



Building a Better Brookline

Robert Sperber, Founder Emeritus

Anne R. Meyers, Co-Chair
Paul Saner, Co-Chair
Cliff Brown
Derrick Choi
Alan Christ
Susan Houston
Kenneth Lewis
Carol Levin
Thomas Nally
Marilyn Newman
Alden Raine
Donald A. Warner

Draft Meeting Minutes November 4, 2019

EDAB Members Present: Paul Saner (Co-Chair) [via remote participation], Anne Meyers (Co-Chair), Ken Lewis, Carol Levin, Tom Nally, Marilyn Newman, Al Raine, Susan Houston, Alan Christ, Cliff Brown

EDAB Members Not Present: Derrick Choi, Donald Warner

Staff: Kara Brewton, Meredith Mooney, Karen Martin and Zoe Lynn

Materials Presented: Amended October 4th draft EDAB minutes; Warrant Article 21 text as voted by Advisory Planning & Regulation Subcommittee on 11/4/19; NETA letter to EDAB dated 11/4/19

With a physical quorum present, Anne Meyers called the meeting to order. Anne announced that Paul Saner was joining the meeting remotely due to geographic distance and read the Town's required checklist with regards to remote participation.

Approval of October minutes

Cliff made a motion to approve the minutes of the October 4th meeting as presented. The Board voted to approve the minutes with a unanimous roll call vote.

Warrant Article 21 continued discussion and vote

Carol gave a recap of the Advisory Planning and Regulatory Subcommittee's discussion which had just taken place prior to this meeting. She went over the main changes to the article since EDAB last met to discuss it. One change she highlighted was the definition of "substantial rehabilitation" that now references Mass Residential Code and establishes a 75% work area threshold for residential buildings. For commercial buildings, she explained, there is now a reference to Mass State Base/Commercial Existing Building Code setting a 50% work area threshold. Carol also explained the proposed "Sustainability Review Board" that will be established and appointed by the Select Board. Another difference to the article from earlier versions is that cooking gas will be exempt. Another exemption is for research laboratories and medical offices that are regulated by Massachusetts Department of Public Health. Lastly, Carol explained that the effective date of the by-law was refined more to be the later of either 1/1/2021 or 5 months after written approval of the Attorney General's office or when the Review Board has been appointed and has held a public hearing to establish the waiver process.

In response to a question by Susan, Kara explained that the Waldo Durgin exemption was in the original warrant article.

Ken and Anne asked if the Petitioner supports this version that was voted on by the Advisory Planning and Regulation Subcommittee. Jesse Grey replied that the petitioners fully support this version. Alan asked if this will be the version presented at Town Meeting. Cliff stated that this will be a substitute motion.

Marilyn thanked the petitioner and AC subcommittee for their hard work on refining this article. She stated that she thinks these are helpful and clear changes. She asked whether a building expansion could be subject to this By-law. Jesse clarified that it is only triggered by level of renovation of an existing building and reconfiguration of building systems. Jesse also clarified that a change was made that allows repairs to existing piping if pipes are found to be dangerous. Jesse clarified that the 50% and 75% numbers would not be triggered if someone was adding only new space. He referenced the specific language that states “not including any added space”.

Alan asked about the charge of the Sustainability Review Board and if it is limited to reviewing the waivers from this By-law. Kara explained that the charge of the committee could be expanded later by the Select Board and they can add more responsibilities in the future. Zoe added that the committee could also be the group that does technical review on proposed Town-owned electric buildings.

Al suggested that one edit be made to the text under Section 8.39.3.a adding “except as specifically stated herein to the end of the sentence. The Board also noted that there are two lines of 8.39.3.d duplicated unintentionally and advised removing one of the duplications.

Ken commended the Petitioner on working through the Town process and creating a model that other communities can adopt. Anne also thanked Zoe and staff for their work.

Paul asked if Jesse could indicate where the proponent stands on any departure from where the AC voted tonight. Jesse stated that petitioners support that version and hope full Advisory votes on this version. Paul also acknowledged the extraordinary work done by the Petitioners.

Jesse thanked the staff for their enormous support and expertise in drafting this by-law.

Paul made a motion that EDAB support the Advisory Subcommittee version of the article with the two minor revisions as discussed.

Al seconded the motion.

The Board approved the motion by a roll call vote of 8 members in favor, none opposed and two members abstaining (Carol and Cliff abstained).

