

**Town of Brookline
Advisory Committee Minutes**

Sean Lynn-Jones, Chair

Date: October 13, 2016

Present: Carla Benka, Carol Caro, Lea Cohen, John Doggett, Dennis Doughty, Harry Friedman, Janet Gelbart, David-Marc Goldstein, Neil Gordon, Angela Hyatt, Alisa G. Jonas, Janice S. Kahn, Bobbie Knable, David Lescohier, Fred Levitan, Robert Liao, Pamela Lodish, Sean Lynn-Jones, Shaari S. Mittel, Mariah Nobrega, Michael Sandman, Charles Swartz, Christine Westphal

Absent: Amy Hummell, Kelly A. Hardebeck, Sytske Humphrey, Stanley L. Spiegel, Steve Kanes, Lee L. Selwyn, Clifford M. Brown

The meeting was called to order at 7:00 PM.

Announcements:

Write ups for the combined reports are due 2 weeks from today. Please send the reports to Sean as soon as possible. Please include the full motion in your report.

1. Review Reserve Fund transfer request in the amount of \$49,410 – to cover the unfunded mandated costs of Early Voting for the Town of Brookline. (The Office of the Town Clerk)

John Doggett gave the A&F subcommittee report. Original figure \$49,410 and subsequent amendment for additional funds \$2,750. Due to a shortage of E-poll pads (\$10,980) and the State grant award (\$2,000) the request was modified to \$39,120 for expenses for Early Voting.

The subcommittee recommends favorable action.

Pat Ward, Town Clerk answered questions from the Committee.

Q: When the early ballots stay at Town Hall and are processed at the end by matching with precinct, why not go during the day to the correct precincts and be fed in during the day?

A: Attended an Inspector's Training session and learned how difficult that scenario would be – checking them in, checking them off, feeding them in while people are voting at the precinct.

Q: What keeps me from voting again after casting early vote?

A: Marked off – cannot vote again.

Q: Given that this is a trend and more people may take advantage of it, is there any way to reduce the burden, any other type of process or system?

A: Nothing approved at this time by the State.

Q: If we were concerned about budget, could we have fewer satellite sites and sessions?

A: One site mandated by the State here in Town Hall and 10 sessions. Other sites are satellite sites and 9 sessions. After this election we will have some data and can determine if we need as many sites, fewer sites or more sites and sessions. And we will be able to budget for it in the future.

Comments:

Legislative change would be required to have early voting for town elections. Turnout is really driven by what is on the ballot.

- This is a spectacular way to spend money,
- It is a way to encourage people to come out to vote.
- This provides people with more opportunities to vote.
- Some people who are disabled are excited because they will be able to come at a time when it may not be so crowded.
- Some people will be able to walk to polling places if we provide additional sites.
- I'm not voting for it, seems wasteful.

The timing of this request seems awkward – the schedule and locations have been publicized but the request for the transfer is coming to us after the fact.

We made a decision to use satellite locations and fund other staff to run the mandated site here at Town Hall. State only finalized and published Early Voting regulations in July and there wasn't any way to estimate what would be required, however, in future this will be built into the regular budget process.

A **MOTION** was made and seconded to approve the reserve fund transfer of \$39,180 to cover unfunded mandated costs of Early Voting for the Town of Brookline.

By a **VOTE** of 21 in favor, 1 opposed with no abstentions the Advisory Committee approved the reserve fund transfer.

Melissa Goff updated the AC and let them know the Fire Department may be requesting a RFT in excess of \$300,000 for a fix on a piece of equipment.

2. Review WA 31 Amendment to Article 2.1 of the Town's By-Laws – Town Meeting --to extend requirements of the Massachusetts Open Meeting Law to Town Meeting-created committees. (Petition of Regina Frawley, TMM16)

The petitioner was not in attendance.

A question was posed whether Advisory Committee members who post on the TMMA list are complying with or in violation of the Open Meeting law? Town Counsel Joslin Murphy reviewed the Open Meeting law and what the Attorney General says specifically on this matter.

We have received several inquiries about the exception for Town Meeting and whether it applies to meetings outside of a Town Meeting session by Town Meeting members or Town Meeting committees or to deliberation by members of a public body – such as the Board of Selectmen – during a session of Town Meeting. The Attorney General interprets this exemption to mean that the Open Meeting Law

does not reach any aspect of Town Meeting. Therefore, the Attorney General will not investigate complaints alleging violations in these situations. Note that this is a matter of interpretation and future Attorney Generals may choose to apply the law in such situations.

These four questions will help determine whether a communication constitutes a meeting subject to the law: 1) is the communication between or among members of a public body; 2) if so, does the communication constitute a deliberation; 3) does the communication involve a matter within the body's jurisdiction; and 4) if so, does the communication fall within an exception listed in the law?

To constitute a deliberation a discussion has to be held by quorum – a simple majority of the group.

Questions and Comments:

Q: Email communication?

