

SELECTBOARD'S MEETING MINUTES

MONDAY, NOVEMBER 26, 2018

6:00 PM – REGULAR SESSION

TOWN HALL, 334 MAIN STREET

PRESENT

Selectboard Members:

Steve Bannon

Ed Abrahams

Daniel Bailly

Bill Cooke

Kate Burke

Town Manager:

Jennifer Tabakin

6:00 PM - OPEN MEETING

1. CALL TO ORDER: S. Bannon called the meeting to order at 6:00PM

2. APPROVAL OF MINUTES:

October 15, 2018 Regular Meeting. – Approved 5-0

November 13, 2018 Regular Meeting. – Approved 5-0

November 15, 2018 Special Meeting. – Approved 4-0-1, D. Bailly abstained

3. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS:

A. General Comments by the Board.

K. Burke suggested coordinating a retreat or meeting regarding the search for a new Town Manager.

B. Selectboard's Liaison List to Distribute.

4. OLD BUSINESS:

A. Continued - SB - To Consider Revision of Local Policy regarding the number of Beer and Wine Package Store Liquor Licenses. (Discussion/Vote)

1. Appearance of conflict announcements

- a. E. Abrahams disclosed that he was a part of the Co-Op in the past but has resigned. Mr. Abrahams filed a disclosure form with the town clerk.
- b. K. Burke disclosed that she filed disclosure form 23-b worked for one of the applicants from 2011-2016, and there is a grant from the co-op that passes through the Farmers' Market, but Mrs. Burke does not pursue or receive any of these funds.
- c. B. Cooke also filed a form and disclosed the appearance of a conflict.

2. Public Comments

a. Mike Wise – 173 Castle Street, Great Barrington

Mr. Wise comments that he cannot conceive of an economic reason to limit the number of licenses granted. The Economy will determine who stays, and who goes. He encourages the Board to eliminate the policy, if set locally, rather than by state.

b. Jennifer Anderson – 94 White Plain Road, Great Barrington

Inquired as to why we are accepting new applications.

S. Bannon: The Selectboard is legally required to consider all applications, and decide based upon need and public good.

- c. **Ed Domaney** – Domaney’s Liquors, Great Barrington
Domaney’s Liquors has been in business since the 1970s and has seen the evolution of fake IDs. They are very common, and very easy to fall for these days. Great Barrington regulates plastic bottles and bags, why not the number of licenses? Urges the Board to vote with their heads rather than hearts, this vote is very important and will foster the safety of the community.
- d. **Joe Domaney** – Domaney’s Liquors, Great Barrington
Presented 5 years of fake IDs. Commented that all stores in Great Barrington are well-stocked and able to meet the demands of the population. Competition is not the issue, safety is the issue.
- e. **Dave Rile** – 85 Christian Hill Road, Great Barrington
Against increasing the number of licenses. Doing so would financially hurt the other stores, further erode the tax base, increase cost of living, discourage investment, and decrease the number of jobs available due to the decrease in profit at each establishment. Also, is it legal for both applicants to receive licenses with their proximity to churches, and did the Town opt in to the quota? S. Bannon responded that the Town Council has confirmed that we do have licenses available to give.
- f. **Joe Aberdale** – Owner, Aberdale’s Housatonic
Has spoken with current license holders to gain insight on how they operate. Currently, they educate employees on spotting underage individuals, use CCTV and state of the art equipment with date and time marks. They work together to inform each other of minors attempting to purchase alcohol, and work with the local law enforcement when necessary. Mr. Aberdale feels the community is already well-served, and shops are presentable. Current licensees hold over 1M in payroll. If they lose business, and are forced to sell, the new owners may not be as responsible, or could end up owned by a large corporation.
- g. **Robert Mellion** – Administrator to BAT Course
Quota system is intended to prevent adulteration, underage drinking, and over-consumption. Is there a public need not being met that would justify adding more licenses?

K. Burke: How is a public need identified?

Run a study with local university/schools/town organizations. Identify, separate from desire, an actual public need.

Licenses are transferrable, if we approve more, they can eventually be sold to larger corporations/convenience stores. Will there be a due process that sets the bar for future attempts at obtaining the licenses?

Beverage Alcohol Training is recommended as mandated for all staff in package stores. The new fake IDs will swipe as valid. The course teaches servers to test individuals, as well as swiping the IDs.

The alcohol industry is already stressed by craft breweries and marijuana legalization, less people are drinking.

