfers to support general operations were not shown in this graph.
* This figure is the first 3 quarters of financial information provided by Wyuka Cemetery and was not from an audit report.
FY2005 includes contributions of \$8,394 and FY2006 includes contributions of \$167,808. If Wyuka had not gotten these contributions, the losses would have been that much higher.

Wyuka Cemetery
Wyuka Trustee – Chairman’s Letter to the Governor

113758/Wyuka



WYUKA
a place of rest
Funeral Home - Cemetery - Park

GOVERNORS OFFICE
NOV 01 2006
RECEIVED

October 31, 2006

Honorable Dave Heineman
Governor, State of Nebraska
State Capitol
Lincoln, NE 68509

Dear Governor Heineman:

I am pleased to respond to your request for information from the Board of Trustees of Wyuka Cemetery.

For years prior Boards of Trustees have authorized the use of perpetual care funds to cover budget shortfalls at the cemetery. As you know, Wyuka has always struggled to be profitable.

The current board made dramatic policy changes in 2002. With the advice of legal counsel and the CPA/auditor team, the use of Per Care Funds was changed to loans from the fund which we intend to pay from future profits. We further stopped using these funds completely at the end of 2005. The Per Care Fund currently stands at over \$224,000 and is growing. The latest P&L statement from the third quarter of 2006 shows the smallest loss in recent history with an expectation of profitability by year end or the first half of 2007.

3600 "O" Street

Lincoln, NE 68510

Ofc: (402) 474-3600

Fax: (402) 474-2650

Page 1

Email: contact@wyuka.com

Website: www.wyuka.com

**Wyuka Cemetery
Wyuka Trustee – Chairman’s Letter to the Governor**

Enclosed are copies of that statement, as well as our most recent audit (2005). Copies of our audits are sent to the State Auditor each year and kept on file.

There are many additional improvements that have been or are being made at Wyuka – all to accomplish the goal of serving the community while making the cemetery profitable.

At your convenience, I would be glad to sit down with you for a few minutes to go through these items in more detail.

Sincerely,



Michael L. Tefft
Chairman, Board of Trustees
Wyuka Funeral Home and Cemetery

(2) Attachments: - Third Quarter, 2006 P&L Statement
- 2005 Audit Report

Wyuka Cemetery Wyuka Transportation Grant Request

State of Nebraska
Department of Roads

Transportation Enhancement Improvement Request (FINAL)

1.	AGENCY NAME: Wyuka Cemetery, public charitable corporation w/ Governor-appointed trustees	TYPE OF GOVERNMENT AGENCY (Check One): <input type="checkbox"/> Village <input type="checkbox"/> City <input type="checkbox"/> County <input type="checkbox"/> NRD <input checked="" type="checkbox"/> State <input type="checkbox"/> Other	
2.	CONTACT PERSON: Ginny Hand, Wyuka Historical Foundation Development Director	FAX NUMBER: 402-484-5587	
	MAILING ADDRESS: (Street) 3600 O Street	CITY: Lincoln	STATE: NE
	DAYTIME PHONE: 402-326-0435	E-MAIL: dgband2@aol.com	
3.	CONTACT PERSON: (Print Name & Title) Chuck Pallesen, Wyuka Historical Foundation President	SIGNATURE 	DATE: 9/19/07
4.	GOVERNMENT AGENCY: (Print Name & Title) Michael L. Tefft, Chair Wyuka Cemetery Board of Trustees	SIGNATURE 	DATE:
5.	PROJECT NAME: (Example: Beatrice Big Blue Trail; Neligh Mill Bridge Renovation) Wyuka Stables Renovation		
6.	PROJECT DESCRIPTION/LOCATION: (Include location, work to be performed, and attach map) The project involves the historic preservation of the Wyuka Cemetery stables (1908-09) in Lincoln's historic Wyuka Cemetery Park and Gardens, chartered by State of Nebraska in 1869 (see Appendix A.) The project scope focuses on the eight exterior sides of the building (four exterior facades and four interior courtyard walls), the roof, floor and site. The project involves repair and repointing of masonry; repair and replacement of stucco and concrete; repair of wood items including trim and cupolas; repair and replacement of doors, windows and hardware; restoration of structural steel supports; replacement of the roof with wood shingles; replacement of copper gutters and downspouts; painting of façade and trim; replacement of electrical service and exterior lighting; replacement of existing restroom fixtures; piping and new sanitary sewer and water service; replacement of brick pavers adjacent to the building and in the courtyard; and re-establishment of an historically appropriate site context. The project also includes creation of new accessible public restrooms in the southeast portion of the stables. The restrooms will enhance public use of the building and will eliminate the current practice of renting unsightly portable restrooms during public events and performances. All work to be performed will be planned and executed in consultation with state and local historic preservation officials. Based on preliminary discussions with these officials, we propose the removal of the south addition to strengthen the secondary façade and enhance the building's relationship to the gardens and pond. The project also involves removal of an outhouse, overhead electrical service and a power pole. Wyuka Cemetery is listed in the National Register of Historic Places. (National Register nomination form provided under separate cover.) DESCRIBE HOW YOUR PROJECT RELATES TO TRANSPORTATION (AS DESCRIBED IN APPLICATION GUIDELINES): The stables are an outstanding example of a pre-motorized transportation facility. They were designed to house and maintain the animals and equipment necessary to transport materials and people associated with the operation of and visitation to the cemetery. They are a component of a larger transportation system which characterizes the "rural cemetery." A uniquely American concept, the rural cemetery was defined by gracefully curving boulevards and avenues that conform to natural topography and drainage patterns rather than the traditional cemetery street grid. Wyuka Cemetery began paving its winding boulevards in brick in 1904 and architect L.A. Lamoreau designed the stables in 1908-1909. Today, the Wyuka Cemetery stables and boulevards are rare extant examples of rural cemetery design in the state of Nebraska. The stables also likely provided transport and stabling services related to the trolley line extending from downtown Lincoln to 35 th and O, the entrance to Wyuka Cemetery. Initially drawn by mules and horses, the trolley line was electrified and extended to Wyuka in 1895, providing a formal route for funeral processions down "O" Street from mortuary to cemetery (see Appendix B.) Oral history accounts indicate that the stables provided temporary quarters for horses and carriages coming to the cemetery, including those which met up with and transported the funeral party arriving by trolley. The multi-modal relationship between pre-motorized and motorized transportation systems in the early 20 th century is underscored by these statistics: In 1902, the U.S. was home to 23,000 autos and over 17 million horses. In 1914, the number of autos surpassed the number of wagons and carriages built in the U.S. for the first time. The Wyuka stables served as a vital link during this transitional period from animal to electric to gas powered transportation modes in Lincoln.		

