

STATE OF MICHIGAN JUDICIAL DISTRICT 41 JUDICIAL CIRCUIT COUNTY PROBATE	<b>SUMMONS AND COMPLAINT</b>	<b>CASE NO.</b>  10-14635-CE
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Court address: 400 E. Houghton Ave, Houghton, MI 49855  
 Court telephone no.: (906) 482-5220

Plaintiff name(s), address(es), and telephone no(s).  
 Kevin Grzelak, 7190 Conservation St NE, Ada, MI 49301  
 Emily and Victor Betterly 45595 Superior Rd, Houghton,  
 MI 49931-9764

Defendant name(s), address(es), and telephone no(s).  
 VVQ Land Holdings, LLC  
 46702 Hwy M-26 P.O. Box 414  
 Houghton, MI 49931  
 (906) 482-3000

RECEIVED  
SEP 29 2010  
THOMAS J. MOYLE, JR.

Plaintiff attorney, bar no., address, and telephone no.  
 Steven L. Pence P27172  
 Pence & Numinen, PC  
 102 W. Washington Street, Suite 106  
 Marquette, MI 49855  
 (906) 226-2580

**SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 9/24/10	This summons expires 12/24/10	Court clerk Mary Schoos
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\*This summons is invalid unless served on or before its expiration date.

**COMPLAINT** Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

**Family Division Cases**

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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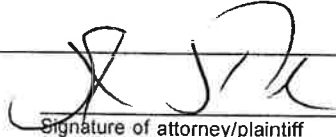
**General Civil Cases**

- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint/  
 A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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**VENUE**

Plaintiff(s) residence (include city, township, or village) Portage Township and Ada, Michigan	Defendant(s) residence (include city, township, or village) Houghton, Portage Township
Place where action arose or business conducted Portage Township	

Date: 9/23/10  
 Signature of attorney/plaintiff: 

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

**PROOF OF SERVICE**

**SUMMONS AND COMPLAINT**

Case No. \_\_\_\_\_

**TO PROCESS SERVER:** You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NON-SERVICE**

**OFFICER CERTIFICATE**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

**OR**

**AFFIDAVIT OF PROCESS SERVER**

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- I served personally a copy of the summons and complaint,
- I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with \_\_\_\_\_  
List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- I have personally attempted to serve the summons and complaint, together with any attachments on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_ Date \_\_\_\_\_ County, Michigan.

My commission expires: \_\_\_\_\_ Date \_\_\_\_\_ Signature: \_\_\_\_\_ Deputy court clerk/Notary public

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_ Attachments

\_\_\_\_\_ on \_\_\_\_\_  
Day, date, time

Signature \_\_\_\_\_ on behalf of \_\_\_\_\_

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF HOUGHTON

KEVIN GRZELAK, EMILY BETTERLY,  
AND VICTOR BETTERY,

Plaintiffs,

File No.: 10-14635-CE  
Hon. Charles Goodman

v

VVQ LAND HOLDINGS, LLC,  
A Michigan limited liability company, and  
THOMAS J. MOYLE, JR. INCORPORATED,  
d/b/a VALLEY VIEW QUARRY,  
a Michigan Corporation,

Defendants.

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Steven L. Pence (P27172)  
Pence & Numinen, P.C.  
Attorneys for Plaintiffs  
102 W. Washington Street, Ste. 106  
Marquette, MI 49855  
(906) 226-2580

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**FIRST AMENDED COMPLAINT AND PETITION FOR DECLARATORY AND  
EQUITABLE RELIEF AND MONEY DAMAGES AND REQUEST FOR JURY TRIAL**

Plaintiffs appear through their attorneys, Pence & Numinen, P.C., by Steven L. Pence, and state the following for their Complaint and Petition for Declaratory and Equitable Relief and Money Damages.

PARTIES

1. Plaintiff Kevin Grzelak is a native of Houghton County, who lives in Kent County, State of Michigan, but owns, pay taxes and enjoys property for recreation in Portage Township, Houghton County, State of Michigan.

2. Plaintiff Emily Betterly resides in the Township of Portage, County of Houghton, State of Michigan.

3. Plaintiff Victor Betterly resides in the Township of Portage, County of Houghton, State of Michigan.

4. Defendant VVQ Land Holdings, LLC, is a Michigan limited liability company with its principal offices located at 46702 Highway M-26, Houghton, MI 49931, in the County of Houghton, State of Michigan.

