

VERMONT TRANSPORTATION BOARD MEETING JULY 31, 2013

Board Members Present:

Maurice Germain, Chairman, term expires 2/28/2014
Tom Dailey, term expires 2/28/2016
Robin Stern, term expires 2/28/2015
Vanessa Kittell, term expires 2/28/2016
Nick Marro, term expires 2/28/2016
James Fitzgerald, term expires 2/28/2015
Wesley Hrydziusko, term expires 2/28/2015

Board Members Absent:

None

Others Present:

John Zicconi, Executive Secretary
Tom Viall, Board Consultant
Toni Clithero, Assistant Attorney General
Kevin Oddy, VTrans Legal Program Administrator
David Hoyne, VTrans Construction Engineer
Richard Tetreault, VTrans Director of Program Development
Traci Wood, VTrans Legal Assistant
John Dunleavey, Assistant Attorney General
William Alexander Fead, Winterset Attorney
Gary Burrington, Winterset President
Maureen Booth, Court Reporter
Mark Richter, Federal Highway Administration
Aldo Ursino (via telephone)

Call to Order:

Chairman Maurice Germain called the Wednesday, July 31, 2013 meeting to order at 9:09 a.m., which was held in Conference Room R206 at the Dewey Building of the National Life Campus in Montpelier, VT.

1. NEW BUSINESS

1.1 TB-383 Winterset, Hearing on Motion for Judgment on Undisputed Facts

The Board conducted a hearing to hear oral argument on TB-383 Winterset. The hearing lasted until 12:13 p.m. A full, written transcript of the proceedings is available for review by contacting the Transportation Board's office.

1.2 Review/Approve the Minutes of June 20, 2013 meeting

On a motion by Ms. Kittell seconded by Mr. Fitzgerald, the Board unanimously voted to approve the Minutes of the June 20, 2013 Board meeting.

1.3 Executive Secretary's Report

Executive Secretary John Zicconi told the Board that consultant Tom Viall's contract expires in September of 2013. Mr. Viall and the Board entered into a two-year contract in September of 2011. Mr. Zicconi told the Board that Mr. Viall, who for nearly three decades was an Assistant Attorney General assigned to transportation, has vast knowledge of transportation issues and is a great asset to the Board who provides cost-efficient services

because his knowledge of transportation law is vast, which saves the Board both time and money as it often prevents the need to conduct lengthy and costly research.

On a motion by Mr. Dailey seconded by Mr. Marro, the Board unanimously voted to authorize Mr. Zicconi to work out the details of a new contract with Mr. Viall.

Mr. Zicconi informed the Board that he planned to be on vacation the week of Labor Day and that the Transportation Board's office would be closed that week. Mr. Zicconi also informed the Board that he planned to take a winter holiday the first two weeks of February.

Mr. Zicconi informed the Board that he has begun discussing the Board's annual fall public hearings with both transportation officials at the various Regional Planning Commissions as well as with officials at the Vermont Agency of Transportation. Mr. Zicconi said he is discussing hearing topics with both parties, and will bring suggestions to the Board at a future meeting. Mr. Zicconi said he wanted the Board to discuss hearing locations so that he could begin setting a schedule.

In the fall of 2012, the Board held six public hearings. The locations were Winooski, Rutland, Bennington, Hartford, St. Johnsbury and Montpelier. The Board when it selected these locations discussed holding the 2013 hearings in different locations. Mr. Zicconi said that his discussion with the RPC representatives identified Bennington, Middlebury, St. Albans and Newport. As for two others, Mr. Zicconi suggested mid-state locations such as Springfield or Randolph, as well as a town in Lamoille County such as Cambridge, Hyde Park or Morristown.

Mr. Marro suggested Morrisville, while Ms. Kittell suggested Hyde Park. Mr. Zicconi suggested letting the RPC decide. The Board agreed. The Board suggested also contacting the local RPC to let it choose between holding a hearing in either Randolph or Springfield. As for dates, Mr. Zicconi said he would coordinate with the RPCs to hold hearings in both October and November in conjunction with their Transportation Advisory Committees as a way to increase participation by public officials. Mr. Fitzgerald suggested the hearings begin at 6 p.m. The Board agreed.

1.4 TB-405 Meehan Farm Crossing

This is a new case initiated by a Barton farmer who believes Vermont Railways has not lived up to a 1998 agreement that the railroad maintain a farm crossing on his property. Mr. Zicconi said that he visited the location, and has spoken with both the Meehans and Vermont Railway to encourage the two parties to work together to reach a mutually satisfactory resolution that would mitigate the need to come before the Board for a hearing. Everyone agreed that Mr. Zicconi should continue to mediate the situation with the goal that the parties come to a mutual resolution that does not involve the Board.

