

The Port of Virginia Structural Review Committee
Open Session Minutes
June 30, 2005

(Revised August 3, 2005)

Committee Members Present:

Conway W. Sheild, III, Committee Chair
Joshua P. Darden, Jr.
Deborah K. Stearns
Mark B. Goodwin
Regina P. Brayboy

Members Absent:

John G. Milliken, Ex Officio

Staff:

J. Robert Bray, Executive Director
J. J. Keever, Deputy Executive Director
Linda G. Ford, Director of Port Promotion
Carla Welsh, Program Manager-Port Promotion
Joe Harris, Media Relations Manager-Port Promotion
Debra J. McNulty, Clerk

Guests:

John M. Ryan, Vandeventer Black, LLP (VIT Corporate Counsel)
Richard N. Knapp, Asst. General Manager, VIT
Arthur W. Moye, Jr., Executive Vice President, Hampton Roads Maritime Association
Roger Geisinger, President, Hampton Roads Shipping Association

Members of the Media:

Carolyn Shapiro, *The Virginian-Pilot*
Novelda Sommers, *The Daily Press*

Pursuant to call by Mr. Sheild, The Port of Virginia Structural Review Committee convened an open meeting on this date at 1:15 p.m., at Norfolk International Terminals (NIT) – Crumbley House, Norfolk, Virginia.

Mr. Sheild mentioned that Mr. Milliken, Chairman of the VPA Board and ex officio member of the Committee, was unable to attend the meeting. Mr. Sheild announced that he and Mr. Milliken agreed that the title of the Committee (formerly named “Working Group”) would be “The Port of Virginia Structural Review Committee”. There was no formal action needed for the title change. At this time, Mr. Sheild introduced each member of the Committee.

Mr. Sheild described the Committee as a study group with no authority over policy changes nor authority over anyone. The focus of the committee, according to Mr. Sheild, would be to determine and recommend the optimum structure for port operation, administration, governance, ownership and provide an efficiency and effectiveness model.

Mr. Sheild said there was no “preconceived notion” and that members of the Committee would gather information and hear from a variety of sources before they prepare the Committee’s final report. He referenced a quote from Peter Drucker – “If we weren’t already doing it this way, would we be doing it this way?”

Mr. Sheild said the Committee needed to determine how much information is needed, what are the sources, and then tie it all together for the Committee’s final recommendation.

Mr. Sheild called on Mr. Bray, Mr. Darden, and Mr. Ryan, to provide a historical summary of VPA and VIT based on their many years of service to the Port.

Mr. Bray explained the challenges that he faced prior to unification of the three city-owned ports when he began his employ in 1967 as the Authority’s General Counsel. He explained that the city-owned marine terminals could not compete as they were fragmented with no marketing plan. Mr. Bray talked about Governor Godwin’s port study commission that led to unification of the three port cities. He explained that the Babalas Commission was later formed to study the single-operating company concept that resulted in the merging of Maritime Terminals, Inc. and Port Authority Terminals, Inc., ultimately forming Virginia International Terminals, Inc. (VIT) in 1982, as private non-stock, non profit corporation.

Mr. Bray explained VPA’s 1997 legislation that removed the Authority’s dependence on \$14 million in General Fund appropriations, thereby allowing the agency to operate as a political subdivision, independent of the state’s personnel and procurement acts. He explained that VIT has been supporting VPA’s operations with terminal revenues since 1997.

Mr. Bray said VIT and VPA have a unique relationship that has been successful for many years.

VIT’s Corporate Counsel, Mr. John Ryan, summarized the corporate structure of VIT and he referred to the three documents that govern VIT, that were included in the Committee’s briefing notebook: the Articles of Incorporation, Bylaws, and Service Agreement.

Mr. Ryan described VIT’s tax status as a private, non-stock corporation and referenced the organization’s exclusion from taxation under Section 115(a)(1) of the Code. He referred to several court decisions that determined the status of private corporations that perform public functions and their similarity to VIT. The court decisions that were described by Mr. Ryan are: Harrison v. Day, 200 Va. 764 (1959), Harrison v. Day, 202Va. 967 (1961), Artist v. Virginia International Terminals, Inc., 679 F. Supp. 587 (E.D. Va. 1988), and RF&P Corp. v. Little, 247 Va. 309 (1994).

