



CITIZENS FOR A BETTER EASTERN SHORE

SHORELINE

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Vacation Rentals and the Transient Occupancy Tax... Are Shore Counties Leaving Money on the Table?

By Mary Miller

Hotels, motels, inns, travel campgrounds, lodges, bed & breakfasts – all are required to have a local business license and to register, collect, and remit both Sales Tax and Transient Occupancy Tax to the state and to Northampton and Accomack counties and towns. But what about those advertised “vacation rentals,” the short-term rental (fewer than 30 days) of houses, condos, guest houses and apartments? Up until recently, there was nothing in the state code that permitted counties, cities, or towns to require this tax on short-term rentals.

In 2017, the General Assembly approved action* that permits a locality “by ordinance, [to] establish a short-term rental registry and require operators within the locality to register annually,” for the purpose of collecting Transient Occupancy Tax on any facility that provides “a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy.” The local ordinance may include fees up to \$100 per property, and penalties of up to \$500 for persons offering unregistered properties for rent may be imposed.

The internet is full of services that connect vacation rental owners with vacationers – VRBO (Vacation Rental

*Virginia Code § 58.1-3819



by Owner), Home Away, Home to Go, and commercial vacation rental services. It’s easy to Google “Cape Charles” or “Chincoteague” and find scores of available short-term rentals with a wide variety of styles, amenities, and prices – a two-week stay at a cottage on Chincoteague for \$1,068.60, two weeks at a waterside home on the seaside for \$1,500, a 10-night stay in a 4-bedroom beachfront home in Cape Charles for \$3,716.30, or two weeks at a “sleeps 10” beachfront house on a sand dune on the bayside for \$7,200. These commercial rentals are registered with the localities, provide detailed information about additional charges and fees for services, and collect and pay thousands of dollars in state and local taxes.

So Who’s Not Paying Occupancy Tax?

There is another type of vacation rental that until now has avoided collecting and paying taxes on rentals. Airbnb is the most well-known of these services. Listing scores of

privately owned houses, condos, guest houses, and apartments in all the same Shore localities as the commercial services; appearing to operate without business licenses; and with one other big difference – the rental owners are not required to charge, collect, or remit any state or local taxes on the rental fees. Their guests enjoy all the locally funded services and amenities with no charge – except to the taxpayers of the Shore. Two-week vacations in a farm cottage for \$1,358, in a guest house in town for \$2,800, or in a villa on the beach for \$12,082 – all with no tax charged and thousands of dollars in tax revenue for towns, counties, and the state not collected and not paid. And even with no internet listing, other vacation rental owners manage to evade collecting taxes through so-called “peer to peer” rentals, repeat customers

See **Vacation**, cont’d on p. 6

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Painter Town Council Approves Tough Poultry Restrictions

by Sue Mastyl

On Monday, January 15, the Painter Town Council unanimously approved amendments to their zoning ordinance to restrict poultry or live-stock facilities within the town limits. The amendments include removal of a special use permit for specialized animal raising, which was out of compliance with state code; and addition of specific requirements for poultry, swine, livestock, and/or fowl raising or production, including a 600-foot setback from the boundary lines of the parcel to any church, school, museum, public road, railroad right-of-way, corporate town limits, any body of water, or any Chesapeake Bay Preservation Act Resource Protection Area. In addition, it specified that the facility must be located wholly within a single parcel of 60 acres or more, wholly contained within the A-1 (agricultural) district within the town limits. Finally, it mandated a maximum density of one facility per 60 acres.

Tighter Setbacks

Currently, there are three parcels zoned A-1 in Painter, which, if consolidated, would total approximately 74 acres. Town attorney John

Hopkins told the joint meeting of the Town Council and the Planning Commission that such a consolidation would require approval of the Town Council under the town's subdivision ordinance, although he noted that this would be "difficult to refuse." Hopkins explained to the officials and the 25 town and Eastern Shore residents in attendance that the 600-foot setback was chosen to make a facility at least theoretically possible. He said that any larger setback "would make it impossible to construct such a facility," which is illegal under the right-to-farm act.