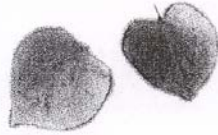
Wyuka Cemetery Wyuka Transportation Grant Request

7.	TOTAL ESTIMATED PROJECT COST: \$747,571	FEDERAL FUNDS REQUESTED: \$500,000
	MATCHING FUNDS PROVIDED BY: Wyuka Historical Foundaton	PERCENTAGE OF MATCH: <i>(Minimum 20% of total)</i> 33%
9.	PROJECT TYPE: <i>(Select One Category)</i> <input type="checkbox"/> Trails <input checked="" type="checkbox"/> Historic Preservation <input type="checkbox"/> Scenic or Historic Byways	
10.	HAVE YOU RECEIVED TRANSPORTATION ENHANCEMENT FUNDS IN THE PAST? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YES, PLEASE LIST ALL PROJECTS FUNDED AND TOTAL DOLLARS RECEIVED:	
11.	IDENTIFY IF THIS PROJECT IS PART OF A OFFICIAL PLANNING DOCUMENT: The project is part of a Wyuka Park and Gardens Master Plan (2007)	
12.	<p>PUBLIC BENEFITS OF THIS PROJECT: Wyuka Stables is currently available for public events, festivals and performances. For the past several years, it has provided rehearsal, classroom and performance space for two non-profit theatre companies -- Flatwater Shakespeare, Inc. and S.T.A.G.E., a youth theatre education group. Over 2500 people attend performances annually at the Swan Theatre, as the stables are referred to as a performance venue. Other events held at the stables in recent years include meetings by various community organizations, staff retreats, birthday parties, and church craft fairs. Wyuka Foundation anticipates that the restoration of the stables and other planned improvements to the park and gardens will have a dramatic impact on the variety and volume of use in the future. For instance, the stables can be used for public gatherings in association with cemetery tours and historic talks. It will be available for public meetings, family gatherings, neighborhood organizations, festivals, performances and special events. The addition of accessible public restrooms will certainly increase community use.</p> <p>Wyuka is adjacent to a designated north-south bike trail (35th street) and close to two major east-west bike trails on J Street, Vine Street and the MoPac Trail. Future improvements to the Wyuka Park and Gardens including the stables renovation, have been designed to take advantage of the proximity to the city trail system by providing connector links to draw pedestrians and bicyclists into the park, reinforcing its park-like amenities and increasing public visibility, access and use.</p> <p>The minority population of Lincoln, Nebraska is 10.2%, the hispanic/latino population is 4.8%, and the median income is \$45,082 (U.S. Census Bureau.) Wyuka is located near schools with especially high minority and hispanic populations, including Clinton Elementary (63.1% minority, 15.6% hispanic), Elliott Elementary (65% and 19.1%), Hartley Elementary (48.6% and 12%) and Culler Middle School (47.9% and 13%). Wyuka is located within a few blocks of several community centers which serve low income, new immigrant and minority populations. These include the Asian Community Center (8 blocks), the Faces of the Middle East Project (8 blocks), the Hispanic Community Center (9 blocks), and City Impact (11 blocks). The stables will provide a valuable resource for these and other community organizations.</p>	
13.	THIS PROJECT IS SUPPORTED BY: East Campus Neighborhood Association, Lincoln Mental Health Center, Flatwater Shakespeare, Inc., S.T.A.G.E., Woods Neighborhood Association, and Honary Chairs of the Wyuka Historical Foundation incuding Gov. Dave Heineman, Mayor Chris Beutler, and Past Mayor Colleen Seng.	

Attach the following required items:

- Budget (follow sample provided in Application Guidelines booklet)
- 8 ½ x 11 map - include aerial image, project location/alignment, north arrow, street names, points of interest
- Resolution
- Environmental Impact Forms (DR275) provided at site visit

Wyuka Cemetery
Wyuka Transportation Grant Correspondence



WYUKA
HISTORICAL FOUNDATION

RECEIVED

NOV 21 2007

SINCLAIR HILLE
ARCHITECTS

OFFICERS AND DIRECTORS

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Diane Bartles, *Vice President*

Danja Siders, *Secretary*

Vince Gorers, *Treasurer*

Phyllis Acklie, *Director*

Sandi Fabry, *Director*

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Yale Gottsdiner, *Director*

Vera Mae Lutz, *Director*

Faye Osborn, *Director*

Cathie Petsch, *Director*

Jeff Schumacher, *Director*

Richard Spencer, *Director*

Michael L. Tefft, *Director*

Rick Wade, *Director*

Dale Young, *Director*

Lori Merliss
Development Director

3600 "O" STREET
LINCOLN, NE 68510

Of: (402) 474-3600

Fax: (402) 474-2650

Email: lmerliss@wyuka.com

Deana McKinstry
Sinclair Hille Architects
700 Q St.
Lincoln, NE 68508

November 20, 2007

Dear Deana,

On behalf of the board of the Wyuka Historical Foundation, thank you for the response to our request for funding to renovate the Lincoln Wyuka Stables. In regard to the 106 coordination that would be required, I wanted to let you know we are aware of this and have had a preliminary visit from a Nebraska State Historical Society representative.

I also want to let you know that Ginny Hand has retired and I am your new contact at Wyuka. My contact information is below.

We appreciate the consideration that the sub-committee is giving our request.

Sincerely,

Lori Merliss
Lori Merliss
(402) 416-5056

December 10, 2007

FOR IMMEDIATE RELEASE

Transportation Enhancement Projects Awarded

The Nebraska Department of Roads announced today that a total of \$6,193,995 has been awarded for community and agency projects, statewide, through the Transportation Enhancement (TE) Program.

According to Roads Director John Craig, "Many positive things have been accomplished and continue to benefit Nebraska as a result of the Transportation Enhancement Program. Since 1993, the Department of Roads has supported over 800 transportation enhancement projects throughout the state. These projects are making a significant contribution to the quality of life in Nebraska communities – from the smallest village to the largest city."

The Transportation Enhancement Program, part of the federal highway bill, provides funding to local, state, and regional governmental entities to construct and restore transportation infrastructure that are not eligible to be funded through other programs. Examples of transportation infrastructure projects eligible under this program include non-motorized facilities for pedestrians and bicycles, development of scenic byways, restoration of historic transportation facilities, and other projects directly related to the historic, current, or future transportation infrastructure.

The 16 projects recommended by the Nebraska Transportation Enhancement Selection Committee total \$6,193,995. Following is a list briefly describing the projects receiving funding:

#MORE#

NEBRASKA FOREST SERVICE / UNL STATEWIDE ARBORETUM

The Nebraska Forest Service and University of Nebraska-Lincoln were awarded \$500,000 in funding for continuation of the Nebraska Community Enhancement Program. This program provides funds to communities and other public entities in Nebraska for landscaping projects that improve transportation corridors.

OMAHA MISSOURI RIVER PEDESTRIAN BRIDGE

The City of Omaha was awarded \$1,500,000 for the new Missouri River Pedestrian Bridge connecting Omaha and Council Bluffs. Envisioned as an architecturally significant structure, the Missouri River Pedestrian Bridge will be designed and constructed to provide the following key elements:

- a main span consisting of a one-of-a-kind, horizontally curved, cable-stayed bridge highlighted by a 506-foot main span and two, 253-foot back spans;
- single-tower pylons, rising over 200 feet above the water surface on both sides of the Missouri River;
- approach structures that extend to the levee in Council Bluffs;
- a bridge deck having a constant, unobstructed width of 15-feet over the entire length of the bridge and widening out to 20-feet on the Omaha landing;
- handrail and deck and pathway lighting;
- pedestrian and transit connections providing access for all visitors to the site through compliance with ADA limitations on maximum grades;

The Missouri River Pedestrian Bridge will be one of the longest pedestrian spans ever designed and constructed. With 150 miles of trails on both sides of the river, the bridge will be a safe yet exciting way for bicyclists and pedestrians to cross over the river and link Omaha's riverfront development to additional parklands in Council Bluffs. The new pedestrian bridge connecting Omaha and Council Bluffs will provide users a highly interesting, enjoyable experience as they cross over this one-of-a-kind structure.

