



**TOWN OF BROOKLINE
MASSACHUSETTS**

**REPORTS OF SELECTMEN
AND ADVISORY COMMITTEE**

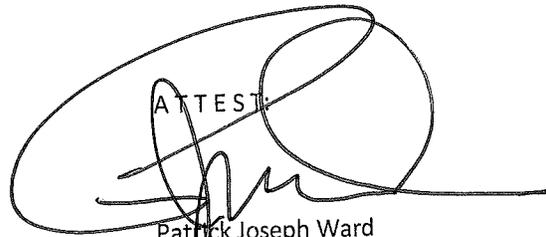
on the

Articles in the Warrant

for the

SPECIAL TOWN MEETING

I hereby certify that the actions as indicated on the within pages were taken at the Special Town Meeting called for Tuesday, November 17, 2015, at 7:00 P.M., and dissolved on Wednesday, November 18, 2015 at 10:11 P.M.

ATTEST


Patrick Joseph Ward
Town Clerk

Town of Brookline
BOARD OF SELECTMEN

Neil A. Wishinsky, Chairman

Nancy A. Daly

Benjamin J. Franco

Nancy S. Heller

Bernard W. Greene

Melvin A. Kleckner, Town Administrator

"The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services or activities. Persons with disabilities who need auxiliary aids and services for effective communication in programs, services and activities of the Town of Brookline are invited to make their needs and preferences known to Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445, 730-2328 Voice, 730-2327 TDD, or email at rsneirson@brooklinema.gov."

MODERATOR

Edward N. Gadsby, Jr.

ADVISORY COMMITTEE

Sean M. Lynn-Jones, Chair, 53 Monmouth Street.....	738-6228
Carla Benka, Vice-Chair, 26 Circuit Road	277-6102
Clifford M. Brown, 9 Hyslop Road	232-5626
Lea Cohen, 1060 Beacon Street, #11	947-9713
John Doggett, 8 Penniman Place.....	566-5474
Dennis Doughty, 57 Perry Street.....	739-7266
Harry Friedman, 27 Clafin Road	232-0122
Janet Gelbart 216 St. Paul Street	566-5616
David-Marc Goldstein, 22 Osborne Road	939-6077
Neil Gordon, 87 Ivy Street.....	(508) 265-1362
Kelly Hardebeck, 18 Littell Road	277-2685
Amy Hummel, 226 Clark Road	731-0549
Sytske V. Humphrey, 46 Gardner Road	277-1493
Angela Hyatt, 87 Walnut Street	734-3742
Alisa G. Jonas, 333 Russett Road	469-3927
Janice Kahn, 63 Craftsland Road.....	739-0606
Steve Kanes, 89 Carlton Street	232-2202
Bobbie M. Knable, 243 Mason Terrace.....	731-2096
Fred Levitan, 1731 Beacon Street.....	962-2434
Robert Liao, 55 Meadowbrook Road.....	(530) 988-8887
Pamela Lodish, 195 Fisher Avenue	566-5533
Shaari S. Mittel, 309 Buckminster Road	277-0043
Mariah Nobrega, 33 Bowker Street.....	935-4985
Michael Sandman, 115 Sewall Ave., No. 4.....	513-8908
Lee L. Selwyn, 285 Reservoir Road	277-3388
Stanley L. Spiegel, 39 Stetson Street.....	739-0448
Charles Swartz, 69 Centre Street	731-4399
Christine M. Westphal, 31 Hurd Road.....	738-7981
Lisa Portscher, Executive Assistant, Town Hall.....	730-2115

NOVEMBER 17, 2015
SPECIAL TOWN MEETING
INDEX OF WARRANT ARTICLES

<u>ARTICLE NUMBER</u>	<u>TITLE</u>
1.	Approval of unpaid bills. (Selectmen)
2.	Approval of collective bargaining agreements. (Human Resources Director)
3.	FY2016 budget amendments. (Selectmen)
4.	Approval of an increase to the amount of the Senior-Work-off Exemption for eligible taxpayers. (Assessors/Council on Aging)
5.	Accept the provisions of MGL Chapter 59, Section 5 Clause Fifth C – Tax Exemptions - Veterans Organizations. (Gordon)
6.	Authorize the filing and acceptance of grants with and from the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs for the Parkland Acquisitions and Renovations for the Communities Grant Program for improvements to Larz Anderson Park and dedicate a portion of said Park for park purposes. (Park and Recreation Commission)
7.	Accept the provisions of Section 148C of Chapter 149 of the Massachusetts General Laws, the Earned Sick Time Law. (Connors & van der Ziel)
8.	Amend Article 2.1 of the Town’s By-laws by adding Section 2.1.14 – Mandatory Educational Training for Town Meeting Members. (Kahn)
9.	Amend Article 3.17 of the Town’s By-laws by adding Section 3.17.2 – Public Works Department Organization – Procedures for Fixing Water and Sewer Rates. (Lescohier & Frey)
10.	Amend Article 8.15 of the Town’s By-laws– Noise Bylaw and Article 8.31 – Leaf Blowers – banning the use of Leaf Blowers. (Nangle & Schraf)
11.	Amend Article 8.31 of the Town’s By-laws – Leaf Blowers enlarging the use of Leaf Blowers. (Michaels & Gately)
12.	Amendment to Article II, Section 2.08, Par 1 of the Town’s Zoning Bylaws – Definition of Habitable Space. (Selwyn)
13.	Authorize the Board of Selectmen to commence a Community Choice Electrical Aggregation Program. (Selectmen)

14. Resolution urging Selectmen to increase the Use of Electricity from Renewable Sources of Energy Using a Community Choice Aggregation Plan. (Vitolo & Oldham)
15. Resolution concerning the exercise of Eminent Domain in Hancock Village. (Frawley)
16. Resolution calling for a Moratorium on High-Stakes Standardized Test in Public Schools. (Smizik & Guisbond, et al)
17. Resolution concerning Natural Gas Pipelines. (Bolon)
18. Resolution on increasing diversity in the Town's workforce. (Merelice & Sneider)
19. Reports of Town Officers and Committees. (Selectmen)

2015 SPECIAL TOWN MEETING WARRANT REPORT

The Board of Selectmen and Advisory Committee respectfully submit the following report on Articles in the Warrant to be acted upon at the 2015 Special Town Meeting to be held on Tuesday, November 17, 2015 at 7:00 pm.

Note: The following pages of this report are numbered consecutively under each article.

ARTICLE 1

FIRST ARTICLE

Submitted by: Board of Selectmen

To see if the Town will, in accordance with General Laws, Chapter 44, Section 64, authorize the payment of one or more of the bills of previous fiscal years, which may be legally unenforceable due to the insufficiency of the appropriations therefor, and appropriate from available funds, a sum or sums of money therefor.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for every Town Meeting in case there are any unpaid bills from a prior fiscal year that are deemed to be legal obligations of the Town. Per Massachusetts General Law, unpaid bills from a prior fiscal year can only be paid from current year appropriations with the specific approval of Town Meeting.

SELECTMEN'S RECOMMENDATION

State statutes provide that unpaid bills from previous fiscal years may not be paid from the current year's appropriations without the specific approval of Town Meeting. As of the writing of this Recommendation, there are no unpaid bills from a previous fiscal year. Therefore, the Board recommends NO ACTION, by a vote of 5-0 taken on September 17, 2015.

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:

As there are no known remaining unpaid bills from the previous fiscal year, the Advisory Committee unanimously recommends NO ACTION on Article 1.

A vote of No Action was passed
unanimously

ARTICLE 2

SECOND ARTICLE

Submitted by: Human Resources

To see if the Town will raise and appropriate, or appropriate from available funds, a sum or sums of money to fund the cost items in collective bargaining agreements between the Town and various employee unions; fund wage and salary increases for employees not included in the collective bargaining agreements; and amend the Classification and Pay Plans of the Town.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when there are unsettled labor contracts. Town Meeting must approve the funding for any collective bargaining agreements.

SELECTMEN'S RECOMMENDATION

There are no Collective Bargaining agreements for Town Meeting authorization at this time. As a result, the Board recommends NO ACTION, by a vote of 5-0 taken on September 24, 2015.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 2 provides for funding of the Town's collective bargaining agreements.

RECOMMENDATION:

As there are no collective bargaining agreements to consider at this time, the Advisory Committee unanimously recommend NO ACTION on Article 2.

*A Vote of NO ACTION Was
Passed Unanimously.*

ARTICLE 3

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 3 of the Warrant for the 2015 Fall Town Meeting proposes amendments to the FY16 budget. The article is required to address three outstanding items:

- Appropriation of a higher state aid amount for Brookline than what was assumed in the budget approved by Town Meeting in May.
- Reallocation of costs associated with Group Health Insurance for override funded school employees and funding for repair and maintenance to expanded school buildings.
- Adjustments to the Water and Sewer budget to reflect the final MWRA Assessment.

The final State budget resulted in an additional \$186,917 of Net State Aid which is available for appropriation. As discussed with the School Superintendent and given the adjustments made to the Town/School Partnership formula that resulted in Town departments absorbing costs to support a lower Override amount, it is recommended that the entirety of this additional State Aid be allocated to the Town. The Selectmen propose to spend the additional State Aid as follows:

1. Parks Forestry Vehicle - \$94,000

In August there was an electrical fire in a forestry truck within the main DPW garage on Hammond Street. After exploring repair and insurance options it has been determined that the truck is a total loss and that the insurance claim does not meet the deductible. The recommendation is for the rental of a truck for most of the year (\$28,000) and the first year of a lease payment for a replacement vehicle (\$66,000). The lease would then be rolled into the Park and Open Space Capital Outlay account for the remaining two years of payments.

2. Diversity Training - \$20,000

The Director of Diversity Inclusion and Community Relations and the Commission for Diversity Inclusion & Community Relations have begun an assessment of the racial climate in Town. This appropriation will support recommended training as a result of the assessment and MCAD training for the Fire Department.

3. Collective Bargaining Reserve - \$72,917

The Town is currently engaged in a proceeding before the Joint Labor Management Commission (JLMC). Given the uncertainty of the JLMC process the Board recommends that the balance of remaining state aid be allocated to the Collective Bargaining reserve. While our negotiation team is actively engaged in

bargaining and the desire is to come to agreement on an equitable contract there is a possibility that an arbitration award will require additional funding.

The Group Health budget was built based on a no-override scenario with the Schools building a contingency for these expenses within their appropriation if an override was successful. A commitment was also made to help fund building repair and maintenance costs given the expanded footprint of school buildings and facilities. It is recommended that \$100,000 will be reallocated from the School Department budget to the School Plant account within the Building Department's budget and \$274,286 be allocated from the School Department budget to the Group Health appropriation.

When the FY16 Water and Sewer budget was voted on by Town Meeting an estimate was used for the MWRA assessments. This estimate was \$492,011 higher than the final numbers voted by the MWRA. The rates voted on by the Selectmen in June accounted for this lower number, and it is recommended that Town Meeting amend the Enterprise Fund budget accordingly.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on November 3, 2015, on the vote offered by the Advisory Committee.

ARTICLE 3

THIRD ARTICLE

Submitted by: Board of Selectmen

To see if the Town will:

- A) Appropriate additional funds to the various accounts in the fiscal year 2016 budget or transfer funds between said accounts;
- B) And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or provided by any combination of the foregoing; and authorize the Board of Selectmen, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants and aid from both federal and state sources and agencies for any of the purposes aforesaid.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required. For FY2016, the warrant article is necessary to appropriate higher than projected State Aid, re-allocate School Department funding between Group Health and School-related Repair and Maintenance, and to amend the Water and Sewer Enterprise Fund.

SELECTMEN'S RECOMMENDATION

A report and recommendation by the Board of Selectmen will be provided in the Supplemental Mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 3 provides for amendments to the budget for this fiscal year. The Town needs to make various budget adjustments, some of which are the result of the May 2015 override and some of which reflect additional aid from the Commonwealth of Massachusetts. The

Advisory Committee unanimously recommends that the \$186,917 in additional state aid be appropriated for replacement of a Parks Forestry vehicle (\$94,000), diversity training (\$20,000), and the Collective Bargaining Reserve (\$72,917).

BACKGROUND:

Article 3 provides for amendments to the fiscal year 2016 (FY2016) budget, which was approved by the May 2015 Annual Town Meeting. A similar Article is included annually in the Warrant for each November Special Town Meeting. The Town budget is based on the best available estimates at the time of the Annual Town Meeting. There are often small changes to revenue or expenditure estimates. In many years, the amount of aid that Brookline receives from the Commonwealth of Massachusetts exceeds the estimate in the Town budget, which is usually based on conservative revenue estimates. The state legislature sometimes does not complete its work on the state budget until after Brookline's Annual Town Meeting, particularly in years in which there is a new governor. The actual amount of state aid thus remains uncertain until some point in the summer after Town Meeting has voted the budget for the coming fiscal year. Article 3 also provides an opportunity to approve any necessary transfers of expenditures between departments.

DISCUSSION:

Action under Article 3 is necessary to adjust the budget authorization for Brookline's Water and Sewer Enterprise Fund, transfer funds between the School budget and others to reflect override-related changes, and to appropriate additional state that was not included in the revenue estimates in the FY2016 budget voted by the May 2015 Town Meeting. Most of these adjustments involve the transfer of funds between accounts. Only the appropriation of the additional state aid increases the overall Town budget.

1. The final numbers voted by the Massachusetts Water Resources Authority (MWRA) came in at \$27,828,674, which is \$496,931 lower than budget. The Selectmen used the final MWRA numbers when they voted in June on the Water and Sewer rates. Thus, the budget authorization for the Water and Sewer Enterprise Fund was \$496,931 higher than the expected receipts. The Town Administrator recommended that it was good practice to reduce the spending authority limit accordingly. The Advisory Committee concurred.
2. As part of the May 2015 override, a commitment was made to help fund building repair and maintenance costs. As this work is managed by the Building Department, the Town Administrator recommends reallocation of \$100,000 from the Public Schools of Brookline budget to the School Plant account within the Building Department's budget.
3. Separately, as a result of the override there has been growth in the number of school employees by 35 beyond original budget assumptions, resulting in an increase of approximately \$274,286 in Group Health Insurance costs. This, too, is reflected in the School budget and is recommended that the requisite funds be transferred from the School Budget to the Group Health budget.
4. The Public Schools of Brookline budget is reduced by \$364,286, the amounts

which were transferred as in 2. and 3. above.

5. Additional net state aid of \$186,917 shown in the table below:

	FY15 FINAL CHERRY SHEET	FY16 TM VOTE	FY16 STATE BUDGET	STATE BUDGET VARIANCE FROM FY16 TM VOTE	%VARIANCE FROM FY16
RECEIPTS					
Ch. 70	11,159,462	12,152,368	12,183,520	31,152	0.3%
Unrestricted General Gov't Aid	5,649,406	5,697,943	5,852,785	154,842	2.7%
Vets Benefits	101,513	108,730	108,730	0	0.0%
Exemptions	40,402	39,059	39,059	0	0.0%
Charter School Reimbursements	893	7,378	5,004	(2,374)	-32.2%
TOTAL RECEIPTS	16,951,676	18,005,478	18,189,098	183,620	1.0%
CHARGES					
County	785,286	841,540	841,540	0	0.0%
Air Pollution Dist.	26,612	28,045	28,045	0	0.0%
MAPC	29,558	29,255	29,255	0	0.0%
RMV Surcharge	232,380	232,380	232,380	0	0.0%
MBTA	5,033,938	5,066,573	5,066,573	0	0.0%
SPED	60,074	49,752	49,812	60	0.1%
School Choice Sending Tuition	13,400	10,700	3,953	(6,747)	-63.1%
Charter School Sending Tuition	20,287	64,767	68,157	3,390	5.2%
TOTAL CHARGES	6,201,535	6,323,012	6,319,715	(3,297)	-0.1%
OFFSETS					
School Lunch	29,385	0	0	0	-
Libraries	97,058	90,324	91,451	1,127	1.2%
TOTAL OFFSETS	126,443	90,324	91,451	1,127	1.2%
NET LOCAL AID	10,876,584	11,772,790	11,960,834	188,044	2.3%
NET LOCAL AID W/O OFFSETS	10,750,141	11,682,466	11,869,383	186,917	1.1%

Because of previous adjustments to the Town/School Partnership formula that resulted in Public Schools of Brookline receiving more than its customary 50% share of new revenues, the recommendation from the Town Administrator and the Town/School Partnership is that the entirety of the additional FY2016 state aid be allocated to the Town.

