

BROOKLINE ADVISORY COMMITTEE
 Subcommittee on Planning and Regulation
 FY20 Program Budget: Legal Services

The Planning and Regulation Subcommittee of the Advisory Committee held a public hearing in Room 111 of Town Hall, at 7:30 pm on February 25, 2019, to review the FY20 Legal Services budget. In attendance were Planning and Regulation Subcommittee members Steven Kanés, Chair, Lee Selwyn, Kelly Hardebeck and Carol Levin; Joslin H. Murphy, Town Counsel, Melissa Goff, Deputy Town Administrator, and Alison Steinfeld, Director, Planning and Community Development Department; as well as several members of the public (see attached sign-in sheet).

Budget Summary

The FY20 Legal Services budget request is \$1,142,204 and represents a 6.1% increase over FY19. The \$66,708 increase includes continued funding for an Associate Town Counsel position to provide labor counsel services and was initially approved by the November 2018 Town Meeting. The remaining personnel increase is due to an increase hours for part-time salaries and Steps. The additional monies are requested for services, supplies and capital to cover the increased cost for professional subscriptions, office supplies, membership dues and leased equipment.

TOWN OF BROOKLINE PROGRAM BUDGET - FY2020

PROGRAM COSTS - LEGAL SERVICES	CLASS OF EXPENDITURES	ACTUAL	BUDGET	REQUEST	FY20 vs. FY19	
		FY2018	FY2019	FY2020	\$ CHANGE	% CHANGE
Personnel	654,349	708,617	771,430	62,813	8.9%	
Services	317,339	250,309	251,309	1,000	0.4%	
Supplies	3,500	3,500	4,500	1,000	28.6%	
Other	78,865	112,000	113,100	1,100	1.0%	
Capital	1,700	1,700	1,865	165	9.7%	
TOTAL	1,055,753	1,076,126	1,142,204	66,078	6.1%	
BENEFITS			358,422			
REVENUE	1,908	10,000	10,000	0	0.0%	

Budget Discussion

The requested budget for Legal Services has a modest 6.1% increase and was described by Joslin Murphy, Town Counsel, as “trim.” The team will grow to 5 lawyers with the addition of an Associate Town Counsel focused on labor issues, but is small compared to nearby communities like Newton, Waltham, Somerville and Cambridge. Ms. Murphy reviewed some of the Legal Services accomplishments from FY19 and highlighted the large volume of work done in support of the School Department and Select Board and the regulatory scheme for recreational marijuana

which is considered a model for other towns.

In the fall of 2018, the vacancy of the HR Director position prompted the continuation of the discussion on the model for Labor Counsel Services and the recommendation to bring a labor attorney in-house. The budget amendment for \$50,813 was approved by the Special Town Meeting in November 2018 and the FY20 increase in personnel costs will continue to fund the position. While the position is funded, no job description has been created yet. Ms. Murphy assured the subcommittee that should the resource not be fully utilized on labor matters, they will be used in other areas.

Subcommittee member Lee Selwyn asked Ms. Murphy if the work Legal Services does for the School Department is reported as part of the Town/School Partnership agreement. Ms. Murphy said while Legal Services provides needed support to the Schools, it does not get reported as part of the Town/School partnership and is difficult to calculate the total number of hours spent. She added that legal work done on school building projects like Baldwin is not considered work for the School Department as the Town owns the properties and the Schools are the using agency.

The subcommittee voted 4-0-0 to recommend approval of the requested Legal Services budget of \$1,142,204.00 for FY2020.

BROOKLINE ADVISORY COMMITTEE
Subcommittee on Planning and Regulation
February 25, 2019 Meeting

Report on Request for Reserve Fund Transfer Relating to Ongoing Litigation

The Planning and Regulation Subcommittee of the Advisory Committee held a public hearing in Room 111 of Town Hall, at 7:30 pm on Monday, February 25, 2019, to discuss, take public comment and vote upon a request for a Reserve Fund Transfer. Attending were P&R Subcommittee members Steven Kanes, Chair, Lee Selwyn, Kelly Hardebeck and Carol Levin; Joslin H. Murphy, Town Counsel, Melissa Goff, Deputy Town Administrator, and Alison Steinfeld, Director, Planning and Community Development Department; as well as several members of the public (see attached sign-in sheet).