- h. **Ray Almorì** – Plaza Package
Requirement was 500ft from Church or School when he built his business. The Co-op's main business is groceries, the occasional bottle of wine or beer is not going to make a big difference in their business. Also, youth is allowed in the grocery store, so it is harder to manage potential underage purchases or other problems. Customers have to be 21+ to enter package stores, where only alcohol is sold.
- i. **Attorney Dennis Egan** – Speaking on behalf of Berkshire Co-op Market
Clarifies that the MA appeals court has made clear that holding liquor licenses not a right, any violation results in a trial before the Selectboard and in Boston. The licenses are renewed annually, and can be taken away with reason.

The 500' regulation says the potential license holders must notify religious or educational abutters, and give them a chance to be heard.

Suggesting new applicants would not screen customers, or act responsibly is inappropriate.
- j. **Attorney Nick Arienti** - Speaking on behalf of Rubiner's Cheesemongers.
The decision tonight is not legislative, or reinterpreting the statute. The Board is being asked to look at 2003 policy, and make an additional determination prior to and in concert with new applications as they come before the Board.
- k. **Luke Shell** – GM, Berkshire Co-Op
The Co-op is looking to serve the niche market, not to put other business owners out. The Co-op will use the ABC Program if appropriate, will cooperate with all training and regulations to ensure staff is properly trained to screen customers. They would go above and beyond to ensure the safety of the community. They will only have 9ft of wine, and 7ft of beer selections.
- l. **Daniel Seitz** – 48 Grove St. & Member of Co-Op
The organization is committed to safety. The Co-op has provided safe-serv training, and would embrace best practices in the sale of alcohol. In regard to need, the co-op customer base is a range of 25+ miles. They are often asked to be more of a "one stop shop". It serves the co-op's success to be able to meet all of the customer's needs. The co-op's success filters down to the community. Competition is not the idea, their selection will be very small, and carefully curated.

E. Abrahams: reviewed minutes of 11/17/03 meeting where Board expressed wish to take formal action to freezing number of licenses. This passed. 4 Months later at special Town Meeting, the same motion failed. Three months later at regular Town Meeting, the same motion was again voted down, 4-1, in a secret ballot.

S. Bannon: All applications must be considered based on need and public good.

MOTION: E. Abrahams made the motion to rescind the policy of setting a limit lower than state's limit.

SECOND: B. Cooke

Discussion:

K. Burke: Policy did set precedent that Great Barrington isn't amenable to having more licenses. Striking the policy would remove this perceived barrier. Creating a new policy with stronger

wording, expressing that each application will be considered based on merit and public need would be beneficial.

Previous motion and second revoked.

MOTION: K. Burke made the motion to amend the current Selectboard Package store policy to grant applications on an assessed need and public good basis.

SECOND: E. Abrahams

Discussion:

D. Bailly: If this is voted in now, the current applicants will be “grandfathered” in, correct? Are we talking about another assessment other than what the current policy says?

S. Bannon: Per Town Council, whatever policy we have is arbitrary, and would not hold up in court. We must consider all applications, regardless.

MOTION: B. Cooke made the motion to disregard the policy of the previous Board.

SECOND: K. Burke

Discussion:

K. Burke: We are ultimately getting rid of the policy in place. The idea is to construct a policy that shows the Town is very strict about granting further licenses.

D. Bailly: Requiring future applicants to follow different rules/policy would be unfair to them.

E. Abrahams: Suggests speaking with Town Council regarding criteria we can use moving forward.

VOTE: 3-2, S. Bannon, D. Bailly opposed.

5. TOWN MANAGER’S REPORT:

A. Department Updates - None

B. Project Updates

- Housatonic School Agreement.- Bill Nappo and Julie Connor – Housatonic School Distributed updated schedule. Application for CPA funding has been put in, are now on Step 2. Also exploring other USDA, CDAC, and Mass Development possibilities. Asking Board for letter of recommendation to use with application for roof repair through MA Preservation Project Fund. This would grant \$75K for the repair.

14-16 viable funding sources have been identified for loans, possible tenants have also been identified. Walk-throughs to remediate/save the building have been in process. How can the School be an anchor to encourage an entrepreneurial spirit locally? Public/Private holding is still in motion, which can affect funding.

MOTION: E. Abrahams made the motion to provide letter of support for the MA Preservation Project Fund Emergency Fund as requested.

SECOND: D. Bailly

ROLL CALL VOTE: 5-0

6. PUBLIC HEARINGS:

A. **Continuation** of Application of Berkshire Cooperative Association, Inc. d/b/a Berkshire Co-Op Market, Daniel Esko, Manager for a New Package Store Beer and Wine Liquor License at 42 Bridge Street, Great Barrington, MA. The premises consist of a supermarket area, four bathrooms, a café seating area and two means of entrance/exit.

