

**Virginia Port Authority Board of Commissioners**  
**Executive Committee Meeting**  
**December 13, 2005**  
**Norfolk International Terminals – Crumbley House**

**Open Session Minutes**

*(Revised January 10, 2006)*

Committee Members Present:

John G. Milliken, Chairman  
Mark B. Goodwin  
William M. Grace  
Deborah K. Stearns

Committee Members Absent:

E. Massie Valentine, Jr., Vice Chairman  
Ranjit K. Sen

Commissioners Present:

Joe B. Fleming

Staff:

J. Robert Bray, Executive Director  
J. J. Keever, Deputy Executive Director  
Linda G. Ford, Director of Port Promotion  
Joe Harris, Media Relations Manager – Port Promotion  
Donald B. Boyd, Chief, VPA Port Police  
Andrew Engemann, Captain, VPA Port Police  
Debra J. McNulty, Clerk

Guests:

John M. Ryan, Vandeventer Black, LLP (VIT Corporate Counsel)  
John D. Padgett, McGuireWoods LLC  
Joseph D. Dorto, General Manager, VIT

Members of the Media:

Peter Dujardin, *The Daily Press*  
Tom Shean, *The Virginian-Pilot*

Pursuant to call by Chairman Milliken, the Executive Committee convened an open session on this date at 2:05 p.m., at Crumbley House, Norfolk International Terminals (NIT), Norfolk, Virginia.

Mr. Milliken announced that the purpose of the Executive Committee meeting was to receive the report of The Port of Virginia Structural Review Committee (the “Working Group”). He explained that the Working Group, chaired by Mr. Conway H. Sheild, III, was tasked with looking at issues affecting the relationship between VPA and VIT.

Mr. Milliken requested that the Executive Committee consider one item mentioned in the report that needed to be acted upon today in order to submit a legislative amendment in time for the General Assembly. He explained that the Working Group had approved a proposed amendment to the Freedom of Information Act (FOIA) that would allow the VPA Board to go into closed session to discuss proprietary information that VPA receives from VIT.

Mr. Sheild reported that the Structural Review Committee had met numerous times in the past couple of months and he thanked Mr. John Padgett, of McGuireWoods LLC, for his advice and assistance with the report. A draft of the Committee's report was distributed at this time to everyone in attendance.

Mr. Milliken explained that the Working Group of the Structural Review Committee had received the report as an "Attorney-Client Confidential Document". He advised that a closed session was held earlier for consultation with attorneys regarding a legal matter referenced in one section of the report. Mr. Milliken reported that the remainder of revisions to the draft report were suggested by several Committee members in open session and revised by Mr. Padgett in time for the Executive Committee meeting. He announced that, at adjournment, the Structural Review Committee members had waived the Attorney-Client privilege after all revisions were discussed. The document was open for public discussion at this time.

Mr. Sheild explained that the report is a recommendation by the Structural Review Committee that is being presented to the Executive Committee with the intention that it would also be presented to the full VPA Board. Mr. Sheild requested that he also attend the VPA Board meeting.

Mr. Sheild reported that there was unanimity of opinion for most of the report with the exception of disclosing VIT salaries. He advised that certain Committee members expressed reservations about salary disclosure. He reported that it was suggested by the Structural Review Committee that the VPA Executive Committee consider the matter for recommendation to the full VPA Board, at which time Mr. Dorto would have the opportunity to express his dissatisfaction regarding the disclosure of salaries.

Mr. Sheild explained that it was the unanimous view of the Structural Review Committee that the structure that currently exists between VPA and VIT ought to continue in its current form. Mr. Sheild introduced Mr. Padgett who presented an overview of the work done by the Working Committee and recommendations that were summarized in the report.

Mr. Padgett reported that the Committee struggled initially in determining VIT's private status in relation to VPA's public status. He advised that several attorneys and the Attorney General's office looked into the matter and that the definitive answer to that question was that VIT is a private corporation, it is separate and distinct from the VPA, and it is a non-stock, non profit corporation.

Mr. Padgett explained that the Committee also looked into the reporting requirements of VIT and that there was no specific disclosure requirements regarding compensation, no requirement that VIT file something similar to a form 10-K (an SEC requirement) or an IRS Form 900. Mr. Padgett reported that those discussions by the Committee resulted in a recommendation for transparency by VIT given the relationship that VIT has with VPA, a public organization.

Mr. Padgett explained the Committee's recommendation to seek an amendment to the Freedom of Information Act in order for the VPA Board to have the ability to discuss VIT's confidential information. He advised that current law prohibits the VPA Board from meeting in closed session to discuss proprietary information received by VPA from VIT.

Mr. Padgett reported that the Working Group determined there was no alternate structure that made more sense than the working relationship between VPA and VIT. The Working Group realizes that the success of the port is in large measure attributed to the stable relationship between VPA and VIT. The Working Group realized that VIT is a private corporation that must remain private for a large number of reasons and most significantly that state law prohibits a state agency from negotiating with organized labor. Mr. Padgett confirmed that VIT, being a private entity, has the ability to negotiate those contracts for VPA.