A: If a member of a public body sends a communication to the body with an opinion regarding a topic within the jurisdiction of the work of the body, it is a violation.

Q: What about ... a letter to the Tab?

A: No, because it reaches an unlimited audience. Limitation on access – if I write to the Tab, everyone can read it. Town Member Meeting List is closed.

Q: If an Advisory Committee member offers an opinion on the TMMA listserv and a majority of AC members read that member's opinion but do not respond to it on the listserv, is that a violation of the OML?

A: It can be. Use the measurement, "Does it involve an issue within the body's jurisdiction?"

Q: How about FaceBook groups?

A: Goes back to whether it is closed or open. Open Meeting Law is in place to insure that public business is conducted in the open.

Q: What about distinguishing between TMM hat, Advisory Committee hat – what about disclaimer?

A: No, you can't escape from the fact that you are a member of the respective body.

Can't the TMM list be public? No. Is it possible to link the TMM list serve archives to the Town website – spirit and intent of the law is met. You can't convert the current list from closed to open even for "read only" but you could start a new open list.

This might discourage people from participating on a Moderator's Committee – I don't think anyone realizes this more or less prohibits them from expressing themselves on the TMMA list.

What would be the impact of Article 31 on the TMM List Serv? Would it require that all of the discussion go on in public?

Administrative or housekeeping type information would not be considered a violation, if it is just a factual correction unless it is used in a coercive manner. Read only would not be in violation.

Not aware of whom anyone is or on what committee they serve when reading the discussions on the list and would hate to lose that forum.

What about providing a blog with links? Lexington has this.

The AG's office won't enforce the law as it relates to Town Meeting.

Will consult with AG office, once we have an opinion we are stuck with it. One argument –is the list serv is an extension of Town Meeting.

One solution might be to remove some of us from the List then we wouldn't run the risk of having a quorum.

Report from the subcommittee regarding Article 31 – They appreciated the intent of the article but took issue with some provisions.

Town Counsel drafted alternative language and petitioner redrafted her article but the two don't meet or mesh. Subcommittee met again, tonight, petitioner felt she hadn't seen Town Counsel's proposal and didn't feel prepared to present at full AC.

Petitioner wants to add a section about fines. Town Counsel says it is redundant, if there is a violation, then Article 10.1 of the Town's by-laws will be in force.

Investigation and enforcement are the two most disparate sections.

Preliminary warning that a violation is about to take place. If nothing is done then actions.

This would only apply to Moderator's Committee.

Leaf Blower – was a hybrid committee, 6 Town Meeting members – the intent of this is right on, but I have an issue with investigation and enforcement pieces. Isn't this impinging on Sandy's [the Moderator's] territory? He can always make sure one member on a committee is not a Town Meeting member and we can avoid this entirely. Feels like cracking a nut with a sledgehammer.

Censure motion or calling moderator into account – this should be done by Advisory Committee or Town Counsel and AC. Don't want this to be an opportunity for everyone to begin perusing minutes and making complaints, etc. We are a volunteer body.

Reviewed bylaws for similar provisions but do not require investigation and have enforcement. Campaign finance is one example – it says do it and everyone does it. No investigation, enforcement and fines necessary.

It seems you have been doing some investigation and enforcement, intervening already without having this bylaw in place.

Usually when people realize they made a mistake, they correct it quickly.

How do you approve the minutes for the final meeting of a committee?
Town Meeting can actually approve the minutes, albeit cumbersome.

Still have to produce minutes if requested. Minutes also need to be posted on the Town website. Draft minutes will suffice for both.

Regardless of your status, you have to conduct yourself within the guidelines of the Open Meeting law. If you don't, you could be found in violation and you (the Committee) could be fined according to article 10.1.

If it was a committee the Attorney General's office didn't think it was covered by her office, she would not enforce it. Future AGs might interpret it differently.

A **MOTION** was made and seconded to table the vote on WA 31 since the petitioner was not present. It was subsequently noted that this evening's meeting was the third time that WA 31 had been docketed, that the petitioner had canceled on two previous occasions, and that the Committee could always vote to reconsider its motion, should information or a new perspective be offered.

If a committee acts in an inappropriate way, more than the fine, I think their work should no longer have worth. The moderator would then have the power to remove the offending party or parties and that would be sufficient penalty.

By a **VOTE** of 4 in favor, 16 opposed and 2 abstentions the motion to table, fails.

A **MOTION** was made and seconded to approve the language as offered by Town Counsel (in Advisory Committee members' packets).

A **MOTION** was made and seconded to AMEND to approve Town Counsel's one sentence version of WA 31.

By a **VOTE** of 20 in favor, none opposed and 2 abstentions the Advisory Committee voted to AMEND the **MOTION** by substituting the following language for ARTICLE 31:

“Committees that are established pursuant to a vote of Town Meeting and therefore are not considered by the Attorney General to be “Public Bodies” under the Open Meeting Law shall conduct their meetings in a manner that is consistent with the provisions and intent of the Open Meeting Law.”

