

**Town of Brookline
Advisory Committee Minutes
January 3, 2023**

Meeting Recording:

https://brooklinema.zoomgov.com/rec/share/lh5wwSvasolyM_4i3GM4MUr_Qts2lw7KokwnG1vBTltZA8P938lm13iNrR1Qpa7G.iDNMboyP2AJZOv4H

Present: Patricia Correa, John Doggett, Dennis Doughty, Harry Friedman, David-Marc Goldstein, Neil Gordon, Susan Granoff, Kelly Hardebeck, Amy Hummel, Anita Johnson, Alisa Jonas, Janice Kahn, Pamela Lodish, Joslin Murphy, Donelle O’Neal, Linda Olson Pehlke, Markus L. Penzel, David Pollak, Stephen Reeders, Lee Selwyn, Alok Somani, Carolyn R. Thall, Christine Westphal

Absent: Katherine Florio, Ben Birnbaum, Harry Bohrs, Clifford Brown, Carol Levin, Carlos Ridruejo

Also Attending: Joe Callanan, Town Counsel; John Moreschi, First Assistant Town Counsel; Ben Kaufman, Town Clerk; Meredith Mooney, Economic Development Director; Kara Brewton, Director of Planning & Community Development; Representative Tommy Vitolo; Kristine Knauf; Werner Lohe, TMM13 and member of ZEAB; Town Moderator Kate Poverman; Sean Lynn-Jones, Bernard Green, Regina Frawley, Susie Roberts, John Bowman, Naomi Sweitzer, Perry Grossman, Lisa Cunningham, Hugh Mattison, Stuart Rubinow, John Harris, Jennifer Dopazio Gilbert, Brenda Hochberg, John Freeman, Scott Englander, Alec Lebovitz, Patrick Hanlon, Judith Leichtner, John Van Scoyoc, and other members of the public.

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

Announcements: Pursuant to this Board’s Authority under 940 CMR 29.10 (8), the committee members will be participating remotely via telephone or video conferencing due to emergency regulations regarding the Corona virus. The Chair has reviewed the requirements of the regulations. There is a quorum physically present and all votes taken will be recorded by roll call so all above listed Advisory Committee members will be allowed to vote.

7:00 pm Public Comment

Werner Lohe, TMM13 and member of ZEAB: A decade ago, I led the initiative when Brookline adopted the original statewide optional Stretch Code, which we now take for granted. As you’ll hear in detail in a few minutes, the new Specialized Stretch Code is just the next logical step to make our buildings more energy efficient. That’s why it’s important that we adopt it. But, it’s also important that we do it now. The most important reason is so that it will go into effect as soon as possible—on July 1. But, second, although many, many people advocated for this—and a handful of people from Brookline were among the leaders—the single person in the state legislature who deserves the most credit for this becoming law is Tommy Vitolo. Therefore, it’s important to acknowledge that and to support him, and be one of the very first towns to adopt this.

Lisa Cunningham: Good evening. My name is Lisa Cunningham, I’m a resident of Brookline and I am an architect and have been working on a state wide building electrification legislation for the past three years.

I wanted to make a couple of comments about the Specialized code. First of all, anecdotally, we know of at least 19 communities who have already announced intentions to pass the Specialized Code in January or at their Spring Town meeting, including many of our neighbors. Public hearings were held last year in Watertown, Newton, Wellesley, and Concord – and many others have said they are moving forward. So while Brookline will be showing strong leadership to be the first Town to pass the opt-in Specialized code, all indications are that we will be followed quickly by many.

Secondly, the opt-in Specialized code is not extraordinarily different from the updated Stretch code, which we have automatically been updated to as of January 1 as part of our “Green Community” status, along with 299 other communities throughout MA. The key provisions that ARE different, however, can be basically thought of as CONSUMER PROTECTION for the average property owner. This is because the Specialized code requires that buildings that continue to use gas or other fossil fuels will need to be pre-wired for future replacement of these appliances, which is inevitable given our local, State, and Federal climate goals. Under law, the Specialized code was supposed to be meet our State climate targets. It does not do this for two reasons: 1. Because it still offers a mixed-fuel pathway (ie a pathway that utilizes fossil fuels) and 2. Because it is also not a “net-zero” code as it was mandated to be. But because of this pre-wiring requirement, it is a stronger code than the Stretch code and as such it offers protections for our community.

