

**The Port of Virginia (POVA) Structural Review Committee**  
**Open Session Minutes**  
September 27, 2005

*(Revised October 21, 2005)*

Committee Members Present:

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

Staff:

J. Robert Bray, Executive Director  
J. J. Keever, Deputy Executive Director  
Thomas D. Capozzi, Senior Managing Director of Marketing Services  
Linda G. Ford, Director of Port Promotion  
Joe Harris, Media Relations Manager – Port Promotion  
Carla Welsh, Program Manager – Port Promotion  
Debra J. McNulty, Clerk

Guests:

The Honorable A. Linwood Holton, former Governor of Virginia  
Richard L. Walton, Jr., Senior Assistant Attorney General and  
Section Chief for Transportation  
John M. Ryan, Vandeventer Black, LLP (VIT Corporate Counsel)  
John D. Padgett, McGuireWoods LLC  
R. Kenneth Johns, Sr., R. K. Johns & Associates  
William L. Ralph, R. K. Johns & Associates  
Joseph D. Dorto, General Manager, VIT  
Richard N. Knapp, Assistant General Manager, VIT

Members of the Media:

Peter Dujardin, *The Daily Press*  
Jeremiah McWilliams, *The Virginian-Pilot*

Pursuant to call by Mr. Sheild, The Port of Virginia Structural Review Committee convened an open meeting on this date at 2:00 p.m., at Norfolk International Terminals (NIT) – Crumbley House, Norfolk, Virginia.

Mr. Sheild presented the minutes of the July 26, 2005 meeting, for approval.

**Action:** Upon motion by Mr. Goodwin, seconded by Mr. Darden, the minutes of The Port of Virginia Structure Review Committee meeting of July 26, 2005, were approved.

Mr. Sheild introduced Mr. John D. Padgett, of McGuireWoods LLC, and announced that Mr. Padgett had been retained, with approval from the Attorney General's office, to provide outside counsel to The POVA Structural Review Committee.

At this time, Mr. Sheild introduced the Honorable A. Linwood Holton, former Governor of Virginia. Governor Holton talked about the interest he had in the port since he was a young boy attending school in Roanoke. Prior to his election in 1969, the Governor recalled meeting Mr. Bray who, at the time, was General Counsel of the Virginia State Ports Authority. The Governor credited Mr. Bray for advising him on the importance of unifying the three city-owned ports into one state-owned Authority. Governor Holton talked about Governor Mills Godwin's appointment of the Virginia Ports Study Commission, chaired by Senate majority leader Edward L. Breeden, Jr. (in 1969). The Governor explained that, after the "Breeden" report was released, he passed legislation, July 1, 1970 that created the corporate structure of the Virginia Port Authority and began the unification process.

(Copies of the 1969 Report of the Virginia Ports Study Commissioner and Governor Holton's July 1, 1970 legislation were provided in the agenda materials.)

Governor Holton also mentioned several prominent business leaders that he had appointed to the first board of the Port Authority – Mr. Red English of Altavista, who was the Virginia State President of the Chamber of Commerce, and Mr. Miles Billups, who represented Hampton Roads ILA.

Governor Holton talked about his efforts to secure appropriations for unification and also the challenges the port faced as a result of legislation that prohibits state agencies from negotiating with labor unions. He advised that the corporate structure of VPA resulted in the formation of an operating company that was and still is a private, non-stock organization (formerly Maritime Terminals, Inc.).

Governor Holton said another factor that needed to be addressed was protection of proprietary information from the FOIA. The Governor said that too was solved by the Authority's corporate structure.

At this time, each member of the Committee expressed appreciation to Governor Holton for his remarks.

Presentation by R. K. Johns & Associates, Inc.

Mr. R. Kenneth Johns, Sr., Chairman of R. K. Johns & Associates, Inc., announced that he had worked with VPA since 1967, when he was President of SeaLand. He also thanked Governor Holton for his efforts in the unification process that "started the whole ball rolling".

