

**BROOKLINE ADVISORY COMMITTEE**  
**Subcommittee on Planning and Regulation**

**Report on Warrant Article 16 – Spring 2019**

The Planning and Regulation Subcommittee of the Advisory Committee held a public hearing on April 3, 2019, at Town Hall, in the School Conference Room (5<sup>th</sup> floor), to discuss and possibly vote upon Warrant Article 16, submitted by Chris Dempsey, TMM Precinct 6. Attending were P&R Subcommittee members Steve Kanes, Chair, Lee Selwyn, and Carol Levin; Petitioner, Chris Dempsey; Kara Brewton, Economic Development Director; also attending were members of the public (see attached sign-in sheet).

The Planning and Regulation Subcommittee held a subsequent public meeting on April 9, 2019, at the High School, Room 208, to discuss further and possibly vote upon Warrant Article 16. Attending were P&R Subcommittee members Steve Kanes, Chair, Lee Selwyn, and Carol Levin; Petitioner, Chris Dempsey; also attending were members of the public (see attached sign-in sheet).

**SUMMARY**

**Warrant Article 16 seeks the creation of Parking Benefit District in Brookline Village (whose boundaries are defined by Petitioner’s map contained in WA16) pursuant to recent State enabling legislation (the “BV Parking District”).**

**Warrant Article 16 provides that a portion of the parking revenue collected in the BV Parking District may be designated for use in that District through a dedicated fund; and designates a BV Parking Benefit District Advisory Board (the “BV Advisory Board) to make recommendations to the Select Board. The warrant article provides that the BV Advisory Board will be appointed by the Select Board and shall consist of nine members, at least five of whom shall be individuals who own or manage commercial businesses located in the BV Parking District.**

**The Subcommittee is of the view that Warrant Article 16 represents a worthy goal of enhancing the Brookline Village business district but believes that the proposal needs further development and clarification. To that end, a number of amendments to WA16 were adopted at the public hearing and at a subsequent public meeting, which Petitioner has accepted. On that basis, the Subcommittee recommends FAVORABLE ACTION on Warrant Article 16, as provided below.**

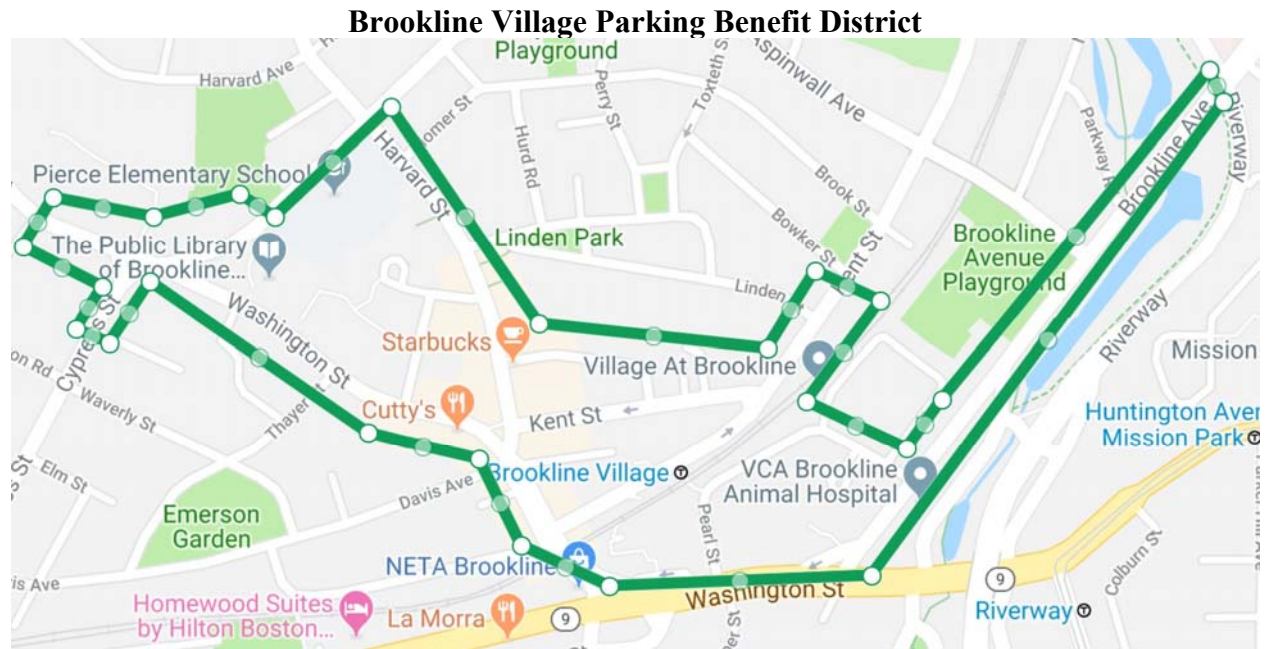
**BACKGROUND**

Petitioner’s warrant article provides in full as follows:

Establishment of a Parking Benefit District in Brookline Village

To see if the Town will vote pursuant to General Laws Chapter 40, Section 22A½ to establish a Parking Benefit District in Brookline Village as substantially described and shown below in the

plan entitled “Brookline Village Parking Benefit District”, in which a portion of parking revenue collected therein may be designated for use in that district through a dedicated fund in accordance with the purposes and uses listed in section 22A of said Chapter 40; and further, to establish and designate a Brookline Village Parking Benefit District Advisory Board to make recommendations to the Select Board about said Parking Benefit District; said Advisory Board to be composed of nine members appointed by the Select Board, at least five of whom shall be individuals who own or manage commercial businesses located in the district,



- Brookline Avenue
- Pearl Street
- Station Street
- Cypress Street from Washington Street to Searle Avenue)
- Kent Street
- Washington Street from Pearl Street to Greenough Circle
- Harvard Street from Harvard Square to School Street/Aspinwall Avenue
- Webster Place
- Holden Street
- Pierce Street
- Town lots on Holden/Pierce (Town Hall), Kent Street, Webster Place, and School Street, or take any other action relative thereto.

WA16, is being proposed pursuant to General Laws Chapter 40, Section 22A½, which was added in 2016, and provides as follows:

“A city or town may establish 1 or more parking benefit districts, as a geographically defined area, in which parking revenue collected therein may be designated in whole or in part for use in that district through a dedicated fund in accordance with the purposes and uses listed in section 22A. A parking benefit district may be managed by a body designated by the municipality, including, but not limited to, a business improvement district or main streets organization.”

With respect to the purposes and uses listed in Section 22A, Section 22A provides in relevant part, as follows:

“...acquisition, installation, maintenance and operation of parking meters and other parking payment and enforcement technology, the regulation of parking, salaries of parking management personnel, improvements to the public realm, and transportation improvements, including, but not limited to, the operations of mass transit and facilities for biking and walking.”

### **PUBLIC COMMENT**

Following the presentation by Petitioner, there was input from members of the public, which included the following comments:

Concern expressed about another government structure without clarity regarding its authority and how funds will be spent, and that the process should be slowed down so that there can be a more thoughtful discussion regarding what should be accomplished.

There was concern raised about contractors using 10-hour meters on Brookline Avenue that needed to be addressed.

One member thought that the map should be increased to include Route 9 up to Cypress Street in order to revitalize Route 9.

The BV Parking District could have benefits that will make Brookline Village a more special place, and a gateway to the Town.

BV is looking for an organizing principle to unite merchants and give BV businesses a voice.

This proposal would give neighbors a forum to discuss parking issues

### **DISCUSSION**

The Subcommittee raised the following issues:

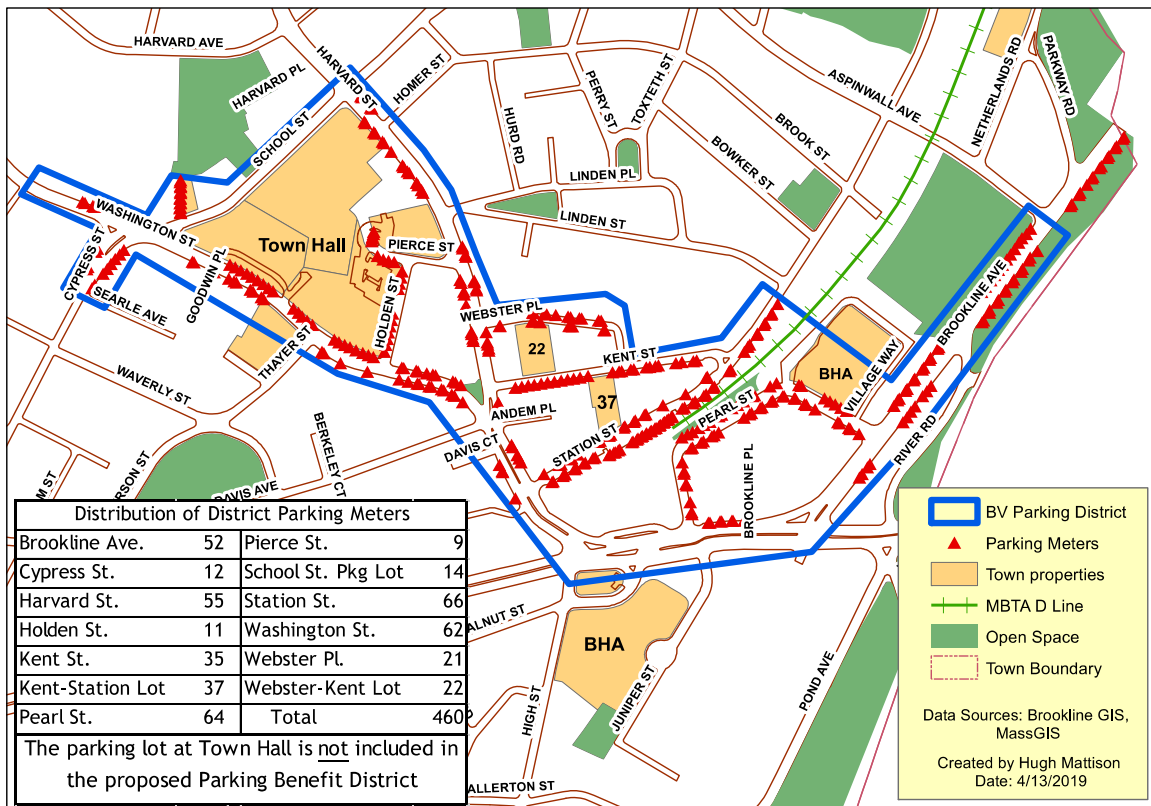
#### **Scope of the BV Parking District**

The Subcommittee raised questions about the perceived boundaries of BV for purposes of establishing the BV Parking District pursuant to WA16. Petitioner agreed that metered parking spaces on the northern end of Brookline Avenue were being used almost exclusively by contractors or other persons accessing the medical area. The Subcommittee expressed the view that these spaces were not legitimately within what is generally considered to be BV and that, in any case, they were not being utilized by persons accessing the BV commercial area. In response, Petitioner has agreed to amend the map to remove some of the metered spaces from the BV Parking District that are located on the northern end of Brookline Avenue, i.e., those spaces north of Aspinwall Avenue.

Furthermore, it was noted that there are certain parking areas within the proposed BV Parking District that the Subcommittee believed should be excluded. In that regard, there was a general consensus that the metered spaces in the Town Hall parking lot should be excluded because they were used principally for Town-wide business and not for parking to shop in or otherwise access BV. For similar reasons, some members of the Subcommittee also questioned including metered spaces located in front of the Library and on Cypress Street. In response, Petitioner has agreed to exclude the metered spaces in the Town Hall parking lot from the BV Parking District.

While the map submitted as part of the WA16 may be legally sufficient, it was the consensus of the Subcommittee that it did not provide adequate disclosure and permit a meaningful understanding of exactly what parking meters were being included in the proposed BV Parking District. In response, Petitioner agreed to amend WA16 to substitute a new map, provided below, detailing the parking meters in the proposed BV Parking District, which now excludes certain spaces on Brookline Avenue and those in the Town Hall parking lot.

### BROOKLINE VILLAGE PARKING BENEFIT DISTRICT - Article 16



Brookline Avenue from Washington Street to Aspinwall Avenue  
 Pearl Street  
 Station Street  
 Cypress Street from Washington Street to Searle Avenue

Kent Street  
Washington Street from Pearl Street to Greenough Circle  
Harvard Street from Harvard Square to School Street/Aspinwall Avenue  
Webster Place  
Holden Street  
Pierce Street  
Town lots on Kent Street, Webster Place, and School Street, **but not including the Town Hall Lot on Holden/Pierce Street.**

### BV Parking District Revenue

The explanation for WA16 contains the following description of what parking revenue is intended to be subject to the BV Parking District dedicated fund:

“Not all of the parking meter receipts collected in a PBD have to be returned to the PBD. The warrant article’s proponents are proposing only that *incremental* increases in parking revenues be dedicated in this way. All *existing* parking revenues would flow to the town’s general fund, as they do today. For example: today’s parking meter rate in Brookline Village is \$1.25 per hour. The BVPBDAB could recommend an increase in rates to \$1.50 per hour. In this case, \$1.25 would flow to the town’s general fund, as it does today, and \$0.25 would flow to the Brookline Village PBD account.”

