

BROOKLINE ADVISORY COMMITTEE
Administration and Finance Subcommittee
Report on Warrant Article 22

The Administration and Finance Subcommittee held a public hearing on Friday, March 19th, 2021 to review Warrant Article 22. In attendance were Harry Bohrs, Dennis Doughty, and Alok Somani for the subcommittee; Neil Gordon as co-petitioner and abstaining member (on the vote) of the subcommittee; co-petitioner Mike Toffel; Feng Yang, acting head of the Information Technology Department; Melissa Goff, Deputy Town Administrator, Justin Cassanova-Davis, Assistant Town Administrator; Jeana Franconi, Finance Director; Rachid Belhocine, Acting Chief Assessor; and several members of the public (who may have been there because they arrived early for the public hearing on Warrant Article 34).

Warrant Article 22 proposes to amend the General Bylaws such that in most cases members of the public receive notice of (and access to) documents to be discussed at a public hearing or meeting “at the same time” that participants in the meeting receive them. This Article imposes additional requirements on meeting organizers and hosts with respect to ensuring that meeting notices contain references (i.e., links) to the documents and for keeping those references up to date as new documents are disclosed to participants.

RECOMMENDATION

By a vote of 3-0-1, the Administration & Finance Subcommittee recommends favorable action on a revised version of the Article (see below). (Neil Gordon, a co-petitioner, abstained.)

Discussion

There was no substantive objection to the concept of Warrant Article 22. Reduced to its essence, this Article can be characterized as “**public** documents discussed at a **public** meeting should be available to the **public**.” The article contemplates examples where this may be difficult or inappropriate, e.g., it considers materials discussed in Executive Session, materials which are produced as a work product of the meeting itself, or materials that were not available until just before the meeting starts. The Warrant Article anticipates these concerns and accounts for them, by providing a safe harbor period after the meeting to distribute late-arriving materials and by explicitly excluding materials that are exempt from disclosure requirements.

It should be noted that the Warrant Article would imply a new way of thinking about preparing for meetings. It would still be legal, but frowned upon, to distribute documents at the last minute. The petitioners hope that every effort will be made to have materials ready and distributed 48 hours or more prior to a meeting, the same “adequate notice” period used by the OML. An example that was discussed at some length is the Advisory Committee’s habit of holding some subcommittee hearings on a Tuesday and the full Advisory review on the Thursday of the same week. This practice might be discouraged for articles with substantial materials or subcommittee reports.

The Subcommittee had one concern regarding the language around posting requirements — the language of the Article as printed in the warrant was ambiguous with respect to materials that arrived between the meeting notice and the start of the meeting — and added simple clarifying language, specifically inserting the phrase “within 48 hours before” in the last sentence of the proposed version of 3.21.3 (a).

Where there was significant discussion was in the area of how to effectively achieve compliance with the Article. Today, only the Select Board could be considered to be in full compliance, and the Select Board achieves this with staff support (in the form of Devon Fields). The software tool that is used to make documents available (OnBase) is not readily available to most committee chairs, and requiring a committee chair to send documents back and forth via email, entrusting staff to keep the public informed, would add quite a burden. Petitioners and the Subcommittee believe that allowing committee chairs to be able to maintain these documents themselves is a reasonable solution, but there is currently no proposed timetable for either replacing OnBase or for providing the necessary training and access to the chairs of the scores of committees that would be affected by this Article. Petitioners propose using a consumer-grade tool such as Dropbox or Google Drive for this purpose, which the Subcommittee grudgingly accepts as an interim measure. However, neither of those tools provide sufficient revision management or traceability to be suitable for archival of government documents. (Example: what stops someone from uploading a replacement version of a document and claiming it was the document that was there all along? Tools like OnBase provide clear document histories in the event of such scenarios.)

The Subcommittee could not agree on language that could address this concern but members expressed some sympathy for the idea that an implementation delay might end up being appropriate as well as for the idea that the petitioner might come to the full Advisory Committee with additional suggestions.

The full motion recommended by the Subcommittee (and approved by the Moderator) is on the following pages.

Moved, that the Town amend Article 3.21 of the Town's General By-laws as follows (language to be stricken appearing in ~~strikeout~~, language to be added appearing in underline):

ARTICLE 3.21

READILY ACCESSIBLE ELECTRONIC MEETING NOTICES, AGENDAS, INFORMATION, AND RECORDS

Section 3.21.1 Purpose and Applicability

This by-law applies to ~~all the meetings of all Town of Brookline governmental bodies~~ public bodies subject to the Open Meeting Law, now G.L. c. ~~39, §§23A-30A, §§18-25 et seq.~~ (hereinafter, respectively, "public meetings" and "OML"), and is intended ~~(a) to take advantage of the internet and its increasing use; (b) to better implement the spirit of the OML; and (c) to the extent reasonably practical, to improve opportunities for broader and more meaningful citizen participation by Residents and other interested parties in the business of Town governmental public bodies.~~

Section 3.21.2 Electronic Notification List(s) & Calendar

The Information Technology Department ("ITD") shall maintain one or more broadly available list(s) for the purpose of providing electronic notifications (such as by email) to Town Meeting Members and other Town residents who request to be included, prominently promoted on the Town website's Homepage, along with a link to a readily available and current Calendar of upcoming meetings.

