
ARTICLE 3

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:

Article 3 provides for amendments to the budget for this fiscal year. The state aid that Brookline received for FY2017 was \$119,972 more than had been estimated in the budget approved by Town Meeting in May 2016. In accordance with the Town/School Partnership formula, this additional aid will be divided evenly between the Town and the Schools, with each receiving \$59,986. Article 3 includes budget amendments that will make it possible to fund the labor contract negotiated with Brookline's firefighters. The Town's share of the additional state aid will be appropriated into the Collective Bargaining Reserve, along with \$131,896 to be transferred from the Fire Department budget. Article 3 also includes appropriations for the Singletree tank and gatehouse improvements. These were inadvertently omitted from the appropriation authorizations voted by the May 2016 Town Meeting. By a vote of 12-4-0, the Advisory Committee recommends FAVORABLE ACTION.

BACKGROUND:

An Article similar to Article 3 is placed on the Warrant for every fall Special Town Meeting so that Town Meeting can, if necessary, vote to amend the budget that the Annual Town Meeting has approved for the current fiscal year. This year, as is often the case, the Town needs to make various budget adjustments that reflect receiving additional aid from the Commonwealth of Massachusetts. Action under Article 3 is necessary to appropriate additional State aid that was not included in the revenue estimates in the FY2017 budget voted by the May 2016 Town Meeting. Some of these adjustments involve the transfer of funds between accounts. Town Meeting also needs to vote on two authorizations that were omitted from the May 2016 Town Meeting approval of the FY2017 budget. Only the appropriation of the additional state aid increases the overall Town budget.

DISCUSSION:

Article 3 would amend the FY2017 budget by appropriating the \$119,972 in additional state aid as recommended by the Town/School Partnership Committee, on a 50-50 basis to the Public Schools of Brookline budget (\$59,986) and to the Collective Bargaining reserve (\$59,986). In addition, to fund the firefighters' contract (see Article 2), Article 3 would adjust the FY2017 budget by decreasing the Fire Department budget by (\$131,896) and by increasing the Collective Bargaining reserve by \$131,896, as shown in amended FY2017 Budget Tables I and II.

Two appropriations for the Singletree tank improvements (\$340,000) and the Singletree Hill Gatehouse improvements (\$320,000) are also included in the motion offered under Article 3. Although both items were included in the FY2017 Budget approved by Town

Meeting in May, the authorizations for the appropriations were erroneously omitted from Warrant.

During its review of Article 3, the Advisory Committee discussed the Town/School Partnership process. Some members raised concerns as to whether the formulaic split of State aid, on a 50-50 basis, should be continued or whether it should be replaced by an approach that would allocate additional revenue to the Town or Schools on the basis of which departments and programs had the greatest need. Members also considered how such an approach might be implemented. The discussion focused on the annual budgeting process that takes place every spring. Should there be, for example, “add back” lists from each department, including the Schools, that would then be evaluated as to the merits so that departments would essentially compete for the extra funds? It was pointed out that the Advisory Committee is the Town’s Finance Committee and should be taking a lead in recommending to Town Meeting its priorities for the Town, which may reflect a 50-50 split of new funds. The Advisory Committee did not take any votes on these questions, but members requested more information on the meetings and decisions of the Town/School Partnership and expressed particular interest in information on how the Public Schools of Brookline would use the additional state aid received for FY2017. The primary use of those funds appears to be to offset the loss of a kindergarten grant that the Schools had received from the state in previous years. The grant program was eliminated in the FY2017 state budget.

The Town Administration recommends the following appropriations of state aid and inter-account fund transfers to fund the new firefighter’s contract:

1. Allocating the State aid of \$119,972 by increasing the School budget by \$59,986 and the Collective Bargaining reserve by \$59,986, to help fund the new firefighter’s contract.
2. That the Collective Bargaining reserve is increased by transferring \$131,896 (by eliminating the purchase of vehicles and reducing one position) from the Fire Department budget
3. Appropriate additional net state aid of \$119,972, with inter-account transfers, as shown in the table below:

ITEM#	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
20. Collective Bargaining Town	\$2,921,346	\$191,882	\$3,113,228
11. Fire Department	\$13,014,196	(\$131,896)	\$12,882,300
22. Schools	\$101,058,795	\$59,986	\$101,118,781

Group Health Budget

The Group Health budget was built based on an assumed level of employee growth in the Schools, building a contingency for additional new hires pending School Committee approval of the School budget plan. School employee onboarding is substantially complete. While enrollment has grown by 45 positions compared to an anticipated 30,

there has been migration to less expensive plans. Analysis shows a \$59,000 surplus based on current enrollees.

Town Administration recommends that this surplus remain in the Group Health budget, to account for additional enrollment that could result from the filling of the remaining benefit-eligible positions (approximately 15) in the Schools, and consequently proposes no adjustment to the Group Health budget.

Singletree Appropriation Omissions

Town Meeting approved the FY2107 budget at May 2016 Town Meeting, and that budget included the Singletree tank and gatehouse improvements of \$340,000 and \$320,000 respectively. However, the appropriation authorizations were erroneously omitted. The Town Administration recommends that this error be corrected and that \$340,000 for the Singletree tank and \$320,000 for the Singletree gatehouse be approved.

RECOMMENDATION:

The Advisory Committee, by a vote of 12–4–0, recommends FAVORABLE ACTION on the motion offered by the Selectmen.

ARTICLE 4

REVISED PETITIONER MOTION

VOTED that the Town amend Article 8.23 of the Town's General By-laws, Tobacco Control, as follows (language to be deleted appearing in ~~strike through~~, new language appearing in **bold underline**; and changes from the warrant article appearing in **bold underlining and italics**):

ARTICLE 8.23 TOBACCO CONTROL

SECTION 8.23.1 - PURPOSE

In order to protect the health, safety and welfare of the inhabitants of the Town of Brookline, including but not limited to its younger population, by restricting the sale of and public exposure to tobacco and e-cigarette products known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of and public exposure to tobacco and e-cigarette products within the Town of Brookline.

SECTION 8.23.2 - DEFINITIONS

a. ~~Tobacco—Cigarettes, cigars, snuff or tobacco in any of its forms.~~ **Tobacco - Any product containing, made, or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco or snuff. "Tobacco" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.**

b. E-Cigarette – Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery, and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid, with or without nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, hookah pens, or under any other product name.

c. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product or non-tobacco product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette shall be considered smoking under this by-law.

- d. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco or e-cigarette products by self-service, with or without assistance by a clerk or operator.
- e. Self-Service Display – Any display from which customers may select a tobacco or e-cigarette products without assistance from an employee or store personnel.
- f. Minor - A person under twenty-one years of age.
- g. Employee - An individual who performs services for an employer.
- h. Employer - An individual, partnership, association, corporation, trust or other organized group of individuals that utilizes the services of one (1) or more employees.
- i. Workplace - An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; where the employer has the right or authority to exercise control over the space.
- j. Food Service Establishment - An establishment having one or more seats at which food is served to the public.
- k. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.
- l. Entity - any single individual, group of individuals, corporation, partnership, institution, employer, association, firm or any other legal entity whether public or private.
- m. Educational Institution - any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.
- n. Retail Establishment - any store that sells goods or articles of personal services to the public.
- o. Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.**
- p. Characterizing flavor - A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco or e-cigarette products or component**

part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.

g. Component part - Any element of a tobacco or e-cigarette products, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

r. Constituent - Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco or e-cigarette products during the processing, manufacturing or packaging of the tobacco or e-cigarette products. Such term shall include a smoke constituent.

s. Distinguishable - Perceivable by either the sense of smell or taste.

t. Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco or e-cigarette product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco or e-cigarette product.

u. Flavored tobacco or e-cigarette product - Any tobacco product or e-cigarette component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco or e-cigarette products, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco or e-cigarette products, that such tobacco or e-cigarette products has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco or e-cigarette products is a flavored tobacco or e-cigarette products.

v. Retail tobacco store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco and/or e-cigarette products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Brookline Board of Health.

w. Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

SECTION 8.23.3 REGULATED CONDUCT

a. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public is permitted. This includes, but is not limited to, any food service establishment, health care institution, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public.

(2) Taxi/Livery services licensed by the Town of Brookline shall be provided in smoke-free vehicles. The restriction of smoking in taxi/livery vehicles applies to drivers as well as passengers. Vehicles shall be posted in such a manner that their smoke-free status can be readily determined from the outside of the vehicle.

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate 100% of individual dwelling units or rooms as non-smoking.

(4) The use of tobacco or e-cigarette products by minors or school personnel is prohibited in or upon any public sidewalk or other public property located within four hundred (400) feet of Brookline High School grounds. The Commissioner of Public Works shall erect and maintain signage identifying the locations where smoking is prohibited under this paragraph (4). Such signage shall be erected so as to notify the public of the smoking prohibition and the areas affected thereby.

b. Workplaces

(1) Smoking in workplaces is prohibited.

(2) Notwithstanding subsection (1), smoking may be permitted in private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility.

(3) Every establishment in which smoking is permitted pursuant to this by-law shall designate all positions where the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position may cause continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

(4) No establishment in which smoking is permitted pursuant to this by-law may require any employee whose effective date of employment was on or before November 1, 1994 to accept a designated smoking position as a condition of continued employment by the employer.

(5) No establishment in which smoking is permitted pursuant to this by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

(6) It is the intent of this by-law that a designated smoking position shall not be considered suitable work for purposes of M.G.L. c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work. c. E-cigarette Usage – Locations Prohibited (1) In addition to the smoking prohibitions set forth in this bylaw, the use of e-cigarettes is further prohibited wherever smoking is prohibited under M.G.L. Chapter 270, Section 22 (the “Smoke-Free Workplace Law”), and in all locations listed in Section 8.23.3 of this by-law. The Director of Health and Human Services and/or his or her designee(s) shall enforce this section in accordance with Section 8.23.6.

SECTION 8.23.4 - POSTING REQUIREMENTS

Every person having control of a premises where smoking is prohibited by this by-law, shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" shall be deemed as compliance.

SECTION 8.23.5 - SALE AND DISTRIBUTION OF TOBACCO AND E-CIGARETTE PRODUCTS

a. Permit Requirement – No Entity otherwise permitted to sell tobacco or e-cigarette products shall sell such products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1st, at a fee set forth in the Department’s Schedule of Fees and Charges.

b. Prohibition of Tobacco Vending Machines – The sale of tobacco or e-cigarette products by means of vending machines is prohibited.

c. Restrictions on the Distribution of Tobacco or e-cigarette Products - No person, firm, corporation, establishment or agency shall distribute tobacco or e-cigarette products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. Such endeavors include, but are not limited to, product “giveaways”, or

distribution of a tobacco or e-cigarette product as an incentive, prize, award or bonus in a game, contest or tournament involving skill or chance.

d. Prohibition of Sales to Minors - No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to a minor.

e. Self-Service Displays – All self-service displays as defined by 8.23.2 (e) are prohibited. All commercial humidors including, but not limited to walk-in humidors must be locked.

f. Prohibition of the Sale of Tobacco Products and e-cigarettes by Health Care Institutions - No health care institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco or e-cigarette products.

g. Prohibition of the Sale of Tobacco and e-cigarette Products by Educational Institutions - No educational institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

h. Required Signage

1. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post signage provided by the Town of Brookline that discloses current referral information about smoking cessation.

2. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that “The sale of tobacco or e-cigarette products to someone under the minimum legal sales age of 21 years of age is prohibited.” The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.

i. Tobacco Sales

1. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco or e-cigarette products until such employee has received a copy of this By-law and federal and state laws regarding the sale of tobacco and e-cigarette and signs a statement, a copy of which will be placed on file in the

office of the employer, that he/she has read the regulation and applicable state and federal laws.

2. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older.

3. All retail sales of tobacco or e-cigarette products within the Town of Brookline must be face-to-face between the seller and the buyer and occur at the permitted location.

4. Original Cigar Package Price - All single cigars shall be sold for no less than two dollars and fifty cents (\$2.50). No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more. This section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Brookline.

5. No entity shall sell or distribute or cause to be sold or distributed any flavored tobacco or e-cigarette products, except in retail tobacco stores.

6. No entity shall sell or distribute or cause to be sold or distributed blunt wraps.

SECTION 8.23.6 VIOLATIONS AND PENALTIES

a. Any person who violates any provision of this by-law, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of \$100 for each offense. For a first violation of this section, and for any subsequent violation, the violator may be afforded the option of enrolling in a smoking cessation/education program approved by the Director of Health and Human Services or his/her designee(s). Proof of completion of such approved program shall be in lieu of the fines set forth in this Section and in Section 10.3 of these By-laws.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of \$100 for a first offense, \$200 for a second offense, and \$300 for a third or subsequent offense.

~~c.~~ **d.** Any entity violating any other section of this by-law shall receive a fine of \$300.00 for each offense.

~~d.~~ c. Employees who violate any provision of Section 8.23.3(b) shall be punished by a fine of \$100 per day for each day of such violation.

e. Violations of this by-law may be dealt with in a noncriminal manner as provided in PART X of the Town by-laws.

f. Each calendar day an entity operates in violation of any provision of this regulation shall be deemed a separate violation.

g. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Brookline Health Department or a Town department or Board from suspending, or revoking any license or permit issued by and within the jurisdiction of such departments or Board for repeated violations of this by-law.

SECTION 8.23.7 SEVERABILITY

Each provision of this by-law shall be construed as separate to the extent that if any section, sentence, clause or phrase is held to be invalid for any reason, the remainder of the by-law shall continue in full force and effect.

ARTICLE 6

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:

Warrant Article 6 would amend Article 8.33 of the Town's General By-Laws to prohibit the use of polyethylene plastic checkout bags by most retail establishments in the Town regardless of the thickness of the plastic. This strengthens the current by-law, which permits the use of polyethylene checkout bags that are at least 2.25 mils thick. Further, the by-law amendment would require large supermarkets (stores with more than 6,000 square feet of retail space) that provide product bags for loose bulk items, such as produce or baked goods, to use bags made of either compostable materials, recyclable paper, or reusable plastic. The current by-law makes no reference to product bags.

The petitioners are concerned that plastic bags, however defined and regardless of the number of times they are re-used, ultimately end up in landfills and never degrade. Their goal is to eliminate the use of plastic bags entirely because petrochemical plastics are not sustainable, create solid waste problems, and impair human health. The Advisory Committee agreed with the petitioners' goal, but a small majority of was skeptical about whether this Article would do much to achieve it. The reservations included the additional cost involved, whether paper or plastic had a larger carbon footprint, and the potential for unintended consequences, such as replacement of loose bulk items with prepackaged foods. Proponents of the Article felt that Brookline residents could easily absorb the additional cost, which amounts to pennies per bag, and argued that any negative impacts could be offset by future amendments to the by-law.

By a vote of 13 in favor, 10 opposed, and 1 abstention, the Advisory Committee recommends NO ACTION on Article 6.

BACKGROUND:

In May, 2012, Brookline became the first Massachusetts municipality to limit the use of plastic checkout bags to those that are at least 2.25 mils thick. Currently, 37 other Massachusetts cities and towns prohibit distribution of "single-use" plastic carryout bags, defined as bags with thicknesses varying between less than 1.5 mils (e.g. Watertown) and less than 4.0 mils (e.g. Wellesley). Most of these laws have been enacted within the past year and are only starting to go into effect. Only Williamstown and Lee extend the restriction to product bags. Nantucket prohibits the use of any packaging material which is not biodegradable.

Since Brookline enacted its bylaw, large chain retail outlets, such as CVS, have introduced checkout bags which the petitioners claim are only marginally better than the single-use bags currently prohibited. Though these bags are called "reusable" (the CVS

bag has an imprint which says it is washable and reusable 125 times) and can be recycled, they ultimately must be added to solid waste landfill and will never degrade.

As originally submitted by the petitioners, Warrant Article 6 would have eliminated the current by-law's small business exemption to include any retail space, pharmacy, and convenience store located within the Town regardless of size or gross sales. The expanded scope was intended to treat all retail outlets equally. Since it included stores not under the licensing jurisdiction of Brookline's Health Department, enforcement was moved to the Town Administrator or his/her designee.

In response to comments from local merchants, Health Department Director Alan Balsam, and Town Administrator Mel Kleckner, the petitioners revised the Article to restore the small store exemption and limit the product bag ban to larger supermarkets with over 6,000 square feet of retail space. This eliminates any new requirements for most local merchants, and instead targets the major chains that generate the bulk of the plastic checkout and product bags. Eliminating the need to monitor compliance in retail establishments that are not currently licensed by the Town would enable the Health Department to continue to enforce the by-law without requiring additional staff.

DISCUSSION:

The petitioners are concerned that plastic bags, however defined and regardless of the number of times they are re-used, ultimately end up in landfills and never degrade. Their goal is to eliminate the use of plastic bags entirely because petrochemical plastics are not sustainable, create solid waste problems, and impair human health. They argue that we need to take steps to insure that fossil fuels remain in the ground and that the best way to do this is to stimulate grass roots support at the local level.

Article 6 is meant to eliminate the use of all polyethylene and PVC bags at checkout regardless of thickness. The changes to current law were made to explicitly prohibit the type of bags now distributed by CVS or sold for ten cents in some supermarkets.

The petitioners argue that because product bags are used in much greater quantity than checkout bags, they present an even greater environmental hazard. The requirement that product bags be made of washable plastic at least 4 mils thick would be cost prohibitive for merchants and encourage the use of recyclable paper instead. Petitioners estimated the cost of a paper bag, exclusive of shipping, to be two cents, as opposed to a one-cent cost for a comparable polyethylene bag. Bags made of compostable material, such as cloth or bioplastics, have become more readily available and are now a viable alternative to the thin-film plastic bags currently used by supermarket chains. The pre-shipping cost of these bags is estimated to be about four cents each.

Advisory Committee members were generally sympathetic to the goal of eliminating the use of petrochemicals, but a small majority remained skeptical about whether Article 6 would have the desired impact. Supermarkets operate on extremely thin profit margins of

2-3% and could not easily absorb the cost of replacing plastic with paper or bioplastic. The additional cost would be passed along to consumers.

Furthermore, it is not clear that paper products create less of a carbon footprint than plastic. Paper manufacture involves the use of large amounts of energy and water, noxious emissions including carbon dioxide, and potential water contamination from heavy metals. Paper bags are heavier than plastic, requiring the use of more fuel to transport them which also increases the cost of the bags.

Just as they eliminated on-site butchers when polystyrene was banned as a material for packaging food items in Brookline, supermarket chains might be more likely to turn exclusively to pre-packaged and shrink-wrapped produce rather than change supplies for one or two stores. Instead of reducing plastic packaging, the proposed ban on plastic product bags might lead to an increased number of polystyrene trays to be disposed of within the Town. Consumers who prefer to select their own produce and baked goods could easily shop elsewhere.

Despite these concerns, a sizeable minority of the Advisory Committee voted for Favorable Action on the motion offered by the petitioners under Article 6. Proponents felt the price differential was not significant and could be absorbed easily by Brookline residents. Although paper products are not carbon neutral, they ultimately degrade whereas plastic is forever. If businesses find new ways to circumvent the by-law, additional amendments could be enacted at a future date.

