

Selectboard Special Meeting via Zoom
Wednesday, May 11, 2022

1. CALL TO ORDER SELECTBOARD SPECIAL MEETING – Mark Pruhenski opened the meeting at 6:00pm noting this is a post-election reorganization meeting. M. Pruhenski congratulated Steve Bannon and Leigh Davis on their re-election to the Selectboard.

a. Roll Call - Ed Abrahams, “aye,” Steve Bannon, “aye,” Leigh Davis, “aye,” Eric Gabriel, “aye,” Garfield Reed, “aye.”

Also in attendance: Town Manager Mark Pruhenski, Assistant Town Manager Chris Rembold, Finance Director Sue Carmel.

2. BOARD REORGANIZATION

a. M. Pruhenski asked for a motion to nominate a chair for the upcoming year.

E. Abrahams made a motion to nominate S. Bannon for Selectboard Chair; L. Davis seconded. M. Pruhenski 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.

M. Pruhenski transitioned the meeting to Chair, S. Bannon.

E. Abrahams made a motion to nominate L. Davis for Selectboard Vice Chair; G. Reed seconded. S. Bannon asked if any discussion – E. Gabriel suggested in the future the Vice Chair role rotate every few years. S. Bannon stated the Selectboard will review policies and procedures which would be an opportunity to add anything new. Roll call vote: E. Abrahams, “aye,” S. Bannon, “aye,” L. Davis, “aye,” E. Gabriel, “aye,” G. Reed, “aye.” All in favor 5-0.

S. Bannon made a statement which he noted was more for the public who are interested in discussion on short-term rentals or want to hear the Selectboard discussion. He stated: At the Selectboard meeting of March 30, 2022, a conflict-of-interest question was raised through an anonymous email regarding Selectboard review and discussion on the Short-Term Rental Bylaw. The conflict described was a financial interest on the subject of short-term rentals for Selectboard members who own and live in property near other property that is used or listed on the Airbnb website. The members in questions were Ed Abrahams, Leigh Davis and Steve Bannon. Eric Gabriel had previously recused under advice of the Ethics Commission.

At the March 30 meeting, the Selectboard stopped its discussion of the Bylaw and the Town Manager asked Town Counsel to review and confer with legal staff at the State Ethics Commission regarding the facts of the situation and how the Commission would apply the law to those facts. This week, legal staff at the Ethics Commission informed Town Council of their determination that Selectboard members Abrahams and Bannon did not have a conflict, but Davis did. The Ethics Commission based its determination on the location of board members’ property and the distance between the properties and the applicable short-term rental properties identified. Legal staff advised if either Bannon or Abrahams were to participate in the short-term rental discussion, they should file a disclosure of the particular facts with the Town Clerk under Section 23, B,3 of the conflict-of-interest statute, Chapter 268A of the General Laws - the appearance of conflict provision. S. Bannon filed a disclosure with the Town Clerk today stating his view that he can act objectively on the matter.

At this time, the Selectboard intends to continue the discussion and vote on the matter the week of May 23 and give Selectboard member Davis an opportunity to continue discussions with the Ethics Commission staff – as would be the case with any other Selectboard member in a similar situation as to whether there is a conflict or not. He noted for the Ethics Commission there is a lot of gray area and moving parts. Davis is in the process of discussion with the Ethics Commission so the hope and plan to discuss short-term rental on May 23 - there will be no discussion today including the warrant.

3. APPROVAL OF MINUTES

a. April 11, 2022

L. Davis made a motion to approve the minutes of April 11, 2022; 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.

4. SELECTBOARD’S ANNOUNCEMENTS/STATEMENTS

- a. G. Reed stated he was elected to the Selectboard a year ago and has enjoyed his first year - he thanked residents for their support.
- b. E. Abrahams stated he filed a conflict of interest form, as Steve did.

5. TOWN MANAGER’S REPORT

- a. Housatonic Water Works – M. Pruhenski stated the letter to HWW requesting relief for customers through bottled water, reimbursement and/or the provision of water filtration options to those significantly impacted/at risk had been sent via regular and certified mail. He noted the Selectboard would meet again in Executive Session with the Town’s attorney regarding strategy on the HWW situation on May 18 at 6:00pm.

