

MINUTES

Board of Commissioners - Session 301

Virginia Port Authority
World Trade Center
Norfolk, Virginia
January 24, 2006

Pursuant to call by Chairman Milliken, the Board of Commissioners held its regular meeting this date at 11:00 a.m., in the Authority's Conference Room A, 600 World Trade Center, Norfolk, Virginia.

The following attended:

Commissioners:

John G. Milliken, Chairman
E. Massie Valentine, Jr., Vice Chairman
Robert C. Barclay, IV
Joe B. Fleming
Mark B. Goodwin
William M. Grace
Jonathan Johnny Johnson
Virginia M. Murphy
Ranjit K. Sen
J. Braxton Powell, State Treasurer

Absent:

Michael J. Quillen
Deborah K. Stearns

Staff:

J. Robert Bray, Executive Director
J. J. Keever, Deputy Executive Director
Thomas Capozzi, Senior Managing Director of Marketing Services
Linda G. Ford, Director of Port Promotion
Rodney W. Oliver, Director of Finance
Jeffrey L. Florin, Chief Engineer
Elaine Smith, Director, Department of Human Resources
Russell J. Held, Managing Director of Marketing, Southeast, U.S. and Europe
Norris (Ed) Merkle, Director of Security
G. David Stutts, Director, Technology Resource Management
Karen D. Siegel, Technology Planner
David M. James, Director of Contracts and Real Estate
Carla Welsh, Program Manager – Port Promotion
Jake Denton, Public Relations Program Manager
Diane Reed, Controller

Staff (Continued):

Donald B. Boyd, Chief of VPA Police
Andrew H. Engemann, Jr., Captain, VPA Police, Administration
William Revell, Lieutenant, VPA Police, Special Operations
Armando Ward, Lieutenant, VPA Police
Benjamin Inman, Sergeant, VPA Police
Rebecca Killen, Administrative Assistant, Senior
JoAnn Fitzgerald, Senior Administrative Assistant to the Police Chief
Sheri Rogers, Administrative Assistant to Captain of Administration
Kristen Geer, Human Resources Assistant
Erika Snow, Administrative Assistant
Jodie Asbell, Deputy Clerk to the Board/Assistant Secretary
Debra J. McNulty, Clerk to the Board/Secretary

Guests:

Conway H. Sheild, III, Chairman of The Port of Virginia Structural Review Committee
Regina Brayboy, VIT Director and Member of The Port of Virginia Structural Review Committee
John D. Padgett, McGuireWoods and Special Counsel to the Structural Review Committee
John M. Ryan, Vandeventer Black, LLP (VIT Corporate Counsel)
Arthur W. Moye, Jr., Executive Vice President, Hampton Roads Maritime Association
Roger Geisinger, President, Hampton Roads Shipping Association
Ronald L. Tillett, Morgan Keegan & Company, Inc.
Kevin D. Rotty, Morgan Keegan & Company, Inc.
Michael T. Crist, P.E., Moffatt & Nichol Engineers
Kenneth Sherwood, Zel Technologies LLC
Michael Farrell (Lt. Cmmdr. USN) Interning with Zel Technologies LLC
James N. Crumbley, Former General Manager of VIT (retired)
Joseph A. Dorto, General Manager, VIT
Richard N. Knapp, Assistant General Manager, VIT

INTRODUCTIONS

Ms. Ford introduced guests in attendance. Mr. Peter Dujardin, with *The Daily Press*, and Mr. Jeremiah McWilliams, with *The Virginian-Pilot*, were also in attendance.

Chairman Milliken welcomed the new State Treasurer, Mr. J. Braxton Powell, to his first meeting of the VPA Board. The Chairman announced that Mr. Powell formerly served as Deputy Treasurer and has 38 years of experience in state government.

RESOLUTIONS OF SERVICE

Chairman Milliken presented a resolution honoring former State Treasurer, Jody M. Wagner, for her service on the VPA Board of Commissioners. Governor Kaine recently appointed Ms. Wagner Secretary of Finance.

