

**OLD DOMINION UNIVERSITY  
BOARD OF VISITORS  
SPECIAL MEETING  
Monday, 17 July 2000**

**MINUTES**

A special meeting of the Board of Visitors of Old Dominion University, called by board members Beverly B. Graeber, J. Jack W. Hilgers, and William M. Lechler, was held on Monday 17 July 2000, at 3:00 PM in the Board Room of Webb University Center on the Norfolk campus. Edward L. Hamm, Jr., Vice Rector and Acting Rector, presided. Present from the Board were:

Edward L. Hamm, Jr., Acting Rector  
James W. Beamer  
Henry P. Bouffard  
Nancy P. Cheng  
Beverly B. Graeber  
Mary C. Haddad  
J. Jack W. Hilgers  
Walter D. Kelley, Jr.  
William M. Lechler  
William E. Russell  
Ronald J. A. Villanueva  
Joel R. Wagner

Absent were: Elizabeth W. Atkinson  
Anthony C. Paige  
Patricia W. Perry  
Lewis M. Warren, Jr.  
Patricia M. Woolsey

Also present were: James V. Koch, President  
Mike Arendall (Student Senate)  
Stephen P. Daniel  
George Dragas, Jr.  
Lorraine Eaton (*The Virginian Pilot*)  
Ronald Forehand  
Donna W. Meeks  
C. Jay Robbins  
Gabriel Morgan  
Jennifer Mullen  
William F. Quinn  
Linwood Smith

## **CALL TO ORDER**

The Rector called the meeting to order at 3:04 PM and welcomed Mr. Henry Bouffard and Mr. Walter Kelley to the Board. He then asked that Board members introduce themselves.

## **PURPOSE OF MEETING**

Mr. Hamm indicated that this meeting has been called as a special meeting by three of the board members for the purpose of appointing a new nominating committee. As he had previously advised the Board, he was of the opinion that the stated purpose of the meeting was not a legitimate reason for calling a special meeting. He opened the floor for discussion.

President Koch commented that although his presence at this meeting is peripheral to the discussions taking place concerning internal board business, he wanted to assure the board members that he would work with any individual appointed by the Governor and particularly those elected to leadership positions on the Board. However, he urged board members, as they enter into discussions today and in the future that may become contentious, to keep in mind the best interests of the University and be willing to compromise for the good of the University. He cautioned them to weigh their words carefully and to avoid comments which others might see as adversarial, and reminded them that these discussions are taking place in an open meeting, in the presence of members of the press. He concluded by saying that, in his view, Old Dominion University is doing remarkably well. It is therefore imperative for the Board to find a way for that performance to continue without disruption and without adverse publicity.

## **MOTION TO APPOINT TEMPORARY CHAIR**

Mr. Hamm asked if there was any business to come before the Board. Dr. Hilgers agreed that only those issues mentioned in the call of the meeting should be discussed. However, Robert's Rules of Order allows for incidental motions and also allows for emergency motions. Dr. Hilgers stated that since Mr. Hamm has expressed certain viewpoints regarding this meeting, and in order to allow him to participate fully in discussions, he feels a temporary chair should be appointed to ensure the impartiality of the proceedings. He made a motion to that effect, which was seconded by Mr. Lechler.

Mr. Hamm stated that Mr. Ronald Forehand from the Attorney General's Office has indicated that this is neither required or appropriate. He asked Mr. Forehand to comment. Mr. Forehand introduced himself and indicated that he was invited by the Rector to attend this meeting. He stated that the basic role of the Attorney General is twofold: to provide legal advice and counsel and to ensure that the laws are enforced. Ordinarily it is not the role of the Board's counsel or the Attorney General to become involved in the internal operations of the Board. Procedural matters are up to the Board. They only become involved and provide legal advice when matters of law are at stake. This particular matter is a matter of law, which states that the presiding officer of the Board is the Rector, and in

the absence of the Rector, the Vice Rector. It is not necessary to follow Robert's Rules of Order unless the presiding officer wishes to relinquish the chairmanship of the meeting.

Dr. Hilgers reiterated that he is not asking the Rector to relinquish his authority, but because of issues to be discussed, it might be wise to have someone who is impartial to preside over this meeting in order for the Rector to participate fully in those discussions. Mr. Hamm commented that the issue at hand is the failure of those voting in the minority on certain decisions by the Board to accept those decisions, and those individuals are now challenging those decisions. The Rector's position is that the decisions already made by the Board are valid. He is free to speak to that and has no plans to put forth a position that has not already been put forth by the majority of the Board. Furthermore, he feels that he has an obligation to speak to this issue as the spokesperson for the Board.