CAIRO DOWNTOWN IMPROVEMENTS

The Village of Cairo was awarded \$118,726 for design and installation of landscaping along Highway 11 that travels through the Village. The proposed project consists of landscape areas in the downtown corridor (2.5 blocks); and a 20-foot wide landscape area from the southern downtown area extending to the southern city limits (2.5 blocks). Landscaping will consist of street trees, shrubs, and sod. The proposed project lies along the Loup River Scenic Byway Highway 11, and is part of a larger NDOR construction project that will enhance the infrastructure of the downtown. All planting beds for the landscaping portion of the project will be located and constructed under the roadway improvements contract. The Village is providing a 20 percent local match of \$29,682.

DAWES COUNTY INTERPRETIVE WAYSIDE MARKERS

Dawes County was awarded \$4,480 to purchase and install two interpretive markers on the Gold Rush Byway (U.S. Highway 385) in northwest Nebraska. The interpretive markers will be located in an existing Department of Roads turnout on Highway 385, one mile south of Chadron. The markers will provide information concerning the historic transportation route known as the Fort Robinson-Camp Sheridan-Pine Ridge Agency Military and Freighting Road, (1874-1886). The County is providing a 20 percent local match of \$1,120.

LINCOLN WEST “O” HISTORIC HIGHWAY PROJECT

The City of Lincoln was awarded \$380,036 for improvements located on a four-block segment of West O Street between 3rd Street and the Salt Creek Bridge. With a focus on transportation history and entryway enhancement, funding for the project will be directed to three primary components: 1) Creation of a historical interpretive area commemorating the historic Detroit-Lincoln-Denver (DLD) Highway; 2) Streetscape improvements to West ‘O’ Street that will enhance the entry to Downtown Lincoln; and 3) Construction of a 370-foot Salt Creek Levee Connector Trail.

The DLD interpretive plaza will be located just west of the Harris Overpass, which began replacement in November 2007. The new bridge structure will significantly improve the aesthetic quality of Lincoln’s west entryway. Elements planned for the plaza include interpretive panels describing the history of the DLD highway, exposed brick from the original DLD on 3rd street, lighting relative to the time period of the DLD highway, and native landscaping. Signage directing visitors to an existing historic DLD mile marker located at 2nd and West ‘P’ Street will also be included in the plaza. The City is providing a 20 percent local match of \$95,009.

LINCOLN WYUKA STABLES RENOVATION

Wyuka Cemetery, a public charitable corporation, was awarded \$500,000 for renovation of the cemetery stable building (1908-09), located in Lincoln's historic Wyuka Cemetery Park and Gardens. The 124-acre cemetery was listed in the National Register of Historic Places in 1981, primarily for its significance to the history of landscape design in Nebraska. Chartered by the State of Nebraska in 1869, Wyuka is the oldest example of a “rural” cemetery in the State. It is located in central Lincoln between 36th and 42nd streets and from O Street to Vine Street. The purpose of the renovation is to enhance public use of the building. The project scope includes renovation of the exterior facades and interior courtyard, including repair of masonry, stucco and concrete; replacement of doors and windows; replacement of the roof with wood shingles; copper gutters and downspouts; replacement of existing restroom fixtures; and new sanitary sewer and water service. The Wyuka Cemetery Corporation is providing a 33 percent match of \$247,619.

NEBRASKA HIGHWAY HISTORICAL MARKER REPAIR

The Nebraska State Historical Society (NSHS) was awarded \$21,760 for the continuation of a project to systematically preserve Nebraska's official highway historical markers. Three previous phases of this effort have been funded by the Transportation Enhancement (T.E.) Program. This phase includes the repair of twenty-five double-post markers, one single-post marker, seven panel markers, as well as the replacement of three badly damaged markers. The NSHS will manage the repair process and encourage local involvement in ongoing historical maintenance. The Nebraska State Historical Society is providing a 20% match of \$5,440.

OMAHA – OLD MARKET STREET REHABILITATION & RENOVATION

The City of Omaha was awarded \$500,000 for the restoration of brick street paving and street curbs in the Old Market Historic District. The City is planning a \$1.3 million dollar restoration in the Old Market intended to repair deteriorated brick streets and related structures such as drainage inlets and historic curbs. Brick streets to be rehabilitated / repaired are: Howard Street from 10th Street to 13th Street; 11th Street from Jackson Street to Harney Street; 12th Street from Jackson Street to Harney Street; and 11th Street from Farnam Street to Harney Street. The repair work will be limited to brick pavement that has settled, been damaged or removed due to utility work. Replacement of deteriorated concrete curbs with historically accurate granite and limestone curbs is also included in the project. Other incidental work includes the replacement of curb/sump inlets, repair of deteriorated concrete street bed below the bricks, and installation of traffic signals for pedestrian safety. The City is providing a 61 percent local match of \$790,766.

BENNINGTON – PAPIO CREEK PEDESTRIAN BRIDGE AND TRAIL

The City of Bennington was awarded \$331,425 for design and construction of a 10-foot-wide, approximately 1-mile-long concrete trail. The trail will provide a north-south connection across Papillion Creek and connections from residential areas to athletic facilities. Residential neighborhoods and a large park/athletic complex are located on the north side of the creek. Soccer fields, tennis courts and an existing trail connecting the elementary school and middle/high school are on the south side of the creek. The City is providing a 20 percent local match of \$82,856.

FORT KEARNY TRAIL & BRIDGE REHABILITATION

The Nebraska Game and Parks Commission (NG&P) was awarded \$499,666 for design and construction of an 8-foot wide, 1.4-mile long concrete trail. The project also includes the rehabilitation of two Fort Kearny Trail bridges located across the Platte River north of the Fort Kearny State Recreation Area. A portion of the requested funds will be used to pave the entire length of the trail making both bridges ADA compatible. The trail is to begin at the Fort Kearny Recreation Area and travel north across both bridges and end just north of Interstate 80 where it will connect to a future trail on the City of Kearney trail system. The two bridges combined are approximately 1,280 feet long with 56 piers. Rehabilitation

work on the bridges will include making necessary repairs and adding steel armoring to the piers to further protect the bridges. The NP&G is providing a 20 percent local match of \$124,916.

FRANKLIN STERNER HIKE & BIKE TRAIL

The City of Franklin was awarded \$296,217 for design and construction of an 8-foot-wide, 4,775-foot long trail which begins at the Franklin Elementary/Secondary Schools, continues through the downtown area and ends at the City Park on the north side of the town. The proposed trail will pass near the Senior Center, Post Office, downtown area, and end in the city park. Future plans for the City of Franklin's trail system include a recreation trail connecting into the proposed trail. This recreation trail will travel through an outdoor classroom to be utilized by the elementary and high school students. The City is providing a 10 percent match of \$32,913.

