

## **SELECTBOARD'S MEETING MINUTES**

**MONDAY, APRIL 23, 2018**

**7:00 PM – REGULAR SESSION**

**TOWN HALL, 334 MAIN STREET**

### **PRESENT:**

Sean Stanton, Chair  
Steve Bannon  
Dan Bailly  
Ed Abrahams  
Bill Cooke

Town Manager- Jennifer Tabakin

### **1. CALL TO ORDER:**

Sean Stanton called the meeting to order at 7:00PM

### **2. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS:**

#### **A. General Comments by the Board**

Bill Cooke announced that the Lake Mansfield Task Force will meet Monday, April 30 at 5:00PM, he encouraged all to attend.

Steve Bannon thanked Sean Stanton for his eight years of service to the Town serving on the Selectboard.

### **3. TOWN MANAGER'S REPORT:**

#### **A. Department Updates.**

#### **B. Project Updates.**

Division Street paving is underway. Ms. Tabakin said that for now, only local traffic and school buses are allowed on the road. This project is expected to be completed by the end of May, 2018. A BRTA public hearing on April 24, 2018 at the Fire Station, 3:00-5:00PM regarding the FY19 budget. Ms. Tabakin encouraged attendance and for residents to speak in favor of the level of service we are used to in Great Barrington.

The ZBA will continue the Roger Road Public Hearing on April 24, 2018 at 7:30PM.

The Complete Streets Open House is at April 25, 2018 at the Senior Center at 6:00PM.

Bulky Waste Day is April 28<sup>th</sup> at the Transfer Station, 7:00AM-3:00PM.

Real estate and personal property taxes are due May 1, 2018.

### **4. PUBLIC HEARINGS:**

- A. Special Permit application of TOPA Enterprises, LLC, Thomas and Paula Doyle, 44 Alpine Trail, Pittsfield, MA 01201 to extend, for another two years, the previous two-year extension of the period to exercise previously granted Special Permits 741-07, A and B, Special Permit 742-07, and Special Permit 743-07, for the project permitted at 546 Main Street, Great Barrington, MA, in accordance with Section 10.4 of the Great Barrington Zoning Bylaw. (Discussion/Vote)

#### **a. Open Public Hearing**

**MOTION:** Steve Bannon motioned to open the public hearing

**SECOND:** Dan Bailly

**VOTE: 5-0**

b. Explanation of Project

Tom Doyle spoke on behalf of the Special Permit. Mr. Doyle said that it is critical for their future project to extend the special permit.

c. Speak in Favor/Opposition

d. Motion to Close Public Hearing

**MOTION:** Steve Bannon motioned to close the public hearing.

**SECOND:** Dan Bailly

**VOTE: 5-0**

e. Motion re: Findings

**MOTION:** Steve Bannon motioned to approve the Findings and Fact for Special Permit #879-18 as submitted and referenced as Exhibit A

## **EXHIBIT A: FINDINGS OF FACT**

**Re: Special Permit Application #879-18**

**Applicant: TOPA Enterprises**

**Site: 546 Main Street, Great Barrington**

### **A. Summary**

The Special Permit application was filed on March 21, 2018 by Tom Doyle of TOPA Enterprises LLC, owner of the subject property. The Applicant seeks to extend the previously granted special permits, 741-07 A and B, 742-07, and 743-07, which were extended by the Selectboard in 2016, again for an additional two years, to expire in 2020.

These special permits allowed for a three story mixed use building (a footprint of 7,808 square feet, and consisting of seven residential units and 5,847 square feet of office space) in a B-2 zone, for multi-family development, for development in the water quality protection district Zone II, and for exceptions to the off street parking requirements, respectively.

Under the Zoning Bylaw, all special permits expire within two years if they are not exercised, but they can be extended for good cause, per Section 10.4.8 of the Zoning Bylaw.

In April 2016 the Selectboard granted SP 853-16 in order to extend for two years all four of the original special permits. Those were granted nearly ten years ago but an appeal took six years to resolve. The owner attempted to find somebody interested in accepting the previously existing building, but could not, and so demolished the structure as a way to prepare the site for development. The owner has since marketed the site in an attempt to move the project forward and exercise the special permits.

In the meantime, the Town voted in May 2016 to change the underlying zoning from B-2 to MXD, and TOPA has developed a building that will be compliant with the new zoning. However TOPA still seeks to enjoy the rights of the original special permits. In particular the Water Quality Protection District Zone II special permit granted in 2008 will be required for any new development at the site, regardless of the zoning designation.

The Planning Board has reviewed this request and has made a favorable recommendation that the previous special permits be extended for another two years.

## **B. Special Permit Criteria and Specific Findings**

§10.4.2 of the Zoning Bylaw, granting of a special permit requires a written determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” This determination shall include consideration of the following six criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and,
6. Potential fiscal impact, including impact on town services, tax base, and employment.

