

**Town of Brookline
Advisory Committee Minutes**

Sean Lynn-Jones, Chair

Date: September 20, 2016

Present: Clifford M. Brown, Carol Caro, Lea Cohen, John Doggett, Dennis Doughty, Harry Friedman, Janet Gelbart, David-Marc Goldstein, Neil Gordon, Kelly A. Hardebeck, Sytske Humphrey, Angela Hyatt, Alisa G. Jonas, Steve Kanes, Bobbie Knable, Robert Liao, Pamela Lodish, Sean Lynn-Jones, Shaari S. Mittel, Mariah Nobrega, Michael Sandman, Lee L. Selwyn, Charles Swartz, Christine Westphal

Absent: Amy Hummell, Fred Levitan, Stanley L. Spiegel, David Lescohier, Carla Benka, Janice S. Kahn,

The meeting was called to order at 7:35PM.

The chair made a recommendation to subcommittee chairs to reach out to Town Meeting Members when an issue or article before this group affects their precincts so they can spread the word.

1. Review WA 32 Resolution regarding support for Town Counsel’s funding requests to defend the Town’s planning interest before the Housing Appeals Committee. (Petition of Harriet Rosenstein, Chuck Swartz and Derek Chiang)

Neil Gordon gave an overview of the A&F Subcommittee’s deliberations of WA 32. All 40B applications coming at once impact the resources of Town Counsel’s office and overwhelm existing resources. We have an adversarial system – the petitioners presented examples of legal action demonstrating that litigation results in measurable improvements, compatibility with neighborhood, reduction in scale, etc. The Town has a legitimate interest in challenging particular aspects of these developments.

The subcommittee revised the Resolved clauses, as originally drafted, because they felt it was an open-ended and unspecified request to fund Town Counsel’s efforts and offered revised language, replacing the existing resolve to read –

Be it hereby Resolved that Town Meeting requests that Town Counsel defend the Town’s planning interests before the Housing Appeals Committee and other appeals courts.

Be it further Resolved that appropriate funding be made available within the FY17 budget, and that future budgets consider the funding requirements of such activities.

The petitioners (Harriet Rosenstein, Chuck Swartz, Derek Chiang) included additional information in the packet to demonstrate there is benefit to legal action.

Chuck spoke as a resident of N. Brookline. In spite of density there is a scale in North Brookline that makes it livable. Now faced with several 40B structures and while not opposed to 40B housing, want to have an opportunity to negotiate some of these. Many are offered with no setbacks or height restrictions and the neighborhood is overwhelmed.

Joslin Ham Murphy, Town Counsel said she met with petitioners before they submitted their petition. Agreed that the Town would defend cases and want to be certain that Town Meeting is aware of the effect these proposals have had on various neighborhoods throughout Brookline. Office will pursue cases when appropriate to do so. Town Counsel had great success in the Hancock Village case in land court just yesterday. Trial set for November 21st. We maintain a very vigilant and aggressive approach to this. Appreciate very much the gesture by petitioners.

Q: How many more units do we have to build before we can stop discussing 40B?

A: Estimate 542 but don't quote me on that. Alison Steinfeld is better prepared to answer this but we have a ways to go. Currently there are 4 or 5 projects in the pipeline with 3 close behind and another we just heard about. This office has requested relief from the regulations. Hearings required 180 days so zoning board is meeting every night, sometimes twice a day. [NB – the ZBA's schedule of hearings on 40B cases has included one per week, sometimes two and on rare occasions three. If the pace doesn't lessen, there is a possibility that the ZBA may have to hear two 40B cases in one night.] We have asked DHCD to give us a stay from that requirement for future filings.

Q: Requesting money for outside counsel? What were the original proposals from the developers? What came out of the ZBA and how many had to go to court to get substantial reductions? It seems that the facts are misleading. If you are going to give something to Town Meeting it should be accurate.

A: We would leave it up to Town Counsel to determine what to request.

