

**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](http://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

## **AGENDA**

**Rest of River Municipal Committee**  
**December 17, 2015, 3:00 p.m.**  
**Lenox Town Hall, Selectmen's Room, 2<sup>nd</sup> Floor**

1. Introductions
2. Review of minutes of Feb. 27<sup>th</sup>, 2015
3. Report on Telephone Conversations with EPA and DEP Western Region Director
4. Budget update and future obligations
5. Adjournment of Regular Session
6. Executive Session – discussion of legal strategy for probable EPA appeal and appeals court proceedings
7. Adjournment of Executive Session and Meeting

***City and Town Clerks: Please post this notice pursuant to M.G.L. Chapter 39, Section 23B.***

***Please Note: In the case of inclement weather on the day of the meeting, please call BRPC at 413-442-1521, ext. 15 to confirm if the meeting is still being held.***

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**Meeting Minutes**  
**Rest of River Municipal Committee**  
**December 17, 2015, Lenox Town Hall, Lenox, MA**

1. The meeting opened at 3:32 p.m. Attending the session were the following Committee members:

Janis Akerstrom, Pittsfield Community Dev.  
Warren Archey, Lenox Select Board  
Pat Carlino, Lee Select Board  
Lauren Gaherty, BRPC  
Nat Karns, BRPC  
Christopher Ketchen, Lenox Town Manager  
Bob Nason, Lee Town Administrator  
Jennifer Tabakin, Great Barrington Town Manager

**2. Minutes of Feb. 27, 2015**

Motion to accept the minutes as presented was made by P. Carlino and seconded by C. Ketchen. The motion passed unanimously.

**3. Report on phone conversations with US EPA and MA DEP**

N. Karns summarized the conversation that occurred between the US EPA and BRPC staff representatives via conference call on Nov. 25, 2015. In that conversation EPA reiterated the three main issues that GE is disputing in the current dispute resolution process. The issue of the landfill was the central topic in the phone conversation, as it is the main central issue that the Municipal Committee has pushed for. A second disputed issue is the open-ended conditions that require GE to go back and control PCBs left behind after the cleanup. GE would rather cleanup and walk away, not having to come back to control PBCs for future land use changes or dam maintenance. These open-ended conditions works in the favor of landowners and dam owners – it leaves GE liable for costs to control PCBs in perpetuity. Dredging of Woods Pond is also a disputed issue, but this issue is being pushed by the state, not so much the municipalities.

L. Gaherty said that there are precedents for conducting cleanup and concentrating dredged hazardous waste in a local landfill. The sites that EPA Region 1 staff have mentioned are Hill 78 and New Bedford Harbor. But then the PCB sediments from the Hudson are being hauled out via rail. So there are precedents on both sides. Research will need to be done to understand why GE agreed to haul PCBs away from the Hudson – it might have been more cost effective because the river is a commercial way and already has a lot of infrastructure in place, including an existing rail. Complete community opposition, combined with the state's opposition, may be needed for EPA to prevail on this issue. The Committee would like to approach EPA to see if there is a database of landfill cases that can be researched to see what the circumstances were when local landfilling prevailed.

N. Karns spoke with MA DEP Western Region Director Mike Gorski, and yes, DEP is still solidly behind the EPA's directive to send dredged contaminated sediment/soils to an out-of-state landfill. DEP does not believe there are precedents in MA. Pittsfield's Hill 78 was already an existing, unlicensed hazardous waste landfill site. Allowing it to remain created a more controlled situation with a cap on an existing site, not a new site. New Bedford – we've heard some indications that the city agreed to in-place landfilling in the bay because the responsible company agreed to pay for a new commercial waterfront infrastructure.

C. Ketchen asked if the consent decree absolves GE of liability once the cleanup is completed? He cites the problem of contaminated stormwater drainage systems that were not cleaned up and are now the liability of PEDDA. He voiced again his concern that the towns south of Pittsfield are subject to a decree to which they were not consulted nor allowed to participate in. B. Nason responded that the state of MA was a party to the decree and was supposed to be representing the other towns in their stead; the towns are instruments of the state.

#### **4. Budget update and future obligations**

L. Gaherty updated the Committee on the budget. The status of the FY15 budget is \$58,181.25 after costs from that year. The City of Pittsfield's funds from FY14 expired, so that city's remaining budget is approximately \$5,900 behind other communities. For FY16, Pittsfield, Lenox, Lee and Stockbridge has told BRPC that they can commit to another \$10,000; Sheffield did not appropriate new funds, and Great Barrington did not report to BRPC. J. Tabakin believes that they did again commit \$10,000 in FY16, but she'll check on it. If all 5 communities (excepting Sheffield) have committed another \$10,000 in FY16, and if Pittsfield fills its \$5,900 gap, the total FY16 budget is approximately \$113,181. There are no outstanding invoices, so the \$113,181 is available.

