

Bay Township Cemetery Ordinance

Bay Township Ordinance No. 13-B

**Bay Township
Charlevoix County, Michigan**

Adopted 10-12-2023

Effective 11-12-2023

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THE TOWNSHIP OF BAY, COUNTY OF CHARLEVOIX, MICHIGAN, ORDAINS:

Section 1. Title

This Ordinance shall be known and cited as the "Bay Township Cemetery Ordinance."

Section 2. Purpose and Intent

The Bay Township Board recognizes and concludes that the proper and reasonable maintenance, appearance and use of the cemetery or cemeteries owned or controlled by the Township is an important function of the government of the Township. It is also important that burials, disinterments and other matters associated with a municipal cemetery are handled in a respectful and proper way in order to promote the safety, public health and general welfare of the community. The Township Board finds that the adoption and enforcement of this Ordinance is in the best interest of the property owners and residents of the Township.

Section 3. Definitions

Base: A base is the flat component upon which a memorial sets and is composed of the same material as the memorial.

Board: Board refers to Bay Township Board of Trustees.

Burial space: A burial space shall consist of a land area four (4) feet wide and ten (10) feet in length.

Burial-transit permit: A burial-transit permit is legal permission from local authorities for a burial to occur.

Cemetery lot: A cemetery lot shall consist of two burial spaces and is eight (8) feet wide and ten (10) feet in length.

Cemetery Lot Certificate: A cemetery lot certificate is the form approved by the Township Board of Trustees which is given to the qualified purchaser of a right to bury upon a cemetery lot at the time of purchase and designates specifically which lot is assigned to that purchaser. It does not convey "actual title ownership" but conveys right of burial in the designated lot. The certificate will indicate each burial space assigned, the name of the specific person who shall be interred in that burial space upon death and are subject to all the township rules, regulations and ordinance requirements.

Cremains: Cremains are the cremated remains of a human body (i.e., Ashes).

Decorations: Decorations include but not limited to statuary, small flower pots, windchimes, personal items, trinkets etc. that are loose in the planting area.

Disinterment: Disinterment is the act of exhuming or digging up remains from a burial space.

Foundation: A foundation is placed flush with the ground upon which a monument or marker is placed.

Green burial: A green burial is the cremation or full-body burial in biodegradable wooden box or shroud, with no embalming fluids or vault.

Headstone: A headstone is the most common form of a memorial for a grave site.

Immediate family: Immediate family is defined as the purchaser's spouse or domestic partner, parents and grandparents, children and grandchildren, brothers and sisters, mothers-in-law and fathers-in-law, brothers-in-laws and sisters-in-laws, daughters-in-laws and sons-in-laws. Adopted, half, and step members are also included in immediate family.

Infant: Infant is a child who is two years or younger at the time of death.

Interment: Interment is the act of burial of bodily remains.

Lot Marker: A lot marker refers to any means used by the cemetery to locate corners of a specific lot.

Marker: A marker is a flat or small upright slanted memorial for one or more individual's burial space or spaces within a lot.

Memorial: A memorial is a marker or monument used to identify a burial within a specified burial space or spaces within a lot.

Monument: A monument is an upright memorial, that marks one or more individual's burial in a lot of the same family or group of lots of the same family.

Plat map: A plat map is the recorded map and associated documents that show the layout of numbered lots, roads, and property markers.

Township: Township refers to Bay Township.

Township cemetery or cemetery: Township cemetery or cemetery is any cemetery owned, operated and/or controlled by the Township for the interment of the human dead.

Township Clerk: The township clerk is the elected official of the Township.

Sexton: The sexton is an employee of Bay Township who reports to the Township Clerk and is responsible for abiding by Township Board of Trustees approved job description.

Statuary: A statuary is a statue or free-standing sculpture carved or cast in a durable stone or metal.

Vault: A vault is a sealed outer receptacle that houses the casket and is made of metal, natural stone, concrete, or newly developed reinforced products. It protects the casket from the weight of the earth and heavy maintenance equipment that may pass over the grave from collapsing the coffin beneath. It also helps resist water, preserves the beauty of the cemetery by preventing the ground from settling and maintenance expense.

Vandalism: Vandalism is the act of destroying, defacing, littering, dumping, applying graffiti or otherwise injuring any monument, sign, tree, plantings or other lawful items located within a township cemetery.

