

DRAFT MINUTES

Board of Agriculture and Consumer Services
Patrick Henry Building
East Reading Room
1111 E. Broad St
Richmond, Virginia

Thursday, March 21, 2024

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9:01 a.m. on Thursday, March 21, 2024, at the Patrick Henry Building. President Horsley called the meeting to order.

ROLL CALL

The Board Secretary called the roll:

PRESENT

Keith Harris
Donald Horsley
Raymond Keating
Brittany Jones
Margaret Ann Smith
Jacquelin Easter
James S Huffard, III
Tyler Wegmeyer
Richard Sellers
Neil Houff
Dr. Robert Corley

Lonnie Johnson

CONGRESSIONAL DISTRICT

1st
2nd
3rd
4th
6th
7th
9th
10th
11th
Pesticides – Commercial Agricultural
Representing Dr. Makola Abdullah, President,
Virginia State University
Representing Dr. Timothy D. Sands, President,
Virginia Tech

ABSENT

Cecil Shell
Kailee Tkacz Buller
Charles Church

5th
8th
Pesticides – Commercial Structural

STAFF PRESENT

Joseph Guthrie, Commissioner, Virginia Department of Agriculture and Consumer Services (VDACS)
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services
Nicolas Robichaud, Policy Assistant, VDACS

APPROVAL OF MINUTES

Mr. Sellers moved that the draft minutes of the meeting on December 7, 2023, be approved as distributed. Mr. Harris seconded the motion. The Board voted unanimously to approve the motion.

REPORTS FROM BOARD MEMBERS

Neil Houff

Mr. Houff remarked that he will be exiting the Board in the next six months and reflected on his vocal support for over-the-top (OTT) dicamba for corn and soybeans at the time of his initial appointment and how the U.S. District Court of Arizona's decision against the U.S. Environmental Protection Agency may now make it unavailable. He noted that spring in western Virginia has opened early for the year and there is some stress in fertilizer movement, particularly in phosphates. He anticipates the supply chain opening up and being plentiful for the season.

Keith Harris

Mr. Harris echoed Mr. Houff's concerns regarding OTT dicamba and the supply chain, noting difficulty in finding alternative pesticides for corn and soybeans and general fertilizer pricing issues. He reported that spring has come early in the 1st District and that wheat and barley have grown in well.

Margaret Ann Smith

Ms. Smith noted that the winter was mild and that spring has come early. The cattle markets are at an all-time high, which has made things difficult for those in the stocker and feeder business. Prices are about 20 percent higher than they were in 2012-2013, which was the last high point. There has been heavy rain in the West, which has helped the region rebound from wildfire issues.

Lonnie Johnson

Mr. Johnson shared that will be a celebration for Dr. Alan Grant's retirement after 15 years of service on May 3. The search committee for his replacement has narrowed down applicants and will begin interviewing in April. Since Dr. Michael Gutter's arrival as Director of the Virginia Cooperative Extension Office in November 2023, 41 new extension agents have been hired. There is strain on their training mechanisms, though this wave of recruitment has helped offset turnover.

Dr. Robert Corley

Dr. Corley extended his appreciation for Dr. Alan Grant, commending his years of service and dedication. As a part of Virginia State University's (VSU) advocacy efforts, Dr. Corley shared his experience participating in Virginia Agriculture Literacy week, reading to elementary school children alongside Commissioner Guthrie at Pleasants Lane Elementary School in Petersburg. VSU's AgFest recently took place, which enjoyed strong turnout both from the community and the University. VSU has recently reintroduced its International Agriculture Certificate Program, a unique opportunity for students to gain experience with international agriculture markets. Both VSU's small farm and urban agriculture efforts have been successful, with their urban agriculture program gaining recognition on the national scale through its work with the U. S. Department of Agriculture (USDA).

Richard Sellers

Mr. Sellers wished the Board a happy National Agriculture Week. He also shared his experience participating in Virginia Agriculture Literacy Week, during which he read to a class of kindergarteners. He noted the early bloom of cherry blossoms in Northern Virginia and that the earlier-than-anticipated spring has many people in his area ready to plant earlier than expected.

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Tyler Wegmeyer

Mr. Wegmeyer shared his hope that recent chills have not negatively impacted crops in his region. He also recognized the value of reminding the public of agriculture's importance during National Agriculture Week, which agritourism farms, such as his own, accomplish daily during their operating seasons. Christmas tree farms were very successful this past season, with many farms sold out well before Christmas. He noted that several Christmas tree lots still had supply after the holiday, potentially showing families' preference to buy their trees directly from farms. The mild winter meant strong moisture over the season, which has pushed strawberry season earlier. A new disease has affected the strawberry industry, though growers are able to avoid the worst outcomes with early preventative work. Mr. Wegmeyer commended the work of Extension Agent Roy Flanagan in this area, which President Horsley reiterated.

