



# BRPC

Berkshire Regional Planning Commission

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## **REGIONAL ISSUES COMMITTEE – Meeting Minutes**

Wednesday, August 28, 2024, 3:30 p.m.

*via Zoom*

### Committee Members Present

Malcom Fick, BRPC Chair, ex-officio; Alternate from Great Barrington  
Andrew Groff, Williamstown (non-Commission member)  
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)

### Committee Members Not Present

Kyle Hanlon, Delegate from North Adams

### BPRC Staff Present

CJ Hoss, Community Planning and Development Program Manager

### Other Attendees

Marybeth Mitts, Lenox Selectboard  
Marya Kozik, North Adams Administrative Officer  
Kate McNulty-Vaughan, Lenox Planning Board

## **I. Call to Order**

Christine R. called the meeting to order at 3:33 p.m. Roll call was taken and the meeting was recorded.

## **II. Approval of May 22, 2024 Minutes**

Christine R. ruled that review and approval of the May 22 minutes would be delayed until the next meeting due to the Regional Issues Committee (the Committee) members receiving said minutes shortly before the current meeting.

## **III. Update on Affordable Homes Act passage**

Before the meeting, CJ H. sent Committee members slides produced by the Citizens' Housing and Planning Association (CHAPA).

Christine R. provided an overview of the Affordable Homes Act (the Act). It is a \$5.2 billion borrowing bill for programs that can take place over the next five years. It was passed by the legislature on the last day of the session, and the Governor signed the bill into law on August 6.

CJ H. said that the Act approved the Berkshire County Home Modification Loan program at level funding from 2018. BRPC is the Berkshires designee for this program. This program provides 50-year 0%-interest loans with deferred payments to homeowners to address accessibility issues such as entrance ramps, accessible bathrooms, and air filtration. Unlike the CDBG program, this program has fairly generous income requirements, providing

funding to homeowners up to the middle/upper-middle income level. This program is available to every municipality in Berkshire County, and BRPC is making a push to raise awareness of the program among Berkshire County residents.

CJ H. said that the Act's provisions on accessory dwelling units (ADUs) are vague. For instance, the Act says that ADUs by right apply to single-family residential districts. It is unclear whether this refers to districts that are zoned exclusively for single-family residential housing or mixed-use districts that are zoned to include single-family residential housing as well as other structure types/land uses. BRPC is hesitant to provide advice to constituents and municipalities in case it has misinterpreted these provisions. These provisions go into force in February 2025, and the Executive Office of Housing and Livable Communities (EOHLC) has indicated that it will provide further guidance on how to interpret these provisions. Additionally, communities that are concerned can place a legal ad for a public hearing around that date that could potentially lock-in some zoning mechanism to deal with ADUs. Many Berkshire County communities already allow ADUs by right, and there have not been a surge of ADUs over the past several years, nor is the economic climate ripe for ADU development, so it is unlikely that this will cause major issues.

Andrew G. agreed with CJ H. that the provisions contain unclear language – such as the definition of “transit stop” – and that BRPC should wait for further guidance from EOHLC.

Kent L. asked if Section 10 of the Act obviated the merger doctrine.

CJ H. said that he did not know.

Christine R. said that it is good that the provisions do not come into effect until February because it gives municipalities time to adapt and get additional guidance from EOHLC. She asked CJ H. if he knew what sort of program BRPC would integrate with the Commonwealth.

CJ H. said that he is hopeful that part of the guidance provided by EOHLC is a model bylaw. If they do not provide that, BRPC could potentially create one itself. BRPC does not have the resources to work with each Berkshire County community on a one-by-one basis drafting bylaws, but it could potentially create several options for communities to adopt or use as templates. Most communities have volunteer zoning boards and do not have the resources to draft a bylaw from scratch by themselves.

Malcolm F. asked if the Act requires municipalities that do not currently have an ADU bylaw to adopt one.

CJ H. said that municipalities do not necessarily need one, and if they are unconcerned about ADUs, they technically do not need to do anything. However, it is in their best interest to adopt one. Just because ADUs are by right, this does not mean that municipalities cannot attach certain provisions to help shape what that by right use looks like.

Kent L. said that if municipalities do not have any objections to the broad structure of the provision, they do not need to do anything. They only need a bylaw if they want to exercise the option to attach other “not unreasonable” restrictions and provisions to by right use.