If the town wanted to prohibit any such uses, it could eliminate the A-1 zoning district, although Hopkins noted that current landowners would be grandfathered in for current and any future agricultural uses including livestock and poultry. Since the setback is from the property line, it is more restrictive than the Accomack County setbacks, which are 200 feet from the property line, 400 feet from a business, and 500 feet from a residence (600 feet on the fan end). The Accomack County poultry ordinance also specifies a 500-foot setback from town limits for any county parcel adjacent to the town.

How Many Houses?

Both Hopkins and members of the Planning Commission referred to the possibility of "one or two" poultry houses in the theoretical parcel after all setbacks are satisfied; however, it should be noted that the Accomack County poultry ordinance, which specifies a density of one poultry house per five acres, does not apply within town limits. The building code would apply, but does not specify spacing or size of poultry houses.

Theoretically, if a parcel as large as eight or nine acres could be created with all the setbacks, knowing that the current poultry houses

under construction occupy 0.9 acres, a single facility could include many more than two houses, depending on other restrictions. When asked why the language refers to a facility, rather than specifying a number or density of poultry houses, Hopkins replied that "objective dimensions on a map [are] the simplest form of regulation." Now that the amendments have passed, the town will obtain a map study to determine the exact size of a potential parcel; if needed, further amendments could address the density issue.

Of the 14 incorporated towns in Accomack County and five incorporated towns in Northampton County, nine towns (Belle Haven, Bloxom, Cheriton, Chincoteague, Exmore, Melfa, Painter, Saxis, and Wachapreague) have agricultural zoning within town limits; however, Painter is the only town that appears to have a large-enough tract to potentially support a poultry operation. 

HELP WANTED

As CBES board members and other volunteers well know, a healthy nonprofit depends on volunteers to achieve its goals. Contributions of money are essential, but it is also the time and talent donated by our members and others that have made the difference in the 30 years of CBES existence.

A new series of articles in *ShoreLine* will highlight secular nonprofits on the Shore that depend on volunteers to accomplish tasks large and small. If you know of any, please email Sarah Morgan, *ShoreLine* editor, at savoystudio@gmail.com. Newcomers and others with time to devote to worthy causes will benefit from knowing the types of opportunities available, and the organizations will be grateful for the extra help.

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Eastern Shore Groundwater Numbers Show Disturbing Trends

by Sue Mastyl

At the January 16 meeting of the Eastern Shore Groundwater Committee, Drew Hammond, Office of Water Supply, Water Withdrawal Permitting for Virginia Department of Environmental Quality (DEQ), reviewed the groundwater withdrawal permitting program. Any operation – commercial, industrial, public water supply, agricultural, or nonagricultural – that uses more than 300,000 gallons a month must apply for a withdrawal permit. The Eastern Shore of Virginia Groundwater Management Area (GWMA) is an area of concern; Hammond showed data from two wells (95 feet deep at Hacksneck, and 284 feet deep near Melfa), showing fluctuations due to rainfall patterns and seasonal withdrawals at the former, and a decrease over time of 10 to 15 feet over approximately 40 years at the latter. For some on the committee, this was alarming news, and provided further support for encouraging the use of the surface aquifer.

Hammond reviewed all the steps required in obtaining a groundwater withdrawal permit. The technical evaluation is critical, he noted, to ensure that the groundwater does not fall below the critical surface (80% of the distance from the ground surface to the top of the aquifer). Other key components include identifying the area of impact and the potential for saltwater intrusion.

Impact of Poultry Operations

Matt Link, Office of Water Supply, Water Withdrawal Permitting for DEQ, reported that the compliance initiative to encourage agricultural operations to apply for groundwater withdrawal permits, which ended on December 15, 2017, yielded 45 applications, including 39 poultry operations, which are currently being reviewed for completeness. The 39 poultry applications represented less than 50% of the 83 poultry concentrated animal feeding operations (CAFOs) under operation in Accomack County. A formal request will be made to those CAFOs who have not submitted an application; DEQ will then begin issuing consent orders for CAFOs out of compliance.

