

Jennifer Tabakin
Town Manager

E-mail: jtabakin@townofgb.org
www.townofgb.org



Town Hall, 334 Main Street
Great Barrington, MA 01230

Telephone: (413) 528-1619 x2
Fax: (413) 528-2290

TOWN OF GREAT BARRINGTON MASSACHUSETTS

OFFICE OF THE TOWN MANAGER SELECTBOARD'S MEETING AGENDA

MONDAY, DECEMBER 3, 2018

**7:00 PM EXECUTIVE SESSION JOINT MEETING WITH THE ZBA
SELECTBOARD REGULAR SESSION IMMEDIATELY FOLLOWING**

TOWN HALL, 334 MAIN STREET

ORDER OF AGENDA

7:00 PM - OPEN MEETING

1. CALL TO ORDER:

7:00 pm Open Session - Conference Room

CONVENE INTO EXECUTIVE SESSION and Return to Open Session - Town Manager's Conference Room

A. Executive Session under MGL c.30A, §21(a)(3) and (6), to discuss litigation strategy relating to pending litigation known as (1) Belanger v. Zoning Board of Appeals, Berkshire Superior Court, C.A. No. 1876CV00134; (2) GJO, LLC v. Zoning Board of Appeals, et al., Land Court Docket No. 2018MISC000240; and (3) GJO, LLC v. Ronald Majdalany et al., Land Court Docket No. 18MISC000240 (KCL); and (4) Town of Great Barrington v. GJO LLC, So. Berkshire District Court Docket No. 1829C1000008, if the Chair declares that an open meeting may have a detrimental effect on the Town's litigating and/or negotiating position. A vote regarding whether to go into executive session is expected; and votes may occur during the executive session.

Roll Call Vote

Chair's Declaration:

I declare, under MG.L. c.30A, §21(a)(3) and (6), that the purpose of the executive session will be to discuss litigation strategy regarding pending litigation concerning 11 Roger Road known as: (1) Belanger v. Zoning Board of Appeals, Berkshire Superior Court, C.A. No. 1876CV00134; and (2) GJO, LLC v. Zoning Board of Appeals, et al., Land Court Docket No. 18MISC000240; (3) GJO, LLC v. Ronald Majdalany et al., Land Court Docket No. 18MISC000240 (KCL); and (4) Town of Great Barrington v. GJO LLC, So. Berkshire District Court Docket No. 1829C1000008 because discussions of the foregoing in open session could have a detrimental effect on the litigating and/or negotiating position of the Town and to **Return To Open Session** at the conclusion of the executive session.

Motion Convening the Executive Session:

I move that the Selectboard go into executive session under M.G.L. c.30A, §21(a)(3) and (6) for the purposes and reasons declared by the Chair and with the Board to **Return to Open Session** at the conclusion of the Executive Session.

Roll Call Vote:

2. APPROVAL OF MINUTES:

September 17, 2018 Regular Meeting.
November 19, 2018 Special Meeting.

3. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS:

A. General Comments by the Board.

4. TOWN MANAGER'S REPORT:

A. Department Updates

B. Project Updates

5. LICENSES OR PERMITS:

A. Peter Mitchell/Headwater Cider for Three (3) One Day Beer and Wine Liquor Licenses for 12.14.18 from 5:00 pm – 8:00 pm; for 12.15.18 from 10:00 am – 8:00 pm, and for 12.16.18 from 10:00 am – 4:00 pm at St. James Place, 352 Main Street.
(Discussion/Vote)

6. OLD BUSINESS:

A. **Continued** - 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)

B. SB – To Outline the Procedure to be Used to Conduct the Hearing on the Matter of the Request for Removal of the GB Housing Authority member. (Discussion/Vote)

7. CITIZEN SPEAK TIME:

8. SELECTBOARD'S TIME:

9. MEDIA TIME:

10. ADJOURNMENT:

NEXT SELECTBOARD'S REGULAR MEETING: Monday, December 17, 2018, 7:00 P.M.



Jennifer Tabakin, Town Manager

Pursuant to MGL. 7c. 30A sec. 20 (f), after notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium. At the beginning of the meeting, the chair shall inform other attendees of any such recordings. Any member of the public wishing to speak at the meeting must receive permission of the chair. The listings of agenda items are those reasonably anticipated by the chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

Fee: \$25.00 (per day)

x3=75



APPLICATION FOR ONE DAY LIQUOR LICENSE

TO THE LICENSING AUTHORITY:

The undersigned hereby applies for a License in accordance with the provisions relating thereto:

Applicant's Name: PETER MITCHELL

Organization Name: HEADWATER CIDER

Applicant's Address: 112 FORGET RD. HAWLET, MA

Telephone Number: 413-695-6079

Type of License: ONE DAY BEER & WINE ONE DAY ALL ALCOHOLIC
(Circle one)

Event: DELIGHTFUL + DELECTABLE HOLIDAY MARKET

Date: FRI. 12/14 SAT. 12/15 SUN. 12/16 Start Time: 5P 10A 10A End Time: 8P 8P 4P 3 DAYS

Event Address: SAINT JAMES PLACE 352 MAIN ST. GREAT BARRINGTON, MA 01230

Is the Event on Town property? YES NO

PLEASE ATTACH THE FOLLOWING TO YOUR APPLICATION:

- OK* 1. TIPS or ServSafe Alcohol certification for anyone serving alcohol. ✓
- 2. Certificate of Insurance showing proof of Liquor Liability coverage. ✓
(If the event is on Town property, the certificate must name the Town of Great Barrington as additional insured.)
- OK* 3. If the event is not on applicant's property, a letter of permission from the owner is required. ✓

Liability: The below individual agrees to take responsibility for the above-noted event and further agrees to indemnify, save harmless, and defend the Town of Great Barrington, its officers, employees and agents, from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto, which may occur in connection with this event.