5. Defendant, Thomas J. Moyle, Jr., Incorporated, d/b/a Valley View Quarry, is a Michigan Corporation with its principal offices located at 46702 Highway M-26, Houghton, MI 49931 in the County of Houghton, State of Michigan.

6. Upon information and belief, Defendant VVQ Land Holdings, LLC purchased certain property in Portage Township in 2004 which was then zoned rural residential.

7. Nevertheless, Defendant VVQ Land Holdings, LLC, in clear violation of the Township Ordinance, began to develop said property for purposes of mining gravel.

8. The noise and dust generated by Defendant Thomas J. Moyle, Jr., Incorporated, d/b/a Valley View Quarry's actions was loud, noxious and intolerable and the enjoyment of life within the neighborhood was often rendered impossible.

9. In the year 2007, full scale mining began including blasting, crushing and the removal of materials with heavy truck traffic and additional noises, dust and pollution in total disregard of the subject ordinance and the requests and needs of residential neighbors.

## JURISDICTION AND VENUE

10. This Court has jurisdiction to grant temporary and permanent equitable relief and all other relief requested in this Complaint and Petition under Michigan Law.

11. Venue is proper since the location of this site is within Houghton County.

## COUNT I NUISANCE

12. Plaintiffs restate allegations 1 through 11 of this Complaint as if fully repeated herein.

13. Portage Township Charter Zoning Ordinance No. 124, provides for the removal and processing of gravel only when authorized by "special use" by the Board of Appeals and only in farm and forest districts (Exhibit A, Ordinance No. 124, § 3.4).

14. Further, such activities are always excluded in rural residential and resort residential districts. (Id)

15. Defendants herein knowingly began gravel operations in violation of an ordinance that was in existence, was clear on its face and presumptively valid.

16. Defendants' maintenance of a gravel operation in a rural residential neighborhood is a nuisance in fact and in law and is both a public and a private nuisance.

17. Defendants have a duty not to maintain a nuisance.

18. Defendants have breached that duty and is liable to Plaintiffs for their damages.

19. Plaintiff Betterleys have suffered special harm by virtue of their being the family who lives, full-time, closest to this noxious and inappropriate operation.

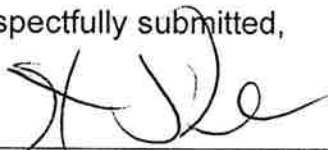
20. Plaintiff Betterleys have and will continue to suffer the grievous effects of often constant, annoying, loud noise pollution such that their peace of mind and ability to enjoy their family home is severely impaired.

21. Plaintiff Grzelak has had the usage and value of his recreational property diminished and devalued by Defendant's actions.

22. Defendants' actions have diminished values of other neighboring property and Defendants' wanton misconduct has, or will, erode the tax base of the township by lowering property values of all neighbors who are within sight or sound of Defendants' illegal operation.

THEREFORE, Plaintiffs pray for damages including those which would compensate them for emotional distress and the loss of enjoyment of life occasioned by Defendants' misconduct and, the loss of property values caused thereby and also request this Honorable Court issue an Order immediately and permanently abating the nuisance.

Dated: September 23, 2010

Respectfully submitted,  
  
By: \_\_\_\_\_  
Steven L. Pence (P27172)  
Pence & Numinen, P.C.  
Attorneys for Plaintiffs  
102 W. Washington Street, Ste. 106  
Marquette, MI 49855  
(906) 226-2580

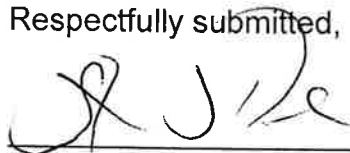
REQUEST FOR JURY TRIAL

Plaintiffs herein request a jury trial for all claims cognizable by a jury.

Respectfully submitted,

Dated: September 23, 2010

By:

A handwritten signature in black ink, appearing to read 'S. Pence', written over a horizontal line.