Mr. Padgett addressed the transparency issue and divulging salaries of highly compensated individuals within VIT. He advised that there is no legal requirement for VIT to release confidential salary information, however, the report recommends that VPA requests that VIT disclose the top three most highly compensated individuals when VIT submits its annual budget report to VPA in May of each year. The report also recommends that supporting information determining how compensation was set and the consultant's recommendations be presented to the VPA Board in a way that would not make it subject to disclosure under FOIA.

Mr. Padgett advised there are two issues at hand: There is a request that VIT disclose confidential salary information and there is a recommendation to amend FOIA to allow closed session discussions by the VPA Board as part of its oversight responsibilities.

He advised that the Working Group was vigilant in trying to make certain that any incidental or unintended consequences were scrutinized. It was a concern of some of the Committee members that disclosure of compensation would impact the competitive position of the Port Authority and would also open VIT to further scrutiny. Mr. Padgett reported that the final conclusion was that that one factor of disclosure would not in and of itself cause VIT to change from a private to a public entity. The Committee wanted VPA to be cognizant of future ramifications. Mr. Padgett emphasized that no one on the Committee wanted to take action that would blur the distinction between VIT/VPA or turn VIT into a public entity.

Mr. Padgett explained that all of the Committee's recommendations are contained in the 12-page report that was distributed.

Mr. Sheild thanked Mr. Padgett and the Structural Review Committee members for their guidance.

Mr. Milliken opened the meeting to questions from the Executive Committee members.

Mr. Grace expressed approval of the amendment to FOIA in order to conduct closed session discussions relating to VIT's confidential information, however, he stated that he is "extremely adamant" about maintaining VIT's private status. Mr. Grace was firmly against releasing salaries and he was of the opinion that the release of any confidential information, including the release of salaries, would eventually lead to an unraveling of the private organization and would be detrimental to negotiations with labor and the ship lines.

Mr. Milliken expressed appreciation to Mr. Sheild for his efforts as Chairman of The Port of Virginia Structural Review Committee.

Mr. Milliken summarized the three issues that he realized were important throughout the proceedings of the Structural Review Committee: 1) the need to amend FOIA closed session language in order for the VPA Board to have the authorization to carry out its oversight abilities; 2) steps to underscore and strengthen the distinction between VPA and VIT and the "arms-length" relationship between the two organizations; and 3) proper disclosure and transparency to maintain the level of public confidence by releasing the top three salaries of VIT.

Mr. Milliken advised that further discussion is needed among the VPA Board, VPA staff and Mr. Dorto, with regard to compensation. Mr. Milliken reported that the Executive Committee would not take action on that subject today. He said it was the recommendation of the Working Group that implementation of salary disclosure would take place at the annual budget submission of VIT in May.

Ms. Stearns stated that the language she had requested regarding the dissention of several members of the Structural Review Committee was not contained in the revised draft. Mr. Padgett referred to page two of the report that contains the language requested by Ms. Stearns. The statement read: "While some members expressed concern that the revelation of compensation would have unintended consequences and do not personally support disclosure of the compensation, the Working Group suggests that VIT disclose publicly the compensation it pays to its three highest compensated individuals."

Ms. Stearns requested that Mr. Padgett also include language on page 11, item #3 (summary of recommendations) that reads, to the effect, that the recommendation to disclose VIT salaries "...does not reflect the views of all members of the Working Group". Mr. Padgett agreed.

For the record, Mr. Goodwin wanted assurance from Mr. Padgett that the public release of salary information would not imperil the private status of VIT.

Mr. Padgett restated his earlier remark, "...that one item itself, in and of itself, would not be legally sufficient to cause the private entity to convert to a public entity..." Mr. Goodwin also noted that there were several policy changes that were recommended, such as a written lease agreement between VIT and VPA.

At this time, Mr. Milliken distributed a proposed resolution for action by the Executive Committee regarding an amendment to the Virginia Freedom of Information Act.

Mr. Padgett explained that the resolution suggests that VPA enact legislation that would protect the information as private by VIT under §62.1-132.4. He confirmed the amendment to §2.2-3711, to allow the Port Authority Board to convene a closed session to discuss information that it receives in accordance with §62.1-132.4, was suggested by the Attorney General's office.

**Action:** Upon motion made by Ms. Stearns, duly seconded by Mr. Goodwin, and adopted by unanimous vote (4-0), the Executive Committee approved a resolution of the Virginia Port Authority Executive Committee to amend Virginia Code Ann. §2.2-3711, to add a new paragraph which authorizes VPA to meet in a closed session to discuss information provided by VIT pursuant to §62.1-132.4 of the Code.

Affirmative Votes:

Mr. Goodwin  
Mr. Grace  
Mr. Milliken  
Ms. Stearns

Mr. Milliken explained that the VPA Board would conduct a public reporting process at the May meeting. He announced that he would work with staff on the agenda for the January 24, 2006 meeting and discuss an implementation process with other members of the Executive Committee.

Mr. Grace and Mr. Goodwin suggested that the report be distributed to the full Board soon in order to have several weeks to review the information before the January board meeting. At this time, Mr. Goodwin expressed disagreement with Mr. Grace's concerns regarding release of salaries.

Mr. Milliken agreed that the report should be distributed soon after Mr. Padgett's revisions.

There were no comments from the public. The meeting adjourned at 2:50 p.m.

Respectfully submitted,

Debra J. McNulty  
Clerk to the Board