

FINAL MINUTES

Board of Agriculture and Consumer Services
Oliver W. Hill Building, 102 Governor St., Richmond, Virginia
March 20, 2008

The meeting convened at 9:00 a.m. on Thursday, March 20, 2008, in Room 220 of the Oliver Hill Building, 102 Governor Street in Richmond, Virginia. President Holland requested a moment of silence and then called the meeting to order. The Board Secretary called the roll:

PRESENT

Stephen Ellis
L. Bruce Holland
Paul W. Rogers, Jr.
William B. Bain
Traci R. Talley
Andrea Lohr
Edward S. Fleming
Charles C. Clark, Jr.
Dr. Alma Hobbs

DISTRICT

1st
2nd
3rd
4th
5th
6th
7th
9th

Representing, President of Virginia
State University

Dr. Mark A. McCann

Representing, President of Virginia Tech

ABSENT

Gregory J. Galligan
John D. Hardesty, Jr.
Melvin Murphy

8th
10th
11th

STAFF PRESENT

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

APPROVAL OF MINUTES

The minutes of the December 6th meeting were approved as distributed.

REPORT FROM BOARD MEMBERS

Dr. Hobbs gave the other Board members a copy of Virginia State University's (VSU) strategic plan and noted in her report that VSU is aggressively working to meet the goals of this plan. She reported on the University's observance of Virginia Agriculture week on campus. Dr. Hobbs updated the Board on VSU's efforts to fill vacant positions and its success in gaining approval for new PhD programs. She reported on the success of the USDA Outreach Conference held at VSU on March 13, 2008, that involved community-based organizations and farmers. She noted that the highlight of

Board of Agriculture & Consumer Services - Final Minutes

March 20, 2008

Page 2

the event was providing a one-stop shop for farmers and other program participants to engage in a dialog with the agencies from USDA.

Dr. McCann talked about the state budget situation and the actions Virginia Tech is taking concerning hiring until there is more clarity on the budget picture and its impact on the University. He reported that the College of Agriculture and Life Sciences will be sending out offers to the incoming freshman class, with the anticipation that it will be larger than the past class. He mentioned that Virginia Tech expects that this coming school year there will be a record number of transfer students coming from community colleges to the University.

President Holland asked Dr. McCann to present at the May Board meeting a report concerning staffing, funding, and the condition of facilities at Virginia Tech's Agricultural Research and Extension Centers (AREC's). Mr. Holland asked the Secretary to put Dr. McCann's report on the May meeting agenda. Mr. Holland stated that he would be discussing AREC's at a future meeting of Virginia Tech's Board of Visitors. As President of the Board, Mr. Holland serves on the Board of Visitors.

Mr. Ellis indicated that he, like the majority of grain farmers in his area, is cautiously optimistic about the year ahead. He mentioned the high grain prices and the rising input costs affecting farmers. He added that the grain prices are hurting the livestock producers and that farmers, in general, are concerned about how they are going to make a profit in the face of cost increases for inputs.

Ms. Talley reported that farms in her area are much greener because of rainfall but that her district is not out of the drought situation yet. She mentioned that greenhouses are seeded and that everyone is gearing up for this year's tobacco crop but that growers are moving ahead with caution. She noted the effects of high diesel and LP fuel prices and the short feed supply on farmers in her area.

Mr. Clark reported that livestock producers are concerned about the high cost of fuel and grain prices. He noted that cattle prices have been higher than expected. He added that there is still a huge demand for hay and that a lot of hay is still being shipped into his area from the West.

Ms. Lohr thanked everyone for their cards and well wishes. She reported that her area has received well needed rain and everything is greening up. She told the board about the loss of a local farmer to a tractor accident. She noted how dangerous farming can be and stressed the need to continue educating farmers about the importance of preventing such accidents. She mentioned that Rockingham County each year holds a Farm Safety Day Camp for youths during April.

Mr. Bain reported that his area still has not seen any rain. He observed that only about 50 percent of the ponds are full. He noted that, with the continuing drought, the winds have worsened the dry conditions. He told the Board that farmers are worried that it will

Board of Agriculture & Consumer Services - Final Minutes

March 20, 2008

Page 3

take twice the amount of operating capital to farm this year. He indicated that farmers will have a difficult time staying afloat financially with the high input costs and especially if the drought conditions continue.

