



Cape Charles

Roads Maintenance and Control Memo

August 8, 2018

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Thank You to Our Funders

This RAFT product was created with funding from:

National Fish and Wildlife Foundation

Virginia Sea Grant Climate Adaptation and Resilience Program

We are grateful to these funders for supporting various phases
of The RAFT from 2015-Present.

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Environmental Resilience Institute at the University of Virginia

National Fish and Wildlife Foundation

National Oceanic and Atmospheric Administration*

School of Architecture at the University of Virginia

Virginia Coastal Zone Management Program*

Virginia Environmental Endowment

Virginia Sea Grant Climate Adaptation and Resilience Program

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** The RAFT implementation on the Eastern Shore, Task #92.03 was funded, in part, by the Virginia Coastal Zone Management Program at the Department of Environmental Quality through Grant #NA17NOS4190152 of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, under the Coastal Zone Management Act of 1972, as amended. The views expressed herein are those of the authors and do not necessarily reflect the views of the U.S. Department of Commerce, NOAA, or any of its sub agencies.

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MEMORANDUM

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Date: August 8, 2018

Subject: Cape Charles Roads Maintenance and Control

Introduction

As part of the Resilience Adaptation Feasibility Tool (RAFT) project, the Town of Cape Charles asked the Virginia Coastal Policy Center to research the Town's ability to take control over construction and maintenance of the roads within its historic district. Currently, the Virginia Department of Transportation (VDOT) manages all of the Town's roads, under the secondary system of state highways program. This memorandum will provide a brief history of secondary road maintenance in Virginia, identify issues that Cape Charles is facing with respect to road maintenance in its historic district, and explain the legal framework for a town to take over the maintenance of its roads.

Secondary Road Maintenance in Virginia

While the history of road maintenance in Virginia goes back centuries, the changes most relevant to this memorandum began in 1930. By 1930, 386,664 motor vehicles were registered in Virginia, the state highway system included 7,191 miles of road, and taxes on licenses and gasoline provided a source of revenue for the state.¹ However, at the local level, counties faced hardships stemming from the maintenance of larger swaths of local roads, which were poorly constructed and maintained.² The Great Depression made it more difficult for rural Virginians to pay their normal property taxes, which had been the main source of income for local road

¹ *A History of Roads in Virginia: "The Most Convenient Wayes,"* VIRGINIA DEPARTMENT OF TRANSPORTATION 1, 31 (2006), <http://www.virginiadot.org/about/resources/historyofrds.pdf>.

² *Id.*

construction and maintenance.³ In 1932, the General Assembly passed “The Byrd Act,” which allowed counties to be relieved of the responsibility to construct and maintain their roads.⁴ The Byrd Act allowed each county to transfer this responsibility to the Highway Commission. One economist at the time claimed that this would reduce annual taxes by \$2,895,102.⁵ The counties of Arlington, Henrico, Nottoway, and Warwick initially chose to retain their local authority and responsibility. Nottoway eventually reversed this decision, and Warwick became a city that eventually merged to form Newport News.⁶ The counties of Henrico and Arlington operate and maintain their own roads to this day.⁷ When the state created a secondary system, the main roads for which the state had been responsible became known as the “primary highway system.”⁸ Over time, with Virginia becoming increasingly urbanized, it became clear that localities had different goals in mind, calling into question “whether complete state responsibility for secondary roads is optimal.”⁹ These questions still persist today.

According to Virginia Code, towns with a population greater than 3,500; a list of towns under former Virginia Code § 33.1-80; the Towns of Altavista, Lebanon, and Wise; and cities regardless of their population are required to maintain their own roadway system.¹⁰ Based on communications with local staff in these three towns and VDOT staff within those regions, all three towns have populations which fluctuate around 3,500 and worked with their state representatives to put forth legislation adding their towns to the code language.¹¹

Cities, towns with populations over 3,500, certain towns listed under a previous state code provision, and the three towns noted above receive a fixed allocation of state funding to build and maintain their own roads;¹² while counties rely on VDOT for road construction and maintenance.¹³ Counties (besides the two noted exceptions) must compete with other counties (and other VDOT priorities) for this funding.¹⁴ For the counties that opt out of state maintenance, VDOT does pay them a certain amount per lane mile to help them maintain their system.¹⁵

The Code of Virginia states:

“The control, supervision, management, and jurisdiction over the secondary state highway system shall be vested in the Department, and the maintenance and

³ *Id.*

⁴ 1932 Va. Acts, Chapter 415.

⁵ *A History of Roads in Virginia*, *supra* note 1, at 33.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Amy A. O’Leary, *Beyond the Byrd Road Act: VDOT’S Relationship with Virginia’s Urban Counties*, VIRGINIA TRANSPORTATION RESEARCH COUNCIL (1998), p. iii.

¹⁰ VA. CODE ANN. § 33.2-319(A) (2017).

¹¹ Emails and phone communications with local staff and VDOT regional staff (July & August 2018) (emails on file with author).

¹² VA. CODE ANN. § 33.2-319.

¹³ VA. CODE ANN. § 33.2-326(A) (2014).

