

**CHARTER TOWNSHIP OF COMMERCE  
ZONING BOARD OF APPEALS **\*\*SPECIAL\*\*** MEETING**

*Thursday, July 31, 2014*

2009 Township Drive

Commerce Township, Michigan 48390

**CALL TO ORDER:** Rusty Rosman, Chairperson called the meeting to order at 5:30pm.

**ROLL CALL:** Present:

Rusty Rosman, Chairperson  
Jorge Pacheco, Secretary  
Clarence Mills  
Rick Sovel  
Bill McKeever

**Also Present:**

Kathleen Jackson, Township Planner  
Jay James, Engineer/Building Inspector  
Terry Carroll, Community Development Director  
Hans Rentrop, Township Attorney

Chairperson Rosman introduced the Members of the Board to those present, as well as Kathleen Jackson, Jay James, Terry Carroll and Hans Rentrop. She reviewed the requirements for receiving a variance from the Zoning Board of Appeals including the fact that all the standards are to be met by the applicant. She assured the applicants present that the sites of the proposed variances have been visited by the members of the Zoning Board. She also explained that if a petitioner's variance request is granted, they will receive their letter of approval by mail. It is imperative that the letter be presented when applying for a building permit. A variance is valid for 365 days from the date of the approval letter.

**APPROVAL OF MEETING MINUTES**

None.

**UPDATE OF ACTIVITIES**

Rick Sovel – Township Board and Library

- Since we met last week, the Township Board has not had a meeting.

Bill McKeever – Planning Commission

- We have not met either.

**PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA**

None

**ITEM IA: PA14-0003 - JOSEPH KALLABAT - TABLED 7-24-14**

Joseph Kallabat of Commerce Township, MI is requesting variances from Article 33 of the Commerce Township Zoning Ordinance to construct a swimming pool in the front yard and the required side yard setback located at 8180 Flagstaff.

Sidwell No.: 17-01-277-040

**MOTION** by Sovel, supported by Mills, to remove item PA14-0003 from the table.

**MOTION CARRIED UNANIMOUSLY**

Rosman - After our previous discussion at the last meeting, it was determined that we would table this item until tonight to allow the Board members to go back and look at the property again, to speak with staff, ask questions and clarify what the appeal was to gain a better understanding of the situation.

Pacheco - I did go back and look at the property again thoroughly, but I don't have any comment yet at this point.

Rosman - We suggested that the owner and neighbor come into the Township to sit down and meet with staff to see if a compromise could be worked out. I understand through Terry that the offer for this discussion was declined.

Jay James returned with the original approved building plans and approached the Board, and the members took a few minutes to review the details for clarification.

Jay James - This is not the first plan that they submitted, but it is the one that was signed and approved.

Rosman - This plan depicts the pool that is there.

Jay James - Yes.

Jay James reviewed and compared the initial plan with the one that was actually approved. He stated that he missed the distance between the pool and the side property line and that was an error on his part.

Sovel - Did John, the pool installer, ask you questions about the pool?

Jay James - I know that he came in, however I don't recall the details.

Sovel - When the pool walls are poured, does that require inspection?

Jay James - When they open the hole we conduct the inspection. It's typical when they dig the hole and start putting in the rebar.

Sovel - What is the next step?

Jay James - We don't typically come back after that until the pool is completed.

**MOTION** by Sovel, supported by Pacheco, **to approve the first portion of Item PA14-0003**, the request by Joseph Kallabat of Commerce Township, MI **for a variance from Article 33.03.1 to allow for a pool in a lakeside front yard** at 8180 Flagstaff. Sidwell No.: 17-01-277-040.

Approval is for the reason that the proposed will not be materially detrimental to the public health, safety and welfare, and it will not be materially injurious to the property or

improvement in such zone or district in which the property is located. Approval is also in consideration of the Finding of Fact as stated within the Planning Department's report.

**Discussion -**

Rosman - Bill, am I correct that the Planning Department is bringing the Planning Commission a bundle of items to review regarding allowing pools in a lakeside front yard that would apply to this situation?

McKeever - Yes, we are reviewing pools in lakeside front yards in consideration of the fact that lake properties present a hardship as they have two front yards.

Kathleen Jackson - That will be reviewed in September.

