

KYLE HANLON, Chair
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NATHANIEL W. KARNS, A.I.C.P.
Executive Director

MINUTES OF THE REGIONAL ISSUES COMMITTEE - Draft

April 25, 2018

*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 4:02 p.m. by Chair Mullen.

The following Committee Members were present:

James Mullen, New Marlborough (Chair)
Larysa Bernstein, North Adams
Bob Bott, Mt. Washington
Andrew Groff, Williamstown
Kyle Hanlon, North Adams
Sarah Hudson, Tyringham
Sheila Irvin, Pittsfield
Pam Kueber, Lenox
Eleanor Tillinghast, Mt. Washington

Others Present:

Deanna Ruffer, City of Pittsfield OCD
Andy McKeever, iBerkshires

Staff Present:

Pat Mullins, Community Development Program Manager
Tom Matuszko, Assistant Director
Nat Karns, Executive Director

II. Approval of March 28, 2018 Meeting Minutes

Upon a motion by Kyle Hanlon, which was seconded by Pam Kueber, the minutes were approved as presented with two abstentions.

III. Massachusetts Housing Choice Program

Chair Mullen initiated the discussion with the thought that the Housing Choice Program was indicative that good intentioned programs that are developed in Boston often don't fit the set of challenges we have in the Berkshires.

Nat Karns provided some points about the program but felt that first the Committee might focus on the legislation, which appears to be on a fast track. Concerns or issues about the program can wait as that will take longer to affect. The legislation is pretty straightforward and make housing friendly zoning tools easier for communities to adopt. The legislation really doesn't affect the Housing Choice Program. The legislation (H.4290) has been reported out of the Joint Committee on Housing favorably and is not in the House Ways and Means Committee. If it comes out of the House, it would then go to the Senate, probably to the Ways and Means Committee there. Since the House is finishing up its version of the budget this week, they will start to work on other legislation, such as this, beginning next week. Some of

the legislative leadership is very interested in seeing this bill move forward and the Governor is strongly pushing for it. The most significant part of this legislation is requiring only a majority vote by town meeting or city council to adopt zoning amendments for the various things contained in the bill which may facilitate more housing production. Other, non-housing related aspects of zoning would still require super-majority votes.

Section 1 allows intergovernmental agreements for tax sharing agreements between municipalities rather than requiring that legislation pass. Section 2 consists of definitions. These are needed to define the various housing terms covered by the bill and it is useful to develop some statewide consistency anyway. However, having them may create some inconsistency with current bylaw definitions and it would be beneficial to update local definitions to be consistent but even if a municipality doesn't update them, it probably would not be a big issue in most cases.

There was discussion to clarify what transfer of development rights (TDR) is and how it works. Generally seems to work better in areas with a fairly high housing market demand. Essentially it provides a market-based method to create a density bonus in areas a community feels are appropriate for more housing and also relieve development pressure in areas a community wants to protect from development (farmland, sensitive environmental areas), while paying the preserved property owner for the development value they have given up. Another way to explain TDR is that while Open Space Residential Development preserves sensitive lands within a parcel by concentrating development in less sensitive parts of the same parcel, TDR expands the geography by allowing transfer of development across parcels or from one part of a community where land preservation is desired to another which is more suited to some additional development beyond what the underlying zoning would allow.

Section 3 adds some specific language elaborating on transfer of development rights.

Section 4 is the core of the bill which changes the voting requirements for changes to zoning from requiring a supermajority to legislative approval by simple majority. This covers allowing multi-family, mixed use, accessory dwelling, OSRD, 40R and some other items by right. The Committee supports the simple majority voting in the bill. In the broader land use legislation previously reviewed, going to simple majority votes was allowed; this requires simple majority the specific items in the bill; all others would remain as requiring a supermajority vote with not local option to reduce that. This will create some confusion for town meeting moderators as some zoning items will be by simple majority and others will be by supermajority.

There was considerable discussion regarding what and how the language in (1) "in a location that would qualify as an eligible location for a smart growth zoning district under section 2 of chapter 40R) would work. C.40R contains some general standards of what qualifies but also gives DHCD considerable ability to make determinations based on its rules and regulations. In developing a 40R proposal for a municipal vote, it seems to require some analysis regarding what would qualify in the localities' opinion but it doesn't require that an actual submission of a 40R application would be needed.

