

Lee and Margaret Kahrs  
3122 Franklin St.  
Brandon, Vt.

July 12, 2021

To the Brandon Select Board:

We contend that the Brandon Select Board has violated Vermont's Open Meeting Law by amending an existing ordinance without public knowledge or input per state statute 24 V.S.A § 1972 regarding the requirements for adopting, amending or repealing a municipal ordinance (see VLCT link included).

On July 27, 2020, the Brandon Select Board adopted and approved the town's updated Animal Control Ordinance, which included the addition of eight points as an addendum to the town's existing animal control ordinance (see ACO eight points attached). The eight points were never uploaded to the town website and that the town select board, the town manager and the police chief changed the expectations of the Animal Control Officer position after the eight points were adopted without holding the required public hearings or public meetings needed to do so.

Margaret was the town Animal Control Officer, appointed in January 2020 and dismissed in January of this year. During a meeting with Selectboard Chair Seth Hopkins, Selectman Doug Bailey and town attorney Coni Pell on Nov. 13, 2020, which Margaret recorded with the knowledge of everyone present, Seth Hopkins referred to the eight points for clarification regarding the ACO position. Specifically regarding to point five ("...work at all times in collaboration with the Brandon Police Department"), Margaret was told to work with the police department in all cases, and if she did not get a response from the police department, to delay action regarding an animal control call.

During that meeting, Seth Hopkins and Doug Bailey read a statement from Police Chief Chris Brickell stating that Chief Brickell wanted the board to issue a directive that confirms that Margaret is "to enforce regulatory issues such as licensed and nuisance calls, but all welfare and neglect concerns, he wants you to go through the police department."

Seth Hopkins then said, "To me, that clarifies it." Those statements from the chief and the select board chair support a change in the updated animal welfare ordinance and the eight points adopted at the July 27, 2020 public meeting.

On Dec. 4, 2020, Margaret requested a job description from Town Manager Dave Atherton to clarify her role following what she was told at the Nov. 13, 2020 meeting with Seth Hopkins, Doug Bailey and Coni Pell.

On Dec 14, 2020, the select board unanimously approved a motion requesting “the assistance of the Town Manager for the supervision and evaluation of officials the Select Board is required by statute to appoint, specifically the Zoning Administrator, the Animal Control Officer, and the Rental Code and Health Officer, similar to the supervision provided by the Town Manager to the other paid staff of the Town (see minutes link included).

On Dec. 16, 2020, Atherton sent Margaret a job description (see Animal Control Officer Job Description PDF attached) It stated, “The Animal Control Officer will run a responsive animal control program that both meets the needs of this community and conforms to Vermont’s Animal Control Regulations and Brandon’s ordinance as they are written and as they are practiced.”

With the eight points, the town ordinance empowers the Animal Control Officer as a humane agent and allows them to enter a property to investigate and potentially seize an animal the ACO believes to be abused or neglected, per state statute. But Atherton’s Animal Control job description only mentions what is written in Brandon’s ordinance, excluding the eight points:

“The Animal Control Officer is responsible for regulating the keeping of animals (such as dogs, cats, and other domestic types) and catching such animals if they’re running at large, and if they cannot be returned to their owner, to see those animals impounded for their health and safety and that of the community, and to deal with not-on-a-farm animals creating a nuisance as defined in the Town of Brandon Animal Control Ordinance.”

In his email, Mr. Atherton also directs Margaret to “report any suspected criminal activity, whether domestic or agricultural, such as neglect or abuse, to the Brandon Police Department, who will then proceed with investigations to determine if any charges are applicable.”

Margaret sent Atherton an email on Dec. 21, 2020 (See Atherton email 12-21-20 attached) questioning Dave Atherton’s latest directive regarding her responsibilities and her continued frustration over unanswered questions. She asked how the “ordinance could be made publicly and then changed behind closed doors.” She noted a recent case where the Brandon Police responded to an animal welfare call on Newton Road after a neighbor called in her concerns about a dog tied outside. It was a property Margaret was told not to revisit after making an initial welfare call there in early 2020. In her email to Atherton, Margaret asked if the police knew the Vermont Animal Welfare statute regarding dogs being tied outside, that issues at that property are obvious by simply driving by the property and that she had had concerns about the animals on the property for a year, but “no concerns were found” by the police.

“13 VSA subsection 352, 4, and 13 VSA subsection 003 a, (f)1 and 3 clearly define the state requirements for the issues brought forth by the caller. I am told there were no concerns found, yet I drove by there yesterday and could see clearly that 13 VSA subsection 352, 4 was not in compliance.”

Atherton responded by telling Margaret her “accusations against the police department, the select board and (Atherton) are out of line and (her) comments (sic) are inexcusable and inaccurate.”

“The direction the Select Board has given the ACO has not changed since the adoption of the new ordinance. You obviously feel that you should be given more authority than the ordinance has granted the ACO and that is not going to happen.”

Three weeks later, on Jan. 11, 2021, the Brandon Select Board voted 3-2 to dismiss Margaret as the ACO.

The town’s existing animal control ordinance is on the town website but the eight points are still nowhere to be seen. When asked in March why the eight points weren’t on the town website, Seth Hopkins said that he didn’t know why and that he would ask Dave Atherton about it. When Margaret communicated with Doug Bailey in April 2021 via Messenger regarding the eight points missing from the website, Seth Hopkins told him that he (Hopkins) did not see that it was pertinent now to add the eight points to the website because Margaret is not longer the ACO and the eight points specifically mention her. They do not.

After reviewing all of the board agendas and minutes on the town website from October 2020 to the present, we have not found any public warning of a board meeting or an agenda item regarding amending the Animal Control Ordinance by removing the eight points that were approved and adopted by the Brandon Select Board on July 27, 2020 (see minutes attached),

Lack of public notice and the lack of a public meeting to inform Brandon voters of an ordinance amendment violates state statute and Vermont Open Meeting law.

Those eight points were adopted but never published or allowed to be put into practice, nor was the ACO allowed to operate under the scope of the eight points, even though the board adopted them based on recommendations from Margaret and after two public hearings.

We request that the select board and the town manager acknowledge that the town Animal Control Ordinance was amended without public knowledge, comment or approval, thus violating Vermont’s Open Meeting Law. We also request that the board

rectify the situation by scheduling a public hearing on the issue, clarifying exactly what Brandon's Animal Welfare Ordinance is and is not.

Awaiting your response,

Lee and Margaret Kahrs  
3122 Franklin St.  
Brandon