Malcolm F. suggested that BRPC provides separate summaries of the Act's ADU provisions and recommendations for municipalities that currently have an ADU bylaw and for municipalities that currently do not have an ADU bylaw, respectively.

CJ H. said he will reach out to the Massachusetts Attorney General to see if that office will be providing guidance.

Marybeth M. asked if it is typical that EOHLC promulgates any type of rulemaking, or does rulemaking typically originate from the Attorney General's office.

CJ H. said that he expects EOHLC to provide rulemaking guidance.

Kate M. said that Lenox residents have raised concerns about the ambiguity of the ADU provisions and was hoping that BPRC could provide some guidance in the future.

#### **IV. Update on Seasonal Communities and including of the Berkshires**

CJ H. said that under the Act, Berkshire County municipalities in which seasonal housing units comprise more than 40% of the total housing stock are eligible to be designated Seasonal Communities. EOHLC will work in consultation with BRPC to determine which municipalities meet this threshold. CJ did not know that BRPC would be involved in this capacity but is pleased that BRPC will have a voice in the matter. The difficulty will be in sourcing data to make these determinations. The American Community Survey data provided by the U.S. Census Bureau has a very wide margin of error for small, rural municipalities, so it will be difficult to rely on such figures as reliable indicators. Additionally, the funding opportunities for seasonal communities were removed from the Act, so what benefit the designation confers on municipalities is uncertain. In the long run, there may be some financial benefit for qualifying communities. In the short run, it is possible that qualifying communities receive extra points when applying for grant programs.

Marybeth M. said that the Lenox assessor is conducting an analysis of all the housing units in that municipality and will determine the proportion of seasonal housing units by distinguishing between those units on which taxes are collected in the form of personal property taxes and those units on which taxes are collected in the form of real estate taxes.

Kent L. said that the Act contains a carve out that allows EOLHC to designate municipalities as Seasonal Communities if they meet certain arbitrary thresholds, even if they do not meet the 40% threshold. What this designation means in the long run is uncertain, but it is good that Berkshire County was recognized as having unique circumstances in the Act. Furthermore, the Act states that municipalities designated as Seasonal Communities "shall accept or deny the designation by vote of its legislative body." This means that it will be voted on in town meetings. It would be helpful for BRPC to provide municipalities with a summary of the benefits of the designation as well as what obligations might come along with it.

CJ H. said that the carve out mentioned by Kent L. is important because the municipalities that meet the 40% threshold may not be the municipalities that could most benefit from the Seasonal Communities designation. This is especially true if the designation provides funding for housing development. These communities likely lack the utilities and infrastructure for significant housing development. Furthermore, much of the workforce that supports seasonal industries tends to live in communities like Great Barrington, Pittsfield, Adams, and North Adams – municipalities that likely will not meet the 40% threshold.

Kent L. noted that of the five factors that would be considered for any community that does not meet the 40% threshold, the third one was an "excessive disparity between area median income and the income required to purchase a municipality's median price home". This condition likely exists in some of the municipalities that do not meet the 40% threshold, but that would benefit from the designation

Christine R. asked if it is possible that the designation could be divided within municipalities, such that it applied to some zoning districts and not to others.

CJ H. said that he would be in favor of this as it would discourage housing development in areas that do not have the utilities, transportation, infrastructure, and other resources to handle residential development, especially for lower-income households.

Eleanor T. asked CJ H. if he had spoken with Representative Pignatelli on this topic.

CJ H. said that he had not had any conversation. He will check to see if Tom Matuszko or Laura Brennan have spoken with him.

Eleanor T. said it would be useful for BPRC to assemble a fact sheet summarizing the benefits and potential problems associated with the designation.

Andrew G. said that according to the data provided by Berkshire Benchmarks, only seven Berkshire County municipalities would qualify under the 40% threshold, and these are largely not the communities where housing development is needed or possible.