Some remarked during fall Town Meeting that they thought they had done the right thing by installing expensive new gas systems in their home, systems that were touted to be “efficient”. For over three years, many of us have been telling you that “Gas is the Past”, and we have been passing legislation to prohibit new fossil fuel infrastructure with near-unanimous votes in Town Meeting, including four distinct pieces of legislation. This legislation is simply to prevent us from digging ourselves into a deeper hole. We will soon be able to join a statewide pilot program which again we have been lobbying for over the past three years with the passage of our local legislation. But make no mistake - to get ourselves out of this hole, we will need to move aggressively to remove dangerous and polluting fossil fuel systems from our buildings, not just to stop installing it. There is no other way to reduce our use of fossil fuels, which are imperiling our future.

Pre-wiring, while not as cost-effective as going all-electric from the get-go, will at least afford some consumer protection for property owners who will need to replace their gas appliances and heating systems far sooner than their useful life is over. The use of gas, oil and propane results in harmful indoor air quality, releasing benzene, formaldehyde, nitrous oxide, and methane into our homes. Both the indoor and outdoor emissions from these appliances are incompatible with a livable climate future. To continue to install new fossil fuel systems is also reckless fiscal folly, as buildings will need to be retrofitted and systems ripped out far before they would have needed to in order to meet our climate goals.

Lastly, we continue to hear false comments from the AC about electrical grid readiness, which fly in the face of what both the State of Massachusetts and the Federal government are telling us. They also fly in the face of our climate reality. We have spoken with Eversource representatives and this is what they say. Today, the electric grid is operating at 20% below the all-time system electric peak in 2006, due primarily to energy efficiency measures. By 2050, New England capacity is planned to double from 25 to 50GW and move from summer peaking to winter peaking. By 2035, without ANY changes to current planning, an additional 10 GW will be available. According to Eversource officials, this will NOT require much in the way of transmission upgrades in the next 10 years. By State law, the electric grid is currently mandated to get more renewable by 3% per year. It’s also important to note that electric heat pumps are 2 to over 4 times more efficient than the most efficient gas boiler.

Thank you for your time. I'm looking forward to Town Meeting showing leadership once again by being one of the first communities to pass the Specialized Building Code.

Here are some helpful links and graphics:

<https://rmi.org/insight/the-economics-of-electrifying-buildings-residential-new-construction/>

Link to the "Making Cents" event recording is here.

Susie Roberts: Question. For those 40B projects that would need to re-evaluate their economic feasibility, can you please tell us how Town Meeting's adoption of the Specialized Stretch Code at the upcoming Special Town Meeting would (a)(i) affect 40B projects currently in permitting, and (ii) 40B projects previously permitted that have not yet started construction, and (b) possibly result, depending on the timing of the Specialized Stretch Code's adoption, in the Town's falling below the 10% threshold?

Rep. Tommy Vitolo replied, any 40B or other multi-family that pulls a building permit after July 1, 2023 will have to comply with the updated stretch (not specialized stretch) — and therefore may have to update its plans regardless of the Town's action on specialized stretch.

7:15 pm **Review, discuss and possibly vote on WA 1: To see if the Town will vote to enact Chapter ___ of the Town of Brookline's General Bylaws, entitled "Specialized Energy Code" for the purpose of regulating the design and construction of buildings for the effective use of energy and reduction of greenhouse gas emissions, pursuant to the entirety of 225 CMR 22 and 23 including Appendices RC and CC, including future editions, amendments or modifications thereto, with an effective date of _____, a copy of which is on file with the Town Clerk, or take any other action relative thereto.**

The Land Use, Zoning and Sustainability Subcommittee Report was given by Chair David Pollak, who began by providing an overview of codes (see Slide 3 of Stretch Code Overview presentation 11-2-22). Complete details are in the linked subcommittee report.