James S. Huffard, III

Mr. Huffard reported that though generally colder than other regions, Southwest Virginia also had a mild winter. Dairy prices have fallen recently, and commodity prices have been below international prices. Mr. Huffard hopes that the export market continues to improve. The total number of dairies in his area has steadily decreased, leaving the dairy market slim. Duchess Dairy continues to operate at capacity and hopes to accommodate additional customers. He noted the importance of marketing, particularly in all-jersey milks, in the dairy industry.

Jacquelin Easter

Ms. Easter reported the success of her county's Tractor Parade in celebration of National Agriculture Week and thanked Commissioner Guthrie for his participation. Local farmers were honored as a part of the parade. She noted how the erratic weather recently has led to unpredictable soil conditions in her region. She attended a crop insurance meeting at the Truck and Tractor Museum in Colonial Heights, which she noted as a great opportunity to learn more about a variety of farm equipment. A primary focus of the meeting was concern over commodity prices.

Donald Horsley

President Horsley reiterated the impact of commodity prices, with recent indications projecting a 25 percent decrease in income from last year. While last year was strong from a production standpoint, Mr. Horsley noted that it was not as strong from a selling standpoint. He noted the recent volatility of prices and expressed concern over potential increases in production due to upswings in prices considering the sizable supply of corn and beans. He also noted a trend of developing farmland in his area and worries that Virginia Beach's Agriculture Reserve Program may be scaled back with a new City Council. President Horsley reiterated Mr. Johnson and Dr. Corley's sentiments regarding Dean Alan Grant and his upcoming retirement.

Raymond Keating

Mr. Keating introduced himself to the Board as an international merchandiser at Perdue AgriBusiness in Chesapeake.

Brittany Jones

Ms. Jones introduced herself to the Board as both a dairy farmer at Richlands Dairy and a teacher of Dairy Sciences at VSU.

COMMISSIONER'S REPORT

During Commissioner Guthrie's presentation of his report, he briefed the Board on personnel changes, recent events, and other matters relating to VDACS. A copy of the written report on which his presentation was based was included in the Board meeting agenda and materials.

After Commissioner Guthrie delivered his report to the Board, he shared written reports from Cecil Shell and Kailee Tkacz Buller, who could not attend the meeting but submitted reports to be shared.

Commissioner Guthrie also brought to the Board's attention a flyer from Herman Ellison, Virginia State Statistician, USDA - National Agricultural Statistics Service. The flyer, included in the meeting materials, highlighted information from the 2022 Census of Agriculture.

Cecil Shell

Mr. Shell sent his apologies for not being able to make it to the meeting today in person. He reports that weather in his district has been erratic, though generally very wet in late 2023 into 2024 and dry recently. Wheat, timber, and tobacco crops have been generally strong.

Kailee Tkacz Buller

Ms. Buller sent her regards to the Board, sharing that she could not attend today's meeting due to the recent birth of their third child. She shared news of her recent appointment as President and C.E.O of the National Oilseed Processors Association. She provided an update on the federal government shutdown, which has been avoided by a recent agreement on government funding through the fiscal year ending on September 30. There is uncertainty regarding forward movement on the federal Farm Bill that expires on the same date. A significant number of regulations are expected from the Biden Administration leading up to federal elections in the fall. Among these, Ms. Buller anticipates Food and Drug Administration regulations defining "healthy"; front of pack labeling guidelines; definitions of processed/ultra processed; and regulations on heavy metals, additives, and chemicals in food. Geopolitical tensions continue to effect federal agriculture policy.

PROPOSED FAST-TRACK ACTION TO AMEND 2 VAC 6-675 (REGULATIONS GOVERNING PESTICIDE FEES CHARGED BY THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES)

President Horsley called on Liza Fleeson-Trossbach, Program Manager, Office of Pesticide Services, to brief the Board on the proposed fast-track action.

Mr. Sellers moved that the Board of Agriculture and Consumer Services adopt 2 VAC 5-675, Regulations Governing Pesticide Fees Charged By the Department of Agriculture and Consumer Services, as presented by staff today, and that the Board authorize staff to take any and all steps necessary to amend this regulation through a fast-track regulatory action. Mr. Houff second the motion. The Board voted unanimously in favor of the motion.

FINAL STAGE – 2 VAC 5-317 (REGULATIONS FOR ENFORCEMENT OF THE NOXIOUS WEEDS LAW)

President Horsley called on David Gianino, Program Manager, Office of Plant Industry Services, to brief the Board on the final stage for 2 VAC 5-317.

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Mr. Harris asked Mr. Gianino how these regulations affect the use of kudzu. After Mr. Gianino addressed the question, Commissioner Guthrie asked Mr. Gianino to brief the Board on the general function of each tier of noxious weed.

