

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201
TELEPHONE (413) 442-1521 · FAX (413) 442-1523
www.berkshireplanning.org

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

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

MEETING NOTICE

A meeting of the Berkshire Regional Planning Commission
will be held on:

Thursday, **July 14**, 2016, at **5:30** p.m.

Berkshire Regional Planning Commission Offices
Pittsfield, Massachusetts

Meeting Material: All written materials for the meeting are posted on BRPC's website:
www.berkshireplanning.org. Click on the calendar date for the meeting and materials available
will be listed.

AGENDA

- I. Opening (5:30-5:35)**
- A. Call to Order
 - B. Roll Call
 - C. Approval of Minutes of May 19, 2016 Meeting
- II. Comments from the Public (5:35—5:45)**
- Members of the public may offer comments regarding topics which are on the agenda or other matters which they wish to bring to the Commission's attention. Comments are limited to no more than three minutes and are to be directed to the Commission.*
- III. Delegates' Issues (5:45-5:50)**
- Delegates and Alternates may bring up any issue not on the agenda.*
- IV. Election of BRPC Officers for FY 2017 (5:50-6:00)**
- The Nominating Committee proposed the following slate of officers for FY 2015:*
- Chair: Kyle Hanlon, North Adams Delegate*
 - Vice Chair: Sheila Irvin, Pittsfield Delegate*
 - Clerk: Marie Raftery, Stockbridge Alternate*
 - Treasurer: Charles Ogden, Egremont Alternate*
- Nominations will be taken from the floor.*
- V. Endorsement of Committee Chair and At-Large Executive Committee Member Appointments for FY 2017 (6:00-6:05)**

VI. Environmental Review Comments (6:05-6:15)

A. Mill Street (Tel-Electric) Dam Removal and West Branch Housatonic River Restoration (Pittsfield)

The Environmental Review Committee is developing comments regarding an Expanded Environmental Notification Form for the removal of the Tel-Electric Dam on the West Branch of the Housatonic River and related river restoration in Pittsfield. Due to the deadline for submittal of comments, the Commission will be reviewing these after the fact but if there are changes requested by the Commission, we can submit revised comments after the Commission meeting.

B. Lenox Landfill Solar PV Project ENF

The project involves the installation of a 2,340-panel solar PV array on the Town of Lenox landfill in Lenox Dale. The project is approximately 5 acres in size and is proceeding through MEPA because it is located within the Upper Housatonic River ACEC. Due to the timing of the site visit, comments will be prior to the meeting.

VII. Local Regulation of Aviation (6:15-6:40)

In a recent State Appeals Court decision involving the Town of Sheffield, the Court has ruled that municipalities cannot regulate any form of aviation without pre-approval of the regulation by the Aeronautics Division of MassDOT. This is true, even if the only regulation by the municipality is by silence, i.e., by not including the aviation use in the Schedule of Uses and thus prohibiting it. Local attorney Alexandra Glover, who represented the property owner in this case and who is also the BRPC Delegate from Alford, will educate the Commission on this ruling and its implications for all Berkshire municipalities.

VIII. Aging in Place Workbook and Video (6:40-7:05)

Planner Eammon Coughlin will present the Aging in Place Workbook and YouTube video which has just been developed under the Age Friendly Berkshires program. With our aging population, this has serious implications for all of our communities (and many of us).

IX. Approval of Executive Committee Actions between May 19 and July 14, 2016 (7:05-7:10)

X. Executive Director's Report (7:10-7:15)

- A. Resignation of Senior Planner Brian Domina
- B. 2017 District Local Technical Assistance Funding
- C. New Planning Board and Zoning Board of Appeals Member Training – Thursday, July 21st, BRPC
- D. New Health Board Member Training – Monday, August 29th, BRPC
- E. 2016 MassWorks Applications Open - applications due no later than September 2nd
- F. Proposed Transportation Improvement Program for FY 2017-2021
- G. Approval of 5-Year Capital Investment Plan by the MassDOT Board
- H. Award of Sheffield/Great Barrington Community Development Block Grant by the Department of Housing & Community Development
- I. Award of DEP/EPA 604b Water Quality Management Planning project for Documenting Bacterial Improvements in the Hoosic and Housatonic Rivers
- J. Other

XI. Adjournment (7:15)

Other interested citizens and officials are invited to attend.
City and Town Clerks: Please post this notice pursuant to M.G.L. Chapter 39, Section 23B

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201
TELEPHONE (413) 442-1521 · FAX (413) 442-1523
Massachusetts Relay Service: TTY: 771 or 1-800-439-2370
www.berkshireplanning.org

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

NATHANIEL W. KARNS
Executive Director

DRAFT MINUTES OF THE BERKSHIRE REGIONAL PLANNING COMMISSION MEETING

Thursday, March 19, 2016
At the Berkshire Regional Planning Commission Office
1 Fenn Street, Suite 201, Pittsfield, MA 01201

I. Call to Order

A. The meeting is called to order at: 7:00 PM

Chair Sheila Irvin reminded all per the open meeting law, BRPC records all meetings. Others may record the meeting after informing the chair. Any documents presented must be left with the chair at the meeting.

B. Introductions/Roll Call

The following Commission members are present:

John Duval – Adams Alternate
Gale LaBelle – Becket Alternate
Peter Traub – Cheshire Delegate
Malcom Fick – Gt. Barrington Delegate
Peter Bluhm – Lee Delegate
Bob Bott – Mt. Washington Delegate
Kyle Hanlon – North Adams Delegate
Michael Ernst – Otis Delegate
Sheila Irvin – Pittsfield Delegate
Rene Wood – Sheffield Alternate
Kate Fletcher – Stockbridge Delegate
Marie Raftery – Stockbridge Alternate
Sarah Hudson – Tyringham Alternate
Marilyn Wiley – Washington Delegate
Roger Bolton – Williamstown Alternate

Staff Present:

Nat Karns – Executive Director
Tom Matuszko – Assistant Director
Clete Kus – Transportation Manager
Emily Lindsey – Transportation Senior Planner

Others Present: Julia Dixon - Creative Economy Specialist at 1Berkshire
Paul Smernoff- Williamstown Resident
Jim Therrien – Berkshire Eagle Staff

C. Approval of Minutes of Commission Meeting of January 21, 2016

Rene Wood moved to approve with revision; seconded by Kyle Hanlon. Unanimously approved with 5 abstentions.

II. Comments from the Public - None

III. MAY 9, 1966 – BRPC’s 50th Anniversary – After an applause, it was decided to serve cake after the meeting.

IV. Delegates’ Issues

Peter Bluhm from Lee asked for an update on standard bridge designs from the state. Nat replied MassDOT explained to BRPC that cookie cutter designs could not be done because the state needs to understand the geology supporting the bridge and there is testing involved. BRPC will prepare a brief memo to share MassDOT’s response. Rene asked if it was possible to send additional comments on the Capital Investment Plan (CIP) stating that although we recognize this is a policy issue and not part of the Capital Investment Plan it should be noted that it has extreme implications for the practicality of building bridges and the use of the money to the region. Also ask if something could be done to assist in reducing the cost of bridge design.

Gale LaBelle from Becket informed the group a pharmaceutical company wants to submit an application to build four green houses for medical marijuana. The company wants to store data on the cloud and have computer service. There are areas in Becket that do not have internet service.

Kate Fletcher from Stockbridge suggested a possible topic for the Regional Issues Committee would be to look into the regulation of drones.

V. Ride-Hailing Services (i.e. Uber, Lyft) in the Berkshires

Senior Planner, Emily Lindsey and Julia Dixon, Creative Economy Specialist at 1Berkshire, briefed the Commission on the nature and issues involved with ride-hailing

What is ride-hailing?

Ride-Hailing applications (like Uber or Lyft) allow travelers to order a car using a smartphone application. They connect passengers to drivers and providing a cash-less travelling experience.

