

VERMONT TRANSPORTATION BOARD MEETING OCTOBER 28, 2020

Board Members Present:

David Coen, term expires 2/28/21
Richard Bailey, term expires 2/28/21
Wendy Harrison, term expires 2/28/22
Pam Loranger, term expires 2/28/22
Philip Zalinger, term expires 2/28/22

Board Members Absent:

None

Others Present:

John Zicconi, Board Executive Secretary
Bernard White, Claimant
Gordon Landrigan, Assistant Attorney General
Sasa Dejan, VTrans RR Crossing Inspector

Call to Order:

Chair David Coen called the Wednesday, October 28, 2020 meeting to order at 10 a.m., which was held remotely via Microsoft Teams due to the COVID-19 pandemic.

1. NEW BUSINESS

1.1 Review/Approve Minutes of the February 6, 2020 Board meeting.

On a motion by Ms. Harrison seconded by Ms. Loranger, the Board unanimously voted to approve the minutes of the February 6, 2020 Board meeting with corrections.

1.2 TB-514 White Small Claim

The Board held an evidentiary hearing regarding the small claim of Bernard White, who filed a \$5,000 claim charging that his truck was damaged on March 5, 2020 while crossing railroad tracks that cross Main Street in Orleans, VT. Mr. White alleges that the tracks extending from the pavement at the RR crossing were too high, and as a result the V-plow attached to the front of his truck struck the tracks which caused \$5,000 in damage to his vehicle. All parties were sworn in.

Mr. White testified that the Vermont Agency of Transportation inspects the crossing once per year and is supposed to at that time check for problems. Whomever conducted the last inspection should have been able to see that there are gouge marks along the tracks that indicate multiple vehicles have struck the tracks because the rail along the crossing is too high. VTrans since Mr. White's accident has repaved the street, which has helped the situation, but he noted that nothing regarding the danger that was present at the time of his accident was noted on the inspection report that is dated May 8, 2019. He claims VTrans was negligent in allowing the track height to be as high as it was on the day of his accident, and that he was damaged as a result of that negligence.

To support his claim, Mr. White filed two affidavits. One was from John Morley at the village office while the other was from Michael Braun, a village merchant who owns a store right beside the RR crossing. Both affidavits support Mr. White's position that the tracks are high in this location and that other vehicles sporting plows have "hit" the tracks throughout the past winter.

Assistant Attorney General Gordon Landrigan said VTrans does not contest the damage that occurred to Mr. White's truck, but the Agency does dispute the causation. To be found negligent, Mr. Landrigan said the Agency has to be aware of a potentially hazardous roadway condition. Other people's knowledge of such a situation is not enough for the Board to find the Agency negligent. The Agency had to be aware that a problem existed, he said. Mr. Gordon introduced Sasa Dejan, a civil engineer who inspects all 419 RR crossings throughout the state, as a witness.

Mr. Dejan testified that the crossing in question is a "super elevated crossing," which means one side of the crossing is purposefully higher than the other. The recent roadway paving at the crossing was conducted as part of a nearby bridge project and was not conducted as a railroad crossing project designed to fix a known problem related to the tracks. The paving did not change the roadway grade as the old pavement was milled before the surface was repaved, he said.

In this location, Mr. Dejan said that VTrans is responsible for the roadway surface, while the Washington County Railroad is responsible for the tracks. As a result, VTrans plows up to the crossing, while the railroad plows the crossing itself with a plow attached to a train. He called the roadway "well used" as approximately 4,000 vehicles a day cross the tracks. The speed limit in the area is 25 mph, and the crossing is engineered to normal safety and functionality standards.

Mr. Dejan said the crossing is inspected once per year and during that inspection the inspector does assess the difference between rail height and the roadway pavement. On May 8, 2019 the inspector, which was not Mr. Dejan, rated the crossing as "fair" (a rating can be either good, fair or poor) which means at the time of the inspection there was less than half an inch difference between the pavement and top of rail. The railroad generally inspects the tracks once per week and notifies VTrans if there is a safety concern. The railroad never notified VTrans of any concern, he said.

Mr. White said frost heaves during the winter could have altered the elevation difference between the pavement and the top of rail. Mr. Dejan said there is a rubber seal at the crossing that helps prevent frost heaving as the rubber seal helps drain water away from the tracks.

Ms. Harrison, pointing to photos entered into evidence by Mr. White, said the photos showed "hit marks" along the rail at the crossing and pieces of rubber missing. She also noted the concern expressed by locals that appear in both the affidavits provided by Mr. White as well as emails that were introduced into evidence. She asked why these things were not noted at the time of inspection and why VTrans did not do anything as a result of these things. Mr. Dejan said he, personally, did not conduct the May 8, 2019 inspection. His predecessor, who still works at VTrans, conducted that inspection. He said the

railroad may have known that other vehicles had hit the tracks or that there were previous complaints, but that no one ever notified VTrans of any issue until after Mr. White's incident on March 5, 2020.