Steven L. Pence (P27172)  
Pence & Numinen, P.C.  
Attorneys for Plaintiffs  
102 W. Washington Street, Ste. 106  
Marquette, MI 49855  
(906) 226-2580

**EXHIBIT A**

Mary Schoos 71P  
Register of Deeds  
Houghton County, Register  
Page 1 of 71 MS 119/756  
PAU Date 01/30/2001 Time 16:09:37  
FEE: 149.00

PORTAGE CHARTER TOWNSHIP

ZONING ORDINANCE

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ORDINANCE NO. 124

Portage Charter Township of Houghton County, Michigan

Charter Township Hall  
Box 750, Green Acres Road  
Houghton, Michigan 49931  
Telephone (906) 482-4310



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SECTION 1 - INTRODUCTION

1.1 AUTHORITY

Whereas, the Township Board, Charter Township of Portage, Houghton County, Michigan, deems it necessary, in order to conserve the value of property in the Township and to the end that building development may be directed to the best advantage of the entire Township, and may otherwise be promoted in accordance with a well considered plan for the use and development of all property throughout the Township.

NOW THEREFORE, BE IT ORDAINED BY THE TOWNSHIP BOARD OF THE CHARTER TOWNSHIP OF PORTAGE, HOUGHTON COUNTY, MICHIGAN, UNDER AUTHORITY OF PUBLIC ACT 184 OF 1943, AS AMENDED:

1.2 PURPOSE

This Ordinance is based on the Portage Charter Township General Development Plan and is designed:

1. To promote and protect the public health, safety, morals, and general welfare of the people;
2. To divide the Township into zones or districts restricting and regulating therein the location, erection, construction, reconstruction, alteration and use of buildings, structures, and land for residential, business and manufacturing and other specified uses;
3. To protect the character and the stability of the residential, business, and manufacturing areas within the Township, and to promote the orderly and beneficial development of such area(s) in accord with sound development policies;
4. To provide adequate light, air, privacy and convenience of access to property;
5. To regulate the intensity of use of lot areas, and to determine the area of open spaces surrounding buildings necessary to provide adequate light and air and to protect the public health;
6. To establish building lines and the location of buildings designed for residential, business, manufacturing, or other uses with such areas;
7. To fix reasonable standards to which buildings or structures shall conform;
8. To prohibit uses, buildings or structures incompatible with the character of development or intended uses within specified zoning districts;
9. To prevent additions, alterations or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations imposed hereunder;
  - a. To limit congestion in the public streets and protect the public health, safety, convenience and general welfare by providing for the off-street parking of motor vehicles and the loading or unloading of commercial vehicles;
  - b. To protect against fire, explosion, noxious fumes, and other hazards in the interest of the public health, safety, comfort and general welfare;
  - c. To prevent the overcrowding of land and undue concentration of structures, so far as is

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possible and appropriate in each district, by regulating the use and bulk of buildings in relation to the land surrounding them;

- d. To conserve the taxable value of land and buildings throughout the Township;
- e. To provide for the control of nonconforming use of land, buildings and structures which are adversely affecting the character and value of desirable development in each district, and;
- f. To define and limit the powers and duties of the administrative officers and bodies as provided herein.

### 1.3 INTENT

An Ordinance dividing the Charter Township of Portage, Houghton County, Michigan into districts for the purpose of classifying, regulating and restricting the location of trades, industries and commercial enterprises, and the location of buildings arranged, intended and designed for specified uses; of regulating and limiting the height and bulk of buildings hereafter erected; of classifying, regulating and determining the area of front, rear and side yards, courts, and other open spaces about buildings; and of regulating and limiting the intensity of the use of land and lot areas within the Township creating a Board of Appeals; providing for administration, enforcement, and amendment of such regulations; defining certain terms used in said Ordinance; providing penalties for its violation; and designating the time when the Ordinance shall take effect.

### 1.4 ABROGATION AND GREATER RESTRICTIONS

- 1. Where the conditions imposed by any provision of this Zoning Ordinance upon the use of land or buildings, or upon the bulk of buildings are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this Ordinance or any other law, Ordinance, resolution, rule, or regulation of any kind, the regulations which are more restrictive (or which impose higher standards or requirements) shall govern.
- 2. This Ordinance is not intended to abrogate any easement, covenant, or any other private agreement provided that where the regulations of this Ordinance are more restrictive (or impose higher standards or requirements) than such easements, covenants, or other private agreements, the requirements of this Ordinance shall govern.

### 1.5 INTERPRETATION

In their interpretation and application, the provisions of this Zoning Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and welfare.