GAVIN'S POINT NEBRASKA MERIDIAN TRAIL – PHASE I

The Lewis and Clark Natural Resource District (NRD) was awarded \$170,900 for the design and construction of a 10-foot wide, 6,200 linear foot recycled crushed concrete trail. The trail will be constructed on the Missouri River bank parallel to Highway 121. This location is approximately three-quarters of a mile east of Gavin's Point Dam. The project will provide a transportation connection to an existing trail in South Dakota and eventually a loop route through Nebraska across the historic Yankton Meridian Bridge. The project will be Phase 1 of a four-phased trail plan connecting the Community of Yankton, SD, Lewis and Clark Recreation Area, Gavin's Point Dam, and the Corp of Discovery Welcome Center. The NRD is providing a 20 percent local match of \$42,725.

LINCOLN ROSA PARKS WAY TRAIL

The Lower Platte South Natural Resources District (NRD) was awarded \$201,134 for the design and construction of a railroad undercrossing and trail connection. This project removes the need for a five-block detour off the Salt Creek Levee Trail by providing a 10-foot-wide, 760-foot-long concrete trail connection from the existing trail west of 1st Street on J Street, south beneath seven sets of BNSF Railroad tracks and back to the existing trail just north of the Rosa Parks Way viaduct. The project includes a 145-foot protective structure made of wire mesh and steel columns beneath the railroad to provide protection from overhead debris. The NRD is providing a 21 percent local match of \$52,550.

MCCOOL JUNCTION PEDESTRIAN & BICYCLE TRAIL

The Village of McCool Junction was awarded \$219,186 for the design and construction of a 10-foot-wide, 4,200-foot-long concrete trail. The trail begins at Northside Park, connecting Downtown and the public school, and then ends at the west edge of town. From the north terminus, the trail will run west from 6th Street along the ball fields in Northside Park and turn south across a drainage ditch via a new bridge or culvert. It would continue south on 5th Street through a residential area, turning west for one block on "L" Street and south for one block on 4th Street to "M" Street along the edge of Downtown.

On “M” Street, the trail will continue past a small park and two churches to the west terminus at Fourth Avenue. The public school on 2nd Street is connected to the trail via a one-block sidewalk. The Village is providing a 20 percent local match of \$54,797.

PAPILLION MIDLAND CREEK TRAIL

The City of Papillion was awarded \$498,960 for the design and construction of a 10-foot-wide concrete trail approximately 6,700 feet in length. The proposed trail will begin at the intersection of 72nd Street and Highway 370, the location of the Shadow Lake Town Center/Residential development with 900,000 square feet of commercial space; 749 single-family and 101 townhouse lots. The trail will travel north between 72nd Street and Midland Creek. The Midland Creek Trail will connect to the Halleck Park Trail and West Papio Trail where 72nd Street crosses the West Papio Creek. The trail will cross West Papio Creek utilizing the existing sidewalk on the 72nd Street Bridge, and continue north to the Papillion YMCA at the intersection of 1st and 72nd Streets. The Papillion portion of the West Papio Trail is three miles in length and travels from the end of the Halleck Park Trail at 72nd Street to 36th Street in Bellevue, where it connects to the 21-mile Keystone/Bellevue Loop Trails. The existing West Papio trail winds through a number of new subdivisions and parks. It is the busiest and longest trail in the metro area. The City of Papillion is providing a 20 percent local match of \$124,740.

SPRINGFIELD TRAIL – PHASE 3

The City of Springfield was awarded \$451,505 for the design and construction of a 10-foot wide, 3,000 foot long concrete trail. The trail will begin at a trailhead funded in 2004, located just south of the Southern Sarpy Activities Complex. The trail will travel south along the Springfield Creek corridor. It will cross the creek in two locations with prefabricated bridges. The trail will continue south until it intersects with the Sarpy County Fairgrounds property. At this location, it will travel west for one block and then south, where it will connect with the existing MoPac Trail. The completion of this trail will create an alternative transportation route from the activities complex to the fairgrounds and the town center. The City is providing a 20 percent local match of \$112,876.

#NDOR#

For additional information contact:

R. James Pearson, Programs Administrator, (402) 479-4881.

NR375

Wyuka Cemetery **Exhibit J-3**
DOR Transportation Enhancement Projects Applications Scoring Summary by Rank

		Federal \$ Requested	Running Total
FY2008 SELECTED PROJECTS			
1	Arboretum Set-Aside	\$ 500,000	\$ 500,000
2	Omaha Missouri River Pedestrian Bridge	\$ 1,500,000	\$ 2,000,000
3	Dawes County Interpretive Wayside Markers	\$ 4,480	\$ 2,004,480
4	Nebraska Highway Historical Markers	\$ 21,760	\$ 2,026,240
5	Cairo Downtown Improvements	\$ 118,726	\$ 2,144,966
6	Franklin Sterner Hike & Bike Trail	\$ 296,217	\$ 2,441,183
7	Omaha Old Market Street Rehabilitation & Renovation	\$ 500,000	\$ 2,941,183
8	Lincoln West "O" Historic Highway Project	\$ 380,036	\$ 3,321,219
9	Lincoln Rosa Parks Way Trail	\$ 201,134	\$ 3,522,353
10	Gavin's Point Nebraska Meridian Trail - Phase 1	\$ 170,900	\$ 3,693,253
11	Fort Kearny Trail & Bridge Rehabilitation	\$ 499,666	\$ 4,192,919
12	Lincoln Wyuka Stables Renovation	\$ 500,000	\$ 4,692,919
13	Bennington Papio Creek Pedestrian Bridge & Trail	\$ 331,425	\$ 5,024,344
14	Papillion Midland Creek Trail	\$ 498,960	\$ 5,523,304
15	McCool Junction Pedestrian & Bicycle Trail	\$ 219,186	\$ 5,742,490
16	Springfield Trail - Phase 3	\$ 451,505	\$ 6,193,995
CONDITIONAL APPROVAL PENDING AVAILABLE FUNDING FOR FY2008			
17	Blair Depot in the Park	\$ 455,694	\$ 6,649,689
18	Beatrice Homestead Trail - Pickrell to Cortland	\$ 498,004	\$ 7,147,693
PROJECTS NOT SELECTED FOR FUNDING			
19	South Sioux City Crystal Cove Link	\$ 331,098	\$ 7,478,791
20	Grand Island State Street & Capital Avenue Connector	\$ 194,778	\$ 7,673,569
21	North Platte - Platte Valley Interpretive Center	\$ 500,000	\$ 8,173,569
22	Omaha Old Lincoln Highway Interpretive Trail & Trailhead	\$ 500,000	\$ 8,673,569
23	Lincoln Beal Slough Trail - Phase 1	\$ 364,450	\$ 9,038,019
24	Columbus Hospital / Highland Park Church Trail	\$ 360,747	\$ 9,398,766
25	Ashland Towers of History	\$ 131,285	\$ 9,530,051
		\$ 9,530,051	

**Wyuka Cemetery
Legal Counsel Memo – Reclamation of Burial Spaces**

To: Mike Foley, State Auditor
 From: Lance Lambdin, Legal Counsel
 Sent: October 23, 2007
 Issue: Wyuka Reclamation of Burial Spaces

1. Background

Allegations have been made that Wyuka Cemetery (“Wyuka”) has inappropriately designated previously sold burial spaces as being abandoned in order to reclaim and resell them.

