

Selectboard Regular Meeting via Zoom and in person
at 334 Main Street Great Barrington MA
Monday, February 27, 2023

1. CALL TO ORDER SELECTBOARD REGULAR MEETING - S. Bannon opened the meeting at 6:00pm with Selectboard members: Ed Abrahams, Steve Bannon, Leigh Davis, Eric Gabriel, Garfield Reed present.

Also present: Town Manager Mark Pruhenski.

2. APPROVAL OF MINUTES

- a. January 30, 2023

L. Davis made a motion to approve the minutes of January 30, 2023; E. Abrahams seconded. S. Bannon asked if any discussion – there was none. All in favor: 5-0.

- b. February 13, 2023

L. Davis made a motion to approve the minutes of February 13, 2023; E. Abrahams seconded. S. Bannon asked if any discussion – E. Gabriel stated he did attend the meeting. All in favor: 4-0; E. Gabriel recused.

3. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS –

- a. G. Reed stated he was glad to see the Berkshire Regional School District plan moving forward.
- b. S. Bannon clarified process items – he stated the definition of a citizen under Selectboard policy is a primary resident of Great Barrington or Housatonic homeowner or renter, a property owner in GB/Housatonic or a business owner/operator with a base of operations located in GB/Housatonic. He stated people are allowed to speak at the public hearing and citizen speak – at the end of the meeting there will be citizen speak, but all comments about the Airport must be made during the public hearing. He continued to state when it is time for public comment he will alternate between in person and zoom attendees.

4. TOWN MANAGER'S REPORT

- a. Housatonic Water Works – M. Pruhenski reported the consultant's appraisal has been presented and is posted on the Town website home page and on the Selectboard page under tab HWW. The presentation is available on YouTube and can be accessed via the Town website home page.
- b. Short Term Rental Update – M. Pruhenski stated staff is working/meeting with GovOS regularly – the payment gateway is set-up and staff is trained; matching if occurring for all live short-term rental ads with parcel data; staff training on the registration portal will be in March; a PR campaign will begin shortly and a letter will be sent to short-term hosts to advise them of the new requirements.
- c. Added items: M. Pruhenski reported on the recent car accident at Monument Mountain Regional High School and noted the MassDOT completed build out of a buffered right turning lane which provides greater visibility and the intersection conflict warning system that will be installed will warn cars exiting the school of oncoming cars. He added the accident involved south and north bound cars which and not related to turning. M. Pruhenski also stated presentation of the FY24 budget will begin tomorrow night – the budget is posted on the Town website and available in hardcopy at the Town Clerk's Office and the Library.

5. LICENSES AND PERMITS

- a. Tiffany Riva and Ananda Timpane/Railroad Street Youth Project for a Temporary Entertainment License on Saturday, May 20, 2023 from 5:30 PM to 9:00 PM in Memorial Field and Skate Park. L. Davis made a motion to grant a Temporary Entertainment License to Tiffany Riva and Ananda Timpane/Railroad Street Youth Project on Saturday, May 20, 2023 from 5:30 PM to 9:00 PM in Memorial Field and Skate Park; E. Abrahams seconded. S. Bannon asked for any discussion – T. Riva stated this is a ticketed event for the annual Culinary Arts Apprenticeship Program Dinner with food prepared by youth chefs. She noted this is for beer/wine service at the event and Parks and Recreation has approved. All in favor: 5-0.
- b. Andrew Davis/i.e. Inc. for a Temporary One Day Beer and Wine License for a cookout on Sunday, March 12, 2023 from 1:00 PM to 5:00 PM at 380 B State Road. L. Davis made a motion to grant a Temporary One Day Beer and Wine License to Andrew Davis/i.e. Inc. for a cookout to on Sunday, March 12, 2023 from 1:00 PM to 5:00 PM at 380 State Road; E. Abrahams seconded. S. Bannon asked for any discussion – A. Davis confirmed this is a private event at Ski Butternut being held in an area there that is not currently licensed - and that i.e., inc. is the food/beverage provider. All in favor: 5-0.

