

# VERMONT TRANSPORTATION BOARD MEETING SEPTEMBER 29, 2016

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## **Board Members Present:**

William Tracy Carris, term expires 2/28/2017 (by phone)  
David Coen, term expires 2/28/18  
Richard Bailey, term expires 2/28/18  
Larry Bruce, term expires 2/28/2018  
Faith Terry, term expires 2/28/19  
Vanessa Kittell, term expires 2/28/19

## **Board Members Absent:**

none

## **Others Present:**

John Zicconi, Board Executive Secretary  
David Grayck, esq., Diamond Run Mall  
Marvin Elliott, Rutland Audubon Society  
Valerie Biebwyc, Rutland Audubon Society  
Jon Slason, Town of Rutland, RSG  
Joe Zingale, Town of Rutland (by phone)  
Christopher Clow, VTrans Transportation Engineer  
Craig Keller, VTrans Permit Division  
Michael Choquette, VFW  
Steve Leach, petitioner  
Patrick Kelty, VFW  
Donald McCormick, VFW  
Theresa Gilman, VTrans Permit Division  
MaryAnn Goulette, Town Manager West Rutland  
Tom Burditt, West Rutland  
Wendy Wilton, Claimant (by phone)  
Florence Smith, VTrans Legal Department  
Toni Clithero, Assistant Attorney General

## **Call to Order:**

Acting Chairman Coen called the Thursday, September 29, 2016 meeting to order at 9:40 a.m., which was held in the Catamount Conference room at 1 National Life Drive in Montpelier, VT.

## **1. NEW BUSINESS**

### ***1.1 Review/Approve Minutes of the August 11, 2016 Meeting***

**On a motion by Mr. Bailey seconded by Mr. Bruce, the Board unanimously voted to approve the minutes of the August 11, 2016 Board meeting with corrections.**

## ***1.2 TB-450 Wilton Small Claim***

Ms. Wilton said that after dark on the evening of April 2, 2016 she struck a pothole that was located along Route 7 in Rutland near the top of a hill near the roadway's intersection with Sugarwood Hill Road. The collision damaged a tire on her Mini Cooper. The pothole was located along the fog line, with part of it being in the travel lane, but most of it being within the roadway's shoulder. She hit the pothole because a large truck was approaching from the south, and she moved to the right for safety.

Ms. Wilton said the pothole had been in existence for at least a week because her vehicle struck this same pothole on March 26, 2016, only that collision did not damaged her tire. To support the claim that the pothole had been in existence for a week, Ms. Wilton introduced an affidavit from Bradford Boyles. In the affidavit, Mr. Boyles states that he was a passenger in Ms. Wilton's vehicle when it struck the pothole on March 26, 2016.

Ms. Wilton said that the Agency of Transportation has a duty to actively inspect and maintain the roadway, and not rely just on phone calls from citizens to alert them that a roadway hazard exists or that vehicles have incurred damage in the area. She argued that had the Agency inspected this section of Route 7 between March 26, 2016 and April 2, 2016, it would have noticed the pothole.

Ms. Wilton said the pothole did not damage her vehicle on March 26, 2016 therefore it may not have been as large or as deep at that time as it was on April 2, 2016. But by April 2, 2016, the pothole was large, it encroached on the roadway's travel lane, and it was a dangerous hazard, she said.

Ms. Wilton said that the Agency is guilty of negligence because Route 7 is inadequately designed in the location of the pothole, and that the inadequate design contributed to her loss. She said that Route 7 is very narrow in the location where she struck the pothole. She claimed this roadway section has not undergone any major improvement since the road was first paved many decades ago.

Ms. Wilton said that other sections of Route 7 have been reengineered to modern specifications and have been improved with wide shoulders so that vehicles can easily and safely move to the right when oncoming traffic encroaches or crosses the centerline. No such improvements were made to the roadway section where she hit the pothole. Had such improvements been made, she said that the roadway would be safer and her accident could have been avoided.

