

Brandon Select Board Hearing
Noise Ordinance
March 20, 2021

Board Members Present: Tim Guiles, Seth Hopkins, Tracy Wyman, Mike Markowski

Others Present: Dave Atherton, Bill Moore, Michael Shank, Allie Breyer, Liz Gregorik, Brian Quigley, Brenna Kimball, Brent Buehler, Chris Brickell, Peter Werner, Larry Forest, Mei Mei Brown, Courtney Satz, Kurt Kimball, Mary Lou Webster, Jay, Karleen, Darcey

1. Call to order

Seth Hopkins, Chair, opened the hearing at 10:00AM.

2. Public Comments

Seth Hopkins read the following:

“Good morning!

Thank you all for taking time to participate in this on the first day of Spring.

I call this hearing to order. This is the first of two intentional listening sessions for the Brandon selectboard to hear from the residents of Brandon about the possibility of regulating noise within our Town through an ordinance. Today is the first step in a process discussed and adopted by the board in February.

This is not a debate and it’s not a Q&A with the board, it’s just an orderly and legal way for you to let the selectboard know your thoughts on regulating noise. The hearing today and on Monday go beyond what is required by Vermont law, and the board is happy to make these additional efforts because we are committed to gaining the true sense of the town.

The board is listening today and not taking any positions itself.

Folks who would like to get out and enjoy the sunshine can submit written comments by emailing those to our town manager David Atherton at datherton@townofbrandon.com for distribution to the board, or mail your written comments to the town office at 49 Center St, or drop off your written comments in the payment box on the sidewalk outside the front door there.

If the board determines to draft a noise ordinance, the process we will follow in Brandon will further exceed the requirements of Vermont law, and will include board deliberation in open session with public comment, as well as an additional hearing for public input on any draft ordinance before board action on it.

This morning, I'd simply ask you to be respectful of everyone and their time. Please identify yourself with your name for the record and verify that you are a Brandon resident by so stating. Please keep your comments brief in consideration of others. If you have lengthy comments, you might serve your goals well by offering a concise summary aloud and submitting the body of your comments in writing. We want to make sure everyone who wants to has a chance to contribute this morning.

Our Monday hearings are kept to one hour because they happen before the selectboard meeting, and if possible to keep today's hearing to one hour, I think lots of folks would appreciate that. We can always schedule additional hearings if there is more interest in contributions. The board is working with an eye to getting this done "right" rather getting this done "right now". If the process needs to go longer, it can go on longer. Seth opened the floor to residents of Brandon."

Tracy Wyman read the following letters he received:

Letter from Eric Mallory received 3/20/21: *"To the Brandon Select Board. I strongly feel that there is no need for a noise ordinance in Brandon. Lots of folks own property and should be able to use and enjoy it in anyway they see fit. Thank you. Eric Mallory"*

Letter from Joanne Scarborough received 3/19/21: *"To the Brandon Select Board. I do not believe Brandon needs an ordinance for noise. I have lived here all my life and believe that what is in the state statute is working fine. For folks that want to have a noise ordinance maybe should look to move to a town that might have one. Thank you. Joanne Scarborough."*

Brent Buehler, Brandon resident, advised he recently asked about noise levels that may occur at the Mobil gas pumps regarding speakers. The Town has to ask the developer/owner and on the project. Mr. Buehler stated it would be helpful during the DRB review to ask what the noise level will be. He does not know if the gas pumps will be running 24 hours and thinks it would be more helpful if the Review Board asked about noise levels. Mr. Buehler thanked Michael Shank for the information from other towns noise ordinances and noted none seem to be heavy handed or overly disciplinary and did not deprive anyone of the enjoyment of their property.

Larry Forest of 999 High Pond Road stated he was present as he wanted to know what the hearing was about because he does a lot of shooting with his muzzle loader.