Recreational Marijuana Warrant Articles (Third Special Town Meeting)

Meredith gave a recap of the three recently filed recreational marijuana warrant articles that have been submitted as a part of a Third Special Town Meeting. Anne stated that EDAB has not had time to discuss these articles yet and has not held a public hearing, therefore the Board is not going to take a vote but they are going to have a discussion.

Attorney Jennifer Gilbert, representing NETA, gave a recap of a memo drafted by Foley & Hoag written in opposition to the articles. She recapped that the memo states that the warrant articles are a violation of the federal contracts clause because they would use Town by-laws to amend the pre-existing Host Community Agreement between NETA and the Town. Also, Jennifer explained that the proposed

amendments should be made to the Zoning By-law, not the General By-law, because the original regulations are found in the Town's Zoning by-law.

Cliff asked to clarify the first point and asked when NETA's license expires. Jennifer stated that it is up for renewal in December. Cliff asked when NETA would file a lawsuit if the articles were passed. Jennifer explained that they would reach out to the Attorney General as a part of their review to determine if they would be approved and then move forward from there. Jennifer explained that there has to be cause to amend or revoke a license so there would be a hearing on those grounds.

Ken asked if the submission of these articles is perhaps an overreaction to the location being the sole location in Boston area and the added disruption 2 Brookline Place construction. Ken asked how many dispensaries might be opening in Boston in the future. Jennifer responded that the City of Boston has eight in the review process. Three more are being added in Brookline, one is open in Newton and one other is set to open in Newton. Alan asked for the timeline for the Boston shops to open; nobody could answer that question.

Ken asked that with eleven stores due to open in the area, what the impact on NETA's customer base will be with these additions. Amanda Rositano explained that she predicts their customer base will spread out. Cliff asked if they had any specific market research numbers but NETA replied that they do not.

Marilyn asked if there have been any concerns about regulations or processes in Brookline Village and any businesses that have raised specific concerns. Kara stated that there have been hours of testimony on both sides of the issue and isn't comfortable summarizing businesses' opinions without a public hearing. The memo handed out contains a list of businesses that do not support the articles, as well as a letter from the Chamber of Commerce that advises using the licensing process in lieu of Town Meeting action.

Ken asked how the third article would impact the other 3 locations in the queue. Cliff stated that the committee would not be able to impact the four total locations in Brookline but may be able to impact any in the future if any went out of business and new ones opened in their place.

Susan asked about the discretionary funds provided by the operation versus funds to mitigate impact since mitigation funds don't have a net gain for the Town. Cliff explained that the community impact will be net revenue to the Town because additional services needed are going to be funded. Susan stated that the existence of the business triggers the need for the services. Al stated that the two detail officers are out of NETA's operating funds and not out of the community impact fees.

Paul asked about revisions to the article about the study committee going into effect in 2021 instead of 2020; Kara clarified that this was a proposed amendment to be taken up by Advisory.

Jennifer stated that NETA has the support of the Chamber of Commerce. Jennifer asked EDAB to focus on Article 2 because it is an attempt of a general by-law to change the operations of a legal business. Jennifer asked if EDAB feels like this falls within the purview of this Board and whether this is a precedent the Town wants to set similar to setting times for people to pick up prescriptions at CVS or buy wine. Jennifer offered for any EDAB member who would like to tour the NETA facility that they can set that up to allow them to see how their operations work.

The Board discussed if they should offer a 'general sentiment' on the warrant articles. Kara recommended that the Board not take a position unless they first held a public hearing, but invited individual Board members to participate on their own behalf in many of the upcoming public meetings. The Board agreed to not give any specific statements on this matter.

Staff Updates

EDAB expressed interest in visiting NETA and are interested in setting something up on Monday, November 18th around 5:30 or 6 pm. Kara will arrange a tour with NETA.

Karen gave an update on Short Term Rentals and discussed the successful community forum that took place in August, plans for future stakeholder meetings and a presentation to the Select Board scheduled for early December. Ken asked when the local option tax will begin being collected. Karen explained that the tax is being collected by the State and already went into effect on July 1st for current Short-Term Rental operators who choose to register with the state. Ken asked about how the proposed regulations would impact condos or leases. Karen explained that all condo by-laws and tenant leases will supercede Town regulations. Jeff Wachter asked about the local impact fee. Karen explained that Brookline will not be eligible because the fee is only permitted on “professionally managed” units which Brookline does not plan to allow under its regulations.