2. Reclamation Time: One Hundred Years

According to Marty Miller, the current President of Wyuka, burial spaces are considered abandoned – and, subsequently, may be reclaimed and sold anew – if they have experienced no activity for one hundred years after purchase.³ Though citing standard cemetery industry procedure to support this practice, Mr. Miller offers no specific examples of similar reclamation processes elsewhere. Nevertheless, a random perusal of various state and local regulations reveals a wide divergence of criteria governing the reclamation and resale of cemetery spaces.⁴ It appears, however, that a waiting period of an entire century is comparatively long.

3. Reclamation Time: Twenty Years

Despite Mr. Miller’s verbal assurance that the cemetery waits at least one hundred years before reclaiming an unused burial space, minutes from meetings of Wyuka’s Board of Trustees (“Board”) reveal that only twenty years of inactivity may be required prior to reclamation. This alternative timeframe has resulted from almost ten months of planning and discussion by the Board.

4. Board Meetings

The issue of reclamation was first raised formally during a Board meeting on October 18, 2005. At that time, it was recorded that Bryan Block, then Co-Director of Wyuka, and trustee Michael Tefft had “communicated regarding the issue of the Cemetery reclaiming unsued graves within the Cemetery, ostensibly for resale.”⁵ Noting the apparent relevancy of Neb. Rev. Stat. § 12-505,⁶ the trustees directed Jim Gordon, the cemetery’s

³ Interview with Marty Miller on October 16, 2007.

⁴ Under Kentucky state law, an officer of the cemetery must file an affidavit with the Circuit Court, indicating that no burial has taken place for at least one hundred years, and the identity of the lot’s owner is unknown and not discoverable. (K.R. S § 381.715) In North Dakota, a cemetery may resell a lot that has been neglected and unused for thirty years or more. (N.D.C.C. § 23-21.1-06.1) New York allows a cemetery to resell a lot if no burial has taken place there for more than seventy-five years. (U.C.C. § 1513-a) Arizona law presumes an unused and unmarked lot to be abandoned and available for resale when its owner cannot be located due to having failed to provide the cemetery with a current address for a period of fifty consecutive years. (A.R.S. § 32-2194.33)

⁵ Minutes of Wyuka Cemetery Board of Trustees Meeting, October 18, 2005 (pg. 9).

⁶ Neb. Rev. Stat. § 12-505 contains two primary provisions. Subsection (1) states, in relevant part: “If the purchase price, or any portion thereof, of any lot or subdivision of a lot shall remain unpaid for three years or more, or if the general assessments, annual care assessments, or other levies or charges made by such association shall remain unpaid on any lot or subdivision of a lot for three years or more, such association shall have authority to sell the unused portion of such lot or fractional part thereof as though the original title remained in such association, proceeding under the general bylaws of the association.” Similarly, Subsection (2) provides: “When there has been no burial in any such lot

Wyuka Cemetery
Legal Counsel Memo – Reclamation of Burial Spaces

legal counsel, to “research this statute and any other statutory provisions and report to the Trustees on this [reclamation] process prior to the next meeting of the Board of Trustees in January.”⁷

The minutes of the next Board meeting, which took place on January 24, 2006, reflect that “[t]he report from Mr. Gordon as Legal Counsel for the Cemetery, had been distributed by him prior to this meeting.”⁸ In addition, Mr. Block shared a succinct memo entitled “Lot Reclamation.” It read:

“At the October meeting we discussed the issue of reclaiming graves. As you may recall, the concern I had about our policy of ‘wait 100 years, then they can be resold if unused’ hinges on the issue of perpetual care being paid. The statutes (attached) [Neb. Rev. stat § 12-505] state that the spaces can be reclaimed if per-care has not been paid and it is my opinion that when the spaces were purchased and there was an accounting entry (often 25% of the purchase price of the graves) showing payment for ‘care and watering’, the payment of perpetual care was taken care of.

“If the resale of these spaces is found to be appropriate, there are also set guidelines for public notice. If there are family members we are able to contact they need to be notified.”

*“It was agreed in October that Legal counsel [sic] Demars Gordon was going to review this issue and report to the trustees their findings.”*⁹

Based upon the contents of these two documents, the trustees adopted the following motion:

*“The Cemetery’s Legal Counsel is instructed to amend the Bylaws of Wyuka Cemetery to provide for the Cemetery’s reselling of those lots or subdivisions of lots within the Cemetery upon which payments have not been made for three years or more, and the reclaiming of the unused portion of a lot or subdivision within the Cemetery when there has been no burial in that lot or subdivision for a period of twenty years.”*¹⁰

When the Board met again on April 18, 2006, Mr. Block raised the issue once more, pointing out that that the reclamation amendment to the cemetery bylaws was to have been made at that meeting. According to the minutes of the meeting, however, “[T]his item of Old Business had been inadvertently omitted from the Agenda for this meeting, but it definitely will be on the Agenda for the next meeting in July.”¹¹

5. Board Resolution

At the next Board meeting on July 18, 2006, the trustees adopted the following motion:

or subdivision and no payment of annual assessments for a period of twenty years, the association may reclaim the unused portion of such lot or subdivision after publishing notice of its intention to do so.”

⁷ Minutes of Wyuka Cemetery Board of Trustees Meeting, October 18, 2005 (pg. 9).

⁸ Minutes of Wyuka Cemetery Board of Trustees Meeting, January 24, 2006 (pg. 6).

⁹ Memo attached to Minutes of Wyuka Cemetery Board of Trustees Meeting, January 24, 2006.

¹⁰ Ibid.

¹¹ Minutes of Wyuka Cemetery Board of Trustees Meeting, April 18, 2006 (pg. 2).

Wyuka Cemetery
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“To approve the Resolution to amend the Bylaws of Wyuka Cemetery to provide for the reselling of those lots or subdivisions of lots within the Cemetery upon which payments have not been made for three years or more, and the reclaiming of the unused portion of a lot or subdivision within the Cemetery when there has been no burial in that lot or subdivision for a period of twenty years.”¹²

The preamble of that resolution began:

“WHEREAS, the Trustees of the Cemetery, upon analysis and review, have determined that it is in the best interests of the Cemetery to be able to resell any lot or subdivision of a lot upon which the purchase price, or any portion thereof, has remained unpaid for three years or more, or other levies or charges made by the Cemetery have remained unpaid for three years or more.

and

“WHEREAS, the Trustees of the Cemetery, upon analysis and review, also have determined that it is in the best interests of the Cemetery to be able to reclaim the unused portion of any lot or subdivision when there has been no burial in such lot or subdivision and no payment of annual assessments for a period of twenty years.

and

“WHEREAS, the Laws of the State of Nebraska provide the authority and set forth the process by which any resale or reclamation shall be accomplished

Having thus established its purpose, the resolution offered the following amendatory language:

“When the applicable statutory requirements have been met, the Cemetery shall have the right, the power, and the authority to sell the unused portion [of] a lot or fractional portion thereof as though the original title remained in Wyuka Cemetery, or in Fairview Cemetery, proceeding under these general Bylaws of the Cemetery, and in compliance with the applicable statutes.

“When the applicable statutory requirements have been met, the Cemetery shall have the right, the power, and the authority to reclaim the unused portion of a lot or of a subdivision, by resolution, and in compliance with the applicable statutes.”

6. Impact of Resolution

Although more than a year has passed since the Board voted unanimously to approve the resolution, Article 15 of the Cemetery bylaws has yet to be amended accordingly.¹³ As a result, the bylaws make no mention of burial space reclamation. To the contrary, Article 15 currently guarantees:

¹² Minutes of Wyuka Cemetery Board of Trustees Meeting, July 18, 2006 (pg. 2).