6. NEW BUSINESS

- a. SB vote Leora Kahn to the Cultural Council
L. Davis made a motion to vote to approve Leora Kahn for the Cultural Council; E. Abrahams seconded. S. Bannon asked for any discussion – there was none. All in favor: 5-0.
- b. Fine Free Library Proposal – Samara Klein, Library Director, presented a proposal for Selectboard approval to make GB libraries fine free. She provided background on how fines are handled currently for books, DVDs, hotspots, tickets, etc. and consequences when items are significantly overdue and considered lost, ultimately leading to the suspension of library cards. Justina Warner, Supervisor Adult Circulation, added fines are currently considered a form of social inequality and a barrier to knowledge that can limit access and impose a financial burden. She noted within the library field there is a movement to eliminate fines and GB is one of the few libraries locally imposing fines. It was clarified that the current proposal does not absolve borrowers from responsibility for non-return of items, but does provide an amnesty period for their return. She also noted fines account for approximately \$1800 in annual revenue to the Town. S. Klein stated the Library Board of Trustees supports the proposal – and it would go into effect over time after the public is informed.
L. Davis made a motion in favor of the Great Barrington Libraries being fine-free; E. Abrahams seconded. Bannon asked for any discussion – L. Davis asked when this would go into effect – S. Klein replied May 1. All in favor: 5-0.

S. Bannon stated is currently 170 virtual attendees and a full house in the meeting room.

- c. SB to reconsider Price Chopper Wine and Malt Package Store License request
 - i. G. Reed recused.
 - ii. Nick Arienti, Arienti + Klepetar, representing Price Chopper Market 32, presented noting the attendance of corporate executive, store designer and real estate representative supporting the application. N. Arienti stated the request is for the Selectboard to reconsider the Price Chopper application pending appeal from the ABCC based on the denial last year. Blaine Bringham, President, Price Chopper described the plan for the store to expand/rebrand as Market 32 – including adding 8,000 sq fee, updating the store’s look inside and out, improving variety to offer more fresh food and adding staff jobs/hours – all of which improves the customer experience and contributes to the Town.

disadvantage compared with other licensed stores and would ultimately lose customers and revenue as well as reduce hours and staffing – which impacts the store’s long-term viability. He highlighted the store’s controls/processes in place regarding purchasing and displaying wine/malt and confirmed its operations would be within the guidelines of the Town/state. David Wright, President, Paragon Realty Group and owners of Barrington Plaza, made a case for the importance of the license and Price Chopper’s presence re: other stores in the Plaza. He noted without the license, the lease renewal would be in question and if vacant, the store building would be very difficult to back fill.

N. Arienti stated the company is open to accepting conditions on the grant of the license contingent on the opportunity to reapply - including having one dedicated aisle with no expansion; no advertising/merchandising outside of that aisle or at the end of the aisle facing out; and to have lockable security gates at both ends.

- iii. S. Bannon stated the question is whether to agree to a public hearing – he noted the last vote failed 2-2. E. Abrahams acknowledged the mistake in giving Big Y a license, but stated he would not object to a public hearing as a matter of practicality due to the importance to the Town. S. Bannon stated the public hearing would be rescheduled and added to an agenda as soon as possible.

7. PUBLIC HEARINGS

- a. Special Permit application from Berkshire Aviation Enterprises, Inc., 70 Egremont Plain Road, Great Barrington, to permit the airport in an R4 zone, in accordance with Sections 3.1.4 E(1), 7.2 and 10.4 of the Zoning Bylaw.

S. Bannon stated each speaker will be allowed three minutes each, but due to the number of attendees, not everyone will be able to speak. He asked that attendees be reasonable about speaking. S. Bannon made a statement – This is a public hearing on the Special Permit application of Berkshire Aviation Enterprises regarding the Airport at 70 Egremont Plain Road. I am aware the Selectboard received many advance comments on this application and there will likely be a number of people who would like to speak on the application during the hearing process. As listed in the agenda for the meeting, there will be an opportunity for public comments either in favor or in opposition to the application. Under Selectboard policies for the citizen speak portion of the meeting, the time period for speaking will be three minutes unless the chair grants a longer period of time. I will use that time as a guide in conducting the public hearing. I will also ask that speakers avoid repeating comments others have made, but instead, refer to previous speakers’ comments - that will allow for participation of the public in a manageable time period for the hearing. When we get to the point of a concluding statement, which hopefully we will get to tonight, in support of the application and any concluding statement or rebuttal in opposition, I will keep in mind the five minute limit for those statements as stated in Selectboard policies and procedures in Chapter 189 of the Town Code. As we go through the hearing if there are questions regarding more or less time for speakers, the chair will decide those keeping in mind my earlier comments.

i. Open Public Hearing

L. Davis made a motion to open the public hearing for the special Permit application from Berkshire Aviation Enterprises; E. Abrahams seconded. Roll call vote: Ed Abrahams, “aye,” Steve Bannon, “aye,” Leigh Davis, “aye,” Eric Gabriel, “aye,” Garfield Reed, “aye.” All in favor: 5-0.

