

Rules that protect the majority, rather than cater to the few

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A local zoning administrator once told me — when I served as chair of the Brandon Planning Commission — that Vermont was the “wild west” when it came to rules and regs. He’s not wrong. I’ve witnessed this in the lax rules regarding toxic pesticide spraying and animal abuse, and it is apparent now as Brandon considers regulating noise pollution.

Brandon leadership, heretofore, has been reluctant to deal with noise pollution. A growing number of noise-related complaints, however — regarding excessive and repetitive ATV use, modified cars with tricked-out mufflers, amplified sound systems blaring at all hours of the night, assault weapons, explosives (e.g., tannerite), fireworks, and more — compelled the town to host public hearings this month. The hearings have sparked important discussion about the future of Brandon’s shared environment.

Throughout this entire process, the town has intimated that a noise ordinance is territory they’re not keen to touch, despite its common place in Vermont policymaking. Most economically thriving Vermont towns have noise ordinances. Yet, in Brandon, the argument against a noise ordinance is that it’s one’s “property rights” to make noise. And the solution proffered is to “talk with your neighbor.”

There are major flaws with this thinking.

First, it presupposes that the property rights of the few usurp the property rights of the many, and second, it relegates governance to individual actors. If it sounds like the “Wild West” of planning, it is. In few other cases of individual action do we apply this few-over-the-majority thinking.

In almost every aspect of public policy, we design shared environments based on the rights of the majority, protecting them from that which might imperil or pollute a shared public space.

Take the physical environment, for example. Nationally, in the 1970s, a maximum speed law was passed with the safety of the majority in mind, despite individual interest in driving fast. In the year after its passing, road fatalities declined by 16.4%. We design our communities with the majority’s interests in mind because individual interests, left to speeding or drinking-while-driving, imperil the entire community.

We still have a speeding problem in Vermont: We witnessed a fatal crash increase of 32% last year, the largest increase in the nation. I get it. I love driving fast, too, and have an electric vehicle with instant torque. But I avoid speeding because good government has set up parameters to protect the majority’s interests, not the interests of the few who love to drive fast.

Locally, a physical environment that's similarly designed for the majority in mind: The river corridor protection work that's rolling out across Vermont towns, including Brandon. It prevents individuals from building too close to waterways so that towns won't get stuck with flood-related cleanup costs.

Sure, there's pushback and the positioning of "property rights" for owners wanting to build cabins close to babbling brooks or decks by waterfalls. But Brandon, rightly, prioritized the community's economic interests, as well as the rights of the majority.

Take the visual environment as another example. In the 1970s, national clean air and clean water policies were enacted to keep airways and waterways — ones we all share — safe from individual harm. Previously, when these airways and waterways were left unprotected, altruism and individual responsibility did not prevail. It was too easy to dump, spill, spew and emit — a polluters' "Wild West" — which is why rules were necessary to protect the air and water for the majority, against the polluting interests of the few.

Sure, it's easier to burn it in your backyard, versus paying for proper disposal of toxic products. But in doing so, we imperil the shared air, water and lands we all utilize, which is why we set up rules and regs to prevent it.

Locally, an example of visual environmental planning designed with the majority in mind? One of the first U.S. anti-littering campaigns, designed to protect the rights of the majority to a litter-free environment, happened in Vermont. Half a century ago, Vermont passed a law banning throwaway bottles after farmers flagged concern about glass bottles tossed into hayfields and eaten by cows. The state realized that in order to benefit the rights of the majority, individual propensity to pollute needed to be addressed.

Sure, it's easier to toss a bottle out of the car window after finishing it, rather than holding on to it for later recycling. But that's why we set up rules and regs, and why Vermont recently passed a single-use plastics ban — again, to protect the rights of the majority to a visual environment that works for all, not just the few.

Now, take the same policy thinking, applied to the majority's physical and visual environments above, and apply it across all policies.

Take the noise environment. This is where the town of Brandon has an opportunity to consistently apply the aforementioned planning approaches. In Brandon, since there's no noise ordinance in effect, if one wants to host a rock concert on stadium speakers at 110 decibels, discharge assault weapons at up to 165 decibels for hours, or operate a jet engine, ambulance siren, or jackhammer for fun, at 120-130 decibels, you can.

The majority of Vermont's thriving towns, in contrast, have noise ordinances oriented toward what's best for the majority's noise environment. And towns like Williston have exemptions for unique, high-decibel events like hunting season, which makes sense. Towns with noise ordinances understand how our nation's founders understood property rights. As the libertarian think-tank CATO Institute put it, "the basic rights they recognized, beyond acquisition and disposal, were the right of sole dominion — variously described as a right to exclude others, a right against trespass, or a right of quiet enjoyment, which all can exercise equally at the same time and in the same respect — and the right of active use, at least to the point where such use violates the rights of others to quiet enjoyment."

In other words, an individual's rights to emit decibels — as part of their “right of active use” — cannot violate the property rights of others to quiet enjoyment. The nation's founders understood that policies — even noise policies — must protect the rights of the majority. The property rights of all must be protected, not just the rights of the few. That's what good governance does. It protects the rights of the majority. Otherwise, it's the wild west.

If Vermont towns want the “Wild West” as the status quo, then be explicit about it. Name it publicly, so newcomers know what they're moving into. Short of that, however, the “Wild West” is a risky way to govern. That's why it's a thing of the past in most states. Making policy that's grounded in what the country's founders envisioned above and protects the rights of the majority — from that which pollutes or imperils our shared physical, visual and noise environments — is the only way forward.

Let's hope we choose it.