

BERKSHIRE REGIONAL PLANNING COMMISSION
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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
May 25, 2016, 9:00 a.m.
Stockbridge Town Office Building Community Room

1. Introductions
2. Review of minutes of Jan. 21, 2016 meeting
3. Follow-up with EPA, Baker Administration, and Legislative Delegation
4. Adjournment of Regular Session
5. Executive Session – discussion of legal strategy for probable EPA appeal and appeals court proceedings
6. Adjournment of Executive Session and Meeting

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

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Meeting Minutes
Rest of River Municipal Committee
May 25, 2016, Stockbridge Town Office Building

1. Introductions. The meeting opened at 9:08 a.m. Attending the session were the following Committee members:

Warren Archey, Lenox Select Board
C.J. Hoss, observer for Pittsfield
Christopher Ketchen, Lenox Town Manager
Jorja-Ann Marsden, Stockbridge Town Administrator
Bob Nason, Lee Town Administrator
Jennifer Tabakin, Great Barrington Town Manager
Rene Wood, Sheffield representative

Others present:

Lauren Gaherty, BRPC
Nat Karns, BRPC

2. Review of minutes of Jan. 21, 2016. R. Wood motioned to accept the minutes of January 21, 2016, as submitted, seconded by C. Ketchen. The motion passed unanimous at 4-0 (Lee was not present; C.J. Hoss is a non-voting member).

3. Budget. The Intergovernmental Agreement signed by all six municipalities in 2013 will expire in October 2016. It is time to renegotiate the content and terms of the Agreement so that we will be in a position to get a renewed contract before the current one expires. L. Gaherty passed out a copy of the existing Agreement so that members can review it and be prepared for renegotiation in the coming months. When originally conceived the Committee and the Agreement were focused on pursuing some sort of compensation from GE for impacts suffered during the cleanup. Since 2013 the cleanup process has moved forward and more recently the Committee has focused its effort on being actively involved in the public process for the EPA's cleanup remedy. Committee members were asked to review the Agreement and begin to think about what changes may be necessary for future cooperative work. Renegotiating the Agreement will be a major agenda item in the next meeting of the group. R. Wood asked BRPC to think about correcting any operational issues that may have hindered the work of the

Committee in the past few years. As an example the Committee worked a great deal to set reasonable quorum and voting majorities for decisions – have they worked well?

The discussion turned to the Committee's budget. L. Gaherty passed out copies of a spreadsheet that shows the town allocations and expenses for each of the six municipalities, beginning with FY14 up through FY17. As N. Karns noted, the exact financial mechanism is slightly different for each municipality: Lee and Stockbridge allocates money each year that is set aside into its own account and is available for use, while Lenox, Pittsfield and Great Barrington have just been paying expenses out of their current legal budgets, and Sheffield has made a smaller commitment. As such, the numbers shown in the spreadsheet are not what has been deposited into any specific central account, but are what each of the towns have verbally agreed to in accordance with the Intergovernmental Agreement. As C. Ketchen stated, as of the end of FY16 Lenox's responsibility is \$20,977, which is the same for most of the municipalities. If BRPC send an invoice for work approved by the Committee, Lenox would be obliged to pay that amount. This amount is not sitting on BRPC's ledger, it's sitting collectively on the Committee's ledger. Sheffield is different, in that it negotiated a reduced obligation with the Committee a couple of years ago. To make it easier to follow the spreadsheet, L. Gaherty will add a few columns to the spreadsheet to show the very first allocation and expenses for each community.

N. Karns asked Lee and Stockbridge if their funds, which were approved at town meeting, would expire soon. B. Nason stated that Lee's funds are in a dedicated fund and rollover. J. Marsden stated that the funds were there but that typically they remain in a separate account for about five years, after which the select board and town accountant would review them to see if they should be moved. At this time there is a history of working with this Committee and documentation of the intent and use of the funds, so the funds are not likely to expire after five years and should be ready for use when needed. It would be up to the select board and the new incoming town administrator to work with the Committee to ensure the continued use of the funds. Both Lenox and Great Barrington have been paying costs as they are incurred and have not been setting aside or "banking" unused funds. Both towns agree that it is helpful to see what their responsibilities are so that they can budget appropriately.

The discussion moved to the slight increase in the budget proposed by Pawa Law Group. At this time the EPA Remedy Permit and GE's opposition arguments are being considered by a designated EPA reviewer Carl Dierker, EPA Regional Counsel. EPA expects that this step in the process will be through summer 2016. Pawa's first estimate for drafting our appeal to the EPA Environmental Appeals Board was \$27,450. Having spoken with DEP staff and receiving past documentation from, which remain opposed to adding 21D as an ARAR, the firm has given the Committee a revised budget for \$30,200 for drafting our appeal. The Committee needs to formally approve the additional \$2,750. B. Nason asked why the firm needed the additional 10 hours of staff time for the appeal. To answer that question will require a discussion of the recent correspondence and phone conversations between BRPC and the Pawa Law Group, and N. Karns suggested that this final budget approval be tabled until after the details of these conversations have been discussed in Executive Session. Committee members agreed.

Regarding the overall legal budget, each municipality will need to confirm that it is or is not again committing an additional \$10,000 in FY17 to the Municipal Committee budget. This will allow BRPC to maintain proper accounting of where the Committee stands in regard to the budget for FY17. It was agreed that each municipality will email L. Gaherty at BRPC stating its financial commitment for FY17 and stating whether the funds are in a dedicated account or from within legal budgets.