- L. Davis stated she filed an Appearance of Conflict of Interest form as her daughter has pursuing an Air Force education and potentially flight training at the Airport. E. Abrahams stated he filed an Appearance of Conflict of Interest form as

he has close friends, like family members, involved with the Airport and knows several pilots – and noted he serves on a nonprofit board with a person openly opposing this permit. He clarified he has no financial or family interests with any of them. It was clarified that neither member would recuse.

ii. Explanation

Dennis Egan, attorney, Cohen Kinne Valicenti Cook, representing Berkshire Aviation Enterprises presented – noting the Airport’s owners and managers were also in attendance. He stated the airport is located at 70 Egremont Plain Road and was built in 1931, prior to the Town’s Zoning Bylaw - it is located in a residential zone and is a preexisting nonconforming use under the Town’s Zoning Bylaw. He noted the proceedings tonight were due to a small group of opponents of the Airport who have filed a lawsuit in Massachusetts Land Court - the lawsuit alleges that improvements post the Zoning Bylaw were made in violation of the zoning code. He stated, regarding the lawsuit, the Airport’s position is it is preempted by federal/state law from those regulations. D. Egan continued to state the purpose of the Special Permit application is to voluntarily submit to the Town’s Zoning Bylaws to preserve the Airport’s rights in Land Court for which it has been added as a party defendant. He stated the Airport is appearing as it is a reasonable resolution to the issue and would provide savings to taxpayers, the Town and the Airport’s owners. He emphasized the Special Permit is not for expansion, it would ensure the Airport’s continued existence confirming its legal use.

D. Egan continued to outline the Airport’s three historical and current main activities - flight operations, aircraft maintenance and flight school - and asked they be allowed to continue. He noted the Airport has agreed to conditions that could be added to the Permit – to address concerns about potential expansion – he noted under MA law, the Selectboard has the right to grant a permit with reasonable conditions and the permit holder must comply with those conditions. D. Egan proceeded to enumerate the conditions the Airport would agree to as part of approving the Special Permit including limits on timing for continuous takeoffs/landings and best efforts to limit Army helicopter training.

D. Egan described the Airport’s compliance with the six factors required by the Special Permit including community, economic, public services, safety, environmental and fiscal impact. E. Abrahams asked to receive information on employment by the Airport - D. Egan stated it has provided 56 jobs.

D. Egan continued to address environmental concerns noting testing results for lead in soil at the Airport in multiple heavily used areas is well below acceptable levels. He also noted water analysis in 2017 resulted in no actionable findings and the same with ongoing testing by the Great Barrington Water District. He also stated aviation fuel is stored at the Airport in underground fiberglass double-walled tanks similar to gas stations.

iii. Public comments; speak in favor or opposition

- Ruby Chang 253 Long Pond Road, asked for an independent environmental assessment paid for by the airport to confirm there is no danger to the aquifer which supplies GB’s drinking water.
- Eunice Agar, 20 Egremont Plain Road stated her house and studio are near the Airport and she does not hear planes when inside, and though there is some noise outside, it is no worse than trucks. She noted the importance of the Airport to the Town and asked that it continue to operate under existing parameters.

- Christopher Weaver, 95 West Avenue, stated the Airport is a great resource for learning and flying experience – he also described a family situation where the Airport’s ability to do medical evacuations was critical – and noted its life and health importance to the local community. He also noted in response to

allegations about allowing jet planes, he noted the runway is not long enough. He asked that the Town formally recognize the Airport for its importance.