Peter Mitchell
Signature of Applicant

11/29/18
Date

FOR TOWN USE:

Approved _____ Denied _____ Postponed _____

NOTICE OF PUBLIC HEARING

The Great Barrington Selectboard will hold a public hearing on Monday, December 3, 2018 at 7:00 pm at Town Hall, 334 Main Street, Great Barrington, MA 01230 to act on the Town's Right of First Refusal option for Chapter 61 Land of Property Owner Swann Real Estate Trust, 671 Stockbridge Road. The property is Assessors Map 35, Parcels 9 and 20a, totaling 64.9 acres, of which 33.33 acres is in Chapter 61.

Stephen C. Bannon, Chair

Please Publish Friday, November 30, 2018

Berkshire Record

HUNTER & GRAZIANO, P.C.

Attorneys at Law

Ten Park Place, Post Office Box 337
Lee, Massachusetts 01238

Don C. Hunter
John W. Graziano*
*Also Admitted In N.Y.

Tel 413 243-0789
Fax 413 243-0213
www.berkshirelawyers.com

RECEIVED
TOWN MANAGER

AUG 21 2018

BOARD OF SELECTMEN
GREAT BARRINGTON, MA

August 17, 2018

Board of Selectmen
Town of Great Barrington
Town Hall
334 Main Street
Great Barrington, MA 01230

Re: Stockbridge Road, Great Barrington, MA
Swann Real Estate Trust

Dear Sirs and Madam:

This office represents Swann Real Estate Trust in the proposed sale of Chapter 61 land situated in the Town of Great Barrington. I have enclosed a copy of the purchase and sale agreement for your review:

The following is pertinent information regarding the property:

Address of the property is Stockbridge Road, Great Barrington, MA
Assessors Map 35, Parcel 9 and Parcel 20a (copy enclosed)
Acreage -- Map 35 -- Parcel 9 29.82 acres and Map 35 -- Parcel 20a 3.51 acres
for a total of 33.33 acres

Owner is Swann Real Estate Trust, Post Office Box 1245, Stockbridge, MA 01262

Buyer is Chris Williams, LLC (Chris Williams, Manager) 134 Great Barrington Road, West Stockbridge, MA 01266

The sale price of the property is \$340,000.00.

It is our understanding that you will acknowledge receipt of the notice, marking the start of the 120 day period for the town to exercise its Right of First Refusal, transfer it to a conservation organization, or relinquish its right.

Board of Selectmen
Town of Great Barrington
August 17, 2018
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We look forward to hearing from you. If you need any additional information please contact me.

Thank you.

Sincerely,



John W. Graziano, Esq.
John@berkshirelawyers.com

/paf

Enclosures

Copies to: Town of Great Barrington Planning Board
Town of Great Barrington Board of Assessors
Town of Great Barrington Conservation Commission
Commonwealth of Massachusetts, State Forester
Swann Real Estate Trust
Michael J. Considine, Esq.

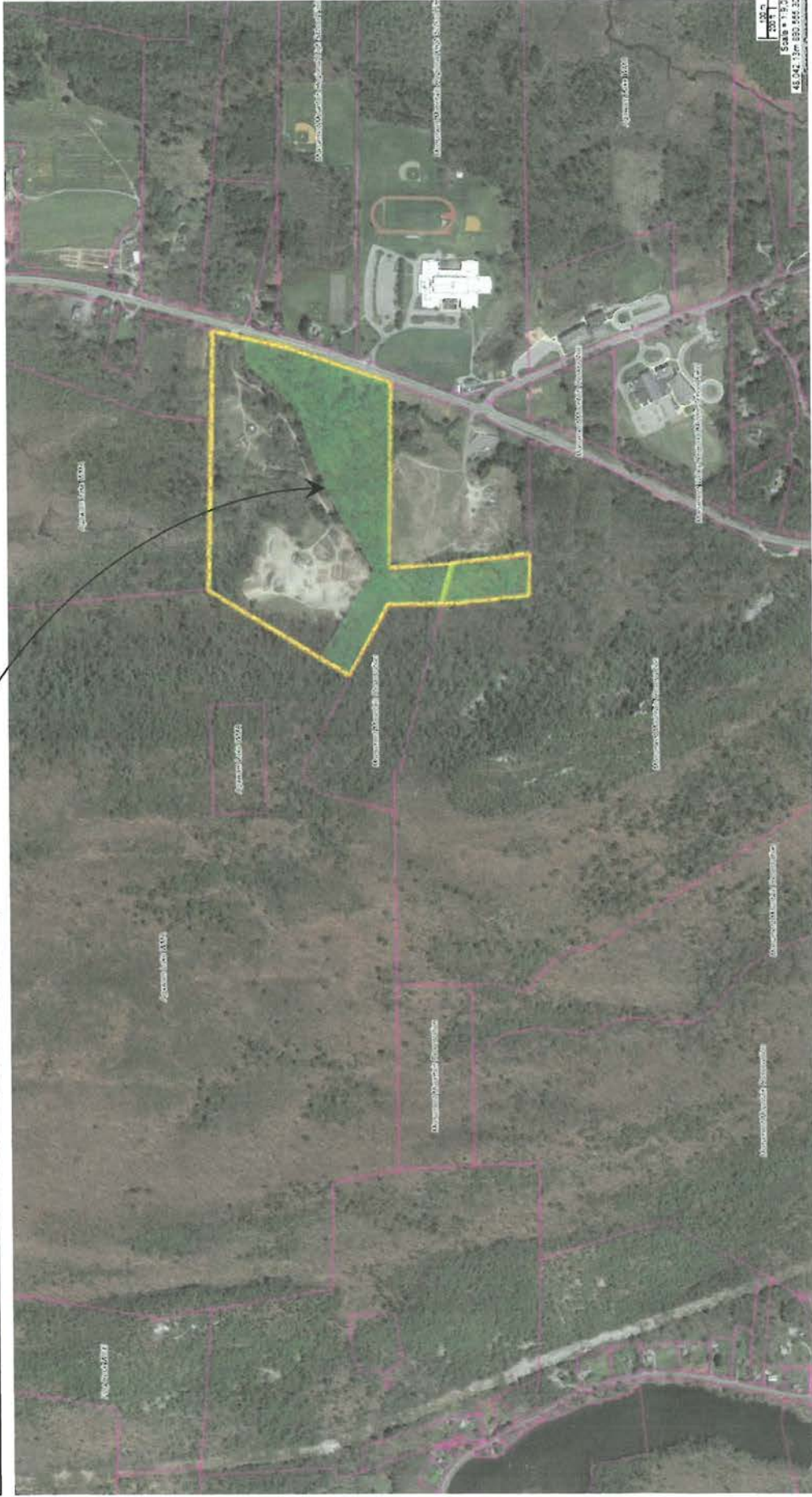
CERTIFIED MAIL
RETURN RECEIPT REQUESTED Board of Selectmen

FIRST CLASS MAIL
POSTAGE PREPAID

Town of Great Barrington Planning Board
Town of Great Barrington Board of Assessors
Town of Great Barrington Conservation Commission
Commonwealth of Massachusetts, State Forester
Swann Real Estate Trust
Michael J. Considine, Esq.