(Discussion/Vote)

a. Open Public Hearing

MOTION: E. Abrahams made the motion to open the public hearing.

SECOND: D. Bailly

VOTE: 5-0

b. Explanation of Project

Dennis Egan – Attorney representing the Berkshire Co-Op

The Co-Op is constructing 14000 sqft on Bridge Street. They are proposing to sell 8ft of wine, and 4ft of beer within this space this number differs slightly from previous statement due to construct changes. If approved, an amendment request would be filed. The Co-op has been in existence for 38 years. The Co-op would go above and beyond the standards of ensuring safety. 38 years of being good stewards of the Town show character of the Co-Op. If a violation were to happen, the license would be revoked by ABCC.

Luke Shell – Berkshire Food Co-op

The rationale is to level the playing field. Big Y and Guidos both have beer and wine. The Co-op is looking to be able to offer the same. Their business plan has been fully researched and solid. They are not looking to eventually sell to anyone else, they are looking to stay in the community. They are seeking to cater to the niche market, working to curate selection. Alcohol will be in back of store, with 24 hour surveillance. Stock will be locked, and they will not be advertising with “neon signs” etc. Their selection is intended to supplement regular purchases. They are looking forward to working with Law Enforcement, just as other businesses do.

Daniel Seitz – Member of Co-op Board

Co-op is expending to provide more benefits to their 3000+ customers. The expansion to Downtown will radiate business to other establishments. The co-op has always been supportive of other businesses in town, and this will continue. They currently employ 60 individuals, and this will be increasing to 75, paid above the minimum wage. They will adhere to a strict policy of purchasing product to sell, considering how they are produced. Locally grown/produced products will be focused on. The co-op’s success would be a public good and serve the need of the customer and community.

c. Speak in Favor/Opposition

Robert Mellion

Public need and public want are two different things. There is not a public need for this license. The quota allows for purchasing licenses in existence, instead of approving a new one. Licenses can be transferred. Violations of this type of license result in aisles closing, not the entire store.

Holly Hamer – 99 Sever Cross Road, Great Barrington

In favor of these licenses, as they are being sold in conjunction with food. It is a healthier way of integrating alcohol, rather than mixing strong drinks that are more appealing to younger people. The current licenses are for “all alcohol”, and the potential licensees tonight would not be selling enough to harm the current package stores. Also noted that the quotas were originally put in place to restrict the Irish from operating liquor stores after prohibition.

Board Discussion:

E. Abrahams: Underage drinking is a bigger problem, worth more of a discussion at later date. Where is the alcohol going to be placed in the store? Will it be segregated? Will it be monitored?

Dan Esko, Project Mgr. Berkshire Food Co-Op: Showed where the alcohol would be kept, at the back of the store, with cameras pointed at the areas. The

application is for 4ft and 8ft, if this increases, it would be minimal, and presented to the Board as an amendment.

D. Bailly: Can we ask questions regarding the Special Permit issued for this property?

S. Bannon: Only if it is in relation to the permit.

D. Bailly: Why bother selling alcohol on such a small scale?

D. Seitz: The Co-op is aiming to be a “one-stop shop” where customers can purchase beer/wine with their dinner ingredients. They are seeking to provide organically produced products with a positive environmental impact. They would work with local companies to ensure fair sourcing, consider wages paid, etc.

K. Burke: We have an opportunity tonight to grant two of four available licenses to small, local businesses looking to sell just a small amount of liquor, impacting on a smaller scale.

Jennifer Anderson: We have two licenses to give, but no policy. Perhaps the licenses should be tabled until policy is written.

d. Motion to Close Public Hearing

MOTION: E. Abrahams

SECOND: D. Bailly

VOTE: 5-0

Board Discussion

E. Abrahams: As far as “need”, as far as liquor is concerned, it is a “want”.

e. Motion re: Findings-N/A

f. Motion re: Approval/Denial/Table

MOTION: E. Abrahams made motion to approve the Berkshire Co-Op. Liquor License.

SECOND: B. Cooke

S. Bannon comments that he will vote no, to be able to be consistent if a larger corporation were to come in. We will have four licenses out there now, and may be hard-pressed to later say no if all vote in favor today.

E. Abrahams: The policy we had keeps out the small, but not larger businesses. It is not the Board’s responsibility to “protect the public”, or to regulate businesses.

D. Bailly: Encourages all to look at this objectively.

VOTE: 3-2, S. Bannon and D. Bailly opposed.