Appropriation of Additional State Aid

The Town Administrator recommended that \$94,000 of this aid be appropriated for replacement of a Parks Forestry vehicle that was damaged by an electrical fire in the main Department of Public Works garage on Hammond Street; \$20,000 for diversity training funding; and the remainder of \$72,917 to the Collective Bargaining Reserve for the anticipated contract with the Fire union.

Parks Forestry Vehicle: The Advisory Committee agreed with the Town Administrator that both the Parks vehicle should be replaced and that replacement should be funded with an appropriation of \$94,000 in additional state aid. The truck is a total loss and cannot be repaired and the insurance deductible exceeds the cost. The funds would provide for rental of a truck for the remainder of the year (\$28,000) and the cost of

leasing a replacement vehicle for one year (\$66,000). The Park and Open Space Capital Outlay account would cover two additional years of lease payments.

Diversity Training: The Director of Diversity Inclusion and Community Relations and the Commission for Diversity Inclusion and Community Relations are assessing Brookline's racial climate and have recommended training for Town employees. Funds are also necessary for Massachusetts Commission Against Discrimination (MCAD) training for the Fire Department. The Advisory Committee recognized the need and obligation of the Town in this area.

Collective Bargaining Reserve: For the remainder of net additional state aid, the Committee discussed several options such as adding to the fund established to cover the cost of other post-employment benefits (OPEBs, primarily retiree healthcare) or the Reserve fund, as well as the Collective Bargaining Reserve. The Advisory Committee discussed the merits of each option. Although the Advisory Committee already has approved a significant Reserve Fund transfer, historical analyses suggest that the Reserve Fund probably will have sufficient funds to cover future FY2016 transfers. The cost of snow removal is the most significant uncertainty, as it is every winter. The Town has made significant progress toward funding OPEBs and reaching its Annual Required Contribution, so the need to increase OPEB funding beyond its current level, which increases by \$250,000 every year, must be weighed against other needs. One such need is likely to be funding for a new contract with the Fire union. After assessing the alternatives, the Committee agreed with the Town Administrator that a transfer of the remaining state aid to the Collective Bargaining Reserve was in the best interests of the Town.

RECOMMENDED VOTE:

VOTED: That the Town:

- 1) Amend the FY2016 budget as shown below and in the attached Amended Tables I and II :

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
4. Diversity, Inclusion and Community Relations	\$175,827	\$20,000	\$195,827
12. Building Department	\$7,283,220	\$100,000	\$7,383,220
13. Public Works	\$14,103,923	\$94,000	\$14,197,923
21. Collective Bargaining- Town	\$1,850,000	\$72,917	\$1,922,917
22. School Department	\$96,290,380	(\$374,286)	\$95,916,094
23. Employee Benefits	\$53,790,574	\$274,286	\$54,064,860

2) Amend Section 7 (Water and Sewer Enterprise Fund) of Article 8 of the 2016 Annual Town Meeting so it reads as follows:

7.) WATER AND SEWER ENTERPRISE FUND: The following sums, totaling \$27,828,674, shall be appropriated into the Water and Sewer Enterprise Fund, and may be expended under the direction of the Commissioner of Public Works for the Water and Sewer purposes as voted below:

	<u>Water</u>	<u>Sewer</u>	<u>Total</u>
Salaries	2,121,310	399,776	2,521,086
Purchase of Services	190,598	163,200	353,798
Supplies	102,020	21,000	123,020
Other	8,900	1,680	10,580
Utilities	102,945	0	102,945
Capital	268,300	236,500	504,800
Intergovernmental	6,930,863	12,639,575	19,570,438
Debt Service	855,691	1,522,056	2,377,747
Reserve	<u>121,550</u>	<u>153,981</u>	<u>275,531</u>
Total Appropriations	10,702,177	15,137,768	25,839,945
Indirect Costs	<u>1,574,389</u>	<u>414,340</u>	<u>1,988,729</u>
Total Costs	12,276,566	15,552,108	27,828,674

Total costs of \$27,828,674 to be funded from water and sewer receipts with \$1,988,729 to be reimbursed to the General Fund for indirect costs.

3) Amend Section 9 (Schoolhouse Maintenance and Repair) of Article 8 of the 2016 Annual Town Meeting so it reads as follows:

9.) SCHOOLHOUSE MAINTENANCE AND REPAIR: The sum of \$4,653,731, included within the Building Department appropriation for school building maintenance, shall be expended for School Plant repair and maintenance and not for any other purpose. The listing of work to be accomplished shall be established by the School Department. The feasibility and prioritization of the work to be accomplished under the school plant repair and maintenance budget shall be determined by the Superintendent of Schools and the Building Commissioner, or their designees.

XXX

James A. Tronimo

FY16 BUDGET - TABLE 1 November, 2015

	FY13 ACTUAL	FY14 ACTUAL	FY15 BUDGET	FY16 BUDGET	PROPOSED AMENDMENTS	FY16 AMENDED BUDGET	\$ CHANGE FROM FY15	% CHANGE FROM FY15
REVENUES								
Property Taxes	169,029,414	174,869,775	182,239,297	194,809,198		194,809,198	12,569,901	6.9%
Local Receipts	24,480,797	25,522,496	22,770,225	23,593,685		23,593,685	823,460	3.6%
State Aid	15,125,059	16,633,741	17,634,876	18,652,559	184,747	18,837,306	1,202,430	6.8%
Free Cash	5,336,413	7,665,155	5,084,152	5,016,500		5,016,500	(67,652)	-1.3%
Overlay Surplus	1,750,000	0	2,100,000	0		0	(2,100,000)	-100.0%
Other Available Funds	10,144,344	6,852,688	6,903,508	7,925,643		7,925,643	1,022,135	14.8%
TOTAL REVENUE	225,866,027	231,543,855	236,732,058	249,997,585	184,747	250,182,332	13,450,275	5.7%
EXPENDITURES								
DEPARTMENTAL EXPENDITURES								
1. Selectmen	644,074	670,358	671,197	662,312		662,312	(8,885)	-1.3%
2. Human Resources	574,019	615,662	523,365	533,746		533,746	10,381	2.0%
3. Information Technology	1,472,035	1,705,110	1,751,863	1,805,725		1,805,725	53,862	3.1%
4. Diversity, Inclusion, and Community Relations	0	0	169,109	175,827	20,000	195,827	26,718	15.8%
5. Finance Department	2,991,976	2,933,343	2,845,778	2,911,236		2,911,236	65,458	2.3%
a. Comptroller	510,643	536,293	568,421	571,047		571,047	2,626	0.5%
b. Purchasing	847,549	636,616	635,373	662,243		662,243	26,870	4.2%
c. Assessing	639,202	654,772	651,556	664,036		664,036	12,481	1.9%
d. Treasurer	994,582	1,105,661	990,428	1,013,910		1,013,910	23,481	2.4%
6. Legal Services	821,872	888,936	832,893	833,934		833,934	1,041	0.1%
7. Advisory Committee	14,974	13,129	24,372	24,900		24,900	528	2.2%
8. Town Clerk	775,342	557,591	627,632	611,324		611,324	(16,308)	-2.6%
9. Planning and Community Development	620,599	757,716	765,310	810,693		810,693	45,382	5.9%
10. Police	14,954,651	15,312,691	15,312,691	16,536,836		16,536,836	1,224,145	8.0%
11. Fire	12,844,259	12,886,490	13,005,941	12,994,548		12,994,548	(11,393)	-0.1%
12. Building	6,854,850	7,163,183	7,024,504	7,283,220	100,000	7,383,220	358,716	5.1%
13. Public Works	14,480,045	15,220,421	15,166,548	14,103,923	94,000	14,197,923	(968,625)	-6.4%
a. Administration	823,184	847,278	864,369	859,718		859,718	(4,651)	-0.5%
b. Engineering/Transportation	1,105,748	1,191,962	1,262,215	1,282,876		1,282,876	20,661	1.6%
c. Highway	4,579,656	4,644,618	5,034,219	4,805,406		4,805,406	(228,813)	-4.5%
d. Sanitation	3,003,721	2,988,704	2,990,830	3,091,137		3,091,137	100,307	3.4%
e. Parks and Open Space	3,507,459	3,552,206	3,525,824	3,567,477	94,000	3,661,477	135,653	3.8%
f. Snow and Ice	1,460,278	1,995,654	1,489,091	497,309		497,309	(991,782)	-66.6%
14. Library	3,742,982	3,827,172	3,754,728	3,888,386		3,888,386	133,658	3.6%
15. Health and Human Services	1,152,529	1,280,036	1,154,562	1,151,234		1,151,234	(3,328)	-0.3%
16. Veterans' Services	294,085	327,315	321,818	329,662		329,662	7,844	2.4%
17. Council on Aging	872,570	837,172	840,206	875,211		875,211	35,005	4.2%
18. Human Relations	117,064	0	0	0		0	0	0.0%
19. Recreation	1,016,673	1,022,391	1,006,120	1,018,816		1,018,816	12,696	1.3%
20. Personnel Services Reserve	715,000	715,000	715,000	715,000		715,000	0	0.0%
21. Collective Bargaining - Town	1,775,000	1,900,000	2,321,220	1,850,000	72,917	1,922,917	(398,303)	-17.2%
Subtotal Town	64,244,600	65,964,144	68,834,857	69,116,532	286,917	69,403,449	568,592	0.8%
22. Schools	79,079,823	82,780,770	86,842,577	96,290,380	(374,286)	95,916,094	9,073,517	10.4%
TOTAL DEPARTMENTAL EXPENDITURES	143,324,423	148,744,914	155,677,434	165,406,912	(87,369)	165,319,543	9,642,109	5.8%
NON-DEPARTMENTAL EXPENDITURES								
23. Employee Benefits	45,240,975	49,570,654	50,500,116	53,790,374	274,286	54,064,660	3,564,744	7.1%
a. Pensions	15,801,983	17,409,988	17,882,573	18,707,021		18,707,021	824,448	4.6%
b. Group Health	22,865,804	24,090,743	25,136,108	27,210,434	274,286	27,484,720	2,348,612	9.3%
c. Health Reimbursement Account (HRA)	50,876	55,880	70,000	70,000		70,000	0	0.0%
d. Retiree Group Health Trust Fund (OPEBS)	2,601,927	3,514,360	3,311,860	3,499,119		3,499,119	187,259	5.7%
e. Employee Assistance Program (EAP)	27,400	24,900	28,000	28,000		28,000	0	0.0%
f. Group Life	132,118	137,555	140,000	145,000		145,000	5,000	3.6%
g. Disability Insurance	13,376	12,367	16,000	16,000		16,000	0	0.0%
h. Worker's Compensation	1,200,000	1,720,000	1,450,000	1,550,000		1,550,000	100,000	6.9%
i. Public Safety LOD Medical Expenses	560,660	400,000	300,575	250,000		250,000	(50,575)	-16.8%

	FY13 ACTUAL	FY14 ACTUAL	FY15 BUDGET	FY16 BUDGET	PROPOSED AMENDMENTS	FY16 AMENDED BUDGET	\$\$ CHANGE FROM FY15	% CHANGE FROM FY15
69 Golf Course Improvements (enterprise fund bond)				1,000,000		1,000,000		
70 . Town/School Bldg Envelope/Fenestration Repairs (bond)				1,550,000		1,550,000		
71 . Town/School Building Roof Repair/Replacement (bond)				1,200,000		1,200,000		
72 . Old Lincoln School Modifications (bond)				1,000,000		1,000,000		
73 . Devotion School Renovation (bond, MSEA)				118,400,000		118,400,000		
TOTAL REVENUE-FINANCED SPECIAL APPROPRIATIONS	12,933,500	8,581,000	9,415,000	10,113,000	0	10,113,000	698,000	7.4%
TOTAL APPROPRIATED EXPENDITURES	212,279,953	217,655,889	228,298,354	241,809,246	186,917	241,996,163	13,510,891	5.9%
NON-APPROPRIATED EXPENDITURES								
Cherry Sheet Offsets	109,160	111,026	126,443	90,324	1,127	91,451	(34,992)	-27.7%
State & County Charges	6,105,553	6,196,321	6,201,536	6,323,012	(3,297)	6,319,715	116,179	1.9%
Overlay	1,958,780	1,726,503	2,080,721	1,750,000		1,750,000	(330,721)	-15.9%
Deficits-Judgments-Tax Titles	12,394	3,049	25,000	25,000		25,000	0	0.0%
TOTAL NON-APPROPRIATED EXPEND.	8,185,887	8,036,899	8,433,700	8,188,336	(2,170)	8,186,166	(247,534)	-2.9%
TOTAL EXPENDITURES	220,465,841	225,692,788	236,732,054	249,997,582	184,747	250,182,329	13,265,527	5.6%
SURPLUS/(DEFICIT)	5,400,186	5,851,066	0	0	0	0	0	0

(1) Breakdown provided for informational purposes.
(2) Figures provided for informational purposes. Funds were transferred to departmental budgets for expenditure.
(3) Funds are transferred to trust funds for expenditure.
(4) Amounts appropriated. Bonded appropriations are not included in the total amount, as the debt and interest costs associated with them are funded in the Borrowing category (item #34).

FY16 BUDGET - TABLE 2 November, 2015

Department/Board/Commission	Personnel Services/ Benefits	Purchase of Services	Supplies	Other Charges/ Expenses	Utilities	Capital Outlay	Inter-Gov'tal	Debt Service	Agency Total
Board of Selectmen (Town Administrator)	627,482	11,100	4,000	17,600		2,130			682,312
Human Resources Department (Human Resources Director)	291,603	200,503	9,000	31,000		1,640			533,746
Information Technology Department (Chief Information Officer)	1,076,404	645,322	10,350	32,550		41,100			1,805,726
Diversity, Inclusion, and Community Relations (Director)	165,827	20,000	9,000	150		850			195,827
Finance Department (Director of Finance)	2,115,357	698,560	50,310	20,957	1,332	24,720			2,911,236
Legal Services (Town Counsel)	586,025	129,409	3,500	112,000		3,000			833,934
Advisory Committee (Chair, Advisory Committee)	21,760		2,275	570		295			24,900
Town Clerk (Town Clerk)	502,952	90,172	14,550	2,450		1,200			611,324
Planning and Community Department (Plan. & Com. Dev. Dir.)	770,538	20,193	9,712	4,550		5,700			810,693
Police Department (Police Chief)	14,925,261	515,744	221,750	69,000	342,137	462,944			16,536,836
Fire Department (Fire Chief)	12,236,953	163,755	149,560	31,350	212,053	200,877			12,994,548
Public Buildings Department (Building Commissioner)	2,248,758	2,270,462	28,950	40,100	2,683,949	141,000			7,383,220
Public Works Department (Commissioner of Public Works)	7,772,821	3,251,447	920,750	53,500	1,117,300	1,057,104	20,000		14,197,923
Public Library Department (Library Board of Trustees)	2,783,946	185,141	572,942	4,700	315,657	26,000			3,888,386
Health & Human Services Department (Health & Human Svcs Dir)	884,822	203,086	15,100	4,120	40,087	4,020			1,151,234
Veterans' Services (Veterans' Services Director)	162,029	2,538	650	163,935		510			329,662
Council on Aging (Council on Aging Director)	737,643	44,083	18,000	2,900	66,385	6,200			875,211
Recreation Department (Recreation Director)	698,523	23,037	86,480	12,400	164,356	34,020			1,018,816
School Department (School Committee)									95,916,094
Total Departmental Budgets	48,613,704	8,474,552	2,126,879	573,832	4,943,256	2,013,310	20,000		162,681,627
DEBT SERVICE									
Debt Service (Director of Finance)								9,478,591	9,478,591
Total Debt Service								9,478,591	9,478,591
EMPLOYEE BENEFITS									
Contributory Pensions Contribution (Director of Finance)	18,592,021								18,592,021
Non-Contributory Pensions Contribution (Director of Finance)	115,000								115,000
Group Health Insurance (Human Resources Director)	27,484,720								27,484,720
Health Reimbursement Account (HRA) (Human Resources Director)	70,000								70,000
Retiree Group Health Insurance - OPEB's (Director of Finance)	3,499,119								3,499,119
Employee Assistance Program (Human Resources Director)	28,000								28,000
Group Life Insurance (Human Resources Director)	145,000								145,000
Disability Insurance	16,000								16,000
Workers' Compensation (Human Resources Director)	1,550,000								1,550,000
Public Safety IOD Medical Expenses (Human Resources Director)	250,000								250,000
Unemployment Insurance (Human Resources Director)	300,000								300,000
Ch. 41, Sec. 100B Medical Benefits (Town Counsel)	40,000								40,000
Medicare Payroll Tax (Director of Finance)	1,975,000								1,975,000
Total Employee Benefits	53,790,574								54,064,860
GENERAL / UNCLASSIFIED									
Reserve Fund (*) (Chair, Advisory Committee)				2,200,198					2,200,198
Liability/Catastrophe Fund (Director of Finance)				78,969					78,969
Housing Trust Fund (Planning & Community Development Dir.)				163,078					163,078
General Insurance (Town Administrator)		382,645							382,645
Audit/Professional Services (Director of Finance)		130,000							130,000
Contingency (Town Administrator)		3,000		15,000					15,000
Out of State Travel (Town Administrator)		10,000	10,000						35,000
Printing of Warrants (Town Administrator)									12,278
MMA Dues (Town Administrator)									192,917
Town Salary Reserve (*) (Director of Finance)	1,922,917								1,922,917
Personnel Services Reserve (*) (Director of Finance)	715,000								715,000
Total General / Unclassified	2,652,917	525,645	10,000	2,469,523					5,658,085
TOTAL GENERAL APPROPRIATIONS	105,057,195	9,000,197	2,136,879	3,043,355	4,943,256	2,013,310	20,000	9,478,591	231,883,163

(*) NO EXPENDITURES AUTHORIZED DIRECTLY AGAINST THESE APPROPRIATIONS. FUNDS TO BE TRANSFERRED AND EXPENDED IN APPROPRIATE DEPT.

