

**Brandon Planning Commission Meeting - Draft
December 7, 2020**

Board Members Present: Michael Shank, Lowell Rasmussen, Ralph Ethier, Allie Walter, Allie Breyer, Stephanie Jerome

Others Present: Jeff Biasuzzi

1. Call to order

Michael Shank, Chair, called the meeting to order at 6:02PM.

2. Agenda Approval

A motion was made by Stephanie Jerome to approve the agenda. **The motion passed.**

3. Approve Meeting Minutes – November 2, 2020

A motion was made by Lowell Rasmussen to approve the Planning Commission minutes of November 2, 2020, as presented. **The motion passed.**

4. Zoning Administrator's Report

Jeff Biasuzzi provided a Zoning Administrator's report. Permit activity has slowed down due to the season and the pandemic. There was one permit approved. Mr. Biasuzzi will be back at the town office on Tuesday and Friday mornings. He is starting to see some inquiries and planning happening for the new year for projects to be ready to go by spring. Mr. Biasuzzi wished everyone a happy and healthy holiday.

5. Noise Ordinance Discussion

Jeff Biasuzzi had contacted VLCT for a template that was distributed to the Committee. He also researched where there were noise ordinances and noted there is not a lot of consensus on this subject. It was noted the Police Chief had advised the language in the Zoning Ordinance is unenforceable and it was recommended there could be a stand-alone ordinance. Mr. Biasuzzi advised there are two basic formats; one that is analytical that uses something to measure the level of sound with the ordinance having specific criteria concerning where, distance, calibration of the equipment, where the noise was measured from, etc., but this is difficult to adhere to for small towns. The other option is more general and qualitative, similar to a nuisance ordinance. He noted there are good pieces of language to take from a number of sources. Michael Shank opened discussion of noise models that were researched from other towns. Lowell Rasmussen liked the VLCT format understanding that it is not one size fits all but touches the bases that might come up, noting it could be a starting point for a format. Mr. Rasmussen asked if the Town has a decibel meter. Mr. Biasuzzi advised the Town does not have a decibel meter, except for a couple of apps on police officers' phones, which might not be enforceable in court. Mr. Shank provided the following links about police departments' uses: https://www.hgazette.com/news/local_news/police-use-meters-to-measure-neighborhood-noise-issue-fines/article_339099b2-7ad8-5659-9d6a-20384951fe28.html and <https://yourvalley.net/apache-junction-independent/stories/decibel-meter-new-tool-for-enforcing-apache-junction-noise-ordinance,183401>.

Jeff Biasuzzi stated in his experience, a noise issue is more personal relation-based, rather than the incident itself. If it is a repeated incidence, it is not going to improve the relationship with neighbors, so he does not know if one method is better than the other and suggested consulting police departments that have information on this. Mr. Biasuzzi has reached out to other Zoning Administrators about noise ordinances but has not received any responses. Stephanie Jerome stated a town that uses decibels is Williston and there are many towns that do not have zoning at all on this item. It was questioned if there are problems in Town. Michael Shank advised that he is aware of issues in Town that involve ATVs, bikes and cars with loud exhausts, weapons, and animals. Ms. Jerome stated there is some language in the Zoning Ordinance concerning

weapons. Mr. Shank suggested the Town could benefit from a noise ordinance, but also noted it is not too unreasonable for neighbors to work things out and stated it might behoove the Town to create a community council or committee to work out disputes that might be manageable. It was thought that part of the discussion should also be about how to educate and raise awareness, as enforcement should be the last option. Ms. Jerome suggested the Town needs an ordinance but should be a simple ordinance. Lowell Rasmussen stated it needs to be determined who would enforce the ordinance and if it is the Police Department, he would be interested in understanding how they would approach a noise ordinance and whether they think it is something the community needs to address. Mr. Biasuzzi stated there is the environmental court process that is for zoning ordinance violations that is time consuming and expensive for the Town and the litigants. Another option addresses less serious violations that may be a good approach to start with, which is a civil court process. Someone could be authorized to write tickets and there would be a clear schedule of penalties, as without a schedule, the ordinance is unenforceable. A first-time violator may get a warning and repeat offences would have an increase in the ticket cost. If tickets are not paid, the offender would have to go to Superior Court. Multiple tickets can become a lot of money and a person cannot get their driver's license renewed if there are outstanding tickets. Whoever issues the tickets has to go to the civil court for the hearing. Mr. Biasuzzi noted the ticket system works, but the Police Department has more than enough work and he does not know how receptive they would be to this option. There cannot be a ticket written and a zoning violation issued concurrently.

