BROOKLINE ADVISORY COMMITTEE
Administration and Finance Subcommittee

Report on Article 9: Resolution pertaining to the establishment of a real estate transfer fee

The Administration and Finance subcommittee of the Advisory Committee held a public hearing on Warrant Article 9 at 5:30pm on September 25, 2019 in Room 408 of Brookline Town Hall.

In attendance were Harry Bohrs, Dennis Doughty, and Neil Gordon for the subcommittee; petitioners Deborah Brown, David Lescohier, and Wendy MacMullin; Joe Viola, Brookline Planning; Harold Peterson, Board of Assessors; Town Meeting Members Regina Frawley, Frank Steinfield, Diana McClure, Frank Caro, and Kate Thurmond; State Representative Tommy Vitolo; Roger Blood, Housing Advisory Board; Richard Benka; and other members of the public.

The subcommittee reconsidered Warrant Article 9 on October 24 to take a formal vote on language discussed at the September 25th hearing that had not then been approved by the Moderator.

RECOMMENDATION
By a vote of 2-0-0, the Administration and Finance Subcommittee votes FAVORABLE ACTION on Article 9 as amended below.

BACKGROUND
Warrant Article 9 is a home rule petition, asking the State Legislature to authorize the Select Board to file legislation authorizing the Town to levy a real estate transfer tax. Petitioners would like the Town to levy such a tax and use the revenues to support affordable housing initiatives.

DISCUSSION
The discussion involved several themes:

The need for affordable housing in Brookline.
All of the petitioners and many members of the public spoke passionately about the lack of sufficient affordable housing. It’s hard to find a subsidized apartment. There’s shame associated with housing insecurity. Several speakers pointed out how difficult it would be for them to purchase their house today, even for middle class families, let alone the poor or people who are just starting out. Developers continue to renovate affordable units and rent them out at market rents, increasing the need for new affordable units. “This Warrant Article sends the message to the Governor and our legislators that Brookline, like many other communities, needs affordable housing relief now.” Petitioners argue that the lack of affordable housing is a “crisis” in Brookline. No speaker argued against this perspective.
The cost of the program and its logistics

How much could this raise? Range is $5-15M in revenues (or $85 per person per year at the low end).

Would this affect all real estate transactions? All those exceeding $500,000, except for certain exemptions.

How much revenue would we forgo if we raised the exemption to $750,000? Out of the most recent 800 transactions, 250 of them were between $500,000 and $750,000. The best current analysis of revenues using an exemption of $750,000 and a 1% fee is that $6M would be raised, which is at the low end of the estimates for the Article as proposed.

Why should we have an exemption at all? The transfer fee is not onerous. Petitioners argue that this makes the fee progressive, as with the residential exemption. Harry Bohrs and State Representative Tommy Vitolo argued against any exemptions at all using language such as “everyone should pitch in” and noting the influx of “two-physician couples” in the Longwood area for whom the transfer fee is not onerous.

Why don’t we tie the exemption to the residential exemption, which would help address speculative ownership? It turns out that Somerville does exactly this, but Somerville’s housing stock is quite different from Brookline’s.

How does this compare to other communities? Nantucket and Somerville have home rule petitions. 35 states have “luxury” Real Estate Transfer Taxes. Vermont’s is very progressive and they have an additional tax on out of state owners. Connecticut has collected $186M theirs. New York City has had a “mansion” tax since 1989. This is not a new idea. There is already a Real Estate Transfer Tax at the state level; Harold Peterson of the board of assessors and land bank committee says “I like the idea of a Town RETT at a modest level. I start to worry about new growth if the total goes all the way to something like 3%.”

If this passes, would the Town stop contributing to the Housing Advisory Board? Presumably.

Roger Blood raised the concern that the need here is almost bottomless and an extra $10M per year actually doesn’t go very far.

Concerns were expressed that more complexity around exemptions results in more staff oversight and more cost to administer this.