Section 4. Sale of Cemetery Lots; Nontransferable (Cemetery Lot Certificates)

- (a) Cemetery lots shall be sold by the Township for the purpose of burial for the purchaser of a lot, or his or her immediate family. No sale shall be made to funeral directors or others, except for those acting as an agent for an eligible purchaser. Funeral homes cannot purchase lots for representatives of the deceased.
- (b) All sales and transfers of cemetery lots shall be made on a form approved by the Township Board, which grants a right of burial only and does not convey any other title or right to the cemetery lot sold. Such forms shall be signed by the Township Clerk, and shall then constitute a permit.
- (c) Cemetery lots may be sold by the Township to any resident or taxpayer of the Township. Cemetery lots will not be sold to nonresidents. The Township Clerk is granted the authority to vary the aforesaid restriction on sales where the purchaser discloses sufficient personal reason for burial within the Township through previous residence in the Township or relationship to persons interred in the Township cemetery involved. Any such decision by the Township Clerk (either granting or denying such variance) may be overturned by the Township Board pursuant to Section 20 hereof.
- (d) At the time of purchase from the Township, each cemetery lot's burial space shall be assigned the name of the specific person who shall be interred in that burial space. Each such person must be a member of the immediate family of a qualified purchaser. If the owner of a burial space desires to effectuate a name change regarding the assigned burial space, that person must request in writing the change to another eligible person and receive approval for the change, from the Township Clerk.
- (e) Ownership of a cemetery lot is nontransferable, but may be sold back to the township for the original purchase price.
- (f) The Township Board shall have the authority to place a limit on the number of cemetery lots sold to a particular person, as well as the purchaser's family and relatives. Purchases of cemetery lots shall be limited to 4 (four) lots by any one resident or taxpayer of the Township. Furthermore, the Township shall have the absolute right and discretion to determine whether a particular cemetery lot(s) will be sold to a specific person and where such cemetery lot(s) will be located and within Township's cemeteries. Such decision shall be based upon reasonable factors including, but not limited to, the number of vacant cemetery lots available and proximity to family or relatives of the person seeking to purchase a cemetery lot(s).
- (g) The Township shall have the right to correct any errors that may be made concerning interments, disinterments, description, transfer or conveyance of any cemetery lot. The permit may be canceled for a particular vacant cemetery lot(s), substituting and conveying in lieu thereof another vacant cemetery lot(s) in a similar location within the cemetery or by refunding the money paid for the cemetery lot to the purchaser. In the event that an error involves the interment of the remains of any person, the Township shall have the right to remove and transfer the remains so interred to another cemetery lot in a similar location in the same Township cemetery in accordance with law.
- (h) The purchaser of every cemetery lot shall be responsible for notifying the Township whenever there is a change in their contact information.

Section 5. Purchase Price for Cemetery Lots

- (a) A fee schedule of the purchase price of cemetery lots shall be established by the Board by resolution. The Township Board may by resolution alter the fees to accommodate increased costs and needed reserve funds for cemetery maintenance and acquisition.
- (b) All fees are to be paid to Bay Township.

Section 6. Grave Opening and Closing Charges

- (a) The Township will charge fees for the opening and closing of any burial space, prior to and following a burial therein, including the interment of cremains. Such fees shall be set by resolution of the Board, payable to Bay Township.
- (b) There will be no Holiday or Sunday burials. There will be an increase in fees for opening and closing if additional time is required to move or relocate markers or monuments that were not placed under the supervision and approval of the Sexton. This shall not apply to any grave opening, disinterment, or similar matter which is conducted pursuant to a valid court order or under the supervision and direction of local or state health department. Even in such cases however, the Township Sexton shall be given at least a twenty-four (24) hour notice of when such a grave opening or closing will occur.
- (c) No burial space shall be opened or closed except under the direction and supervision of the Township Sexton or other individual as designated by the Township Clerk.

Section 7. Markers, Monuments and Foundations *(Reference Appendix A for examples.)*

- (a) A marker is a flat headstone or plaque either flush or above ground or a slanted upright headstone. A marker does not require a base but does require a foundation constructed and installed per ordinance. A flat marker is not to exceed 8 inches in height, 40 inches in length, and 18 inches front to back. An upright slanted marker may not exceed 18 inches in height, 40 inches in length, and 18" front to back. The marker may indicate the given and/or family name as well as the names, dates of birth and death, and marriage date of those buried in the burial space(s), etc.

