

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
TELEPHONE: (518) 474-6226
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ANDREW M. CUOMO
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

To: New York State Cemetery Board

From: Michael D. Seelman, Investigator II

Subject: Foxwood Memorial Park, Town of Oswegatchie, #45-073

Re: Request for final payment adjustment

Date: February 22, 2021

As I explained in my report dated March 5, 2019, Foxwood Memorial Park in the Town of Oswegatchie was abandoned to the Town of Oswegatchie in 2015 because it was impossible to reconstitute the board and available assets were insufficient to cover operating expenses. The abandonment followed a course of mismanagement (or worse) by the cemetery's founder, Richard Fox, which the Division identified in an audit.

The cemetery board approved an application by the Town in the amount of \$504,610.71 for extensive repairs to the facility and the purchase of tools and equipment necessary for its maintenance. The Town has successfully operated the cemetery since its abandonment and has even built a two-retort crematory.

I have verified that the requested items were purchased and present at the cemetery and that all repairs had been made. The town has received \$434,394.45 of the total of \$504,610.74 and has spent \$410,989.04 as follows:

2018 Ram 3500 w/ Fisher plow and sander	\$43,786.50
Ferris IS3200Z mower and bagger attachment	\$12,649
Stihl MM-55 Yard Boss and attachments, FS131	\$2,421.72
Trimmer, HT133 Pruner, MS250 Chainsaw, BR500 Blower and attachments	
Forston Low Boy mausoleum lift	\$19,965
Fireking Fire safe File cabinets (2)	\$2,000
Shredder, Printer, Toner	\$658.97
Bills Painting	\$19,500
SRS Computing Software	\$14,060
Lehigh Hanson Crusher-run (culvert replacement)	\$2,079.55
Blair Supply Culvert Pipe	\$570.80
Dell laptop computer	\$1,170.09
Barkleys Safe and Lock Security System	\$14,851.76



Department
of State

Colton Glass, doors and window repairs	\$22,486.40
Flooring*	\$33,520
Roof replacement	\$221,269.25

The following items came in under the estimated price:

Item	bid	cost	difference
Roof	\$243,000.00	\$221,269.25	\$21,730.75
Culvert	\$ 5,100.00	\$ 2,650.35	\$ 2,449.65
Office	\$ 19,985.41	\$ 17,889.06	\$ 2,096.35
Lift	\$ 20,365.00	\$ 19,965.00	\$ 400.00
Tools	\$ 2,637.64	\$ 2,421.72	\$ 215.92
Mower	\$ 12,686.00	\$12,649.00	\$ 37.00
Sidewalks	\$66,760.00	\$65,150.00	\$ 1,610.00
			-\$28,539.67

The following items came in over the estimated price:

Floor	\$33,520.00	\$ 60,888.49	\$27,368.49
Truck	\$43,718.50	\$ 43,786.50	<u>\$ 68.00</u>
			+\$27,436.49

The Town of Oswegatchie has been paid based upon the estimated price for those items that ended up costing more and at the invoiced price for those items that ended up costing less.

In addition, we have submitted a \$68,895.99 voucher for walkways and flooring to fiscal that will be paid in the amount of \$45,490.58.

The result is that the amount disbursed will be \$479,885.03 which is \$24,725.68 less than what was originally approved. At the same time, two items came in a total of \$27,436.49 higher than was bid and the Town has paid out of pocket for these items.

It is requested that the Board allow the funds to be spent as invoiced. The flooring amount would be increased by \$27,368.49 and the cost of the truck would increase by \$68.00. The contractor that originally bid on the flooring was unable to perform the work and additional bids were received. The flooring bid increased substantially to \$60,150 and a \$738.49 change order was required to correct a sunken floor, the total cost was \$60,888.49. The cemetery was able to buy a 2018 Ram truck as was originally approved but the price increased by \$68.

This modification would not result in any additional expenditure by the state, and, in fact, would result in a total price of the work that is \$1,103.18 less than budgeted, but would allow the Town to receive the amount previously approved and apply it to areas where the actual cost exceeded the budgeted amounts.

APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER:
 Town of Oswegatchie
 51 State Street
 Heuvelon, NY 13654

PROJECT:
 Foxwood Memorial Park Improvements

APPLICATION NO.: 2
 PERIOD TO: 6/24/2020
 Project # T4 #19-23

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Northern Tier Contracting Inc.
 329A Scotch Settlement Rd.
 Gouverneur, NY 13642

ARCHITECT
 Tisdal Associates
 113 Main Street
 Canton, NY 13617

CONTRACT FOR: No. 1 General Construction

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
 Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$125,300.00
2. Net change by Change Orders \$738.49
3. CONTRACT SUM TO DATE (Line + 2) \$126,038.49
4. TOTAL COMPLETED & STORED TO DATE \$126,038.49
 (COLUMN G ON G703)

5. RETAINAGE:
 - a. 5 % of Completed Work \$0.00
 (Columns D + E on G703)
 - b. 5 % of Stored Material 0.00
 (Column F on G703)
- Total Retainage (Line 5a + 5b or Total in Column I of G703) \$0.00

6. TOTAL EARNED LESS RETAINAGE \$126,038.49
 (Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$57,142.50
 (Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE \$68,895.99
9. BALANCE TO FINISH, INCLUDING RETAINAGE \$0.00
 (Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$738.49	\$0
Total approved this Month	\$0.00	\$0
TOTALS	\$738.49	\$0
NET CHANGES by Change Order	\$738.49	

CONTRACT DATE: 8/30/2019

The undersigned Contractor certifies that to the best of the Contractor's knowledge information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Northern Tier Contracting Inc. Date: 6/24/20

By: [Signature]
 State of: New York
 County of: St. Lawrence
 Subscribed and sworn to before me this 24th day of June 2020

JEFFREY W. McADOO
 Notary Public, State of New York
 No. 01MC6382455
 Qualified in St. Lawrence County
 Commission Expires 10/22/2022

Notary Public: [Signature]
 My Commission expires: 10/22/2022

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$68,895.99

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT: [Signature] Date: 6/26/2020

This certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.
 In tabulation below, amounts are stated to the nearest dollar.
 Use Column 1 on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER: 2
 APPLICATION DATE: 6/24/2020
 PERIOD TO: 6/24/2020
 ARCHITECT'S PROJECT NO: TA #19-23

A	B	C	D	E	F	G	H	I	
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D+E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G/C)	BALANCE TO FINISH (C-G)	RETAINAGE
Carpet Replacement									
General Conditions									
1	Labor	\$2,000.00	\$2,000.00	\$0.00	\$0.00	\$2,000.00	100%	\$0.00	\$0.00
2	Material	\$2,350.00	\$2,350.00	\$0.00	\$0.00	\$2,350.00	100%	\$0.00	\$0.00
3	Demo of Flooring	\$12,500.00	\$12,500.00	\$0.00	\$0.00	\$12,500.00	100%	\$0.00	\$0.00
4	Labor	\$1,300.00	\$1,300.00	\$0.00	\$0.00	\$1,300.00	100%	\$0.00	\$0.00
5	Material	\$17,000.00	\$17,000.00	\$0.00	\$0.00	\$17,000.00	100%	\$0.00	\$0.00
6	Install New Carpet	\$25,000.00	\$25,000.00	\$0.00	\$0.00	\$25,000.00	100%	\$0.00	\$0.00
Concrete Sidewalk Replacement									
General Conditions									
7	Labor	\$2,000.00	\$0.00	\$2,000.00	\$0.00	\$2,000.00	100%	\$0.00	\$0.00
8	Material	\$1,500.00	\$0.00	\$1,500.00	\$0.00	\$1,500.00	100%	\$0.00	\$0.00
9	Removal of Sidewalks	\$5,300.00	\$0.00	\$5,300.00	\$0.00	\$5,300.00	100%	\$0.00	\$0.00
10	Labor	\$5,600.00	\$0.00	\$5,600.00	\$0.00	\$5,600.00	100%	\$0.00	\$0.00
11	Material	\$26,800.00	\$0.00	\$26,800.00	\$0.00	\$26,800.00	100%	\$0.00	\$0.00
12	New Sidewalks	\$20,400.00	\$0.00	\$20,400.00	\$0.00	\$20,400.00	100%	\$0.00	\$0.00
13	Labor	\$2,600.00	\$0.00	\$2,600.00	\$0.00	\$2,600.00	100%	\$0.00	\$0.00
14	Material	\$950.00	\$0.00	\$950.00	\$0.00	\$950.00	100%	\$0.00	\$0.00
Change Orders									
15	CO #1: Level Floor Where Slab Sank	\$738.49	\$0.00	\$738.49	\$0.00	\$738.49	100%	\$0.00	\$0.00
Totals		\$126,038.49	\$60,150.00	\$65,888.49	\$0.00	\$126,038.49	100%	\$0.00	\$0.00

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ABANDONED CEMETERY ORDER

By application dated 10/04/2018, The Town of Oswegatchie, St. Lawrence County, requested funds for the maintenance of the Foxwood Memorial Park, Cemetery No. 45-073, under Section 1507(h) of the New York State Not-for-Profit Corporation Law.