Sovel - That is the process, and **I would like it noted as part of the motion that we have had a lot of these requests in the past for other lakefront homes, not only on Union Lake but also on other lakes.** **MOTION CARRIED UNANIMOUSLY**

**MOTION** by Rosman, seconded by Mills, **to deny the second portion of Item PA14-0003**, the request by Joseph Kallabat of Commerce Township, MI **for a variance from Article 33.03.2 to allow for a pool to encroach by 4' into the required side yard setback** at 8180 Flagstaff. Sidwell No.: 17-01-277-040.

**Denial is based upon the Finding of Fact that the pool is in the required side yard setback and it is acknowledged that the permit was issued in error. Denial is also indicative of, and in accordance with, the 2009 Michigan Building Code** which states as follows:

- *R 105.4, The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid; and,*
- *R 105.6, The building official is authorized to suspend or revoke a permit issued under provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.*

**MOTION CARRIED UNANIMOUSLY**

**ITEM IB: PA14-0004 – JOHN NORDSTROM – PUBLIC HEARING**

John Nordstrom of West Bloomfield, MI is requesting a variance from Article 32 of the Commerce Township Zoning Ordinance to build houses that will encroach into the required wetland protection setback located in the Whispering Woods Subdivision. Sidwell Nos.: 17-09-376-012; 17-09-376-026; 17-09-376-027; 17-09-376-061; 17-09-376-040; 17-09-376-050; 17-09-376-051; 17-09-376-052; **17-09-376-054**; 17-09-376-058.

Chairperson Rosman opened the public hearing.

John Nordstrom, 3885 Tyroconnel Trail, West Bloomfield, MI, was present to make the appeal.

John Nordstrom - Thank you. Ben Thomas is also here with me and he is the homeowner.

Rosman - Of all of the lots?

John Nordstrom - No. This is a situation in which our subdivision was developed and the design was negotiated and approved back in 1999. There was no wetland setback requirement at that time. Times have changed and I am here tonight for Ben, homeowner of Lot 42. I am not sure which Sidwell number applies to that lot.

Rosman - That's all right for now. We know it is one of the 10 listed in the request.

John Nordstrom - You have the letter and site plan for Lot 42 and we are requesting a variance of 7.1' into the required 25' wetland setback. Ben can explain our request further.

Ben Thomas - I have muscular dystrophy, so we are pushing the house back to a level that allows my driveway to be less sloped so I can come up and down it easier, whether I'm walking or with a wheelchair. It is steep to come up and down so we need a little more area.

Rosman - John, will you be speaking to the other properties?

John Nordstrom - This situation is new to me and I think to Commerce Township also. It's unique and I don't think they have specifically looked at our neighborhood yet. It seems like we should have been grandfathered in because a number of these lots would now be unbuildable with the 25' setback. A good example of that is Lot 46. Some of this may be just an inquiry on how we should deal with this going forward. Ben's lot is the one that is proceeding and the others are still a little up in the air. Two of them, I think Lots 39 and 40, were good upon review by the architect so they could be omitted. The rest will require a variance, but at this time we don't have a customer involved yet. There is a customer on Lot 4, but I don't know what to tell him right now. How do you sell something when you don't know what can be built or designed?

Ben Thomas - What John is saying is that it is difficult to come up with a house and a plan that will meet with the wetland criteria. We didn't realize that it was 25' and to get the house and driveway in, we had to squeeze everything.

John Nordstrom - Did the Board visit Ben's lot?

Rosman - We visited all 10 lots.

John Nordstrom - Okay. I guess I'm looking for two things. First is a variance for Ben, and then secondly, direction on how we should deal with the other lots as they come up. Again, I guess going through the Zoning Board of Appeals on an individual basis can be done, or if Commerce Township could make it easier on me somehow ... it's hard to do business this way. Or, if you can only give me a variance on Lot 4 because I do have a customer interested in designing and building, but he won't put a deposit down. I have had probably four customers walk away already because if you can't tell them what you can do, they won't proceed.

Rosman - Thank you. Are there any comments from the public?

Todd Lampert, 1865 Sleeth Road, Commerce Township - I have a couple of questions. I received this notice in the mail but I can't read where the lot numbers are so I didn't know which ones it pertained to. Is Lot 4 the one next to mine that has been cleared?