The working estimate for all permitted groundwater withdrawal (prior to adding poultry operations) in the Eastern Shore GWMA has been 10.4 million gallons a day (MGD), with Accomack County

accounting for approximately 60% of the total. This already exceeds the estimated recharge rate for the Yorktown-Eastover aquifer by over 1 MGD.* (See figure.) Using metering data from the 39 new applications from poultry operations, Link estimated the total groundwater withdrawal for all 83 permitted CAFOs at an additional 3.1 to 3.6 MGD; this is almost three times what other groups have

Data from a 284-foot deep well near Melfa showed a decrease over time of 10 to 15 feet over approximately 40 years; for some on the committee, this was alarming news.

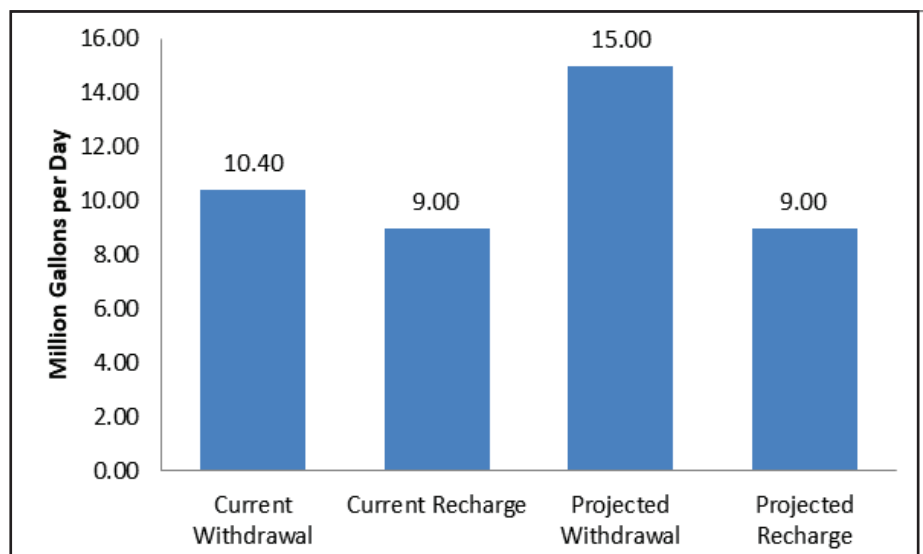
estimated as the usage for new CAFOs, but is based on real metering data. And, according to Hammond, DEQ has been notified that an additional 100 to 150 new poultry houses will be added over

the next 5 to 10 years, which could add another 1.5 to 2 MGD. This would bring the total permitted withdrawal to 15 MGD or more, with a recharge rate to the Yorktown-Eastover aquifer of 9 MGD.*

*Britt McMillan: Groundwater Protection and Management Planning for the Eastern Shore of Virginia: Using a Sustainable Approach. June 2009. <http://anpdc.org/groundwater/presentations.html>

Ed. Note: There are few more dangerous threats to our community's well-being than running out of water. We have been operating under the assumption that the recharge of our deep aquifer (the Yorktown-Eastover) is sufficient to maintain it. Now, these data indicate that our aquifer is already declining. This means that we already need to reduce our water use, without even addressing new uses.

See **Groundwater**, cont'd on p. 7



Current estimates of permitted withdrawal (prior to adding poultry operations) and recharge into the Yorktown-Eastover aquifer, and projected estimates once current and future poultry operations are accounted for.

27th Community Unity Celebration Still Strong

By Donna Bozza

On January 15, 340 citizens turned out to celebrate the wisdom of Martin Luther King Jr. and the strength found in our diversity at the 27th Community Unity Day, held at Northampton High School, Eastville. The sweet message of unity and lifting each other up came through in song, inspiring words, and acknowledgement to those who serve our community, with special recognition to past and current educators. From wee ones to oldsters, we celebrated the ties that connect us.

CBES is co-founder of the event, partnering with the Northampton NAACP, Northampton Public Schools, and this year, the Northampton Medical Foundation, Riverside Shore Memorial Hospital, and Eastern Shore Rural Health. Although the driving force of the event has always been coordinator Jane Cabarrus, President, Northampton Chapter of the NAACP, volunteers from the community are crucial to the event's success.