Mr. Ryan reported that several Virginia Attorney Generals have rendered opinions affirming that VIT was a “private entity” and, therefore, not subject to the Freedom of Information Act. Mr. Ryan referred to the code provision that maintains confidentiality of VIT’s data: Va. Code §62.1-132.4, that states;

“Notwithstanding any provision of law to the contrary, the Authority shall not disclose proprietary information and data furnished to it in confidence, including but not limited to ship tally sheets, ship manifests, information relating to tonnages and cargoes, information and annual budgets furnished to it by any entity, including but not limited to any entity operating a terminal on behalf of the Virginia Port Authority.”

Mr. Ryan reported that VPA is directly referenced in the Virginia Freedom of Information Act at Va. Code §2.2-3705.6, which provides in part:

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Proprietary information gathered by or for the Virginia Port Authority as provided in §or §62.1-134.1 (The latter pertaining to coal shipments.)

Mr. Ryan reported that VIT operates independently in its negotiations with major customers, labor, private insurers, hires, fires and promotes its employees, institutes, funds and provides for the management of its employee pension, health, and benefit plans, and maintains its own bank accounts. VIT also publishes the tariff (Schedule of Rates) which is VIT’s “contract with the public”, and is posted on VPA’s website.

Mr. Ryan referred to the copy of Senate Joint Resolution No. 12 (1946), that prohibits a state agency from negotiating with unionized labor yet allows the creation of organizations similar to VIT’s structure. Mr. Ryan noted that Mr. Roger Geisinger, President of Hampton Roads Shipping Association (HRSA), is also chief labor negotiator.

Mr. Ryan advised that he would provide the Committee with a copy of his remarks and the court decision, Artist v. VIT, Inc. (not included in the briefing materials).

Ms. Stearns asked if there was a formula for the tariff. Mr. Ryan explained that the tariff is a “work in progress” that is amended each October. He advised that, this year, the tariff will include the implementation of security service charges that were adopted by the VPA Board on May 24, 2005. Mr. Bray added that VIT’s tariff rates also support VPA’s operations and debt service on the bonds.

Mr. Goodwin asked Mr. Ryan if there were any federal or state agencies that pay sales and use taxes. Mr. Ryan said he did not know. Mr. Goodwin asked if VIT was unique in that respect. Mr. Ryan advised that he has a letter from the state denying VIT from exemption of sales and use taxes.

Mr. Darden explained the history of NIT and he recollected Mayor Roy Martin's efforts to unify the ports. Mr. Darden announced that he served as chairman of Governor Baliles' transportation commission, whose membership also included Senator Hunter Andrews, which was instrumental in providing VPA with funding for NIT's infrastructure. In answer to Mr. Goodwin's inquiry, Mr. Bray advised that port property was purchased with state funds.

Mr. Sheild introduced Mr. Roger Geisinger, President of Hampton Roads Shipping Association (HRSA), and Chief ILA Negotiator. Mr. Geisinger described his 33-year tenure on the waterfront that included his position as Deputy Executive Director for the Philadelphia Regional Port Authority. Mr. Geisinger explained his duties as negotiator for ILA and the ILA's responsibilities at the three marine terminals.

Mr. Goodwin asked if the cities had a contract with ILA to operate those properties prior to the creation of VIT. Mr. Geisinger explained that stevedoring companies operated the port prior to that time. Mr. Goodwin asked if ILA are certified to represent employees of VIT. Mr. Geisinger explained that VIT hired casual ILA labor on a daily basis but VIT employees, other than those provided by the ILA daily, are not represented by the ILA. He advised that ILA members must become signatories of the contract upon hire. Mr. Knapp confirmed for Mr. Goodwin that the ILA was formed long before VIT. He added that Ed Brown, International Vice President of ILA, has been with ILA for 54 years.

Mr. Bray explained that, in the 1960's, the cities operated through private stevedoring companies. He advised that ILA has a contract with all shiplines that basically prohibits a ship from entering any port that does not have ILA labor.

Mr. Bray clarified that, in order for Virginia to do business at its ports, they had to have legislation in place to allow an operating company to employ organized labor.

After Mr. Geisinger's presentation, Mr. Sheild invited him and other members of the HRSA to attend meetings of the Committee. Mr. Moyer also offered assistance from the HRMA membership.

Mr. Art Moyer, Executive Vice President of the Hampton Roads Maritime Association (HRMA), described the Port as unique with a level of cooperation that no other port has in satisfying customers' needs. He emphasized the importance of maintaining the current relationship between VIT and VPA. Mr. Moyer said the Port is entering into a new era with the opening of APM Terminals and he remarked that "all eyes of the shipping world are on Hampton Roads". He advised that there will be a level of competition at this Port not seen since unification. He emphasized the importance of maintaining VIT's privacy in this competitive arena. Mr. Moyer said, we are no longer a "feeder port" and we do not have to be "second banana" to anyone. Mr. Moyer said everything depends on the structure of the VPA and VIT relationship.