Mr. Kelley asked Mr. Forehand if it is his position that the Board is without legal authority to elect a temporary chair. Mr. Forehand stated that that was correct, unless the Rector voluntarily steps down as chair. Mr. Kelley then asked if the Rector can participate in the discussion and vote on motions, despite the fact that it conflicts with Robert's Rules of Order, and Mr. Forehand stated that he could.

Mr. Beamer asked if the *Code of Virginia* requires the Board to have a Rector. Mr. Forehand indicated that the enabling legislation for the Old Dominion University Board of Visitors calls for a Rector, Vice Rector and Secretary as the elected officers of the Board. Other officers may be elected, as determined by the Board's bylaws. This enabling legislation differs for each institution, so other institutions may not have the same legal requirements for board officers.

In light of the foregoing discussion, Dr. Hilgers withdrew his motion.

### **MOTION REGARDING ELECTION OF OFFICERS AT ANNUAL MEETING**

Dr. Hilgers commented that he has stated his views regarding the election of officers at the annual meeting. There has been a cloud over these proceedings because the Board did have what the General Counsel considered to be an arguably flawed election due to the composition of the nominating committee. Ms. Rollison very eloquently pointed out in her letter that the Board, in its wisdom, overcame that flaw. In an attempt to clear the air, he is prepared to make a motion to ratify the election. However, he asked that the General Counsel first review the status of those opinions regarding the elections.

Mr. Robbins stated that there are two views regarding the elections. The first view, expressed by Rector Hamm, is that the elections were valid because the nominating committee was elected and the Board performed as required by the Bylaws. The second view is that since Ms. Haddad, one of the three elected to the nominating committee, was not aware of her election to the committee and did not participate in its deliberations, then the question arose as to the validity of the nominating committee, and thus, the election. Mr. Robbins concluded that the safest approach for the Board would be to hold a special meeting to ratify the election.

Mr. Bouffard asked for a brief summary of the issues surrounding the nominating committee and the election. Mr. Hamm referred Mr. Bouffard to the minutes of the annual meeting and then summarized the events leading to today's discussion. The Bylaws require that, on the regular board meeting immediately preceding the annual meeting (held on June 15), the Board elect three members to constitute a nominating committee. That committee will select its chair and solicit input from the Rector, President and board members, and then meet to consider a suggested slate of officers for consideration at the annual meeting. Three members were elected by the Board in compliance with the Bylaws. Ms. Haddad was one of those members. Ms. Haddad, however, was unaware of her election until several weeks later, when she explained to the Rector that she was unable to serve due to family obligations. The Rector discussed this with Dr. Russell, who served as chair of the committee, and the committee proceeded with its deliberations, which included receiving input from Ms. Haddad. At the annual meeting, questions were raised as to the validity of the nominating committee's report since only two members served. Following discussion, however, the Board voted in favor to accept the report by a vote of nine to four. Nominations were then accepted from the floor. Dr. Hilgers was nominated from the floor as Rector and Ms. Graeber was nominated from the floor as Vice Rector. Election for each office was taken up separately, and both Ms. Rollison and Mr. Hamm, as suggested by the nominating committee, were elected by majority vote for Rector and Vice Rector, respectively. Ms. Atkinson was elected unanimously as Secretary. No requests for reconsideration were made at the time, nor were any objections made or points of order discussed.

Ten days later a special meeting was held to consider the appointment of the new president. The University arranged for a press conference to immediately follow the meeting. Questions arose about the new president during the meeting which the Rector thought were answered. Questions were raised by former board member Lois Williams and Dr. Hilgers as to the propriety of the election. Ms. Rollison, the newly elected Rector, learned approximately one week ago that she was not reappointed to a second term. On the same day the Board learned that she was not reappointed, the Board received an announcement by three board members of a special meeting to appoint a new nominating committee. Today's date was selected since this date had previously been set aside for a meeting of the Executive Committee.

Mr. Bouffard asked if the purpose of the special meeting was to appoint a nominating committee for an entirely new slate or for a new rector. Mr. Hamm stated that correspondence led him to believe that it was for a new slate (the notice said "appoint a new nominating committee to elect board officers"). Other board members with whom he spoke came to the same conclusion.

Dr. Hilgers made a motion that the Board validate the election which took place at the annual meeting in June so that there is no mistake that the Board accepted the slate and the election took place. He commented that this is a pro forma motion but made nonetheless in an effort to clear the air.