6. LICENSES AND PERMITS

- a. Molly Amstead of Berkshire South Regional Community Center, 15 Crissey Road, for a One-Day Beer and Wine Liquor License for their Welcome Summer Festival on Saturday June 4, 2022 from 11:00 AM to 4:00 PM.
 - i. M. Amstead provided an overview of this second annual event that includes nonprofit booths, arts/crafts vendors, food trucks, live entertainment – she noted the beer vendor, Shire Brew House, and confirmed the server is TIPS trained and will ID everyone.

L. Davis made a motion to approve One-Day Beer and Wine Liquor License for the Welcome Summer Festival on Saturday June 4, 2022 from 11:00 AM to 4:00 PM to Molly Amstead of Berkshire South Regional Community Center; 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.

7. PUBLIC HEARINGS

- a. Eugene Richard of Price Chopper, 300 Stockbridge Road for a Beer and Wine Package Store License, James Collins Manager.

L. Davis made a motion to open the Public Hearing; E. Abrahams seconded. S. Bannon asked if any discussion – G. Reed stated he would recuse. Roll call vote: E. Abrahams, “aye,” S. Bannon, “aye,” L. Davis, “aye,” E. Gabriel, “aye.” All in favor 4-0.

- i. Anik Patel asked about the denial of his request for a Beer and Wine Package Store License – S. Bannon asked for the presentation to proceed and comments to be heard afterwards.
- ii. E. Richards, Esq., representing Price Chopper, operating company of Massachusetts, Inc., the liquor licensing subsidiary of Price Chopper Supermarkets/Market32 by Price Chopper, presented a request to add a section for wine and beer at the Stockbridge Road store as part of the Market32 rebranding – similar to existing local Market32 stores in Lenox, Pittsfield and other locations in MA.

He described a plan for one two-sided aisle towards the center of the store encompassing 1900 sq feet/4% of the sales area plus small, periodic displays in other areas to highlight food parings, holidays, etc. He noted construction would start June 6, including expansion into two vacant spaces next door and would be completed the end of October.

- iii. E. Richards stated Price Chopper has a long history of selling alcohol and is licensed in eight locations – with no disciplinary actions related to alcohol sales. He described the safeguards in place including security/lock storage, TIPS training, manager-cashier oversight and a system to check ID/record information before all liquor sales. He added that store manager, J. Collins, has extensive experience managing stores selling alcohol and has worked for Price Chopper 39 years.
 - iv. L. Davis expressed concern about the periodic displays outside the beer/wine aisle and asked if that could be eliminated – E. Richards stated preference would be to have displays, but would consider excluding them.
 - v. E. Gabriel stated he is uncomfortable with every grocery store in Town selling beer/wine as it is a strong temptation to some shoppers.
 - vi. S. Bannon asked about buying beer/wine at self-check-out – E. Richards replied a sale cannot be completed at self-check-out without manager/staff checking ID and approving in the system.
 - vii. E. Richards stated meeting competition is important for supermarkets noting Big Y is licensed and on the opposite side of Town.
 - viii. M. Loubert, 70 Division Street, challenged opinions about potential temptations and noted the number of stores selling marijuana. She also noted witnessing high security at grocery stores selling alcohol including Market32, Lenox.
 - ix. Frederica Sigel, 27 Round Hill Road, noted people can control their urges, but supported limiting alcohol sales to one aisle.
 - x. James Garzon, 84 North Plain Road, stated it was unfair/anti-competitive to allow Big Y and others to have licenses and not Price Chopper. He stated dispensaries are a bigger issue.
 - xi. E. Abrahams noted the decision made by Town Meeting was to not limit the number of dispensaries. The Selectboard does not control those approvals – but does control granting liquor licenses – so they are not comparable situations.
 - xii. L. Davis suggested granting a license with the condition there are no satellite displays.
 - xiii. S. Bannon stated he would like to go to the Lenox store to see their operations – the Selectboard agreed to discuss/vote on this at the next meeting.
- L. Davis made a motion to continue to May 23 at 6:00pm; 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.” All in favor 4-0.