Additional military, firefighters, and police markers are to be of brass or similar durable metal alloy and may be placed in front of the memorial designating the burial of that person with a foundation or affixed to the back of an upright monument.

- (b) A monument is an upright memorial which rests on a base of the same material.
- (c) No monument will be allowed or erected in the cemetery which exceeds 50 inches in height above foundation ground level (including the base).
- (d) A base is a flat, separate component upon which the monument is affixed and is of the same material as the monument. It is larger in length and from front to back. It rests upon the foundation.
- (e) Markers and monuments of cement, concrete, artificial stone, composition, wood, tin, or iron are not permitted. Only those markers constructed of granite, marble or bronze will

be permitted. Native boulders or field stone will not be permitted as markers or monuments. Granite boulders with inscription on the flat side and placed on a foundation will be acceptable.

- (f) Any upright monument or marker shall have a foundation two (2) inches larger on each side of the monument base or marker and at least four (4) inches thick with reinforcement and be a maximum of 24 inches from front to back and 48 inches long. Placement must be flush with the ground on all sides.
- (g) The installation and cost of the monuments, markers, and foundations shall be the responsibility of the purchaser(s) of the cemetery lot certificate, or their heirs at law or their next of kin. All installations will be with the approval and supervision of the Sexton.
- (h) Monuments and markers shall read from the Southwest (West) and be placed at the Northeast end of the burial space or lot. This pertains to Dyer Cemetery.
- (i) Markers and monuments must be placed in the appropriate manner to denote burial(s) within the burial space(s) and lot. The foundation shall be parallel and meet the head of the lot border. The foundation cannot exceed 24 inches from front to back to allow for adequate placement of the vault. (*Reference Appendix A for examples.*)
- (j) No footstones are allowed.
- (k) The name of inscription on each memorial must correspond with the name and record on file with the Clerk and no changes shall be made thereon except upon request of the proper parties and by permission of the Clerk.

Section 8. Interment and Vaults

- (a) Only one full body burial is allowed in each burial space. The sexton may make an exception for the burial of a parent and infant, or for two infants, buried at the same time.
The head of the deceased shall lie on the Northeast (East) or the Southwest (West) end of the burial space.
- (b) The Township shall be given not less than 48 hours' prior notice in advance of any funeral to allow for the opening of the burial space. The opening and closing of burial spaces shall be done only by the Township or such person(s) as are designated by the Township.
- (c) The appropriate permit or form issued by the Township for the burial space involved, together with appropriate identification of the person to be buried therein and the burial-transit permit shall be presented to either the Sexton or the Township Clerk prior to interment. Where such permit or form has been lost or destroyed, the Township Clerk must be satisfied, from his or her records, that the deceased person to be buried in the burial space is an authorized and appropriate person for that space before any interment is commenced or completed. A death Certificate and Obituary will be requested. Copies of all required forms will be kept on permanent file by the Township Clerk.
- (d) The minimum earth cover above the cremains container or vault is eighteen (18) inches.
- (e) Two cremains may be buried in each burial space.
- (f) No cremains shall be scattered or dispersed within the Township cemeteries.
- (g) Green burials are not permitted.

- (h) Crematoriums normally do not forward a burial-transit permit however, the Sexton will attempt to obtain a burial-transit permit and/or be satisfied the cremains are of the deceased person assigned to the proper burial space.
- (i) Interments during the period of November 1st to April 30th will incur additional winter burial charges that will be invoiced and paid in full prior to burial.
- (j) All full body burials shall be within a vault.
- (k) Cremains shall be in a durable, non-deteriorating container approved by the Sexton; a vault is not required.

Section 9. Disinterment

No disinterment, or digging up of an occupied grave shall occur until all permits, licenses and written authorizations required by law for such, have been obtained from any applicable state or county agency, governmental unit or official, and copies of the same has been filed with the Township.

