

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF BERRY'S CHAPEL)	
UTILITY, INC. TO INCREASE RATES)	
AND CHARGES; TARIFF TO RECOVER)	
THE COST OF FINANCIAL SECURITY)	DOCKET NO. 14-00004
IMPLEMENTATION OF PASS)	
THROUGHS FOR SLUDGE REMOVAL,)	
ELECTRICITY, CHEMICALS AND)	
PURCHASED WATER)	

**OBJECTIONS TO THE ADVOCATE'S MOTION FOR ANOTHER ROUND OF
DISCOVERY AND TO THE ADVOCATE'S QUESTIONS**

Summary

Berry's Chapel Utility, Inc. ("Berry's Chapel") objects to the request by the Consumer Advocate and Protection Division (the "Advocate") for an additional round of discovery requests beyond the two rounds already agreed to by the parties and approved by the Hearing Officer. Furthermore, Berry's Chapel objects to five of the six questions which the Advocate wants to ask in this new round of questions. The first question asks who at Berry's Chapel authorized the filing of the utility's pending rate case. As the company's witness will testify, the filing of the rate case was authorized by Mr. Tyler Ring, president of Berry's Chapel. The other five questions concern issues of corporate governance raised by at least one customer who has written numerous letters to the Advocate, the Authority, and the company in an effort to prevent any increase in rates. His latest letter questions whether the board of directors or the members of the corporation control the company, issues which are neither relevant to the determination of rates nor within the jurisdiction of the Authority to resolve. Such issues must be raised, if at all, in a

"derivative suit" filed in Chancery Court. In the unlikely event that the members of the corporation file a successful derivative suit, elect a new board, and try to withdraw the rate case—despite the utility's need for additional revenue—the Authority can take appropriate action at that time to insure continued wastewater service and protect the company's customers. There is no reason for the Authority to address these issues now. Finally, as discussed below, the governance issues implicitly raised in the Advocate's filing have no merit under Tennessee law.

Objection to Another Round of Discovery

In an Order issued February 19, 2014, the Hearing Officer issued a procedural schedule which provides the Advocate with two rounds of discovery requests. The Advocate's first round of questions was issued February 12, 2014. The Advocate may issue a second round of questions on April 25, 2014. The Advocate now asks to submit a third round of discovery questions, which are attached to his motion, and asserts that these questions "should be addressed as soon as possible" because they concern the "validity and/or authority to file Berry's Chapel's petition." The Advocate also states that "it is necessary that this information be obtained as soon as possible" in order "to properly develop the record regarding the role and status of the members and directors of Berry's Chapel." Advocate's "Motion for Leave to Ask Additional Discovery Requests" at p. 2.

These assertions that answers are needed "as soon as possible" do not warrant a departure from the procedural schedule issued by the Hearing Officer. Even if these six questions were appropriate, they can just as well be asked during the second round of discovery on April 25, 2014. The company has fully responded to each of the Advocate's first round of questions and will continue to answer all discovery questions relevant to the rate case. If the Hearing Officer finds that one or more of these additional questions are appropriate, there is ample time in the

schedule for the Advocate to file them during the second round of discovery and get answers well prior to the rate hearing in June. There is no reason to believe that giving this information to the Advocate "as soon as possible" will cause this rate case to be litigated in any less time or with any less expense than it will be handled otherwise. More likely, it will have just the opposite effect.

Objections to the Advocate's Questions

In response to the Advocate's first question about who authorized the filing of this rate case, the company will state that Tyler Ring, the President of Berry's Chapel, authorized the filing of this rate case as the President is authorized to do under the company's bylaws. The timing and filing of the case was also discussed at the last meeting of the company's board of directors in December, 2013. Terry Buckner, the company's witness in the rate case, can testify to these facts from his personal knowledge.

The other, additional questions the Advocate wants to ask are: (2) who are the members of the corporation, (3) did the members approve filing the rate case, (4) who are the current directors, (5) how were the directors selected, and (6) whether there have been proxy votes by the directors. In his brief, the Advocate implies that the members did not approve the rate case and may soon elect a new board which could decide to withdraw the rate case.