The Cemetery Board has reviewed the submitted paperwork and has determined that the request for abandoned cemetery funds is fair and reasonable. Therefore, pursuant to Section 1507(h) of the Not-for-Profit Corporation Law, the request is approved as follows, subject to the availability of funds:

REQUESTED AMOUNT
\$504,610.71

ALLOCATED AMOUNT
\$504,610.71

Within 90 days of its receipt of disbursements, the municipality shall make a report to the Cemetery Board setting forth details of the maintenance and clean-up undertaken, equipment purchased, and the amount of funds, if any, to be redeposited in the fund. If the maintenance and clean-up have not been completed, or the equipment requested has not been purchased, the reasons therefor shall be set forth, and the anticipated date for a subsequent, final report shall be disclosed.

CEMETERY BOARD

Rossana Rosado, Secretary of State

BY *Mark P. Pattison*
Mark P. Pattison, Chairman

Letitia James, Attorney General

BY *Jill Faber*
Jill F. Faber, Esq.

Dr. Howard A. Zucker, Commissioner of Health

BY *Thomas W. Fuller*
Thomas W. Fuller

FILED: 05/06/2019

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DEPARTMENT OF STATE – DIVISION OF CEMETERIES MEMORANDUM

TO: NEW YORK STATE CEMETERY BOARD

FROM: MICHAEL SEELMAN, Senior Investigator

CC: ANTONIO MILILLO, Counsel

DATE: MARCH 5, 2019

SUBJECT: TOWN OF OSWEGATCHIE/ FOXWOOD MEMORIAL PARK, NO. 45-073

RE: APPLICATION FOR ABANDONED CEMETERY FUNDS

EXHIBITS

- A) Certification, Statement of Income & Expenses
- B) Application
- C) RSI Roofing Estimate
- D) Culvert Estimate
- E) Forston Lift estimate
- F) Middlemiss sidewalk estimate
- G) Bill's Painting estimate
- H) Shultz Flooring estimate
- I) Colton Glass & Door estimate
- J) Barkleys Security System estimate
- K) WB Mason estimate
- L) SRS Software estimate
- M) Gamble estimate for Zero Turn Mower
- N) LaBerge & Curtice estimate for power tools
- O) Ram 3500
- P) Upstate Doors estimate
- Q) Rich Raven Heating estimate
- R) List of light fixtures (informal)
- S) Middlemiss Parking lot estimate
- T) Witherbee & Whalen sign estimate
- U) LaBerge & Curtice Toolcat estimate



Department
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INTRODUCTION

The Town of Oswegatchie assumed operation and maintenance of the Foxwood Memorial Park in 2015, a cemetery that consisted entirely of a mausoleum complex. At that time, the Town took possession of the operating and permanent maintenance accounts totaling \$430,302.

The Town has continued to sell niches and perform entombments, generating \$151,218.66 from January 2016 to date. Over the same period, the crematory has generated \$178,475. Total expenses over that time, have been \$777,344.04, which includes the crematory construction costs. The cemetery consists of a 13,500 square foot mausoleum that contains approximately 3,000 crypts and niches. All crypts are sold and approximately half of them are occupied, while there are 289 niches available for sale. The grounds are approximately 3.6 acres and are grassy lawn with several trees, a stone driveway and parking lot. There is a seasonal stream that crosses the property and enters a large pond.

The Town purchased an adjacent 1.4 acre parcel and built a crematory on site with the hope that the crematory will help generate income to maintain the mausoleum, the funds for this improvement came from the money received with the conveyance and expenses have totaled \$427,299.01 as of June 2018. A certification and itemized statement of income and expenses is included with this application. (Exhibit A) To date the crematory is breaking even and the Town recently purchased a second retort. The Town is currently maintaining the facilities including plowing snow, cutting grass, performing entombments and routine cleaning of the building. Annual maintenance has averaged \$28,000 for each of the last three years.

The Town of Oswegatchie has applied (Exhibit B) for Funds for Maintenance of Abandoned Cemeteries in the amount of **\$603,515.12**. The items requested consist of building repairs, grounds keeping equipment, driveway and parking lot repairs and office equipment.

RECOMMENDATION

The Division recommends that the Board approve a total of \$504,610.71 in repairs to the roof, culvert, lift replacement, walkways, painting, tile/carpeting, building security, office equipment, mower, tools/ equipment and Ram pickup truck.

The roof replacement, culvert replacement and lift replacement are health and safety concerns and should be viewed as time sensitive.