Mr. Hamm stated that the chair will accept the motion, if seconded, although the Board made a considered decision which was supported by the majority at the annual meeting and does not require further action.

Mr. Bouffard seconded Dr. Hilgers' motion, stating that he did so for purposes of harmony on the Board.

Mr. Beamer asked if, by law, the election in June was valid. If not, the Board should act. If so, the Board should not. Mr. Robbins stated that the law specifies that three officers shall be elected by the Board from its own members. The Bylaws specify the procedures for doing so and can be altered by a revision to the bylaws. The Board cannot change the statute. Those who had concerns about the elections are now saying, by motion, that the issue should be resolved once and for all so that the Board can move forward to other more pressing matters, such as selecting a new Rector.

Mr. Beamer asked how it is possible for the Board to re-elect as Rector an individual who is no longer on the Board. Mr. Robbins indicated that the Board, by this motion, would merely validate the election that previously took place, and would not hold a new election.

Ms. Haddad provided her own perspective of what transpired, commenting that at the annual meeting it was acknowledged that only two individuals served on the nominating committee. However, the nominating committee presented its slate of officers and, following a lengthy discussion, the Board voted to accept that slate. It then properly considered nominations from the floor and the Board voted on the individuals presented by the nominating committee and those nominated from the floor. The individuals elected were elected by the majority. She expressed her concern about certain board members calling a special meeting to rehash decisions that were previously made by the Board in compliance with its Bylaws, and, if this particular motion passes, the precedent it would set in enabling individual board members to present for revote, "for the sake of harmony," any issues the outcome of which they did not support. For these reasons, she will not support the motion.

Ms. Graeber commented that, in her opinion, this discussion could be avoided if the Board agrees to follow its Bylaws in the future. It is important that the Board elect a nominating committee at this time in order to proceed with the University's business, and not to rehash past votes. Dr. Hilgers' motion is merely an attempt to clear the air. Rector Hamm stated that the Board did, in fact, follow its Bylaws.

Mr. Bouffard called for the vote, at which time the Rector asked Ms. Meeks to restate the motion. Dr. Hilgers amended the motion to read as follows: "I move that the Board of Visitors ratifies the results of the election of officers that took place at its annual meeting on June 15, 2000." The amended motion was seconded by Mr. Lechler and was approved by a vote of eight in favor (*Beamer, Bouffard, Cheng, Graeber, Hilgers, Kelley, Lechler, Wagner*) and none opposed. Ms. Haddad and Dr. Russell abstained.

## **SUSPENSION OF BYLAWS AND ELECTION OF NOMINATING COMMITTEE**

Mr. Hamm suggested that the meeting adjourn, since the purpose for which the meeting was called had been discussed and resolved. Dr. Hilgers indicated that the purpose of the called meeting was to elect a nominating committee to fill the vacant position of Rector, which had not yet taken place.

Mr. Kelley made a motion that Bylaws section 4.04 be suspended and that a nominating committee be elected. The motion was seconded by Dr. Hilgers.

There followed discussion regarding several procedural issues. The first issue concerned whether the Board could suspend the Bylaws. Mr. Hamm interpreted the Bylaws to mean that 3/4 of the total board membership had to vote affirmatively to suspend the Bylaws. Dr. Hilgers noted that the Bylaws state that 3/4 of the board members *present and voting*, and at least nine members, must vote affirmatively in order to suspend the Bylaws. Mr. Robbins supported Dr. Hilgers' interpretation, reiterating that at least nine members must vote affirmatively.

Mr. Forehand asked to confer with the Rector outside of the room. Several board members objected to the Rector leaving their presence to confer with legal counsel. Mr. Forehand then advised the Board that it was allowable under the Freedom of Information Act for them to recess and reconvene in executive session for the purpose of discussing legal matters. The Board collectively agreed to remain in open session for these discussions.

Mr. Beamer asked Mr. Hamm the point of order he and counsel planned to discuss outside of the room. Mr. Hamm indicated that the announcement of the meeting stated the appointment of a new nominating committee, which was supported by all correspondence. The announcement did not specifically reference the Vacancy Clause. This issue has already been addressed and therefore requires no further deliberation. Furthermore, the Bylaws state that the nominating committee be elected at a **regular** meeting of the Board, and in the Rector's view, was crafted as such in order to ensure the presence and broad base support by the entire board membership. A special meeting, on the other hand, does not afford some members the opportunity to be present, so they are potentially disadvantaged. Rector Hamm pointed out that this is important, since it is necessary that the Nominating Committee have broad board support, and to avoid future issues surrounding the Nominating Committee itself.