The Subcommittee noted that the language in WA16, as proposed, could encompass substantially all of the revenue from the meters in the BV Parking District, which would be inconsistent with Petitioner’s intent as articulated in the explanation. In response, Petitioner provided clarifying language to WA16 that only the incremental amount charged in excess of the general parking rate that would otherwise be charged would be deposited in the dedicated fund. Petitioner also agreed that if the general rate structure were subsequently increased to the level of the BV Parking District, the District would need to request a new rate increase in order to continue to share in revenue from the BV Parking District.

### Budgetary Concerns

The Subcommittee noted that WA16 as proposed took the approval process out of the normal budgetary process and put it in the hands of the Select Board. The Subcommittee raised concerns about coordination of the uses of the funds with the Town’s normal budgetary process. Petitioner believes that coordination should not pose a significant problem.

Clarifying language was also added to confirm Petitioner’s intent that the Select Board would have final authority on the expenditure of funds.

### Accounting Matters

While the explanation provided detail on how the BV Parking District fund would operate, there was concern that WA16 did not provide sufficient detail. Upon advice from the Deputy Town Administrator, it was suggested that Petitioner amend the language to provide that incremental

parking meter funds resulting from an increase in parking meter rates based upon a recommendation from the BV Advisory Board would be deposited into a “special revenue fund”, which would be reported as a line item in the DPW annual budget. The use of a special revenue fund is in keeping with the intended administration of a dedicated fund, which would not go through the normal budgetary process.

### BV Advisory Board

The Subcommittee suggested that Petitioner might want to reduce the size of the BV Advisory Board, which may be too unwieldy with nine members, of which five are required to be business owners. The Subcommittee also suggested that the terms of the members should be specified. Petitioner has decided not to reduce the size or composition of the BV Advisory Board but has provided language specifying staggered three-year terms for its members.

### Cost of Administration

The Subcommittee also discussed the cost to the Town to administer the BV Parking District as well as other parking benefit districts that may subsequently be formed. The administration would be principally through the Transportation Department. The Subcommittee concluded that that it was unlikely that these costs would be excessive, provided that there was only one parking benefit district. Petitioner agreed that if administrative costs escalate significantly, it may be necessary under such circumstances to require parking benefit districts to provide funding for Town administrative costs.

### Support of Local Businesses

The Subcommittee raised the question of just how many businesses located in the proposed BV Parking District actually have voiced support for WA16. Petitioner said there has been extensive outreach to local businesses, but the Subcommittee noted that the website supporting the BV Parking District only states that 7 businesses have signed a letter of support. The Subcommittee told Petitioner that if it votes to support WA16, such support will be premised on Petitioner being able to establish that there is significant support for WA16 among the businesses in the proposed BV Parking District when WA16 comes before the full Advisory Committee for consideration.

## **WARRANT ARTICLE 16, AS AMENDED**

Based on discussions with Petitioner, as detailed above, the text of WA16 would be amended as follows (additions are denoted in ***bold, italicized text***, deletions are denoted in ~~stricken~~ text):

To see if the Town will vote pursuant to General Laws Chapter 40, Section 22A½ to establish a Parking Benefit District in Brookline Village as substantially described and shown below in the plan entitled “Brookline Village Parking Benefit District”, in which a portion of parking revenue collected therein may be designated for use in that district through a dedicated fund in accordance with the purposes and uses listed in section 22A of said Chapter 40; ***the funds available to the Parking Benefit District shall only be those amounts in excess of revenue that***

