

CORRECTION TO THIS ARTICLE

A version of this article that appeared in today's print editions should have said Board Chairman Gerald E. Connolly (D) is planning a June 4 public briefing, not a hearing, on the rail contract. This version has been corrected.

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Fairfax Closed Doors for Sessions on Metro Extension

By Bill Turque
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It was less than seven weeks ago that the Fairfax County Board of Supervisors complained about the lack of transparency with which Virginia officials and a private contractor were negotiating to build the first phase of the Metrorail extension to Dulles International Airport.

Now it's the board's deliberations that have turned opaque. Three times in the past six weeks, the 10-member board has convened in closed session to discuss the multibillion-dollar project, scheduled to break ground next spring. The most recent meeting, on Monday, lasted more than two hours.

Board members, who must vote to fund the county's share of the extension, said the discussions are exempt from the state's open meetings law because they were receiving advice from County Attorney David P. Bobzien.

"I was the one who thought the meetings should be closed," Bobzien confirmed.

At least two supervisors, however, said they recalled no direct questioning of Bobzien at Monday's session.

"He didn't say a whole lot," said Supervisor Michael R. Frey (R-Sully).

Interviews with supervisors and county documents indicate that the board's private discussions have gone beyond legal strategy into broad political and policy questions that are not covered by exemptions in the public meetings law. These include expression of continued misgivings about the elevated track planned for the Tysons Corner segment instead of a tunnel.

The discussions also involve concerns about the ultimate price of the agreement reached March 30 by the state, the Metropolitan Washington Airports Authority and Dulles Transit Partners, the private construction consortium headed by Bechtel Inc. The accord offered only an estimate of between \$2.4 billion and \$2.7 billion, pending review by the Federal Transit Administration. The board has also addressed the potential for cost overruns that would be funded by Fairfax County taxpayers and motorists on the Dulles Toll Road.

There was also some discussion of what County Executive Anthony H. Griffin described in at least one session as "the nuclear option" -- pulling out of the plan altogether.

Supervisor T. Dana Kauffman (D-Lee), the board's most outspoken critic of the rail plan's financing and aerial design, said the closed sessions were necessary because the terms of the contract between the state and Dulles Transit Partners are "still in flux."

"It's painful to me to handle it this way, but that's the course we've set," he said.

Board Chairman Gerald E. Connolly (D), who attended two of the three closed sessions, said they were strictly limited to legal questions. "All of us act on the advice of the county attorney," he said. "I don't like doing a lot of business in closed session, but to protect the public, sometimes we have to be able to have a full and frank discussion about legal issues."

Connolly said he intended to schedule a public briefing on the contract, probably for June 4.

The board met privately March 12, April 9 and Monday to discuss the rail extension, the first phase of which would run from a point just east of the West Falls Church Station to Wiehle Avenue in Reston. Some of the deliberations did involve counsel from Bobzien on the county's vulnerability to a lawsuit if it opted out of the rail plan. Bobzien's view, according to Connolly, was that the county could face court action from the airports authority or the consortium if it pulled out.

But the discussions appear to have been broader than legal strategy. Documents released by the county this week show that some questions raised by Kauffman at the April 9 meeting go beyond potential litigation.

"Why would the Board freely choose to endorse any such agreement or interim understanding in the absence of a commitment from [the consortium] to the total cost of the project?" Kauffman asked.

Another query was: "What legal and related political strategies should we pursue if a deal . . . is not in our County's best financial interest?"

"Clearly, they are making broad policy decisions out of the light of day. It is completely inappropriate," said Charles W. Hall, a Democratic community activist challenging Supervisor Linda Q. Smyth (D-Providence) in the June 12 primary.

"Anything potentially could result in litigation. If you abuse that, you could literally shut down the doors of government every day."

Smyth declined to discuss the meetings. "I go by the opinion of the county attorney," she said. "My husband's a lawyer, and I pay attention to the lawyers."

Said Hall: "The county attorney works for them. They don't work for the county attorney."

Frosty Landon, executive director of the Virginia Coalition for Open Government, a nonprofit group that promotes expanded access to official records and proceedings, said the open meetings law was designed to be broadly construed "for maximum openness."

"They have no right to discuss general policy issues in a closed meeting," he said.

Lack of disclosure was an issue as the state, the airports authority and Dulles Transit Partners reached the deal that was announced March 30.

Under the Public-Private Transportation Act of 1995, the law used to forge the agreement, the state was allowed to bypass traditional competitive bidding and bargain with a single partner that would design and build the project for a fixed price and profit.

The law allows information that would usually be public in a competitive bidding situation to remain

private to protect business and pricing practices of the companies.

In March, the Fairfax board expressed its concern "that critical pricing documents have been kept confidential and may not be available for review," making it difficult for the county to evaluate the financial risks inherent in a multibillion-dollar public works project.

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