

**TOWN OF GREAT BARRINGTON
SELECTMEN'S MEETING
MINUTES
MONDAY, MARCH 14, 2011
7:00 P.M. – REGULAR SESSION – BOARD ROOM**

PRESENT: WALTER ATWOOD
ALANA CHERNILA
DEB PHILLIPS
SEAN STANTON
KEVIN O'DONNELL, TOWN MANAGER

STEPHEN BANNON- Not Present

7:00 P.M. – Public Session – Board Room

1. CALL TO ORDER:

Sean Stanton called the meeting to order at 7:00 P.M.

2. APPROVAL OF MINUTES:

February 7, 2011 – Special Meeting

MOTION: Deb Phillips: To accept the minutes from February 7, 2011 – Special Meeting

SECOND: Bud Atwood

VOTE: 4-0

February 28, 2011 – Regular Meeting

MOTION: Bud Atwood: To accept the minutes from February 28, 2011 – Regular Meeting

SECOND: Deb Phillips

VOTE: 4-0

March 2, 2011 – Strategic Planning Priorities

MOTION: Deb Phillips: To accept the minutes from March 2, 2011 – Strategic Planning Priorities

SECOND: Alana Chernila

VOTE: 4-0

3. SELECTMEN'S ANNOUNCEMENTS/ STATEMENTS:

A. Discussion re: Communication Protocol – E-mails

Sean Stanton stated that there have been E-mails sent to the Board and going forward, he will read any questions that come through at the Selectmen meetings and have a discussion about them then.

B. Discussion re: Request from Chip Elitzer – Retiree Health Insurance- Sean Stanton read the E-mail from Chip Elitzer regarding retiree health insurance. Mr. Elitzer said that tax payers want to know what the retiree health insurance will cost them over the next 20 years. He offered pro-bono work in making a spreadsheet to determine premiums, contributions, etc. He stated that the model will be policy neutral and keystroke changeable. He asked that the Board instruct the Town Manager to fill in the data sheet provided in order to go forth with the project.

Bud Atwood replied that according to GASB Law, they are required to do this. He said that HIPPA laws would pose a problem for sharing the information with him. He said that it is a great offer but doesn't believe that it is necessary.

Kevin O'Donnell stated that the Berkshire Regulatory Group provides a report every 2-3 years and he anticipates that the report will be completed by November. He stated that an actuary completes this report and Mr. Elitzer is not an actuary.

Deb Phillips stated that it is not necessary to run the numbers again. She stated that it will be helpful to know what the Board has control over and what they do not.

Bud Atwood suggested that they invite those with questions to come in and look at the report. Kevin O'Donnell said that later this fall, when the report is completed, he could have the accountant come in and explain everything. He will see if he can schedule this before one of Board of Selectmen's meetings.

Sean Stanton said that he will follow-up with Chip and let him know their decision.

C. Discussion re: Request from Jenny Clark – Website

Sean Stanton read the e-mail from Jenny Clark. She suggested that there be a sign-up area on the first page of the website which will make it self-selective.

Sean Stanton replied that we are doing a lot with communication and plan on doing more. He said that the information is there and at some point, people have to take responsibility and look for the information themselves.

Kevin O'Donnell stated that he and Bob O'Haver will be meeting with virtual Town Hall and will explore other options.

Deb Phillips asked if there are notices that go out for people who sign up for E-mails. (i.e. – E-mail blasts promoting what is going on)

Kevin O'Donnell said that he will get back to them after his meeting.

D. Alana Chernila thanked those that put together the Lake Mansfield Alliance event.

Deb Phillips said that there is a Great Barrington page on the Appalachian Trail website. She encourages those that use the trail to send in information, pictures and such to update the page.

Deb Phillips also said that in looking at things that drive the budget, toxic environment should be a focus. She wrote a letter to the School Committee suggesting that this be a topic for their research and discussion.

4. TOWN MANAGER'S REPORT:

A. Police Chief – Introduction of new police dog

Jason LaForest was welcomed as a new full time police officer.

Police Chief Walsh stated that Sgt. Bartini and officer Ullrich came to him with a proposal to establish a K-9 unit. When the Chief looked back on all the times that they required the use of a K-9 or could have used one, the number was compelling. Chief Walsh said that the Sgt. and Officer deserve all of the credit as they did the research, training, etc. They were able to raise \$30,000 from the community to establish the K-9 unit. (26 donors) The chief said that the Pittsfield Police department K-9 unit has given many hours of help with their knowledge and experience.

Chief Walsh and Officer Ullrich thanked the top 7 donors (Iredale Mineral Cosmetics, Comfort Inn, Camp Eisner, GB Fire Association, So. Berk. Ambulance Squad, Eagleton School and Black Rock Foundation) and presented them with plaques.

Officer Ullrich introduced the K-9, Jori, who is 20 months old and still in training.

