

VERMONT TRANSPORTATION BOARD MEETING AUGUST 6, 2014

Board Members Present:

Nick Marro, Chairman, term expires 2/28/2016
Wesley Hrydziusko, term expires 2/28/2015
James Fitzgerald, term expires 2/28/2015
William Tracy Carris, term expires 2/28/2017

Board Members Absent:

Robin Stern, term expires 2/28/2015
Tom Dailey, term expires 2/28/2016
Vanessa Kittell, term expires 2/28/2016

Others Present:

John Zicconi, Board Executive Secretary
Sommer Bucossi, VTrans Planner
Lev Isaac McCarthy, UVM Undergraduate Student
Matthew Brand, UVM Undergraduate Student
Carson Casey, UVM Undergraduate Student
Olivia Taylor, UVM Undergraduate Student
Phoebe Girouard Spencer, UVM Graduate Student
Anna Schulz, UVM Graduate Student
Tim Pede, UVM Graduate Student
Elizabeth Wright, UVM Student Coordinator
Emilie Riddle, UVM Student Coordinator
Christopher Koliba, UVM Transportation Research Center
Lisa Aultman-Hall, UVM Professor
Brian Lee, UVM Professor
Amanda Hanaway-Corrente, UVM Transportation Research Center
Glenn McRae, UVM Transportation Research Center
Kevin Oddy, VTrans Legal Program Administrator
Traci Wood, VTrans Legal Assistant
Richard Sucese, Milton Resident
Samantha Sucese, Milton Resident

Call to Order:

Chairman Nick Marro called the Wednesday, August 6, 2014 meeting to order at 9:30 a.m., which was held at the University of Vermont Transportation Research Center in Burlington, VT.

1. NEW BUSINESS

1.1 Fall Hearings General Discussion

The Board conducted a general discussion about its upcoming fall public hearings. Prior to the meeting, the Board via email agreed to focus this year's hearings on transportation issues important to young adults (ages 18-32) and to hold the hearings at college campuses around the state. Mr. Zicconi said that in July he met with officials from the State's various Regional Planning Commissions, as well VTrans planning officials, to discuss the idea. All agreed it was a worthwhile topic, and promised to canvas their staffs to solicit possible discussion topics.

Mr. Zicconi said he contacted eight colleges, all of which expressed interest in hosting the Board sometime in either October or November. The Board typically conducts six public hearings each fall. Mr. Zicconi asked the

Board if it wanted to pick and choose between the colleges, or expand the fall program to cover all eight. The Board chose to visit all eight, and drafted the following schedule:

- October 14: Norwich University
- October 15: Castleton State College
- October 21: Lyndon State College
- October 22: VT Technical College
- November 4: Brattleboro CCV Campus
- November 6: University of Vermont
- November 12: Johnson State College
- November 13: Bennington College

Mr. Zicconi said he would contact the colleges to work out the details.

1.2 Fall Hearings Meeting with UVM

Prior to the meeting, Mr. Zicconi provided Board members with research papers and other literature that discussed how young adults view transportation. The literature indicates that young adults view transportation very differently than their older counterparts. According to the literature, young adults tend to have a desire to live in an urban/dense population, prefer transportation modes other than a car, have strong environmental concerns related to driving, and seek out transportation alternatives that allow them to use information and communication technologies while traveling. Vermont has a well-documented issue regarding the flight of young adults. The Board, during its fall hearings, wants to discuss these and other issues with young Vermonters and those that chose to attend college in Vermont.

To help the Board choose the most appropriate questions to ask young adults, it schedule a meeting with a combination of students, staff and faculty associated with the University of Vermont's Transportation Research Center. The Center gathered more than a dozen people, who met for 90 minutes with the Board to flush out topics for the Board's consideration. The session was recorded, and is available by contacting the Board's office.

Upon the conclusion of the 90-minute session, Board members thanked the UVM folks for participating and said they would consider their suggestions. The Board again will discuss the issues at its meeting in September, when it plans to finalize the program that will drive this year's fall hearings.

1.3 TB-411 Sucese Small Claim Hearing

Chairman Marro opened the hearing and asked Richard Sucese to detail his case for the Board.