Mr. Knapp suggested that former members of the MTI and VIT Boards assist. He suggested that Mr. Bray develop a list of those members in order to get input for the Committee that would also be good to have for the archives. Mr. Sheild concurred.

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Mr. Sheild discussed future meetings and completion of the Committee's final report. He announced that the Committee is scheduled to meet on July 26, 2005, at 2:00 and on September 27, at 2:00. All meetings will be held at Crumbley House. He asked the clerk to poll the Committee for October and November dates in order to complete a report by November-December.

It was determined by Mr. Sheild that there would be no subcommittees formed and, in consideration of Mr. Goodwin's travel from Richmond, there would be no twice-monthly meetings. Mr. Bray suggested that everyone hold November 22, 2:00 p.m., which is right after the VPA board meeting. Mr. Sheild suggested that the Committee members attend VPA board meetings.

Mr. Sheild announced that a possible meeting in August would be determined at the July meeting. Mr. Bray suggested that Mr. Dorto and Mr. Ed Brown speak at the next meeting. Mr. Sheild concurred.

Mr. Sheild asked for suggestions for speakers from other entities. Mr. Bray suggested representatives from shiplines, trucking, and stevedoring firms.

Ms. Stearns suggested a discussion of the advantages or disadvantages of the structure of the Port of Virginia. Mr. Darden advised that Mr. Crumbley, former General Manager of VIT, offered assistance.

Mr. Goodwin asked if the Committee would consider assistance from a consultant relating to gathering of information. Mr. Sheild advised that the Committee needed someone, possibly an attorney, who would operate independently and is not beholding to VIT or VPA. Mr. Sheild advised that the Committee has no budget, costs would be incurred by VPA, and the hire of an attorney would need approval from the Attorney General's office. Mr. Sheild advised Mr. Bray to contact Mr. Rick Walton, the Authority's Attorney General representative, for his approval to hire an attorney and proceed with a resolution for adoption by the Committee and the full VPA Board, on July 26th.

Mr. Goodwin concurred and advised that the Committee needs counsel that is experienced in labor law and with the concepts that are apparent in the structure of VIT and VPA. He stated that the Committee does not have the time to do all of the work in such a short period of time. Mr. Sheild agreed and he also added that the law firm should be a Virginia firm. He also quoted: "If it ain't broke, don't fix it".

Mr. Goodwin remarked that there were very interesting questions raised at the meeting and he said that some of the driving force is to "show properly disclosed information". He added that VIT is operating in an excellent way and he referred to the recent feature article in The Journal of

Commerce regarding the success of VIT's chassis pool. Mr. Goodwin also said that the people who maintain the operation of VIT should be applauded, however, he said there may be some issues of disclosure that need to be addressed.

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Mr. Sheild said there would be no need for an interim report and no site visits of other operations. He suggested that the Committee review Mr. Ryan's remarks when they are received and contact Mr. Bray for additional information.

Mr. Geisinger remarked that VIT is the first terminal to establish two empty depots, labor concessions and the chassis pool. He reported that VIT received several inquiries from other ports on the formation of the chassis pool. Mr. Geisinger announced that ILA International wants to visit the chassis pool. He also mentioned how VIT and VPA have accommodated the trucking industry and that turn-around times are better than other ports. Mr. Geisinger said the key to the success of VIT and VPA is their working relationship and how they solve issues for the better of The Port.

At this time, Mr. Sheild asked for a motion for the Committee to seek independent counsel upon the Attorney General's approval. He added that VPA would fund the cost.

Action: Upon motion by Mr. Goodwin, seconded by Ms. Stearns, The Port of Virginia Structural Review Committee agreed to request the VPA to seek approval from the Attorney General's office for the Committee to hire a Virginia law firm as independent counsel to the Committee.

Affirmative Votes:

Ms. Brayboy
Mr. Darden
Mr. Goodwin
Ms. Stearns

Ms. Stearns asked Mr. Bray to review the VIT Budget approval process. Mr. Bray requested that the Committee hear a briefing from Mr. Dorto at the July 26 meeting. The Committee approved.

There were no comments from the public. The meeting adjourned at 2:55 p.m.

Respectfully submitted,

Debra J. McNulty
Clerk to the Board
Virginia Port Authority

