

**Town of Brookline
Advisory Committee Minutes**

Sean Lynn-Jones, Chair

March 7, 2019

Present: Carla Benka, Ben Birnbaum, Clifford M. Brown, Carol Caro, John Doggett, Harry Friedman, David-Marc Goldstein, Neil Gordon, Susan Granoff, Kelly Hardebeck, Amy Hummel, Alisa G. Jonas, Janice S. Kahn, Steve Kanes, Bobbie Knable, David Lescohier, Carol Levin, Pamela Lodish, Sean Lynn-Jones, Mariah Nobrega, Michael Sandman, Lee L. Selwyn, Kim Smith, Clair Stampfer, Charles Swartz, John VanScoyoc, Christine Westphal

Absent: Dennis Doughy, Janet Gelbart, Stanley Spiegel

Also Attending: Melissa Goff, Deputy Town Administrator; arriving at 7:30: Town Counsel Joslin Murphy, Patty Correa, First Assistant Town Counsel, Attorney Doug Louison

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

Announcement: The meeting and public hearing will be videotaped by Brookline Interactive Group.

OPEN SESSION

1. Review and possibly vote on FY20 Operating Budget – Human Resources
2. Review and possibly vote on FY20 Operating Budget – Personnel Benefits

Carol Caro reviewed the deliberations of the Personnel Subcommittee and shared some highlights the details of which are in their report.

This is a level services budget to support the department’s ongoing activities.

The Human Resources Department is currently without a Director as it is difficult to find qualified candidates.

There is a potential reserve fund transfer request to cover the cost of pre-employment physicals for the 12 firefighter recruits. A similar request was funded in 2018 when the police had an unusually large incoming class. A question was raised as to why this isn’t included in the budget? Ms. Goff explained that we weren’t sure how many new recruits there would be (it is an estimate based on 2019) and we were not aware when the classes would be timed. Next year we probably won’t have classes so the figure varies.

The Personnel Benefits Budget found on page IV-127 of the FY 20 Financial Plan has been revised to reflect the final group health insurance rates from the GIC. The budget proposal of \$66,295,696 represents an increase of \$3,249,677 (5.2%).

Pension funding is following current actuarial schedule which is for two years. Group Health has new GIC rates but still need to confirm them before showing the Town School split.

QUESTIONS AND COMMENTS

Q: If there was a Gerald Alston situation to happen tomorrow, would there be procedures in place in the HR department to respond? A: Yes, following this incident a Policy Against Discrimination, Sexual Harassment and Retaliation (<https://www.brooklinema.gov/DocumentCenter/View/10320/Policy-Against-Discrimination-Sexual-Harassment-and-Retaliation-PDF>) was put in place and procedures would be followed.

Q: Should OPEB money be diverted to pensions? A: At some point we will have pressure on the OPEB fund as it is now appearing on our balance sheet. Rating agencies are looking at this. We have a plan in place for pensions, so wouldn't recommend diverting OPEBs.

Q: Health Insurance - do we offer Advantage Plans which are oftentimes less expensive than others? A: Only 4 different options within the GIC.

Q: Group life insurance – do people have ability to purchase supplemental? If you doubled the amount to \$10,000 – the cost wouldn't necessarily go up significantly. Has this been considered? A: People cannot buy supplemental through the Town but can purchase private insurance.

Q: Employees eligible for noncontributory pensions – who are these people? A: The group of people in this eligibility category are passing away. This will disappear eventually.

Q: Long Term Disability claims expected to increase – did we triple the number of people we are covering? A: Based on number enrolled.

A **MOTION** was made and seconded to recommend favorable action on appropriating \$653,495 for the Human Resources Department FY 20 budget.

By a **VOTE** of 26 in favor, none opposed and no abstentions recommend appropriating \$653,495 for the Human Resources Department FY 20 budget.

A **MOTION** was made and seconded to recommend favorable action on appropriating \$66,295,696 for the Personnel Benefits FY 20 budget.

