

EXECUTIVE COMMITTEE MEETING

9:30 A.M., Thursday, April 21, 2022

Meeting Minutes

1. Open Meeting

Voting Members in Attendance: Richard Williams, Sr. (Town of Patterson); Warren Lucas (Town of North Salem); Tony Goncalves (Town of Lewisboro); Matthew Slater (Town of Yorktown); Rich Franzetti as alternate for Michael Cazzari (Town of Carmel)

Others in Attendance: Vincent Giorgio (NYCDEP); Sabrina Charney-Hull (Town of New Castle); Millie Magraw (Westchester County); Christine Chale (Corporate Counsel); Todd Hirsch (Corporate Counsel); Kevin Fitzpatrick (EOHWC); Linda Matera (EOHWC); Cory Lapidus (EOHWC)

2. Approve Meeting Minutes

a. March 24, 2022 Executive Committee Meeting

Motion by Director Lucas, second by Alternate Franzetti to approve the Executive Committee meeting minutes of March 24, 2022; all in favor.

b. March 30, 2022 Executive Committee Meeting

Motion by Director Lucas, second by Alternate Franzetti to approve the Executive Committee meeting minutes of March 30, 2022 (joint meeting with Audit Committee); all in favor.

3. Financial Update

The financial update was presented by Linda Matera in Keith Giguere's absence. Total cash and investments for the month of March were approximately \$15,859,000. Checks written this month total \$90,437, which includes \$4,575 in the FAD basin.

4. Tax Returns – Draft Form 990 and CHAR 500

Linda Matera requested a motion from the Executive Committee to accept the Form 990 and CHAR 500 and recommend them to the Board of Directors at the May 10th meeting. Motion by Director Lucas, seconded by Alternate Franzetti to accept the Form 990 and CHAR 500 and recommend them to the Board of Directors for acceptance at the May 10th meeting; all in favor.

5. List of Reporting and Filing Due Dates

The List of Reporting and Filing Dates were made available to Executive Committee members. All items are up to date.

6. Project Update

Kevin Fitzpatrick reported that construction on the Scolpino park project (SE-EB-715) will close out after the asphalt work is completed at the end of this month. We expect to issue final payment to the contractor and certification for phosphorus reduction to New York State Department of Environmental Conservation (NYSDEC) by the end of the month or at the latest in May when final plantings are been done. Certifications were submitted for a little over 20 kilograms of catch basin insert projects that cover work done at Mt. Kisco Commons (MK-NC-602) and Arborview Road (Carmel-CF-901/902) in Carmel. We plan to begin the next installation of catch basins at Junior Lake (Y-MU-602) in Yorktown followed by some work at Walter Panas High School (C-NC-1000) in Carmel over the summer once the school year has concluded. The next installation agreement to be discussed with Counsel is for a large project located at Greenbriar Subdivision (S-CF-901) in Somers for about 16 kilograms. Their Homeowners' Association reached out to us and is eager to get it installed. Additionally, we will have an installation at Vails Grove (NS-EB-901) for roughly 10 kilograms, which is partially in North Salem and partially in Southeast. We will get that installed once their final catch basin cleanings are complete. After that, we expect the next construction project to be at Keeler Lane (NS-MU-601), which is a long running project in North Salem that we are wrapping up final installation agreements on. It's straight channel stabilization through two properties. Everybody is onboard, it's just a matter of final details, site access and construction windows. Director Lucas asked about the catch basin project at Vail's Grove (NS-EB-901) which is identified as being in North Salem, but most of it is actually in the Town of Southeast. Kevin said it originated as a North Salem project so rather than changing the I.D. or anything like that, it was just kept it as North Salem. Director Lucas was concerned with what would happen when all the maintenance has to be done. Out of 52 basins, North Salem only has about 6-7 of them.

