

## MINUTES OF CTOS MEETING – May 4, 2022

The Brookline Committee on Town Organization and Structure (CTOS) held a duly posted meeting via the Zoom platform on May 4, 2022 to discuss relevant warrant articles coming before the spring Town Meeting.

In attendance were; Jean Berg (CTOS), Dick Benka (CTOS), Harry Bohrs (CTOS), Abby Cox (CTOS – Arrived at 5:30 pm), Betsy DeWitt (CTOS), Sean Lynn-Jones (CTOS), Ian Roffman (CTOS), C. Scott Ananian (TMM), Sandy Batchelder (CDICR), Deborah Brown (TMM), Joe Callanan (Town Counsel), Dave Gacloch (TMM), David Marc Goldstein (AC/TMM), Neil Gordon (AC/TMM), Susan Granoff (AC/TMM), Leigh Jackson (Parks & Recreation), Richard Mazandi Iseke, Mariah Nobrega (CDICR/TMM) Arthur Wellington Conquest III (TMM).

The meeting began at 5:00 p.m.

Dick Benka stated that draft revisions and a draft report have been distributed and posted on the Committee's website. Draft revisions have also been received from Petitioners. There are differences. The draft revisions from CTO&S attempt to address legal issues posed by the Home Rule Amendment to the Massachusetts Constitution, legal issues with regard to standing in particular with regard to third parties and complaints by individuals not authorized by actual victim of discrimination, privacy and due process and fairness in the proceedings. Also deal with the application of subpoena power, appointment of Complaint Committee and inclusions of fines.

Petitioner Mariah Nobrega asks whether it's in the best interest of Town Meeting to have disparate drafts or to have time to try to reconcile issues.

Sean Lynn-Jones asked how many other motions have emerged from Advisory Committee or Select Board.

Neil Gordon of the Advisory Committee stated that the Advisory Committee subcommittee has not discussed any amendments.

Dick Benka said that while there were not amendments at the AC subcommittee meeting, there were comments about the subpoena power and the ability to compel the attendance of witnesses and to compel testimony.

Dick Benka indicated his view that subpoena power was a political rather than structural issue that would have to be decided by Town Meeting. The CTO&S group (Ian Roffman, Betsy DeWitt, Dick Benka) wanted it to be done fairly, with either complainant or respondent able to invoke it.

Dick Benka indicated that documents should go into the Supplemental Report. The question is whether there's a likelihood of reaching consensus. Ian Roffman seeks the CTO&S changes as modest but important.

Sean Lynn-Jones would submit a CTO&S report to the Combined Reports and then see if gap can be bridged, or at least get some clarity. Harry Bohrs agrees it would make it easier to understand if something were in the Combined Reports mailing.

Betsy DeWitt would like to meet legal standards, including responding to comments from Town Counsel. Would work to address concerns with Petitioners to reduce confusion at Town Meeting. Dick Benka agrees it is important to try to close the gap.

Petitioner Sandy Batchelder feels it would be important to have one version for Town Meeting. As to subpoenas, Complaint Committee can initiate but it goes to Town Counsel and Select Board. No reason to change subpoena provisions. Jean Berg does not agree.

Mariah Nobrega believes there could be two areas of disagreement: including a reference to perjury on the sworn statement and appointing authority for the Complaint Committee members. She asked why the penalty move into the retaliation section? Dick Benka said that CTO&S group took out the broad penalty because it would likely be applied in an unfair manner, if at all, against small entities rather than larger entities, but believed that the Home Rule Amendment would allow fines in the retaliation section. Town Counsel Joe Callanan disagreed, believing that this would also be barred by the Home Rule Amendment in many, many circumstances.

Sandy Batchelder wanted the threat of fines so people would pay attention. Petitioner Deborah Brown encourages parties to discuss differences in language.

Sandy Batchelder said that “under penalties of perjury” will scare people off. Town Counsel says it is unlikely that a perjury charge would be brought.