Swann property, Stockbridge Road

Map 35, Parcel 9:	61.42 acres total	29.82 in Ch. 61
Map 35, Parcel 9A:	<u>3.51 acres total</u>	<u>3.51 in Ch. 61</u>
	64.93 total	33.33 total in Ch. 61



Swann property, Stockbridge Road

Map 35, Parcel 9:	61.42 acres total	29.82 in Ch. 61
Map 35, Parcel 9A:	<u>3.51 acres total</u>	<u>3.51 in Ch. 61</u>
	64.93 total	33.33 total in Ch. 61



671 Stockbridge Road



PARCEL INFORMATION

Owner#1: SWANN REAL ESTATE TRUST
 Owner#2: MARK SWANN & ROSALY SWANN BASS
 Address#1: PO BOX 1245
 Address#2: STOCKBRIDGE MA 01262-1245

Use-Code: 061
 Tax Class: T
 Tot Fin Area: 0
 Tot Land Area: 61.42

Sale Price: 0
 Sale Date: 5/8/1972
 Sale Type: L
 Sale Valid: A
 Grantor: SWANN

Book: 381
 Page: 53
 Cert/Doc:

Inspect Date:
 Meas Date:
 Entrance:
 Collect ID:
 Inspect Reas:

Road Type: T
 Rd Condition: P
 Traffic: L
 Water:
 Sewer:

Exempt-B/L%: 0/0
 Resid-B/L%: 57.8947/0
 Comm-B/L%: 42.1053/100
 Indust-B/L%: 0/0
 Open Sp-B/L%: 0/0

RESIDENCE INFORMATION

Style:
 Story Height:
 Roof:
 Ext Wall:
 Masonry Trim:
 Foundation:
 Heat Type:
 Fuel Type:
 Fireplace:
 Central AC:

Tot Rooms:
 Bedrooms:
 Full Baths:
 Half Baths:
 Ext Bath Fix:
 Bath Qual:
 Kitch Qual:
 Ext Kitch:
 Bsmt Gar Cap:
 Bsmt Gar SF:
 Att Gar SF:

Main Fn Area:
 Up Fn Area:
 Add Fn Area:
 Unfin Area:
 Tot Fn Area:
 Eff Yr Built:
 Year Built:
 Grade:
 Condition:
 Pct Complete:
 %Good P/F/E/R: ///

Attic:
 Bsmt Area:
 Fn Bsmt Area:
 Bsmt Grade:
 RCNLD:
 Mkt Adj:
 Sound Value:
 Cost Bldg:
 Att Str Val1:
 Att Str Val2:

LAND INFORMATION

Seg	Type	Code	Method	Sq-Ft	Acres	Influ-1/2/3	Value	Class
1	P	313	A	87120	2	N	159300	R4
2	R	313	A	217800	5	N	25000	
3	R	313	A	1110780	25.5	N	127500	
4	R	313	A	1259755	28.92	N	144600	M
5	P	313	A	87120	2	N	159300	M
6	R	313	A	217800	5	N	25000	M

NBHD CODE: 300
 NBHD CLASS:
 ZONE: R4
 Class

DETACHED STRUCTURE INFORMATION

Str	Unit	Msr-1	Msr-2	E-YR-Bld	Grade	Cond	%Good	P/F/E/R	Cost	Class
SE	S	1476		1985	A	A	///79		7700	1
SE	S	640		1985	F	F	///75		3300	3
SE	S	225		1985	F	F	///75		1100	3
SE	S	128		1988	F	F	///78		1200	3

SKETCH

Porch Type
 Porch Area
 Porch Grade Factor

VALUATION INFORMATION

Current Total: 327700
 Prior Tot: 327700
 Bidg: 13300
 Bldg: 13300
 Land: 314400
 Land: 314400
 MktLnd: 456400
 MktLnd: 456400

PHOTO

PARCEL INFORMATION

Owner#1: SWANN REAL ESTATE TRUST
 Owner#2: MARK SWANN & ROSALY SWANN BASS
 Address#1: PO BOX 1245
 Address#2: STOCKBRIDGE MA 01262-1245

Use-Code: 601
 Tax Class: T
 Tot Fin Area: 0
 Tot Land Area: 3.51

Sale Price: 1
 Sale Date: 8/26/1980
 Sale Type: L
 Sale Valid: N
 Grantor: TRUSTEES OF RESERVAT

Book: 480
 Page: 230
 Cert/Doc:

Inspect Date:
 Meas Date:
 Entrance:
 Collect ID:
 Inspect Reas:

Road Type: T
 Rd Condition: P
 Traffic: L
 Water:
 Sewer:

Exempt-B/L%: 0/0
 Resid-B/L%: 0/0
 Comm-B/L%: 100/100
 Indust-B/L%: 0/0
 Open Sp-B/L%: 0/0

