

VERMONT TRANSPORTATION BOARD MEETING JUNE 16, 2016

Board Members Present:

William Tracy Carris, term expires 2/28/2017

David Coen, term expires 2/28/18

Richard Bailey, term expires 2/28/18

Vanessa Kittell, term expires 2/28/2019

Board Members Absent:

Tom Dailey, term expires 2/28/2016

Larry Bruce, term expires 2/28/2018

Others Present:

John Zicconi, Board Executive Secretary

Gene Fialkoff, Claimant

Kevin Oddy, VTrans Legal Program Administrator

Call to Order:

Acting Chairman Coen called the Thursday, June 16, 2016 meeting to order at 9:45 a.m., which was held by telephone and publically based in the conference room at 14 Baldwin Street, Montpelier, VT.

1. NEW BUSINESS

1.1 Review/Approve Minutes of the May 26, 2016 Meeting

On a motion by Mr. Bailey seconded by Ms. Kittell, the Board voted to approve the minutes of the May 26, 2016 Board meeting.

1.2 Fall Hearing Topics

Mr. Zicconi told the Board that he has a meeting scheduled next week with VTrans officials to discuss topics for this year's fall forums. At a meeting in April, the Board identified both rail and water quality as potential topics. Mr. Zicconi said he plans to discuss both these topics with VTrans officials, and learn from them not only their preference but discuss what a forum's agenda could look like. Mr. Coen suggested that Mr. Zicconi also discuss with VTrans the topic of truck traffic through villages and how rail impacts such traffic. The Board agreed.

1.3 Executive Secretary's report

Mr. Zicconi informed the Board the Senator Robert Starr was successful in getting a bridge in Derby named after Kermit Smith. The naming language was included as part of H.533, which was a bill related to victims rights and animal welfare. Mr. Smith did not qualify for the Board's naming process because he is still living. The Board's naming rules allow naming only after a person is deceased.

1.4 TB-447 Fialkoff Small Claim Hearing

Mr. Fialkoff said that VTran's written response to his claim contained an error as it states that the tire that was damaged was used. He said that it was new. Mr. Oddy acknowledged that this was a typo, and apologized for the error.

Mr. Fialkoff said that VTrans is negligent in this case because the pothole his vehicle struck on March 2, 2016 along Route 100 B in Moretown was not a sudden defect in the roadway. He submitted a affidavit from a witness that claims the area of Route 100B where his vehicle incurred damage consistently contained a large pothole for approximately two weeks prior to his accident. Mr. Fialkoff said he also spoke to other motorists as well as those employed in the vehicle-towing industry who told him the pothole had damaged other vehicles. He did not, however, submit affidavits from any of these people.

Because the pothole existed for more than two weeks prior to his accident, Mr. Fialkoff said that his negligence claim meets the four-pronged legal test because VTrans owed him a duty to keep Route 100B free of hazards. The Agency, however, breached that duty by either not patching the pothole or posting warning signs so he new to avoid it. As a result of this breach, Mr. Fialkoff said he was damaged due to the hazard, and VTrans' breach of its duty is the cause of the damage.

Mr. Carris asked Mr. Fialkoff if he took photographs of the pothole he struck. Mr. Fialkoff said he did not as he did not have a camera with him at the time of the accident.

Mr. Oddy said that VTrans does not question that Mr. Fialkoff struck a pothole along Route 100B that damaged his tire. He said, however, that there is no evidence that the pothole existed prior to March 22 in the potentially dangerous form it did the day Mr. Fialkoff struck it. He said that a pothole in that location may in fact have existed for a considerable period of time, but that it was not big enough to constitute a hazard until shortly before March 2, 2016, the day of Mr. Fialkoff's accident. To support this argument, Mr. Oddy said that no one prior to Mr. Fialkoff reported that a dangerous pothole along Route 100B existed in this location.

