

## **FINAL MINUTES**

Virginia Board of Agriculture and Consumer Services  
Oliver Hill Building  
102 Governor Street, 220 Board Room  
Richmond, Virginia  
December 4, 2008

### **CALL TO ORDER**

President Holland called the meeting of the Board of Agriculture and Consumer Services to order at 9:00 a.m. on Thursday, December 4, 2008, at the Oliver Hill Building, 102 Governor Street, Room 220, in Richmond, Virginia. Mr. Holland requested a moment of silence.

### **ROLL CALL**

Mr. Seward reported that Ms. Talley, Ms. Lohr and Mr. Murphy had advised Joyce Knight earlier that they would be unable to attend. He then called the roll:

#### **PRESENT**

Stephen Ellis  
L. Bruce Holland  
Paul W. Rogers, Jr.  
William B. Bain  
Edward S. Fleming  
Patrick A. Toulme  
Charles C. Clark, Jr.  
John D. Hardesty, Jr.  
Dr. Wondi Mersie  
Dr. Kevin Boyle

#### **DISTRICT**

1<sup>st</sup>  
2<sup>nd</sup>  
3<sup>rd</sup>  
4<sup>th</sup>  
7<sup>th</sup>  
8<sup>th</sup>  
9<sup>th</sup>  
10<sup>th</sup>  
Representing Virginia State University  
Representing Virginia Tech

#### **ABSENT**

Traci R. Talley  
Andrea Lohr  
Melvin Murphy

5<sup>th</sup>  
6<sup>th</sup>  
11<sup>th</sup>

#### **STAFF PRESENT**

Todd P. Haymore, Commissioner  
Donald G. Blankenship, Deputy Commissioner  
Roy E. Seward, Board Secretary

#### **WELCOME AND ACKNOWLEDGEMENTS**

Mr. Holland welcomed new Board member Patrick Toulme, who was appointed to fill Greg Galligan's unexpired term. He also welcomed Dr. Kevin Boyle who was representing Virginia Tech.

Mr. Holland thanked Mr. Clark and Mr. Hardesty for participating in Virginia Tech tours that he was unable to attend.

### **APPROVAL OF MINUTES**

Mr. Clarke moved that the minutes of the meeting of August 19, 2008, be accepted as distributed. His motion was seconded by Mr. Bain and carried by a unanimous vote.

### **REPORT FROM BOARD MEMBERS**

Mr. Fleming reported on crop conditions in his area. He also noted the impact of lower fuel prices and declining commodity prices.

Mr. Rogers reported that the harvest in his area is nearly complete. He noted that some parts of his district have experienced drought problems. He indicated that lower fuel prices have helped, but that earlier high fuel prices saddled farmers with high input costs. He added that farmers are faced with lower farm prices.

Mr. Bain thanked Mr. Rogers and staff for a well-organized summer meeting and tour in Mr. Rogers' district. He reported his district also has pockets of drought. He advised that peanut production this fall ranged from 1200 to 4400 pounds an acre. He indicated that lower fuel prices have helped but that commodity prices are falling faster than the cost of fuel. He talked about the pricing of fertilizer under the current situation.

Mr. Toulme, in his report, mentioned the farmers market in his district and his interest in working on the Board.

Dr. Mersie, who represented Virginia State President Eddie N. Moore, Jr., reported that approximately 300 students will receive degrees during the University's December graduation ceremonies. He advised that VSU's School of Agriculture has received a grant from Philip Morris that will fund scholarships for undergraduate and graduate students majoring in agriculture. He noted that the University has filled several positions in Agricultural Research and Extension. He reported that Governor Timothy M. Kaine and his cabinet will be visiting VSU's Randolph Farm on December 8, 2008, to learn about the University's agricultural programs.

Dr. Boyle, representing Dr. Charles W. Steger, Virginia Tech President, reported that student enrollment at the University has increased by 20 percent. He also reported on Virginia Tech's efforts to obtain grants and the filling of key positions in the College of Agriculture and Life Sciences. He noted that the University will be holding the Virginia Tech Agriculture Trade Conference on March 5-6, 2009, at the offices of the Virginia Farm Bureau Federation located in the Richmond area.

