

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
August 11, 2010**

**A. ROLL CALL**

David Gussman – Chair  
Terence Elkins  
William Apperson  
Larry Waltrip  
Charles Roadley - Alternate

**ABSENT**  
John Hughes

**OTHERS PRESENT**

County Staff (Staff)

**The responsibility of this Board is to carry out locally the Commonwealth policy to protect against and minimize pollution and deposition of sediment in wetlands, streams, and lakes in James City County, which are tributaries of the Chesapeake Bay.**

**B. MINUTES**

The July 14, 2010 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-10-083 – Cooke’s Gardens – Continued from 11/18/09, 2/10/10, and 6/9/10**

Michael Woolson, Senior Watershed Planner, presented the following case:

On November 12, 2009 the Chesapeake Bay Board was presented with an exception request for Cooke’s Garden Center. The exception (CBE-10-038) requested Board approval for the continued use of the RPA for display and storage of nursery container stock. The applicant proposed the reduction of impervious cover from the RPA, while still allowing a portion of the RPA to be used for the commercial sale of plant material.

Following the Board’s discussion, the applicants requested a deferral to provide additional time to respond to specific issues and concerns raised by the Board. A motion for a deferral of this case was voted on and approved by the Board.

The Board requested that a site plan (SP-057-10) and a nutrient management plan (pollution prevention plan) be submitted for review to the County. This was done on July 9, 2010. One additional area for the Board’s consideration is the enlarging of an existing on-site pond for stormwater management purposes. This pond captures and treats stormwater from the existing site (3 parcels) plus a portion of off-site area currently not treated.

Staff believes that the submitted plans before the Board addresses concerns outlined in the November 12, 2009 public hearing and that this project significantly reduces the proposed RPA buffer impacts, increases the area of undisturbed RPA buffer, provides RPA mitigation, and addresses water quality issues.

This revised proposal before you this evening:

1. Eliminates 8,364 square feet of impacts caused by the existing gravel within the RPA area.
2. Provides stormwater treatment, to current guidelines, for the entire 3 parcels plus an adjacent off-site parcel.
3. Provides a pollution prevention plan.
4. Provides a 3,942 sf green roof over the garden center.
5. Provides an underground rainwater harvesting tank (cistern) for the capture and reuse of rainwater for irrigation purposes.

The issue before the Chesapeake Bay Board is a revised application, requesting Board approval for 6,273 square feet of RPA buffer impacts for walkways and a portion of a stormwater management facility for this retail plant and garden supply sales operation. This will bring the entire site into compliance for current stormwater regulations, along with a green roof and cistern to promote reuse and recycling of rainwater

#### **Staff Recommendations**

Staff recommends approval of CBE-10-038, as revised, with the proposed mitigation measures as outlined in the WQIA and site plan. Furthermore, this approval should be conditioned as follows:

1. The applicant must obtain all other necessary federal, state, and local permits and approvals as required for the project.
2. The removal of 8,364 sf of RPA buffer impacts caused by the existing gravel.
3. This exception request shall be null and void if construction has not begun by August 11, 2011.
4. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

#### **Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-10-038 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-10-038 are included for the Board's use and decision.

Mr. Roadley asked if the entire site would drain to the proposed BMP.

Mr. Woolson stated all of the impervious surface from this site, a portion of the undeveloped upland parcel to the east, and a portion of Jamestown Road would drain to the BMP.

Mr. Elkins asked if green roof and cistern were part of this request or a future proposal.

Mr. Woolson responded they were part of the mitigation requirements for the continued use of the RPA although the green roof would not be installed until the building was completed.

Mr. Gussman continued the public hearing.

**A.** Jeff Shell, owner and applicant, provided a brief history of the property and his aspirations for the garden center.

Mr. Gussman asked if the improvements and mitigation could be completed by August 2011.

Mr. Roadley asked what runoff would be feeding the proposed rain tank.

A. Mr. Shell said the following winter would be a more realistic completion date and the goal was to tie most if not all of the building roofs to rain tanks.

