

Selectboard Regular Meeting via Zoom
Monday, June 27, 2022

1. CALL TO ORDER SELECTBOARD REGULAR MEETING - Chairman Bannon opened the meeting at 6:00pm.

a. Roll call: Ed Abrahams, “aye,” Steve Bannon, “aye,” Leigh Davis, “aye,” Eric Gabriel, “aye,” Garfield Reed, “aye.” All members present.

Additional attendees: Town Manager Mark Pruhenski, Assistant Town Manager Chris Rembold.

2. APPROVAL OF MINUTES

a. May 23, 2022

L. Davis made a motion to approve the May 23, 2022 minutes; E. Abrahams seconded. S. Bannon asked if any discussion – E. Abrahams stated he had several edits –

i. In section 7, a, ii – he asked to insert the following prior to the first sentence from 1:04:33 of the recording: *C. Rembold stated: "I left that meeting (SB Meeting of 3/7/22) with a charge to work with the chair and vice chair to develop a draft based of what the board members had laid down in their comments."*

ii. In section 7, a, iii - he asked that after “E. Abrahams asked about the removal of the grandfather clause” to replace the next sentence with the quote from 1:07:35 of the recording: *S. Bannon replied: "The Selectboard, as Chris has pointed out, had asked Leigh and I, Chris and Mark, mainly Leigh and I, to come back with a draft to the full SB. Ultimately Leigh could not participate. The Ethics Commission said if the grandfather clause wasn't in there she would be allowed to." E. Abrahams said: "So the grandfather clause that the four of you had agreed to have in there was removed? S. Bannon stated: It was only two of us. Mark and Chris were just giving advice.* Then it would continue with the original as written.

iii. L. Davis asked if these changes were verbatim from the video – E. Abrahams replied yes. She then asked to review the edits and discuss/approve at the next meeting – the Selectboard agreed.

L. Davis withdrew the motion to approve the May 23, 2022 minutes; E. Abrahams withdrew the second.

b. June 13, 2022

L. Davis made a motion to approve the June 13, 2022 minutes; E. Abrahams seconded. S. Bannon asked if any discussion – there was none. Roll call vote: E. Abrahams, “aye,” S. Bannon, “aye,” L. Davis, “aye,” E.

Gabriel, “aye,” G. Reed, “aye.” All in favor: 5-0.

3. SELECTBOARD’S ANNOUNCEMENTS/STATEMENTS

a. G. Reed stated that in collaboration with Betsy Andrus, he is organizing a Great Barrington Day on August 4, coinciding with the Auto Show, to encourage residents to come downtown and merchants/restaurants offering discounts/giveaways to residents. G. Reed stated he has reached out to merchants and vetted with Town Manager and Fire/Police. The event will be promoted via flyers, social media and signage. The Selectboard expressed support and asked for a report on participation/success metrics from merchants and approved \$400-\$500 from the Town celebration’s account for advertising.

4. TOWN MANAGER’S REPORT

a. Housatonic Water Works – M. Pruhenski stated Housatonic Water Works held an information session last week to provide an update on the manganese management pilot – there were 13 attendees. Recent water sample reports show an increase in manganese levels and a decrease in haloacetic acid, with next testing in August.

i. The Selectboard agreed to hold an executive session on HWW following the July 11 regular Selectboard meeting.

ii. L. Davis asked that a formal request be sent to Jim Mercer asking that, go forward,

community meetings are recorded, and a meeting link is posted on the Town website. M. Pruhenski stated the Town had created a hyperlink for the last HWW meeting, but would send a formal written request.

- b. M. Pruhenski announced that as of July 15, in person meetings would resume unless the deadline is extended or legislation is passed before July 15. He stated the Town Hall meeting room has been updated/improved for hybrid meetings and ease of participation, but asked the public to be patient in the transition regarding technology and access. He also asked that for meetings, to check well in advance of the date if they are in person or hybrid.
 - i. S. Bannon stated for the next Selectboard meeting, members who are comfortable to participate in person to get the technology tested/working. He stated assuming meetings cannot be virtual, they will go hybrid - but the chair and a quorum must be present. He noted other board/committees that tend to draw large audiences could use the Selectboard meeting room, as it is enabled for hybrid meetings – or the library and fire station could also be used in the future. Others with smaller audiences would meet in person. He noted it would take time to work through the technology.