Discussion

Asking us to support the funding doesn't seem appropriate because that is what we do during the budget cycle. Leave the funding out of the resolution and say we support neighborhoods including litigation but simply voting to give Town Counsel more money doesn't make sense.

Petitioners noted that they have received great feedback on how to make their packet more complete and will take that into consideration.

The burden shouldn't be on the neighborhood to get the expertise and contribute funding for action to be taken. It was difficult to get money when it was needed.

Town Counsel noted that her office was asked to exhaust the outside counsel account and then come back to request additional funds. This is how we operate.

Advisory Committee also approved additional appropriations for outside counsel when needed.

We in our neighborhood of North Brookline have raised money for legal assistance for a number of these developments. This resolution was borne from three developments within a few blocks and we wanted to know what we could do.

Support subcommittee in their language. We make clear to Town Meeting as a whole we are facing some expensive development issues

The inference is that we are always going to be fighting these in court, and the fact that it notes that neighborhoods are raising money for this litigation suggests that the Town should be doing what neighborhoods are doing themselves. Have a broader interpretation.

Believe Town Meeting is aware of these developments and the need for funding Town Counsel.

This is a resolution, we are not funding anything. We should be budgeting for eventualities. When we know we are confronting a spate of 40B applications, some we know about some still yet to be, budget for this and avoid reserve fund transfers. We are letting 40B developers know that they will face a town that will litigate when warranted. The Town has an interest that goes beyond individual neighborhoods. Letting it be known in advance that we need to budget for this thing.

Language seems amorphous in first resolution, needs strengthening. Suggest removing second resolution.

The thing about the second part of the resolution is that it does put people on notice that the Town will litigate and agree it is an important thing.

MOVE an amendment, to add at the end of the first resolution - "regarding 40B applications."

Alternately, strike out "Town's planning interests" and replace it with "Local Concerns regarding 40B applications (environment, health, safety, open space, planning and design)"

A **MOTION** was made and seconded for favorable action on Warrant Article 32 with all the Whereas clauses as they appear in the petitioners' Article and the following two Resolved clauses, as recommended by the Subcommittee, to replace the Resolved clause in the petitioners' Article.

Now, therefore, be it hereby Resolved that Town Meeting requests that Town Counsel defend the Town's planning interests before the Housing Appeals Committee and other appeals courts.

Be it further Resolved that appropriate funding be made available within the FY17 budget, and that future budgets consider the funding requirements of such activities.

A **MOTION** was made and seconded to amend the **MOTION** by adding "regarding 40B applications" to the end of the first Resolved clause.

Be it hereby Resolved that Town Meeting requests that Town Counsel defend the Town's planning interests before the Housing Appeals Committee and other appeals courts regarding 40B applications.

By a **VOTE** of 18 in favor, none opposed and 3 abstentions, the amendment is approved.

By a **VOTE** of 15 in favor, 4 opposed with 2 abstentions the Advisory Committee recommends favorable action on WA 32 as amended by the Subcommittee and with the amendment to the end of the first Resolved clause. The Advisory Committee's recommended motion thus consists of the Whereas clauses offered by the petitioners' and the following two Resolved clauses.

Now, therefore, be it hereby Resolved that Town Meeting requests that Town Counsel defend the Town's planning interests before the Housing Appeals Committee and other appeals courts regarding 40B applications.

Be it further Resolved that appropriate funding be made available within the FY17 budget, and that future budgets consider the funding requirements of such activities.

2. Review WA 33 Resolution urging the Selectmen to Establish a Committee to Study Enhanced Brookline Tax Relief for Senior Homeowners with Modest Incomes. (Petition of Susan Granoff, TMM7)

Sytske Humphry reported on behalf of the Human Services Subcommittee.