There was a discussion of what to file in the Combined Reports and how to proceed with different drafts. Sean Lynn-Jones suggested an update in the Combined Reports without getting into details and then continuing discussions. Harry Bohrs suggested a short discussion in Combined Reports pointing out the major issues that have been raised regarding the Town’s legal authority.

Betsy DeWitt raised the issue of application to Schools, and issue of whether appointed CDICR should have the authority to appoint the CC.

Dick Benka moved that he be authorized to draft a short report on behalf of CTO&S for the Combined Reports identifying some of the major issues, and stating that more work will be done to attempt resolve differences with Petitioners. Aye: Berg, Bohrs, DeWitt, Lynn-Jones. Abstain: Cox, Benka..

The committee moved on Article 33.

Dave Gacioch, one of the petitioners, reported that the language in the motion discussed at this meeting last week was ruled out of scope by the Assistant Moderator. Though the petitioners disagree with the ruling, they understand it is likely they will need to return to language close to what was in the original article. Mr. Gacioch addressed some points of issue with the CTOS draft report on Article 33 that was circulated and posted prior to the meeting: He believes Town Meeting has the power to set its procedures and this stands next to the moderator’s power to regulate the proceedings and enforce order. He pointed out that other towns also incorporate by reference entire documents (like Town Meeting Time or Roberts Rules of Order) into their procedures. Section 2.1.9 already incorporates Town Meeting Time as our primary rules of procedure to the extent the bylaws don’t otherwise specify. Overall, he thinks the proposal is asking for far less change than the draft report suggests. The moderator’s discretion is constrained by a number of things, including the “traditions of Brookline”, and

the goal of the article is to add a little more specificity as to what those traditions are. The petitioners are still unsure as to whether they will be making a motion.

Dick Benka pointed out that the amended language the petitioners had introduced at the prior meeting did seem to set an order of precedence, which may have been the impetus for the language in the CTOS draft report. Dave Gacioch responded that it was an attempt to make everything explicit and order it for clarity. The point is moot because the amended language has been ruled out of scope.

Ian Roffman pointed to Chapter 39, Section 15 as the relevant piece of state law granting the authority to the moderator to regulate the proceedings of town meeting, but that authority is not unfettered, and that the same law grants Town Meeting the ability to pass a bylaw that regulates the proceedings of Town Meeting. In his view, Article 33 is trying to limit the authority of the moderator by locking in certain procedures that exist in the Town Meeting Handbook, but does it in a general way without reference to a specific bylaw that would get regulated. It's a general constraint on the authority of the moderator that would interfere with the moderator's ability to act in such a way as to ensure the smooth running of Town Meeting unless the specific tool the moderator seeks to use is something that was previously endorsed by Town Meeting through a ratification of the handbook. He believes this might be the result of the remote environment in which Town Meeting has taken place for the last two years, which is not contemplated in the Town Meeting Handbook, and that it's an object lesson of why this is a bad idea: we don't know what the future holds and what tools the town or the moderator may need to regulate Town Meeting in the future. On a separate note, State law gives Town Meeting the authority to pass a bylaw that regulates proceedings, but Article 33 talks about procedures, which may not be the same thing (e.g. the budgetary process is described in some detail in the handbook, but it's not a regulation of the proceedings of Town Meeting, and it's a process that involves many arms of the government.) He does not think it makes sense to subjugate the moderator's role to the approval or ratification of Town Meeting. There are also procedures in the Town Meeting Handbook that clearly don't need Town Meeting ratification to change (e.g. the placement of the screen in the auditorium.)

Sean Lynn-Jones asked if there is any reason why CTOS should not vote "no action" on Article 33. He asked the petitioner why they are proceeding with the motion when it's not the one they really want to make. Dave Gacioch responded that the petitioners are still not sure how they will proceed.

The committee voted unanimously to recommend "No Action" on Article 33.

