

VERMONT TRANSPORTATION BOARD MEETING MAY 17, 2012

Board Members Present:

Maurice Germain, Chairman; term expires 2/28/2014
Timothy Hayward, term expires 2/28/2013
Nick Marro, term expires 2/28/2013
Charles Bucknam Jr., term expires 2/28/2013
Arthur Sanborn, term expires 2/28/2015
Wesley Hrydziusko, term expires 2/28/2015

Board Members Absent:

Robin Stern, term expires 2/28/2015

Others Present:

John Zicconi, Executive Secretary

Call to Order:

The Chair, Maurice Germain, called the Thursday, May 17, 2012 meeting to order at 10:15 a.m. The meeting, which was held at the Third Floor Conference Room at National Life, was preceded by a fieldtrip to the Vermont Agency of Transportation Sign Shop in Berlin.

1. NEW BUSINESS

1.1 Field Trip to Traffic Shop

The meeting was preceded by a fieldtrip to the Vermont Agency of Transportation Sign Shop in Berlin for a demonstration of how the Agency paints lines on the roadway. The demonstration, which began about 9:30 a.m. was hosted by Mark Dindo and Russell Velander, who showed the Board not only how the line-strip equipment works, but also what the Agency's proper protocol is when painting lines.

1.2 Approve the Minutes of April 19, 2012

On a motion by Mr. Hayward seconded by Mr. Marro, the Board unanimously voted to approve the minutes of the April 19, 2012 meeting as submitted.

1.3 Executive Secretary's Update

Mr. Zicconi informed the Board that Rock Art Brewery appealed the Board's compensation decision in TB-390 to the Vermont Superior Court in Lamoille County. No Board action was necessary. The information was an FYI only.

Mr. Zicconi informed the Board that he received a call from DMV Commissioner Robert Ide inquiring if any Board member would like a three-digit VT license plate for his or her personal vehicle. According to Commissioner Ide, Vermont policy allows Transportation Board members to receive such a plate. There were no immediate takers, but Mr. Zicconi asked any Board member who wished to receive such a plate to please contact him in the future.

Mr. Zicconi reminded the Board that it historically has held public meetings in the fall pursuant to V.S.A. Title 19 § 5 to obtain public comment on state transportation policy, state transportation planning, state transportation capital programming, state transportation construction projects and the mission of the Transportation Agency. While such hearings can be an open forum, the Board also can designate specific topics to be discussed. With the fall only five months away, Mr. Zicconi encouraged Board members to brainstorm possible topics for discussion at a future meeting. Mr. Zicconi also said that he would reach out to VTrans' officials to receive their input on possible topics.

Mr. Zicconi informed the Board that in April he received a call from VTrans Finance and Administration Division asking that he create a list of Vermont dealers that sell new motorcycles so that the Agency can contact them and obtain the fees called for in Title 9 V.S.A. Chapter 108, the Motor Vehicle Manufacturers, Distributors and Dealers Franchising Practices Act. Mr. Zicconi was informed that the motorcycle-dealer list that was created last year was riddled with dealer names that were either no longer in business or not subject to the fee. Mr. Zicconi told the Board that during May he worked closely with the Vermont Auto Dealers Association, and together they created and verified a list of 25 Vermont dealers that sell new motorcycles. Mr. Zicconi said annually he will work with the Vermont Auto Dealers Association to update the list and keep it current.

1.4 Sawyer (TB-343) Dismissal Request

On April 19, 2012, the Board received a stipulation for dismissal signed by both parties in TB-343. The request asked that the Board dismiss the case with prejudice and that both sides shall assume their own costs.

On a motion by Mr. Marro seconded by Mr. Bucknam, the Board unanimously voted to dismiss TB-343 with prejudice pursuant to the stipulation agreement.

