

**MINUTES OF THE  
EASTERN SHORE OF VIRGINIA  
PUBLIC SERVICE AUTHORITY**

A meeting of the Eastern Shore of Virginia Public Service Authority was held on Tuesday, December 21, 2010, at 7:00 p.m. in Conference Room #2 of the former Northampton Middle School, 7247 Young Street, Machipongo, Virginia.

Members present:

Robert H. Meyers  
Granville F. Hogg, Jr.  
J. T. Holland  
Henry J. Heneghan, Jr.  
Artie Miles  
Carl Harris  
Felton Sessoms

Members absent:

Bob Panek  
George E. Gowen, Jr.  
Scott R. Walker, Jr.

Others present:

Jeff Walker, citizen  
Richard Tankard, member, Board of Supervisors  
Spencer Murray, member, Board of Supervisors  
Joe Turner, Hurtt & Proffitt  
Bif Johnson, Hurtt & Proffitt  
Eldon James, consultant  
Sue Rowland, consultant  
Roberta Kellam, member, State Water Control Board  
John Ordeman, Citizens for a Better Eastern Shore  
Mary Miller, citizen  
Andrew Barbour, citizen  
Larry LeMond, member, Cheriton Town Council  
Katherine H. Nunez, Executive Director & County Administrator  
Janice Williams, County Administrator's Office

Call to Order & Establishment of Quorum:

Chairman Meyers called the meeting to order and announced that a quorum was present.

Statements from the Public:

Mr. Andrew Barbour, resident of District 1 and former member of the Northampton County Board of Supervisors, voiced his opposition to the project as currently planned, saying that it was too big and too expensive. He said that he has no problem with a partnership between Cape Charles and Cheriton; he does have a problem when the project tries to “rope in” some of the County’s poorest residents to pay for it. He questioned why the residents of Fairview would be required to participate, noting that the community was built on well-drained soils and has no problem areas to remediate. He said that it was “unconscionable” that Fairview residents would be included due to the advantage of grant availability but would cost the residents \$500 per year vs. the existing \$50 per year. Mr. Barbour continued by saying that the State Water Control Board has granted a loan in excess of \$10 million and that Northampton County taxpayers are on the hook for this debt when the County cannot afford any more debt.

Chairman Meyers read the following letter from Bob Panek:

*“December 20, 2010*

*To: Board Members, Eastern Shore of Virginia Public Service Authority*

*The Chairman of the Authority provided public comments concerning the application for financial assistance for the southern node of the proposed Northampton County regional wastewater system at the State Water Control Board (SWCB) meeting on December 9, 2010. The Chairman’s comments included both analytic and procedural matters associated with the project, and concluded with a recommendation that funding be denied. I understand the SWCB proceedings will be discussed at the December 21<sup>st</sup> Authority Board meeting. As I will not be able to attend this meeting, I want to provide you my perspective.*

*The analytic matters certainly need to be addressed in a deliberate manner by the Authority, and it is not my intent to comment on them at this time. However, I would note that the Authority has had over four months to take this on since the application was submitted by the County in advance of restructuring the Authority. Some questions were posed to the consulting team by the Chairman and another board member, but no action has been proposed by the Chairman or been taken by the Authority to attempt to resolve these matters. The first step would have been to transfer responsibility for the financial assistance application from the County to the Authority. It would then have been appropriate for the Authority to conduct a review of the Preliminary Engineering Report and application and make changes if deemed necessary. This was not done and, instead, the Chairman has simply provided negative comments to the Department of Environmental Quality (11-16-2010) and SWCB (12-9-2010). **It is time for the Authority Board to remedy this procedural issue and accept this responsibility.***

*I will address three matters raised in the Chairman’s comments to the SWCB:*

- 1. The Chairman states, “In another area, Hurt & Proffitt together with Mr. Robert Panek seem to be preparing to use the Cape Charles sewage system to subsidize the wealthier residents of Cape Charles by charges made to the low income families outside the town.”*

