

**FINAL MINUTES**  
**Board of Agriculture and Consumer Services**  
**Oliver W. Hill Building, 102 Governor St., Richmond, Virginia**  
**May 21, 2009**

The meeting convened at 9:00 a.m. on Thursday, May 21, 2009, in Room 220 of the Oliver W. Hill Building, 102 Governor Street in Richmond, Virginia. Vice President Rogers requested a moment of silence and then called the meeting to order. The Board Secretary called the roll:

**PRESENT**

Stephen Ellis  
Steve Sturgis  
Paul W. Rogers, Jr.  
William B. Bain  
Andrea Lohr  
Edward S. Fleming  
Patrick A. Toulme  
Charles C. Clark, Jr.  
Melvin Murphy  
Dr. Alma Hobbs

**DISTRICT**

1<sup>st</sup>  
2<sup>nd</sup>  
3<sup>rd</sup>  
4<sup>th</sup>  
6<sup>th</sup>  
7<sup>th</sup>  
8<sup>th</sup>  
9<sup>th</sup>  
11<sup>th</sup>  
Representing, President of Virginia  
State University  
Representing, President of Virginia Tech

**ABSENT**

Traci R. Talley  
John D. Hardesty, Jr.

5<sup>th</sup>  
10<sup>th</sup>

**STAFF PRESENT**

Todd P. Haymore, Commissioner  
Roy E. Seward, Board Secretary

**APPROVAL OF MINUTES**

The minutes of the March 19, 2009, meeting were approved as distributed.

**ELECTION OF BOARD PRESIDENT, VICE PRESIDENT, AND BOARD SECRETARY**

Vice President Rogers turned the meeting over to Commissioner Haymore who called for nominations for Board President.

Mr. Murphy nominated Mr. Rogers for President. Mr. Ellis seconded the nomination. There being no other nominations, Mr. Haymore asked if there were a motion that nominations be closed and that Mr. Rogers be elected by acclamation. Mr. Ellis made the motion and it was seconded by Mr. Sturgis. The Board then elected Mr. Rogers by a unanimous vote.

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Mr. Rogers accepted the gavel as President and called for nominations for Vice President. Mr. Clark nominated Mr. Ellis for Vice President, and Mr. Sturgis seconded the motion. There being no other nominations, President Rogers asked if there were a motion to close the nominations and that Mr. Ellis be elected by a unanimous vote. Mr. Murphy made the motion and it was seconded by Mr. Sturgis. The Board then elected Mr. Ellis Vice President by a unanimous vote.

Mr. Rogers called for nominations for Board Secretary. Mr. Fleming nominated Mr. Seward, and Mr. Murphy seconded the motion. Mr. Fleming moved that the nominations be closed, and that Mr. Seward be elected by acclamation. Mr. Clark seconded the motion and the Board voted unanimously to elect Mr. Seward as Secretary.

### **REPORT FROM BOARD MEMBERS**

Mr. Clarke reported that, in general, crops are coming out slowly. He noted that cold weather thus far has held the crops back and expressed hope that a frost that hit his area will not hurt, in the long run, overall crop yields. He added that pasture growth, in particular, has been slowed by weather conditions but that his area has received much needed moisture.

Mr. Toulme reported that he has received positive feedback from constituents in his Congressional district concerning a Washington Post article in which Commissioner Haymore was quoted regarding Virginia's increasing agricultural exports to Cuba. He noted that citizens in his district have expressed positive sentiments about Virginia opening new lines of trade with Cuba, and that they would like to see Virginia's agricultural businesses benefit from the new administration's apparent willingness to relax restrictions with Cuba. He added that the citizens in his district would like to see the Board and VDACS do everything they can to foster that goal.

Mr. Ellis reported that his district is looking pretty good as far as crops are concerned. He commented that his area has received more than adequate rainfall this spring. He noted that his district has had a frost but it has had very cool nights. He pointed out that the price of nitrogen has dropped more than 50 percent in the last ten months and that this substantial drop has helped everybody's pocketbook since nitrogen contributes significantly to the cost of growing wheat and corn. He added that the price for nitrogen ordered last week was actually below the price paid two years ago.

Mr. Sturgis reported that the Eastern Shore looks good. He noted that the rain has been very beneficial. He advised that potatoes are in full blossom and that snapbean planting is about 95% complete. He reported that the wheat crop looks good but that it will be hard to meet last year's prices. He commented that he has been working with the Commissioner on a draft agreement between

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tomato growers and DEQ and DCR regarding run-off issues. He added that the tomato crop is looking good.

Dr. Kok, Interim Dean, College of Agriculture & Life Sciences and representative of Dr. Charles W. Steger, Virginia Tech's President, reported that the College graduated approximately 540 students and its enrollment is looking good despite the economy. He briefed the Board of the University's search for a Dean of the College.

