

FINAL

VIRGINIA OUTDOORS FOUNDATION
BOARD OF TRUSTEES ADJOURNED MEETING
ST. PAUL'S EPISCOPAL CHURCH PARISH HALL
IVY, VIRGINIA
MARCH 13, 2008 10:30 AM

Trustees present: Chairman, Mr. Frank M. Hartz, presiding; Mr. J. William Abel Smith; Mr. Mark S. Allen; Dr. M. Rupert Cutler; Mr. Charles H. Seilheimer, Jr. and Mr. Jeffrey K. Walker. VOF staff attending: G. Robert Lee, Executive Director; Ms. Tamara Vance, Deputy Director; Ms. Leslie Grayson, Deputy Director; Ms. Sherry Buttrick, Easement Manager; Mr. Josh Gibson, Easement Specialist; Ms. Kristin Ford, Easement Specialist; Ms. Sara Ensley, Human Resources Manager; Ms. Melissa Collier, Stewardship Specialist; Mr. Kerry Hutcherson, VOF Staff Counsel; Mr. John Toler, Special Projects and Ms. Anna G. Chisholm, Finance Manager. Also in attendance were Mr. Frederick S. Fisher, Special Assistant Attorney General and Ms. Brett Ellsworth, Assistant Attorney General.

Mr. Hartz convened the meeting at 10:35 a.m. After introductions, Mr. Hartz called for public comments. Mr. George Beadles of Chesterfield County commented on VOF's public website and his questions concerning the removal of a posted "Conversion/Diversion Policy" and suggested that all of VOF's policies should be posted. He further suggested that the website could include a running total of easement proposals approved at each Trustee meeting.

Mr. Hartz asked if there were any changes to the order of business and suggested that the Virginia's Commitment presentation should be moved up to the first agenda item. Dr. Cutler moved to approve the order of business as presented by Mr. Hartz, Mr. Allen seconded, and the motion passed unanimously.

Mr. Hartz asked if there were any additions or corrections to the Board minutes for the January 24th, 2008 meeting. There were no changes. Dr. Cutler moved to approve the minutes, Mr. Walker seconded, and the minutes were approved unanimously. Mr. Hartz abstained from the vote because he had not attended the January meeting.

Mr. Hartz then asked Mr. Lee to give the Executive Director's Report to the Board. Mr. Lee reported on the status of VOF's General Fund appropriation for the upcoming Fiscal Year 2009 and the likelihood of reductions from the current level. He detailed an audit project conducted by Mr. Toler to review the collections of the \$1 Recordation fees in applicable jurisdictions. The audit discovered several jurisdictions not collecting at all or not collecting on every required deed. Communications with the jurisdictions should result in increased revenue for VOF. He reported that he and Mr. Hartz had attended meetings with staff at the Department of Conservation and Recreation (DCR) concerning the process whereby DCR reviews easements with a tax credit value of \$1M or more. The aim of the meeting was to improve landowner experiences in the review with better understanding and cooperation between VOF and DCR. He announced a May 30th meeting with area lawyers to review the VOF easement template. Mr. Lee concluded by asking the Deputy Directors if they had anything to report.

FINAL

Tamara Vance recognized Dr. Cutler's key role in the City of Roanoke's 6,185 acre easement on a portion of the Carvins Cove Natural Reserve which was to be presented to the Trustees later in the day. She thanked him for his work with the City Council to secure its support.

Virginia's Commitment

Mr. Hartz recused himself from discussions due to his wife's employment with Dominion Power. Ms. Vance recused herself due to her husband's professional connections to the issue. They left the room for the following discussion. Mr. Seilheimer opened the next discussion by recognizing Lana Westfall of Virginia's Commitment. Ms. Westfall briefly described the work of Virginia's Commitment related to the proposed Virginia Dominion Power 500kV power line in northern Virginia. Mr. Lee briefly outlined the issue of the proposed power line crossing properties currently under easement held by VOF and turned over discussion to Mr. Seilheimer who along with Mr. Abel-Smith had met with Mr. Frank Pearl of Virginia's Commitment earlier. Mr. Seilheimer described the meeting with Mr. Pearl where they discussed the primary view of Virginia's Commitment that the line was not needed. But in the event that the line is approved by the SCC, Virginia's Commitment was working on alternative designs to mitigate the affects of the line by utilizing smaller towers and screening trees. The Trustees noted that the mitigation efforts could be beneficial in the event that the line was approved but that it was premature to take any action at this point. There was no vote on the issue.

Closed Session

At 11:15 a.m. Mr. Hartz asked for a motion to go into a closed session to discuss legal issues regarding the disposition of publicly-held real property pursuant to Section 2.2-3711(A)(3) of the Code of Virginia. Mr. Seilheimer so moved, Mr. Walker seconded and the motion passed unanimously.

At 11:30 a.m., the public portion of the meeting resumed. Upon resuming the public meeting, a roll call vote was taken certifying that only matters covered by § 2.2-3711(A)(3) were discussed. Dr. Cutler voted yes, Mr. Walker voted yes, Mr. Allen voted yes, Mr. Hartz voted yes, Mr. Seilheimer voted yes, and Mr. Abel Smith voted yes.

Norfolk Southern 1704 Consideration

Mr. Seilheimer addressed the Norfolk Southern representatives and thanked them for their efforts and cooperation in working with staff to prepare for the meeting. Mr. Hartz asked the Trustees if they wished any further discussion related the essentiality of the proposed conversion or diversion of the eased property in question. The Trustees indicated that the question of essentiality had been adequately answered.

Mr. Jeffrey H. Burton, General Counsel for Norfolk Southern thanked the Trustees for the consideration of an early meeting and outlined proposals related to its conversion/diversion application under §10.1-1704 (see attached.)