By a **VOTE** of 21 in favor, 1 opposed and 1 abstention the Advisory Committee recommends favorable action on the **MOTION** as **AMENDED** under Article 31.

3. **Review WA 16 Resolution regarding Responsibility for Town Electric Vehicle Charging Facilities (Petition of Scott Ananian)**
4. **Review WA 17 Amend Section 6.04 of the Town’s Zoning By-Law to require parking spaces for charging Electric Vehicles. (Petition of Scott Ananian)**
5. **Review WA 18 Resolution urging the Selectmen to petition for a change in the State Electrical Code, as applied to Brookline, to require outlets suitable for Electric Vehicle Charging in newly constructed garages. (Petition of Scott Ananian)**

Carla Benka provided details from the Capital Subcommittee’s report on the three articles. Petitioner Scott Ananian offered a presentation on the three articles.

Reason behind Selectmen’s opposition WA 16: the article wasn’t needed, given that DPW is in the process of resuscitating the charging sites. Not a bad idea to present all three articles as a package at Town Meeting to raise awareness. WA 17 : some subcommittee members felt that this was something for which the market could be a more effective agent of change rather than passing legislation. If this was seen as desirable, developers would take the lead on this and build to the need. Opposition to WA18 was grounded in the fact that it was not appropriate for the Town to impose on a homeowner the cost of meeting a demand that has not yet been demonstrated. Also regarding WA16, the Subcommittee recommended imposing a charge for the use of the stations – Cambridge charges \$1.25 per hour for use of its stations.

Questions and Comments

Q: Are cars able to park overnight to be charged in the spaces with the two outlets?

A: I would imagine that they could, but am not certain.

The charge in Cambridge seems in line with the charge for a parking meter.

Q: Maintenance – what is broken on existing charges? And how is space dedicated?

A: Don’t know what it broken; chargers are thought to last five years or so and the ones in the parking lots are five years old. As to how locations of chargers would be decided in parking garages of, for

example, condominium buildings, that would be up to the developer who presumably would choose the optimum locations. Compliance with ADA requirements is mandatory.

Q: Do cars come with chargers?

A: Most can be plugged into dryer outlet.

Q: Statics about EVs – a friend has another gas car. Are these second cars or solo vehicles? How will it help?

A: We don't know how many of these are second vehicles for their owners. There are also plug-in hybrids now that would benefit from this article.

Keep the "reasonable" word in WA 17. It is a term of art in legal documents.

We will get people to put these in, but technology will change before anyone has cause to plug anything into them. But still a good idea.

This is a "what comes first, chicken or egg" question – if you are thinking about buying an electric car but don't have chargers in your town you might think twice. But if chargers are available, they might go ahead with their purchase.

Q: Hydrogen fuel cells?

A: It is on the downward trend right now. Hydrogen fuel cells are increasing in cost.

Charge for parking and use that to recoup the cost of electricity.

Q: WA 18 - does this apply to apartment buildings?

A: Article 17 applies to 40Bs.

A **MOTION** was made and seconded to recommend to favorable action on WA 16 with the exception that we delete "and annually appropriate funding as needed"; add "be it further resolved that the Town shall charge a reasonable fee for the use of these facilities."

"Maintain" replaces "designate"

By a **VOTE** of 16 in favor, none opposed with no abstentions the Advisory Committee recommended favorable action on WA 16.

"Now, therefore be it hereby Resolved that the Town shall maintain responsibility for the town-owned electric vehicle charging stations; Be it further resolved that the Town shall charge a reasonable fee for the use of these facilities."

A **MOTION** was made and seconded to vote favorable action on the Planning Board's motion on WA 17 beginning "Except for single family homes, at least 2% of parking spaces , and not less than a single parking space must be equipped...."

By a **VOTE** of 16 in favor, none opposed with 1 abstention the Advisory Committee recommended favorable action on WA 17.

A **MOTION** was made and seconded to vote favorable action on WA 18.

By a **VOTE** of 13 in favor, 3 opposed with 1 abstention the Advisory Committee recommended favorable action on WA 18. Correct spelling of Town Council to Counsel.

Upon a **MOTION** made and seconded to adjourn, and voted unanimously, the meeting was adjourned at 10:30pm.

Documents Presented:

For Reserve Fund Transfer

- Administration & Finance Subcommittee Report – RFT – 2pgs
- Notice of Incentive Grant Award – 1pg
- RFT Request Memo – 2pgs
- RFT Request Amendment Memo – 1pg
- FY17 Reserve fund Status – 1pg

For WA 31

- School Subcommittee Report on WA 31 – 2pgs
- Draft Amendment by Town Counsel to WA 31 – 2pgs

For WA 16, 17, 18

- Capital Subcommittee Report on WA 16, 17, 18 – 3pgs
- Letter from Exec Office of Public Safety & Security Board of Fire Prevention Regulations – 1pg