

Brandon Select Board Meeting April 12, 2021

NOTE: These are unapproved minutes, subject to amendment and/or approval at the subsequent board meeting.

All in Attendance via Zoom.

Board Members In Attendance: Brian Coolidge, Seth Hopkins, Tim Guiles, Mike Markowski, Tracy Wyman

Others In Attendance: Dave Atherton, Barry Varian, Allie Breyer, Chris Brickell, Adam Murach, Butch Shaw, Linda Stewart, Bernie Carr, Karen Rhodes, Karleen Werner, Brent Buehler, Doug Bailey, Lee Kahrs, Sue Gage, Mei Mei Brown, Peter Werner, Derek Gregorik, Mary Lou Webster, Jessica Doos, Ralph Ethier

Stephanie Jerome reported the American Rescue Plan funds are coming to the State and she has sent Mr. Atherton some of the information. The Town will receive \$99.00 per person. There will be an additional \$194.00 per person for the County and she thinks the majority of that money may go to each of the towns. Some may go to Fire and Water districts. She stated this is big news and suggested thinking about one-time money that could possibly be used towards projects that are about to happen, perhaps the repairs to the sewer system. It does not have to be used in one year and can be used within 3.5 years. There is a lot of money coming for affordable housing and broadband. Sue Gage stated a lot of this money is based on census figures and Vermont was slow in doing the census, but it is important for federal funding. Bill Moore stated the Town has lost 200 people in the census. Ms. Jerome stated they are using 2018 data from the VLCT for the funding. Butch Shaw noted concern with losing 200 people in the census and advised the county could lose a representative because of that. If the numbers do not make sense, the Town can challenge the census figure. Mr. Shaw stated the General Census Committee is working on this now. Mr. Shaw stated Rutland County lost a representative last time and we don't need to lose another one.

1. Call to order

The meeting was called to order by Seth Hopkins - Chair at 7:03PM.

a) Agenda Adoption

Motion by Brian Coolidge/Tracy Wyman to adopt the agenda, as posted. **The motion passed unanimously.**

2. Approval of Minutes

a) Select Board Noise Ordinance Public Hearing – March 20, 2021

b) Select Board Noise Ordinance Public Hearing – March 22, 2021

c) Select Board Minutes – March 22, 2021

Motion by Tracy Wyman/Mike Markowski to approve the minutes of the March 20th Select Board Noise Ordinance Public Hearing, March 22nd Select Board Noise Ordinance Public Hearing and March 22nd Select Board Meeting. **The motion passed unanimously.**

3. Town Manager's Report

Dave Atherton provided a report for the weeks of March 22nd, March 29th and April 5th, 2021:

. Segment Six sidewalk repairs/replacement will start the week of April 19th. We will also be going over punch list items in preparation for a final walk through.

. We have been awarded \$300,000.00 through the VTrans Transportation Alternatives Program to replace the sidewalks on Union Street from Hannaford's to the rail crossing.

. An Invitation to Bid has been sent out for the construction of the bioswales in the parking area behind Café Provence and Pearl Street. This is 100% grant funded by NRCS.

. Mr. Atherton has had a few meetings with N.E. Woodcraft, NRCS and Watershed Consulting to discuss and design a stormwater filtration system for the runoff on their property located on North Street. Their property falls under the new 3 acre commercial stormwater regulations that are soon to be enacted. We are looking at grant options for Woodcraft in getting this project funded.

. Mr. Atherton has submitted all of the required documentation for the grant closeout on the EVSE grant used for the charger installation at the Conant Square parking area.

. Mr. Atherton attended an Emergency Management "Hot Topic" meeting that discussed best management practices for roadsides and municipal rights-of-way. The majority of the discussion focused on healthy tree canopy, diverse plant habitat and safe roadways.

. Mr. Atherton attended RRTC meeting on March 25^o. There was a presentation by a Rutland HS student on the future of Hydrogen vehicles and the new VTrans ranking system for regional State highway projects.

Rec Department News:

. We will be offering an Archery Course led by Melinda Hardt at Estabrook on Fridays in May. Ages 7 and up. \$40 for the 4 weeks. Check out brandonvt.myrec.com for more information.

. Miller Amusements, our Carnival Ride Vendor, will be able to restart operations in VT after July 4th. Stay tuned for a new Brandon Carnival Date.