Opportunities

- Increased travel options for smartphone owners
- Easily connects passengers and drivers (no flagging down cars, or waiting to talk to a dispatcher)
- Increased mobility for those that do not own/operate automobiles
- Unprofessional drivers (and passengers) are weeded out via ratings system
- Unlike taxi-services, these operate cash-less, all you need is a credit card linked to your account
- Potential safety benefits (replacing impaired driver trips) and subsequent economic benefits
- Drivers can be full-time or part-time, bringing a flexible opportunity for all drivers and do not need a Commercial Drivers License

Challenges

- Complements existing (limited) transit system
- Reliability with too few drivers
- Must own a smartphone and data plan
- Surge pricing (based on supply/demand)
- Taxi and ride-hailing service tension
- Taxi and ride-hailing service regulation
- Potential safety concerns
- Drivers must be at least 21 and drive a car that is 2000 or newer. The car must have 4 doors and be insured

Julia Dixon explained 1Berkshire conducted a survey. There were 1583 responses.

- Most people use Uber on the weekends and nights.
- The driver receives 75% and Uber received 25% of the fee collected.
- Uber is cheaper than taxi service.
- Uber is trying to sign up as many drivers as possible.
- Many young people are used to using Uber in other cities and would like to use Uber in Berkshire County.
- Less young people have their driver's license due to the cost of owning a car and the testing for obtaining a driver's license has become harder.

Emily explained since Uber uses smartphones, locations and tracking of rides is useful data that is collected and many states are buying that data for transportation analysis. Uber also helps people get to public transit locations. Also as a result of a lawsuit in Massachusetts and California, where drivers claimed Uber had "misclassified" them as independent contractors, rather than employees, Uber has agreed to help create an Uber "drivers association" in both CA and MA, while drivers still are officially contractors. At present, there are not a lot of details on what the association will look like, though the group discussed the creation of an Uber employee association in Washington state.

VI. FY 2017-2021 Transportation Improvement Program

Clete Kus, Transportation Manager gave an overview of the draft Transportation Improvement Program for FY 2017 to FY 2021 that is in alignment with the State's Capital Investment Plan.

Clete reviewed the first three years of the Tip (Scenarios 1, 2 and 3)

Under Scenario 1 the Pittsfield BMC area is not moving along. Under Scenario 2 there is a funding gap, the unused money would go to another area in the state.

At its last meeting, the Berkshire MPO indicated it preferred Scenario 3. This Scenario programs all the money by rearranging the projects and adding a new project (Clarksburg, Route 8) in FFY 2017.

At its last meeting, the Berkshire MPO indicated its preference to advance Scenario A for FFY 2020 – 2021.

Clete reviewed the last two years of the TIP (Scenarios A, B, and C)

Scenario A, B and C are all rated about the same. At both the MPO and TAC meetings Scenario A was the preferred Scenario. The Hinsdale, Skyline Trail project has been on the TIP for many years and is the one section of the road that had not been improved.

Scenario B the Hancock Route 20 is more heavily traveled but in better shape than the Hinsdale project. In Scenario C the Otis Rte 23 road condition is between the condition of the Hinsdale Project and the Hancock project.

There was a discussion to clarify the makeup of the Transportation groups.

MPO – Selectboard members and elected officials are on the MPO.

TAC – Every community can have a representative appointed by the Selectboard, the town administrator or the Mayor. Six or seven communities have appointees who regularly attend.

Nat asked the Commission to recommend how the Chair should vote on the Transportation Improvement Program (TIP) at the MPO meeting on June 28th.

Rene Wood made a motion for the Chair to endorse Scenario 3 and Scenario A at the next MPO meeting; Peter Bluhm seconded. Approved by a vote of 11 in favor and 3 opposed.

VII. FY 2017 Transportation Unified Planning Work Program

Clete Kus gave an overview of the draft work activities for the Transportation Unified Planning Work program which is a list of the transportation planning activities for the next federal fiscal year for Berkshire County.

The planning studies and tasks in the UPWP will be a MPO action item at their upcoming meeting.

VIII. Senate Bill No. 2144: An Act Promoting the Planning & Development of Sustainable Communities

Nat explained the Regional Issues Committee reviewed the revised bill on reforming land use and subdivision laws. There are a lot of good aspects to the bill and there are a few new things added to the bill. The draft letter presented is our recommendation to support the bill with some changes requested.

Rene thanked the committee for their work.

Rene Wood moved to approve the letter as presented; seconded by Gale LaBelle. Unanimously approved.

IX. Consideration of BRPC FY 2017 Budget

Tom explained the overall budget for FY2017 has decreased due to less for subcontractors. The agency's benefits have decreased due to fewer staff taking health or dental benefits.

Rene Wood moved to approve the BRPC FY 2017 Budget as presented; seconded by Mike Ernst. Unanimously approved.

X. Nominating Committee Report – Slate of Officers for FY 2017

Rene Wood reported the Nominating Committees nominations for the following slate of officers:

Chair	Kyle Hanlon
Vice-Chair	Sheila Irvin
Clerk	Marie Raftery
Treasurer	Charles Ogden

XI. Approval of Executive Committee Actions between March 17 and May 5, 2016

Rene Wood moved to approve all Executive Committee actions between March 17, 2016 and May 5, 2016; seconded by Kyle Hanlon. Unanimously approved.

XI. Executive Director's Report

A. 2017 State Budget and District Local Technical Assistance Funding

Nat recommended that all should call or email Senator Downing and Senate President Stanley Rosenberg to support DLTA and actually increase DLTA funding for FY2017.

B. Tennessee Gas Pipeline Northeast Energy Direct Project Status

C. Initial Meeting of Rural Policy Advisory Commission – June 10, 11:30 a.m.-1:30 p.m. Franklin Regional Council of Governments, Greenfield

D. Project to Update Mt. Washington's Parcel Maps

E. Update of Pittsfield's Open Space & Recreation Plan

F. Initiation of Health Impact Assessment Project for Egremont

G. Initiation of Tyringham Pavement Management Assessment

H. Egremont Complete Streets Project

I. Initiation of Natural Hazard Mitigation Planning Project for Lanesborough

J. Other – Sarah asked about the Sandisfield ruling on Article 97. Nat replied the Berkshire Superior judge has ruled that FERC can overrule Article 97.

XII. Adjournment

Peter Bluhm made a motion to adjourn; seconded by Sarah Hudson. Unanimously approved. Adjourned at 8:54 pm.

Cake was served after the meeting was adjourned.

Materials distributed or presented during this meeting:

Meeting Agenda
Draft Meeting Minutes
Approval of Executive Committee Actions Memo
Executive Director's Report
Ride-hailing Services handout
Consideration of Proposed Transportation Improvement Program memo
Scenarios – Berkshire MPO FFY 2017 - 2021 TIP
2017 UPWP Planning Studies & Tasks
Draft Letter recommended by the BRPC Regional Issues Committee
Two page summary
Senior Planner Brian Domina memo dated March 3, 2016
Jay Wickersham and Robert Richie memo dated July 8, 2015
Capital Investment Plan letter April 28, 2016
Proposed FY2017 Budget memo May 12, 2016
Draft FY2017 Budget (Revenue and Expenditures)
Tennessee Gas Pipeline Docket No. CP 16-21-000 Northeast Energy Direct Project
Rural Policy Advisory Commission May 10, 2016

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201
TELEPHONE (413) 442-1521 · FAX (413) 442-1523
Massachusetts Relay Service: TTY: 771 or 1-800-439-2370
www.berkshireplanning.org

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

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

MEMORANDUM

TO: Berkshire Regional Planning Commission
FROM: Nathaniel W. Karns, AICP, Executive Director
DATE: July 29, 2016
SUBJ: Endorsement of Committee Chair and At-Large Executive Committee Member Appointments

In preparation for the FY 2017 Commission year, and presuming that he is elected Chair at your July 14th Commission meeting, Kyle Hanlon has been approaching various members regarding taking on Committee chair positions or their interest in being appointed At-Large Executive Committee Members. As of today, not everything has been resolved; hopefully by your July 14th meeting, all slots will be filled. To date, the following have been appointed, subject to Commission approval:

Environmental Review Committee Chair:	James Mullen (New Marlborough Delegate)
Regional Issues Committee Chair:	Marie Raftery (Stockbridge Alternate)
At-Large Member with Transportation Expertise:	Samuel Haupt (Peru Delegate)
At-Large Member:	Roger Bolton (Williamstown Alternate)
At-Large Member:	John Duval (Adams Alternate)

To be named are the Commission Development Committee Chair and possibly one additional At-Large Member.