Mr. Kanes made an initial presentation concerning the role of this Subcommittee and the Advisory Committee regarding Reserve Fund Transfer (RFT) requests, noting that the Advisory Committee was the finance committee of the Town and that bringing, defending and settling litigation, which involves analyzing the merits of a case, is the role of the Select Board.

Town Counsel next made a presentation of the Legal Services Department's request for a RFT in the amount of \$105,350 (\$77,400 to the General Counsel Fund and \$27,950 to the Litigation Account) to meet the unforeseen or extraordinary expenses expected to be incurred for ongoing litigation through June 30, 2019.

Ms. Murphy first disclosed that she is one of the named defendants in the US District Court case that has been brought by Gerald Alston against the Town and certain Town officials, which is one of the cases for which funds are identified in the RFT request. She then discussed the RFT request which is the subject of her Memorandum, dated February 15, 2019 (posted on the Town website), which preceded her receiving the Civil Service Commission (CSC) decision in the matter of Gerald Alston (posted on the Town website).

Ms. Murphy noted that the Memorandum does not identify any funding request for a possible appeal of the CSC decision. She stated that she did not believe that the RFT would need to be supplemented by a further RFT should the Select Board determine to appeal the CSC decision.

Ms. Murphy next reviewed how RFTs fit within the budget process, reviewed the costs anticipated for outside counsel for the various matters identified in RFT Memorandum, and stated that she had consulted with outside counsel concerning their anticipated costs through June 30, 2019. She stated that she believed the estimated costs were reasonable and trim, and that the total amount was not out of line with prior requests.

Ms. Murphy answered a number of questions from the public concerning the two cases involving Gerald Alston. She stated that to date in this fiscal year, the Town had expended \$54,621 on the Alston federal case and \$83,476 on the CSC case. Ms. Murphy also stated that

Associate Town Counsel Patty Corea has spent approximately 75% to 85% of her time on the two cases involving Mr. Alston and on other pending civil rights litigation. She further stated that from December 2015 through January 2019, the Town had spent \$277,418 for outside counsel on all litigation involving Gerald Alston. Ms. Murphy next discussed and answered questions relating to the other litigation identified in the RFT Memorandum (not involving Mr. Alston).

The discussion next turned to further questions regarding the CSC decision and the cost of outside counsel if there were an appeal, the cost of which Ms. Murphy believed would not be significant. Ms. Murphy also discussed the possible cost of the CSC decision to the Town if the Town did not appeal, including the possibility of approximately 27 months of back pay. She did not want to speculate on the cost to the Town going forward under the terms of the CSC decision, which found Mr. Alston to be disabled and also required that he be reinstated. Ms. Murphy stated that the Town over the years had tried but was unable to negotiate Mr. Alston's return to work, despite repeated efforts to engage his counsel.

The Subcommittee next heard statements from the public in support of Mr. Alston, with many urging the that the Town not appeal the decision of the CSC. Following these statements, the Subcommittee deliberated the RFT request, noting that while being sympathetic to the concerns expressed by members of the public, no funding for an appeal is identified in the RFT request. With regard to the Alston federal case and other federal litigation referred to in the RFT Memorandum, it was noted that the Town and named Town officials were defendants, and that denying funding for anticipated expenses in these cases would not only supplant the role of the Select Board, but it would also prejudice the Town's ability in those cases to fully defend itself and the named Town officials, whom the Town may legally be obligated to indemnify under state law, thereby putting the Town at extreme financial risk.

Following that discussion, the Planning and Regulation Subcommittee voted 4 to 0 to recommend that the Advisory Committee approve a request to transfer \$105,350 from the Town's Reserve Fund, as follows: \$77,400 to the Legal Services Department's General Counsel Fund, and \$27,950 to the Legal Services Department's Litigation Account, to meet the extraordinary and unforeseen expenses of ongoing litigation through June 30, 2019.