. Sign-ups for Majors and Minors Softball will be ending on April 14th. T-ball and Mighty Mites will begin through April 28th. Sign-up today.

. We will forgo a Middle School Lacrosse season due to not having a coach.

Tim Guiles asked the status of the swamp land sale as it seemed to have fallen through. He understood from when he was looking at the process there is a 95 acre piece that is unclaimed. Dave Atherton stated they would have to quick claim it. The State backed out of the two swamp lots and he has another interested party and will talk to the Select Board about this in the future.

4. Public Comment and Participation

Sue Gage thanked Jimmy Pinkham for picking up litter before May 1st and noted he picked up a truckload in her neighborhood. Seth Hopkins noted Helyn Anderson has also started her foot-based pick up during her walks.

Doug Bailey asked if the two speed radar towers that were obtained during Segment 6 will be installed at each end of Town. Dave Atherton advised they are due to be installed this spring and will be put up shortly.

Linda Stewart asked if the sidewalks near the library are going to be repaired as they are shedding pieces of the concrete. Mr. Atherton stated Casella will be back with the concrete company to either repair or replace the sidewalks in question starting next week.

5. Consider Policy to Avoid Conflicts of Interest in Board Appointments

Seth Hopkins stated this policy was introduced at a previously meeting and was edited. Brent Buehler asked what the issue was with having a second person from the same household on the same committee. He stated there are many married couples or partners that have participated on the same committees in his work and asked what precipitated that. Seth Hopkins stated there was concern expressed by a board member that conversations do not stop after the meeting is over and it is likely there would be ongoing conversations after a meeting. Mr. Buehler stated it could be true of committee members that talk regularly. Mr. Hopkins stated it would be more probable if the members live together. Tim Guiles stated the next item in the policy indicates the Select Board can waive the policy when needed if it seems the best sense to appoint two from the same household. Mr. Hopkins stated this policy is an enhancement to the VLCT's model policy. Allie Breyer thought it was directed at Michael and she when they were on the same board, but they did not talk about things and noted there is a bit of strangeness in this policy in that there is so much conflict of interest in other areas in Town.

Motion by Tracy Wyman/Brian Coolidge to approve the Policy to Avoid Conflicts of Interest in Board Appointments as written and posted. **The motion passed unanimously.**

6. Noise Ordinance Discussion

Seth Hopkins thanked all who have made contributions to the discussion and noted the Select Board has had a number of written comments and they appreciate all comments. They have had good input from the Police Chief and the Town Manager has received information from the VLCT. It has been helpful to have the range of opinions and appreciated all who have brought forth their contributions to inform the Board. Mr. Hopkins opened the floor for Board discussion on this subject. Tracy Wyman advised he read through all of the letters and noted of the 22 letters, one had no name, there were 12 for an ordinance, 9 against the ordinance and a letter and survey from the Werner's who did a survey in the High Pond area that posed the questions of whether people in the area were threatened about guns being shot and whether it was thought a noise ordinance was needed. Of the 35 people that had signed the survey, 34 did not want a noise ordinance and one wanted it and no one felt threatened. Mr. Wyman thought since there is State statute relative to noise issues and until the Town has more voter input because the Select Board has heard from 50 to 60 out of around 1100 people, he did not think it warrants having a noise ordinance. Mike Markowski agreed with Mr. Wyman as there has been discussion about majority rights versus personal rights and the only fair way to move forward would be with a Town vote. It seems there are a lot more people against it than for it and the Board needs to tread lightly and needs a way to enforce it. Tim Guiles has been grateful for the broad points of view that have been very thoughtful and he does not think it is just a gun or car issue, but there are several kinds of noise issues that arise. He thinks it is fair to say that everyone agrees the best way to solve noise issues by would be by talking to your neighbor, but the noise ordinance comes down to the small class of problems that cannot be solved with talking with your neighbor and is not the majority of issues. When talking does not work, a noise ordinance is a tool that can be used. He thinks of the ordinance as more of a tool in the toolbox for the Police Department or the Zoning Administrator to use. He understands there are State statutes but enforcing it is different from enforcing a local ordinance. When keeping an ordinance locally, it can be handled more effectively. As with the animal control ordinance, the Town was trying to say at a local level what it is at the State level. There is a State statute about disturbing the peace that already exists but may be appropriate to restate it in a simple noise ordinance to allow us to apply at the discretion at a local level. Like animal control, we allow the control officer to do what is in State statutes. Karen Rhodes did not understand this issue as when neighbors dispute there a mechanism for that. She stated trying to gain enforcement over a neighborhood is why this blew up and noted it seems that there are ways for neighbors to dispute this rather than involving the entire Town and thought this was excessive. Linda Stewart stated it is nice to say go to your neighbor, but if they have teenagers that play loud music it is difficult to do and she thought there has to be some sort of restriction. They can either go to their neighbor or call the police. Allie Breyer requested the High Pond survey and would like them on record as well as all the records that were sent in. She stated there is a neighbor that shoots assault weapons and the neighbor is not reasonable. They now have several people that create loud noises because they are mad. Their neighbor shoots their guns and are not reasonable people, even though they have tried to speak to them. She knows there are several people in Town that have had similar issues and they need someone to step in. She hopes the Select Board thinks about all the people that have expressed issues and there are not many issues but there are severe issues. Mei Mei Brown echoed her support for the ordinance as this is a tool for people to live in harmony. She worked for the Thomas Answering Service and sometimes you need law enforcement to step in and Brandon needs that extra tool. She has talked with Chief Brickell regarding barking dogs, but they could not do anything because there is not an ordinance. Too many people are taking the

