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

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

AGENDA

Rest of River Municipal Committee
September 23, 2016, 9:00 a.m.
Community Room, Stockbridge Town Office Building

1. Introductions
2. Review of minutes of May 25, 2016 meeting
3. Updates to the Committee:
 - Budget
 - BRPC comments to MassDOT on PCB contamination & Valley Street Bridge project
4. Renewal of the Intergovernmental Agreement
5. Executive Session – further legal strategy for probable EPA appeal and appeals court proceedings
6. Adjournment

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
September 23, 2016, 9:00 a.m., Stockbridge Town Office Building

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

Janis Akerstrom, Pittsfield Community Development
Warren Archey, Lenox Select Board
Christopher Ketchen, Lenox Town Manager
Bob Nason, Lee Town Administrator
Christopher Rembold, Great Barrington Planner
Steve Shatz, Stockbridge Selectman

Others present:

Lauren Gaherty, BRPC
Nat Karns, BRPC

2. Review of minutes of May 25, 2016 meeting. Motion to accept by B. Nason, seconded by C. Ketchen. Correction by Mr. Nason on page 2, second paragraph, second sentence: delete the words “and would remain there unless there was another approval by town meeting to remove them.” Mr. Nason clarified that removing funds from dedicated accounts do not require town meeting approval. Also, Mr. Nason asked that the name of the designated EPA reviewer, “Carl Dierker” be listed in the minutes. Minutes unanimously accepted as amended.

3. Updates to the Committee:

Budget. The legal budget as it stands for FY17 if all communities stay within the Committee is almost \$160,000. The Pawa Law Group has been working on the Committee’s legal brief and has sent an invoice for \$5787.54 for work through August 2016. The amount owed by each of the six municipalities is \$964.59. The Committee had previously authorized up to \$30,200 for drafting and filing the legal brief. The Town of Sheffield was not present and L. Gaherty will confirm that Sheffield will pay its 1/6 share of the invoice.

N. Karns gave an update on the EPA permitting process. He had spoken to MA DEP Commissioner

Suuberg and the state is expecting that the Region 1 designated review process would be concluded within the next couple of months. Mr. Karns then reminded the Committee that once the review process is concluded then EPA will issue its remedy permit, which will include responses to public comments. Appeals of the remedy permit will be to the EPA Environmental Appeals Board, which is where we will first file our legal arguments. There is only a 30-day window to file our appeal after the issuance of the remedy permit.

The discussion turned to the Hudson River cleanup. According to NPR and the NY Times the NY DEC has stated that the dredging work in the Hudson has not reached its cleanup goal and they are asking the EPA to make GE conduct more dredging. L. Gaherty has read that both the state delegation and governor were behind the DEC's request. N. Karns stated his belief that this is an example of what can occur when PCBs are left behind, and C. Ketchen concurred pointing to the PEDDA site's lingering contamination and costs of cleanup. L. Gaherty noted that the Hudson can serve as a cleanup precedent that we may want to refer to, and if EPA forces GE to do more cleanup there we may want to use this in the event we need GE to clean up more here. She asked that Committee members pass along and share any information they see in the media in the future so that we stay informed.

BRPC comments to MassDOT on PCB contamination & Valley Street Bridge project. N. Karns reported that BRPC submitted comments to MassDOT stating its belief that GE is responsible for any incremental costs of the Lee/Lenox bridge project and that the DOT should work with the EPA to ensure that. BRPC referred to the draft EPA remedy permit in its comments. Mr. Karns noted that our comments moved through DOT bridge review to the legal division within a week, which is unusually quickly for something to move through the DOT review process. B. Nason voiced his and the Town of Lee's concern that the presence of PCBs could slow down the replacement of bridge, which needs to occur as quickly as possible to allow the businesses on the east side of the river to stay open. N. Karns stated that DOT's response noted that the project should proceed without delay if possible. This may be a precedent for infrastructure projects in contaminated riverbank and floodplain. L. Gaherty will pass along DOT's response to everyone.

4. Renewal of the Intergovernmental Agreement (IGA). The City of Pittsfield is not going to sign onto a renewed IGA. J. Akerstrom stated that the decision to leave the agreement was made solely by Mayor Tyer, with input from the city solicitor. The mayor believes that leaving the agreement is in the best interest of the City. The City has many things that it needs to consider, including working with GE. Ms. Akerstrom said the mayor wants the group to know that she is not going to abandon them, and wants this move not to color possible future relationships. She stressed again that the City is not abandoning the Committee. S. Shatz asked how the Committee could not feel abandoned; he also asked what she meant by "working with GE." Ms. Akerstrom could not answer those questions. N. Karns stated that he had a meeting scheduled with the mayor on this issue on a couple of weeks. He has asked that a couple of municipal representatives could also attend that meeting, but he has not yet received a response from the mayor's office. Mr. Karns said that when he first met with the mayor shortly after her election on the topic of Rest of River she did make a statement that GE was still a major taxpayer who controlled large amounts of land in the center of the city. She is also facing pressure from the residential neighborhood off of Holmes road which will be facing cleanup activities. Mr. Karns stated that she may not be aware that the dewatering facility will, in his opinion, probably be located at Lane Construction, which means that people in Lenox Dale and that section of Lee will be experiencing impacts from that facility 24/7 for up to 15 years.

B. Nason asked if Sheffield was still intending to remain in the Committee and the IGA. L. Gaherty responded that she'd spoken with Rene Wood and yes the town intends to remain within the group and IGA.