Mr. Ellis reported that his area in eastern Virginia has received a lot of rain. He noted that the harvest is nearly complete in the Middle Peninsula and Northern Neck. He repeated his report from the August Board meeting that farms within five miles of a river probably had bumper crops this year because of increased rain, but the further you travel from the river the dryer it was this year. He observed that many farmers in his area, which is an important part of the Chesapeake Bay watershed, have taken advantage of incentives to plant more acres of cover crops.

Mr. Hardesty reported that his area was finishing the soybean harvest. He indicated that farmers in his area have finished about 80 percent of the corn harvest. He noted that the apple harvest is finished and that the average yield was 400 bushels per acre. He added that the price for apples was better than growers have seen in a number of years. He advised that wheat and barley crops are all planted.

Mr. Clark reported that livestock prices have fallen 15 to 20 percent. He noted that in the last month it has been extremely dry in his area. He added that this fall and in the last two weeks his area is finally getting some moisture. He indicated that he hopes the five to seven-inch snowfall two weeks ago will help improve soil conditions. He added that creeks and springs still need more precipitation and that he hopes 2009 will be a better year for rainfall.

President Holland reported on the Eastern Shore's corn crop and noted that the soybean and snap bean crops were above average. He advised that small grain planting went well. He expressed his concern that his area has had to deal with people who do not know agriculture and are quick to blame farming for environmental problems. He stressed the importance of educating people about agriculture. He echoed Mr. Ellis's comments about the improved conditions in the Chesapeake Bay. He noted that the crab harvest has been the best in 15 years.

#### **COMMISSIONER'S REPORT**

During Commissioner Haymore's report, he thanked Mr. Rogers for hosting the August Board meeting. He commended the staff in the Division of Consumer Protection for their hard work in handling citizen complaints about price gouging. He noted that VDACS is continuing its work with the Office of the Attorney General in investigating these complaints. He added that the North Carolina Attorney General found three stations that were found guilty of price gouging.

#### **VDACS BUDGET REPORT**

President Holland called on Deputy Commissioner Don Blankenship who briefed the Board on VDACS budget reductions approved by Governor Kaine for FY 2008-2009.

#### **PUBLIC HEARING – RULES AND REGULATIONS PERTAINING TO THE DISPOSAL OF ENTIRE FLOCK OF DEAD POULTRY (2 VAC 5-200)**

President Holland recessed the Board meeting at 10:00 a.m. He then re-convened the Board for a public hearing at 10:10 a.m. on the proposed Rules and Regulations Pertaining to the Disposal of Entire Flock of Dead Poultry (2 VAC 5-200-10), to receive comments from the staff and the public. (A court reporter was present to prepare a transcript of the public hearing. The transcript will be included in the Board records and copies will be provided to Board members.)

The Commissioner introduced Dr. Richard Wilkes, Director of the Division of Animal and Food Industry Services (DAFIS), who, along with Doug Saunders, Assistant Director of DAFIS, reviewed with the Board the purpose and need for the proposed regulations.

Following the staff presentation and questions from the Board, President Holland asked Mr. Seward to call on any persons who had signed up to speak at the public hearing. Mr. Seward advised that no one had come forward to request an opportunity to speak.

President Holland stated that the public comment period on the proposed regulations would be open until December 26, 2008. He stated that the Board would not be considering any action on the proposed regulations until a future Board meeting---most likely the meeting in March 2009.

President Holland then closed the public hearing.

### **VIRGINIA AGRICULTURAL STATISTICS SERVICE (VASS) REPORT**

President Holland called the regular meeting of the Board to order. He then called on Herman Ellison, Director, Virginia State Office, National Agricultural Statistics Service (NASS), USDA,

who briefed the Board on NASS surveys and reports including the November 1 report on crop production, rotational studies being conducted by his staff, and Agriculture Census work.