Section 3.21.3 Meeting Notices, ~~and~~ Agendas, and Information

(a) Each meeting "notice" required by the OML shall not only be "posted" ~~under~~ in accordance with the OML at least forty-eight hours before the meeting but, additionally, shall be posted in electronic format as soon as is practicable on the Town website Calendar after said meeting has been scheduled. ~~To the extent possible, each posting~~ Each such notice shall include (i) an agenda that is reasonably descriptive of the intended business of the meeting, subject to later revisions as needed in compliance with the OML, ~~and~~ (ii) the name of a contact person along with contact information for further inquiries, for forwarding messages to the relevant ~~governmental~~ public body, for obtaining background

information to the extent readily available, and for obtaining contact information (or a website link containing such information) for all ~~of~~ members of the ~~governmental~~ public body, and (iii) webpage link(s) on the meeting agenda to such documents that the public body chair and/or their designee circulates to public body members in advance of the meeting (hereafter called the "Agenda Packet"). All documents circulated to public body members in advance of the meeting shall at the same time be made available to the public.

Additional items made available to public body members within 48 hours before, during, and subsequent to the meeting are also part of the Agenda Packet, and shall forthwith and similarly be made available to the public as soon as practicable, and no later than forty-eight hours after the meeting. Notwithstanding anything herein to the contrary, no documents need be made available under this Article if such documents are exempt from disclosure under applicable law.

(b) With the assistance and direction of the Town Clerk and ITD, the information specified above shall be disseminated in a timely manner to members of the public who join the aforementioned notification list(s).

(c) Each public body chair and/or their designee shall use all best efforts to post the Agenda Packet (and any and all updates thereto) sufficiently in advance of the meeting to allow the public body members and the public to read and comprehend the materials in the Agenda Packet prior to the meeting.

Section 3.21.4 Records

Records of meetings of all Town ~~governmental~~ public bodies shall be reasonably descriptive of the business conducted, and shall include a summary of discussions, in addition to indicating actions taken and other requirements of the OML, and shall include link(s) to the Agenda Packet and to any electronic recording of the meeting, and shall be accessible electronically from the Town website as soon as is practicable following the meeting at issue.

Section 3.21.5 Enforcement

As to mandates of this by-law that exceed those of state laws, including the OML, all officials, boards and committees responsible for appointing members of committees subject to this by-law shall ~~periodically~~ notify their appointees in writing of the requirements of this by-law. Such notification shall be provided no later than when appointees and chairs are sworn in by the Town Clerk. No additional enforcement powers are hereby conferred upon the ~~Norfolk County District~~ Attorney General beyond the responsibility of such office with respect to state law, including the OML, nor shall actions taken at any meeting be held invalid due to failure to comply with any requirements of this bylaw that exceed those of state laws, including the OML.

~~Section 3.21.6 Effective Date~~

~~The requirements of this by law shall become effective on July 01, 2008.~~

The Administration and Finance Subcommittee of the Brookline Advisory Committee held a duly noted hearing on March, 19, 2021 for the purpose of considering Warrant Article 34 of the 2012 Annual Town Meeting. The open public hearing was held on the Zoom platform beginning at 9:10 a.m.

In attendance were: Dennis Doughty, Neil Gordon, Harry Bohrs, Alok Somani [all of the A&F Subcommittee], Melissa Goff, Deborah Brown, Paul Harris (principal petitioner), Jeana Franconi, Robert Weintraub, Linda Olsen Pelke, Werner Lohe, Carol Caro, Susan Granoff, Nathan Shpritz, Mike Toffel.

Summary

WA 34 is both a proclamation of principle and a proposal for the creation of a Payment In Addition To Tax (PIATT) program for private property owners who already pay real-estate taxes, though may be in a position to contribute more. This would be a Town financial vehicle akin to PILOTs for non-profit organizations.

The Article is a Resolution in that Town Meeting can only ask that the Select Board establish a PIATT (or in this case ask that that they establish a committee to examine instituting such a financial vehicle). Town Meeting cannot direct the Board to do so.

As envisioned by the petitioners, if Brookline had a PIATT, residents of significant means could voluntarily pay into the trust some amount greater than their assessed real-estate taxes, in order to support a variety of yet to be defined programs for the common good - programs that are beyond the financial grasp of the Town. These voluntary payments would be tax deductible under IRS code (cited is Section 170 (c)(1)).