Mr. Gussman closed the public hearing as no one else wished to speak.

Mr. Gussman stated he was in favor of the project but was not sure the completion date of August 11, 2011 allowed enough time.

Mr. Waltrip and Mr. Apperson agreed and suggested a two year time frame.

Mr. Elkins stated because there had been gradual, haphazard encroachment into the RPA over the years, he was concerned with setting a precedence for legitimizing this past activity because the applicant was now proposing a reduction of impervious cover. In addition, he felt there was adequate space outside of the RPA for the proposed commercial activity and therefore the proposal did not meet minimum necessary to afford relief that was required in the Chesapeake Bay Ordinance.

Mr. Roadley commended the applicant for the proposed green roof.

Mr. Apperson made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-10-083 at Cooke's Garden Center, on tax parcels #4730100002, #4730100005, and #4730100003 with an amended condition for a completion date of August 11, 2012.

The motion was approved by a 4-1 vote. (Aye: Apperson, Roadley, Waltrip, and Gussman)  
(Nay: Elkins)

## **2. CBE-11-001 – Hallmark/Hart – 104 Braemore**

Michael Majdeski, Senior Environmental Inspector, presented the following case:

### **Brief Summary and Description of Activities**

Mr. Michael Carroll of Hallmark Builders, Inc. on behalf of Paul and Jane Hart has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for construction of a single family dwelling at 104 Braemore in the Ford's Colony Subdivision.

The proposed dwelling will create approximately 627 square feet of impervious cover in the 50' seaward buffer and 2,057 square feet of impervious cover in the landward 50' buffer. The applicant also proposes to remove nine trees which equates to roughly a 20% reduction in overall tree canopy on the lot.

Additionally, due to a 30' building setback line enforced by Ford's Colony that is in place on the north side of the lot, the proposed dwelling cannot be moved forward out of the seaward 50' RPA buffer.

### **Background**

The lot was recorded following the adoption of the Ordinance in 1990, and no RPA existed on the lot at the time of plat recordation. The Chesapeake Bay Preservation Ordinance was revised in 2004 and it was determined that the adjacent pond was perennially fed and subsequently a RPA has been located on this lot. In this case, the exception request is for the construction of a single family dwelling which will encroach into both the 100' and 50' RPA buffers. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is for the construction of a single family residence in the Ford's Colony Subdivision. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

### **Water Quality Impact Assessment (WQIA)**

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within the RPA requires a water quality impact assessment (WQIA). Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request.

A WQIA was provided on June 30, 2010. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Replanting the RPA with 7 canopy trees (Red Maple), 7 understory trees (American Holly), 21 shrubs (Wax myrtle), and 160 square feet of mulch.

The amount of plantings proposed does not meet the standard mitigation planting requirements of the County for impervious impacts. The mitigation plan will need to be revised to meet the proper mitigation rates prior to implementation in the field.

### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be moderate for the proposed construction and that the proposed mitigation measures, once revised, may offset the impacts to the RPA. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary local permits as required for the project.
2. The mitigation plan must be revised to meet County mitigation standards by including 14 understory trees prior to the plan's implementation in the field.
3. All proposed mitigation plantings shall meet James City County Standards with canopy and understory trees being of 1 ½ caliper or six feet to eight feet tall and shrubs being of three gallon size.
4. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c) by providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if construction has not begun by August 11, 2011, or all improvements including the required mitigation plantings are not completed by that expiration date.
6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

### **Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-001 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-11-001 are included for the Board's use and decision.

Mr. Gussman opened the public hearing and as no one wished to speak, closed the public hearing.

Mr. Elkins stated the site would be unbuildable without this allowance.

Mr. Elkins made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-11-001 at 104 Braemore, tax parcel No. 3720500032.

The motion was approved by a 5-0 vote.