The Division believes that the other items appear to be reasonable and necessary to get the facility in condition for the Town to continue with routine maintenance but are not as time-sensitive as these items do not present the same level of health and safety issues.

REQUESTS—HIGH PRIORITY ITEMS

Roofing

The existing roof is worn and leaking in several places, causing water to enter the interior of the building and crypt spaces. The Town solicited two bids for roof replacement: Bertrand, at \$262,000; and RSI Roofing, (Exhibit C) Inc. of 44 County Route 9, Gouverneur, NY 13642, at \$243,000. RSI will provide a 30- year warranty and stated that patching the roof would not offer significant savings and would not be warrantied.

I was unable to visually inspect the roof, but I did inspect the ceiling on the interior of the mausoleum. I noted more than two dozen cracks that had staining due to roof leaks, several were dripping water at the time of my visit (which occurred on a dry day) and there is evidence that water has leaked unto occupied crypts. It appears that the roof replacement is a reasonable request as the leaking roof presents a health and safety risk to visitors and employees. RSI has stated that it can begin this project in September of 2018. It seems reasonable that any interior work be postponed until after the new roof is installed.

\$243,000

Culvert Repair

The main driveway that accesses the Mausoleum crosses over a small stream that enters the pond on the property. The culvert that passes under the driveway has buckled, causing the retaining wall to give way and fall toward the pond. The Town has submitted an estimate (Exhibit D) for materials to replace the culvert that passes under the drive and rebuild the road in this area. The town did not submit a request for labor costs but estimated 120 hours of labor. As the crossing is unstable, it appears that this is a reasonable request as the unstable stream crossing is the only access to the mausoleum and crematory and presents a health and safety hazard to visitors and employees.

\$5,100

Lift

The Town reports that the existing lift for entombments is unsafe. I inspected it and it seemed to be in poor repair and all of the safety controls have been overridden to render it operational. The casket lift appears appropriate and is a priority item because the Town will still have to perform entombments. An estimate from Forston Custom Lift Equipment is included. (Exhibit E)

\$20,365

REQUESTS-OTHER RECOMMENDED APPROVALS

Walkways

There are concrete walkways partially surrounding the building, some of which are cracked or unlevel, some areas have sunken or raised creating tripping hazards. There are wooden frames that were not removed after the concrete was poured and there are areas where the concrete pitches toward the building. The Town solicited two bids to remove and replace the walkways, one from Dean Concrete for \$148,750 and one from Middlemiss Plowing and Paving (Exhibit F) of 1221 Knox St., Ogdensburg, NY 13669, for \$66,760. I inspected the walkways with Director Polishook. We noted that there were areas that should be replaced due to the conditions listed above, we also noted several areas that appeared to be in very good condition. Upon inquiry we found that only the uneven, cracked sections will be replaced.

\$66,760

Painting

Due to age and the roof leaks, the interior of the building needs new paint on the ceiling and walls. The exterior stucco is cracked in several areas and delaminating, it should be repaired to prevent further damage. The Town solicited one bid (Exhibit G) to paint the interior ceiling and walls, to repair the exterior stucco and to repaint the exterior of the building from Bill's Painting and Construction Svc LLC, of 653 US 11, Gouverneur, NY 13542.

I noted that the ceiling and walls are stained and discolored in several areas due to the roof leaks. I noted that the stucco exterior is cracked and loose in some areas. I also noted that the east wall of the building has a painted sign along the length of it that reads "Foxwood." As the Town is trying to rebrand the complex as the Oswegatchie Memorial Park, they wish to paint over the Foxwood sign.

\$19,500

Tile/ Carpeting

Due to age and roof leaks, the existing carpet is faded, stained and musty. The Town solicited two bids to remove and replace the floor covering with carpet tiles, one from Wilson Tile & Carpeting for \$57,614 and one from Shultz Flooring Inc. (Exhibit H) of 18464 County Route 69, Adams, NY 13605 for \$33,520.

\$33,520

Doors and Windows

The entrance doors are in need of new sealing and hardware. Several sealed windows have bad seals and are in need of repair. The Town solicited two bids to repair the existing doors and windows, one from Northern Glass for \$155,000 and one for Colton Glass & Door (Exhibit I) of 6085 US 11, Canton NY 13617, for \$22,486.40. I noted that the seals around the main entrance doors are missing, allowing water to penetrate the building. I also noted that several glass panes have blown seals and are foggy.