Dr. Hobbs, Dean of the School of Agriculture and Extension Services and representative of Eddie N. Moore, Jr., Virginia State University's President, introduced Dr. Franklin Jackson who is VSU's Associate Dean for Extension. Dr. Hobbs reported on increases in enrollment in the University's agriculture program and VSU's success in seeking funding for a new forestry program available to 1890 Land Grant Colleges and Universities. She noted the University would be one of the first institutions to initiate this program and that Dr. Jackson who facilitated VSU's proposal will be overseeing the launching of the new program in June. Dr. Hobbs advised that the University would be working closely with Virginia Tech, the Virginia Forestry Association and the Virginia Department of Forestry on this initiative. She added that VSU has applied for other stimulus grants and reported on a cooperative agreement with the University of the District of Columbia that will permit UDC students to study in VSU's four-year hospitality management program. Dr. Hobbs also reported on the University's work with Virginia dairy development to assist southside Virginia farmers. She added that Dr. Jackson is the lead person in this initiative. She also provided the Board with information about economic development work VSU is doing in cooperation with the Office of the Mayor of Petersburg.

In her closing comments, Dr. Hobbs advised the Board that she would be leaving VSU to accept an opportunity to work in President Obama's administration as Deputy Assistant Secretary of Administration for USDA. She noted that the University is scheduled to announce an Interim Dean to replace her on May 22, 2009. She thanked the Board for the opportunity to serve and represent VSU.

Mr. Fleming thanked the Board members and VDACS staff for their prayers, telephone calls and emails. He reported that he is doing much better after his recent illness. He commented on the effects of the cold weather on farmers' efforts to plant their crops and noted that farmers in his district were glad to see the drop in nitrogen prices.

Mr. Bain reported that his area has received ample rainfall. He noted that commodity prices are still down and have ways to go to improve. He added

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that a number of farmers made an early investment in inputs and got burnt by paying higher prices. He expressed disbelief in comments of officials of the current administration that farmers who gross over \$500,000 do not need anymore government support or subsidies. He added that many farmers are quite upset about this. He added that when publications you read describe record farm income, these sources are not talking about net farm income.

During his report, Mr. Murphy noted that he had also heard positive feedback about Virginia's trade with Cuba. He also mentioned that his mother has been sick in recent months.

Ms. Lohr reported that farmers are in full swing of planting their soybeans and corn, and getting hay made. She mentioned the status of Pilgrim Pride and reports that this poultry company has filed for Chapter 11 bankruptcy. She shared reports this company has been able to sell some of their facilities. She expressed gratitude that Governor Kaine and the General Assembly agreed to reinstate funding for VDACS' Weights and Measures program. She shared her dismay with the public misunderstanding about the relationship of the H1N1 flu reported in humans to poultry and swine. She mentioned that a school her daughter is attending is participating in VDACS' Farm-to-School program and that she and her husband, Delegate Matt Lohr, volunteered to serve lunch to students during this program.

Mr. Rogers, in his report, noted a similarity between the impact of public misunderstanding of the peanut butter situation and the public's misperception of the connection of pork products to the so-called Swine Flu. He added that the reports about the peanut products hurt significantly the peanut industry. He also mentioned that this spring has been cool and wet in southeast Virginia. He reported that the crop situation is generally okay and mentioned the challenges that the damp weather has had on peanut planting. In closing he noted that Michael Vick has been released from prison and there is still a heightened citizen concern for animal cruelty as an aftermath to the publicity Mr. Vick received during his trials.

### **COMMISSIONER'S REPORT**

The Commissioner congratulated Dr. Hobbs on her new appointment and sent get well wishes to Mr. Fleming. Commissioner Haymore briefed the Board on personnel news, 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.

At the end of the Commissioner's Report, he responded to Mr. Toulme's comments regarding his district's support for efforts to increase trade with Cuba. He congratulated

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Dr. Hobbs on her appointment to the Obama administration. He also expressed his thanks that Mr. Fleming was recovering well from his recent illness. In response to Mr. Ellis's question about bio-energy efforts in the state, the Commissioner mentioned the Governor's visits to energy projects in the Commonwealth and plans for the Secretary of Agriculture to tour Virginia. In response to President Rogers' question about plans for a coal-powered power plant in his area, the Commissioner stated that VDACS has not been involved in the planning thus far but that it will offer its support to the lead state agency that is working with this project.

### **MEETING RECESS**

President Rogers called for a recess of the meeting and a five minute break while the court reporter set up her equipment for the public hearing.

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

President Rogers called the public hearing concerning Retail Food Establishment Regulations, 2 VAC 5-585, to order. He explained that a court reporter would be preparing a transcript of the hearing and that the Board would not be considering any action on the proposed regulations until a future Board meeting. He noted that the public can submit comments on the regulations until Friday, July 10, 2009. Mr. Rogers introduced Dr. Richard Wilkes, Director of the Division of Animal and Food Industry Services (DAFIS), who briefed the Board on the authority for the regulations and what actions have been taken up to the hearing.