It was suggested it might be more successful to target consumer behavior than attempt to effect change at the corporate level. For example, Cambridge charges customers for any bags they might request at checkout. Unfortunately, Brookline cannot follow suit because under Massachusetts law, only cities—not towns—may impose of fee on the distribution of single-use bags by retail outlets.

RECOMMENDATION:

After hearing the arguments pro and con, by a vote of 13–10–1 the Advisory Committee recommends NO ACTION under Article 6.

ARTICLE 6

BOARD OF SELECTMEN’S SUPPLEMENTAL RECOMMENDATION

The petitioners of Article 6 submitted a revision which further restricts section 8.33.2(B) to just large supermarkets, those over 6000 sq. ft. The Board felt this addressed their concerns about the impact on smaller grocery stores and that the new proposal was something that was acceptable and enforceable.

On November 9, 2016 the Board unanimously voted FAVORABLE ACTION on the following motion:

VOTED: To amend the General By-Laws by revising the Article 8.33 as follows (additions are underlined and deletions are in strikeout):

ARTICLE 8.33 SUSTAINABLE PLASTIC BAGS ~~REDUCTION~~

SECTION 8.33.1 Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Director”, the Director of Public Health Services or his/her designee.

“ASTM D6400”, the American Society for Testing and Materials (ASTM) International “Standard Specification for Compostable Plastics”.

“ASTM D7081”, ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment”.

“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale. ~~Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.~~

“Compostable plastic bag”, a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

“Department”, the Brookline Department of Public Health.

“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability; and conforms to any other standards deemed acceptable by the Director, provided additional, Director-approved standards are as stringent as ASTM D7081.

“Product Bag” bags in which loose produce, bulk items, unwrapped baked goods or prepared food, or other products are placed by the consumer to deliver such items to the point of sale or check out area of the store.

“Reusable bag”, a bag that is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

“Reusable check-out bag”, a sewn reusable bag with stitched handles that is specifically designed for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material can carry 25 pounds over a distance of 300 feet.

“Retail establishment”, any retail store that satisfies at least one of the following requirements: (a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same name within the Town of Brookline that total 2,500 square feet or more; or (b) a retail pharmacy with at least two locations under the same ownership within the Town of Brookline; or (c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

SECTION 8.33.2

(a) If a retail establishment as defined in Section 1 provides ~~plastic~~ checkout bags to customers, the ~~plastic~~ bags shall comply with the requirements of being either a recyclable paper bag, a reusable checkout bag, or a compostable plastic bag that is compostable as well as marine degradable ~~plastic bag~~.

(b) If a supermarket, a retail establishment described in the definition set forth in section 8.33.1, with more than 6,000 square feet of retail space, provides product bags to customers, the bags shall comply with the requirements of being either a recyclable paper bag, reusable bag, or a compostable plastic bag. ~~(a) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.~~

(c) The Director may promulgate rules and regulations to implement this section.

SECTION 8.33.3 PENALTIES AND ENFORCEMENT

(a) Each Retail Establishment as defined in Section 1, above, located in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the Director shall issue a warning notice to the Retail Establishment for the initial violation. (2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Director shall issue a notice of violation and shall impose a penalty against the retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court. (4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

(5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

SECTION 8.33.4

All of the requirements set forth in this by-law shall take effect ~~December~~ July 1, 20137. In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative checkout bags or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional six-month period upon showing of continued infeasibility as set forth above.

ARTICLE 7

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

SUMMARY:

Warrant Article 7, submitted by the River Road Study Committee (RRSC), would amend the Zoning By-Law to create a new “Emerald Island Special District” (EISD) on the plot of land bordered by River Road, Washington Street, and Brookline Avenue that is currently zoned Industrial (I-1.0). More information about the RRSC is available at <http://www.brooklinema.gov/1303/River-Road-Study-Committee>.

By a vote of 23–0–0, the Advisory Committee recommends FAVORABLE ACTION on Article 7 as submitted by the petitioners.

BACKGROUND:

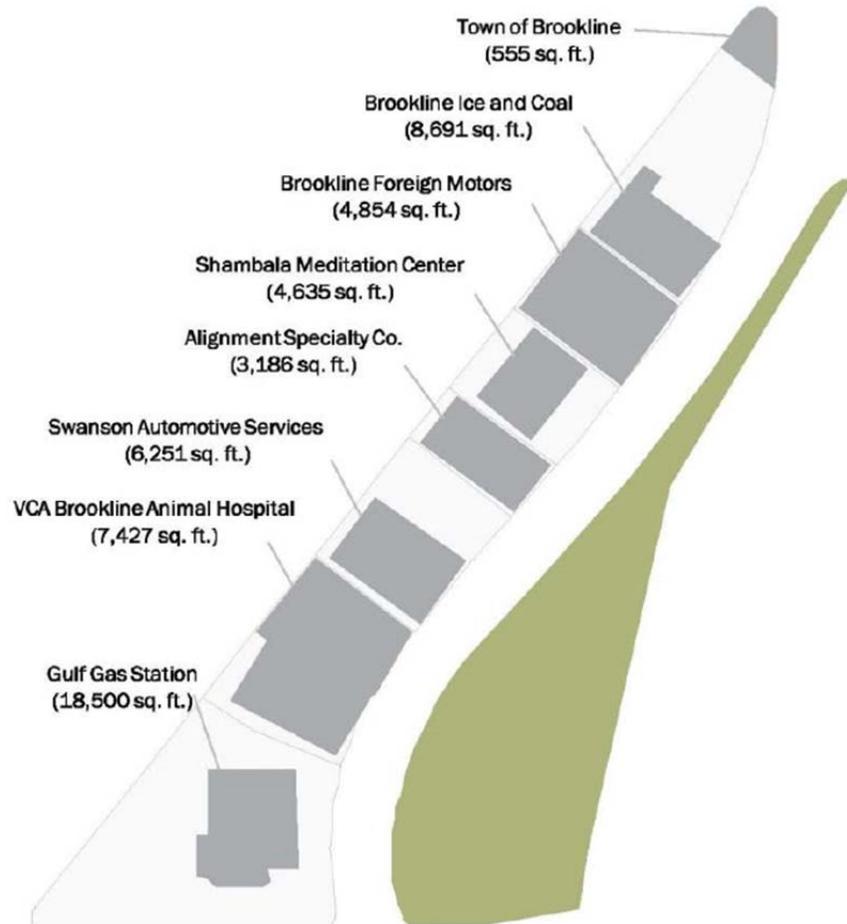
The RRSC was formed in response to several recent developments:

- The vision articulated in the 2015 MIT study of Route 9 East, entitled “Bringing Back Boylston” — <http://brooklinema.gov/DocumentCenter/View/8736>.
- As part of this study, the industrial island was seen as a potential anchor point for redevelopment along Route 9 that would improve the offerings along Route 9 (e.g. public amenities, green space, and commercial spaces) as well as tie the north and south sides of Route 9 more closely together.
- The purchase of 25 Washington Street—the former Gulf station at the corner of Brookline Avenue and Washington Street by Claremont Company, the same firm that developed the Homewood Suites at the former Red Cab site. Claremont first presented plans for a hotel on the site in January 2016, shortly before the RRSC was formed.

The goal in forming the RRSC was to bring to life some of the ideas presented by the MIT study as well as earlier Town plans (e.g. the Comprehensive Plan) by developing an entire district around some of these ideas, as opposed to having just the one-off hotel development (a use that is not allowed under current zoning.) Hotels are seen as very attractive developments because they are a significant source of tax revenue (excise tax, real estate tax) without incurring the concomitant costs that full-time residents would expect in terms of town and school services.

Businesses currently occupying the proposed EISD include VCA Brookline Animal Hospital, Brookline Ice and Coal, Shambhala Meditation Center, and several auto repair shops, many of which are owner-occupied. Importantly, none of these businesses would be forced to cease operations because of the proposed zoning changes, although the new zoning will increase the worth of the land such that their current uses may not be considered the highest and best use. There is also a small Town-owned parcel at the

northern tip of the site. Claremont recently purchased the parcel occupied by Alignment Specialty and plans to use this site for construction staging. They have approached other property owners but have not been successful in negotiating additional sales to date. A map of the site with current businesses and the square footage of each lot follows.



The Emerald Island Special District has several challenges and constraints:

- River Road itself is Article 97-protected parkland.
- The northernmost tip of the site (the Town-owned parcel and a portion of the parcel currently occupied by Brookline Ice and Coal) is a flood zone with complex regulations about what can be built there and how.
- The lot parcels are extremely small and shallow, which limits their future usefulness.

A 30' wide easement bisects the block near its midpoint; the easement is for a large storm drain and must be accessible to the Town at all times.

Notwithstanding these constraints, Article 7 introduces several concepts that are used in other communities, but would be new to our Zoning By-Law:

- Sets parking maximums, as opposed to the more common parking minimums, as a result of the transit-rich environment and its proximity to the Longwood Medical Area.
- Uses form-based zoning, including maximum building height and lot coverage percentages, instead of traditional floor-area ratio (FAR) and setbacks.
- Creates new categories of zoning uses, including Micro Units (< 500 SF) and Live/Work Space (< 900 SF, primary residence/studio space). (Note: The zoning also identifies age restricted housing (62+), retail, commercial and hotel as allowed on the EISD, but these are not new uses in Brookline.)

Other important elements of the proposed zoning are its use of Design Guidelines, which describe desired aspects such as lighting, streetscape and facade articulation, to ensure the buildings are visually appealing and diverse, as well as minimum sidewalk widths.

It is important to note that, while the current zoning for these parcels would remain in effect, the new zoning can only be “unlocked” once an acceptable design proposal for an allowed use on a minimum parcel size of 13,600 square feet is aggregated. This means:

- 25 Washington Street is large enough as a stand-alone parcel.
- VCA Animal Hospital and Swanson Automotive can be combined into one lot.
- Either all four commercial properties to the north of the easement must be combined, or at least three of the four must be combined. (In theory, Alignment Specialty is not needed to achieve the minimum parcel size, though calculations by the RRSC indicated the financial viability of any project would require acquisition of all lots north of the easement.)

The vision of the RRSC is a redeveloped Emerald Island comprised of the following sites:



DISCUSSION:

The Advisory Committee held a subcommittee hearing, a subcommittee meeting and two full committee meetings on the River Road articles. In attendance was Economic

Development Planner Andy Martineau as well as many members of the RRSC and the public. Areas of significant discussion included:

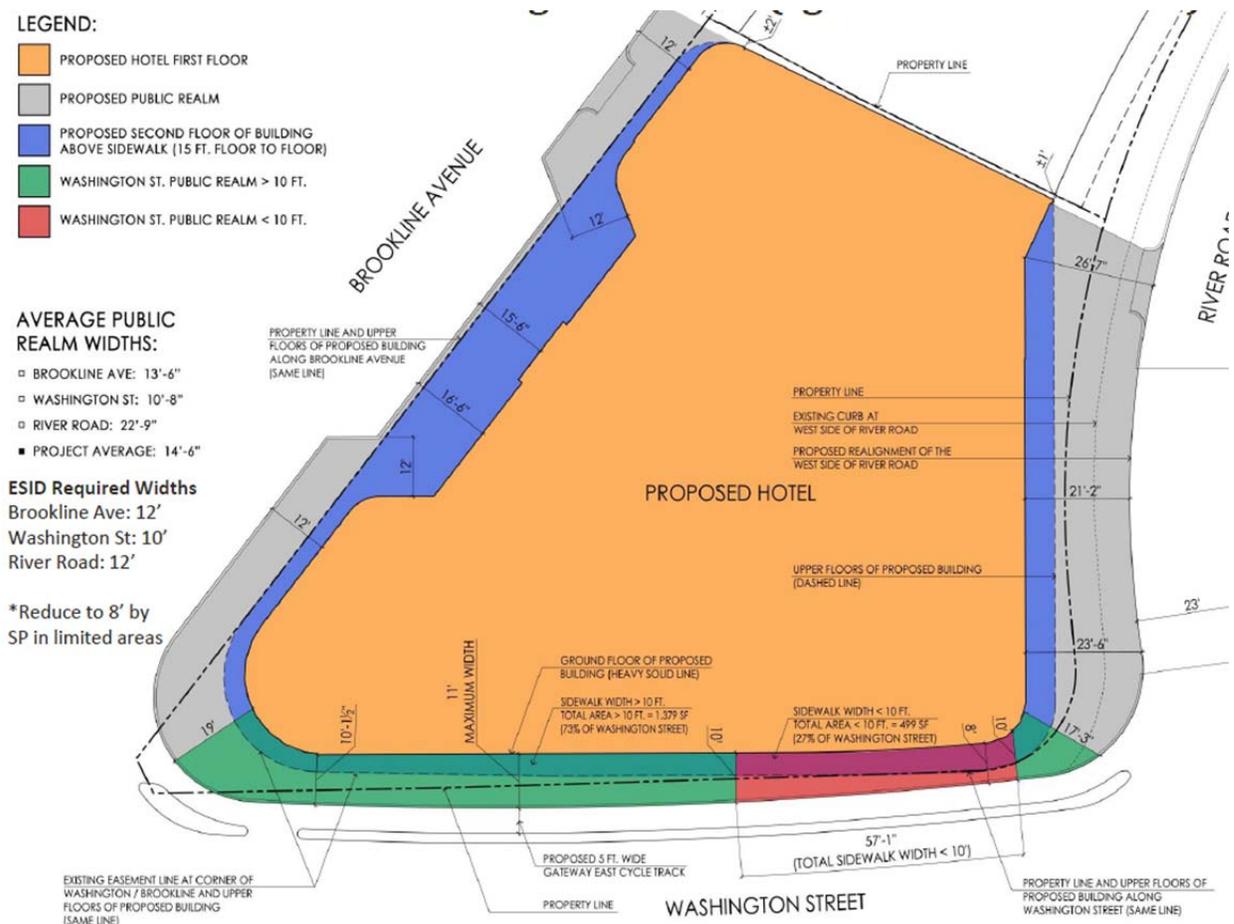
Parking

Many people questioned the appropriateness and validity of parking maximums for this site, specifically whether the maximums have been chosen correctly and whether this will become an unwelcome precedent in town. The response from Andy Martineau and other RRSC members present was that the committee itself discussed this at length and ultimately decided that maximums were appropriate for the following reasons:

- The RRSC worked closely with Pam McKinney, considered the preeminent real estate consultant in the Metro Boston area, to vet the ideas and ensure overall project viability. Pam was comfortable with parking maximums that addressed the minimum needs for each project type (e.g. hotel, retail, residential).
- The EISD is not in a residential neighborhood. The nearest residential development is across Brookline Avenue (Village at Brookline) and the RRSC member who is also a Village resident reported a surplus of parking at the development.
- There is significant on-street parking nearby on Brookline Avenue, and there will be additional parking at 2 Brookline Place once the new parking garage is constructed.

Sidewalk widths

Sidewalk widths are the principal difference between Articles 7 and 8, and specifically the sidewalk on Washington Street. As shown on the diagram on the next page, Claremont has proposed a <10' sidewalk for a 57' portion of that side of the hotel, which has been accounted for in the zoning in Article 7 (allowing for reduction in widths to as narrow as 8' with documented evidence of need). The narrower width includes the portion of the sidewalk reserved for tree plantings. Much of the discussion during the review of Articles 7 and 8 focused on whether this width was adequate given the foot traffic in this area. Bus routes 39, 60, 65, and 66 all run within two blocks of this corner, as do the D and E lines.



Benefits of EISD

Many benefits were discussed, including:

1. Additional tax revenue to the town: the hotel alone would generate \$1M/year in real estate tax to the town.
2. New open/green space: the easement would no longer be used for parking as it is currently, but rather a green space that connects Pearl Street to the Emerald Necklace. The RRSC voted to add setbacks on either side of the 30' easement, to increase the width to 50'. Since the easement cannot be built on, it could serve as a grassy area, pedestrian walkway, or similar—as well as breaking up the height of the buildings to either side.
3. More standard benefits include the 1% of construction costs being returned as public realm benefits, street trees, seating, LEED certification for buildings, and no street-level parking. Claremont has also agreed to additional public benefits documented through a Memorandum of Agreement (MOA) and tax certainty agreement — see discussion of Articles 9 and 10 for those details. Importantly, the MOA is contingent on Article 7 passing in its proposed form, or something substantially similar.

Impact of MOA on property value

There was extended discussion of whether Article 7 could be considered “spot zoning” or “contract zoning”— particularly in reference to whether the MOA could be challenged at a later date as it might be considered to be an encumbrance on the property. Spot zoning is zoning for one parcel that is out of character for the neighboring parcels. Contract zoning is generally defined as zoning changes that are made in exchange for something of value. Associate Town Counsel Jonathan Simpson opined that the proposal under Article 7 is not considered spot zoning because it affects more than one parcel, and is generally consistent with the scale of adjacent developments at Brookline Place and the Brook House, nor is it considered contract zoning because the terms of the MOA are being offered voluntarily.

Conversely, there was also discussion about whether the Town is leaving money on the table by not identifying a mechanism to facilitate MOAs for the other two aggregated parcels that would be redeveloped under Article 7. Currently, the only potential known MOA trigger would be any desired purchase of the small piece of Town-owned land at the northernmost tip of the island; there is no similar trigger identified for the site at the center of the block between the proposed hotel and the easement. The question of limiting the EISD to the 25 Washington Street property was discussed but ultimately discarded as that would constitute spot zoning. The Advisory Committee and Town Counsel felt that the documentation of the MOA, which is part of the public record and tied to the deed, was sufficient to protect against future challenges.

RECOMMENDATION:

By a vote of 23–0–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

ARTICLE 8

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

SUMMARY:

Warrant Article 8 was submitted as a citizen petition to replace Article 7, which creates special zoning for the EISD (Emerald Island Special District). Articles 7 and 8 differ on only one aspect – the minimum sidewalk width along Washington Street. Article 7 calls for a 10’ minimum (with potential leeway for minor reductions), while Article 8 calls for an 8’ minimum sidewalk plus a 10’ minimum planting strip, with no possibility for a reduction in width due to special circumstances.

By unanimous vote of 23–0–0, the Advisory Committee recommends NO ACTION on Article 8.

BACKGROUND:

Article 8 was submitted by Hugh Mattison (TMM-5), a member of the River Road Study Committee (RRSC) and chair of the Tree Planting Committee. Article 8 seeks to change only one aspect of the zoning changes described in Article 7—that of the minimum sidewalk width along Washington Street. Article 11 contains the same provisions as Article 8, but is framed as a resolution in the event that neither Article 7 or 8 passes.

Article 7 calls for the sidewalk along Washington Street to be at least 10 feet wide, but allows this to be reduced for a portion of the street frontage by Special Permit, recognizing the irregular geometry and constrained size of the site, compounded by the somewhat late addition of a cycle track as part of the Gateway East DOT project. The new hotel plans to pursue this relief, showing a sidewalk width that averages 10’-8” wide along Washington Street, although approximately one-third of the frontage is less than the 10’-0” minimum, necking down to 8’-0” for approximately 5’-0” in length. (The new cycle track is at sidewalk level and represents an additional 5’-0” in width, but is not included in the sidewalk width calculation.)