ARTICLE 4

FOURTH ARTICLE

Submitted by: Board of Assessors, Council on Aging

To see if the Town will elect to increase the amount of the Senior-Work-off Exemption for eligible taxpayers, for fiscal year 2016 to \$1,125 from the current \$1,000 based on the current state minimum wage of \$9.00 per hour and the continued use of the 125 volunteer services hours as allowed by section 5K of Chapter 59 of the General Laws, originally adopted by the 2008 Annual Town Meeting. Further, to maintain the 125 volunteer services hours and increase the amount of the exemption as the scheduled increases in the state minimum wage take effect in calendar year 2016 and 2017, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article provides for an increase of \$125 over the current abatement of \$1,000 for certain eligible senior taxpayers for fiscal year 2016 and accepts, prospectively, the additional scheduled increases in the state minimum wage, while maintaining the standard of 125 volunteer services hours, thus increasing the amount of the exemption by an additional \$125.

The statute permits the Board of Selectmen to establish a property tax work-off program for taxpayer's 60-years old, or older. Under the program, qualified taxpayers volunteer their services to the Town in exchange for a reduction in their tax bills. The current amount Brookline can abate is \$1,000.00 in taxes per property. The abatement would be granted by the Board of Assessors based on a 'Certificate of Service' issued by a Town department head supervising the volunteer services. The credit earned for worked performed could be at a rate no more than the state's minimum wage (current at \$9.00 per hour). Qualifying taxpayers retain their eligibility for other statutory exemptions including the residential exemption. The Town's program can set the income limits to be imposed. The Board of Assessors & Council on Aging is recommending an annual income limit of \$48,800 based on the HUD standard single-member household, median family low income limit. There would be NO asset limit requirements. Program volunteers performing services in return for property tax reductions would be considered employees for purposes of municipal tort liability. Earned reductions will be applied to the actual tax bill for the fiscal year, not the preliminary (1st & 2nd quarter) tax bills. The amount of the property tax reduction earned by the taxpayer under this program is not considered income or wages for purposes of state income tax withholding, unemployment compensation or workman's compensation. The IRS has ruled, however, that the abatement amount will be included in the taxpayer's gross income for both federal income tax and FICA tax purposes.

The Board of Selectmen, with 2008 Town Meeting authorization, established the program and directed the Board of Assessors and the Council on Aging to oversee its administration, originally as a pilot program for Fiscal Year 2009, limiting the number of participants to 20. The current program has 30 participants. The maximum cost of the program to the Town for FY2016 would be \$33,750 (\$1,125/ taxpayer-volunteer) and be funded through the overlay reserve account.

Because the senior tax-work off exemption program is based on the state minimum wage and the state minimum wage is scheduled to increase in 2016 and 2017, the petitioners also wish to fix the volunteer hours, as allowed by statute, at 125-hours, and increase the amount of the exemption as required, as follows:

For fiscal year 2016: \$1,125.00 (125-hours x \$9.00/hour)
For fiscal year 2017; \$1,250.00 (125-hours x \$10.00/hour)
For fiscal year 2018: \$1,375.00 (125-hours x \$11.00/hour)

SELECTMEN'S RECOMMENDATION

The Senior Property Tax Work-off Abatement Program authorized by G.L. Chapter 59 §5K, was accepted by Town Meeting in 2008 and adopted by the Board of Selectmen as a pilot program beginning in FY2009 with a maximum of 20 eligible taxpayers. The current program has thirty participants and has been a mutually beneficial program for both the Town and the participants. The program is funded through the Overlay Reserve Account and is administered by the Council on Aging and Board of Assessors.

Article 4 increases the abatement amount given to eligible seniors participating in the senior work off program. This increase is requested in anticipation of increases to the state minimum wage which would have the effect of reducing the hours of the program unless this change is adopted. This article also seeks to increase the exemptions for the next two known increases to the state minimum wage in FY 2017 and FY 2018.

This article provides seniors with options for tax relief and is an important component of the Town's efforts to keep Brookline affordable. The Board agrees it is prudent to increase the exemption amount in order to preserve the volunteer hours available for this successful program. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on September 17, 2015 on the following vote:

VOTED: that the Town increase the amount of the Senior-Work-off Exemption for eligible taxpayers, for fiscal year 2016 to \$1,125 from the current \$1,000 based on the current state minimum wage of \$9.00 per hour and the continued use of the 125 volunteer services hours as allowed by section 5K of Chapter 59 of the General Laws, originally adopted by the 2008 Annual Town Meeting. Further, to maintain the 125 volunteer

Passed by a unanimous vote

services hours and increase the amount of the exemption as the scheduled increases in the state minimum wage take effect in calendar year 2016 and 2017.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 4 is submitted jointly by the Board of Assessors and Council on Aging and seeks "to see if the Town will elect to increase the amount of the Senior-Work-off Exemption for eligible taxpayers, for fiscal year 2016 to \$1,125 from the current \$1,000 based on the current state minimum wage of \$9.00 per hour" and also to "increase the amount of the exemption as the scheduled increases in the state minimum wage take effect in calendar year 2016 and 2017." The Advisory Committee believes that this program, which enables seniors to reduce their taxes in return for volunteer work, is very valuable and important. The Committee strongly supports increasing the amount of the exemption.

BACKGROUND:

The Senior-Work-Off Exemption for eligible taxpayers (60 years and older) was established as a Pilot Program by Town Meeting in 2008 for 20 volunteers. The program was so beneficial, both for Town departments receiving volunteer services and for volunteers, that the following year Town Meeting increased the number of participants to 30. To date this program enables qualified taxpayers to volunteer and receive a \$1,000 (125 hours x \$8.00) tax reduction in exchange for a "Certificate of Service" granted by the department that supervises the volunteer.

The Senior Tax-Work-off exemption program is based on the state minimum wage, which is scheduled to increase to \$10.00 per hour on January 1, 2016, and to \$11.00 per hour on January 1, 2017, resulting in the request from the Board of Assessors and the Council on Aging for a 3-year change to the current exemptions:

For fiscal year 2016: \$1,125.00 (125—hours x \$9.00/hour)
For fiscal year 2017: \$1,250.00 (125—hours x \$10.00/hour)
For fiscal year 2018: \$1,375.00 (125—hours x \$11.00/hour)

Any change of an existing exemption has to be approved by Town Meeting. In the event that Town Meeting does not approve this change the tax-work-off program can reduce the number of hours or the amount of participants in the program.

The state minimum state wage is applied, rather than Brookline's living wage because, according to section 4.8.5 number (exemptions to Brookline's living wage bylaw), the Brookline living wage bylaw exempts those who work for less than 6 months, as well as interns and non-town employees/volunteers.

DISCUSSION:

The Senior-Work-Off Exemption Program is administered through the Assessor's Office and the Council on Aging. The funding of this Program comes out of the Overlay Reserve Account and does not have to be appropriated by Town Meeting. The maximum cost for fiscal year 2016 would be \$33,750. An outreach worker at the Assessor's Office promotes this program as well as informing homeowners of other beneficial programs. The J.O.B.S (Job Training Opportunities for Brookline Seniors) Coordinator for the Brookline Senior Center promotes this program as well.

The program remains limited to 30 qualified participants; there are no asset limits for participants and the income limit is based on the Housing and Urban Development standard. That limit is currently \$48,800 for a single-member household. In addition to financial eligibility, volunteers often need specific qualifications to fill needed volunteer openings in the Town. Volunteers are punctual and responsible and are matched up with departments that need their particular skills. Volunteers maintain their sense of self worth both through working and paying their taxes. The Town benefits through a pool of volunteers that provide ongoing support to the Town Clerk's Office, The Assessor's Office, the Library and many other departments.

This year volunteers face a steep increase in their property taxes after the recent override (often compounded by increased property values) and increasing the exemption to \$9.00 while maintaining the current 125 volunteer hours will support struggling homeowners.

RECOMMENDATION:

By a vote of 18-0-2 the Advisory Committee recommends FAVORABLE ACTION on the following motion under Warrant Article 4.

VOTED: that the Town will elect to increase the amount of the Senior-Work-off Exemption for eligible taxpayers, for fiscal year 2016 to \$1,125 from the current \$1,000 based on the current state minimum wage of \$9.00 per hour and the continued use of the 125 volunteer services hours as allowed by section 5K of Chapter 59 of the General Laws, originally adopted by the 2008 Annual Town Meeting. Further, to maintain the 125 volunteer services hours and increase the amount of the exemption as the scheduled increases in the state minimum wage take effect in calendar year 2016 and 2017.

ARTICLE 5

FIFTH ARTICLE

Submitted by: Neil Gordon, TMM1

To see if the Town will accept clause Fifth C of MGL Chapter 59, section 5, the effect of which would be to increase from \$750,000 to \$1.5 million the property tax exemption applicable to the VFW/American Legion property located at 386 Washington Street, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In November, 2005, Special Town Meeting voted favorable action on a Warrant Article accepting clause Fifth B of MGL Chapter 59, Section 5, the effect of which was to increase to \$700,000 the property tax exemption of the Brookline VFW and American Legion Post property located at 386 Washington Street.

The Post is currently assessed at over \$600,000 and may exceed the \$700,000 limit by the next assessment. This warrant article, if approved, would increase the exemption limit to the statutory limit of \$1,500,000, so that the Post property located at 386 Washington Street remains exempt from property tax.

(Note: The petition was drafted stating the current exemption as \$750,000 when, in fact, it is \$700,000. This will be corrected by amendment.)

Clause Fifth C of MGL Chapter 59, section 5 reads as follows:

“The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of \$1,500,000, if used and occupied by such association, and if the net income from the property is used for charitable purposes, but the estate shall not be exempt for any year in which the association, or the trustees holding for the benefit of the association, willfully fails to file with the assessors the list and statement required by section 29. This clause shall take effect upon its acceptance by any city or town. In a city or town which accepts this clause, clauses Fifth, Fifth A and Fifth B shall not be applicable.”

Clauses Fifth A and Fifth B read as follows:

“Fifth A, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of four hundred thousand dollars, if actually used and occupied by such association, and if the net income from said property is used

for charitable purposes; but it shall not be exempt for any year in which such association or the trustees holding for the benefit of such association willfully omit to bring into the assessors the list and statement required by section twenty-nine. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions of clause Fifth shall not be applicable; provided, however, that the state treasurer shall annually reimburse the city or town an amount equal to the reimbursement, if any, granted to such city or town under said clause Fifth for the most recent fiscal year in which it received such reimbursement.”

“Fifth B, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of seven hundred thousand dollars, if used and occupied by such association, and if the net income from said property is used for charitable purposes; provided, however, that such estate shall not be exempt for any year in which such association or the trustees holding for the benefit of such association willfully omit to file with the assessors the list and statement required by section twenty-nine. This clause shall take effect upon its acceptance by any city or town. In a city or town which accepts the provisions of this clause, the provisions of clause Fifth and Fifth A shall not be applicable.”

SELECTMEN'S RECOMMENDATION

Article 5 calls for acceptance of MGL Chapter 59, section 5, Clause 5C which would increase the property tax exemption from \$700,000 to \$1.5 million for real and personal estate (property) belonging to or held in trust for the benefit of incorporated organizations of veterans of any war if the net income from the property is used for charitable purposes. In Brookline the VFW and American Legion Post property located at 386 Washington Street continues to be the only property that has met that criterion. The assessed value of this property is close to the current limit of \$700,000, so this article would increase the exemption limit to keep the property tax exempt. The Board is supportive of this warrant article. There is no loss in revenue because the Town does not currently collect tax revenue from this property. The Board believes that the Post provides an important service to its members and the community.

Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on September 17, 2015 on the following:

VOTED: That the Town accept clause Fifth C of MGL Chapter 59, section 5, the effect of which would be to increase from \$750,000 to \$1.5 million the property tax exemption applicable to the VFW/American Legion property located at 386 Washington Street.

Passed by a Unanimous Vote

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

By a vote of 17-0-2 the Advisory Committee recommends FAVORABLE ACTION on Article 5, which seeks to have the Town accept Massachusetts General Laws (MGL) Chapter 59, section 5, clause Fifth C, the effect of which would be to increase from \$700,000 to \$1.5 million the property tax exemption applicable to the Veterans of Foreign Wars (VFW)/American Legion property located at 386 Washington St. The Advisory Committee supported this step so that the VFW/American Legion property would remain exempt from Brookline real estate taxes. The Committee felt the property should continue to be exempt from property taxes, even though its assessed value has increased.

BACKGROUND:

The VFW/American Legion property is currently exempt from local property tax up to an assessed value of \$700,000. It derives this tax exemption under the authority of state statute MGL Chapter 59, section 5, clause Fifth B which states:

Fifth B, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of seven hundred thousand dollars, if used and occupied by such association, and if the net income from said property is used for charitable purposes; provided, however, that such estate shall not be exempt for any year in which such association or the trustees holding for the benefit of such association willfully omit to file with the assessors the list and statement required by section twenty-nine. This clause shall take effect upon its acceptance by any city or town. In a city or town which accepts the provisions of this clause, the provisions of clause Fifth and Fifth A shall not be applicable.

Town Meeting voted to accept clause Fifth B in 2005.

The current assessment for the property is over \$600,000. Town Assessor Gary McCabe expects that the property will be assessed for over \$700,000 this coming year due mainly to increasing land value, which would impose a local property tax to the incremental assessed value over \$700,000.

MGL Chapter 59, section 5, clause Fifth C provides for a higher level of local property tax exemption up to an assessed value of \$1.5 million, if it is accepted by the Town through a vote of Town Meeting. It states:

Fifth C, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of \$1,500,000, if used and occupied by such association, and if the net income from the property is used for charitable purposes, but the estate shall not be exempt for any year in which the association, or the trustees holding for the benefit of the association, willfully fails to file with the assessors the list and statement required by section 29. This clause shall take

effect upon its acceptance by any city or town. In a city or town which accepts this clause, clauses Fifth, Fifth A and Fifth B shall not be applicable.

Article 5 seeks to have Town Meeting vote to accept MGL Chapter 59, section 5, clause Fifth C to increase the VFW/American Legion property's real estate tax exemption to \$1.5 million.

DISCUSSION:

The American Legion has owned the property since 1970, and it is used by both the American Legion and the VFW. Brookline's Veterans Affairs Director, William T. McGroarty, maintains an office in the building where he often meets veterans to offer his support and services. The post provides a meeting place and safe haven to the veterans of Brookline. It is also used and rented out to other community groups.

The property currently does not pay local property tax and Article 5 seeks to maintain this state in the face of rising land values.

The tax rate for commercial property in Brookline is 2% of assessed value. Increasing the tax exemption for the property from the current \$700,000 to \$1.5 million would cost the town at the most a potential \$16,000 $[(1.5 \text{ million} - 700,000) \times 2\%]$ in incremental forgone property tax revenue per year. Initially it would be much less than that, as the assessment has just reached \$700,000 and will not reach \$1.5 million for many years, if ever. This is a small price to pay for the valuable service that the post provides to the Brookline community and its veterans.