COMMERCIAL SECTIONS/GROUPS

Section:	ID	Use-Code	Section:	ID	Use-Code
Category: Grnd-FI-Area: Story Height: Bldg-Class: Yr-Built: Eff-Yr-Built: Cost Bldg:			Category: Grnd-FI-Area: Story Height: Bldg-Class: Yr-Built: Eff-Yr-Built: Cost Bldg:		
<u>Id</u> <u>Cd</u> <u>B-FL-A</u> <u>Firs</u> <u>Unt</u>	<u>Id</u> <u>Cd</u> <u>B-FL-A</u> <u>Firs</u> <u>Unt</u>	<u>Id</u> <u>Cd</u> <u>B-FL-A</u> <u>Firs</u> <u>Unt</u>	<u>Id</u> <u>Cd</u> <u>B-FL-A</u> <u>Firs</u> <u>Unt</u>	<u>Id</u> <u>Cd</u> <u>B-FL-A</u> <u>Firs</u> <u>Unt</u>	<u>Id</u> <u>Cd</u> <u>B-FL-A</u> <u>Firs</u> <u>Unt</u>

LAND INFORMATION

NBHD CODE:	1	NBHD CLASS:		ZONE:		R4		
Seg	Type	Code	Method	Sq-Ft	Acres	Influ-1/2/3	Value	Class
1	R	131	A	152896	3.51	N	15795	F
2	R	601	A	152896	3.51	N	315	F

DETACHED STRUCTURE INFORMATION

Str	Unit	Msr-1	Msr-2	E-YR-Blt	Grade	Cond	%Good	P/F/E/R	Cost	Class

SKETCH

VALUATION INFORMATION

Current Total:	300	Bldg:	0	Land:	300	MktLnd:	15800
Prior Tot:	300	Bldg:	0	Land:	300	MktLnd:	15800

PHOTO

PURCHASE AND SALE AGREEMENT

▶ 1. PARTIES:	SELLER(S)	BUYER(S)
	Name(s) <u>SWANN REAL ESTATE TRUST</u>	<u>CHRIS WILLIAMS LLC</u>
	Address <u>P O Box 1245</u> <u>Stockbridge, MA 01262</u>	<u>134 Great Barrington Road</u> <u>West Stockbridge, MA 01266</u>

▶ **2. DESCRIPTION:** Subject to the terms and conditions hereinafter set forth, the SELLER agrees to sell and the BUYER agrees to buy SELLER'S real property located at 671 Stockbridge Road, Great Barrington, MA 01230 as more particularly described in a deed dated 4/7/72, and recorded in the Southern Berkshire County Registry of Deeds in Book 381, Page 53, or Land Court Certificate # _____ Assessor's Map # _____ Section # _____ Lot # _____ (the "Premises").

▶ **3. PURCHASE PRICE:** For the Premises, BUYER shall pay the "Purchase Price" sum of\$ \$340,000.00 of which an initial deposit has been paid this day in the amount of.....\$ \$20,000.00 and an addition deposit will be paid within n/a days in the amount of.....\$ \$0.00 resulting in a balance to be paid in the amount of.....\$ \$320,000.00 in cash, wired funds, or by certified / bank check at the Closing.

3.1 Escrow. All deposits are to be held by the Seller's Attorney ("Escrow Agent") in a non-interest bearing escrow account, unless otherwise specified herein.

▶ **4. CONTINGENCY TERMS:** The following terms and dates apply to paragraphs 6, 7 and 8 as the case may be:

- 4.1 Mortgage: Amt: see par. 35 Rate: prev Type: Variable Pts: 0 Yrs: 20
- 4.2 Mortgage / Insurance Application Date:..... within 10 days of signed acceptance by SELLER
- 4.3 Mortgage / Insurance Contingency Date:..... within 45 days of signed acceptance by SELLER
- 4.4 Inspection Contingency Date:..... within n/a days of signed acceptance by SELLER
- 4.5 Septic System Inspection Date: (if applicable) within n/a days of signed acceptance by SELLER

▶ **5. CLOSING DATE:** The Deed is to be delivered and the Purchase Price paid on 9/14/18 ^{or BEFORE} at 2:00 p.m. (the "Closing Date") at the appropriate Registry of Deeds or such other location within the county in which the Premises is located, as specified by BUYER.

6. MORTGAGE / INSURANCE CONTINGENCY: The Buyer's obligations under this Agreement are contingent upon the Buyer's obtaining a written commitment letter from a conventional mortgage lender for a loan consistent with the contingency term used and the BUYER'S satisfaction with the insurability of the property consistent with the mortgage requirements in purchasing the premises. Should the Buyer be unable to obtain such a commitment letter or satisfactory insurance binder despite diligent efforts, Buyer may cancel this Agreement by written notice received by the Listing Broker or Seller's Attorney, no later than 5:00 p.m. on the Mortgage / Insurance Contingency Date, whereupon all obligations of the parties under this Agreement shall cease and Buyer's deposits shall be promptly returned in full. Buyer's failure to (a) give such written notice or (b) make a good faith mortgage or insurance application by the Mortgage /Insurance Application Date shall be a waiver of the Buyer's right to cancel under this Paragraph. If the Buyer cancels the agreement, BUYER shall attach a copy of the applicable denial letter to BUYER's cancellation notice.

~~**7. INSPECTION CONTINGENCY:** The BUYER'S obligations hereunder are contingent upon BUYER'S receipt, prior to 5:00 p.m. on the Inspection Contingency Date, of written home inspection reports on the Premises satisfactory to the BUYER. Such reports may, at BUYER'S option and expense, include but are not limited to: inspections for structural and mechanical matters, pests, including wood-boring insects, lead paint, mold, asbestos, radon gas, other hazardous substances, underground tanks, septic system, well water and environmental conditions. Should the results of any such test be unsatisfactory to BUYER, BUYER may cancel this Agreement by written notice received by the Listing Broker or Seller's Attorney no later than 5:00 p.m. on the~~

SELLER(S) Initials _____ BUYER'S Initials: CW pg 1 of 6

~~Inspection Contingency Date, whereupon all obligations of the parties shall cease and BUYER'S deposits shall be promptly returned in full. BUYER'S failure to give such notice shall be a waiver of BUYER'S right to cancel under this Paragraph. The BUYER and BUYER'S consultants shall have the right of access to the Premises for the purpose of conducting a home inspection, at reasonable times, upon twenty-four (24) hours advance notice to the SELLER's Agent. In consideration of Buyer's right to inspect and terminate, BUYER acknowledges that by accepting the deed BUYER accepts the condition of the Premises and releases the SELLER, SELLER'S Agents and BUYER'S Agents (which include the Selling and Listing Brokers), from any and all liability relating to any defects in the Premises including, without limitation, water seepage from any source.~~

