

# VERMONT TRANSPORTATION BOARD MEETING APRIL 13, 2017

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## **Board Members Present:**

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  
Wendy Harrison, term expires 2/28/19 (by phone)  
Vanessa Kittell, term expires 2/28/19

## **Board Members Absent:**

William Tracy Carris, term expires 2/28/2017

## **Others Present:**

John Zicconi, Board Executive Secretary  
Ron Shems, (by phone)

## **Call to Order:**

Following a deliberative session – see item 2.1 under old business – Chair Vanessa Kittell called the Thursday, April 13, 2017 meeting to order at 10:20 a.m., which was held at the Law Office of Shoup, Evers and Green in Burlington, Vermont.

## **1. NEW BUSINESS**

### ***1.1 Review/Approve Minutes of the February 23, 2017 Meeting***

**On a motion by Mr. Bailey seconded by Ms. Terry, the Board unanimously voted to approve the minutes of the February 23, 2017 Board meeting with corrections.**

### ***1.2 TB-457 Roback Railroad Crossing Petitions and Motion by VTrans to Intervene***

Mr. Zicconi informed the Board that he and Board Attorney Ron Shems had a prehearing phone conference with the parties on April 10 to discuss the upcoming hearing scheduled for May 10, 2017. Prior to the conference, VTrans, which owns the Railroad tracks at issue in the case, let the Board know that it planned to file a motion to intervene. At the phone conference, VTrans was asked to file the motion prior to today's Board meeting so the Board could act upon the motion should it want. The Motion was filed on April 12 and emailed to the Board for review.

Mr. Bruce asked if there is a time limit on motions to intervene. No one knew what time frame the Rules of Civil Procedure dictated and asked Mr. Zicconi to investigate. Mr. Coen asked that any approval include a list of things that are expected of the intervener, such as attending hearings on time and meeting filing deadlines. Mr. Bruce said he is involved in a case before the Public Service Board which outlines such rules that interveners must follow. Mr. Zicconi asked Mr. Bruce to send him a copy of the language used by the Public Service Board so that he could use it as a guide to draft similar language.

The Board asked Mr. Zicconi to draft a decision granting VTrans motion to intervene and circulate it to Board members via email next week for review and approval.

*Note: The Board on April 24 granted VTrans' Motion to Intervene.*

### ***1.3 TB-458 Northfield Train Bridge Petition***

Mr. Zicconi informed the Board that he received a petition from the Town of Northfield pursuant to 5 V.S.A. § 3577 to 3579 asking the Board to order the Genesee and Wyoming Railroad, parent company to the New England Central Railroad, to fix a train bridge in the Town of Northfield that VTrans recently ordered closed. The closure impacts how local residents can get around as well as emergency response times to some 25 homes. Since the petition was filed, however, the town and the railroad have entered into negotiations to repair the bridge, and the town is now asking the Board to stay its petition while the two parties work out an agreement.

Mr. Zicconi said he recently contacted the Railroad and was verbally told they do not oppose a stay. He asked for such a communication in writing, but has yet to receive it. Mr. Coen suggested the Board hold off on taking any formal action until the railroad provides the Board an official response. Others agreed. The Board took no action.

### ***1.4 TB-416 G. Stone Motors vs. General Motors Request for Dismissal***

The Board received a stipulated agreement signed by both parties requesting that the Board dismiss this case with prejudice as the parties have reached a settlement.

**On a motion by Mr. Coen seconded by Mr. Bailey, the Board unanimously voted to dismiss TB-416 with prejudice.**

### ***1.5 TB-454 Matthews Helipad, Motion to Withdraw Application***

The Board received a letter from the applicant withdrawing his application without prejudice. Mr. Zicconi said the applicant, faced with opposition from neighbors, no longer wishes to proceed, but does want to leave potential options open should the local situation eventually change.