John Nordstrom - No, it is away from you in Whispering Woods.

Todd Lampert - Oh, back in the sub?

John Nordstrom - Yes, on the east point.

Todd Lampert - My other question is out of curiosity, regarding when you talk about encroaching onto wetlands. There are a lot of lots involved here. How much encroachment are you talking about?

John Nordstrom - We are not actually encroaching into the wetlands. This sub was approved by Commerce Township back in 1999 when there was no required wetland setback.

Todd Lampert - So you have to be 25' away from it?

John Nordstrom - We are not encroaching into the wetland here, just into the 25' setback and we have never had to deal with that before as there was no requirement for the setback.

Sam Agius, 4750 Rayfore, Commerce Township - I live across the street to the north of this site. Back in 1999 when the homes on Sleeth were built, they needed to do some draining of water, something to do with making electrical connections and with the foundations of those homes.

We have a pond to the north and because of the aggressive drainage or changing of the water so that they could make connections, they devastated my pond. It took me a couple of years for it to come back. At that time, I talked to the builder and he told me what they had to do. Now they know better. If that kind of drainage needs to be done again to build those homes, I'd like to approach the builder for compensation for the chemicals required in my pond to bring the water back. I'm not sure if you follow what I'm saying.

Rosman - I do.

Sam Agius - Do they know if there will be drainage of the water again that's in place on the site?

Jay James - I may be able to help address this. You are referring to the sub that was originally developed. I believe when they installed the public utilities, they were dewatering the sink wells down there to where the utilities would go. They open the hole and put a pipe in the ground.

Sam Agius - This is the three homes on Sleeth Road that are included in the sub.

Jay James - Yes, and those are platted as part of this sub to be built, but these homes would not require further dewatering as the utilities are already in place for the sub.

Rosman - I would suggest that whenever you do see any trucks working in your area, you check with Jay James regarding the work so that you will be comfortable with what is taking place.

Walter Goodman, 35138 Old Timber, Farmington Hill, MI - I own the sub off of Loon Lake Road. I have a similar situation there with 4 lots that were approved but are now within the 25' setback that you are mentioning. I know I will have to come before the Board, unless there is an understanding or a simpler way that makes it so that we don't have to come in.

Rosman - The Zoning Board of Appeals is here to allow for people to come in who have an issue that is outside of the Zoning Ordinance. We are here to hear your appeal for a request to do something that is not in compliance with the Zoning Ordinance requirements and each property stands alone. You can check-in with Kathleen Jackson and keep in touch with her regarding the status.

Chairperson Rosman read the following two letters into the record:

1. Jack Healy, Healy Homes LLC, 3696 Sleeth Road, Commerce Township, MI, dated July 25, 2014, in favor of granting variances to allow the petitioner to build homes that will encroach into the 25' require wetland setback.
2. Jeffrey A. King, King & MacGregor Environmental, Inc., 2520 Woodmeadow SE, Grand Rapids, MI, dated July 29, 2014, detailing a review of the wetland survey for Lot 42 of Whispering Woods of Commerce.

Chairperson Rosman closed the public hearing as there were no additional questions or comments.

**There were -0- returns and -2- letters.**

Rosman - Kathleen Jackson, is there anything you would like to share with the Board that you feel is important for us to know with regard to the change in the wetland setback requirements?

Kathleen Jackson - Mr. Nordstrom has done a good job of explaining the situation, but as expressed in the Planning Report, 2 of the 10 sites do not need a variance, and Lot 42 is before you. Therefore, 7 of the 10 may require variances. I spoke with Jay James and Hans Rentrop in this regard and it is my mindset that those remaining 7 lots should be applied for on a case-by-case basis. For example, Lot 4 shows only a 3' encroachment into the setback and I feel that the house could be redesigned so it would not encroach at all. This two-story home, is approximately 2,800 square feet.

John Nordstrom - Ben's home?

Kathleen Jackson - Yes, and I don't feel that it would be impossible to eliminate 49 square feet from this home. It could be added back elsewhere on the site. I understand that reducing the slope of the driveway is necessary and that you have some difficult situations; however, you are charged with looking at the spirit and intent of the ordinance. It's my feeling that with a little bit of creativity, the architect could redesign this and it could still be a buildable, economically viable lot as the attorney outlined in his letter.

