

# VERMONT TRANSPORTATION BOARD MEETING JUNE 21, 2012

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## **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  
Robin Stern, term expires 2/28/2015  
Wesley Hrydziusko, term expires 2/28/2015

## **Board Members Absent:**

Arthur Sanborn, term expires 2/28/2015  
Charles Bucknam Jr., term expires 2/28/2013

## **Others Present:**

John Zicconi, Executive Secretary  
Guy Rouelle, VTrans State Aeronautics Administrator  
Dan Dutcher, Assistant Attorney General  
David Coutu, Cavendish homeowner  
Mark Hall, Attorney for David Coutu

## **Call to Order:**

The Chair, Maurice Germain, called the Thursday, June 21, 2012 meeting to order at 9:35 a.m. All Board members with the exception of Ms. Stern gathered in the AOT 3<sup>rd</sup> Floor Conference Room, at One National Life Drive Montpelier, VT. Ms. Stern participated by telephone.

## **1. NEW BUSINESS**

### ***1.1 Approve the Minutes of May 17, 2012***

**On a motion by Mr. Marro seconded by Mr. Hayward, the Board unanimously voted to approve the minutes of the May 17, 2012 meeting as submitted.**

### ***1.2 Executive Secretary's Update***

Mr. Zicconi informed the Board that he and Chairman Germain agreed that he would close the Transportation Board office the week of July 1-7 for the purpose of taking a vacation with his family. Mr. Zicconi said that should anyone need to reach him, he would be available via call or email.

Mr. Zicconi informed the Board that he had discussions with both VTrans' Right-of-Way officials and officials from the Federal Highway Administration to arrange the Board training mandated by H.523, the state's new property condemnation law. Several dates for the training in September were identified, and the Board chose September 20, which is the normal date for the Board's September meeting. Mr. Zicconi said he would now work with VTrans and FHWA to arrange all the details.

Mr. Zicconi informed the Board that the State of Vermont is not expected to finalize space plans with the National Life Group regarding the potential to move the Board's office to the National Life Building until sometime in the winter. Since March, the Agency of Transportation has provided the Board a temporary cubical to use when the Executive Secretary is in the National Life building. Mr. Zicconi said that this arrangement has worked very well, and that so long as the Agency provides him with space at National Life when he requires one, that he is content

with keeping the Board's main office at 14 Baldwin Street. The Board concurred that such an arrangement would be workable, and left it with Mr. Zicconi to work out the details with VTrans.

Mr. Zicconi informed the Board that the Bishop Marshall School in Morristown appealed the Board's condemnation and compensation decision in TB 390 to the Superior Court in Lamoille County.

**At 9:57, the Board agreed to jump to agenda item 1.5 (TB-352 Coutu helipad) as all parties were present.**

***1.5 Coutu (TB-352) Letter***

In late May, the town of Cavendish sent the Board a letter stating that the town has no local zoning, land-use or any other municipal ordinance that pertains to David Coutu's application for a helipad. As a result of its lack of a local ordinance, the town therefore concluded that it has no basis for municipal action under 5 V.S.A. 207(d) to either approve or reject Mr. Coutu's application.

Back in November of 2011, the Board denied Mr. Coutu's helipad application as being administratively incomplete because he did not have town approval. However, the Board also conditionally approved his application should Mr. Coutu either obtain municipal approval or a final court order ruling that the Town of Cavendish lacks the legal authority to approve or disapprove a helipad facility.

VTrans believes that the Cavendish letter satisfies the conditions required in the Board's order. As a result, VTrans recommends that the Board issue Mr. Coutu a certificate of approval. In attendance to discuss the issue was Mr. Coutu, his attorney Mark Hall, Vermont Assistant Attorney General Daniel Dutcher and VTrans state Aeronautics Administrator Guy Rouelle.

With both Mr. Coutu and the state agreeing that Mr. Coutu's application to the Board for a Certificate of Approval under 5 V.S.A. 207 (d) is now administratively complete, much of the discussion centered around 5 V.S.A. 207(f), which calls for Mr. Coutu to obtain "operational approval" from the Board, as well as the Federal Aviation Administration's (FAA) role in reviewing the airspace above Mr. Coutu's property and the FAA's process for granting him permission to take off and land.

