

# VERMONT TRANSPORTATION BOARD MEETING DECEMBER 6, 2013

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## **Board Members Present:**

Tom Dailey, term expires 2/28/2016  
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:**

Maurice Germain, Chairman; term expires 2/28/2014  
Robin Stern, term expires 2/28/2015

## **Others Present:**

John Zicconi, Board Executive Secretary

## **Call to Order:**

Acting Chairman Nick Marro called the Thursday, December 6, 2013 meeting to order at 9:05 a.m., which was held at Meeting Room R235 of the Dewey Building at the National Life Campus in Montpelier, VT.

## **1. NEW BUSINESS**

### ***1.1 Review/Approve the Minutes of the October 17, 2013 Meeting***

**On a motion by Mr. Dailey seconded by Mr. Fitzgerald, the Board unanimously voted to approve the Minutes of the September 19, 2013 Board meeting as submitted.**

### ***1.2 Executive Secretary's Report***

Executive Secretary John Zicconi told the Board that at 1:30 p.m. today the Supreme Court will hear oral arguments in the Luck Brothers case, and that he planned to attend. Luck Brothers is a construction appeal brought by Luck Brothers against VTrans that seeks to bypass the Board and go directly to Superior Court. Board members asked Mr. Zicconi to provide them a written summary of the oral arguments following the Court appearance. Mr. Zicconi agreed.

Mr. Zicconi also informed the Board that Board member Jim Fitzgerald following the Christmas holiday will be traveling to Florida for a period of several months and will be unable to attend Board meetings in person until spring. Mr. Fitzgerald, however, will attempt to participate in Board matters via phone whenever that is appropriate.

### ***1.3 TB-407 Wallace Spur Railroad Exemption Request (Richfield Road, Manchester)***

The Vermont Agency of Transportation in September asked the Board pursuant to 5 V.S.A. 3581(b) to consider granting exempt status to a railroad crossing along the Wallace Spur over Richfield Road in Manchester. The Agency requested the exemption on behalf of a local school bus driver.

Following the request, Mr. Dailey and Mr. Zicconi visited the location. Mr. Dailey reported to the Board that the Wallace Spur in this location is abandoned and currently carries no rail traffic. The track, in fact, is badly

deteriorated and incapable of supporting trains as the ground beneath large stretches of track is washed away, leaving ties and rail often suspended in the air.

Statute requires that both the railroad and the road's owner, which is the Town of Manchester, be given a chance to be heard before the Board renders a final decision. Vermont Rail Systems, which operates the track, wrote the Board a letter on November 5, 2013 supporting the requested exemption. The railroad, however, caveated its support by also saying that in the future should a customer request rail service along the spur and that the track be repaired, that it is the railroad's intention to petition the Board to rescind the exempt crossing designation pursuant to 5 V.S.A 3581(c).

Mr. Zicconi informed the Board that he contacted the Town of Manchester several times, but to date has not had any of his calls returned. As a result, he does not yet know whether the town supports a crossing exemption. Mr. Zicconi said that given the track's condition and the spur's abandonment, he would expect the town to have no objection. However, to provide the town more time to weigh in, Mr. Zicconi encouraged the Board to approve the exemption conditioned on the town's approval. Should the Town of Manchester not approve, Mr. Zicconi said he would bring the matter back to the Board for further consideration.

**On a motion by Mr. Dailey seconded by Mr. Fitzgerald, the Board unanimously voted to approve the exemption contingent on the Town of Manchester's approval.**

#### *1.4 2013 Legislative Report*

The Board's 2013 public hearings are now complete. Mr. Zicconi informed Board members that if they have not yet done so that now is the time for them to provide him initial input so that he can begin drafting the Board's annual report to the Legislature. Mr. Zicconi said he would provide the Board drafts of the report's chapters on a weekly basis so that Board members can chart his progress and provide incremental input. The goal is to have a complete final draft for the Board's review and approval at its January meeting.

## **2. OLD BUSINESS**

### *2.1 TB-406 Monsalvat Farm Private Helicopter Landing Area*

The Board at its meeting on October 17, 2013 granted Monsalvat Farm a Certificate of Approval for a personal helicopter landing area with the following restriction: the number of round trips is limited to 60 annually, where a round trip can include two (2) trip ends.

Since that approval, Monsalvat Farm employee Kevin Lessard and the Board's executive secretary, John Zicconi, have talked and Mr. Lessard indicated that the farm may have erred in its calculation that a round trip equals two trip ends. Instead, Mr. Lessard indicated that a round trip may actually consist of four trip ends. As a result, the farm may want to ask the Board to amend its Certificate.

Mr. Zicconi told the Board that he was looking for guidance that should the farm wish to seek an amendment, what kind of public notice must either the farm or the Board provide abutting land owners? During its application, the Board required the farm pursuant to 5 V.S.A. § 207(d) to provide all abutting landowners, as well as those who own property within the helicopter's proposed flight path, with a copy of its application via certified mail

before the Board conducted a hearing so that these landowners could provide either testimony or written comment.

Mr. Zicconi advised the Board that should Monsalvat farm seek an amendment to its certificate that the Board should require the farm to provide a copy of the proposed amendment, via certified mail, to everyone who initially received a copy of the farm's original application pursuant to 5 V.S.A. § 207(d) so that they had a similar amount of time to provide comment. The Board agreed, and Mr. Zicconi said he would contact Mr. Lessard to inform him of the process the farm must follow should it wish to amend its application.

**2.2 TB-383 Winterset (deliberation)**

**At 10:05 a.m. the Board on a motion by Mr. Fitzgerald seconded by Ms. Kittell entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-383 Winterset.**

Mr. Zicconi was invited to attend the deliberative session.

**At 10:34 a.m. the Board exited deliberative session.**

**1. OTHER BUSINESS**

**3.1 Round Table**

No Board members had anything to discuss.

**2. ADJOURN**

**On a motion by Ms. Kittell seconded by Mr. Dailey, the Board unanimously voted to adjourn at 10:35 a.m.**

Respectfully submitted,

John Zicconi  
Executive Secretary

**Next Board Meeting:  
January 16, 2014 at 9:30 a.m.  
Dewey Conference Room R235, National Life Campus, Montpelier, VT**