**On a motion by Mr. Bruce seconded by Ms. Terry, the Board unanimously voted to dismiss TB-454 without prejudice.**

### ***1.6 TB-445 Winterset Appeal, Appoint Hearing Officer***

When this case was first filed back in January, then Board Chair Nick Marro appointed Ms. Kittell prehearing officer to preside over prehearing matters. Mr. Zicconi told the Board that this authority generally was meant to extend only to minor prehearing matters such as scheduling, and was not meant to usurp the Board's authority to preside over more significant prehearing legal issues such as motions

from the parties that could help decide or otherwise impact the case's outcome. Should the Board wish Ms. Kittell to have such prehearing authority, Mr. Zicconi said the full Board should appoint her prehearing officer so that there would be no ambiguity as to the extent of her authority.

**On a motion by Mr. Bruce seconded by Mr. Coen, the Board unanimously voted to appoint Ms. Kittell hearing officer over all prehearing matters associated with TB-445.**

***1.7 TB-443 Schultz Appeal, Appoint Hearing Officer***

When this case was first filed back in January, then Board Chair Nick Marro appointed Mr. Carris prehearing officer to preside over prehearing matters. Mr. Zicconi told the Board that this authority generally was meant to extend only to minor prehearing matters such as scheduling, and was not meant to usurp the Board's authority to preside over more significant prehearing legal issues such as motions from the parties that could help decide or otherwise impact the case's outcome. Should the Board wish Mr. Carris to have such prehearing authority, Mr. Zicconi said the full Board should appoint him prehearing officer so that there would be no ambiguity as to the extent of his authority.

**On a motion by Ms. Terry seconded by Mr. Bruce, the Board unanimously voted to appoint Mr. Carris hearing officer over all prehearing matters associated with TB-443.**

***1.8 Executive Secretary's Report***

**Contracting with an attorney:** Shortly after the Board during the summer of 2016 agreed to extend the contract of legal consultant Tom Viall through September of 2017, Mr. Viall announced he would be spending much of his time out of state and would be unable to work for the Board in his prior capacity. At that time, Mr. Zicconi hired attorney Ron Shems to temporarily help the Board with a couple of small legal issues. Mr. Shems' workload has since increased, and Mr. Zicconi advised the Board that it would be proper for the Board to formally contract with Mr. Shems due to the amount of his growing legal fees.

The Board agreed it should formally contract with an attorney, but said it wanted to place such a contract out to bid rather than simply provide Mr. Shems a sole-source contract. Board members were clear that such a decision had nothing to do with the satisfaction of past services provided by Mr. Shems. Being a public body, the Board believed it proper to seek options prior to signing a contract. Mr. Zicconi said he would investigate bidding options and report back to the Board at a future meeting.

**Parking Placards:** Because the Board may hold future hearings in downtown Montpelier, Mr. Zicconi requested and received parking placards for Board members that allow them to park in the various state employee lots about town.

**Board Duty Spread Sheet:** With so many new members, the Board at its last meeting asked Mr. Zicconi to compile a list of Board duties that would help everyone understand the full breadth of the

Board's authority. Mr. Zicconi compiled a spreadsheet outlining such duties and presented them to the Board.

## **2. OLD BUSINESS**

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

**At 9:30 a.m. the Board on a motion by Mr. Coen, seconded by Mr. Bruce and approved unanimously entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-441 Pike Contractor Claim. Ms. Harrison, who participated in the public portion of the meeting by phone, did not participate in the executive session.**

Mr. Zicconi and Mr. Shems, who participated by phone, were invited to join the deliberative session.

**The Board exited deliberative session at 10:20 a.m.**

## **3. OTHER BUSINESS**

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

No one had any issues to discuss

## **4. ADJOURN**

**On a motion by Mr. Bailey seconded by Mr. Coen, the Board unanimously voted to adjourn at 11:30 a.m.**

Respectfully submitted,

John Zicconi  
Executive Secretary

**Next Board Meeting: 10:30 a.m. on May 10, 2017**