

VERMONT TRANSPORTATION BOARD MEETING APRIL 19, 2012

Board Members Present:

Maurice Germain, Chairman; term expires 2/28/2014
Timothy Hayward, term expires 2/28/2013
Nick Marro, term expires 2/28/2013
Charles Bucknam Jr., term expires 2/28/2013
Arthur Sanborn, term expires 2/28/2015
Robin Stern, term expires 2/28/2015
Wesley Hrydziusko, term expires 2/28/2015

Board Members Absent:

None

Others Present:

John Zicconi, Executive Secretary

Call to Order:

The Chair, Maurice Germain, called the Thursday, April 19, 2012 meeting to order at 9:30 a.m., which was held via conference call. Chairman Germain, Board Member Marro and Executive Secretary Zicconi gathered in the AOT 3rd Floor Conference Room, at One National Life Drive Montpelier, VT. Other Board members participated by phone.

1. NEW BUSINESS

1.1 Approve the Minutes of March 15, 2012

On a motion by Mr. Marro seconded by Mr. Bucknam, the Board unanimously voted to approve the minutes of the March 15, 2012, meetings, as submitted.

With the Board's permission, a new agenda item regarding TB-380 (Claussens permit appeal) was placed on the agenda as number 2.4 under Old Business.

1.2 Executive Secretary's Update

Mr. Zicconi informed the Board that attorneys involved in two cases had reached stipulation agreements with the Agency of Transportation regarding scheduling. TB-383 (Claim of Winterset Inc) is scheduled to be ready for a hearing in September 2012, while TB-386 (Claim of Miller Construction) is scheduled to be ready for hearing in December 2012. Chairman Germain signed the two Discovery and Stipulation Orders.

On a motion by Ms. Stern seconded by Mr. Marro, the Board unanimously voted to provide the Executive Secretary the authority to both approve and sign future Discovery and Stipulation orders on the Board's behalf.

Mr. Zicconi informed the Board that its decision in TB-394 (Siegriest condemnation) had been appealed to Vermont Superior Court. Mr. Zicconi informed the Board that he transferred the file on TB-394 to the Chittenden Superior Court. Mr. Marro, who is the Board's newest member, said he was unfamiliar with the Siegriest condemnation case, and asked to receive a copy of the Board's decision. Other Board members also asked for a

copy. Mr. Zicconi said he would scan the Board's decision and supply all Board members with electronic copies via email.

Mr. Zicconi informed the Board that he had worked out an arrangement with the Vermont Agency of Transportation to supply the Board a long-term temporary working space at the National Life Campus. Currently, the Agency can only provide the Board temporary space because the Agency has not yet worked out a permanent solution with the campus' landlord. Until a permanent location can be found, the Board will continue to occupy its office at 14 Baldwin Street.

Mr. Zicconi informed the Board that Donna Holden would no longer be taking meeting minutes, and that he would assume that duty. Ms. Holden, who is employed by the Agency of Transportation, provided the Board exemplary service during the months that the Board sought a new Executive Secretary, and remains at the Board's disposal whenever it requires administrative assistance or support.

Mr. Zicconi provided the Board an update on H.523, legislation being considered by the Vermont General Assembly that would alter the Board's involvement regarding property condemnation. The House version of H.523 passed in early March eliminated the Board from the condemnation and compensation process in favor of appeals going directly to the Superior Court. Since being hired in mid March, Mr. Zicconi has been working with the Senate and the Agency of Transportation to alter the legislation so that the Board continues to have a role.

While the Senate has not yet passed a bill, Mr. Zicconi said that the Senate Judiciary Committee agreed to alter H.523 in a way that allows the Board to continue to hear some, but not all, compensation appeals. The Senate Judiciary Committee's alterations include the following: Should the landowner and the Agency of Transportation disagree over the amount of compensation by \$25,000 or less, the landowner has the choice of appealing to Superior Court or the Transportation Board. Any Board decision could then be appealed to Superior Court. All disputes in excess of \$25,000 would go only to Superior Court. The Senate Judiciary Committee bill also mandates that Transportation Board members undergo specific training to ensure they understand the nuances of condemnation appraisals.

