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## FULL COMMISSION MEETING MINUTES APPROVED November 21, 2024

This hybrid meeting was held at Greylock Glen Outdoor Center, 135 Gould Rd., Adams, MA, and via Zoom.

### I. Opening

#### A. The meeting was called to order at 5:58 p.m.

Chair Malcolm Fick stated that per the open meeting law, BRPC was recording this meeting. Others may record the meeting after informing the meeting Chair. Documents presented must be provided to the Chair at the meeting.

#### B. The following Commission members were present:

Diana Mott – Becket Alternate  
Peter Traub – Cheshire Delegate  
Mary McGurn – Egremont Delegate  
Pedro Pachano – Great Barrington Delegate  
Malcolm Fick – Great Barrington Alternate  
Tony Zaniboni – Hinsdale Delegate  
Leanne Yinger – Lanesborough Delegate  
Buck Donovan – Lee Delegate  
Laura Mensi – Monterey Delegate (left early)  
Kyle Hanlon – North Adams Delegate  
Sheila Irvin – Pittsfield Delegate  
Sari Hoy – Sheffield Delegate  
Christine Rasmussen – Stockbridge Alternate  
Don Gagnon – Washington Delegate  
Roger Bolton – Williamstown Alternate  
Douglas McNally – Windsor Delegate (left early)+  
Ben Bederson – Windsor Alternate

#### Towns with no Delegate or Alternate present:

Adams, Alford, Clarksburg, Dalton, Florida, Hancock, Lenox, Mount Washington, New Ashford, New Marlborough, Otis, Peru, Richmond, Sandisfield, Savoy, Tyringham, West Stockbridge

#### Staff Present:

Thomas Matuszko, Marianne Sniezek, Laura Brennan

#### Others Present:

Pittsfield Community Television recorded the meeting; Peter Matson, Washington; Lee Buttala, Sheffield; Diane George, New Ashford;

Catherine Neill & Felipe Zamborlini EOHLIC\*; Margaret Hurley – Attorney General’s Office; Katherine Keenum; Susan; Dennis & Diana D; Mark Smith, Lenox; Peter Bluhm; Al B; others in-person not identified

**C. Vote to Approve Minutes of the September 25, 2024 Commission Meeting**

Douglas McNally motioned to approve the September 25, 2024, draft meeting minutes with the correction that Sheila Irvin is the Pittsfield Delegate, not Alternate. Peter Traub seconded the motion. A roll call vote approved it: Peter Traub, Mary McGurn, Pedro Pachano, Tony Zaniboni, Leanne Yinger, Laura Mensi, Sheila Irvin, Christine Rasmussen, Roger Bolton, Douglas McNally

Abstained: Buck Donovan, Kyle Hanlon, Don Gagnon

**II. Comments from Berkshire Regional Planning Commission Delegates and Alternate Delegates**

Pedro Pachano asked if there is more news about cuts to the Healthy Incentives program. It has been announced that state funding is being cut in half. Tom Matuszko has not heard anything else about it. Pedro expressed concern about the cuts' impacts on farmers, farmers' markets, and people who depend on it for access to food.

**III. Comments from the Public**

There were no comments.

**IV. Presentation and Discussion Related to the Accessory Dwelling Unit (ADU) Provisions of the Affordable Homes Act**

Representatives from the Massachusetts Executive Office of Housing and Livable Communities, Filipe Zamborlini, Manager, Community Assistance, and Catherine Neill, ADU Coordinator, and Margaret Hurley, Regional Chief, Attorney General's Office, reviewed the Accessory Dwelling Unit provisions of the Massachusetts omnibus housing bill, The Affordable Homes Act, passed earlier this year and answered questions. The slide deck from their presentation is posted on [BRPC's website](#).

Comments and questions and answers:

Jeff Clements raised concerns about new law removing single-family residential districts – If ADAs are allowed then in effect each zone is two family.

Jeff Clements questioned whether the definition of ADU will include non-conforming uses, such as gas stations in residential areas.

Reply: The regulations are still being defined. Most likely there will be language either in guidance or under regulations about nonconformity, but don't have a specific answer now. It is possible to have a mixed-use building that is non-conforming in that residential district. The principal

dwelling will guide where an ADU will be allowed.