None of these additional questions concern the determination of just and reasonable rates. Except for the first one, the questions all appear to be about who controls the company, the members or the board of directors. Under Tennessee law, members of a nonprofit corporation seeking to challenge an act or the failure to act of the corporation may file a "derivative suit" under T.C.A. § 48-56-401. Such proceedings must be brought in a court of equity. Bourne v. Williams, 633 S.W. 2d 469 (Tenn. Ct. App. 1981). If the court finds that the suit was brought

"frivolously or in bad faith," the corporation may recover its expenses, including counsel fees, from the plaintiff(s). T.C.A. § 48-56-401(e).

This is a rate case, not a derivative suit. The TRA is not a court of equity and has no jurisdiction to resolve a dispute between the members and the board over who has the authority to run the company.

The Governance Issues Raised by the Advocate Have No Merit

Finally, the implications in the Advocate's brief that the members, not the board, control the company are not supported by state law or the bylaws of the corporation. Copies of the corporation's charter and bylaws are attached. Under the bylaws of Berry's Chapel, "All corporate powers of the Corporation shall be exercised by . . . the Board of Directors." The Directors "shall be elected by the Board of Directors" and each Director "shall be elected to serve a term of three (3) years or until his or her successor is elected and qualifies. . . ." The corporate charter of Berry's Chapel filed with the Secretary of State on July 27, 2010 shows the names and addresses of the three directors. Those directors remain in office since no successors have been elected and qualified. In March, 2011, the corporate charter was amended to state, "This corporation will have members." No other amendments to the charter or bylaws were made. The provisions concerning the selection and duties of the directors have not changed. In short, although the corporation now has members, there is nothing in the charter or bylaws giving the members the authority to manage the company or to elect the directors. Therefore, the members have no such rights except as may be granted by state law.

Tennessee law expressly provides that if a corporation has members, "all directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the charter or bylaws provide some other time or method of

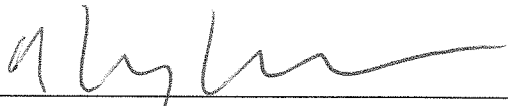
election. . ." T.C.A. § 48-58-104(a), emphasis added. As quoted above, the bylaws of Berry's Chapel provide "some other . . . method of election" of directors other than election by the members. The bylaws provide for a self-perpetuating board. Until the bylaws are changed, the directors, not the members, remain in charge of the company.¹

Conclusion

The Advocate has not provided any reason sufficient to warrant amending the procedural order to allow a third round of discovery. Moreover, the questions which the Advocate wants to ask are, with one exception, irrelevant to the determination of rates and raise issues which the Authority has no jurisdiction to resolve. Finally, the Advocate's implicit claim that the members control the company has no legal support.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

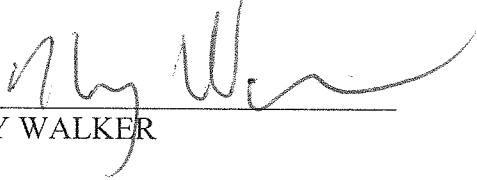
By: 
Henry Walker (B.P.R. No. 000272)
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203 Phone: 615-252-2363
Email: hwalker@babco.com

¹ As affirmed by the board of directors at its December, 2013 meeting, it is still the intention of the board to recruit all the customers of Berry's Chapel to become members of the corporation and to amend the bylaws to allow the members to elect a new board of directors following the conclusion of this rate case and other pending regulatory dockets. Although the board did not finish this rate case or resolve the other regulatory matters in 2013 as it had hoped to do, the board's intention to turn the company over to its members remains unchanged.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 2014, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

Mr. Vance L. Broemel
Senior Counsel
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0270



HENRY WALKER

FILED
RECEIVED
STATE OF TENNESSEE

2010 JUL 16 PM 4:08

TRE HARGETT
SECRETARY OF STATE

**CHARTER
OF
BERRY'S CHAPEL UTILITY, INC.**

The undersigned, acting as the incorporator of a corporation under the Tennessee Nonprofit Corporation Act, adopts the following Charter for such corporation:

1. The name of the corporation is Berry's Chapel Utility, Inc.
2. This corporation is a mutual benefit corporation.
3. The initial registered agent for the corporation is Tyler L. Ring whose street address is 321 Billingsly Court, Suite 4, Franklin, Tennessee 37065.
4. The name and address of the incorporator is:

Tyler L. Ring
321 Billingsly Court, Suite 4
Franklin, TN 37065
5. The street address of the principal office of the corporation is 321 Billingsly Court, Suite 4, Franklin, Tennessee 37065.
6. This corporation is not for profit.
7. This corporation is not a religious corporation.
8. This corporation will not have members.
9. This corporation's initial directors and their addresses are:

John Ring
321 Billingsly Court, Suite 4
Franklin, TN 37065

Tyler L. Ring
321 Billingsly Court, Suite 4
Franklin, TN 37065

James B. Ford
9679 Aurora Court
Brentwood, TN 37027

10. The purpose of the corporation shall be to own and operate a sanitary sewer collection and treatment system and to engage in any other lawful business.
11. Upon dissolution, after all creditors of the corporation have been paid, its assets shall be distributed to any person, partnership, limited partnership, limited liability company or corporation engaged in the sanitary sewer business or to the State of Tennessee or any county, municipality or political subdivision of the State of Tennessee.
12. To the extent allowed by the laws of the State of Tennessee, no present or future director of the corporation (or his or her estate, heirs and personal representatives) shall be liable to the corporation for monetary damages for breach of fiduciary duty as a director of the corporation. Any liability of a director (or his or her estate, heirs and personal representatives) shall be further eliminated or limited to the fullest extent allowed by the laws of the State of Tennessee, as may hereafter be adopted or amended.
13. With respect to claims or liabilities arising out of service as a director or officer of the corporation, the corporation shall indemnify and advance expenses to each present and future director and officer (and his or her estate, heirs and personal representatives) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

Dated the 14th day of July, 2010.


Tyler L. Ring, Incorporator

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CHARTER	
07/27/2010	11:22 AM
BATCH	184116
MTG TAX	0.00
TRN TAX	0.00
REC FEE	5.00
DP FEE	2.00
ARC FEE	0.00
TOTAL	7.00

STATE OF TENNESSEE, WILLIAMSON COUNTY

SADIE WADE
REGISTER OF DEEDS

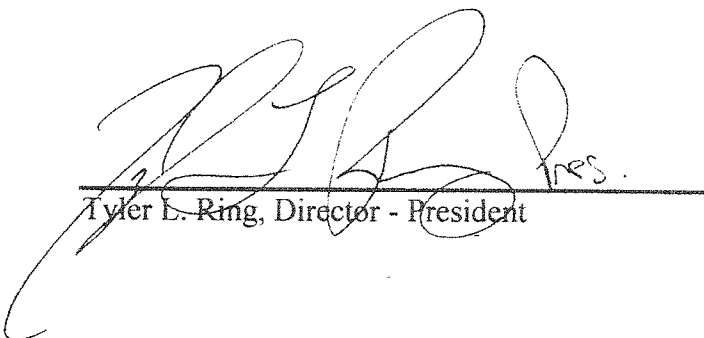
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SECRETARY OF STATE

**ARTICLES OF AMENDMENT TO THE
CHARTER
OF
BERRY'S CHAPEL UTILITY, INC.**

Pursuant to the provisions of Section 48-60-105 of the Tennessee Nonprofit Corporation Act, the undersigned corporation adopts the following articles of amendment to its charter:

1. The name of the corporation is Berry's Chapel Utility, Inc.
2. The text of the amendment to paragraph 6 of the corporation's charter adopted is:
 6. This corporation will have members.
3. This amendment was duly adopted on March 11, 2011 by the board of directors without members' approval, as such was not required.
4. Additional approval of the amendment by anyone other than the board of directors is not required.

DATED this 11th day of March, 2011.



Tyler L. Ring, Director - President

**BYLAWS
OF
BERRY'S CHAPEL UTILITY, INC.**

These Bylaws shall regulate the affairs of the Corporation, subject to the provisions of the Corporation's Charter and any applicable provisions of the Tennessee Nonprofit Corporation Act, *T.C.A. § 48-51-101, et seq.* (the "Act").