B. Application of Rubiner’s Cheesemongers and Grocers LLC, Matthew Rubiner, Manager for a New Package Store Beer and Wine Liquor License at 264 Main Street. (Discussion/Vote)

a. Open Public Hearing

MOTION: E. Abrahams

SECOND: D. Bailly

VOTE: 5-0

S. Bannon has 47 emails in favor of the Rubiner’s application., All will go on public record.

- b. Explanation of Project

Nicholas Arienti – Attorney

Rubiner's is an existing business presently selling cheese and charcuterie. This is the second time they are applying for the license to sell wine and beer in conjunction with their current offerings. They were denied the first time. The primary purpose is to complement their current business and maintain sustainability. Great Barrington has changed quite a bit since then.

Matthew Rubiner – Owner, Rubiner's Cheesemongers & Grocers

Cheese, charcuterie, wine and beer are part of a whole. This license would allow them to round out their business, and add additional quality to the products they sell.

- c. Speak in Favor/Opposition
- d. Motion to Close Public Hearing

MOTION: E. Abrahams

SECOND: D. Bailly

VOTE: 5-0

- e. Motion re: Findings
- f. Motion re: Approval/Denial/Table

MOTION: E. Abrahams made the motion to grant license to Rubiner's Cheesemonger and Grocers to sell beer/wine.

SECOND: B. Cooke

VOTE: 3-2, D. Bailly and S. Bannon opposed

- C. Application of Richard Stanley/Triplex Management Corp Inc. for a Change of Manager from Lisa Cabrera Rizzo to Timothy Danner on the Common Victualler All Alcoholic Restaurant Liquor License at 70 Railroad Street. (Discussion/Vote)

- a. Open Public Hearing

MOTION: E. Abrahams

SECOND: D. Bailly

VOTE: 5-0

- b. Explanation of Project

Tim Danner explained the request in change of manager on the license.

- c. Speak in Favor/Opposition - none
- d. Motion to Close Public Hearing

MOTION: E. Abrahams

SECOND: D. Bailly

VOTE: 5-0

- e. Motion re: Findings
- f. Motion re: Approval/Denial/Table

MOTION: E. Abrahams made the motion to approve change of manager to

Timothy Danner.

SECOND: D. Bailly

VOTE: 5-0

- D. Special Permit Application from 910 Housing Inc. and the Community Development Corporation of South Berkshire for a Water Quality Protection Overlay District Special Permit, in accordance with Sections 9.2 and 10.4 of the Great Barrington Zoning Bylaw, in order to increase impervious area of a lot by more than 15% or 2,500 square feet. Proposed impervious surfaces are in connection with a proposed development of consisting of up to 49 apartments in several new buildings, and associated parking, driveway and site work, at 910 Main Street. (Discussion/Vote)

a. Open Public Hearing

MOTION: E. Abrahams

SECOND: D. Bailly

ROLL CALL VOTE: 5-0 (E. Abrahams, D. Bailly, B. Cooke, K. Burke and S. Bannon All yes)

b. **Explanation of Project - Tim Geller, Executive Director of the CDC**

Special permit due to the water quality protection overlay district.

Looking to build affordable family housing at 910 Main Street. Income restrictions are approximately \$40,000-1BR, \$60,000 – 4 person, \$13,000 will be most restrictive. This will fill a demonstrated need for affordable housing in the area.

Brent White – White Engineering

This property has public water and sewer available, no septic needed. Project site has been divided into Northern and Southern portions, each with separate catch basins and infiltration systems. Favorable endorsements have been received from the Planning Board and Board of Health.

D. Bailly asked if rainwater is planned to be caught with standard gutters. Mr. White said yes, with portions on pump basins to comply with ADA regulations.

D. Bailly asked if there will be licensed property managers to handle continuing maintenance concerns with gutters. Mr. Geller asserted that Berkshire Housing Development Corp. will likely manage the site.

c. Speak in Favor/Opposition

John Broderick, 920 Main Street, Great Barrington

Inquired where the dirt that needs to be moved will go. Mr. White asserted that all will be contained to the building site, and hauled away as needed.

E. Abrahams inquired if all they are doing is by right. C. Rembold confirmed that all they are doing is by right and approved by the Planning Board.

d. Motion to Close Public Hearing

MOTION: E. Abrahams

SECOND: D. Bailly

VOTE: 5-0

d. Motion re: Findings

MOTION: E. Abrahams made a motion to approve the findings with one change: a minor typo on page 2, item number 1 – “uses” is missing.

SECOND: D. Bailly

VOTE: 5-0

e. Motion re: Approval/Denial/Table

MOTION: E. Abrahams made the motion to approve the permit as requested.