¹³ The most recent revision of the “Wyuka By-laws and Rules and Regulations” was issued on January 1, 2004.

Wyuka Cemetery
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“Every grantee by deed from the Cemetery shall have the full legal ownership of his/her lot for the sole purpose of sepulcher, internment or the spreading of ashes of cremated remains, under and in conformity with the Rules & Regulations now in effect, or that hereafter may be established by the Board of Trustees.”

Given that Wyuka’s “Rules and Regulations” remain similarly silent regarding the issue of reclamation, there exists no formal indication of the cemetery’s intent to exercise such power.

7. Statutory Considerations

Nebraska law provides two specific statutory references to the right of cemeteries to reclaim burial spaces. The first of these, Neb. Rev. Stat. § 12-505, was relied upon by the trustees when they approved the resolution of July 18, 2006. Section (1) of the statute allows the unused portion of a burial space to be sold when either its purchase price or any specified assessments or levies on the lot remain unpaid for three years or more. Section (2) of the statute allows an unused burial space to be reclaimed when there has been no burial in it and no payment of annual assessments for a period of twenty years.

The second statutory provision, Neb. Rev. Stat. § 17-938(3), states, in relevant part:

“When any lot has been transferred by warranty deed or by a deed conveying a fee simple title, but there has been no burial in any such lot or subdivision thereof and no payment of annual assessments for a period of three years, the cemetery board, with the sanction of the mayor and council or of the chairperson and board of trustees, as the case may be, may reclaim the unused portion of such lot . . .”

Though they permit the reclamation of unused cemetery lots, the two statutes referenced above have limited application – raising questions about their relevance to Wyuka. For instance, Neb. Rev. Stat. § 12-505 deals specifically with cemetery associations, which are unique corporate entities under Nebraska law. Rather than being a cemetery association, however, Wyuka Cemetery is designated by Neb. Rev. Stat. § 12-101 as a “public charitable corporation.”

Likewise, Neb. Rev. Stat. § 17-938(3) pertains only to cemeteries found in either cities of the second class or villages.¹⁴ This is clearly problematic given Wyuka’s location in the heart of Lincoln, which has a population of approximately a quarter of a million people.¹⁵

In the report that he distributed to the Wyuka trustees prior to the Board meeting on January 24, 2006, legal counsel Jim Gordon concluded, based largely upon a thorough

¹⁴ Neb. Rev. Stat. § 17-101 defines cities of the second class as all “cities, towns, and villages containing more than eight hundred and not more than five thousand inhabitants. . .” Neb. Rev. Stat. § 17-201 provides that any “town or village containing not less than one hundred nor more than eight hundred inhabitants incorporated as a city, town, or village under the laws of this state and any city of the second class that has adopted village government as provided by law shall be a village . . .”

¹⁵ According to data quoted by the Agricultural Marketing Service of the U.S. Department of Agriculture, Lincoln’s estimated population for 2003 was 258,538, and the city’s projected population for 2008 is 272,427. (<http://www.ams.usda.gov/statesummaries/NE/MSA/MSA.pdf/Lincoln.pdf>)

Wyuka Cemetery

Legal Counsel Memo – Reclamation of Burial Spaces

analysis of legislative history, that “the [Wyuka] Cemetery can *generally* do what the statutory scheme enables the Cemetery Associations to do in reselling and reclaiming lots.”¹⁶ As pointed out earlier, this analysis influenced the Board’s decision to adopt the resolution calling for Wyuka’s bylaws to be amended to reflect its reclamation authority.

8. Notice Requirements

As Mr. Gordon’s report pointed out, in addition to granting a cemetery association the authority to reclaim unused burial spaces after a period of twenty years, Neb. Rev. Stat. § 12-505(2) also requires the cemetery to complete specified procedures prior to perfecting such reclamation. To start, the cemetery must first publish, “once each week for four weeks in a legal newspaper of general circulation throughout the county in which the cemetery is located,” its intention to reclaim the burial space. That publication must “describe the lot or subdivision proposed to be reclaimed” and must be addressed “to the person in whose name such portion stands of record or, if there is no owner of record, to all persons claiming any interest.” The statute then states, “If no person appears to claim such lot or subdivision and pay all delinquent assessments with interest within fifteen days after the last date of such publication, the association may by resolution reclaim such lot or subdivision.” Finally, in order for any such reclamation to be complete, “a verified copy of such resolution, together with proof of publication” must be filed “in the office of the register of deeds.”

A review of Wyuka’s records revealed that a number of burial spaces have been reclaimed throughout the past decades. What those same records fail to indicate, however, is whether the cemetery complied with the notice and filing requirements of Neb. Rev. Stat. § 12-505(2).

9. Procedures for Reclamation

Although Wyuka asserts – and, indeed, has acted upon – its presumed reclamation authority, it appears that the cemetery has established no formal procedures for exercising that power. With both its bylaws and “Rules and Regulations” silent on the matter, the reclamation process seems haphazard. In addition to lacking a comprehensive method for reclaiming each burial space as soon as it becomes available, Wyuka has no official process for approving, completing, and documenting its reclamation in a way that provides an accurate record of events, as well as informs the public of the specific actions taken.¹⁷

10. Contractual Provisions

It is generally recognized that “a cemetery lot owner's rights are contractual and subject to the ordinary rules of contract law.”¹⁸ Ideally, then, one would expect the contents of the standard purchase agreement entered into between Wyuka and the buyer of a burial space to provide notice of the cemetery’s reclamation policy. In fact, it does not.

¹⁶ January 21, 2006, report of Jim Gordon, legal counsel to Wyuka, regarding the “Resale or Reclamation of Cemetery Lots” (pg. 7).

¹⁷ Mr. Gordon’s January 21, 2006, report to the Board emphasized that lots could be resold if “the conditions required by the statutes [Neb. Rev. Stat § 12-505] have been met, and if the Bylaws of Wyuka Cemetery have been amended to authorize the use of this process[.]” (pg. 6).

¹⁸ *Spencer v. Flint Memorial Park Ass'n*, 4 Mich.App. 157, 161, 144 N.W.2d 622, 624 (1966).

**Wyuka Cemetery
Legal Counsel Memo – Reclamation of Burial Spaces**

Far from giving any indication that reclamation is a possibility, the purchase form utilized by Wyuka leads the buyer to believe otherwise. Section 2(d) of the document states: “The lot covered by this agreement may be used for internment purposes at any time after the section in which said lot is located has been opened for internment purposes . . .” Although the section offers certain provisos to this guarantee, none stipulate that the burial space must be used within a specified period of time.

Section 3(a) of the purchase agreement obligates the buyer to “comply at all times with the rules [sic] and Regulations providing for the operation, care and control of the Cemetery.” Those guidelines contain no reference to reclamation, however.

Finally, Section 4(h) declares, “This agreement contains the full contract of the parties and no other agreement will be recognized.”

Summary

Based upon general industry standards, Wyuka asserts a right to reclaim and resell previously sold burial spaces that have not been used within one hundred years. At the same time, however, the Board has taken decisive steps, relying upon statutory language that may not be directly applicable to Wyuka, to establish its authority to reclaim those same unused burial spaces after only twenty years. Moreover, though over a year has passed since the adoption of the necessary amendment to revise the cemetery’s bylaws accordingly, that final action has yet to be taken.