- ▶ **8. SEWAGE DISPOSAL / SEPTIC SYSTEM:** The SELLER represents that the Premises is not connected to a municipal sewer system. ~~If the premise is not connected to a municipal sewer system, SELLER represents that the Premise is served by a septic system located entirely within the boundaries of the Premises, to the best of their knowledge. The SELLER shall engage a licensed Septic Inspector to perform a System Inspection and to issue a Septic System Report (the "Report") and deliver the Report to the BUYER on or before the Septic System Inspection Date as defined in paragraph 4.5. Should the Report indicate that the system is a "failed system" as defined by Title 5 of the State Environmental Code (310 CMR 15.364), the BUYER may, within 3 days of receipt of report, cancel this Agreement, and all deposits shall be returned to the BUYER.~~
- ▶ **9. POSSESSION:** Full possession subject to existing tenants and occupants shall be delivered at the Closing Date. The premises shall be free of encroachments burdening the premises and of improvements that encroach on adjoining Premises, including but not limited to buildings, septic systems, well and driveway, and has sufficient legal access to a public way.
- ▶ **10. SURVEY:** SELLER represents that no new boundaries are being created by the sale of the Premises. If new boundaries are being created, SELLER shall deliver to BUYER at the Closing a survey of the Premises, in recordable form. The SELLER shall pay for the preparation and recording of the survey, unless otherwise provided herein.
- ▶ **11. FIXTURES:** Included in this sale as part of the Premises, unless expressly excluded, are the usual fixtures belonging to SELLER and used in connection therewith including but not limited to, if any, furnaces, heaters, oil and gas burners and fixtures appurtenant thereto, built-in ranges, dishwashers and disposals, hot water heaters (if not rented), mantels, electric and other lighting fixtures, chandeliers, venetian blinds and window shades, attached mirrors, automatic door openers (with remote controls), installed air conditioners, wall brackets and hangers, built-in bookcases and shelving, all installed stair carpeting and wall to wall carpeting, drapery rods, curtain rods, plumbing and electrical covers, screens, screen doors, storm and other detached windows and doors, blinds, awnings, bathroom fixtures, towel bars, medicine cabinets, radio and television antennas, satellite dishes, fences, gates, hardy shrubs, and fire and burglar alarm systems. The following additional personal property is included:

Excluded items: _____

12. ADJUSTMENTS: Current real estate taxes, water rates, sewer use charges and fuel are to be apportioned as of the Closing Date. Rents are to be apportioned only for the month in which the closing occurs and only when collected by either party. Unpaid rents due SELLER from months prior to the month of the Closing Date, shall be the responsibility of the SELLER to collect. If the real estate tax rate is not set as of the Closing Date, the apportionment of real estate taxes shall be made on the basis of the tax assessed for the most recent preceding year, with a readjustment at the request of either party, when the amount of the current year's tax is set. If the amount of the tax is reduced by abatement, the rebate, less the reasonable cost of obtaining it, shall be apportioned between the parties. *SEE APPENDIX A*

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- ▶ **13. BETTERMENT ASSESSMENTS:** SELLER represents that the property is not subject to a betterment assessment. If the property is subject to a betterment assessment, the SELLER agrees to pay the total outstanding betterment assessment at the closing unless the Buyer agrees to purchase the property subject to, and assumes the payment of the betterment assessment.
- ▶ **14. TITLE:** The Premises shall be conveyed by a good and sufficient quitclaim deed unless otherwise specified herein (accompanied by a Certificate of Title, if registered), conveying a good, clear record, marketable and insurable title, free of all encumbrances and exceptions, except
 - a) Real Estate Taxes assessed or to be assessed on the Premises to the extent that such taxes then are not yet due and payable.

- b) Federal, state, and local laws, ordinances, by-laws, and rules regulating the use of land, particularly environmental, building, zoning, health, rent control, and condominium conversion laws, if any, applicable as of the date of this Agreement, provided that as of the Closing Date, the Premises may be used as of right for single family residential use or, if the Premises is/is not a single family residence, the Premises may be used as of right for _____
- c) Existing rights, if any, in party or partition walls; and
- d) Utility easements in the adjoining ways.

15. USE OF PROCEEDS TO CLEAR TITLE: To enable SELLER to make conveyance as herein provided, the SELLER may at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, all instruments so procured to be recorded simultaneously with the delivery of said deed or at such later time as shall be reasonably acceptable to BUYER, and provided further, with respect to discharges or mortgages from insurance companies, banks and credit unions, such discharges may be recorded within a reasonable time after the recording of the deed.

16. EXTENSION: If, after a reasonable and diligent effort, SELLER is unable to deliver possession as defined in paragraph 9 or convey title of the Premises as required hereunder, upon notice by either party, prior to the Closing Date, this Agreement shall be automatically extended for 30 days (or if BUYER's mortgage commitment sooner expires to a date one business day before the expiration of such commitment). SELLER shall remove all mortgages, attachments and other encumbrances incurred or assumed by SELLER which secure the payment of money, provided the total amount thereof does not exceed the Purchase Price, and SELLER shall use reasonable and diligent efforts to remove other defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof. At the end of the extended period, if all such defects have not been removed, or the SELLER is unable to deliver possession, or the Premises do not conform with the requirements of this Agreement, BUYER may elect to terminate this Agreement and to receive back all deposits, upon receipt of which all obligations of the parties hereto shall cease.

17. STANDARDS: Any title matter or practice arising under or relating to this Agreement which is the subject of a Title Standard or a Practice Standard of The Real Estate Bar Association for Massachusetts shall be governed by said Standard to the extent applicable.