**Board Comments:**

Sovel – One of my concerns is that we didn't have an ordinance in place when this was approved. We put one in place and now everyone says that they want a variance from this requirement. These can be reviewed on an individual basis, but I'm not thrilled with the idea of doing a blanket variance on all of these properties with no set plans to build.

Kathleen Jackson - Yes, they could be done on a case-by-case basis. I believe we have only had two variance requests since the wetland setback was put into effect 4 years ago.

Sovel - I'm going back to the builders who built up the rear yards to the setback and then came in afterwards wanting variances for decks. This sounds to me like the same type of situation.

Kathleen Jackson - As you recall, we saw a proliferation of deck variance requests. At that time, we had the Building Department and Planning Commission begin making it very clear to applicants when they came in for site plan review that decks would not be permitted and variances would not be granted.

Jay James - This has a lot to do with the economy. What we're seeing now are vacant lots in subs that are coming in to be finished. Probably 3/4 of these will have issues like this and they will be coming in to ask questions.

Sovel - With all these different Sidwell numbers, can we take action on one and deny all the others?

Rosman - We can take them one by one.

Hans Rentrop - You would look at each parcel individually.

Sovel - Should each of them be approved, denied or tabled?

Jay James - Currently, building plans have only been submitted for one house. On all of the others, we don't know the actual house footprint.

John Nordstrom - Yes, that is correct so we can pull the others from the application.

Rosman - Okay, as any variance is only valid for 365 days; therefore, the others will be pulled and he can keep only the one he knows that he will use as soon as possible.

Hans Rentrop - If the applicant wishes, he can withdraw those properties tonight and preserve his rights to apply for variances again at a later date.

John Nordstrom - Ben's Lot 42 will be the only one we are applying for today.

Rosman - Okay, only Lot 42 is being reviewed for a variance request from the wetland setback.

Pacheco - The variance request is for the building and not a deck, correct?

Rosman - It is for the building.

Jay James - If they came in for a deck permit later, it would be another variance request within the 25' wetland setback.

Rosman - Mr. Nordstrom and Mr. Thomas, I think you should seriously consider what you might want to do about a deck. We could have you come back before us the next time we meet because if we vote today, you cannot come back for the same appeal. I would suggest that you sit down with Jay James and see what can be worked out.

Jay James - If I am correct, they are asking today for a variance for the building and there is no deck currently being proposed. The request is to place the house into the 25' setback. If they wanted to build a deck later that encroaches, after the house was constructed, I would deny the request in the Building Department and he would either conform, or he would come back before the Zoning Board of Appeals to apply for another variance for the deck itself to be placed in the setback.

John Nordstrom conferred with Ben Thomas.

John Nordstrom - Ben would like to proceed with having you decide today on the building variance and we could deal with a deck variance at a later date.

McKeever - Am I to understand that there is no way this house can be designed without a variance? Can it or can't it? We are restricted as to what does and does not qualify for a variance.

John Nordstrom - We designed the home for the lot.

Ben Thomas - We are trying to get the accessibility that I need which is how the architect came up with the design.

Rosman - Kathleen, you mentioned 49 square feet ...



Kathleen Jackson - The line from the corner setback is 7'. It is less than 50 square feet that actually encroaches into the 25' setback. I believe that with a little bit of work on the architect's part, this could be made smaller or the square footage could be made up elsewhere and added to another part of the house that does not encroach.

Rosman - The house can be brought into compliance with the ordinance. As I read earlier, there are alternatives that would meet the requirements of the ordinance. We as a Board work under the points that I outlined at the beginning of the meeting.

Ben Thomas - This was designed to be accessible for me.

Sovel - Hans, does handicap accessibility impact anything when it comes to the Zoning Board of Appeals?

Hans Rentrop - It does as it is a unique situation. That is one of the criteria and we recommend looking carefully at the criteria associated with the property as you take action.

Sovel - So it would qualify as a hardship?

Hans Rentrop - I would think so, yes.

Pacheco - I think they just answered my question. I believe this is a very unique situation for the property and the circumstances.

Mills - I have no other questions.

Rosman - I also have no other questions. Does anyone have anything else to add?