5. LICENSES AND PERMITS

- a. Dana Audia for one Weekday Entertainment License at 389 Main Street Great Barrington for the Berkshire Botanical Garden Gala on July 2, 2022, from 5:00 PM to 8:00 PM.
 - i. It was noted D. Audia was not in attendance.
 - ii. S. Bannon stated there is a short timeline and if it is not approved the event cannot happen.
- L. Davis made a motion to grant to Dana Audia a one Weekday Entertainment License at 389 Main Street Great Barrington for the Berkshire Botanical Garden Gala on July 2, 2022, from 5:00 PM to 8:00 PM; E. Abrahams seconded. S. Bannon asked if any discussion – G. Reed stated the applicant should be in attendance especially when requesting a liquor license – others agreed that is the preference/expectation so questions can be raised. E. Gabriel confirmed TIPS certification will be verified and asked why the application is late – it was noted it was received recently and that the applicant was notified of the meeting well in advance. E. Abrahams stated it could go forward if there are no questions. Roll call vote: E. Abrahams, “aye,” S. Bannon, “aye,” L. Davis, “aye,” E. Gabriel, “aye,” G. Reed, “aye.” All in favor: 5-0.
- b. Dana Audia for one All Alcoholic License at 389 Main Street Great Barrington for the Berkshire Botanical Garden Gala on July 2, 2022, from 5:00 PM to 8:00 PM.
- L. Davis made a motion to grant to Dana Audia an All Alcoholic License at 389 Main Street Great Barrington for the Berkshire Botanical Garden Gala on July 2, 2022, from 5:00 PM to 8:00 PM; E. Abrahams seconded. S. Bannon asked if any discussion – there was none. Roll call vote: E. Abrahams, “aye,” S. Bannon, “aye,” L. Davis, “aye,” E. Gabriel, “aye,” G. Reed, “aye.” All in favor: 5-0.
- c. Deborah Mars & William Ryan for permission to install a driveway at 116 Brush Hill Road
 - i. L. Davis recused.
 - ii. Mike Parsons, Kelly Granger Parsons & Associates, appeared representing the applicant stating this includes removing access to an orchard so there are not two driveways on the lot.
- E. Abrahams made a motion to grant Deborah Mars & William Ryan permission to install a driveway at 116 Brush Hill Road; E. Gabriel seconded. S. Bannon asked if any discussion – The Selectboard discussed ways for the egress to be permanently blocked and it was noted the building inspector will monitor the situation to ensure compliance. Roll call vote: E. Abrahams, “aye,” S. Bannon, “aye,” E. Gabriel, “aye,” G. Reed, “aye.” All in favor: 4-0.

i. E. Ivey-Williams stated she was relocating to the alley between Barrington Outfitters and Tom's Toys and has permission from both store owners – and that this would be the permanent location. It was confirmed it would not block the alley nor be in the right of way. L. Davis made a motion to grant to Emily Ivey-Williams of Stylin' Franks for an amended Common Victualler in the alley at 289/291 Main Street; E. Abrahams seconded. S. Bannon asked if any discussion – there was none. Roll call vote: E. Abrahams, "aye," S. Bannon, "aye," L. Davis, "aye," E. Gabriel, "aye," G. Reed, "aye." All in favor: 5-0.

6. PUBLIC HEARINGS

a. Jean-Francois Bizalio Manager for Bizalio's Fine Food, 684 Main Street Great Barrington for an Annual Off Premises Package Store Wine and Malt Liquor License

L. Davis made a motion to open the public hearing for Bizalio's Fine Food; E. Abrahams seconded. Roll call vote: E. Abrahams, "aye," S. Bannon, "aye," L. Davis, "aye," E. Gabriel, "aye," G. Reed, "aye." All in favor: 5-0.

i. S. Bannon stated the public hearing would be continued due to the appeal on another liquor license with the ABCC and this request should be on hold until it is heard.

ii. Jean-Francois Bizalio Manager for Bizalio's Fine Food was in attendance and acknowledged that public hearing would be continued.