Action: Upon motion made by Mr. Valentine, duly seconded by Mr. Sen, and adopted by unanimous vote (10-0), the Board approved the Resolution on the Services of Jody M. Wagner. Chairman Milliken presented a resolution honoring Donald B. Boyd, the Authority's Chief of Port

Police, on the occasion of his retirement from the Authority and for his service to the Commonwealth. The Chairman spoke of Chief Boyd's accomplishments in maintaining security at the Port during his 15-year tenure after having served 27 years with the Newport News Police Department.

Action: Upon motion made by Mr. Valentine, duly seconded by Mr. Sen, and adopted by unanimous vote (10-0), the Board approved the Resolution on the Services of Donald B. Boyd.

I. APPROVAL OF MINUTES

Action: Upon motion made by Mr. Sen, duly seconded by Mr. Valentine, and adopted by unanimous vote (10-0), the Board approved the minutes of the meeting held November 22, 2005.

II. REPORTS OF COMMITTEES

A. Executive Committee – Chairman Milliken

1. Appointment to Committees

Chairman Milliken appointed Mr. Powell to serve on the Finance/Planning Committee and the Facilities Committee.

2. Presentation of the final report of The Port of Virginia Structural Review Committee (the "Working Group")

It was reminded by Chairman Milliken that he had appointed members to The Port of Virginia Structural Review Committee (the "Working Group") several months ago to examine the relationship between VPA and VIT. The Chairman introduced Mr. Conway Sheild, who chaired the Committee, and he thanked him for his service to the Board. The Chairman also introduced Ms. Regina Brayboy, who is a member of the Committee and also serves on the VIT Board.

Mr. Sheild reported that the Structural Review Committee was tasked to review the structure between VPA and VIT and to determine if the current model would continue to work well for the Port. Mr. Sheild referred to the final report of the Committee contained in the agenda notebooks. He thanked the Committee for their work whose membership included Ms. Deborah Stearns and Mr. Joshua Darden, both absent today, Mr. Mark Goodwin, Ms. Regina Brayboy, and Chairman Milliken, who served as ex officio.

Mr. Sheild reported that the Committee had met five times and heard from a variety of business leaders whose names were listed on the last page of the report. Mr. Sheild explained that the Committee engaged the services of Mr. John Padgett of McGuireWoods LLP to act as independent counsel and to prepare the final report. Mr. Sheild thanked Mr. Padgett for his services. He explained that several drafts of the report were prepared based on input from Committee members. Mr. Sheild referred to the recommendations listed on page 11 of the report that he read as follows:

1. The submission of the legislation necessary to allow VPA to discuss information submitted by VIT in a closed session.

2. *Identify all relationships between VIT and VPA that need to be in writing, including, but not limited to, the lease agreement between VIT and VPA.*
3. *With the understanding that some members of the Working Group do not agree that the compensation paid to VIT employees should be disclosed, it requests that VIT disclose publicly on an annual basis the salaries of the three highest compensated individuals at VIT. The disclosure would be made as part of VIT's annual submission of budget information to VPA. Furthermore, the information that supports the compensation recommendations should also be provided to VPA in a manner that it will not need to be disclosed under FOIA.*
4. *The Boards of VPA and VIT should meet at least twice a year in closed sessions to discuss budget and operational issues.*
5. *That a new Working Committee convene every third year, or as appropriate, to evaluate the relationship between VIT and VPA and recommend any additional changes that may be warranted.*

Mr. Sheild advised that there were lengthy discussions by the Committee regarding recommendation #3 and it was the consensus of the Committee that the disclosure of the top three salaries at VIT would be appropriate in that it would provide some transparency and openness in government. Mr. Sheild explained that the Committee, after considerable thought, felt that the revelation of further proprietary information would be advantageous to the port's competitors. He explained that the Committee was concerned that the release of salary information could set a precedent for the revelation of more information in the future that would impair VIT's competitiveness.

With regard to recommendation #5, Mr. Sheild advised that the work of the Committee is evolutionary in nature and needs to continue periodically. He reported that Committee members were unanimous in that the current relationship between VPA and VIT is critical to the port's success and that the relationship between the two entities should continue in its current structure.

