

**Town of Brookline  
Advisory Committee Minutes**

Sean Lynn-Jones, Chair

**Date:** November 1, 2016

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

**Absent:** Amy Hummell, Dennis Doughty, Pamela Lodish

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The meeting was called to order at 7:40PM.

**Announcements**

Regarding his email of 27 October (see below), Sean clarified that we have been told about use of TMMA email list and Town Counsel recommendations to Advisory Committee regarding their participation. Sean noted that this does not suggest an endorsement of the opinion but just reiterating what we have been told.

“Dear AC Members,

I have received the following email from Town Counsel. She reports that the Attorney General’s Office has stated that Advisory Committee member discussions of matters within the Committee’s jurisdiction on the TMMA listserv “would qualify as a deliberation outside of a publicly noticed meeting.” Town Counsel notes that Associate Town Counsel Jonathan Simpson will be present at tonight’s meeting of the Advisory Committee and could answer questions regarding the applicability of the Open Meeting Law. We have a very full agenda tonight, however, so I recommend that we not discuss or debate this topic via email, and that we schedule a session with Town Counsel or an attorney from her office if we want to ask further questions.

Best,

Sean”

First, you probably have seen my post to the TMMA listserv, in which I pointed out that Town Counsel and the Attorney General’s office have indicated that Advisory Committee member posts to the TMMA listserv may be regarded as deliberation under the Open Meeting Law. That post does not mean that I agree with this interpretation of the Open Meeting Law. I am aware that the interpretation could have serious negative implications. I am writing to Town Counsel to request that she ask for a formal opinion from the Attorney General. I hope that such an opinion would not only look at the issue more closely, but also would discuss the broader applicability of the Open Meeting Law to online discussions. I made the post (in response to Andrew Fischer comment Article 24) only to explain why Advisory Committee

members might not be posting comments on the TMMA listserv. I did not want the absence of such posts to be interpreted as agreement with any arguments expressed on the TMMA listserv.

Second, at some of our recent meetings we have vigorous and vociferous debates in which members have forcefully offered opposing views. I hope that members of the Committee will continue to articulate their views. To be honest, there have been some meetings when I thought that members of the Committee were surprisingly reticent to voice strong positions on issues that often provoke debate. Although it can prolong meetings, it is usually better to justify your position and to speak out than to silently nod—or shake—your head. Each of us brings to the Advisory Committee a set of views and some knowledge or expertise. Our discussions help the Committee to give Town Meeting the best advice possible. I hope that no member will ever hesitate to express a dissenting view, even if that member finds her/himself as a minority of one. In my experience, we all learn from each other’s cogent arguments, even when we disagree. Sometimes a lone dissenter will succeed in persuading the entire Advisory Committee. In many cases, a member who is a “voice in the wilderness” on one issue makes a motion at the next meeting that wins unanimous support.

**Also attending:** Melissa Goff, Deputy Town Administrator; Daniel Bennett, Building Commissioner; Michael Yanovitch, Deputy Building Commissioner

**1. Review WA 3 to see if the Town will:**

A) Appropriate additional funds to the various accounts in the fiscal year 2017 budget or transfer funds between said accounts;

B) Appropriate \$340,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for Singletree Hill tank improvements.

C) Appropriate \$320,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for Singletree Hill Gatehouse improvements.

D) And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or provided by any combination of the foregoing; and authorize the Board of Selectmen, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants and aid from both federal and state sources and agencies for any of the purposes aforesaid or act on anything relative thereto.

John Doggett gave a report on the work of the subcommittee and highlighted key points of the three budget amendments under review.

No action recommended – no need for a vote on the Group Health Adjustment for School Enrollees.

**Comments:**

We as a finance committee need to see where the funds from Town/School Partnership come from and determine where they should be expended as opposed to simply splitting it in half. This group didn't receive anything from the School to indicate where the money will be spent.

Q: What is the Fire Department losing in this \$131,896?

A: Reducing 2 vehicles under capital outlay and reducing a vacant position.

Two members of the Advisory Committee, Sean Lynn-Jones and Michael Sandman, are on the School/Town Partnership Committee. School lost an expansion grant for Kindergarten (\$260,000) so that is where they are allocating the money.

Should there be an "ADD BACK LIST" – some mechanism for resolving those requests for a way to use unexpended funds.

At the Town/School Partnership Committee meetings have there been these discussions around these decisions? Minutes are in fact available.

Sometimes School comes in and asks for more than the 50/50 split, and explains what they would do with those funds. Perhaps Advisory Committee members, who are also members of the School/Town Partnership Committee, should report to the AC on a routine basis.

Members are encouraged to sign up to receive notification of these meetings so people know and can attend if possible.

A **MOTION** was made and seconded to table this essentially splitting the votes tonight.

By a **VOTE** of 6 in favor, 9 opposed with no abstentions, the motion to split fails.

A **MOTION** was made and seconded to recommend favorable action on the Vote under Article 3. By a vote of 12 in favor, 4 opposed with 3 abstentions, the Advisory Committee recommends favorable action under Article 3.