L. Davis made a motion to continue the public hearing for Bizalio's Fine Food to August 22 at 6:00pm at location Great Barrington Town Hall and remote; E. Abrahams seconded. S. Bannon asked if any discussion – there was none. Roll call vote: E. Abrahams, "aye," S. Bannon, "aye," L. Davis, "aye," E. Gabriel, "aye," G. Reed, "aye." All in favor: 5-0.

b. Christine Bump, Manager for Black Sheep Brewing Company d/b/a/ Big Elm Brewing, 389 Stockbridge Road Great Barrington for an Annual On Premises Malt Farmer Series Liquor License.

i. C. Bump stated this should be moved to the next meeting as she is awaiting a state Farmers Brewers License. She requested to withdraw and refile – it was accepted by S. Bannon.

c. Jeremy Davis Manager for Betony GB LLC d/b/a East Rock Inn, 304 State Road Great Barrington for an Annual On Premises Hotel Wine and Malt Liquor License.

L. Davis made a motion to open the public hearing for Betony GB LLC d/b/a East Rock Inn; E. Abrahams seconded. Roll call vote: E. Abrahams, "aye," S. Bannon, "aye," L. Davis, "aye," E. Gabriel, "aye," G. Reed, "aye." All in favor: 5-0.

i. J. Davis stated the East Rock Inn, will open in the fall with 18 renovated guest rooms and a lobby bar/gathering areas open to guests only, not the general public.

ii. It was noted that is not open to the public and only guests will be served, unlike a bar license - and alcohol can be brought anywhere on the property. It was also confirmed ABCC will conduct a site visit.

L. Davis made a motion to close the public hearing for Betony GB LLC d/b/a East Rock Inn; E. Abrahams seconded. Roll call vote: E. Abrahams, "aye," S. Bannon, "aye," L. Davis, "aye," E. Gabriel, "aye," G. Reed, "aye." All in favor: 5-0.

L. Davis made a motion to grant an Annual On Premises Hotel Wine and Malt Liquor License to Jeremy Davis, Manager for Betony GB LLC d/b/a East Rock Inn, 304 State Road Great Barrington; E. Abrahams seconded. S. Bannon asked if any discussion – G. Reed expressed concerns about the ease of getting a license. C. Rembold confirmed a public hearing involves advertising/notification to the public and abutters. Roll call vote: E. Abrahams, "aye," S. Bannon, "aye," L. Davis, "aye," E. Gabriel, "aye," G. Reed, "aye." All in favor: 5-0.

7. PREVIOUS BUSINESS

a. Main Street Pedestrian/Crosswalk Safety, next steps (continued from April 11)

i. C. Rembold provided background and summary of the project last discussed in April

including plans for various design interventions at Railroad Street and Rotary Way to make crossing safer for pedestrians and more noticeable to vehicles. He noted staff had ideas to address concerns voiced at the meeting and that funding had been approved for FY23. He stated the options: simple markings using signals and signage; mid-block pedestrian islands on Main Street with flashing beacons to shorten the crossing; and the staff suggestion - to have a pedestrian island at Railroad Street, but not Rotary Way. C. Rembold stated driver blind spots will be helped by flashing signs, but a raised island at Rotary Way will block emergency vehicles/response.

- ii. Kien Ho and Tyler de Ruter, BETA Engineering described methods/benefits of safer crossings and the addition of a raised island for improved pedestrian safety.
- iii. The Selectboard discussed options for improved pedestrian safety balanced with traffic concerns and first responder vehicle access. The relative merits of raised, mountable and painted islands were considered – and while there was agreement on a raised island at Railroad Street, there were concerns about a Rotary Way island/beacons obstructing emergency access and reducing traffic to one lane. There was also discussion about managing the flow of pedestrians with timed flashing beacons/lights and audio features. It was noted that pedestrians have the right of way and can cross at any time.
- iv. L. Davis stated pedestrian safety for street crossing is paramount and endorsed the idea of having two raised islands with flashing beacons.
- v. E. Abrahams confirmed a painted island with no beacon would allow first responder access.
- vi. E. Gabriel expressed concerns about the Rotary Way island for emergency vehicles and reducing traffic to one lane.
- vii. James Garzon, 84 North Plain Road, stated if first responders have concerns about the island – their view as professionals should be prioritized.
- viii. G. Reed stated flashing lights on South Main Street have worked very well and advocated to replicate.
- ix. K. Ho suggested a mountable island with no beacon.
- x. S. Bannon expressed concerns about reducing traffic to one lane creating a bottleneck as that might discourage people from coming downtown and expressed concern about pedestrians not looking for oncoming cars when crossing.