There was unanimous support for this Article, with no statements offered in opposition at either the subcommittee's public hearing or the full Advisory Committee meeting.

RECOMMENDATION:

By a vote of 17-0-2, the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 5:

VOTED: That the Town accept clause Fifth C of MGL Chapter 59, section 5.

XXX

ARTICLE 6

**MOTION OF THE PARK AND RECREATION COMMISSION, TO BE
OFFERED BY AMY HUMMEL, TMM-12**

VOTED: That the Town:

Clause 1. Dedicate so much of the land known as Larz Anderson Park, consisting of approximately 55.05 acres of active recreational park land as shown on the plan entitled “Plan of Land Showing Dedicated Parkland at Larz Anderson Park”, a copy of which is on file with the Town Clerk, for public park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 3; and authorize said land to be under the care, custody, management and control of the Town’s Department of Public Works, Parks and Open Space Division;

Clause 2. Authorize the Commissioner of Public Works or designee, with approval of the Board of Selectmen, to file on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Parkland Acquisitions and Renovations for Communities (PARC) Grant Program, and/or any other grant applications for improvements to said Larz Anderson Park;

Clause 3. Authorize the Commissioner of Public Works or designee, with the approval of the Board of Selectmen, to enter into all agreements and execute any and all instruments as may be necessary to effect the said grants and/or reimbursements received by the Town under paragraph 2 of this vote;

Clause 4. Appropriate the sum of up to \$400,000, for improvements to said Park, including all costs incidental or related thereto; and to meet such appropriation, authorize the Treasurer, with the approval of the Selectmen, to borrow said amount under the provisions of M.G.L. Chapter 44, s. 7(25), as amended, provided that any amount so borrowed shall be repaid by the amount of any aid received.

Explanation:

The Park and Recreation Commission put forth this Article to secure grant monies from PARC, and further their work in improving our limited and precious open space. They have sought this sort of funding since the 1960s, and the parks that have benefitted include Harry Downes Field, Cypress Playground, Waldenstein, Amory Courts and Hall’s Pond to name a very few. Their goal, which benefits every citizen, is maintaining and updating the park facilities, and protecting parks today and for future generations.

The anticipated grant funding, along with monies approved by 2013 Town Meeting, is intended to preserve and enhance the park per the Larz Anderson Master Plan (1989), a

Horticulture Master Plan (2001), and the Parks, Open Space, and Recreation Strategic Master Plan (2006), the later of which is updated every five to seven years with input of a wide range of representatives from town boards, commissions including the Board of Selectmen, the Advisory Committee, and the public. This careful, inclusive, long-range planning is one reason why the Town has been able to maintain our current parks and in the last ten years, add two new parks for all, despite space and financial constraints.

The act of formally protecting 55 of the approximately 65 acres of Larz Anderson Park under Article 97, a protection most assumed the park already had, in order to secure potential grant monies, is a timely and responsible next step for the Parks and Recreation Commission. Notably, ten acres of the park is purposely excluded from possible Article 97 protection, allowing for some other allowable use, such as Civic Moxie's proposed Isabel School, should the community decide that is best siting for a 9th K-8 school.

The omission of the 10 acres illustrates the balance the commission has tried to strike between their responsibility and desire to protect our open space and the realization that we are currently and again scrambling to solve a long growing and shared student enrollment problem.

Passing Article 6 is in all of our interests, affirmatively protecting precious open space, acknowledging the consistent vision and efforts of the Parks and Recreation Commission for all, while still allowing for the possibility of some School use at Larz Anderson.

ARTICLE 6

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

The Town of Brookline submitted an application and is being considered for a Parkland Acquisitions and Renovations for Communities (PARC) Grant for improvements to Larz Anderson Park. The PARC Program (formerly the Urban Self-Help Program) was established in 1977 to assist cities and towns in acquiring and developing land for park and outdoor recreation purposes. Grants are available for the acquisition of land and the construction, or renovation of park and outdoor recreation facilities. Brookline has applied for and is eligible for the grant maximum of \$400,000.

The PARC program is a reimbursement program administered through the Executive Office of Energy and Environmental Affairs, Division of Conservation Services (DCS). Applicants selected to receive grant funding will be required to submit a PARC Project Agreement, State Standard Contract, and billing forms, which will be sent to Applicants with their award letter. It is a requirement that any property acquired or improved with DCS grant assistance include language in the deed so that it is protected open space under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, dedicated to recreation use in accordance with M.G.L. Chapter 45 Section 3.

Warrant Article 6 must receive an affirmative vote by Town Meeting in order for Brookline to be eligible to receive the grant and enter into said contract. The Executive Office of Energy and Environmental Affairs must receive the approved Town Meeting vote by December 31, 2015. The Commonwealth of Massachusetts DCS PARC grant requires that Brookline:

- vote to borrow funds in anticipation of state reimbursement prior to receiving agreement for reimbursement (M.G.L. Chapter 44, §8C). The draft municipal vote must cite the particular parcel to be acquired or developed/renovated and contain authorization to seek funding and to enter into any contracts for the project;
- dedicate the site for park purposes as under M.G.L. Chapter 45, Section 3; and,
- appropriate 100% of the total project cost.

The language also must ensure that Town officials and/or staff are authorized to enter into said contract and/or submit forms and receipts for reimbursement.

Article 6 designates the project area, approximately 55 acres of land at Larz Anderson Park, as parkland. By designating this area as parkland, this property will be protected

under Article 97 of the State Constitution. Even if the land is already protected by deed restriction, Article 97 or other means, the language as provided and approved by DCS must be voted by Town Meeting. An affirmative vote of Article 6 officially designating this parcel as parkland (as part of this grant cycle), enables the Town to receive and use PARC grant funding towards park improvements. To comply with this policy, municipalities that seek to dispose of any Article 97 land must: obtain a unanimous vote of the municipal Conservation Commission that the Article 97 land is surplus to municipal, conservation, and open space needs; obtain a unanimous vote of the municipal Park Commission if the land proposed for disposition is parkland; obtain a two-thirds Town Meeting or City Council vote in support of the disposition; obtain a two-thirds vote of the legislature in support of the disposition, as required under the state constitution; comply with all requirements of the Self-Help, Urban Self-Help, Land and Water Conservation Fund, and any other applicable funding sources; and comply with the EEA Article 97 Land Disposition Policy.

The boundaries of the project and Article 97 protected area (55 acres) as part of this vote are intentionally outside of the area that the Civic Moxie consultant team, Board of Selectmen and School Committee proposed for consideration of a 9th elementary school at Larz Anderson Park. While it is likely that some or possibly the entire park has some protected status, this vote does not add or subtract any protected status from that which already exists on the 10-acres provided in the attached map as “Leased Properties/Operations Area”. At the time of the Board of Selectmen vote there was still need for additional clarification on the exact conditions and protected status of the entire site. New information on a federal grant accepted in 1975 in order to make improvements to the Skating Rink at the Park has recently come to the Board’s attention. While a federal grant may not have required state protection under Article 97, it may have required a similar restriction of land. Town records were not readily available at the time of this Board’s vote to verify the scope of this restriction.

In light of this information, some Board members did not feel they could vote in favor of the article until the research was completed on the protections currently afforded to this site. This new information has heightened the need to be careful and strategic when considering such grants and the requirements that come with them. The Board of Selectmen agreed that including language that the vote of Town Meeting would be conditional upon receipt of the grant was appropriate. A majority of the Board felt comfortable moving forward with an amended version of the warrant article. On motion it was,

VOTED: That the Town:

Clause 1. Dedicate so much of the land known as Larz Anderson Park, consisting of approximately 55.05 acres of active recreational park land as shown on the plan entitled “Plan of Land Showing Dedicated Parkland at Larz Anderson Park”, a copy of which is on file with the Town Clerk, for public park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 3; and authorize said land to be under

the care, custody, management and control of the Town's Department of Public Works, Parks and Open Space Division;

Clause 2. Authorize the Commissioner of Public Works or designee, with approval of the Board of Selectmen, to file on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Parkland Acquisitions and Renovations for Communities (PARC) Grant Program, and/or any other grant applications for improvements to said Larz Anderson Park;

Clause 3. Authorize the Commissioner of Public Works or designee, with the approval of the Board of Selectmen, to enter into all agreements and execute any and all instruments as may be necessary to effect the said grants and/or reimbursements received by the Town under paragraph 2 of this vote;

Clause 4. Appropriate the sum of \$400,000 for improvements to said Park, including all costs incidental or related thereto; and to meet such appropriation, authorize the Treasurer, with the approval of the Selectmen, to borrow said amount under the provisions of M.G.L. Chapter 44, s. 7(25), as amended, provided that any amount so borrowed shall be repaid by the amount of any PARC grant aid received; provided further that if aid in an amount less than the appropriation is received, all action taken under this Article shall be rescinded.

ROLL CALL VOTE:

Favorable Action

Daly
Franco
Heller

No Action

Wishinsky
Greene

ARTICLE 6

Report of the Conservation Commission



Town of Brookline
Conservation Commission

Marcus Quigley, Chair
Matthew Garvey, Vice Chair
Gail Fenton
Werner Lohe
Roberta Schnoor
Deborah Myers
Pallavi Kalia Mande

Associates
Pamela Harvey
Marian Lazar

November 10, 2015

Dear Town Meeting Members,

On November 3, the Conservation Commission considered and voted to support favorable action on Warrant Article 6, which involves an appropriation request in anticipation of state grant funding for improvements to Larz Anderson Park. As is typically required for these types of grants, Article 6 also requests acknowledgement by Town Meeting that the land in question is “dedicated for public park purposes.” We write to share with you the Conservation Commission’s perspective on the importance of Larz Anderson Park as a significant open space in Brookline, as well as how the Commission has thoughtfully considered the Park in the Town’s open space planning process with regards to its rehabilitation and protection.

Brookline began formal open space planning through the Conservation Commission in the 1970s. Currently, the town adopts an Open Space Plan every five years and, following upon Open Space Plan 2010, is about to embark upon preparing its eighth plan.

The Open Space planning process is led jointly by the Board of Selectmen and the Conservation Commission, and involves all interested parties. The most recent Open Space Plan Committee consisted of 18 members from various boards, commissions, town departments and community interest groups. Several public forums are held to solicit input from Town residents.

For decades, Larz Anderson Park has been identified in Open Space Plans, not only as one of our premier open space parcels, but also as a property protected by Article 97, a provision added to the state constitution in 1972. Only about 15% of the town’s land is

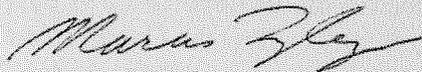
“protected” open space and, in most instances, this means the land is regarded as protected under Article 97.

Recent case law on Article 97 has called into question the community’s generally accepted understandings of what land is protected under Article 97. In view of this, we expect the next Open Space Plan will include a review of all Article 97 properties in town and a plan to reconfirm their status so that we can protect these precious resources.

Years of community planning processes including the Open Space Plans, the Comprehensive Plan and the Parks and Open Space Master Plan have inventoried the amount of “protected” open space in Brookline and found it wanting. The desire of Brookline residents for more and better open space is layered upon our civic pride in our core legacy of extraordinary open spaces, which are such a distinctive part of Brookline’s character. Given the current efforts to site a new school in Brookline, the Commission feels the application for protection of 55 acres within Larz Anderson Park is appropriate.

The majestic landscape of Larz Anderson Park, which reflects the unique history of this property, has long been widely considered and valued as one of Brookline’s most significant open space resources. While the next open space planning process will work to solidify the Town’s understanding of our Article 97 properties, the Conservation Commission believes that in light of the longstanding history and treatment of Larz Anderson Park, it is important for Town Meeting to confirm in Article 6 that the portion of the park designated in that article is “land dedicated for public park purposes under MGL c. 45, sec. 3.”

Sincerely,



Marcus Quigley
Conservation Commission Chair

ARTICLE 6

SIXTH ARTICLE

Submitted by: Parks and Recreation Commission

AUTHORIZATION TO FILE AND ACCEPT GRANTS WITH AND FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS FOR THE PARKLAND ACQUISITIONS AND RENOVATIONS FOR COMMUNITIES GRANT PROGRAM FOR IMPROVEMENTS TO LARZ ANDERSON PARK

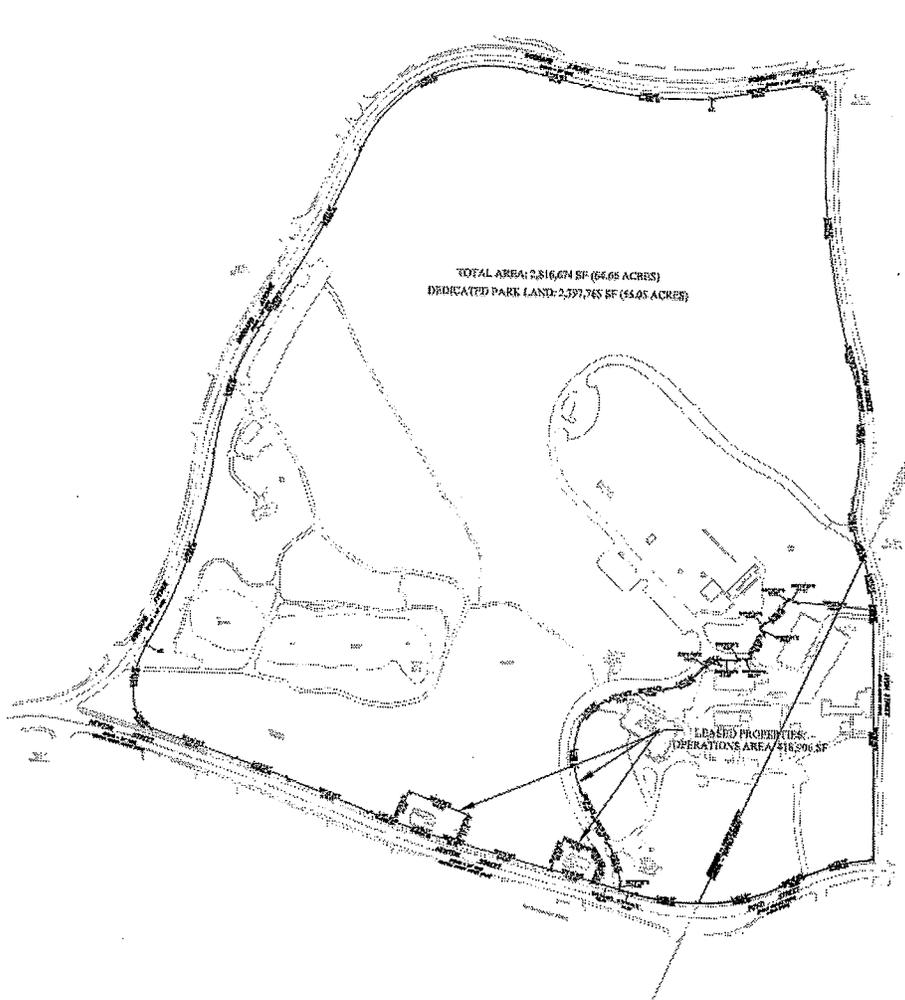
Clause 1. To see if the Town will vote to dedicate so much of the land known as Larz Anderson Park, consisting of approximately 55.05 acres of active recreational park land, as shown on the plan depicted below and on file with the Town Clerk entitled "Plan of Land Showing Dedicated Parkland at Larz Anderson Park" for public park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 3, and authorize said land to be under the care, custody, management and control of the Town's Department of Public Works, Parks and Open Space Division.

Clause 2. To see if the Town will further authorize the Commissioner of Public Works or designee, with approval of the Board of Selectmen, to file on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Parkland Acquisitions and Renovations for Communities (PARC) Grant Program, and/or any other grant applications as may be consistent with the scope and purposes of Clause 1 of this Article.

Clause 3. To see if the Town will further authorize the Commissioner of Public Works or designee, with the approval of the Board of Selectmen, to enter into all agreements and execute any and all instruments as may be necessary to effect the renovations to said Park as may be designated under Clause 1 of this Article.

Clause 4. To see if the Town will vote to appropriate \$400,000, or any other sum, for improvements to said Park including all costs incidental or related thereto; and to determine whether this appropriation shall be raised by borrowing or otherwise, provided that any amount borrowed shall be repaid by the amount of any aid received.

*A vote of No Action Was
Passed Unanimously*



Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Funding for the Town's non-reimbursable portion of this project to "raise and appropriate \$660,000, to be expended under the direction of the Commissioner of Public Works, for costs associated with improvements to the roadways and pathways at Larz Anderson Park" was approved by a vote of Town Meeting on Tuesday, May 28, 2013. In order for the Town to be eligible for the reimbursable PARC grant program, Town Meeting must appropriate the maximum value of the grant (\$400,000 to be expended and reimbursed) and protect the investment in park land improved.