a. NewC-NCR-601 Sheather Road Stabilization

A new project has been added to the list from the Year 6 Workplan in the Town of New Castle at Sheather Road (NewC-NCR-601). It involves stabilization of a long stretch of roadway at the Burden Preserve. While it was part of the work plan at that time, the project was significantly difficult to actually install and we knew that we would most likely need some other assistance for funding or another way to get into the Preserve because it's a roadway that borders a classified stream and wetlands. It's going to be difficult to restore because it's about a 30-foot drop from the roadway down to the stream. The Town of New Castle reached out to us with it as an emergency situation. The bank needs to be fixed and stabilized before the roadway destabilizes. We've been looking at it with the town to see if we can work with them to stabilize the road and prevent any further loss of soil. It is going to be a great project for stabilization, but it also gives us an opportunity to do bioinfiltration directly adjacent to where the road is failing and take out about a 75-acre drainage point because there's a large outfall right in that spot and would provide about 21 kilograms of phosphorus reduction. We will be working with the town on a reimbursement agreement. They need to streamline the effort to make sure they can protect the roadway before we go through our usual channels of construction for the water quality element. The reimbursement agreement will be presented to the board in a few months. We will check in with everybody to make sure they are comfortable with the project as we move along. It's currently labeled as concept on the Project Status Table because we don't have a design engineer to move forward with. We're allowing the Town of New Castle to go out to bid on it because they need a structural engineer. We want to make sure there's a clear line defining what we would view as water quality efforts versus structural engineering efforts to get the project to work. The town is running the design of the project with input from us. Christine Chale suggested that Kevin and Sabrina consider doing a coordinated SEQR review so that it doesn't have to be done twice. Sabrina

agreed and said that Kevin has been most helpful in coordinating with the Town of New Castle, particularly from an engineering perspective. It enabled the town to have a preliminary conversation. Director Lucas asked if there is a ballpark figure. Given just the water quality volume portion of it where we are treating through bioinfiltration, we expect it to be significantly large because of the drainage area. In all likelihood, we will go to Army Corps to see whether we can setup some funding for the water quality portion because they are more than happy to work with us on these types of projects. The tricky part is going to be the stabilization effort. It's going to be a different approach than is normally taken. Unfortunately, we don't have that dollar value yet but would expect to get it by the end of the summer. Kevin added that it will probably fall into the area of approximately \$50,000 per kilogram. We will see what the Town of New Castle's geotechnical structural engineer believes needs to be done there and whether it's something that fits into the program. There is no question about it being a stabilization issue, but we will have to see what the price comes back as, because in all fairness, we just don't know what the solution is going to be. Director Williams asked if the Town of New Castle is going to take care of the bidding for the design work and bidding for construction. Kevin said that they will take care of the bidding for design but once we get to construction, we will tackle that together and decide which will be the best course of action. It would be the best approach because there is a clear delineation between all of the aspects of the project. Director Williams inquired about the cost-sharing. Kevin said that the way it is presently set up is there is a structural geotechnical task order for water quality treatment. As discussed with the town, the construction is what would be eligible, but we can discuss later whether water quality treatment is something we can take on. Currently, we are not paying for anything having to do with design and the Town of New Castle will be doing the permitting. Sabrina said that they have an emergency-situation, and the repair needs to be done. It would be ideal if the water quality component can be incorporated in this repair because it's a prime location. If we can't, then we need to move forward and fix the failing roadway. Kevin is coordinating with New Castle's engineer and highway superintendent on the best approach. Sabrina will make her engineer aware of the coordinated review as Counsel suggested.

At approximately 9:47 am, Alternate Franzetti exited the meeting.

7. Installation Agreement discussion

Kevin explained that the topic of discussion has to do with hazardous material on any site and where the responsibility for it lies as it related to installation agreements. There are multiple different variations of an installation agreement for municipalities which is pretty cut and dry that indicates the municipality bears responsibility. The language that's been written up says that anything found on town-owned property falls to the town, and the East of Hudson doesn't carry any financial responsibility in the cleanup. It get trickier in the case of U.S. Army Corps of Engineers (USACE) giving us funding for a project because the discussion becomes that part of the agreement we have with USACE is to make sure that they don't take on any responsibility either, and the ownership in that case has to fall to an entity, which ends up being the municipality. We directly have a situation that drove this in New Castle where we're looking to do the installation at Courtmel Road (NewC-NCR-801). The town had to take on the responsibility for any hazardous material cleanup that is found on site and that is the language that was put into any USACE funding installation agreement. Christine explained we are trying to make sure that the party that owns the property is responsible. It's standard USACE language. When they enter into an agreement, they don't want to be responsible for anything, so like any lender, they are just transferring responsibility to somebody else. Sabrina said t New Castle's attorney reviewed it and didn't have a problem with it.