Impact on the elderly or other vulnerable populations

Several members of the public expressed the concern that this could be seen as “a tax on the elderly” or as an unexpected penalty on those whose net worth is tied up in their property. This was also seen as a potential “downsizing” penalty, in which an older person would pay this fee on both sides of a downsizing transaction. “There is an enormous amount of financial anxiety among older people; even people who objectively could absorb this kind of modest tax worry about every dollar.” Regina Frawley, in particular, expressed the concern that any attempt to “work out the details later” could result in a 40B-like level of unintended consequences.
Dick Benka, former Select Board Member, said “I virtually guarantee you that opponents of an override would point to this as Brookline's hostility to property owners.”

However, there were several members of the public who disagreed with this perspective, including State Representative Vitolo, who expressed the opinion that “as an individual, I don't think there's anyone who is going to LOSE money on their sale.” Many expressed the position that “I want to leave an estate free of lien” is not a persuasive argument and pointed out that if you don’t sell your property there is no impact to you at all.

**Concerns about the specifics of the article**
Brookline voted down the Community Preservation Act twice in recent memory. At that time, one of the prevailing arguments was that the CPA was, in effect, a choice between housing and open space or the schools. “If you pass this tax there's less money for overrides for the schools. And since we need to go to the voters, if there’s no school component this would be unlikely to pass.” The term “override fatigue” came up repeatedly.

Speaker after speaker expressed concern regarding the Warrant Article’s seemingly prescriptive language which appears to severely restrict the Town’s choices with what to do with the money. Petitioners argued that the language was intended to be representational rather than deterministic and any actual language would be negotiated between the Select Board and the Legislature, but this was not satisfactory to the concerned members of the public. In particular, there were concerns about whether the language of the Article would preclude the Town from adopting specific exemptions or from addressing downstream issues that might arise from investing in more affordable housing (e.g., increased enrollment in the schools). During the discussion of the CPA it was pointed out that the CPA failed at a 3% level, not the 1-2% level that is proposed by this Article, and that the CPA represented an annual assessment rather than a transaction fee.

**Other benefits**
Petitioners argue that this helps address the disproportionate impact climate change has on the poorer neighborhoods (for example, Brookline’s flood zone has the highest concentration of African Americans). Also that this helps support “smart growth.” No speakers other than the petitioners appeared to support these claims, preferring to focus on housing and the possibility of crafting a new tool the Town can use to address affordable housing issues.

**RECOMMENDATION**

The subcommittee agreed with the goals of this Article and agreed with the petitioner that the proposed language should not be considered binding. However, in the interest of eliminating these concerns, the subcommittee proposed new language which changed most of the uses of “shall” to “may” and which eliminated certain constraints.

The subcommittee voted **FAVORABLE ACTION, by a vote of 2-0-0**, on the following amended resolution, which is included in both redline and clean forms on the following pages.
ARTICLE 9 [Redlined Copy]

Submitted by: Wendy MacMillan, TMM4; David Lescohier, TMM11; Deborah Brown, TMM1

To see if the Town will authorize and empower the Select Board, on such date and in such manner as required by the House Clerk, to file a petition for legislation to authorize the Town to levy a real estate transfer tax, which will be considered in the legislative session opening on the first Wednesday in January in the year 2020, provided that the General Court may reasonably vary the form and substance of this requested legislation which shall be within the scope of the general public objectives of this petition.

WHEREAS Brookline is one of the state’s wealthiest towns with a median household income, of $111,289 one of the highest in Boston’s inner-core and the median for married couples with dependent children is approximately $260,756. Elderly women living alone earn $32,519 per year.

WHEREAS Brookline has the highest median home price of any community in the Commonwealth, at $892,959 and the average market rent is approximately $3,435.

WHEREAS affordable housing is further compounded and complicated by a combination of regional housing demand and constrained supply.

WHEREAS in view of limits on Brookline revenue growth, there is likely insufficient funding from existing sources for sufficient affordable housing purposes after meeting the Town’s existing operational and infrastructure maintenance commitments.

WHEREAS the Town of Brookline’s Land Bank Study Committee has researched a real estate transfer fee to expand Brookline affordable housing, among the possible purposes. Since the State House, however, will be considering transfer fee legislation for Somerville and Cambridge beginning in January 2020, it is urgent that the Town file its peti-
tion at the beginning of this upcoming legislative session so that Brookline may join this official conversation prior the scheduling of the session's hearings.