Sovel - One last clarification. The property can be put to a use that conforms with the ordinance and designed with an elevator or whatever may be necessary, but the issue here is that you already have a plan designed that does not work and you need a variance to make it work, or you would have to design a new plan, correct?

Ben Thomas - This is the way they did it. I need a lot of stuff on the main level. We have an upstairs and my wife can go upstairs but I can't. The main level has wide archways and accessibility for me.

Sovel - So you already have a design now?

John Nordstrom - Yes.

Sovel - And the design does not work. Can you create a new plan that could work without the need for a variance?

John Nordstrom - I can't really answer that because it is designed specifically for Ben's use.

Sovel - In general, but not for that lot.

John Nordstrom - For that lot.

Ben Thomas - Yes, especially with the driveway because it is too much of a slope. To get the house and driveway up and in there, we have to go back further.

Rosman - I am understanding that the house is being placed 35' back from the road because you need less of a sloping driveway.

John Nordstrom - Yes, it creates a flatter area.

Rosman - It can't be closer to the road ...

Sovel - It could still be redesigned at the back.

**MOTION** by Pacheco, supported by Mills, **to approve Item PA14-0004**, the request by John Nordstrom of West Bloomfield, MI for a variance from Article 32 of the Commerce Township Zoning Ordinance to build a house on **Lot 42** that will encroach into the required wetland protection setback located in the Whispering Woods Subdivision.

Sidwell No.: **17-09-376-054**

**Approval is for a 7' variance to allow encroachment into the required 25' wetland setback, and approval is for the reason that the hardship is not created by the applicant as discussed herein.**

Approval is for the reason that the proposed will not be materially detrimental to the public health, safety and welfare, and it will not be materially injurious to the property or improvement in such zone or district in which the property is located. Approval is also in consideration of the Finding of Fact as stated within the Planning Department's report.

**Discussion -**

Pacheco - In my opinion, this follows what the applicant must show for a hardship that is not self-created.

Rosman - And the reason for the hardship is because of the physical disability needs of the homeowner?

Pacheco - Yes, and the house was designed to accommodate his disability.

Sovel - Do we need to included anything in the minutes about the other Sidwell numbers that have been withdrawn by the petitioner?

Rosman - No, but we can add that the petitioner withdraws the remaining 9 out of 10 Sidwells from the application.

Hans Rentrop - It is sufficient to have the applicant on record stating that he withdraws the remaining 9 Sidwells.

**John Nordstrom - I withdraw the application for the remaining 9 Sidwells.**

Sovel - This is a tough decision.

Rosman - The hardship is that there is a disability. The house is designed and the petitioner is asking to place the house where he wants it due to the slope of the land for ease of access when entering and exiting the property. It will encroach 7' into the wetland setback. The other side could be redesigned to correct the encroachment and

the house could be placed elsewhere by having the architect flip it or redesign. The motion is stated to approve the 7' variance for what he currently has designed.

**Roll Call Vote:**

**Ayes:** Pacheco, Mills, Sovel

**Nays:** McKeever, Rosman

**Absent:** None

**MOTION CARRIED**

**ITEM II:PA14-0005 – ARTUR KOKAJ – PUBLIC HEARING**

Artur Kokaj of West Bloomfield, MI is requesting a variance from Article 6 of the Commerce Township Zoning Ordinance to build a house that will encroach into the required setback located at 2696 Trillium Drive. Sidwell No.: 17-20-326-081

Mike Kahm of Singh Homes was present on behalf of Artur Kokaj to speak to the variance.

Mike Kahm - Mr. Kokaj could not be here this evening. Our application is for 2696 Trillium Drive in the Hills of Loon Lake. We submitted the application for a building permit and that particular plan met the setback requirements. The permit was approved and issued and the foundation was completed. Unfortunately, during the inspection we realized that another provision requires a minimum of 10' of separation between the homes. The adjacent home is set at 4.5' feet from the property line, and ours is also 4.5' for a total separation of 9' between the homes. We are here to request a 1' variance from the required separation between homes. As mitigation, we are offering to build a firewall on the home that is under construction. The construction has been stopped. These provisions will adhere to the code in consideration of the separation between the homes.

Chairperson Rosman opened the public hearing.