▶ **18. WATER:** SELLER represents that the Premises is not served by a municipal water system. ~~If the Premises is not served by a municipal water system, SELLER represents that the Premises is served by either a well / a private water company (strike one). (If a well is present, it is located entirely within the boundaries of the Property and contains no defects known to SELLER)~~

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19. LEAD PAINT LAW: BUYER acknowledges that under Massachusetts Law, on homes constructed prior to 1978, and whenever a child under six (6) years of age resides in any premises in which paint, plaster or other accessible material contains dangerous levels of lead, the owner of said premises must remove or cover said material so as to make it inaccessible to children under six (6) years of age. The BUYER further acknowledges that, prior to the signing of this Agreement, the SELLER and Broker(s) have (a) provided to the BUYER the standard notification form from the Massachusetts Department of Public Health concerning lead paint, the certificate for which BUYER has signed, which is attached hereto; (b) informed the BUYER of the availability of inspections for dangerous levels of lead; and (c) verbally informed the BUYER of the possible presence of dangerous levels of lead and the provisions of the lead paint law and regulations, found in 105 CMR 460.100D. Notwithstanding, SELLER is under no obligation to the BUYER to remove lead paint, which may be present in the Premises.

20. ASBESTOS: The BUYER acknowledges that the Department of Public Health has issued regulations governing the maintenance, repair and removal of asbestos material by any owner of real property and that asbestos material is a common insulation material on heating pipes, boilers, and furnaces.

21. RADON GAS: Radon gas is a radioactive gas, which occurs naturally in certain areas and may accumulate in some buildings in a high enough concentration to be a potential health hazard.

▶ **22. UNDERGROUND STORAGE TANKS:** The parties acknowledge that the Massachusetts Board of Fire Prevention has issued regulations governing the maintenance, repair, and removal of underground storage tanks to prevent and detect leakage of tank contents into surrounding soil and water supplies. The SELLER hereby discloses that to the best of SELLER's knowledge, there are not one or more underground storage tank(s) at the

Premises. If there are one or more underground tanks at the Premises, the SELLER further discloses that the tanks have not been used within the past six (6) months exclusively for the storage of fuel oil for consumption of the Premises and to the best of the SELLER'S knowledge there has been no release or leakage of oil from such tank(s). If the Premises is not in compliance with 527 CMR 9.00 et seq. and BUYER does not cancel this Agreement, pursuant to paragraph 7, BUYER shall be obligated to purchase the Premises and shall be deemed to have assumed the obligation to bring the Premises into compliance with 527 CMR 9.00 et. seq.

23. CONDITION OF PREMISES AT CLOSING: Upon delivery of the Deed, the Premises and all appliances therein and utilities serving the same shall be in their present condition, reasonable use and wear of same excepted. The Premises is to be left broom clean and all personal property and rubbish removed. With respect thereto BUYER shall have the right to walk-through the Premises within twenty-four hours prior to the closing and if the sale is completed subsequent to said walk-through or if the walk-through is waived by BUYER, the foregoing condition of the Premises shall, as between the BUYER and SELLER and their representatives (if applicable), be conclusively presumed to be acceptable to BUYER regardless of condition.

24. NOMINEE: BUYER may require the conveyance to be made to another person, persons, or entity ("Nominee"), upon notification in writing delivered to SELLER at least five days prior to the Date of Closing. The appointment of a Nominee shall not relieve BUYER of any obligation hereunder. Any Note or mortgage or other document to be delivered from BUYER to SELLER shall be executed by or unconditionally guaranteed by BUYER, unless otherwise specified herein.

25. CLOSING: Simultaneously with the delivery of the deed, SELLER shall execute and deliver:

- a) ~~Smoke Detector Certificate of Compliance;~~
- b) ~~Carbon Monoxide Certificate of Compliance;~~
- c) ~~Wood Stove permit, where applicable~~
- d) Affidavits and indemnities with respect to parties in possession and mechanic's liens to induce BUYER'S title insurance company to issue lender's and owner's policies of title insurance without exception for those matters;
- e) A bill of sale for all personal property included as part of the sale, if requested by the BUYER.
- f) In the case of new construction, a Certificate of Occupancy and an assignment of any and all builder's, SELLERS, or manufacturer's warranties on the Premises or on any appliances or other property included in the sale.
- g) FNMA Vendor's affidavit FNMA 1099;
- h) An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulation issued thereunder, which states, under penalty of perjury, the SELLER'S United States taxpayer identification number, that the SELLER is not a foreign person, and the SELLER'S address (the "1445 Affidavit");
- i) Internal Revenue Service Form W-8 or Form W-9, as applicable, with SELLER'S tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Service and stating SELLER is not subject to back-up withholding.

26. RISK OF LOSS-INSURANCE AND DAMAGE PRIOR TO CLOSING: Prior to the delivery of the Deed, the risk of loss shall be on the SELLER. SELLER shall continue to carry the fire and extended coverage insurance presently maintained on the buildings on the Premises (or, upon the written request of the BUYER, and at the BUYER'S expense, in such greater amount as BUYER may reasonably request). If the Premises is damaged by fire or other casualty prior to the Closing Date, and SELLER has not restored the Premises to their former condition, the BUYER has the option to take an assignment of SELLER'S insurance proceeds or terminate this Agreement. If BUYER elects to purchase, SELLER shall assign all insurance proceeds to BUYER and the Purchase Price shall be reduced by:

- a) the net amount of any insurance proceeds which a mortgagee has applied to the mortgage debt, less any amount reasonable expended by SELLER for partial renovation.
- b) the amount of any insurance proceeds received by SELLER; and
- c) any deductible amount under SELLER'S insurance policy. SELLER will credit BUYER the amount of deductible toward purchase price.

27. ACCEPTANCE OF DEED: Acceptance of the deed by BUYER shall be a full performance and shall discharge every agreement and obligation herein except any agreements which by their terms are to be performed after the Closing. THE BUYER FURTHER ACKNOWLEDGES THAT THE BUYER IS PURCHASING THE PREMISES 'AS IS' and BUYER has not relied upon any statements or representations, oral or written, regarding the condition or

SELLER(S) Initials _____ BUYER'S Initials: GW pg 4 of 6

value, present or future, of the Premises made either by the SELLER or the SELLERs Agents, which are not otherwise contained in this Agreement and that the SELLER's Agents are acting exclusively upon behalf of the SELLER. All oral or written representations between the parties are merged herein. BUYER further acknowledges it is the BUYER'S responsibility prior to closing to obtain any and all governmental permits for any intended use of the Premises including, but not limited to, health or environmental department, planning or zoning board approvals. SELLER and SELLER'S representative(s) make no representations as to the adequacy of the Premises being conveyed for BUYER'S intended purposes, disclosed or undisclosed.