WHEREAS the Real Estate Transfer Fee, as recommended, to fund the Brookline affordable housing trust fund is equitable, very low impact, and inexpensive to administer.

WHEREAS a real estate transfer fee would be in line with the direction neighboring communities including Concord, Cambridge and Somerville are moving to employ a Real Estate Transfer Fee to create affordable housing.

WHEREAS this type of fee is appropriate to fund housing and clearly defined, non-recurring purposes expenditures.

WHEREAS a real estate transfer fee earmarked for the affordable housing trust is well suited to operate within the Town’s organizational structure and financial policies, and is specifically adapted to and compatible with the unique combination of long established urban and suburban neighborhoods and commercial districts in Brookline.

THEREFORE, the Town of Brookline hereby requests that the Legislature grant the Town of Brookline authority to levy a real estate transfer fee of the portion of any purchase price exceeding $500,000 upon the transfer of the purchase price of non-exempt real estate transactions, not to exceed 1.0% to be paid by the seller and not to exceed 1.0% to be paid by the buyer in aggregate to be paid by buyer and seller. Any agreement between the purchaser and the seller or any other person with reference to the allocation of the liability for the fee shall not affect such liability of the purchaser to the Town. The Town may define by bylaw what constitutes a controlling interest and the calculation of the fee.

And that the Town may authorize certain transfers of real property interests be exempt from the fee including: transfers to the federal government, the Commonwealth, the Town, and any of their instrumentalities, agencies or subdivisions, including the Brookline Housing Authori-
ty; transfers to the Brookline Improvement Corporation; transfers of real
property subject to an affordable housing restriction; (transfers made
without additional consideration to confirm, correct, modify or supple-
ment a transfer previously made;; and transfers to a charitable organiza-
tion, as defined in clause Third of section 5 of chapter 59 of the General
Laws, or a religious organization, provided, however, that the real prop-
erty interests so transferred will be held solely for the production of af-
fordable housing.

And the Town may not, by bylaw or otherwise, eliminate or reduce any
exemption set forth in this law.

And that the Town may use existing property tax collection and billing
methods. The fee shall be paid to the Town. The Town shall have such
remedies to collect the fee as provided by law with respect to the collec-
tion of real property taxes. The Town may, by by-law, adopt additional
requirements, exemptions, and regulations to implement or enforce said
fee, consistent with this act.

And that the Town shallthrough policy, regulation and or by-law
require prioritization of projects that employ sustainable practices which
focus on increasing the efficiency of resource use — energy, water, and
materials — while reducing building impacts on human health and the
environment during the building's lifecycle, through better siting, design,
construction, and use.

And that the Town shallthrough policy, regulation and or by-law
require prioritization of projects that employ mixed income and mixed-
use development as characterized as pedestrian-friendly development
that blend two or more residential, commercial, cultural, institutional,
and/or industrial uses.

And that the Town shall require a copy of the deed or other instrument
evidencing such transfer and shall be accompanied by: (i) an affidavit
signed under oath or under the pains and penalties of perjury by the pur-
chaser and seller attesting to the purchase price; (ii) the applicable fee
owed or, if applicable, an affidavit of intent to seek one of the permissible exemptions, as described above for that property by the purchaser; and (iii) the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from said fees. Upon receipt of the transfer fee or satisfactory evidence of exemption, the Town or its designee shall promptly thereafter issue a certificate indicating that the fee has been paid or that the transfer is exempt from the fee. The Norfolk Registrar of Deeds shall not record or register a deed unless the deed is accompanied by such certificate.

And that the Town’s appropriation of funds into the Municipal Affordable Housing Trust Fund under the provisions of MGL Chapter 44 Section 55 C, shall be limited to financing affordable housing and reasonable amounts for personnel and other costs.

And that the Town may prepare and issue an annual report that: (i) identifies fee receipts; (ii) quantifies affordable housing programs funded, including type and purpose; and (iii) evaluates the impact of said affordable housing programs, including but not limited to, to the extent reasonably possible and permitted by applicable law, the number and demographics of individuals and families served as well as measures of housing stability and wealth generation in the community.

And that this Act shall only become effective by a majority vote for a question on a Town election ballot.
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