L. Davis made a motion to approve the recommended plan for Railroad Street and a mountable curb for Rotary Way; there was no second. Motion failed.

G. Reed made a motion to use the same system as on South Main Street; there was no second. Motion failed.

E. Abrahams made a motion for a raised island at Railroad Street and a painted island at Rotary Way; E. Gabriel seconded. S. Bannon asked if any additional discussion – it was clarified there would be three beacons at Railroad Street on each side of the road and the island and two beacons at Rotary Way on each side of the road. C. Rembold pointed out a painted island will narrow Main Street beginning at Rotary Way to Church Street. L. Davis stated road narrowing is part of traffic calming and pedestrian safety.

E. Gabriel amended the motion to not reduce Main Street to one lane at Rotary Way; E. Abrahams seconded. S. Bannon asked for additional discussion – E. Abrahams stated he was not concerned about traffic, but would support the amended motion as a compromise. E. Gabriel stated pedestrians could be encouraged to use the Railroad Street crossing. Roll call vote: E. Abrahams, “aye,” S. Bannon, “aye,” L. Davis, “no,” E. Gabriel, “aye,” G. Reed, “no.” Amended motion passed: 3-2.

The Selectboard voted on the original motion, as amended, for a raised island at Railroad Street with three beacons and a smaller painted island at Rotary Way with two beacons and not to reduce traffic to one lane. Roll call vote: E. Abrahams, “aye,” S. Bannon, “aye,” L. Davis, “aye,” E. Gabriel, “aye,” G. Reed, “aye.” All in favor: 5-0.

- xii. C. Rembold stated next steps would be design revisions/refinements and specs – and connecting with MassDOT and Federal Highway.

8. NEW BUSINESS

- a. Vote to appoint Julie Anidjar to the Tree Committee
L. Davis made a motion to appoint Julie Anidjar to the Tree Committee; E. Abrahams seconded. S. Bannon asked if any discussion – there was none. Roll call vote: E. Abrahams, “aye,” S. Bannon, “aye,” L. Davis, “aye,” E. Gabriel, “aye,” G. Reed, “aye.” All in favor: 5-0.
- b. Housatonic Valley Association, Alison Dixon, presentation/discussion of the Great Barrington Road/Stream Crossing Management Plan
 - i. Allison Dixon of HVA presented on the Road-Stream Crossing Management Program focused on creating a plan for culverts in Town - collecting data on culvert infrastructure, barriers for fish and wildlife and vulnerability/risk for flooding. A. Dixon reported she had discussed the data with Town staff and the Brush Hill Road culvert was identified as highest priority. Dixon reported a preliminary design has been created to replace the culvert – next steps are to finalize the plan, permit the work and identify funding. She also noted the Conservation Commission is supportive.
 - ii. S. Bannon asked that the report be made available at Town Hall and the libraries – and stated there would be public comment at the next meeting.
 - iii. E. Abrahams confirmed DPW/Sean VanDeusen had been fully involved in discussions.
- c. Selectboard Liaison List- Review Assignments – M. Pruhenski stated the list was approved at the October 25 meeting and will be included on the agenda for the reorg meeting in May. He noted a few assignments are not as necessary now as in the past: COVID Task Force, Emergency Medical Services, Marijuana and Parking.
 - i. S. Bannon asked if any Selectboard members wanted to give up any assignments. He noted these are voluntary roles, but the Chair makes the final decision.
 - ii. E. Abrahams stated he and E. Gabriel are interested in the Planning Board Housing Subcommittee. S. Bannon asked L. Davis and G. Reed if they wanted to remain in that role – they confirmed they want to stay on. S. Bannon noted the list would be revisited in May.
- d. Selectboard/Town Mission Statement – S. Bannon confirmed the Selectboard was ready to select/vote on one of the options.
L. Davis made a motion to accept the revised Mission Statement #1; E. Abrahams seconded. S. Bannon asked if any discussion – there was none. Roll call vote: E. Abrahams, “aye,” S. Bannon, “aye,” L. Davis, “aye,” E. Gabriel, “aye,” G. Reed, “aye.” All in favor: 5-0.
 - i. S. Bannon read the new mission statement: Great Barrington strives to foster an inclusive, sustainable, and welcoming community with opportunity for all, through responsible governance.
 - ii. M. Pruhenski stated the Mission Statement was last revised in 2008 and had been identified as a priority for the year – and thanked the Selectboard for approval.