CBES gives special thanks to Eastern Shore Coastal Roasting Company and the Willis Family, who once again donated their wonderful coffee, and to Dave Kabler, who provided \$300 to offset CBES purchase of new coffee equipment. Thanks also to CBES own early-rising volunteers Jim Baugh, Arthur Upshur, Meriwether Payne, Wendy Martin, Sarah Morgan, John and Martina Coker, and Jack and Jody Humphreys.

Well-known local journalist Ted Shockley gave the opening remarks, which resonated so strongly that *ShoreLine* is reproducing them here:

“My name is Ted Shockley and I am publisher of *Eastern Shore First*, the Eastern Shore's monthly lifestyle news magazine. I welcome you to the 27th annual Community Unity Day Breakfast. It is an honor to be asked to serve as the emcee of Unity Day, and to share this morning with you. The celebration this morning is important, because history shows us that unity is hard work. And while there's an old saying that 'all politics is local,' I believe that 'all unity is local,' too.

“For we cannot expect the world or our country to be fair and just if we don't have the same expectations for our community. So it starts here – in this room, on our streets, in our schools, in our governments, in our towns, in our neighborhoods.

“The decisions we make about unity and civility and equality will dictate the environment in which we live. Because it is our decision, and our decision alone, whether to include rather than exclude.

“It is our decision to be enabling rather than disabling. It is our decision to embrace a challenge, rather than to

distance ourselves from it. It is our decision to raise up instead of tear down. It is our decision to encourage, rather than discourage. It is our decision whether to be part of the solution, rather than part of the problem. It is our decision to love, not hate, to understand and not alienate, to change people's hearts instead of trying to retaliate.

“And here in Northampton County, it is our decision to meet every year, at this time, in this place, thanks to selfless and active organizers, to take stock of our community's unity, to meet with each other and share a meal, celebrate, and to listen to the wise counsel of those whose words will lead us through the year. Thank you for your attendance and your work to continually improve this community. The Community Unity Day Breakfast is a Northampton County treasure and it is the attendance and efforts of each of you that make it so.”

Keynote speaker for the event was Apostle Irving O. Jackson of the Living Word Church of Deliverance in Parksley. The Rev. Roland Major and the New Mount Calvary Male Chorus provided music, as did soloist McKay Shockley, a Broadwater Academy junior, her music teacher, Ally Tarwater, and Peg Volk.

Cabarrus recognized several volunteers and educators for their community service. Honorees were Zelma L. Braggs, Joe Mysko, John W. Nottingham, and Robert B. Toner, as well as Cooper Hurley Injury Lawyers.


Thanks to all who came to share the Shore love. 

Photo credits: Cecil Watts, Watts Photography



Kiptopeke Elementary's Ties with the Guys, sponsored by Keith Moody, presented a Tribute to Dr. King.



Northampton High School's Varsity Boys Basketball team served breakfasts that were dished out by CBES volunteers and Northampton High School cafeteria staff.



Jane Cabarrus, one of the founders of the event, shares a special moment with honoree Zelma Braggs, a longtime school teacher.

COMMUNITY UNITY DAY 2018

Northampton County, VA



As part of our 30th Anniversary Celebration, CBES donated copies of Little Leaders: Bold Women in Black History, the New York Times Bestseller by Onley native Vashti Harrison, to Northampton and Accomack County Public Schools and to Jane Cabarrus, President of Northampton Chapter of NAACP, as well as holding a free drawing at Community Unity Day. Shown above are (L-R) Jane Cabarrus, President of the Northampton County Chapter of the NAACP, Donna Bozza, CBES Executive Director, Mrs. Delois Lindsay, the winner of the book drawing, and Dr. Eddie Lawrence, Superintendent of Northampton County Schools, along with a Kiptopeke Elementary student.



Apostle Irving Jackson, of the Living Word Church of Deliverance in Parksley, gave a powerful keynote speech to hundreds of attendees at the 2018 Community Unity Day in Eastville.

Vacation, cont'd from p. 1


not using rental agencies, and word-of-mouth advertising among renters.

And the Way to Resolve That Problem...