Mr. Dutcher and Mr. Rouelle advised the Board that should it grant Mr. Coutu a Certificate of Approval, the next step before he could operate aircraft is that he receive an FAA determination – which entails receiving written documents from the FAA declaring that the helipad will not interfere with the safe operation of nearby Springfield Airport or the safe operation of any other state or federal airway – and also return to the Board for operational approval under 5 V.S.A. 207(f). Mr. Coutu did not dispute that an FAA determination was needed, but said that the FAA in his experience does not issue written documents. Should he not receive a written determination from the FAA within 90 days of applying for approval, such a lack of issuing paperwork is considered approval, Mr. Coutu said. Mr. Rouelle strongly disagreed and disputed Mr. Coutu's 90-day interpretation, explaining that he has a large file full of FAA documents granting airway approval for some 85 private and public aviation facilities.

Mr. Rouelle said he did not know how long it would take the FAA to rule on Mr. Coutu's application, but that standard procedure is for the FAA to dispatch a certified inspector to visit Mr. Coutu's property. Following the inspection, the FAA would then issue a written determination. Mr. Coutu explained that his past experience with a private helipad on property he owns in Connecticut, and which he has been using for about four years, required no FAA written approval. Mr. Coutu said the FAA actually issues only recommendations and not approvals, and that

he recently called the FAA, which told him he can operate aircraft after 90-days of submitting the proper paperwork even if he has not received a written determination.

Mr. Rouelle said that neither Mr. Coutu nor anyone who works for the State of Vermont is certified to determine whether operation of Mr. Coutu's helipad would create a hazard or interfere with operations of the Springfield Airport or any other state or federal airspace, and that without a determination from the FAA that he would be uncomfortable signing off on its operation.

The Board asked the parties what, if any, tie they believe FAA approval has to Board approval of Mr. Coutu's helipad. Mr. Hall said there was no tie whatsoever. While Mr. Coutu is agreeable to comply with whatever regulations the FAA may impose, such federal approval is not a prerequisite of Board approval, Mr. Hall said.

Mr. Dutcher said he "largely" agreed with Mr. Hall. However, he also said that "one way or the other" the Board has to make an affirmative finding of Board Rule 6.01, which states that operation of a personal landing area cannot interfere with the safe operation of any public airport or with the safety of any state or federal airway. The issue, Mr. Dutcher said, is what is the most effective means of doing that? The Board's regulations may not require an FAA determination, but using an FAA determination may be a "useful means" to satisfying Board Rule 6.01, and in past practice the Board has use the FAA for such a purpose, Mr. Dutcher said.

Mr. Zicconi said the Board has a two-pronged process for approving personal landing areas: the first prong is granting a certificate of approval – which allows the applicant to basically build the facility – while the second prong is granting operational approval, which allows the applicant to use what is built. The issue before the Board today is only whether the Board should grant a Certificate of Approval. Should the Board do that, the parties can then take the time to work with the FAA to receive whatever airspace determination is necessary, and then return to the Board with the information when Mr. Coutu applies for operational approval under 5 V.S.A. 207(f).

Mr. Hall again voiced his concern that the Board should not tie its approval to written documentation from the FAA because 1) the FAA issues recommendations and not approvals, and 2) he has no confidence that the federal agency will issue any paperwork. Mr. Hall also said that Mr. Coutu will abide by all FAA regulations, but would prefer to do so "as the FAA applies them." When Mr. Coutu has satisfied the FAA, he will provide the Board with an FAA phone number to call to verify that Mr. Coutu's helipad complies with all FAA regulations, Mr. Hall said. What he would prefer not to do, Mr. Hall said, is to tie one regulatory process to another as it is not the Board's role to decide FAA matters. Mr. Hall also said that he would prefer that the Board not tie its approval to VTrans interpretation of what the FAA concludes, as the Board should not insert itself into the FAA process.

The Board thanked everyone for their input, and at 10:52 a.m. ended discussion.

**At 10:53 a.m. on a motion by Mr. Marro, seconded by Mr. Hayward, the Board unanimously voted to enter executive session, pursuant to Title 1 § 313, to deliberate testimony.**

Mr. Zicconi was invited into the executive session.

**At 11:10 a.m. the Board exited executive session.**

**On a motion by Mr. Hayward seconded by Mr. Marro, the Board voted to issue Mr. Coutu a Certificate of Approval for a private helipad at his residence at 1807 Heald Road in Cavendish, VT. The Board as part of its motion instructed Mr. Zicconi to draft a Decision and Order, as well as a Certificate of Approval, first**

**for review by the Board and then for circulation to both Mr. Coutu and VTrans for comment. Following comment, the Board will then finalize both the Certificate of Approval and Decision and Order. The Motion passed unanimously.**

Ms. Stern exited the meeting at 11:15 a.m. The Board then resumed its regular agenda, beginning with item 1.3, a discussion regarding the Board's upcoming fall public hearings.