Berkshire Regional Planning Commission Environmental Review Report

July 6, 2016

SUBJECT: Tel-Electric Dam Removal
EOEA#: 15510
LOCATION: Pittsfield
ESTIMATED COST: \$1.5 million (construction)
REVIEW TYPE: EENF
PROPONENT: City of Pittsfield and Div. of Ecological Resources (DER)
COMMENTS DUE: July 8, 2016

PROJECT DESCRIPTION:

The proposed project involves the removal of the Tel-Electric Dam, which is located on the West Branch of the Housatonic River in Pittsfield. The City of Pittsfield is proposing to remove the dam because it is in poor condition, represents a public safety risk and attracts illegal activity, and hinders the City's vision for a greenway along the river that could serve as a catalyst for neighborhood revitalization.

The privately owned dam was originally constructed to provide power to the mill building to which it is structurally attached. The dam is approximately 18' high and 40' wide, with a 30' slightly curved spillway. A secondary spillway directs water through a bypass conduit. A new low-level outlet with a drop-gate was installed in 2014. The Dept. of Conservation and Recreation Dam Safety office inspected the dam in 2000 and found it to be a low-hazard dam in poor condition.

The proposed project includes the removal of the dam and excavation of sediment and debris behind the dam. The amount of sediment built up behind the dam and within the impoundment is calculated to be approximately 9,000 cubic yards (cy). The project proposes to mechanically excavate 3,000 cy of sediment located closest to the dam and dispose of it in a landfill. The remaining 6,000 cy in the upstream portion of the impoundment will be allowed to "passively" migrate gradually downstream, which is expected to be over the course of several large storm events. Once river channel grades stabilize, sediment movement would also stabilize.

Studies conducted over several years demonstrate that the sediment within the impoundment contains contaminants, including elevated polycyclic aromatic hydrocarbons (PAHs), heavy metals and PCBs. The contaminants found are not uncommon in stretches of river that flow through urban areas such as this location. DER's *Sediment Management Plan* (April 2016) states that "with a history of industry in the upstream watershed and known oil and hazardous materials releases at Dorothy Amos Park (~1,400 feet upstream) and the King Street Dump (~5,500 feet upstream), multiple threats to sediment quality were identified."

A previous study recommended removing 12,000-15,000 cy of sediment to remove most of the contamination within the impoundment, which brought with it a \$4.5 million cost of excavation and disposal. This level of cost would stop the project from going forward. However, in 2012

Berkshire Regional Planning Commission Environmental Review Report

an inadvertent release of water and sediment affectively drained the impoundment. Due to this event the amount of sediment left in the impoundment was greatly reduced, bringing sediment management to the current level of 9,000 cy. While this benefited the dredging project, it also increased contamination levels in the stretch of river downstream of the dam. As a result, the contamination levels below the dam are now actually slightly higher than in the upper reaches of the impoundment. Because the contamination levels are approximately equal in the immediate upstream and down reaches, the proponents believe that the overall contamination levels will remain the same when the 6,000 cy are allowed to passively move downstream during the dam breaching and during successive storm events.

Given that contaminants will likely continue to enter the river through various pathways, project proponents believe that allowing contaminated sediment to migrate downstream is a “justifiable balance between cost and protecting existing infrastructure.” If dredging of all impoundment sediment were required, the project would be “likely financially infeasible.” (DER, April 2016).

The project also includes several other components:

- Installation of a concrete retaining wall to protect the foundation of the attached mill building immediately downstream of the dam
- Removal of an abandoned railroad bridge just upstream of the dam
- Installation of scour protection at the abutments of two active railroad bridges immediately upstream of the bridge being removed
- Installation of boulders upstream near the West Street bridge to protect water, sewer and utility lines that cross the river and are embedded in the river channel.

The project is currently at the 25-30% design phase, with the next engineering phase to focus on the work involving railroad bridge removal and stabilization.

The proposed project meets or exceeds these MEPA thresholds:

- Alteration of a dam that causes any decrease in impoundment capacity
- Alteration of 500 or more linear feet of bank
- Alteration of ½ or more acres of Land Under Water (the impoundment is expected to transition to Boarding Vegetated Wetland, Riverfront and Land Subject to Flooding)

The proposed project will require these permits:

- Wetlands Protection Act Order of Conditions from the Pittsfield Conservation Commission, with possible Superceding Orders from the Mass. Dept. of Environmental Protection (DEP)
- 401 Water Quality Certification from the Mass. DEP
- Chapter 253 Dam Permit from the Mass. Office of Dam Safety
- Section 404 Permit from the Army Corps. of Engineers

The project has received \$30,000 in state financial assistance from the DER for project feasibility study so MEPA purview is broad. The project has received and continues to receive

Berkshire Regional Planning Commission Environmental Review Report

technical assistance from DER staff. The project has also received \$750,000 from the GE Natural Resources Damages (NRD) Funds and \$1million from the U.S. Dept. of the Interior. The project meets the thresholds for a mandatory EIR, but the proponents are requesting a waiver from the EIR process.

PROJECT ALTERNATIVES:

In 2006 a dam removal feasibility study was conducted to assess various approaches to dam removal. Dam repair and various fish passage structures for improved aquatic connectivity were mentioned briefly but not analyzed in this study. Rehabilitation of the dam for energy generation was not mentioned at all.

The EENF lists No Action and Dam Repair or Modification as the alternatives considered. Reasons for rejecting the No Action option include the continued inherent risks of dam failure: the uncontrolled release of water and sediment to sites downstream and the headcutting and scour damage to the railroad bridges immediately upstream of the dam. Lastly the dam and impoundment are viewed by the City of Pittsfield as a public safety concern, attracting vandalism, illegal activity and a past drowning death. The reason given for rejecting the Dam Repair/Modification option is “As the dam no longer serves a purpose, there is no imperative for the dam owner to perform costly ongoing maintenance and repairs that would be required to satisfy requirements for dam safety.” (EENF p. 7).

Neither the dam owner, the City of Pittsfield nor the DER considered investigating the option of rehabilitating the dam to generate hydropower as part of the EENF filing.

COMMENTS AND RECOMMENDATIONS:

Generally BRPC supports the City of Pittsfield’s proposal to remove the Tel-Electric Dam. Removing dams that are in poor condition and are not likely to be rehabilitated for energy generation, and which offer benefits such as reduced public safety risks and improved aquatic connectivity is consistent with Sustainable Berkshires. Removing the Tel-Electric Dam is an action item listed in the *Pittsfield Hazard Mitigation Plan* and development of a greenway corridor along the river in the West Side Neighborhood has been noted in other city planning efforts for the past several years. BRPC has in the past provided a letter of support for federal funding for removal of the dam.

At this time we cannot support the proponents’ request for a waiver from filing an EIR because the EENF lacks information in two key areas: 1) the lack of any type of analysis to determine if the dam could reasonably be rehabilitated to produce hydropower and 2) a lack of information about the impacts of the release of 6,000 cy of contaminated sediment to fisheries and other aquatic organisms downstream of the dam. We would, however, support a request for an extension of the MEPA review process to allow the proponent to provide supplemental information on the two key areas listed above. Our main concerns regarding the project are discussed herein.

Berkshire Regional Planning Commission Environmental Review Report

We respectfully would propose that providing key analyses, including hydropower potential and more detailed downstream impacts, should serve as a new model for any future dam removal projects for protection of the environment and to aid the search for renewable energy generation. This is all the more important where the Commonwealth is the project proponent and/or where public funding is involved.

Energy Generation Alternative

The Commonwealth of Massachusetts has established broad policies to protect the environment which include the dual goals of improving aquatic connectivity and reducing greenhouse gas emissions. While we acknowledge some benefits of removing the Tel-Electric dam, this section of the Housatonic River does not provide ecologically significant habitat; it is not a cold water fishery nor does it support rare or endangered species. Allowing the dam to remain and possibly generate renewable energy should have at least been investigated by the owners and/or the proponents as part of the alternatives analysis. A potential to generate renewable energy and reduce greenhouse gas emissions is a missed opportunity at this site. The height and width of the dam and the volume of water flowing over it indicate that, of the largest 50 dams in Berkshire County, it is in the top 15 for its potential to generate electricity if rehabilitated for hydro power.

