

**Town of Brookline
Advisory Committee Minutes**

Sean Lynn-Jones, Chair

Date: October 18, 2016

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

Absent: Amy Hummell, Dennis Doughty

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

Also attending: Melissa Goff, Assistant Town Administrator; Sandra Debow-Huang, Director of Human Resources; Andy Martineau, Economic Development Planner; and, Petitioner Susan Granoff, TMM7

- 1) A MOTION was made and seconded to reconsider Article 13: **Amend Article 5.8 of the Town's By-Laws – Sign By-Law -- to improve its content neutrality in light of U.S. Supreme Court decision in Reed v. Town of Gilbert. (Planning & Community Development)**

By a VOTE of 19 in favor, none opposed and 2 abstentions, the Advisory Committee agreed to reconsider Article 13.

- 2) A MOTION was made and seconded to reconsider Article 14: **Amend Article VII of the Town's Zoning By-Law – Signs, Illumination & Regulated Façade Alterations -- to improve its content neutrality in light of the U.S. Supreme Court decision in Reed v. Town of Gilbert. (Planning & Community Development)**

By a VOTE 19 in favor, none opposed and 2 abstentions the Advisory Committee agreed to reconsider Article 14.

- 3))John Doggett discussed the issues he had originally raised regarding First Amendment rights issues -consulted with a lawyer Changes address all of the concerns he previously had.

Two points regarding definitions Section 1

Several court cases apply to flags, gave them to Town Counsel and the main changes in section 7.05 a, b, c have been changed to distinguish non-commercial and commercial speech.

Article 13 (Town Property) Section 5.84: all of the previous wording has been deleted, replaced with a simple statement. Cleaning it up and making it consistent.

Regarding Section 7, Article 14, the Planning Board flagged Section 7.06 concerning illuminated signs, and voted to amend the add “ internal” to “illuminated signs” subject to those hours.

Subcommittee voted unanimously to accept the changes in both of these articles.

What is the definition of “temporary”? Four months. That captures what happens in practice now. As it relates to signs related to politics, too much regulation even if content neutral have been found to be in violation of free speech rights.

Who is authority on signs on private property? Challenging when it comes to political signs, not specific to a date or event and the Building Commissioner will exercise discretion.

What about multi-unit apartment buildings? There is no limit so every tenant could put one sign up. Condo association may regulate this – signs in windows may be permitted, but the Town is not imposing a one sign per property limit as this has been deemed unconstitutional.

Only the Town can put signs on Town property.

Utility poles not owned by the Town, would this bylaw have any impact on those? Yes, Insofar as they are in the public way.

Are signs to be electrified – as in dangerous, do not touch? That would be a public safety issue, not dealt with this bylaw but the purview of the Building Department.

If a person puts up a permanent sign, what would be the process? They would be subject to this bylaw – need a permit, etc.

A **MOTION** was made and seconded to recommend favorable action on Article 13 as revised by the petitioner.

By a **VOTE** 22 in favor, none opposed with 4 abstentions the AC recommends favorable action on Article 13 as revised by the petitioner.

A **MOTION** was made and seconded to recommend favorable action on Article 14 as revised by the petitioner.

By a **VOTE** of 22 in favor, none opposed with 4 abstentions, the Advisory Committee has recommended favorable action on Article 14 as revised by the petitioner.

3) Possible Reconsideration of 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)

A **MOTION** was made and seconded to reconsider Article 33.

By a **VOTE** of 15 in favor, none opposed with 9 abstentions, the Advisory Committee agreed to reconsider Article 33.

A **MOTION** was made and seconded to recommend to favorable on this motion under Article 33 with the added first clause “Whereas the Town of Brookline has a long history of recognizing our common responsibility to care for deserving members of the community including but not limited to our veterans, our residents with blindness and other disabilities, our children, and our seniors;”

By a **VOTE** of 20 in favor, none opposed and 6 abstentions, the Advisory Committee recommends favorable action on WA 33, as currently amended.

4) Review WA 2 Approval of collective bargaining agreements. (Human Resources Director)

Janet gave an overview of some changes to the Firemen’s contract and highlights of same.

JLMC’s recent decisions: those awards may sound old but they are 6 year contracts so they are current as of now. Enormous awards but we can control where the money goes. Don’t have incentive to other unions to say we want the same thing because there is lots of trickle down. 2% on the base wages was really important to us to signal to other unions as well.