SECOND: D. Bailly

VOTE: 5-0

7. LICENSES OR PERMITS:

A. Betsy Andrus/So. Berkshire Chamber of Commerce for permission to host the 10th Annual Holiday Shop, Sip & Stroll on Saturday, December 8, 2018 (Discussion/Vote) as follows:

- for One Day Weekday Entertainment License for Saturday, December 8, 2018 from 6:00 am – 8:30 pm.
- to Block Main Street entrance of the TD Bank parking lot.

- to Close the left side of Railroad Street.
- to Reserve 4 Parking Spots at the top left side of Railroad Street.
- to have a Police Officer stationed at the Railroad and Main Street crosswalks.
- to Rope and Cone off the parking spots on the right side of Town Hall and to Block the entrance.
- to Block off 2 parking spots in front of Subway on Friday, November 7th, 2018.
- for permission to have the Fireworks Display.
- to Reserve the area up and around the front drive of Town Hall to place luminaries.

MOTION: E. Abrahams made the motion to approve all as requested.

SECOND: D. Bailly

VOTE: 5-0

8. NEW BUSINESS:

A. SB – Overnight Street Parking and Addition of ADA spot. (Discussion/Vote)

A1 – Overnight Street Parking: We need a solution for those who live close enough to downtown that they have no place to park other than in public places. We do not have a place for those who are unable to move their cars in the morning if they are sick, from out of town, or otherwise unable. A solution may be to designate a lot for unlimited parking. Two possibilities are the lot by the fire station, the other is the lot at the end of Railroad Street. The downside is that both are 4-hour parking. There are not many places open for rentable parking, and those that are available discourage overnight parking. Those complaining will be directed to speak with those who have spots available.

A2 – The addition of an ADA spot at 47 Railroad Street. The dimensions of the current spot do not meet ADA requirements. Can we combine two current spots into one, and restripe as per requirements when the area is repaved

MOTION: E. Abrahams made the motion to authorize the creation of one ADA spot at the end of Railroad Street as requested.

SECOND: D. Bailly

VOTE: 5-0

B. SB – To Consider Scheduling a Hearing on the Matter of the Request for Removal of the GB Housing Authority member. (Discussion/Vote)

S. Bannon read aloud an email from Town Council David Doneski regarding this request, and the Selectboard's role.

MOTION: E. Abrahams made the motion to hold a public hearing on December 12 at 6:00PM at the Claire Teague Senior Center.

SECOND: D. Bailly

VOTE: 5-0

The ground rules for this hearing will be discussed at the December 3, 2018 Selectboard meeting. Clarification on the definition of "misconduct" will be received from Town Council.

C. SB – To Act on Right of First Refusal for Chapter 61 Land, Property owner - Swann Real Estate Trust, 671 Stockbridge Road, Assessors Map 35, Parcels 9 and 20a, total 33.33 acres. (Discussion/Vote)

MOTION: E. Abrahams made the motion to schedule a hearing to discuss exercising the right of first refusal and purchasing the land to retain it in conservation status.

SECOND: D. Bailly

VOTE: 5-0

D. SB – To Endorse the Memorandum of Understanding between Fairview Hospital and GB Selectboard for Rural Health Network outreach. (Discussion/Vote)

MOTION: E. Abrahams made the motion to endorse the work of Rural Health Network with S. Bannon as representative, and E. Abrahams as back-up.

SECOND: D. Bailly

VOTE: 5-0

E. Request from David Magadini to allow him to store his cart on the Town Hall premises. (Discussion/Vote)

The Selectboard determined that this request would be denied.

9. CITIZEN SPEAK TIME:

a. Jennifer Anderson, Great Barrington

Suggested a Liquor Commission or policy be developed prior to approving any future licensing

b. Michael Andelman, Roger Road, Great Barrington

Inquired as to the status of the talks with Ed May in regard to enforcement on Roger Road. J. Tabakin asserted that how enforcement takes place is to be determined by Officer May. He is monitoring strategically. Keeping records is encouraged. S. Bannon confirmed there is a joint Zoning Board meeting on December 3.

Mr. Andelman also commented on bringing a warrant concerning the banning of “nips” in Great Barrington.

10. SELECTBOARD’S TIME: None

11. MEDIA TIME: None

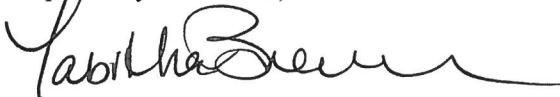
12. ADJOURNMENT:

MOTION: E. Abrahams made the motion adjourn at 9:30PM

SECOND: D. Bailly

VOTE: 5-0

Respectfully Submitted,



Tabitha Brewer
Recording Secretary