

MINUTES OF CTOS MEETING – February 8, 2023

The Brookline Committee on Town Organization and Structure (CTOS) held a duly posted meeting via the Zoom platform on February 8, 2023 to discuss warrant Article 5 that was referred by the Fall Town Meeting to CTOS.

In attendance were; Dick Benka (CTOS), Jean Berg (CTOS), Harry Bohrs (CTOS), Abby Cox (CTOS) Sean Lynn-Jones (CTOS), Ian Roffman (CTOS), Harry Friedman (Advisory Committee/Town Meeting), Marty Rosenthal (Town Meeting), John VanScoyoc (Select Board)

The meeting began at 6:30 p.m.

The committee began with a discussion on Article 5 from the Fall Town Meeting. Sean Lynn-Jones summarized the main themes of the public hearing that CTOS had held on January 25 on Article 5: 1) The importance of public hearings to members of the public, and the Select Board's accession that they would certainly do things differently on that score than the process they followed in fall of 2022, and 2) the workload of the Select Board is large, and Article 5 was a response to the issue of having too many articles in too little time. Lynn-Jones referred to a memo he had circulated and posted. His two questions to the committee are whether CTOS wants to draft warrant articles to address the issues raised by Article 5, and if so, what approach the committee would like to take. He has reviewed every warrant since 2019 and assessed the articles in light of the recommended required categories that CTOS had laid out in November, namely those articles that:

- Have been submitted by a Town department, board, committee, or commission
- Request action by the Massachusetts state legislature
- Propose to amend any Town bylaw
- Authorize or require the Town to enter binding agreements
- Include any appropriation of funds

Lynn-Jones noted that there had been an average of 40 articles per Town Meeting since 2019. Had the criteria outlined been applied, an average of 31 articles per Town Meeting would have been subject to review, though the Select Board certainly might have reviewed more articles given the controversial nature of some of them (e.g. the golf course.) Despite some of the testimony at the public hearing, Lynn-Jones did not find many "frivolous" articles on issues of national policy; rather, there were lots of Brookline centered articles and by-law amendments. In addition to the categories suggested by the CTOS report in November, Lynn-Jones proposed that perhaps another category should be added: When the town considers entering into binding agreements (e.g. Newbury College.) Additional issues that have been raised are the nature of consideration (if you hold a public hearing, does that constitute "consideration") and whether consideration of an article must always result in a report and/or recommendation. Lynn-Jones emphasized that it was key to make sure that there are always public hearings on an article. The memo does not really get into how to address the Select Board's workload. Dick Benka talked to Town Counsel about what could be done on that without legislation. Some areas they discussed were licensing, small contract amendments or budget reallocations, and committee assignments. The Select Board had proposed, and Town Meeting had approved giving the Select Board the authority not to hear licensing on a variety of issues. A Home Rule petition was filed and died at the end of the session. It will be re-filed by Brookline's representatives. Benka asked Town Counsel if

certain portions of the subsidiary licensing decisions such as changes in managers could be carved out and delegated to the Town Administrator and staff. Town Counsel said it would be unwise as it might jeopardize the Home Rule legislation and could also lead to decisions being declared null and void if the Select Board delegated those powers and it was ruled not to have that authority. In terms of contract amendments and reallocations, Town Counsel said they are working with the Town Administrator's office to determine what sorts of sign-offs can be delegated without a change in the Town Administrator Act. Delegation of signatory authority occasionally happens on an ad hoc basis. Addressing the issue of committee assignments, there are some committees where the by-laws stipulate that a Select Board serve as a member and others that don't (e.g. Commission on Women.) Benka will try to get the number or percentage of those where by-law requires Select Board participation for the next CTOS meeting. Ian Roffman asked about the word "recommendation" and whether it is the same as "report" or "vote." Lynn-Jones responded that the language has not yet been tested. The Advisory Committee sometimes reports without making a recommendation (e.g. Cuba) when it feels that an issue is not in its "wheelhouse." Roffman stated that he "agreed directionally" with leaving decisions about reports or recommendations to the political process. There could be scenarios where you have a report without a recommendation or a vote with no report. Lynn-Jones spoke to the unlikelihood of writing a by-law that could specify the quality of a report or public hearing. John Van Scoyoc (Select Board) commented that he attends a lot of meetings as a Select Board member because he is fairly new and thought it would be helpful. He does not think that other Select Board members attend as routinely. Because he is a retiree, it is not as great a burden, and he also believes he has one of the lighter workloads of the members. Harry Bohrs commented that the issue goes back to having too many articles. CTOS must provide a report for Town Meeting. The question is whether CTOS should draft legislation. He pointed to page 10 of the memo, which highlights some basic themes CTOS might want to address, namely:

- Importance of having public hearings (though quality can't be controlled.)
- Recommendations vs. reports: do we provide flexibility to do either?
- Setting requirements of type of articles the Select Board must consider, and/or providing processes whereby they can opt out or opt in to consideration of articles.

