CITY of WINTERSET

WINTERSET, IOWA 50273

Mayor and City Council

Board of Trustees
Electric Light Plant, Waterworks
Building Dept.

NOTICE OF HEARING ON MATTERS CONCERNING:

Out Lot Eleven (11) of Laughridge & Cassiday's Addition to the City of Winterset, Iowa.

Out Lot Nine (9) of the East Addition of Out Lots on the East Side of Winterset, Iowa

Lots One (1), Two (2), Three (3), and the North Half (N½) of Lots Seven (7) and Eight (8) in Block Two (2) in Wilsey's Addition to the City of Winterset, and all that part of the Vacated Alley running East and West through said Block Two (2) in said Wilsey's Addition, which lies between Lots One (1) and Two (2) on the North side thereof and Lots Seven (7) and Eight (8) on the South side thereof.

A tract of real estate which was the part of East Summit Street in the City of Winterset, Iowa, lying between the East line of South Fourth Street and the East line of South Fifth Street, including the intersection of East Summit Street and South Fifth Street, which part of street has been vacated for street purposes by Ordinance 109 of the City of Winterset, Iowa, enacted September 6, 1955.

Lots Five (5), Six (6), Seven (7), and Eight (8) in Block Five (5) of Guiberson's Addition to Winterset, Madison County, Iowa

which it has held and used for cemetery purposes.

Be it known that a hearing was conducted on November 19, 1979 in the Council Chambers of the Winterset City Hall at 10 o'clock A.M. before the Board of Adjustment concerning the Winterset Cemetery Improvement Association's application for Special Use Permit filed with the Winterset City Clerk on October 23, 1979.

All persons present in response to the "Public Notice Of Hearing" were heard before the Board of Adjustment. The Board of Adjustment voted a unanimous vote in favor of approval of the Special Use Permit Application.

I certify the above to be true as presented and the following are the minutes covering the above mentioned Public Hearing.

Herbert Ehm

Herbert Ehm, Building Inspector & Zoning Administrator
City of Winterset, Iowa

FILED NO. 363
BOOK 33 PAGE 208
1980 SEP -9 PM 1:53
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA
Fee $ 9.00

BOARD OF ADJUSTMENT
CITY OF WINTERSET
WINTERSET, IOWA 50273

FILED NO. 363
BOOK 33 PAGE 208
1980 SEP -9 PM 1:53
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

Meeting of the Winterset Board of Adjustment was called to order at 10:00 o'clock a.m. on Monday, November 19, 1979 for the purposes of considering the Application for a Special Use Permit filed by the Winterset Cemetery Association. Members of the Board present were Breeding, Nelson and Gordon. Herb Ehm, Building Inspector, presented the Application which had been previously approved by the Winterset Planning and Zoning Commission to the Board,with a copy of the notice of hearing on said Application as published in the Winterset Madisonian, and stated that all preliminaries to the hearing had been completed.

Leonard M. Flander, the attorney for the applicant, was present and spoke to the Board in favor of granting the permit. Mr. Flander gave a brief history of the area to be affected, pointed out that the Special Use Permit did not adversely affect the value and use of adjoining properties as evidenced by the fact that several new residences had been or were in the process of construction on the perimeter of cemetery property. Mr. Flander further discussed the necessity of expanding the actual part of the cemetery used for burial pruposes and discussed the suitability or unsuitability of surrounding tracts not owned by the cemetery. He pointed out that the Cemetery Association's sole purposes was to operate, maintain and own the cemetery and that the real estate for which the Special Use Permit was sought had been acquired by the Association for cemetery purposes over the course of years.

He pointed out that various parcels of land included in the application were acquired by the Association for cemetery purposes prior to the enactment of the first Zoning Ordinances of the City and that although no actual burials occurred in the area described in the Application, that the Association had held the land for cemetery purposes and in fact had established a non-conforming use for the tracts acquired prior to the time of the enactment of the ordinances. He further pointed out that the ordinances as it relates to the operation of a cemetery is somewhat vague and indefinite creating a question as to whether a Special Use Permit was actually required, but since the Association was in part tax supported, the Association felt it should use every effort to comply with the requirements, but did not waive any rights held by it by the application.