¹⁴ VA. CODE ANN. § 33.2-358 (2015).

¹⁵ VA. CODE ANN. § 33.2-366 (2015).

improvement, including construction and reconstruction, of such secondary state highway system shall be by the Commonwealth under the supervision of the Commissioner of Highways. The boards of supervisors or other governing bodies of the counties shall have no control, supervision, management, or jurisdiction over such public highways, causeways, bridges, landings, and wharves constituting the secondary state highway system. Except as otherwise provided in this article, the Board shall be vested with the same powers, control, and jurisdiction over the secondary state highway system in the counties and towns of the Commonwealth, and such additions as may be made, as were vested in the boards of supervisors or other governing bodies of the counties on June 21, 1932, and in addition thereto shall be vested with the same power, authority, and control as to the secondary state highway system as is vested in the Board in connection with the primary state highway system.”¹⁶

In 2001, the General Assembly adopted what is known as the “Devolution Statute.”¹⁷ The statute allows a county, through a resolution from its board of supervisors, to request authority from the Commissioner of Highways to resume responsibility for all or any portion of secondary roads within the county’s jurisdiction. The resulting agreement between the Commissioner of Highways and the county’s board of supervisors specifies the equipment, facilities, personnel, and funding that will be provided to the county in order to implement such agreement’s provisions.¹⁸

Road Maintenance in Cape Charles

Cape Charles is a town located within Northampton County on the Eastern Shore of Virginia, with an estimated population of 972 people.¹⁹ The historic district of Cape Charles, which is mostly residential, experiences flooding related to inadequate stormwater drainage along its roads.²⁰ All stormwater management systems are in the VDOT right-of-way, and VDOT owns all streets and the majority of sidewalk rights-of-way in the Town.²¹ Within this fairly densely populated historic district, street curb drainage leads to several collections of low-points.²² High-valued homes along the beachfront corridor, on Bay Avenue, are subject to significant street flooding.²³ The streets do not have signs to warn of potential flooding and, being a historic district, zoning restrictions prohibit the raising or relocation of structures. Recently, new stormwater outfall piping was installed, which should help speed up the drainage rate for most of the historic

¹⁶ VA. CODE ANN. § 33.2-326.

¹⁷ VA. CODE ANN. § 33.2-342 (2014); *Devolution of the Secondary System*, VIRGINIA DEPARTMENT OF TRANSPORTATION, http://www.virginiadot.org/business/lad_devolution.asp (last visited Apr. 8, 2018).

¹⁸ VA. CODE ANN. § 33.2-342.

¹⁹ *Population*, CAPE CHARLES, <http://www.capecharles.org/pview.aspx?id=10040&catid=607> (last visited Apr. 3, 2018).

²⁰ E-mail from Larry DiRe, Town Planner, Cape Charles, to author (Mar. 14, 2018) (on file with author).

²¹ *Id.*

²² *Id.*

²³ *Id.*

district.²⁴ Cape Charles was interested in researching this topic as a potential method to resolve the drainage issues at a quicker pace because the locality deals with the issues as they occur, rather than having to wait for VDOT to have time to address them.

As noted above, cities and certain towns are required to construct and maintain their own roads. Additionally, a county can request authority from the Commissioner of Highways to resume responsibility over all or a portion of its roads. Therefore, one option for the Town of Cape Charles would require coordination with Northampton County. Northampton County could make this request to the Commissioner of Highways and specify that responsibility for only those portions of the County's secondary system that include the secondary roads in the Town of Cape Charles will be transferred. The Town would need to work directly with the County's board of supervisors to seek this approval. Although our research did not locate an instance where this had been done before, the process would likely involve an agreement between the County and the Town to outline the specifics of the plan (i.e., timing, control, etc.).

Additionally, a second option may exist. There have been some instances where a town has worked directly with its state representatives to put forth legislation to add itself to the list of towns responsible for their own road maintenance.²⁵ Communications with local staff and VDOT staff in those regions did not provide much detail regarding the specific information these towns provided to their representatives.²⁶ However, these communications did reveal that all of the towns in question have populations which fluctuate around 3,500.²⁷ Therefore, a potential barrier to this approach may be the population size in Cape Charles, which is closer to 1,000.

Conclusion

As it currently stands, there are potentially two options for Cape Charles to take over responsibility for its roads. The first option is to receive authority through Northampton County. If the County agreed to make this request of the Commissioner of Highways, it would likely limit such request to secondary roads that are located within the Town of Cape Charles. While it is unclear whether Northampton County would be willing to do this, the information outlined above shows that local control over local roads presents substantial opportunity to incorporate localized decision-making that will be tailored to urgent issues such as flooding. The second option would involve Cape Charles working with its state representatives to propose legislation to add the town to the list within Virginia Code §33.2-319(A)(v). However, the towns currently listed within this provision have populations larger than that of Cape Charles. And under either approach, the Town must assess whether it has the funding and manpower to take on this responsibility.

²⁴ *Id.*

²⁵ See *infra* text accompanying note 11.

²⁶ Emails and phone communications with local staff and VDOT regional staff (July & August 2018) (emails on file with author).

²⁷ *Id.*