Allie Breyer liked Essex Junction's noise ordinance. The ordinance notes it was enacted to protect, preserve, and promote the health, safety, welfare, peace and quiet for the citizens of the Village of Essex Junction through the reduction, control, and prevention of noise. The intent of this ordinance is to establish standards which will eliminate and reduce unnecessary noises which are physically harmful or otherwise detrimental to the enjoyment of life, property, and maintenance of business. Ms. Breyer provide the following link:
https://www.essexjunction.org/fileadmin/files/Ordinances_Codes/Municipal_Code/municode7.pdf

Jeff Biasuzzi stated most of the time ordinances are a reaction to a specific event. An ordinance can be quickly passed through the legislative body, as opposed to trying to get it through a normal change of a zoning regulation, as this takes much longer. Michael Shank noted concern with having a noise ordinance that is not enforceable. Mr. Biasuzzi advised the Planning Commission needs to come up with an ordinance that is clear and can be enforceable, as the current language is not. Mr. Biasuzzi noted it is succinct, but he is not sure it could be enforceable in court as it does not have standards. Mr. Shank agreed that a new ordinance is needed but wants to be sure it is enforceable. He noted it is possible to come up with a good ordinance as there are examples that have been provided that show successful ones. Mr. Shank thought it should be an ordinance that addresses all types of sounds and Mr. Biasuzzi agreed the ordinance would need to address all noises. Mr. Shank stated all things need to be treated equally and enforceable as these types of issues could cause the Town to lose economically when people are considering moving or not purchasing property in an area.

Ralph Ethier liked the Willison ordinance because it has numbers rather than leaving it to an objective opinion. He did not agree that all noises are the same. Allie Breyer stated when being more respectful of neighbors, there are some conversations that should be had rather than using an ordinance. Allie Walter stated different towns in Vermont are considering noise ordinances and noted she would prefer to hear a chainsaw rather than an automatic rifle, but she does not know how to differentiate in an ordinance. Mr. Shank reviewed the decibels for various items with the Committee and agreed he likes things that are quantifiable. Ms. Jerome noted all ordinances likely derived from the VLCT model and suggested taking that model and include additional language the Committee would like. Mr. Biasuzzi likes the ordinances that have good definitions as they are helpful for people to understand the ordinance and for the Zoning Administrator to administer the ordinance. Lowell Rasmussen liked the VLCT as a template but noted is not an end all. In looking at a qualitative approach and not measuring decibels, the Town's infrastructure may not be able to administer it. Mr. Rasmussen suggested for a qualitative approach, he would like the Woodstock model merged with the VLCT model. Ms. Jerome stated having some exceptions may be good to include. Allie Breyer preferred the qualitative version as it would be a challenge for the police department to be present when the noise is happening. Mr. Shank liked the Woodstock version as well that includes certain exemptions. Mr. Biasuzzi suggested one thing to develop is the repetitive nature of the violation. A behavioral pattern of warnings and blatant repeated nature of the violation might be something to include. Mr. Biasuzzi stated the violation should also be directed to the owner of record, so that property owners are responsible for the behavior. Mr. Rasmussen suggested the ordinance needs to be done, but also felt there could be articles in the newspaper about noise mitigation practices and consumer and property owner education of what the Town would like on

this subject. Mr. Biasuzzi noted it could be helpful to educate people when purchasing items and also providing education to suppliers. Mr. Biasuzzi noted Wallingford distributes monthly newsletters that include topics like this. Mr. Shank stated this will be a Town process and the Select Board will need to approve the language. Mr. Shank suggested beginning with the VLCT ordinance as a reference and starting point. Ms. Jerome suggested taking the VLCT model and pieces from other towns and creating a draft. Mr. Shank noted the definitions from the Willison and Woodstock ordinances are good as well as the exceptions from Woodstock. Mr. Biasuzzi advised either approach can be enforced the same, as there would be a notice of violation or ticket issued, but when it gets appealed is where the enforceability is called into question. With a decimeter that is a reliable instrument and operated by someone with training, it provides some consistent behavior and is solid evidence. With the qualitative approach, a log of issues could be developed. Mr. Ethier asked if there are standards of noises that could be used with the qualitative approach. Mr. Biasuzzi stated there are certain items that have an average noise level, but there are other kinds of noise levels that are not quantitative. The quantitative approach would need levels of detrimental impact. Mr. Biasuzzi noted an audiologist could provide some insight and perhaps advise how the Town could set a maximum limit of a noise.