B. Update for Strategic Planning Priorities

Kevin O'Donnell gave the Board the updated priorities and said that if they approve, he will disseminate and put it up on the website.

Alana Chernila spoke to the 4th priority- explore the use of the website- and said that she thought the priority was bigger.

After some discussion, it was decided to change the wording of the priority to take out, "with the community" and to add, "improve communication by exploring expanded methods including the website and other communication avenues such as streaming meetings, you-tube and facebook.

MOTION: Bud Atwood: To accept the updated strategic planning priorities, including the discussed amendment, and to direct Kevin to proceed with them.

SECOND: Deb Phillips

VOTE: 4-0

C. BIFF request for June Film Festival

Kelly Vickery said that they are planning a great Film Festival that will include a free family film. She asked if they are allowed to serve alcohol at the film festival. (Not the family film night)

The Board said they feel comfortable with this plan and told her to come back with proper permit applications.

D. BRPC/Mackenzie Greer – presentation of hazard mitigation plan
Mackenzie Greer presented the hazard mitigation plan and said that it is an effort to understand hazards in the County. She stated that the Board will be asked to approve the plan, which will give them the opportunity to receive grant funds. She also read excerpts from the Great Barrington portion of the plan. Emergency responders were included in the process to see what their concerns are over-all. This is the opportunity to provide feedback to her and then she will put it out to MEMA and FEMA and will report back at the beginning of the year when the final plan is in place.
She stated that people can go to BerkshirePlanning.org website to read more and ask questions.

Members of the Board pointed out redundancies, which Mackenzie will correct.

5. CITIZEN SPEAK TIME: David Magadini said that he has written a letter to the Attorney General stating that there were procedural violations at the February 9th Special Town Meeting. He said that people were not properly notified of the meeting and that there was confusion at the meeting in regards to the meaning and effect of the vote. He feels that the vote should be taken again. He submitted the letter to the Board.
David Magadini also expressed his concern with the sale of the Fire House. He stated that it would be in the ‘utmost good of the people of Great Barrington’ that the re-use of the Firehouse is fair agreement and not a ‘bargain sale’. He feels that an agreement to rent may be wise.

6. LICENSES OR PERMITS:

A. David A. Smith, Jr./J&D Enterprises, Inc. D/B/A Smitty’s Sandwich Shop for 2011 Common Victualler License at 230 Stockbridge Rd.

MOTION : Bud Atwood to approve license

SECOND: Deb Phillips

VOTE: 4-0

B. Massachusetts Electric Company D/B/A National Grid and Verizon New England, Inc. for permission to install one (1) Jo Pole and anchor on Silver St. beginning at a point approximately 380 feet east of the centerline of the intersection of Newsboy Monument Lane.

David Multhrop – 35 Silver St.- stated that there has been no other communication regarding this until he found out that there was a meeting set for tonight.

The abutters’ main concerns were that the lines would run where the water lines are and also that the pole takes away the view and beauty.

Ray Elling – stated that he had offered to go underground and pay for half and was told no.

The homeowner stated that, in sympathy with her neighbors, she has been working with National Grid for 7 months and they have thought through every option and have no others to offer. She said that she deserves power.

MOTION: Deb Phillips to approve the installation of the pole

SECOND: Alana Chernila

VOTE: 1-3 Alana Chernila in favor; Deb, Buddy and Sean against

Deb Phillips stated that there seems to be a lot of conversation to be had with all parties and recommended that they get together with the engineer on the job and go through the options.

MOTION: Deb Phillips to re-consider the previous vote

SECOND: Bud Atwood

VOTE: 4-0

MOTION: Deb Phillips to table for 2 weeks

SECOND: Bud Atwood

VOTE: 4-0

7. NEW BUSINESS:

A. BOS-Referral of proposed zoning amendment for the Housatonic Mill Revitalization Overlay District (HMROD) to the Planning Board

MOTION: Deb Phillips to refer the proposed zoning amendment for the Housatonic Mill Revitalization Overlay District to the Planning Board

SECOND: Alana Chernila

VOTE: 4-0

MOTION: Deb Phillips to amend the original motion to refer the proposed zoning amendment for the Housatonic Mill Revitalization Overlay District to the Planning Board with the condition that the BOS be the special permit granting authority.

SECOND: Bud Atwood

VOTE: 4-0

B. BOS – Approval of Iredale Tax Increment Agreement (TIF)

MOTION: Deb Phillips to approve the Iredale Tax Increment Agreement

SECOND: Alana Chernila

VOTE: 4-0

C. BOS – Recommendation to the ZBA on the Special Permit Application and on the petition for a use variance of new Cingular Wireless PCS, LLC by AT&T Mobility Corp., its manager, to replace telecommunications antennas atop Fairview Hospital at 29 Lewis Avenue.

MOTION: Bud Atwood to send positive recommendation

SECOND: Alana Chernila

VOTE: 4-0

8. SELECTMENS TIME:

Alana Chernila thanked Karen Ball for all of her years of service to the library.