Bohrs favors opt out vs. opt in. He also worries about gamesmanship in the process. For example, if appropriations is a category of article that must be considered, might a petitioner add a \$1 appropriation to ensure that the article is taken up by the Select Board? Lynn-Jones wondered whether the opt-out process should apply to categories listed by CTOS, and if so, should there be a higher bar? He emphasized the importance of public hearings as educational, beneficial, and a matter of respect. Abby Cox stated her preference for opt out rather than opt in because, conceptually, everything on the warrant should come to the Select Board for consideration. There was discussion of the suggestion that the window between the closing of the warrant and the start of Town Meeting be extended, and the feeling that it would help the Select Board, Advisory Committee, and committees like CTOS. Lynn-Jones stated that the time is set at exactly 75 days in the by-law. He has conferred with Sandy Gadsby (former Town Moderator) and was told that it would not require a home rule petition or approval to change. However, it might be outside the scope of Article 5. Berg voiced her concern that with an opt-out process, the Select Board might do what they had done in the fall Town Meeting and fail to consider important articles (like the climate-focused articles.) Lynn-Jones pointed out that the motion on page 10 of the draft report requires a hearing for everything and only after the hearing can the Select Board decide that it's going to terminate consideration and not do a report and recommendation. He

wondered if it would help if CTOS got behind the petition on refiling the licensing legislation. Benka noted John Van Scoyoc's comments today were quite different from what CTOS had heard from Select Board members at the public hearing last time. Berg stated that it seems like something that should be left to the discretion of each committee. Benka reminded the committee that the three suggestions he had made about reducing the Select Board's workload are peripheral to Article 5; they impact the time commitment, but they do not solve the issue of growing numbers of articles on the warrant. If we require public hearings, everyone has to be allowed to speak. It can be managed by a strong chair. He doesn't know if this has been a problem. Potential alternative language could be "or in the minimum, an opportunity for proponents and opponents to express their views." Lynn-Jones wondered how frequently having too many speakers at a public hearing is a problem, particularly on warrant articles. Marty Rosenthal (TMM) offered an alternative suggestion of adding the words "if any" to the current by-law's language around reports and recommendations (so that it would read "...shall prepare a written report stating the recommendations, if any, and the reasons therefor). The Select Board could then choose not to make a recommendation and express that in one sentence. Benka said Rosenthal's proposed language wouldn't address the need for a public hearing. CTOS would like to clarify the need for a public hearing and put some guardrails around the decision to make a report or recommendation, which could take the form of mandating types of articles that must be addressed, or designating a process by which the Select Board may judge which articles will be considered. Roffman offered his agreement with Berg about not allowing an opt-out for categories that mandate a report or recommendation. He agrees with Lynn-Jones that the quality of the report cannot be legislated, and that a report on the vote total would suffice. He does not share Bohrs' concern about gamesmanship in the categories as it can be handled in other ways. He believes there should be public hearings on all articles, a report/recommendation on the mandated categories, and opt in on the other articles with a lower threshold (e.g. one Select Board member) for inclusion. Bohrs stated that a list sets expectations. If articles are selected on an opt-in basis, the threshold would have to be low. Benka pointed the committee back to page 10 of the memo in its attempt to lay out multiple options. He thought that the scope issue might lead to an opt-out process rather than an opt-in. Lynn-Jones agreed that scope questions can be mysterious and tricky. Berg said she continues to be concerned about the issue of how the Select Board's load can be lightened so that they can give their recommendations to Town Meeting, which is ultimately going to vote on issues important to the Town. Bohrs responded that he isn't sure that can be done in the context of Article 5, but it is a discussion that CTOS should have and will require other legislation. Lynn Jones reminded the committee that with the list of categories CTOS already has suggested, 20-25% of the articles would be cut off of the load, though he noted that not all articles are created equal and some may be a great deal more time-consuming than others. Berg commented that many articles are "not ready for prime time" and staff ends up spending a lot of time cleaning them up. She wonders if those articles could go to another meeting. Bohrs responded that can technically occur now. He believes the number of signatures to get a petition onto the warrant could be more effective in reducing the load, but it would not be easy to make that happen. He noted that the Advisory Committee has a questionnaire that asks petitioners to take stock of the financial consequences of their proposed legislation and whether they have spoken with the people who might be affected or related Town departments. The Select Board has a similar form, and maybe a common form could be created. One couldn't say no hearing without a form, but perhaps prior to the hearing, the form would need to be completed. Benka pointed out that these articles can always be referred to a moderator's committee or other committees like CTOS, or votes for no action can be taken. Nonetheless, an article that is not

cleaned up can still pass Town Meeting, and then the only safeguard is that the Attorney General might deny it on legal grounds. The Advisory Committee does feel obliged to get things into as good shape as possible, often with the agreement and cooperation of the petitioner. Harry Friedman (Advisory Committee and TMM) reported that the Advisory Committee only recently has come to the table about articles that maybe they should not take up. Much of the decision making is done by consensus. There really only have been 1-2 times the Advisory Committee has not issued a recommendation. Usually it will do a hearing, report and recommendation. He does believe the mandated list of articles to consider is important for the Select Board because a body of only 5 people can be more easily pressured by a strong chair. The Advisory Committee, because it's so large, affords less leverage to its chair. He further stated that the Select Board can be compelled to write reports, because now, in his estimation, they are "brief and worthless." Friedman believes that the increasing number of articles is due to the belief that you can do a lot of things at the town level to impact lives. He is reluctant to see an increase in the number of required signatures, and does not believe that forms really help. He thinks the most helpful thing would be to increase the amount of time between the close of the warrant and the start of Town Meeting. Cox asked about the potential impact that might have for petitioners who have time-sensitive articles (e.g. zoning). Lynn-Jones pointed out that the Select Board can always vote to call a Special Town Meeting within the Town Meeting for articles that miss the close of the warrant. Benka stated that generally the legislation is retroactive so it would be unlikely to have an adverse effect. The committee ended its discussion by highlighting an agenda for the next meeting where members should come prepared to discuss the categories of issues that might be included on a mandated list of articles to consider and make some decisions around the draft language on page 10 of the circulated memo.

The meeting adjourned at 8:06 pm.