Mr. Johns described his firm's credentials as a management consulting firm that has served the maritime transportation industry since 1987. He announced that today's presentation would cover the following objectives and perspectives:

- Hampton Roads ports before VIT
- How the port world changed in the 1980s
- VPA/VIT today – achievements and competitive landscape
- East Coast port structure
- What does the port industry face ahead?
- VPA/VIT structure – agile enough for the challenge?

Mr. Johns introduced his colleague, Mr. William (Bill) Ralph, whose employment credentials include SeaLand, Panama Canal, and 17 years with The Journal of Commerce.

Mr. Ralph advised that he had read the minutes of the previous meetings of the Committee. He said he was not going to recommend a structure for VPA and VIT or to recommend whether or not the relationship should change or remain the same.

Mr. Ralph said he also read the 1969 Report of the Virginia Ports Study Commission and that it was clear to him that the Port, at that time, had a lack of innovation, lack of structure, and a lack of vision. He said the Hampton Roads ports, before VIT, lacked a market perspective. Mr. Ralph reviewed shares of East Coast container trade in 1982 when Baltimore was leading Hampton Roads.

Mr. Ralph explained how Hampton Roads surpassed Baltimore in container tonnage after the creation of VIT in 1983 and the passage of The Shipping Act of 1984. He advised that those two factors “propelled the port forward by creating one market-driven vision, operating flexibility, investment economies of scale and a commercial “arm” to deal with and provide required services to a growing powerhouse – the container carrier”. He advised that VPA/VIT focused “outward” and their efforts paid off by putting the Port in the league of the “Top 4” East Coast container ports (New York, Norfolk, Charleston and Savannah). Mr. Ralph advised that the key is the ability to conduct business confidentially on a level playing field with carriers.

Mr. Ralph described the structures of a non-operating, operating, and limited operating port. He described VPA as a “hybrid” limited operating port that operates most facilities with a separate company and leases some facilities (one lease remaining until 2007). He mentioned the staffing levels at VPA and VIT and he used New York as an example of a landlord port that has several (6) private terminal operating companies operating on different Port of New York properties. Mr. Ralph said that there is no duplication of effort at the Port of Virginia as the staffs of VPA and VIT perform distinctly different functions. Mr. Ralph also discussed the availability of certain information, such as leases, that can be obtained through the Federal Maritime Commission. He reported that there is no port structure that allows the release of commercial transactions between a port and its customers. Mr. Ralph advised that VPA and VIT have a “commercial focus”.

Mr. Ralph outlined challenges that VPA and VIT face ahead, including the huge influx of imports from North Asia. He reported that, by 2010, East Coast ports’ container volume is projected to top 15.3 million TEUs. Mr. Ralph advised that Hampton Roads can expect a 51 percent increase in physical capacity once Maersk comes online.

Mr. Ralph also presented a list of the global containership fleet by operator showing current vessel capacity and the larger vessels that are on order. He also remarked on the growth of retailers' imports and establishment of distribution centers over the past three years – Wal-Mart, Home Depot, Target, and Lowes.

Mr. Johns provided concluding remarks, emphasizing that “a great big piece of business is coming to Virginia” and that VPA/VIT met the challenge to bring the port into the “Top 4”.

Mr. Johns reported that his firm interviewed the top 25 importers in America and he said in every case the companies reported they were going to ship more goods to Virginia - imports from China or India. He advised that importers want to bring cargo to Virginia because we have deep water and good rail connections to the mid-West. Mr. Johns congratulated VPA on the funding recently approved for the Heartland Corridor.

He concluded by saying that the private terminal system is the one that is moving forward at the greatest pace and that port clients want a stable port partner. To the Committee, Mr. Johns said, “The whole structure issue is one that you need to put behind you as soon as you can.”

At this time, Mr. Sheild asked for comments from the Committee members.