Ms. Haddad commented that she spoke on the phone with several of the board members who are not present today, and she conveyed Ms. Woolsey's interest in serving on the nominating committee should it be elected today. Ms. Atkinson provided a letter distributed today stating her views that election of the nominating committee wait until the next regular meeting.

Mr. Kelley and Ms. Graeber asked for Mr. Forehand's advice. Mr. Forehand stated that this is a procedural issue and not a legal issue, and therefore should be decided by the Board. Nonetheless, the Bylaws state that the Board should follow Robert's Rules of Order if the issue is not otherwise provided for in the Bylaws. Robert's Rules say, in a specially

called meeting, that if matters beyond the call are considered and voted on then they must be presented at the next regular meeting to be confirmed. One issue before the Board is whether the motion is within the call of the meeting or beyond the scope of the call of the meeting. Mr. Hamm's position is that this is an arguable point.

Mr. Kelley then made a motion that the Board determine that the election of a nominating committee to fill the vacancy of Rector is within the scope of the call of the meeting. Dr. Hilgers stated that a motion is already pending. Mr. Kelley then withdrew his original motion in order for the Board to take up this preliminary motion. Mr. Beamer seconded the motion and called for the question. Mr. Hamm asked Mr. Robbins for his opinion as to whether the call of the meeting was sufficient. Mr. Robbins stated that the special meeting notice is required to state the date, place and time of the meeting and whether public comment will be received. Dr. Hilgers' notice satisfied those requirements; anything beyond that is a procedural decision for the Board.

The Rector called the question and the motion passed by a vote of ten in favor (*Beamer, Bouffard, Cheng, Graeber, Haddad, Hilgers., Kelley, Lechler, Villanueva, Wagner*) and none opposed. Dr. Russell abstained.

Mr. Kelley then restated his motion that Section 4.04 of the Bylaws be suspended and the Board elect a nominating committee to suggest a candidate for the vacant position of Rector. The motion was seconded by Ms. Haddad and approved by a vote of ten in favor (*Beamer, Bouffard, Cheng, Graeber, Haddad, Hilgers., Kelley, Lechler, Villanueva, Wagner*) and none opposed. Dr. Russell abstained.

Thereupon, Ms. Haddad nominated Ms. Woolsey as a member of the nominating committee, Dr. Hilgers nominated Mr. Beamer, Mr. Beamer nominated Mr. Wagner, Mr. Kelley nominated Mr. Lechler and Ms. Graeber nominated Ms. Cheng. Ms. Cheng declined the nomination and Mr. Wagner removed himself from consideration. Mr. Beamer moved that the nominations be closed. The motion was seconded by Mr. Wagner and approved by a vote of ten in favor (*Beamer, Bouffard, Cheng, Graeber, Haddad, Hilgers., Kelley, Lechler, Villanueva, Wagner*) and none opposed. Dr. Russell abstained.

Mr. Kelley made a motion that the nominations be accepted and Mr. Beamer, Mr. Lechler and Ms. Woolsey be elected as the nominating committee. The motion was seconded by Ms. Haddad and approved by a vote of ten in favor (*Beamer, Bouffard, Cheng, Graeber, Haddad, Hilgers., Kelley, Lechler, Villanueva, Wagner*) and none opposed. Dr. Russell abstained.

### **MOTION REGARDING AUGUST 14<sup>TH</sup> MEETING**

Dr. Hilgers stated that he has an incidental motion for the Board's consideration, allowable under Robert's Rules, concerning the August 14<sup>th</sup> meeting. He made a motion that a special meeting of the Board be held on August 14<sup>th</sup> in lieu of the previously scheduled Executive Committee meeting, and that the following issues be considered: (1) student representation to the Board; (2) institutional review issues, and (3) president-elect's contract. The motion was seconded by Mr. Kelley.

Mr. Hamm conferred with Counsel and a determination was made that this motion was legitimate under Robert's Rules. Mr. Hamm asked Dr. Hilgers to explain what he plans to discuss regarding the institutional review. Dr. Hilgers stated that the review offered over 50 recommendations. Although the review has been released publicly, the Board has taken no action on those recommendations and discussion is necessary. He cited examples of having the finance recommendations referred to the Board's Administration and Finance Committee and academic affairs issues being discussed by the Academic Affairs committee of the Board, and there are some that do not fit with the Board's standing committees. For example, the Rector may wish to appoint a governance committee to address the governance issues. Ms. Haddad agreed with Dr. Hilgers that the Board should begin addressing these issues. Mr. Hamm added that an orientation session is normally held for the new board members in conjunction with the August executive committee meeting, and he asked President Koch to suggest a schedule which would allow for both the orientation session as well as the special meeting.