Chairman Milliken announced that the Board would hear final comments on the report, convene to a closed session to discuss legal matters relating to VPA and VIT, and then present the report for the Board's public vote.

Mr. Dorto asked the Chairman if he could address the Board in closed session to discuss competitiveness of the port. He stated that the information he planned to present could have an impact on the Board's position prior to a vote. The Chairman advised Mr. Dorto that he would need to consult with counsel to determine if Mr. Dorto's discussion was permitted by the Code.

Mr. Sheild expressed dissatisfaction with the Daily Press' opinion (December 14) that was published after the Structural Review Committee's last meeting. He emphasized the need for VIT to maintain its private company status, under current Virginia law. Mr. Sheild said there needed to be a "clear, bright line drawn" that would indicate that the information made public is in a sense of openness and transparency without compromising VIT's private status. Mr. Sheild stated that the Board needed to ensure that the revelation of information today does not establish a precedent for future information that may impact the competitiveness issue.

Mr. Grace agreed with Mr. Sheild. Mr. Grace said he had firmly disagreed with any intrusion of VIT's private status and the release of proprietary information. He advised that recommendation #3 was too vague and needed clarification to insure that further information is not released.

Mr. Goodwin also agreed that nothing be done to imperil the private status of VIT. He referred to the several court cases that were described by counsel in meetings of the Committee, in particular, Judge Doumar's ruling recognizing that VIT is not a public agency. Mr. Goodwin said Mr. Ryan had clarified VIT's non-stock, private status and that VIT is a creation of the legislature of Virginia and is not owned by VPA.

Mr. Goodwin supported the release of the three top salaries of VIT and he said it was important at a time when executive compensation is in the limelight. He advised that the Committee had discussed the release of five salaries based on the standards of public companies. Mr. Goodwin said he was satisfied that the recommendation to release three, and not five salaries, was fair in that VIT is not a public company. He mentioned the recent proposal by the Securities and Exchange Commission (SEC) regarding disclosure of executive compensation that includes the release of all salaries over \$10,000. Mr. Goodwin said he felt that what the Committee has recommended is simple and fair and that it is not analogous to the SEC because VIT is a private company. Mr. Goodwin concluded by stating he hoped the Board would vote unanimously on the recommendations contained in the report.

Ms. Brayboy explained that three points were made clear to her during the deliberations of the Committee: (1) the State has a compelling interest in making sure that The Port of Virginia and VIT are competitive; (2) in serving on a board with oversight capacity, it is important that VPA and VIT board members ensure that the public trust is protected, and (3) it is important for VPA to articulate the purpose of VIT, why it was created, how the oversight roles function, and how that ties in to protecting the State's interest. Ms. Brayboy emphasized that the public needs to understand why VIT was created. She stated that occasionally there is misinformation in the press that influences public perception. Ms. Brayboy advised that it is important to have an effective oversight process in place and to make sure the people are educated about the business that they are asked to oversee.

Chairman Milliken spoke of the "unique working relationship between VIT and VPA" that has attributed to the Port's success. The Chairman emphasized the need to reinforce the independence of VIT and VPA so that there is never any question that one is a public agency and one is a private, non-stock organization – thereby keeping the two entities at "arms length". He advised that the VPA Board needed to be more diligent with direct oversight of VIT's operations and the VIT Board.

The Chairman said formalizing the relationship between the two entities, strengthening the oversight, and drawing a very clear line between those things that are appropriately disclosed to the public and those things that need to be kept confidential so as not to impact the port's competitiveness are important. The Chairman supported the Structural Review Committee's recommendations including the public release of salary and compensation information of the top three VIT officials and he felt it would not impact the competitive nature of business.

Mr. Bray affirmed that much of VIT's information needed to remain confidential and he thanked everyone for their dedication and patience throughout the deliberations. Mr. Bray personally thanked Mr. Sheild for his efforts and hard work as chairman of the Committee.

