



*Township of Castle Rock*

Dakota County, Minnesota  
2537 240<sup>th</sup> Street West  
Farmington, Minnesota 55024  
(651) 460-2221

**RESOLUTION NO. 2022-05**

**A RESOLUTION APPROVING AMENDMENT NO. 1 TO CONDITIONAL USE PERMIT, RESOLUTION NO. 2016-01, ALLOWING THE USE OF ONE OF THE BUILDINGS FOR THE PERFORMANCE OF MUSLIM BURIAL RITES (WASHING OF THE BODY) AND AS A MOSQUE FOR PRAYER ROOM PURPOSES ASSOCIATED WITH BURIAL SERVICES AS PART OF THE CEMETERY USE, SUBJECT TO THE CURRENT CONDITIONS, AS MODIFIED HEREIN.**

**WHEREAS**, the Town Board (“Town Board”) for the Castle Rock Township (“Town”) approved a conditional use permit to allow the operation of a cemetery on the property located at 1120 – 220<sup>th</sup> Street West within the Town, and legally described in the attached **Exhibit A** (the “Property”), subject to ten conditions on March 14, 2016 in Resolution No. 2016-01 (“Conditional Use Permit”). A copy of Conditional Use Permit is attached hereto as **Exhibit B**.

**WHEREAS**, the Property is located within the Town’s AG Agricultural District (“AG District”) as designated pursuant to the Castle Rock Zoning Ordinance, Ordinance No. 2013-01, reformatted with amendments, April 2021, (“Ordinance”).

**WHEREAS**, Mohamad Osman (“Applicant”) submitted an application on behalf of the owner of the Property, Maghfirah Cemetery Association (“Owner”), to amend the Conditional Use Permit to allow the use of one of the buildings located on the Property as a prayer room and Mosque to conduct prayers associated with Muslim burial services, and to use that building to perform Muslim burial rites, including washing the bodies without the use of chemicals or embalming, and revise the conditions set forth in the Conditional Use Permit by deleting “and vault liners” from condition number 3, and delete condition number 9 regarding screening in its entirety.

**WHEREAS**, Section 6.04.C.4 of the Ordinance allows cemeteries as a conditional use in the AG Agricultural District provided that provisions and requirements of Sections 8.05 and 6.04.D of the Ordinance are fulfilled.

**WHEREAS**, Section 8.05.A & B of the Ordinance authorizes the Town Board to alter an existing conditional use permit upon receipt of an application of the permittee.

**WHEREAS**, Section 8.05.A & B requires the permittee to seek an amendment to a conditional use permit where the permittee seeks any change to the conditions of a conditional use permit or any change involving structural alterations, enlargement or intensification of use, which are not specifically permitted by that conditional use.

**WHEREAS**, Section 8.05.B.4 of the Ordinance requires an application to amend a conditional use permit to be administered in a manner similar to that required for a new conditional use permit.

**WHEREAS**, Section 6.04.D and 8.05.A of the Ordinance set forth the criteria and standards for granting a conditional use permit.

**WHEREAS**, Section 8.05.A of the Ordinance authorizes the Town's planning commission ("Planning Commission") to recommend and Town Board to impose additional conditions in approving an amendment to a conditional use permit considered necessary to protect the best interest of the surrounding area or the community as a whole, including but not limited to, requiring fencing, screening, landscaping, or other facilities to protect adjacent or nearby property.

**WHEREAS**, the Planning Commission conducted a public hearing on the requested amendment to Conditional Use Permit on June 20, 2022, during which it heard from the Applicant, other representatives of the Owner, the Owner's attorney, and the public regarding the application.