Consideration of the Criteria in relation to SP #879-16:

Per §10.4.2 of the Zoning Bylaw, granting of any special permit requires a determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.”

1. Social, economic, or community needs which are served by the proposal.

Finding 1: The proposal will provide additional time for the subject property to be developed in accordance with previously granted special permits, which were found to meet the needs of the town.

2. Traffic flow and safety, including parking and loading.

Finding 2: Neither the traffic flow, parking, and loading needs of the project changed, nor the background traffic conditions have changed significantly since the previous special permits were granted. The findings of the previous special permits are upheld.

3. Adequacy of utilities and other public services.

Finding 3: There is adequate water and sewer service for the use. Public services including fire and emergency have adequate access to the buildings. The findings of the previous special permits are upheld.

4. Neighborhood character and social structures.

Finding 4: The proposal was previously found to be in harmony with the zoning bylaw and essential or desirable to the public at this location. With the new MXD zoning in place, the project is more in harmony with the zoning bylaw. The findings of the previous special permits are upheld.

5. Impacts on the natural environment.

Finding 5: Neither the proposal nor the environmental context have changed. The findings of the previous special permits are upheld.



6. Potential fiscal impact, including impact on town services, tax base, and employment.

Finding 6: The proposal will provide a positive impact to the town's tax base and will not negatively impact services.

The conditions of special permits 741-07 A and B, 742-07, and 743-07 are upheld and remain in place.

Section 10.4 Finding:

In consideration of the above findings, and with the imposition of the above listed conditions, this Board finds that the benefits of the proposal outweigh any possible detrimental impacts.

§10.4.8 of the Zoning Bylaw states that special permits shall lapse if a substantial use thereof of construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal...) with the Town Clerk.

Finding: The property owner has taken positive action to exercise the special permits, but given economic conditions the owner has not been able break ground. The owner has developed alternative plans that also comply with the MXS, and is actively marketing them. Extending the rights of the previous permits will allow the owner time to finish the marketing and financing. There is sufficient good cause, and no adverse impacts, to extend these permits by another two years.

**SECOND:** Dan Bailly

**Roll Call Vote:** Bannan; yes, Bailly; yes, Abrahams; yes, Cooke; yes, Stanton; yes.

f. Motion re: Approval/Denial/Table

**MOTION:** In view of the approved Findings of Fact, Steve Bannan motioned to approve Special Permit #879-18 for another two year extension of Special Permits 741-07, A and B, Special Permit 742-07, and Special Permit 743-07, together with the conditions imposed thereby, per Section 10.4 of the Zoning Bylaw.

**SECOND:** Dan Bailly

**Roll Call Vote:** Bannan; yes, Bailly; yes, Abrahams; yes, Cooke; yes, Stanton; yes.

**5. LICENSES OR PERMITS:**

- A. Kelley Vickery/Berkshire International Film Festival for Three (3) One Day Weekday Entertainment Licenses for May 31, June 1 and June 2, 2018 from 5:00 PM – 11:00 PM behind the Town Hall green and the Gazebo. (Discussion/Vote)

**MOTION:** Steve Bannan motioned to approve.

**SECOND:** Dan Bailly

**VOTE:** 5-0

**MOTION:** Steve Bannan motioned to approve the installation of 12 Pole Banners, 9 along Main Street and 3 on Railroad Street.

**SECOND:** Dan Bailly

**VOTE:** 5-0

- B. Kelley Vickery/Berkshire International Film Festival for Three (3) One Day All Alcoholic Liquor Licenses for May 31, June 1 and June 2, 2018 from 5:00 PM – 11:00 PM behind the Town Hall green and the Gazebo. (Discussion/Vote)

**MOTION:** Steve Bannan motioned to approve

**SECOND:** Dan Bailly

**VOTE:** 5-0

- C. Kelly Vickery/Berkshire International Film Festival – request to grant a Moratorium to lift the parking laws in the Town for the BIFF weekend from Thursday, May 31, 2018 thru Sunday, June 3, 2018 and for permission to occupy 3 parking spaces behind the Town Hall. (Discussion/Vote)

**MOTION:** Steve Bannon motioned to approve

**SECOND:** Dan Bailly

**VOTE: 5-0**

- D. Michael Murphy/Housatonic Veterans of Foreign Wars Post 8183 for permission to hold Memorial Day Parade on Monday, May 28, 2018 starting at 9:00 am in Housatonic and 11:00 am in Great Barrington. (Discussion/Vote)

**MOTION:** Steve Bannon motioned to approve

**SECOND:** Dan Bailly

**VOTE: 5-0**

- E. Nicole Blum/Carr's Ciderhouse for a Farmer Winery License to sell Hard Cider at the Great Barrington Farmers Market on Saturdays from May 12, 2018 to October 27, 2018 from 9:00 am to 1:00 pm at 13 Church Street. (Discussion/Vote)

**MOTION:** Steve Bannon motioned to approve.

**SECOND:** Dan Bailly

**VOTE: 5-0**

- F. 2018 May License Renewals, as per list attached. (Discussion/Vote)

- Coin Operated Soft Drink and Food Machines

- Real Estate Signs

Steve Bannon recused himself from the vote on the approval of the Fairview Hospital Coin Operated Soft Drink and Food Machine Sign.