At 10:45 a.m., the Chairman moved that the Board convene a closed meeting in accordance with 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.

Valentine. Mr. Sen seconded. The vote was unanimous (10-0).

Chairman Milliken excused guests and staff, with the exception of Mr. Sheild, Mr. Padgett, Mr. Bray, and Mr. Keever. Mr. Dorto requested permission to speak in the closed session and the Chairman advised him that he could if his discussion was within the referenced code section. Mr. Dorto left the room at this time.

The Board came out of closed session at 12.55 p.m. After reconvening the open session, the following resolution was made by Mr. Valentine and seconded by Mr. Sen.

Resolution

“Whereas, the VPA Board of Commissioners 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 the Board that such closed meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved, that the Board of Commissioners 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 Board.”

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

Mr. Milliken	Mr. Grace
Mr. Valentine	Mr. Johnson
Mr. Barclay	Ms. Murphy
Mr. Fleming	Mr. Sen
Mr. Goodwin	Mr. Powell

Chairman Milliken announced that Commissioners had conferred with legal counsel in closed session and, there being no further questions, he reviewed each of the five recommendations contained on page 11 of the report. With regard to recommendation #1, the Chairman announced that legislation had been introduced and was pending General Assembly approval for an amendment to FOIA that would allow both the VPA and VIT Boards to convene a closed session in order to discuss proprietary information prior to the public release of salaries and compensation. The Chairman explained that the Executive Committee met in December and authorized Authority staff to go forward with the FOIA amendment legislation.

The Chairman explained that recommendation #2 would formalize the lease agreement between VPA and VIT and would further underscore that VPA and VIT are separate entities. The Chairman explained that recommendation #3 involved a lot of discussion among the Structural Review Committee and VPA/VIT staff and it was the consensus of the Committee that the top three salaries of VIT would be released publicly.

Recommendation #4, provided the FOIA amendment is approved by the General Assembly, would allow the VPA and VIT Boards to meet in closed session to discuss budget and operational issues. Recommendation #5 continues the work of the Structural Review Committee every third year, or as appropriate.

At this time, Mr. Grace offered an additional recommendation, read as follows:

“That VPA reaffirm the importance of retaining the private status of VIT and states that VIT is and shall remain a private non-stock, nonprofit corporation and any efforts to undermine the private status of VIT should be vigorously resisted.”

Action: At the request of Chairman Milliken, a motion was made by Mr. Sen, seconded by Mr. Valentine, to lay the five recommendations of the Structural Review Committee on the table for consideration.

Action: At the request of Chairman Milliken, a motion was made by Mr. Grace, seconded by Mr. Barclay, to lay an amendment to the five recommendations of the Structural Review Committee on the table for consideration.

Chairman Milliken announced that he agreed with Mr. Grace’s additional recommendation as the Chairman said it would underscore the importance of protecting the private status of VIT in order for the port to remain successful in the competitive marketplace. There were no further questions from the Board.

Mr. Barclay stated that the competing core values of both organizations involve a responsibility for public disclosure yet maintaining private competitiveness. Mr. Barclay commended the parties responsible for crafting a report that he felt maintains a balance between those core values.

Action: At the request of Chairman Milliken, the Board unanimously (10-0) approved the additional recommendation to the report, as suggested by Mr. Grace.

Affirmative Ayes:

Mr. Milliken	Mr. Grace
Mr. Valentine	Mr. Johnson
Mr. Barclay	Ms. Murphy
Mr. Fleming	Mr. Sen
Mr. Goodwin	Mr. Powell

Action: At the request of Chairman Milliken, the Board unanimously (10-0) approved the recommendations contained in the report of the Structural Review Committee (the Working Group), as amended by Mr. Grace’s motion.

Affirmative Ayes:

Mr. Milliken	Mr. Grace
Mr. Valentine	Mr. Johnson
Mr. Barclay	Ms. Murphy
Mr. Fleming	Mr. Sen
Mr. Goodwin	Mr. Powell

On behalf of the Board, the Chairman thanked Mr. Sheild and the members of the Structural Review Committee for their services.