## **V. Review of previously submitted comments from BRPC on the 2024 SMART Straw Proposal**

CJ H. said that BRPC had already submitted comments on the 2024 proposal. These comments were largely the same as the ones that BRPC submitted in response to the 2019 proposal. Some of the main points made were as follows:

- The adders and subtractors offered by the current proposal seem inadequate to serve as either effective deterrents or incentives to building solar in priority areas. This is of particular concern for the greenfield subtractor, which should automatically make projects ineligible for the community benefits adder.
- BRPC supports the expansion of agrivoltaics but feels that their current definition is overly broad and offers insufficient protection for agricultural lands.
- The current environmental protections are a significant improvement, but the greenfield subtractor is not sufficient enough to offset the cost of building on developed plots over undeveloped plots.
- BRPC supports solar development, but the Commonwealth must level the playing field to cut down on the among of greenfield solar development in the Berkshires.

Eleanor T. asked when the department expects to release their decision.

CJ H. said that he did not know and would follow up.

## **VI. Update on previously discussed clean energy legislation**

CJ H. said that Senator Mark told him that the Legislature is in session through December 31<sup>st</sup> and that the Senate and the House are still negotiating a final version of the Clean Energy Bill (the Bill). Additionally, Sen. Mark said that there is still a strong chance that it will happen this session and that there could be a special formal session.

Eleanor T. said that the conflict between Senator Mike Barrett and Representative Jeffrey Roy continues. They are in agreement on the siting language, but they have other disagreements on topics including natural gas hookups that got them hung up at the end of the last formal session. The House and the Senate are now in informal session. This means that any piece of legislation can be brought to the floor, but if a legislator calls for a quorum, it gets tabled. The Republicans are ensuring that they always have a legislator in

the chamber to call for a quorum in case the Bill is brought to the floor. Eleanor also heard a report from Sen. Mark that it will be difficult for the Bill to be brought on the floor this year. BRPC should weigh in against the siting provisions that eliminate local control and exert pressure on the House and Senate Joint Committees on Telecommunication, Utilities, and Energy (TUEs). Also, local residents should ask their selectboards to tell their local representatives that they are concerned about this particular issue.

Ken L. asked if there would be value in inviting Sen. Mark and Rep. Barrett to attend the next Committee meeting to give an update on the Bill's status.

Eleanor T. said that the Bill is in conference.

Christine R. asked if CJ H. could provide municipalities with a draft law that could be presented at selectboard and planning board meetings. This could then be sent to the TUEs, Sen. Barrett, Rep. Mark, and Berkshire County's legislators.

Eleanor T. said that Sen. Barrett is more sensitive to the effect that the siting language will have on Western municipalities than Rep. Roy. The big issue is that the language gives municipalities no opportunity to appeal a decision for projects larger than 25MW. The appeals process for smaller projects is also limited. Only project proprietors can appeal in the case that a municipality denies the project. If the municipality approves the project, no one else can appeal.

CJ H. said he could send a brief message to the selectboards and planning boards alerting them of these provisions and what they could mean for the Berkshires. He could also draft and send them a form letter for them to send to the legislators.

Christine R. said that another issue is the timeline allowed for siting approval. Many smaller municipalities do not have the resources to conduct extensive reviews and approvals.

Eleanor T. said that she could draft a fact sheet summarizing the effects of the provisions over the coming weekend.

Christine R. suggested that BRPC could also publish a notice in local newspapers.

CJ H. said that he would draft a letter based on Eleanor's fact sheet and send these to the selectboards and planning boards.

## **VII. Future discussion topics**

Christine R. said that there is a lot of discussion regarding a new transportation bonding. This is not something that needs to be handled immediately but should be on the Committee's radar.

CJ H. said that there are some new sources of funding in the housing bond bill and the overall amount of funding has been increased. He would like to discuss how BRPC could play a larger role in connecting local municipalities and housing authorities to these funding sources.

Malcom F. said he would like to discuss in more detail the 18 items that are included in the housing bond programs, how the funding is made available, and how they impact municipalities

Christine R. said that she would like to discuss the loss of farmland and forested land due to the siting decisions. There have been some developments in New York State that may be pertinent to Berkshire County.

#### **VIII. Next Committee Meeting Date**

The Committee agreed on a tentative next meeting date of Wednesday, October 2<sup>nd</sup>, 2024 at 3:30 p.m. CJ H. said he would send out a poll to Committee members to lock-in the date.

#### **IX. Adjournment**

Kent L. made a motion to adjourn and enjoy Labor Day Weekend. Eleanor T. seconded to the motion. The motion passed unanimously. The meeting adjourned at 4.45 p.m.