



BRPC

Berkshire Regional Planning Commission

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REGIONAL ISSUES COMMITTEE – Meeting Minutes

Wednesday, February 28, 2024

via Zoom

Committee Members Present

Malcom Fick, BRPC Chair, ex-officio; Alternate from Great Barrington
Kyle Hanlon, Delegate from North Adams
Sheila Irvin, Delegate from Pittsfield
Kent Lew, Washington (non-Commission member)
Christine Rasmussen, Alternate from Stockbridge, RIC Chair
Eleanor Tillinghast, Mount Washington (non-Commission member)

BPRC Staff Present

Sherdyl Fernandez-Aubert, Environmental & Energy Planner
CJ Hoss, Community Planning Program Manager
Tom Matuszko, Executive Director

I. Call to Order

The meeting was called to order at 3:34 by Christine R. Roll call was taken and the meeting was recorded.

II. Approval of January 19, 2024 Meeting Minutes

Kent L. said that “Other Persons Presen” should be corrected to “Other Persons Present”. Kent L. also said that the characterization of H.3215 as a bill “on the topic of local control of permitting and zoning of solar development” was misleading and the bill should instead be characterized as “on the topic of consolidating under state control the permitting and zoning of solar development”. All committee members agreed on these amendments. Kent L. made a motion to approve the minutes from the January 19, 2024 meeting. Sheila I. seconded the motion. The motion passed unanimously.

III. Discussion regarding the Commission on Energy Infrastructure Siting and Permitting online survey

CJ H. said that survey comments are due March 15, but the Commission on Energy Infrastructure Siting and Permitting (the Commission) indicated that comments should be submitted by March 1 for maximum effect. The survey comprises 44 questions. A handful of the questions are not germane to RIC and BRPC will not be responding to every question.

Tom M. alerted RIC that in addition to survey comments being submitted by March 1, the Commission is holding virtual public listening sessions on March 4, 12pm-2pm and March 5, 6pm-8pm for comments to be provided in person. Eleanor T. asked Tom M. to provide RIC with the link for these sessions in an email.

Sherdyl F. said that BRPC’s positions and comments on the survey focus on maintaining local and municipal control, especially with respect to siting and permitting. BRPC also believes that consolidating permitting and siting into a single state entity will not produce the desired efficiencies and will limit municipal input and control. BRPC is focusing on the

first six pages and 20 questions of the survey and is choosing not to address the outreach and education portions of the survey.

BRPC's responses focus on three main areas:

1. Ensuring provisions for encouraging the use of degraded and impacted lands and impermeable surfaces as the primary siting preference for solar development;
2. Taking a regional approach to developing a siting plan rather than a state approach. A regional approach would allow regional entities to provide technical resources to municipalities to help them with updating zoning and siting regulations;
3. Ensuring that any state agencies that have permitting and oversight powers should include MEPA so both environmental and equity concerns are addressed evenly

Eleanor T. said that she agreed with the comments made by BRPC. She was struck by the degree the document strips local control and consolidates power at the state level. BRPC should stress the "retention of the current local permitting framework with little or no changes". BRPC should also stress that most solar development will occur in Western Massachusetts and therefore Western, rural populations will be disproportionately affected. Additionally, the expediting of large, complex projects is inappropriate as those are the projects that demand the most local control and oversight. She understands the urgency that the Commission is feeling to come up with recommendations, but there is little need to adjust the current system of local permitting.

Tom M. suggested a tiered permitting approach that allowed for expedited permitting for development on degraded and impacted lands and impermeable surfaces such as parking lots and industrial roofs. Eleanor T. feared that a surrendering of local control would set a precedent that would later result in greater erosion of local control. She said that permitting bottlenecks typically occur at the state level, anyways, with permitting conflicts between EFSB and DPU slowing down project approval. One compromise could be to streamline the permitting process for projects on disturbed and built environments at the state level, while leaving local control unchanged.

Christine R. suggested that municipal governments identify and pre-approve sites for expedited development. Eleanor T. said that this could create local political conflicts with local landowners wishing to have their land included or excluded from such designations. She prefers strong state-level incentives and disincentives to encourage and discourage development on different types of properties. CJ H. suggested a compromise that ensures all Berkshire County communities allow expedited permitting of development on parking lots, building roofs, and similarly unambiguously disturbed and built lands.