Mr. Sucese testified that his vehicle, while traveling along Route 7 in the Town of Milton near Village Drive at about 6:15 p.m. on January 11, 2014, struck a large pothole in the roadway. Within one minute of hitting the pothole, the vehicle's tire went flat, and he pulled over to the side of the road and called the Milton Police.

Mr. Sucese testified that it was raining that evening, and that he was driving at or about the posted speed limit but could not avoid the pothole because it was filled with water, which at night made it invisible. After pulling over with a flat tire, Mr. Sucese said he noticed another vehicle that also apparently hit the pothole and also had a flat tire. He produced a police report filed by Milton Police Officer Frank Scalise, who was dispatched to meet with Mr. Sucese, which states that night there were two other vehicles along the roadside damaged due to hitting the pothole.

The report indicates that Officer Scalise then secured the pothole area with cone and a flairs until VTrans could fill the pothole with gravel. There were no roadway warnings marking the pothole at the time Mr. Sucese's vehicle struck it.

Mr. Sucese testified, and produced a VTrans work order showing, that on January 7, 2014 – three days prior to his vehicle hitting the pothole – that VTrans repaired the 7.8 mile stretch of Route 7 that passes through Milton by applying approximately 1.5 tons of material and cold patch to the roadway. Mr. Sucese testified that the pothole area was included in this work.

As a result, Mr. Sucese said the pothole his vehicle struck likely existed on January 7, 2014, but was patched. That patch, Mr. Sucese said, dissolved sometime between January 7, 2014 and the time his vehicle struck the pothole on January 11, 2014. Mr. Sucese said that as a result of the January 7, 2014 patching, this segment of Route 7 was a known hazard area, and that the Agency of Transportation knew, or should have known, that the area was subject to further pothole creation.

Kevin Oddy said that VTrans does not dispute that Mr. Sucese's vehicle struck a pothole along Route 7 in Milton, and that his vehicle was damaged by the collision. Mr. Oddy testified, however, that the January 7, 2014 work order does not identify specific roadway locations that were patched. The work order states only that locations along 7.8 miles of Route 7 in Milton were patched, along with locations along 3.5 miles of Route 7 in Essex.

Mr. Oddy acknowledged that VTrans on January 7, 2014 patched segments of Route 7 through Milton, and that this work included repairing potholes. Mr. Oddy, however, testified that there is no way to know if the pothole Mr. Sucese struck existed on January 7, 2014 and was patched at that time, or whether it was a new pothole that formed sometime after January 7, 2014.

Mr. Oddy testified that VTrans was unaware of the pothole Mr. Sucese struck until the evening of January 11 when Mr. Sucese, after striking the pothole, called Milton Police. Once notified, VTrans dispatched a maintenance crew to fill the pothole, Mr. Oddy said. Mr. Oddy testified that VTrans that evening filled the hole with gravel, and returned on Monday, January 13, 2014 to complete the repair with cold patch.

Mr. Oddy said that VTrans has a duty to either detour traffic or repair or remove roadway hazards quickly upon learning of their existence. Being that January 11, 2014 was a Saturday, VTrans likely did not have a regularly scheduled roadway crew working that day and as a result was not aware of the pothole until Mr. Sucese reported it to the Milton Police, Mr. Oddy said. But once Milton Police secured the area with cones and made the Agency aware of the hazard, VTrans assembled a maintenance crew and conducted the repair.

Mr. Sucese disputed that VTrans was unaware of the pothole before his accident. As proof, he pointed to Officer Scalise's police report which states: "I was informed by dispatch that VT State Highway had called to alert us of the pothole. I told dispatch to contact them and make sure they knew about the pothole as they were the ones who could handle it. Dispatch then received a call reporting vehicle possibly with flat tires in the area."

Mr. Sucese said this statement indicates that VTrans called to inform police of the pothole before he struck it with his vehicle. Therefore, Mr. Sucese said, both VTrans and police knew of the pothole before his vehicle struck it.

Mr. Sucese said this prior knowledge, combined with the fact that VTrans repaired the roadway on January 7, 2014, shows that VTrans failed to properly maintain a safe roadway as the pothole location was a known hazard.

Due to the weather condition on January 11, 2014 – it was raining – and because the area was recently repaired, VTrans should have posted the area with markers to alert motorists of potential hazards, Mr. Sucese said.