**WHEREAS**, the Planning Commission considered the requested amendment and took action on June 27, 2022 by recommending approval of the following portions of the Applicant's requested amendment to the Conditional Use Permit, and subject to the following conditions:

1. Delete "and vault liners" from condition number 3 "Vaults" of the Conditional Use Permit;
2. Add the following language at the end of the fourth sentence in condition number 9 "Screening" of the Conditional Use Permit: "In lieu of a privacy fence, a natural privacy screen of 6 foot tall evergreen trees or 6 foot tall non-evergreen trees that is 10 feet wide is acceptable instead of a privacy fence"; and
3. Add clarifying language that states that the use of one of existing buildings (office building) on the property to perform Muslim burial rites (washing of the body) and as a Mosque for prayer room purposes associated with burial services are permitted as a cemetery use, subject to the building meeting the recommendations/requirements of the Town's building official.

**WHEREAS**, The Town Board considered the Planning Commission's advice and recommendations, the application materials on file, additional comments from the Applicant, other representatives of the Owner, and the Owner's attorney, and the effect of the proposed amendment on the health, safety, and general welfare of the occupants of surrounding lands, the



effect of existing and anticipated traffic conditions, including parking, and the best interests of the surrounding area and community as a whole at its meeting on July 12, 2022, and hereby finds and determines as follows:

The Conditional Use Permit already approves the use of the Property as a Cemetery. The Conditional Use Permit does not specifically address the performance of burial rites or prayer within the existing buildings. The current condition of the buildings, need of repair, meeting of Building Code, building inspector's initial inspection on July 8, 2022, and effect of existing and anticipated traffic, including parking were discussed. The Town Board concluded that the use of one of the two existing buildings on the Property to perform Muslim burial rites (washing of the body) and as a Mosque for prayer room purposes associated with burial services are permitted as they arise out of the "cemetery" use. The Conditional Use Permit shall be amended to approve the use of one of the two existing buildings on the Property to perform Muslim burial rites (washing of the body) and as a Mosque for prayer room purposes associated with burial services, subject to the condition that the building and all of its utilities meet the final recommendations/requirements of the Town's building official inspector.

Sealed vaults, that include bottoms, will continue to be required under Condition Number 3. Therefore, the phrase "and vault liners" was determined to no longer be necessary. Condition Number 3 shall be amended to read as follows:

3.     Vaults. The Association shall use sealed vaults in all graves.

The Town Board determined that the general welfare of the current and future residential occupants adjacent to the Property require screening to remain a condition of the Conditional Use Permit. Allowing the Owner to choose between fencing and/or tree screening of the Property was determined to be acceptable, and it was determined, with the input of the Applicant and Applicant's attorney, that Condition Number 9 would be revised to read as follows:

9.     Screening. The boundaries of the Property, as the burial area expands, shall be screened with trees so as to reduce the visibility of the cemetery from neighboring properties. Before the first burial of the Property, a privacy fence of at least six feet in height shall be constructed along the line of the Property to screen the cemetery from current and future residences that border the cemetery. The privacy fences shall be constructed of wood, or other quality material, that completely obscures the sight of the cemetery from the residential properties and the solid side of the fence that does not show the supports must face the residential properties. The fence must be maintained in good order and repaired as needed so it continues to serve its screening purpose. In lieu of a privacy fence, a natural privacy screen of 6 foot tall evergreen trees and/or 6 foot tall non-evergreen trees, or a combination thereof, that are 10 feet wide is acceptable instead of a privacy fence. The portion of the western boundary that extends south past the residential building sites within the plat may be screened using trees instead of a fence.

**NOW, THEREFORE, BE IT RESOLVED**, that, based on the record in this matter, the materials submitted in support of the application to amend the Conditional Use Permit, and the

findings and determinations contained herein, the Town Board hereby grants approval and amends the Conditional Use Permit (Amendment No. 1) as follows:

The use of one of the two existing buildings on the Property to perform Muslim burial rites (washing of the body) and as a Mosque for prayer room purposes associated with burial services is permitted, subject to the following conditions:

- (a) That the building and all of its utilities meeting the final recommendations/requirements of the Town's building inspector;
- (b) That the Owner obtain all necessary reviews, permits and approvals required by the Ordinance, or other applicable law or regulations, prior to performing improvements to the Property; and
- (c) That a certificate of occupancy is obtained from the Town prior to the use of the building for performing Muslim burial rites (washing of the body) or as a Mosque for prayer room purposes associated with burial services.