Tom M. said that the role of a single state agency could be to provide technical resources to local and regional stakeholders including municipalities and RPAs. These resources would include staff assistance for resolving questions of site selection, zoning, and permit review. Kent L. agreed that the best compromise is to keep local control as is but increase the resources available to local bodies in order to resolve capacity issues. Eleanor T. agreed with this suggestion. CJ H. said that this was similar to the technical assistance provided to local bodies through 40B.

Sheila I. asked how battery energy storage systems feature in these questions of permitting. Kent L. said that the document makes specific reference to including battery energy storage systems in the clean energy infrastructure definition, and thus they would be subject to the same permitting and oversight determinations.

Eleanor T. said that the definition of clean energy infrastructure should not include utility distribution infrastructure because distribution has traditionally been the remit of municipal oversight and distribution deals with the interconnection between transmission systems and

residences. Therefore, it should not be treated the same as transmission systems, which transport energy between regions.

Malcom F. asked if there are measures to limit NIMBY lawsuits and if an insistence on local control could create the opportunity for such lawsuits. Eleanor T. said that it is very difficult to file a NIMBY lawsuit for energy projects. Kent L. feared that including a comment referencing NIMBY lawsuits could provide the Commission with justification for limiting local control. He again instead favored a compromise that increased the technical resources available to municipalities in order to improve decision-making and limit the opportunities for such lawsuits.

Kent L. said that rendering a default decision in the case of a permit deadline not being met was dangerous. It opened the opportunity for permitting bodies to be maliciously overwhelmed in order to produce default decisions as well as for state permitting bodies to be intentionally underfunded to produce default decisions. Eleanor T. agreed. Tom M. agreed and suggested that state bodies could have deadlines, but not local bodies.

Kent L. said that if the Commission decides to approve a mechanism for overriding local permitting decisions, there should be compensation rendered to the municipality. Eleanor T. said that such compensation has traditionally never been adequate and is wary of framing local control as something which is open to compromise.

Tom M. suggested that there could be a maximum acreage of clean energy infrastructure development beyond which municipalities have the option to restrict further development. Christine R. said she was concerned such a standard would be hard to arrive at given the diversity of municipalities and their terrain. Eleanor T. said she thought such a proposal was too elaborate to include at the moment.

Sherdyl F. asked RIC if there were any stakeholders besides the RPAs, MEPA, and the municipalities that should be included in site suitability zone determinations. Eleanor T. said that the Massachusetts Division of Fish and Wildlife should be included. Tom M. said that site suitability zones are generally unfavorable, but if the Commission mandates them, they should be developed at the regional and local levels.

Kent L. said that from the perspective of a small, rural town, directed CBAs are of no use as the impacts such towns are trying to offset are typically intangible. Tom M. said he favored unrestricted CBAs for all municipalities, not just small, rural towns.

Sherdyl F. asked what the role of MEPA should be. Eleanor T. said that Sherdyl should speak with BRPC's Melissa Provencher for language. Also, she felt that MEPA is a streamlined and efficient organization. Tom M. said that he would favor MEPA being the primary project review body at the state level.

Tom M. said that Sherdyl F. would incorporate today's discussion into the survey answers. The answers would then be sent to RIC for comments to be returned by 12:00pm on Friday. These comments would be incorporated, and the final answers would be submitted to the Commission by EOD. Eleanor T. suggested formatting the answers into a comment letter to be sent to Berkshire County's state legislators and officials in relevant state agencies.

IV. Future Discussion Topics

CJ H. said he had reached out to Casey Pease in Senator Mark's office about attending future RIC meetings but had not yet received a response. He would follow up.

Tom M. said that the Commission on Energy Infrastructure Siting and Permitting would be acting quickly and RIC may need to follow-up shortly. Also, there may be an economic development bill that RIC wishes to comment on.

Eleanor T. said there will be a major energy bill in the near future.

V. Next Committee Meeting Date

Undecided.

VI. Adjournment

Kent L. made a motion to adjourn. Eleanor T. seconded the motion. The motion passed unanimously. The meeting adjourned at 4:42pm.