gun issue part and suggested stepping back to see how to live in harmony with your neighbors and there needs to be tools to resolve issues peacefully. The ordinance needs to be in place to enhance Brandon as a community. Tim Guiles stated there is currently an enforcement action going through with the Zoning Administrator because in the BLUO it talks about having noise below 60 decibels at night and 70 decibels during the day. That is another possible tool to consider in what is the right tool to address the issue. He does not understand how a noise ordinance will impinge on the majority of the Town and will be detrimental to most of the people because if one is not having a noise problem, it will not affect people. Dave Atherton stated with regard to the BLUO, Section 600 is standards for new land use development. This is not a standalone noise ordinance and is the criteria for new development. Mr. Atherton noted he had a similar discussion with the Planning Commission and has also reviewed this with Chief Brickell and confirmed it is not a noise ordinance.

Motion by Tim Guiles to have a small study group to put together a potential solution to bring to the Board.

Mei Mei Brown volunteered to assist Mr. Guiles with this.

The was no second to the motion and the motion failed.

Motion by Tracy Wyman/Mike Markowski to maintain the current course and rely on the existing State statute.

Tracy Wyman suggested it could be placed on the town ballot next year. Tim Guiles agreed that State statute would be the right tool and he would like to amend the motion to suggest if it is passed, it includes a statement from the Board about the enforcement of the State statute. Seth Hopkins stated it is not the Board's practice to tell the professionals how to do their job and the Board has not told the Police Chief how to enforce the law. Mr. Guiles stated he did not suggest Mr. Brickell does not do his job and his reason for the suggestion is it feels like there are a number of people who would like to have a clear understanding of how to address noise problems and showing support for enforcing State statute is a way to do that. Chief Brickell cautioned the Board putting out a statement on how the Police Department will enforce, as they have to meet standards in order to charge someone of a criminal violation. If the Board is going to come together on action of the Police Department, the statement might not meet the criteria in the court of law. Lee Kahrs suggested discussing further as there are people who want to know how to move forward with the current issues at hand and what the Board's position is. Seth Hopkins stated the Board cannot take a position on how the issues can be resolved.

Motion by Tracy Wyman/Mike Markowski to call the question. **The motion passed unanimously.**

The original motion passed with one no vote – Tim Guiles.

Seth Hopkins thanked all who were present and all who were engaged during the process. Mr. Hopkins also thanked Mr. Werner for his efforts and the information that he provided. Mr. Hopkins found that to be an admirable effort of outreach to neighbors and for 35 people signing

their names was refreshing and was fairly positive in terms of what the community does not support. Tracy Wyman echoed Mr. Hopkins statement.