Liz Gregorik appreciated the opportunity to speak and advised they have lived in Brandon over 30 years and are glad to have the space for quiet and to enjoy their hobbies. She asked why there is an inquiry for a change and how it was going to affect people in town versus out of town. Ms. Gregorik stated their family moved out of town to enjoy hobbies that do include shooting guns. Seth Hopkins stated the hearings are happening because the Select Board has been given a number of concerns about noise that started at the Planning Commission level with some public input. The Select Board is the forum where this would happen and is the reason for the hearings. What the ordinance might include is a blank slate at this point and the Select Board is just listening to people's comments and learning about what the community wants.

Michael Shank thanked the Select Board for organizing the sessions. Mr. Shank asked how the Town approaches the idea of personal versus the collective and the rights of majority versus the rights of the person. He cited examples of historical and legal precedents that compromised the society as a whole such as littering or speeding. Vermont farmers flagged littering in the 1950s and something was done because personal pollution was bad for the majority. He personally could host a 120 decibel level concert via speakers in his field, but he doesn't because it would impact the majority. The purpose of government is to protect the rights of the majority. He has an electric EV and would like to drive it fast, but he doesn't due to the national speed limit because it impacts the security and safety of the society. If he wants to drive fast he could go to a racetrack. The individual choice versus the needs and the rights of the majority is why gun clubs are set up. There are appropriate exceptions for hunting and gun clubs. If law does not apply, then anything goes and is why we have speed limits to protect us. We have ordinances that apply to physical that adheres to the majority, so why not consistently apply policy to noise as it has an exception to the rule.

Peter Werner of 1426 High Pond Road recently became aware of this hearing and was aware that Mr. Shank has some issues with shooting. Mr. Werner did some research to try to understand more about injury from loud decibel levels. He has lived here 30+ years and has seen neighbors come and go, but he has gotten along with all of them and believes he can get along with Mr. Shank. If a rifle gives off 150 decibels, it dissipates by 6 level every time you double the distance. Mr. Gregorik is 2290 feet away and the 150 decibels, not taking into account trees etc., the decibels drop to 80.7. If you are standing by a train, the noise may cause damage, but from a distance, the sound of the train far away is a romantic sound. We can't categorize gun shots as damaging noise as they dissipate. Even at the level near Mr. Shank it dissipates minus the trees, etc.. Damaging sound typically happens over a long length of time. With a gun shot it is a fraction of a second. He does shoot and wears ear protection. He has heard Larry Forest and Derek Gregorik shoot a lot and it has not been an issue. Mr. Werner offered to prepare a spreadsheet on the information that he researched for the Select Board.

Mary Lou Webster asked to address the February 13th letter that she sent to the Select Board. Seth Hopkins stated there is a letter that will be presented at the Select Board meeting that Bill Moore wrote and this item can be discussed at that meeting. Ms. Webster stated the purpose of the letter was to address the noise at Estabrook Park and thought it was germane to the meeting. Mr. Hopkins advised the Select Board is taking public comment and the written remarks she made can be part of the comments and participation. This is entirely for the public to talk to the Select Board and not for the Board to take position. This is a specific case that the Board needs to respond to. Ms. Webster asked that the written letter be included in the comments for the meeting.

Following is the letter received by the Select Board from Mary Lou Webster:

"This letter addresses concerns I have over the mis-management of Estabrook Field and the upcoming debate over a noise ordinance for Brandon. For select persons who are newer residents of Brandon, I will start with a brief history of Estabrook Field. This field is approximately twelve acres acquired from the State of Vermont, and originally part of the old Brandon Training School. With grant money from the Land and Water Conservation Fund, through the

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March 20, 2021

Vermont Forest, Parks and Recreation Department, the town began development of Estabrook Field in the summer of 1983. It was built with grant money to develop a recreational field for athletic sports. It was named after, and dedicated to the memory of a local physician, Dr. Seeley Estabrook because of his great interest in sports. Until recently, it has always been used for this purpose, and has always been confined to daytime use, which has not presented any conflicts with the surrounding residential neighborhood.