Bridging the Divide

The petitioners point to the extreme wealth gap in this country, and its continued widening. It was noted that the upper limit income tax rate has fluctuated dramatically in the past century, from a low of 15% to a high of 91%. The highest rate is currently 37%. One of the petitioners highlighted the irony that the Federal Government elects to borrow money to finance spending rather than raise it from taxation (borrow and spend versus tax and spend). The twist is that in order to keep upper income tax rates down, the Government must borrow by issuing bonds to support the country's operations. The very wealthy often buy these bonds, meaning that Americans pay them interest on that borrowing as a way to help keep their tax rates lower. Borrowing, then, helps subsidize a system that provides lowered tax rates for the very wealthy. There is of course much more that goes into borrowing, spending, and the assignment of tax burdens, both philosophically and mechanically, but it is an interesting contrast.

The petitioners also point out that, as at the national level, there exists a very wide income divide in Brookline, as well as unmet community need.

Assets and Income

Municipalities primarily raise funds for the public coffers through property taxes. The value of a home essentially becomes a proxy for wealth or income. We know that is not always the case, however. This point was discussed at the subcommittee hearing. There is the old adage of "house rich and cash poor".

Many long-time Brookline residents are understandably astounded at how their home values have appreciated. This “wealth”, though, does not serve them unless they sell and move somewhere less expensive. Many people simply wish to remain in their homes, as valuable as they may be, but may not have high incomes and struggle to pay their assessed taxes.

Be that as it may, there are still many residents who have very significant assets and very significant incomes, and could be very instrumental in supporting the betterment of the community in which they live.

Accomplishing this requires soliciting funds and establishing a financial vehicle to receive contributions – that is the purpose of the PIATT. Of course, we must also establish mechanisms for distributing funds and monitoring effectiveness.

Resolving the Whereas(s)

The Whereas clauses underscore the history of Brookline’s cutting-edge initiatives, the community’s commitment to the greater good, and the need to focus on what the petition refers to as a “21st Century Vision of Brookline in the Global Context”. It goes on to outline some of that vision, specifically referencing support of the school system, affordable housing, food security, support for the elderly, and contributing to a sustainable future.

It was noted that in both a national or global context, Brookline is a very well-off community, and perhaps we should encourage people to support those in more impoverished areas. While this was acknowledged, it was pointed out that there is tremendous need right here in Brookline, alongside many of us who are very secure. This is a “give where you live” effort in which we pitch in to support our fellow community members.

The subcommittee offers revised language that makes changes to three different Whereas clauses.

Whereas clause #2, delete "Town of Brookline staff,"

Whereas clause #7 changes to: **WHEREAS, In 2020, the wealthiest 1.13% of U.S. households had a net worth above \$10 million, and in Brookline it is likely substantially higher;**

Whereas clause #8 changes to: **WHEREAS, an annual household voluntary contribution from the more wealthy among us can help realize a 21st Century Vision of Brookline in a Global Context and would be of significant value to our community.**

Concerns

The subcommittee is concerned with what this proposal might mean in terms of staff time and commitment. We do not want to see an implied commitment and a new project assigned to already over-stretched staff members.

Questions arose, prematurely according to some, around how such a program could be managed by the Town, even if advised by a SB committee. How do we decide funding priorities? How do we choose the organizations or programs within those areas to be funded? Who reaches out? Who maintains the ongoing supportive relationships with each funded organization and monitors fund usage? It is a lot to

digest, and may be unreasonable to fully consider this early in the discussion – especially as this Warrant Article simply asks the Select Board to commission a study of the issue and its potential applicability.

The subcommittee is unaware of what percentage of Brookline residents have “net worth” above \$10M, but we are confident that it is greater than the nation as a whole.

We also believe that many in the community can contribute to some extent, though we don’t believe we necessarily need to specify where the lines are drawn. We simply seek to recognize that there are those among us with significant means and capacity – how ever we may choose to define that.

The Costs and Benefits

Our community has many in need and many challenges around hunger, affordable housing, mental health support, education, youth, and the environment.

The benefit of the proposed program is that it may generate additional resources for the Town with which to do good for the common betterment of the community in a coordinated and targeted fashion.

The risk is that we spend every dollar three ways before we even receive it. Everyone has a vision of what we should fund. And any proposed program will need to describe, generally, where the funds will be used. Whatever the need(s), those contributing will want to have confidence that their donation will be used for programs and people in need, rather than for, say, new shiny trucks and office furniture.

Presumably, a Select Board Committee will be able to make concrete recommendations in this regard.

Staffing

There are potentially significant staff costs.