### **RECODIFICATION OF TITLE 3.1 – UPDATING AFFECTED REGULATIONS**

Perida F. Giles, Assistant Director, Office of Policy, Planning and Research, briefed the Board on the need to update regulations the Board has promulgated that include references to the old Title 3.1 which was replaced in the Code of Virginia by the new Title 3.2 on October 1, 2008. She recommended that the Board authorize staff to work with the Office of the Registrar of Regulations and the Department of Planning and Budget to update those regulations with out-of-date references to sections of Title 3.1 so they include the correct references to sections of Title 3.2. She explained that making these corrections in a timely manner will benefit those affected by the regulations as well as VDACS.

Mr. Clark moved that the Board of Agriculture and Consumer Services direct staff to work with the Office of the Virginia Registrar of Regulations and the Department of Planning and Budget to update regulations promulgated by the Board that include out-of-date references to Title 3.1 of the Code of Virginia with the correct references to Title 3.2 and authorizes staff to take any and all other actions necessary to finalize the necessary changes through the regulatory process. Mr. Ellis seconded motion and it was passed by a unanimous vote.

### **RETAIL FOOD ESTABLISHMENT REGULATIONS (2 VAC 5-585)**

Dr. Richard Wilkes, Director, DAFIS, opened the staff presentation of a draft of the Retail Food Establishment Regulations, 2 VAC 5-585, which was sent to the Board prior to the Board meeting and which was included in the meeting folders. Dr. Wilkes introduced Ryan Davis, Manager of the Office of Dairy and Foods, who reviewed the changes being proposed. After Board comments and questions, Mr. Davis

recommended that the Board propose this draft regulation and authorize staff to file the proposal for public review and comment under an abbreviated regulatory process provided by Section 3.2-5121(C) of the Code of Virginia. Mr. Davis explained that the proposed regulations are based on 2005 Food Code and the 2007 Supplement to the Code. It was also noted that the Virginia Department of Health and VDACS are working with their respective boards on similar regulatory actions to update their food regulations and that, once the regulatory processes are completed, the respective food regulations would need to become effective on the same date.

Mr. Clark moved that the Board of Agriculture and Consumer Services propose 2 VAC 5-585, Retail Food Establishment Regulations, that this proposed regulation be developed in accordance with the Administrative Process Act exempt process for such proposed regulations specified by Section 3.2-5121(C) of the Code of Virginia, and that staff be directed to develop and file with the Virginia Registrar of Regulations and with any other appropriate entity any and all necessary or appropriate documents associated with this proposal. Mr. Rogers seconded the motion and it was passed unanimously.

#### **SCRAPIE ERADICATION REGULATION (VAC 5-206)-**

Dr. Richard Wilkes, Director, DAFIS, provided the Board an update on the scrapie eradication regulation, 2 VAC 5-206, including a review of his discussions with USDA officials regarding several proposed exceptions to the current regulation which Dr. Wilkes presented to USDA at the request of Commissioner Haymore following the September 11 meeting of the Joint Commission on Administrative Rules.

Mr. Rogers requested that the Board go into a closed meeting to consult with Steven Jack, Assistant Attorney General. In response to Mr. Rogers, Mr. Seward read the following motion:

Mr. President, pursuant to Sections 2.2-3711 and 2.2-3712 of the Code of Virginia, Board member Paul Rogers hereby moves that the Board of Agriculture and Consumer Services convene a closed meeting. The subject matter of the closed meeting is agenda item number eleven, "Regulation for Scrapie Eradication, 2 VAC 5-206." The purpose of the closed meeting is to consult (pursuant to Section 2.2.3711 (A) (7) of the Code) with legal counsel, Steven Jack, to seek his legal advice regarding litigation. Because their presence is necessary or will reasonably aid the Board in its consideration of this topic, the following staff of the agency (pursuant to authority contained in Section 2.2-3712 (F) of the Code of Virginia) should also participate in the closed meeting: Commissioner Todd P. Haymore, Deputy Commissioner Don Blankenship, Dr. Richard Wilkes and Roy Seward.

Mr. Hardesty seconded the motion and the Board voted on this motion as follows:

AYES: 10

NAYES: 0

ABSENT DURING VOTING: All members attending the meeting participated in the voting.

