

## HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE

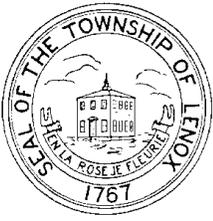
### AGENDA

Rest of River Municipal Committee  
September 7, 2018, 9:00 a.m., Lenox Town Hall, Land Use Room

1. Introductions (9:00 am)
2. Review of minutes of Aug. 24, 2018 meeting (9:05 am)
3. Updates (9: 10 am)
  - Clarifying the remand and new permit process
  - Other Business
4. Executive Session – legal strategy, mediation (9:15 – 9:50 am)
5. Attend Mediation Organizational Meeting – facilitated by J. Bickerman (10:00 am – noon)
6. Adjournment (approximately noon)

***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.***



## HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE Meeting Minutes

Rest of River Municipal Committee; September 7, 2018, Lenox Town Hall, Land Use Room

1. **Introductions.** N. Karns opened the meeting at 9:01 a.m. Attending the meeting were the following Committee members:

Pat Carlino, Lee Select Board

Christopher Ketchen, Chief Administrative Officer, Towns of Lee and Lenox (9:07 a.m.)

Chris Rembold, Great Barrington Town Planner

Steve Shatz, Stockbridge Representative

Rene Wood, Sheffield Select Board

Others present:

Lauren Gaherty, BRPC

Tom Matuszko, BRPC Executive Director

N. Karns, BRPC Consultant

2. **Review of minutes of August 24, 2018 meeting.** *Motion to accept the minutes as presented was made by S. Shatz, seconded by P. Carlino, and approved by unanimous vote.*

3. **Updates.**

N. Karns clarified the remand and new permit process, given the work EPA and DEP are doing to answer the EAB's remand questions. It is highly likely the EPA will develop a new Statement of Basis on the remanded portions of the Permit. It is felt issues not subject to the remand will not be impacted. The new Statement of Basis & Permit will go through a public comment period of possibly 60 days; all submitted comments will be answered by the EPA; possible changes to the Statement of Basis & Permit may be made based on the comments; and finally the Statement of Basis & Permit will be released by the EPA. The new Permit is subject to the same EAB appeals process for all parties with standing, as was available and exercised on the previously issued Permit. Forecast: at least a year before this process is completed.

N. Karns believes the EPA is not going to issue the revisions, new Statement of Basis etc. if mediation is making progress. EPA's goal is to have the mediation succeed and avoid years of costly legal actions.

4. **Executive Session – to discuss legal strategy and mediation.**

At 9:10 a.m. N. Karns requested a motion to go into Executive Session to discuss legal strategy for potential mediation or actual litigation regarding the EPA Rest of River clean-up and the appeals of the EPA's Permit and the EAB decision. Such discussion, if held in open meeting, may have a detrimental effect on the legal position of the Rest of River municipalities' legal action with EPA and GE. After the Executive Session, the Rest of River Committee will reconvene in regular session. ***On a motion made by P. Carlino, seconded by S. Shatz, which carried unanimously with the following roll call vote: P. Carlino, Lee, AYE; C. Ketchen, Lenox, AYE; S. Shatz, Stockbridge, AYE; C. Rembold, Great Barrington, AYE; and R. Wood, Sheffield, AYE, the Committee went into Executive Session at 9:11 a.m.***

## 5. Bickerman Mediation Organizational Meeting

The Committee reopened the regular session at 9:56 a.m. and attended the J. Bickerman Organizational meeting. Prior to the meeting, all present had about 10 minutes to informally mix and mingle and introduce themselves. At a few minutes after 10:00 a.m. the Committee attended the Bickerman meeting. The following Rest of River Municipal Committee members were present:

Pat Carlino, Lee Select Board  
Christopher Ketchen, Chief Administrative Officer, Towns of Lee and Lenox  
Chris Rembold, Great Barrington Town Planner  
Steve Shatz, Stockbridge Representative  
Rene Wood, Sheffield Select Board

Other Committee associates were present:

Lauren Gaherty, BRPC  
Nat Karns, BRPC Consultant  
Ben Krass, Esq., Counsel  
Tom Matuszko, BRPC Executive Director

J. Bickerman opened the meeting, describing it as a procedural meeting and asked everyone to introduce themselves. It appeared all parties with standing were present, except DEP, including 4 representatives from GE; 5 representatives from EPA; 2 from City of Pittsfield; 1 from BEAT; numerous representatives from HRI; Mass Audubon and Jeff Cook. J. Bickerman next went over the mediator's role and his mediation experience. This appeared to be a repeat of the information he gave us at a prior meeting.

He then announced to the group that he had heard that the "towns are pulling out" of the mediation process. He also stated that he tried to meet with the Municipal Committee but was told the "towns don't want to meet with me." When Attorney Krass asked him to address the agenda and noted that all towns have formally voted to mediate, he cut him off. (Note: at this time the decision to mediate as voted by all 5 select boards still stands; it is incorrect that the towns were "pulling out.")

He proceeded to discuss the Ground Rules. Issues of how he planned to get information from one party and convey it to another were reviewed, in which he clearly spoke of taking an issue and discussing it with "Great Barrington or Pittsfield".

He said items have to be approved in a public meeting, but conversations within the mediation committee and private conversations are private and confidential. Didn't address emails to towns and felt "they have to work through it". Ground Rule: don't share the position of another member of the mediation process; make your public statements reflective of your position only. The issue of how to deal with the press if certain meetings are open was discussed but not resolved. He did note that towns need extra time.