### 1.6 SEVERABILITY

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

### 1.7 TITLE

This Ordinance shall be known, cited, and referred to as the "Portage Charter Township Zoning Ordinance of 2000". ✓

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SECTION 2 - GENERAL PROVISIONS

2.1 JURISDICTION

The jurisdiction of this Ordinance shall include all lands and waters within the unincorporated areas of Portage Charter Township. All buildings erected hereafter, all uses of land or buildings established hereafter, all structural alterations or relocation of existing buildings occurring hereafter, and all enlargements of or additions to existing uses occurring hereafter shall be subject to all regulations of this Ordinance which are applicable to the zoning districts in which such buildings, uses, or land shall be located.

2.2 USE RESTRICTIONS

1. Principal Uses - Only those principal uses specified for a zoning district, their essential services, and the following uses shall be permitted in that district.
2. Accessory Uses and Structures - Accessory uses and structures are permitted in any district, but not until their principal structure is under construction.
3. Temporary Dwellings - No structure shall be used for dwelling purposes that does not comply with the requirements of this Ordinance or any applicable Building Codes. No garage or other accessory building, basement, partial or temporary structure whether of a fixed or portable construction shall be erected or moved onto a lot and used for any dwelling purposes unless authorized by the issuance of a temporary permit by the Zoning Administrator and satisfying all of the conditions thereof. However, temporary usage of lots of record, either with or without dwellings may be permitted for wheeled vehicles designed for sleeping or camping by temporary permit from the Zoning Administrator.
4. Trailer Dwellings - Shall be treated as single family dwellings.
5. Special Uses - Special uses and their accessory uses are permitted in districts as specified, but only according to the special use procedure in Section 8.
6. Unclassified or Unspecified Uses - In case of uncertainty where the Zoning Administrator is unable to determine literally whether a use is permitted as a principal or accessory use, he shall consult the Board of Appeals for an interpretation.
7. Temporary Uses - Temporary uses, such as real estate field offices or shelters for materials and equipment being used in the construction of a permanent structure, are permitted while sales or construction are in progress.

2.3 SITE RESTRICTIONS

1. Soil Conditions - No land shall be used or structure erected where the land is unsuitable for such use of structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low percolation rate or bearing strength, erosion susceptibility, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of the Township. The Planning Commission, in applying the provisions of this section, shall in writing recite the particular facts upon which it bases its conclusion that the land is not suitable for certain uses. The applicant shall have an opportunity to present evidence supporting suitability, if he so desires. Thereafter, the Planning Commission may affirm, modify, or withdraw the determination of unsuitability.

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2. All lots shall abut upon a right-of-way with at least forty (40) feet of frontage.
3. Any lot of record created prior to the effective date of this Ordinance without any frontage on a public street or way shall not be occupied unless access to a street be provided by an easement or other right-of-way no less than twenty (20) feet in width.
4. The finished surface of ground areas outside the walls of any building or structure hereafter erected, altered or moved shall be so designed that surface water shall flow away from the building walls in such a direction and with such a method of collection that inconvenience or damage to adjacent properties previously developed with existing grades shall have priority.
5. Nothing within this Ordinance shall be construed to prevent compliance with an order by the appropriate authority to correct, improve, strengthen, or restore to a safe or healthy condition any part of a building or premise declared unsafe or unhealthy.
6. Reduction of Joint Use - No lot, yard, parking area, building area, or other space shall be reduced in area or dimension so as not to meet the provisions of this Ordinance. No part of any lot, yard, parking area, or other space required for a structure or use shall be used for any other structure or use.
7. Substandard Lots - Any lot in a single ownership, which ownership was of record at the time of the adoption of this Ordinance, that does not meet the requirements of this Ordinance for yards, courts, or other area of open space may be utilized for a single family dwelling, provided the requirements for such yard or court area, width, depth, or open space is within seventy-five percent (75%) of that required by terms of this Ordinance and further provided that satisfactory arrangements can be made of sewage disposal and water supply. The purpose of this provision is to permit utilization of recorded lots which lack adequate width or depth as long as reasonable living standards can be provided.

#### 2.4 ACCESSORY USES

In any zoning district, accessory uses, incidental only to a permitted use, are permitted when located on the same lot; provided, however, that such accessory uses shall not involve the conduct of any business trade or industry.

#### 2.5 ACCESSORY BUILDING

1. In any zoning district, an accessory building may be erected, either detached from the permitted principal building or as an integral part of the permitted principal building. The architectural character of all accessory buildings shall be substantially compatible with that of the principal building.
2. No accessory building or structure shall include residential or living quarters for human beings.