Dr. Wilkes introduced Ryan Davis, Program Manager for the Office of Dairy and Foods, who reviewed the major changes contained in the proposed regulations published in The Virginia Register of Regulations on May 11, 2009. In response to a question from Mr. Bain, Mr. Davis stated that the proposed regulations do not include requirements associated with the federal Country of Origin Labeling (referred to as COOL) requirements.

Christine Solem of Charlottesville was the only member of the public who presented comments to the Board. A copy of the transcript of the public hearing including Ms. Solem's comments will be prepared by the court reporter, will be shared with the Board members and will be kept as part of the official minutes of the May 21 Board meeting.

After making one last call for persons with comments to present, Mr. Rogers adjourned the public hearing at approximately 10:35 a.m. and then re-convened the regular business meeting of the Board.

### **RULES AND REGULATIONS PERTAINING TO CARBONATED AND STILL WATER BOTTLING PLANTS AND BEVERAGES (2 VAC 5-540)**

Mr. Rogers called on Dr. Wilkes, DAFIS Director, who explained that his staff, in its recent periodic regulatory review, had determined that there was good reason to consider the repeal of the Rules and Regulations Pertaining to Carbonated and Still

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Water Bottling Plants and Beverages, 2 VAC 5-540. Dr. Wilkes then introduced Ryan Davis, Program Manager, Office of Dairy and Foods, who explained that the current regulations were adopted by the Board in the 1950's and that currently the Code of Virginia includes all of the pertinent provisions of 2 VAC 5-540. Mr. Davis recommended that the Board authorize staff to file a Notice of Intended Regulatory Action to initiate the state regulatory process for considering the continued need and effectiveness of the regulations.

Mr. Rogers then read the staff's suggested motion: That the Board of Agriculture and Consumer Services authorize staff to take any and all actions necessary to file, on behalf of the Board, a Notice of Intended Regulatory Action concerning Rules and Regulations Pertaining to Carbonated and Still Water Bottling Plants and Beverages.

Mr. Ellis made the motion, Mr. Murphy seconded it, and it was passed by a unanimous vote.

### **ANIMAL POUNDS AND SHELTERS CIVIL PENALTIES – PROPOSED CONSENT AGREEMENTS WITH SURRY AND SUSSEX COUNTIES**

President Rogers called on Dr. Wilkes, DAFIS Director, who opened the staff presentation on the two proposed consent agreements concerning civil penalty assessments for violations of the Comprehensive Animal Care Laws and regulations regarding the maintenance of animal pound facilities in Surry County and Sussex County. Dr. Dan Kovich of DAFIS provided additional information and responded to questions from the Board concerning the proposed agreements.

In response to Ms. Lohr's questions about repeat violations at the Surry facilities, Commissioner Haymore advised the Board VDACS is prepared to hold the locality to the commitments included in the consent agreement to address conditions at its pound.

In response to questions from Mr. Rogers, Dr. Kovich explained that addressing the problems at Surry will require at least the amount of the civil penalties that will be directed toward solving the problems and pointed out that the agreement includes timelines for completion of actions by the locality. It was noted that Tyrone Franklin, Surry County Administrator, and Mary Jones, Sussex County Administrator, were present to answer questions from the Board concerning the proposed agreements.

In response to a question from Mr. Bain, Dr. Wilkes stated that it was just a coincidence that agreements for Surry County and neighboring Sussex County were being presented at the same time. In referring to a report from Eileen McAfee at the March Board meeting, Dr. Wilkes noted that there are other local pounds in the state that have problems that need addressing.

Before the Board considered action on the proposed consent agreement with Surry County, Mr. Rogers read the following statement into the record: "I, Paul W. Rogers, Jr., acknowledge that I may possibly be financially impacted as a result of votes by the

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Board concerning the proposed consent agreement with Surry County regarding the handling of civil penalties assessed against Surry County by the Virginia Department of Agriculture and Consumer Services for violations of the Comprehensive Animal Care Laws and regulations regarding the maintenance of animal pound facilities in Surry County. The nature of my personal interest is as follows: I am a resident and taxpayer in Surry County, am nevertheless able to vote fairly, objectively and in the public interest.” Mr. Rogers then presented Mr. Seward with that statement which he had signed and dated May 21, 2009.

Mr. Seward read the following suggested motion: That the Board of Agriculture and Consumer Services approve the proposed consent agreement staff has presented concerning the handling of civil penalty assessments for violations of the Comprehensive Animal Care Laws and regulations regarding the maintenance of animal pound facilities in Surry County.

Mr. Clark made the motion, Mr. Ellis seconded the motion, and it was carried by a unanimous vote.