8. PREVIOUS BUSINESS

- a. Samascott Orchards for a farm winery special license to sell at the Farmer’s Market from May 11th through November 13th, 2022 from 10:00am to 4:00pm
 - i. S. Bannon asked if anyone was in attendance from Samascott Orchards. M. Pruhenski confirmed they had been in touch about the meeting. S. Bannon stated this item would be passed over as the applicant is not in attendance, but can be discussed later if they join.

b. Ephrat David for permission to install a driveway at 10 Knob Hill Road

- i. E. David stated her property has an existing circular driveway on a portion of a right of way and her neighbors want to use the right of way to pave a driveway to a new house to be built. Her request is for a permit to move a part of the circular driveway away from the easement and create a new leg of the driveway. She asked the Selectboard to grant permission to have two driveways on their property.
- ii. S. Bannon stated the Selectboard's position is to address the driveway issue only as the civil matter is not within its purview. He stated the Selectboard can either grant the permit, impose conditions or deny it.
- iii. E. Abrahams stated at this point, there is no issue with the second driveway/curb cut, but the Selectboard is not weighing in on the civil matter – and the Selectboard does not have the authority to grant a third curb cut. If there is a decision to allow the driveway in the easement, the applicant must be aware that the curb cut will have to be removed.
- iv. Alexandra Glover, Esq, representing Yigal Litvin and Robin Scheman, owners of the neighboring property, stated the matter will likely come back before the Selectboard regarding the easement – and that the easement/30-foot right of way to access her client's property over the David's property is reflected in a recorded plan attached to the David's deed. She also stated her hope to have a joint application to correct the situation.
- v. Bill Martin, Esq., Martin and Olivera, representing the Davids, stated the permit application is only to relocate a leg of the circular driveway, but disagreed that the outcome of the civil litigation will determine whether or not the driveway needs to be removed. He stated there are currently two driveways, whether zoning/Town bylaws permit a third driveway is separate from the parties' rights under the easement.
- vi. A. Glover stated concerns that if the new/relocated driveway is approved, it would provide the applicant with an advantage in the property dispute and impact use of the right of way. She asked for the permit decision be delayed.
- vii. S. Bannon asked for a decision from the Selectboard about voting on the permit.

L. Davis made a motion to grant permission to install a driveway at 10 Knob Hill Road; E. Abrahams seconded. S. Bannon asked if any discussion – S. Bannon stated if the Selectboard decides not to do this, it gets into the civil matter as the Town bylaw permits the driveway. E. Abrahams reemphasized the need for clarity that the Selectboard is not weighing in – if the court decides they are entitled to the easement and a curb cut can be put in, the building inspector will likely ask for one to come out – and the applicant's position cannot be that there cannot be another curb cut because there are already two – it cannot be a reason not to comply with an order to remove it. S. Bannon agreed and stated they must comply with the Town's bylaws. Roll call vote: E. Abrahams, "no," S. Bannon, "aye," L. Davis, "aye," E. Gabriel, "aye," G. Reed, "aye." Motion passed 4-1.

c. Short-term rental public input session (Subject to the ethics commission approval)

d. Short-term rental bylaw Discussion/Vote (Subject to the ethics commission approval)

9. NEW BUSINESS:

- a. Alyssa Eisler and Matthew Skyrpack for permission to install a driveway at 20 Alford Road.
 - i. S. Bannon confirmed the applicant was not in attendance though they were

contacted/advised of the meeting. The Selectboard did not have questions on the application. G. Reed stated the applicant should be in attendance.