BRPC encourages the proponent to seek technical assistance from the Massachusetts Department of Energy Resources (DOER) and the Clean Energy Center (CEC) to investigate the feasibility of rehabilitating the Tel-Electric Dam for hydropower generation. As BRPC has commented consistently in recent years, dam repair / rehabilitation and dam removal projects should include an investigation as to whether the dam in question could be suitable for hydroelectric power generation. Given the recent Massachusetts Supreme Judicial Court's decision, stating that the Commonwealth is falling short of meeting the mandates of the Global Warming Solutions Act, it is all the more important that state agency actions involving dam repair/rehabilitation or dam removals require an analysis of the potential hydro-electric generating power of the dam being reviewed -- particularly those that receive public funding. This would require a coordinated effort between state agencies such as DCR Dam Safety, DER, DOER and DEP.

In the short term BRPC respectfully requests that the Secretary direct the DOER and CEC to provide technical assistance to the City of Pittsfield so that it can expeditiously investigate the feasibility of hydropower generation at the dam. In the longer term we also take this opportunity to again petition the Commonwealth to conduct a statewide dam assessment to determine which ones may offer the opportunity to generate hydroelectric power and aid the state in its efforts to reduce greenhouse gas emissions.

Impacts to Fisheries and Aquatic Organisms

The EENF lacks a detailed analysis of the impacts of "passively" releasing 6,000 cy of impounded sediment to the river ecosystem downstream of the dam. Although the Sediment Management Study discusses options for removing and disposing of impounded sediment, the studies included in the EENF have not analyzed in detail the impacts of sediment release on

Berkshire Regional Planning Commission Environmental Review Report

aquatic life downstream of the dam. DER staff have publicly stated that physical smothering of aquatic habitat and benthic organisms is a short-term impact that will occur over a period of a few years until a series of large storm events can actively redistribute the sediment. DER staff have stated that the area immediately below the dam is sediment-starved, and redistribution of sediment will in the long term offer an improved habitat for aquatic organisms.

We are concerned that no site-specific studies have been conducted to determine impacts to aquatic habitat and life for the species living there. The DER has stated that it has not conducted a site-specific impact study because sediment-related impacts are well known and understood through the literature of fisheries biology and fluvial morphology and through dam removal projects at other sites. BRPC requests that the DER provide to MEPA and the public a summary of the fisheries community below the dam and findings from the literature and from past dam removal sites to demonstrate that a site-specific fisheries impact study is not needed for the Tel-Electric Dam removal project. The findings should be drawn from scientific literature and dam removal projects that are similar in size, riverine conditions and fisheries populations to serve as comparisons to that of the West Branch Housatonic River at the dam site.

Dam Owner Commitment

We are concerned with the apparent lack of financial commitment to the project from the dam owner who, like every other dam owner across the state, has a legal responsibility to maintain the structural integrity of their dam. The owner of the dam has apparently tried for years to convince the City of Pittsfield to accept ownership of the dam, approaching several successive mayors. Wisely none have accepted ownership. The City has, however, dedicated a great deal of staff time and effort to the project, identifying possible funding sources, writing grants, and bringing the funding and technical assistance together to reach the current 30% design phase.

The dam owner appears to be purely a beneficiary of the project rather than a partner. Although we recognize the public and connectivity benefits of this dam removal, it is clear that the dam owner is receiving benefits equaling millions of dollars to remove a dam that is a nuisance and public safety liability to him. We urge the City of Pittsfield and the DER to get a financial commitment from the dam owner that would at a minimum cover the cost of reinforcing and stabilizing the foundation of the mill building that he owns. This foundation is currently deteriorating and will continue to do so regardless of whether the dam is removed or not. Public funds are removing the liability of the dam, and it is the owner's responsibility to stabilize the building itself. Public funds for this type of project are limited, and the significant amount of funding being directed to this project means that other equally deserving dam repair or removal projects go without.

A Pittsfield resident that attended the MEPA site visit on May 27, 2016 asked City of Pittsfield personnel who would be liable if impacts of the dam removal construction further acerbated the deterioration of the building foundation, or if other unforeseen consequences were to occur at the site. That resident suggested that the City of Pittsfield obtain a legal release from liability as part of project negotiations with the dam owner and future contractors. We agree. The City, the Commonwealth and their contractor(s) should be legally held harmless from any damage to the building caused by efforts to remove the dam or to stabilize the structure.

Berkshire Regional Planning Commission Environmental Review Report

Contamination

We continue to have concerns with the proposal to release 6,000 cy of contaminated sediment to downstream sections of the Housatonic River, regardless of existing contamination within the receiving stretch of river. At a minimum, if the DEP allows the proponent to remove only 1/3 the total amount of contaminated sediment and allow “passive” release of 6,000 cy of contaminated sediment, it seems prudent to at least require the proponents to selectively remove hot spot areas and areas where contamination concentrations are greatest. While this may entail additional detailed sediment sampling, it is more protective of the downstream environment in the long term.

While all parties agree that removing greater amounts of contaminated sediment from the river system would be preferable, the proponents have stated that excavating and disposing of greater amounts of contaminated sediment is cost prohibitive. This is another instance where we believe that a financial commitment from the dam owner would benefit the project. Funds brought to the project by the dam owner could be directed towards the additional costs of removing greater amounts of contaminated sediment from the environment. BRPC urges the DEP continue to review this project closely and work with the proponents, including the dam owner, to develop a plan that will minimize to the extent feasible the contamination levels of the sediment being allowed to migrate downstream and that being left in future floodplain. This project is a golden opportunity to remove significant levels of contamination from this stretch of the river and it should not be easily dismissed.

These comments were approved as amended by the BRPC Environmental Review Committee on July 1, 2016, and the BRPC Full Commission will consider the comments at its meeting on July 14, 2016.

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201

TELEPHONE (413) 442-1521 · FAX (413) 442-1523

Massachusetts Relay Service: TTY: 771 or 1-800-439-2370

www.berkshireplanning.org

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

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

July 7, 2016

Matthew Beaton, Secretary
Executive Office of Energy and Environmental Affairs
Attn: Page Czepiga, Environmental Analyst
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Lenox Landfill Solar PV Project EEA# 15532

Dear Secretary Beaton:

The Berkshire Regional Planning Commission (BRPC) hereby submits comments on the proposed Lenox Landfill Solar PV Project (EEA # 15532). The project includes the installation of a 749 kW solar array on the former Town of Lenox Landfill, involving the placement of approximately 2,340 solar panels and accessory structures on roughly five acres of land. The landfill site is currently vegetated with a mix of pioneer tree species, shrubs and tall herbaceous perennials such as golden rod, wildflowers and grasses. To accommodate the solar array, vegetation on the landfill will be removed and the site will be regraded to create an even layer of soil and gravel cover to meet DEP Post-Closure Use Permit requirements. The project is in the MEPA review process because it is in the Upper Housatonic River Area of Critical Environmental Concern (ACEC). The project requires a local wetlands permit and a DEP Post-Closure Permit. The project will be reviewed by the Natural Heritage & Endangered Species Program concurrently with the wetland permitting process.

As proposed in the ENF and from information obtained at the site visit held on July 6, 2016 the project offers several public benefits, a few of which are:

- The project is a renewable energy generation source, where the output from the facility will be distributed to the Eversource grid system and the Town of Lenox will receive net metering credits.
- Regrading of the site will help the town bring the landfill into compliance with DEP regulations by creating a more uniform and protective land cover of approximately two feet deep.
- Clearing of the site offers an opportunity to remove and possibly control to some extent the continued spread of invasive species at the site. During the site visit BRPC staff noted the proliferation of several invasive plant species across the project site, including honeysuckle, Phragmites, bittersweet, buckthorn and possibly autumn olive. According to Lenox

Conservation Commissioners, the invasive species are most aggressively established within the footprint of the landfill. Careful construction practices and post-construction maintenance may help to keep invasive species reestablishment to a manageable level.

The project is not without environmental impacts, two of which are:

- The project will remove a significant amount of tree canopy and thick shrub cover and replace it with a mix of grass, gravel and solar panel cover, which will undoubtedly increase the runoff potential of the site. We echo the Lenox Conservation Commission's concerns regarding stormwater management at the site.
- As proposed, the project will cut off a major public access pathway to the town-owned Post Farm recreational area, which is located north of the project site.