Ms. Harrison asked about the crossing being rated fair. Mr. Dejan said when a crossing is rated either fair or poor, it flags the crossing to be scrutinized during a subsequent inspection, but such a rating does not necessarily mean there is a problem. He said he believes somewhere between 30 percent and 40 percent of all Vermont RR crossings at any one time are rated fair. Since the summer paving, the crossing is now rated "good." Ms. Harrison asked why no one re-inspected the crossing following the report of Mr. White's incident. Mr. Dejan said he did not know as he was not the state's crossing inspector at that time.

Mr. White criticized VTrans for not having the person who was responsible at that time attend the hearing to testify. He said the "hit marks" that are noticeable in his photos should have caused VTrans to re-inspect the tracks following the once-a-year routine inspection that took place on May 8, 2019. He said VTrans should be responsible to ensure crossing safety all the times, not just once per year.

Mr. Landrigan said there may have been other factors that contributed to what happened to Mr. White's vehicle – he could have been going too fast or he may not have had his plow elevated enough. For the Board to find VTrans negligent, it has to conclude that VTrans either caused the underlying problem – and that it was not a result of anything Mr. White did or something one of the Agency's contractors did – or the Board has to find that VTrans had actual or constructive notice of a roadway defect and then either ignored or failed to act on that notice.

Chair Coen closed the hearing and allowed the parties three weeks to submit post hearing memos.

At 12:29 p.m. the Board on a motion by Ms. Loranger, seconded by Mr. Zalinger and approved unanimously, voted to enter into deliberative session, pursuant to Title 1 § 313, to discuss TB-514, Small Claim of Bernard White.

Mr. Zicconi was invited to join the deliberative session.

The Board exited deliberative session at 12:46 p.m.

1.3 TB-510 Major Ira Day Road Naming.

Mr. Zalinger, who was the hearing officer for a public hearing in this matter informed the Board that the public hearing was "uneventful" and did not last long as no one spoke against the proposal to name this section of Route 64 that runs through parts of Williamstown and Brookfield. The Public hearing was hosted by the Williamstown Selectboard, which was supportive of the proposal. Mr. Zicconi informed the Board that he received no written comments opposing the proposal and one email supporting it. Mr. Coen commented that he had never seen a more appropriate request to name a road.

On a motion by Ms. Loranger seconded by Mr. Zalinger, the Board unanimously voted to name the portion of Vermont Route 64 that runs from its intersection with Chelsea Road in Williamstown south to its intersection with VT Route 65 in Brookfield “The Major Ira Day Memorial Highway.”

1.4 TB-512 Houghton Terminal Naming

Mr. Zicconi said the Board needs to schedule a public hearing regarding the petition to name the terminal building at the Rutland state airport. He advised that the Board appoint a hearing officer to conduct such a public hearing, which he advised should be conducted remotely due to the COVID-19 pandemic. Mr. Loranger volunteered to be hearing officer, and she agreed to hold the remote hearing on December 17, 2020.

On a motion by Ms. Harrison seconded by Mr. Bailey, the Board unanimously voted to appoint Ms. Loranger hearing officer for the public hearing associated with TB-512.

1.5 TB-515 Strassberger Airstrip

Mr. Zicconi said the Board needed to set several dates related to the application from Karl Strassberger to permit a grass airstrip on his property at 1380 Route 64 in Williamstown, VT. The Board needs to schedule a site visit as well as an evidentiary hearing, which will be conducted remotely. He informed the Board that following discussions with Chair Coen, that the Board had hired VHB to help the Board conduct a remote hearing in this case and that once the Board schedules a hearing date he will work with the applicant to send notification of that hearing by mail to his closest neighbors. Following discussion, the Board agreed to hold the site visit on November 19, 2020 and to conduct the evidentiary hearing on December 10, 2020. Although the entire Board will conduct the hearing, Mr. Coen asked for a volunteer to act as hearing officer for any prehearing meetings or decisions that need to be made. Ms. Harrison volunteered.

On a motion by Ms. Loranger seconded by Mr. Bailey, the Board unanimously voted to appoint Ms. Harrison hearing officer for all prehearing matters associated with TB-515.

1.6 Executive Secretary’s Report

Mr. Zicconi informed the Board that the Legislature recently adjourned and it appears that COVID-19 did not have a negative effect on Vermont’s transportation budget as the Legislature approved a transportation bill that totals more than \$650 million, which is one of the largest transportation bills in the state’s history. While this is good news, no one is yet predicting what next year’s budget will look like.

1.7 December 10, 2020 meeting

The Board chose December 10, 2020 as its next meeting date.

2. OLD BUSINESS

2.1 None

3. OTHER BUSINESS

3.1 Round Table

No one had any issues to discuss

4. ADJOURN

On a motion by Ms. Loranger seconded by Ms. Harrison, the Board unanimously voted to adjourn at 12:47 p.m.

Respectfully submitted,

John Zicconi
Executive Secretary

Next Board Meeting: December 10, 2020