The petitioner is concerned that the sidewalk width described in Article 7, which follows the recommendations of the RRSC, is not adequate to accommodate all planned uses (pedestrians, street furniture, plantings, etc.) and that the current hotel design will be produce a streetscape that is either devoid of street trees, or has trees that are too columnar in appearance. For this reason the petitioner is proposing that an additional 8 feet be added to the “sidewalk zone” for a total of 18 feet—8 feet of this for the actual sidewalk and 10 feet for a new planting strip, with no option to reduce the width along Washington Street by Special Permit. The petitioner’s goal is to create a planting zone enough to support large-scale full canopy street trees such as those proposed at 2 Brookline Place.

DISCUSSION:

After the petitioner's initial presentation at a September 21, 2016, public hearing, it became clear that the original objective of Articles 8 and 11 was to increase the building setback along the entire Washington Street frontage in order to allow the addition of large street trees. The original language of both Articles, however, refers to *sidewalk width* only. In fact, the proposed hotel design achieves the minimum sidewalk widths described in Article 11 by overhanging the upper stories over the sidewalk zone by approximately 3 feet, which is allowed because it is still within the property lines.

Claremont stated that if Article 8 were to be applied as a *building setback* to allow for full canopy trees along Washington Street, the total number of parking spaces on the two parking decks would be reduced by over 50% (from 70 spaces to 37 spaces). In order to maintain 70 parking spaces, (a figure which was corroborated by the RRSC as well as the Town's outside real estate consultant), the hotel would require two additional parking decks (for a total of 4 decks), increasing the building height by 20 feet to 130 feet high. If, on the other hand, Article 8 were applied as affecting *sidewalk width* only, the parking count would be unchanged because the parking decks could overhang the sidewalk (eliminating the possibility of full-canopy trees), but the street-level hotel interior and—perhaps most important—the shared parking ramp would not fit within the remaining street-level building footprint.

The petitioner subsequently attempted to amend Article 8 to include language to disallow a building that overhangs the sidewalk, but the proposed amendment was rejected by the Moderator as being more restrictive.

Members of the RRSC and Claremont noted that the average sidewalk width as proposed in the current project is 10'-8" (8" wider than that proposed in Article 8), with a portion approximately 5' in length that necks down to 8'-0" wide. Under the provisions of Article 7, this "pinch point" would be subject to Planning Board review and approval.

The Advisory Committee was generally sympathetic to the goals of Article 8, but agreed with the Planning Board that the special zoning envisioned by the RRSC and proposed by Article 7 represents an appropriate compromise given the various site constraints. For that reason, it recommends Favorable Action on Article 7, rather than Article 8.

RECOMMENDATION:

By a vote of 23-0-0, the Advisory Committee recommends NO ACTION on Article 8.

ARTICLE 9

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:

Warrant Article 9 was submitted by the Board of Selectmen and, if passed, would allow the Board to enter into a Restrictive Covenant Agreement with Claremont Brookline Avenue, LLC to guarantee tax revenue on the parcel at 25 Washington Street for 95 years.

By a vote of 23–0–0 the Advisory Committee recommends FAVORABLE ACTION on Article 9.

BACKGROUND:

Article 9 was submitted by the Board of Selectmen. If passed, this Article would allow the Board to enter into an agreement with Claremont Brookline Avenue, LLC, the developer of the parcel at 25 Washington Street, that guarantees 100% of the property tax revenue for 95 years should Claremont sell the property to a nonprofit entity.

Specifically, Article 9 does the following:

1. It defines the parcel of land currently owned by Claremont Brookline Avenue, LLC.
2. It includes a draft of the restrictive covenant that details the schedule of voluntary payments, liens and/or remedies for failure to make the voluntary payments and conditions for terminating the agreement.

The property tax from the parcel is currently estimated to be \$1M annually. Brookline has entered into Restrictive Covenant agreements at Brookline Place, Cleveland Circle Cinema, and the former Red Cab site, and it has become the Town's practice to negotiate such agreements, when possible.

DISCUSSION:

The benefits to the Town of an agreement with Claremont Brookline Avenue, LLC are clear: if the property is sold to a tax-exempt entity the Town would continue to receive payments equivalent to the tax revenue for 95 years. The Town has entered into agreements similar to this one at 2-4 Brookline Place, the Cleveland Circle Cinema site and the former Red Cab site, which was also developed by Claremont Company. A tax certainty agreement is recorded on the deed for the property. In order to receive the full benefit of the agreement, the Town must file a notice of extension before 35 years have expired and every 20 years thereafter.

Importantly, this agreement sets the payment amount to be equal to the property tax that would have been levied by the Town and will likely increase over time. When the Town

enters into PILOT agreements directly with nonprofits, the agreement is generally for 25% of the property tax revenue. By seeking such agreements before the property is transferred, Brookline is able to secure the full measure of tax revenue.

Questions were raised about the possibility of this agreement being considered “contract zoning” or whether the Town could extend this agreement to other parcels in the EISD. In the case of contract zoning, Associate Town Counsel Jonathan Simpson believes Articles 7 and 9 could not be considered contract zoning because (1) the benefits to the Town (such as the tax certainty) evaporate should Town Meeting fail to pass the zoning amendment, and (2) the Town is not bound to adopt the proposed zoning changes.

With regards to guaranteeing tax certainty for the other parcels, there is no developer or party with which to negotiate such an agreement.

RECOMMENDATION:

By a vote of 23–0–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

ARTICLE 10

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

SUMMARY:

Article 10 authorizes the Board of Selectmen to enter into and amend any agreements that are necessary to carry out the terms of the Restrictive Covenant and Memorandum of Agreement (MOA) between the Town and Claremont Brookline Avenue, LLC. The MOA details specific benefits to the Town that include the tax certainty agreement, shared maintenance for parkland, limits on the number of parking spaces and hotel rooms and shared parking ramp access for a neighboring building.

The Advisory Committee by a vote of 23–0–0 recommends FAVORABLE ACTION on Article 10.

BACKGROUND:

The terms of the MOA, negotiated by the Planning and Community Development Department and Selectman Ben Franco, chair of the River Road Study Committee, include:

- The Town and Claremont Brookline Avenue, LLC enter into a PILOT agreement that is recorded in the chain of title on the deed to guarantee tax certainty for 95 years;
- Claremont will provide public benefits estimated to be \$376K to mitigate the cost of bike, pedestrian and landscape improvements as well as participate in shared maintenance of the parkland;
- Claremont will make a one-time payment equal to 1% of hard construction costs for parks and public realm improvements;
- Claremont will design and construct the building to accommodate shared parking ramp access for future development on an adjoining parcel;
- Claremont will grant the Town a permanent easement for the planned Gateway East improvements on Washington Street;
- Claremont agrees to limit the number of hotel rooms to 175 and number of parking spaces to 70.

DISCUSSION:

The terms laid out in Article 10 are favorable to the Town as they protect an estimated \$1M annually in tax revenue, limit the scope of the hotel and parking on the site, offset the costs of improved bike and pedestrian zones, and accommodate future development on adjoining parcels.

The inclusion of shared parking ramp access was deemed necessary due to the lot size and shape, as well as the zoning requirements in Article 7 which prohibit surface parking and require the aggregation of parcels to “unlock” the new zoning.

RECOMMENDATION:

By a vote of 23-0-0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

ARTICLE 11

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

SUMMARY:

Article 11 was submitted as a citizen petition in the event that Article 7 (special zoning for the EISD) fails. It was submitted as a resolution version of Article 8, which focuses on the minimum sidewalk width along Washington Street. Like Article 8, it seeks to increase the minimum total sidewalk zone width from 10’ to 18’ (8’ minimum sidewalk plus a 10’ minimum planting strip).

By a vote of 12–11–0, the Advisory Committee recommends NO ACTION on Article 11.

BACKGROUND:

Article 11 was submitted by Hugh Mattison (TMM-5), a member of the River Road Study Committee (RRSC) and chair of the Tree Planting Committee. Article 11 seeks to change only one aspect of the zoning changes that were recommended by the RRSC—that of the minimum sidewalk width along Washington Street. Article 11 contains the same provisions as Article 8, but is framed as a resolution in the event that neither Article 7 or 8 passes.

Article 7 calls for the sidewalk along Washington Street to be at least 10 feet wide, but allows this to be reduced for a portion of the street frontage by Special Permit, recognizing the irregular geometry and constrained size of the site, compounded by the somewhat late addition of a cycle track as part of the Gateway East DOT project. The new hotel plans to pursue this relief, showing a sidewalk width that averages 10’-8” wide along Washington Street, although approximately one-third of the frontage is less than the 10’-0” minimum, necking down to 8’-0” for approximately 5’-0” in length. (The new cycle track is an additional 5’-0” in width, and is not included in the sidewalk width calculation.)

Petitioner is concerned that the sidewalk width described in Article 7, which follows the recommendations of the RRSC, is not adequate to accommodate all planned uses (pedestrians, street furniture, plantings, etc.) and that the current hotel design will be produce a streetscape that is either devoid of street trees, or has trees that are too columnar in appearance. For this reason petitioner is proposing that an additional 8 feet be added to the “sidewalk zone” for a total of 18 feet—8 feet of this for the actual sidewalk and 10 feet for a new planting strip, with no option to reduce the width along Washington Street by Special Permit. Petitioner’s goal is to create a planting zone enough to support large-scale full canopy street trees such as those proposed at 2 Brookline Place.

DISCUSSION:

After the petitioner's initial presentation at a September 21, 2016 public hearing, it became clear that the original objective of Articles 8 and 11 was to increase the building setback along the entire Washington Street frontage in order to allow the addition of large street trees. The original language of both Articles, however, refers to *sidewalk width* only. In fact, the proposed hotel design achieves the minimum sidewalk widths described in Article 11 by overhanging the upper stories over the sidewalk zone by approximately 3 feet, which is allowed because it is still within the property lines.

Subsequent to this hearing, petitioner amended the last paragraph of Article 11 as follows:

BE IT FURTHER RESOLVED that Brookline Town Meeting urges the Board of Selectmen to ~~require a sidewalk of at least 18 feet, on the south property line of 25 Washington Street (Parcel ID 135-01-00) to include a 10 foot planting strip, with the final design of all landscaping in this strip to be determined by the Director of Parks and Open Space, or his/her designee~~ use their best efforts to widen the sidewalk at 25 Washington Street enough to allow a planting strip that includes a row of full-canopy trees to separate the proposed cycle track from pedestrians;

Members of the Advisory Committee questioned why petitioner identified the Selectmen rather than the Planning Board in this clause, since the Planning Board would be responsible for reviewing any future project proposal. Petitioner did not feel strongly about which group was identified and suggested both could be named.

Although Article 11 could coexist with Article 7 in theory, it seems unlikely that the amended version could be actually implemented because the design analysis performed to date by the RRSC as well as the Claremont Company illustrates that there is not adequate space for full canopy trees on Washington Street given the minimum clearances required for a hotel and its above-grade parking. Several members of the Advisory Committee, however, expressed their appreciation for the goals of Article 11 and for bringing the matter to the attention of the broader public. Ultimately, a narrow majority of the Advisory Committee felt that recommending Favorable Action on Article 7 would send a confusing message and could jeopardize the viability of the entire development.

RECOMMENDATION:

By a vote of 12–11–0, the Advisory Committee recommends NO ACTION on Article 11.

ARTICLE 14

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

The following motion is a corrected motion under Article 14 which only amends scrivener’s errors on numbering in the article:

VOTED: That the Town amend Article VII of the Town’s Zoning By-Laws as follows (new language appearing in bold/italics, deleted language appearing in strikeout):

ARTICLE VII

SIGNS, ILLUMINATION, & REGULATED FACADE ALTERATIONS

- §7.00 - *SIGN BY-LAW*
- §7.01 - *SIGNS IN ALL DISTRICTS*
- §7.02 - *SIGNS IN S, SC, T AND F DISTRICTS*
- §7.03 - *SIGNS IN M DISTRICTS*
- §7.04 - *SIGNS IN I, G, L AND O DISTRICTS*
- §7.05 - *TEMPORARY SIGNS*
- §7.06 - *ILLUMINATION*
- §7.07- *EXCEPTIONS TO THE ABOVE*
- §7.08 - *DESIGN REVIEW PROCEDURES*
- §7.09 - *NONCONFORMANCE OF SIGNS*

~~§7.00 SIGNS IN ALL DISTRICTS~~ ***SIGN BY-LAW***

~~The following requirements shall apply to all signs and other advertising devices in all districts:~~

- a. ~~No sign or other advertising device with visible moving or moveable parts or with flashing animated or intermittent illumination shall be erected or maintained, except that a traditional rotating barber pole may be permitted by the Planning Board subject to the design review process in §7.03, paragraph 2.~~
- b. ~~No sign or other advertising device, or part thereof, shall be more than 25 feet above ground level except signs announcing the name of an individual building by special permit of the Board of Appeals.~~
- c. ~~No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, a non-combustible projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or vertical banner sign, composed of pliable fabric or similar material, may project~~

- ~~more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. No projecting or banner sign shall be larger than 12 square feet in area per face.~~
- ~~d. In cases where an attached sign size larger than permitted in this Article VII is appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, a larger attached sign up to but not more than 25% larger than permitted by the specific regulations in this Article may be allowed by the Planning Board in accordance with the procedures of **§7.03, paragraph 2.** only if such an increase is necessary to fill the most appropriate sign area on the building and the sign location is a proper one for an oversized sign. No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.~~
- ~~e. Signs or advertising devices not attached to the building shall not exceed 20 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 12 feet in height, except gasoline service station signs as regulated by **§7.03, paragraph 1., subparagraph h.** Except for signs regulated by paragraphs 3 and 4 below, all permitted signs in excess of one square foot in area shall be set back one-half the depth of the required front yard setback from all street lot lines. Except for signs regulated by **paragraph 2** below, any freestanding sign of more than 10 square feet in area, or more than four square feet for a nonconforming use, or a freestanding sign of any size for a gasoline service station shall be subject to the requirements of **§7.03, paragraph 2.** Except for signs regulated by paragraph 3 below, there shall be not more than one freestanding sign, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.~~
- ~~f. Signs, whether temporary or permanent, on the exterior of buildings shall be made of substantial materials. A special permit of the Board of Appeals shall be required to determine the appropriateness to the building of any flags, streamers, and balloons etc. used for sign purposes. National, state and Town flags are exempted from this provision. The Building Commissioner may approve temporary banners for public events.~~
- ~~2. Non illuminated non-commercial public message signs may be placed on private property in all zoning districts. Such signs related to a specific event shall be removed by the property owner within 7 days following the event.~~

- ~~3. Non-illuminated signage that does not exceed 1.5 square feet in area and that identifies allowed users of individual parking spaces is allowed in all zoning districts.~~
- ~~4. Required signage for parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) as described in §6.01, paragraph 5 is allowed in all zoning districts.~~

1. Purpose: The purpose of this Article 7.00 is to improve pedestrian and traffic safety; to avoid the proliferation of signs; to minimize their adverse effect on nearby public and private property, to preserve the esthetic environment; to encourage the effective use of signs; and, to enable fair, consistent and content-neutral enforcement of this section.

Applicability: The following shall apply to all signs in all zoning districts.

Severability: The provisions of this By-Law shall be deemed to be severable. Should any of its provisions be held to be invalid, unenforceable or unconstitutional, the remainder of this By-Law shall continue to be in full force and effect.

Definitions: The following words and phrases used in this section shall have the meanings set forth below:

- a. Sign: Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, attract attention to or announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. For the purposes of this by-law, the term “sign” shall not include the following:*
 - i. Official traffic control devices required, maintained, or installed by a Federal, State or local governmental agency.*
 - ii. Town of Brookline government signs and signs permitted by the Town on Town property.*
 - iii. Building markers indicating the name of a building and date and incidental information about its construction, which marker is cut into a masonry surface or made of other permanent material.*
 - iv. Flags, holiday lights and decorations.*
- b. Regulated Façade Alteration: Any change intended to be permanent in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway. A regulated facade alteration shall include:*

- i. commercial building facades in all districts; and*
- ii. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, and T districts.*

§7.01 SIGNS IN ~~S, SC, T, AND F~~ ALL DISTRICTS

1. ~~In any S, SC, T, and F district, Signs in all districts shall be subject to the following requirements:~~

- ~~a. One sign displaying the street number or name of the occupant of the premises, or both, not exceeding one square foot in area. Such sign may include identification of a permitted accessory professional use.~~
- ~~b. Two bulletin or announcement boards or identification signs for a permitted principal non-residential building or use, neither of which may exceed 10 square feet in area.~~
- ~~c. One sign in connection with a lawfully maintained nonconforming use, not exceeding 10 square feet in area.~~
- ~~d. One “For Sale” or “For Rent” sign not exceeding six square feet in area, and advertising only the premises on which the sign is located; such sign to be removed at once upon rental or sale of property, and, in any case, to remain no longer than a four month period in any calendar year, after which period, permit may be given by the Building Commissioner for an additional four month period upon written application, if need is shown.~~
- ~~e. One contractor’s sign, not exceeding 10 square feet in area, maintained on the premises while a building is actually under construction.~~
- ~~f. Other temporary signs in connection with the construction or development of a building or lot, by special permit of the Board of Appeals which shall specify limits on the size and number of signs and the length of time to be maintained.~~
 - a. All regulated facade alterations shall be subject to the design review process in §7.08.*
 - b. Signs with visible moving or moveable parts or with flashing animated or intermittent illumination are prohibited.*
 - c. Signs or parts thereof attached to a building, shall not exceed a height of 25 feet above ground level.*

- d. Projecting or banner signs attached to a building shall not be internally illuminated, shall not exceed 12 square feet in area per face and shall not extend lower than a height of 8 feet.*
- e. Signs attached to a building shall not project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached.*
- f. Signs shall not be permitted on building walls nor parallel or within 45 degrees of parallel to the street.*
- g. No A-Frame or “Sandwich board” signs shall be permitted in any district.*
- h. Signs, whether attached to a building or free-standing, shall have an aggregate area not exceeding two square feet for each foot of building face parallel or substantially parallel to a street lot line. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.*
- i. The aggregate area of all signs in any window, whether temporary or permanent, shall not exceed 30% of the area of such window, and the area of permanent window signs shall be included in the aggregate sign area permitted in paragraph (h) above.*
- j. All permanent free standing signs in excess of 1 square foot shall be set back one-half the depth of the required front yard setback from all street lot lines.*
- k. Permanent signs not attached to a building shall not exceed 30 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 19 feet in height.*
- l. Temporary, non-illuminated, signs may be placed on private property in all zoning districts, provided that the signs are in fact temporary, not involving any substantial expense, and are displayed in a manner which will not deface the building facade.*
- m. Non-illuminated signs that do not exceed 1.5 square feet in area identifying allowed users of individual parking spaces may be placed in all zoning districts.*
- n. All lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property.*

- o. No neon type or exposed gas-illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.*
- p. There shall be not more than one freestanding sign per property, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.*
- q. Signs, whether temporary or permanently attached to the exterior of buildings shall be made of substantial materials.*

§7.02 - SIGNS IN M-S, SC, T AND F DISTRICTS:

1. In any S, SC, T and F District, no *permanent on-premises* sign or other *permanent on-premises* advertising device shall be permitted except as follows:
 - ~~a. As permitted in S, SC, T, and F Districts.~~
 - ~~b. Two signs for a permitted hotel use or permitted principal non-residential use, neither of which may exceed 20 square feet in area.~~
 - ~~c. Two signs announcing the name of an individual multiple dwelling and identifying accessory uses with an aggregate area not exceeding twenty square feet except that multiple dwellings with more than 200 units may have an additional aggregate area of five square feet per 100 units above 100 units, up to a maximum aggregate area of forty square feet. If the Planning Board determines that a central directory is not adequate for identifying an individual exterior entrance to an accessory use, the Board may approve an individual sign displaying the street number and/or name of the occupant and specialty, not exceeding two square feet in area.~~
 - ~~d. Two signs in connection with a lawfully maintained principal nonconforming use, not exceeding a total of 20 square feet in area.~~
 - ~~e. One sign, not exceeding 20 square feet in area, in connection with the construction, development, conversion or leasing of a new or substantially rehabilitated building.~~
2. All signs permitted in this section shall be subject to the design review process as regulated by **§7.03, paragraph 2.**
 - a. One sign located in a manner intended to identify the address and/or occupant of the premises not exceeding 1 square foot in area.*
 - b. Two bulletin board or announcement board signs not exceeding 10 square feet in area.*

§7.03 - SIGNS IN ~~L, G, I AND O~~ **M DISTRICTS**

1.-In any M District, no *permanent* on-premises sign or other *permanent* on-premises advertising device shall be permitted except as follows:

As permitted in S, SC, T, F, and M Districts.