Section 10. Grounds Maintenance *(Reference Appendix A for examples.)*

- (a) Flower pots and urns of a durable material, including heavy plastic, may be placed and maintained at the head stones of graves no earlier than May 1st and must be removed no later than October 1st of each year. Pots and urns not in use for over one year will be removed by the Sexton and if not claimed by the lot owner within one year will be discarded.

Decorations will be permitted for holidays falling outside of these dates. Veteran flags and flag holders shall be governed by the Veteran's Administration rules and guidelines. The designated area for placement of pots, urns, veteran's flag holders and any other approved item shall be in front (24 inches from back lot line) and on the sides of memorials only. They will not be allowed to extend on the back side of the memorial.
- (b) No grading, leveling or excavating within a cemetery shall be allowed without the prior permission of the Township Sexton or the Township Clerk. Furthermore, no tree, shrub, landscaping or similar plantings shall occur without the prior permission of the Township Sexton or the Township Clerk.
- (c) No shrubs, trees or perennial large vegetation of any type shall be planted. Any of the foregoing items planted without Township approval will be removed by the Sexton.
- (d) Flowers must be planted in the designated area.
- (e) Artificial flowers are allowed as long as they are contained in pots and urns as referenced in 10a.
- (f) The Township Board reserves the right to remove or trim any existing trees, plants or shrubs located within a cemetery, including within the lot borders.
- (g) The Sexton shall have the right and authority to remove and dispose of any and all growth, emblems, displays, decorations, containers and other items that through decay, deterioration, or damage have become unsightly or a source of litter or a maintenance problem.
- (h) Surfaces other than earth or sod are prohibited.

- (i) Mounds, landscaping bricks, blocks, stones (i.e. rocks, crushed stone, chipped stone, etc.) and other borders are prohibited.
- (j) All refuse of any nature including, but not limited to, flowers, wreaths, papers and plastic flower containers, easels and stands, must be removed from the cemetery within 7 days after a burial.
- (k) No glass items of any kind are allowed.
- (l) Except for markers, memorials, flowers, and urns expressly allowed by this Ordinance, and United States flag, military, and veteran flags as authorized by law, no other item (including, but not limited to, ornaments, statues, solar powered lighting or any other lights, signs, trellises, benches, or other structures) shall be installed or maintained within a cemetery without Sexton approval. Although granite, marble or metal benches are not approved for placement on a cemetery lot, they may be placed on a foundation in other areas of the cemetery with prior approval from the Sexton.
- (m) The Township reserves the right to reject any memorial which, on the account of size, design, or inscription, is unsuitable to the lot.

Section 11. Disclaimer of Township Liability and Responsibility

People who enter, remain in or travel within a cemetery do so at their own risk. The Township is not responsible for any injury, accident or other calamity that might occur to any person present in a cemetery. Furthermore, the Township is not responsible for any damage or vandalism to, theft of or deterioration of any memorial, or other item placed anywhere in a cemetery. The purchaser or transferee (and all subsequent transferees, assigns, heirs, or beneficiaries) hereby releases, waives, indemnifies and holds harmless the Township for, from and against any injury, damages, causes of action, claims, costs and expenses associated with, relating to and/or involving the lot or similar right, memorial or similar items, and any matter related to the cemetery involved. Such waiver, release and hold harmless provision shall apply not only to the Township, but also as to the Sexton and any Township employee, officer, official, agent, or volunteer who has signed the Bay Township Cemetery Volunteer Release Form.

Section 12. Forfeiture of Vacant Cemetery Lots

Cemetery lots remaining vacant for fifty (50) years or more from the date of their sale shall automatically revert to the Township upon the occurrence of the following events:

- (a) Notice shall be sent by the Township Clerk by certified return receipt mail to the last known address of the last owner of record informing him/her of the expiration of the 50-year period and that all rights with respect to said cemetery lots will be forfeited if he/she does not affirmatively indicate in writing to the Township Clerk within sixty (60) days from the date of mailing of such notice of his/her desire to retain such burial rights.
- (b) If no written response to said notice indicating a desire to retain the cemetery lots in question is received by the Township Clerk from the last owner of record of said lots, or his/her heirs or legal representative, within sixty (60) days, the lots revert back to Bay Township.

Section 13. Repurchase of Cemetery (Cemetery Lot Certificates)

The Township may repurchase any cemetery lot from the owner for the original price paid upon the written request of said owner or his or her legal heirs or representatives.