### **3. CBE-11-002 – Chin – 108 Godspeed Lane**

Michael Majdeski, Senior Environmental Inspector, presented the following case:

#### **Brief Summary and Description of Activities**

Mr. David Chin of 108 Godspeed Lane has applied for an exception to the Chesapeake Bay Ordinance for the placement of an accessory structure (storage shed) in the seaward 50' buffer of the RPA. The entire area behind the existing dwelling is located within the Resource Protection Area. An existing shed is located on the southern side of the property in the seaward 50' buffer.

The applicant proposes to install a 10'x16' storage shed on the northern side of the property adjacent to the canal. According to the applicant, the storage barn will be utilized to store boating, camping, and related equipment along with providing closer access to the existing dock and canal.

#### **Background**

The lot was recorded prior to the adoption of the Ordinance, and no RPA existed on the lot at that time. Following the 1990 adoption of the Ordinance, the adjacent canal leading into Powhatan Creek was identified as a resource thereby requiring that a 100 foot RPA buffer be established on the lot.

In this case, the exception request is for the installation of a storage shed in the seaward 50' buffer. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

#### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is for a new accessory structure in the seaward 50' buffer of the RPA. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

#### **Water Quality Impact Assessment (WQIA)**

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within the RPA requires a water quality impact assessment (WQIA). Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request. James City County has established guidelines for submission of minor/major WQIAs.

A WQIA was provided on July 6, 2010. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Planting of one understory tree and three shrubs directly adjacent to the proposed accessory structure. The proposed mitigation meets County Standards for mitigation rates for the proposed impervious cover.

### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal for the proposed development and that the proposed mitigation measures are acceptable. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary federal, state and local permits as required for the project.
2. The mitigation plan shall be revised to reflect the installation of appropriate native plantings prior to implementation in the field.
3. All proposed mitigation plantings shall meet James City County Standards with canopy and understory trees being of 1 ½ caliper or six feet to eight feet tall and shrubs being of three gallon size.
4. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c) by providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if construction has not begun by August 11, 2011.
6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

### **Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-10-032 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-10-032 are included for the Board's use and decision.

Mr. Roadley asked if the proposed shed location met the County's set back requirements and if an alternate location or expansion of the existing shed was discussed with the applicant. He also wanted to know if the existing shed was approved by the County.

Mr. Majdeski stated the proposed location was convenient for access to boating equipment and deferred further comments to the applicant.

Mr. Gussman opened the public hearing.

A. David Chin, owner stated he has recently purchased the property and the original shed was not in the desired location and the location of the proposed shed met the 5 foot setback requirements.

Mr. Gussman closed the public hearing as no one else wished to speak.

Mr. Waltrip stated most of the houses in this area required small sheds for lawn equipment and boating accessories.

Mr. Waltrip made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-11-002 at 108 Godspeed, tax parcel No. 4730500050.

The motion was approved by a 5-0 vote.

**4. CBV-10-009 APPEAL – Casto – 142 Riverview Plantation Drive**

Michael Woolson, Senior Watershed Planner, presented the following case:

Mr. William G. Casto has filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements, dated June 25, 2010. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, the restoration of the RPA with native plantings, and removal of two retaining walls.

On June 10, 2010, staff became aware of the unauthorized retaining walls following a mitigation inspection at the residence. Staff initiated an investigation and as a result has documented a violation of the County's Chesapeake Bay Preservation Ordinance. Staff has met with the Owner regarding this issue after issuing the Notice of Violation on June 25.

**Historical Background Information**

On or about May 26, 2009 an Application for Building Permit was submitted for the building of a new single family residence. This lot (PIN 1640600001) has an RPA encroaching upon it because of the 2004 Chesapeake Bay Preservation Ordinance amendments from the lake (Lake Norvel). At the time of the original Building Permit application, it was noted that the retaining walls shown on the plan were to receive approval from the Chesapeake Bay Board prior to building them. The exception request that was granted for the building of this residence expressly stated that the approval did not include the retaining walls.

On or about February 11, 2010, an additional Application for Building Permit was applied for, requesting the building of the two retaining walls shown on the original application. Staff noted there was no erosion and sediment control required for these structures. No request was made at that time for a Chesapeake Bay Board exception and the walls were built.