The legislation does not require that any community change its zoning but if it decided it wanted to develop new zoning utilizing these tools, adoption would be by simple majority. It would still be the community's decision whether to allow things by right, by special permit, or not at all. The Committee felt that the legislation could potentially benefit all communities. If communities need more tools, it makes it easier for them to adopt some of them. Using a simple majority vote for some forms of housing is potentially beneficial to every community as there are always challenges in getting approval with a super majority vote requirement. The Committee supports this aspect of the legislation.

Section 10 reduces the supermajority vote requirement for the Special Permit Granting Authority for some housing related special permits to a simple majority.

The committee discussed the 40R eligible locations language further. If what is intended is that DHCD makes a determination over what is an eligible location, that can be a very involved process. The Committee felt it would be better to list the criteria for 40R designation in this legislation, leaving out a DHCD determination entirely. A community should not have to apply to DHCD for a 40R designation in order to establish a 40R district.

There was discussion about any possible interrelationship of this legislation and the land use reform legislation. Nat Karns opined that if this legislation passes, the legislature will not have any appetite to take up the broad land use reform legislation. There was some discussion that the broader land use reform efforts need to be broken into smaller pieces, which could advance specific higher priority updates which have some level of support from most stakeholders such as those things the House leadership team has been working on.

The Committee then started discussing the Housing Choice Program with the intent of developing comments or a position on it.

One of the issues is that for the development community, it is much more profitable to build higher-end housing. But this doesn't necessarily meet the need for workforce or family housing. Given that the lack of workforce/family housing is the key housing issue across the state, this program is actually not very good policy. There are ways to make sure that incentives provided are directed to housing that meets community needs and to not reward the type of development that is creating the community challenges. The program is rewarding the communities that have been subjected to most aggressive profit-motivated market trends.

Communities have no ability to set maximum housing sizes. One modest fix in zoning is to allow communities to regulate maximum dwelling size. If we tried to get added that change added to the Housing Choice legislation it would complicate that legislation and the development community would turn against it. It is a point to be made in housing choice program, not the legislation.

The Committee felt that the critical thing for our communities about the program as structured is that our communities, almost none of whom are achieving the housing unit production thresholds in the program, don't have a market demand for more units. However, they should not be blocked from being able to access the various grant programs. It was felt that it would probably not be possible to get the Baker Administration to not create the housing incentive so our efforts should focus on eliminating the aspect of being penalized on various grant programs. While the claim is that grant bonus points are meaningless and don't matter, then why have them at all? The program is based on inequity already so don't penalize our communities more. And while the claim is this program is based on the Green Communities and Complete Streets programs, it really isn't although it has some similar elements.

V. Next Committee Meeting Date

The next meeting was scheduled for 4 p.m. on Wednesday, May 16th. Various possible topics were discussed but it was finally decided to invite Sam Russo from General Dynamics to talk about the work he is involved in to determine what their workforce is indicating is needed to keep them here. Housing choices are a key part of that. Most of their workforce is millennials and they indicate that there is not housing available which they desire. They would like to see apartment complexes in campus settings which offer a lot of chances to recreate and socialize as part of the package.

It was determined that the Committee would focus over the next several meetings on developing a policy position on creating a housing program that meets the needs of Berkshire County. If we can develop something that we believe will better meet our needs than Housing Choice, perhaps we can get support for that. We have the issues of the older housing stock, second home demand sucking up the inventory in parts of the county, unmet millennial housing needs, and our rapidly aging population with housing needs.

There was also strong suggestion to set up more sharing of best practices across the region.

VI. Adjournment

Upon a motion by Eleanor Tillinghast, seconded by Sheila Irvin, the meeting was adjourned at 6:05 p.m.

Material Sent or Provided to the Committee

- Agenda for April 25, 2018 Meeting
- Draft Minutes of the March 28, 2018 Regional Issues Committee Meeting
- H.4290 - An Act to Promote Housing Choices
- Housing Choice Program – development of comments/position
- Housing Choice Initiative Proposed Revised and New Thresholds for Slow Growth Communities
- Power Point Presentation by Chris Kluchman to Regional Issues Committee – 3-28-2018