#### 2.6 GARAGES OCCUPIED AS DWELLING UNITS

Any building erected as a garage or in which the main portion is a garage shall in no case be occupied for dwelling purposes unless it is auxiliary to a residence already being occupied upon the premises and unless it also complies with all the provisions of this Ordinance relating to buildings for residence purposes.

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**2-7 COMMERCIAL AND INDUSTRIAL USES PROHIBITED IN RESIDENTIAL STRUCTURES**

Residential structures or buildings accessory thereto and additions to the same shall not be used for commercial or industrial purposes, except as otherwise permitted as home occupations,

**2.8 DOUBLE FRONTAGE LOTS**

Buildings on lots having frontage on two (2) intersecting or nonintersecting streets shall comply with front yard requirements on both such streets where practical,

**2.9 ADDITIONAL SETBACKS FOR STRUCTURES ADJACENT TO MAJOR STREETS**

Notwithstanding any other provision of this Ordinance, no building or structure shall be hereafter constructed, erected or enlarged on a lot abutting a street designated as a major street on the Portage Charter Township General Development Plan", as the same shall be amended from time to time, unless the following minimum building setbacks measured from the street centerline are maintained:

1. State and Federal Trunklines and Primary Roads—one hundred (100) feet.
2. Secondary Roads—eighty (80) feet.

**2.10 CONTROL OF HEAT, GLARE, FUMES, DUST, NOISE AND VIBRATION**

Every use shall be so conducted and operated that it does not create a nuisance and so that it is not dangerous by reason of heat, glare, fumes, dust, noise or vibration beyond the lot on which the use is located.

**2.11 TRANSITION ZONING**

The following transitional uses are permitted on premises in a R District where the side yard adjoins a B or M District:

1. The first such lot or lots in single ownership or the first one hundred fifty (150) feet thereof, whichever is the lesser, may be utilized in accordance with the next less restricted zone requirements.
2. The first one hundred fifty (150) feet thereof may be utilized for off-street parking.
3. Any single principal structure located or built completely upon the first one hundred fifty (150) feet thereof may be used for homes or business provided:
  - a. Yards must meet the district requirements in which such lot is located; and,
  - b. The building shall conform to the residential character of the neighborhood.

**2.12 TEMPORARY USES OR STRUCTURES REQUIRING ZONING ADMINISTRATOR AUTHORIZATION**

1. Upon application, the Zoning Administrator may issue a permit for a temporary office building or yard for construction materials and/or equipment which is both incidental and necessary to construction at the site where located. Each shall be valid for a period of not more than six (6) calendar months and may be renewed by the Zoning Administrator for four (4) additional

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successive periods of six (6) calendar months or less at the same location if such building or yard is still incidental and necessary to construction at the site where located.

2. Upon application, the Zoning Administrator may issue a permit for a temporary office which is both incidental and necessary for the sale or rental of real property in a new subdivision or housing project. Each permit shall specify the location of the office and area and shall be valid for a period of not more than six (6) calendar months and may be renewed by the Zoning Administrator for four (4) additional successive periods of six (6) calendar months or less at the same location if such office is still incidental and necessary for the sale or rental of real property in a new subdivision or housing project.

#### 2.13 SITE DEVELOPMENT PLAN

To fully insure the safety, convenience and well-being of the citizens of the Township and of the intended occupants of a particular use, the Planning Commission is hereby empowered as an administrative body to require and thereafter review a site development plan for all principal uses which require more than four (4) parking spaces prior to the issuance of a building permit. Approval shall be subject to the following procedures and conditions:

1. The Planning Commission shall determine that the proposed development is arranged:
  - a. To provide convenient and safe automobile circulation and parking in relation to streets, pedestrian walkways and adjoining properties or parking areas;
  - b. To insure adequate visual distances;
  - c. To minimize conflicts of traffic movements on public streets and upon the property involved;
  - d. To insure the valuation and reasonable use of adjacent properties and the safety, convenience, and well-being of adjoining property owners and the citizens of the Township;
  - e. To insure adequate drainage without jeopardizing adjacent or downstream properties;
  - f. To maintain proper setbacks as set forth in this Zoning Ordinance;
  - g. To insure adequate paved parking areas and the proper identification of loading zones and storage areas;
2. To accomplish these goals, the Planning Commission may recommend the following:
  - a. Entries and exits for vehicular traffic;
  - b. The direction of traffic flows on off-street parking areas and drives;
  - c. The number and location of entries and exits onto public streets;
  - d. The use of existing entries and exits on adjacent properties to minimize traffic hazards on public streets.
3. Further, the Planning Commission is empowered to require a performance bond or certified check

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in an amount equal to five percent of the cash value of the building permit construction cost or \$500, whichever is greater, such bond to be posted by the applicant in order to insure that the development will be executed in accordance with the approved site development plan, and if not, said performance bond or certified check shall be forfeited. In cases where the provisions of this Section has not been met, the amount of the aforementioned performance bond or certified check shall be used by the Township to return the property to a safe and healthy condition, and the balance, if any, shall be returned to the applicant.