Kevin indicated that the installation agreement for private property still needs to be resolved. While

the language is going to protect us legally, it's a hard sell to a property owner that doesn't have any reason to let us on their property and we're telling them that if we find something, they also must bear the financial responsibility to clean it up. Christine said she understands Kevin's concern, but EOHWC can't use public funds to clean up a problem that we find on someone else's property. If we are negligent, then it's a different situation. If we know about something and run into it then it's our responsibility and we would put that on our contractor, which we would deal with through our contractor's insurance. Director Lucas asked if it makes any difference if we simply say we are not responsible for it as opposed to saying they must clean it up. Christine explained that she is not saying they must clean it up. It's not our responsibility to deal with something that we are coming to on their site. Christine and Kevin will work through it and figure out the language. Director Lucas asked if we do a Phase 1 or 2 Environmental Site Assessment before we start. Kevin said there is always a title search and review of it. In the case of a commercial property, we must do the Phase 1 Environmental Site Assessment to protect ourselves and to know what's going on. The commercial properties are rare cases because the owners are not going to let us on their property to tear up a whole parking lot or a portion of their property. We don't typically go to the lengths of hiring an outside consultant to do the assessments but internally we do a title search and review of any existing data we can find. In the case of private property installation in a residential area, we don't tend to dive that deep into it because we're talking about a drainage ditch that might be going along the property line where our construction and easement access are extremely narrow. If there's a tank, you can see it because it would be unearthed by the stabilization or the eroded channel itself. Director Williams agreed with Kevin and believed that the Phase 1 Environmental Site Assessments needs to be done by the project engineers and not necessarily us. The issue is the type of project. If you're doing channel stabilization of an existing channel and you're just smoothing it out and adding rip rap and some check dams, then it's a big difference from digging a hole in the ground. If we are digging a hole in the ground then we should be doing a little more investigative work, which we found out in the Town of Kent. Director Williams said he will work with Kevin and Christine to get it figured out and then it will be brought back for members to review. Kevin said that one part that he and Chris were interested in having addressed today was the New Castle project at Courtmel Road (NewC-NCR-801). A resolution was prepared about 3 months ago to authorize the president to enter into the installation agreement. Over the past 3 months we've been working with the town to iron out the language and make sure everyone is comfortable with it. At this point the town is comfortable signing the installation agreement as presented so we do have a resolution to authorize the president to enter into the agreement with the USACE language as written. Christine explained that this was an installation agreement that was previously approved, but the language has been revised to address the relationship between the Town of New Castle and EOHWC regarding USACE language. Director Williams asked if the revised agreement went out with the resolution as an attachment. Kevin said it was discussed immediately before the meeting and we didn't realize that there was a resolution to amend that agreement. It would be helpful if we could approve the resolution pending review so the board can authorize Director Williams to move forward with it between now and the next meeting. Director Williams said he's not comfortable signing it without having had the chance to review it. Christine read the revised language from the amended installation agreement out loud to be clear about what Director Williams would be signing and what board members would be agreeing to. Director Lucas said that he would be comfortable passing the resolution as long as it says that Director Williams has to review it and be comfortable with it before he signs it. Director Williams was comfortable with that arrangement if it is subject to his subsequent review of the terms and conditions. Christine said the language of the authorization says the president is authorized to execute and deliver in substantially the form on file with such changes as may be approved by the party executing the same on behalf of EOH. Our standard language of approval always says that you can make insubstantial changes and that you are going to

sign it subject to that. This is specifically for the Courtmel Road project because this is sort of the test case we worked out with New Castle. The discussion that Kevin is having is that this will be the model going forward. Once we have a further discussion about private property, it would be appropriate to propose 3 model install agreements that are revised to include similar language.

Motion by Director Lucas, seconded by Director Williams to approve execution of revised agreement with U.S. Army Corps of Engineers and authorize execution of installation agreement.

