

VERMONT TRANSPORTATION BOARD MEETING MAY 3, 2018

Board Members Present:

David Coen, term expires 2/28/21
T. Faith Terry, term expires 2/28/19
Tim Hayward, term expires 2/28/2020
Wendy Harrison, term expires 2/28/19
Vanessa Kittell, term expires 2/28/19
David Markowski, term expires 2/28/21

Board Members Absent:

Richard Bailey, term expires 2/28/21

Others Present:

John Zicconi, Board Executive Secretary
Toni Clithero, Assistant Attorney General
Peter Young, Attorney Washington Country Railroad
Mark Fitzgerald, VTrans Rail Section
Tim Chow, Kendall Station Road Resident
Lynn Chow, Kendall Station Road Resident
Nora Jacobson, Kendall Station Road Resident
Ernie Ciccotelli, Kendall Station Road Resident
Chris Maute, Rivers Edge Lane Resident
Colleen Barr, Kendall Station Road Resident
John Roback, Kendall Station Road Resident
Paula Bergeron, Kendall Station Road Resident
Roger Blake, Kendall Station Road Resident
Other Norwich residents or members of the media who did not speak or leave their names

Call to Order:

Chair David Coen called the Thursday, May 3, 2018 meeting to order at 9 a.m., which was held in the Norwich Public Library, 368 Main Street in Norwich, VT.

1. NEW BUSINESS

1.1 Introduction and Welcome of New Board Member

Mr. Coen introduced new Board Member David Markowski, who replaces Larry Bruce. Mr. Markowski is from Rutland County and was appointed by Governor Scott to a three year term that will end on February, 28, 2021.

1.2 Review/Approve Minutes of the January 31, 2018 Meeting

On a motion by Ms. Terry seconded by Ms. Kittell, the Board unanimously voted to approve the minutes of the January 31, 2018 Board meeting with corrections.

1.3 State Transportation Rule Review

Mr. Zicconi informed the Board that he was contacted by VTrans, which is requesting that all Administrative Rules related to Transportation be reviewed to make a determination of whether the rule should be retained, modified or repealed. All told, there are close to 100 rules that deal with transportation, of which 21 pertain to the Board. Some rules date back to the 1960s. The Agency's goal is to modernize all rules so that anything remaining in place is both necessary and functional in today's society. The first phase of the initiative is to identify rules that are outdated and can be repealed. Mr. Zicconi said he would review the rules, identify which ones he believes could be repealed and present them to the Board at its next meeting on June 6 for discussion.

1.4 Executive Secretary Job Description Subcommittee

Mr. Coen informed the Board that before he was appointed Chair that former Chair Ms. Kittell had appointed a subcommittee comprised of Mr. Bailey, Ms. Harrison, and Mr. Hayward to work with Mr. Zicconi to draft a job description for the Executive Secretary's position. Mr. Coen supports this effort, and asked the Board to officially sanction the subcommittee, which will hold its first meeting later today.

On a motion by Ms. Terry seconded by Ms. Kittell, the Board unanimously voted to form an Executive Secretary Job Description Subcommittee comprised of Mr. Bailey, Ms. Harrison and Mr. Hayward.

1.5 Executive Secretary's Report

TB-443 & TB-457: Mr. Zicconi informed the Board that court appeals to both TB-443 Schultz and TB-457 Roback have been scheduled for May 30. Roback is scheduled for 9 a.m. in Windsor County Court, while Schultz is scheduled for 2 p.m. before the Vermont Supreme Court. Mr. Zicconi said he plans to attend both hearings and will report back to the Board at its meeting on June 6.

Aviation Rule Letter: At the Board's retreat in January, the Board expressed a wish to review its administrative rules regarding aviation for potential modification regarding the citing of Restricted Landing Areas. It instructed Mr. Zicconi to draft a letter seeking pre-rulemaking comments from stakeholders such as municipalities, regional planning commissions and the aviation community. Mr. Zicconi informed the Board that such a letter, which was reviewed by both Mr. Coen and Board attorney Ron Shems, has been issued. Stakeholders were given until July 1 to comment.

TB-445 Winterset: Mr. Zicconi informed the Board that the parties in the Winterset case wrote to inform the Board that they have agreed to settle. The parties are still drafting the agreement, but once signed they plan to seek dismissal from the Board.

Lemon Law Legislation: Mr. Zicconi informed the Board that both the House and Senate Transportation Committees approved the two statutory changes that were sought by the Motor Vehicle

Arbitration Board, and that both changes were included in the Transportation Bill that should be approved by the Legislature sometime later in May.

1.6 TB-464: Site Visit – Kendall Station Road Southern RR Crossing

The Board suspended the meeting to hold a site visit at 10 a.m. at the Kendall Station RR Crossing.