SECTION 1 – OFFICES AND REGISTERED AGENT

Section 1.01. *Registered Office.* The Corporation shall designate and continuously maintain a registered office in the State of Tennessee.

Section 1.02. *Principal Office.* The principal office of the Corporation shall be that which is designated as such in its Charter.

Section 1.03. *Other Offices.* The Corporation may also have other offices within and without the State of Tennessee at such places as the Board of Directors may from time to time determine.

Section 1.04. *Registered Agent.* The Corporation shall designate and continuously maintain a registered agent in the State of Tennessee at its registered office.

SECTION 2 – BOARD OF DIRECTORS

Section 2.01. *General Powers and Qualifications.* All corporate powers of the Corporation shall be exercised by an under the authority of, and the affairs of the Corporation shall be managed under the direction of, the Board of Directors. All Directors must be natural persons and shall be at least eighteen (18) years of age.

Section 2.02. *Number of Directors.* The Board of Directors shall be comprised of three (3) Directors, but these Bylaws may be amended from time to time to increase or decrease the number of Directors within the limits provided by law, although at no time shall there be fewer than three (3) Directors.

Section 2.03. *Election and Tenure.* Directors shall be elected by the Board of Directors at a meeting of the Board of Directors to be held at the principal office of the Corporation, or at such other place as may be fixed by the Board of Directors. Each Director shall be elected to serve for a term of three (3) years, or until his or her successor is elected and qualifies, subject, however, to the removal of any Director as allowed by law.

Section 2.04. *Regular Meetings.* Regular meetings of the Board of Directors may be held without notice at such time and place as the Board of Directors shall determine from time to time.

Section 2.05. *Special Meetings.* Special meetings of the Board of Directors may be called by the President or by any two (2) Directors.

Section 2.06. *Notice of Meetings.* Except as otherwise provided by these Bylaws, the notice requirements for meetings are as follows:

- (a) Regular meetings of the Board of Directors may be held without notice.
- (b) Special meetings of the Board of Directors must be preceded by at least two (2) days' notice to each Director of the date, time and place, but not the purpose, of such special meeting.
- (c) Notwithstanding (a) and (b) just above, any action by the Board of Directors to remove a Director or to approve a matter that would require approval by the members of the Corporation if the Corporation had members shall be preceded by at least seven (7) days' written notice to each Director that the matter will be voted upon at a therein specified meeting of the Board of Directors, unless such notice is waived pursuant to Section 2.07 or Section 5.04 below.

Section 2.07. *Waiver of Notice of Meeting.* If a Director attends or participates in a meeting, he or she waives any required notice to him or her of the meeting unless the Director at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 2.08. *Quorum and Voting.* A quorum of the Board of Directors consists of a majority (but no fewer than two (2)) of the Directors then in office before a meeting begins. If a quorum is present when a vote is taken, the affirmative vote of the majority of the Directors present is the act of the Board of Directors, unless these Bylaws, the Charter or the Act require the vote of a greater number of Directors.

Section 2.09. *Vacancy.* If a vacancy occurs on the Board of Directors, including a vacancy resulting from an increase in the number of Directors or a vacancy resulting from a removal of a Director with or without cause:

- (a) The Board of Directors may fill the vacancy; or
- (b) If the Directors remaining in office somehow constitute fewer than a quorum of the Board, they may fill the vacancy by the affirmative vote of a majority of all Directors remaining in office.

Section 2.10. *Removal of Director Without Cause.* The Board of Directors may remove any Director without cause by the affirmative vote for such removal of two-thirds (2/3) of the Directors then in office.

Section 2.11. *Action Without Meeting.* Action that is required or permitted to be taken at a meeting of the Board of Directors may be taken without such a meeting if all Directors consent

to taking such action without a meeting. If all Directors so consent, the affirmative vote of the number of Directors that would be necessary to authorize or take such action at a meeting shall be the act of the Board, except as otherwise provided in these Bylaws. Such consent(s) shall describe the action taken, be in writing, be signed by each Director entitled to vote, indicate each signing Director's vote or abstention on the action, and be delivered to the Secretary of the Corporation and included in the minutes filed with the corporate records.