The Office of Town Counsel

MEMORANDUM

TO: Select Board
Advisory Committee

FROM: Joslin H. Murphy, Town Counsel

RE: RESERVE FUND TRANSFER REQUEST

DATE: February 15, 2019

A Reserve Fund transfer to the Legal Department's General Counsel Services account (\$77,400) and Litigation account (\$27,950) in order to meet the extraordinary and unforeseen expenses of ongoing litigation is respectfully requested. This request is based upon outside counsel and litigation expenses that are expected to be incurred through June 30, 2019, as follows:

GENERAL COUNSEL: *Account No. 524008*

Louison, Costello, Condon & Pfaff, LLP

Gerald Alston v. Town of Brookline, et al (US District Court CA #1:15-cv-13987-GAO)

This is an ongoing lawsuit brought against the Town and Town officials by former Fire Department employee Gerald Alston in the United States District Court. Counsel at Louison, Costello, Condon & Pfaff, LLP were engaged by the Town as co-counsel in this matter. Discovery in the federal court case is near completion, and the Town and individual defendants anticipate filing a motion for Summary Judgment in March 2019. Counsel estimates that their costs in this matter through June 30 will reach \$20,400.

Gerald Alston v. the Town of Brookline (Civil Service Commission)

In a related case, Mr. Alston challenged his termination from work at the Civil Service Commission. A ten day evidentiary day hearing was conducted and a decision is expected by early March. No additional costs in this matter are expected at this time; however it is anticipated that the non-prevailing party will challenge the decision.

Juana Baez v. Town of Brookline. et al. (US District Court #1:17-cv-10661-GAO)

This is an ongoing lawsuit brought by Brookline resident Juana Baez in the United States District Court. Counsel filed a Motion to Dismiss the Complaint in October 2017; however, the Court has not ruled on the motion. Should a ruling be issued, counsel estimate their costs in this matter through June 30 could reach \$13,000.

Deon Fincher v. Town of Brookline. et al. (US District Court #1:18-cv-10929-GAO)

This is an ongoing lawsuit brought by a former Town of Brookline Department of Public Works employee in the United States District Court. Counsel filed a Motion to Strike in

which is considered a model for other towns.

In the fall of 2018, the vacancy of the HR Director position prompted the continuation of the discussion on the model for Labor Counsel Services and the recommendation to bring a labor attorney in-house. The budget amendment for \$50,813 was approved by the Special Town Meeting in November 2018 and the FY20 increase in personnel costs will continue to fund the position. While the position is funded, no job description has been created yet. Ms. Murphy assured the subcommittee that should the resource not be fully utilized on labor matters, they will be used in other areas.

Subcommittee member Lee Selwyn asked Ms. Murphy if the work Legal Services does for the School Department is reported as part of the Town/School Partnership agreement. Ms. Murphy said while Legal Services provides needed support to the Schools, it does not get reported as part of the Town/School partnership and is difficult to calculate the total number of hours spent. She added that legal work done on school building projects like Baldwin is not considered work for the School Department as the Town owns the properties and the Schools are the using agency.

The subcommittee voted 4-0-0 to recommend approval of the requested Legal Services budget of \$1,142,204.00 for FY2020.

BROOKLINE ADVISORY COMMITTEE
Subcommittee on Planning and Regulation

FY20 Program Budget: Planning and Community Development

The Planning and Regulation Subcommittee of the Advisory Committee held a public hearing on the FY19 Planning and Community Development budget on February 25, 2019 in Room 111 of Town Hall, at 7:30 pm. Attending were P&R Subcommittee members Steven Kanen, Chair, Lee Selwyn, Kelly Hardebeck and Carol Levin; Alison Steinfeld, Director, Planning and Community Development Department, Joslin H. Murphy, Town Counsel, and Melissa Goff, Deputy Town Administrator; as well as several members of the public (see attached sign-in sheet).

Budget Summary

The FY20 Planning and Community Development budget request is \$1,183,868 and represents a 2.3% increase over FY19. The \$26,542 increase is due to increases in Personnel costs, specifically an increase in Steps (\$11,442); a \$15,000 increase in Services to spent on increased Advertising; and a \$100 increase in Capital for Leased Equipment.