1.7 TB-464: Public Hearing – Kendal Station Road Southern RR Crossing

Mr. Markowski told those in attendance that he is in the construction business and that at points in time his firm does work for both VTrans and the railroad. But he is here as a Board member with his intent to make decisions in the best interest of all involved. He said he would consider recusing himself if anyone thought that was necessary. No one sought his recusal.

Mr. Coen said when the Board was in town last year to take up matters related to Kendall Station Road's northern crossing it observed that there were concerns regarding the roadway's southern crossing. In its order regarding the northern crossing, the Board stated it would return to hear those concerns and asked the railroad to consult the neighbors and come up with a plan to address the issues. He asked if the railroad had in fact consulted with the neighbors and if such a plan had been drafted?

Mr. Young said the RR consulted with VTrans regarding highway safety at the crossing but that they did not reach out specifically to neighbors although they did have input from some residents that were involved in the northern crossing issue. After having such communications, the RR determined it was prudent to wait for the state to assess the crossing since its safety is a roadway matter under the state's jurisdiction and not an issue that is directly related to operation of the railroad.

Ms. Clithero said VTrans has conducted a safety assessment of the southern crossing and has determined that the southern crossing falls in a range where improvements could be made, however approximately 40 percent of all crossing throughout the state fall into this category. What VTrans does is spend what money it has to make safety improvements at the crossings that it considers the most critical. For the crossing at issue, VTrans has made the determination not to take any action at this time.

Mr. Coen then called on members of the public and invited them to speak.

Mr. Chow said he measured the crossings stop sight distance and it came to 225 feet to the north and 275 feet to the south. When trains travel at 25 mph, which is the case here, federal guidelines say these distances should be 600 feet. Prior to 2017, trains running along Kendall Station Road were limited to 10 mph. At that speed the existing sight distances were adequate. So the safety issue at the crossing was caused when the state improved the tracks so that train speeds could be increased.

Ms. Jacobson said she agreed with Mr. Chow, and asked if a stop, look and listen sign could be erected on both sides of the track. She is concerned most about the speed of the trains. She said she liked the trains when they travelled at 10 mph but now that they run at 25 mph or greater they are terrified.

Ernie Ciccotelli said that since the northern crossing has closed that traffic over the southern crossing has doubled. Not all traffic is from people who live in the neighborhood as about half the homes along Kendall Station Road include a home business of some kind. He also said the way the train whistle blows is inadequate. He said in years past, the train whistle was blown well in advance of the train reaching the crossing, but now the train is much closer before it blows its whistle providing less warning time. He said for safety, the neighborhood needs some kind of warning device other than just the train whistle. He requested lights.

Ms. Maute said there are three houses that are fairly close to the tracks and that with the recently increased train speeds that should there be an accident these houses would be vulnerable should there be a derailment.

Ms. Barr requested that some kind of light at the crossing be installed.

Ms. Chow said last year a storm blew a tree down on the power lines, and emergency officials closed the crossing, which for a few hours made it impossible for residents to either access their homes or leave the neighborhood. She also said to properly see if there is a train coming you have to drive very close to the tracks, which is dangerous. She requested some form of signage to help warn people.

Mr. Chow said there are scrape marks along the pavement at the crossing which was likely made by a car bottoming out when it crossed the tracks. This shows that the crossing is not designed as safely as it should be. He also said that Route 113 in Thetford has a crossing similar to the one at Kendall Station Road, with better sight distances, and when the state improved the tracks in that location so that train speeds could be increased that the state also installed warning lights at that crossing.

Mr. Ciccotelli said there is a fair amount of traffic along Kendall Station Road that comes from out of state. These drivers are not aware of how dangerous the crossing can be and likely do not know to take some of the same safety precautions that the locals do. He said the crossing needs a long-distance warning device such as a light.

John Roback said he would like the Board or the state to negotiate a slowing of the trains as it is possible to mitigate the safety issues by slowing the train speeds.

Mr. Markowski asked if there were federal regulations that provide a standard for blowing train whistles? Mr. Young said there was, and that he would provide that information to the Board.

Ms. Terry asked Mr. Young to address the matter that neighbors have complained that there is no consistency to when and how the train's blow their whistles. Although he did not know exactly what the federal standard where, Mr. Young said the RR abides by the federal standards.

Ms. Bergeron said she has lived in the neighborhood since 1973 and that in years past as many as 6-8 trains would pass through the neighborhood each day. In those days, the train blew its whistle miles prior to reaching the crossing. She would like to see that practice reinstated.

Mr. Ciccotelli said last night the train did not blow its whistle until it was within about 150 yards of the crossing, which represents only about a 10 second warning. He said such little notice was an inadequate safety measure.