Section 2.12. *Indemnification.* With respect to claims or liabilities arising out of service as a Director of the Corporation, the Corporation shall indemnify and advance expenses to each present and future Director (and his or her estate, heirs, and personal representatives) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

Section 2.13. *Immunity.* To the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended, each present and future Director (and his or her estate, heirs, and personal representatives) shall be immune from suit arising from the conduct of the affairs of the Corporation.

SECTION 3 – OFFICERS

Section 3.01. *Required Officers.* The officers of the Corporation shall be a President, Vice-President and Secretary-Treasurer and such other officers as may from time to time be elected or appointed by the Board of Directors. Except for the offices of President and Secretary-Treasurer, the same individual may simultaneously hold more than one (1) office in the Corporation. All officers must be natural persons and shall be at least eighteen (18) years of age.

Section 3.02. *Election.* Each year at a meeting fixed and held by the Board of Directors, the Board shall elect the officers of the Corporation by a majority vote of those Directors present, provided a quorum exists.

Section 3.03. *Term of Office.* The officers of the Corporation shall hold office for one (1) year or until their successors are chosen and qualify in their stead, subject, however, to the right and authority of the Board of Directors to remove any officer at any time with or without cause.

Section 3.04. *Powers and Duties of Officers.* The powers and duties of the officers of the Corporation shall be as follows:

(a) *President.* The President shall be the Chief Executive Officer of the Corporation, shall have general and active management of the Corporation, and shall see that all orders and resolutions of the Board of Directors are carried into effect, subject, however, to the right of the Board of Directors to delegate any specific powers, unless exclusively conferred upon the President by law, to any other officer(s) of the Corporation.

(b) *Vice President.* The Vice President shall have such powers and perform such duties as may be assigned to him or her by the Board of Directors or the President. In the absence or disability of the President, the Vice President shall perform the duties and exercise the

powers of the President. The Vice President may sign and execute contracts and other obligations pertaining to the regular course of his or her duties.

- (c) *Secretary-Treasurer.* The Secretary-Treasurer shall attend all meetings of the Board of Directors of the Corporation and shall be responsible for preparing the minutes of such meetings. The Secretary-Treasurer shall be responsible for the care and custody of the minute book of the Corporation and for authenticating records of the Corporation. It shall be his or her duty to give or cause to be given notice of all meetings of the Board of Directors. In the event the Secretary-Treasurer is absent for some reason from any meeting where minutes are to be prepared or is otherwise unable to take such minutes, the presiding officer of such meeting shall appoint another person, subject to the approval of those present and entitled to vote at such meeting, to take the minutes thereof. The Secretary-Treasurer shall have custody of the Corporation funds and securities, shall keep full and accurate account of receipts and disbursements in the appropriate Corporation books, and shall require the deposit of all monies and other valuable assets in the name of and to the credit of the Corporation in such financial institutions as may be designated by the Board of Directors. The Secretary-Treasurer shall require disbursement of the funds of the Corporation as may be ordered by the Board of Directors, and shall render to the President and the Board of Directors, at any time they may require, an account of his or her transactions as Secretary-Treasurer and of the financial condition of the Corporation. The Secretary-Treasurer shall also perform such other duties as may be assigned to him or her by the Board of Directors or by the President, under whose supervision he or she shall act.

Section 3.05. *Removal.* The Board of Directors may remove any officer at any time with or without cause.

Section 3.06. *Vacancies.* Any vacancies occurring in the offices of the President, Vice President, Secretary or Treasurer shall be filled by the Board of Directors as soon as practicable. Vacancies in other offices may be filled at the discretion of the Board of Directors.

Section 3.07. *Delegation of Powers and Duties.* In case of the absence of any officer of the Corporation, or for any reason that the Board of Directors may deem sufficient, the Board of Directors may delegate the powers of such officer to any other officer or to any Director for the time being.