B. Nason asked about next year's DLTA grant program, and was wondering if the Committee would again be receiving BRPC technical support for Rest of River activities. L. Gaherty reported that Pittsfield again took the lead and has applied on behalf of the Committee. J. Tabakin verbally provided Great Barrington's support to the DLTA request at the meeting.

#### **5. Adjournment**

N. Karns asked for a motion to go into Executive Session to discuss the Pawa Law firm's advice regarding the appropriate strategy to best protect the Rest of River Municipalities' legal rights regarding the Permit and such discussion, if held in open meeting, may have a detrimental effect on the legal position of the Rest of River Municipalities during the pending legal action by GE. As the Agenda for the meeting states, we expect to adjourn from Executive Session and do not expect to reconvene in regular session. P. Carlino made the motion and J. Tabakin seconded. Roll call vote: Jennifer Tabakin, Great Barrington AYE; Warren Archey, Lenox AYE; Pat Carlino, Lee AYE; Janis Akerstrom, Pittsfield AYE. Vote unanimous 4-0, with Stockbridge and Sheffield absent.

Regular session ended 4:05 pm.

**Minutes Respectfully submitted by L. Gaherty, BRPC.**

#### **Meeting materials:**

Meeting Agenda 12-17-15

Meeting minutes February 27, 2015

Housatonic ROR Municipal Committee Budget Update, dated July 2015

**HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE BUDGET UPDATE**  
**Budget Update July 2015 (FY16)**

**Budget Breakdown by Municipality**

Municipality	Carried Over FY14 Funds	FY15 Budget	Total FY15 Budget	FY 15 Expenses	FY15 Remaining Budget	FY 16 Budget	Total FY16 budget	Carried Over FY 14 & FY 15 Funds	FY 16 Allocation
Pittsfield	-	10,000.00	10,000.00	4,944.18	5,055.82	-		No ^^	see below ^^
Lenox	5,922.04	10,000.00	15,922.04	4,944.18	10,977.86	-	20,977.86	Yes*	Not direct allocation, but can direct funds to legal if necessary*
Lee	5,922.04	10,000.00	15,922.04	4,944.18	10,977.86	10,000.00	20,977.86	Yes^	Yes^
Stockbridge	5,922.04	10,000.00	15,922.04	4,944.18	10,977.86	10,000.00	20,977.86	Yes***	Yes***
Great Barrington	5,922.04	10,000.00	15,922.04	4,944.18	10,977.86		10,977.86		
Sheffield	-	10,000.00	10,000.00	786.00	9,214.00	-	9,214.00	Yes	No**
<b>Total</b>	<b>23,688.15</b>	<b>60,000.00</b>	<b>83,688.15</b>	<b>25,506.90</b>	<b>58,181.25</b>	<b>20,000.00</b>	<b>83,125.43</b>		

NOTE: Initial emails sent to Pitts, Len, Lee, Gt Barr, Sheff 6-4-15 (post-town mtgs)-- not yet to Stockbr (Jorja on vaca) & Pitts still in budgeting process

Sent email to Stockbr & Pitts 6-22-15

Email sent again to Gt Barr 6-22-15, again 7-16-15, again 8-17-15

^Email per Bob Nason 5-4-15: ". Since we fund these installments as Special Articles from available funds, the balances carry forward."

\*Phone conversation with Chris Ketchen 6-8-15:

Yes, the \$10,977.86 is "encumbered" and available for the war chest if needed. The town will not be closing out the funds from the previous years.

FY16 - a little different here in Lenox. They have some flexibility is directing money to ROR if needed.

The Select Bd has the power to direct funds to Rest of River if needed without going to town meeting.

Chris increased the legal budget FY16, so they should be fine in covering legal fees if necessary.

\*\* Email from Rene Wood 6-4-15

^^Email from Jim McGrath 6-22-15:

"I spoke with Solicitor Degnan on this matter. She has advised me that her budget was reduced for FY 16 , and

there is nothing programmed in for Rest of River. Though, the city council is aware of this and when funds are needed for legal services related to this issue

Kathy Degnan is prepared to go back to city council for an authorization. Concerning FY15 remaining funds, they do not roll over to FY 16.

\*\*\*Email from Jorja Marsden 6-23-15:

1. Yes to carry over money
2. Appropriation of \$10,000 for FY16