- e. Open Meeting Law Complaint and draft response – M. Pruhenski stated his office had received on June 17 a complaint alleging two Selectboard members violated the Open Meeting Law during our process of drafting the Short-term Rental Bylaw. He stated he was asked to read the statement and if the Selectboard is supportive of the position in the statement, Counsel David Doneski will craft a

formal response in line with the position on behalf of the Selectboard. He proceeded to read the statement –

Report on Open Meeting Law complaints of Antonio Segalla and Daniel Seitz: On June 17, 2022 the Town Manager's Office received two identical complaints signed by Antonio Segalla and Daniel Seitz on behalf of eight other named persons asserting that Selectboard members Bannon and Davis violated the Open Meeting Law over the course of two Selectboard meetings on March 7 and May 23, 2022.

The complaints state that on March 7, the Selectboard asked two board members to revise a draft Bylaw proposal on Short-term rentals and present a revised draft for review at a later Selectboard meeting. The complaints referenced a revised draft presented to the Selectboard at the May 23 meeting and states "this sequence of events proves that a de facto subcommittee operated and de facto violation of the Open Meeting Law, and that there was no public notice and opportunity to be present at the subcommittee meetings."

I have reviewed portions of the video recordings of the Selectboard's meetings of March 7 and May 23 which are referenced in the complaints and also consulted with Town Counsel - and would offer the following for the selectboard's consideration:

The Open Meeting Law applies to public bodies including multiple member boards, commissions, committees or subcommittees - it states that a subcommittee shall include any multiple member body created to advise or make recommendations to a public body - Mass General Law Chapter 30A, Section 18. In considering issues related to the creation of a subcommittee, the Attorney General's Office stated the law defines a subcommittee as a multiple member body created to advise or make recommendations to a public body. The AG's office has also established a three-part test to determine whether a group of individuals is a public body that is subject to the Open Meeting Law. The questions are as follows: 1) Whether the entity is within government and not excluded from the definition of a public body. 2) Whether the entity is empowered to act collectively 3) Whether the entity serves a public purpose. Refer to Open Meeting Law determination 213-56.

In this instance, after a fairly lengthy discussion on March 7, it was Assistant Town Manager, Chris Rembold, who made the suggestion he could work with the two Selectboard members in order to make revisions to the draft Short-term Rental Bylaw in an attempt to come up with a document that could be endorsed by at least three members of the Selectboard. Selectwoman Davis volunteered to work with Chris and the Chair stated he could be available for this task. There was no vote of the Selectboard, there was no statement of the creation of a subcommittee and there was no delegation or grant of any authority to the Chair and Selectwoman Davis. The Chair simply stated: "Let's move ahead – Leigh and I will work with Chris on this and let's move ahead on this."

A similar situation was reviewed in a 2017 Open Meeting Law determination in a complaint that the Brookline Selectboard had created a subcommittee that did not comply with the law. The AG's Office stated the analysis would depend on the Selectboard's action and whether it intended to create a multiple member body. Refer to Open Meeting Law determination 217-111. The issue was proposed policies of the town's Diversity Commission to be adopted by the Town's Selectboard. At a public meeting the Chair suggested the draft be sent back to the Commission for the incorporation of public comment and asked if a Selectboard member would lead the effort to complete the task.

Then a member of the Selectboard suggested that another member take the lead and also offered to help that named member. There was no vote of appointment or granted authority by the Selectboard. After the meeting, the two members in question worked with the Police Chief and a member of the Commission to finalize the document for consideration at a subsequent Selectboard meeting. After review and based on the facts, the AG's Office found the Selectboard had not created

a subcommittee. The determination did note that if the Selectboard had formally appointed the two members in question to collectively revise the draft policies it would have created a subcommittee.