The Specialized Energy Code was recently promulgated pursuant to the 2021 Climate Bill that called for its creation within an 18-month period. It provides a new higher energy efficiency tier, above the Base Energy Code and the Stretch Code, and is tied to the Commonwealth's commitment to achieving a net zero building economy by 2050. This version of the Specialized Code will not get us to that goal, but – like the Stretch Energy Code – the plan is to regularly update the code in keeping with evolving technologies in order to achieve this goal over time.

Town Meeting will only need to adopt the Specialized Code once – future revisions will go into effect automatically in the same way that the Stretch Code works. The adoption could be reversed by a future Town Meeting vote.

The subcommittee voted for Favorable Action on the Warrant Article as amended by the Subcommittee 4 in favor, none opposed, and no abstentions.

Comments, Questions, Discussion

Q: What is "passive house"? A certification standard that only addresses energy conservation. LEED is what most people are aware of and has about 6-8 categories whereas passive house looks at building envelope and calls for a very high performance envelope with very little leakage and it regulates machines to make sure it is also low energy utilization. It

has become the standard in affordable housing in Massachusetts. Basically super insulated construction which significantly lowers energy use.

Rep. Vitolo offered some history and explained the process to date so everyone understands why we are calling for a Town Meeting in January. Thank you, Chair Doughty. I know many folks on this call know this history more or less, but there may be a few who don't, and I think it's important to make sure that we all understand how it is we came to call for a town meeting a week from today. That really began with the actions taken by Town Meeting in fall 2019 in voting in favor of Jesse Gray's warrant article to prohibit new fossil fuel infrastructure inside buildings, sort of behind the gas meter, as you will. You may recall that although Town Meeting passed that Article 200 and something to 4, or something very close to that, the Attorney General's office in June of 2020 ruled that Brookline's Warrant Article was inconsistent with 3 pieces of State law, and therefore, could not go into effect.

Some of that State law being 60 or 80 years old, but nonetheless it is on the books, and in response to that ruling in early June, I and Representative Kay Khan of Newton filed an amendment to the House Roadmap bill in late June 2020, calling upon the DOER in consultation with BDRS the State agency, who drafts the building codes and grants exceptions or workarounds, to propagate a net zero municipal opt-in building code.

Ultimately that language weakened a little bit, but was included in the Roadmap Bill that the Legislature passed in December of 2020, pocket vetoed by the Governor, and then passed again in March of 2021. And so at that point what became law was a municipal opt-in specialized stretch code, and that's what we're talking about today.

We are in consultation with BDRS. Had 18 months starting in March or April of 2020 to draft this specialized stretch code. They created a process that included building trades, both unionized and non-unionized building developers, large medium and small property management companies, large, medium and small institutions, architects, engineers and the like to update the stretch code and the specialized stretch code. That 18 month public process carried on throughout the State and well-noticed to the development community, concluded October 2022, and it was at that point that there was a stretch code and a specialized stretch code promulgated by DOER in consultation with BDRS. Now the stretch code as David mentioned and it's Werner mentioned, Brookline has adopted many, many years ago, and that means that for residential buildings beginning January 1, 2 days ago, and for commercial buildings, which includes multi-family residential on July 1st of this year there are more stringent code requirements than existed last year, and anyone who pulls a building permit for a 40B project or a 48 project on July 2, 2023 is going to have to comply with the stretch code standards, regardless of the action that Town Meeting takes on January 10th.

And so another part of the answer to Miss Gilbert's question is, Yes, they will have to comply, but they'll have to comply with the stretch code regardless and if the developer wasn't preparing for this inevitability, despite the fact that the State had been very clear that this is coming, well, that's on the developer to be more prepared next time. If anybody is surprised that Brookline is considering adopting the specialized stretch code given that the idea was born in Brookline, then they're not paying very close attention to folks like you and I who have been talking about this non-stop for years, now going back to 2019.