Both the House and Senate versions of the bill remove the Board's statutory involvement in 502 hearings. This change, however, does not prevent the Board from participating in 502 hearings as the hearings are open to all members of the public. The Agency of Transportation, even if H.523 becomes law, has agreed to continue to notify the Board of all 502 hearings so that Board members may be notified of upcoming hearings.

2. OLD BUSINESS

2.1 Review Status and Plan Assignments for Pending Cases

The Board reviewed the pending case spreadsheet. No new or assignment changes were necessary.

2.2 TB-385 – Neal Salha Hearing – Reconsideration Motion by Agency

At 10:14 a.m. on a motion by Mr. Hayward seconded by Mr. Hrydziusko, the Board unanimously voted to enter executive session, pursuant to Title 1 § 313, to deliberate the motion.

Mr. Zicconi was invited into the executive session.

At 11:02 a.m. the Board exited executive session.

On a motion by Mr. Hrydziusko seconded by Mr. Marro, the Board voted to reconsider its March 15, 2012 decision to award Mr. Salha damages.

On a Motion by Ms. Stern seconded by Mr. Hayward, the Board then unanimously voted to reaffirm its decision to award Mr. Salha damages because the claimant meet his burden of proof, and the Board found that due to a preponderance of the evidence that the snowbank his vehicle hit was left in the travel lane of Interstate 89 by a Vermont Agency of Transportation plow truck operating inconsistently with Agency policy.

The Board then instructed Mr. Zicconi to prepare Findings of Fact based on the evidence, and draft a written decision for the Board's review and eventual signature of the Chairman.

2.3 Web Page Update

The Board reviewed and approved a format for posting meeting agendas and meeting minutes on its website. Mr. Zicconi informed the Board that VTrans is working to update the Agency's current website, which the Board page is a part of, and that when the project is complete the Board will have a new tool in which to present information. Mr. Zicconi informed the Board that he will create draft content for the new website, and work with the Agency on how to post things like Board minutes and decisions once the new website is launched, likely sometime in the fall or winter.

2.4 TB-380 – Claussens' request for dismissal

Mr. Zicconi informed the Board that on April 17 his office received a written notice from Claussens that it was withdrawing its appeal of a Section 1111 permit denial, and requesting that the Board dismiss its appeal. Mr. Zicconi told the Board that it is his understanding that the parties had worked out their differences, and that the Agency agreed to issue Claussens a Section 1111 permit with conditions.

On a Motion by Mr. Hayward seconded by Mr. Bucknam, the Board unanimously voted to dismiss TB-380, Claussens' appeal of a Section 1111 permit denial.

3. OTHER BUSINESS

3.1 Round Table

Mr. Zicconi informed the Board that the Agency of Transportation will hold a Section 502 pre-condemnation hearing on JERICHO STP HES 030-1(21) on May 8, 2012 at the Jericho Town Office Building. The upcoming construction project will take place at the intersection of Route 15 and Browns Trace Road in Jericho, where turn lanes will be added to increase safety.

Prior to the hearing, the Agency's project manager on April 24 will hold a skull session designed to explain details of the project to other interested Agency staff. Mr. Zicconi was invited to attend the session, and said that following the meeting he would create a memo outlining the project's details so that Board members could decide

whether they wished to attend the May 8th 502 hearing. Chairman Germain, Mr. Hayward and Mr. Marro all live fairly close to Jericho, and asked to receive a copy of the memo when it is written.

4. ADJOURN

On a motion by Mr. Marro seconded by Mr. Hayward, the Board unanimously voted to adjourn at 11:27 a.m.

Respectfully submitted,

John Zicconi
Executive Secretary

Next Board Meeting:

May 17, 2012 9:00 a.m.

VTrans Traffic Shop followed by AOT 3rd Floor Conference Room #1