- ~~b. Signs or advertising devices, whether attached to the building or free standing, shall have an aggregate area not exceeding two square feet for each foot of building face parallel or substantially parallel to a street lot line. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.~~
- ~~e. Signs for commercial uses on upper floors of a building may have signage additional to subparagraph b. above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in **§7.00, paragraph 1., subparagraph b.**, at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line. Signage, particularly for office and services uses, preferably should be located on windows or, if not possible, in an architectural element of the facade. In cases where an existing architectural element needs a larger sign background to fill the space, the Planning Board may allow an increase up to 25%; however, the lettering on the sign should not be increased correspondingly.~~
- ~~d. Signs shall not be permitted on building walls not parallel or within 45 degrees of parallel to the street, except for one directional or identification sign not exceeding twelve square feet in area for structures with a single business and not exceeding eighteen square feet in area for structures with more than one business provided that the sign is proportionate to the area of the building wall to which it will be attached. Where such building wall contains the main business entrance or entrances, the Planning Board may allow a larger sign or signs, but in no case shall the aggregate area of such signs exceed two square feet for each linear foot of building face of that wall.~~
- ~~e. For open lot uses, where a calculation of aggregate sign area based upon building-face dimensions would result in inequitable deprivation of identification, the Board of Appeals by special permit under **Article IX** may authorize an aggregate sign area up to but not more than one square foot for each foot of street lot line.~~
- ~~f. All window signs, other than temporary identification signs regulated in subparagraph g. below and non-commercial signs regulated by **§7.03, paragraph 2**, shall be subject to the design review process, except that paper or similar temporary signs may be installed in a window only if the sign advertises a particular sale or special event and is not a general identification sign for the~~

~~business or for goods sold or services rendered thereby. Such signs may be displayed in a window for no more than 30 days. The aggregate area of all signs in any window, either temporary or permanent, shall not exceed 30% of the area of such window, and the area of permanent window signs shall be included in the aggregate sign area permitted in subparagraph b. above.~~

- ~~g. One temporary identification sign for a property or use subject to the design review process specified in **paragraph 2** below or in **§5.09** may be permitted by the Building Commissioner to be displayed during the period from submission of an application to the Building Commissioner to thirty days after the decision of the Planning Board or the Board of Appeals if an appeals is taken, provided that the temporary sign conforms with all dimensional regulations of this By-law, is in fact a temporary sign not involving any substantial expense, and is displayed in a manner which will not deface the building facade or otherwise impinge upon the design review of the proposed sign.~~
 - ~~h. Freestanding signs for gasoline service stations may exceed the dimensional restrictions of **§7.00, paragraph 1, subparagraph e** by a maximum of 10 square feet in area for each face and 7 feet in height, only if the design of the sign incorporates gasoline prices. For all gasoline service stations, no additional price signs shall be displayed on the lot, except for the standard price signs typically affixed to gasoline pumps. No sandwich or cardboard signs, or the like, shall be permitted on the lot, and all temporary signs shall be confined to the windows of the building as permitted by **§7.03, paragraph 1, subparagraph e**.~~
 - ~~i. One “For Sale” or “For Rent” or other sign required for sale or leasing of a commercial or industrial property not exceeding 20 square feet in area and advertising only the premises on which the sign is located; such sign to be removed at once upon rental or sale of property; and, in any case, to remain no longer than a four month period in any calendar year; after which period, permit may be given by the Building Commissioner for an additional four month period upon written application, if need is shown. The sign design and location shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.~~
- ~~2. All signs permitted in §§ **7.02** and **7.03**, except temporary signs or advertising devices permitted in **§7.03, paragraph 1, subparagraphs f. and g.** or signs permitted in **§7.00, paragraphs 2, 3, and 4**, shall be subject to the following design review process:~~
- ~~a. The applicant shall submit to the Building Commissioner an application form, plans of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Building Commissioner or Planning Board.~~

- ~~b. Within five working days, the Building Commissioner shall refer the application and accompanying material to the Planning Board.~~
- ~~c. After its receipt of the application and all required material, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed to those individuals whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant and the Building Commissioner. The recommendations shall be based on the Design Review requirements in ~~§5.09~~ and such design guidelines as the Planning Board may adopt.~~
- ~~d. Upon receipt of the Planning Board's report or the lapse of thirty days from his referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations, if any, the regulations in the Zoning By-law, and such other technical requirements as are within the Building Commissioner's jurisdiction.~~
- ~~e. If the applicant or any other interested party or any citizen of the Town of Brookline does not agree with the recommendations of the Planning Board or other requirements imposed by the Building Commissioner, he may appeal to the Board of Appeals within 30 days through the special permit procedure in **Article IX**.~~
 - a. As permitted in S, SC, T and F districts.*
 - b. Two signs not exceeding a total aggregate of 20 square feet in area.*
 - c. Dwellings with more than 200 units may have an additional aggregate area of 5 square feet per 100 units above 100 units, up to a maximum aggregate area of 40 square feet.*

§7.04 – ILLUMINATION SIGNS IN I, G, L AND O DISTRICTS

1. In any I, G, L and O Districts, no *permanent* on-premises sign or other *permanent* on premises advertising devices shall be permitted except as follows: ~~districts, all lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property.~~

- ~~2. In all districts no neon type or exposed gas illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.~~
- ~~3. In any residence district no sign or other advertising device shall be of the neon type or exposed gas illuminated tube type; and any lighting of a sign or other advertising device shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, T, and F Districts no sign or advertising device shall be illuminated after 11 p.m. local time.~~
- ~~4. In an S, SC, T, F, M 0.5, M 1.0, or M 1.5 District no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities and except temporary holiday lighting in use for no longer than a four week period in any calendar year, except that decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.~~

- a. As permitted in S, SC, T, F and M districts*
- b. Signs on upper floors of a building may have signage additional to §7.01(h), above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in §7.01(c), at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line.*
- c. One sign not parallel or within 45 degrees of parallel to a street, not exceeding twelve square feet in area for structures with a single business and not exceeding eighteen square feet in area for structures with more than one business provided that the sign is proportionate to the area of the building wall to which it will be attached. Where such building wall contains the main business entrance or entrances, the Planning Board may allow a larger sign or signs, but in no case shall the aggregate area of such signs exceed two square feet for each linear foot of building face of that wall.*

~~§7.05 – NON CONFORMANCE OF ACCESSORY SIGNS~~ **TEMPORARY SIGNS**

1. In all districts, no *temporary* on-premises sign or other *temporary* on-premises advertising device shall be permitted except as follows: ~~Accessory signs or other advertising devices legally erected may continue to be maintained, subject to the provisions of §5.83 of the Town of Brookline Sign By-law (Article 5.8); provided, however, that no such sign or other advertising device shall be permitted if it is enlarged, reworded (other than in the case of theatre or cinema signs or signs with automatically~~

~~changing messages) redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this By law; and provided further that any such sign or other advertising device which has deteriorated to such an extent that the cost of restoration would exceed thirty five percent of the replacement cost of the sign or other advertising device at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this By law. Any exemption provided in this **Article VII** shall terminate with respect to any sign or other advertising device which:~~

- ~~1. shall have been abandoned;~~
- ~~2. advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at the particular premises; or~~
- ~~3. shall not have been repaired or properly maintained within thirty days after notice to that effect has been given by the Building Commissioner.~~

- a. The design and location of all temporary signs attached to or associated with a commercial property or use shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.*
- b. Except as provided in Section 7.07 b., the Building Commissioner may approve temporary signs attached to or associated with a commercial property or use for no more than a four month period in any calendar year.*
- c. Temporary signs associated with a non-commercial property, dwelling or use not exceeding 12 square feet may be placed in all districts.*
- d. Signs related to an event on a specific date or dates shall be removed within 7 days after the event.*

~~§7.06 - REGULATED FAÇADE ALTERATIONS~~ **ILLUMINATION**

~~1. In all districts, no sign shall be illuminated except as follows: A regulated facade shall include:~~

- ~~a. commercial building facades in all districts; and~~
- ~~b. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, T, and F districts.~~
- ~~c. Conversion of attic or basement space in Single Family and Two Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

- ~~2. A regulated alteration shall be defined as any change in the visual appearance of the facade including the blocking of the view through a street level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway.~~
- ~~3. All regulated facade alterations shall be subject to the design review process of **§7.03, paragraph 2.**~~

- a. In any residence district, no sign shall be of the neon type or exposed gas-illuminated tube type; and any lighting of a sign shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, and T Districts no sign shall be illuminated after 11 p.m.*
- b. In an S, SC, T, M-0.5, M-1.0, or M-1.5 District, no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities.*
- c. New internally illuminated signs in L, G, I and O Districts may be illuminated via low intensity LED light bulbs from 5 am until 11 pm; or ½ hour past the close of business, whichever is later. In the case of a business that operates 24 hours per day; internally illuminated signs shall be dimmed between the hours of 11 pm and 5 am. Signs shall be installed with an automatic timer to comply with this Section.*

§7.07 – EXCEPTIONS TO THE ABOVE

- 1. Signs in all districts shall comply with this section of the By-Law except as follows:*
 - a. In cases where an attached sign size larger than permitted in this Article VII is appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, a larger attached sign up to but not more than 25% larger than permitted by the specific regulations in this Article may be allowed by the Planning Board in accordance with the procedures of §7.01(h) only if such an increase is necessary to fill the most appropriate sign area on the building and the sign location is a proper one for an oversized sign. No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.*

- b. Upon the expiration of the initial four month period for a temporary sign for a commercial property or use, the Building Commissioner may permit a temporary sign for an additional four month period upon written application, if need is shown.*
- c. Additional temporary signs on a construction or development site may be allowed by special permit of the Board of Appeals which shall specify limits on the size and number of signs and the length of time to be maintained.*
- d. Permanent decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.*

§7.08 – DESIGN REVIEW PROCEDURES

All permanent signs permitted in §7.02, 7.03 and 7.04, except signs permitted in paragraph 7.02(a) shall be subject to the following design review process:

- a. The applicant shall submit to the ~~Building Commissioner~~ Planning Department an application form, plans of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Building Commissioner or Planning Board.*
- b. Within ~~five~~ 10 working days, the ~~Building Commissioner~~ Planning Department shall refer the application, its recommendations and accompanying material to the Planning Board.*
- c. After its receipt of the application and all required material, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed and/or emailed to those individuals whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant and the Building Commissioner. The recommendations shall be based on the provisions of this Section of the Zoning By-law, the community and Environmental Impact and*

Design Standards in §5.09 and such design guidelines as the Planning Board may adopt.

- d. Upon receipt of the Planning Board's report or the lapse of thirty days from his referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations, if any, the regulations in the Zoning By-law, and such other technical requirements as are within the Building Commissioner's jurisdiction.*
- e. If the applicant or other aggrieved party does not agree with the recommendations of the Planning Board or other requirements imposed by the Building Commissioner, he may appeal to the Board of Appeals within 30 days through the special permit procedure in Article IX.*

§7.09 – NON-CONFORMANCE OF SIGNS

Signs legally erected may continue to be maintained, subject to the provisions of § 5.83 of the Town of Brookline Sign By-law (Article 5.8); provided, however, that no such sign shall be permitted if it is enlarged, reworded (other than in the case of theatre or cinema signs or signs with automatically changing messages) redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this By-law; and provided further that any such sign which has deteriorated to such an extent that the cost of restoration would exceed thirty-five percent of the replacement cost of the sign at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this By-law. Any exemption provided in this Article VII shall terminate with respect to any sign which:

- 1. has been abandoned;*
- 2. advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at the particular premises; or*
- 3. has not been repaired or properly maintained within thirty days after notice to that effect has been given by the Building Commissioner.*

ARTICLE 15

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

On November 1, 2016 the Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ARTICLE 17

REVISED PETITIONER MOTION

VOTED: That the Town amend Section 6.04 of the Zoning By-law as follows:

Section 6.04.15 – ELECTRIC VEHICLES

15. At least 2% of parking spaces, and not less than a single parking space, must be equipped for electric vehicle charging. Electric vehicle charging spaces must provide a Level 2 or Level 3 charger of at least 5kW capacity, or an accessible electrical receptacle capable of providing equivalent power. If a charger is provided, users may be charged a reasonable fee for time the equipment is in use. The count of spaces equipped for electric vehicle charging may include spaces designated for visitors or tradespeople. Changes in the requirements of this section may be approved by the Board of Appeals for an individual building by special permit.

ARTICLE 19

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

SUMMARY:

Article 19 proposes to substantially reduce the minimum off-street parking requirements for residential housing located within half a mile of Green Line stops, the proposed “Transit Parking Overlay District” (TPOD). Under current zoning, adopted in 2000, the minimum parking requirements, applying town wide, are 2 spaces for studios, one-bedroom units and two-bedroom units, and 2.3 spaces for units with three or more bedrooms. The petitioner states that these requirements are excessive and have harmful consequences. Article 19 proposes to lower the minimum requirements to 0.5 spaces for studios, 0.8 for one-bedroom units, 1.1 for two-bedroom units, and for larger units, 1.5 if the parcel’s FAR is 0.5 or higher or 1.9 for if the FAR is less than 0.5.

The amendment to Article 19 that is supported by both the Advisory Committee and Selectmen recognizes the need to adjust the minimum parking ratios to better reflect residents’ needs and aspirations, but scales these reductions back to align more closely with those proposed by the Moderator’s Committee on Parking, which gathered significant data on residents’ parking needs and usage from 2011-2013. These ratios were considered at the 2013 Fall Town Meeting, obtaining a majority but not the required two-thirds vote. The three differences between the 2013 proposal and Article 19, as amended, are as follows:

- 1.4 spaces are proposed instead of 1.5 for one-bedroom units
- 2.0 spaces are proposed instead of 2.3 for three-bedroom units and larger
- All the reduced ratios would apply *only* within the proposed TPOD, whereas the 2013 proposal would have been applied Town-wide.

A summary of the current and proposed parking ratios is as follows for properties within the proposed TPOD:

<u>Unit size</u>	<u>Current By-Law</u>	<u>Fall 2013 Warrant Article</u>	<u>Art. 19 (Petitioner)</u>	<u>Art. 19 (BOS/AC)</u>
Studio	2.0	1.0	0.5	1.0
1-bed	2.0	1.5	0.8	1.4
2-bed	2.0	2.0	1.1	2.0
3-bed	2.3	2.3	1.5 / 1.9	2.0

By a vote of 16–6–0, the Advisory Committee recommends FAVORABLE ACTION on Article 19 as amended by the Selectmen.

BACKGROUND:

Article 19 was submitted as a citizen petition by Scott Englander. It seeks to reduce the minimum off-street parking spaces required for new housing developments (new construction or renovations) within a half-mile radius of any MBTA Green Line stop, based on the premise that many residents that choose to live close to the T take advantage of public transportation and, as a result, are less reliant on automobiles than those that live further away.

Current off-street parking requirements were adopted in 2000 in response to the observation that residents moving into new, high-end housing owned more cars than the on-site spaces called for under previous zoning, causing a shortage of off-street parking. The current requirements pre-date the trend towards online shopping, telecommuting, Uber, Peapod, and Hubway.

DISCUSSION:

The Advisory Committee heard public comment on both sides of the issue. Residents in support of Article 19 spoke about the current requirements being excessive and out-of-date, not reflecting the trends to alternative modes of transportation and less reliance on cars, particularly with millennials. They argue that providing more parking spaces than are actually required not only raises the cost of new housing, but it also creates larger buildings (if the parking is enclosed) and less green space (if unenclosed). Residents in opposition to Article 19 noted that residents own cars for many reasons, one of which is commuting. Working couples with children routinely need two cars in order to divide up childcare drop-off and pick-up obligations, for example. Some even posited that lower residential parking requirements might even cause property owners in L and G districts to replace commercial uses with residential use, lowering property tax contributions and undercutting the Town's policy to encourage commercial development.

A majority of the Advisory Committee expressed the following concerns about Article 19 as proposed by Petitioner:

- No data about the car ownership of the affluent new residents moving into expensive new housing has been provided. Town-wide averages do not provide this relevant information. See excerpt below from the Advisory Committee report on the November 2010 parking reduction Warrant Article¹.
- No data has been provided to substantiate the claim that roughly half of the parking spaces that have been provided in housing developments since 2000 are unused.
- The Moderator's Committee on Parking found no statistically significant relationship between distance from MBTA Green Line stops and car ownership².

- The Moderator's Committee on Parking found that residents living near the T commuted by car less than those living further away, but residents in comparable housing owned cars at the same rates regardless of distance from the T.
- A 2010 report by Northeastern University's Dukakis Center for Urban and Regional Policy found that the gentrification often observed near transit stops was associated with increases in car ownership. See the excerpt from the report quoted below³. Thus in the TPOD there may actually be a need for more rather than less off-street parking.
- Maintaining our overnight parking ban serves all residents, including those without cars, by keeping Brookline streets cleaner, safer, and not clogged 24/7 with parked cars. There was concern that Article 19, as proposed by the petitioner, may unduly pressure the overnight ban by excessively increasing the demand for overnight street parking.

¹From the Appendix to the Advisory Committee report on Article 10 at the Fall 2010 Town Meeting, pp. 10–33:

Residents of new construction are likely to have more vehicles than the town-wide average. New construction tends to be more expensive—not just because it has more parking, but because there is a premium for new buildings that have modern amenities and no wear and tear. Buyers tend to be more affluent and to own more vehicles than the residents of older Brookline multi-family buildings. New construction also will not include many, if any, rooming houses/single-room occupancies, affordable senior housing units, and college dormitories—categories of housing in which the residents tend to own few cars. New residential construction will probably be condominiums, not rental units, and homeowners are more likely to own cars than renters.