Under VIII, Schedule, he spoke of a more substantive meeting following this organizational meeting, which would be a public meeting, in which each party would make a statement of position. He went back again to discussing the town's pulling out and took it a step further by saying that other groups have heard this too. He then spoke of a "rumor" he had heard that the State (DEP) has told the towns they are not interested in mediation at this time. At this point S. Shatz called him out on this "rumor" and said this meeting had no place for rumors. He stated that he thought the way J. Bickerman was conducting the meeting was inappropriate. He suggested he call DEP and ask them directly, to which Bickerman replied he has not been able to talk with them. Bickerman responded that he wanted to ask the Municipal Committee but was "denied the opportunity to talk to you about it."

Attorney Krass asked J. Bickerman how he planned to have the parties meet, how he would conduct the sessions. J. Bickerman said he would have parties talk to each other face to face. This led to discussion of quorums of municipal members being present and once again whether the open meeting law came into play. J. Bickerman then discussed smaller group and doing shuttle diplomacy.

How confidentiality would proceed within public open meeting laws was a question. R. Doheny, Pittsfield legal counsel, volunteered to write the AG's office and get an advisory on the applicability of the open meeting law and also to write the Sec. of State's office and get an advisory on applicability of the public records law. He is looking for the ground rules on each and agreed he will do this for all the represented municipalities and will get the received responses to each.

Jane Winn, BEAT, noted they have no problem with matters conducted in public; the environmental groups are less comfortable with meetings behind closed doors. She doesn't want to see back door deals like have previously been done, implying the Consent Decree.

S. Shatz again chastised J. Bickerman for starting the meeting with his statements re: ROR towns pulling out and continuing to bring this matter up. He noted all the towns are present and participating.

J. Bickerman said he "plans to bring other parties into this, those that don't have standing, at some point".

J. Bickerman stated next steps would be to gather goals and objectives from all parties. He wants another meeting where each party of standing would identify their goals and objectives and define what is success and failure. He mentioned that he has these from EPA and GE from previous mediation, but would like them updated to meet current conditions.

R. Doheny suggested J. Bickerman look to the written submissions made to the EPA during the public comment period and other publicly available documentation for such information.

J. Bickerman pushed hard on getting dates set and these statements from each group. Spoke of another organizational meeting.

GE noted the need for the mediation agreement to be signed by all parties before they would begin listing objectives. J. Bickerman pushed as to where the municipalities were on this and made comments that he never thought when he provided the agreement in June that he would not have it back by September. Attorney Krass said that it is "Under Review".

T. Gray noted that the environmental groups would like a copy of the draft mediation agreement; as of yet they have not been provided a copy of it. J. Bickerman again noted that edits would likely becoming from the Municipal Committee but would get a copy to the environmental groups. T. Gray wanted to know what the rush was – he's been in this for 30+ years and he would rather have a good cleanup than a rushed deal.

Brian Olsen of EPA, head of the cleanup program in the NE, stated why the EPA wanted to try mediation: it has been a long time since the cleanup began; millions of dollars already spent and Rest of River is already dragging on too long; the agency doesn't want to litigate for the next 10 years (but we will if we have to); delay doesn't help the river or the towns if we can come up with a settlement. He spoke of J. Bickerman at this point and reviewed his accomplishments in settlement mediations, with an emphasis on a recent resolution at Centredale Manor, RI. EPA is supportive of the mediation process; the Administration is pushing for cleanup as a priority. He noted EPA has told GE they feel EPA will win on the

remand. He wants to share the EPA's info with all parties and not have it appear first in the papers. He has 2 issues: 1) Get the PCBs out of the river and 2) Where to put it?

***At approximately 11:10 a.m. the Bickerman meeting recessed and the ROR Committee, on a motion by R. Wood and seconded by P. Carlino, returned to Executive Session, after which it would return to the mediation meeting and later to open session. Motion carried unanimously with the following roll call vote: P. Carlino, Lee, AYE; C. Ketchen, Lenox, AYE; S. Shatz, Stockbridge, AYE; C. Rembold, Great Barrington, AYE; and R. Wood, Sheffield, AYE.***

The Committee returned to the Mediation Organizational meeting at 11:25 a.m. S. Shatz made a personal statement about the review process in Stockbridge. He noted that R. Dohoney's requests to the AG's and Sec. of State's offices will help resolve key issues in the contracting process.

S. Shatz proposed Oct. 12<sup>th</sup> at 9 a.m. for an Executive Session of the Municipal Committee with J. Bickerman to take the next step in mediation, predicated on two items: 1) written advisory opinions received from the AG's and Sec. of State's offices; and 2) the ROR municipalities have had the finalized mediation agreement signed by their executive authority.

More discussion ensued on written objectives with J. Bickerman noting GE and EPA may want to review their statements of several years ago.

The Mediation Organizational Meeting adjourned about 11:30 am.

The Committee reconvened in open session at 11:40 a.m. S. Shatz proposed Oct. 12<sup>th</sup> at 9 a.m. for an Executive Session with J. Bickerman to take the next step in mediation, predicated on two items: 1) written advisory opinions received from the AG's and Sec. of State's offices; and 2) the ROR municipalities have had the finalized mediation agreement signed by their executive authority.

The next open meeting of the ROR Municipal Committee was set for Friday 9/21 at 9 a.m. at the Lee Town Hall.

## **6. Adjournment.**

***R. Wood motioned to adjourn, which was seconded by S. Shatz, and unanimously approved. The meeting adjourned at 11:50 a.m.***

### Meeting Materials:

- Meeting Agenda 9-7-2018
- Draft Meeting Minutes of 8-24-2018
- Agenda, Housatonic ROR Mediation; 10am; 9-7- 2018

Respectfully submitted,  
Rene Wood, Sheffield's Representative