Because VTrans did not post the location to warn motorists of potential hazards, the Agency was negligent and therefore responsible for the damage to his vehicle, Mr. Sucese said. He seeks the cost of the repair, which is \$556.11.

Mr. Oddy testified that VTrans does not question the existence of damage to Mr. Sucese’s vehicle, but that as the claimant, Mr. Sucese carries the burden of proof to demonstrate negligence on the part of VTrans.

Mr. Oddy testified that Mr. Sucese, according to state statute, has a duty to drive at a speed that would allow for “reasonable prudence” to recognize potential roadway hazards and avoid them, especially along roadway segments that Mr. Sucese knew had a recent history of repair. Mr. Oddy also testified that Mr. Sucese failed to show that the pothole existed for any significant portion of time before he struck it, or that the pothole had been in the roadway long enough that VTrans knew, or should have known, of its presence and then failed to take corrective action.

Mr. Oddy also questioned Mr. Sucese’s interpretation of Officer Scalise’s police report. Mr. Oddy said a closer reading of the report indicates that the officer “told dispatch to contact them (VTrans) and make sure they (VTrans) knew about the pothole as they (VTrans) were the ones who could handle it.” The officer would not have written this if VTrans had been the ones who informed police of the pothole, Mr. Oddy said.

A reasonable reading of the officer’s statement is that Police received a call from a motorist, likely Mr. Sucese, who had collided with the pothole. The officer then instructed dispatch to alert VTrans as the Agency was the one who “could handle” or fix the defect, Mr. Oddy said. Supporting this, Mr. Oddy said, is the fact that VTrans has no record of receiving a complaint on January 11, 2014 regarding a pothole along Route 7 in Milton until after Mr. Sucese reported his collision.

Chairman Marro closed the hearing and thanked the parties for attending. He said the Board would deliberate and issue a written report detailing its conclusion.

At 12:30 p.m., the Board on a motion by Mr. Hrydziusko seconded by Mr. Fitzgerald entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-413, Sucese Small Claim.

Mr. Zicconi was invited to attend the deliberative session.

At 12:50 p.m. the Board exited deliberative session.

1.4 Review/Approve the Minutes of the April 16, 2014 Meeting

On a motion by Mr. Hrydziusko seconded by Mr. Fitzgerald, the Board unanimously, with Mr. Carris abstaining, voted to approve the Minutes of the April 16, 2014 Board meeting as submitted.

1.5 Executive Secretary’s Report

Lemon Law Board: Mr. Zicconi told the Board that he recently meet with the New Motor Vehicle Arbitration Board to discuss Lemon Law processes. The reason for the meeting was to determine if any of the Board’s rules

or statutes could be tweaked to better serve the people and corporations involved in cases before the Board. DMV attorney Tom McCormick and Lemon Law Administrator Pauline Liese also attended the meeting. Mr. Zicconi said the Board had some suggestions, which he and Mr. McCormick will discuss further.

TB- 415: Mr. Zicconi said that last week Jerry's Nissan from the Rutland filed a complaint with the Board under the Manufacturers, Distributors, and Dealers Franchising Act. To help the Board with the complaint, Mr. Zicconi said he contacted the Attorney General's Office, which likely will assign the Board an Attorney to help it administer the case. Should this case come to a hearing, it will be the first case under the so called "Maker/Dealer Act," which was passed in 2009, to come before the Board.

Once the Attorney General's Office assigns the Board an attorney, Mr. Zicconi said he and Chairman Marro will consult with him or her and keep the Board and report back to the Board as needed.

T-Board Budget: Mr. Zicconi informed the Board that the State has closed out Fiscal Year 2014. The Board closed the year \$2,500 under budget. The excess money likely will be swept by the Agency of Transportation to cover potential shortfalls in other areas, which is common practice, Mr. Zicconi said.

Mr. Zicconi informed the Board that the State recently announced it must cut \$31 million from the State's recently-passed Fiscal Year 2015 budget. The cuts at this time all appear to be non-transportation related, so at this time it does not appear the shortfall will affect Transportation Fund or any transportation programs.