L. Davis made a motion to continue to May 23 the business of Alyssa Eisler and Matthew Skyrpack for permission to install a driveway at 20 Alford Road; E. Abrahams seconded. S. Bannon asked if any discussion – E. Abrahams stated if there are no questions the applicant should not have to appear - G. Reed stated it is their opportunity to speak and it should be a priority. Roll call vote: E. Abrahams, “no,” S. Bannon, “no,” L. Davis, “aye,” E. Gabriel, “aye,” G. Reed, “aye.” Motion passed 3-2.

ii. S. Bannon stated he voted “no” because there are no questions about the application.

b. Selectboard vote to waive or exercise the Town’s Chapter 61 Right of First Refusal on two parcels on Lake Buel Road identified as (1) 0.615 acres designated as Parcel A, a portion of existing Parcel 38.1 of Assessors Map 42; and, (2) 0.492 acres designated as Parcel B, a portion of existing Parcel 38D of Assessors Map 42; both parcels to be conveyed to the abutter and removed from Chapter 61 status.

i. C. Rembold stated attorneys for the parties are present. He provided background stating this is land under the Chapter 61 property tax assessment program - there is a lien on the property by which the Town may meet offers to sell or assign its rights if the land is better kept in a conservation or recreation program. He further stated the Conservation Commission and Planning Board have made an assessment as to the value of staying in Chapter 61 status or for the Town to buy the parcels/keep in conservation status – comments are in the packet. He noted this is a swap of the land between the two parties.

ii. S. Bannon asked if the attorneys would like to comment or if any questions from the board – there were none.

L. Davis made a motion to vote to waive the Town’s Chapter 61 Right of First Refusal on two parcels on Lake Buel Road identified as (1) 0.615 acres designated as Parcel A, a portion of existing Parcel 38.1 of Assessors Map 42; and, (2) 0.492 acres designated as Parcel B, a portion of existing Parcel 38D of Assessors Map 42; both parcels to be conveyed to the abutter and removed from Chapter 61 status; 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.

iii. C. Rembold noted the right of first refusal waiver in the Selectboard’s signature folder.

c. Review and approve the 2022 Annual Town Meeting Warrant

i. S. Bannon stated Selectboard can approve each Article or approve them all together except for Articles 29-32 which will be done on May 23.

ii. M. Pruhenski stated there were three budget adjustments reviewed/approved by the Finance Committee at its April 19 meeting, after the public hearing. S. Carmel reviewed:

- Special Article 11 – For out of district transportation to the vocational program at Taconic High School. Four additional students to attend for an additional \$250,000.

L. Davis made a motion to recommend Article 11 to Town Meeting; 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.

- Article 4 – Town operating budget – Chief Berger increased the Fire Department operating budget by \$6,500 due to unexpected increases of 5% for water rate and 10% for hydrant rentals from the GB Water District.

L. Davis made a motion to recommend Article 4 to Town Meeting; 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.

- Article 5 – Capital budget for the General Fund for a highway truck snow package for an additional \$70,000 making the total cost \$170,900

L. Davis made a motion to recommend Article 5 to Town Meeting; 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.

iii. The Selectboard agreed to approve the Articles as a group.

L. Davis made a motion to recommend Articles 1-28 and 33 to Town Meeting; 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.

d. Town Manager Performance Evaluation – S. Bannon congratulated M. Pruhenski on behalf of the Selectboard for his exceptional work and leadership this past year especially in such challenging times. S. Bannon also noted the evaluation summary and individual evaluations are made public. M. Pruhenski noted his appreciation for the Selectboard’s support and feedback.

10. CITIZEN SPEAK

- a. M. Loubert, 70 Division Street, expressed concerns about traffic/speeding, safety, trucks and noise on Division Street and the surrounding area – which she stated is especially worrisome with the reopening of the Division Street Bridge and other public works. She asked that the Town remain vigilant about monitoring the area and enforcing bylaws.

11. SELECTBOARD’S TIME

- a. G. Reed noted the Senior Tax Deferral is on the warrant – and he is now supportive of the \$40,000/5% requirements.
- b. L. Davis thanked M. Pruhenski/DPW for repainting the crosswalks.
- c. S. Bannon thanked voters for coming out for the Town election and exercising an important right.

12. MEDIA TIME

13. ADJOURNMENT - Chairman Bannon adjourned the meeting by unanimous consent at 7:20pm.

Respectfully submitted,

Stacy Ostrow
Recording Clerk