

**The Port of Virginia (POVA) Structural Review Committee**  
**Open Session Minutes**  
December 13, 2005

*(Revised January 5, 2006)*

Committee Members Present:

Conway W. Sheild, III, Committee Chair  
Deborah K. Stearns  
Mark B. Goodwin  
John G. Milliken, Ex Officio

Committee Members Absent:

Regina P. Brayboy  
Joshua P. Darden, Jr.

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:

The Hon. Jody Wagner, State Treasurer and VPA Commissioner  
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 Sheild, The Port of Virginia Structural Review Committee convened an open meeting on this date at 10:10 a.m., at Norfolk International Terminals (NIT) – Crumbley House, Norfolk, Virginia.

A draft copy of Mr. Padgett's "Report of the Port of Virginia Structural Review Committee" was distributed to only Committee members and executive staff as an "Attorney/Client Confidential Communication".

Chairman Sheild announced that Ms. Brayboy and Mr. Darden had previous commitments and were unable to attend the meeting. The Chairman reported that he had received an e-mail from Mr. Darden that expressed his support of the confidential report that was released to Committee members last week. A copy of Mr. Darden's e-mail was distributed to Committee members.

Chairman Sheild welcomed State Treasurer and VPA Commissioner Jody Wagner to the meeting and congratulated her on the appointment to Secretary of Finance that was recently announced by Governor Warner.

Chairman Sheild concurred with Mr. Milliken's request to go into closed session in order to address several legal questions contained in one section of the report that Committee members wanted to discuss with counsel. Mr. Milliken advised that additional corrections to the text of Mr. Padgett's report would then be discussed in open session.

At 10:15 a.m., the Chairman moved that the Committee convene a closed meeting under the Virginia Freedom of Information Act, under Virginia Code §2.2-3711(A) (7), for consultation with legal counsel regarding the legal relationship between VPA and VIT, Inc. and legal issues involving that relationship, which require the provision of legal advice by that counsel. Motion read by Mr. Sheild. Ms. Stearns seconded. The vote was unanimous.

Mr. Sheild excused guests and staff, with the exception of Mr. Padgett, Ms. Wagner, Mr. Bray, Mr. Keever, and the clerk.

The Board came out of closed session at 10:30 a.m. After reconvening the open session, the following resolution was made by Mr. Sheild and seconded by Ms. Stearns.

Resolution

*"Whereas, The Port of Virginia Structural Review Committee has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and*

*Whereas, §2.2-3712(D) of the Code of Virginia requires a certification by this Committee that such closed meeting was conducted in conformity with Virginia law;*

*Now, therefore, be it resolved, that The Port of Virginia Structural Review Committee certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements under this chapter were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered by the Committee."*

The resolution passed by a roll call vote of the Committee members present. as follows:

Mr. Sheild	Aye
Mr. Goodwin	Aye
Ms. Stearns	Aye
Mr. Milliken	Aye

Chairman Sheild announced that, after the meeting, Mr. Padgett would revise the report to incorporate corrections and additions suggested by Committee members in time for distribution at today's 2:00 meeting of the Executive Committee. The report at this time was still considered "Attorney/Client Confidential Communication".

Both Mr. Goodwin and Ms. Stearns had suggested several revisions to the document that were noted by Mr. Padgett. Mr. Milliken mentioned that he had some changes in wording that would clarify language regarding the use of confidential information received by VPA. He said he would review that information with Mr. Padgett after the meeting. Mr. Milliken announced that his main concern was that the VPA Board has the legal ability to go into closed session in order to discuss confidential proprietary information that is received by VPA from VIT. It was reminded by Mr. Milliken that this matter had been discussed in several prior meetings.

Mr. Goodwin referred to page 2 of the report that suggested VIT disclose publicly the compensation it pays to its three (3) highest compensated individuals. He asked if the key executives of VIT are the top three or if there were more. Mr. Dorto confirmed that three individuals are top management. Ms. Stearns firmly stated her opposition to the release of salary information. She also spoke on behalf of Ms. Brayboy who, Ms. Stearns reported, was of the same opinion. Ms. Stearns suggested to Mr. Padgett that a dissenting statement be included in the report representing the opinions of those Committee members who do not want to disclose VIT's confidential salary information.

Mr. Sheild advised that the Committee should determine if the salaries should be revealed at all. He said he did not want to "open a Pandora's box" and that the Committee needed assurance that revealing salaries would not cause competitive damage. Mr. Goodwin and Mr. Milliken agreed with the report's recommendation that the disclosure be made in conjunction with the submission of VIT's annual budget each May.

Mr. Sheild remarked that he did not want a decision that would seem to be tracking public securities laws or IRS rulings, however, he felt that transparency is important and that the Committee needed to determine how to address these issues. Mr. Milliken said there were two major issues for concern: 1) should information be discussed and made public, and 2) if it is, what number of salaries should be disclosed? Mr. Milliken agreed that disclosing salaries and compensation of key people at VIT would be an appropriate step towards additional transparency. Mr. Sheild concurred with the number of key salaries suggested in the report. Mr. Goodwin also agreed that he did not want it to look as if VIT were tracking with SEC requirements and he acknowledged that VIT is not subject to IRS rules. Mr. Milliken agreed that the number of top salaries to disclose should be three (3).

Ms. Stearns affirmed that the Structural Review Committee would be making a recommendation to the VPA Board's Executive Committee who, in turn, would make a recommendation to the VPA Board.