Concerning the proposed consent agreement for Sussex County, Mr. Seward read the following suggested motion: That the Board of Agriculture and Consumer Services approve the proposed consent agreement staff has presented concerning the handling of civil penalty assessments for violations of the Comprehensive Animal Care Laws and regulations regarding the maintenance of animal pound facilities in Sussex County.

Mr. Toulme made the motion, Mr. Clark seconded the motion, and it was carried by a unanimous vote.

### **ACCEPTANCE OF GIFTED ASSETS FOR WINE BOARD**

Mr. Rogers called on Mr. Seward who briefed the Board on a request from the Virginia Wine Board concerning monetary assets offered to the Wine Board. He explained that the Wine Board passed a motion at its meeting on April 7, 2009, requesting that the Board of Agriculture and Consumer Services accept, on behalf of the Wine Board, monetary assets being offered to the Wine Board by the Virginia Wine and Food Society. Mr. Seward explained that the Code allows the Board of Agriculture and Consumer Services to accept gifts and donations, but the Wine Board does not have a similar authority. He added that last year the Board of Agriculture and Consumer Services took a similar action to accept assets to the Wine Board on the Wine Board's behalf.

Mr. Seward presented the following suggested motion: That the Board of Agriculture and Consumer Services, under its authority in Section 3.2-111 of the Code of Virginia, accept a monetary gift from the Virginia Wine and Food Society and direct staff to have that gift placed in an account for the Virginia Wine Board established for the Virginia Wine Promotion Fund under Section 3.2-3005 of the Code of Virginia.

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In response to a question from Mr. Toulme, Mr. Seward informed the Board that the monetary gift was approximately \$7,000.

Mr. Ellis made the motion as presented by Mr. Seward. Mr. Murphy seconded the motion and it was carried by a unanimous vote.

### **VIRGINIA AGRICULTURAL STATISTICS REPORT**

Herman Ellison, Director of the Virginia State Office of the National Agricultural Statistics Service of USDA, briefed the Board on recent reports and surveys conducted by his office and NASS. He also advised the Board members that each has an opportunity to offer suggestions concerning the 2012 Ag Census by the August deadline.

Mr. Sturgis noted that the Board at its March meeting expressed an interest in communicating with USDA regarding new data that should be collected in the next Ag Census. Commissioner Haymore asked Mr. Seward to work with Mr. Ellis in preparing a draft letter from the Commissioner that would support Board recommendations concerning new data that should be collected in the next Ag Census.

During his report Mr. Ellison reviewed the status of special studies and reports in progress and/or scheduled to be conducted by his office.

### **NEW BUSINESS**

No new business was discussed.

### **PLANS FOR FUTURE BOARD MEETINGS**

President Rogers reported that the Board's last meeting of the year will be on December 3, 2009 in Richmond. He then called on Mr. Ellis who discussed his plans to host an afternoon meeting and dinner on August 4 and a tour on August 5 in his home district.

### **PUBLIC COMMENT PERIOD**

Jim Riddell of Virginia Tech presented a special award to Mr. Bain as Virginia Farmer of the Year. Mr. Riddell explained that Mr. Bain has been selected to represent Virginia in the Swisher Sweets/Sunbelt Expo Southeastern Farmer of the Year Competition at Moultrie, Georgia in 2009. Mr. Riddell read a list of Mr. Bain's accomplishments as a farmer and saluted him as a leading ambassador of Virginia agriculture.

Eileen McAfee presented Dr. Kovich with questions about the provisions of the consent agreements that were approved by the Board earlier in the meeting. In response Dr. Kovich indicated that both Surry and Sussex would have to pay at least \$1,000 in civil penalties and that, if the consent agreements were not followed by the localities, Surry and Sussex could pay more than that.

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Ms. McAfee presented the Board with information about examples of abuse and cruelty to animals at local pounds that she indicated have not been adequately addressed by Dr. Wilkes and his staff. She also presented the Board with photographs of animals that she described as suffering from abuse and mistreatment in local pounds across the Commonwealth. She advised the Board that she has been working with different persons who have served as State Veterinarian over more than a decade trying to encourage the State Veterinarian to take action to address the problems at local pounds. She added that she will next seek legal action to address her concerns regarding the state's lack of action to address major problems in local facilities.

In response to a question from Mr. Murphy, Dr. Kovich emphasized that DAFIS will continue to take immediate action on problems at local pound facilities.

In response to Mr. Murphy's question to Ms. McAfee, she indicated that she wants the localities that violate the law to be assessed civil penalties for their violations. In response to a question from Mr. Bain, she told the Board that she gets calls from concerned persons about violations at local pounds.

**ADJOURNMENT**

The Board adjourned at 11:40 a.m.

Respectfully submitted,

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Paul W. Rogers, Jr., Board President

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Roy Seward, Board Secretary