9. MEDIA TIME:

David Scribner said that he has been attending the Housatonic School Campus Task Force meetings and he gives a 'thumbs up' to Kevin for great leadership and moderating. He said that there is great civic engagement and great ideas.

10. ADJOURNMENT:

On a motion by Bud Atwood, seconded by Deb Phillips, the Board adjourned its meeting at 8:47 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cara Becker".

Cara Becker
Recording Secretary

P.O. Box 589
Great Barrington, Massachusetts 01230
March 2, 2011

Attorney General Martha Coakley
One Ashburton Place
Boston, MA 02108-1518

Dear Attorney General Martha Coakley:

I am writing to complain about the procedural violations that occurred regarding the recent Special Town Meeting of Great Barrington that was held at Monument Mountain Regional School on February 9, 2011, which began at 6:00 PM on that date.

At the beginning of the Special Town Meeting, just after the warrant had been declared valid, and the Special Town Meeting had been declared as properly called, by the Moderator, I rose to raise a point of order just as the first speaker on the first article began speaking just seconds after the calling of the Special Town Meeting had been declared valid by the Moderator. I rose and called for a point of order by saying "point of order" several times as the first speaker began speaking. My attempt to raise a point of order regarding improper procedure in calling the Special Town Meeting was ignored by the Moderator, and the Moderator refused to hear my point of order, and the first speaker was allowed to continue speaking. This violation of procedure is in itself intrusive of the rights of voters of Great Barrington to be heard on public issues, and such disregard for the right of freedom of speech should not be allowed.

With regard to the point(s) of order attention was to be called to the following flagrant violations.

The warrant was improperly called because the voters of the Town of Great Barrington had not been properly notified because the subject matter contained in the warrant was not the subject discussed at the Special Town Meeting. There were two articles on the warrant: Article 1 and Article 2.

Article 1 cited Chapter 164 of the General Laws of Massachusetts and called for a municiple lighting plant. The subject of Chapter 164 is Gas and Electric Utilities. What in fact was discussed was the bringing of broadband to Great Barrington. Broadband by contrast, is contained in Chapter 23A section 3 and Chapter 40 J section 6B and Chapter 40J section 6C. For context see the purposes that are contained in 40 J section 6C.

Since the warrant cited Chapter 164 of the General Laws of Massachusetts as authority for the calling of Article 1 of the Great Barrington Special Town Meeting of February 9, 2011, instead of Chapter 23A section 3, Chapter 40 J section 6 B, Chapter 40 J section 6C and Chapter 23A section 2 as authority for a broadband initiative, the voters of Great Barrington were not properly notified of the subject matted contained in Article 1 of the Special Town Meeting of Great Barrington of February 9, 2011. Since the voters of Great Barrington were not properly notified of the subject matter to be discussed by Article 1 the calling of the Special Town Meeting of February 9, 2011 is invalid.

Since the calling of the Special Town Meeting of February 9, 2011 for Article 1 is invalid, there is no Special Town Meeting to add anything on to. The vote on Article 2, the withdrawal of the downtown redo plan is therefore invalid.

It should also be noted that when the vote on the downtown redo plan was taken, the Moderator did not announce previous to the vote on the downtown redo plan what would be the effect of either a YES or NO vote on this article. The voters were not therefor properly notified of the effect of their vote on this issue.

It should also be noted that while the meeting was in progress, on the Article 1, a number of people came in and sat in the front two or three rows on the far left side of the stage as view by the voters attending. I estimate these people numbered between 20 and 30 people. One of the Town Clerks inquired of the Moderator as to who these people are. The Moderator responded to this Town Clerk by saying: These people are non-resident voters.

There is no such thing as a non-resident voter in a town meeting. This violation in and of itself is sufficient to nullify the entire Special Town Meeting of February 9, 2011.

Finally it also needs to be noted that the warrant was not properly posted. I first observed the posted warrant that was posted in the Great Barrington Post Office at 6:45 PM on January 27, 2011. The warrant had been date stamped at 1:17 PM on January 26, 2011. A Special Town Meeting, according to the Massachusetts General Laws Chapter 39 section 10 requires notification of at least 14 days notice before any Special Town Meeting. According to the computation of time according to Rule 6 of Civil Procedure:

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

The time computed with regard to the notification of the voters of the Special Town Meeting of February 9, 2011, when computed in accord with Rule 6 of Civil Procedure is less than the 14 days required by Chapter 39 section 10 of the Massachusetts General Laws. The Special Town Meeting of February 9, 2011 is therefore improperly called and is therefore invalid.

For all the reasons stated above, the vote on Article 1 and the vote on Article 2 is invalid.

Due to all the invalidities as explained above, opportunity should be given to reconsider the vote on both these articles at the Annual Town Meeting in May of 2011.

Sincerely,



David Magadini
1 Stanley Park (voting address)
P.O. Box 589
Great Barrington, Massachusetts 01230