Mr. Milliken explained that the report suggests that VPA's Board of Commissioners would request that VIT, as part of its budget disclosure in May of each year, include the salaries of the three key individuals in the publicly disclosed budget information.

Ms. Stearns strongly opposed disclosing salaries in that it would be a step towards "blurring the lines between public and private industry" that would also cause future ramifications for the Port.

She said the Committee has heard substantial communication and testimony from a variety of individuals who have portrayed VIT as a very successful and effective organization. Ms. Stearns expressed concern with market ramifications. She also said it was not right that VIT employees who chose to work for a private company could be faced with having the rules changed. Ms. Stearns emphasized the need for a statement in the report noting dissent among some members of the Structural Review Committee regarding disclosure of salaries.

Mr. Milliken agreed that there needed to be a very tight line drawn between information that can be made public and information that, if revealed, would run the risk of putting VIT at a competitive disadvantage. Mr. Milliken, however, agreed with the consultant's opinion (September 27 meeting) that the release of salary information would not jeopardize VIT's competitiveness. Mr. Goodwin agreed with Mr. Milliken.

Mr. Goodwin said the Committee as a whole understands the importance of maintaining VIT's private status as outlined in the report. However, Mr. Goodwin believed that a decision to release the top three salaries would not imperil the private status of VIT. He was of the opinion that VIT is a private company employed by the state and is, therefore, owned by the state of Virginia and that there is a public trust to appropriately disclose salary information. Mr. Goodwin said he also respected the concerns of Ms. Stearns.

Mr. Sheild asked Mr. Ryan if the Commonwealth owns VIT. Mr. Ryan emphasized that VIT is private and owned by no one. He said there are no owners. Mr. Ryan mentioned Riverside Hospital, Mariner's Museum and Sentara Hospital as some examples of non-stock companies with no owners. Mr. Sheild said because the VPA Board appoints the VIT Board, that is close enough to maintain the goal for transparency.

Mr. Sheild asked Mr. Padgett if the release of information could provide any ammunition to competitors. Mr. Padgett was of the opinion that disclosure of compensation would not in and of itself create significant risk that would convert the private entity to a public entity.

Mr. Sheild asked Mr. Dorto's opinion regarding release of top three salaries. Mr. Dorto stated he was in total disagreement with disclosing any salaries. He mentioned that the private terminal operators at the Port of New York and New Jersey do not reveal salaries. Mr. Dorto advised that some ship line officials have already used that information as ammunition. Mr. Goodwin disagreed with Mr. Dorto and referred to the consultant's opinion. Mr. Dorto and Ms. Stearns disputed the consultant's remark. Ms. Stearns was concerned that there would be long-term effects at the Port should any confidential information be released.

Mr. Sheild discussed the concerns expressed by Mr. Darden and Ms. Brayboy. He said Mr. Darden's e-mail indicated that he approved the content of Mr. Padgett's report. Mr. Padgett reported that Ms. Brayboy left a voice message for him indicating that she would defer to Ms. Stearns and that she too was not in agreement with releasing salary information. Ms. Stearns advised that Ms. Brayboy was in agreement with other points mentioned in the draft document.

Mr. Sheild remarked that it should be the view of the Committee that transparency of government is an ideal that should be adhered to as much as possible. Mr. Goodwin confirmed he was satisfied with releasing the three key salaries of VIT and that the disclosure should be made in conjunction with the submission of VIT's annual budget. Mr. Sheild, Mr. Milliken and Mr. Goodwin all agreed to "draw the line", regarding release of further proprietary information on VIT. Mr. Sheild announced that he agreed with the release of three salaries with the caveat that Mr. Dorto has the opportunity to articulate his concerns to the Executive Committee.

Mr. Milliken explained the need for the Executive Committee to adopt a portion of the report that recommends an amendment to the Freedom of Information Act (FOIA) in time before the General Assembly convenes. Mr. Milliken advised that the VPA Board would hear further from Mr. Dorto and Mr. Sheild prior to VPA's May board meeting, when the VIT budget is presented.

Mr. Milliken advised that the Executive Committee would be asked to approve the recommendations contained in the report including the release of the top three salaries and to approve the amendment to FOIA to allow closed discussions by the VPA Board regarding VIT proprietary information.

Ms. Stearns was concerned that any decision by the Committee would be the start of a series of future inquiries into VIT's proprietary information.

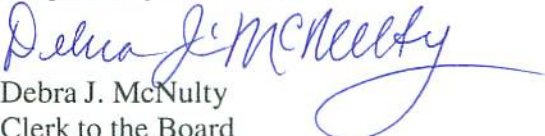
Ms. Stearns and Mr. Goodwin suggested a few additional changes to the report, as noted by Mr. Padgett. Ms. Stearns referred to the recommendation that "...VPA establish a permanent Committee that will convene approximately every three years (include language "or as appropriate") to review the relationship between VIT and VPA and make recommendations to VPA". The Committee agreed.

Mr. Padgett advised that he would incorporate all revisions in a second draft in time for today's Executive Committee meeting.

Mr. Milliken announced that the Committee would waive the privilege of the Attorney-Client confidentiality for Mr. Padgett's revised document that will be presented to the Executive Committee meeting. Mr. Goodwin moved adoption of the report as amended. Mr. Sheild seconded the motion. Mr. Padgett reminded the Working Group that the original version of the report should remain confidential.

There were no comments from the public. The meeting adjourned at 11:30 a.m.

Respectfully submitted,



Debra J. McNulty  
Clerk to the Board  
Virginia Port Authority