Jesse Kilmer, who owns real estate immediately north and adjoining a portion of the tract for which the permit is sought, was present in person and by his attorney, Mr. Couch, for the purposes of entering an objection to granting the permit.

Mr. Kilmer objected generally to the issuance of the permit, stating that it would adversely affect the value and use of his real estate, would be inconvenient to he and others adjoining the premises described in the Application, would result in burials right next to his property line with consequential adverse affects upon he and his family and neighbors and specifically objected to the granting of the permit as the same would affect lots 5, 6, 7 and 8 in Block 5 of Guiberson's Addition and the area which was described as vacated Summit Street immediately south of lots 5, 6, 7 and 8. In support of his objection he stated that an agreement between the Winterset Cemetery Association and himself had been made several years ago, that the four lots in question would never be used for burial purposes, and that he had recorded a letter which he had received from attorney Daniel Gallery in 1956 to that affect. He stated that Mr. Gallery was a member of the Association's Board of Directors at that time and had authority to speak for the Association. He further stated that he had offered to buy the four lots from the Association and offered to sell his property to the Association in order to prevent burials upon the four lots, but that such arrangement could not be consumated. He further stated that there was plenty of room in the cemetery for future burials, that there was no necessity for expanding burial plots in the area covered by the permit, and that if anything, the Cemetery could expand southward from its present location. His attorney noted that perhaps the permit could be granted for everything except lots 5, 6, 7 and 8, and that the

decision regarding such lots could be postponed until after the death of Mr. Kilmer or sale of the premises by him.

Mr. Flander spoke in rebuttal to Mr. Kilmer's objections, stating that the Association was entitled to a ruling on the entire Application at this time and that he could not agree to a postponement regarding lots 5, 6, 7 and 8. He pointed out that although there was quite a number of burial spaces in the cemetery's property, many, if not most of those spaces were owned by individuals and there was not available for burial except to the owners of those lots, that the cemetery had reached a point where it is absolutely necessary to plan further burial spaces for future sales and burials and that planners were at this time working on the layout of the entire premises covered by the application. Mr. Flander introduced a deed for lots 5, 6, 7 and 8 which the Cemetery Association had received from the Administrator of the Estate of Charles F. McNeley as the same is recorded in the Recorder's Office in Winterset, Madison County, Iowa, and pointed out that no restrictions of any kind were included in such deed. Mr. Flander further introduced a copy of the deed as the same is recorded in the Recorder's Office in Winterset, Madison County, Iowa, which the Association had received from the City of Winterset for vacated Summit Street between 4th and 5th Street and pointed out that said deed did in fact contain a restriction prohibiting burials within the street right-of-way and stated that the Association had no intention of violating that restriction. He pointed out that a private cemetery road now existed on vacated Summit Street and the premises was used for cemetery purposes and thus should be covered by the Special Use Permit. Mr. Flander further introduced a copy of the letter from Daniel Gallery to Mr. Kilmer, the same being recorded in the Madison County Recorders Office,and pointed out that that letter discussing the restriction of burials specifically referred only to vacated Summit Street and did not in any way mention lots 5, 6, 7 and 8.

In response to a question from Mr. Ehm, suggesting that the area to be covered by Special Use Permit be screened by bushes and trees, Mr. Kilmer stated he did not desire such an arrangement in that several years ago he had destroyed the bushes and trees on the line between his property and the Cemetery Association property because the bushes and trees interferred with his air and view.

After further general discussion the hearing was closed. Thereupon Jim Nelson moved that the Special Use Permit as applied for be granted. Motion was seconded by Mr. Gordon. Chairman Breeding called for a vote of the Motion and the Motion carried, there being no votes opposed to same.

Nelson moved the meeting be adjoured, seconded by Gordon, and upon approval, meeting was adjourned.

Board of Adjustment members present: James Breeding, Norman Gordon and James Nelson.

Jas Breeding, sec.