Section 3.08. *Indemnification.* With respect to claims or liabilities arising out of service as an officer of the Corporation, the Corporation shall indemnify and advance expenses to each present and future officer (and his or her estate, heirs and personal representatives) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

SECTION 4 – RECORDS AND REPORTS

Section 4.01. *Corporate Records.* The Corporation shall keep as permanent records minutes of all meetings of its Board of Directors, a record of all actions taken by the Board of Directors without a meeting, and appropriate accounting records.

Section 4.02. *Records at Principal Office.* The Corporation shall keep at all times a copy of the following records at its principal office;

- (a) Its Charter or Restated Charter and all amendments thereto;
- (b) These Bylaws and all amendments thereto;
- (c) A list of the names and business or home addresses of its current Directors and officers;
and
- (d) The most recent annual report delivered to the Tennessee Secretary of State.

Section 4.03. *Annual Financial Statements.* The Corporation shall prepare annual financial statements that include a balance sheet as of the end of the fiscal year, an income statement for that year, and such other information necessary to comply with the requirements of the applicable provisions of the Tennessee Nonprofit Corporation Act.

SECTION 5 – MISCELLANEOUS PROVISIONS

Section 5.01. *Fiscal Year.* The fiscal year of the Corporation shall be the calendar year.

Section 5.02. *No Seal.* The Corporation shall have no seal.

Section 5.03. *Notices.* Whenever notice is required to be given to Directors or officers, unless otherwise provided by law, the Charter or these Bylaws, such notice may be given in person, or by telephone, telegraph, teletype or other form of wire or wireless communication, or by mail or private carrier or by electronic mail. If such notice is given by mail, it shall be sent postage prepaid by first class United States mail or by registered or certified United States mail, return receipt requested, and addressed to the respective address that appears for each such person on the books of the Corporation. Written notice shall be deemed to have been given at the earliest of the following:

- (a) When received;
- (b) Five (5) days after its deposit in the United States mail if sent first class, postage prepaid;
or
- (c) On the date on the return receipt, if sent by registered or certified United States mail, return receipt requested, postage prepaid and the receipt is signed by or on behalf of the addressee.

Section 5.04. *Waiver of Notice.* Whenever any notice is required to be given under the provisions of any statute, or of the Charter or these Bylaws, a waiver thereof in writing signed by the person entitled to such notice, whether before or after the date stated thereon, and delivered to the Secretary of the Corporation and included in the minutes or corporate records, shall be deemed equivalent thereto.

Section 5.05. *Negotiable Instruments.* All checks, drafts, notes or other obligations of the Corporation shall be signed by such of the officers of the Corporation, or by such other person(s), as may be authorized by the Board of Directors.

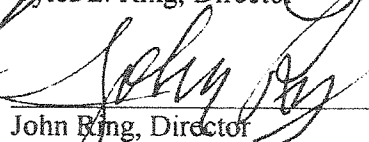
Section 5.06. *Deposits.* The monies of the Corporation may be deposited in the name of the Corporation in such bank(s) or financial institution(s) as the Board of Directors shall designate from time to time and shall be drawn out by check signed by the officer(s) or person(s) designated by resolution adopted by the Board of Directors.

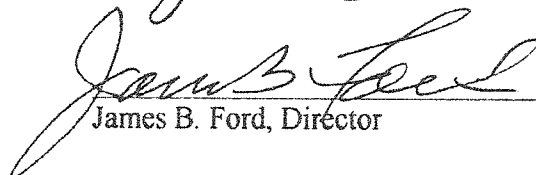
SECTION 6 – AMENDMENT OF BYLAWS

Section 6.01. *By Board of Directors.* By a majority vote of the Directors then in office, the Board of Directors may amend these Bylaws at any meeting of the Board of Directors where a quorum is present, provided that such meeting is preceded by at least two (2) days' notice to each Director of the date, time and place of the meeting. Such notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider a proposed amendment to the Bylaws, and shall contain or be accompanied by a copy or summary of the proposed amendment or state the general nature thereof. These Bylaws may also be amended by the Directors without a meeting in the same manner as provided therefor herein, except that such action to amend must be by a majority vote of the Directors then in office.

Adopted this ____ day of July, 2010


Tyler L. Ring, Director


John Ring, Director


James B. Ford, Director