Ms. Harrison asked to see a copy of VTrans's safety assessment. Ms. Clithero provided one, and said the crossing, which sees two trains per day and according to a January traffic count sees a volume of 113 cars per day, scored a 50 on the state's sufficiency assessment. The state likes crossings to score at least 60. That said, about half the state's crossings score about 50, she said. Proving lights at this location was assessed, and estimated to cost \$300,000 due to how controllers in the area would have to be installed.

Mr. Markowski asked if the Railroad plans to increase train traffic in the future. Mr. Young said it was the railroad intention to eventually increase train traffic, but that there was no timetable as to when that could occur.

Ms. Kittell asked if the railroad had any discretion in its use of the train whistle. Mr. Young said the routine use of the whistle is federally controlled, but that the whistle can be used in certain circumstances as needed. Ms. Kittell pointed out that several neighbors have commented that the whistle may not be being used as it should. Mr. Young said he would bring those comments back to the Railroad's headquarters and that they would discuss the comments internally.

Mr. Chow said that his family crosses the tracks about 10 times per day and that a similar family would cross the tracks along Route 113 in Thetford a similar amount of times yet the state installed lights there. He asked why his families safety is not as important? He said the railroad could use a flagger at the local crossing, or slow the train's speed, which would cost either nothing or much less than \$300,000.

Mr. Coen closed the hearing and gave everyone 14 days to file additional, written information.

1.8 TB-458: Closure Plan – Kendall Station Road Northern Crossing

Mr. Coen asked about having berms on either side of the tracks as part of the closure plane and if the crossing needs to be open in case of emergency how those berms would be used as part of opening.

Because the closure plan is the subject of two appeals, Mr. Young said he was not going to offer comments in too great a detail. He said the revised plan the was last submitted is consistent with what RR officials testified to. In the event that an emergency opening were to take place that the berms would be used to fill in the existing drainage ditches.

Mr. Coen asked if the crossing has to be open because of flooding at the southern crossing, what would be the impacts to the tracks at the northern crossing if you fill in the drainage ditches?

Mr. Young said his understanding is to physically open the crossing upon request from the town that they likely would use culverts to allow water to flow. It's a more complicated process than just shoveling dirt into the ditch. But what actually would happen would be up to the railroad professionals who were there at the time charged with opening the crossing. He said the railroad has already prepositioned some timbers near the crossing so that they could be laid between the trails in case a crossing needs to be reopened. He said previous testimony indicates that the combination of berms and timbers allows the railroad to on request and contingent on needs and circumstances reopen the access.

Mr. Coen asked Mr. Young to please check with the railroad's engineer and enquire if it was possible to have a more specific answer as to whether temporary culverts would be used when filling in the ditches.

Mr. Young said it was unlikely he could get such an answer if he asked. If the question is how fast could the railroad open the crossing, Mr. Young said they may or may not, depending on the circumstances, wait for a culvert to arrive on site. He said the railroad would not do anything that compromises the track bed or the rail. So how that actually gets done would be determined at the time depending on the manpower available, the resources they have and access to supplies.

Mr. Coen said he understood that, but that his question was a narrow one: what is the impact on the drainage ditches if they were to be filled in? He asked because using dirt from the berms to fill in the ditches to allow access was part of the proposed plan that is before the Board.

Mr. Young said he could clarify that the plan is to use culverts to the extent that they are practical. What actually happens should the crossings need to be reopened will be a matter of the need, the nature of the emergency and how fast things needed to be done.

Mr. Coen again said that because use of dirt from the berms was part of the plan that he would like clarification, in writing, regarding how this would be done and how it would affect the drainage ditches.

Ms. Terry asked that given the current condition of the northern crossing, if there were an emergency next week how would the railroad be able to deal with it quickly to ensure the residents safety?

Mr. Young said the railroad works with emergency responders and municipalities things are needed. The railroad has people on the ground who can work with the community. In a true emergency railroad folks are dealing with a lot of things. Whether the railroad makes opening the crossing the highest of priorities of the railroad system will depend on the circumstances. But the railroad is always in communication with the Town of Norwich, Vermont emergency management and others, and that the railroad is always willing to work with emergency responders. He said it is the railroad's position that an emergency crossing not be designed with a gate that provides local residents a key.

Ms. Harrison asked how far along the railroad was in the implementation of the proposed plan.

Mr. Young said the proposal is the present plan that the railroad would implement when the order becomes final, and should it not have any conditions.

1.9 TB-463 Proctor Train Overpass – Request for Variance

Mr. Coen, who was asked by the Board to visit the overpass to make an assessment, said he was in agreement with the request. He said he believed it was reasonable to build the overpass to 21 feet above rail rather than 23, particularly since 21 feet is what is being used for the Middlebury Tunnel some 25 miles to the north. He said on the ground in Proctor, the impact of going to the statutory mandated 23 feet would be very negative on nearby houses and driveways. He said it was his recommendation that the Board approve what is being requested.

