

KYLE HANLON, Chair
SHEILA IRVIN, Vice-Chair
MARIE RAFTERY, Clerk
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.
Executive Director

MINUTES OF THE REGIONAL ISSUES COMMITTEE

February 22, 2017

*At Berkshire Regional Planning Commission Office
1 Fenn Street, Ste. 201, Pittsfield, MA 01201*

I. Call to Order

The meeting was called to order at 4:11 p.m. by Chair Raftery.

The following Committee Members were present:

Marie Raftery, Stockbridge, Chair
C.J. Hoss, Pittsfield, Vice Chair
Peter Bluhm, Lee
Robert Bott, Mt. Washington
Kyle Hanlon, North Adams
Sheila Irvin, Pittsfield
Gwen Miller, Lenox
Eleanor Tillinghast

Staff Present:

Nat Karns, Executive Director

II. Approval of Minutes of September 14, 2016 Meeting

A motion was made by Kyle Hanlon to approve the minutes, seconded by Sheila Irvin. The motion was approved unanimously with 3 abstentions.

III. Airport Zoning Legislation – SD 455 (Senator Tarr)

A presentation had been made at the June BRPC meeting on the Hanlon v. Sheffield case which had gone to Land Court and then on to the Appeals Court. The ramifications of the decision which was against Sheffield affect most, if not all, zoning bylaws and ordinances. In the Appeals Court, it was determined that legislation that had been approved several decades ago gave the Mass. Aeronautics Commission (MAC) review authority over any zoning regulation that impacted airports (and heliports as well). If a zoning bylaw/ordinance had any, even indirect, impact on airports, then it was not valid unless it had been approved by MAC. In the court case, Sheffield had the typical language that “any use not listed as permitted was thereby prohibited.” Nowhere in the bylaw are airports allowed by right or by special permit; a private property owner built a small landing strip on his property and landed his plane on it. The Town, in enforcing the zoning bylaw, found that the private airstrip was not listed as permitted and therefore was prohibited and was taken to court and ultimately lost because their bylaw which did not list private airstrips and therefore the “any use not listed is prohibited” clause was in play had not received the approval of the MAC.

Subsequently, the ramifications of this ruling have become clearer. Great Barrington submitted zoning bylaw changes to the Attorney General’s Office for the standard review after adoption. Two zoning changes were not approved with a requirement that they be approved first by the MAC. One involved a new mixed use zone which did not list airports and the other involved adding helipads as a permissible part of a hospital in a definition. The AG’s office felt that the omission of airfields in the mixed use zone required approval by MAC and the inclusion of helipads in the hospital

definition also required MAC's approval. So the basic message is that either by not mentioning or by mentioning an air use, all communities will have to seek prior approval of MAC. And MAC requires that the community provide justification for not permitting airports in any bylaw, even if it doesn't totally prohibit them throughout the community.

The Sheffield decision affects every zoning bylaw or ordinance, even if it was passed many years ago. There is now a subsequent court case making its way through the process which involves a town in Senator Tarr's district and that has apparently lead him to file SD 455. SD 455 [now S.1993] would keep the existing language in place for commercial aviation facilities. Given the court decision, this would mean that unless a community had MAC approval of its bylaw, commercial aviation facilities would essentially be permitted anywhere. However, private use facilities would not necessarily be allowed everywhere. A community wishing to regulate them, either by allowing either as a permitted use or a special permit use or by not listing them as permitted at all would simply notify the MAC of their proposed bylaw and MAC could comment. There would be no requirement for the municipality to heed MAC's comments nor does MAC have to comment at all.

In Committee discussion, various concerns were raised about the bill as currently drafted:

- It does not clear up the legal status of bylaws that were never approved by MAC when it comes to anything to do with either commercial or private aviation facilities.
- Unclear why MAC needs to comment at all for private facilities.
- The standard language about "uses not permitted are not allowable" becomes moot when it pertains to airfields.
- It becomes very unclear about what happens when a zoning bylaw change has nothing to do with airports and is silent on them. Do those need to be submitted to MAC.

The Committee felt that we should be working with the Mass. Municipal Association on this problem.

Eleanor Tillinghast moved for the Committee to draft a letter to Senator Tarr and others with our comments and concerns regarding SD 455. Kyle Hanlon seconded the motion. Nat Karns clarified that a letter would be drafted and brought to the RIC at its next meeting. The vote was unanimous to approve the motion.

New Item. ANR Time Extension Legislation – HD 391 (Representative Cariddi)

Representative Cariddi has filed legislation to extend the deadline for action on Approval Not Required Plans to 45 days from the current 21 days.

The Committee felt that this was very reasonable as many planning boards only meet once a month. Also, even for communities where the board meets more frequently, if they want input from other boards, the 21 day limit makes that very difficult.

Eleanor Tillinghast moved that a letter be drafted and brought back to the Committee for consideration supporting the bill. CJ Hoss seconded and the vote was unanimously in favor.

IV. Land Use Reform Legislation

Nat Karns explained that three bills have been filed, all involving the substantial changes to the zoning enabling law and subdivision control law which have been worked on for years. SD 22 (Senator Rodrigues) has been filed on behalf of the Massachusetts Association of Homebuilders. HD 2587 (Representatives Kulik and Peake) is the much revised version of last year's bill that made it through the Senate. SD 1609 (Senator Chandler) is a refiling of the bill that the Senate passed last year. There is a redlined version of HD 2587 which shows the changes between the two bills. Nat cautioned that he actually had not yet seen a copy of the bill that was actually filed so there might be some differences but he doubted they would be great. He was asked to send the red-lined version to the Committee members.

We submitted comments last year at least twice, once on the bill when it was in committee and then after it came out of committee. The Senate took it up and made some modifications and we had a particular concern about those made regarding ANR and we commented on that. The Committee felt that working from an update or elaboration of the chart we did last year might be helpful in going through this, each section or topic individually, probably over several meetings.

Not intending to get into these bills today. When asked about the likelihood of anything passing, since this has been attempted for twenty years, Nat indicated he thought the Senate will try to take it up fairly quickly since they passed it last year. The Homebuilders have some base of support in the House and the bills may be competing somewhat. We don't believe this is on the Administration's radar screen at all. CJ pointed out the changes that the Rodrigues bill makes to C.44, s. 53G that would be very detrimental.

Peter questioned if we knew the impact of the site plan provisions on towns that have existing site plan review provisions and processes. Some guidance about site plan provisions could be useful to the towns. Lee does site plan review on very minor things, even if a business is simply changing. Nat responded that currently site plan review is not even mentioned in C. 40A so everyone has created their own provisions. BRPC has not analyzed what each town/city has.

V. Next Committee Meeting Date, Time & Topic

The Committee will next meet on Wednesday, March 29th at 4 p.m.

VI. Adjournment

Upon a motion by C.J. Hoss, which was seconded by Eleanor Tillinghast, the meeting was adjourned at 5:00 p.m.

Material Sent or Provided to the Committee

- Agenda for 2/22/2017 Meeting
- Minutes for 9/14/2016 Meeting
- SD 455 – Municipal Authority Relative to Airports (Senator Tarr)
- HD 391 – Approval Not Required Deadline (Representative Cariddi)
- SD 22 – Land Use Legislation (Senator Rodrigues)
- SD 1609 – Land Use Legislation (Senator Chandler)
- HD 2587 – Land Use Legislation (Representatives Kulik and Peake)
- Smart Growth Alliance – Great Neighborhoods
- Table on elements of HD 2587 dated 1/20/2017