

VERMONT TRANSPORTATION BOARD MEETING JANUARY 31, 2018

Board Members Present:

David Coen, term expires 2/28/18
Richard Bailey, term expires 2/28/18
T. Faith Terry, term expires 2/28/19
Timothy Hayward, term expires 2/28/2020
Wendy Harrison, term expires 2/28/19
Vanessa Kittell, term expires 2/28/19
Lawrence H. Bruce, term expires 2/28/2018

Board Members Absent:

None

Others Present:

John Zicconi, Board Executive Secretary
Ron Shems, Board Attorney

Call to Order:

Board Chair Vanessa Kittell called the Wednesday, January 31, 2018 meeting to order at 10 a.m., which was held at the Catamount Conference Room on the National Life Campus in Montpelier, Vermont.

1. NEW BUSINESS

1.1 Review/Approve Minutes of the October 23, 2017 Meeting

On a motion by Mr. Bailey seconded by Mr. Coen, the Board unanimously voted to approve the minutes of the October 23, 2017 Board meeting.

1.2 TB-443 Schultz Contactor Claim, Motion to Stay and Motion for Fees

The Board at 10:10 a.m. on a motion by Ms. Terry, seconded by Mr. Bailey and approved unanimously entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-447 Roback Railroad Crossing and TB-443 Schultz Contractor Claim.

Mr. Zicconi and Mr. Shems were invited to join the deliberative session.

The Board exited deliberative session at 11:05 a.m.

1.3 Helipad Statutes, Rules & Permits

The Board discussed possibly updating its rules regarding how it permits helipads and other private landing areas, and whether it wants to recommend potential statute changes to the Legislature. The Restricted Landing Area (RLA) statute states that an applicant must assert how the facility serves the "public interest." Mr. Shems said Vermont statute does not define public interest, so if the Board seeks

clarity it has options: it could ask the Legislature to define the term or the Board could promulgate a rule that defines it. He suggested rule promulgation.

Mr. Zicconi said it is his belief that the Board's current rules and the state statute (5 V.S.A. § 207) are written with some ambiguity because the statute also calls for an RLA to have municipal approval. It is through this municipal approval that both the public good and public interest would be debated and determined. Once approved on the municipal level, statute calls for the Board's review, which he believes was envisioned to be more on a technical level than a community level. Mr. Bruce agreed but said the issue the Board is having stems from the fact that in some cases municipal approval is almost meaningless as applications sometimes come to the Board after little or no public debate at the local level.

Ms. Harrison said that local zoning regulations often spell out certain rights that landowners have by right, as well as other property uses that are possible under certain circumstances. The issues with helipads and other aviation landing areas is that the uses often are accompanied by disturbances that transcend property lines, such as noise, that if approved should come with either additional compensation of some sort or some other permit threshold prior to being allowed.

Mr. Coen said in the past the Board has required applicants only to have to allow their RLA to be used by emergency services when needed. No other conditions have been necessary to determine public good or public interest. Ms. Harrison said the Board's permits, however, do not require the applicant to keep the landing area free of snow or lit at night so that it could always be used for emergencies. And often times a community has other areas where a helicopter could land in an emergency. As a result, the Board's RLA process could benefit by defining public interest more broadly, she said.

Mr. Coen said the Board's rules also do not provide for a way the Board can revoke an RLA permit should a situation arise post approval where such a revocation would be within the public's interest.

Ms. Terry said that in many locations there is an already established airport within a reasonable distance that could be used to land helicopters. Under such circumstances, maybe the Board's rules should bar RLAs on private property, thus creating a form of quiet zone, as there is a reasonable local alternative.

Ms. Kittell said the Board may want to build into its rules more discretionary powers to consider additional ways to grapple with these issues. Mr. Bruce said the Board also could better define what it expects from local review of RLAs regarding public interest, and if such a review is not done then the Board would step in and consider public interest.

Mr. Shems said the Board should keep in mind that there sometimes is tension between public interest and local approval. Facilities that generate energy, regional landfills or hazardous waste facilities,

schools, and hospitals are all examples of development that does not have to go through local zoning because they serve the public interest. Mr. Shems said RLAs may or may not rise to such a standard, but he cautioned the Board to keep this tension in mind as it works its way through this issue.

Ms. Harrison said the Board should consider some kind of reasonable distance between RLA. Ms. Kittell said such a threshold maybe better left to the locals and be included in local zoning regulations. She suggested the Board draft a letter letting municipalities know that issue regarding RLAs have become a concern in some communities and thus have become a point of interest for the Board. Hopefully such a letter will provoke communities to discuss the issue on the local level as well as provide the Board feedback. Mr. Coen said any such effort should also be accompanied by the Board potentially reworking its RLA rules to better define the Board's process.

Mr. Shems said good rulemaking involves a pre-rulemaking process. The Board could send such a letter to municipalities, the League of Cities and Towns, various planning associations, the aviation community, VTrans, and others to let them know that the Board is thinking of doing rulemaking about this issue. Hopefully this communication will prompt a conversation that helps the Board come up with a proposal. The Board agreed and asked Mr. Shems and Mr. Zicconi to draft such a letter that would include a June date for getting feedback.

1.4 Executive Secretary's Report

Lemon Law Update: Mr. Zicconi informed the Board that he, at the request of the Motor Vehicle Arbitration Board, worked with the Department of Motor Vehicles to include two updates to the Lemon Law statutes in this year's DMV Miscellaneous Bill. The draft statutory changes, he said, are designed to nullify any auto manufacturers' attempt to force consumers into binding arbitration and to clarify that the primary manufacturer of a Recreational Vehicle is ultimately responsible for any warranty defects that result in the RV being lemoned. As a result of these proposals, Mr. Zicconi said he will be spending considerable time this Legislative Session at the Statehouse to shepherd the changes through to law.

1.5 Kendall Station Road, Norwich, Southern Crossing

In its August 10, 2017 order regarding TB-457, the Board noted that Kendall Station Road residents raised safety concerns regarding the railroad crossing located at the southern end of their neighborhood. In the decision, the Board noted that pursuant to 5 V.S.A. § 3456 and 3457 that the Board has jurisdiction over the crossing and that in the future it would "notice a proceeding to address issues regarding the southern crossing." Mr. Zicconi suggested that the Board hold a site visit and hearing regarding this matter sometime in the spring. The Board chose May 3, 2018.

1.6 2018 Public Forms

At its retreat on January 11, 2018, the Board selected five possible topics for this year's fall forums. After considerable discussion, the Board narrowed the field and chose the topic of electric and

autonomous vehicles, as well as the economic and social challenges they would bring, as this year's leading candidate. Mr. Zicconi suggested that he schedule some state experts on these topics to provide the Board a presentation at a future meeting. The Board agreed, and scheduled its next meeting for February 22, 2018 and asked that presentations be made at that time.

2. OLD BUSINESS

2.1 TB-467 Roback vs. Washington Country Railroad

See item 1.2 under New Business

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 12:50 p.m.

Respectfully submitted,

John Zicconi
Executive Secretary

Next Board Meeting: 10 a.m. on February 22, 2017