By a **VOTE** 26 in favor, none opposed and no abstentions recommend appropriating \$66,295,696 for the Human Resources Department FY 20 budget

3. Question of whether the Advisory Committee shall enter into an Executive Session pursuant to G.L. c. 30A, s. 21(a)(3) for the purpose of discussing litigation strategy in the matter of Gerald Alston v. Town of Brookline, Civil Service Commission No. D1-16-170

PROPOSED EXECUTIVE SESSION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A **MOTION** was made and seconded to leave Executive Session. By a roll call **VOTE** (18-8-0) the meeting reconvened in open session.

BENKA	Yes	HARDEBECK	Yes	NOBREGA	No
BIRNBAUM	Yes	HUMMEL	Yes	SANDMAN	No
BROWN	No	JONAS	No	SELWYN	No
CARO	Yes	KANES	Yes	SMITH	Yes
DOGGETT	Yes	KAHN	Yes	STAMPFER	No
FRIEDMAN	Yes	KNABLE	Yes	SWARTZ	Yes
GOLDSTEIN	Yes	LEVIN	Yes	VANSCOYOC	Yes
GORDON	No	LESCHOIER	Yes	WESTPHAL	Yes
GRANOFF	Yes	LODISH	No		

OPEN SESSION

5. Public Hearing on a proposed Advisory Committee resolution regarding the appeal of the Civil Service Commission's ruling in the Gerald Alston case.

The Chair advised that comments will be limited to 3 minutes. He further explained that an Advisory Committee member may well make a motion to postpone indefinitely. Such a motion would take precedence over other motions and further motions will not be taken.

Deborah Brown: 20 year, Brookline resident. This is a moral injustice. You have a fiduciary duty to make decisions for the Town not just looking at a narrow view of money. This is not a good use of our money because the case is already expensive and will only cost much more. I am an attorney and I have never seen anything like this. What the Civil Service Commission was saying by including all of those facts is

don't even try to appeal. It is not sound fiscal policy to proceed. This is a stain on the character and integrity of this Town.

Jim Franco, TMM Precinct 1: Full disclosure my son is a member of the Select Board but we have had no discussions regarding this issue. Advisory reviews warrant articles and makes recommendations to Town Meeting and the main thrust is financial. I would caution weighing in on litigation strategy very carefully. There are two parties and each represented by counsel. The Select Board needs to decide how to proceed with everything brought before them and they will have to reconcile Federal case and this civil decision. Struck by the number of times Mr. Alston or his attorney rebuffed Town attempts to come to reconciliation. I counted 11. It has never been any doubt no one denies the original sin but there have been many attempts by the Town to mediate and bring this to conclusion.

Larry Onie: Have any of you ever experienced identity theft? Have any of you been raped? This is a humanitarian crisis we have in Brookline and in the world I live in, budgets and expenditures represent values. If people had done their jobs and the right thing and were not fearful we would never be in this situation now. We have a case of identity theft and the identity theft is of Gerald Alston but there is also a pattern to this because I know of other black men in Brookline some who have been employed here, so hope the Select Board doesn't assume this situation will be settled as others have been.

Barbara Brown: I have lived here since the 70's and my husband's family has lived here since the 1800s. I am also the Executive Director of Hidden Brookline. I received the document on Friday like all of you because I heard about the case but didn't know much about it. I was grateful for all of the knowledge and by the time I got to the end of it, I felt I had been misled. I was shocked that my Select Board that I trusted mistook the harassment he faced for his mental illness. They made the mental illness the problem and not the Town's racism.

As Deborah Brown noted this is a tightly argued case and I was dirtied by it because there were things that I didn't know to be true, turned out to be true. This was a failure of leadership of the Fire Department, failure of leadership of the Select Board, and then Town Counsel. I hope you will encourage the Select Board to make their final decision and think again. You have that power and credibility to advise them what you would do if you were in their shoes. Also there is the larger financial issue for the Town – we pride ourselves on getting the best people everywhere in this Town but it will now, may prove difficult.