The project is located within the Upper Housatonic River ACEC, a locally-generated and state-approved designation in which the development of industrial projects should not be taken lightly. With this in mind we respectfully request that the Secretary and the proponent consider these comments:

- Due to the project's location within the ACEC, it is important that construction practices carefully remove and handle invasive species plant material in a manner that will avoid the spread of these species to neighboring areas. Retaining the services of an invasive species specialist who can outline and oversee best practices during construction may be prudent. Best practices could be outlining how best to move plant debris and materials around the site to avoid spreading viable seeds or plant segments, and what time of year is best to move or burn unwanted plant material. The Town already has Native Habitat Restorations under contract to control invasive species in Kennedy Park, and perhaps this is a site where the firm's expertise could provide additional benefits to the town.
- Any new fill or gravel brought to the site should be determined to be free of invasive species, and all equipment and vehicles entering or leaving the site should be cleaned to prevent the spread of invasive species.
- Due to the project's location within the ACEC it is also important that construction operating procedures are in place to avoid contamination due to equipment spills, including fuel, motor oils, antifreeze and hydraulic fluids.
- Maintaining public access to Post Farm via Willow Creek Road should continue to be a high priority for the town and the proponent. The access road currently provides access not only to the public for recreation, but also to Mass. Fish & Wildlife staff for stocking pheasants during Upland Bird Season. In addition, Willow Creek Road serves as a critical link between Post Farm and the larger public recreational assets in the area that include Woods Pond, October Mountain State Forest and the George Darey Housatonic Valley Wildlife Management Area. As such, we urge the Town of Lenox and the proponent to design the project in such a way that public access is maintained.

BRPC appreciates the opportunity to comment on the Lenox Landfill Solar PV Project. If you have any questions regarding these comments, please contact Senior Planner Lauren Gaherty at lgaherty@berkshireplanning.org. These draft comments have been approved by the Chairman of the BRPC Environmental Review Committee on July 7, 2016 and will be approved or approved-as-amended by the BRPC Full Commission at its meeting on July 14, 2016.

LAZAN GLOVER & PUCILOSKI LLP
BOSTON • GREAT BARRINGTON

DAVID M. LAZAN*
PETER L. PUCILOSKI
ALEXANDRA H. GLOVER

OF COUNSEL
JAMES B. MCLINDON
ALLEN B. KOENIG (1948-2011)

785 MAIN STREET
GREAT BARRINGTON, MA 01230
TELEPHONE 413-644-0200
FAX 413-644-0201
www.lazanlaw.com

Alexandra H. Glover
Email: glover@lazanlaw.com

Zoning Bylaw Significance: Aviation Uses
Hanlon v. Town of Sheffield, et al.

OVERVIEW

Many municipalities are unaware of a statute governing when and how they may make any rules, including zoning bylaws, regulating aviation uses. While the Berkshire Regional Planning Commission has referenced the statute in its materials, the issue does not seem to be generally known to municipalities. The rule is tough: a municipality may not regulate any aviation use, unless that regulation is first submitted to, and approved by, the Aeronautics Division of the Massachusetts Department of Transportation. The approval required by MassDOT is in addition to the approval required by the Attorney General.

The Appeals Court recently affirmed the rigidity of the statute. In Hanlon v. Town of Sheffield, 89 Mass.App.Ct. 392 (2016), the Court ruled that, under M.G.L. c. 90, s. 39B, municipalities *may not prohibit aviation uses, or regulate them any manner*, unless the regulation has first been approved by the Aeronautics Division of the Mass DOT. This ruling applies even to privately-owned helicopters and airplanes in any zoning district (rural/residential, as well as commercial, etc.).¹

Thus, if a city or town fails to have its bylaw approved by MassDOT, any individual now keeping and flying airplanes or helicopters from their homes or elsewhere may, subject to safety regulations of the MassDOT, continue that use.

FACTS

In Hanlon, the homeowner kept and flew multiple airplanes and a helicopter on his registered airstrip, which was a hayfield in the Rural District of Sheffield. After an abutter complained, the Building Inspector issued a Cease and Desist Order, which was upheld by the Zoning Board of Appeals. The homeowner claimed that Sheffield could not regulate his aviation use in any way, since the zoning bylaw had not been submitted to and approved by MassDOT.

¹ A copy of the Appeals Court Decision is attached hereto.

The Appeals Court agreed with the homeowner, who has since resumed flying airplanes to and from his home.

SUMMARY

This ruling is significant because the majority of municipalities regulate/prohibit aviation by, in part, by not including aviation in the schedule of permitted uses. The well-known law provides that any use not expressly permitted, is prohibited.

This is not the rule when it comes to aviation uses, according to the Appeals Court. Thus, many municipalities may be under the impression that they have effectively regulated or prohibited aviation, but they have not done so, unless and until the bylaw is approved by MassDOT. Moreover, MassDOT, in an affidavit submitted by the Department in the litigation, stated that it would not be likely to approve a blanket prohibition on aviation in a rural district such as that in Sheffield.

It is critical that municipalities submit their zoning bylaws to the Aeronautics Division of MassDOT, and I strongly recommend that, in submitting the proposed bylaw, the municipality articulates specifically all the ways in which it intends to regulate, limit and prohibit aviation uses. Otherwise, MassDOT make take the position that it has not approved a municipality's particular prohibition of aviation by omitting it from the municipality's schedule of uses.

Alexandra H. Glover, Esq., the author of this paper, was the attorney who represented the Plaintiff, John R. Hanlon, Jr., in the above-referenced litigation, and is a Member of the Planning Board of the Town of Alford.

89 Mass.App.Ct. 392

Only the Westlaw citation is currently available.

Appeals Court of Massachusetts,
Suffolk.

John R. HANLON, Jr.

v.

TOWN OF SHEFFIELD & others.¹

No. 15-P-799.

|
March 7, 2016.|
May 13, 2016.**Synopsis**

Background: Property owner sought review of cease and desist order sent by town that prohibited use of property as private noncommercial aircraft landing area. Town zoning board of appeals upheld cease and desist order. Property owner appealed. The Land Court Department, 2015 WL 1467254, Howard P. Speicher, J., affirmed. Property owner appealed.

[Holding:] The Appeals Court, Grainger, J., held that town was not permitted to prohibit noncommercial private restricted landing areas (PRLAs) without prior approval from Department of Transportation aeronautics division.

Reversed and remanded.

West Headnotes (3)

[1] Zoning and Planning

Statute governing approval of municipal airport sites and restricted landing areas by the Department of Transportation aeronautics division prohibited town from banning noncommercial private restricted landing areas (PRLAs) without prior approval from the division, where subsection of statute required that a municipality making any rule, regulation, ordinance or by-law “relative to the use and

operation of aircraft on said airport or restricted landing area” receive approval from the division prior to the rule’s taking effect, and provision of statute stating that it did not apply to restricted landing areas designed for non-commercial private use was applicable only to subsections that were in effect at time provision was enacted, which did not include subsection requiring division approval. G.L. c. 90, § 39B.

Cases that cite this headnote

[2] Statutes

The Appeals Court gives substantial deference to a reasonable interpretation of a statute by the administrative agency charged with its administration enforcement.

Cases that cite this headnote

[3] Statutes

Courts are not foreclosed by faulty or imprecise draftsmanship from giving statutes and ordinances a practical and reasonable construction.

Cases that cite this headnote

Zoning, Private airstrip, Validity of by-law or ordinance. Statute, Construction. Municipal Corporations, By-laws and ordinances.

Civil action commenced in the Land Court Department on March 21, 2012.

The case was heard by *Howard P. Speicher, J.*, on a motion for summary judgment.

Attorneys and Law Firms

Alexandra H. Glover for the plaintiff.

Peter Sacks, State Solicitor, for Department of Transportation, amicus curiae.

Present: Kafker, C.J., Katzmann, & Grainger, JJ.

Opinion

GRAINGER, J.