1.5 TB-406 Barnard Private Helicopter Landing Area

This is a new case initiated by Monsalvat Farm of Barnard. The farm filed an application for a private helicopter landing area on its property. The Agency of Transportation reviewed the application and deemed it complete, and it is now up to the Board to schedule a hearing. Mr. Zicconi asked Board members to review the application, and if they agreed the application is complete that they schedule a hearing as part of the Board's regularly scheduled Board meeting on September 19, 2013. Mr. Zicconi explained that the Town of Barnard has no zoning regulations or other permit vehicle that regulates private landing areas, so the town has not held a public process that vets

local concern. As a result, Mr. Zicconi encouraged the Board to hold its September meeting in Barnard and that the Board require the applicant to follow the optional procedure spelled out in 5 V.S.A. § 207 that the applicant notify all abutting landowners of the Board's hearing. Mr. Zicconi said he would also ensure that notice of the hearing be posted in a public place within Barnard, as well as be published in a local newspaper. Mr. Zicconi also encouraged the Board to conduct a sit visit of the proposed location prior to the public hearing.

On a motion by Mr. Marro seconded by Ms. Stern the Board unanimously voted to hold a site visit and public hearing in Barnard on September 19, 2013 and to require Monsalvat Farm to notify all abutting landowners of the site visit and hearing by certified mail pursuant to 5 V.S.A. § 207.

1.6 TB-404 Ursino Small Claim

The Board conducted a small-claim hearing, with Mr. Ursino participating by phone from Massachusetts, and Mr. Oddy representing the Agency of Transportation.

Mr. Ursino testified that his vehicle, while traveling 55 p.m. along Interstate 89 south near Exit 3 in Royalton at about 4:10 p.m. on February 15, 2013, struck a wood pallet in the roadway. Soon after the collision, the vehicle began experiencing problems, including but not limited to the engine light coming on and overheating.

Mr. Ursino testified that he was driving the posted speed limit, but could not avoid the pallet because when he noticed it there was a vehicle beside him in the other travel lane, as well as a vehicle behind him. Ahead of him, a vehicle was pulled over to the side of the roadway. The locations of the surrounding vehicles left him no safe option but to hit the pallet, Mr. Ursino testified.

Mr. Ursino further testified that after hitting the pallet he continued driving for several miles, and at about 4:30 p.m. pulled off the Interstate in the area of Exit 1 to report the incident to the Vermont State Police. Mr. Ursino testified that the dispatcher told him that she had received other calls regarding the wood pallet, and that he remembered being passed by a vehicle with a flashing yellow light prior to the collision. Mr. Ursino said he thought this vehicle may have been a state maintenance vehicle that was alerted to the pallet being in the roadway.

Mr. Ursino further testified that upon returning home to Massachusetts that his vehicle continued to experience problems, causing him to incur rental car expenses. Mr. Ursino testified that a mechanic told him the vehicle's water pump had been damaged, and that wood splinters were visible in the vehicle's engine area. Mr. Ursino testified that he eventually "traded in" his car, but that the necessary repairs diminished its value. He seeks the cost of the repair appraisal (\$1,433.88) plus the cost of car rental (\$300).

Mr. Oddy testified that the Vermont Agency of Transportation (VTrans) does not question the existence of damage to Mr. Ursino's vehicle, but that as the claimant, Mr. Ursino carries the burden of proof to demonstrate negligence on the part of VTrans.

Mr. Oddy testified that Mr. Ursino, according to state statute, has a duty to drive at a speed that would allow him to "have regard" for potential roadway hazards and avoid them. Mr. Oddy also testified that Mr. Ursino failed to show that the wood pallet fell off of a VTrans' vehicle, or that the pallet had been in the roadway long enough that VTrans knew, or should have known of its presence, and failed to take corrective action.

Mr. Oddy also produced a VTrans' work document dated the day the incident occurred that noted VTrans' maintenance personnel were contacted by State Police regarding the pallet at about 4:30 p.m., the same time Mr. Ursino testified that he first called the State Police to report the presence of a wood pallet in the roadway.

Mr. Ursino testified that the State Police Dispatcher, whom he said was named Dispatcher Anderson, told him at the time of his call that "many people" had called prior to him to report the pallet, which Mr. Ursino said appeared to have been hit by other vehicles prior to his collision. Mr. Ursino, however, did not produce testimony from Dispatcher Anderson to affirm whether the dispatcher received any such calls, or produce testimony from Dispatcher Anderson as to exactly when the dispatcher alerted VTrans to the hazard.

Board members thanked both men for their testimony, and said they would produce a written decision in the near future.

2. OLD BUSINESS

1.2 TB-386 Miller Construction, Motion for Reconsideration

At 1:30 p.m. the Board on a motion by Mr. Marro seconded by Mr. Dailey entered into deliberative session, pursuant to Title 1 § 313, to deliberate on TB-383 Winterset, TB-404 Ursino Small Claim and TB-386 Miller Construction.

Mr. Zicconi and Mr. Viall were invited to attend the deliberative session.

At 4:15 p.m. the Board exited deliberative session.

3. OTHER BUSINESS

3.1 Round Table

No Board members had anything to discuss.

4. ADJOURN

On a motion by Mr. Marro seconded by Dailey, the Board unanimously voted to adjourn at 4:20 p.m.

Respectfully submitted,

John Zicconi
Executive Secretary

**Next Board Meeting:
September 19, 2013 at 9:00 a.m.
Barnard Town Hall, Barnard, VT**