Nevertheless, in October we communicated 3 things they said and David covered these earlier. We'd like you to give 6 months' notice minimum to developers about the code change, and we would like the code change to go into effect on January 1 or July 1 of a given calendar year, and we'd like you to use the language that we draft for your warrant article to make sure that we're consistent with the Supreme Judicial Court in the Attorney General's office by having a Town Meeting on January 10th. It allows Brookline to meet those 3 requests and have our specialized stretch code go into

effect in July 1, 2023 rather than January 1, 2024. And so we get 6 months more of this regulation, and yes, that means that buildings who pull a building permit in July 2023 would have to be built to a higher standard, then they would otherwise. And that's exactly the point. Brookline through resolution and the State through State law, has made it clear that we must decarbonize our transportation sector, our electricity generation sector and our building sector. This is about the building sector, and it's not about the whole building sector. It's about new construction. We also have to retrofit existing buildings but that's for a different bill, for a different day. I have no doubt Town Meeting will be talking about it sometime in the future. This is only new construction which is part of, in fact, about 1% per year of our building stock.

Yes, we also have to decarbonize our electric grid yes, we're making significant progress on that in fact, our electric grid is roughly half the carbon intensity that it was 20 years ago. So we're getting there, and we have a path forward. It won't be free of bumps along the way, but we do have a clear path.

This is part of the path for buildings as Ms. Cunningham pointed out. This does not require all new construction to be fossil fuel free, which means this is not even the last thing we're going to talk about for new buildings. We're the Town Meeting or the State Legislature is going to make it clear for the Federal legislature, fingers crossed. [?]

I'm not holding my breath that all new construction will be fossil fuel free, but this does move us in the right direction.

Brookline created this idea in late 2019. The Attorney General said it wasn't consistent with State law, and so I broke lines. Representatives worked hard and successfully made it a part of State law which allows us to move forward.

This is our opportunity to do so. The specialized stretch code has been fully vetted at a state level in the Baker Administration, a pro-business and pro- housing administration. I would like it if the specialized stretch code was more stringent than it is but I am happy to take the progress that's being offered now, and continue to work for more progress at a later date. I hope that Town Meeting will do the same, and of course, the home rules that that are in play in this session and the next session, those are still in play. This does not relate to those; this is one tool of many that we've got to use to successfully fight climate change.

Kara Brewton, Director of Planning & Community Development I'll try to give an answer that's clear and specific to Susie's questions about 40Bs. The consensus opinion of 3 departments, Town Counsel, Building and Planning, is the specialized code, if adopted, would apply at the time an applicant applies for building permit. We do not yet know to what extent the specialized code would have a financial impact on multifamily projects beyond other building code changes and changing market conditions, but have reached out to the development community. As David mentioned, our nonprofit multi-family developers are seeking passive house standards already. Part of the basis for that decision is that they're receiving additional points when competing for available state funding.

Most of the 40B developers that have received a building permit have requested some modification to their permit for a variety of reasons. As construction drawings are developed financial feasibility is reevaluated. 40B projects fall off our State housing inventory temporarily when developers do not have a building permit within 12 months of the approval date. From looking at this this afternoon, I believe we have only had one 40 B project team that received a building permit in that 12 month window so these projects return to the inventory. Once a building permit is issued by the Building Department they go back onto the State housing inventory, but rarely do they do so that 12 month window the updated 2020 year round housing census number, which is the denominator, that 10% threshold that the State uses regarding 40B's. That number is not scheduled to even be released until May of this year. So given the changing

construction costs, changing financial market conditions, the 2020 housing unit number, and the usual delay that we've seen already in the time period between when 40B applicants get their permit to when they're able to develop the construction documents and receive a building permit, and then also take into account an outlook of how fast the 40B projects that are in the queue are going to move forward to the next phase, I believe it is quite possible that the Town could fall into the 10% threshold in the second half of this year, even if the specialized code were not adopted.