Ms. Smith said that the doctrine of Sovereign Immunity bars the Agency from claims such as the one Ms. Wilton is making because filling potholes is a discretionary function. She said that sovereign immunity immunizes the state from tort liability for decisions involving choice or judgment.

Ms. Smith said that VTrans is protected from negligence claims like this one due to its legislative authority to establish policy, its authority to make choices regarding how the Agency spends its financial resources, and to make decisions regarding what work to direct its employees to undertake. Ms. Smith said that decisions such as to how often to patrol state highways to look for unreported potholes and other defects, as well as how to triage pothole and other repair work, are inherently discretionary.

Ms. Smith said that the absence of evidence that the Agency's response to this particular hazard conflicted with its policies and procedures for roadway maintenance leaves the Board no other decision but to conclude that the Agency is immune from tort liability with respect to this claim.

Ms. Clithero said that both case law and state statute, specifically 12 V.S.A. § 5601(e)8, preserves the state's sovereign immunity against damage claims made against the Agency due to the design of its roadways so long as the state does not deviate from a particular set of standards while planning and designing the highways. The fact that this particular roadway had not been updated as some other sections have does not negate the state's sovereign immunity, she said.

Ms. Wilton asked the Board to refer to some photographs of the pothole that she submitted, but the Board had no such photographs. Ms. Wilton said she supplied the photographs to the Department of Risk Management when she first filed her claim. Mr. Zicconi said he received a file from Risk Management, but that it did not include photographs.

Ms. Wilton asked if she could email the Board the photographs. Mr. Coen said yes. Mr. Zicconi said he would contact Risk Management to see if it had copies of such photographs, and that if it did he would compare to ensure the record was kept straight.

Ms. Terry asked if VTrans kept a record of when this section of roadway was inspected during the time period in question. Ms. Smith said the Agency does document its daily maintenance activity, but that she did not have that information with her. Mr. Coen asked that the Agency supply the Board with these records. He gave both parties one week to submit complementary documentation.

### ***1.3 TB-451 Petition to Name Route 22A***

Mr. Leach said to honor those who served as well as their families, the petitioners, on the 25<sup>th</sup> anniversary of Kuwait's liberation, seek to have Vermont 22A in its entirety named The Desert Storm Veterans Memorial Highway.

Mr. Leach said Some 600,000 Americans were deployed during Operation Desert Storm in the early 1990s following Iraq's invasion of Kuwait. Several Vermont National Guard organizations were activated, including the 131<sup>st</sup> Engineering Company. About 300 American soldiers were killed liberating Kuwait, he said.

Mr. Coen told the Board that he and Mr. Carris were hearing officers at a public hearing held on August 17, 2016 in the town of Shoreham, which is located along Route 22A. He said two of the eight attendees spoke against the naming. One opposed the naming not because he was opposed to naming a roadway after Desert Storm veterans, but because he considered Route 22A in such poor condition that it would embarrass such veterans. The other speaker opposed to the naming said he would rather have the road named after a geographic feature than after a military conflict.

Mr. Zicconi said that overall support for naming a roadway after the Desert Storm veterans appears strong. Although the petition to name Route 22A had 134 signatures, the he noted that the petitioners originally attempted to designate Vermont Route 103 but changed to Route 22A after learning half of

Route 103 was already named in memoriam after U.S. President Calvin Coolidge. The original petition contained more than 700 signatures.

Mr. Zicconi said that short segments of Route 22A already contain local street names and postal designations. These local designations appear along the road's Class I segments in both Vergennes and Fair Haven. However, Vermont's past naming practice shows no conflict in designating a state highway in memoriam at the same time. Nothing in the Board's action would change or supersede these local monikers or postal designations, or force the municipalities to change their local naming, he said.