*would otherwise be applicable to the general fund through the standard meter-rate-setting process established by the Select Board; said funds shall be deposited into a special revenue fund, to be reported as part of the Department of Public Works annual budget; and further, to establish and designate a Brookline Village Parking Benefit District Advisory Board to make recommendations ~~to the Select Board~~ about said Parking Benefit District **to the Select Board, which shall have the final authority on the expenditure of funds**; said Advisory Board to be composed of nine members appointed by the Select Board, at least five of whom shall be individuals who own or manage commercial businesses located in the district; **said members to be appointed to 3-year staggered terms by the Select Board; a vacancy arising on said Advisory Board shall be filled in the same manner as the original appointment for the remainder of the unexpired term.***

*[A new map would be appended as provided above]*

### **RECOMMENDATION**

Despite some remaining concern about the coordination of expenditures outside the normal budget process, the Subcommittee was of the view Petitioner had made a persuasive case for adoption of W16, subject to the amendments discussed above and evidence of significant support from local businesses.

**By a vote of 3-0-0, the Planning and Regulation Subcommittee recommends FAVORABLE action on Warrant Article 16, as amended, subject to evidence of significant support from local businesses.**

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**BROOKLINE ADVISORY COMMITTEE**  
**Subcommittee on Planning and Regulation**

**Report on Warrant Article 21**

To Amend Section 8.37.5 of the Town's General By-Laws Pertaining to Host Community  
Agreements with Marijuana Establishments

The Planning and Regulation Subcommittee held a public hearing on Wednesday, April 3, 2019, to discuss Warrant Article 21 of the May 2019 Annual Town Meeting. In attendance were Subcommittee members Steven Kanes (chair), Lee Selwyn, and Carol Levin; Janet Gelbart, ad hoc Subcommittee member; petitioner Kate Silbaugh (TMM 1); and members of the general public (see attached sign in sheet). Steve Kanes did not participate in the discussion or vote.

**SUMMARY**

**WA 21 seeks to amend Section 8.37.5 of the Town's General By-Laws to specifically grant the Select Board discretion to begin evaluating proposals for marijuana establishments prior to executing a Host Community Agreement (HCA). Further, the proposed changes specify that the Town is under no obligation to enter an HCA if it determines the proposed establishment may violate applicable state or local law. The Town retains the ability to require additional information subsequent to entering into an HCA and to exercise its full discretion during the permitting and licensing process under the Town's General and Zoning By-Laws. By a vote of 3-0-1, the Subcommittee recommends favorable action on WA 21.**

**DISCUSSION**

To open a recreational or medical marijuana establishment, an applicant must identify a site, enter into a Host Community Agreement with the municipality where the site is located, receive approval from the State Cannabis Control Commission (CCC), and, finally, submit to the licensing and permitting procedures defined in the municipality's general and zoning by-laws. The HCA sets forth conditions, such as payments and other concessions and commitments, that the establishment will be subject to if the license is approved and the establishment is permitted to open for business.

A recent lawsuit filed by a recreational marijuana applicant against the City of Salem involved the interpretation of the enabling legislation, M. G. L. c. 94G, § 3(d). Section 3(d), with respect to a municipality's obligation to enter into an HCA with a prospective applicant.

Mass. Gen. Laws M. G. L. c. 94G, § 3(d). Section 3(d) of chapter 94G, states, in relevant part:

A marijuana establishment or a medical marijuana treatment center seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment or a medical marijuana treatment center.

The Plaintiff, Mederi, Inc., asserted that the statute *obligates* municipalities to enter into HCAs and that the Plaintiff had an expectation of a right to an agreement. In a pre-trial ruling, Essex Superior Court determined that while the statute requires an applicant to have executed an HCA with a municipality, it does not require a municipality to execute an HCA with any particular applicant. The Court found that the statute contemplates a negotiation, not a “ministerial act” by the municipality.

In its by-law, Salem had explicitly reserved its discretion to refrain from entering into an HCA with any given applicant and to select among competing applicants before proceeding to enter into an HCA or issue a license. The Brookline by-law contains no such reservation.

The purpose of this warrant article is to provide similar clarity in the Brookline By-Law and give the Select Board the specific ability to gather information prior to entering into an HCA. The petitioners believe that the new language would strengthen the Town’s negotiating position and afford it with discretion to select among competing applicants. Because the siting of a marijuana establishment is such a lengthy process, it is to the Town’s advantage to eliminate patently unqualified applicants quickly so potential sites are not kept in limbo unnecessarily.

**By a vote of 3-0-1, the Planning and Regulation Subcommittee recommends FAVORABLE ACTION on Warrant Article 21.**

Sign In - WA21 + WA16

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