- Liz Shaker, 86 Castle Street, stated she is part of a local citizen's group to save the Airport and noted the Airport should be celebrated as a resource for the Town and the area. She expressed concern about distortions/misinformation about the Airport's intentions and the impact of the Special Permit approval – and noted any expansion plans would have to be approved separately. She stated there are petitions and many testimonials in support of the Airport.
- Tad Heuer, attorney, Foley Hoag LLP representing Holly Hamer, Marc Fasteau and Anne Fredericks stated their opposition to the Special Permit application. He stated the denial of the Special Permit will not close the airport – it would just remain a pre-existing non-conforming use subject to precedent on expansion /intensification. He noted the Airport's representatives' position that it is not subject to zoning regulations. He stated the focus of the hearing is on whether the Airport has met the legal requirements under the Zoning Bylaw as it applies to every property owner in Town in obtaining a Special Permit – and noted the law states there is a burden of proof on the Airport to provide evidence that it is entitled to a Special Permit. T. Heuer stated. based on the application, Berkshire Aviation Enterprises does not provide new/sufficient evidence to support approval of this Special Permit. He stated the Airport's argument that it meets the six Special Permit requirements provides no documentation and he noted the Selectboard had made written findings in 2020 that the airport did not meet most of the conditions – and so it has no legal basis to make the opposite decision now. T. Heuer stated further that the proposed conditions for Airport operation/hours are pre-empted by federal law. He also stated in addition that even if the current owners voluntarily comply – which he stated they are not currently - subsequent owners may not. He noted the application asks for the applicant and subsequent owners to be permanently allowed to develop all 93 acres which would significantly increase air traffic, noise, safety concerns and aviation use without additional Town approval. He asked the Selectboard not to grant the Special Permit as the application does not meet legal standards. He stated he can clarify the Land Court lawsuit and judge's decision if there are questions.
- Claudia Shapiro, 78 Egremont Plain Road, stated that several of the conditions and improvements at the Airport are mandated and clarified she is not party to the Land Court action and has not filed complaints about the Airport. She noted the meeting agenda reflects that hearing will be concluded tonight and suggested there is a predetermined decision on this matter. She further stated Selectboard approval will allow for Airport expansion and would exempt it from the Zoning Bylaw and filings re: water overlay district requirements. She stated there is no enforcement action against the Airport.
- Marcia Stamell, 624 South Egremont Road, stated there is plane traffic over her house, low flying planes over Route 23 and other unsafe activities. She stated concerns about the Airport being able to develop as they want and asked the Selectboard to vote against the Special Permit.
- David Long, 304 North Plain Road, stated he supports the Airport - has lived nearby and seen its value including medical evacuations. He stated the Airport has provided many benefits to people and is part of the fabric of the community.
- Joanne Cooney, 148 Hurlburt Road, stated the Airport has gone from low to high traffic and expressed concerns about noise and safety. She noted a range of residents are opposing the Special Permit and asked the Selectboard to deny the application.

- Jonathan Hankin, 43 West Plain Road, stated he has been an abutter of the Airport for many years and emphasized its importance as a small business and amenity especially for medical evacuation. He stated the noise is not loud and intermittent and there is no evidence of harm to the aquifer and children in the area. He also noted the value of the flight school for vocational training at no cost to the Town/citizens.
- Tristana Nunez, 115 Hurlburt Road, stated the Airport contributes medical, economic and social value – it provides community and engages children/families.
- Aiden Coffman, 14 Stanley Drive, stated he received training at the Airport and received his pilot's license – and emphasized it is a great learning opportunity.
- Michael Peretti, 125 Seekonk Cross Road, stated he has lived near the Airport for 60 years and pointed out the growth of the flight school emphasizing that aspect needs to be discussed as it creates a lot of flight traffic. He stated he does not want the Airport to close. He played an audio recording of a turbo prop plane near his home.
- Gary Leveille, 33 Silver Street, stated he serves on the Town's Historical Commission as was asked by the Commission to speak in favor of the Airport. He shared stories of historical figures associated with the Airport and noted it is part of the history of the Town. He also described personal success stories of individuals who pursued careers in aviation due to the Airport.
- Barbara Barak, 6 Cornwall Drive, expressed concerns about large, noisy planes during the summer and low flying helicopters and flight school activity – and noted granting the Special Permit will allow expansion in a residential neighborhood.
- Daniel Miller, 40 Christian Hill Road, stated the Airport is important to the community and noted opponents do not have specifics on Airport/plane disturbances and there is no evidence of environmental hazards attributable to the Airport. He asked the Selectboard to rule in favor of the Airport with whatever conditions are necessary.
- Sennin Esko, 410 North Plain Road, stated he has lived near the airport and planes can be heard, but no worse than a lawn mower. He noted due to Airport training he received his pilot's license which has enriched his life.
- Joanne Sheron, 95 Seekonk Cross Road, stated she is an abutter of the Airport, and although she would like it to remain, she is concerned about expansion and commercialization. She noted past plans to build hangers and add an access road.

S. Bannon stated one of T. Heuer's clients asked to speak, but would not be called on as no one is allowed to speak twice – and Town Counsel agrees. He asked T. Heuer to speak with his client.