Condition Number 3 is amended to read as follows:

- 3. Vaults. The Association shall use sealed vaults in all graves.

Condition Number 9 is amended to read as follows:

- 9. Screening. The boundaries of the Property, as the burial area expands, shall be screened with trees so as to reduce the visibility of the cemetery from neighboring properties. Before the first burial of the Property, a privacy fence of at least six feet in height shall be constructed along the line of the Property to screen the cemetery from current and future residences that border the cemetery. The privacy fences shall be constructed of wood, or other quality material, that completely obscures the sight of the cemetery from the residential properties and the solid side of the fence that does not show the supports must face the residential properties. The fence must be maintained in good order and repaired as needed so it continues to serve its screening purpose. In lieu of a privacy fence, a natural privacy screen of 6 foot tall evergreen trees and/or 6 foot tall non-evergreen trees that is 10 feet wide, or a combination thereof, is acceptable instead of a privacy fence. The portion of the western boundary that extends south past the residential building sites within the plat may be screened using trees instead of a fence.

All remaining conditions and requirements of the Conditional Use Permit shall remain in full force and effect.

ADOPTED this 8<sup>th</sup> day of August 2022.

**BY THE TOWN BOARD**

BY:   
Jon Juenke, Chair

Attest:

BY:   
Molly Weber, Clerk

## EXHIBIT A

### Legal Description of the Property

The East Half of the Northwest Quarter of Section 3, Township 113 North, Range 19 West, Dakota County, Minnesota, EXCEPT that part of said East Half of the NW Quarter described as follows:

Beginning at the Northeast corner of said East Half of the Northwest Quarter; thence North 89°47'51" West, assumed bearing, along the North line of said East Half of the Northwest Quarter, a distance of 417.43 feet; then South 00°08'45" East, parallel with the East line of said East Half of the Northwest Quarter, a distance of 834.96 feet; thence South 89°47'51" East, parallel with said North line of the East Half of the Northwest Quarter, a distance of 417.53 feet, to the East line of said East Half of the Northwest Quarter; thence North 00°08'45" West, along said East line of the East Half of the Northwest Quarter, a distance of 834.96 to the point of beginning.

**EXHIBIT B**

**Castle Rock Township, Dakota County, Minnesota  
Resolution No. 2016-01**



**CASTLE ROCK TOWNSHIP  
DAKOTA COUNTY, MINNESOTA  
Resolution No. 2016-01**

**RESOLUTION ISSUING A CONDITIONAL USE PERMIT  
FOR THE PROPERTY LOCATED AT 1120 – 220<sup>th</sup> STREET WEST**

**WHEREAS**, Ewing Group Mel Smith (“Applicant”) submitted an application for a conditional use permit (the “Application”) to Castle Rock Township (“Town”) as agent for Agstar Financial Services, FLCA (“Owner”), owner of the approximately 72.82 acres of property (PID # 070030025015) located at 1120 – 220<sup>th</sup> Street West within the Town and legally described in the attached Exhibit A (“Property”);

**WHEREAS**, the Applicant sought a conditional use permit (“CUP”) from the Town in order to use the Property for a private cemetery, to remodel the existing buildings, and to locate a funeral home within one of the buildings, which would include an embalming room, for the washing of bodies and to allow for procedures to be conducted by a licensed mortician;

**WHEREAS**, the Property is located within the Town’s AG Agricultural District (“AG District”) as designated pursuant to the Castle Rock Zoning Ordinance, Ordinance No. 2013-01 (“Ordinance”);