The committee took up Article 26. Harry Bohrs began the discussion by noting that there are no new documents that we are considering; they are the same as those that have previously been distributed and are posted online. He questions whether or not there may be new changes to the proposed bylaw itself. He also noted that the Park and Recreation Commission will be meeting Tuesday the 11th. They say they are waiting for possible changes to the proposed bylaw as well. He went on to outline that the Park and Recreation Commission is defined within our bylaws 3.16.1 in two parts; area programs and open space design review panel - each of these really looks at facilities from a CIP standpoint. As well, there is the 1981 changes to chapter 32 reorganizing the Park and Recreation Commission allowing it to appoint a Director and continue acting as an "advisory body" and participate in budget preparation. As well the 1991 changes to chapter 198 authorized the Park and Recreation Commission to set fees for parks, recreation programs, activities, facilities and services, "subject to the approval of the Selectmen". He went on to outline the proposal of this bylaw change; it proposes there be a five-year program plan with an annual review, requiring the individual Commissioners to be involved in fundraising and seeking

grants, requiring a youth engagement study on an annual basis in order to determining programming. It would also provide that low income family members may be covered through scholarships for up to 100% of the fees for Recreation Department programs. The bylaw would also specify the criteria for who qualifies as low income family based on living in a BHA facility, living in section 8 housing, or being eligible for the free lunch program. There is also a requirement that the Park and Recreation Commission make best efforts to engage women in minority enterprises.

He went on to note that the Park and Recreation Commission has expressed support on working on these issues. And, has already begun to do some of these things, though not as extensively as the petitioner is requesting. Everyone seems to be on the same page. The big question is whether this should be done through bylaw or through a policy implementation. The petitioner has made a strong case that any policy would flow from a bylaw, so this might as well be inserted in the bylaw itself.

Physical constraints, space and staff issues around recreation and camp programs must be considered - spaces are limited. Given these constraints, a model for a set aside, first come first serve, scaling within different programs, etc. would need to be considered and devised. There is still a lot of information gathering that needs to be done before these questions can be answered, or programmatic structural models advanced. Questions such as how many families or children in which programs would be most affected. Should we do this for elderly programs as well.? Or for the visually impaired or the physically impaired? Much less specifying in our bylaws. Other priorities may be petitioned for inclusion in the bylaw as well, such as a recreation center.

He again mention that there appears to be a commitment by the Park and Recreation Commission to pursue these things. The Advisory Committee is recommending referral to the Park and Recreation Commission, having it present the fall Town Meeting with a report. He said he believes that this has shed light on a larger issue of reviewing and addressing the current bylaws, and larger considerations. There are questions as to what the charge should be for the Park and Recreation Commission, this broader context, though, is not part of the current warrant article. He noted that CTOS can consider changes to the bylaws specifically or it can recommend no action, it can recommend the Advisory Committees motion, or anything else that it believes is appropriate. Though there is still in deliberation between the Commission and petitioner.

He also went on to note that there have been conversations between the Town and the Brookline Community Foundation around directing ARPA funds (up to \$500,000 over the next two years) toward these programs. There is no MOU at this point. Even with money, programs and additional space or facilities and staffing need to be tackled. Much of this comes down to financial issues which would have to be dealt with by Town Meeting in terms of providing the Recreation Department with the needed funds. From CTOS' standpoint does it make sense to put this structurally into a bylaw now? - given what we know or don't know.

Sean Lynn-Jones noted that there have been some changes to the proposed article. Park and Recreation Commission makeup has been taken out of the original submitted article, as has a directive regarding the Select Board. From his standpoint financial concerns are a primary focus now. He noted that the petitioner has concern that there is currently a scholarship cap of 30 to 50% of the tuition cost. The petitioner would like to raise this cap. He also noted the issue of community outreach and engagement. Not all families are aware of the possibility for tuition assistance. He also pointed out transportation could be an issue that is not easily resolved. He noted that the petitioner believes that the funding required would be on the order of \$1-1.5M per year. He thinks that the petitioner will be offering a budget amendment to Town Meeting. He would love to see this worked out, and believes that the Park

and Recreation Commission recognizes the need in principle to make more accessible programming available to all, and aid for families of all ages in need. The Advisory Committee may have chosen the right track, but feels resolution on some of these issues should be found before the fall Town Meeting.