### ***1.3 Fall 2012 Public Hearings***

The Board each fall conducts a series of public hearings to seek public comment regarding state transportation policy, the mission of the Agency of Transportation, state transportation planning, capital programming, program implementation and anything else transportation related the general public may want to talk about. Once the hearings are complete, the Board publishes a report, which is sent to the Legislature and published on its website.

In past years, these meetings have been conducted as kind of a free-form discussion with no real agenda or focus other than taking public comment. Beginning this fall, Mr. Zicconi told the Board that he would like to better structure these hearings, and provide specific topics for discussion. This would not preclude participants from bringing up any subject they may wish, but instead would provide time for both a free-form discussion as well as time for discussion on specific topics.

To this end, Mr. Zicconi told the Board that he had discussions with both the Agency of Transportation and Regional Planning Commission official regarding this format, and all agreed the change would likely result in more productive public discussion that would provide VTrans, RPCs and the Legislature with valuable public input. The Board agreed. Mr. Zicconi will now meet with both VTrans and RPC officials to identify topics that they would like discussed.

As for the timing of this fall's hearings, the Board said it would like five or six hearings held in various parts of the state during October and/or November. While a half dozen hearings would not be enough to ensure that every town has one close by, Board members said hearing locations can be changed from year to year to ensure geographic distribution. Mr. Zicconi said he would work with the RPCs to identify six locations for this fall.

### ***1.4 August Board Meeting Date***

The Board generally meets on the third Thursday of each month, but the third Thursday in August (August 16) is Bennington Battle Day, which is a state holiday. If the Board is to meet in August, all agreed a different date is needed. Since it is common for Boards to take a month off in the summer, the Board decided to wait until July to decide if an August meeting is necessary, and if so, what date on which to hold it.

## **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 Colchester HES NH 56000(14) 502 Hearing***

On May 30, 2012, Mr. Germain and Mr. Zicconi attended a 502 hearing regarding a proposed construction project along Routes 2 and 7 at the interchange with I-89 at Exit 16 in Colchester.

Mr. Germain told the Board that the project begins at the Winooski town line and extends north one mile to the intersection of Sunderland Woods. The purpose of the project is to reduce traffic congestion, increase safety and support economic growth in this extremely busy section of Colchester. The project involves roadway widening to accommodate additional turning lanes, constructing of a so-called "Double Crossover Diamond" interchange with I-89, the construction of a sidewalk/bike path under the I-89 overpass, and upgrading traffic-signal equipment.

The project is tentatively scheduled for construction in either 2014 or 2015.

The roadway widening will impact a couple of dozen properties, but only two of them (the Hampton Inn and Shaw's Grocery Store) involve significant, permanent acquisitions. At the 502 hearing, no landowner expressed opposition, but the fact that VTrans only plans to construct a sidewalk/bike path on one side of the road (the north side) drew considerable criticism.

Following the 502 hearing, Mr. Zicconi met with VTrans officials to discuss the sidewalk/bike path issue. Mr. Zicconi told the Board that VTrans engineers took the criticism to heart and are currently working on plans to include a sidewalk/bike path on the south side of the road. While the Agency is making no guarantee that a sidewalk/bike path on both sides would be built, Mr. Zicconi said Project Manager Joshua Schultz informed him that building a sidewalk/bike path on both sides is the Agency's goal.

The Board decided it would take no action pursuant to its authority under 19 V.S.A. Section 502 at this time.

### **3. OTHER BUSINESS**

#### ***3.1 Round Table***

Mr. Zicconi informed the Board that VTrans hopes to be ready for the third and final round of condemnation hearings in TB-390: Morristown Truck Route in late summer, and asked the Board to choose a hearing date. The Agency's preferred date is August 30, but it also said September 6 and September 7 would work for the necessary employees. Board members Mr. Hayward, Mr. Sandborn and Mr. Bucknam acted as hearing officers in both previous rounds, and all said they would like to continue but that August 30 is problematic. The Board instructed Mr. Zicconi to inform VTrans that either September 6 or September 7 is its preference.

### **4. ADJOURN**

**On a motion by Mr. Hayward seconded by Mr. Marro, the Board unanimously voted to adjourn at 11:29 a.m.**

Respectfully submitted,  
John Zicconi  
Executive Secretary

**Next Board Meeting:  
July 19, 2012 9:30 a.m.  
AOT 3<sup>rd</sup> Floor Conference Room**