Because neither its bylaws nor “Rules and Regulations” address the issue of reclamation, Wyuka has not established a formal process for reclaiming and reselling burial spaces. In addition to giving rise to concerns regarding the propriety of possible future reclamations, this lack of procedure has contributed, no doubt, to the existing dearth of documentation regarding such actions in the past.

Finally, the standard purchase agreement form used by Wyuka provides the buyer with no knowledge of the cemetery’s reclamation policy. To the contrary, its simple provisions seem to indicate that the buyer enjoys an indefinite right to any burial space obtained.

Recommendations

It is suggested that Wyuka implement the following recommendations to address the issues raised herein:

1. Pursue legislative action to amend the relevant state statutes to provide Wyuka with explicit authority to reclaim and resell burial spaces.
2. Amend its bylaws and/or “Rules and Regulations” to reflect accurately Wyuka’s reclamation policy, including establishing a formal procedure for initiating, implementing, perfecting, and documenting each case of reclamation.
3. Amend its standard purchase agreement form to provide the buyer with adequate notice of Wyuka’s reclamation policy.

Wyuka Cemetery
ICCFA President Letter



11111 Aurora Avenue North · Seattle, WA 98133
206 362 5200 | info@washelli.com | www.washelli.com

December 18, 2007

Dear Auditor Foley,

The question has been asked if it is appropriate for a cemetery to utilize the “corpus” of its endowment care – or, as it is described in Nebraska, “permanent maintenance” or “perpetual care” – fund to subsidize the general operations, as well as compensate for the financial shortfalls, of the cemetery. I believe such action to be clearly in conflict with not only the letter but also the spirit of Nebraska’s applicable cemetery laws.

It is my understanding that the cemetery that is currently undergoing financial review by your office is a unique public entity and, therefore, subject to its own specific statutory regulations. Section 12-103 of the Nebraska State statutes says clearly: “No part of the principal of this [“permanent maintenance”] fund shall be used except for investment purposes as aforesaid.” Such “aforesaid” purposes are specifically those that comply with your state’s “prudent investor rule.” Covering operating losses with money from a fund created for the purpose of ensuring the long-term viability of the cemetery is hardly a “prudent” investment in any sense of the word.

To use the corpus/principal of the care fund in any way other than that specifically authorized by your state’s law is to deny such funds the opportunity of fully endowing the property in question. The ‘fully endowed cemetery’ is one in which every grave space has been sold (totally sold-out) and as such has contributed to the care fund as sales were made. Upon achieving fully endowed status, a cemetery must rely upon its endowment care fund to provide for future maintenance and care. Otherwise, that responsibility will inevitably fall to local taxpayers, who will be saddled with the burden of paying expenses for which a properly administered fund should have been able to provide. That is why care funds are to be invested with an eye toward maximizing gains and augmenting the income balance, not squandered to subsidize poor management and even worse “investments.”

Throughout my long career in the cemetery business, I have never seen an endowment care fund spent down legitimately in the way that you have described to me. Unfortunately, what I have seen under similar circumstances is gross mismanagement and blatant ineptitude that has resulted, at times, in both civil and criminal sanctions.

My response to the question is based on my experience as the Washington State Cemetery Board’s Executive Director who was in charge of audits and licensing. I have served as President of the National Cemetery Regulators Association (mid 1980s) and currently serve as President of the International Cemetery, Cremation and Funeral Association (ICCFA). I have been in cemetery management and cemetery regulation for 38 years.

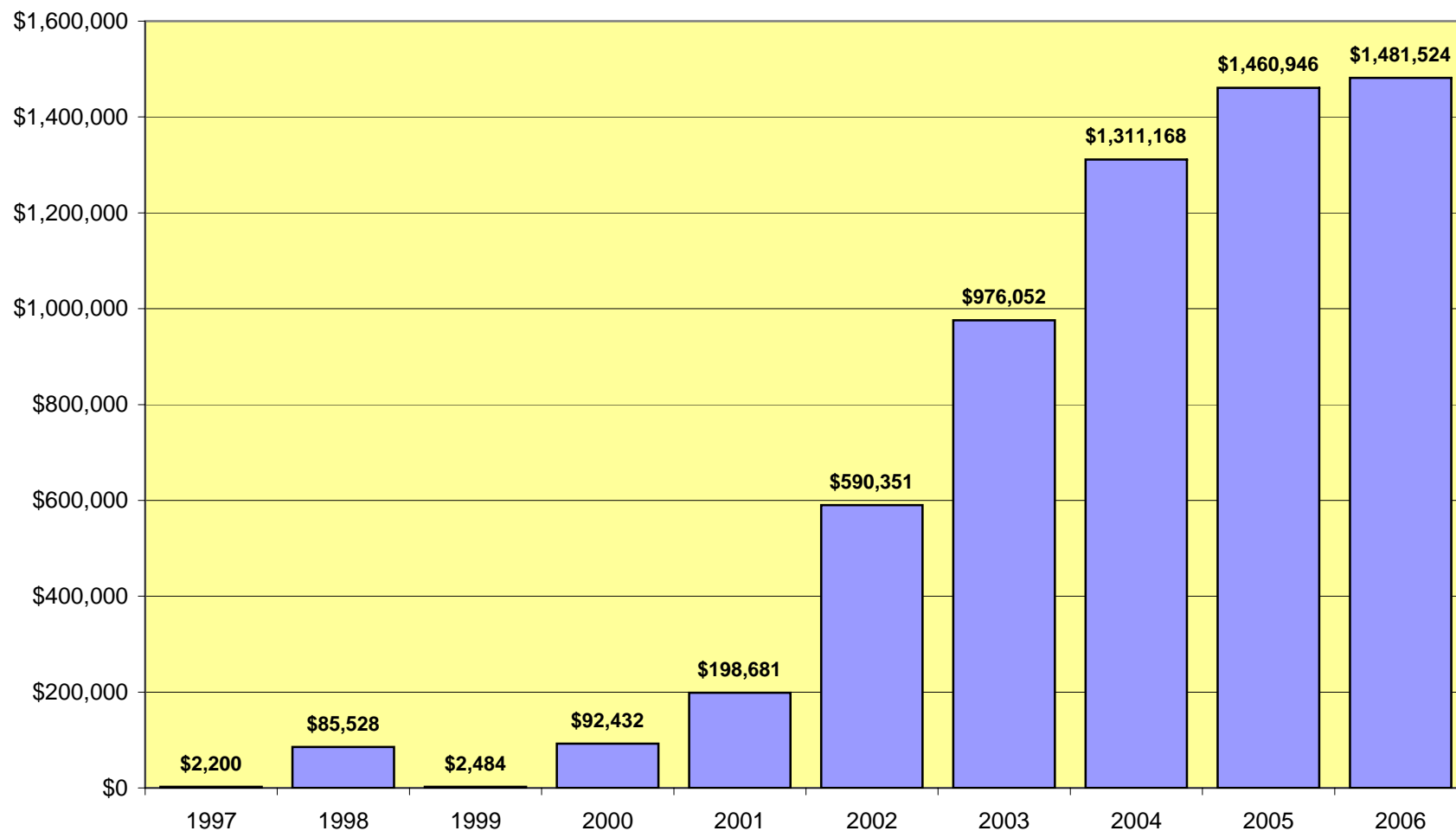
Hopefully the foregoing is helpful in your review of reporting care fund principal use/abuse.