Jeff emphasized the need to address non-conformity in guidance or regulations and the importance of clear definitions, particularly regarding means of egress. The law mentions a separate entrance. Building officials are more concerned about the means of egress and less concerned about the entrance. Jeff's opinion was that the regulations should say a separate means of egress, because the building code requires means of egress. Stating one entrance is going to cause a lot of discussion that could be avoided just by making the definition clear.

Peter Bluhm, asked two questions about the application of the statute in different zones and lots. One is, does the statute apply in a given zone? And if it does, does it apply to a given lot? Peter stated he interpreted the law to say if the Zone allows for single family residential use, then the law applies in that zone, regardless of what else may also be authorized. Can a two-family house that's in compliance with zoning also have an ADU in the backyard?

Reply: The response was that there are multiple interpretations being considered for the regulations. The law will apply to most of the town except for industrial zones. The regulations will clarify the question about two family dwelling.

Leanne Yinger asked for more information about owner occupancy - does not require owner occupancy in either dwelling. The requirement that the owner does not have to live in the house or on the property.

Reply: The key term is require. For example, if there are municipalities that have an ADU bylaw already, and they require that the primary home be a homeowner occupant or there are other bylaws that require that a person who is a family member, perhaps, is the only person that could live in the ADU. So those types of requirements are not going to be in line with the law. This will be addressed more, probably in the regulations and guidance.

Diana George asked about the possibility of renting both units and the relief for owners with unruly tenants.

Reply: Estate laws pertaining to rental will stand, and the law does not directly address tenant issues. It was confirmed that probably both units can be rented out if the owner does not occupy either unit.

Mary McGurn asked about the compatibility of commercial property structures with ADUs and read an excerpt from Egremont's ADU bylaw which states, an ADU may be located on the same lot for a permitted retail business or consumer service establishment, provided that the lot does not also contain a two family or multi family dwelling. So how does that provision fit with what the regulations may be contemplating?

Reply: It is difficult to provide a response to a specific bylaw question. Advised adhering to the current law itself prior to the regulations being prepared, and consulting the town council for specific cases. The final regulations will provide concrete guidance once completed.

Ben Bederson asked what happens if town bylaws are not consistent with the

new ADU law.

Reply: Advises communities to consider permits that meet the new law's definition to avoid rejection. Margaret (AGO) adds that bylaw provisions clearly in conflict with the statute will no longer be enforceable from February 2, 2025.

Tom Matuszko asked the AGO about the ADU Bylaws that comply with this law that are under review now.

Reply: Suggested checking the Massachusetts Municipal Law Unit's decision lookup feature on mass.gov for recent decisions on ADU bylaws. Guidance on the bylaws will be provided in the AG's decision.

Lee Buttala asked how would ADUs relate to historic districts that many of us have at the center of our towns, in terms of ADUs and what supersedes in such situations?

Reply: This is an active area of inquiry and will likely be addressed in regulations or guidance.

Malcolm Fick commented his town has an ADU by-right bylaw but faces challenges in getting loans for construction. Does this law address this issue?

Reply: The law does not directly address this issue. There needs to be efforts to educate the banks on the value of ADUs and potential financing programs. As soon as the regulations are done, EOHLC will be working on getting additional resources because Mass Housing will likely be interested in finding ways to potentially create financing tools for it. Mass Housing Partnership is also in discussion with EOHLC about potential financing tools. CEDAC might have some financing tools as well, and EOHLC may have additional financing tools outside of the law, for instance, through the capital investment plan. Incentivizing and facilitating the actual development is very important to EOHLC. EOHLC is also working closely with the AGs office to make sure that people aren't scammed and ensure seniors aren't taken advantage of.

Lillian, asked if EOHLC staff roles are being sustained in the future to provide long-term support for ADUs?

Reply: Confirms that their roles are funded for the next five years to support the implementation of ADUs. Stresses the importance of long-term support for communities to adopt and enforce ADU bylaws.

Laura Mensi asked if there is a deadline for planning boards to make their local bylaws be compliant with the state law?

Reply: There is no deadline specified in the law itself when bylaws must be amended. There real deadline is that 2/2/2025 ADUs must be allowed by right if they comply with the definition of the law, as stated in Section 8.

