

Shutesbury Conservation Commission

Minutes – 07/07/2023

Approved – (8/10/23)

Virtual Meeting

Meeting Start: 5:00 p.m.

Commissioners Present: Miriam DeFant, Mary David, Robin Harrington

Commissioners Absent: Scott Kahan, Beth Willson

Other Staff: Carey Marshall (Land Use Clerk) – Absent

Other present: Stephen Sullivan, Don Wakoluk, Matt Styckiewicz, and all other unidentified individuals.

Chair's Call to Order at 5:00 p.m.

Meeting is being recorded

Review requests for minor permit changes for the Sawmill River Culvert Replacement, DEP File # 286-0279

DeFant introduces Matt Styckiewicz as the Project Manager from Nitsch Engineering for the Sawmill River Culvert replacement; SCC is here tonight to review a request for minor changes for the original OOC. OOC instructed that the contractor is to contact the Conservation Commission office if there are any emergency issues or questions. DeFant requests that Chair be contacted directly instead - Styckiewicz agrees that change can be made, and the contractor will receive DeFant's phone number. SCC is in agreement with this change. DeFant further adds the reasoning for this change is because their Land Use Clerk, Carey Marshall, is only in the office twice a week. She explains this also includes notification of any unexpected water releases as the SCC should be notified 12 hours before any changes are to happen; Styckiewicz agrees.

SCC needs to schedule a pre-construction site visit. Styckiewicz recommends meeting to be sometime within the next week to allow time for erosion controls to be placed. DeFant informs Styckiewicz that next week, two Commissioners will be traveling and will not be available – recommends either Wednesday July 12 or Thursday July 13 at 3:30. Styckiewicz will need to confirm with their contractor; contractors start dates is dependent on the outcome of tonight's meeting; therefore, he will confirm the site visit at a later date.

DeFant: OOC requires that trees slated for removal will be reviewed by SCC; wants to make sure the trees will be identified at the site visit. Styckiewicz confirms that the trees have already been marked. DeFant introduces the Town's Tree Warden Don Wakoluk. Wakoluk understands that the utility company tree removal located at the corner of Lakeview Road, involving crane work, is scheduled to be on Monday before the site visit; the crane work is a 2-3 day operation; he is unaware of the contractor's hours but wanted to inform SCC of this information. David wants to confirm that the tree removal work is occurring on Monday July 10th but the roads won't be closed until July 12th. Styckiewicz clarifies that work is separate from the culvert replacement work; that tree removal is for work being done by National Grid to complete utility work. Sullivan wants to clarify that as of July 1st, he was made tree Warden for Shutesbury and Tim

Hunting, the Highway Department Superintendent, is his assistant (Hunting would have been the Tree Warden if he was not planning to retire). SCC thanks Sullivan for informing them of this new change.

Styckiewicz shares that he is here tonight to ask for a minor change within the original OOC; the condition puts a time of year restriction for the work to be completed, meaning they only have a window to start and complete the project – currently listed as August 1 through September 30. This time restriction applies for both work in Resource Areas in water and work in the Buffer Zone; due to the proximity of the culvert to the water and the nature of this project, there is work happening within Buffer Zone, such as the tree removal, road work, removing and resetting the guardrail, and repaving, but this work is also still restricted by the time restriction listed in the OOC. The issue with the time restriction is that it only allows for 2 months of work, but the in-water work alone, including the excavating to remove the old culvert and replace it, will take two months along to complete; it is impossible to complete all proposed work within that time frame. They are requesting that SCC help guide them in finding an acceptable compromise as to whether the Adjacent Upland Resource Area (AURA) work, which is still in buffer but not wetlands, could commence prior to the time of year restrictions and potentially beyond the time of year restrictions. They are anticipating about six to seven weeks of in-water work which would take up the time of year restrictions; contractor would need a couple weeks before that so they can prep to begin their in-water work right when the time of year restrictions start and have enough time to finish before it ends. Town is not asking to Amend the OOC because the change they are looking to make is an unimpactful change; the Buffer Zone restriction that was included in that condition doesn't seem to be related to any Performance Standards of the WPA and doesn't seem to have any connections to the local Bylaw – seems to be in response to when they were originally asked when the work would be performed (August to September because of low water flow). The Town believes that allowing work in the AURA would have no impact on Performance Standards or Town Bylaw Values; hoping that SCC would be flexible in allowing this work this would to be performed outside of the time restriction.

David asks what the time frame they are proposing. Styckiewicz shares that it was going to be July 12 as the start date and to complete some of the roadway work and installation for the bypass so that the in-water work could start on August 1. The work is planned to be finished by the end September with the hopes of having the repaving completed as well. Since everything has been pushed back a little, their new start date for the AURA work would start on July 19th, the in-water work to start August 1st and be completed by the end of September; if the time of year restriction for the AURA work is removed, it allows for additional time to complete the repaving if weather prevents it from being completed by September 30.