**MOTION:** Steve Bannon motioned to approve all 2018 May License Renewals except the Fairview Hospital Coin Operated Machine.

**SECOND:** Dan Bailly

**VOTE: 5-0**

**MOTION:** Dan Bailly motioned to approve the Fairview Hospital Coin Operated Soft Drink and Food Machine.

**SECOND:** Ed Abrahams

**VOTE: 4-0**

## **6. OLD BUSINESS:**

- A. SB – Amendment to 2018 Annual Town Meeting Warrant **Article 19: Marijuana Establishments and Medical Marijuana Treatment Centers.** (Discussion/Vote)

Sean Stanton asked the Town Planner how much land in the I2 zone behind Stockbridge Road is developable. Mr. Rembold said that he would have to get back with a definitive answer.

Jonathan Hankin asked the Board if they would consider food preparation as processing and if they want that type of processing downtown. Jonathan said that he believes, in comparison with the rest of the country the Great Barrington Selectboard is practicing extreme caution.

Sean Stanton said that he is okay with being considered too cautious because there is still a lot of unknown when it comes to marijuana facilities. Mr. Stanton said that his greatest concern is the impact these facilities will have on residential neighborhoods. Mr. Stanton said he expects it will be easier to take a decision away than it will be to create more stringent laws.

Holly Hammer, Seekonk Cross Road. Ms. Hammer said her understanding is that a food retailer would never be able to cook on the premises without a separate license.

Michael Andleman 17 Blue Hill Road, asked to not have these facilities 'in his backyard,' the I and I2 Zones.

The Board replaced the word processing with 'manufacturing' in the third line.

**MOTION:** Steve Bannon motioned to approve the Article 19 Amendment with the one change made in this meeting.

**SECOND:** Dan Bailly

**VOTE: 5-0**

**MOTION:** Steve Bannon motioned to ask the Planning Board to endorse the amendment to Article 19.

**SECOND:** Dan Bailly

**VOTE: 5-0**

## **7. NEW BUSINESS:**

A. SB – Appointment of member to the Cultural Council. (Discussion/Vote)

**MOTION:** Steve Bannon motioned to appoint Catherine Hancock for a term to expire on June 30, 2020.

**SECOND:** Dan Bailly

**VOTE: 5-0**

## **8. CITIZEN SPEAK TIME:**

Michael Andleman, 17 Blue Hill Road asked if there is a second Complete Streets Informational Meeting planned. Mr. Andleman said the meeting on April 25, 2018 is the same night the Competitive Cyclists have a meeting and he thinks it is likely this group of people will want to participate in the discussions. Steve Bannon said for future community meetings he would like more coordination and organization with the Selectboard. Jennifer Tabakin said the Complete Streets Team could organize a second informational meeting.

Mr. Andleman said there is still an outstanding \$36,000 fine as a result of the 2011 ZBA hearing regarding Roger Road. Ms. Tabakin said that after the ZBA makes a determination they can also decide how to proceed with outstanding fines.

Jonathan Hankin, said that the deliberation he witnessed at tonight's meeting was a very opaque process for those in the audience and those watching at home. Mr. Hankin said that the Planning Board meetings, in comparison are very transparent because they use a projector to display all documents discussed.

Chris Post, Wandering Star Brewery. Mr. Post said there is going to be an open house at Lifeworks Studio and he believed he was seeking approval for the One Day Temporary Beer and Wine License at tonight's meeting. The Selectboard asked him to double check with the Town Manager's Admin, Helen. The Selectboard said that they will request that his attendance is not required for his license approval.

## **9. SELECTBOARD'S TIME:**

Steve Bannon asked for a re-organizational meeting after the election on either May 15<sup>th</sup> or May 16<sup>th</sup>. The Board decided on May 16<sup>th</sup> at 4:30PM.

Sean Stanton said Thank You to the voters for placing him on the Selectboard for eight years.

## **10. MEDIA TIME:**

Eileen Mooney, The Newsletter, asked about the Town Manager's Evaluation process. Ed Abrahams said he spoke with Attorney General's office and anything not discussed in a public meeting is not subjected to the Open Meeting Law, however all documents can be requested through the public records law. Ed Abrahams said he is awaiting a legal opinion from Town Counsel regarding employee personnel files and if that is subjected to the public records law. Mr. Abrahams said that it is still the goal of the Selectboard to complete the review and evaluation process prior to the Town Meeting.

**11. ADJOURNMENT:**

On a motion made by Steve Bannon, seconded by Dan Bailly, with a unanimous vote the meeting adjourned at 8:15PM

Respectfully Submitted,



Rebecca Jurczyk  
Recording Secretary