\$22,486.40

Building Security

The Town has solicited three estimates for a security system at the mausoleum. The Barkleys estimate (Exhibit J) is lowest at \$14,851.72. The Town wishes to be able to monitor activities in the mausoleum as there is no control who enters due to thousands of keys being in circulation.

\$14,851.76

Office Equipment

The Town has requested \$2,057.15 for a computer, \$3,843.26 for office equipment (Exhibit K) and \$14,085 for software. (Exhibit L) These items may be necessary for recording sales, interments and cataloging existing entombments. The current system is incomplete and consists of hand drawn diagrams.

\$19,985.41

Zero-Turn Mower

The Town has requested \$12,686 for a zero- turn mower and provided an estimate from Gamble Distributors. (Exhibit M) this seems appropriate however it does not appear to be necessary until Spring of 2019.

\$12,686

Other Tools and Equipment

The Town has requested \$2,637.64 for a string trimmer, chainsaw, pole saw, gas cans and safety equipment. They have provided an estimate (Exhibit N) from LaBerge & Curtice, Inc., these all seem appropriate.

\$2,637.64

Ram 3500

The Town submitted an estimate for a Ram 3500 (Exhibit O) as an alternative to the Toolcat for snow removal.

\$43,718.50

REQUESTS WE RECOMMEND THAT THE BOARD DENY

Garage Door

Bid from Upstate Door (Exhibit P) to remove and replace the existing garage door for \$1,980. **At the time of my visit the door appeared to be secure and operated properly; we do not anticipate recommending payment to replace this door.**

Heating System

The mausoleum was built in five phases and has four different heating systems. While they are operating currently, Mr. Tuttle stated that they are likely to require repairs or replacement in the future. The Town solicited one estimate (Exhibit Q) to replace the boiler in the garage, replace a boiler and two hot air furnaces in the basement for \$16,200.

At the time of my visit the furnaces appeared to be operating properly; this does not appear to be “maintenance” under the statute.

Lights and Electrical Fixtures

The Town has requested \$8,619 to replace all light bulbs with LED, to replace 10 ceiling fans. The replacement of bulbs was stated as being for efficiency. A list of requested bulbs and fixtures is attached as Exhibit R.

At the time of my visit the lights and fans appeared to be operating properly.

Parking Lot

The Town has submitted a proposal (Exhibit S) to regrade the existing parking lot away from the building, install new drains and move a veterans memorial to allow for ease of plowing. This appears to constitute an improvement as the existing parking lot has been functioning as is.

While this improvement may allow for easier plowing and maintenance, it does not appear to be “maintenance” under the statute.

Driveway Repair

The Town has requested \$2,863 for stone and fabric to resurface the remaining portion of the driveway that is not repaired by the bridge or parking lot.

With the exception of the bridge, the driveway and parking lot appeared operational when I visited the site.

Monument Sign

The Town has submitted an estimate from Witherbee & Whalen (Exhibit T) for \$2,690 for a new granite sign to replace the existing sign. The town wishes to rebrand the cemetery as the Oswegatchie Memorial Park as opposed to the Foxwood.

The cemetery Board has refused a similar request in the past.

Toolcat

The Town has requested \$68,785.95 for a Bobcat "Toolcat". (Exhibit U) I have only found one other cemetery in the state who owns such a piece of equipment but it is the Rochester City cemetery that maintains 196 acres and several miles of roads. **While it may be appropriate for snow removal and maintenance, there are several other options at a far cheaper cost that could be pursued for a 3.6 acre mausoleum/crematory complex with no inground graves.** An estimate for a Ram 3500 pickup truck equipped with a plow and sander for \$43,718.50 was included as an alternative. As the Town definitely has a need for snow removal equipment, the Ram appears to be a reasonable option.

SUMMARY

While many of the items requested fall under the category of maintenance and should be granted, several other items appear to be improvements and should not be approved.

<u>Item(s)</u>	<u>Cost</u>
Roof, culvert and lift (health and safety items)	\$268,465.00
Interior work (painting, flooring, windows, doors)	\$75,506.40
Walkways	\$66,760.00
Security system	\$14,851.76
Office equipment	\$19,985.41
Zero-turn mower and power tools	\$15,323.64
Dodge Ram 3500	\$43,718.50
Total	\$504,610.71

The following items appeared to be functioning at the time of my visit and should be considered improvements and/ or not maintenance under the statute.

<u>Item(s)</u>	<u>Cost</u>
Garage Door	\$1,980
Heating System	\$16,200
Lights	\$8,619
Parking lot/ Driveway	\$43,463
Granite Sign	\$2,690
Tool Cat	\$68,785.95
Total recommended against	\$141,737.95