Board members have communicated to staff their general resistance to processing after-the-fact permits.

**Staff Guidance and Recommendations**

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. Mr. William Casto is the current property owner and he had prior knowledge that a Chesapeake Bay Preservation Area was designated on the property through his original building permit application.
2. The Chesapeake Bay Preservation Ordinance Sections 23-7 and 23-10 require that authorization and a plan of development be reviewed and approved by the County prior to activities within RPA's.
3. Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity; and
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Staff's guidance to the Board on deciding this matter is as follows:

1. The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within Riverview Plantation that have RPA components located on them.

2. The granting of the appeal in this case may not adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity, once the proposed planting plan is implemented or possibly expanded upon.
3. The hardship is self-inflicted, as the owner was told, in writing, that he had to go through the Chesapeake Bay Board for approval of the retaining walls.

Should this Board find in favor of staff, the Board should deny the appeal and allow the administrative order to remain in place.

Should the Board find in favor of the appellant, the Board should require that the retaining wall application come before them at the next regularly scheduled Chesapeake Bay Board meeting for review and discussion.

Mr. Roadley asked if the walls were constructed as depicted on the original site plan and if any additional grading in the RPA was done for installation of the walls. He asked if the Environmental Division advised the applicant of the RPA restriction when he applied for a building permit for the walls.

Mr. Apperson asked if the comment on the house plan was noticed before the certificate of occupancy (CO) for the house was issued.

Mr. Woolson stated the walls were constructed in the area depicted on the original site plan and in his opinion the impact to the RPA was done during construction of the house. He could not definitively answer the questions regarding the procedures that were followed when the permit was issued for the walls or when the CO was issued for the house. He respectfully deferred further comments to the applicant.

Mr. Gussman opened the public hearing.

A. Mr. Casto, owner, stated he accepted the responsibility for the violation however; he wanted the Board to know the oversight was not intentional and he was willing to follow the proper procedures for keeping the walls in place. He advised the Board that the retaining walls on both sides of the property were required because of the multiple restrictions on the lot. He confirmed that no additional grading was done for the walls and he was also concerned with the impact removing the walls would have on the septic system drain fields.

Mr. Waltrip stated it looked like the walls were required for the installed septic system.

Mr. Roadley asked if the Health Department's approval was contingent upon the installation of the walls.

A. Mr. Casto stated it was not required before installation but they did help to control the flow from the drain fields.

Mr. Gussman asked that a letter from an adjacent property owner be entered into the record.

B. Mary Mulhare, adjacent property owner at 140 Riverview Plantation Drive, asked in her letter why she had not been notified when the exception was approved for construction of the house and why the required planting had not been installed.

Mr. Woolson stated the original plantings had not yet been installed however, the County did hold surety to guarantee the plantings.

Mr. Gussman closed the public hearing as no one else wished to speak.



Mr. Elkins stated he saw no justification in granting the appeal as it appeared to be a violation of the Ordinance.

Mr. Roadley stated based on the evaluation criteria, the hardship is not shared by other properties in the vicinity due to the nature and configuration of the lot, he does not believe the Chesapeake Bay, its tributaries or other properties will be adversely affected and although the oversight did occur, it is being remedied and the applicant has previously acted in good faith with County.

Mr. Roadley made a motion to adopt the resolution granting the appeal for Chesapeake Bay Board case number CBV-10-009 at 142 Riverview Plantation Drive, tax parcel No. 1640600001.

The motion was approved by a 4-1 vote. (Aye: Apperson, Roadley, Waltrip, and Gussman)  
(Nay: Elkins)

#### **D. BOARD CONSIDERATIONS**

##### **1. CBE-08-016 – Anton – 7511 and 7513 Oak Cove Road – Change in mitigation requirements**

Michael Woolson, Senior Watershed Planner, presented the following information regarding this request:

On April 9, 2008 the Chesapeake Bay approved a retaining wall with specific mitigation planting requirements. Mr. Anton is seeking relief from these requirements. The following information is given so that the Board may make a determination for this request:

1. The retaining wall (and associated bulkhead project) is completed and the disturbance for the project was approximately one half of what was anticipated (700 sf instead of 1410 sf).
2. He has in place the entire surety amount requested plus a fully executed Chesapeake Bay Restoration Agreement.