Mr. Oddy also argued that Vermont's motor-vehicle statutes place an obligation on the operator of a motor vehicle to adjust his speed to what is reasonable and prudent for the conditions, and with regard to potential hazards. He said that 23 V.S.A. § 1081(a) requires a motorist to control his speed to what is necessary to avoid colliding with any persons, vehicle or other object on or adjacent to the highway.

Mr. Oddy also questioned the affidavit of Matthew Idol, who claimed that a "large" pothole existed along Route 100B as early as the middle of February. While the Agency does not question that Mr. Idol witnessed a pothole along Route 100B in Moretown, Mr. Oddy said there is no evidence that the pothole Mr. Idol saw was the same pothole that some two weeks later damaged Mr. Fialkoff's vehicle on March 2, 2016. Mr. Oddy said that Mr. Idol never reported such a pothole to the state.

Mr. Oddy said that it regularly inspects state highways and makes repairs quickly upon identifying potential hazards. He said that the Agency was not aware of the pothole that damaged Mr. Fialkoff's vehicle on March 2, 2016 but that quickly after learning of the pothole on March 3, 2016 – the day Mr. Fialkoff filed his claim – the Agency dispatched a maintenance crew and repaired the road. Citizen reporting, Mr. Oddy said, is critical to proper roadway maintenance, especially during winter months like March when sudden roadway defects like potholes develop

quickly. Agency personnel cannot be everywhere at once to identify them immediately, Mr. Oddy said.

Mr. Coen closed the hearing. Mr. Zicconi said that the Board would deliberate later in the meeting and issues its decision in writing.

2. OLD BUSINESS

2.1 TB-387 Route 7 Rutland Town Break in Limited Access

Mr. Zicconi told the Board that VTrans and the Town of Rutland needed a more time than originally thought to finish its traffic analysis, but that both sides agree that they will be ready for a hearing at the Board's August 11, 2016 meeting. Mr. Zicconi said that he had contacted the Holiday Inn along Route 7 in Rutland, and that it had a room where the Board could meet. He suggested holding the August 11 meeting there.

The Board on a motion by Mr. Carris seconded by Ms. Kittell unanimously voted to schedule a hearing to review the Town of Rutland's request for a break in Route 7's Limited Access as part of the Board's meeting on August 11, 2016.

2.2 TB-446 Petition to Name Route 103

Mr. Zicconi informed the Board that the Petitioners have abandoned their wish to have Route 103 named after the Desert Storm Veterans, and instead submitted a new petition – which arrived just today – that asks the Board to name Route 22A. The reason for the switch is because research conducted by the Board after receiving the original petition revealed that about half of Route 103 is already part of the Calvin Coolidge Memorial Highway. The Petitioners do not want to ask the Board to rename the highway, and instead prefer to request that the Board name a roadway that does not already carry a memorial moniker.

The Board discussed potentially holding a public hearing regarding the petition in Shoreham as early as the evening of August 11 as the Board already plans to be in Rutland earlier that day. Mr. Zicconi said he still must vet the petition, and he is not sure that a hearing could be held as soon as August 11 because the Board's rules require that a public hearing be warned at least 30 days in advance. Should the vetting process not be completed by early July, Mr. Zicconi said he would contact Board members to find a date that would conform to the Board's rules.

2.3 TB-449 Rothblatt Helipad

At 10:37 a.m. the Board on a motion by Mr. Bailey seconded by Mr. Carris entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-447 Fialkoff Small Claim and TB-449 Rothblatt Private Landing Area.

Mr. Zicconi was invited to join the deliberative session.

The Board exited deliberative session at 10:58 a.m.

3. OTHER BUSINESS

3.1 Round Table

No one had any issues to discuss

4. ADJOURN

On a motion by Mr. Carris seconded by Mr. Bailey, the Board unanimously voted to adjourn at 10:59 a.m.

Respectfully submitted,

John Zicconi
Executive Secretary

Next Board Meeting: August 11 at 1 p.m. at the Holiday Inn in Rutland