EOHLC representative stated that draft regulations, a public comment period, and public hearing dates are coming soon. For more information: [mass.gov/adu](https://mass.gov/adu); Emails: [EOHLCADUhomes@mass.gov](mailto:EOHLCADUhomes@mass.gov); Sign up for the AHA implementation newsletter: [mass.gov/aha](https://mass.gov/aha).

Other discussion

Efforts are being made by at least some communities to make bylaw amendments. There are still unanswered questions that make it hard to make bylaw amendments, such as two-family districts, non-conforming uses, height restrictions, setbacks, differences between ADUs and other accessory structures, when does a requirement for a sprinkler system or a HERS rating be triggered.

There was discussion about an ADU and foundation or slab, tax assessment if there is no owner occupancy requirement. Concerns were raised about the impact on tax rates and zoning laws, especially in historic districts.

Building inspectors discussed the new Massachusetts building code allowing tiny homes up to 400 square feet, effective October 11. Tiny homes can be built with special permits, and the code also allows straw bale and 3D homes. The 10th edition of the building code is being extended until January 30.

**V. North County Legislative Update**

Not presented.

**VI. Presentation of Executive Committee Actions**

Executive Committee actions taken at the October 3 and November 7, 2024, meetings were in the meeting's materials packet. There were no questions or discussion.

**VII. Vote to Amend the BRPC Bylaws**

The BRPC Executive Committee recommended the BRPC Bylaws be amended to comply with annual elections per the Regional Planning Law. At the January 18, 2024 Commission meeting, a vote was made to change the officers' terms to bi-annual. This amendment requires a two-thirds vote of Delegates or Alternates attending a Commission meeting.

Peter Traub motioned to amend the BRPC Bylaws requiring annual elections of officers with one year terms. Kyle Hanlon seconded the motion. There was no discussion. A roll call vote approved the motion: Diana Mott, Peter Traub, Mary McGurn, Pedro Pachano, Tony Zaniboni, Leanne Yinger, Buck Donovan, Kyle Hanlon, Sheila Irvin, Christine Rasmussen, Don Gagnon, Roger Bolton, Douglas McNally

**VIII. Vote to Elect BRPC Officers for FY 2025**

The Regional Planning Law requires BRPC Officers to be elected annually. The officers for FY 25 need to be elected. The following slate of officers is proposed for FY 2025:

- Chair: Malcolm Fick, Great Barrington Alternate
- Vice Chair: John Duval, Adams Alternate
- Clerk: Sheila Irvin, Pittsfield Delegate
- Treasurer: Buck Donovan, Lee Delegate

There were no nominations from the floor. Peter Traub motioned to approve

the proposed slate of BRPC officers for fiscal year 2025. Diana Mott seconded the motion. A roll call vote approved the motion: Diana Mott, Peter Traub, Mary McGurn, Pedro Pachano, Tony Zaniboni, Leanne Yinger, Buck Donovan, Kyle Hanlon, Sheila Irvin, Don Gagnon, Roger Bolton, Douglas McNally

**IX. Report and Possible Discussion of the Executive Director's Report**

Tom highlighted several items:

- The state's drought has increased to Level 3.
- The [Citizen Planner Training Collaborative](#) Western Mass conference in Greenfield is canceled.
- The Executive Office of Energy and Environmental Affairs (EEA) has initiated a Wholistic Land Use Plan for state interagency coordination of intersecting policy decisions and potentially conflicting goals and plans. BRPC has raised questions about how different planning areas will work together, such as transportation, housing, the Energy Siting Bill, etc., and the need to clarify and remove inconsistencies or conflicts.

**X. Adjournment**

Pedro Pachano made a motion to adjourn. Peter Traub seconded the motion. A roll call approved the motion: Diana Mott, Peter Traub, Mary McGurn, Pedro Pachano, Tony Zaniboni, Leanne Yinger, Buck Donovan, Kyle Hanlon, Sheila Irvin, Christine Rasmussen, Don Gagnon, Roger Bolton, Ben Bederson

The meeting was adjourned at 7:33 p.m.

The next meeting is scheduled for Thursday, January 16, 2025, at 7:00 p.m.