*Here are the facts:*

- a. *It is common knowledge that economies of scale accrue when additional customers are added to a system with sufficient capacity. This has been discussed numerous times at the Wastewater Summit and in T-CUP Project Management Team meetings.*
- b. *Cape Charles rates are about 50% higher than the state-wide average for small systems; low income families also reside within the town.*
- c. *One of the objectives from the beginning has been to pursue rate efficiencies for existing systems. The following is contained in the Northampton County Resolution of July 13, 2010, Authorizing the Application for Funding for a Regional Wastewater System:*

*“WHEREAS, the Preliminary Engineering Study and Report was recently begun for a project to serve the Towns of Cheriton and Cape Charles and the surrounding County area which will determine whether environmental, economic and **rate affordability benefits** can accrue;” (bolding added).*

*Similar language appeared in the resolutions adopted by the Towns of Cheriton and Cape Charles.*

- d. *The Preliminary Engineering Report determined that it would be less costly to use the Cape Charles treatment plant to process sewage from the new service area rather than build another plant.*
2. *The Chairman states, “In addition to being the Town’s appointed PSA member, Mr. Panek is a paid consultant for the Town of Cape Charles. He presumably has both a professional and an employment/financial interest in this project.”*

*Here are the facts:*

- a. *I am an employee of the Town of Cape Charles with the title of Staff Consultant. This is no secret and is noted in numerous public documents.*
  - b. *My duties are principally to manage the large capital projects for improvements to the Town’s water and wastewater systems. I provide assistance to the Town Manager and staff in other areas as needed.*
  - c. *I am not paid for attendance at meetings of the T-CUP Project Management Team or Authority Board.*
  - d. *I certainly have a professional interest in the regional project, particularly since benefits may accrue to residents of Cape Charles and the County at large.*
  - e. *I have no employment/financial interest in the regional project. My employment with the Town is not at all dependent on the success of the regional project.*
3. *The Chairman states, “He also indicated the Senator would not have given support if he had been made aware of the permanent burden the ever growing sewage costs would place on the backs of those who could least afford it.”*

*Here are the facts:*

- a. The information provided to Senator Northam's aide consisted of the positions taken by the Chairman of the Board of Supervisors and the Mayors of Cheriton and Cape Charles. Additionally, I explained that the project development process would determine whether an affordable rate could be achieved or not.*
- b. No entity that I am aware of - not the Towns, not the County, not the Authority, not the T-CUP PMT – is advocating the imposition of an unaffordable rate.*
- c. The local governing bodies have the responsibility of making the determination of affordability if the necessary percentage of voluntary service agreements is not achieved.*
- d. The Senator was not asked to lend his support to the burden of an unaffordable rate.*

*The Chairman's comments, above, are laced with hyperbole, misleading statements and innuendo. **The Authority Board should modify the Bylaws to indicate that Officers of the Authority shall not sign correspondence using their title unless authorized by the Board.***

*On December 9, I requested that the Chairman include both of the recommendations above on the December 21 meeting agenda. The agenda distributed by the Chairman on December 19 does not include these items. The Chairman and I have had an exchange of several emails today and, as of this afternoon, he refuses to include these items on the agenda. I urge the Authority Board to take up these two matters at the December 21 meeting. The Authority Board needs to consider and decide on their responsibility for financial assistance applications and guidelines for ensuring clear public expression of the Authority's positions. **I recommend that the revised bylaws not be adopted until the latter issue is decided.***

*I request that this letter be entered into the record of the December 21, 2010 meeting.*

*Bob Panek”*

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The Chairman read the following letter from Mayor Estelle Murphy of Nassawadox:

Approval of Minutes:

Following the addition of a staff member's name and the rewording of a statement from Mr. Miles, motion was made by Mr. Heneghan, seconded by Mr. Sessoms, that the minutes of the meeting of November 16, 2010 be approved as amended. All members were present with the

exceptions of Mr. Gowen, Mr. Walker and Mr. Panek and voted ‘yes.’” The motion was unanimously passed.

Review of Financial Statement:

No changes

Report of Officers:

(a) At the request of the Chairman, it was reiterated that mass communications by and between more than two members of the PSA constitute a public document. It was also noted that the Executive Director should be copied on all official correspondence so that the public record can be maintained.