If the Town were to dip below the 10% threshold, we would likely see a handful of additional 40B applications like we have in times before when we've gone under until one of the temporary or permanent so-called safe harbor thresholds are reached. You can catch up as soon as there's a couple of cases. Then you can reach a temporary safe harbor until those work through the pipeline.

I hope that's helpful. I'm not aware of any reason why adopting the specialized code or not would have a significant effect on our state housing inventory 10% status.

Q: Renovation for residential dwelling units where there is mixed fuel – homeowner would have to install solar to offset energy use. Was there a cost associated with that? A: If you are building a 4000 square foot house in Brookline, you can afford it. Solar installation can be tens of thousands of dollars on a multimillion dollar home depending on grants and guidelines. Solar requirement is only if you can do it rather than in all cases.

Q: Commercial change of use it applies to all size buildings. What is the definition – someone changing from retail space to restaurant? A: Don't know. Zoning use is not the right way to think about it since this changing commercial to residential not from different types of retail. Depends on the construction itself.

Q: Difference between prescriptive and performance. Are there different prescriptive requirements between the Stretch Code and the Specialized Stretch Code? A: If you build it according to standard metrics – HERS requirements, need to have more high performing windows, etc.

Q: Is there any opportunity for Zoning Board of Appeals, ability to alter any of these requirements? A: No.

Q: Difference between HERS 42 and 45 – and getting to Net Zero? A: Alisa was referring to the over 4000 SF home. If you can't get to HERS 0 then you would need to go all-electric, which anybody in their right mind would do anyway. The HERS rating for residential are exactly the same for residential construction EXCEPT for new homes OVER 4000 sf using the "mixed fuels" pathway. So the 42 and 45 HERS rating will be the same with the default stretch code or the new specialized code except if you are using building a new multi-million dollar home.

Q: How difficult is it to meet these standards and does it require people who are specially trained to be able to certify these ratings? A: There are plenty of specialists and more are being trained by the minute. Electricians, HERS raters, etc. Need to build a more energy tight house – better appliances, more insulation, etc. All relatively easy to achieve. Code is also done to try to incentivize all electric construction. Comment: Don't feel like we have any other viewpoints not just from advocates. Bit of a red flag for me.

Q: If we do not pass the specialized code at Town Meeting, when would it go into effect? A: It is an opt in code so never. We are under stretch and we have specialized so communities may opt in or not.

The reality is that being in Brookline adds 25% to any construction costs because we have to get permits and we have a complex system. This will probably add another 5-10% more. Partly because we are perceived as a wealthy community

and partly due to the fact that we have stringent enforcement. Not sure that this is moving us significantly toward our Net Zero goals. Does it make sense for us to be the first adopter of this?

Q: Why DOER is considering language and how it envisions Fossil Fuel Free Demonstration Program and this code co-existing? A: DOER released suggested language around the pilot program around December 23 and it would be too confusing to get into that at this meeting. Very few differences between updated stretch code we are automatically enrolled in and specialized stretch code which will provide more consumer protections.

Q: Does all electric mean heat pumps? Do heat pumps work on the 7 or 8 or 10 coldest days of the year in New England?
A: Yes and they are far more efficient.

Comment: Reference to a DOER report <https://www.mass.gov/info-details/massachusetts-household-heating-costs> We can't go to electricity until we have a sufficient amount available. Mostly relying on wind, solar is limited. Unstable markets and inappropriate to limit how our residents heat their homes.

Comment: We are boiling the oceans and when the oceans die so do we. As for free markets, putting in the cheapest alternative is leading us to disaster.

Comment: Generally acknowledged by all that David gave an excellent presentation and report.

A **MOTION** was made and seconded for Favorable Action on WA 1 as amended by the subcommittee.

By a **VOTE** of 17 in favor, 1 opposed, and 3 abstentions, the Advisory Committee recommends Favorable Action on WA 1 as amended by the subcommittee.