PROJECT DESCRIPTION:

Larz Anderson Park has the distinction of being not only the largest park in Brookline at over 65 acres, but also one of the most historically and culturally significant landscapes. The site is the former estate of Larz Anderson and his wife Isabel Weld Perkins Anderson, an elite social couple of the early 20th century, and is listed on both the

National and State Registers of Historic Places. Larz Anderson Park is the flagship park of the Town and is free and open to the public year round. The park is a regional destination with over 180 parking spots and thousands of visitors annually, of all ages and abilities, who enjoy it for both active and passive recreation. Highlights and park features include walking paths, athletic fields, play equipment, picnic areas and a picnic shelter with grills, an open air ice skating rink, restrooms, parking, community gardens, as well as a privately run auto museum. The landscape consists of rolling hills, lawn, meadow, woodlands, significant trees, and a pond with an attractive seasonal fountain. Visitors to the park can enjoy outstanding views of the Boston skyline from the Top of the Hill area of the park and over the course of the year, people can be found flying kites, sunbathing, walking dogs, and sledding on the sweeping slopes below. Tucked into the landscape are many architecturally and historically significant structures, including temples, bridges, pergolas, gazebos, sculptures, walls, and decorative fences all influenced by the Anderson's extensive travels.

The Larz Anderson Park Project will repair, restore and/or replace critical access and infrastructure elements in the park including key multimodal circulation features and structures such as pedestrian paths, stairs, historic bridges, parking, a carriage road, lighting, and drainage. Many visitors enjoy walking in the park, especially around the picturesque Larz Lagoon, with its 1462 linear feet of bordering water resource and historic tempietto, fondly known as the Temple of Love, and adjacent weeping willows. Water-based recreation at the park also involves other more passive pursuits such as bird watching, relaxing and enjoying popular picnic areas next to the water, all of which rely on park pathways for circulation and access. The pathways, stairs and bridges in this area are currently in poor condition due to their age and amount of use. Additional pathways and stairs in the park that connect to the athletic fields, the auto museum and the carriage road, are also in poor condition with crumbling edges and uneven surfaces. In addition to making these much-needed repairs, this project will add a perimeter path around the park, as recommended in the Larz Anderson Master Plan, to connect destinations and to create a long loop path. The addition of the loop path is a significant recreational enhancement that will improve access, enjoyment, visitation, and health and wellness opportunities within the park.

The carriage road through the park is critical for overall access, given the size and topography of the park, particularly for elderly and handicapped persons. In addition to repair/reconstruction of the carriage road, drainage infrastructure and erosion will be addressed. Lighting will be added or replaced at existing entrances for improved visibility, safety and to better welcome and direct visitors, whether pedestrians or those arriving by vehicle or bicycle. Improved safety lighting is necessary to support evening recreational uses at the park, such as the outdoor skating rink and public events hosted by the Auto Museum. Finally, the comfort station will be upgraded with some structural, accessibility, ventilation and facade improvements. Completion of these critical infrastructure and environmental improvements will enhance the recreational benefits of the park, provide for greater inclusion, improve health and wellness opportunities, address significant access and safety needs, and better serve all park visitors.

SELECTMEN'S RECOMMENDATION

A report and recommendation by the Board of Selectmen will be provided in the Supplemental Mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 6 seeks to (1) modify current use restrictions and to permanently limit 55 acres of Larz Anderson Park for public park use and (2) obtain \$400,000 in Town funds to enable the Town to receive up to \$400,000 in state funds for park improvements. (This amount would be added to the \$660,000 appropriated by Town Meeting for FY 2014.)

By a vote of 14-6, the Advisory Committee recommends NO ACTION on Article 6.

BACKGROUND:

Article 6

Article 6 is sponsored by the Park and Recreation Commission. It seeks Town Meeting's approval to:

1. Dedicate approximately 55.05 acres of the approximately 66.7 acre park for public park purposes under the provisions of MGL Chapter 45, Section 3;
2. Authorize the Commissioner of Public Works, with the approval of the Board of Selectmen, to file the necessary paperwork to be eligible for grants and/or reimbursements from the Commonwealth's Parkland Acquisitions and Renovations for Communities (formerly the Urban Self-Help) grant program;
3. Authorize the Commissioner of Public Works, with the approval of the Board of Selectmen, to enter into agreements to improve the park; and
4. Appropriate \$400,000 or any other sum, for improvements to the park, through borrowing or some other mechanism, with the provision that this amount or any other amount will be reimbursed by the PARC grant. (The maximum PARC grant is \$400,000; funds for the PARC program become available approximately every two years).

In addition to "front-ending" the state funds, the PARC program's eligibility criteria include acceptance by the Town of MGL Chapter 45, Section 3 which states in part: *A city or town may take and hold in trust or otherwise any grant, gift, bequest or devise, made for the purpose of laying out or improving any parks therein.*

Current Restrictions

Isabel Anderson bequeathed the land and buildings on her estate to the Town in 1948. The bequest contained the proviso that the use of the land and buildings be limited to use for public recreational or educational or charitable purposes. Town Meeting accepted the gift in 1949. The property, which includes land in both Brookline and Boston, is approximately 66.7 acres in size. In 1985, the park and its buildings were listed in the

National and State Registers of Historic Places. In addition, in 1998, the Town gave to the Massachusetts Historical Commission a preservation restriction (in perpetuity) for an area at the top of the hill, including the skating rink and surrounding open space.

Master Plan, Open Space Plan, and Recent and Projected Funding

Walker-Kluesing Design Group completed a Master Plan for the park in 1989; a Horticulture Master Plan followed in 2001. Since the 1990s, there have been a number of major park improvement projects that have restored or preserved key historical features and have repaired or replaced parts of the park's infrastructure.

Preserving and enhancing the environment is one of the main goals of the Parks, Open Space, and Recreation Strategic Master Plan (2006), and safeguarding Larz Anderson Park is part of that strategy. Moreover, as the Town's largest park, it represents an important component in the Conservation Commission's Open Space Plan, currently being updated.

In 2013 Town Meeting approved \$660,000 to continue such work and fund drainage improvements, reconstruction of the access road, and repair of some of the pathways and stairs within the park. With potential state funds of up to \$400,000 comes the opportunity to repair, restore, or upgrade parking areas, lighting, bridges and the comfort station, and to add a walking path along the park's perimeter. The \$660,000 represents the non-reimbursable portion of the current park improvements project, but also represents the match for PARC funds, should they be forthcoming. The current CIP has an additional \$4.9 million scheduled for improvements to the park through FY 2021 and \$3.5 million thereafter.

Article 97 and Chapter 45, Section 3

According to Town Counsel, recent case law has brought into question previous assumptions about the level of protection afforded to parks under Article 97. It appears that it is now necessary to specifically and formally dedicate parks to public park purposes to ensure the level of protection upon which we have previously relied. Acceptance of Chapter 45, Section 3 fulfills that requirement. At the same time, acceptance of Chapter 45, Section 3 would impose limits on future use of the approximately 55 acres, which while legal, would be more restrictive than those specified in the bequest.

DISCUSSION:

The Advisory Committee appreciates the time, effort, and thought that are behind Article 6's submission to Town Meeting and commends the Director of Parks and Open Space as well as the Park and Recreation Commission for their stewardship of Larz Anderson as well as our other public open space assets. The Committee recognizes that the grant application was submitted in July, and that the response from the Executive Office of Energy and Environmental Affairs is expected in one to three months.

During its discussion, the Committee was reminded that once any park is protected under Article 97, the bar to use the land for some other purpose is high and includes a unanimous vote of approval from both the Conservation and Park Commissions; a 2/3

vote of Town Meeting; a 2/3 vote of the State Legislature; and a designated replacement parcel.

PARC Funding

The Committee was also informed that any limitation on the scope of the project and reduction of the acreage under protection were not feasible since it was in the interest of the EOEEA to protect parklands within the Commonwealth for future use. If the scope of the project were limited, no grant monies could be used for any project outside the protected area, such as the perimeter path. Accordingly, if the article were to fail, the Town would forego up to \$400,000 of State funding.

Public Support

Public passion for and commitment to Larz Anderson Park was well documented in the Capital Subcommittee's Report on Article 6, which can be viewed on the Town website: (<http://www.brooklinema.gov/DocumentCenter/View/8239>).

At the Subcommittee's public hearings, Larz Anderson was described as the "flagship" park of our system and a place to which the public can go when they want to escape the hustle and bustle of everyday life. It was also noted that as Brookline becomes more developed, open space becomes more important, and that consequently it was critical to conserve what we already have.

Finally, it was noted that there would still be approximately 10 acres of the park that would remain subject to the existing use restrictions. It was suggested that this amount of land could suffice for other town needs such as a second high school.

Advisory Committee Observations

In response, several Advisory Committee members noted that Larz Anderson is not easy to visit without a car or the ability to bike to Newton Street. It was also noted that the Town has added two new parks to its inventory: Skyline Park with 15.15 acres (opened in 2008) and Fisher Hill Park with 4.8 acres (to be opened in the near future).

Advisory Committee Concerns

Furthermore, a large majority of Committee members expressed concerns about the timing of the grant request, and more specifically, the requirement to adopt Chapter 45, Section 3, in light of three other studies that are either recently completed or soon to be undertaken: the Ninth K-8 School Study, the High School Expansion Study, and the Town-wide Strategic Assets Review. Should Chapter 45, Section 3 be adopted, the Town would be relinquishing land use options it might otherwise need to exercise without both a thorough discussion with the community and a careful examination of unintended consequences.

Additionally, members were loath to "take Larz Anderson off the table" when there may well be other properties that other advocates would also like removed from possible consideration for different or for multi use purposes. Giving Larz Anderson Park essentially blanket protection would be contrary to sensible, and fair, planning principles and practices. This was stated as being especially true given the facts that there is no

guarantee that Brookline would actually get the grant or that the grant would be in the amount being sought.

Moreover, other members noted, the Town is at a crossroads and it is crucial to those who live here now and those who will move here in future years that the community – “school” and “town” - work together to address the challenges that we face, including financial pressures, loss of socio-economic diversity, and space needs. Much has changed during the 26 years since the publication of the park’s Master Plan. In that regard, even at the maximum amount of \$400,000, the grant was viewed as being relatively small considering the potential loss of flexibility and the cost of future budgeted renovations.

With regard to the 10 acres, a portion of which is located in the City of Boston, that would remain under the existing use restrictions, it was noted that this land was encumbered by town buildings and existing long-term leases to third parties. Further, because it has not been evaluated in sufficient depth by any professional entity to determine its viability as a possible location for any sort of alternative use, it was suggested that it was premature to conclude that it would be appropriate or adequate for development as anything, including a major school facility. Indeed, some members suggested, that type of analysis is exactly what the strategic asset plan would contemplate.

(NB: On October 22nd, after the Advisory Committee’s vote, a presentation by Civic Moxie identified a portion of Larz Anderson Park as a potential site for a ninth school. In order to locate the building within the Brookline portion of the 10 acres that would be excluded from Chapter 45, Section 3 dedication, existing Town facilities would need to be relocated in order for the school not to be “shoehorned” into the site. The Board of Selectmen and the School Committee requested further exploration of this recommendation.)

Though virtually all Advisory Committee members stated their hope that town and school needs could be addressed without having to encroach on Larz Anderson Park, the majority of members stressed that as town-wide planning gets underway, it is important, and prudent, to keep options open and not change the existing use limitations on the park before both larger planning needs are assessed and more public discourse than just a Town Meeting debate has occurred.

RECOMMENDATION:

The Advisory Committee recommends NO ACTION on Article 6 by a vote of 14 to 6.

ARTICLE 7

SEVENTH ARTICLE

Submitted by: Patricia Connors, TMM3 and Cornelia H.J. van der Ziel, TMM15

To see if the Town will accept the provisions of Section 148C of Chapter 149 of the Massachusetts General Laws, the Earned Sick Time Law, pursuant to Article CXV of the Amendments to the Constitution of the Commonwealth.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The town of Brookline recognizes the importance of providing earned sick time to employees in order to safeguard the public health, keep the cost of health care down, and allow workers to take care of themselves and their families. Voters approved ballot initiative Question 4 entitled, "Earned Sick Time for Employees," on November 4th, 2014, providing that employees may earn and use sick time if they must be absent from work for certain reasons. Brookline voters approved Question 4 by a vote of 72% to 24% with 4% blanks. This law allows employees to use earned sick time to look after their own medical needs or the needs of family members, or to address issues related to domestic violence. It requires an employer of eleven or more employees to provide a minimum of one hour of earned paid sick time for every thirty hours worked by an employee up to 40 hours of earned paid sick time in a calendar year. Workers employed by a town are not included under this law unless Town Meeting votes to accept the law as required by Article CXV of the Amendments to the Constitution of the Commonwealth. To learn more about this law, go to:

<http://www.mass.gov/ago/docs/government/earned-sick-time-law.pdf>

MOTION TO BE OFFERED BY THE PETITIONERS

VOTED: That the Town accept the provisions of Section 148C of Chapter 149 of the Massachusetts General Laws, the Earned Sick Time Law, pursuant to Article CXV of the Amendments to the Constitution of the Commonwealth.

Explanation

Approved by Massachusetts voters in 2014, the Earned Sick Time Law provides a fair, just and inclusive method for providing earned sick time to employees, many of whom were previously unable to take time off for their own illnesses or for their sick children or

*Defeated by an Electronic Petition
Voted of 64 Yes, 142 No and 5 Abstentions*

parents. Additionally, expected employer benefits include a reduction of worker turnover and of illnesses spreading throughout the workplace.

Recently, the town adopted a new sick leave policy for its “non-benefited positions.” These part-time, seasonal and temporary employees previously had no sick time. However, some significant differences exist between the state law and the town policy:

- 1) The state law permits employees to use up to 40 hours of accrued sick time per year for well visits/preventative medical care for themselves or immediate family members. The town policy prohibits this use of sick time. Rather, the formerly “non-benefited” employees may use merely up to 8 hours per year of personal time for such visits;
- 2) The state law allows employees (with some exceptions) to use sick time in hourly increments; the town policy allows only half-day increments;
- 3) The state law would apply both to “town” and “school” employees; the town policy applies only to “town” employees; and,
- 4) The state law requires employers to keep records of employees’ sick time and to post notices about employees’ sick time rights. It prohibits employers from retaliating against employees for using sick time. It grants the Attorney General the authority to go to court to halt a violation and the ability to issue civil citations against employers. The town policy affords no such employee protections.

Straightforward and municipal employer-friendly in its approach, the Earned Sick Time Law and its regulations offer employers a fair and uniform system of providing this basic employee right.

SELECTMEN’S RECOMMENDATION

On November 4, 2014, Massachusetts voters approved Ballot Question 4, MA Earned Sick Leave Law, with 75% of Brookline voters voting in favor of the law. The law, which mandates employers to provide earned sick time to employees, applies to both private and public employers. However, cities and towns are considered “employers” for the purpose of the law only if the municipal legislative body votes to accept the law. The Sick Leave Law, MGL as ch. 149, sec. 148 C was effective July 1, 2015 and the Attorney General’s Office published final regulations on June 19, 2015 (940 CMR 33.00).

The Human Resources Director and Town Administrator have considered the impact of this law analyzing our various employee groups, current practices, procedures and union contracts. They also considered the interests of the Brookline citizens who strongly supported this law and need for all employees to received earned, paid sick time. Their goal was to find a way to meet the intent of the new state law within the context of long established practices for our unionized environment which when considered in their

entirety exceed the intent of the new law. They wanted the work rules for the non-unionized workforce to be consistent with our unionized workforce.

Following their analysis, the HR Director and Town Administrator recommended to the Human Resources Board, on September 8, 2015, and the Board of Selectmen, on September 17, 2015, that the majority of the law's provisions be incorporated into the current Classification and Pay Plan (CPP) for those employees who do not currently receive any paid leave benefits. Using the Earned Sick Leave Law as a model, the CPP expands paid sick time for two groups of employees do not currently receive any paid leave benefits due to the limited nature of their employment:

- Less than Half-Time employees, who regularly work less than 18.5 hours per week,
- Temporary/Seasonal employees

(Part-time employees working more than 18.5 hours/week, who are not covered by a union, already receive pro-rated sick, vacation, personal days and holidays.)