Mr. Rogers reported that spring field work is starting in his area and that corn planting is approximately 10 to 14 days away. He stated that the wheat crop looks good and will stay promising as long as we do not have a late frost. He mentioned that soil moisture is good but the winds could change that in a hurry. He echoed the observation that farmers are very cautious about the high input prices.

Mr. Fleming reported that farmers and consumers in his district are concerned with high fuel costs and the impact it is having on the United States and the economy. He stated the small grains crop looks good this year. He added that farmers are prepared for corn planting and that hay is being brought into his area because of last year's drought.

Mr. Holland reported that farmers on the Eastern Shore have planted 90 percent of the potato crop. He noted that his area will need more rain to fill the farm ponds and that farmers are hopeful that they will have a seasonable amount of rain this year. He stressed that input costs will continue to affect farmers as fertilizer, fuel and other essential inputs rise in cost. He mentioned that Pilgrim Pride closed a poultry processing plant in North Carolina recently because of high feed costs. He added that he felt that grain prices are too high.

COMMISSIONER'S REPORT

Commissioner Haymore briefed the Board on personnel changes, recent and future events and other matters relating to the Department and agriculture and consumer protection. A copy of a written report on which his presentation was based was included in the Board's meeting folders.

Following the report, Mr. Rogers asked what action the Board needs to take regarding the Commissioner's amendment of the seed peanut germination standard. Andy Alvarez, Director of the Division of Consumer Protection (DCP), advised that the Commissioner's action to change the standard was sufficient to address the matter.

LEGISLATIVE UPDATE

Commissioner Haymore briefed the Board on legislation considered during the 2008 Session of the General Assembly. During his comments the Commissioner recognized the efforts of the Office of Policy, Planning and Research and the other agency division and office staff involved in the 2008 session who supported Deputy Commissioner Blankenship and him in carrying out their work during the session. A copy of the most recent edition of the VDACS legislative tracking record was included in the Board's meeting folders.

The Commissioner gave special recognition to Melvin Murphy who was greatly involved in promoting the Governor's initiatives relating to consumer protection and fraud issues

Board of Agriculture & Consumer Services - Final Minutes

March 20, 2008

Page 4

which were presented in Executive Order 5. He also noted that Mr. Alvarez served as point person in following the credit freeze and database breach bills during the session.

Following this update, Mr. Holland also thanked the agency staff and mentioned efforts this year to gain funding for AREC's. The Commissioner noted that, in his travels following the legislative session, funding for AREC's came up in discussions, particularly during his visit to Suffolk. Mr. Holland stressed that legislators need to know about the importance of these facilities to Virginia agriculture.

BUDGET UPDATE

Before his presentation on the budget, the Deputy Commissioner thanked agency staff for their excellent work which he credits with earning him recognition in the form of the NASDA Honor Award. He noted that VDACS has great staff and that the agency is a great place to work. He also recognized the efforts of Sandy Adams, Director of Administrative and Financial Services, and Craig Halbleib, Budget Director, for their considerable support to him during the budgetary process.

Before presenting a summary of the VDACS budget for the 2008-2010 biennium as approved by the General Assembly, Mr. Blankenship noted that the VDACS budget for Fiscal Year 2007-2008 was cut 5 percent (approximately \$1 million) and a half percent (approximately \$135 thousand) and that these cuts have been factored into the upcoming biennium budget. He also noted that the Governor will be presenting his amendments to the General Assembly's (GA's) budget for the GA's action on April 23. A copy of the summary of the GA's budget for the upcoming biennium was provided to the Board members.

Following his report, Mr. Blankenship recognized the Commissioner's tireless efforts during the 2008 Session including but not limited to meeting with legislators to answer questions about the Department's budget needs.

Mr. Holland thanked the Commissioner for his work with the budget. He also commended Mr. Blankenship and his staff on receiving the NASDA Honor Award. He noted that it is a special honor to be associated with an agency that has such outstanding programs.