Shore counties and towns have now been given a statewide mechanism to capture the thousands of dollars in lost Transient Occupancy Tax revenue – it's the same mechanism that could require rental owners to obtain a local business license and collect and pay state Sales Tax (some of which is returned annually to localities). If local governments choose to use this new revenue-producing legislation, they need to take legislative action:

- Review local lodging ordinances and add a new definition, e.g., "Short-term Rental/Vacation Rental" means any lodging unit that is occupied or intended or designed to be occupied on a short-term basis, for a period of less than 30 consecutive calendar days, other than a hotel, motel, inn, campsite/campground cabin, or bed & breakfast
- Review current zoning classifications for similar uses, i.e., where are "Short-term Rental/Vacation Rental" units permitted? By Right or by Special Use Permit?
- Create a registry of short-term rental owners, provide applications, set fees and penalties for noncompliance
- Advertise and conduct a Public Hearing for amendments to the Zoning Ordinance to add the new definition and District Uses
- Adopt amendments
- Provide updated Transient Occupancy Tax collection, reporting, and remitting paperwork to all short-term rental owners and operators

Towns and counties around Virginia have already adopted ordinances, created registries and updated forms to take advantage of the new revenue stream. Albemarle** and Botetourt*** counties have incorporated the new changes, and which provide ordinance examples.

The new law has been especially beneficial to areas with a growing tourism economy, like the Eastern Shore. Adoption of across-the-board fair and equal application of the Transient Occupancy Tax to all short-term vacation rentals levels the playing field for all the facilities that have been paying their fair share. Transient Occupancy Tax not only provides local revenue to help pay for the services vacationers expect, but it provides funding for the area's tourism advertising and promotion. 

**Albemarle County short-term rental ordinance, ARTICLE IX. TRANSIENT OCCUPANCY TAX

***Botetourt County short term rental ordinance, Sec. 25-434. – Bed & breakfast and short-term rental establishments.

Keeping Track

Tourism Headliners Cape Charles and the Shore

In the best kind of promotion possible for the Shore's tourism industry, Cape Charles has recently been named, not once, but three times, by *Southern Living* magazine as one of the best places on the south Atlantic coast to take a beach vacation. (For best results from links, please copy and paste the entire url into your browser.)

Southern Living: Cape Charles "The Perfect Beach Town"
<https://www.southernliving.com/travel/south-east/cape-charles-virginia>

Southern Living lists "The South's Best Beaches" and includes Cape Charles:

<https://www.southernliving.com/travel/2017-souths-best-beaches#cape-charles-virginia>

Southern Living calls out Cape Charles in "Find Your Perfect Little Beach Town"

<https://www.southernliving.com/travel/best-beach-towns#cape-charles-virginia>

And to add icing to the Shore's next tourism season, an aerial shot of the Shore with four kayaks on a quiet creek is featured on the cover of the *2018 Virginia Travel Guide and State Map*:

<https://www.virginia.org/travelguide>



Transient Occupancy Tax on State Park Campgrounds?

Delegate Robert Bloxom has introduced HB579, which would permit localities to impose Transient Occupancy Taxes on room/cabin rentals and travel campgrounds in Virginia state parks. This would amend the state code to allow local governments to elect to impose these taxes on overnight and short-term stays in state parks under the control of the Department of Conservation and Recreation to the same extent that such taxes could be imposed if parks were privately owned and operated.

In areas with strong and growing tourism economies, where private campgrounds already collect and pay transient occupancy tax to local governments, like Northampton County, passage of this Bill would level the playing field for private campgrounds. In addition, it would provide local governments with additional revenue to support essential services for the increased seasonal population. *ShoreLine* will follow this Bill and report on the outcome. (See related article, "Vacation Rentals and the Transient Occupancy Tax" on page 1.)

See **Keeping Track**, Cont'd on page 7

Keeping Track, *cont'd from p. 6*

A Local Moratorium on Poultry House Construction?

The Dillon Rule Rules

Residents concerned about the number of poultry houses being built in Accomack County have wondered if the county can put a moratorium on new permits for additional houses. The answer is almost certainly – no. And not even if there’s a petition to make it a local ballot initiative.