To ensure consistency with the Town's established work rules and procedures, rules that have been bargained extensively with the various unions, the provisions of the law has been tweaked in the CPP to ensure efficiency by treating the non-benefited group within the same work rules as union employees. Therefore, the CPP provides these non-benefited employees with paid personal as well as paid sick leave. Although adding personal time will be a more costly provision (virtually every employee will use personal, but not all employees will use sick leave), it will ensure consistent work rules, which the HR Board believes is worth the costs of this new initiative (\$3,200-\$5000 extra per annum after the first year).

As approved by the HR Board, the Classification and Pay Plan has been amended to provide part-time employees <18.5 hrs/week, seasonal and temporary employees, working more than 90 days as follows:

- Employees accrue 1 hour for every 30 actually worked (applied across accrual tables)
- Employees accrue paid leave time to a cap of 40 hours;
- Permit the carryover of unused sick leave into subsequent years
- Permit the use of sick leave for Domestic Violence leave
- Permit 8 hours of personal leave each year (to cover routine well doctor's visits and preventive care consistent with provisions in the Town's collective bargaining agreements)
- Exempt election workers and student interns from such coverage
- Allow usage of sick leave in increments of no less than ½ work of the employee's work day or as otherwise allowed by the Department.

The Board of Selectmen unanimously voted to adopt the amendments to the 2015 Class and Pay Plan on September 17, 2015 because we believe it was good policy to provide formerly non-benefited employees with earned, paid sick time in a manner consistent

with longstanding practices enjoyed by our unioned workforce. The Board also believed it was important to provide earned sick leave to all Town employees as it was the clear view of Brookline voters that all employees, regardless of their status, received paid sick leave.

The Board of Selectmen unanimously voted to recommend “No Action” as we believed the amendment to the 2015 CPP, coupled with our various collective bargaining agreements, meets, if not exceeds, the mandate of the state. It provides important new benefits to temporary, seasonal and Less than Half-time employees; and, does so in a manner that is consistent with the current sick leave provisions secured by other unionized employees.

Additionally, we recommend “No Action” because, if adopted by Town Meeting, MGL ch. 149, sec. 148 C will impact each of our collective bargaining agreements as the law would override many contractual provisions that have been bargained over many decades and are unique to each of the bargaining units, from School Traffic Supervisors, to our Engineers to our Police and Fire. Both the Town and the unions have unique needs that have been addressed and fine-tuned over decades to the mutual benefit of the parties. Adopting the state sick leave law will negatively impact our labor relations because the bargained rules and procedures will be disrupted. Therefore, for unionized employees, we believe it is critical that both the Town and Schools maintain the integrity of leave benefits in the collective bargaining agreements.

The following matters are addressed by the law and by our various collective bargaining agreements, each with its own nuanced differences.

- How is “family member” defined
- How much notice is required before sick time is used
- When a sick note is required, what information must it contain
- In what increments can sick leave be taken
- How do you treat non-sick employees for mandatory overtime.
- When is a fitness for duty exam required and does it matter if the employee is in a safety-sensitive or non-safety-sensitive position.

These issues have all been addressed in the union/management relationship, paid for by the Town through years of collective bargaining agreements and will be disrupted, and likely litigated, if the law is adopted.

For example, it is unclear how the rights provided by the law would affect our public safety departments, Fire, Police and DPW; departments who must sometimes mandate overtime in public safety emergencies or situations, e.g., marathon day, hurricanes, blizzards. Although public emergencies are referenced in the law, the regulations are not specific, at all. This area will likely be challenged by the unions if the law is adopted if an employee seeks to exercise his right to use his state mandated sick time consistent with the law, rather than the bargained rules of the workplace. Further, as the law is only several months old, there is no established precedent from the private sector experience. The application of the Earned Sick Leave law to employees who are covered by

collective bargaining agreements is fraught with challenges that need to be studied further.

With regard to unions, the more appropriate vehicle for changes to the leave provisions of the collective bargaining agreements is at the bargaining table where changes are carefully reviewed, discussed and negotiated by both sides. We are about to start bargaining with the majority of our unions providing an excellent time to review these matters with each of the unions who bring their own interests and priorities.

Again, the Board of Selectmen, the HR Board, the Town Administrator and the Human Resources Director have taken the new state law mandate very seriously and have instituted paid sick leave for those part-time and temporary employees who formerly did not receive sick time. No other municipality in the Commonwealth, that we are aware of, has instituted similar provisions for this group of employees and certainly not as quickly. The new law has yet to be tested and challenged and as such we strongly urge Town Meeting to vote "No Action" and to maintain the integrity of the Town and Schools' labor relations.

By a vote of 5-0 taken on September 29, 2015 the Board recommends NO ACTION on Article 7.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 7 seeks to have the Town accept the provisions of the recently passed state law, Section 148C of Chapter 149 of the Massachusetts General Laws, which is known as the Earned Sick Time Law. The law was overwhelmingly endorsed by Brookline voters as part of a November 2014 statewide ballot question. The law as enacted does not cover employees of municipalities unless it is endorsed by the municipality, through a vote, which in Brookline would need to be a vote of Town Meeting.

The majority of the Advisory Committee felt that the Town now provides benefits as close to the law as possible while still being consistent with collective bargaining agreements and maintaining the general employment policies of the Town. The Advisory Committee voted for NO ACTION by a vote of 13 in favor, 1 opposed, and 5 abstentions.

BACKGROUND:

The petitioners feel that the new law offers both a significant benefit, especially to part time workers in the Town who are not covered by collective bargaining agreements, and significant protections to workers, because it includes an appeals process through the Attorney General's office. They also stated that the law's flexibility in allowing the accrued sick time to be used for "well care" (doctor's appointments for check-ups and pharmacy visits, etc.) would be especially valuable for those workers who have care-giver responsibilities for multiple generations. It requires an employer of eleven or more employees to provide a minimum of one hour of earned paid sick time for every thirty hours worked by an employee up to 40 hours of earned paid sick time in a calendar year.

DISCUSSION:

Sandra Debow, director of the Town's Human Resources Department, pointed out that in response to the passage of the law the Town had updated its Classification and Pay Plan to include earned sick time for part-time, temporary, and seasonal employees and that the new policies would cover all Town workers except poll workers and student interns. The new policy, which is on page 24 of the Classification and Pay Plan dated September, 2015, is included in the appendix below.

Ms. Debow expressed reservations about the law because it would supersede the work-rules that the Town has established through its collective bargaining agreements and established Town policies. Differences between the Town's present policies and the policies outlined in the new law would include such things as when doctors' notes would be needed, what might constitute an abuse of sick time, and how much sick time can be accrued. This list is intended to give a sense of the difficulties the Town might face if Article 7 passed, but it is not comprehensive.

The petitioners were concerned that the Town would only allow 8 hours of the accrued sick time to be used for well care and that the Town's policy does not cover school employees. Mary Ellen Dunn, the deputy superintendent for administration and finance for the Brookline Public Schools, indicated that the schools were still reviewing their policies with regard to the new law and shared the Town's concerns about the potential impact on collective bargaining agreements.

The Advisory Committee had a general discussion about the potential abuse of sick time, and there was also a discussion about whether the Town's acceptance of the law was time-sensitive. Although Brookline voters voted overwhelmingly in favor of earned sick time for part-time employees and agreed with the concept, details of how this would apply to town employees were not known. If Town Meeting did not vote to accept the law in this Town meeting, could it decide to do so during the Spring Town meeting? It appears that acceptance by the Town is not time-sensitive and Town Meeting could vote to accept the provisions of the law at some future time.

Taking into consideration both the potential impact of accepting the law on the collective bargaining agreements and the fact that the Town now has policies that do provide paid sick time to its part time, seasonal, and temporary employees, the Advisory Committee concluded that the Town should not accept the Massachusetts Earned Sick Time Law.

RECOMMENDATION:

By a vote of 13-1-5, the Advisory Committee recommends NO ACTION on Article 7.

Appendix: The New Brookline Policies on Earned Sick Time

Earned Sick Time

Less than half-time, temporary and seasonal employees shall accrue paid sick leave, no earlier than 90 days following employment, in accordance with the following schedule. For employees who are working an average of or where hired to work a schedule with an average of:

Average Hours/week	Hours earned each calendar year	Accrual rate
Less than Half Time		
5-9 hours per week	10 hours	.83 hours/month
10-15 hours per week	20 hours	1.66 hours/month
16-19 hours per week	30 Hours	2.5 hours/month
Temp Part-time and Full Time		
20-40 hours	40 hours	3.33 hours/month

Cap on Earned Time

Once an employee possesses a bank of 40 hours of unused earned sick time, the employee shall not continue to accrue more hours of earned sick time regardless of the additional hours worked. Once the employee draws down on the bank, below 40 hours the employee may accrue additional hours consistent with this policy.

Carry over

Such hours may be carried over from year to year up to a maximum of 40 hours.

Use of Hours

An employee may use earned sick use for a qualifying purpose in accordance with the rules described herein. In addition, less than half-time, temporary and seasonal employees may also use up to a maximum of 8 hours of the employee's accrued sick time, during each calendar year, as personal time for purposes of:

- professional medical diagnosis or care, or preventative medical care;
- attend a routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of spouse;
- address the psychological, physical or legal effects of domestic violence; or
- travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.

When personal time is used, as described herein, it shall not be regarded as use of sick time for purposes of analyzing sick time abuse. Such personal time is also available for personal matters, consistent with personal time described herein, Section 11, Other Leave.

ARTICLE 8

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

The Advisory Committee has amended its recommended motion under Article 8 to clarify when Town Meeting Members would be required to complete on-line Conflict of Interest Law training.

The language of the previous motion under Article 8—the language included in the petitioner's Warrant Article—may be confusing, because would require Town Meeting Members to complete the on-line Conflict of Interest Law training “within one hundred and twenty (120) days of their election or the effective date of this by-law, whichever occurs first...” Town Meeting Members elected in 2015 and previous years obviously will not be able to complete the training within 120 days of their election.

To clarify the proposed by-law, the Advisory Committee has amended its motion by deleting “within one hundred and twenty (120) days of their election or the effective date of this by-law, whichever occurs first,” and substituting “within one hundred and twenty (120) days after the effective date of this by-law for Town Meeting Members incumbent on that date, and within one hundred and twenty (120) days after their initial election for Town Meeting Members elected subsequent to that date,” as shown below.

Thus Town Meeting Members who are incumbents as of May 1, 2016, will be required to complete the online training within 120 days of that date. Town Meeting Members elected after that date will be required to complete the online training within 120 days of the date of their election. Regardless of when they are elected or re-elected, Town Meeting Members will only be required to receive the training once.

RECOMMENDATION:

By a vote of 16–1–0 the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 8:

VOTED: that the Town will amend the General By-Laws by adding the following Article 2.1.14:

2.1.14 MANDATORY EDUCATIONAL TRAINING FOR TOWN MEETING MEMBERS

All Town Meeting Members shall, within one hundred and twenty (120) days after the effective date of this by-law for Town Meeting Members incumbent on that date, and within one hundred and twenty (120) days after their initial election for Town Meeting Members elected subsequent to that date, complete the on-line Conflict of Interest Law training provided by the State Ethics Commission. In the alternative, Town Meeting

Members may attend an educational training seminar hosted by the Office of Town Counsel. This Article shall not apply to Town Meeting Members who have fulfilled the training requirements set forth in Article 3.20. Town Meeting Members shall not be required to receive such training more than once, unless they are otherwise required to do so as special municipal employees under the provisions of G.L. c. 268A. This by-law shall become effective on May 1, 2016.

Unanimously a Contingent Vote of 190
In Favor; and Opposed

ARTICLE 8

EIGHTH ARTICLE

Submitted by: Janice S. Kahn, TMM15

To see if the Town will amend the General By-Laws by adding the following Article 2.1.14:

2.1.14 MANDATORY EDUCATIONAL TRAINING FOR ALL TOWN MEETING MEMBERS

All Town Meeting Members shall, within one hundred and twenty (120) days of their election or the effective date of this by-law, whichever occurs first, complete the on-line Conflict of Interest Law training provided by the State Ethics Commission. In the alternative, Town Meeting Members may attend an educational training seminar hosted by the Office of Town Counsel. This Article shall not apply to Town Meeting Members who have fulfilled the training requirements set forth in Article 3.20. Town Meeting Members shall not be required to receive such training more than once, unless they are otherwise required to do so as special municipal employees under the provisions of G.L. c. 268A. This by-law shall become effective on May 1, 2016.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This warrant article continues efforts made by Town Meeting over the past ten years for "good government" and greater transparency. Modeled after Article 3.20 (Mandatory Educational Training For All Elected And Appointed Officials) of the Town's By-laws, Article 2.1.14 (Mandatory Educational Training For All Town Meeting Members) would require all Town Meeting Members to take an educational training on conflict of interest law either on-line or at an educational training seminar hosted by the Office of Town Counsel. This requirement would need to be fulfilled just once during a Town Meeting Member's tenure; and all elected and appointed officials who have met the training requirements under Article 3.20 will not need to take the training again.

The on-line training provided by the State Ethics Commission takes about an hour to complete and in an introductory slide notes: "The conflict of interest law serves the public interest by promoting integrity and confidence in public service." For town meeting, the training would encourage town meeting members to disclose outside influences that might impair their objectivity before addressing the legislative body.

Why mandatory training for Town Meeting Members? In Brookline's representative town meeting form of government Town Meeting Members, during warrant article debates, often look to their colleagues who have particular expertise to help provide a clearer understanding of the issues. Disclosure of any conflicts of interest will provide greater transparency and set the stage for an honest discussion of the issues involved by providing a context for a speaker's comments.

This bylaw would be for educational purposes only, to raise the bar for ethical behavioral expectations at Town Meeting. As a side benefit, it would also serve to inform Town Meeting Members who may in the future seek to be appointed to a board or commission in the Town, the legal requirements of the conflict of interest law which are applied to special municipal employees.

The Town Meeting Members Handbook (p. 14) discusses ethical considerations that Town Meeting Members should be aware of when speaking at Town Meeting: "...under well recognized principles of ethics, any person should, prior to addressing Town Meeting, disclose any material economic interest that he or she or any member of his or her immediate family or any close business associate has in the particular matter under consideration. Similarly, any person who is employed in any capacity, such as attorney, architect, broker, etc., by another interested in the Article under discussion should disclose that relationship before speaking."

Approximately 20% of Town Meeting Members currently serve on an appointed board or commission and are subject to the State conflict of interest law as "special municipal employees". They are also required (with certain exemptions) by Town statute, to attend an educational training seminar hosted by the Office of Town Counsel or meet with Town Counsel or a member of Town Counsel's staff to receive the information and training. That by-law requires training in both Conflict of Interest Law and the Open Meeting Law. Article 2.1.14 would require educational training only on Conflict of Interest Law and would be fulfilled by completing an on-line training available on the State Ethics Commission website <http://www.mass.gov/ethics/>.

The fact that Chapter 268A of Massachusetts General Laws exempts Town Meeting Members from the provisions of conflict of interest law because of the special status of Town Meeting Members as elected voters rather than elected officials (unless appointed to a board or commission), should not deter Brookline Town Meeting from approving this warrant article. Brookline Town Meeting has previously passed legislation that is not required by State statute and may in fact foreshadow state law. For example, Brookline, often a leader on issues, was first in the Commonwealth to ban smoking in restaurants (this is now State law as well).

In a representative Town Meeting form of government it is essential that Town Meeting Members maintain high ethical standards when engaging in debates on the legislative issues that come before this deliberative body. This amendment to Article 2.1 "Town Meetings" of the Town's General By-laws would affirm the commitment of elected town meeting members to that high standard.

SELECTMEN'S RECOMMENDATION

Article 8 is a petitioned article that proposes a requirement for Town Meeting Members to complete the on-line Conflict of Interest Law training provided by the State Ethics Commission within 120 days of their election or the effective date of this by-law. In the alternative, Town Meeting Members may attend an educational training seminar hosted by the Office of Town Counsel.

In the past, members of the Board of Selectmen have completed the training and have found it to be informative. Although the State Ethics Law exempts Town Meeting Members, this change would allow Members to learn about the state ethics regulations. For many newly elected Town Meeting Members, this is their first engagement with the legislative side of government and the training would introduce them to the rules related to ethics and conflict of interest. The test is short and does not present a large burden.