Sincerely,

Paul Elvig

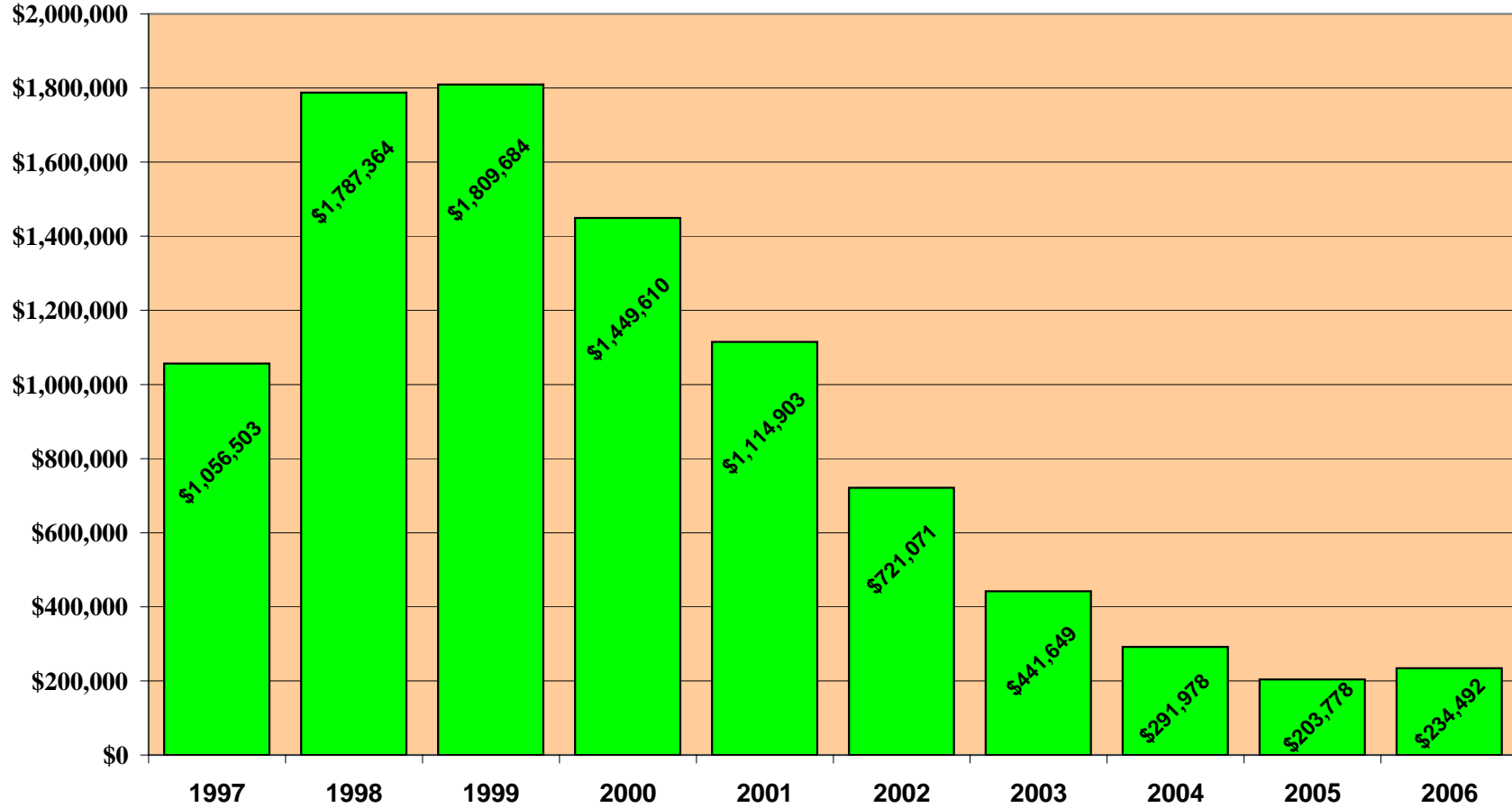
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Wyuka Cemetery Perpetual Care Trust Fund Amounts Due From Other Funds



Note: The financial information was obtained from the annual audit report of Wyuka Cemetery. As of December 31, 2006, the Perpetual Care Trust Fund was owed \$1,481,524 from the Cemetery General fund.

Wyuka Perpetual Care Trust Fund Investment



Note: The financial information was obtained from the annual audit report of Wyuka Cemetery. As of December 31, 2006 the Cemetery general fund had borrowed \$1,481,524 from the Perpetual Care Trust Fund.

Wyuka Cemetery
Checks Cleared Wyuka Bank Account;
Not Recorded Or Reflected In Wyuka Financial Records

Exhibit O

Date Cleared Wyuka Bank	Check #	Amount	Payable To
12/20/2007	46590	\$ 1,558.57	Todd TerMaat
12/10/2007	46591	\$ 1,558.57	Todd TerMaat
11/23/2007	46593	\$ 1,558.57	Todd TerMaat
11/9/2007	46594	\$ 1,557.58	Todd TerMaat
10/19/2007	46595	\$ 1,834.63	Todd TerMaat
10/12/2007	46596	\$ 1,558.57	Todd TerMaat
9/28/2007	46597	\$ 1,557.58	Todd TerMaat
9/10/2007	46598	\$ 1,335.26	Todd TerMaat
8/31/2007	46599	\$ 1,331.52	Todd TerMaat
8/20/2007	45786	\$ 1,247.64	Todd TerMaat
8/15/2007	45779	\$ 1,557.58	Todd TerMaat
7/23/2007	45626	\$ 1,250.98	Todd TerMaat
7/18/2007	45625	\$ 1,775.77	Todd TerMaat
6/20/2007	45550	\$ 1,322.73	Todd TerMaat
5/29/2007	45292	\$ 1,135.69	Todd TerMaat
5/11/2007	45291	\$ 1,387.94	Todd TerMaat
4/27/2007	45202	\$ 1,243.77	Todd TerMaat
4/9/2007	45149	\$ 1,824.48	Todd TerMaat
3/19/2007	45034	\$ 1,247.33	Todd TerMaat
2/5/2007	44901	\$ 1,523.07	Todd TerMaat
11/27/2006	44537	\$ 1,099.15	Todd TerMaat
10/12/2006	44396	\$ 1,099.15	Todd TerMaat
9/13/2006	44397	\$ 1,099.15	Todd TerMaat
8/16/2006	44399	\$ 1,379.42	Todd TerMaat
6/26/2006	43779	\$ 1,099.15	Todd TerMaat
5/19/2006	43556	\$ 1,134.47	Todd TerMaat
4/20/2006	43386	\$ 1,335.57	Todd TerMaat
12/19/2005	42746	\$ 826.68	Todd TerMaat
11/28/2005	42747	\$ 826.68	Todd TerMaat
10/20/2005	42748	\$ 749.53	Todd TerMaat
5/11/2005	41375	\$ 753.71	Todd TerMaat
4/14/2005	41080	\$ 648.44	Todd TerMaat
2/28/2005	40767	\$ 820.89	Todd TerMaat
Total Verified Alleged Theft		\$ 42,239.82	