1.6 TB-414 Stamford Private Landing Area

Mr. Zicconi said the applicant, Mike Kuranda, wrote the Board and requested that the Board invoke 5 V.S.A. § 207 (g) and wave the provisions of 5 V.S.A. § 207 (d) that require him to give notice by registered or certified mail of the upcoming September 16 hearing to "all persons owning or interested in adjoining lands." The reason for the request is because the Town of Stamford's Select Board required that he hold a face-to-face meeting with his neighbors before it would provide the Transportation Board with a letter letting the Board know whether the town has the authority to grant municipal approval, which is required under 5 V.S.A. § 207 (d).

After holding such a meeting, the Select Board issued the T-board a letter indicating it did not have any local laws or ordinances that govern private landing areas. As a result, the town held no hearings and made no decisions. Mr. Zicconi said past T-Board practice has been to wave the public notice elements of 5 V.S.A. § 207 (d) only when a municipality had a local regulatory process, and conducted local hearings, to which abutters and other nearby landowners could participate. In the absence of a local regulatory process, the Board historically has made applicants notice not only abutters but landowners that fall within the aircraft's nearby flight pattern.

Board members agreed that the lack of a local regulatory process in this case should require the applicant to abide by 5 V.S.A. § 207 (d) and issue registered or certified mailings to not only all abutters but also a select group of other landowners. Using a map submitted by the applicant as part of his application – which the Board deemed complete – the Board instructed Mr. Zicconi to inform the applicant that in addition to abutters, all landowners along Poplar Drive, as well as those along The Lane stretching east from Poplar Drive to the stream that runs close to Main Road, also should be notified of the September 16, 2014 by registered or certified mail.

1.7 Date & Location of September Meeting

With the need to conduct a public hearing in Stamford as part of TB-414, the Board decided to hold its regular September meeting in Stamford. While the Board generally meets on the third Thursday of the month, Board Member Tom Daily, who represents the Stamford area, informed the Board prior to today's meeting that he cannot attend a hearing or meeting on Thursday, September 18, but that he can be available on Tuesday, September 16. Mr. Zicconi also said that Agency of Transportation personnel told him that they can attend a hearing on September 16.

Mr. Fitzgerald suggested hold the Board's September meeting at 10:30 a.m. on September 16, 2014 in Stamford. The rest of the Board agreed, and instructed Mr. Zicconi to secure a location.

1.8 TB-412 Roy Small Claim

Mr. Zicconi informed the Board that the appellant in TB-412 has not responded to e-mails, phone messages or U.S. Postal letters since filing her complaint in May. In his last communication to the appellant, Mr. Zicconi indicated that the Board was meeting today and could discuss dismissal of her case should she not respond. Mr. Oddy indicated that his office is willing to file a motion to dismiss should Ms. Roy continue to be incommunicado. Mr. Marro said he liked that idea, and instructed Mr. Zicconi to request that Mr. Oddy file a Motion to Dismiss, and that once received, that Mr. Zicconi send a copy of the Motion to appellant via certified mail and indicate that the Board, at its next meeting, will discuss dismissal unless she responds.

1.9 Tom Vial Contract Extension

The Board has had a sole-source consulting contract with retired assistant attorney general Tom Viall for the past three years. The contract expired at the end of July 2014. Mr. Zicconi cleared it with the Attorney General's office that the Board can again contract with Mr. Viall for another two years, with an option for a third year. Mr. Viall is willing to sign a new contract, of which the terms are the same as the previous contract.

On a motion by Mr. Fitzgerald seconded by Mr. Hrydziusko, the Board unanimously voted to enter into a new two-year, sole-source contract with Tom Viall, with the ability to add a third year at its discretion, at the rate of \$110 per hour.

2. OLD BUSINESS

2.1 TB-383 Winterset

Mr. Zicconi informed the Board that the Agency of Transportation informed him that it had reached a settlement with Winterset.

3. OTHER BUSINESS

3.1 Round Table

No one had any items to discuss.

4. ADJOURN

On a motion by Mr. Fitzgerald seconded by Mr. Marro, the Board unanimously voted to adjourn at 1:32 p.m.

Respectfully submitted,

John Zicconi
Executive Secretary

**Next Board Meeting:
September 16, 2014 at 10:30 a.m.
Community Room at the Stamford Community Church, 1059 Main Road, Stamford, VT**