By a vote of 5-0 taken on October 27, 2015, the Board recommends FAVORABLE ACTION on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 8 would require Town Meeting members to receive training in the Commonwealth's Conflict Of Interest Law. The Advisory Committee felt that Town Meeting members should be familiar with this law so that they would be aware of their own potential conflicts of interest and would understand how the law applies to others. The Committee thus voted 19-1-1 to recommend FAVORABLE ACTION, with one minor amendment.

BACKGROUND:

Members of Town boards and commissions are considered as "special municipal employees" under Mass. G.L. c. 268A and are required to complete training in the State's Conflict Of Interest Law. Under Brookline's By-law Article 3.20, they are also required to complete training in the Open Meeting Law. Town meeting members who are not members of boards or commissions are deemed to be elected voters, so they are not required to comply with the Conflict Of Interest Law.

DISCUSSION:

Article 8 would require Town Meeting members who are not subject the above mandates to take training in the Conflict Of Interest Law, either by attending the seminar offered by Town Counsel or by taking online the course offered by the Attorney General's office. No person currently required to attend training in the Open Meeting Law under By-law Article 3.20 would be exempted from that requirement by the proposed new article, and those "special municipal employees" would additionally be required under Mass. G.L. c. 268A to complete the online training provided by the State Ethics Commission every two

years.

Online training takes approximately 1-1/2 hours if the viewer goes through all of the video clips, although it is possible to significantly reduce the time by simply going to the list of questions that need to be answered.

The names of those who complete the course offered by Town Counsel presumably would be reported to the Town Clerk. Those who complete the online course can print a certificate of completion, but the proposed by-law would not require them to produce their certificates or to report their certification status to the Town Clerk. The proposed Article 8 does not include any penalty for failure to complete the training.

Article 8 imposes a very modest requirement on Town Meeting Members who are not already required to take this type of training by virtue of their positions on Town boards and /or commissions. If there is any quarrel with the concept, it may be that the requirement is too modest. Town Counsel provided input via email to the effect that she believes that the wording of Article 8 was in compliance with its purpose, and stated that providing training would not be a burden on the resources of her office.

The Advisory Committee made one minor amendment: "All" was deleted prior to "Town Meeting members" in the title of the new Section 2.1.14.

RECOMMENDATION:

The Advisory Committee by a vote of 19-1-1 recommends FAVORABLE ACTION on the following motion under Article 8:

VOTED: that the Town will amend the General By-Laws by adding the following Article 2.1.14:

2.1.14 MANDATORY EDUCATIONAL TRAINING FOR TOWN MEETING MEMBERS

All Town Meeting Members shall, within one hundred and twenty (120) days of their election or the effective date of this by-law, whichever occurs first, complete the on-line Conflict of Interest Law training provided by the State Ethics Commission. In the alternative, Town Meeting Members may attend an educational training seminar hosted by the Office of Town Counsel. This Article shall not apply to Town Meeting Members who have fulfilled the training requirements set forth in Article 3.20. Town Meeting Members shall not be required to receive such training more than once, unless they are otherwise required to do so as special municipal employees under the provisions of G.L. c. 268A. This by-law shall become effective on May 1, 2016.

ARTICLE 9

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

CORRECTION TO ADVISORY COMMITTEE REPORT ON ARTICLE 9

The following motion is the Advisory Committee's recommendation under Article 9. An incorrect motion was inadvertently included in the Combined Reports. Changes appear in italics, although the language in the bylaw would not be italicized.

VOTED: That the Town will amend Article 3.17 of the Town's General Bylaws, entitled Public Works, Department Organization, as follows (new language is underlined):

ARTICLE 3.17
PUBLIC WORKS DEPARTMENT

SECTION 3.17.1 ORGANIZATION

There shall be a Department of Public Works in accordance with Chapter 32 of the Acts of 1981, as amended. The Department has the following divisions:

- Engineering
- Highway/Sanitation
- Parks, Forestry, Cemetery & Conservation
- Transportation
- Water and Sewer

SECTION 3.17.2 PROCEDURES FOR FIXING WATER AND SEWER RATES

The Board of Selectmen shall conduct a public hearing annually, giving notice in accordance with the provisions of M.G.L. c. 30A, s. 20. At least 21 days before such a hearing, the Board shall make known to town meeting members and the general public estimates of any proposed changes for the coming fiscal year to any such water and sewer fees, charges, and rates, in order to satisfy the requirements of this bylaw. The estimated changes shall be based on best available information using the most recent available preliminary MWRA water and sewer assessments. The Board of Selectmen shall distribute to all town meeting members and make available to the public an annual report on the operations of the Water and Sewer Division of the Department of Public Works. The report shall enumerate the estimated differential impact of the proposed fees on costs to consumers, as determined by the commissioner of public works.

Passed by a unanimous vote

ARTICLE 9

NINETH ARTICLE

Submitted by: David Lescohier & Ernest Frey

To see if the Town will amend Article 3.17 of the Town's General Bylaws, entitled Public Works, Department Organization, as follows (new language is underlined):

ARTICLE 3.17
PUBLIC WORKS DEPARTMENT

SECTION 3.17.1 ORGANIZATION

There shall be a Department of Public Works in accordance with Chapter 32 of the Acts of 1981, as amended. The Department has the following divisions:

Engineering

Highway/Sanitation

Parks, Forestry, Cemetery & Conservation

Transportation

Water and Sewer

SECTION 3.17.2 PROCEDURES FOR FIXING WATER AND SEWER RATES

Prior to fixing the rates for the use of the Town's water supply and the provision of sewer services, the Board of Selectmen shall conduct a public hearing, giving notice in accordance with the provisions of M.G.L. c. 30A, s. 20. At least 30 days before such a hearing, the Board shall make known to town meeting members and the general public estimates of any proposed changes to any such fees, charges, rates, or payments of any description to the Water and Sewer Enterprise Fund, in order to satisfy the requirements of this bylaw. The estimated changes shall be based on best available information using the most recent available preliminary MWRA water and sewer assessments. The Board of Selectmen shall distribute to all town meeting members and make available to the public an annual report on the performance of the Water and Sewer Division of the Department of Public Works. The report shall enumerate the estimated differential impact of the proposed fees on cost per household by representative levels of usage and number of units in buildings over a range encompassing typical lower and higher usage in Brookline and from single-family to a number of units that is representative of larger buildings in Brookline, as determined by the commissioner of public works.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Article will provide increased openness to Town Meeting Members and citizens of Brookline by requiring a Public Hearing in conjunction with the annual review of the Water and Sewer Rates proposed to the Board of Selectmen by the Water and Sewer Division of the Department of Public Works.

For most households, the Water and Sewer Bill is second only to the Property Tax Bill that is payable to the Town of Brookline. But, usually the first time that residents learn about a rate increase is when they receive their Water & Sewer bill in late summer or early fall, after the fiscal year rates have already been approved by the Board of Selectmen. By then, it is too late to register any meaningful reaction to the rates.

Water and Sewer Charge Comparisons				
	2013	2014	2015	2016
Water and Sewer Charges	\$25,850,955	\$25,910,938	\$26,438,588	\$27,877,905
Water and Sewer Revenue Increase		0.23%	2.04%	5.44%
Property Tax Revenue	\$170,137,612	\$175,738,902	\$182,239,292	\$188,609,198
Percent Water and Sewer Compared to Property Tax	15.19%	14.74%	14.51%	14.78%

Passing this warrant article will give early notice of rate changes to the general public, so that timely information is available in order that informed comments may be registered with the Selectmen or the Water and Sewer Division, as desired.

The current practice is for the Director of the Water and Sewer Division to appear before the Board of Selectmen in a regular meeting just prior to the beginning of the Fiscal Year for which the rates are to be effective. Currently, public comment may be accepted by the Chair, but it is not required.

		Water and Sewer Rate Structure			
Block Rates		2013	2014	2015	2016
1 st 7hcf/quarter		\$5.20	\$5.40	\$5.50	\$5.75
Above 7hcf/quarter		\$12.50	\$12.75	\$12.90	\$13.45
Water service only (irrigation)		\$5.00	\$5.15	\$5.25	\$5.50
Base Charge/yr (meter size)	Number of Meters (as of approx. 2013)				
.625	6,451	\$200	\$200	\$200	\$240
.75	1,656	\$240	\$240	\$240	\$280
1	1,516	\$320	\$320	\$320	\$360
1.5	503	\$480	\$480	\$480	\$520
2	207	\$640	\$640	\$640	\$680
3	48	\$960	\$960	\$960	\$1,000
4	28	\$1,280	\$1,280	\$1,280	\$1,320
Water service only (irrigation)	1,672	\$20	\$20	\$20	\$40
(One hcf equals 748.052 gallons.)					

The water and sewer rate structure is based on both the amount of water used and the size of the meter between the household to the water mains. The first 7 hundred cubic feet (hcf) in each quarter is at a lower rate. The use above 7 hcf is at a higher rate. Since water used for irrigation does not flow into the sewer, the sewer portion of the rate is omitted, but this rate is a bit lower still.

The base charge is the same whatever the amount of water purchased. This charge, billed quarterly depends on the size of the meter. Since the meter size rarely changes, this portion of the bill is stable and predictable.

The revenue that depends on usage, charged at a lower and then a higher rate, is more volatile since the amount of water that households purchase is somewhat uncertain from year to year and has been trending down.

With this structure, part of the revenue is stable and is expected to match the costs of billing, administration, maintenance, debt service, and management of Brookline's water and sewer infrastructure. The usage-dependent portion, under this structure, aims to match the MWRA assessment for the water delivered to Brookline and the sewage received from Brookline.

History

There was a Public Hearing in June 2011, when the current Block & Base Rate Charge Structure was introduced. All of the public comment recommended that the changes not be implemented because of concern about possible inequity in the proposal. And while the proposal was tweaked (principally in the Base Charges), the concept moved forward by vote of the Selectmen at their next weekly meeting.

This was the only Public Hearing regarding Water & Sewer Rates from 2008 to 2015. The only other meeting at which public comment was accepted by the Selectmen for the annual increase was 2014.

In 2001, Town Meeting converted the water and sewer finances into an enterprise fund, which means that the Town must use only water and sewer revenue to defray water and sewer expense. Expenses fall into three broad categories:

First, relatively stable expenses for staff, related costs to manage and maintain the system, issue bills, and provide customer service.

Second, the planned capital expenses to repair and replace the infrastructure and payment of the associated debt.

Third, usage related MWRA assessments for water delivered to the Town and associated sewage.

In 2011, when the Board of Selectmen changed the water and sewer rate structure, the aim was to accommodate the decreasing water consumption trend which is resulting in decreased revenue. Other concerns were to reduce revenue volatility and achieve an equitable cost distribution among Brookline water and sewer customers. The goals of the new structure were to minimize revenue volatility, equitably distribute cost among customers, introduce block rates, capture revenue from public building water and sewer use, introduce a equitable rate structure for irrigation, and institute a fire service charge for buildings with sprinkler systems.

Other Ideas Related to Setting Water and Sewer Rates

The value to the Town of the public hearing requirement is that receiving a diversity of views and recommendations from interested individuals may assist the Board of Selectmen's decision making. Here are examples of the kind of questions that could be addressed through a public hearing:

Should the goal be to equalize cost amongst housing types for the same volume of water use? Is this the same as fairness?

If we accept that an aim of a base charge is to apportion the cost of maintenance and infrastructure, wouldn't this suggest that multi-family unit owners actually cost the Town

much less on a per capita basis? Shouldn't those unit owners reap some benefits for the infrastructure efficiency of their mode of living?

Is a recurring charge for fire service justified?

What about water conservation? Does the block rate structure encourage conservation in the multi-unit building setting when the over 7hcf level is quickly triggered due to the multiplier effect of all those units?

Has the new rate structure indeed achieved a revenue stream that is more stable, closer to the actual cost? Have revenues exceeded cost?

Reasons for this Warrant Article

- Water is a necessity of life.
- The cost of water and sewer service exposes Brookline residents to a significant expense, averaging approximately one-seventh of the average property tax.
- The Board of Selectmen under state law must establish just and equitable rates and have great discretion in setting Brookline's rates and rate structure. Communities in Massachusetts have developed and adopted many rate structures and strategies.
- An open, public process will encourage ongoing evaluation and public comment about the impact of water and sewer rates and the rate structure on Brookline residents.

Summary and Conclusion

This Warrant Article requires a Public Hearing as part of the rate setting process. At least 30 days prior to that Public Hearing, the proposed rates must be circulated to all Town Meeting Members and to the general public, along with a report to support those rates and provide information on the impact on Brookline residents with various levels of usage in various types of buildings.

The town should aim to adopt a sustainable rate structure for water and sewer that balances the need to collect enough revenue for enterprise fund solvency with equity for Brookline customers. While a perfect structure may not be possible, the current formula, which looked fine in 2013, after four years of experience, appears, as rates increase, to be gradually deviating from the intended equity goal.

At some point, the structure will, we believe, need to be renewed or replaced, either at the initiative of the Water and Sewer Division, directed by the Board of Selectmen, or in response to a Town Meeting warrant article resolution.

The added openness afforded by this bylaw will ensure an informed public process, identifying the extent of any adjustments that may prove necessary to maintain an equitable and sustainable balance of all interests. Further, this process will provide an opportunity to consider diverse views regarding the definition of the equitable distribution of the costs. Looking broadly at the rate structure, it may be that each household paying the same is not the best or only approach.

Additional Explanation: Billing Examples

Here are two examples showing the total of the quarterly water and sewer bills for one year using 2016 rates. The first column is single family household with a 5/8 meter using 100 hcf per year. The second column is a condo with a 5/8 meter. Condos with 5/8 meters average 2.98 households per building, and in this case each household is using 100 hcf per year.

Two Household Bill Calculations: 100 hcf, 5/8 meter			
SF HH, 100 hcf, 5/8 meter	Charge	Condo, 2.98 HH, 100 hcf / HH, 5/8 meter	Charge
Base	\$240	“	\$240
Block 1 (28 x \$5.75)	\$161	“	\$161
Block 2 ((100-28) x \$13.45)	\$968	(298-28) x \$13.45	\$3631
Total (building)	\$1369		\$4033
Total / HH, HH = 1, (\$1369/1)	\$1369	Total / HH, HH = 2.98, (\$4033 / 2.98)	\$1353
Difference: 1% ((1369 - 1353) / 1369) x 100			

**Additional Explanation: An Example of an Impact on Equity Analysis
Methodology- Usage, Building Size, Rates**

Since the adoption of the current rate structure, the Water and Sewer Division has been able to keep revenue and expenses in balance. However, as the charts presented in the Impact Analysis below indicate, the adopted rate structure has limitations with respect to equity for various categories of customers. While equity, defined as each household paying the same for the same quantity of water, was initially quite satisfactory in the first year of implementation, with each increase in rates in following years, equity, using this definition, has decreased. In view of the likelihood that there will continue to be increases in MWRA assessments and normal increase in other expenses in line with the overall increases in the Town’s budget, equity is likely to further suffer until the current structure is reconsidered and structural improvements are adopted.

For the purposes of this analysis, Brookline water and sewer residential customers have been divided into categories based on the amount of water they purchase from 32 to 512 hundred cubic feet (hcf) per year and the size of the building from single family to 256 apartments. (One hcf equals 748.052 gallons.)

Billing data show that the correlation between building size and meter size is not as exact or linear as these charts assume. However, while the details from building to building may vary, we believe many of these variations offset each other leaving the assumptions we have adopted as the best and most straightforward model for the relationship between rates, usage, and building size.

However, while the model looks at the impact of rates on categories of customers, it does not provide any information about the impact of the rate structure on revenue. While very important to the management of Brookline's Water and Sewer Division, this is beyond the scope of our analysis. The Water and Sewer Division uses its billing data to determine the rates needed to maintain the stability of the enterprise fund. The calculation we have presented is an independent procedure that indicates the impact of the Water and Sewer Division's calculated rates on equity. Under the current structure we believe that stability and equity are somewhat in opposition to each other and that as rates grow, inequity will continue to increase and, likely, become of progressively greater concern.