7. Consider Estabrook Park Use Policy

Seth Hopkins stated this item was discussed at the previous meeting about how the policy came to be, discussion of a letter from Mary Lou Webster and the response letter from Mr. Moore as the Rec Director. Mary Lou Webster stated the current hours should be 7AM to dusk as those are realistic hours. Mr. Hopkins asked if that included exemptions for certain special events. Ms. Webster stated the park was designed for outdoor recreation use and it should not be changed to nighttime activity. She does not want a lot of lighting and late hours and noise as it is disturbing to the neighborhood. Mr. Moore's letter had asked about rescinding the 1994 resolution and Mr. Hopkins spoke to Mr. Atherton and noted he had a good comprehensive solution. Dave Atherton stated there had been discussion about revisiting all of the rules and bylaws for using the town parks and other areas. It is time to revisit those areas due to the changes that have been made in the downtown and the changing times we are now in. Mr. Atherton noted the Town has an open container rule but there have been special events where it happens. We have some regulations in the parks for vendors, but it would be good to have something when someone wants to use the park or the town hall for an event. The Town has some great areas that people can use and Estabrook Park should be included under the same umbrella of rules. Mr. Hopkins stated all of the public places are for building community and this is a good idea. Mr. Hopkins asked if the Board wanted to develop a public use document or have the Town Manager develop it to bring to the Board.

Motion by Mike Markowski/Tracy Wyman to have the Town Manager, Rec Director and Police Chief confer and develop a blanket policy for all public spaces in Town.

Linda Stewart was in support of Mary Lou Webster's comments because there are a lot of people who bought their homes who knew the rule and now the Town is talking about changing the rules. Any noise at night is disruptive to the nursing home and the apartments nearby and people did not buy their homes to have things change. She is in support of the Barn Opera, but there is also the carnival and fireworks and the Town has gone away from the rules that were in place.

Bill Moore advised he has never received a complaint, including from Ms. Webster until this point. The carnival has been going on since 2016 and nothing was done last year and perhaps the Barn Opera was what sparked this issue. There needs to be open lines of communication. The drive-in movies are broadcast over people's car radios and the neighbors that border the park do not have a problem with them. He fails to see why this has become such a big issue because it is the complaint of a single resident in determining how to use that park. This years' activities will be starting and the park serves the public well. This is something that could have been changed and he does not see that it is as large an issue as it has been made out to be. Mary Lou Webster stated she did call in complaints to the Police and when she called about the Barn Opera, she called in the afternoon when they were adjusting their PA and asked to have a call put through to the Brandon Police and dispatch refused to put the call through. Mr. Moore stated if Ms. Webster had reached out to him, it could have been resolved. Ms. Webster stated she reached out to her elected officials who are responsible to her. Mr. Moore stated he is responsive and if she had

called him about the Barn Opera, the issue would have been settled. Ms. Webster felt the Town needs a noise ordinance. Chris Brickell stated this is the first he is hearing of this and the fact that she called dispatch for State Police is something out of his control. While he agrees, he cannot address something that he was not made aware of. Mr. Hopkins asked what the schedule is for the drive in and Mr. Moore advised the plan is from June through the end of July with some breaks on Fridays and Saturdays but reiterated there is little noise as people are listening to them in their cars. Mr. Moore advised the Town will need to cancel some of the events based on the resolution. Mr. Atherton was concerned as there was a decision made that Ms. Webster, Mr. Moore and he would meet, but they did not get a call from Ms. Webster. When he read the ordinance, the reason it was closed at dusk was because there were no lights, but there are lights in the area now. The only reason that things were not happening after dusk was because there was no lighting. Ms. Webster did not meet with Mr. Atherton and Mr. Moore because she sent her concerns to her elected officials and noted they should be discussed in a public forum.

Motion by Tracy Wyman/Mike Markowski to rescind the 1994 resolution.

Seth Hopkins stated the reason for this motion is that there is a request to discuss this in public and there is a request from the Rec Director to allow him to move forward with developing his activities. This is a comprehensive policy that has been thought out and is a smart way to go and he is being responsive to the action. Brent Buehler asked if the legal papers allow for commercial activities, such as the movies. Dave Atherton stated the resolution has nothing to do with the deed and only relates to changing the hours. Originally the field was supposed to close at 10PM. They resolved that on 9/26/94 the hours would be 7AM to dusk. There are no restrictions and the resolution is only changing the hours from 10PM to dusk and State statute would indicate 10PM. Jessica Doos wanted to speak in general about the Rec Department noting young families in Brandon have good things to do as families and Estabrook Park is a good spot for the activities. Having a lot of things to do for young families strengthens the community and the Town shouldn't restrict it so much that it is impeded. It is important for families and the community in general, and for Brandon as a destination for events. It helps our businesses, Town and community spirit and Ms. Doos thought it is important for Estabrook Park to be a space like that.