Regina Frawley asked if there two resolutions proposed to this committee. The Chair noted that yes there are two, one submitted by Mariah Nobrega and then a substitute motion offered by Steve Kanes.

Arthur Wellington Conquest III, TMM Precinct 6: I have lived here since 1982 and a week doesn't go by when something racist happens to me in your Town. None of you experience what I experience in Brookline all the time. It becomes nerve wrecking and I try to keep myself under control. I am presently reading a book by Howard Zinn who was fired as a professor at Spellman College and I would like to begin my comments with a quote from the book:

The quotes below, from the book “You Can’t Be Neutral on a Moving Train”, are Howard Zinn’s when he was fired from his post as a professor of the History Department at Spelman College for leading the fight with his Black students to integrate the city of Atlanta, Georgia.

“A few white colleagues from the English department joined the campaign to annul my dismissal. But President Manley (of Spelman College) was adamant. To visiting delegations he gave the reason he had not put in the letter. I was subordinate. (It was true I suppose.)

“I wanted to fight the dismissal and was sure I was on good legal ground. I was chair of the department, a full professor with tenure, and by all the rules of the profession I could not summarily be fired. When I called Don Hollowell for legal advice, he was confident that Manley had broken my contract with the college. And yes, he said, he would take the case. When I called the American Association of University Professors in Washington they were sure my tenure rights had been violated, and they would set up a committee to investigate.

“But by this time I was acutely conscious of the gap between the law and justice, I knew that the letter of the law was not important as who held the power in any real life situation. I could sue, but the suit would take several years and money I didn’t have. The A.A.U.P would investigate, and some years later would issue a report citing Spelman College for violating my academic freedom, but this would mean little. I soon concluded that I did not want to tie up my life with this fight. In doing so, I was reluctantly bowing to reality. ‘The rule of law’ in such cases usually means that whomever can afford to pay lawyers and can afford to wait is the winner, and ‘justice’ does not much matter.”

In the case of Gerald Alston V. the Town of Brookline, the situation is almost 360 degrees in the opposite direction from the position taken by Howard Zinn when he was dismissed from his position at Spelman College. Gerald Alston has literally tied up his life with this fight against the Town of Brookline, and has refused to bow to what many see as and believe is the reality. He and his lawyer, Brooks Ames, unlike others who have challenged the Town of Brookline have defied “the rule of law” and steadfastly maintained that “justice does matter,” regardless of the consequences.

Most important, it is paramount that the Town of Brookline cease with this evil notion of seeing and treating its Black, Latinx, Asian and People of Color citizens, employees, and people passing through this community as sub-human beings. Gerald Alston has risks his life for citizens from his community and he deserves to be treated with the highest degree of respect, as a living, functioning, compassionate, intelligent human being.

Charles Terrell, TMM Precinct 1: The first ten years here I suffered terrible police harassment. I appealed my treatment to the Select Board with no support. After the hearing, the Select Board actually congratulated the Brookline Police on good police work. Over the years people say things have changed in Brookline but I read the Alston case and it doesn’t make me feel that way. I would hope that the justice that I do not feel I was accorded when I appealed my police harassment will be accorded Mr. Alston and hope you use whatever influence you have to ensure that the Town doesn’t appeal this case and lifts its sense of justice to where we believe it should go.

Martha Grey, TMM: Hold Advisory Committee accountable for stepping up and doing the right thing – and to acknowledge there have been gross injustices in this town and we will collectively turn the page to show that we can and will do the right thing.

The Public Hearing concluded at 9:04 p.m.

6. Review and possibly vote on a proposed Advisory Committee resolution regarding the appeal of the Civil Service Commission's ruling in the Gerald Alston case.

A **MOTION** was made and seconded to postpone indefinitely.

DISCUSSION

We are dealing with complex litigation that involves a lot of moving parts, both parties are represented by competent counsel and opining on pending litigation is beyond the scope and purview of the Advisory Committee's responsibilities. Not knowledgeable enough to make a decision on this. Appropriate to postpone indefinitely, take no action and not pursue this further.