Section 14. Records

The Township Clerk shall maintain records concerning all burials, cemetery lots, issuance of burial-transit permits and any other records related to cemeteries, and the same shall be open to the public. These records may include, but not limited to:

- The original copy of the Cemetery Lot Certificate and conveyance documents for the cemetery property.
- Any surveys of the cemetery showing its exact dimensions.
- Surveys, "grids," maps or other documents that show precisely where the boundary lines for the individual burial spaces are located.
- Records of maps showing whose remains are buried in which burial spaces.
- Detailed records (including the name, last known address and known telephone number) of the person or persons who purchased each burial space (and when), as well as the names of other family members who will utilize those spaces (*i.e.*, who is designated for which burial spots). The same records should be kept for the transfers of vacant burial spaces. Such records should include the cemetery lot certificate, burial-transit permits, receipts of sale, all applications, any other permits and other documents.
- It is recommended to keep a copy of the obituary, veteran status, and any additional historical data.
- The Sexton has full access to all cemetery records and may copy as needed.

Section 15. Cemetery Hours

Township cemeteries shall be opened from dawn to dusk. No person shall be present in a cemetery outside of these hours. Such prohibition on being present in a cemetery during the time when a cemetery is closed shall not apply to the Sexton, any Township official, a person accompanied by the Sexton, or any law enforcement or firefighting official when engaged in the lawful duties of any such office or position.

Section 16. Prohibited Uses and Activities

The following prohibitions shall apply within any Township cemetery:

- (a) Vandalism is prohibited in cemeteries. (MCL 324 750.387)
- (b) No person shall disturb the peace or unreasonably annoy, harass, engage in fighting or disturb any other person who is lawfully present on the grounds of any cemetery.
- (c) No off-road vehicles including snow mobiles are allowed in a cemetery. (MCL 324.81133, MCL 324.82126)

- (d) Domestic animals and pets are allowed within the cemetery grounds as long as they are kept on a leash at all times and owners show respect and clean up after them when necessary.
- (e) There shall be no fires, candles or open flames.
- (f) There shall be no solicitation, peddling or advertising of services or goods, placards private signs, lighting, moving displays or changeable copy on a sign.
- (g) There shall be no hunting on cemetery property.
- (h) No firearms or archery arrows shall be discharged or shot except during military funerals or veteran ceremonies honoring the military and veterans.
- (i) There shall be no music, playing of any radio, or the use of any amplification device or similar item, except pursuant to a funeral or a military ceremony.

Section 17. Authority of the Township Sexton

- (a) The Township Board shall appoint a Township Sexton, who shall serve at the discretion of the Township Board.
- (b) At the discretion of the Township Board, the Township Sexton may be a Township employee or an independent contractor for the Township.
- (c) The Township Sexton shall assist other Township officials with the enforcement and administration of this Ordinance.
- (d) The Township Sexton shall have such duties and obligations with regard to Township cemeteries as specified in the Sexton's job description and by the Township Board.

Section 18. Fees

The Township Board shall have the authority to set fees pursuant to this Ordinance by resolution. Such fees can include, but are not limited to: Fee(s) for a disinterment permit, grave opening and closing, cemetery lot certificate, and transfer fees for burial spaces, and other matters. Any check for fees pursuant to this Ordinance should be made out to Bay Township.

Section 19. Applicability of this Ordinance

- (a) This Ordinance shall apply only to cemeteries owned, controlled or operated by the Township.
- (b) The provisions of this Ordinance shall not apply to Township officials or their agents or designees involved with the upgrading, maintenance, administration or care of a Township cemetery.
- (c) The provisions of this Ordinance shall not apply to police officers or firefighting officials or officers involved in carrying out their official duties.

Section 20. Interpretation/Appeals to the Township Board

- (a) The Township Board shall have the authority to render binding interpretations regarding any of the clauses, provisions, or regulations contained in this Ordinance or any rule or regulation adopted pursuant to this Ordinance, as well as the rules' or regulations' applicability.

The Township Board (or its designee) is also authorized to waive application of the strict letter of any provision of this Ordinance or any rules or regulations promulgated under this Ordinance where practical difficulties in carrying out the strict letter of this Ordinance or any rules or regulations related thereto would result in hardship to a particular person or persons or the public. Any such waiver, however, must be of such a character as it will not impair the purposes and intent of this Ordinance.