**VOTED:**

That the Town:

1) Amend the FY2017 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
20. Collective Bargaining – Town	\$2,921,346	\$191,882	\$3,113,228
11. Fire Department \$	\$13,014,196	(\$131,896)	\$12,882,300
22. School Department	\$101,058,795	\$59,986	\$101,118,781

2) Appropriate \$340,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for Singletree tank improvements.

3) Appropriate \$320,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for Singletree Hill Gatehouse improvements.

2. Review WA 22 Amend Sections 5.09, 5.22 and 7.06 of the Zoning By-Law – Floor Area Ratio -- under Sec. 5.09, Design Review; under Sec. 5.22, Exceptions to Maximum FAR Regulations for Residential Units; Sec. 7.06 Regulated Façade. (Moderator’s Committee on FAR and others)

Lee Selwyn provided background on the work of the Subcommittee regarding WA 22.

Dick Benka added under the current situation when a new house is being constructed bulk can go over 150% of FAR. When that space is finished only up to 150% of that space can be finished legally. Under current zoning, there is no limit on the amount of unfinished basement and attic space square footage because neither is counted towards the total FAR.

Existing zoning bylaw for exterior modification for conversion of basement and attic, now it applies design façade review process. Doesn’t require notice to abutters. This would change that to a special permit process that would apply identical notification for abutting property owners to appear and object if there were exterior modifications necessary to convert basement to habitable space.

The other thing this does is it includes an option that the Moderator’s Committee was not unanimous on - eliminating the FAR exemptions in T (two-family) F(three-family) and M (multi-family) districts. Very high allowable FAR in T districts and with exemption of 5.22 in addition to the very high FAR, you could have a 2.5 times the existing density in that district. It eliminates the 5.22 exemptions in the T F and M Districts.

Polly Selkoe noted that the Planning Board felt that the reduction from 150 to 130 for the conversion of attics and basements for single and two families was better not to do that at this time, better to do it incrementally. The Planning Board recommended referral back to the Moderator’s Committee.

Michael Yanovitch, Deputy Building Commissioner, noted that change is difficult. We see some holes in this, interpretation issues. We need to enforce it and will enforce whatever is passed.

Dan Bennett, Building Commissioner, commented that the Committee has done a lot of hard work, realize there is an issue here that needs to be addressed, some concerns with some of the language, but we will do what we can to enforce the bylaw. All we want to do is be consistent with how we enforce it.

Angela noted the deletion of some redundant words in the Article made during October 25 meeting. “Concurrently or and subsequently” “footprint, siting”. Intent of this bylaw was – any newly created space.

What about people who didn’t get a permit, prior to this change. Be in existence prior to a bylaw or to a change in a bylaw. Be preexisting and nonconforming. State case law allows preexisting nonconforming space to be extended if it is not substantially detrimental to the neighborhood. The provisions in our bylaw should govern or guide the ZBA. This may be a non-issue when all is said and done.

Lot, structure and use are the three ways you can be nonconforming.

Agree and support this proposal. Have been to many Neighborhood Alliance meetings in which residents discuss how frustrated they are with McMansions being built in their neighborhoods. Overbuilding's negative visual impact is a problem throughout town, in every neighborhood. In the past people looked to local historic districts or neighborhood conservation districts. Article 22 is an attempt to use zoning as protection. This proposal is a response to the concerns people have and is a significant step forward in preventing developers from gaming the current system.

Are there any unintended consequences that we can see? Is this a step forward?

It is a step. We, the Building Department, are under scrutiny for treating homeowners differently than developers. Developers are savvy about the processes. Smaller homeowners don't have as much knowledge of the process, the special permit process.

Still haven't heard from the Zoning Board on any of this. A determination has to be made by the staff at the counter about substantial changes.

A **MOTION** was made and seconded to recommend favorable action on the AMENDED Article 22 including 130% and not 150%.

A **MOTION** was made and seconded to for an additional change in section n. to add "newly created" in first sentence of (n) so it reads "any construction of *newly created* space."

By a **VOTE** of 18 in favor, with none opposed and 2 abstentions the Advisory Committee approves the amended language.

By a **VOTE** of 18 in favor, with none opposed and 2 abstentions, the Advisory Committee recommends favorable action on WA 22 as amended subject to the Moderator and Town Counsel approval.

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Upon a **MOTION** made and seconded to adjourn, and voted unanimously, the meeting was adjourned at 9:15 pm

**Documents Presented:**

For WA 3

- Recommended Vote
- Group Health Adjustment for School Enrollees Memo from Melissa Goff, Deputy Town Administrator
- FY 2017 Budget Tables 1 and 2

For WA 22

- Planning and Regulation Subcommittee Report on WA 22
- Article 22 With October 25 Changes by AC Planning and Regulation Subcommittee
- Memo from Dick Benka, Moderator's Committee to the Board of Selectman and P&R Subcommittee of the Advisory Committee

- Planning Board Report and Recommendation WA 22
- Emails of Support or 2 Opposed to Article 22