WHEREAS, EOHWC is considering undertaking a stormwater retrofit project involving the installation of filtration BMPs in the Town of New Castle (the “Town”) right of way and the stabilization of two eroded channels on property owned by the New York City Department of Environmental Protection at Courtmel Road in the Town (“Project”); and

WHEREAS, the United States Department of the Army (the “Department”) is authorized to provide design and construction assistance for publicly owned, non-Federal water-related environmental infrastructure and resource protection and development projects in the New York City Watershed, including projects for water supply, storage, treatment, and distribution facilities, and surface water resource protection and development pursuant to Section 552 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (hereinafter “Section 552”); and

WHEREAS, the EOHWC and Department wish to enter into an agreement under which the Department would provide design and construction assistance for the Project (the “Agreement”); and

WHEREAS, the estimated total costs of the Project would be approximately \$800,000, with the Department covering 75% thereof (up to \$600,000) and EOHWC covering 25% (estimated to be approximately \$200,000) using Water Quality Investment Program funds; and

WHEREAS, on August 26, 2021, by Resolution No. R-0826-01, the EOHWC Executive Committee approved a prior version of the Agreement and the Department has since presented the EOHWC with a revised draft of said Agreement in substantially the form on file in the office of the EOHWC (the “Revised Agreement”); and

WHEREAS, the EOHWC wishes to enter into an Installation Agreement with the Town with respect to portions of the Project on Town property and has reviewed a draft installation agreement in substantially the form on file in the office of the EOHWC (the “Installation Agreement”); and

WHEREAS, the EOHWC has considered the proposed Revised Agreement, Installation Agreement, and all other relevant information and believes that entering into the Revised Agreement and Installation Agreement is in the best interest of the Corporation; and

WHEREAS, on April 22, 2021, by Resolution No. R-0422-01, the EOHWC Executive Committee reviewed all available evidence and resolved that the Project would not have an adverse impact on the environment and that a draft environmental impact statement would not be prepared.

NOW THEREFORE IT IS HEREBY RESOLVED, by the Executive Committee of EOHWC as follows:

1. The execution and delivery of the Revised Agreement and the Installation Agreement are hereby approved. The President of the EOHWC is hereby authorized to execute and deliver

the Revised Agreement and Installation Agreement on behalf of the EOHWC, in substantially the form on file in the offices of the EOHWC, with such changes as may be approved by the party executing the same on behalf of the EOHWC.

2. The officers, employees and agents of the EOHWC are hereby authorized and directed for and in the name and on behalf of the EOHWC to do all acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution.

Motion passed; all in favor.

R-0421-01

8. O& M Program Update

Kevin reported that the O&M spring cleanup inspection was received from the Town of Bedford. Members were encouraged to submit their inspection reports as they are completed instead of waiting until December to send them in.

9. MS4 Update/Impact on EOHWC Project Schedule and Funding

Kevin said he is aware that all town supervisors met to address non-corporation issues with the MS4 Permit coming out. He inquired if there is a general feeling from the members represented as to whether we are going to see or have any ability to act on corporation issues for years 11-15. We have been given the impression that there would be a secondary document that would come out from NYSDEC addressing a phosphorus number. To date, we haven't seen that but as we understand it was supposed to come out in early April. We would like to know if any actions that the coalition and the member municipalities are taking is going to delay that document or if we should continue with the thought that we will be able to work on years 11-15 in the near future. Director Williams said that nothing they've done to date or plan on doing should delay that second document coming out. Originally, Tom Snow said that it was coming out concurrently with the General Permit but it has not. We can certainly follow-up with Tom to see when we can expect it. The only other issue is the reporting that was in the General Permit, which isn't the way we do it now, and it's not clear if it's going to change. Kevin said he had an update for this year's reporting and that he would do what he had done in past years with the breakdown of question 7A thru 7C and send it over to Sabrina as soon as he gets back on his feet. Director Lucas asked if the April 26th effective date for the General Permit has been postponed. Director Williams said that there is nothing in the Environmental Notice Bulletin as of today that it has been. Christine asked Vincent Giorgio if there is anything he can share with us about what he knows about the status of the permit issuance or comments and did the NYCDEP submit comments and if he has any information for us about that. Vincent said that he does not have any more information than EOHWC currently has. Director Williams asked if Vincent had anything to share about the new FAD that recently came out. Vincent said the comment period is open and he believes it ends in June. The revisions came out based upon what was in their long-term watershed plan. Kevin acknowledged that EOHWC is set up differently than the Catskill Watershed but inquired if we would be able to get a piece of the education funding as well so we can assist member municipalities. Vincent said that there is going to be some funding from the state that will be flowing through the city so maybe it can be on that list. Christine asked if Vincent would share more information. Vincent agreed.