- Glenn Bergman, Interim Director, Berkshire Agricultural Ventures, 321 Main Street, stated he had written to the Town raising the issue that in keeping with the GB Growing Better Plan, the 60 acres could be used, in conjunction with its owners, for agriculture to increase security for farmers and promote sustainable agriculture and jobs in farming.
- Paul Moulthrop, 35 Silver Street, described his enjoyable personal and family experiences living near the Airport and noted many people who have received pilot licenses and built careers due to training at the Airport.

- Tammy Harvey, 27 Christian Hill Road, stated the Airport is an asset to the community and a unique opportunity for young people to learn.
- Ed Domaney, 327 State Road, shared personal and family memories of the Airport and noted it is a well-known asset for the Town and part of the fabric of the community.

- Alexander Thomas, 28 Manville Street, stated he is a pilot and former instructor for the Airport. He noted the importance of having opportunities offered for the younger generation to learn.
- Noah Meyerowitz, 32 West Sheffield Road, stated the Airport is important and brings people together. He noted the integrity of the owners and efforts to ensure safety and noise abatement. He noted concerns about the fate of the Airport if the Special Permit is not granted.
- Cheryl Lein, 137 Seekonk Cross Road, stated she has long studied the Airport and the strain on the community, but noted her respect for its history and people's personal stories. She noted the impact on people in the flight pattern and asked the Selectboard to consider what is appropriate for the community.
- Michael Lee, 294 Park Street, stated he has lived near the Airport and started an aviation program in 2009 at the Berkshire School from which he has seen a significant impact on students and some have gone on to careers as pilots. He asked that the Airport remain as it exists and remarked it is less busy now with fewer instructors than in the past.

S. Bannon stated due to Bruce Palmer's lack of audio, he should contact the Town Manager and send an email that will be forwarded to Selectboard members.

S. Bannon noted the 300+ attendees virtually and in the meeting room.

S. Bannon stated according to Town code, five minutes must be given to proponents and opponents as a wrap up of the public comment portion. He also stated a time will be set for the continuation of the public hearing – and the public comment portion is now concluded - there will now be closing statements from the attorneys.

- T. Heuer stated the focus of the discussion is where the Airport is today, not how it was – it is very different. He noted concerns expressed about continuous noise, safety and flight paths which are not following protocol or good practice as well as conditions that allow flights into the evening. He noted a Berkshire Edge article that stated the number of flights have more than doubled in the last three years. He called out environmental concerns about the Green River echoed by a member of the Board of Health. He stated if the Special Permit is granted, it gives the Airport a lot of leeway to expand. He noted the Airport is in a residential area and two years ago the Selectboard made a finding that the character of the residential area is being protected by zoning. He continued to state the Airport has a burden of proof that it is entitled to the Special Permit and it has not met under Section 7.2 and 6.4 regarding excessive noise. He stated nostalgia for the Airport is competing against what it could be if the Special Permit is granted – he noted it has not met legal requirements to have a Special Permit in this location and asked the Selectboard to vote to deny the Permit.
- D. Egan posed the question what would happen if the Special Permit was denied – he stated the clock would be turned back to 1932 and the Airport would be crippled at best. He objected to disparaging remarks about the owners who have always acted in good faith and integrity and value the neighborhood and its residents. He stated there is no evidence the Airport has not complied with what it has been asked to do. He also noted if there was any evidence of lead poisoning

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the opposition would have produced it. He stated in the Land Court case the presiding judge decided to pause the proceedings while the Selectboard takes the Special permit under consideration. He stated the Airport has met its burden of proof and asked that the Special Permit be granted.

iv. Close Public Hearing

L. Davis made a motion to continue the public hearing to March 13 at 6:00pm at Town Hall and virtually; E. Abrahams seconded. S. Bannon asked if any discussion – there was none. Roll call vote: Ed Abrahams, “aye,” Steve Bannon, “aye,” Leigh Davis, “aye,” Eric Gabriel, “aye,” Garfield Reed, “aye.” All in favor: 5-0.

v. Selectboard discussion

vi. Motion; decision

8. CITIZEN SPEAK TIME

- a. D. Miller inquired how the Town can impose an electric provider/rates on residents and noted he has found a cheaper provider. S. Bannon replied residents can opt out and the Town rate is less than National Grid. He stated questions can be directed to the Town Manager’s Office.

9. SELECTBOARD’S TIME – No members asked to speak.

10. MEDIA TIME – No media asked to speak.

11. ADJOURNMENT - Chairman Bannon adjourned the meeting by unanimous consent at 8:36pm.

Respectfully submitted,

Stacy Ostrow, Recording Clerk