Mr. Shank summarized the Committee will use the VLCT model ordinance as the starting point and will need definitions, a quantifiable chart, and some exceptions similar to what Woodstock has. Mr. Rasmussen suggested looking at the qualitative approach but include an option if there is a disagreement with the qualitative approach, the parties can look into a quantitative approach. Allie Walter stated there had been a prior suggestion of having a mediator and thought that would be the easiest way to work out issues like this. Allie Breyer stated the qualitative ordinances do have information about specific noises. Mr. Shank noted Article 3 of the VLCT ordinance would address the issues that have come up in Brandon. Mr. Shank suggested keeping what the Town currently has as far as decibels unless the Committee likes the differentiation that Williston's ordinance has as far as commercial and residential. Allie Walter asked if the ordinance would differentiate between day and night hours. Mr. Biasuzzi noted the State has statute that relates to dawn to dusk, and after dusk is when State violations come into play and Chief Brickell has indicated it is not as much of a challenge to enforce the ordinance at night. Mr. Shank stated at the next meeting, the Committee will discuss and agree on some exceptions, definitions, and decibel levels. Mr. Biasuzzi stated there should be something that addresses construction projects as they like to operate between dawn and dusk and zoning ordinances have exemptions about construction projects.

6. BLUO Review and Discussion

This agenda item was postponed to a subsequent meeting.

7. Old/New Business

Michael Shank stated the subject of Dollar General has come up and wanted to provide an update. Stephanie Jerome suggested the Committee review the Dollar General that had been constructed in Shoreham that was made to look somewhat like a barn. She stated if there is something the Town does not like, it needs to be addressed in the Land Use ordinance, as the Commission does not have the authority to say that a certain type of business cannot come into Town if they are in compliance with the BLUO. Some people in Town are going to feel that this store is needed, as there is not a store that carries many of the items they sell, and Ms. Jerome suggested it should be made to look as much as possible in line with how the Town looks. Allie Walter stated the look is so different and agreed to make sure there is some enforcement for new businesses as companies have the ability to assure the properties match other buildings in the town and go with the feel of the town. Ms. Jerome stated it would be better if a business could go into an existing space. Mr. Shank noted the business is looking to build between the medical center and the gas station/Subway facility north of Town. Mr. Shank asked what the plan is north of Park Village. Ms. Jerome stated there are defined areas of commercial development and this facility is within an area that has two pieces of commercial properties. Ms. Jerome stated the Planning Commission cannot be partisan as they are the writers of the rules and the DRB will be the ones to make the determination. Ms. Jerome stated with a prior issue with Hannaford's wanting to build a big plaza outside of Town, it would have decimated the downtown, but stated there is a concern that if people wish to shop at a larger Hannaford's in Middlebury, they then take their other business elsewhere. Allie Walter stated the major problem is sprawl and noted there are two Dollar Generals in Rutland and one will be in Pittsford. Ms. Jerome stated it needs to be addressed that the look and feel of the store is within the Town's guidelines and suggested talking to the Vermont Preservation Trust as the Town

cannot bias one business from another. Mr. Shank suggested Brandon could do what Rutland Town did in determining viewsheds throughout the town that would want to be protected from any development that would provide some negotiating leverage. Ms. Jerome suggested doing research on the Shoreham Dollar General to see what was done. Mr. Biasuzzi also suggested researching Castleton as that Dollar General project had three hearings and there was no pushback just interested neighbors, until the clearing of the site. The end result was that it was on the outside of the village and after the store was constructed, they did not feel that it has impacted the town's businesses. Mr. Biasuzzi has had experience with two Dollar General applications and Castleton did not request a change, but in Pittsford the developer provided recommendations and an agreement was reached. Ms. Jerome asked if there is a business that will create sprawl and take away from the downtown businesses if the DRB could rule on that criteria. Mr. Biasuzzi advised Brandon is a 10-acre town and has zoning and subdivision. Anything over one acre, it will grant Brandon say at the Act 250 level for impact on fire, police, schools, and neighborhood aesthetics that is different from most towns. Ms. Jerome suggested talking to Bill Moore and Dave Atherton to determine what they know. Allie Walter suggested making the document stronger, regardless of the determination on Dollar General to assure more protection. Ms. Jerome suggested looking at what the scale of commercial should be for the Town.

8. Date of Next Meeting

Next meeting – January 4, 2020 at 6:00PM via Zoom

9. Adjournment

A motion was made by Allie Walter to adjourn the meeting at 7:59PM **The motion passed unanimously.**

Respectfully submitted,

Charlene Bryant
Recording Secretary