Ms. Stearns asked Mr. Ralph to review the types of operating terminals. Mr. Ralph explained there are 34 landlord ports, 31 operating ports, and 7 quasi- or limited-operating ports. He advised those are port definitions that are determined by the AAPA. Mr. Ralph explained what is happening in Jasper County, S.C. regarding the South Carolina State Ports Authority Board's decision to prevent private businesses from operating proposed new terminals in Jasper County. Mr. Bray referred to news articles that were included in the agenda package.

Mr. Ralph went on to discuss infrastructure problems at ports and the importance of the Heartland Corridor. Mr. Johns said the opening of APM Terminals at PMT gives VPA some breathing room in handling capacity for growth and he advised port officials to continue focusing on the development of the Craney Island Marine Terminal. Mr. Darden expressed concern with Hampton Roads current road connections and the effects on port customers. Mr. Johns advised that road problems exist at every port combined with the lack of a solid trucking industry as a base to support the amount of cargo that is expected.

Mr. Goodwin asked about Charleston's FOIA laws and proprietary information. Mr. Ralph explained that the South Carolina State Ports Authority (SCSPA) budget is publicly available, upon request. He advised that the information is not published and it must be requested through the state's FOIA. Mr. Ralph said that commercial transactions are proprietary information, which is the case at any port in the U.S. He mentioned that he has seen FOIA requests for SCSPA that include requests for capital programs and also for the salaries.

Mr. Goodwin asked, “And what about salaries of their key executives?”

Mr. Ralph confirmed that he has seen a list from a FOIA request for SCSPA employees earning more than \$50,000 that was made available. He clarified that the salaries of the APM Terminal employees at SCSPA were not made available.

Mr. Ralph advised that during his firm's interviews with steamship lines, VPA/VIT rated high in marketing and customers think we are tough negotiators.

Mr. Sheild thanked Mr. Johns and Mr. Ralph for their presentation. At this time, he asked the Committee for their opinion as to whether or not they had received sufficient information to date.

Mr. Goodwin commented that the information received today has been very good and he said he was very interested in receiving the report from McGuireWoods. He announced that his primary concern is the growth of the port to the benefit of all of the citizens of the State of Virginia. Mr. Goodwin said, "This port is an economic growth engine for the State of Virginia and I, for one, would hate to see anything occur to prevent that from continuing to grow more. If we look at the structural review issues, I think it has to be against that framework from my standpoint. And we have heard a lot of interesting things today, very useful things from these experts with regard to the importance of certain sensitive information that, if it were disclosed would make us potentially less competitive than we are today."

Mr. Goodwin firmly stated his opinion that both VPA and VIT executive salaries should be deliberated in closed session and that the final decision on salaries, including VIT, be made public. Mr. Goodwin referred to the Sarbanes-Oxley Act requiring financial disclosure of public companies in accordance with securities laws. He said, "I see no reason why, because we have a private, non-stock company that that information should not be public at the end of the day when the discussion has been held in private. It seems to me that is specific with what we have heard and what we do in other areas and what the public probably expects. I doubt that if that information is disclosed it is going to hurt us competitively or from a negotiation standpoint. I think we need to take a look at this from the standpoint of freedom of information and also the current climate of the laws of other areas and I think the law firm needs to give us some sense of that."

Mr. Goodwin also questioned, with regard to current labor laws that exist today, the need for two separate independent boards. He suggested that the VIT Board could consist of Mr. Bray, Mr. Dorto, and Mr. Keever. Mr. Goodwin suggested that as an example for counsel's consideration.

Mr. Sheild asked for Mr. Walton's advice on the subject of open versus closed meeting protocol with regard to salaries.

Mr. Walton advised that the Freedom of Information Act is consistent with the law from a labor standpoint, as far as salaries of VPA employees. He confirmed that the salary information is public. He explained VPA's FOIA requirements.

Mr. Goodwin emphasized his point that deliberations of VPA and VIT salary information should be discussed in closed session and the final decision announced in open session.

