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January 12, 2010

Victoria Trinko, Clerk  
Town of Cooks Valley  
3717 CTH A  
Bloomer WI 54724

Re: **Notice of Claim and Claim - \$893.80, Wis. Stats**

Dear Clerk Trinko:

On behalf of David L. LaGesse and Dawn A. LaGesse, please find enclosed per \$893.80(1), Wis. Stats., their Notice of Claim and Claim with respect to issues pertaining to non-metallic mining in the Town of Cooks Valley.

Kindly process this in accord with the law.

Very truly yours,

**WELD, RILEY, PRENN & RICCI, S.C.**

Brian M. Nodolf

BMN/aal  
Enclosure  
c: Clients (w/enc.)

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**NOTICE OF CLAIM AND CLAIM**  
**§ 893.80, Wis. Stats.**

David L. LaGesse and Dawn A. LaGesse, by and through their attorney, Brian M. Nodolf, of the law firm of Weld, Riley, Prenn & Ricci, S.C., of Eau Claire, Wisconsin, hereby file the following Notice of Claim and Claim against the Town of Cooks Valley, Chippewa County, Wisconsin.

1. David L. LaGesse and Dawn A. LaGesse, husband and wife, are real estate owners in the Town of Cooks Valley ("Town").
2. The Town has adopted and has indicated to the Claimants, its intent to enforce what it calls Chapter 19, Mining Ordinance.
3. The Town is, as of the date of this Notice of Claim and Claim, not a party to the Chippewa County Zoning Code.
4. Chippewa County has enacted and enforces a county-wide zoning ordinance under §59.69, Wis. Stats.
5. Chapter 19 of the Town Code constitutes a zoning ordinance insofar as it pervasively prohibits or limits the use of land within the Town and has not been adopted in accord with the substantive and procedural requirements of §60.62, Wis. Stats.; to-wit, upon information and belief it was not adopted following either a referendum vote of the electors of the Town or action of the Town Meeting, nor did the Chippewa County Board of Supervisors approve of the adoption and enforcement of said ordinance.
6. That to the extent it can be contended by the Town that Chapter 19 is not a zoning ordinance, it is an excess of limited delegation of police powers. General power ordinances may only be adopted by a Town Board subsequent to the Town Board's adoption of village powers pursuant to Wis. Stat. § 60.22(3). To date, the Town does not possess properly adopted village powers and therefore may not adopt Chapter 19.
7. Further, if it is determined that Chapter 19 is not a zoning ordinance and is not an excess of limited delegation of general police powers, Chapter 19 fails to contain reasonable standards against which the Town will exercise discretionary authority to grant or deny non-metallic mining permits and, as such, is arbitrary and capricious, constituting a denial of due process and is therefore unconstitutional.
8. Further, if it is determined that Chapter 19 is not a zoning ordinance, is not an excess of limited delegation of general police powers, and is not an unconstitutional police power ordinance, it is an invalid police power ordinance. Chapter 19 is an invalid police power ordinance as it was not adopted utilizing the required legal procedures, is a draft/preliminary version only, and does not include the required, properly adopted application and corresponding permit.

9. Finally, even if Chapter 19 is a valid and enforceable police power ordinance, which Claimants strenuously deny, Claimants have an 11.47 acre pit, as is referenced in their vesting documents, that pre-exists Chapter 19 and is therefore exempt from Chapter 19 pursuant to Section 2.08 of said Chapter.

10. That the Claimants have permitted non-metallic mining in their 11.47 acre pre-existing pit for financial benefit in the past, and desire and intent to do so in the future.

WHEREFORE, the Claimants request the following relief of and from the Town:

(A) That the Town acknowledge that Chapter 19 was adopted in violation of §60.62, Wis. Stats., and that it is inapplicable to the Claimants' use of their existing 11.47 acre pit.

(B) That the Town acknowledge that Chapter 19 is unconstitutional and invalid and therefore will not be enforced.

(C) That the Town acknowledge that the Claimants' 11.47 acre pit pre-exists Chapter 19 and is therefore exempt from Chapter 19 pursuant to Section 2.08 of said Chapter.

Further, that in lieu of the Town acknowledging the above, the Claimants intend to pursue a declaratory judgment action in Circuit Court for Chippewa County, seeking to invalidate Chapter 19, to enjoin the Town from enforcing it against the Claimants and seeking the Claimants' costs and disbursements of such an action.

Dated this 12th day of January, 2010.

**WELD, RILEY, PRENN & RICCI, S.C.**

By: 

Brian M. Nodolf  
State Bar No. 1041814  
Attorneys for Claimants

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