In reviewing this request, staff notes that standard mitigation ratios are 1 canopy tree, 2 understory trees, and 3 shrubs for every 400 sf of impact (mitigation unit). Using this standard, Mr. Anton's original mitigation rate should have been 4 mitigation units (1410/400) or 4 canopy trees, 8 understory, and 12 shrubs. In this case, the Board approved a mitigation rate that was double the standard rate (see condition 6).

Mr. Anton is seeking to have his mitigation rate be equal to the standard for the amount of disturbance he actually incurred. Based on an approximate 700 sf disturbance, the mitigation rate would be 2 units, and his mitigation requirement would be 2 canopy trees, 4 understory trees, and 6 shrubs.

Staff concurs with Mr. Anton's request to modify the approved Chesapeake Bay Resolution, dated April 9, 2008 with the above stated mitigation rate.

Mr. Roadley asked if the doubling of the mitigation rate was due to other factors or just a mathematical error.

Mr. Woolson stated the Wetlands permit has its own resolution and mitigation requirements.

Mr. Elkins asked if the original mitigation was required by the Staff or Board or was it offered by the applicant.

Mr. Woolson stated typically the applicant offers a mitigation plan that meets or exceeds the requirements of the County and it is either accepted or denied by Staff and the Board.

A. Mr. Anton, property owner, briefly described the project and his previous interactions with Staff and the Board. He stated he originally agreed to the mitigation requirements in order to expedite the process. Because the anticipated impact was reduced and the vegetation was not removed, he was now seeking relief from the requirements that exceeded the County standards and would greatly impact his view of the river.

Mr. Roadley asked if staff verified the limits of disturbance.

Mr. Woolson stated the project has been complete for some time so it is difficult to determine the limits of disturbance other than to agree that the trees in the disturbed area noted on the plan, were still there so the construction could not have been the anticipated 1410 sqft.

Mr. Waltrip stated the issued was a 75% reduction in mitigation.

Mr. Elkins stated it was possible the Board approval was based on the proposed excess mitigation.

Mr. Gussman stated the mitigation plan was not intended to be punitive and he would defer to staffs recommendation for reduced mitigation.

Mr. Apperson and Mr. Waltrip agreed with Mr. Gussman.

Mr. Apperson made a motion to adopt a resolution granting a reduction in the mitigation requirements for case Chesapeake Bay Board case number CBE-08-016 at 7511 and 7513 Oak Cove Road as recommended by staff.

The motion was approved by a 5-0 vote.

#### **E. MATTERS OF SPECIAL PRIVILEGE**

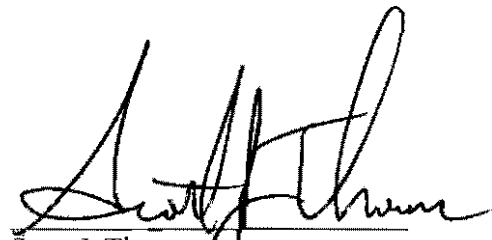
Mr. Woolson stated a request has been made for a joint work session with the Wetlands and Chesapeake Bay Boards regarding the Stonehouse Development. This work session will cover various alternatives proposed by the developer regarding gravity main and force main sanitary sewer lines and sanitary pump station locations. This is strictly for informational purposes so that there is a clear understanding of the opportunities and constraints each alternative provides. The developer will be coming forward in the future for both tracts for discussion by the Board at a public hearing.

All Board members were agreeable to this work session and asked Staff to coordinate an appropriate date and time.

#### **F. ADJOURNMENT**

The meeting adjourned at 8:50 PM.

  
David Gussman  
Chair

  
Scott J. Thomas  
Secretary to the Board