No comments.

Chairperson Rosman closed the public hearing.

**There were -0- returns and -0- letters.**

**Board Comments:**

McKeever - I'm of the same opinion as the other case. This can be built without a variance and I am not in favor of it.

Pacheco - I share Bill's opinion.

Mills - I tend to agree as another footing could be poured inside of that one and it could be moved over one foot.

Sovel - When you say you're offering to build a firewall, is that on this house with the basement or on the other house next to it?

Mike Kahm - On the house that is under construction that has a basement.

Sovel - Is the other house also yours?

Mike Kahm - Yes.

Sovel - Could they either pour cement inside or place cinder blocks to correct this?

Jay James - It is the basement. They can leave that wall up and then pour another wall. This will be buried as it is ground level. That can be done.

Sovel - It can?

Jay James - Well, it's on a pad footing, so you have the wall itself that sits on the pad footing that is wider than the wall.

Sovel - So they could pour another footing and if he were to do so, they would not require a variance?

Jay James - That is correct.

Sovel - You always have that option no matter what.

Jay James - There are different ways to bring this into compliance. One is to remove it completely and re-pour an entirely new footing for the house. They can also reduce the house size by 1' on the west side. By just pouring a wall 1' inside of the other, they would be reducing or shortening it by 1'. I don't know if that impacts the design, but they can adjust on the other side to get the same footprint if necessary.

Sovel - So they can extend the other wall 1', shifting the same plans from east to west if they don't want to redesign the house.

Mike Kahm - If I may clarify the problem, but otherwise you are right. The problem is because of the garage that happens to be on that side. Cutting out that 1' from the garage makes it almost unusable as a 2-car garage as you can't get the doors open. It is a problem of practicality in the functionality of the home and how that 1' will be used.

Sovel - To alleviate that on the outside, you can pour another wall and then shift everything. Basically, you're re-pouring it. Have you done the trenches for the garage yet?

Mike Kahm - No.

Sovel - So you're re-pouring that and still getting the same size garage; just dig the trench over an extra foot.

Kathleen Jackson - The garage is on a slab.

Jay James - The walls only support the house. You can backfill against the walls and then dig the trenches where the garage will go and pour the slab.

Mills - Yes, if the footings are not done yet for the garage.

Rosman - You can move the whole thing over. I'm so sorry that it isn't right, but it can be made right by moving the foundation.

**MOTION** by Mills, supported by McKeever, **to deny Item PA14-005**, the request by Artur Kokaj of West Bloomfield, MI for a variance from Article 6 of the Commerce Township Zoning Ordinance to build a house that will encroach into the required setback located at 2696 Trillium Drive. Sidwell No.: 17-20-326-081

**Denial is for the reason that according to the Findings of Fact, this house could be put into compliance with the ordinance once the footings are moved to the proper location.**  
**MOTION CARRIED UNANIMOUSLY**

**OTHER MATTERS TO COME BEFORE THE BOARD**

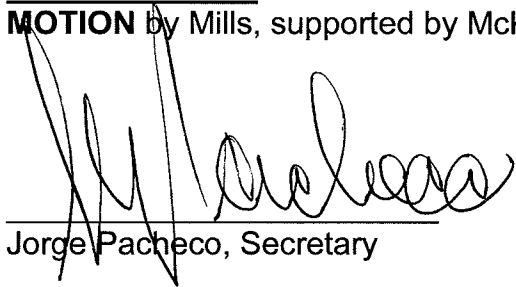
- The Board members consulted with Township Attorney, Hans Rentrop, for clarification regarding communications, meeting policies and procedures.
- Terry Carroll provided an update to the Board with regard to the property at 1890 Ayrshire. He met with the contractor who believed that he would be able to create the foundation for the addition as required. Completion of the project is expected by November 1st.
- Kathleen Jackson stated that the Planning Commission will be reviewing the draft Master Plan on Monday.

**NEXT REGULAR MEETING DATE: THURSDAY, SEPTEMBER 18, 2014.**

**ADJOURNMENT**

**MOTION** by Mills, supported by McKeever, to adjourn the meeting at 7:02pm.

**MOTION CARRIED UNANIMOUSLY**

  
\_\_\_\_\_  
Jorge Pacheco, Secretary