Mr. Sellers moved that the Board Agriculture and Consumer Services adopt 2 VAC 5-317, Regulations for Enforcement of the Noxious Weeds Law, as presented by staff today, and that the Board authorize staff to take any and all steps necessary to have this regulation become a final regulation of the Board. Ms. Easter seconded the motion. The Board voted unanimously in favor of the motion.

MEETING RECESS

At 10:13 a.m., President Horsley recessed the meeting.

OFFICE OF PESTICIDE SERVICES – CASE DECISION – THIBAUT ENTERPRISES, LLC. (CASE #73148)

At 10:24 a.m., President Horsley resumed the meeting.

President Horsley introduced Kate Kulbok, Assistant Attorney General, as the Board's legal counsel regarding the case decision for Office of Pesticide Services Case #73148. Ms. Kulbok briefed the Board on its roles and responsibilities pertaining to the review of the case decision and the recommendation of the hearing officer for the formal hearing held in this case.

President Horsley called on Justin Bell, attorney representing VDACS, to present his case. Mr. Bell explained that he typically would represent the Board in legal matters, though as he has represented VDACS in the legal proceedings for Case #73148 to this point, he has asked Ms. Kulbok to advise the Board in his place. He then noted that the appellate is typically given first opportunity to present their argument, at which point Mr. Nate Scaggs, legal counsel for Thibault Enterprises, addressed the Board. Mr. Scaggs provided geographical context regarding the location of the case and, after reiterating his arguments presented to the hearing officer, asked that the Board follow the recommendation of the hearing officer.

Mr. Bell then presented on behalf of VDACS, asking that the Board strike portions of the hearing officer's recommendation and reiterating his arguments as presented to the hearing officer.

Several Board members directed questions to Ms. Kulbok, Mr. Bell, Mr. Scaggs, and a member of Thibault Enterprises who was present. These questions included clarification of wind direction, VDACS testing capabilities and methods, sampling methods, Thibault's licensing status, and the ability of the Board to amend the recommendation of the hearing officer.

Ms. Kulbok advised the Board that they could not amend the hearing officer's recommendation and that it could only move to adopt the recommendation or determine its own motion.

After discussion, Mr. Sellers introduced a motion that the Board of Agriculture and Consumer Services (i) accept the report and findings of the hearing officer, (ii) find that Thibault Enterprises LLC acted in compliance with Va. Code § 3.2-3939(B), (iii) direct VDACS to vacate the \$120 penalty VDACS issued for this case, and (iv) direct VDACS to vacate any points assessed to Thibault Enterprises, LLC, as a result of this case. Mr. Houff seconded the motion. The Board voted unanimously in favor of the motion.

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Following the acceptance of the motion, the Board shared its rationale for the vote and advised Mr. Thibault on best practices moving forward to show good faith to the complainants.

VIRGINIA WINERY DISTRIBUTION COMPANY BOARD APPOINTEE

President Horsley called on Commissioner Guthrie, who brought to the Board's attention the resignation, effective March 22, 2024, of Doug Zerbst from the Board of Directors of the Virginia Winery Distribution Company (VWDC). Commissioner Guthrie indicated that he received a letter dated February 23, 2024, from Jay Colston, President, Virginia Wine Wholesalers Association, recommending that Ken Tambaschi from Republic National Distribution Company be appointed to fill Mr. Zerbst's unexpired term on the VWDC Board of Directors.

Mr. Sellers moved that the Board of Agriculture and Consumer Services, effective March 22, 2024, appoint Ken Tambaschi, Republic National Distribution Company, to fill the remainder of Doug Zerbst's unexpired term through June 30, 2027, on the board of directors of the Virginia Winery Distribution Company as an owner or manager of a wine wholesaler licensee. Vice President Smith seconded this motion. The Board voted unanimously in favor of the motion.

NEW BUSINESS

There was no new business brought before the Board.

FUTURE BOARD MEETINGS

President Horsley noted the upcoming 2024 Board meeting dates of May 23 and December 12 in Richmond. He then called on Vice President Smith and Neil Houff to announce the upcoming July 31 – August 1, 2024, Board meeting dates in Staunton. Further details regarding the summer meeting and tour will be announced in May.

Commissioner Guthrie also alerted the Board that VDACS will likely request a brief special Board meeting in early July to appoint members to the newly established Virginia Beer Distribution Company Board of Directors. Commissioner Guthrie mentioned that he will provide additional details at the May Board meeting.

PUBLIC COMMENT PERIOD

The Board did not receive any public comment.

ADJOURNMENT

There being no further business, the Board adjourned at approximately 11:26 a.m.

Respectfully submitted,

Donald Horsley
Board President

Kevin Schmidt
Board Secretary