L. Gaherty began the discussion about renewal of the IGA, reminding Committee members that the original intent of the Committee was to pursue socioeconomic damages from GE, and that the IGA embodied that intent. In the three years since the agreement was signed, however, it has become clear that there are no laws or policies in place, either federal or state, that would allow governmental agencies to force GE to provide compensation. Within the past three years the Committee has learned that the only chance to receive compensation is through the adoption of 21D as an ARAR, and that is what Pawa's firm is drafting our legal brief on. As such, the IGA needs to be updated to reflect the change and direction of what the Committee is pursuing. Also, the Committee creates the coalition of towns to jointly fight a local landfill and other issues we want to see come out of the remedy permit. L. Gaherty has begun to draft edits to reflect these changes, particularly in the Preamble. She has not removed older references that speak to possible GE negotiations and possible compensation because there may be some negotiations with GE in the future. She handed out a revised IGA with edits in track changes and questions for the Committee to think about highlighted.

S. Shatz suggested to the Committee that they revisit the intent of the IGA to reflect today's conditions. GE is under no compulsion to pay socioeconomic damages, so we should state what we are pursuing at this juncture, three years after the original signing of the document. C. Ketchen offered that the *raison d'être* of the Committee was as a group to oppose the landfill and to make sure GE has responsibility for remaining PCBs in perpetuity. S. Shatz agreed. C. Rembold also offered that the first objective is to get the PCBs out of the river and environment, and then also to remove it from the county and be responsible for it forever; so there would be three major intentions rather than two. B. Nason suggested that the Committee revisit R. Wood's five major points, as shown on page five of the Executive Session minutes of May 25, 2016.

C. Ketchen agreed that the topic of 21D was definitely one that the Committee should pursue, but questioned if it should be in the IGA. If 21D is added as an ARAR and it triggered by a temporary or permanent landfill or dewatering site, the actual negotiations for compensation would then be directly between GE, DEP and that one particular community; it would not be a negotiation whereby each of the committee members in the IGA would be compensated. So the IGA won't work on this particular issue. N. Karns stated that in certain cases compensation from 21D would be extended to neighboring communities also impacted, but agreed that it might be negotiations outside the IGA. But he saw the benefits of working as a Committee to push for the 21D issue because there is no way of knowing at this time where staging areas, dewatering or landfilling would really be proposed.

S. Shatz stated that the Committee should identify common ground and focus on remaining together in a regional effort, noting that Stockbridge is much less impacted than the communities upstream. He does not believe that the IGA should continue to focus on financial compensation in any way, as these were unlikely to materialize and, if any did materialize that they would be community-specific, depending on how the cleanup progressed. Mr. Shatz is concerned that the IGA, if financial compensation references remain it, gives the impression that compensation is possible, and he does not want to give false expectations.

J. Akerstrom asked Mr. Shatz if he thought it was a detriment to leave financial compensation language into the IGA. Mr. Shatz responded that he did, because he felt it could lead to a set of false expectations from someone reading this contract.

L. Gaherty asked then if the real intent of the group and the IGA was to share legal representation through the EPA and courts appeals process. B. Nason referred again to R. Wood's five main objectives, and offered that perhaps that is what should now be stated in the Preamble. Some members offered that there were the three objectives mentioned earlier, that of cleaning up the river, removing it from the county and responsibility of GE in perpetuity.

N. Karns reminded the group that the reason we have legal council is to take us through the inevitable legal process, representing us through submission of legal briefs and other requirements. The group agreed that this role is different than that of the expiring IGA, which on page three discusses compensation from GE, so this section should be edited to reflect current thinking.

C. Ketchen raised an interesting question: are any of the individual communities in danger of not obtaining legal standing if they don't each submit their own legal briefs? Should Pawa be submitting briefs collectively and individually? BRPC will ask Pawa for his legal opinion about this.

To summarize the discussion L. Gaherty asked the group if they are in agreement that references to GE compensation be removed from the IGA. S. Shatz offered that it should definitely be removed from the Preamble, because at this time they were not retaining Pawa to pursue compensation – they were retaining them for legal council through the appeals process.

The discussion turned to what constituted a quorum of the Committee. Currently a majority vote of the Committee is required for usual business, but a unanimous vote of all six is required for a consensus on the landfill issue. C. Rembold suggested that a unanimous vote should also be extended to GE's ongoing responsibilities in perpetuity.

S. Shatz offered to go through the IGA and edit some of the language to clarify our intent. He would not be changing content, just clarifying language. In general the IGA needs to state our goals, how we meet, how we pay our expenses, and have a term of time.

B. Nason raised the issue of distribution of any possible compensation, which is in section 3 of the expiring IGA. What happens if by chance GE offers some compensation and Pittsfield is no longer part of the IGA. In this agreement any proceeds from negotiations pays for everyone's legal fees first, so that each community is reimbursed for legal fees; after than compensation is apportioned according to impacts suffered. So, going forward is Pittsfield going to expect any reimbursement? J. Akerstrom stated no, Pittsfield would not expect to receive any compensation from GE because they are no longer a signatory to the IGA.

The Committee moved into Executive Session to discuss legal strategy at 10:33 a.m., with the intent of not returning to regular session, motion made by S. Shatz and seconded by B. Nason. Roll call vote: S. Shatz, Stockbridge AYE; W. Archey, Lenox AYE; B. Nason, Lee AYE; J. Akerstrom, Pittsfield, AYE; C. Rembold, Great Barrington, AYE; Sheffield not present.

5. **Adjournment.** The Committee did not return to regular session.

Meeting Materials:

- Meeting Agenda
- Meeting Minutes of 5-25-16
- Intergovernmental Agreement Amendment 8-22-16
- Rest of River legal costs Jan – Aug 2016

Respectfully submitted,
Lauren Gaherty, BRPC