4. Each development shall be under construction within one (1) year after the date of final approval by the Planning Commission. If the developer does not fulfill this provision, the Commission may grant a sixty (60) day extension provided the developer presents reasonable evidence to the effect that said development has encountered unforeseen difficulties but is then ready to proceed. Should neither of the aforementioned provisions be fulfilled or a sixty (60) day extension has expired without construction underway, the site development plan shall be null and void.
5. Upon approval of said plan, the Chairman of the Planning Commission shall sign three (3) copies thereof. One (1) signed copy shall be made a part of the Commission's files and one (1) shall be forwarded to the Building Administrator for issuance of a building permit. The third copy shall be returned to the applicant.

#### 2.14 GENERAL LIGHTING AND SCREENING REQUIREMENTS

1. All lighting upon any premises, regardless of zone, shall be so arranged that such lighting does not produce any glare which is a nuisance or annoyance to residents or occupants of adjoining premises.
2. Except as otherwise provided in this zoning Ordinance, all premises used for commercial or industrial purpose shall be screened from adjoining premises by either of the following:
  - a. A natural compact planting area of deciduous or evergreen trees which maintain their density and screening effect throughout the calendar year, not less than five (5) feet in height in one growing season and maintained in a neat and attractive manner.
  - b. An artificial wall or fence of sufficient density or compactness to screen the activities of the business or industry from the view of occupants of adjoining premises, not less than five (5) feet in height and maintained in a neat and attractive manner.
  - c. No such planting area, wall or fence shall be closer than ten (10) feet from any adjoining street right-of-way line.
3. In the event of any controversy as to the adequacy of any proposed or existing screening or the creation of any nuisance or annoyance by artificial lighting, the Board of Appeals shall have the right and is hereby given the authority to determine whether the same is in violation of these screening and lighting provisions and the purposes sought to be accomplished hereby.

#### 2.15 WATER FRONT LOTS IN RESIDENTIAL DISTRICTS

No principal building or structure intended for human occupancy in an R-1, R-2, R-3 or R-4 District shall be located closer than fifty (50) feet to the edge of a river, lake or stream. However, in those cases where high banks of ten (10) feet or more border a river, lake or stream, buildings or structures for human occupancy may be closer if it is demonstrated that the soil structure lends itself to adequate load bearing and percolation rates and the building or structure is designed and engineered for such sites.

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SECTION 3 - ZONING DISTRICTS

3.1 ESTABLISHMENT

For the purpose of this Ordinance, the Township of Portage is hereby divided into the following zoning districts:

- FF FARM AND FOREST DISTRICT
- RUR RURAL RESIDENTIAL DISTRICT
- RER RESORT RESIDENTIAL DISTRICT
- LAR LAKESHORE RESIDENTIAL DISTRICT
- R-1 LOW DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT
- R-2 MEDIUM DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT
- R-3 HIGH DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT
- R-4 MEDIUM DENSITY MULTI-FAMILY RESIDENTIAL DISTRICT
- B-1 NEIGHBORHOOD BUSINESS DISTRICT
- B-2 GENERAL BUSINESS DISTRICT
- M-1 GENERAL MANUFACTURING DISTRICT

With respect to the Statement of Intent contained in Section 1.3 of this Ordinance, Portage Charter Township recognizes the diverse nature of the zoning districts under this legislation. Provided, however, that it shall be a violation of this Ordinance to engage in the care, raising or possession, for profit or not for profit, of farm animals, such as cows, horses, sheep, goats, pigs, fowl, or the like, in zoning districts LAR, R-1, R-2, R-3, R-4, B-1, B-2 or M-1 unless the same are confined within a licensed veterinary clinic for medical treatment or boarding in a zoning district authorizing the same, or as otherwise authorized herein.