Mr. Walton advised that salaries of VPA employees are public information. He explained that FOIA requires the disclosure of financial information on VPA officials that is publicly available. He stated that VPA could discuss salaries under FOIA in closed session. Mr. Walton also acknowledged that VIT is a private entity. He advised that the legislature would have to amend the code to publish VIT salaries after discussion in closed session. Mr. Walton referred to the RF&P case that was reversed and he advised that information was discussed at the last meeting.

Mr. Goodwin emphasized that he does not have a problem with disclosure of results. He said, “I am concerned about the disclosure of the deliberations over the salaries. I think that that is the wrong policy for an agency and an authority overseeing that agency that has to deal with competitive issues.” Mr. Walton advised that the law allows discussion of the Executive Director’s salary under closed session (he cited the code section). Mr. Walton advised that the agency has the option to go into closed session to discuss executive salaries under §2.2-3711(A)(1).

Mr. Walton said, “VIT is an entirely different animal. It is a private entity.” He cited Judge Doumar’s decision in Federal District Court, in the late 80’s, and said, “VIT wanted to be a public entity for purposes of that lawsuit, but Judge Doumar said they are not the alter ego of the state, they are not a state agency, they are a private entity. To have sunshine on a private entity would require a change to FOIA and the legislature would have to make that change the same way they made the change in the Supreme Court that made RF&P a wholly-owned subsidiary of VRS that is subject to FOIA but also provided certain documentation and certain information to be discussed in closed session.”

Mr. Dorto said he disagreed. He said, “We have a law on the books today that protects any information that VIT supplies to VPA. It would never serve to strengthen VIT if that information is released. We don’t know the salaries of the private terminal operators, and the ship lines, who think we are difficult to negotiate with, would be much more difficult to negotiate with if they had that information. And we are not a public company. If we were, we would get stocks, then we would be a public company, but we were created as a private company and it has worked for 23 years. To change that would be disastrous.”

Mr. Goodwin disagreed with Mr. Dorto. “I don’t see that we have a private company in the sense that people have invested their private money in this private company. We have a private company that was established by the state of Virginia, we have a public trust that’s at stake here and public officials are getting their salaries disclosed. Public company officials at the highest level in the state of Virginia where there is investor money have their salaries disclosed.

The only people who don’t have their salaries disclosed are people who have invested their own funds in their private companies.” He added, “I am totally opposed to having the deliberations over your salaries disclosed. I think that should be private, but at the end of the day, what the salary is, that puts you in no different position than any other public company where the top 5 officers salaries are known and I don’t think hurts any public company in negotiations with anybody.”

Mr. Dorto said, “You are comparing us to Charleston’s port, which we are not competing with. We are competing directly with New York’s private terminal operators and we will be competing with APM Terminals who is not going to give away that information.”

Mr. Milliken advised that Mr. Goodwin’s opinions needed to be put on the table for discussion. He said, “There is a provision in the law or exemption from FOIA that documents and information obtained by VPA from VIT are protected. However, those same documents cannot be discussed by the VPA Board in a closed meeting. We (VPA Board) can receive information individually but we can’t sit down and talk about it?”

Mr. Walton said that was correct under 62.1-132.4. Mr. Padgett concurred.

Mr. Milliken advised that there is no provision in the law to allow the VPA and VIT Boards to discuss proprietary information. Mr. Walton said that was true. Mr. Milliken said, “That doesn’t make any sense to me. That inhibits my ability as a board member to come to a rational conclusion about some of my responsibilities. I would at least like to have that looked at and I think it is analogous to RF&P that counsel has provided us information on that. I would at least like to at what would have to be done to change that.”

Regarding the labor issue, Mr. Milliken wanted clarification in what the state can and cannot do with regard to labor unions. He said, “If VIT, like the RF&P, were a wholly-owned subsidiary of VPA, which it is not, although a separate corporate entity organized by the state law, would it be able to continue to operate vis-a-vis labor today? I have no interest in suggesting that it probably be changed, I just want to know what it (the law) is.”