Mr. Lloyd Clingenpeel with Norfolk Southern (NS) detailed the efforts to secure acceptable replacement property. He indicated that NS was unable to come to any agreement with the owners of several options preferred by the affected landowners and VOF.

Mr. Hartz asked for a staff report from Ms. Leslie Grayson. She indicated that she and other staff had reviewed the details of the offered properties and that Option 1, per Mr. Poff's March 12th letter was preferred by staff, but that Option 2 was satisfactory.

Mr. Hartz asked if Mr. Douglas P. Stanley, County Administrator for Warren County, would like to comment. Mr. Stanley indicated that the Warren County Board of Supervisors concurred that the proposed railroad improvements advanced the goals of the adopted comprehensive plan and are

FINAL

essential to the orderly development and growth of the County. Mr. Stanley indicated that the Supervisors found the two options offered by NS acceptable.

Mr. Hartz asked for any public comments on the issue. Mr. William Trenary, the owner of eased property to be diverted for the rail project, thanked VOF for its hard work in finding a solution for a difficult problem but expressed his disappointment in the situation. He commented that when he placed the easement on his property, he thought that VOF would fight to protect his property and now he questioned the protection provided by the easement. Mr. Seilheimer asked Mr. Trenary for his opinion on NS's proposals of replacement land. Mr. Trenary answered that he preferred Option #2 because of its close proximity to his land. Mrs. Trenary commented that she and her husband had given their easement before the existence of state tax benefits and that the monetary considerations of the issue were secondary to their concerns for the future of their easement. She warned the trustees that she thought the release of eased property in the face of "big business" interests would have a negative impact on future easement donors.

Mr. Fred Fisher with the Office of the Attorney General explained that the provisions of Section 10.1-1704 of the VA Code allowed diversions under certain limited circumstances in the interest of the community not commercial interests.

Mr. Hartz recognized Mr. Todd Benson with the Piedmont Environmental Council (PEC). Mr. Benson thanked VOF for delaying its decision and commented that the delay resulted in much greater detail and review of the available options. He confirmed that PEC supported both proposal options but preferred Option 1. He said that both options were an improvement over the original.

Ms. Georgia Herbert with PEC voiced a concern that the proposed replacement properties did not include details of the easement terms. She asked whether the properties would remain agricultural land with no buildings. Ms. Grayson confirmed that that was true. In response to a question from Ms. Herbert, Mr. Fisher clarified that the release of the eased land and the substitution of the replacement land would occur and be recorded in one deed.

Mr. Beadles referred to a past release and substitution issue with the Mary Moody Northen property in Chesterfield County and warned the Trustees against accepting only the offer of the 15 acres bordering Andy Guest State Park because of the distance. In the Chesterfield County easement case, land which was a significant distance from the eased property had been offered as a substitution and been rejected by the Trustees.

Mr. Hartz indicated that the current case was significantly different and that the Trustees had indeed required substitute land closer to the easement.

Mr. John Eckman with the Valley Conservation Council (VCC) commented that the Trenary easement was the first easement VCC co-held with VOF. He thanked VOF, PEC and NS for their work on the current proposal. Mrs. Trenary asked the Norfolk Southern representatives if the railroad expansion would result in increased noise and pollution.

Mr. Hartz closed the public comment session and asked the Trustees if further discussion was needed. Mr. Seilheimer commented that he appreciated the work and cooperation of Norfolk Southern and relayed his personal difficulty in weighing the various options. He noted that rather than new construction in this case the railway pre-dated the easements so that further degradation of the properties would be minimal. Mr. Allen commented that the Mercurio property in Option 1 would entail an addition to an existing easement as opposed to Option 2 which would result in a new easement. Option 2 would create additional stewardship work for VOF. Mr. Walker commented that he felt this situation was handled well in accordance with the law but when dealing with compromises, it is important for landowners to understand that we take very seriously the commitments they make when donating an easement.

FINAL

Dr. Cutler made a motion to approve the release of 5.31 acres from easement in return for either Option 1 or 2 as outlined in the attached NS proposal, with the resulting easement proposal presented at the July trustee meeting. Mr. Walker seconded the motion and it passed unanimously.

Consent Agenda - Amendments

FAU-VOF-939 The amendment will: remove one division right; extinguish the right to build a house on the second parcel; clarify language associated with the existing main house; and update template language.

RAP-VOF-401/1959 The amendment will: add an additional 13 acres; include a 4.25 acres donut hole originally excluded from the easement; and update template language.

Mr. Seilheimer made a motion to approve the amendments as presented. Mr. Allen seconded the motion and it passed unanimously.

Carvins Cove Easement – Roanoke & Botetourt Counties

A portion of Carvins Cove Natural Reserve of 6,185 +/- acres owned by the City of Roanoke and Western Virginia Water Authority (WVWA) - Josh Gibson introduced Roger Holnback of Western Virginia Land Trust, which will co-hold the easement with VOF. Mr. Holnback recognized Dr. Cutler as the leader in the effort to secure the easement and thanked him for his work with the City Council. He went on to comment that the City of Roanoke would receive no tax or financial benefit from this gift of easement. He suggested that a mechanism such as a scoring system was needed to encourage municipal governments to place third party protection on municipally owned properties in the absence of any financial consideration. Mr. Bill Hackworth, Roanoke City Attorney, described the acquisition history of the property and the problem of mineral rights retained by previous owners. He characterized the risk of future problems as very low and said the City was satisfied with the property description. Dr. Cutler made a motion to accept the easement as presented. Mr. Walker seconded and the motion passed unanimously.

Mr. Hartz adjourned the meeting at 1:50 p.m.

Respectfully submitted,

Anna G. Chisholm
Finance Manager