Christine introduced Todd Hirsch who is an associate in her office and will be working on some matters with the EOHWC office staff.

10. May Board of Directors Meeting Agenda

Director Williams presented the May 10 Board of Directors' agenda and asked if there were any additions or comments.

11. Checks and vouchers

Monthly vouchers were signed. No action taken.

12. Other business

Christine discussed recent changes to Open Meeting Law (OML). She said that we can continue to follow the procedure that we've been following until June, but after that we are going to have to comply with new rules. The legislature adopted a revision to the (OML) with the budget. While initially most of us who read it thought it was narrowing, turns out what they really meant to say was something completely different, so OML has come out with a description that members have been looking at in the context of town board meetings as well. What it's intended to do is to say that if you are going to use videoconferencing, in the absence of an emergency, you need to make those locations available to the public to attend wherever you are going to be meeting. For example, if the public can attend at Patterson or New Castle town halls as part of the announcement, they can do so at any of those locations. The board members at those locations will count for the quorum and can vote. In addition to that, you can have somebody participate by videoconference in an urgency sort of situation where there's a medical issue, caring for ill parents or something along those lines. A decision will have to be made as to whether EOHWC will continue videoconferencing. The way we notice meetings will have to change so that people who are going to videoconference from another location are using the appropriate language in their notice and making their facilities available, presumably a public meeting site to make that possible or practicable, or you can go back to meeting in person. Director Lucas said he interpreted it that a quorum of the members needed to be in person. Christine said that's not the way it's being interpreted by OML. It certainly is the way that most of us read it quickly, but it says location or locations. It's been interpreted in such a way that it means that you can count to a quorum if those locations are identified as places where this can happen and I'm sure because at the state level, many of the state agencies, certainly don't drag everybody to Albany or New York City for meetings. They have a videoconference meeting which they've been doing for years where people are attending from their various locations. Their intention and the way it's being interpreted by Council on Open Government (COOG) is that you can count those people for a quorum if it's properly noticed and allows the public to attend. Director Lucas attempted to clarify the new OML by giving an example. To be clear, members of the public and people like Vincent, who are not on the board can continue to Zoom in if you want to do it hybrid even if you went to an in-person meeting. If EOHWC Board members make their town halls available for the public to attend with you, we don't have to include their locations, you only have to include the Board members' locations. If we are going to do this, it should be at town halls and an accessible location. Whether or not the public attends, it must still be made available. Cory Lapidus asked if the public can attend from the EOH offices as a central location or does each individual municipality have to have a meeting point for the public as well. Christine said public access must be made available from town hall locations. Director Williams said that he and Christine will boil this down into what the procedures would have to be if we are going to continue doing videoconferencing, so everybody has a clear understanding because there are two different documents out there that came down from COOG and they're still kind of tough to read. Christine said she will prepare a form of notice, assuming it was agreed that meetings would be conducted remotely, that would make sense and then you could see what they are going to look like to the public and how this

would look if you were to do it that way. In reality, if you to the notice correctly and as long as you are all attending at your town halls, it shouldn't be that big of a deal and you could continue to use Zoom, but that's up to you to decide. Linda asked if the publication in which we currently advertised would have to change or if we could continue to advertise only in the Putnam County Courier. Christine said that we can continue to use the same publication and it would need to be on the website as well. Director Williams asked if a notice needed to be posted on any municipality's website that is attending remotely. Christine will look it over again and possibly check with COOG for clarification. Something will be prepared and sent out before the next meeting so that a decision can be made. Christine said that we can continue to use Zoom for the 60-day period after the official notice came out but will have to make a decision as to whether we will convert to the new procedures or go back in person for the June meeting.

13. Adjournment - Motion to adjourn by Director Lucas, seconded by Director Goncalves; all in favor. Adjourned 10:28 AM.

DRAFT