

VERMONT TRANSPORTATION BOARD MEETING NOVEMBER 13, 2019

Board Members Present:

David Coen, term expires 2/28/21
Pam Loranger, term expires 2/28/22
Tim Hayward, term expires 2/28/2020
Philip Zalinger, term expires 2/28/22
Richard Bailey, term expires 2/28/21

Board Members Absent:

James Fitzgerald, term expires 2/28/21
Wendy Harrison, term expires 2/28/22

Others Present:

Ron Shems, Board Attorney
Jenny Ronnis, Vermont Assistant Attorney General
Bruce Martin, VTrans Project Manager
Rosa Benoir, VTrans Right-of-Way Chief
Eric Furs, VTrans Right-of-way Agent
James Morale, Pittsford Property Owner
Christopher Blanchard, Morales Attorney
William Scranton, Licensed Appraiser

Call to Order:

Chair David Coen called the Monday, October 7, 2019 meeting to order at 9:15 a.m., which was held at the Pittsford Town Offices at 426 Plains Road in Pittsford, VT.

1. NEW BUSINESS

- 1.1 TB-504 Morale Just Compensation – Site Visit***
- 1.2 TB-504 Morale Just Compensation – Hearing***

Mr. Coen immediately upon opening the meeting recessed the proceeding so the Board could conduct a site visit at 36 Mountain View Drive in Pittsford, VT – the home of James and Patricia Morale. Upon concluding the site visit, the Board and the parties to the Morale appeal of just compensation returned to the meeting room to conduct an evidentiary hearing.

Mr. Zicconi swore in the parties. Mr. Martin conducted a short presentation of the Route 7 highway project known as Pittsford, NH 019-3(491), which both reconstructs and widens the segment of Route 7 in Pittsford that passes in front of the Morale's property. The project is 1.37 miles long, and its purpose is to improve and widen Route 7 to make it a safer roadway.

Ms. Benoir testified that VTrans conducted an appraisal of the Morales property to determine the fair-market value of the land the state acquired in a taking necessary to improve Route 7. The Route 7 roadway project required the condemnation of various properties along Route 7, including a 0.44-acre

strip of the Morale's land, permanent slope easement rights to an additional 2,770 square feet of their property, and temporary construction easement rights to another 3,850 square feet of their property, all of which run along the western side of Route 7. VTrans appraisal concluded the fair-market value of the taking to be \$2,800, while the Morales believe the value is \$11,000. The Morales did not participate in VTrans' appraisal as they did not answer any of three notices they were given. The appraisal was conducted in May of 2019.

Ms. Benoir said VTrans valued the land as if it were vacant and suitable for development as the taking did not involve a structure. VTrans appraisal identified six properties for comparison purposes, but only used three as comparable. VTrans valued the condemned property at \$15,942 per acre for comparison purposes. VTrans used a methodology to appraise the property known as the Sales Comparison Approach.

She described the Sales Comparison Approach as a set of procedures that derives a land value by comparing the property being appraised to similar properties that have recently sold. Property is assessed at its highest and best use, which here is residential. This methodology is an accepted methodology and common within the appraisal industry. It allows the appraiser to break the property into various units to make value adjustments to these units based on specific and unique features to each property.

Part of the condemned property – 0.41 acres – is encumbered by an easement due to it being within the Route 7 right-of-way. VTrans valued right, title and interest in this 0.41 acres at \$200. VTrans valued the unencumbered portion of the condemned property – 0.03 acres – at \$500. VTrans valued all permanent rights of the taking at \$1,400. VTrans valued all temporary rights – including the right to plant trees, shrubs and construct a temporary driveway – of the property needed for two years at \$700. The sum of all these units total \$2,800.

Ms. Benoir said VTrans will remove several trees and shrubs that are within the Route 7 right-of-way on the Morale's property. This greenery helps buffer the Morale's home from Route 7. VTrans' appraisal values these trees and shrubs at zero dollars because the Agency, before it completes the Route 7 reconstruction project, will replace them by planting a total of seven evergreen trees and eight deciduous shrubs. While initially small, she estimated the new plantings would take 5-10 years to create an adequate buffer.

Mr. Blanchard asked Ms. Benior why VTrans did not use certain nearby land sales as comparable properties in its assessment of fair-market value. Ms. Benoir said those land prices were the product of negotiated settlements regarding other land takings. She said there is a Supreme Court case that says the state cannot use negotiated takings as comps when assessing fair-market value.

Mr. Furs testified that VTrans negotiated with the Morales prior to a portion of their property being condemned, and offered the Morales \$10,000 as just compensation for the taking. The Morales responded to VTrans offer with a counteroffer of \$15,000. VTrans did not accept the counteroffer. He

said ultimately the parties were unable to successfully negotiate a mutually agreeable sum of just compensation for the taking.

While the Morales after months of negotiation did agree to accept \$10,000, Mr. Furs said they agreed very close to the time the land was officially condemned, and once that takes place the state by law cannot offer more than the appraised, fair-market value of the land, which in this case is \$2,800. He said the higher sum was offered only as a way to prevent the state from having to proceed through the condemnation process, and by the time the Morales accepted the \$10,000 offer he was no longer authorized to make such an agreement.