B. Finance/Planning Committee – Mr. Goodwin, Committee Chair

1. VPA/VIT Combined Financial Reports

Mr. Oliver reviewed the combined income statement of VPA and VIT for the six months ended December 31, 2005. He announced that operating revenues are \$1 million below budget, but 9.4% ahead of prior years. Mr. Oliver reported that terminal operating expenses are \$2.8 million below budget. Improvements at NIT, the chassis pool, and empty container yards have all contributed to the Port's operating efficiencies. He reported that maintenance expenses were \$4 million below budget due to a \$4 million operating maintenance expense appropriation transfer from VDOT in November for yet to be obligated capital projects.

Mr. Oliver reported that capital transfers from the Transportation Trust Fund (Commonwealth Port Fund) are less a \$6.7 million withdrawal of escrowed funds by the Army Corps of Engineers that is budgeted for next month, to complete the 50-foot channel dredging.

Mr. Oliver reviewed the obligated/unobligated balances and year-to-date expenditures in the Capital Improvement Program that includes the Commonwealth Port Fund (CPF), Special Fund, Federal Grant, and the 2002, 2003, and 2005 bond issues.

Mr. Oliver referred to Mr. Cavanaugh's monthly Financial Covenant Compliance report, dated December 30, 2005, that confirmed the required balances for the CE, CEMA and various debt services funds, along with respective balances on hand, were in compliance with the bond covenants.

Mr. Oliver announced that Moody's Investors Service recently affirmed its A1 rating of VPA's terminal revenue bonds.

C. Facilities Committee – Mr. Sen, Committee Chair

Mr. Florin presented the Capital Outlay Program and Facilities Maintenance Overview. He announced that all projects are on schedule due to the good weather. The following projects were reviewed by Mr. Florin:

- 50-foot Channel Dredging

Mr. Florin reported that dredging of NIT South access channel and berths was completed. Dredging of NIT North access channel and berths is expected to begin February 1, 2006. Work on the Atlantic Ocean Channel began December 24, 2005. Mr. Florin indicated those areas on a slide of the Hampton Roads channel.

- NIT South Improvements – Phase II – Backlands Reconstruction – Stage 2
- NIT South Improvements – Phase II Backlands – All Stages to be completed February 2012 – 147 total acres
- NIT North Container Yard Expansion – expected completion in January 2007
- PMT Reefer Row/Transfer Zone Relocation – project is 28% complete
- VIP Administration Building Addition – SWAM contract – 50% complete
- Craney Island Status Update – Final Feasibility Report package was submitted to NAD for review and approval (January 24, 2006)

Mr. Florin reviewed the timetable for Craney Island. The revised final feasibility report package, draft

record of decision, and Chief's report submitted by ASA(CW) to Congress is scheduled by October 2006, followed by Congressional action to authorize the project subject to passage of Water Resources Development Act (WRDA).

- NIT North Wharf Extension – involves 1,000-foot extension to the North Wharf to house 3 new Suez-class container cranes

Mr. Florin reported that VPA received five proposals January 16, 2006 that were short-listed to two proposals for interviews next week. The project should be completed by Summer 2008.

D. Marketing Committee – Mr. Goodwin, Committee Vice Chair

Mr. Capozzi announced that the port increased TEUs by 9.6% for calendar year 2005 – an increase of 173,000 TEUs and 74 more ship calls. He reported that breakbulk cargo, which includes the private breakbulk terminals in the port, decreased overall by 14.7%. Mr. Capozzi clarified that VIT's breakbulk at NNMT decreased by only 2.3%.

Mr. Capozzi reported that Midwest train traffic and VIP rail both increased by 25.6% for the calendar year. Fiscal year-to-date performance, July – December 2005, demonstrated an 8.6% increase in TEUs, 1.5% increase in ship calls, and a 22.2% decline in breakbulk. Fiscal year Midwest train traffic increased by 26.3% and VIP rail increased by 27.8%.