3.2 DISTRICT BOUNDARIES

Boundaries of these districts are hereby established as shown on the maps entitled "Official Zoning Map" which accompanies and is hereby declared to be a part of this Ordinance. Where uncertainty exists as to the boundaries of zoning districts as shown on the zoning map, the following rules of construction and interpretation shall apply:

1. Boundaries indicated as approximately following the centerline of streets, highways, or alleys shall be construed to follow such centerlines.
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
3. Boundaries indicated as approximately following township boundaries shall be construed as following township boundaries.



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4. Boundaries Indicated as approximately following shorelines or lake or stream beds shall be construed as following such shorelines or lake or stream beds; and in the event of change in the location of shorelines or lake or stream beds such shall be construed as moving with the shoreline and lake or stream bed.
5. Lines parallel to streets without indication of the depth from the street line shall be construed as having a depth of four hundred (400) feet from the front lot line.
6. Boundaries indicated as approximately following property lines, section lines or other lines of a government survey shall be construed as following such property lines, section lines or other lines of a government survey as they exist as of the effective date of this Ordinance or applicable amendment thereto.

### 3.3 AREAS NOT INCLUDED WITHIN A DISTRICT

In every case where land has not been included within a district on the zoning map, such land shall be in the FF (Farm and Forest District).

Vacation of public streets and alleys shall cause the land vacated to be automatically placed in the same district as the adjoining district. If the vacated street or alley adjoins two different zones, the center line of the vacated street or alley shall constitute the zone boundary.

### 3.4 FARM AND FOREST, RURAL RESIDENTIAL AND RESORT RESIDENTIAL DISTRICTS

#### 1. FF - FARM AND FOREST DISTRICT

- a. Purpose - The Farm and Forest District is established as a zone in which agriculture, forestry and certain related uses are encouraged as the principal uses of land. The specific intent is to facilitate the proper use of lands best suited to agriculture and forestry through preventing the mixture of urban uses which creates incompatibility and conflict, places unbalanced tax loads on agricultural and forestry lands to help pay for urban services, and contributes to the premature termination of agricultural and forestry pursuits. This zone is also designed to prevent health hazards brought about by the illogical placement of inappropriately high residential densities in the otherwise open countryside.
- b. Permitted Uses
  - (1) Agricultural and forestry uses, including but not limited to, horticulture; forestry; crop and tree farming; gardening; dairy, stock and poultry farming; and the operation of any machinery or vehicles and other uses customarily incidental thereto; but excluding slaughter houses, fertilizer works, plants for the processing of animal skins or hides, and plants for the reduction of animal matter.
  - (2) Agricultural supply outlets.
  - (3) Dwellings.
  - (4) Public or private community facilities such as schools, churches, cemeteries, libraries, parks, recreational facilities, and similar uses.
  - (5) Signs as permitted in Section 5 of this Ordinance.

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(6) Mobile homes

(7) Removal and processing of sand, gravel, or other such minerals when authorized as a special use by the Board of Appeals. In considering such authorization, the Board of Appeals shall consider the following standards:

(a) The size of the property from which such sand, gravel, or other such materials are to be removed;

(b) The amount of sand, gravel, or other such material which is to be removed;

(c) The effect of such removal on adjoining property;

(d) The effect of such removal in terms of causing a safety hazard, creation of erosion problems, altering the groundwater table and other problems of this nature;

(e) The potential for such removal to cause the creation of sand blows, stagnant water pools, bogs, or any type or kind of injurious areas;

(f) The effect of such removal on the environment and the natural topography and the potential destruction of natural resources;

(g) The potential traffic congestion and problems because of trucks or other vehicles or means utilized to haul and transport the materials removed;

(h) The ability of the applicant to return the disturbed area to a safe and useful condition through acceptable reclamation measures and techniques.

c. Accessory Uses, including the following:

(1) Home occupations and neighborhood related services in a single-family dwelling provided that such use is incidental to the main use as a dwelling, and further provided that such use is limited to a person actually residing in the dwelling.

(2) Living quarters for hired help such as a tenant house, mobile home, apartment, or room for persons employed on the premises.

(3) Barns and other bona fide farm buildings or structures.

(4) Private garages and private greenhouses.

(5) Roadside stands with adequate parking, and parking as regulated in Section 4.

(6) Kennels.