1.5 Discussion of Dormant cases (TB-354, TB-360 & TB-372)

Mr. Zicconi told the Board that he and VTrans recently discovered three small-claim cases that have withered on the vine for many months with no activity or official resolution. Two (TB-354 and TB-360) date from 2009, while one (TB-372) dates to 2010. The Agency requested that the Board either bring these cases to a hearing or dismiss them. According to the Board's files, all appellants in these cases were offered hearing dates, but no dates were ever set. In all three cases, there is no record of appellants responding to the Executive Secretary's requests to schedule a hearing.

V.R.C.P. Rule 41 (a) (2) (b) (1) allows the Board on its own motion to dismiss cases after reasonable notice if the action has been pending two years or if all parties against whom a judgment is sought have failed to plead and the plaintiff has failed to request or apply for a default judgment within six months of filing the action. Following a discussion which included Mr. Zicconi providing the Board a description and timeline of each case, the Board concluded all three cases met the guidelines provided in V.R.C. P. Rule 41 (a) (2) (b) (1).

On a motion by Mr. Marro seconded by Mr. Sanborn, the Board unanimously voted to dismiss TB-354, TB-360 and TB-372 pursuant to V.R.C.P. Rule 41 (a) (2) (b) (1).

1.6 Colchester HES NH 56000(14) 502 Hearing

Mr. Zicconi informed the Board that on May 30, 2012 the Agency of Transportation will hold a 502 hearing regarding a proposed \$4 million construction project along Routes 2 & 7 in Colchester at the I-89, Exit 16 interchange. Mr. Zicconi told the Board that earlier in the week he attended a VTrans skull session regarding the proposed construction project, and that he would soon provide Board members a memo describing the project in detail so they could decide whether to attend the 502 hearing.

At 11 a.m., Mr. Bucknam left the meeting.

1.7 TB-396 Hartford (Wilder) STP 1444(35) Railroad Variance request

On May 9, 2012 Vermont Agency of Transportation Structures Engineer Kristin Higgins contacted Mr. Zicconi to request that the Board grant the Agency a variance to build two railroad underpasses in Hartford's Wilder Village more than a foot lower than the national standard of 23 feet. By statute, only the Board can grant such a variance. Complicating this case is that construction has already begun. In fact, construction of one bridge – BR 36 Passumpsic Avenue – is already complete. The agency is presently constructing the second bridge, which is BR 38 Gillette Street.

On May 16, 2012, Mr. Hayward, Mr. Hrydziusko and Mr. Zicconi conducted a site visit of the two bridge locations along with Ms. Higgins.

Ms. Higgins, who is the VTrans' project's manager for the construction project, apologized to the Board, explaining that this was her first train-bridge project and that she was unaware of the variance procedure until just recently. Ms. Higgins told the Board that the Agency and the Washington County Railroad Company back in 2007 signed a variance agreement calling for a minimum 20.67 foot clearance, and that the document clearly states that Board approval is required. The document, however, contained no signature line for the Board. Ms. Higgins said the Agency in the future will redesign its variance agreements to include a signature line for the Board so that such an oversight does not happen again.

Ms. Higgins informed the Board that the Wilder project involves modernizing two train underpasses. In one case – BR 36 Passumpsic Avenue – a wooden bridge was removed and replaced with a modern bridge, while in the second case – BR 38 Gillette Street – the Agency is rehabbing an historic pony truss bridge. Rehabilitation of this bridge has recently begun. In both cases, the Agency does not want to establish the 23-foot, national clearance standard. Also in both cases, the railroad and the local municipality have agreed in writing that they support a variance establishing a minimum clearance of 20.67 feet.

Ms. Higgins said there were two primary reasons for requesting a variance: 1) making the bridges higher would negatively impacted the historic neighborhood and create a "hump" in the roadway that drastically would limit sight distance and therefore would be dangerous, and 2) that there are four other bridges along the Washington County Railroad line that also do not meet the 23-foot standard. Keeping the two Wilder bridges lower than the standard will not prevent taller train cars (so-called double-stack cars) from using the line as other pinch points exist, she said.