*1 The plaintiff John R. Hanlon, Jr., appeals from summary judgment entered in favor of the defendants, ruling that the town of Sheffield (town) was authorized to regulate the plaintiff's use of his property as a private noncommercial aircraft landing area notwithstanding the regulatory authority of the Massachusetts Department of Transportation aeronautics division (division).² In reversing the judgment we acknowledge that the motion judge was confronted, as are we, with statutory language in G.L. c. 90, § 39B, that undermines the evident purpose of the statute, and we note that this is an appropriate subject for corrective legislation.³

Background. The facts are undisputed. The plaintiff owns approximately thirty-eight acres of land (property) in the town, containing the plaintiff's residence and a number of outbuildings suitable for storage of small airplanes. On the property, the plaintiff created a strip eighty feet wide by 1,250 feet long for takeoff and landing of airplanes and, since at least 2006, has operated aircraft from the property as a hobby. In 2006, the plaintiff registered the property with the Federal Aviation Administration as a helipad. Pursuant to G.L. c. 90, § 39B, fourth par., he also registered the property as a noncommercial private restricted landing area (PRLA) with the division. He neither sought nor received any approval from the town with respect to the PRLA.

The property is located in a rural district under the town zoning by-law. Section 3.1 of the by-law provides that land may not be "used except as set forth in the ... Table of Use Regulations." The section further provides that "[a]ny ... use of premises not herein expressly permitted is hereby prohibited." Although "commercial airfield" is listed as a prohibited use in rural districts, the Table of Use Regulations contains no mention of noncommercial or private airfields.

In a letter dated November 15, 2011, the town's building commissioner/zoning enforcement officer ordered the plaintiff to cease and desist from using the PRLA on the property as such use was not "set forth" in § 3.1 of the by-law, and was therefore prohibited. The plaintiff appealed the cease and desist order to the town zoning board of appeals (board), which held hearings on four dates.⁴ The board upheld the cease and desist order, and the plaintiff appealed the decision

to the Land Court. In the Land Court, the plaintiff both appealed the board's decision, see G.L. c. 40A, § 17, and sought a determination that the by-law provision was invalid, see G.L. c. 240, § 14A, insofar as it purports to regulate the use of the property for aircraft, because the town never submitted it to the division for approval. On the plaintiff's motion for summary judgment, the judge held in favor of the town, declaring the by-law provision valid and enforceable to prohibit the plaintiff's use of the property as a PRLA.

[1] [2] *Discussion.* The issue at hand is whether G.L. c. 90, § 39B, fifth par., read in conjunction with the section's preceding fourth paragraph, allows a municipality to ban noncommercial PRLAs without prior approval from the division. "We review questions of statutory interpretation de novo." *Commerce Ins. Co. v. Commissioner of Ins.*, 447 Mass. 478, 481, 852 N.E.2d 1061 (2006). However, "[o]ur primary duty in interpreting a statute is to effectuate the intent of the Legislature in enacting it.... Where the meaning of a statute is not plain from its language, we consider the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Water Dept. of Fairhaven v. Department of Env'tl. Protection*, 455 Mass. 740, 744, 920 N.E.2d 33 (2010) (quotations and citations omitted). In doing so, "[w]e give substantial deference to a reasonable interpretation of a statute by the administrative agency charged with its administration enforcement." *Commerce Ins. Co. v. Commissioner of Ins.*, *supra*.

*2 Section 39B, added to the General Laws by St.1946, c. 607, § 1, governs division approval of municipal airport sites and restricted landing areas and details the procedure for receiving a certificate of approval from the division.⁵ The fifth paragraph of § 39B, inserted by St.1985, c. 30, requires that a municipality making any rule, regulation, ordinance or by-law "relative to the use and operation of aircraft on said airport or restricted landing area," receive approval from the division prior to the rule's taking effect. The language of the fifth paragraph applies to all landing facilities; it does not distinguish between commercial landing areas and private noncommercial landing areas.⁶ Therefore, if the fifth paragraph is applicable in these circumstances, the town's cease and desist order is invalid, because the by-law provision on which it is based has not been approved by the division.

However, the fourth paragraph of § 39B, already in effect at the time the fifth paragraph was enacted, contains the

following introductory clause: “*This section* shall not apply to restricted landing areas designed for non-commercial private use ...” (emphasis added). Read literally, this wording exempts noncommercial private landing areas from every provision contained in all six paragraphs of § 39B, whether the provision was enacted at the same time or almost four decades after the fourth paragraph.

The application of the fourth paragraph to the fifth paragraph of § 39B creates a serious incongruity. The fifth paragraph is a legislative delegation to the division to approve or disapprove municipal ordinances and by-laws regulating an “airport or restricted landing area owned by a person.”⁷ The statute as a whole contains no other provision that refers to any municipal power to regulate private noncommercial landing areas other than the language in § 39B, fifth par. The fifth paragraph allows for division review of such municipal rules and regulations, and thereby implies the permissibility of those rules and regulations in the first place.

As a result, were we to apply the exemption of the fourth paragraph of § 39B to the fifth paragraph, it would eliminate the only statutory basis for a town's regulation of private noncommercial landing areas. Otherwise stated, our choice is to interpret the statute to require town regulation of private noncommercial landing areas to be subject to division approval or, alternatively, to declare that there is no basis for any municipal regulation at the outset. To avoid the latter outcome, we read the word “section” in the fourth paragraph to apply to the preceding paragraphs, but not to the fifth paragraph. See, e.g., *Commonwealth v. Neiman*, 396 Mass. 754, 757–758, 488 N.E.2d 772 (1986) (use of “this section” in fourth paragraph of G.L. c. 94C, § 32A, held to apply only to immediately preceding subsection).

This interpretation resolves additional discrepancies with related sections of G.L. c. 90. For example, G.L. c. 90, § 39, as appearing in St.1948, c. 637, § 10, sets forth the express legislative grant of “general supervision and control over aeronautics” to the division. This wording is difficult to reconcile with an unreviewable assignment of one portion of the same regulatory authority to cities and towns. General, not limited, “supervision and control” is delegated to the division specifically

*3 “for the purpose of protecting and insuring the general public interests and safety, and the safety of persons receiving instructions concerning, or

operating or using, aircraft and of persons and property being transported in aircraft, and for the purpose of developing and promoting aeronautics within the commonwealth....”

G.L. c. 90, § 39, fourth par., as amended by St.1946, c. 583, § 3. Likewise, § 40 of c. 90, as amended by St.1946, c. 582, § 1, reinforces the breadth of jurisdiction delegated to the division by the Legislature. The division is authorized and directed to “foster air commerce and private flying within the commonwealth and for such purpose shall: (a) encourage the establishment of airports and air navigation facilities and the development of education in aeronautics.”

[3] On the infrequent occasions when we are presented with this level of statutory incongruity, our cases instruct “that we should not accept the literal meaning of the words of a statute without regard for that statute's purpose and history.” *Sterilite Corp. v. Continental Cas. Co.*, 397 Mass. 837, 839, 494 N.E.2d 1008 (1986). *Libertarian Assn. of Mass. v. Secretary of the Commonwealth*, 462 Mass. 538, 551, 969 N.E.2d 1095 (2012). We “are not foreclosed by faulty or imprecise draftsmanship from giving statutes and ordinances a practical and reasonable construction.” *Advanced Dev. Concepts, Inc. v. Blackstone*, 33 Mass.App.Ct. 228, 232, 597 N.E.2d 1372 (1992). Cf. *Reade v. Secretary of the Commonwealth*, 472 Mass. 573, 584, 36 N.E.3d 519 (2015).

We therefore conclude that this case “presents one of those rare instances in which a court must overcome its reluctance to supply word or words which were not employed by the Legislature ... in order to render a statute intelligible and so effectuate its obvious intent.” *Watros v. Greater Lynn Mental Health & Retardation Assn., Inc.* 421 Mass. 106, 114 n. 3, 653 N.E.2d 589 (1995) (quotation and citation omitted). Accordingly, we interpret the word “section” in the fourth paragraph of G.L. c. 90, § 39B, to refer to those provisions of the § 39B in effect at the time the fourth paragraph was added to the statute in 1946, but not to the fifth paragraph, here at issue, which was added to the statute in 1985, almost four decades later. As a result, any part of § 3.1 of the town zoning by-law that purports to regulate “the use and operation of aircraft on [an] airport or restricted landing area” cannot take effect until “submitted to the [division] and ... until approved by the [division].”