**WHEREAS**, shortly after submitting the application the Town informed the Applicant that the proposed funeral home and embalming uses are not allowed under the Ordinance, but that the Town will continue to process the application for the cemetery use;

**WHEREAS**, the Castle Rock Planning Commission conducted a public hearing regarding the requested CUP on May 27, 2014, and then again on June 24, 2014, and voted to forward the application to the Town Board with a recommendation that it be approved, but only with respect to the cemetery use and subject to certain conditions;

**WHEREAS**, the Town Board acted at its meeting on August 11, 2014 to deny the application;

**WHEREAS**, the Applicant attempted to appeal the denial to the Town’s Board of Appeals and Adjustments, but was informed the Town Board’s decision was a final decision not appealable to the Board of Appeals and Adjustments;

**WHEREAS**, the Property was subsequently purchased by Al Maghfirah Cemetery Association, a Minnesota nonprofit corporation (“Association”). As part of that transaction, the rights under the Application were also assigned to the Association;

**WHEREAS**, on November 17, 2014, the Association resubmitted a CUP application, without plans to build a funeral home on the Property, for a cemetery on the Property;

WHEREAS, the Town rejected and returned the resubmitted application as not being allowed under Section 8.05(B)(5) of the Ordinance, which prohibits the resubmission of a CUP application within twelve months after denial of the application;

WHEREAS, on January 12, 2015, the Town Board approved several amendments to the Ordinance, including removing cemeteries as a conditional use in the AG District;

WHEREAS, the Association appealed the Town's administrative rejection of its resubmitted cemetery CUP application to the Town's Board of Appeals and Adjustments on the basis that the Association was a new owner and should be allowed to present an application despite the twelve-month prohibition;

WHEREAS, the Board of Supervisors, sitting as the Board of Adjustment and Appeals, denied the appeal on February 9, 2015;

WHEREAS, the Association filed suit challenging the denial of its CUP and the denial of the Application submitted on behalf of the Owner;

WHEREAS, the Dakota County District Court, in the matter of *Al Maghfirah Cemetery Association v. Castle Rock Township* (Court File No. 19HA-CV-15-1839), considered the Association's challenge and issued an order dated January 28, 2016 ("Order") directing the Town Board to issue a CUP for the Property with the eight specific conditions recommended by the Planning Commission as a result of its May 27, 2014 meeting; and

WHEREAS, the Town Board hereby finds and determines as follows with respect to the request:

- a. As a result of the Order, the application for a CUP is to be reviewed and processed under the Ordinance as it existed at the time of the Association's application;
- b. Pursuant to Section 6.04.C.2 of the Ordinance in effect at the time of application, "cemeteries" are allowed within the AG District with the issuance of a CUP;
- c. Cemeteries are regulated separately under Minnesota law. Private and public cemeteries are generally governed by Minnesota Statutes, chapters 306 and 307;
- d. The plan for the cemetery shows four phases and the entire area lined with trees; and
- e. The description of the cemetery indicates there will be approximately two funerals a week, there will be no digging of graves during the winter (though graves will be pre-dug and protected for winter burials), and any headstones used will be flush against the ground;

NOW, THEREFORE, BE IT RESOLVED, that, based on the record of this matter and the findings and determinations contained herein, and as directed by the Order, the Town Board of Castle Rock Township hereby approves and issues a conditional use permit to operate the



proposed cemetery on the Property, provided the Association complies with, and remains in compliance with, all of the following conditions and limitations:

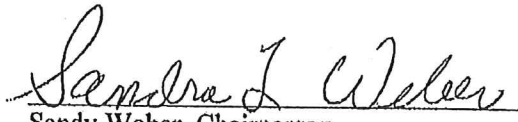
1. Hours of Operation. Hours of operation of the Property shall be limited to 7:00 a.m. to one-half hour after sunset.
2. Parking. The Association shall provide adequate parking on the Property.
3. Vaults. The Association shall use sealed vaults and vault liners in all graves.
4. Number of Burials. The Association shall define the number of potential burials on the property.
5. Water Table. The Association shall provide the water table information to the Township.
6. Landscaping. The Association shall identify landscape perimeter requirements.
7. Grave Markers. The Association shall use only flat stone makers for graves.
8. Traffic. The Board of Supervisors shall review the installation of a turn lane on Highway 50 and shall contact the Minnesota Department of Transportation if necessary.
9. Screening. The boundaries of the Property, as the burial area expands, shall be screened with trees so as to reduce the visibility of the cemetery from neighboring properties. Before the first burial on the Property, a privacy fence of at least six feet in height shall be constructed along the western boundary line of the Property to screen the cemetery from the current residences within the plat of Chaparral Estates. The privacy fence shall be constructed of wood, or other quality material, that completely obscures the sight of the cemetery from the residential properties and the solid side of the fence that does not show the supports must face the residential properties. The fence must be maintained in good order and repaired as needed so it continues to serve its screening purpose. The portion of the western boundary that extends south past the residential building sites within the plat may be screened using trees instead of a fence.
10. Financial Security. Before the first burial on the Property, the Applicant shall provide the Town financial security in the form of a bond or cash, as provided herein, to provide for the maintenance of the cemetery if it ever becomes abandoned or reverts to the Town. The Applicant may determine whether to provide the financial security in the form of a bond or cash. The Town, by requiring financial security, is not obligating itself to assume responsibility for the cemetery and is instead ensuring funds are available in case it elects to, or is required by law, to provide for its maintenance if it is abandoned. If the Applicant provides a bond, it must be in a form acceptable to the Town Board. If the Applicant provides cash, it shall be deposited into a certificate of deposit in the Town's name at a bank of the Town's choosing. Upon maturity of the certificate of deposit, any interest accrued shall be paid by the bank directly to the Applicant and the certificate of deposit renewed. The term of each certificate of deposit must be acceptable to the Town.

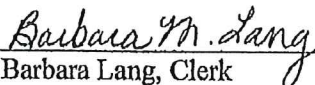
The amount of the required financial security, whether provided by bond or cash, shall be as follows:

- a. \$100,000 prior to the first burial site is established.
- b. An additional \$100,000 before the burial area is expanded beyond the initial five acres.
- c. An additional \$100,000 before the burial area is expanded beyond the initial 25 acres.
- d. An additional \$100,000 before the burial area is expanded beyond the initial 45 acres.
- e. An additional \$40,000 before the burial area is expanded beyond 65 acres.
- f. The maximum security required for the Property shall be \$440,000.

Adopted on the 14<sup>th</sup> day of March, 2016.

BY THE TOWN BOARD

  
Sandy Weber, Chairperson

Attest:   
Barbara Lang, Clerk



Prepared by:  
Troy Gilchrist, Castle Rock Township Attorney  
Kennedy & Graven, Chartered  
200 South Sixth Street, Suite 470  
Minneapolis, MN 55402



**EXHIBIT A**  
Legal Description of the Property

The East Half of the Northwest Quarter of Section 3, Township 113 North, Range 19 West, Dakota County, Minnesota, EXCEPT that part of said East Half of the NW Quarter described as follows:

④ HI SEND 3-113-19  
K- P. NEW

Beginning at the Northeast corner of said East Half of the Northwest Quarter; thence North 89°47'51" West, assumed bearing, along the North line of said East Half of the Northwest Quarter, a distance of 417.43 feet; then South 00°08'45" East, parallel with the East line of said East Half of the Northwest Quarter, a distance of 834.96 feet; thence South 89°47'51" East, parallel with said North line of the East Half of the Northwest Quarter, a distance of 417.43 feet, to the East line of said East Half of the Northwest Quarter; thence North 00°08'45" West, along said East line of the East Half of the Northwest Quarter, a distance of 834.96 to the point of beginning.