In preparation for the future should a 23-foot clearance be necessary, Ms. Higgins said the Agency is constructing the two Wilder bridges with footing depths deep enough to accommodate lowering the tracks so a 23-foot clearance can be obtained with further construction. The Agency also signed a finance-and-maintenance agreement with the railroad stating that the Agency will pay to lower the tracks whenever a 23-foot clearance is

necessary to accommodate taller train cars, Ms. Higgins said. Lowering the tracks at this time would have added an additional \$750,000 to the project's cost as approximately a mile of track would need to be lowered, she said.

On a motion by Mr. Hayward seconded by Mr. Germain, the Board pursuant to V.S.A. Title 5 § 3670 (b) unanimously voted to grant a clearance waiver for BR 36 Passumpsic Avenue and BR 38 Gillette Street in the Village of Wilder in accordance with the December 4, 2007 agreement between the State of Vermont, Agency of Transportation, and the Washington County Railroad Company.

2. OLD BUSINESS

2.1 Review Status and Plan Assignments for Pending Cases

The Board reviewed the pending case spreadsheet. No new or assignment changes were necessary.

2.2 H.523 Training Requirement

The Vermont Legislature's rewrite of condemnation law – Bill H.523 – contains a section that mandates training for Board members regarding the methodology of condemnation appraisals, Vermont law governing the determination of damages resulting from a condemnation for a state highway project, and provisions of the federal Uniform Relocation Assistance and Real Property Acquisition Properties Act as it relates to the determination of damages. Because such training is mandatory, Mr. Zicconi asked the Board for suggestions on how to schedule training so that all Board members are present.

The Board said it preferred the training to take place all in one day rather than spread over time, and that scheduling should not be limited to just the dates of regularly scheduled Board meetings. Mr. Zicconi said he would identify trainers and training materials, and will work with schedules to arrange a date where all three topics could be addressed.

2.3 Jericho STP HES 030-1(21) 502 Hearing

Mr. Marro on May 8, 2012 attended a 502 hearing regarding a proposed construction project along Route 15 at its intersection with Browns Trace. The project will involve a full-depth reconstruction of approximately 1,550 feet of Route 15, plus about 250 feet of Browns Trace. Route 15 in this location will be widened, and a left-hand turn lane will be added at the intersection of Browns Trace. Also, Browns Trace will be widened at its intersection of Route 15 so that a right-hand turn lane can be added.

Mr. Marro told the Board that the project is tentatively scheduled for construction in 2015 and that the average daily traffic (ADT) volume of Route 15 in this area is 9,000 vehicles. The proposed roadway widening will impact several properties requiring driveway restrictions as well as property acquisition, and that the general area contains two historic buildings, both of them single-family homes.

The reason for the project, according to VTrans, is safety because the area is considered a "high crash location," Mr. Marro said. Limited sight distance and high speeds (the speed limit along this section of Route 15 is 50 mph), coupled with stopped vehicles along Route 15 waiting to turn onto Browns Trace, result in frequent rear-end collisions, Mr. Marro said. Several residents attended the 502 hearing, and all opposed the project. Instead of the proposed construction, residence suggested the Agency should lower the speed limit, Mr. Marro said.

The Board accepted Mr. Marro's report, but chose not to get involved in the project at this time.

3. OTHER BUSINESS

3.1 Round Table

Mr. Sanborn said a written communication within a recent VTrans' weekly report made is sound like H.523 limited the Board's ability to preside over compensation cases to appeals involving property valued at \$25,000 or less, rather than valuation disputes of \$25,000 or less regardless of the property's total value. Mr. Zicconi said the new law does not restrict the Board's jurisdiction based on property value. The \$25,000 restriction is subject to the disputed value amount, not the total property value, he said. Mr. Sandborn asked Mr. Zicconi to double check the statutory language, and to communicate his findings via email to Board members. Mr. Zicconi agreed.

4. ADJOURN

On a motion by Mr. Marro seconded by Mr. Hayward, the Board unanimously voted to adjourn at 11:40 a.m.

Respectfully submitted,

John Zicconi
Executive Secretary

**Next Board Meeting:
June 21, 2012 at 9:30 a.m.
AOT 3rd Floor Conference Room #1**