It was noted there are already many organizations working for the public good in town, each able to accept financial contributions and experienced at vetting and monitoring that funds are spent effectively. These include the Brookline Community Foundation (BCF), the Brookline Center for Mental Health, the Food Pantry, the Brookline Housing Authority, Brookline Improvement Coalition, Teen Center, Steps to Success, and the Council on Aging - just to name a few.

BCF has long worked to provide assistance to organizations supporting those in need in Brookline. However, it has a full-time staff to study, assess, vet, and administer grants, as well as lend ongoing support and guidance to organizations

A newly-established Select Board Committee would need to seriously consider the structure of a related program and the staffing needs that could result.

Conclusion

It is easy to be cynical about such a proposal. After all, who really wants to pay more into local government, especially if you feel you are over-contributing already. And do we think that the Town can and should manage such an operation?

A Select Board Committee may answer such questions. And what a gift it would be if we had to wrestle with an abundance of funds to direct toward addressing our most pressing community issues.

If this effort merely heightens awareness of opportunity and need, enough to inspire giving to existing programs in town, then it will be a success. Whether it will be an overwhelming success, we won't know unless we try, and unless we first ask. And without a purse to put it in, it becomes an empty effort.

This is why the establishment of a PIATT is so important. It is the place to hold funds when those with resources step up to provide for those in need in our community.

Recommendation

By a vote of 3-0-1, the subcommittee recommends Favorable Action on the following amended motion under WA 34:

That the Town will adopt the following Resolution:

1. WHEREAS, the Town of Brookline has historically been a lighthouse community in our nation, with a reputation for responding with creativity and innovation to a broad range of local, national, and global challenges — in climate action, education, housing, preservation, and engaged governance;
2. WHEREAS, the COVID-19 pandemic has produced the dual financial challenges of reduced Town of Brookline revenue and significant increased need; it also presents an opportunity to create a 21st Century Vision of Brookline in a Global Context supported by ~~Town of Brookline staff~~, community volunteers, and people of means who find fulfillment providing financial support to their home community;
3. WHEREAS, The Town of Brookline has immediate needs not included in the current budget to serve the less-privileged among us, especially in the context of COVID-19, for nutritious food, urgent affordable housing repairs, access to reliable and affordable wifi services, emotional and physical safety and wellness, including additional social workers in the public schools, Innovation Funds in the K-8 schools that can address equity issues, technology-vocational training, and educational support;
4. WHEREAS, in addition to addressing immediate needs, the Town of Brookline requires long-term resources, including for comprehensive planning and zoning, to develop and realize a 21st Century Vision of Brookline in a Global Context, that will:
 - a. Provide necessary support so that all Brookline residents, including the elderly, disabled, and disadvantaged, have food, safe housing, and basic services
 - b. Address racial justice and equity issues
 - 89 c. Lead the transition from fossil fuel energy to renewable electricity for Town facilities and throughout Brookline to support a sustainable future for the world
 - d. Engage elders as wise counselors and inspiring mentors for younger generations
 - e. Provide guidance and support to meet the physical, mental, emotional, and social wellness needs of students in the Public Schools of Brookline
 - f. Advocate for improvements in state and national policies to better meet local needs

5. WHEREAS, many employees of the Town of Brookline cannot afford to live in Brookline, and a Town program providing affordable housing for Town employees who want to live in Brookline could benefit the entire Brookline community;

6. WHEREAS, tax policy in the United States and in Massachusetts has skewed LESS progressive since the 1970's, with real hourly wages stagnant and the social safety net weakened, leading to growing income and wealth gaps, and those most fortunate among us now have the means to make a greater contribution to the public good of the town;

7. WHEREAS, In 2020, the wealthiest 1.13% of U.S. households had a net worth above \$10 million; **and in Brookline it is likely substantially higher**

8. WHEREAS, an annual household voluntary contribution ~~to~~ **from the more wealthy among us can** help realize a 21st Century Vision of Brookline in a Global Context **and of 1% of total net worth above \$10 million** would be of significant value to our community;

9. WHEREAS, The Town of Brookline has a Payment in Lieu of Tax (PILOT) Policy and receives voluntary contributions from tax-exempt property owners;

, THEREFORE, BE IT RESOLVED that Brookline Town Meeting calls upon the Select Board to (i) adopt a Payment in Addition to Tax (PIATT) program; ~~(ii) recommended by a Select Board~~ appointed **a** committee charged with developing rules and regulations for disbursement of funds received; ~~and (iii) encourage contributing~~ Brookline households to make annual voluntary contributions to the Town of Brookline with a suggested guideline of 1% of household net worth above \$10 million, ~~or such other amount as Town Meeting may recommend~~, pursuant to and under Massachusetts General Laws, Chapter 44, Section 53A; with these contributions to be used exclusively for public purposes and therefore be considered tax-deductible under Section 170(c)(1) of the Internal Revenue Code; and ~~(iii)~~ **(iv)** consider a similar program for businesses and others