PROGRAM COSTS - PLANNING AND COMMUNITY DEVELOPMENT					
CLASS OF EXPENDITURES	ACTUAL FY2018	BUDGET FY2019	REQUEST FY2020	FY20 vs. FY19	
				\$ CHANGE	% CHANGE
Personnel	955,692	1,095,431	1,106,873	11,442	1.0%
Services	34,895	43,633	58,633	15,000	34.4%
Supplies	9,620	9,712	9,712	0	0.0%
Other	3,022	4,550	4,550	0	0.0%
Capital	3,440	4,000	4,100	100	2.5%
TOTAL	1,006,669	1,157,326	1,183,868	26,542	2.3%
BENEFITS			709,129		
REVENUE	100,967	42,000	42,000	0	0.0%

Budget Discussion

The proposed Planning & Community Development Department budget for FY20 represents a 2.3% increase over the FY19 budget. Personnel costs have increased by \$11,442 due to Steps, and Services by \$15,000 for additional consulting services for promoting the Town’s commercial districts.

The Subcommittee’s members queried Ms. Steinfeld about two new hires authorized in the FY2019 budget: a full-time Sustainability Planner and a half-time Preservation Planner. Both new hires are just starting. Ms. Steinfeld indicated these hires will provide the capacity to engage in some pro-active preservation planning and allow the Senior Regulatory Planner to

focus exclusively on regulatory planning. An assessment of this goal should be included in the review of the FY 2021 Budget. One of the Department's objectives for FY2020 is to start work on a 5-year preservation plan in conjunction with the Preservation Commission.

The discussion then turned to the Regulatory Planning function and the Town's Zoning By-Law. It was noted there are currently two different versions of the Zoning By-Law posted on the Town's website, and that the hard copies currently being distributed are not up to date as they do not include the changes in the Zoning By-Law approved at the May 2018 Town Meeting, concerning Retail Marijuana Establishments. It was also noted that the Zoning By-Law was not easily accessed on the Town's Website and was not searchable. Concern was also expressed about potential legal ramifications for the Town both due to the failure to post changes in a timely manner and the dissemination of incorrect information.

Ms. Steinfeld noted the Planning Department received funding in the FY 2019 CIP to begin recodification of the Zoning By-Law. An outside consultant, General Code has been retained and is reviewing the code from both an editorial and legal perspective. The review is looking for inconsistencies with both State law and those created by successive amendments. The final work product will be a searchable, electronic version of the Zoning-By-Laws. The Subcommittee urged Ms. Steinfeld to pursue interim solutions with the IT Department, for providing a correct, searchable version of the Zoning By-Law on-line.

Ms. Steinfeld updated the Subcommittee on a number of the Planning Department's major accomplishments over the past year, including: achieving Safe Harbor on 40(b)s until October 2019, obtaining a Mass Historic Grant to inventory Aspinwall Hill, the successful amendment of the Demolition Delay by-law, and the commencement of Gateway East construction by Mass DOT this coming summer.

The discussion returned to the Regulatory Planning function and the adoption of two software products. Acela is being utilized to improve coordination with the Building Department and flag issues. OnBase, which is currently used by the Select Board to publicize meetings and distribute materials, will be used by the Planning Department for the same purpose.

Concerns were raised by the Subcommittee regarding work on proposed Warrant Articles that would legalize and regulate Airbnbs, and the need to obtain more public input and to fully explore the impact on neighborhoods, condominiums, individual home owners and property values, particularly under the zoning amendments currently being considered.

Following that discussion, the Planning and Regulation Subcommittee voted 3-0-1 to recommend that the Advisory Committee approve the FY 2020 Program Budget for Planning

and Community Development in the amount of \$1,183,868. The member who abstained did so because the FY2020 Budget maintained funding which he opposed in the FY2019 Budget, and because of the continued failure of the Preservation staff to address zoning issues in their recommendations to the Preservation Commission.

SIGN IN

<u>NAME</u>	<u>ADDRESS</u>
Anne Greenwald	6 Gibbs St.
Deborah Brown	26 Parkman, #1
Raul Fernandez	5 Winchester St.
Katka Seidman	18 EILA ST
Debbie Katz	125 Sumner Rd #1
Scott MURPHY	
Kelly Race	58 Marshal St.
Sean Lynn-Jones	53 Monmouth St.
Barbara Brom	44 Watvoly St
Ben Poorz	
neil Gordon	AC
Fred Leviten	1731 Beacon St
Jules Milner-Brage	231 Rawson Rd.
Aztha Ewelly Conywater	115 Huggan St
John M. Feole	306 Russell Park
Susan Houston	1258 Beacon St
Keith Grove	29 Green St. #1
Joanna Baker	1824 Green Beacon St #4
Melissa Goff	SB