Harry Bohrs says he is so far inclined to support referral as the Park and Recreation Commission since it has to work on this regardless, referral would allow people some time to do it. He believes there is value in this as a civic engagement and the exercise will begin consideration of looking at the bylaw more broadly. Formally taking this on as a study moves things forward. People need to sit down at the table and begin work, that work however has not happened yet. If there is to be a bylaw change, it should likely be broader to catch a greater swath of our community, if this is to be statutory.

Jean Berg commented that a bylaw makes it happen, but it can also create constraints going forward. There was the question of whether, as currently proposed, this can implicitly, through silence, neglect other groups - by reference or lack there-of.

Sean Lynn-Jones said that the elephant in the room is one of financing. He hopes that there will be resolution through discussion.

The petitioner Deborah Brown says she understands there are staff and space considerations. And, scope may need to be reconsidered. Some of this may be strictly policy. However, she believes nothing has happened to address this, and questions what is different now. She believes it is unfair to delay this, rather than amending it again in a year if that's what is required. Policy says "we would like you to", by law says "you have to". The Town needs to make money available to the Recreation Department to advocate on the people side. Deborah Brown went on to note that since proposing this article she has heard from disadvantaged families saying to her "that would be wonderful". She believes we have a two-tiered system. She pointed out that this was submitted in February but no real progress at coming to better ideas has happened. Park and Recreation Commission can still be working on this now. She went on to state that she believes the policy approach would tie the hand behind the back of the Recreation Department Director Leigh Jackson. She stated, "we do not fund policy, we only fund what we have to in this town". She also noted that she will be finalizing a Q&A presentation. She went on to say that if this proves to be too difficult for our current Park and Recreation Commissioners, maybe we should look for other people. She asserts that the Town does not have a system for financial support. Deborah Brown went on to say that she believes she will 'get to yes' with the Commission, in her estimate there's an 85% chance that they will come to an agreement by the middle of next week.

Harry Bohrs pointed out that we need to think structurally. And that our funds will run out so that we need to also look at long-term solutions.

Deborah Brown said for her part that when she says fundraising she means simply speaking up and asking. She pointed to what she refers to as the BAA" slush fund "and PGA money. She noted that the Park and Recreation Commission should not ask for funds only in the context of the CIP. They should advocate for people. She believes the issues should not seem unwieldy if everyone sits down to discuss them. She underscored the notion that the bylaw change is not just for now but for those yet to come. She also stated that if there are real problems then she needs to hear them, and perhaps make changes. She stated, "I'm a believer in getting to yes".

The Park and Recreation Commission has said that it is working on this. They would like to be able to sit down with the petitioner and work through it. The Recreation Department has been in conversations with the BHA, and has had an informational event at the BHA this spring.

Dick Benka asked whether there will be changes to the warrant article. Deborah Brown responded, perhaps tweaks.

Harry Bohrs noted that the Recreation Department has reached out to foundations for funding for summer camp scholarships for several years now.

Betsy DeWitt stated that she supports the goals. She believes there needs to be more detail and quantitative analysis; that there needs to be a determination of cost and scope of programming and pointed out that our funds will be short-lived. She asserted there needs to be a budget to address the underserved. She also asked where the School programs potentially fit into all of this. She believes there needs to be some more thoughtful consideration and detailed information, and there needs to be a plan with measurable objectives.

Deborah Brown stated that she has the data.

Harry Bohrs noted that the number of kids in BHA facilities and free lunch eligibility numbers have been presented at previous meetings.

Betsy DeWitt went on to say she believes that specifics are still lacking. She also believes we should not use the bylaws to instruct Board or Commission members, generally, to be involved in fundraising. Deborah Brown disagrees.