Once again, the Dillon Rule rules. Unless and until the General Assembly passes a Bill and creates legislation to allow Accomack County to put a moratorium on new poultry house construction, it appears that local government is powerless to take action.

For a good explanation of how the Dillon Rule allows the state to meddle in local government’s decision making, go to <http://www.virginiaplaces.org/government/dillon.html>

Municipal (town, county, and city) governments may act “only if the General Assembly has clearly granted authority for the local government to make decisions on that topic.”

Many attempts have been made to eliminate the Dillon Rule, but so far, the General Assembly has refused to give up its authority to control local governance.



Accomack #3 Polluter Per Capita in State

The Toxic Release Inventory published by the US Environmental Protection Agency (EPA) reports that 2016 water and air pollution from the Perdue Farms Accomack Processing Plant made Accomack County the #3 pollution-per-capita area in Virginia. The nearly 800,000 pounds of pollution discharged in 2016 included 83,800 pounds of hydrogen sulfide released into the air and 700,029 pounds of nitrate compounds released into the water. These amounts are all properly permitted. According to the state Department of Environmental Quality (DEQ), the Perdue Processing Plant is currently in compliance with the Clean Air Act and the Resources Conservation and Recovery Act. According to EPA documents, the Accomack nitrate compound pollution appears to be more than twice the amount released in 2015.*

*https://iaspub.epa.gov/triexplorer/tri_factsheet.factsheet?&pstate=VA&pcounty=accomack&pyear=2016&p-Parent=TRI&pDataSet=TRIQ1

The Shore vs. Virginia Population Moving Out vs. Moving In

Since the Great Depression, the trend has been more people moving into rather than out of Virginia.* The Weldon Cooper Center for Public Service at UVA tracks population trends which, in turn, help localities plan for the future. While the state is not losing population overall, due to more births than deaths in younger urban areas, outmigration is increasing. Shrinking Federal government employment, especially in Northern Virginia, as well as the trend of older retirees moving south to warmer climates are reasons cited by researcher Hamilton Lombard.

Contrary to the State trend, both Shore counties have had more people moving in than moving out. The latest figures are from 2016.

*<http://demographics.coopercenter.org/virginia-population-estimates/>



Groundwater, *cont'd from p. 3*

It is critical that we begin to move as many water uses as possible to the shallow aquifer (the Columbia), which is still stable, with a much higher recharge rate. These data also highlight how important it is to have a clear understanding of water use by the current and future expansion of poultry houses. CBES hopes that all concerned parties to this discussion begin to act now to reduce our water use, before we move into crisis mode, with failed wells and saltwater intrusion the norm throughout the Shore.



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INFORM, ENGAGE, EMPOWER!

SHORELINE

Community Calendar - February 2018

Note: Please verify times and places prior to attending meetings.

CBES and Other Activities		Accomack County		Northampton County	
Feb 7	VIMS Public Seminar 7:30 PM, Wachapreague	Feb 7	Board of Zoning Appeals 10 AM, Sup. Chambers	Feb 6	Board of Zoning Appeals 1 PM, Conference Room
Feb 8	Shorekeeper Meeting* 3 PM, Barrier Islands Center	Feb 14	Planning Commission (PC) 7 PM, Sup. Chambers	Feb 6	Planning Commission (PC) 7 PM, Sup. Chambers
Feb 20	ES Ground Water Committee 10 AM, Accomac	Feb 20	School Board 6:30 PM, Sup. Chambers	Feb 13	Board of Supervisors 7 PM, Sup. Chambers
Feb 20	CBES Board Meeting 7:00 PM, Eastville	Feb 21	Board of Supervisors 5 PM, Sup. Chambers	Feb 21	Wetlands Board TBA, Conference Room
		Feb 22	Wetlands Board 10 AM, Sup. Chambers	Feb 21	PC Work Session 7 PM, Sup. Chambers
		Feb 27	PC Work Session 7 PM, Sup. Chambers	Feb 26	BOS Work Session 7 PM, Old Courtroom
				Feb 27	School Board 6:00 p.m., Machipongo

* Alternating between the ES Chamber of Commerce and the Barrier Islands Center

www.cbess.org