Mr. Coen said he also asked for a list of other overpasses along this rail line that may come before the Board in the future seeking a variance to 21 feet, and that the Board's decision may want to include language that reflects the Board's thoughts regarding future work on these other overpasses to provide both VTrans and the railroad some guidance going forward.

Mr. Markowski asked about future rail use and heights of other overpasses north of this request and how they would possibly limit train travel. Mr. Zicconi said that the Legislature approved the 21-foot height of the Middlebury Tunnel, and once the tunnel is built it will create a 21-foot maximum in Middlebury that would prevent anything taller from using the tracks between Middlebury and Burlington, which for all practical purposes is the end of the line. If the Board were to approve this request, it would move the 21-foot height restriction 25 additional miles to the south in Proctor.

Mr. Coen said a minimum height of 21 feet above the top of rail will allow double stack train cars to use the rail line, which is why he finds this to be a reasonable proposal.

Ms. Harrison said she supported approving this variance but was not in favor of providing the railroad a blanket variance to 21 feet that would impact all the other overpasses along the rail line. Mr. Coen said he was not asking for a blanket variance, only for the written decision to provide some kind of future guidance regarding other overpasses. He said the Board could discuss the matter further in deliberations.

At 2:40 p.m. the Board on a motion by Ms. Terry, seconded by Mr. Hayward and approved unanimously entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-463 Proctor Variance Request, TB-458 Kendall Station Road Northern Railroad Crossing Closure Plan, and TB-464, Kendall Station Road Southern Railroad Crossing.

Mr. Zicconi was invited to join the deliberative session.

The Board exited deliberative session at 3:30 p.m.

1.10 TB-462 Panton Airstrip – Discussion

There was no discussion

1.11 Lemon Fair Insect Control District Aviation Needs Review

Mr. Zicconi told the Board that last week the Lemon Fair Insect Control District, as well as the BLSG Insect Control District, contacted his office regarding permits for helipads. Apparently neither District, which spray to control mosquitos in parts of Addison and Rutland counties, realized they needed to acquire permits until VTrans told them. The issue is that both Districts need to begin spraying in the next week or so, and the helipad permit process takes several months.

Mr. Zicconi said up until now, the Lemon Fair District used a plane that operated out of Middlebury's public airport, something that did not require a permit from the Board. The District, however, this year wants to switch to using a helicopter based in a farm field, possibly more than one farm field, as a way to save money. The BLSG District also used planes up until a few years ago, but since then has been operating a helicopter without a permit near its headquarters in Brandon.

Mr. Coen said he is familiar with the mosquito issues in this part of the state, and if untreated the infestation can be severe. He said he did not want the Board to stall spraying, which to be effective must begin in the early spring when the mosquitos are still in their larva stage. Mr. Zicconi said District officials told him that weather conditions determine how problematic any given mosquito season can be, and that sometimes spraying needs to happen on multiple occasions during the months of May, June and July.

Mr. Zicconi suggested that if the Board did not want to intervene in this spring's spraying that he at least work with the Districts and VTrans to have a VTrans aviation official visit all of the proposed landing sites prior to use. Should any sight be viewed by the VTrans aviation expert as potentially problematic, the District would be told so and encouraged not to use them. The Districts would then be instructed to apply for permits for the other sites prior to next year's mosquito season. The Board agreed.

2. OLD BUSINESS

2.1 Fall 2018 Public Forum –Discussion and Topic Choice

The Board conducted a lengthy discussion regarding the topics of electric vehicles and automated vehicles and chose to have this fall's forums focus primarily on the topic of automated vehicles but include a short section on the economics of electric vehicles. Automated vehicle subtopics for discussion could include:

- Necessary Roadway Infrastructure
- Transition issues – accommodating Vermont's roads, statewide economics, and municipal issues
- Vehicle ownership vs. signing up for a service
- Insurance and liability issues
- Public transit issues and vulnerable populations
- Sprawl – potential impacts
- Testing – what's required get Vermont on Board

3. OTHER BUSINESS

3.1 Round Table

The Board chose to schedule its July/August meeting on July 26. Mr. Coen asked the Board to appoint Mr. Hayward Vice Chair, and to provide him signatory authority during times that Mr. Coen could not be reached.

On a motion by Ms. Harrison seconded by Ms. Terry, the Board unanimously voted to appoint Tim Hayward as the Board's Vice Chair and granted him signatory authority.

4. ADJOURN

On a motion by Ms. Kittell seconded by Mr. Hayward, the Board unanimously voted to adjourn at 3:45 p.m.

Respectfully submitted,

John Zicconi
Executive Secretary

Next Board Meeting: June 6, 2018