

VERMONT TRANSPORTATION BOARD MEETING NOVEMBER 29, 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
Richard Bailey, term expires 2/28/21

Board Members Absent:

Vanessa Kittell, term expires 2/28/19

Others Present:

John Zicconi, Board Executive Secretary
Jenny Ronis, Assistant Attorney General
Ron Shems, Board Attorney

Call to Order:

Chair David Coen called the Thursday, November 29, 2018 meeting to order at 9:30 a.m., which was held in Dewey Conference Room R236 at 1 National Life Drive, Montpelier, VT.

1. NEW BUSINESS

1.1 Review/Approve Minutes of the October 31, 2018 Meeting

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

1.2 TB-387 Rutland Route 7 Break in Limited Access, Request for Extension

The Board received a request from the Town of Rutland to extend by two years the permit the Board issued on December 19, 2016. VTrans wrote the Board informing it that the Agency has no objection to the extension.

On a motion by Mr. Hayward seconded by Ms. Terry, the Board unanimously voted to approve a two-year extension to the permit it issued to the Town of Rutland on December 19, 2016 that allowed a break in Route 7 in Rutland at Farrell Road.

1.3 TB-473 Mystafa Small Claim Hearing

Mr. Mystafa testified that on April 15, 2018 he struck a pothole along a section of Route 105 in Newport. He said that he is familiar with this section of roadway as he travels it regularly. He said he did not know how long the pothole existed before he hit it, but he believes it did not exist for very long as he travels the road “every day” and does not remember seeing the pothole before. Mr. Mystafa testified that

he did not believe VTrans was negligent maintaining the roadway. He seeks reimbursement for his damages should the Board believe such compensation is just.

Mr. Mystafa presented no witnesses or affidavits regarding the length of time that the pothole existed prior to the Incident.

Ms. Ronis said that VTrans received no complaints of a dangerous pothole along Route 105 in Newport prior to when Mr. Mystafa reported the pothole that he hit, and that VTrans repaired the pothole within 48 hours of receiving notice of the incident.

Ms. Ronis said that VTrans acted consistent with its policies and procedures for roadway maintenance and this amounts to an absence of evidence that VTrans knew or should have known about the road condition that caused the loss. Further, she said that the Agency is immune from tort liability with respect to this claim.

1.4 Executive Secretary's Report

Expiring Board Terms: Mr. Zicconi mentioned that the terms of Ms. Kittell, Ms. Harrison and Ms. Terry expire on February 28, and reminded them that if they wish to be reappointed that they must go to the state website dedicated to boards and commissions and submit the appropriate form. Should any of them not wish to be reappointed, Mr. Zicconi asked that they inform him and that he will alert the governor's office.

1.5 Board Schedule – Future Meeting Dates

The Board Scheduled meetings for January 18 and February 21 at locations to be determined. Mr. Shems informed the Board that he will be switching firms beginning January 1. He will be joining the firm of Tarrant, Gillies and Richardson. Given that Attorney Paul Gillies may be involved in TB-478 DuPont/Cotton RLA Application, Mr. Coen asked Mr. Shems to set up a “firewall” with his new firm regarding this case so that there would be no conflicts. He asked Mr. Shems to supply the Board with a letter acknowledging such a firewall.

2. OLD BUSINESS

2.1 Aviation Rules – Discussion

Mr. Zicconi circulated a draft of reworked aviation rules that Mr. Shems drafted. He explained that he and Mr. Shems met with the Vermont Aviation Council, which had no comments other than to tell them that the term “airman” is still the term that the federal government uses and suggested that the Board not change this term as any change would place the state in conflict with federal language. Mr. Shems said the council did suggest that “aviator” would be a reasonable term if the Board were to make the state language gender neutral.

Mr. Shems said while redrafting the rules he focused on areas of statute that mention “public interest” and “municipal approval.” He said his draft took into account the limitations that are currently set in statute as administrative rules must comply with statute. The Board cannot, Mr. Shems said, expand the definition of public interest or municipal approval beyond what is spelled out in statute. Mr. Coen said that if the Board wanted to expand the definitions that he would be willing to discuss statutory change with the Legislature when it reconvenes in January.

Mr. Shems said comments the Board received from municipalities indicates that some would like the Board to have land-use powers akin to those of a zoning board, but that he believes that kind of authority would stray beyond the Board’s current mandate. Mr. Zicconi said his sense due to past discussions is that the Board would like to define public interest in a way that goes beyond what statute currently allows. Doing that cannot be done by writing new administrative rules and instead would require that the Board approach the Legislature and seek a statutory change.

Ms. Terry said she would like to go beyond what statute currently allows and redefine public interest. Mr. Zicconi said to do that the Board needs to define what authority it actually wants so that he and Mr. Shems can draft proposed new statutory language that can be presented to both VTrans and the Legislature.

Ms. Harrison said she would like the Board to consider defining public interest as something that the community would receive from the applicant in addition to the creation of a helipad or airstrip. Something like funding for a community amenity like a playground. She said some states require developers to provide a contribution to the community at large to offset the impact the private development has on others. She said that she would also like to see a requirement for distance between aviation facilities so that individual communities do not get overwhelmed by potential air traffic. Mr. Coen said such congested air traffic currently happens in the Hamptons. Ms. Harrison agreed and said the Board should take measures to prevent something similar from happening here in Vermont.

To do that, Mr. Shems said the Board would have to expand its mandate to include review of zoning-type issues when it receives an application in a town that does not have zoning. Mr. Coen said the only way the Board now can deem the a private helipad or airstrip serves the public good is by mandating that the facility can be used by medical and other emergency services when necessary. He said he did not believe this was enough and that he supports expanding the definition. He said he liked Ms. Harrison’s idea, and that the Board should work to change the definition and present it to the Legislature.

Mr. Coen said aside from redefining public interest, he believes the state is leaving money on the table by not having a fee associated with an application for a helipad or airstrip. In fact, he said the state is losing money because it takes staff time and state resources to permit such facilities and process applications.

Ms. Harrison said that how such permits run – whether with the land or with the person – needs to be better defined. Mr. Zicconi said the Board could work that out in a proposed new rule as opposed to needing to amend statute.

The Board debated whether it should draft proposed statutory changes to present to the Legislature or whether to have the Board's Chair first discuss the issue with the Legislature and ask the Transportation Committees for input on how to better define public interest. Should the Board wish to draft a proposal, Mr. Zicconi said he could approach VTrans about placing such language into this year's Transportation Bill.

Mr. Hayward suggested that the Board first put together a case statement that defines the problems the Board is currently having with the existing system so that it could systematically develop a solution. The Board agreed. Ms. Harrison volunteered to work with Mr. Shems on this and present back to the Board at its meeting in January.

2.2 TB-466 Cote Small Claim, Request to Reconsider

2.3 TB-467 Doucette Small Claim, Request to Reconsider

2.4 TB-470 Molleur Small Claim, Request to Reconsider

At 10:10 a.m. the Board on a motion by Ms. Harrison, seconded by Mr. Terry and approved unanimously entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-466 Cote Small Claim, TB-467 Doucette Small Claim and TB-470 Molleur Small Claim.

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

The Board exited deliberative session at 11 a.m.

2.5 TB-478 Dupont Air Strip (Deliberation if Necessary)

No discussion or deliberation on this topic was conducted

3. OTHER BUSINESS

3.1 Round Table

No one had any issues to discuss

4. ADJOURN

On a motion by Ms. Terry seconded by Mr. Bailey, the Board unanimously voted to adjourn at 11:55 p.m.

Respectfully submitted,

John Zicconi
Executive Secretary

Next Board Meeting: January 18, 2019