The judgment is reversed and the matter is remanded to the Land Court for entry of a new judgment consistent with this opinion.

All Citations

So ordered.

--- N.E.3d ----, 89 Mass.App.Ct. 392, 2016 WL 2758919

Footnotes

- 1 Zoning board of appeals of Sheffield and building inspector/zoning enforcement officer of Sheffield.
- 2 The Transportation Reform Act of 2009, St.2009, c. 25, transferred to the division the powers and duties of the former Massachusetts Aeronautics Commission and additionally changed the definition of "Commission" in the statute to the division. G.L. c. 90, § 35(m). For the sake of consistency, we refer only to the division regardless of which entity was in power at the time.
- 3 We acknowledge the amicus brief and participation in oral argument on behalf of the plaintiff by the State Solicitor.
- 4 Hearings were held on January 19, 2012, January 26, 2012, February 6, 2012, and February 28, 2012.
- 5 The first version of the statute passed in 1946 consisted of current paragraphs 1, 3, 4, and 6. Two years later, the second paragraph was added. In 1985, thirty-nine years thereafter, the fifth paragraph was added.
- 6 The full text of the fifth paragraph states:

"A city or town in which is situated the whole or any portion of an airport or restricted landing area owned by a person may, as to so much thereof as is located within its boundaries, make and enforce rules and regulations relative to the use and operation of aircraft on said airport or restricted landing area. Such rules and regulations, ordinances or by-laws shall be submitted to the [division] and shall not take effect until approved by the [division]."
- 7 See G.L. c. 90, § 35(o), as amended by St.1946, c. 507 (defining "Person" as "any individual, firm, partnership, corporation, company, association, joint stock association; and [including] any trustee, receiver, assignee or other similar representative thereof"). This simply details varieties of private ownership.

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201
TELEPHONE (413) 442-1521 • FAX (413) 442-1523
www.berkshireplanning.org

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

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

MEMORANDUM

TO: Delegates and Alternates, Berkshire Regional Planning Commission
FROM: Nathaniel W. Karns, AICP, Executive Director
DATE: June 8, 2016
SUBJ: Approval of Executive Committee Actions

In accordance with the bylaws, all actions taken by the Executive Committee on the Commission's behalf must be endorsed at the next Commission meeting.

The Executive Committee took the following actions at its June 2, 2016 meeting:

- **Approved Resolution to Renew Line of Credit with TDBank**

Approval was requested to renewal of our Line of Credit with TDBank. The line of credit is for if BRPC has any short-term cash flow issues. The line of credit is for up to \$180,000. We have not used the line of credit recently.

- **Approved the Environmental Review Committee on behalf of the Commission to comment on the removal of the Pittsfield Tel-Electric Dam**

Approval was requested to comment on the removal of the Pittsfield Tel-Electric Dam. BRPC staff will be setting up a meeting with the Environmental Review Committee in June to discuss the removal of the Pittsfield Tel-Electric Dam. The Dam is located behind the Clock Tower Building and is in very poor condition. The Dam is privately owned. There is contamination in the sediments behind the dam and both a building foundation and railroad abutments, with make this a complicated project.

- **Approved the Executive Director on behalf of the Commission to take action regarding the revised S.2144 - An Act Promoting the Planning and Development of Sustainable Communities**

Allow the Executive Director to take action as he sees appropriate with our legislative delegation on the revised S.2144 - An Act Promoting the Planning and Development of Sustainable Communities on behalf of the Commission because the comments are due before the next Executive Committee Meeting.

- **Approved the one-time bonus for the Executive Director be converted to Vacation Hours**

Approval was requested instead of paying the Executive Director the remaining unused portion of the one-time bonus of \$2,500 that was previously approved for professional development it be converted to time off which calculates to be approximately 32 vacation hours.

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201
TELEPHONE (413) 442-1521 · FAX (413) 442-1523
Massachusetts Relay Service: TTY: 771 or 1-800-439-2370
www.berkshireplanning.org

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

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

MEMORANDUM

TO: Delegates and Alternates
FROM: Nathaniel W. Karns, AICP, Executive Director
DATE: June 30, 2016
SUBJ: Executive Director's Report

There are a number of items to bring to your attention.

A. Resignation of Senior Planner Brian Domina

Brian Domina has left us to become Town Administrator in Whately, in southern Franklin County. We will miss his very good work in supporting many local planning boards in updating their zoning bylaws and providing other technical assistance and in leading our regional economic development planning efforts. In talking with Brian, there were three primary factors in his decision to leave after seven years: 1) about a half hour less commute each way just too and from the office, much less when he had a late evening meeting in some further corner of the Berkshires; 2) more opportunities to advance and achieve a higher earning power by switching to town government; 3) an approximately 10% increase in salary which we could not match. Brian's last day in the office was Tuesday, June 28th. We wish him all the best with his new challenges. We are actively recruiting for a new Senior Planner or Planner to fill his position.

B. 2017 District Local Technical Assistance Funding

I am very pleased to report that the legislative Budget Conference Committee has recommended level funding for the DLTA program at \$2.8 million. We were very concerned that with the state's revenue shortfall, this funding would be reduced or even eliminated by the Conference Committee. As most of you know, District Local Technical Assistance (DLTA) funding has been the lifeblood of BRPC's ability to provide significantly enhanced planning services to our municipalities since the program began in 2009. The Governor's proposed 2017 budget only recommended \$2.0 million for DLTA funding to the regional planning agencies, a decrease of \$800,000 (29% decrease) (budget line item 1599-0026). The House Budget has increased the funding to the historic \$2.8 million level. The Senate Budget did not provide any funding. The House and Senate are taking up the final budget approval today in order to have an "on-time" budget on the Governor's desk tonight, before the start of the fiscal year at midnight. We will have to closely monitor the Governor's budget actions as he has ten days to send line items back to the legislature with vetoes or reductions.

C. New Planning Board and Zoning Board of Appeals Member Training – Thursday, July 21st, BRPC

Attached is the announcement for the annual workshop to train new Planning Board and Zoning Board members (and older ones who want a refresher). For further information contact Associate Planner Doucette at 442-1521, ext. 16 or ndoucette@berkshireplanning.org.

D. New Health Board Member Training – Monday, August 29th, BRPC

Training for new Board of Health members is scheduled for Monday, August 29th starting at 5:30 p.m. at BRPC. There will be a “make-up” date in late September as well. Announcements are not yet prepared but will go out shortly. For further information, contact Public Health Program Manager Laura Kittross at 442-1521, ext 32 or lkittross@berkshireplanning.org.

E. 2016 MassWorks Applications Open – applications due no later than September 2nd

MassWorks released its application information for 2016 on June 1st. Applications will be due no later than September 4th. Go to www.mass.gov/hed/economic/eohed/pro/infrastructure/massworks for more information on the program. As always, it is helpful if communities will inform us of their applications as we have a role in the review. For further information, contact Executive Director Nat Karns at nkarns@berkshireplanning.org or 442-1521, ext 26.

F. Proposed Transportation Improvement Program for FY 2017-2021

Attached is a summary of the highway, bridge and bike path projects proposed for inclusion in the FY 2017-2021 Transportation Improvement Program for Berkshire County. These are projects which will receive federal funding. The Berkshire Metropolitan Planning Organization released this for the required 30 day public comment period and will take final action, after receiving public comment, on Tuesday, August 2nd. For further information, contact Senior Planner Anuja Koirala at akoirala@berkshireplanning.org or 442-1521, ext. 18 or Transportation Program Manager Clete Kus at ckus@berkshireplanning.org or ext. 20.

F. Approval of 5-Year Capital Investment Plan by the MassDOT Board

On June 21st, the MassDOT Board gave final approval to the five year Transportation Capital Investment Plan. We are still trying to plow through the 282 page document. It seems, reading the “equity analysis” that the more rural areas of the Commonwealth are not receiving their full share of resources but we have not yet been able to determine exactly what that means. They have not yet launched the plan on their website for public access but expect to do so on July 1. For further information contact Transportation Program Manager Clete Kus at ckus@berkshireplanning.org or 442-1521, ext. 20.