Questions and Comments

Q: Provisions regarding sick time is there any relationship to earned sick time state law and warrant article we considered previously?

A: Yes all the sick provisions would have been out the window.

Q: What is the delta for 2018, based upon the information that you currently have and looking at what the budget projections were, if you are few \$100K short in 2017, you will be \$300-\$400K short the following year? Why also taking money from a capital item to fund an operating item?

A: Money in 2017 is in the base, so would only need 2% on that base in 2018. Recommendation is to take it from recurring revenue. Collective bargaining threshold for 2018 hadn’t been set yet. In the forecast, what we voted on in fiscal 17 compared to this year’s forecast has created a gap and I can drill down on that. Capital outlay within their operating budget, not the CIP, so for a few years we will have to hold back on vehicle replacement and other items.

We may be getting a reserve fund transfer request for a new piece of equipment.

Q: Why are we funding an increase in pay through the Fire Department’s existing budget? How much will it be?

A: Approximately \$130k. We had also been putting aside other money in anticipation of this contract. The Board did not want to penalize other departments by cutting positions.

Giving them an increase, but we are always looking for cost saving measures elsewhere.

Q: Other sources of funds squirreled away, are any of those part of the Town/School partnership?

A: These are only Town funds; the School portion is not being used. They will need their funds to make up loss of Kindergarten grant.

Mediation was done under member of the JLMC, who was also going to be the arbitrator. If they asked for a contract for some absurd amount, Town Meeting would have the authority not to approve. True, but that has never happened.

Q: Has the issue of minimum manning on firetrucks entered the discussion?

A: When it came to putting issues on the table, we didn't because we didn't need the leverage at the time.

Disagree with this contract, don't feel it is sustainable. We are going to have to go to three men on a truck.

Public safety subcommittee chair: We took our cues from the former Chief. He felt you wanted to have more boots on the ground when fighting a fire and he would rather take cuts elsewhere. This is like an insurance policy. We need to think about our priorities and how we want to go forward.

Q: Are we looking for a new fire chief?

A: Yes, assembling a committee.

If someone can find it, there was an override committee study done about all of these options/issues. Do comparisons with other communities about contracts and wages in other communities.

Our whole budget is not sustainable. 2018 will be a challenging year.

Question about the education incentives - 2 year associate's degree vs 4 year bachelor's degree in Fire Science. What is the difference in educational content? We would rather firefighters have a Bachelors and have recently added a Masters. And they also receive training before coming to the Department.

Q: HazMat pay – in previous years there was Federal funding for this under Homeland Security – is any available to help defray some of these costs? Beef up grants for fire department,

A: Declined for the Safer Award, most recent grant cycle applied for. Another grant received a few years ago but for training.

A **MOTION** was made and seconded to recommend favorable action on a motion to appropriate funds for the Firemen's contract.

By a **VOTE** of 22 in favor, 1 opposed with 3 abstentions the Advisory Committee recommends favorable action on the motion to appropriate funds for the Firemen's contract.

Janet gave an overview of the Librarian's Contract. Sandra noted that this was not a protracted process and worked very well.

Q: How do salaries in the library system compare to school library positions?

A: We have done comparison with other town libraries and comparable. School librarians in all towns are paid more than in towns.

A **MOTION** was made and seconded to recommend favorable action on a motion to appropriate funds for the Librarian's contract.

By a **VOTE** of 26 in favor, none opposed with no abstentions, the Advisory Committee recommends favorable action on the motion to appropriate funds for the Librarian Contract.

5) **Review WA 15 Amend Article 8.20 of the Town's By-Laws– Soliciting Money -- to delete panhandling from requirement of permission by Chief of Police in light of the U.S. Supreme Court decision in Reed v. Town of Gilbert and other court decisions. (Police Department)**

Alisa gave background on the substance of the Article and the impact of Reed v. Gilbert on municipal regulations, including panhandling. Chief of Police suggested that there are alternative ways to deal with aggressive panhandling.

There was a suggestion to remove the word "Solicitation" entirely from the article.

Town Counsel said that this is a critical housekeeping measure to be sure we do not behave unconstitutionally. We will be scrutinizing other parts of this bylaw but this particular Article responds to this issues. This is a good start. The bylaws distinguish between commercial and non-commercial speech. We interpret this to apply to "peaceful" panhandling, because there is another bylaw that addresses the other type.