The motion passed unanimously.

Dave Atherton will begin the process of working on a new policy.

8. Consider Real Estate Conveyance

Dave Atherton stated this was the offer that was brought to the Select Board from the gentleman who wanted an easement and the Board preferred it be a sale. This is the Purchase and Sale Agreement and the 1061 notice is attached.

Motion by Tracy Wyman/Brian Coolidge to approve the Purchase and Sale Contract.

Tim Guiles asked if the purchaser covers the legal and advertising costs. Mr. Atherton advised that those costs are included in the sale. Brent Buehler stated he did not see the charges in the

document and Mr. Atherton offered to send Mr. Buehler the emails that indicate what the advertising and legal fees would be. Mr. Atherton noted the attorney fees were \$450.00.

The motion passed unanimously.

9. Consider Reinstating Interest and Penalty on Sewer and Taxes

Dave Atherton stated at the end of last year, the Town was not far off with delinquencies. With all of the financial assistance for water and sewer, there has been opportunities and ways for people to pay at no cost to them. There are not unusual delinquent taxes seen and not enough of alarm to worry that the Town is being put in a bad position. There is a lot of work involved in setting up payment plans and the Board waived the penalties for a year. The financial situation has gotten back to normal and Mr. Atherton thought it is time for the Town to get back to normal. Seth Hopkins asked if penalties were waived for a year or for the duration of the state of emergency. Tim Guiles asked if there is a timing issue or if it could be any month when the Board decides to institute it. Mr. Atherton noted the State has indicated things will be opened up as of July 4th. Butch Shaw stated the Governor is shooting for July 4th, depending on the vaccination roll out, but he has not yet talked about rescinding the emergency order and much of the legislation passed last year is dependent on the emergency order being in place. They are determining how this will affect the legislation and if it is tied to the emergency order that could be problematic. There is no certainty of the Governor lifting the emergency order at any time. Mr. Guiles asked if instituting the penalties will make a difference with people paying their sewer payments. Mr. Atherton stated it is a hefty penalty and it was discussed in March that we need to start moving forward to not get behind again like in the past. Mr. Hopkins stated in the Town Report the Select Board waived the interest during the state of emergency and suggested waiting to the end of the state of emergency to institute the penalties. Mr. Hopkins stated there is a moratorium on eviction and he would not want Brandon to do tax sales during a state of emergency. Tracy Wyman was in agreement. Mike Markowski agreed with Mr. Atherton to not get too far behind in taxes. Mr. Hopkins stated the goal was to not choose an arbitrary date and felt the Governor would have the best information possible and the Board was hoping to work in concert with his emergency order. Mr. Markowski stated once the state of emergency is lifted, it will not be as easy for people to catch up as monies would not be as available. It was noted the existing policy of the Town is to wait until the state of emergency is over. Tracy Wyman suggested adding this item to next month's agenda.

10. Consider Loan resolution for Wastewater Bond

Motion by Tim Guiles/Tracy Wyman to approve the Loan Resolution for the Wastewater Bond.
The motion passed unanimously.

Dave Atherton stated the Town has approval to borrow money for the wastewater upgrades. Mr. Atherton advised the USDA has notified the Town they will be using this project as their Earth Day project. There may be some advertising and the Town will be making headlines for something good. This is the resolution for the money the Town will be getting through the USDA.

11. Fiscal

a) General Fund Warrant – April 12, 2021 - \$156,644.49

Motion by Tracy Wyman/Mike Markowski to approve the warrants of April 12, 2021 in the amount of \$156,644.49. **The motion passed unanimously.**

Motion by Brian Coolidge/Tracy Wyman to find that the premature general public knowledge of the negotiation strategies with the NEBPA will clearly place the Town at a substantial disadvantage. **The motion passed unanimously.**

Motion by Brian Coolidge/Tracy Wyman to enter into executive session at 8:32PM under the provisions of 1 V.S.A. 313(a)(1) to discuss the current collective bargaining agreement with the NEBPA, with the session to include the Town Manager Dave Atherton and Policy Chief Brickell. **The motion passed unanimously.**

12. Executive Session

The Board came out of executive session at 9:19PM.

13. Adjournment

Motion by Tracy Wyman/Mike Markowski to adjourn the Select Board meeting at 9:20PM. **The motion passed unanimously.**

Respectfully submitted,

Charlene Bryant
Recording Secretary