²From the 2013 Moderator's Committee on Parking report, p. 15:

Using Census Block Group (CBG) data compiled by proponents of Article 10 at the November 2010 Special Town Meeting, the Committee developed a statistical regression model of the demand for off-street parking based upon three potential explanatory variables -- (1) the average unit size, (2) the percent owner-occupied units, and (3) a location designator indicating proximity to one of the three Green Line branches. ... Generally, CBGs that were located within roughly ½ mile of one of the three Green Line branches were coded as "1" (i.e., near mass transit), whereas all others were coded "0". ... The Unit Size and Ownership variables were found to be statistically significant at the 95% confidence level; proximity to the Green Line was not observed to be statistically significant at the 95% confidence level.

³From the October 2010 report of Northeastern University's Dukakis Center for Urban and Regional Policy, "Maintaining Diversity in America's Transit-Rich Neighborhood," p. 24:

The relative reduction in the proportion of the TRN [Transit-Rich Neighborhood] households using public transit in 40 percent of the neighborhoods studied is consistent with the finding that automobile ownership increased faster in nearly three-quarters (71 percent) of these neighborhoods, with ownership of two or more autos increasing in nearly three in five (57 percent). When upper income households move into an area, they are more likely to own motor vehicles and to use them for their commute.

Recognizing that the parking ratios in our current Zoning By-Law are almost two decades old and, therefore, deserving of reassessment in light of the concerns and developments articulated by the petitioner, the Advisory Committee considered substitute language to reduce parking requirements within the TPOD to levels proposed by the Moderator's Committee on Parking (2011–13). These ratios were considered at the 2013 Fall Town Meeting, obtaining a majority but not the required two-thirds vote: 1 space for studios, 1.5 for one-bedroom units, 2 for two-bedroom units, and 2.3 for larger units. The Advisory Committee's Planning and Regulation Subcommittee proposed a further reduction to the proposed 2013 ratios, dropping the 2.3 space requirement and requiring 2 spaces for all units with two or more bedrooms. The Selectmen adopted this approach, with one further reduction: to require 1.4 spaces instead of 1.5 for a one-bedroom unit, based on the notion that if a single one-bedroom unit was created, it would round down to 1 space rather than up to 2 spaces. After consideration, the full Advisory Committee adopted the Board of Selectmen's position.

Adopting reductions in off-street parking required by zoning constitutes an experiment whose outcome is to be determined. It is the Advisory Committee's considered view that parking requirements in the Town should be reduced, but that the Town should proceed with caution, having the opportunity to revisit these requirements in the future. The amendment supported by both the Advisory Committee and the Selectmen represents an incremental but significant reduction in parking requirements.

RECOMMENDATION:

By a vote of 16–6–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

ARTICLE 22

BOARD OF SELECTMEN’S SUPPLEMENTAL RECOMMENDATION

This article was submitted by the Moderator’s Committee on Zoning and seeks to prevent the construction of overly large single family homes (McMansions), out-of-character with the surrounding neighborhood. Currently, unfinished basements and attics are not counted toward the FAR, but ten years after the initial construction of a home, they can be finished and made habitable up to 150% of the allowed FAR. The ten year waiting period has not deterred developers from building large basements and attics, and it has been observed that developers will tell potential buyers that the space could be illegally finished once the Building Department has inspected the finished house. An earlier zoning amendment in 2002, which also addressed the issue of McMansions, was found to violate the uniformity law by the Attorney General because it allowed finishing the basement and attics in existing homes, but not in new homes. The thought was that a ten year waiting period was a long enough that developer’s would not have an incentive to construct homes with large basements and attics. Unfortunately, this was not the case, and developers have been “gaming” the system by building large basements and attics in anticipation of them being finished.

This zoning amendment would require that basements and attics that could easily be converted in the future to habitable space should be counted toward the FAR. This would result in smaller homes being built and prevent “gaming” of the system. Existing homes, or homes at least ten years old, could still seek a special permit to exceed the allowed FAR. However, this amendment would reduce the allowed floor area bonus for basements and attics from 150% of the allowed floor area to 130% of the allowed floor area. It would also eliminate the bonus for residences that are in a two family district, limiting it solely to single family zones (S and SC). Lastly, the bonus floor area currently allowed in Section 5.22.3.b.2 for additions and interior conversions for residences in T, F, and M districts would be eliminated entirely.

The Board of Selectmen is in support of this amendment. A lot of thought and hard work has gone into formulating measures to prevent detrimental impacts to the character of established neighborhoods from houses that are out of place.

Therefore, a unanimous Board of Selectmen voted on November 1, 2016 to recommend FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

SUMMARY:

Article 22 is the latest in a series of efforts at Town Meeting, dating back to 2002, to address the so-called “McMansion Loophole” in the Brookline Zoning By-Law. The Deputy Building Commissioner estimates that about 90% of new one- and two-family homes are currently being built with unfinished attic and/or basement spaces that are in excess of existing Floor Area Ratio (FAR) limits, in anticipation of the expansion opportunity available under Section 5.22 of the Zoning By-Law. Section 5.22 (§5.22) permits currently uninhabitable (unfinished) basement and attic space in existing one- and two-family homes to be converted as-of-right for habitable use (i.e., finished out), but not until ten years after the issuance of the Certificate of Occupancy, with the post-conversion habitable floor area not to exceed 150% of the maximum FAR applicable in the zoning district. Thus, for example, in an S-10 (minimum 10,000 square foot lot size) zoning district, the applicable FAR is 0.30. A house built on a 10,000 square foot lot could thus contain up to 3,000 square feet of “habitable space” as the term is currently defined in §5.09. However, after 10 years, the amount of “habitable space” could be increased up to a maximum of 4,500 square feet.

Article 22 had its genesis in Article 12 of the November 2015 Special Town Meeting. That Town Meeting voted to refer Article 12 to a Moderator’s Committee “with the request that a preliminary report be presented at Spring 2016 Town Meeting with the goal that a new Warrant Article be presented to the Fall 2016 Town Meeting.” The Moderator’s Committee’s report was included in the Spring 2016 Combined Reports, and contained several specific recommendations that have now been incorporated into Article 22 here. The Department of Planning and Community Development did not participate in the Committee’s meetings. The purpose of Article 12 then, and Article 22 now, is to address the so-called “McMansion Loophole” in the Brookline Zoning By-Law, under which developers have been able to construct oversized homes that are not in keeping with the scale and character of neighborhoods and of other nearby structures. Town Meeting’s stated intent in adopting the “50% conversion” opportunity in 2005 was to enable long-time Brookline residents to expand the living areas of their existing homes to accommodate increases in family size or other needs over time as an alternative to demolishing their home and replacing it with a larger one. But there was an unintended consequence of that accommodation: Developers have been “gaming” the by-law by designing houses with large amounts of initially unfinished spaces with the intent of ultimately finishing them out either following the ten-year waiting period or (illegally) sooner than that. Article 12 from the November 2015 Town Meeting proposed to address this problem by modifying the definition of “habitable space” to include any areas capable of being readily finished out and converted to habitable use, and prohibiting any construction, including such areas, in excess of FAR.

Article 22, in contrast, would not redefine “habitable space” nor would it prohibit outright any structure that, with the inclusion of certain initially unfinished spaces, would exceed FAR. Instead, it replaces the current “as-of-right” conversions with a requirement for a Special Permit in all situations in which the finished area together with any (initially) unfinished space that can be readily converted for habitable use exceeds the allowable FAR. Additionally, Article 22 provides specific guidelines to the Zoning Board of Appeals (ZBA) *and to developers* with respect to the ZBA’s consideration and approval of such applications for a Special Permit. Article 22 also includes a provision, initially proposed by the Planning Department, that would reduce the “bonus” amount of additional finished area in basements and attics from 50% to 30%.

The Advisory Committee, by a vote of 18–0–2, recommends FAVORABLE ACTION on a slightly amended motion under Article 22.

BACKGROUND:

The Brookline Zoning By-Law contains various provisions whose purpose and effect is to restrict the overall size of a building on a lot. Principal among these are Gross Floor Area (GFA) and Floor Area Ratio (FAR) limits, along with minimum setbacks, height limits, and usable open space requirements. In November 2002, Town Meeting voted to amend §5.22 of the Town’s Zoning By-Law to limit the size of *new* houses to the FAR specified in the by-law, while still permitting the finished (habitable) area of *existing* single- and two-family homes to exceed FAR limits by up to 50%. A stated objective of the 2002 amendment was “[t]o be an incentive to retain existing structures that fit the scale of the neighborhood and minimize the demolition of existing homes and the building of new larger homes that are out-of-scale with the neighborhood.”¹ However, the Massachusetts Attorney General rejected the differential treatment of “new” vs. “preexisting” structures contemplated in the 2002 amendment. In response to the Attorney General’s action, Town Meeting in 2005 adopted a further amendment allowing such conversions to occur as-of-right after a period of 10 years following the date of issuance of the original Certificate of Occupancy. The initially unfinished space, because it is unfinished, is not included within the definition of GFA for purposes of computing FAR.

As the Advisory Committee’s Recommendation on the 2005 Article had noted, “... what has resulted from the AG’s editing of the original article is that there is now an enormous loophole in Brookline’s zoning by-law. Developers can and are building homes that are ready for build outs. The petitioner referred to this as a ‘McMansion’ loophole. The petitioner by submitting this article is trying to prohibit builders from building oversized buildings and then immediately converting the attics and basements to habitable space. It is thought that if this additional attic or basement space has to be left vacant for ten years, it will be a disincentive to overbuild additional space.”²

¹ November 12, 2002 Special Town Meeting, Article 10 – Planning Board Recommendation on Warrant Article 10, Combined Reports, at p. 10□5.

² May 24, 2005 Town Meeting, Article 11 – Advisory Committee Recommendation on Article 11, Combined Reports at pp.11□5 – 11□6.

Developers have been allowed, and are continuing, to take advantage of this loophole in the Zoning By-Law by building new houses to the maximum allowable FAR and also building in additional space under the guise of non-habitable space to take advantage of the 50% bonus under §5.22. In some cases, this additional unfinished space is actually being marketed to potential home buyers as readily usable space. The petitioner of Article 12 in November 2015 had cited several examples of realtor listings in which the advertised floor areas of new homes were well in excess of the allowed FAR. The effect of the current language is to unnecessarily increase the bulk of new houses. The petitioners of Article 22 for the current Town Meeting have noted that “the 10-year waiting period has not proven to be the disincentive that was intended. It has failed to close the ‘McMansion loophole’ or otherwise achieve its stated goals of preventing the demolition of smaller, affordable homes or the construction of new out-of-scale homes that are ready for interior buildouts. ‘Square footage sells,’ and the Deputy Building Commissioner estimates that about 90% of new one- and two-family homes are therefore built with unfinished ‘attic’ and/or ‘basement’ spaces that could take advantage of the 50% basement/attic expansion, either legally after 10 years or illegally prior to that time.”

The issue was highlighted in the case of 71 Spooner Road, which was the subject of extensive and protracted litigation involving the Town and was ultimately decided by the Supreme Judicial Court.³ The case affirmed the decision of the Brookline ZBA in its finding that the developer had exceeded the maximum allowable FAR, based in part upon the Land Court’s determination that certain space that had been characterized by the developer as “uninhabitable” was actually “intended” for habitable use, and upheld the Town’s order that the house be demolished. Article 22 provides specific guidelines to the ZBA as to the need for that Board to exercise judgment with respect to the potential for space ultimately to be converted for habitable use, thus directly tracking the holding of the courts in the 71 Spooner Road case that common sense be used when determining GFA and its conformity with the allowed FAR.

Under the approach used by Article 12 in November 2015, the definition of “Habitable Space” would have been broadened to include certain unfinished attic and basement spaces that could be easily built-out and made habitable, such as by putting drywall on studs or by putting in a drop ceiling. Any space, finished or unfinished, that met state building code requirements for habitability would have been included within GFA, and any structure with a GFA in excess of FAR would not have been allowed as-of-right. In its report on the November 2015 Article 12, the Planning Board recognized that “large areas of unfinished space can be concerning for neighbors who are impacted by the size of new home” and that such structures can be “too large for the neighborhood.” Town Meeting determined in November 2015 that referral would enable certain technical concerns that had been identified by the Planning Board to be addressed and incorporated

³ *81 Spooner Road, LLC v. Town of Brookline*, Mass. Land Ct. Misc. Case No. 315944 (CWT), *Decision Denying Developer Spooner Road, LLC’s Motion for Summary Judgment and Allowing the Town of Brookline’s Cross Motion for Summary Judgment*, Aug. 29, 2007; *Aff’d*, 78 Mass. App. Ct. 233; SJC, 461 Mass. 692 (Dec. 8, 2011–Mar. 20, 2012).

into a revised Warrant Article for consideration at the November 2016 Special Town Meeting.

DISCUSSION:

The Moderator's Committee Approach

In formulating Article 22, the Moderator's Committee has addressed and responded to specific concerns that had been raised with respect to Article 12. Article 22 does not modify the definition of "habitable space" nor does it impose an absolute limit on GFA at FAR. Instead, it simply requires that the developer obtain a Special Permit where the sum of habitable space and any unfinished spaces that could readily be finished out and made habitable exceeds the allowed FAR, as set out at a new § 5.09.2 (n):

any construction of newly created⁴ space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01.

The new section also provides specific guidelines for the ZBA to apply in considering any application for a Special Permit under this circumstance:

In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood.

Finally, applicants for a Special Permit under 5.09.2(n) will be required to adhere to representations they make to the ZBA regarding future conversions of unfinished spaces for habitable use, whether immediately or following the 10-year waiting period:

In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to

⁴ The Advisory Committee inserted the words "newly created" to make it clear that the intent of Article 22 is to impose the Special Permit requirement only where a permit to construct new space, either as an entirely new structure or as a significant modification to an existing structure, is being sought. The Special Permit requirement obviously could not apply where a permit had already been issued.

habitable space no greater than the applicant's representation of the intended amount of future conversion.

Thus, if a developer is proposing to construct additional full-height basement and/or attic spaces that can be readily converted for habitable use at some point, the Special Permit could also make clear the restrictions of the ten-year waiting period and the By-Law Limits on the amount of GFA that can be added through conversions. Because Special Permits are recorded before building permits are issued, this information would protect future buyers.

The requirement for a Special Permit where the total potential amount of habitable space exceeds FAR will result in abutters receiving notification of such plans prior to the issuance of a Building Permit, and allow their views to be heard and considered by the ZBA before construction can be authorized, with findings designed to protect abutters and the neighborhood. The goal here is to create a level of transparency that does not presently exist—developers will not be permitted “as-of-right” to proceed with the construction of oversized houses before their plans are fully disclosed and fully vetted by the ZBA.

The Risk of No Action

The Advisory Committee believes that the Planning Board's current recommendation for further referral should not be followed. The Board has raised issues that are either inapposite or unwarranted. The Planning Board objects to the inclusion of the phrase “substantially satisfies” in the proposed amendment. According to the Board, “[t]he language ‘substantially satisfies’ is hard to quantify and is therefore especially difficult. It requires a subjective judgment by the Building Department that will need to interpret each proposal on a case by case basis.” Difficult or not, a court that heard the *Spooner Road* case specifically determined that the developer “had designed and built the unfinished second-floor space *with the intention of using it as living quarters*. What was ‘readily apparent’ to the board members, who heard this matter, was that the disputed space was not only ‘accessible’ by a stairwell that provided code compliant access to other space on the home's second floor, but also that the disputed space *had more than the minimum ceiling height to be suitable for human occupancy.*”⁵ Difficult or not, the *Spooner Road* ruling requires that professional judgment be exercised when granting a building permit. Strict adherence to fixed dimensions would enable developers to again “game” the by-law, e.g., by setting the ceiling height at 6 feet 11-1/2 inches instead of the 7 feet specified in the state building code, or by building a basement with a 10-foot ceiling and initially installing a 4-foot removable sub-floor above the base of the foundation, with the ultimate intention to remove the sub-floor to create additional habitable space in the future. Indeed, the inclusion of the word “substantially” should itself discourage gaming of the sort that has gone on.

⁵ *81 Spooner Road, LLC v. Zoning Board of Appeals of Brookline and others*, 78 Mass. App. Ct. 233, 244-246, notes and citations omitted, emphasis supplied.

Richard Benka, chair of the Moderator’s Committee, explained that the Committee’s proposal does what Town Meeting, the Board of Selectmen, the Advisory Committee and this Planning Board wanted it to do—it addresses “gaming” and the McMansion loophole without raising the concerns voiced by the Planning Board about the November 2015 Article 12:

- It doesn’t change the definition of “habitable space,” so it doesn’t make any existing home with an unfinished basement or attic nonconforming;
- Because it doesn’t include unfinished basement and attic space in Gross Floor Area, it doesn’t prevent the construction of new homes with unfinished basement or attics;
- It doesn’t prevent the expansion of existing homes;
- It also doesn’t discriminate between new houses and existing homes—it applies to any construction that creates unfinished space over the allowable FAR, whether it’s a new home with unfinished basement and attic space, or a large attic that would exceed FAR being added to an existing home;
- The special permit process also adopts the Deputy Building Commissioner’s thinking—he had advised the Moderator’s Committee that developers want to avoid the need for special permits, so just having the special permit process in place should reduce gaming.

The Deputy Building Commissioner estimated that 10 to 15 new single-family homes are built in Brookline each year, and that some 90% of these involve large build-outs of putatively “unfinished” space that substantially conforms to State Building Code requirements for habitable use with minimum exterior modification. The Advisory Committee does not believe that the Planning Board has offered sufficient justification for further delay, and that affected abutters and neighbors of these projects are entitled to the protections that Town Meeting has sought to provide as far back as 2002 and that Article 22, which has been carefully and thoughtfully structured by the Moderator’s Committee, would now address. Appended to this Advisory Committee report is a memorandum from Richard Benka to the Advisory Committee's Planning and Regulation Subcommittee addressing the concerns raised by the Planning Board with respect to Article 22.

Additionally, while the “McMansion Loophole” has affected every zoning district, it is of particular concern in “T” (two-family), F (three-family) and M (multi-family) districts. These zoning districts have smaller minimum lot sizes than S districts, and have higher FARs. T-5 districts, for example, require a minimum 5,000 square foot lot, and have an FAR of 1.0. Thus, with the existing 50% “bonus” and as-of-right treatment, the potential exists for 7,500 square foot structures to be built on such properties. The petitioners have

provided an analysis (at p. 22-11 of their Explanation in these Combined Reports) showing that well over half (697) of the 1179 properties in T-5 districts are single-family homes, and that more than 90% of these are currently under the allowed FAR. Only 30 out of the 482 two-family houses in T-5 districts currently exceed FAR. Under the existing by-law, these houses could be demolished and replaced with new structures nearly double in size. Several instances of such redevelopment have already occurred, to the consternation of abutters and neighbors.⁶ The same basic concern also arises in T-6 districts, although the FAR there is 0.75. Nearly half of all properties in T-6 zones are single-family, thus making them ripe for similar demolition/redevelopment activity. F and M districts raise similar issues, though the numbers are much smaller. Article 22 would make the FAR exemptions inapplicable in T, F and M districts.