People who solicit on the street requesting funds for their cause, are they covered still under this bylaw? There is a separate article/bylaw that any person seeking information or donations must register with the Chief of Police. We may be looking at that one in the near future.

Q: If someone is soliciting for what purports to be a charity is there any requirement that it be compliant with AG regulations?

A: Can't speak to the current AG regulations.

AG regulations are different and based on your size. There is a check list of practices on how people solicit funds. You can go to the AG's website to see if someone is compliant and authentic.

Q: Question about article in Article 8.2 "without having first obtained permission" from the Chief and the others talk about "registering" with the Chief. Seems like two different activities.

A: Permission is registration as well. Not aware of Police Chief not having granted permission.

Since we are removing “soliciting” from the body of the Article, would a more appropriate title be “Permission of Sales in Public”? This falls into the housekeeping department.

A **MOTION** was made and seconded to change the title to “Sales in Public Places” including deletion of “solicit money, or” in Article 15.

By a **VOTE** of 21 in favor, 1 opposed and 4 abstentions we are recommending favorable action on the MOTION under Article 15.

6) **Review WA 21 Amend Section 4.07 of the Town’s Zoning By-law - Regulation of Non-emergency and non-commercial manned aircraft landing areas. (Planning & Community Development)**

Harry Friedman provided background on the impetus behind proposing this amendment to the Zoning By-law. Warrant Article 21, a zoning code amendment to the Table of Use Regulations (Section 4.07) that would prohibit manned aircraft (includes airplanes, helicopters, dirigibles, and hot-air balloons - except for those balloons moored to the ground) landing areas within residential districts of the town, and allow such landing areas in non-residential districts only by Special Permit.

Brookline’s current zoning code’s Table of Use Regulations does not mention landing areas as a zoning use. When a use is not mentioned in the Table, the use in question, here an aircraft landing area, is deemed prohibited. Thus, aircraft are prohibited from landing anywhere in the town. However, there is a quirk in the law when it comes to landing fields. There is a state statute that says that zoning bylaws regarding aircraft landing areas must be approved by the state Department of Transportation. If the table of uses is silent, there is nothing for the Department of Transportation to approve. Thus, what happens? It turns out that the “prohibition by omission” is invalid.

The Town of Sheffield, MA table of use regulations was silent regarding landing fields (like Brookline’s current status). A landowner wanted to build a private landing area. The town said “no,” the landowner sued, and the Massachusetts Appeals Court, in Hanlon v. Town of Sheffield, 89 Mass. App. Ct. 392 (2016), ruled in favor of the landowner. It said that “[a]ny part of a town zoning bylaw purporting to regulate the use and operation of aircraft on an airport or restricted landing area could not take effect until submitted to and approved by the aeronautics division of the [state] Department of Transportation.”

Thus, the town of Brookline has thought it necessary to have the zoning bylaw specifically refer to landing areas, with the intention of presenting the bylaw to the Commonwealth’s Department of Transportation, so that the ban on landing manned aircraft in Brookline could take effect.

We are being proactive to add prohibition to Town’s Zoning By-law regulations. We are hosting the US Open in a few years and we don’t want some people thinking it is ok to fly in!

When there is a change to a table there is usually an image of the new table. Why is that not here? We were told it wasn’t necessary.

This change would not affect emergency situations like medical evacuations and such.

A **MOTION** was made and seconded to vote to Amend Section 4.07 of the Town's Zoning By-law - Regulation of Non-emergency and non-commercial manned aircraft landing areas.

By a **VOTE** of 25 in favor, none opposed and 1 abstention the Advisory Committee voted favorable action to Amend Section 4.07 of the Town's Zoning By-law - Regulation of Non-emergency and non-commercial manned aircraft landing areas under Article 21.

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

Documents Presented:

For WA 2

- Personnel Subcommittee Report on WA 2
- MOAs from previous years for Fire Department and Public Library
- Budget Amendments Memo
- Costs of Collective Bargaining Proposal with Fire
- Board of Selectmen Memo

For WA 15

- Public Safety Subcommittee Report on WA 15

For WA 13 and 14

- General By-Law Amendment WA 13
- Zoning By-Law Amendment WA 14

For WA 33

- Petitioner's New Clause