Dr. Hilgers called for the question and the motion passed by a vote of ten in favor (*Beamer, Bouffard, Cheng, Graeber, Haddad, Hilgers., Kelley, Lechler, Villanueva, Wagner*) and none opposed. Dr. Russell abstained.

#### **MOTION REGARDING PRESIDENT-ELECT'S CONTRACT**

Dr. Hilgers offered as an emergency action (where no notice is necessary), the following motion regarding the president-elect's contract. The motion was seconded by Mr. Kelley. Mr. Hamm asked Mr. Forehand to comment on the motion. Mr. Forehand commented that he understands that an agreement was reached with Dr. Runte and the Board passed a resolution to hire Dr. Runte at a certain salary and under certain conditions. So there is a contract but at this point there is not a written document that has been ratified by the Board. Mr. Kelley asked if approving the contract would be a "rubber stamp" action by the Board, to which Mr. Forehand replied that any revisions made would be considered to constitute an amended contract. Mr. Bouffard asked if the contract is now merely in the form of a verbal agreement, and Mr. Forehand stated that is essentially correct.

Mr. Hamm interjected that an agreement in writing does exist which was signed by Dr. Runte and by both himself as outgoing Rector and Ms. Rollison and incoming Rector. This 4-5 page agreement puts forth the terms of Dr. Runte's employment and is binding on the part of Dr. Runte and has provisions for ratification and approval by the Board. The Attorney General's office has confirmed that the agreement is binding on Dr. Runte, but that Board has some flexibility in terms of some of the specifics stated therein. Mr. Hamm reminded the Board that the Rector was empowered by the Board in executive session to move forward with negotiations, and did so in concert with the new rector, and the major terms of the contract were discussed (with the Board) prior to those negotiations. An additional contract was entered into by the Board with Dr. Runte to hire her at a specific salary and with tenure, by action of the Board (at the June 26<sup>th</sup> meeting). So that contract is binding. There are details, however, that may be reviewed and agreed to or modified by the Board.

Mr. Kelley asked if the Board had been supplied with a copy of the contract. Mr. Hamm said that he had not yet distributed copies of the contract, but he and President Koch will do so today at the end of the meeting. He asked that the board treat this contract with utmost confidentiality. Mr. Lechler commented that he was pleased to be receiving a copy of the contract, because without a contract, the board does not have the collective wisdom to make an informed decision.

Mr. Lechler asked if the Board objected to any items listed in the proposed resolution. Ms. Haddad commented that it was reasonable for the Board to move forward, but suggested that Mr. Bouffard represent the Board in reviewing the contract with Mr. Robbins. Dr. Hilgers amended the motion accordingly and Mr. Kelley seconded the amended motion. The following motion passed by a vote of ten in favor (*Beamer, Bouffard, Cheng, Graeber, Haddad, Hilgers., Kelley, Lechler, Villanueva*) and none opposed. Dr. Russell abstained.

### RESOLUTION

WHEREAS, Mr. C. Jay Robbins is the Special Assistant Attorney General and General Counsel to the Old Dominion University Board of Visitors; and

WHEREAS, negotiations have been held between Dr. Runte and Mr. Hamm resulting in the execution of an agreement proposed to be Dr. Runte's employment agreement with the University; and

WHEREAS, the Board of Visitors must take action to ratify said agreement.

THEREFORE, BE IT RESOLVED, that Mr. C. Jay Robbins, with board member Henry P. Bouffard, review the agreement prior to board action to:

Reconcile said proposed agreement with the resolution approved by a majority of the board members at a special meeting on 26 June 2000;

Determine if Commonwealth contractual requirements have been met;

Advise if the current provisions are in proper legal form;

Provide additional contractual provisions for consideration by both parties, if required;

Report findings to the Board no later than 4 August 2000; and he is to

Provide all board members with copies of the said proposed agreement along with the General Counsel's comments and findings not less than 7 days prior to any meeting to assess ratification of said proposed agreement.

BE IT FURTHER RESOLVED, that the Board meet expeditiously, following the seven-day assessment period, to review Mr. Robbin's findings and consider ratification of the proposed agreement.

Mr. Hamm offered to discuss the agreement with Mr Bouffard at his convenience should he have any questions.

With no further business to discuss, the meeting was adjourned at 4:20 PM.