Recent legislation that has already been adopted by the Massachusetts Senate (Senate Bill 2311) would invalidate any local zoning prohibition against the creation of an “Auxiliary Dwelling Unit” in single-family zones. Were this legislation to become law, it could provide owners of single-family houses with a strong financial incentive to expand their homes so as to create an income-producing rental unit. Article 22 would address this concern by continuing the existing prohibition on using the additional habitable space created under the exemptions of Section 5.22 for an additional dwelling unit and, should the Town’s existing prohibition on additional dwelling units be deemed invalid (as a result of the legislation), Article 22 provides that “§ 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.” Failure to adopt Article 22 *now* could result in the *de facto* creation of two-family houses in single-family zones.

The Advisory Committee felt that the terms “footprint” and “siting” in the proposed revision to Section 5.09.4.c (Design Review Standards, Relation to Streetscape) were redundant and unnecessary because these issues were fully addressed by the other attributes included in Section 5.09.4.c —scale, massing, height, yard setbacks, and architecture, and agreed that references to “footprint” and “siting” should be deleted. The phrase “concurrently or subsequently” in Section 5.22.1.a (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, General Provisions) was also deleted as unnecessary, since the provision without the phrase (“[a]ny expanded unit

⁶ For example, residents of the Buttonwood Village Neighborhood in South Brookline submitted Article 21 for the May 2014 Annual Town Meeting seeking to reduce the minimum lot size for S- districts to 4,000 square feet and, in so doing, to reclassify certain properties in T- zones to single-family. In their explanation, the petitioners state that “[o]ver the last decade, developers have been transforming our neighborhood, demolishing the original modest homes and shoehorning into their place luxury condos and 2 family dwellings. The new construction has been completely out of character with respect to the size, scale and density that is prevalent in the rest of the neighborhood. This originally started encroaching towards Meadowbrook Road contiguously from the denser housing stock along Clyde Street, but the most recent development of 4 units at 28/32 Meadowbrook resulted in 2 enormous, unsightly 2 family condos smack dab in the middle of our neighborhood, surrounded by single family houses on both sides and across the street.” Warrant Article Explanations, May 27, 2014 Annual Town Meeting, at p. 18. In order to preserve the character of their neighborhood, the petitioners were proposing to voluntarily have their properties rezoned from two-family to one-family districts.

(individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be divided”) would cover all situations in any event.

Warrant Article 22 as submitted would amend Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) to provide that “[a]ny increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than 130% of the total permitted in Table 5.01 (the “permitted gross floor area”).” At present, the allowed increase is 150%. The petitioners have described the pros and cons associated with this particular revision as follows:

The ... change, initially proposed by the Department of Planning and Economic Development, would limit the bulk of single-family and two-family houses after basement and attic conversions under Section 5.22.2 to 130% of allowable FAR (rather than its current 150%). On the one hand, the change to 130% would conform to the 130% allowed for other interior conversions under Section 5.22.3. Moreover, some members of the Committee believed that this change would restrain the bulk of new construction, since developers and potential buyers would know that any “unfinished” space over 130% of FAR could not legally be converted to habitable space. On the other hand, other members were concerned about the change potentially creating zoning nonconformities for existing houses.⁷

Richard Benka noted that only about 313 out of 5066 single- and two-family houses in S, SC and T districts, i.e., only about 6% of those houses, would potentially be made nonconforming if the change to 130% were adopted. He also explained that under two recent Appeals Court rulings, making these 313 existing houses nonconforming would have little or no practical impact on those homeowners, since under these rulings they would be permitted to extend the nonconformity, perhaps even in excess of the existing 150% limit. Lee Selwyn noted that when the 50% "bonus" was created in the 2005 warrant article, it was focused upon the preexisting housing stock; the ten-year waiting period was expressly intended to discourage developers from building new homes out to the 150% level. The legislative history of the 2005 by-law supports this interpretation—that intention is expressly stated in the Advisory Committee's recommendation in the Combined Reports for the May 2005 Town Meeting. The ten-year delay was a means of getting around the Attorney General's rejection; there was never any intention to create an as-of-right *de facto* across-the-board increase in FAR by 50%. But that was the unintended consequence of the 2005 by-law, and is what Article 22 now seeks to correct. The requirement for a Special Permit is intended as yet another means for discouraging the construction of oversized houses. Whether or not it will succeed will depend on how the ZBA treats these applications. Up to now, the ZBA seems to have largely ignored the Supreme Judicial Court's ruling in the Spooner Road case. The 33 Sargent Beechwood case is a particularly good example. Adopting a 130% of FAR limit will have virtually no

⁷ *Id.*

adverse effect upon existing houses, since only about 313 houses out of the 5000+ in S, SC and T districts would become nonconforming. And, as a result of the two recent Court of Appeals cases, the ability of those homeowners to increase the amount of finished spaces in excess of 130% would not be constrained. Adopting a 130% cap would absolutely reduce the potential for developer gaming, and will help to avoid controversial cases in the first place. It was noted that a developer who had appeared before the Planning Board in opposition to Article 22 had stated that three of her projects would be adversely affected by this Article. Claire Stampfer, who spoke at the Planning and Regulation Subcommittee's October 25 public hearing on Article 22 described an oversized house that this same developer had built at 33 Sargent Beechwood. She explained that a number of abutters and neighbors had gone to the ZBA to oppose the size and scale of the house, but in the end the project was allowed to go forward with only minor modifications by the ZBA. The Advisory Committee agreed that leaving the limit at its present 150% could largely defeat the purpose and intent of Warrant Article 22.

RECOMMENDATION:

By a vote of 18–0–2, the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 22. Additions and deletions to the existing Zoning By-Law as contained in Article 22 as submitted by the petitioners are shown in bold type (underlined for additions, strike-through for deletions). The modifications to Article 22 as adopted by the Advisory Committee are shown in italics and with double strikethroughs.

VOTED: That the Town amend Sections 5.09, 5.22 and 7.06 of the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strikethroughs):

A. By amending Section 5.09.2 (Design Review, Scope) as follows:

2. Scope.

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior **modifications or** changes, including exterior demolitions, which require a building permit from the building department under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified. Exterior alterations, exterior additions and exterior changes **(except as provided below)**, including fences, walls, and driveways, to residential uses permitted by right in S, SC, T, and F districts; signs as regulated in §§ 7.02, and 7.03; and regulated facade alterations as defined and regulated in §7.06 shall be exempt from the requirements of this section.

.....
j. any exterior addition **or exterior modification** for which a special permit is requested pursuant to §5.22
.....

n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.

B. By amending Section 5.09.3.c.4 (Procedure, Photographs) as follows:

4. Photographs – Photographs show the proposed building site and surrounding properties, and of the model (if required). Applications for alterations, **modifications** and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.

C. By amending Section 5.09.4.c (Design Review Standards, Relation to Streetscape) as follows:

c. Relation of Buildings to the Form of the Streetscape and Neighborhood—Proposed development shall be consistent with the use, scale, **massing, height, footprint, siting,** yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area, **including existing abutting buildings and existing buildings that conform to the zoning by-law on lots of similar size in the neighborhood.** The Board of Appeals may require modification in massing, **scale, height, footprint, siting, setbacks** or design so as to make the proposed building more consistent with the form of **such existing buildings and** the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the **massing, scale, siting, footprint, setbacks and** height of the building to more closely match **such** existing buildings **and the existing streetscape,** or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph 2., subparagraph a.

of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

D. By amending Sections 5.22.1.a, 5.22.1.b and 5.22.1.c (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, General Provisions) as follows:

- a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be ~~concurrently or subsequently~~ divided into multiple units. **If the limitations set forth in this paragraph 1, subparagraph a, or the limitations in paragraph 2 regarding separate dwelling units, should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.**
- b. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions. **Any exterior additions or modifications shall further comply with the provisions of §5.09, including §5.09.4.c, §§ 9.03 to 9.05, and this Section. The limitations and standards set forth in such provisions shall also guide the Zoning Board of Appeals in determining under G.L. c.40A, §6 whether a change, extension or alteration is substantially more detrimental to the neighborhood than an existing nonconforming use.**
- c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction was granted at least ten years prior to the date of the application for additional gross floor area under this section or if there is other evidence of lawful occupancy at least ten years prior to the date of such application. **In the case of the substantial demolition of a structure or of an increase in the number of units, the time period prior to such demolition or unit increase shall not be counted toward the required ten-year waiting period, and the ten-year waiting period shall be deemed to commence with the grant of a new Certificate of Occupancy after such demolition or unit increase. As used in this paragraph 1, subparagraph c, “substantial demolition” shall mean the act of pulling down, destroying, removing or razing a structure or a significant portion thereof, by removing one or more sides of the structure, or removing the roof, or removing 25% or more of the structure.** If the limitation set forth in this paragraph 1, subparagraph c should be found to be invalid, § 5.22 shall be deemed null and

void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

E. By amending Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as of right~~ **in S and SC Districts** provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to **the procedures, limitations, and conditions specified in §5.09, §§9.03 to 9.05, and this Section.** ~~the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw.~~ No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than **130%** ~~150%~~ of the total permitted in Table 5.01 (the “permitted gross floor area”).

F. By amending Sections 5.22.3.a., 5.22.3.a.1 and 5.22.3.a.2 (Special Permit for Exceeding Gross Floor Area for Residential Dwellings) as follows:

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, **§§9.03 to 9.05, and this Section** for an existing residential building which meets the following basic requirements:

- 1) The existing building(s) is located on a lot (or part of a lot) in a ~~an~~ **S or SC District** ~~with a permitted maximum floor area ratio no greater than 1.5.~~
- 2) The existing building contains at least one residential unit but no more than ~~four~~ **two** total units. For the purpose of this paragraph 3,

subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

G. By amending Section 5.22.3.b.2 as follows:

~~In all T, F, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 3, subparagraph (b)(2), or any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.~~

H. By amending Section 7.06.1.c (Regulated Façade Alterations) as follows:

~~Conversion of attic or basement space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

MEMORANDUM

TO: Board of Selectmen; Planning and Regulation Subcommittee of the Advisory Committee

FROM: Dick Benka

DATE: October 24, 2016

RE: Article 22

The Planning Board, in a report drafted by the Planning Department, has recommended referral of Article 22 back to the Moderator's Committee on Zoning FAR, making a few comments and criticizing "the length and complexity" of the article.

The Article was carefully drafted by the Moderator's Committee to address issues within its charge; the Planning Department did not participate in the Committee's meetings. As a result, many, if not all, of the Planning Department's comments have already been considered by the Moderator's Committee. Particularly because the Planning Department offers no substantive changes that would improve the article, referral would serve no purpose given the substantial time and thought that has already been put into the article. Referral would simply allow the "McMansion Loophole," which has been festering for more than a decade, to fester even longer.

Nevertheless, in order to address the Planning Board's expressed concerns about "length" and "complexity," this memorandum divides Article 22 into discrete issues, with an explanation of the manner in which the Committee decided to address each of those issues. An appendix to this memorandum presents the article in its entirety with brief flagged "comments." While this memorandum divides issues to address the "complexity" criticism, the sections of Article 22 are interrelated and it is therefore my hope that the Subcommittee and the Board in their October 25 meetings will recommend FAVORABLE ACTION on Article 22 as a whole, subject only to any amendments deemed necessary, with this memorandum serving as a road map to guide the Selectmen's and the Subcommittee's consideration.

1. Preventing Construction of Unreviewed Bloated Spaces and "McMansions."

Under our existing Zoning By-Law, "unfinished" attics and basements – no matter how large, no matter by how much they would exceed the allowable Floor Area Ratio (FAR) for the property, no matter how serious their impact on abutters and the neighborhood – can be constructed without any review by the Planning Board or ZBA and without any right for abutters and Town Meeting Members to receive notice and to object. The reason is that "unfinished" attics and basements are treated for FAR purposes as if they don't exist, despite the bulk that they can impose on abutters and neighborhoods.

The spaces can then legally be finished after 10 years, or can be illegally finished before that time. The Planning Board, the Advisory Committee and the Board of Selectmen have all recognized this "McMansion Loophole" and its potential adverse impact on neighborhoods, and as a result the November 2015 Town Meeting created the Moderator's Committee to address it. According to the Deputy Building Commissioner, 90% of buildings are constructed with attics and basements exceeding the allowable FAR. New homes are offered for sale with advertised

floor areas well above what is legally allowable; Town Meeting Members reported a developer with wallboard already pre-cut and a promise to “finish” the attic after the Building Department’s inspection; and during the Planning Board’s October 13 hearing a developer acknowledged that attics and basements are illegally “finished” (though not by her) before the waiting period has run.

The Moderator’s Committee thus recommends requiring a special permit before houses are constructed where the “unfinished” spaces, if finished, would push the building over the allowable FAR. The goal is to “catch” the excess spaces before they are constructed, to provide notice to abutters, and to review the compatibility of the building with the neighborhood, thus ensuring that oversized “McMansions” that are out-of-scale with the neighborhood are noticed to abutters and reviewed before they are built and become a *fait accompli*.

The inclusion of Section 5.09.2.n (“Paragraph ‘n’”) would require a special permit and therefore design review when unfinished spaces, if finished, would result in a building exceeding the allowable FAR. The design review standards are modified in Section 5.09.4.c to incorporate consistency in massing, siting, setbacks, and so on, with existing buildings in the neighborhood. The amendments would not prohibit large houses in a neighborhood of similar houses; they would, however, ensure design review and notice to abutters of houses with potential bulk exceeding the allowable FAR. They would set standards of review to be met.

The Planning Board’s comments are briefly addressed here.

The Planning Board suggests design review for homes “over a certain size.” This, however, would ignore the context of construction and would “sell out” areas of Town with smaller lots. For example, if the “cutoff” size were 6,000 square feet, a 5,000 square foot building in a neighborhood of 2,000 square foot houses would not even be reviewed, despite the potential neighborhood impact, while a 6,000 square foot house on a one-acre lot would be reviewed, even if it were well within the allowable FAR and setbacks. Moreover, the Planning Board’s suggestion does nothing to address the key fact that “unfinished” basements and attics would remain totally unreviewable, regardless of their bulk.

The Planning Board asserts that the question of whether State habitability standards are “substantially satisfied” is “hard to quantify.” The Committee discussed the “substantially” language in depth and included it in order to reduce “gaming” of the system. For example, a former Building Inspector advised developers that space would not be considered habitable if ceilings were 6’11” rather than 7 feet high, even though difference in the building’s bulk would be imperceptible. During the Planning Board hearings, the Deputy Building Commissioner reported plans for a 10-foot-high “basement” ceiling with a four-foot-high dummy “subfloor” reducing the nominal ceiling height to 6 feet, with the “subfloor” obviously designed for removal. He also reported rafters in attics that reduced ceiling clearance to 6 feet, but these again could easily be removed. In the *81 Spooner Road LLC* cases, the courts affirmed the ZBA’s use of its informed judgment in determining whether or not space should be deemed an “attic.” The “substantially” language simply requires the same sort of common-sense professional judgment. One could, of course, eliminate the word “substantially” from paragraph “n,” but doing so would open the door to “gaming” and abuse by developers.

The Planning Board suggests that including limits on the future conversions of attics and basements might violate the “uniformity” requirements of Article 40A, Section 6. The provision, in the last sentence of Paragraph “n,” does not impose different zoning on similar properties; it merely incorporates the standard practice of including conditions where a special permit has been requested and granted. The inclusion of relevant conditions in a special permit – for example, that “unfinished” space cannot be finished within 10 years, that only x square feet of “unfinished” space may be finished without exceeding 150% of FAR or violating representations made when the special permit was granted – would be recorded under General Laws Chapter 40A, Section 11 and thus become part of the chain of title and put subsequent purchasers and real estate agents on notice. This should discourage efforts to flout the Zoning By-Law and encourage self-enforcement.

Finally, the Planning Board comments that requiring a special permit would result in “added costs” for new homes and “possibly” the need for additional Town staff. The Building Department has reported that there are only between 10 and 15 new single-family homes constructed each year and that 75% of these are being built by developers, and further estimates that 75% of developers would want to avoid filing plans that trigger the special permit process, so that the Moderator’s Committee proposal would reduce gaming and “bloated” construction even without additional staff time. It could also actually **reduce** staff time by reducing demands for Neighborhood Conservation Districts or further zoning changes and, as noted above, by encouraging self-enforcement. Even if a handful of cases were added, they would be only a marginal addition to the current docket, which the Planning Department estimates at 70 to 75 per year, and would be a small price to pay to protect abutters and neighborhoods and to ensure confidence in the fair application of our by-laws. The “added costs” to builders is a red herring – a developer touted her “\$5 million” houses during the Planning Board’s hearing on October 13th. Given the amounts involved and potential profits to be made, the “added cost” of special permit review is insignificant, particularly where the special permit applies **only** to houses with the potential to exceed FAR.

2. **Requiring a Special Permit When the Conversion of Basement or Attic Space Requires Exterior Modifications**

The Planning Board states that a special permit should be required “for any requested bonus floor area” but then states that it “remain[s] uncertain what the appropriate percentage bonus should be for the conversion of basements and/or attics to habitable space.” The Board notes that before the current Zoning By-Law language took effect, all basement and attic conversions were limited to 130% of FAR and all had to be by special permit.

In response to comments from the public, the Moderator’s Committee decided to require a special permit in Section 5.22.2.a for basement and attic conversions **only** when exterior modifications were necessary, not for “any” bonus basement-attic floor area. The concern was that requiring a special permit for conversions involving purely interior work would have an adverse impact on existing homeowners without any substantial offsetting benefits.

This special permit requirement replaces the “façade and sign design review process” of Section 7.06.1 that is now in place, but which does not guarantee the right of abutters to receive notice, the right of abutters to comment or object, or the right to written reviewable findings in accordance with the explicit standards set forth in Article 22. These changes should be read in

the context of the changes to Section 5.09.4.c (discussed above), which would set standards for such special permit review, both in the case of oversized construction and in the case of conversions in excess of allowable FAR.

The question of “treating basements and attics differently” has, in fact, already been considered by both this Moderator’s Committee and earlier committees. The problem is that “basements” in Brookline can in fact add substantially to the height and bulk of buildings because our Zoning By-Law defines a “basement” as that portion of a building which is even “partly ... below grade.” Thus, our By-Law allows “walk-out” “basements” with 8 or 10 foot ceilings, full-height windows, and formal entryways, as already pointed out in the Committee’s submissions to Town Meeting.

The Committee also in Section 5.22.2.b offers the option of reducing the maximum FAR exemption for basements and attics from 150% to 130%, as suggested by the Planning Board. The change from 150% to 130% could be adopted to reduce the potential for basement and attic conversions. It would presumably lead to smaller structures but, as noted in the Committee’s report, could also create some zoning non-conformities.

While the Moderator’s Committee did not unanimously endorse the Planning Board’s suggested FAR reduction from 150% to 130%, there is no disagreement that the By-Law should at least be changed to incorporate the Moderator’s Committee’s proposal requiring a special permit for exterior modifications connected with basement and attic conversions.

3. Reducing the Potential Increases in Density in T and F Districts

The Planning Board report states that it “had hoped the Moderator’s Committee would look at ... the allowed FAR in T districts.” It asserts that “most of the cases where neighbors have been concerned about the size of the project have been in T zones” and this is “a larger problem” facing the Town.