There is a difference between not giving the Select Board legal advice and not giving the Select Board political advice. The political opportunity is to make a moral statement that we are disturbed by the fact that Mr. Alston has been turned into hamburger on the meat grinder of the legal process. There are two hands on the meat grinder and by the Town removing their hand hopefully his attorney will do the same and the case will be settled.

If we make the decision to postpone indefinitely it is because we are privy to information that is not available to the general public.

I want to speak to the motion – I will vote against it and to me it is hiding, it is not coming out and saying how we stand on the issue.

I don't think this our place and I would vote in favor of postponing and against either resolution. We would be setting a precedent if we inserted ourselves in this litigation. If we feel passionately one way or the other we can speak individually to Select Board members.

In business you are faced with following a business strategy or making a legal decision but when you make that decision you have all the information you need to make that decision. While I appreciate Mike's analogy, we aren't in the situation he described because we don't have all of the information.

But, we are just one more advisor to the Select Board.

Yes, but do we want to endeavor to advise without sufficient information?

As much as I respect this body there are many things I wouldn't want them advising me on. There is more value in staying out of this litigation than in passing any resolution.

By agreeing to not participate in this advice giving means we are giving up our responsibility. We must still attempt to understand how we operate as a Town and to make sure whatever is factual in this decision and we don't agree with it, that we change it.

The chair summarized the debate, noting that those who argued for the motion to postpone indefinitely had made three distinct arguments: (1) the Advisory Committee should not give advice to the Select Board on pending litigation; (2) this case is too complicated for the Advisory Committee to make a recommendation; and (3) the Committee does not have enough information to offer advice on this matter. Each member who argued for the motion did not necessarily support all three of these arguments. Those who opposed the motion to postpone indefinitely had argued that the Advisory Committee could offer recommendations on any matter concerning the Town, and that there were legal, financial, political, and moral reasons to consider this matter.

By a **VOTE** of 18 in favor, 7 opposed with 1 abstention the motion to postpone indefinitely passes.

7. Possible Warrant Article preview for the May 2019 Annual Town Meeting and possible assignment of Articles to subcommittees for review.

1. Wood and Bark
2. Collective Bargaining
3. Compensating Balance
4. Revolving Fund plan on how we get money from cable companies
5. Establish a Bylaw for Revolving Funds
6. Close Out Appropriation
7. Unpaid Bills
8. Annual increase property tax exemptions
9. Budget Article
10. Newbury Acquisition
11. Easement at 20 Boylston Street
12. Waldo Durgin Zoning
13. Waldo Durgin MOA
14. WD Tax Certainty Agreements
15. Parking Rate Increase
16. Amending Membership of Naming Committee
17. Amendment to Leash Law
18. Amendment to Tobacco Law
19. Menstrual Hygiene Products in Town Buildings
20. By Law Amendment on Marijuana Establishments
21. Resolution on Pedestrian Friendly Street Lighting
22. Electrification of Town's Motorized Fleet (budget implications)
23. Town Supply of Green Electricity
24. Appropriation of Funds for Advancement of Racial Equity in the Town
25. Resolution Race and Equity Review Consultant

26. Resolution calling for an apology to Gerald Alston
27. Resolution to change flag
28. Resolution to encourage diversity in Town Meeting
29. Outdoor Pool Siting Study

Assignments to subcommittees will be made at the March 12 meeting.

A **MOTION** was made and seconded to adjourn; there being no further business, the meeting adjourned at 9:35 p.m.

Documents Distributed at Meeting

- Personnel Subcommittee Report on FY 20 Operating Budget – Human Resources Department
- Personnel Subcommittee Report on FY 20 Operating Budget – Personnel and Benefits
- Public Comment on the Alston Appeal
- Proposed Resolution from the Advisory Committee to the Select Board regarding the appeal of the CSC ruling in Alston Case (Nobrega)
- Substitute Resolution of the Advisory Committee (Kanes)
- Amended Protective Order dated 208-12-07