28. MERGER: The parties agree that this Agreement contains all of the terms and conditions of this transaction. It is mutually agreed that any oral or prior written representation made by either party prior to the execution of this Agreement is null and void. This Agreement shall be construed as a legal contract under seal and is binding upon the parties, and their respective heirs, successors, and assigns.

29. SURVIVAL: Notwithstanding any presumptions to the contrary, all covenants, conditions, and representations contained in this Agreement, which by their nature, implicitly or explicitly, involve performance in any particular manner after the Closing and delivery of the deed, or which cannot be ascertained to have been fully performed until after the Closing and delivery of the deed, shall survive the Closing.

30. TERMINATION: In the event the BUYER terminates this Contract in accordance with the provisions herein relating to "Mortgage / Insurance Contingency," "Risk of Loss Insurance," "Inspection Contingency," "Septic System Inspection", default by SELLER, or the failure of any contingency shown under special conditions, the Escrow Agent shall forthwith refund such deposit money together with accrued interest thereon (if applicable) to the BUYER.

▶ **31. BUYER'S DEFAULT:** If the BUYER defaults, BUYER shall be liable to the SELLER in the amount of deposit % of the purchase price, as liquidated damages, which shall be SELLER's exclusive remedy in law or in equity. The deposits shall be applied to the payment of said liquidated damages.

32. RELEASE OF DEPOSITS: The deposits (which term shall include all interest earned, if any) made hereunder shall be held in escrow, subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement. The deposits may not be released from escrow without the assent of both BUYER and SELLER. The recording of the deed to the Premises shall constitute such assent. In the event of any disagreement, the Escrow Agent shall retain the deposits pending written instructions by both the SELLER and BUYER, or by a court of competent jurisdiction. So long as Escrow Agent served in good faith, BUYER and SELLER each agrees to hold harmless Escrow Agent from damages, losses, or expenses, arising out of this Agreement or any action or failure to act, including reasonable attorney's fees, related thereto. BUYER and SELLER acknowledge that the Escrow Agent may be counsel or fiduciary to one of the parties and agree that Escrow Agent may continue to act as such counsel or fiduciary notwithstanding any dispute or litigation arising with respect to the deposits or Escrow Agent's duties.

33. AGREEMENT TO MEDIATE DISPUTE OR CLAIMS: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement, or the brokerage services provided in relation to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS"). Disputes and claims shall specifically include, without limitation, representations made by the SELLER, the BUYER, or the Broker(s) in connection with the sale, purchase, finance, condition, or other aspect of the Premises to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and / or fraud. The mediation conference shall be held within 30 days from the date on which the mediator receives notice of the dispute. If the parties reach a settlement, they shall both sign a settlement agreement. If the parties cannot reach a mutually agreeable settlement, they may arbitrate or litigate the dispute without regard to the mediation procedure. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the right to mediate under this paragraph, nor shall such filing constitute a breach of the duty to mediate. The provisions of this paragraph shall survive the closing.

34. GOVERNING LAW: This Agreement is to be governed by the laws of the Commonwealth of Massachusetts.

35. LICENSEE-CONSUMER RELATIONSHIP: BUYER and SELLER acknowledge that they have been provided with a completed copy of the 'Mandatory Licensee-Consumer Relationship' form, as mandated by the Massachusetts Board of Registration of Real Estate Brokers and Salespersons.

36. SPECIAL CONDITIONS / ADDENDA:

- 1. Parties agree that no broker is being used in this transaction.
- 2. Purchase shall be contingent upon Buyer's obtaining a satisfactory home-equity loan on Buyer's principal residence.
- 3. Seller agrees to remove and release the premises from existing Ch. 61 Tax Lien status prior to closing and be solely responsible for payment of real estate taxes associated with said removal.
- 4. This contract is subject to review by attorneys for both parties within five (5) business days of Seller's acceptance.

See addendum A for full back ch 61 treatment

OS
OS

37. TERMINATION OF OFFER: This offer is subject to acceptance by SELLER by (time) ~~4 p.m.~~ and (date) ~~7/25/18~~ after which time this offer is void and terminated, and deposit paid by BUYER shall be returned.

38. TIME: Time is of the essence of all provisions of this agreement, unless otherwise specified elsewhere in this agreement. Any reference to "days" shall mean calendar days and is not intended to mean only business days.

39. FACSIMILE: This agreement may be executed by facsimile, which signatures shall be deemed originals for all purposes. Further, this agreement may be executed in duplicate counterpart originals; with all such counterparts constituting singular binding agreements, notwithstanding the signatories may not have the same counterpart.

40. THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL: Executed under seal by the Parties hereto as of the latter of all dates set forth below, and incorporating all provisions on pages 1 through 6, together with referenced additions, if any.

Chris Swann
SELLER: SWANN REAL ESTATE TRUST DATE

Chris Williams LLC 7/20/18
BUYER: CHRIS WILLIAMS LLC DATE

Michael J. Considine
SELLER: DATE

Chris Williams, Manager 7/20/18
BUYER: DATE

John Graziano
SELLER's Attorney's Name

Michael J. Considine
BUYER's Attorney's Name



FOR REFERENCE: SELLER/SELLER AGENT TO COMPLETE BEFORE RETURNING CONTRACT TO BUYER/BUYER AGENT			
Many dates in this agreement refer to the final signed acceptance date of the seller(s). Please calculate the actual dates of contingencies and deadlines starting from the date of the last seller(s) signature, making sure to include all calendar days and not only business days as paragraph 38 dictates.			
Mortgage / Insurance Application:.....	within	<u>10</u> days of signed acceptance by Seller	= on or before <u> / / </u>
Mortgage / Insurance Contingency:.....	within	<u>45</u> days of signed acceptance by Seller	= on or before <u> / / </u>
Inspection Contingency:.....	within	<u>n/a</u> days of signed acceptance by Seller	= on or before <u> / / </u>
Septic System Inspection: (if applicable)	within	<u>n/a</u> days of signed acceptance by Seller	= on or before <u> / / </u>
Second Deposit Due & Payable.....	within	<u>n/a</u> days of signed acceptance by Seller	= on or before <u> / / </u>
Closing Date.....			= on <u>9/14/18</u>

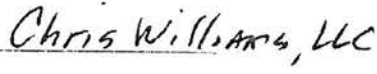

"ADDENDUM A"

SWANN REAL ESATE TRUST to WILLIAMS, INC.