At 9:36 a.m., at the conclusion of this discussion, the Committee adjourned temporarily from the meeting to enter into Executive Session to discuss legal intervention. The Committee will return to regular session after adjournment of the Executive Session, expected to be approximately 30 minutes.

R. Wood motioned to enter into executive session, seconded by J. Marsden. Roll call vote: W. Archey, Lenox AYE; B. Nason, Lee AYE; R. Wood, Sheffield, AYE.; J. Marsden, Stockbridge, AYE; J. Tabakin, Great Barrington, AYE . The motion passed at 5-0 (C.J. Hoss non-voting member).

At 10:40 a.m. the Committee returned from Executive Session to its regular session. R. Wood motioned to authorize the Pawa Law Group to spend up to \$30,200 to prepare a submit an appeals brief to the EPA Environmental Appeals Board; and in addition to authorize up to a maximum of a 5% contingency if other issues come up, seconded by W. Archey. This amount will be divided by all six municipalities, as prescribed under the conditions of the current Intergovernmental Agreement. The motion passed at 5-0 (C.J. Hoss non-voting member).

4. Follow-up with EPA, Baker Administration and Legislative Delegation. J. Marsden noted that the AG's office is holding a public listening session in Pittsfield tomorrow. L. Gaherty and R. Wood will attend that meeting on behalf of the Committee and introduce the issues to staff. BRPC will draft a fact sheet to deliver at the meeting.

Committee members offered opinions on when it will be best to engage and petition our state officials and political delegation. Most agreed that everyone was in a holding pattern waiting to see what the EPA review process will yield. BRPC did send a letter to the federal delegation asking them to ask Administrator McCarthy to back EPA Region 1 in its remedy, but we have not heard from any of them. BRPC should ask Pawa for his opinion on when it would be best to approach

R. Wood motioned to adjourn the meeting, seconded by B. Nason. The motion passed at 4-0 (C.J. Hoss non-voting member; J. Tabakin has left the meeting early).

Minutes Respectfully submitted by L. Gaherty, BRPC.

Meeting materials:

Meeting agenda

Meeting minutes of Jan. 21, 2016

Budget Update June 2016 handout

HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE BUDGET UPDATE

Budget Update June 2016

Budget Breakdown by Municipality and Fiscal Year

| Municipality | Initial FY14 Allocation | FY 14 Expenses | FY14 Rollover Funds | FY15 Allocation | FY15 Budget | FY 15 Expenses* | FY15 Rollover Funds |
|------------------|-------------------------|------------------|---------------------|------------------|------------------|------------------|---------------------|
| Pittsfield | 10,000.00 | 4,077.96 | 5,922.04 | 10,000.00 | 15,922.04 | 4,944.18 | 10,977.86 |
| Lenox | 10,000.00 | 4,077.96 | 5,922.04 | 10,000.00 | 15,922.04 | 4,944.18 | 10,977.86 |
| Lee | 10,000.00 | 4,077.96 | 5,922.04 | 10,000.00 | 15,922.04 | 4,944.18 | 10,977.86 |
| Stockbridge | 10,000.00 | 4,077.96 | 5,922.04 | 10,000.00 | 15,922.04 | 4,944.18 | 10,977.86 |
| Great Barrington | 10,000.00 | 4,077.96 | 5,922.04 | 10,000.00 | 15,922.04 | 4,944.18 | 10,977.86 |
| Sheffield | 10,000.00 | 4,077.96 | - | 10,000.00 | 10,000.00 | 786.00 | 9,214.00 |
| Total | 60,000.00 | 24,467.76 | 29,610.20 | 60,000.00 | 89,610.20 | 25,506.90 | 64,103.30 |

| Municipality | FY15 Rollover Funds | FY 16 Allocation | FY16 Budget | FY 16 Expenses | FY17 Allocation | FY17 Beginning Budget |
|------------------|---------------------|------------------|-------------------|----------------|------------------|-----------------------|
| Pittsfield | 10,977.86 | 10,000.00 | 20,977.86 | 0.00 | 10,000.00 | 30,977.86 |
| Lenox | 10,977.86 | 10,000.00 | 20,977.86 | 0.00 | 10,000.00 | 30,977.86 |
| Lee | 10,977.86 | 10,000.00 | 20,977.86 | 0.00 | 10,000.00 | 30,977.86 |
| Stockbridge | 10,977.86 | 10,000.00 | 20,977.86 | 0.00 | 10,000.00 | 30,977.86 |
| Great Barrington | 10,977.86 | 10,000.00 | 20,977.86 | 0.00 | 10,000.00 | 30,977.86 |
| Sheffield | 9,214.00 | 0.00 | 9,214.00 | 0.00 | 0.00 | 9,214.00 |
| Total | 64,103.30 | 50,000.00 | 114,103.30 | 0.00 | 50,000.00 | 164,103.30 |

3 Invoices FY14

Invoice 1 =15,735.60 for Pawa = 2622.60 each

Invoice 2 = 4,187.58 Pawa, BRPC, Bracket & Lucas = 697.93 each

Invoice 3 = 4,544.60 Pawa = 757.43 each

I Invoice FY 15

Invoice = 25,506.91 Pawa, BRPC = 4944.18 X 5 and 786.00 Sheffield

* Sheffield representative provided in-kind services in lieu of full cash contribution