**On a motion by Mr. Bailey seconded by Mr. Bruce, the Board unanimously voted to name Vermont Route 22A in its entirety "The Desert Storm Veterans Memorial Highway."**

***1.4 TB-453 Petition to Name Island Pond Bridge, Request to Withdraw***

Mr. Zicconi presented the Board with a letter from lead petitioner Beverly Pepin requesting withdrawal of the petition, which had been signed by more than 80 people asking that a bridge along Route 105 in Island Pond (Bridge #87) be named the Tyler G. Pepin Memorial Bridge. Mr. Zicconi said Board rules that govern petitions to name transportation infrastructure allow for the lead petitioner to make such a request. Mr. Zicconi said that in phone conversations he has had with Ms. Pepin, who is the Tyler Pepin's grandmother, that she indicated that the family had changed its mind and that it no longer wants the bridge named after Tyler.

**On a motion by Mr. Bruce seconded by Mr. Bailey, the Board unanimously voted to accept the petition's withdrawal.**

***1.5 TB-432 Route 4 West Rutland Break in Limited Access***

Ms. Goulette said the Town of West Rutland seeks a permit to break the limited access of Vermont Route 4 to create a new access to a 125-acre parcel owned by the town that is used as a recreational facility. The intent is to create a second access to the recreational facility that connects to Boardman Hill Road to accommodate future development of the land.

The sole existing access to the recreation area, Ms. Goulette said, is off of Fairview Avenue through a residential neighborhood. The access is paved, but narrow and winding, with limited site distances and steep drop-offs. The existing access cannot accommodate a sidewalk due to its typography, and is not considered ideal for significant traffic volumes or bicycle and pedestrian safety, she said.

The affected area of Boardman Hill Road lies within the right-of-way of Route 4, which is a limited access highway.

Ms. Goulette said most of the 125-acre recreational area is largely undeveloped. In 2012, the town developed a Master Plan for expansion of the facility. The Master Plan recommends improved access to the facility as a way to both improve safety and accommodate an increase in vehicular traffic due to facility expansion, she said.

Ms. Goulette said that a road intersecting Boardman Hill Road from the recreation area existed prior to the construction of Route 4 and that remnants of this road still exist. A new road in the area of the historic access to Boardman Hill Road can be constructed to form a “T” intersection with safe sight distances along Boardman Hill Road, she said. A total of 24 homes exist along Boardman Hill Road, which is not heavily traveled.

Due to the proximity of the newly proposed access along Boardman Hill Road, the majority of West Rutland residents will continue to use the existing access off of Fairview Avenue, Ms. Goulette said. The town estimates that only some 164 West Rutland households would use the new access regularly, but the vast majority of out-of-towners will use the new access along Boardman Hill Road to access the recreational facility due to the new access proximity to Route 4, she said.

Ms. Goulette said that due to its proximity to the town’s emergency-service centers, a Boardman Hill access to the recreation area will provide for faster access from first responders and emergency-service vehicles. A Boardman Hill Road access to the recreation area also would provide firefighters safer and more accessible access to a fire hydrant located at the base of Boardman Hill, she said.

Ms. Goulette said a Boardman Hill Road access to the recreation area also will provide safe access to a bike path and a nearby 150-acre trail system that offers hiking, biking, snowshoeing and access to the Clarendon River for fishing and swimming.

Ms. Gillman said the Vermont Agency of Transportation has reviewed the proposed Boardman Hill access and believes there is sufficient capacity for Boardman Hill Road to safely absorb the kind of traffic an expanded recreational facility will generate. An Agency analysis of the town’s traffic study showed that the proposed future development of the recreation area will not result in the backup of vehicular traffic on the Route 4 off ramp in order to allow turning movements into the facility, she said.

Ms. Gillman said that a break in the Route 4 limited access right-of-way, because the roadway was designed and constructed with federal-aid highway funds, requires approval of the Federal Highway Administration. FHWA requires that an environmental review of the proposed break be conducted, and that the town complete a National Environmental Policy Act (NEPA) document that shows no negative environmental impacts. A review and document was completed for this project, and no negative environmental impacts were found. As a result, FHWA concluded that the proposed break will not impair Route 4 or interfere with the free and safe flow of traffic, she said.