ENFORCEMENT OF VIRGINIA GASOLINE AND MOTOR FUEL LAW (2 VAC 5-420)

Mr. Alvarez, Director of DCP, briefed the Board on the need to amend Section 30 of the regulation on Enforcement of the Virginia Gasoline and Motor Fuel Law - 2 VAC 5-420. A copy of the suggested amendments to 2 VAC 5-420-30 which Mr. Alvarez presented was sent to Board members via email and by regular mail prior to the meeting. Also, a copy of the suggested amendments was included in the Board's meeting folders.

Following Mr. Alvarez's explanation of why the Board needs to amend Section 30 of 2 VAC 5-420-30, the suggested process for achieving the suggested amendments and

Board of Agriculture & Consumer Services - Final Minutes

March 20, 2008

Page 5

the timetable for the process, he answered questions from the Board regarding his report.

After discussion, Mr. Ellis moved that, in response to the Renewable Fuel Standard Requirements issued by the U.S. Environmental Protection Agency pursuant to the Clean Air Act, as amended by the Energy Independence and Security Act of 2007, which present cause for regulatory action as presented by staff, and in recognition that this regulatory action is exempt from the Administrative Process Act, pursuant to Va. Code § 2.2-4002(A)(21), the Board promulgate an amendment to Section 30 of the regulation Enforcement of the Virginia Gasoline & Motor Fuel Law, 2 VAC 5-420, as presented by staff concerning specifications for gasoline and diesel fuel, and that the Board authorize staff to take any and all steps to effectuate the amendment, including but not limited to conducting an informational proceeding pursuant to Section 59.1-153 of the Code of Virginia for the purposes of informing the public of the amendment and receiving public comment.

In response to Mr. Holland's question about the sale of blended fuels with more than 10 percent ethanol, staff informed him that, as long as a fuel is properly registered and labeled, it can be sold in Virginia and tested.

Mr. Ellis' motion was seconded by both Mr. Clark and Mr. Bain and passed by a unanimous vote.

SCRAPIE ERADICATION (2 VAC 5-206)

Dr. Richard Wilkes, Director, Division of Animal and Food Industry Services, reviewed with the Board public comments received on the proposed regulation concerning Scrapie Eradication – 2 VAC 5-206. He advised the Board that he and his staff had drafted amendments to the proposed scrapie eradication regulation in response to public comment and offered to review each suggested change as included in the documents that had been emailed to the Board members and sent by mail to them prior to the Board meeting. Copies of the amended proposed regulation and the transcript of the December 6th public hearing on the regulation, which also had been sent by mail prior to the March meeting, were included in the Board's meeting folders.

Before any action was taken on Scrapie Eradication, 2 VAC 5-206, Secretary Seward advised the Board that Mr. Clark has completed a disclosure statement of financial impact when a Board member chooses to vote. He then read the statement into the record: "I, C. C. Clark, Jr., a member of the Board of Agriculture and Consumer Services, acknowledge that I may possibly be financially impacted as a result of the vote concerning Scrapie Eradication, 2 VAC 5-206. The nature of my personal interest is as follows: I own 31 meat goats. I am a member of a business, profession, occupation, or group affected by the transaction. I am nevertheless able to vote fairly, objectively, and in the public interest." This statement was signed by C. C. Clark, Jr., Board member, and dated March 20, 2008.

Board of Agriculture & Consumer Services - Final Minutes

March 20, 2008

Page 6

Dr. McCann, who indicated he had sheep, completed for the record of the Board meeting the following statement: I, Mark A. McCann, a member of the Board of Agriculture and Consumer Services, acknowledge that I may possibly be financially impacted as a result of the vote concerning Scrapie Eradication regulation, 2 VAC 5-206. The nature of my personal interest is as follows: part-time farmer—22 ewes, 44 lambs. I am a member of a business, profession, occupation, or group affected by the transaction. I am nevertheless able to vote fairly, objectively, and in the public interest.” This statement was signed by Mark A. McCann, Board member, and dated March 20, 2008.

After discussion of the amended proposed regulation, Mr. Rogers moved that the Board adopt the proposed regulation concerning Scrapie Eradication, 2 VAC 5-206, with amendments presented by staff today and that the Board authorize staff to take any and all steps necessary to make this a final regulation of the Board.