At this Selectboard's meeting on March 7, there was no vote to appoint the Chair and Selectwoman Davis as subcommittee. They essentially volunteered to assist in the drafting process for the Short-term Rental Bylaw which was being led by the Assistant Town Manager. The revised document presented for the Selectboard meeting on May 23 was for all and subject to the Selectboard's discussion and approval – it was not a recommendation. On the basis of the facts I would recommend the Selectboard to vote to find that it did not make the Chair and Selectwoman Davis a subcommittee at the meeting of March 7 and there was no violation of the Open Meeting Law and therefore, no remedial action is required – and to authorize the Town Manager and/or Town Counsel to prepare a written response to the complaints with the reasons for the Selectboard's vote.

L. Davis made a motion to accept the prepared response and proposed motion; E. Abrahams seconded. S. Bannon asked if any discussion –

- i. E. Abrahams stated he does not agree with the complaint's suggested remediation and the Attorney General will determine if it takes a formal vote to create a subcommittee – but there definitely was no vote, and that should be stated, but four Selectboard members agreed two members should meet and report back. He also stated in his view, C. Rembold perceived the meeting with the two members as a decision of the Selectboard. E. Abrahams stated his view that in leaving this out, it is a half-truth.
- ii. S. Bannon objected to these comments and stated there are no half-truths.
- iii. E. Abrahams stated members volunteered to assist in drafting, but Garfield was told he could not participate; it did not just happen; it was an action of the Selectboard. He asked that it be acknowledged in the response that all four members participating in the discussion agreed it was a good idea for two members to meet. He noted the AG may require a formal vote, but in his view, the three-part test was satisfied, just with no formal vote.
- iv. L. Davis asked E. Abrahams if he knew about/had a hand in the complaint – E. Abrahams replied he has been personally attacked about his motives – and stated the complainants' motivation, how it was done and who was involved is not relevant. He clarified that he was not part of the complaint and saw it only when Steve sent it to him.
- v. S. Bannon asked to focus on the complaint and the response that was read. He said he does not agree with E. Abrahams' comments – while he respects what he is saying, he is not in agreement.
- vi. L. Davis read the names of the complainants and signatories: Antonio Segalla, Daniel Seitz, Tracy Thornton and Michael Fernbacher, 2 Parley St; Ronald and Naomi Blumenthal, 185 East St; Larissa Yapple, 15 Castle Hill Ave; Krista Martins, 354 North Plain Rd; Claudia Laslie, 29 Benton Ave; Sarah Dixon, 214 Pine St. She stated she agrees with the presented response – and asked the vote of the citizens at Town Meeting be recognized and for no more roadblocks. She stated work should move forward.

E. Abrahams made an amendment to the motion to include that four Selectboard members discussed this and thought it was a good idea for the two members to talk to staff. There was no second.

- vii. E. Abrahams stated in his view, choosing not to include this is a half-truth – not meaning any offense. S. Bannon replied he is not offended – and stated the suggested addition to the response is not relevant and there are no half-truths.
- viii. E. Gabriel asked if he should be involved in the discussion. M. Pruhenski stated Town

Counsel, David Doneski, could be consulted. E. Gabriel stated he would like to recuse as he was not involved in the original discussion. S. Bannon agreed.

Roll call vote: E. Abrahams, “no,” S. Bannon, “aye,” L. Davis, “aye,” G. Reed, “aye.” Motion passed 3-1.

9. CITIZEN SPEAK TIME

- a. Sharon Gregory, 32 Hollenbeck, stated the Selectboard has been open and considerate to issues regarding short-term rental and that the vote of citizens should be accepted.
- b. James Garzon, 84 North Plain Road, stated discussion has been contentious - professional debate is good, but there should not be rancor. He asked to move on.
- c. James Manning, 304 Main Street, stated it is a small percentage of people opposing this and noted it was approved through a democratic process.

10. SELECTBOARD’S TIME

- a. E. Abrahams acknowledged James’ comments and stated some of the rancor is a result of being called out personally – and being called unethical by two members of the board, because they disagreed with the Ethics Commission, which he followed. He also apologized for losing his patience, but noted personal attacks should have been called out.
- b. L. Davis stated she agreed with James that the rancor should be put behind us - noting the citizens have spoken and their votes should be honored.
- c. S. Bannon stated James’ statement was true, and that the Selectboard should set an example. He stated we need to get past this.

11. MEDIA TIME

12. ADJOURNMENT - Chairman Bannon adjourned the meeting by unanimous consent at 8:15pm.

Respectfully submitted,

Stacy Ostrow

Recording Clerk