Mr. Burditt said that a break in limited access will allow future development of the recreation area to proceed. The new access to Boardman Hill Road will benefit the public through increased safety, increased recreational opportunities, and increased economic activity as modernization and expansion of the facility will allow the town to host additional local events as well as regional and statewide recreation-oriented events.

Ms. Gillman said that VTrans supports the proposal before the Board.

Mr. Coen closed the hearing. Mr. Zicconi informed everyone that the Board will deliberate in private and that the Board will issue a written decision.

### ***1.6 Executive Secretary's Report***

**ID Badges:** Mr. Zicconi informed the Board that Mr. Bailey had requested that he investigate the possibility of Board members getting electronic identification badges that would allow them to access the National Life complex without having to go through security. He said the state can issue Board members state IDs, but that National Life will only issue its key cards, which are necessary to unlock the building's doors and avoid security, to workers who are in the building regularly.

### ***1.7 TB-452 Smith Small Claim***

Mr. Zicconi said that Ms. Smith waived her right to a hearing and requested that the Board decide her claim solely on the paperwork submitted. The Board agreed to discuss the case when it goes into deliberative session later in the meeting.

### ***1.8 TB-441 Pike Contractor Claim***

Mr. Zicconi said that other than the seven public forums the Board has scheduled during the months of October and November that it has no other business, other than deliberations, that needs to be conducted prior to December. The Board then agreed to hold its next regular meeting, which will include a hearing on the Pike claim, on December 7.

## **2. OLD BUSINESS**

### ***2.1 Fall Public Forums***

At its last meeting, the Board agreed that this fall it would hold six public forums on the topic of rail in the following locations: Brattleboro, Newport, Rutland, St. Albans, Vergennes and White River Junction. All communities were selected because they are so-called "train towns," and most will be affected by the advent of new passenger service scheduled to begin sometime in the next few years.

Mr. Coen said that because Chittenden County is squarely in the cross hairs of several planned passenger rail expansions that he believes the Board would be remiss if it did not hold a forum in Burlington. Other Board members agreed, and chose November 14 as the date for a Burlington forum. Mr. Zicconi said he would work to find a suitable location, but that Main Street Landing would be his first choice as it is the location of the proposed new train station. Including the newly scheduled Burlington forum, the schedule is as follows:

- October 17 – Vergennes, 6:30 p.m. at the Bixby Library
- October 20 – Newport, 6 p.m. at the Gateway Center
- October 27 – Rutland, 6 p.m. at the Holliday Inn
- November 9 – Brattleboro, 6 p.m. at the Brattleboro Museum & Art Center
- November 10 – St. Albans, 6:30 p.m. at the St. Albans Museum
- November 14 – Burlington, TBD

- November 16 – White River Junction, 6 p.m. at the Hotel Coolidge

## **2.2 TB-387 Route 7 Rutland Break in Limited Access**

Mr. Coen opened the hearing, which is a continuation of a hearing that took place on August 11, 2016.

Mr. Zingale informed the Board that the Rutland Select Board requests to have Phase B of the town's proposal taken off the table. The reason for this is that the future of Rutland Commons, a proposed commercial development south of Holiday Drive, now appears uncertain. The town still seeks a permit for Phase A.

Mr. Zicconi said he discussed this with Mr. Zingale prior to today, and sought legal council's thoughts. He was informed that proceeding with Phase A only is OK, but that any permit the Board may issue should make clear that the Board reserves a right to make a public-good determination for Phase B should anyone apply to develop the Rutland Commons property in the future.

Mr. Elliott said that a Route 7 connection to Farrell Road that does not involve the Rutland Commons property has no impact on property owned by the Rutland Audubon Society. Mr. Grayck said that his client, the Diamond Run Mall, has no objection to the construction of Phase A. Mr. Grayck also provided the Board copies of a Superior Court document titled "Stipulation of Withdrawal" that he said shows that Saxon Partners, LLC, the parent company of Rutland Commons, has withdrawn its ACT 250 application to develop the land south of Holiday Drive.