Mr. Morale testified that he stipulated to the necessity of the Route 7 highway project, but that he does not believe \$2,800 is a reasonable price for the taking of his land. He said the current tree and shrub buffer, which is more than 20 years old, will be lost as part of the project and that newly planted trees and shrubs will not work as well as they will take many years to mature. He is also concerned that the construction on his land could damage his septic system and leach field, but he was unable to verify the legitimacy of this concern as he is unaware of just where the septic systems infrastructure is buried.

Mr. Morale said the state's \$10,000 offer took place after he hired legal counsel. He in turn asked for \$15,000 in part to help compensate for his legal fees. The state did not accept his counteroffer, so he lowered it to \$12,000. The state also rejected this counteroffer.

Mr. Scranton testified that he agreed with the methodology that VTrans used to appraise the Morales property, but questioned the way VTrans used prior land sales as comparable. In his appraisal, Mr. Scranton identified four properties for comparison purposes. Two were the same properties used by VTrans in its appraisal, while two were properties, both located in Pittsford, that were not used by VTrans.

By using these properties, he calculated a higher value of the Morale property. Mr. Scranton also said his appraisal did not assign separate monetary values to the various units of the property being taken as VTrans' appraisal did. Instead, his appraisal assigned a single value to the entire 0.44 acre taking, treating all land involved as property owned by the Morales in total fee interest even though most of the land involved in the taking was encumbered by being part of the Route 7 right-of-way.

Mr. Scranton said when he conducted his appraisal, he did not understand that 0.41 acres of the 0.44-acre taking was encumbered by the easement for the Route 7 right-of-way. As a result, his appraisal was based on the unencumbered value of this portion of the Morale's land. But he now acknowledges that the value of the encumbered land should be lower than the value of unencumbered land.

When Mr. Scranton conducted his appraisal, he said he used four properties for comparison and weighted the value of all four properties the same. He said that two of these four properties were less similar to the Morale Property than the other two, yet he valued all four properties the same for comparison purposes.

At the conclusion of the hearing, Mr. Coen gave the parties 30 days to file findings of fact and conclusions of law.

Mr. Coen closed the hearing at 12:15 p.m.

1.3 Review/Approve Minutes of the October 7, 2019 Board meeting.

On a motion by Mr. Bailey seconded by Mr. Zalinger, the Board unanimously voted to approve the minutes of the October 7, 2019 Board meeting as presented.

1.4 RLA Working Group -- Update

Mr. Zicconi said the working group, for which Ms. Harrison is chair, met for the first time and discussed how it should proceed. There was thought that the group should draft both a model ordinance as well as model zoning regulations as not all municipalities have zoning. At its next meeting in December, the group plans to conduct a table-top drafting exercise and hopes to have its work complete after a total of three meetings.

1.5 TB-494 Bettis Small Claim – Dismissal

1.6 TB-489 Anderson Small Claim – Dismissal

1.7 TB-485 Rosenkranz Small Claim – Dismissal

1.8 TB-495 Power Small Claim – Dismissal

Mr. Coen said he is seeking dismissal of all four of these small claims because VTrans settled with each claimant.

On a motion by Mr. Hayward seconded by Ms. Loranger, the Board unanimously voted to dismiss TB-494, TB-489, TB-485 and TB-495.

1.9 Fall Meeting with Secretary Flynn – Update

Mr. Coen said he had a meeting scheduled with VTrans Secretary Joe Flynn on December 5 and that two other Board members could participate if they wished. He said he asked Ms. Harrison to participate as one of the topics to be discussed is public outreach, and Ms. Harrison has a particular interest in this subject. This leaves one more opening. He said Mr. Fitzgerald, who was absent, in the past has expressed interest in attending. Board members said they were fine with that. Mr. Bailey said he would attend if Mr. Fitzgerald declined.

1.10 Executive Secretary's Report

TB-509: Mr. Zicconi said the Board recently received an appeal filed by the construction company J.A. McDonald following VTrans' decision to suspend the company's ability to be a pre-approved bidder on transportation projects. Upon receiving the appeal, Mr. Zicconi asked Board Attorney Ron Shems to contact the parties as Board rules in such cases entitle J.A. McDonald to a hearing within 30 days of

filing an appeal. Such a deadline would mean the Board would have to conduct a hearing shortly after Thanksgiving. Mr. Shems was discussing this deadline with the parties, who informed him that they were working on a stipulation to wave the 30-day deadline. But to date, the parties have not confirmed that such a stipulation has been reached. Mr. Coen asked if the Board could appoint a hearing officer to conduct a hearing should it need to be conducted so quickly. Mr. Zicconi said the Board has that authority.

On a motion by Ms. Loranger seconded by Mr. Hayward, the Board unanimously voted to appoint Mr. Zalinger hearing officer in TB-509 should a hearing need to be held within 30-days of the appeal being filed.

2. OLD BUSINESS

2.1 TB-493 Mead Small Claim – Possible Deliberation

At 12:25 p.m. the Board on a motion by Mr. Zalinger, seconded by Ms. Loranger and approved unanimously entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-493 Mead Small Claim and TB-504 Morale Just Compensation Appeal.

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

The Board exited deliberative session at 12:35 p.m.

3. OTHER BUSINESS

3.1 Round Table

No one had any issues to discuss

4. ADJOURN

On a motion by Ms. Loranger seconded by Mr. Bailey, the Board unanimously voted to adjourn at 12:35 p.m.

Respectfully submitted,

John Zicconi
Executive Secretary