Mr. Clark seconded Mr. Rogers’ motion.

Mr. Holland then recognized persons in attendance who expressed an interest in commenting on the regulation.

Christine Solem stated that the proposed scrapie eradication regulation was brought to the attention of the Joint Commission on Administrative Rules as an over-burdensome rule affecting small farmers. Ms. Solem also mentioned that the 2008 Session of the General Assembly considered legislation concerning the proposed regulation and that this bill was carried over to the 2009 Session. She also stated that she did not see any changes in Dr. Wilkes’ amendments to the proposed regulation and noted that Dr. Wilkes said they were substantively the same. She noted that Dr. Wilkes’ amendments do not address issues that have been raised. She stated that the regulation is terribly burdensome on privacy issues. She asked the Board to give more time to review these regulations, indicating that she saw them only last week. She suggested that the Board wait until its May meeting to consider final action. She indicated that the proposed regulation could be changed to exempt low risk goats.

Dr. Wilkes reported that he had shared the proposed legislation Ms. Solem mentioned with USDA and that Dr. Wilkes was informed that Virginia would not be a consistent state if we adopted a regulation that was consistent with that legislation. Ms. Solem indicated that she disagreed with the USDA official.

Susie Croes stated that her goats are raised and sold as pets. She asked the Board to think about people who have operations like hers.

Board of Agriculture & Consumer Services - Final Minutes

March 20, 2008

Page 7

Lois Smith stated that she is a homesteader. She added that she is already overtaxed. She described the scrapie regulation as a burdensome regulation that big agriculture wants.

Following comments and additional discussion, the Board voted 9 to 1 (with Mr. Fleming voting against the motion) to adopt the proposed regulation concerning Scrapie Eradication, 2 VAC 5-206, with amendments presented by staff today and to authorize staff to take any and all steps necessary to make this a final regulation of the Board.

NEW BUSINESS

President Holland recognized Mr. Rogers who has offered to host the Board in August for a meeting and tour in southeast Virginia. After some discussion, Mr. Rogers suggested that August 19 and 20 be the dates that we work with scheduling the Board meeting (August 19 at 1:00 p.m.) and tour (August 20).

PLANS FOR FUTURE BOARD MEETINGS

Mr. Holland reported that the Board's next meeting is scheduled for May 15 in Richmond and that election of the Board president, vice-president and secretary are usually held at that meeting. Mr. Seward noted that, after the August meeting and tour, the Board will meet again on December 4 in Richmond.

PUBLIC COMMENT PERIOD

Ms. Solem stated that she had witnessed a pressurized abuse of power today and that this is how government continues to grow. She urged the Board to re-consider its motion on the scrapie eradication regulation and vote to delay action until the May 15th meeting.

Ms. Croes expressed support for Ms. Solem's remarks and added that the bookkeeping required by the scrapie regulation is more than an inconvenience.

Ms. Lohr stated that she has been on a farm all her life and she is not here to put people out of business. She noted that it sounds like records are already being kept but that folks just do not want to be required to do this.

Ms. Smith stated that she is about personal responsibility. She indicated that she grows her own food and noted the regulations may be needed for corporate farms but not for her farm.

Ms. Talley stated that she is a tenth-generation farmer who raises poultry and beef cattle. She indicated that in order to sell her animals for the best price she must meet the requirements of her industry.

Mr. Holland noted that he delayed the August public hearing on the scrapie regulation until December 6, 2007, at Ms. Solem's request.

Board of Agriculture & Consumer Services - Final Minutes

March 20, 2008

Page 8

Ms. Solem expressed her concern that the Board was being pressurized by the Department to adopt the scrapie regulation.

Mr. Bain stated that since the December Board meeting he has wrestled with the issues expressed at the public hearing on the proposed scrapie regulation. He noted that both sides presented good cases for their positions but he feels that Virginia needs to be consistent with the rest of the nation.

Ms. Solem stated that she felt that Mr. Holland did the right thing in allowing the public three more months to comment on the proposed regulation because it was a due process issue.

ADJOURNMENT

The Board adjourned at approximately noon.

Respectfully submitted,

L. Bruce Holland, Board President

Roy Seward, Board Secretary