Mr. Capozzi announced new weekly ship line services that commenced in 2005: AWE-4 (Cosco, K-Line, Yang-Ming and Hanjin), USATLAN (CSAV, Libra, Montemar), and AMAX (China Shipping). New services for 2006 include China Shipping, CMA CGM transatlantic service that promises to bring 30-40,000 TEUs. Mr. Capozzi reported that VIT continues to negotiate long-term contracts to its customers with the latest 10-year contract being signed by the Grand Alliance - the biggest customer of VIT. The contract is valued at \$500 million and is the largest contract in the history of the Port. Mr. Capozzi announced that 44.6% of VIT's 2005 volume is now secured under 10-year contracts.

Mr. Capozzi reviewed the port's top customers for imports and exports. He noted that 14 out of the 20 top import customers have distribution centers in the Commonwealth of Virginia.

Mr. Capozzi announced that the port is projecting 8% growth in TEUs for calendar year 2006. He added that business has tapered off in the Asia and Europe trade lanes. Mr. Capozzi said that diversion of rail traffic from Europe contributed to the phenomenal growth in 2005 and is showing signs of slowing down. He announced that the port would exceed 2 million TEU tons by calendar year-end 2006.

E. Security Committee – Mr. Grace, Committee Chair

Mr. Merkle announced that the electronic gate system at PMT is in the first stage of operation. He reported that the FY06 security grant program should be announced by the government this month. Mr. Merkle advised that VPA has not changed its current security posture and is closely monitoring the latest terrorist tape released by the Federal government.

III. REPORT OF EXECUTIVE DIRECTOR

Mr. Bray asked Mr. Keever to report on legislation in the General Assembly that the Authority is tracking. Mr. Keever referred to the legislative package that was provided in the agenda books and he briefly reported on the following:

SB45, relating to payment in lieu of taxes, was introduced by Senator Mamie Locke and was tabled until the next Session.

SB173, introduced by Senator Quayle, would allow the Authority to provide security on a contractual basis at private terminals within the port, namely, the new APM/Maersk Terminal. The bill was unanimously reported out of Committee and out of the Senate and communicated to the House. Mr. Keever advised that VPA does not expect any opposition to this bill.

HB953, introduced by Delegate Joannou, would include any corporation created by the Commonwealth of Virginia, subject to the Freedom of Information Act (FOIA) - VIT would then be considered a public body. The bill has been referred to the Committee on General Laws. HB954 was also introduced by Delegate Joannou and would provide that authorities, commissions, or other political subdivisions would be subject to periodic reviews by JLARC (Joint Legislative Audit Review Commission) and the Auditor of Public Accounts.

HB1467 was the result of the recommendation by the Structural Review Committee and adopted by the Executive Committee that would grant an exemption from the open meeting provisions of the Freedom of Information Act to allow closed meeting discussions of proprietary information provided to VPA by VIT.

Mr. Keever announced that the Governor's transportation package includes \$29 million for preliminary engineering and design work for Craney Island. He added that the Governor's budget recently introduced includes full funding for the Heartland Corridor including the relocation of the railroad interstate, Route 164, as well as some funding from the Rail Enhancement Fund.

Mr. Milliken asked Mr. Keever to communicate to Delegate Joannou the Board's concern and opposition to the legislation he has introduced.

Mr. Dorto announced that VIT is insured by Sigma Mutual, one of the largest workmen's compensation firms in the Nation, and recently received their safety award having been chosen among the biggest and best ports and terminals in the U.S. Mr. Dorto reported that VIT's record was 1 lost workday injury per 100 people compared with the industry average of 4.5 per 100 people. Chairman Milliken commended VIT on their safety program.

IV. UNFINISHED BUSINESS

There was no unfinished business.

V. NEW BUSINESS

VI.

ADJOURNMENT

There being no further business and no public comments, the open meeting adjourned at 1:40 p.m.

The next meeting of the Board of Commissioners is scheduled to be held in the Authority's Conference Room A, 600 World Trade Center, Norfolk, Virginia, on Tuesday, March 28, 2006.

Respectfully submitted,

Debra J. McNulty
Clerk to the Board