First, as a factual matter, while some large single-family homes may sit on large lots and not impinge on neighbors, many of the abuses identified by the Moderator’s Committee actually occurred in S (Single-Family) zones. These include the examples of the attic and basement “storage” spaces with 8-foot-high ceilings, full-height windows, a fireplace and a formal entry; new houses offered for sale with floor area well above the allowed limit; the developer pre-cutting wallboard to “finish” the attic immediately after the Building Department inspection; the litigation that twice went to the State Supreme Judicial Court; the demolition of a property to its foundations with the claim that the 10-year waiting period was satisfied (see below), and so on.

Second, the Committee did in fact address T Districts in its proposal. The incursions of incompatible buildings in T Districts have in recent years led to proposals for downzoning and for Neighborhood Conservation Districts. Volunteer neighborhood residents have had to lead these efforts. In fact, it was the volunteer Moderator’s Committee that assembled the first database showing the potential build-out in T Districts and reported those results to the Spring 2016 Town Meeting. The charge of the *ad hoc* Moderator’s Committee did not extend to rezoning the Town, and therefore in the Spring the Moderator’s Committee recommended that the Department of Planning and Community Department and/or the Zoning By-Law Committee tackle the problem. That has not happened.

Given this, the Moderator’s Committee has, in Sections 5.22.2 and 5.22.3, offered By-Law changes that are within the scope of its charge to address the potential abuse of FAR exemptions. The Moderator’s Committee proposal would eliminate the application of those exemptions in T and F Districts, limiting them to S and SC Districts (the attached annotated article offers the option of language that would also retain FAR exemptions for one- to four-unit structures in M Districts, if the decision were made to eliminate FAR exemptions only in T and F Districts). Although the base FAR in those T and F Districts would remain the same until rezoned, the potential to exceed that FAR by 20%, 30% or even 50% would be eliminated. Without the changes, the density for properties in T Districts could, for example, potentially increase to 200% or 250% of the current density.

4. Cleaning Up Language

The Moderator’s Committee proposal adds the word “modifications” in several sections, including those dealing with special permits, to be consistent with the terminology used in Section 5.22.2.a.

The proposal, in Section 5.22.1.a, includes language designed to continue the existing ban on the FAR exemptions being used to create additional units; in the event of a challenge to that ban under state law, exemptions would be put on hold.

Section 5.22.1.b includes language addressing certain recent state court decisions under General Laws Chapter 40A, Section 6 that allow zoning non-conformities to be extended for single- and two-family homes if the Zoning Board of Appeals finds that the extension is not “substantially more detrimental” to the neighborhood. Because Town Meeting already allows exemptions to FAR and has set limitations in the By-Law that already balance the rights of property owners and of neighbors, the language states that Town Meeting’s By-Law limitations should guide the Zoning Board of Appeals in determining what would and what would not be “substantially more detrimental” to the neighborhood.

Finally, Section 5.22.1.c addresses an issue identified by the Building Department, making explicitly clear the Building Department’s existing policy that the clock for the “ten-year waiting period” for FAR exemptions under Section 5.22 resets when the number of units are increased or a building is substantially demolished. A developer, for example, argued that he could demolish a house to its foundations and build a much larger structure because the Certificate of Occupancy for the original construction was more than ten years old. The Moderator’s Committee language incorporates language from the Town’s Demolition Delay By-Law, so the Building Department will not be forced to apply two sets of standards.

ARTICLE 22

**PETITIONER’S ADDITIONAL EXPLANATION AND POSSIBLE DIVIDED
VOTE**

This submission includes the option of a divided vote on Article 22, providing a format for a separate vote by Town Meeting on the question of whether the exemptions in Section 5.22 of the Zoning By-Law (allowing FAR to be exceeded) should apply in T, F and M Districts, where the base FAR (even without the exemptions) is already high.

The **First Vote** includes changes to the Zoning By-Law proposed by the Moderator’s Committee to address core issues, including abuse of the By-Law through the construction of “unfinished” spaces in “basements” and “attics” that add to bulk without being subject to any abutter notice or design review. The First Vote would thus introduce special permit review, including notice to abutters and the requirement of consistency with the scale of the neighborhood, for the construction of space that exceeds the otherwise-allowable FAR. This would effectively treat the construction of both “finished” and “unfinished” spaces uniformly, in recognition of the fact that both types of spaces contribute equally to building bulk, and also treat uniformly all such construction and additions to new and existing buildings. The First Vote would also introduce a special permit requirement for exterior modifications in connection with basement and attic conversions, again assuring notice to abutters and consistency with the neighborhood, and treating basement and attic conversions consistently with other conversions and additions, which already require a special permit. It includes the Planning Department’s recommendation that all conversions result in no more than 130% of FAR, and includes changes assuring consistency of language within the By-Law. (See Petitioner’s Explanation).

What the **First Vote** does **not** include is By-Law changes that would eliminate the application of the Section 5.22 exemptions (which allow buildings at 120%, 130% or, now, even 150% of the otherwise-allowable FAR) in T, F and M districts. The **Second Vote**, if approved, would eliminate those Section 5.22 exemptions in T, F and M districts. The divided vote poses the issue if Town Meeting wishes to address the T, F and M issue separately.

On the one hand, as set forth in the report of the Moderator’s Committee to the May 2016 Town Meeting, the base FAR in T, F and M Districts is already high, and, for example, the Section 5.22 exemptions would potentially allow the density of properties in T Districts to increase even more, to 200% or 250% of the current density, with corresponding impacts on population, school population, congestion, and so on. The actual incursions of incompatible buildings in T Districts have in recent years led to proposals for downzoning and for Neighborhood Conservation Districts. Although the base FAR in those districts would remain the same until rezoned, the potential to significantly exceed that FAR would be eliminated by the Second Vote.

On the other hand, the Moderator’s Committee recognized that elimination of the Section 5.22 exemptions did not address the very high base FAR limits in T, F and M districts, and that eliminating the exemptions would potentially make some homes non-conforming and affect some individuals seeking to expand their homes. Since Article 22 was filed, several existing homes in T Districts that have applied for building permits for conversions would be affected by the elimination of the Section 5.22 exemptions.

Therefore, a **divided vote is attached**. If only the First Vote is passed, the Section 5.22 exemptions would continue for homeowners in T, F and M District exemptions but there could be substantial increases in density in those districts. If the Second Vote is also passed, the exemptions would be eliminated in T, F and M districts, reducing the potential increases in density, but existing homeowners would not be able to utilize Section 5.22. The decision is ultimately for Town Meeting, and this submission is an effort to facilitate that decision.

FIRST VOTE –

VOTED: That the Town amend the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strike-throughs):

A. By amending Section 5.09.2 (Design Review, Scope) as follows:

2. Scope.

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior **modifications or** changes, including exterior demolitions, which require a building permit from the building department under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified. Exterior alterations, exterior additions and exterior changes **(except as provided below)**, including fences, walls, and driveways, to residential uses permitted by right in S, SC, T, and F districts; signs as regulated in §§ 7.02, and 7.03; and regulated facade alterations as defined and regulated in §7.06 shall be exempt from the requirements of this section.

....

j. any exterior addition **or exterior modification** for which a special permit is requested pursuant to §5.22

.....

n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In

granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.

B. By amending Section 5.09.3.c.4 (Procedure, Photographs) as follows:

4. Photographs – Photographs show the proposed building site and surrounding properties, and of the model (if required). Applications for alterations, **modifications** and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.

C. By amending Section 5.09.4.c (Design Review Standards, Relation to Streetscape) as follows:

c. Relation of Buildings to the Form of the Streetscape and Neighborhood—Proposed development shall be consistent with the use, scale, **massing, height,** yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area, **including existing abutting buildings and existing buildings that conform to the zoning by-law on lots of similar size in the neighborhood.** The Board of Appeals may require modification in massing, **scale, height, setbacks** or design so as to make the proposed building more consistent with the form of **such existing buildings and** the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the **massing, scale, setbacks and** height of the building to more closely match **such** existing buildings **and the existing streetscape,** or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

D. By amending Sections 5.22.1.a, 5.22.1.b and 5.22.1.c (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, General Provisions) as follows:

a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be ~~subsequently~~ divided into

multiple units. **If the limitations set forth in this paragraph 1, subparagraph a, or the limitations in paragraph 2 regarding separate dwelling units, should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.**

b. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions. **Any exterior additions or modifications shall further comply with the provisions of §5.09, including §5.09.4.c, §§ 9.03 to 9.05, and this Section. The limitations and standards set forth in such provisions shall also guide the Zoning Board of Appeals in determining under G.L. c.40A, §6 whether a change, extension or alteration is substantially more detrimental to the neighborhood than an existing nonconforming use.**

c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction was granted at least ten years prior to the date of the application for additional gross floor area under this section or if there is other evidence of lawful occupancy at least ten years prior to the date of such application. **In the case of the substantial demolition of a structure or of an increase in the number of units, the time period prior to such demolition or unit increase shall not be counted toward the required ten-year waiting period, and the ten-year waiting period shall be deemed to commence with the grant of a new Certificate of Occupancy after such demolition or unit increase. As used in this paragraph 1, subparagraph c, “substantial demolition” shall mean the act of pulling down, destroying, removing or razing a structure or a significant portion thereof, by removing one or more sides of the structure, or removing the roof, or removing 25% or more of the structure.** If the limitation set forth in this paragraph 1, subparagraph c should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

E. By amending Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as of right~~, provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to **the procedures, limitations, and conditions specified in**

~~§5.09, §§9.03 to 9.05, and this Section.~~ the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw. No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than 130% ~~150%~~ of the total permitted in Table 5.01 (the “permitted gross floor area”).

F. By amending Sections 5.22.3.a., 5.22.3.a.1 and 5.22.3.a.2 (Special Permit for Exceeding Gross Floor Area for Residential Dwellings) as follows:

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, §§9.03 to 9.05, and this Section for an existing residential building which meets the following basic requirements:

- 1) The existing building(s) is located on a lot (or part of a lot) in a district with a permitted maximum floor area ratio no greater than 1.5.
- 2) The existing building contains at least one residential unit but no more than ~~four~~ two total units. For the purpose of this paragraph 3, subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

G. By amending Section 7.06.1.c (Regulated Façade Alterations) as follows:

~~Conversion of attic or basement space in Single Family and Two Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

* * *

SECOND VOTE --

VOTED: That the Town amend the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strike-throughs; changes from First Vote are shaded):

H. By amending Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as of right~~ **in S and SC Districts** provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

I. By amending Sections 5.22.3.a.1 (Special Permit for Exceeding Gross Floor Area for Residential Dwellings) as follows:

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, §§**9.03 to 9.05**, and this Section for an existing residential building which meets the following basic requirements:

1) The existing building(s) is located on a lot (or part of a lot) in ~~a~~ **an S or SC District with a permitted maximum floor area ratio no greater than 1.5.**

J. By amending Section 5.22.3.b.2 as follows:

~~In all T, F, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 3, subparagraph (b)(2), or any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.~~

ARTICLE 23

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:

Warrant Article 23 proposes to amend Article 8.15 (Noise Control) and Article 8.31 (Leaf Blowers) of the Town's by-laws and consolidate them into a single article: Article 8.31 (Leaf Blower Control). Under Article 23, as originally amended by the Advisory Committee, the property owner/property manager as well as the leaf blower user would each be liable for the full amount of a fine for second, third, and all subsequent violations of the by-law. Other amendments to the original article included removing a self-identification requirement for a complainant, increasing the size of land parcels exempted from leaf blower regulations from two to five acres of open space, and restricting such exemption eligibility to only properties in nonresidential use. On October 20th, by a vote of 21–3–0, the Advisory Committee recommended Favorable Action on an Article containing the foregoing provisions.

On November 3rd, upon learning that the penalty provision adopted by the Committee was ruled to be beyond the scope of the original Warrant Article and the existing by-law, the Advisory Committee reconsidered its recommendation relative to penalties and subsequently voted to equally divide the fines (up to the allowable maximum total of \$300) between the property owner/manager and the leaf blower user. By a vote of 21–0–1, the Advisory Committee now recommends FAVORABLE ACTION on the amended motion found at the end of this report.

BACKGROUND:

Article 23 and its companion, Article 24, are the result of the research and deliberations of a committee appointed by the Moderator in response to the referral vote on Article 10 at the 2015 Special Town Meeting. The Committee's charge was to review and evaluate the provisions with respect to Leaf Blowers of Article 8.15 (Noise Control) and Article 8.31 (Leaf Blowers). Additionally, it was to consider the Selectman's Noise By-Law Committee report, leaf blower abuses, inappropriate uses, best practices, provisions used in other towns, property owners' responsibilities, landscaping service provider responsibilities, Town responsibilities, enforcement issues, and other relevant matters.

Research of Moderator's Committee

As of October 5th, the Committee had met 16 times. The agendas and minutes from their meetings are posted on the Town's website: (<http://www.brooklinema.gov/AgendaCenter/Moderators-Committee-On-Leaf-Blowers-96>)

The Committee's initial tasks included review of the findings of the Selectmen's Noise By-Law Committee and review of the two by-laws that currently govern the use of leaf blowers in the Town. In addition, the Committee conducted an online survey, gathering information from Brookline residents. This "non-scientific" survey was intended to gauge public opinion regarding both the positive and negative impact of leaf blowers on individual citizens. There were 1,312 responses with over 3,600 comments. IP addresses of survey participants were reviewed and the vast majority were found to be legitimate Brookline IP addresses. Although the responses were not regarded as opinions encompassing all Brookline residents, they nonetheless provided a starting point for the work of the Committee.

Replies indicated that:

- A large percentage of the survey respondents (who were presumably informed about this issue and self-selecting) reported being aware of the existing restrictions on leaf blowers in the Town;
- A majority of respondents were in their home more than 4 hours a day;
- Noise was considered as having the largest impact on respondents;
- A majority of survey respondents thought that an education campaign would improve the situation;
- A majority of respondents were not in favor of a gas-powered leaf blower ban.
- Over 40% of respondents thought there should be no exemptions to the regulations;
- About half of the respondents were satisfied with the current regulations and about half were dissatisfied;
- A majority of respondents were not in favor of additional restrictions on leaf blowers.

Moreover, the Committee evaluated various gas and electric leaf blowers (for noise and efficiency), studied a Town map showing the distribution of leaf blower noise complaints, researched leaf blower regulations of multiple municipalities, and met with Town officials to discuss leaf blower operations, enforcement, health issues, and the legal aspects of current and proposed regulations.

Committee Observations

Based on information gathered, the Committee observed the following:

- Many believe that leaf blowers are needed to adequately address huge leaf drops in the fall as well as outside clean-up in the spring;
- Many believe that the noise from leaf blowers disrupts their quality of life;
- Both the Advisory Council on Public Health as well as Health Department staff do not believe that the use of leaf blowers constitutes a public health threat;
- Varying lot sizes, numbers of deciduous trees, and building density in various neighborhoods prevent one-size-fits-all regulations;

- Education over time of landscapers and other leaf blower users holds promise for eventual greater noise relief;
- The involvement of property owners in encouraging compliance with regulations has the potential to encourage both dialogue and the development of “on the ground” mitigation/solutions;
- Often Town residents hesitate to contact the Police regarding violations of the by-law, resulting in under-reporting.

Recommendations of Moderator’s Committee

- Combine the leaf blower regulations found in Article 8.15 (Noise Control) and Article 8.31 (Leaf Blowers) into one Article (8.31) and delete the language regarding leaf blowers from Article 8.15;
- Make property owners responsible for by-law compliance and fineable for violations. A warning would be required for the first violation, followed by fines of \$100, \$200, and \$300 (increased from the existing \$50, \$100, and \$100) for subsequent violations;
- Change the usage period for gas-powered blowers from the existing September 15th to December 15th to October 1st to December 31st;
- Change the time of weekend and holiday use from 9 am to 8 pm to 9 am to 6 pm.
- Incorporate the exemption process currently found in the Noise Control By-law (Section 8.15.7);
- Exempt leaf blower use on land parcels with open space greater than two acres.
- Limit the simultaneous operation of leaf blowers to two on parcels of 7500 square feet or less;
- Require complainants to provide name and contact information as well as the address of the alleged violation;
- Authorize the Police, Building, Public Works, and Health Departments to enforce Article 8.31;
- Retain 67dBa as the permissible noise level for gas and electric leaf blowers;
- Retain the Town exemption from the By-law.

DISCUSSION:

Members of the Advisory Committee are greatly appreciative of the work and diligence of the Moderator’s Committee. Members of the Moderator’s Committee as well as at least one resident reported that by-law abuses had declined during last summer, likely the result of a Committee member acting as a de facto code enforcement officer, speaking to landscape contractors and distributing a brochure (in three languages) describing “best practices” for leaf blower use. Although this perceived improvement may not have taken place throughout the Town, it does indicate that one-on-one, non-confrontational conversations may, in the long run, produce positive change.

Advisory Committee members supported the process for seeking an exemption from leaf blower regulations; the changes in hours of permitted operation on weekends and legal

holidays from 9 a.m. – 8 p.m. to 9 a.m. – 6 p.m.; and the change in use during the fall from September 15–December 15 to October 1–December 31. (The permissible period during the spring remains March 15–May 15.) They also agreed with continuing the authority of the Commissioner of Public Works to temporarily waive any of the restrictions in order to aid in emergency operations and clean-up associated with severe storms, and with restricting to two the number of leaf blowers that can be used simultaneously on properties of 7,500 square feet or less.

The Advisory Committee, however, amended several of the other provisions in proposed by-law. First, the Committee increased the size of a property qualified for exemption from seasonal restrictions from two to five acres, believing that the former size was too small and therefore too many properties would be eligible. While it was noted that the goal of using the two acre criterion was to give all private school properties equal status with public school grounds, a thorough examination of the size of properties owned by private schools led to the conclusion that five acres could achieve the same goal. A second, related change by the Advisory Committee was to require that these larger properties had to be nonresidential in use.

A third Advisory Committee amendment was to eliminate the requirement that complainants identify themselves while registering a complaint. This provision had been included in the original article to (1) assist with initiating negotiations between the complainant and the alleged offender; and (2) minimize instances of personal grudge complaints. However, the majority of Advisory Committee members found this requirement to be a potentially significant deterrent to filing a complaint; it has, therefore, been deleted from the amended Article.

The greatest amount of discussion was generated by the Moderator's Committee's recommendation to fine the property owner or manager, rather than the contractor or user. The argument behind this measure is that the property owner has control over the landscape contractor because of their financial relationship. Being subject to a fine would encourage the property owner to be more alert to whether his/her landscape contractor was using a leaf blower that exceeded the permissible noise level or was being used during prohibited hours or in the off season. In addition, being the party notified of possible violations would increase the owner's awareness to the noise concerns of neighbors.

Some Advisory Committee members disagreed, asserting that such an arrangement absolved the leaf blower user of any responsibility of violating the by-law. They also questioned how a property owner could be notified of a complaint if he/she were not home during the day or were on vacation. In response to the first point, it was noted that in most cases, the leaf blower user is merely following orders to complete his/her job quickly and efficiently. As to the second point, notice of a complaint would be either handed to the property owner or manager if available, or left at the front door, as is the case with warnings about putting trash out too early.