(7) Riding stables.

d. Special Uses:

(1) Junkyards: The provisions of Township Ordinance No. 111, regulating the "Open Storage of Junk", or any amendments thereto, shall be applicable to any junkyard or area

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used for the storage of motor vehicles or parts thereof.

(2) Public utility and service uses such as electric substations, gas regulator stations, telephone transmission structures, radio, radio-television-microwave relay towers, water reservoirs, or pumping stations, government buildings (see Section 9. Special Uses), transportation facilities, and similar uses.

e. Bulk Requirements:

(1) Lot:

(a) Minimum Lot Area

Single Family Dwelling	1 acre
Mobile Home	1 acre
Other Uses	1 acre

(b) Minimum Frontage

All Uses	125 feet
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(2) Minimum Yards:

Front	30 feet
Side	20 feet
Rear	30 feet

(3) Buildings:

(a) Minimum Floor Area

Single/Multi Family Dwelling	1,200 square feet per dwelling unit
Mobile Homes	1,200 square feet per dwelling unit

(b) Maximum Height 35 feet

2. RUR - RURAL RESIDENTIAL DISTRICT

a. Purpose - The Rural Residential District is established to permit a controlled mixture of dwellings in an area without public sewer and water services. This district is intended to provide an orderly transition between F & F and higher density of the urban areas.

b. Permitted Uses

(1) Dwelling, single and multi family dwellings.

(2) Mobile home.

(3) Agriculture and forestry.

(4) Public or private community facilities such as schools, churches, cemeteries, libraries, parks, recreational facilities, hospitals, institutions, etc. (Also see Section 9 of this

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Ordinance).

(5) Signs as permitted in Section 5 of this Ordinance.

(6) Neighborhood services.

c. Accessory Uses

(1) Home occupations and neighborhood related services in a single-family dwelling provided that such use is incidental to the main use as a dwelling, and further provided that such use is limited to a person actually residing in the dwelling.

(2) Living quarters for hired help such as a tenant house, mobile home, apartment, or room for persons employed on the premises.

(3) Barns and other bona fide farm buildings or structures.

(4) Private garages and private greenhouses.

(5) Roadside stands with adequate parking, and parking as regulated in Section 4.

(6) Riding stables.

d. Special Uses

(1) Public utility and service uses such as electric substations, regular stations, telephone transmission structure, radio-television-microwave relay towers, water reservoirs or pumping stations, government buildings, transportation facilities and similar uses. (See Section 9, Special Uses)

e. Bulk Requirements

(1) Lot:

(a) Minimum Lot Area

Single/Multi Family Dwelling	1 acre
Mobile Home	1 acre
Other Uses	1 acre

(b) Minimum Frontage

All Uses	125 feet
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(2) Minimum Yards:

Front	30 feet
Side	20 feet
Rear	30 feet

(3) Buildings:

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(a) Minimum Floor Area

Single/Multi Family Dwelling	1,200 square feet per dwelling unit
Mobile Home	1,200 square feet per dwelling unit

(b) Maximum Height 35 feet

3. RER - RESORT RESIDENTIAL DISTRICT

- a. Purpose - The purpose of this District is to accommodate a compatible mixture of seasonal and year-round housing types along with controlled expansion of seasonal units around Otter Lake. Densities must necessarily be relatively low because public sewer and water will not be available.
- b. Permitted Uses
  - (1) Single-family dwellings.
  - (2) Mobile homes.
  - (3) Agricultural and forestry activities as regulated by Section 3.4 of FF and 2b.(3) of RUR.
- c. Accessory Uses
  - (1) Home occupation in a single-family dwelling provided that such use is incidental to the main use as a dwelling, and further provided that such use is limited to a person actually residing in the dwelling.
  - (2) Private garages.
  - (3) Roadside stands located at least twenty-five (25) feet from the front property line and parking as regulated in Section 4.
- d. Special Uses
  - (1) Public or private community facilities such as schools, churches, cemeteries, libraries, parks, recreational facilities, hospitals, institutions, etc. (Also see Section 9 of this Ordinance.)
  - (2) Public utility and services uses such as electric substations, gas regulator stations, telephone transmission structures, radio-television-microwave relay towers, water reservoirs or pumping stations, government buildings, transportation facilities and similar uses. (See Section 9, Special Uses.)
  - (3) Public boat landings, docks or access points for pleasure or fishing boats and buildings for storage of boats.
  - (4) Dwelling units for seasonal occupancy.
  - (5) Commercial boat landings and related facilities.