Paul gave an update on the Newbury College study committee and discussed the redevelopment plans which currently include a building off of Fisher Ave with two courtyards, an FAR of 1.25 and .6 spaces per unit. About 1/3 parking will be underground and a total of 160 units. The proposal does not include any inclusionary zoning units, however, Welltower is in discussion with 2Life regarding the creation of an off-site affordable housing solution - possibly something on Holland Road. Tomorrow night there will be a meeting for Fisher Hill neighbors to learn about the project. Paul explained that the Committee has been considering preliminary plans for the west side of the site to potentially house a 9th school in various schemes or possibly other Town uses as shown in the Strategic Asset Plan. Welltower has loosened up its originally expected time line with regards to Town Meeting. The committee is also looking into a tax certainty agreement and is in the final stages of firming up Pam McKinney’s consulting services.

Kara updated that the Waldo Durgin zoning was approved by the Attorney General in September and the Town is waiting for updated timeline from Chestnut Hill Realty.

Kara gave an update on Chestnut Hill Office Park that conversations have started with WS Development and Town Meeting Member Janice Kahn in the past week which started based off of questions of the impacts from Warrant Article 21 on this development. Kara stated that the developer will look at various uses based on various traffic scenarios and that their initial assessment was that significant traffic mitigation will be needed for uses like lab or retail. She also recapped the CTPS (Central Transportation Planning Staff) study for Route 9 which will be released soon. Al asked if CTPS considered an enhanced shuttle to Chestnut Hill station. Kara stated that she does not believe this is included in their scope but it would be worth looking into with WS Development.

Meredith gave an update on Small Business Development Committee. The committee recently began meeting twice per month and is undertaking opportunities for learning in 2019 before launching into work mode in 2020. The committee has many new faces and is working on understanding the landscape of the Town.

Warrant Article updates:

Article 20: Kara explained that Petitioner Bobby Zuker pulled the portion of the article that asked to amend the Public Benefit Incentive section related to the FAR and minimum lot size. Zuker continues to state that he will work with the Town on potentially entering into a PILOT, but that his attorney has stated that this should not be requested now that the FAR component has been removed.

Article 15: Paul updated that the Select Board and Advisory voted in favor of Article 15. Paul stated that the only question raised was if there would be parking maximums or not but that no one has had any objections to the core concept. Cliff added that the discussion at Advisory discussed the minimum becoming a maximum. Cliff stated that a table of commonly used parking ratios for a variety of uses would be useful for Advisory to review for their next hearing on Thursday night. Paul said that he would speak with Linda Olson Pehlke, his Co-petitioner, about this request.

Article 29: Meredith gave an update on Article 29 which proposes that the Town request that additional funds from recreational marijuana be used to help new small business ventures. Economic Development was at one point contemplated as being participants in the process of determining who would receive funds but that now is no longer the case. The language of the article was changed and now proposes that 35% of recreational marijuana sales tax be used for racial equity and social justice initiatives in Town, in consultation with the Committee for Diversity, Inclusion and Community Relations.

Cliff added that Advisory has not decided whether they will reconsider this article. He understood the fund was for minority and women Brookline residents who are business owners. He stated he is concerned about the Committee for Diversity, Inclusion and Community Relations will be given oversight for processes related to businesses. He also questioned if the changes are out of scope with the original article. Paul asked if Brookline has data on Brookline's status on numbers of minority and women owned businesses and how this compares to surrounding communities. EDAB members did not believe this data was readily available.

Ken asked if this proposal would divert the recreational marijuana funds that are otherwise going to other Town programs. Cliff stated that yes, including general revenue needed to offset the impact of future school overrides. Ken asked if this would create grants for businesses. Meredith stated that the intention was that there would be funds generally available, and that the Small Business Development Committee could apply for a grant to assist minority and women-owned businesses.

Other Updates

Susan announced that there will be a Greater Boston Interfaith Organization (GBIO) meeting on Sunday at Temple Ohabai Shalom on affordable housing open to the public.

Meredith asked about the Driscoll School debt exclusion. She asked if Cliff had any estimates on its fiscal impact on businesses. Cliff explained that the debt exclusion will equal a 2% to 3% increase in the Town's overall assessment but that it is hard to know how this is broken down between any individual residential or commercial tax bills. He explained that the impact will not be fully felt for about 3 years and is in addition to the already voted debt exclusion for 1) the Coolidge Corner School which is just beginning to hit tax bills and 2) the High School which has not hit yet. Cliff stated that in total, the Town will have multiplied its FY2018 general tax obligations by more than five times by 2025.

Anne made a motion to adjourn the meeting at 8:58 pm.
Al seconded the motion.

The meeting was adjourned unanimously by roll call vote.