- (b) Any party aggrieved by any interpretation or decision made by the Township Sexton or any Township official, agent or contractor pursuant to this Ordinance, as well as any matter relating to a Township cemetery, rights to a burial space, or other matter arising pursuant to this Ordinance, shall have the right to appeal that determination or decision or matter to the Township Board.

Any such appeal shall be in writing and shall be filed with the Township within thirty (30) days of the date of the official decision, determination, or other matter being appealed from.

The Township shall give the aggrieved party who filed the written appeal with the Township at least ten (10) days' prior written notice of the meeting at which the Township Board will address the matter unless an emergency is involved. In an emergency, the Township shall utilize reasonable efforts to notify the aggrieved party who filed the appeal of a special or emergency meeting of the Township Board during which the matter will be addressed. Pursuant to any such appeal, the decision of the Township Board shall be final.

- (c) The Township Board may set a fee or fees for any such appeal by resolution.

Section 21. Authority of the Township to Remove Unauthorized or Unlawful Items from a Township Cemetery

No such item (including, but not limited to, a monument, marker, planting, trellis, personal item, urn, flowers or foliage, structure, flag, or similar item) can be installed, placed, maintained or kept in a Township cemetery unless expressly authorized by this Ordinance or a written rule or policy of the Township.

Any monument, marker, planting, trellis, personal item, urn, flowers or foliage, structure, flag (except for lawful veterans, United States and military flags), or other item that has been placed, installed, left or maintained in any Township cemetery in violation of this Ordinance, any Township rule or regulation regarding Township cemeteries, or any county, state or federal law, statute or regulation may be removed by the Township from the Township cemetery at any time and destroyed or disposed of by the Township without any prior notice to, permission from, or liability or obligation to the person or persons who left, installed, maintained or kept such item in the Township cemetery.

Even if such an item is authorized to be installed, kept, maintained or left in a Township cemetery, the Township shall still have the discretion to remove any such item at any time and dispose of

the same without prior notice to, consent from, or liability to the person or persons who installed, maintained or left such item in a Township cemetery.

Section 22. Penalties

A violation of this Ordinance (or of any rule or regulation adopted pursuant to this Ordinance) constitutes a municipal civil infraction. Any person who violates, disobeys, omits, neglects or refuses to comply with any provision of this Ordinance, or any permit or approval issued hereunder, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in violation of this Ordinance, shall be in violation of this Ordinance and shall be responsible for a civil infraction.

Civil infraction is covered under Bay Township Ordinance Number 7, Establish Procedure for issuance of Municipal Civil Infractions, specifically by designating Township Officials authorized to issue Municipal Civil Infractions, by designating the methods of commencing a Municipal Civil Infraction action, by designating the form of Municipal Civil Infraction citations and by providing for penalties for failing to appear on Municipal Civil Infractions.

Section 23. Township Officials Who Can Enforce this Ordinance

As specified in Bay Township Municipal Civil Infraction Ordinance No. 7, Section #3, dated April 15, 1997 the Bay Township Supervisor and the Bay Township Zoning Administrator have the authority to enforce this Ordinance and to issue municipal civil infraction citations/tickets pursuant to this Ordinance.

Section 24. Severability

The provisions of this Ordinance are hereby declared to be severable and should any provision, section, or part thereof be declared to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall only affect the particular provision, section, or part thereof involved in such a decision and shall not affect or invalidate the remainder of this Ordinance, which shall continue in full force and effect.

Section 25. Effective Date and Conflicts

This Ordinance shall become effective thirty (30) days after a copy of this Ordinance (or summary thereof) appears in the newspaper. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The above Ordinance was offered for adoption by Township Board Member _____ and was seconded by Township Board Member _____, the vote being as follows:

YEAS:

NAYS:

ABSENT/ABSTAIN:

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby declare that the above is a true copy of an ordinance adopted by the Bay Township Board at a regular meeting held on _____ at the Bay Township Hall, pursuant to the required statutory procedures.

Dated: _____

Date Published _____

Effective Date: _____

Respectfully submitted,



Bay Township Clerk

APPENDIX A