The petitioner became very concerned about the impact of tax overrides on seniors with modest incomes. In addition to supporting the override campaign she also started to think of ways to enhance tax relief for Brookline Seniors, especially since more overrides may be imminent to fund the public schools. The petitioner focused on the Massachusetts Circuit Breaker Income Tax Credit, created in 1999, which supports seniors 65 and older. As of 2015 Circuit Breaker tax credits provide up to \$1,070 based on income (up to \$ 57,000 for singles and up to \$85,000 for a couple); and property value (\$693,000 and below). Property values statewide are significantly lower than they were in 2008, mostly due to declining property values in Western Mass. This is particularly difficult for Brookline Seniors: property values here continue to increase as do property taxes (increased property value and the override) and fewer seniors are now eligible for these Circuit Breaker tax credits.

Over the last 15 years about 360 seniors qualified; currently only 7 seniors are participating in the Circuit Breaker tax credit program. The petitioner reached out to the State House, our assessor and the Council on Aging and examined tax relief programs in Newton and Sudbury to see if Brookline can expand

additional tax relief for seniors with modest incomes. Newton offers tax relief programs to Seniors at a much lower interest rate: currently it is 0.75%, but will increase to 1% in 2017. Brookline charges an interest rate of 5%. In addition the income qualifier is less than \$60,000 versus Brookline less than \$55,000 a year. Sudbury piloted a “Means Tested Senior Tax Exemption” and Sudbury TMM just voted to continue this program. This program looks at town wide property values, rather than state-wide averages.

Petitioner Susan Granoff, TMM7 offered additional background on WA 33. Committee members asked questions and shared comments.

Well worth spending time on exploring other opportunities for tax relief.

How can we improve what we currently have, are there any new programs Brookline should be considering. There is a chart in the Warrant Article page 63 with research from the MA Dept of Revenue including the number of individuals who are taking advantage of the circuit breaker income tax credit.

As Circuit Breaker tax credit is a state program, is there any possibility of state action on this perceived inequity? Interested in doing this on a statewide basis, using Sudbury model and creating a state law.

Do we need a resolution to recommend the formation of a committee? Why didn't you just make this about the creation of a committee? A committee could be formed without a resolution but the petitioner wasn't aware of this.

Questions about Whereass clauses – The first clause seems speculative – that additional overrides will be necessary to fund schools; is there any data to show hardships for hundreds of seniors (based on number of people who were using the circuit breaker tax at its peak, presuming their income hasn't increased, they would be able to take advantage of additional program)

Fourth Whereas clause, is there a source for the contention that “existing programs to provide tax relief to senior homeowners are not meeting the needs of many of Brookline’s senior homeowners with modest incomes;”

The Council on Aging has been keeping close tabs on numbers of people living in own homes but are food insecure, for example. We don't have it tied in specifically to a number of homeowners.

Support formation of the committee, there is no institutional knowledge or responsible party for identifying trends and best practices that may be in peer communities or changes in legislation that might trigger a warrant article. Good to have a Selectman’s committee to know what is going on, what our options are. It doesn't recommend any specific action but the study of this by a committee is totally appropriate.

This could possibly go beyond seniors to help others because there are many homeowners under 65 who aren't aware of tax credits available to them.

A **MOTION** was made and seconded to recommend favorable action on WA 33.

By a **VOTE** of 21 in favor, 0 opposed with 2 abstentions, the Advisory Committee votes favorable action on WA 33.

3. Review WA 34 Resolution in Support of Affordable Senior Housing Development Using Air Rights over Town-Owned Parking Lot in Brookline Village. (Petition of Harry Winkelman and Ken Goldstein)

The discussion and review of this Warrant Article was deferred. The Advisory Committee will take it up on the 29th of September.

Upon a **MOTION** made and seconded to adjourn, and voted unanimously, the meeting was adjourned at 8:55pm.

Documents Presented:

- Administration & Finance Subcommittee report WA 32
- Supplemental Information for Discussion on WA 32
- Human Services Subcommittee report on WA 33
- Letter in Support of WA 34
- Emails Opposed to WA 34 and AC Chair reply