DeFant: because of high amount of rain this year, if they were to encounter a rain event that delays their work, then what would be the plan to come back to SCC? Styckiewicz states they would come back to SCC and would leave it up to the SCC on how they should proceed. DeFant believes that time of year restrictions were placed because the Army Corps of Engineers had same time restrictions in place. In-water work does have an impact on water resources and wildlife, and thus is significant; this is why the time restrictions are in the permit; SCC found the work to be significant. Styckiewicz agrees and if the AURA work was considered impactful, then

the Town would come back to SCC if it wished to hold a hearing to Amend the Order of Conditions.

DeFant: SCC is happy to work with Styckiewicz to find a solution and not hold up the project; want to find something that works since it's a large project; points out that SCC started reaching out to the Town months ago, informing them that SCC was cornered about some of the wording in the permit and encouraging them to submit a Request to Amend the OOC; this would have allowed the SCC and Town to work together to revise the OOC so that there was enough flexibility in the permit and decisions didn't have to be made on an emergency basis. She believes SCC should modify the time of year restriction as a minor change because SCC wouldn't normally require time restrictions for AURA work. David agrees with DeFant noting it is concerning that this project has been approved for two years, so her only request is that in the future SCC receive appropriate notice. Styckiewicz agrees.

DeFant wants to reflect on a conversation she had with Styckiewicz recently where he shared that a part of the issue is the Town hadn't factored in the cost for extra permitting and for consultants to come to public hearings; in that conversation, Styckiewicz stated the Town did not want to Amend the OOC because it would require notifying Natural Heritage of Endangered Species Program (NHESP). She wants to remind the Town that they are responsible for any regulatory requirements, including reporting to any other state agencies that have jurisdiction, if it seeks additional changes. Styckiewicz agrees and understands.

David states that she wants to make sure the Town and contractor know who they need to notify for any reason; wants to make sure Styckiewicz has a correct list of people if he needed to call anyone with issues; don't see anyone listed for Styckiewicz to call if the lake, for example, needed to be lowered. Styckiewicz believes that lake lowering was forbidden in the OOC; thus he would contact SCC; would not be able to do without SCC approval. DeFant informs Styckiewicz if the Town were to request lake lowering for the completing of the project, then the SCC would require MESA/NHESP filing as part of the Emergency Certification; NHESP has recently written to the Town regarding two other projects at the lake involving Emergency Certifications; NHESP ordered no further work to happen at the Lakeview Road culvert site until the Town filed as they were required to do in the Emergency Certifications.

DeFant: the dewatering plan is modeled for 8 cubic feet per second (cfs) of flow with a backup pipe that allows for a total of 16 cfs of flow. The plans also say that anything equal to or greater than 20 cfs of flow overtop the coffer dams and flood the work site; the plan was modeled off a two-year frequency storm event. She reviewed the Stream Stats for the West Branch of the Swift River which is the analog used for modeling flow from the Lake Wyola watershed, shows that recent storms have been more severe than this standard. Three days ago, it was logged at 60 cfs of flow; the model assumes that inflow to Lake Wyola is half the flow on the stream gage for the West Branch of the Swift River, so this would be approximately 30 cfs. How is this being factored in? Styckiewicz agrees about the concern, but dams influence those kinds of models; they are banking on the dam to serve as a backup to control the flow upstream of their project. The contractor has been on site viewing conditions; if the contractor or Styckiewicz have any concerns, they will be in touch with the SCC. DeFant agrees and ask Styckiewicz to remind the

contractor that the SCC may from time to time stop by to inspect site conditions. Stickiewicz agrees.

Motion: DeFant moves that SCC issue a letter to the Town of Shutesbury as the Applicant, authorizing the removal of the time of year restriction for AURA work only and including the requirement that the Chair be notified directly by phone if there are any unforeseen circumstances. David seconds. Vote: David – aye, DeFant – Aye, and Harrington – Aye. *The motion carries.*

DeFant asks what outcome was of the issues involving the land survey and the property boundary with #387 Locks Pond Road. Styckiewicz stated that the issue was resolved, and the Town's design plans were found to be correct. David sits on the Dam Safety Committee and believes that is incorrect; her understanding is that proposed work done towards that side of the property may be an incursion onto private property. Styckiewicz: have to go back into his emails to find out more. Styckiewicz will make sure the contractor is aware of the issue if there is an issue with the property lines; there was a solution; he will find out exactly what it was and inform SCC.

Motion to Adjourn: David moves to adjourn, Harrington second. Vote: David – aye, DeFant – Aye, and Harrington – Aye. *The motion carries.*

Meeting Close: 5:34 p.m.

Next Meeting: July 12th, 2023 at 7 p.m.

Documents Used :

- Agenda
- Sawmill River Culvert Replacement NOI, Site Plan and Construction Schedule
- Draft letter to Town regarding time of year restrictions and emergency notification procedure for the Sawmill River Culvert Replacement OOC
- Letter from NHESP regarding order for retroactive MESA filings for Emergency Certifications, June, 2023