7:45 pm Review, discuss, and possibly vote on Warrant Article 2: To see if the Town will accept the provisions of M.G.L. c. 53, s. 18B pertaining to information relating to local ballot questions. (Select Board)

The Administration and Finance Subcommittee Report was given by Neil Gordon. Complete details are in the linked report. Favorable Action on Article 2 will give Brookline an immediate mechanism for providing residents with clear, substantive, information about local ballot questions, similar to information provided by the Secretary of State on statewide ballot questions.

The Article was precipitated by the recent debt exclusion ballot question related to fire station renovation and reconstruction. Absent "pro" or "con" ballot question committees, and absent a local newspaper, voters had little access to information on that ballot question. Although numerous inquiries were made to Town staff, they are prohibited by law from advocating a position.

No subcommittee member and no member of the public (during a public hearing) expressed any objection to voters being better informed. Accordingly, much of the discussion centered on the role of Town Counsel as a presumably neutral party, areas where Town Counsel (or others) might exercise discretion over content or over having a mailing at all, budget impact, staffing, and the logistics of timely drafting, editing, printing and distributing of required material.

The Administration & Finance Subcommittee unanimously recommended FAVORABLE ACTION on Article 2, by a vote of 4-0-0.

Comments, Questions, Discussion

Comment: Would have preferred the Town Moderator as the more likely neutral party, although the statute does not allow that.

Q: What are the “extraordinary circumstances” Town Counsel referenced in the subcommittee report? A: COVID for example, extending deadlines. Something is going on that is not foreseeable and not the typical situation.

Comment: The League of Women Voters has a great deal of experience with this type of voter education and urge the Town to work with the League rather than reinvent the wheel.

Q: Who writes the actual question? A: Debt exclusion for the Fire Station was the last question. Typically a staff responsibility and reviewed by Town Counsel. The question is prescribed by statute. This allows for more information about the questions. What a Yes vote would do, What a No vote would do. We could identify who drafted the for and against comments.

Comment: Concerned about the mail service. This information would also be published through electronic channels as well.

Comment: Moderator may be a better neutral party. The State statute is what it is, we either opt in or not.

A **MOTION** was made and seconded for Favorable Action on WA 2 as printed in the Warrant.

By a **VOTE** of 20 in favor, none opposed, and no abstentions, the Advisory Committee recommends Favorable Action on WA 2.

8:15 pm **Other Business**

Upon a **MOTION** made and seconded to adjourn, and voted unanimously, the meeting was adjourned at 8:52 pm.

Documents Presented

<https://www.brooklinema.gov/DocumentCenter/Index/3527>

- Article Explanations January 10, 2023 STM
- Article 1 AC Land Use Subcommittee Report and Recommendation 12.28.22
- Stretch Code Overview presentation 11-2-22
- 2022 12 29 Admin and Finance Subcommittee Report - WA 2 for Jan 2023 STM
- Timelines for Local Ballot Question Information

VOTES

	Vote 1	Vote 2
# Votes Yes	17	20
# Votes No	1	0
# Votes Abstain	3	0
Vote Description:	MAIN MOTION: FAVORABLE ACTION ON WA1 as amended	MAIN MOTION: FAVORABLE ACTION ON WA2
	<i>Enter Y, N or A</i>	<i>Enter Y, N or A</i>
Ben Birnbaum		
Harry Bohrs		
Cliff Brown		
Patty Correa	Y	Y
John Doggett	Y	Y
Katherine Florio		
Harry Friedman	A	Y
David-Marc Goldstein	Y	Y
Neil Gordon	Y	Y
Susan Granoff	Y	Y
Kelly Hardebeck	Y	Y
Amy Hummel	Y	Y
Anita Johnson	A	Y
Alisa Jonas	Y	Y
Janice Kahn	Y	Y
Carol Levin		
Pam Lodish	Y	Y
Joslin Murphy	Y	Y
Donelle O'Neal, Sr.		
Linda Olson Pehlke	Y	Y
Markus Penzel	Y	Y
David Pollak	Y	Y
Stephen Reeders	N	Y
Carlos Ridruejo		
Lee Selwyn	Y	Y
Alok Somani	Y	
Carolyn Thall	Y	Y
Christine Westphal	A	Y
Dennis Doughty		