It is mutually agreed that the following provisions are incorporated into and hereby become a material part of the Purchase and Sale Agreement between the parties referenced above.

1. Seller will notify the Town pursuant to C. 61 and seek a waiver of any right of first refusal. Seller will pay any roll back taxes at closing but Buyer will contribute \$5,0000.00 towards same.
2. In the event that any provisions of this Addendum shall conflict with provisions of the Purchase and Sale Agreement, the provisions of this Addendum shall control.


SELLER


BUYER



THIS INSTRUMENT MUST BE DULY FILED FOR RECORD OR REGISTRATION

State Tax Form 17D

GT. BARRINGTON
Name of City or Town

OFFICE OF THE BOARD OF ASSESSORS
FOREST LAND TAX LIEN

The Board of Assessors of the city/town of GT. BARRINGTON hereby states that it has accepted and approved the application of JOHN BUTLER SWANN TRUSTEE OF SWANN REAL ESTATE TRUST owner or owners of the hereinafter described land for valuation, assessment and taxation of such land under the provisions of General Laws, Chapter 61 commencing on January 1, 1981.

This said land, of 397.1 acres, being managed under an approved Forest Management Plan as shown by State Forester's certificate # OAB-82-1

DESCRIPTION OF LAND

ASSESSORS' MAP 35 LOT 2 AND 9 DEED BOOK 381 PAGE 53

Statement made this 21ST day of DEC., 1981

[Signature]
BOARD OF ASSESSORS

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE ss. dec 21, 1981
Then personally appeared PAUL L. HAMMER, a member of the Board of Assessors of the city/town of GT. BARRINGTON and acknowledged the foregoing instrument to be the free act and deed of the Board of Assessors of GT. BARRINGTON before me. *[Signature]*
Notary Public



December 28, 1981, at 2 o'clock and 55 minutes P
Southern Berkshire Registry of Deeds
Registry District

Received and entered with
Book 502, Page 161, Document No. _____ Certificate of Title No. _____
Attest: *[Signature]*
Registry

THIS FORM APPROVED BY COMMISSIONER OF REVENUE
FORM 880 HOBBS & WARREN, INC., BOSTON, MASS. REVISED 1981



1981 00502161
Bk: 502 Pg: 0161 Doc: FLIEN
Page 1 of 1 12/28/1981 12:00PM

WAIVER

We, the undersigned Selectboard of the Town of Great Barrington, Massachusetts, having been advised by the Swann Real Estate Trust, of the proposed conveyance by it of certain land, being Assessors Map 35, Parcel 9 (29.82 acres) and Parcel 20a (3.51) acres for a total of 33.33 acres, said land being on Stockbridge Road, Great Barrington, Massachusetts, and being aware that the said land is presently taxes under Massachusetts General Laws Ch. 61 (see lien recorded in Book 502, Page 161) hereby release any rights which the town may have to purchase same as they relate to said conveyance, which rights arise under the said Ch. 61.

Signed this _____ day of _____, 2018.

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared _____, _____, _____, _____ proved to me through satisfactory evidence of identification, being _____, to be the person(s) whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires _____

Helen Kuziemko

From: Chris Rembold
Sent: Thursday, November 15, 2018 12:49 PM
To: Helen Kuziemko; Jennifer Tabakin
Cc: Great Barrington Conservation Commission
Subject: Ch 61 - Swann Property

Jennifer, for the SB 11/26 meeting... We were in close communication with conservation organizations who had expressed an interest in exercising the Right of First Refusal (ROFR) on the Town's behalf. As you can see below, while the interest is strong, there does not seem to be a viable path forward. Therefore assignment of the ROFR is no longer a viable option.

Chris

Christopher Rembold, AICP
Town Planner
Town of Great Barrington
(413) 528-1619, ext. 7

From: David Santomenna [<mailto:dsantomenna@thetrustees.org>]
Sent: Wednesday, November 14, 2018 2:57 PM
To: Chris Rembold; shepevans@yahoo.com; Narain Schroeder; Milanese, Pete (FWE)
Subject: Swann Sawmill Property

Hello all---I wanted to pass along the update that despite significant interest in adding the Swann parcel to the base of protected land at Monument Mountain, due to a lack of available funding in the required compressed timeframe, we will not be requesting an assignment of the Town's Chapter 61 right of first refusal. Thanks to all for your assistance in scoping out this opportunity over the last few weeks.

Regards,
David



David T. Santomenna
Associate Director of Land Conservation
Trustees | Boston
200 High Street, 4th Fl. | Boston, MA 02110

dsantomenna@thetrustees.org | [978.921.1944](tel:978.921.1944) x1918 (office) | [978.500.3201](tel:978.500.3201) (cell)



thetrustees.org

Town Hall, 334 Main Street
Great Barrington, MA 01230



Telephone: (413) 528-1619
Fax: (413) 528-2290

TOWN OF GREAT BARRINGTON
MASSACHUSETTS

PLANNING BOARD

September 18, 2018

Selectboard
Town Hall
334 Main Street
Great Barrington, MA 01230

RE: Right of First Refusal for Chapter 61 Land
671 Stockbridge Road

Dear Members of the Selectboard:

The Planning Board discussed a recommendation for the Chapter 61 land at 671 Stockbridge Road. The Board voted to recommend that the Selectboard investigate exercising its Right of First Refusal as the parcel being discussed may have significant conservation value due to its close proximity to Monument Mountain and the Agawam Conservation area.

Thank you for your attention to this matter.

Sincerely,

Kimberly L. Shaw
Planning Board Secretary

Cc: Chris Rembold, Town Planner