Initial Recommendation

By a vote of 21–3–0, the Advisory Committee recommended Favorable Action on a motion that among other provisions, imposed the full amount of the fines (up to the maximum allowable total of \$300) on both the property owner/manager and the leaf blower user in the penalty provision under Section 8.31.8 b.

Reconsideration

On November 3, upon learning that the penalty provision adopted by the Committee was found to be beyond the scope of the original Article and the existing by-law, and that Town Counsel recommended a small number of clarifications in language in the proposed by-law, the Advisory Committee reconsidered its position and equally divided the fines between the property owner/manager and the user for the second, third, and subsequent offenses.

RECOMMENDATION:

By a vote of 21–0–1 the Advisory Committee now recommends FAVORABLE ACTION on the following motion, in which for Part 2, additions to the original article as published in the Warrant appear as underlined bold text and deletions from the original article as published in the Warrant appear with strikethroughs:

VOTED:

- 1) That Article 8.15 (Noise Control) be amended by
 - a) Adding the following to Section 8.15.2 (b):
 4. Noise regulations concerning Leaf Blowers are found in Article 8.31.
 - b) Deleting references to leaf blowers in Section 8.15.6 (c) - Maximum Noise Level Chart; and
 - c) Deleting the text of Section 8.15.6 (f) and replacing it with the words “Text Deleted”;

and

- 1) That the current Article 8.31 (Leaf Blowers) be replaced with the following:

Article 8.31
Leaf Blowers ~~§~~ **Control**

SECTION 8.31.1: STATEMENT OF PURPOSE

The reduction of noise and emissions of particulate matter resulting from the use of leaf blowers as well as reducing the use of gasoline and oil fuels and reducing carbon

emissions into the environment are public purposes of the Town, as are protecting the health, welfare and environment public purposes of the Town. Therefore, this By-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

SECTION 8.31.2: DEFINITIONS

- a. “Leaf Blowers” governed by this By-law are defined as any portable powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.
- b. “Property Owner” as used in this By-law shall mean the legal owner of record of real property as listed by the tax assessor’s records.
- c. “Property Manager” shall mean any tenant in possession or person or entity in control of real property, including, but not limited to, a condominium association.
- d. “User” means the person or entity using the Leaf Blower at the time of the violation.

SECTION 8.31.3: LIMITATIONS ON USE

a. No Property Owner or **Property** Manager shall authorize **or permit** the operation of leaf blowers on property under their control, **or on the sidewalks or ways contiguous to such property, nor shall any person operate a leaf blower,** except between March 15th and May 15th and between October 1st and December 31st in each year, and except for leaf blowers powered by electricity which are exempt from this seasonal usage limitation. The provisions of this Section 3.a. shall not apply to **nonresidential property owners but only with respect to** parcels of land that contain at least ~~two~~ **five** acres of open space.

b. No Property Owner or **Property** Manager shall authorize **or permit** the operation of leaf blowers on property under their control, **or on the sidewalks or ways contiguous to such property, nor shall any person operate a leaf blower,** except between the hours of 8 (eight) A.M. to 8(eight) P.M.

Monday through Friday, and from 9 (nine) A.M. to 6(six) P.M. on Saturdays, Sundays and legal holidays.

c. On land parcels equal to or less than 7,500 (seven thousand five hundred) square feet in size, no Property Owner or **Property** Manager **or User** shall **operate or** authorize the operation of more than 2 (two) leaf blowers **on such property** simultaneously. This limitation shall **also** apply to sidewalks and roadways contiguous to such parcel.

d. No Property Owner or Manager shall authorize the operation of any **leaf blower and no person shall operate a** leaf blower which does not bear an affixed manufacturer's label or a label from the Town indicating the model number of the leaf blower and designating a noise level not in excess of sixty-seven (67) dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology on their property. Any leaf blower bearing such a manufacturer's label or Town label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any leaf blower(s) that have been modified or damaged, as determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the Town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or Town label. The Controller of any leaf blower without a manufacturer's ANSI label on such equipment may obtain a label from the Town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. Such testing will be provided by the Town's designated person for no more than a nominal fee (which shall be non-refundable) and by appointment only at the Town's discretion. If the equipment passes, a Town label will be affixed to the equipment indicating Decibel Level. In the event that the label has been destroyed, the Town may replace it after verifying the specifications listed in the Controller's manual that it meets the requirements of this By-law.

The provisions of this Article 8.31.3 shall not apply to the use of leaf blowers by the Town, its employees or contractors while performing work for the Town.

SECTION 8.31.4: REGULATIONS

a. The Commissioner of Public Works shall have the authority to promulgate regulations to implement the provisions of this By-law, subject to the approval of the Board of Selectmen.

b. The Commissioner of Public Works shall have the authority to waive temporarily any of the limitations on the use of Leaf Blowers set forth in this By-law in order to aid in emergency operations and clean-up associated with severe storms. In the event of issuing a temporary waiver, the Commissioner of Public Works shall post a notice prominently on the Town of Brookline's internet home page and make other good faith efforts to notify the public including, but not limited to, social media.

SECTION 8.31.5: DUTIES AND RESPONSIBILITIES OF TOWN DEPARTMENTS

a. Departmental Actions

All Town departments and agencies shall, to the fullest extent consistent with other laws, carry out their programs in such a manner as to further the objectives of this By-law.

b. Departmental Compliance with Other Laws

All Town departments and agencies shall comply with federal and state laws and regulations to the same extent that any person is subject to such laws and regulations.

c. Town Exemption

The Department of Public Works shall be exempt for day and night time operations for routine maintenance. However, the DPW shall make every effort to reduce noise in residential areas, particularly during the limited use hours set forth in Section 8.31.3.b of this By-law.

d. Town Leaf Blower Equipment

Prior to purchasing new equipment, the Town must consider equipment with the lowest Decibel rating for the performance standard required.

SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

(a) The Board of Selectmen, or its designee, may grant a special permit to a Property Owner or **Property** Manager:

- (i) for any activity otherwise prohibited under the provisions of this By-law,
- (ii) for an extension of time to comply with the provisions of this By-law and any abatement orders issued pursuant to it,
- (iii) when it can be demonstrated that bringing a source of noise into compliance with the provisions of this By-law would create an undue hardship on a person or the community. A Property Owner or Manager seeking such a permit should make a written application to the Board of Selectmen, or its designee. The Town will make reasonable efforts to notify all direct abutters prior to the date of the Selectmen's meeting at which the issuance of a permit will be heard.

(b) The Board of Selectmen, or designee, may issue guidelines defining the procedures to be followed in applying for a special permit.

The following criteria and conditions shall be considered:

- (1) the cost of compliance will not cause the applicant excessive financial hardship;
- (2) additional noise will not have an excessive impact on neighboring citizens.
- (3) the permit may require portable acoustic barriers during night use.
- (4) the guidelines shall include reasonable deadlines for compliance or extension of non-compliance.

(5) the number of days a person seeking a special permit shall have to make written application after receiving notification from the Town that (s)he is in violation of the provisions of this By-law.

(6) If the Board of Selectmen, or its designee, finds that sufficient controversy exists regarding the application, a public hearing may be held. A person who claims that any special permit granted under (a) would have adverse effects may file a statement with the Board of Selectmen, or designee, to support this claim.

SECTION 8.31.7: HEARINGS ON APPLICATION FOR SPECIAL PERMITS

Resolution of controversy shall be based upon the information supplied by both sides in support of their individual claims and shall be in accordance with the procedures defined in the appropriate guidelines, **if any**, issued by the Board of Selectmen, or designee.

SECTION 8.31.8: ENFORCEMENT AND PENALTIES

a. This By-law may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

~~b. The Property Owner and/or Manager of any real property upon which a Leaf Blower is operated in violation of this By law, or upon any abutting sidewalk or way in connection with such operation, shall be liable for all violations of this By law. Any User in violation of this By law other than the Property Owner or Manager shall be issued a written notice, whenever practical, notifying the User of the enforcement action to be taken against the Property Owner or Manager for the violation.~~

b. Violations of this By-law shall be subject to the following penalties:

~~1) For the first violation in each calendar year a written warning will be issued to the Property Owner or Manager.~~

~~2) For second and subsequent violations occurring on the same property under the same ownership or management Property shall be issued to **in each calendar year, both** the Property Owner or **Property** Manager **and the User shall be fined** according to the following schedule **table below**:~~

- ~~1. \$100.00 for the second offense;~~
- ~~_____ 2. \$200.00 for the third offense;~~
- ~~_____ 3. \$300.00 for the each subsequent offense;~~
- ~~_____ 4. plus~~

	<u>Property Owner or Property Manager</u>	<u>User, if other than Property Owner or Property Manager</u>
<u>First Offense</u>	<u>Written Warning</u>	<u>Written Warning</u>
<u>Second Offense</u>	<u>\$50.00</u>	<u>\$50.00</u>
<u>Third Offense</u>	<u>\$100.00</u>	<u>\$100.00</u>
<u>Each Subsequent Offense</u>	<u>\$150.00</u>	<u>\$150.00</u>

3) Applicable court costs for any enforcement action taken.

SECTION 8.31.9: ENFORCEMENT

~~The Health, Building, Police and Public Works Departments shall have enforcement authority for this By-law. On complaint by any individual not an employee or agent of the Town, complainant is required at a minimum to provide her/his name and contact information as well as address of alleged violation for the complaint.~~

SECTION 8.31.10: ——— EFFECTIVE DATE

The provisions of this By-law shall be effective as provided in M.G.L. c. 40, s.32.

ARTICLE 23

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

On November 9, 2016 the Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ARTICLE 24

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

SUMMARY:

As originally proposed, Article 24 asked the Selectmen to appoint a Leaf Blower Code Enforcement Officer, or the equivalent, to address issues that arise with the use of leaf blowers in Brookline and, along with the Police Department, to enforce the Leaf Blower Control By-law.

Article 24, as recommended by the Advisory Committee, urges the Selectmen to consider assigning additional duties to the Department of Public Works (DPW) relating to the use of leaf blowers in Brookline, including investigating and attempting to resolve complaints with the parties involved and, along with the Police Department, enforcing the Leaf Blower Control By-law. By a vote of 21–1–0, the Advisory Committee recommends FAVORABLE ACTION on the motion found at the end of this report.

BACKGROUND:

1. Moderator’s Committee on Leaf Blowers

Article 24, along with Article 23, is the result of the research and deliberations of a committee appointed by the Moderator in response to the referral vote on Article 10 at the 2015 Special Town Meeting. The Committee’s charge was to review and evaluate the provisions of the Town’s By-laws, Article 8.15 - Noise Control (with respect to Leaf Blowers), and Article 8.31 - Leaf Blowers. Its charge also included reviewing the Selectman’s Noise By-Law Committee report, leaf blower abuses, inappropriate uses, best practices, provisions used in other towns, property owners’ responsibilities, landscaping service provider responsibilities, Town responsibilities, enforcement issues, and other relevant matters.

In addition to reviewing relevant by-laws and reports and leaf blower regulations of multiple municipalities, the Committee studied a Town map showing the distribution of leaf blower noise complaints and met with Town officials to discuss leaf blower operations, enforcement, health issues and the legal aspects of current and proposed regulations.

Moreover, the Committee conducted an online survey, gathering information from Brookline residents. This “non-scientific” survey was intended to gauge public opinion regarding both the positive and negative impact of leaf blowers on individual citizens. There were 1,312 responses with over 3,600 comments. IP addresses of survey participants were reviewed and the vast majority of these addresses were found to be legitimate Brookline IP addresses. Although the responses were not regarded as opinions

for all Brookline residents, they nonetheless provided a starting point for the work of the Committee.

2. Moderator's Committee Observations

Based on information gathered, the Committee's observations relevant to Article 24 were:

- Many respondents believe that leaf blowers are needed to adequately address huge leaf drops in the fall as well as outside clean-up in the spring;
- Many believe that the noise from leaf blowers disrupts their quality of life;
- Education over time of landscapers and other leaf blower users holds promise for eventual greater noise relief;
- The involvement of property owners in encouraging compliance with regulations has the potential to encourage both dialogue and the development of "on the ground" mitigation/solutions;
- Often Town residents hesitate to contact the Police regarding violations of the By-law, resulting in under-reporting.

3. Code Enforcement Officer

Article 24, as published in the Warrant, envisioned the creation of a position of Code Enforcement Officer. This suggestion was predicated on the belief that awareness, education, and dialogue are, in the long run, more effective approaches to reducing leaf blower noise than fining violators. Changing behaviors and attitudes, the long-term and longer lasting solution to reducing excessive use and noise, is more likely to take place by working and negotiating with all parties—complainants, property owners, and leaf blower users.

Members of the Advisory Committee's Ad Hoc Subcommittee on Articles 23 and 24 had a number of objections and questions regarding the creation of a new position of Code Enforcement Officer, including the cost of creating a new position, whether it should be part-time or full time, and in which Town department the position would reside.

In response to these concerns, two representatives from the Moderator's Committee on Leaf Blowers held meetings with the Town Administrator and other Town Hall staff, including the Commissioner of Public Works, to discuss the intent of Article 24. Participants discussed reservations about the potential cost of the position and the ability of an individual to meet the expectations outlined in the original resolution. As a result, the possibility of upgrading an existing but currently unfilled position in the Sanitation Division of the Department of Public Works and assigning that position with some of the responsibilities originally envisioned for the Code Enforcement Officer was explored. A preliminary estimate of the cost of such an upgrade was under \$10,000.

In order to further pursue this option, the Moderator's Committee proposed an amended version of Article 24, which the Ad Hoc Subcommittee presented to the full Advisory Committee on November 3rd. The amended resolution asks that the Selectmen consider expanding the responsibilities assigned to an existing position in the Sanitation Division of the Department of Public Works, rather than creating an entirely new position.

DISCUSSION:

Advisory Committee members raised a number of questions, including why another person is needed to enforce the By-law; how Brookline residents would find out about the new compliance/enforcement structure; and what coordination between the Police and the DPW staff member would look like.

In response to the first question, it was stated that six communities currently have code enforcement positions and that their experiences indicate that the position encourages negotiations with property owners, leaf blower users and complainants that ultimately result in greater compliance. In some instances, it may take up to a month to resolve the issue. It was further stated that the Moderator's Committee's research revealed that some residents are reluctant to call the Police about a leaf blower, believing that the Police Department should be dealing with the paramount issue of public safety. Contacting a civilian to file a complaint will likely be far less intimidating. Finally, the Committee believes that the use of exclusively Police Officers to enforce leaf blower restrictions has had limited success.

It was emphasized, however, that in no way would the creation of this position result in the elimination of the Police Department's enforcement role. It is essential that the Police would be called in if and when situations became excessively confrontational and negotiations proved fruitless.

As for spreading the word about the new Leaf Blower By-law and compliance efforts, a description of the DPW position and the option of calling the DPW instead of the Police with a complaint about leaf blowers, as well as recently approved changes in the Leaf Blower By-law, could be publicized on the Town's website and in the DPW's annual Public Works Information Guide and could be included in an enclosure in property owners' Water and Sewer bills.

Coordination details, including how calls will be routed, will be determined by the two departments, both of which have indicated support for the proposal. It should be underscored that the DPW position is not intended to replace a Police Officer in terms of By-law enforcement, but the emphasis of the work of the former will be on effective compliance, including education, communication, and follow-up with homeowners and landscape companies. It is the belief of an overwhelming majority of Advisory Committee members that the DPW position will enhance the efforts to increase

compliance with the Leaf Blower By-law, thereby reducing the number of violations and the noise from leaf blowers in the Town.

RECOMMENDATION:

By a vote of 21–1–0, the Advisory Committee recommends FAVORABLE ACTION on the following motion, with bold underlined text indicating additions to the original article and strikethroughs indicating deletions:

VOTED: That the Town adopt the following Resolution:

~~Resolution to Appoint a Leaf Blower Code Enforcement Officer~~ **With Respect to Administration of the Leaf Blower By-Law**

WHEREAS the Police Department is currently the sole **primary** enforcer of the Leaf Blower By- laws and is using valuable resources that do not directly concern public safety;

WHEREAS many Town residents have expressed concern about calling the Police to report violations of the Leaf Blower By-Law;

WHEREAS, accordingly, there are believed to be, ~~apparently,~~ many current leaf blower by-law violations that are not reported and therefore not resolved;

~~WHEREAS noise deemed excessive and/or annoying which is within the legal scope of the current and proposed By law could be reduced through negotiation with the parties involved;~~

~~WHEREAS the Police Department estimates that about 30% of noise complaints involved exempt Town operations and 50% of leaf blower complaints originate from a small number of “hot spots” around Town, a more systemic approach working with Town Departmental managers, residents, and landscape contractors might be more successful in reducing noise overall;~~

~~WHEREAS negotiating with neighbors and/or landscape service providers with a focus on education and best practices is likely to be productive in reducing noise pollution;~~

~~WHEREAS the Town and its contractors performing Town work are exempt from Leaf Blower By laws;~~

WHEREAS the Department of Public Works has an environmental enforcement program, pursuant to which it is already enforcing other By-laws; **and**

WHEREAS a modest added expense may be required in order for the Department of Public Works to handle additional duties to administer the Leaf Blower By-law; ~~now, therefore, be it~~

THEREFORE, be it RESOLVED resolved, that **Town Meeting urges**

~~the Board of Selectmen appoint a Leaf Blower Code Enforcement Officer, or equivalent officer, who should not be part of the Police Department, who reports to the Board of Selectmen or its designee, and whose duties to consider assigning additional duties to the Department of Public Works that would include:~~

1. ~~Take~~ **Taking** calls during Town Hall business hours;
2. ~~Investigate~~ **Investigating** and ~~attempt~~ **attempting** to resolve complaints with the parties involved;
3. ~~Work~~ **Working** with the landscape service provider community to build awareness of the leaf blower noise concerns, help further the use of best practices and promote use of protective equipment for operators;
4. ~~Liaise~~ **Working** with the Police Department Community Service Officer designated to support leaf blower complaint resolution;
5. ~~Issue~~ **Issuing** warnings and citations as appropriate;
6. ~~Call~~ **Calling** on the Police Department for support and/or enforcement, as appropriate;
7. ~~Track~~ **Tracking**, ~~monitor~~ **monitoring** and ~~report~~ **reporting** periodically to the ~~Board of Selectmen~~ on complaint statistics and resolutions;
8. ~~Communicate~~ **Communicating** and ~~educate~~ **educating** Town residents as to their responsibilities to reduce leaf blower noise; **and**
9. ~~Recommending~~ **ing** regulation changes as appropriate.

~~And be it further:~~

~~RESOLVED that:~~

~~The Department of Public Works work closely with the Leaf Blower Code Enforcement Officer or equivalent officer to adopt practices and equipment standards that adhere as near as practical to the Leaf Blower By-Laws.~~

ARTICLE 24

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

As indicated in the previous report of the Selectmen on this article, ongoing discussion on the wording of this Resolution has transpired. After considering other versions of the Resolution that would meet the intent of the Committee but not be overly prescriptive, the Board of Selectmen reconsidered its prior recommendation of No Action and on November 9, 2016 the Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.