ABSENT DURING THE MEETING: Traci Rickman Talley, Andrea Lohr, and Melvin E. Murphy.

[At this point the Board closed the meeting.]

[The Board reopened its meeting.] In the open meeting, the Board Secretary read the following "Certification of Closed Meeting":

"Whereas, the Board of Agriculture and Consumer Services has convened a closed meeting on this date, December 4, 2008, pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

Whereas, Section 2.2-3712 (D) of the Code of Virginia requires a certification by the Board of Agriculture and Consumer Services that such closed meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved that the Board of Agriculture and Consumer Services hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements under the Freedom of Information Act, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were held, discussed or considered by the Board of Agriculture and Consumer Services."

Mr. Clark made the motion and it was seconded by Mr. Hardesty.

The Board Secretary then conducted a roll call vote of each Board member on the question of whether he would certify the statement read by the Board Secretary:

The Board members voted as follows on the certification statement:

(Ayes: "I certify")

Stephen Ellis - "I certify"  
L. Bruce Holland - "I certify"  
Paul W. Rogers, Jr. - "I certify"  
William B. Bain - "I certify"  
Edward S. Fleming - "I certify"  
Patrick A. Toulme - "I certify"  
Charles C. Clark, Jr. - "I certify"  
John D. Hardesty, Jr. - "I certify"  
Dr. Wondi Mersie - "I certify"  
Dr. Kevin Boyle - "I certify"

AYES: 10

(Nays: "I do not certify")

NAYES: 0

ABSENT DURING VOTING: All members attending the meeting participated in the voting.

ABSENT DURING THE MEETING: Traci Rickman Talley, Andrea Lohr, and Melvin E. Murphy.

Following the Board's vote on certification, President Holland thanked Dr. Wilkes for his presentation and urged that efforts be continued to seek preliminary approval from USDA on several proposed exemptions that Virginia would like to add to the current scrapie regulation.

### **NEW BUSINESS**

In response to Mr. Clark's question about the availability of state assistance for farmers seeking organic certification, Mr. Blankenship advised him that VDACS has a part-time organic certification marketing specialist who works throughout the state with those wanting to be certified under the USDA program. Mr. Blankenship also mentioned that in the past VDACS has used USDA funding to provide cost-share reimbursement to farmers who apply for certification and that the agency expects to receive \$50,000 from USDA for a similar purpose. He told Mr. Clark that he will ask staff to contact him about organic certification assistance being provided by VDACS.

### **FUTURE BOARD MEETINGS**

Mr. Holland reported that the next Board meeting will be on March 19, 2009, and that other future dates include May 21, 2009, and December 3, 2009. He encouraged Board members to consider volunteering to host a Board meeting next summer. He told how much he enjoyed having the Board visit the Eastern Shore for a summer meeting. He noted that his last term on the Board would be ending in early 2009 and

that he wanted to thank Board members and staff for their support and cooperation during his years on the Board.

**PUBLIC COMMENT PERIOD**

Christine Solem presented the Board with a summary of her research on the scrapie regulations adopted by other states. She urged VDACS to challenge USDA's position what it will accept as exceptions or exemptions for low-risk goats.

Lois Smith asked that the Board represent the interests and concerns of small, traditional farmers. She added that the Board should not overlook the importance of local markets for farmers' products.

Katie Frazier of the Virginia Agribusiness Council (VAC) presented President Holland with the Council's Distinguished Service Award for his contributions to Virginia agriculture. Dr. Dan Brann, who chairs the VAC Awards Committee, described Mr. Holland as an unselfish, uncompromising and dedicated visionary and expressed the gratitude of the VAC for Mr. Holland's work as a Board member and President,

Mr. Bain asked for a report regarding fertilizer price gouging. Dr. Boyle provided him an update concerning his request for analysis of the situation.

On behalf of the Department and its staff, Commissioner Haymore thanked President Holland for his service to the Board and his work with VDACS.

**ADJOURNMENT**

The Board adjourned at approximately 12:25 p.m.

Respectfully submitted,

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Paul Rogers, Jr., Board Vice President

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Roy E. Seward, Board Secretary