G. Award of Sheffield/Great Barrington Community Development Block Grant by the Department of Housing & Community Development

We are very pleased to be able to announce that Sheffield and Great Barrington have been awarded Community Development Block Grant funding which will allow continuation of the very successful housing rehabilitation program in both towns, construction of handicapped accessibility improvements at the Sheffield Town Hall, and design of infrastructure improvements around the “Housydome” and former Housatonic School in Great Barrington. For further information, contact Community Development Program Manager Pat Mullins at pmullins@berkshireplanning.org or 442-1521, ext. 17.

H. Award of DEP/EPA 604b Water Quality Management Planning project for Documenting Bacterial Improvements in the Hoosic and Housatonic Rivers

We are very pleased to be able to announce that BRPC has been awarded funding for assessing water quality, focusing on bacterial counts, in the Hoosic and Housatonic Rivers. Portions of these rivers are on the “impaired waters” list due to bacterial counts but there is some evidence that conditions may have improved, allowing their removal from that list if the sampling shows that. For further information on this project, contact Senior Planner Lauren Gaherty at lgaherty@berkshireplanning.org or 442-1521, ext. 35.

Attachments: (3)

New Planning Board and Zoning Board of Appeals Member Training



July 21, 2016

6:00 –8:00 PM

Are you a recently elected planning board or zoning board of appeals member, or an experienced member seeking to expand your knowledge about the intricacies of Massachusetts land use law?

If so, this is the training for you!

Experienced land use attorney Paul Bobrowski will review the duties of board members, the required procedures, and the relevant laws (Zoning Act, Subdivision Control Law). Paul will also have the answers to all your burning land use questions.

A light dinner and refreshments will be provided.

This FREE Training will be held at:

**Berkshire Regional Planning
Commission**

1 Fenn Street, Suite 201
Pittsfield, MA 01201

With questions, please contact:

Nancy Doucette
413-442-1521 ext. 16
ndoucette@berkshireplanning.org

Please use the link below to register by July 19, 2016:

<http://www.eventbrite.com/e/new-planning-board-and-zoning-board-of-appeals-member-training-tickets-26153142754>



**Commonwealth of Massachusetts
Executive Office of Housing and Economic Development
Press Release**

Contact:

Samantha Kaufman (HED) – samantha.kaufman@state.ma.us

Adrian Servetnick (HED) – adrian.servetnick@state.ma.us

– Follow us on [Twitter](#) –

Baker-Polito Administration Opens Sixth Round of MassWorks Infrastructure Awards

Reauthorization will provide continued support for public infrastructure improvements, housing creation and economic growth.

Worcester – Thursday, June 2, 2016 – Today Lieutenant Governor Karyn Polito announced the opening of the sixth annual round of MassWorks Infrastructure Program, with online applications available on June 3. The competitive grant program invests in projects in local communities that can leverage private funding and open up areas to further residential, commercial, or industrial development.

“MassWorks funding is a critical part of our support for cities and towns throughout Massachusetts,” said Governor Charlie Baker. “The legislature’s reauthorization of MassWorks through our economic development bill will allow us to continue its success in helping communities unlock potential opportunities for job creation and economic growth.”

The Baker-Polito Administration’s [Economic Development Bill](#), An Act to Provide Opportunities for All (H. 3983) authorizes an additional \$500 million in capital funding over the next five years for the MassWorks Infrastructure Program, allowing the Administration to award funds in the next round and in the future.

"Our partners at the local level know the needs of their communities, and our economic development bill provides funding and technical assistance to help them achieve their goals" said Lt. Governor Polito. "The Massworks infrastructure award program allows us to support local solutions, creating jobs and helping communities to prepare for success."

“Public infrastructure investments can catalyze significant private funding and business growth, helping to generate jobs and homes for residents,” said Housing and Economic Development Secretary Jay Ash. “MassWorks’ investments are an important part of our work to grow businesses, create jobs, and build housing throughout the Commonwealth.”

The MassWorks Infrastructure Program provides a one-stop shop for municipalities and other eligible public entities seeking funding to support housing, economic development and job creation. In addition, the Program supports municipalities with a population of 7,000 or less that may seek grants for roadway improvements to enhance public safety.

The 2016 grant round will support housing and commercial growth opportunities that contribute to the long-term strength and sustainability of Massachusetts, with a particular emphasis on projects that support the production of multi-family housing in appropriately located mixed-use districts and projects that support economic development in weak or distressed areas.

The MassWorks Program encourages municipalities to apply with projects that have been well planned, exhibit prompt and predictable permitting, and have implemented zoning that supports future growth.

The reference materials for the 2016 MassWorks grant round and the electronic application system will be available online beginning June 3, 2016, giving public entities a 12-week head start to gather the information they need in order to submit their applications between August 22 and September 2. The 2016 application, guidelines, FAQs and other relevant materials are available at <http://mass.gov/hed/massworks>. Applicants will have access to previous MassWorks grant round submissions. All decisions will be rendered within approximately eight weeks after the September 2 application deadline.

In total, the MassWorks Infrastructure Program has invested over \$333 million to over 181 infrastructure improvement projects across the Commonwealth during the past five grant rounds. These public investments have leveraged millions of private dollars and created thousands of new housing units and jobs.

To learn more about the MassWorks Infrastructure Program and how it is supporting job growth and long-term, sustainable economic development, please visit: <http://mass.gov/hed/massworks>.

###

FY 2017-2021 TRANSPORTATION IMPROVEMENT PROGRAM

ROADS, BRIDGES, BIKE PATHS

FY 2017

Housatonic Street Reconstruction (Dalton) – remainder	\$340,591
Water Street (Rte. 43) Reconstruction (Williamstown)	\$2,700,000
Rte. 8 Resurfacing (Clarksburg)	\$4,348,340
Hodges Cross Road (Rte. 8A) Bridge Maintenance (North Adams)	\$276,780
Chapel Street Bridge Superstructure Replacement (Lee)	\$1,097,531
Valley Street Bridge Replacement (Lee/Lenox)	\$1,500,612
TOTAL	\$10,263,854

FY 2018

BMC Area Traffic Improvements (Pittsfield) – initial	\$2,238,973
Walker Street Reconstruction (Lenox)	\$5,652,329
Rte. 2 & Phelps Ave. Intersection Improvements (North Adams)	\$1,280,000
Rte. 7A Bridge Replacement (Sheffield)	\$5,000,000
Mohawk Bicycle/Pedestrian Trail (North Adams/Williamstown)	\$4,294,138
Bikeway Construction – Stockbridge to Park St. (Lee)	\$3,619,200
Ashuwillticook Rail Trail Extension (Lanesborough/Pittsfield)	\$2,251,210
TOTAL	\$24,335,850

FY 2019

BMC Area Traffic Improvements (Pittsfield) – continuation	\$6,944,227
Lakeway Drive Bridge Replacement (Pittsfield)	\$1,629,249
Umpachene Falls Bridge Replacement (New Marlborough)	\$790,763
Berkshire School Road Bridge Replacement (Sheffield)	\$1,908,183
New Road Bridge Replacement (Pittsfield)	\$2,343,824
South Main St. (Rte. 7)/Maple Ave. (Rtes. 23/41) Signal Improvements (Great Barrington)	\$594,000
Rte. 7 Resurfacing (Lenox, Lee, Stockbridge)	\$5,686,200
TOTAL	\$19,896,446

FY 2020

Rte. 8 Pavement Rehabilitation (Adams)	\$7,638,400
Rte. 2 Bridge Deck Preservation (Williamstown)	\$444,000
Norfolk Rd. Bridge Replacement (New Marlborough)	\$5,461,456
Campbell Fall Rd. Bridge Replacement (New Marlborough)	\$3,286,528
Monterey Rd. Bridge Replacement (Tyringham)	\$1,727,040
Ashuwillticook Rail Train Extension (Adams/North Adams)	\$4,949,402
TOTAL	\$23,506,826

FY 2021

Skyline Trail Reconstruction (Hinsdale/Peru)	\$6,380,000
Rte. 2 Bridge Replacement (North Adams)	\$18,315,704
Roaring Brook Road Bridge Replacement (Lenox)	\$1,122,880
Center Road Bridge Replacement (Savoy)	\$813,740
Rte. 8 Resurfacing (Pittsfield)	\$5,568,000
TOTAL	\$32,200,324