Phase A creates a slip lane connecting Route 7 south to Farrell Road. Mr. Slason, A senior engineer at RSG and the town's consultant, said the town's Phase A proposal calls for maintaining north-bound traffic only along Cop John Drive north of Farrell Road but in a way that eliminates traffic from turning left into the Green Mountain Plaza. Safety will be enhanced because of this, he said.

Mr. Bruce asked Mr. Slason about the impacts of closing Cop John Drive north of Farrell Road instead of restricting it only to north-bound traffic. Mr. Coen said closing the northern most segment of Cop John Drive to all traffic would eliminate the ability for vehicles to cross into the path of motorists using the new slip lane, many of whom likely would be traveling at a high rate of speed. Mr. Zicconi said closing the northern most segment of Cop John Drive also would eliminate a merge from Cop John Drive into traffic exiting the Green Mountain Plaza and entering Route 7.

Mr. Slason said keeping the northern part of the road open allows motorists options on how to gain access to Route 7. He described options as generally being good, but said the benefit in this case is "minor" because closing the northern segment of Cop John Drive only would shift 10 vehicles per peak hour to the south.

Adding 10 cars to the south at the un-signalized intersection at Holiday Drive with a stop sign is not a significant number of vehicles, Mr. Slason said. But when you add redundancy to the network, it adds an overall benefit of the area because creating redundancy in a safe manor improves the efficiency of the overall network as it reduces the concentration of traffic movements. And since so few cars travel north

on Cop John Drive, he sees no reason to eliminate that movement. It also seems prudent to keep capacity where appropriate because doing so keeps flexibility into the future, he said.

Mr. Clow said he spent time observing traffic movements in the area. He said during the daytime it appears that trucks entering Route 7 from Farrell Distributing go south along Cop John Drive and access Route 7 via Holiday Drive even if these trucks are headed north.

Mr. Clow said he called Farrell Distributing and was told this is generally true in the daytime, but that in the very early morning when trucks begin their daily delivery runs – usually at 5:45 a.m. – that northbound trucks generally travel north along Cop John Drive and enter Route 7 through the entrance to the Green Mountain Plaza. Plaza stores, however, are closed at this time so there is no traffic at the plaza entrance, he said.

Clow said there would be no negative to having all trucks using Farrell Road access Route 7 at Holiday Drive, but that he agreed with Mr. Slason the options are generally good. Thus he also favored leaving the north end of Cop John Drive open to north-bound traffic only. He said that he believes with proper signage and roadway delineations, that allowing east moving traffic along Farrell road to take both left and right turns along Cop John Drive would work safely.

Mr. Slason said that should the Board issue a permit condition requiring the northern segment of Cop John Drive be closed, that trucks existing Farrell Road could access the Green Mountain Plaza parking lot via an entrance along Farrell Road, navigate through the parking lot, and use the main plaza driveway to access Route 7. He described the turning movement entering the parking lot a tight, but possible. He said such a maneuver during shopping hours would be undesirable due to the parking-lot traffic, but that at 5:45 a.m. with all the stores closed such a maneuver could be done safely.

Mr. Coen closed the hearing.

**At 11:50 p.m. the Board on a motion by Ms. Kittell seconded by Mr. Bruce entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-387 Town of Rutland Request for a Break in Route 7's Limited Access, TB-450 Wilton Small Claim, TB-452 Smith Small Claim, and TB-432 Town of West Rutland Request for a Break in Route 4's Limited Access.**

Mr. Zicconi was invited to join the deliberative session.

**The Board exited deliberative session at 12:20 p.m.**

### **3. OTHER BUSINESS**

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

No one had any issues to discuss

### **4. ADJOURN**

**On a motion by Ms. Kittell seconded by Mr. Bruce, the Board unanimously voted to adjourn at 12:21 p.m.**

Respectfully submitted,

John Zicconi  
Executive Secretary

**Next Board Meeting: December 7 at Dewey Conference Room R206 at National Life in  
Montpelier**