(b) The Chairman had distributed forms from the Commonwealth of Virginia relative to Conflict of Interest disclosure. The County Administrator indicated that as a result of conversations with the Commonwealth’s Attorney, PSA members are required to file both the Statement of Economic Interests and the Financial Disclosure Form, both as a condition of assuming office and annually thereafter. Failure to do so is a Class I misdemeanor and in the opinion of the Commonwealth’s Attorney, failure to file means that you are not a legal member of the Authority. Forms can be downloaded from the website of the Secretary of the Commonwealth or are available from the County Administrator’s Office. Only five members filed the disclosure form upon assuming office earlier in the year (Mr. Heneghan, Mr. Holland, Mr. Walker, Mr. Miles and Mr. Panek).

(c) The Chairman reported to the Board on the regular meeting of the Northampton County Board of Supervisors held on December 14<sup>th</sup>. He noted that a letter from Mr. Hughes of the Fairview community had been read into the record of that meeting. He also read statements attributed to Supervisor Murray and further, noted that a petition had been received by the Northampton Board from Mr. John Green of the Fairview community containing 34 signatures of residents indicating that it was not in their best interest to participate in the wastewater project. Copies of this documentation were distributed to the PSA Board.

Report of Committees:

Mr. Panek and Mr. Gowen were absent but Chairman Meyers indicated that Mr. Gowen had told him that they were planning to meet with Mike Canales of Riverside Shore Memorial Hospital on January 12<sup>th</sup>.

Old Business: Review of Bylaws:

In light of the uncertainty as to whether a true quorum was present, motion was made by Mr. Heneghan, seconded by Mr. Holland, that this matter be tabled until the January 2011 meeting. Mr. Heneghan, Mr. Holland and Mr. Miles voted “yes”; Mr. Meyers voted “no” and the remaining members present (Mr. Sessoms, Mr. Harris, Mr. Hogg) were hesitant to vote

because they had not completed the required disclosure forms. It was therefore the consensus of the group that this matter be tabled.

#### New Business: Scheduled Presentations:

##### Report on December 9, 2010 State Water Control Board Meeting

Mrs. Roberta Kellam, member of the State Water control Board, said that a list of loan applicants had been presented to the SWCB at its September 2010 meeting. Generally, these applications are not controversial; this was the first time that public comments had been presented at the SWCB meeting on funding a sewer project. The SWCB did vote to approve a loan to the County in the amount of \$10,920,746 at 0% interest for a 20 year term.

Speakers that appeared before the SWCB were concerned with cost effectiveness and environmental impact. DEQ staff indicated that points raised by the speakers would be addressed in the review process which commences upon loan approval. This review process would include a public hearing and the loan applicant would be responsible for the information provided to DEQ and responsible for addressing any of the issues. Mrs. Kellam distributed a sheet illustrating the review process.

Another point raised at the meeting was that funding was available on an annual basis and that if the County has modifications to the project, the State will work with the County to try to achieve its objectives. The State will not direct the County in how to proceed.

##### Requested Presentation by County Administrator and Consultants

Ms. Nunez distributed the award letter received from DEQ as referenced above.

She then shared with the PSA Board certain items that need to be brought to its attention including next steps and consultant wrap-up items.

Ms. Nunez distributed planning grant documentation with eight key steps that have to be completed (management plan), developed by the Planning Management Team and accepted by the State. Items in yellow are beyond the scope of work of the consultants. The only remaining bid item under the DHCD grant is the completion of the Northern Node Preliminary Engineering Report (PER). Mr. Johnson indicated that the consulting team will be looking at the project for the entire Town of Nassawadox including the healthcare community area in order to put together the financials and background data necessary for the preparation of the PER of Phase I (will be utilizing a phased-in approach for the Northern Node) as per the direction of the PMT and the PSA.

Ms. Nunez discussed the status of the Southern Node portion of the project indicating that two public information meetings have been held. She again referenced the letter from Mr. Hughes and the petition submitted from Mr. John Green, noting that “clearly this is an area not sold on inclusion in the project.”