During this last year, the town began a series of new activities, primarily at night, which violated a series of town regulations. Since the field's inception, there has always been a posted sign alongside the driveway entrance stating the field hours as "7 am until Dusk." This sign has been moved to the field's northern boundary into the brush line where it is difficult to see. I assume that this was done to minimize its message in light of the nighttime activity last summer. Some of these functions were also of a commercial nature and required entrance fees or were profit-making ventures. The town has a sign posted along Route 7 at the field's entrance that clearly states, "Prohibited: overnight camping, abandoned vehicles, commercial enterprises." Apparently, the town feels that citizens should obey all town rules and regulations, but they are free to ignore them when it suits them. In past years, the town has also placed an extremely large, unsightly sign (small billboard) across the road from our home that when I measured its placement, was well within the state highway right-of-way and not on town road right-of-way or property. I could also find no permit on file for this sign at the town office. Again, the town ignored regulations to suit its own purposes.

Now the town of Brandon is going to debate the need for a noise ordinance, and that brings the issue of night activity in Estabrook Field into the discussion. This marks a substantial change in use of the field, and not one in harmony with a residential neighborhood. The noise down there last summer was highly disruptive. I followed this issue in the Brandon Reporter's Police Log and noted that I was not the only person who called in noise complaints to our police department. It was so bad during those opera nights, that even with all the windows and doors closed on a warm night, we still could not sleep. Operas, carnivals, and rock concerts are not compatible with, and do not belong in peoples' neighborhoods. The Town of Brandon's current board seems to be resisting the need for a noise ordinance. Is this because they do not wish to be placed in the embarrassing position of having to conform to it themselves?

I have only good things to say about our police department. Whenever I have seen vehicles down in the field after dark, they have always responded to my calls if they were available. Ninety-nine percent of the time, they have been there, and I thank them for their service. They work diligently to keep our neighborhoods safe. But they can only enforce the law and ordinances, not create them. A noise ordinance is a tool very sorely needed, both to maintain the peace in my neighborhood, but also with the many other noise issues that have arisen around our community. I am in firm agreement with the need for a noise ordinance for Brandon. I also want to see the posted hours sign returned to its original location along the inner driveway, and an end to nighttime use of Estabrook.

Kurt Kimball of 114 Kimball Road stated he has lived here for 62 years and his father and grandfather before that and they have never had any trouble, only when Butch Trombley was

shooting constantly. As far as he and his sons shooting guns, he hopes that it will not bother people. He is highly against the ordinance.

Mei Mei Brown was sorry the hearing was focusing on guns. She lives in the Arnold District and suffered when the gun club was running in Leicester. Guns are startling noise if you don't know it is happening but she wants people to think beyond guns. It is about loud parties, barking dogs and loud vehicles. She hopes the conversation goes beyond gun as it is more about all noises that could be harmful to people. Chronic noise can have health issues and there is a need to have some sort of ordinance in Brandon.

Courtney Satz agreed with Ms. Brown as it is not all about gun shooting. They live on Woods Lane and have had discussions with one of their neighbors about their cars using the road as a racetrack at all hours of the day. The neighbor to neighbor discussions have not gone anywhere and there is not a platform for the Town to address anything. She is in favor of an ordinance as it would provide the Town the ability to intervene.

Mr. Shank responded to Mr. Werner's comments noting most noise ordinances have to do with property boundaries. Any noise ordinance would be predicated on property boundaries. His position has more to do with the health of his animal sanctuary and human health as well. His horse barn is adjacent to the mobile home and when assault weapons are shot, it impairs the horses. He has talked about getting rid of the horses for their health. He recognizes that horses are not humans, but it does affect his business. Mr. Shank had some business ideas that he did not pursue because he cannot guarantee a client a retreat or therapeutic riding. The Town cannot guarantee a stable environment so he is not pursuing the business ideas or having children ride horses on his property as the gun shooting could imperil the children. There have been additional complaints to the Planning Commission concerning loud cars, ATVs, and loud music. Anonymous comments indicate we don't have laws to protect the majority. Where the decibels land, it makes his property unusable the way he had envisioned it. Noise ordinances should apply to property boundaries and he imagines there are places that people could shoot that would not undermine the majority.

Seth Hopkins stated there will be another hearing from 6PM to 7PM on Monday. The Board appreciates all comments and they will take them all into consideration as the process goes forward.

The hearing closed at 10:35AM.

Respectfully submitted,

Charlene Bryant
Recording Secretary