Dick Benka pointed out that not all the facts are ascertainable. We can come up with estimates. As an example, does each kid receive one week of summer camp or all of the summer? Are there facilities to accommodate everyone? Demand and capacity need to be known. He also went on to point out the effectiveness of policy. The Fire Department has what it refers to as four-in-four, where four units respond in four minutes. He also pointed to the Free Cash flow policy for the Town. Under this policy it dictates how monies will flow and as a result ensures that money routinely goes into the Affordable Housing Trust. He believes that by using bylaws that we risk rearranging priorities for the whole community, not merely within the ambit of the Recreation Department. Should the Senior Center policies have to be written into bylaw to have the same need, and parity of importance as what is offered in this one article? Does the Fire Department four-in-four policy have to be written into a bylaw to have the same priority? If bylaw means "you have to do it", then there are a whole lot of things beyond the Park and Recreation Commission that you will need to put into bylaw as well.

Deborah Brown disagrees. She states that if the seniors don't have a problem, then you don't need a bylaw. It is the Park and Recreation Commission with the problem. She went on to assert that the BHA has told her that at best 50% of the BHA kids would participate in recreation programs. She believes that the system needs to be corrected. She again underscored that if the seniors don't have a problem, then they have figured this out.

Dick Benka pointed out that things with a cost in a bylaw become a budget issue. Before saying in a bylaw that you have to do this, we should have some sense of what it will entail.

Abby Cox stated that she appreciated Deb shining a light on this. She noted that the School Department has wrestled with this for some time, and mentioned her experience at the Ridley, formally Devotion, School. She believes that maybe if we had a better handle on the scope that that could help guide a better bylaw proposal.

Sean Lynn-Jones asked what are the obstacles to implementation?

Leigh Jackson, the Director of the Recreation Department, noted that this becomes very complex. She also noted that the Park and Recreation Commission does have a financial aid program. She said that while she cannot weigh in on the warrant article, that this idea does have support. She noted that this is a Revolving Fund paid for with the tuition receipts; some people will need to be paying in order to fund this. She also noted that capacity is an issue; that currently, for example, there are 300 seats in the Summer Camp program. Adding another 250 students would require collaboration with the School Committee and School Department, finding space, facilities and staff. There also becomes the larger issue of who potentially gets displaced if there are not as many slots as those looking for space. This requires collaboration and funding; there are a number of ripple effects. Currently, the Town offers on average 30 to 35% financial support for the tuition costs. In FY18, 229 scholarships were awarded across programs. Everyone who asked for a scholarship got one. She also went on to note that the department is currently struggling with staffing and this may affect what they can or cannot offer in terms of Summer Camps this year.

Sean Lynn-Jones question whether CTOS should even make a recommendation.

Ian Roffman thanked Deborah Brown and said that this article was fantastic and needed. He questioned what the effect of a referral would be if, as Deb suggests, this is worked out prior to Town Meeting.

Harry Bohrs noted that even with success, having a referral requires a deliverable from the Park and Recreation Commission. And, what we get from that deliberative process may be more than we anticipated, we simply don't know. But it maintains focus and momentum on an important issue.

Betsy DeWitt maintained a referral gives a little time for people to be introspective and work on this, and work through some specifics, to make more informed decisions

Dick Benka noted that next meeting a potential motion may be an order, informed by what happens in the next week.

Harry Bohrs stated that next week there will be a draft report and that CTOS can decide on a recommendation or not, guided in part by any potential resolution by the petitioner and Commission. He rhetorically asks, does this risk a structural precedent in bylaw.

Dick Benka reaffirms that what gets enshrined in a bylaw is a consideration.

Harry Bohrs noted that Deborah Brown makes a strong argument for having this become a bylaw. But, the Park and Recreation Commission has already expressed support for pursuing this and working on it.

Sean Lynn-Jones noted that some bylaws may already require reports. And he suspects there is inconsistency within our current bylaws already.

Harry Bohrs agreed with Abby and Ian's comments that Deb brings great ideas forward. How do we ideally structure this?

Sean Lynn-Jones noted we need to find a way to account for the limits of funds and the limits in capacity so that there is a fair and consistent system.

Betsy DeWitt states that there are things that can and things that cannot be put into bylaws, so changes should be well informed and considered. We all seem to share the same goals, we just haven't figured out quite how to get there yet.

Deborah Brown notes that we can't kick the can down the road indefinitely looking for perfection, this affects the kids.