She reiterated earlier comments from the funding agencies that the PSA is not an eligible applicant for funding; it has to be a town or the County. DHCD feels that this is a regional project and the County already has CDBG grants still outstanding. Staff has asked the State for flexibility in the rules and consideration of all of the towns' pooling of allowable CDBG funding. This is going to have to be an area of conversation by the PSA as it pertains to construction application timeframes to DHCD in the Spring.

Another item of conversation by the PSA will have to be DEQ construction assistance grant applications. This conversation should be held between the PSA and the Board of Supervisors as the County Board would again be the applicant but the PSA should be a joint participant with the Board on the grant negotiations.

A smaller grant application to the Department of Conservation & Recreation was submitted jointly by the County and the Town of Cheriton. The PSA needs to engage in a conversation with Cheriton and the Board of Supervisors as to whether the PSA will take on this grant if awarded (\$250,000), and what would be the PSA's responsibility with regard to the grant.

The PSA's position on any future financial assistance applications (such as to DEQ or USDA) also needs to be discussed. Ms. Nunez reminded the group that she remains the Executive Director and asked the PSA to consider future direction and approach through the staff that is available.

Ms. Rowland distributed a summary of survey results and discussed same with the PSA Board. Almost 500 surveys have been collected and as noted earlier, a series of public information meetings have been held in both the Northern and Southern Nodes.

Ms. Nunez addressed the PSA with comments she has heard from both the public and the Board of Supervisors, such as where do we stand on the acquisition of existing systems in place today (Exmore and Cape Charles). This function is contained in the PSA's mission statement but has not been of focus to date due to other pressing matters. Perhaps the PSA could prepare a response to this issue as well as a time line.

Ms. Nunez said that we are coming to the end of the planning grant (use of the consultants as a resource). She questioned how the PSA will be proceeding forward and what resources can be brought to bear (for preparation of funding applications or hiring of other consultants).

Mr. Johnson indicated that the consulting team is looking for direction for the Northern Node portion of the project. Should the team focus on all of Nassawadox? Just the health care community? Commercial properties on Rt. 13? He also commented that in response to allegations that the application did not contain specific information concerning failing systems, he said that site-specific information was not included because publication of that information would force "somebody"; i.e., Health Department or County Government, to fix it. He noted that six mound systems are in use in the Fairview area. The Health Department is not comfortable with going into that amount of detail. Mr. Johnson noted that the application as

submitted did receive funding and that negotiations will be ongoing as to the details of that fund mechanism.

Ms. Nunez stated that she believes the funding agencies will have problems if Nassawadox is not part of the Northern Node project or if only the health care community is targeted.

Mr. Sessoms, an employee of the Eastern Shore Health District and a resident of Nassawadox, said that there were several residential issues in the Town of Nassawadox including his own home which has a secondary treatment system in his backyard.

Mr. Miles said that Exmore still wishes to participate with its residential needs and hopes that Nassawadox's "backtracking" does not "queer" the deal, noting that Nassawadox's letter (read into the record earlier in the meeting) was a disappointment.

Mr. Miles also stated that the PSA Board is sensitive to Mr. Meyers' recommendations to the DEQ and to the Northampton Board of Supervisors. He asked that if Mr. Meyers chooses to comment in the future, that he clearly indicate that he is speaking only as a resident and not as Chairman of the PSA unless the PSA has so directed. Mr. Miles stated that as Chairman, Mr. Meyers is only the mouthpiece for the PSA, but only with that body's approval.

Mr. Meyers responded that page 3 of the hand-out clearly showed his signature as "resident of Northampton County".

Adjourn:

Motion was made by Mr. Harris, seconded by Mr. Hogg, that the meeting be adjourned. All members were present with the exceptions of Mr. Walker, Mr. Gowen and Mr. Panek, and voted "yes." The motion was unanimously passed. The meeting was adjourned at 8:15 p.m. The next meeting of the PSA will be on Tuesday, January 18, 2011 at 7:00 p.m. in Conference Room #2 of the former Northampton Middle School, 7247 Young Street, Machipongo, Virginia.