Mr. Sheild announced that the suggestions and points made today would be reviewed by Mr. Padgett and Mr. Ryan.

Ms. Brayboy said, “At some point in the future, someone will look at our actions and ask “did they make it better, did they make it worse? I hope we give this issue the appropriate amount of deliberations and get the right amount of information. We have a long history to reflect on, however we also have a future that is somewhat tenuous...need to make the right decisions for the right objectives.”

Mr. Sheild said we all need to consider this in the next week or so and need to identify it so that information can be presented at the next meeting. Ms. Brayboy asked, “If we are going to look at another model, what is that model? We have not seen it.”

Ms. Stearns said that Mr. Goodwin has a good argument as does Mr. Dorto. She said, “I haven’t heard, up to now, that there is any benefit to Virginia if we change the current structure. We heard from industries, etc. Everyone has recommended that we keep it as it is. Why would it be better if we did something different?”

Mr. Knapp commented on the oversight of the VIT Board. He defended the importance of the current VIT Board structure and how VIT has come to rely on the board for information and feedback from the local community. Mr. Knapp advised that VIT board members have provided the VIT staff with critical guidance on the development of the port and that would be missed if the board consisted of just a panel of executives.

Mr. Dorto said, “We would lose the connection we have with those VIT board members and the local politicians of our cities. It is very important to keep that relationship.” As an example, Mr. Dorto mentioned the empty container depots and the struggles he had with the cities on that project. He said that several VIT Board members were instrumental in those negotiations.

Mr. Goodwin said that Mr. Dorto’s point was worth consideration. Mr. Goodwin said, “The point I was trying to make was from the standpoint of the labor laws which is what I’ve understood has driven this structure and its creation some years ago. I know of no reason why there has to be the kind of separation that exists today versus one that I have suggested.”

Mr. Dorto addressed the consultants and asked Mr. Bill Ralph for his opinion if salaries were made public. He asked Mr. Ralph, “Would it help or hurt?”

Mr. Ralph explained that enough salary information is available in the general public and he said, “I wouldn’t think that that would hurt you in terms of revealing top executive salaries at some similar corporate standard that exists in the market today.” ... “Salaries, I don’t think it personally makes a difference.” He said, “If you reveal private contracts, my opinion, ...that is not good anywhere, in any port..”

Mr. Dorto emphasized that the disclosure of top salaries could affect negotiations with steamship lines and ILA. Mr. Ralph again said he did not think the release of salaries would be an issue. He added that it would have to be pretty clear where the lines are drawn, regarding legislation.

Mr. Goodwin agreed that competitive commercial information should not be published. He was firm on the opinion of publishing VIT salaries a sort of public trust similar to a “Proxy 5” standard. He said, “Bobby’s salary is public, I don’t see any reason why yours or Rick’s shouldn’t be published, Joe.”

Mr. Dorto said, It’s because we’re a private company. If you change that, then I agree with you.” Mr. Goodwin said, “If you haven’t invested your money, VIT is not a private company in the traditional sense, like Estes Truck Lines is a private company here in Virginia.” Mr. Dorto firmly stated that VIT is a private company and that the money earned by VIT does not come from the state but from business that VIT contributes to the state, not tax dollars.



Mr. Milliken suggested to Chairman Sheild that the Committee meet again the later part of October or early November and then, from that meeting, direct counsel to prepare the report for a final meeting in later November/early December.

Mr. Bray announced that VPA may need to hold its November 22 meeting in early November due to a contractual matter. He suggested that the Committee meet later in the day at that time in order for counsel to have time to prepare their report. The Committee members agreed to meet in late October or early November.

There were no comments from the public. The meeting adjourned at 3:50 p.m.

Respectfully submitted,

Debra J. McNulty  
Clerk to the Board  
Virginia Port Authority