Water and Sewer Bill Impact on Brookline Residents by Usage and Building Size											
2013 Rates											
	Number of Households on the Meter	Typical Meter Size	Cost per HH for 32 hcf per year	Cost per HH for 64 hcf per year (2x)	Percent cost per HH is not double	Cost per HH for 128 hcf per year (4x)	Percent cost per HH is not quadruple	Cost per HH for 265 hcf per year (8x)	Percent cost per HH is not eight times	Cost per HH for 512 hcf per year (16x)	Percent cost per HH is not sixteen times
HCF /yr usage			32	64		128		256		512	
	1	.625	\$396	\$796	0.55%	\$1,596	0.83%	\$3,196	0.96%	\$6,396	1.03%
	2	.625	\$398	\$798	0.28%	\$1,598	0.41%	\$3,198	0.48%	\$6,398	0.52%
	4	.625	\$399	\$799	0.14%	\$1,599	0.21%	\$3,199	0.24%	\$6,399	0.26%
	8	.75	\$404	\$804	-0.55%	\$1,604	-0.83%	\$3,204	-0.97%	\$6,404	-1.04%
	16	1.0	\$407	\$807	-0.90%	\$1,607	-1.35%	\$3,207	-1.58%	\$6,407	-1.69%
	32	1.5	\$409	\$809	-1.07%	\$1,609	-1.61%	\$3,209	-1.88%	\$6,409	-2.02%
	64	2.0	\$407	\$807	-0.84%	\$1,607	-1.27%	\$3,207	-1.49%	\$6,407	-1.59%
	128	3.0	\$406	\$806	-0.73%	\$1,606	-1.10%	\$3,206	-1.29%	\$6,406	-1.38%
	256	4.0	\$404	\$804	-0.52%	\$1,604	-0.79%	\$3,204	-0.92%	\$6,404	-0.98%
Percentage Variation Between Highest and Lowest Cost per HH			3.29%	1.64%		0.82%		0.41%		0.20%	

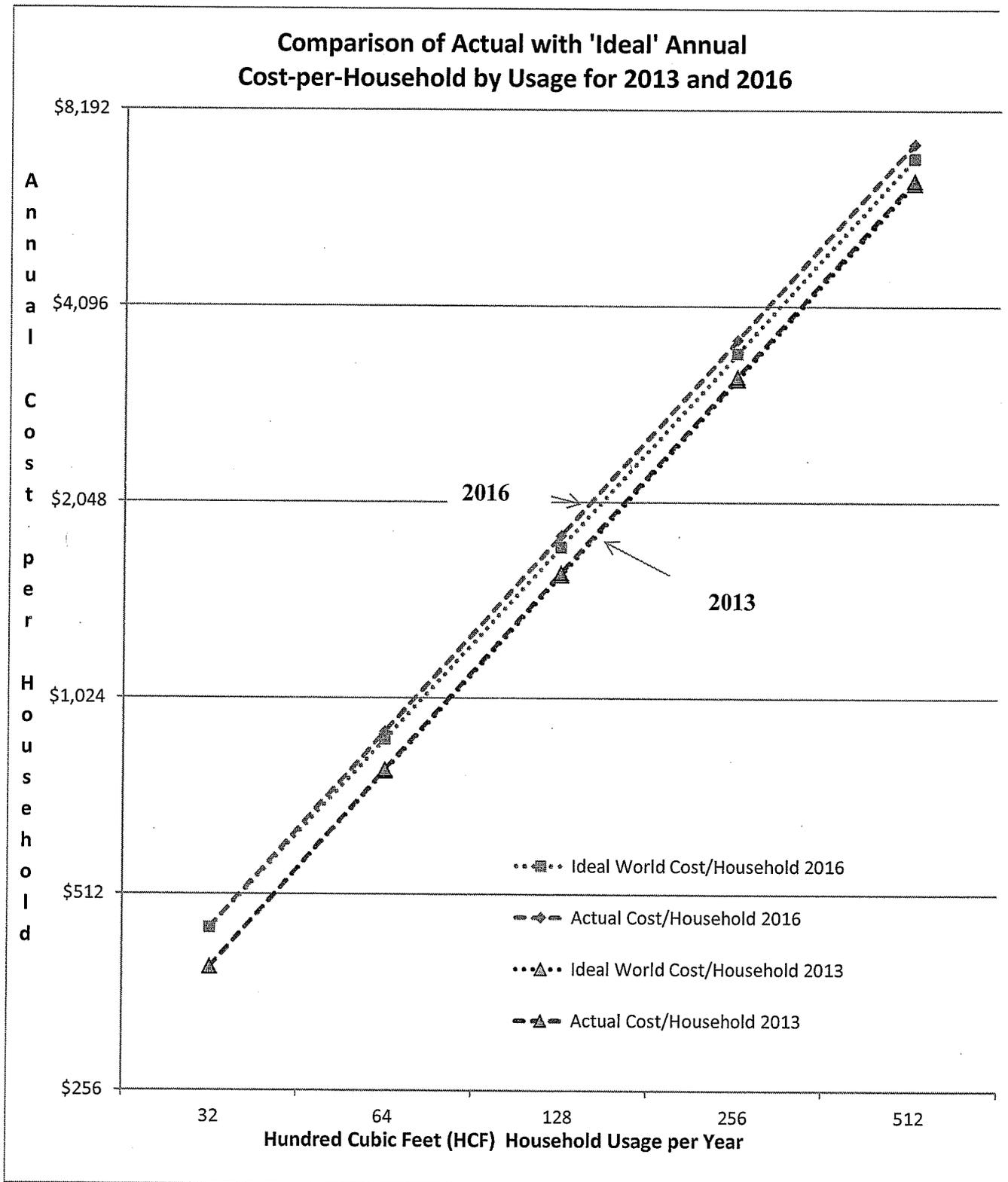
Water and Sewer Bill Impact on Brookline Residents by Usage and Building Size											
2014 Rates											
	Number of Households on the Meter	Typical Meter Size	Cost per HH for 32 hcf per year	Cost per HH for 64 hcf per year (2x)	Percent cost per HH is not double	Cost per HH for 128 hcf per year (4x)	Percent cost per HH is not quadruple	Cost per HH for 265 hcf per year (8x)	Percent cost per HH is not eight times	Cost per HH for 512 hcf per year (16x)	Percent cost per HH is not sixteen times
HCF / yr usage			32	64		128		256		512	
	1	.625	\$402	\$810	0.72%	\$1,626	1.07%	\$3,258	1.25%	\$6,522	1.33%
	2	.625	\$405	\$813	0.36%	\$1,629	0.53%	\$3,261	0.62%	\$6,525	0.67%
	4	.625	\$407	\$815	0.18%	\$1,631	0.27%	\$3,263	0.31%	\$6,527	0.33%
	8	.75	\$412	\$820	-0.52%	\$1,636	-0.78%	\$3,268	-0.92%	\$6,532	-0.98%
	16	1.0	\$415	\$823	-0.87%	\$1,639	-1.31%	\$3,271	-1.53%	\$6,535	-1.64%
	32	1.5	\$417	\$825	-1.04%	\$1,641	-1.57%	\$3,273	-1.83%	\$6,537	-1.97%
	64	2.0	\$415	\$823	-0.82%	\$1,639	-1.24%	\$3,271	-1.45%	\$6,535	-1.56%
	128	3.0	\$414	\$822	-0.72%	\$1,638	-1.08%	\$3,270	-1.26%	\$6,534	-1.35%
	256	4.0	\$412	\$820	-0.51%	\$1,636	-0.77%	\$3,268	-0.90%	\$6,532	-0.96%
Percentage Variation Between Highest and Lowest Cost per HH			3.57%	1.77%		0.88%		0.44%		0.22%	

Water and Sewer Bill Impact on Brookline Residents by Usage and Building Size											
2015 Rates											
	Number of Households on the Meter	Typical Meter Size	Cost per HH for 32 hcf per year	Cost per HH for 64 hcf per year (2x)	Percent cost per HH is not double	Cost per HH for 128 hcf per year (4x)	Percent cost per HH is not quadruple	Cost per HH for 265 hcf per year (8x)	Percent cost per HH is not eight times	Cost per HH for 512 hcf per year (16x)	Percent cost per HH is not sixteen times
HCF / yr usage			32	64		128		256		512	
	1	.625	\$406	\$818	0.88%	\$1,644	1.31%	\$3,295	1.53%	\$6,598	1.64%
	2	.625	\$409	\$822	0.44%	\$1,648	0.66%	\$3,299	0.76%	\$6,601	0.82%
	4	.625	\$411	\$824	0.22%	\$1,649	0.33%	\$3,301	0.38%	\$6,603	0.41%
	8	.75	\$417	\$830	-0.49%	\$1,655	-0.74%	\$3,307	-0.87%	\$6,609	-0.93%
	16	1.0	\$420	\$833	-0.85%	\$1,658	-1.28%	\$3,309	-1.49%	\$6,612	-1.60%
	32	1.5	\$421	\$834	-1.02%	\$1,660	-1.54%	\$3,311	-1.80%	\$6,613	-1.93%
	64	2.0	\$420	\$832	-0.81%	\$1,658	-1.22%	\$3,309	-1.43%	\$6,612	-1.53%
	128	3.0	\$419	\$831	-0.71%	\$1,657	-1.06%	\$3,308	-1.24%	\$6,611	-1.33%
	256	4.0	\$417	\$830	-0.51%	\$1,655	-0.76%	\$3,307	-0.89%	\$6,609	-0.95%
Percentage Variation Between Highest and Lowest Cost per HH			3.88%	1.92%		0.96%		0.48%		0.24%	

Water and Sewer Bill Impact on Brookline Residents by Usage and Building Size											
2016 Rates											
	Number of Households on the Meter	Typical Meter Size	Cost per HH for 32 hcf per year	Cost per HH for 64 hcf per year (2x)	Percent cost per HH is not double	Cost per HH for 128 hcf per year (4x)	Percent cost per HH is not quadruple	Cost per HH for 265 hcf per year (8x)	Percent cost per HH is not eight times	Cost per HH for 512 hcf per year (16x)	Percent cost per HH is not sixteen times
HCF / yr usage			32	64		128		256		512	
	1	.625	\$455	\$885	-2.76%	\$1,746	-4.19%	\$3,468	-4.93%	\$6,911	-5.30%
	2	.625	\$443	\$873	-1.40%	\$1,734	-2.11%	\$3,455	-2.47%	\$6,899	-2.65%
	4	.625	\$437	\$867	-0.70%	\$1,728	-1.06%	\$3,449	-1.24%	\$6,893	-1.33%
	8	.75	\$438	\$869	-0.93%	\$1,730	-1.40%	\$3,451	-1.63%	\$6,894	-1.75%
	16	1.0	\$439	\$870	-1.04%	\$1,731	-1.56%	\$3,452	-1.83%	\$6,895	-1.96%
	32	1.5	\$440	\$870	-1.09%	\$1,731	-1.65%	\$3,453	-1.93%	\$6,896	-2.07%
	64	2.0	\$438	\$868	-0.84%	\$1,729	-1.26%	\$3,450	-1.47%	\$6,894	-1.58%
	128	3.0	\$437	\$867	-0.71%	\$1,728	-1.06%	\$3,449	-1.24%	\$6,893	-1.33%
	256	4.0	\$435	\$865	-0.50%	\$1,726	-0.75%	\$3,448	-0.88%	\$6,891	-0.94%
Percentage Variation Between Highest and Lowest Cost per HH			4.62%	2.32%		1.16%		0.58%		0.29%	

The difference between the lowest and highest household cost for the lowest usage category compared by the number of units grows from 3.29% in 2013 to 4.62% in 2016. The deviance between the lowest usage and the highest usage category for single family houses changes from 1.03% in 2013 to an upside down incentive of -5.30% in 2016.

The line chart below illustrates these differences in a graphical format. The lines for 2013 are so close that they seem to be the same line because the differences are so small. For 2016, on the other hand, the lines for actual and ideal are gradually separating as usage increases. This is an indication of small but growing inequity between the ideal and actual expenses for households. (Here we are defining the ideal world to be that when usage doubles, the bill should double.) However using the current rate structure, each year, this is less and less the case due to the mathematics of the structure.



SELECTMEN'S RECOMMENDATION

Article 9 was submitted by petition in an effort to create more public engagement and transparency during the process of establishing annual water and sewer rates. Specifically, the article proposes amending the Town's By-Laws in order to; 1.) require the Board of Selectmen to hold a public hearing, 2.) at least 30 days in advance of the public hearing require the Board to make known to Town Meeting Members and the general public estimates of proposed changes to any fees, charges, rates, or payments of any description to the Water and Sewer Enterprise Fund, and 3.) require the Board to distribute to all Town Meeting Members and make available to the public an annual report on the performance of the Water and Sewer Division of the Department of Public Works.

The Board of Selectmen is always supportive of enhancing the public's understanding and involvement in Town financial affairs. It supports the formal requirement for a public hearing and the submission of an annual report. However, the Board is concerned that the requirement to publish definitive rate information 30 days in advance of the public hearing is impractical given the MWRA's traditional schedule for setting final wholesale rates. The Town must set the water and sewer rates no later than June 30 each year. Typically, the MWRA approves and announces its wholesale rates less than 30 days prior to June 30. With the support of the Advisory Committee and others, some compromise language has been agreed to by the petitioners. The main motion will not require information to be distributed not less than 21 days prior to a hearing and such information and such information shall be based on "best available information" using the most recent available preliminary MWRA water and sewer assessments.

At their meeting on October 22, and following a public hearing, the Board of Selectmen voted unanimously to recommend FAVORABLE ACTION on Article 9 using the revised language approved by the Advisory Committee and agreed to by the petitioners.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

By a vote of 21-0-0 the Advisory Committee voted FAVORABLE ACTION on Article 9 as amended.

Although Warrant Article 9 and the petitioners' explanation contains pages of information, the intent of the warrant article is actually quite simple—to require that the Board of Selectmen hold a public hearing in advance of a change of water and sewer rates.

BACKGROUND:

The petitioners did an extensive amount of research regarding water and sewer rates in Brookline. For most households, payment for the water and sewer bill is second only to a property tax bill. The cost to residents averages 15% of their average property tax bill. For most Brookline residents, the first time they learn about a rate increase is when they receive their water and sewer bill in late summer or early fall, after the fiscal year rates have already been approved by the Board of Selectmen and that at that point, there is little room for any meaningful reaction to the rates.

Water and sewer rates are based on both the amount of water used and the size of the meter at the household. (The meter is owned by the Town). The first 700 cubic feet of water used in each quarter is billed at a lower rate. The base quarterly charge is the same regardless of the amount of water that is purchased and depends on the size of the household's meter. Thus this portion of a household's water bill is stable.

Revenue that depends on usage can vary since the amount of water that households use varies from year to year and has been trending down.

When the current Block and Base Rate Charge Structure was introduced in 2011 after a public hearing, it was the only public hearing regarding water and sewer rates from 2008 to 2015. The aim of the change in 2011 was to accommodate decreasing water consumption that was resulting in decreased revenue. The goals of the new structure were to minimize revenue volatility and equitably distribute cost among users.

Prior to 2011 residents paid by units of water usage with no base rate. This created problems with revenue stability and cost responsibility. As usage fell, Brookline still needed to maintain the capital infrastructure, pay for debt service and deliver reliable service. Billing tied just to usage created shortfalls in covering fixed costs.

When the base charge was calculated and ultimately adopted, consideration was given to individuals and families who might be categorized as "water misers" or constituted single-occupancy households so the base rate was held back somewhat with some low cost usage built into it.

DISCUSSION:

There was general support from the Advisory Committee regarding a public hearing so long as there would be an understanding that the figures presented by the Division before the end of the fiscal year would be preliminary. The hearing could include discussion of such topics as:

- whether the goal of rate setting should be to equalize costs among housing types for the same volume of water use;
- whether a recurring charge for the fire service is justified;
- whether the structure adopted in 2011 has achieved a revenue stream that is more stable and closer to the actual cost; and
- whether there should be reduced rates for low-income elderly households.

The Advisory Committee was assured that preparation for the hearing by the Director of Water and Sewers would not be unduly burdensome.

Conclusion

If this article passes, the Selectmen will be required to hold a public hearing in advance of any changes in the water and sewer rates for the next fiscal year.

RECOMMENDATION:

By a vote of 21-0-0 the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 9:

VOTED: That the Town will amend Article 3.17 of the Town's General Bylaws, entitled Public Works, Department Organization, as follows (new language is underlined):

ARTICLE 3.17
PUBLIC WORKS DEPARTMENT

SECTION 3.17.1 ORGANIZATION

There shall be a Department of Public Works in accordance with Chapter 32 of the Acts of 1981, as amended. The Department has the following divisions:

- Engineering
- Highway/Sanitation
- Parks, Forestry, Cemetery & Conservation
- Transportation -
- Water and Sewer

SECTION 3.17.2 PROCEDURES FOR FIXING WATER AND SEWER RATES

The Board of Selectmen shall conduct a public hearing annually, giving notice in accordance with the provisions of M.G.L. c. 30A, s. 20. At least 30 days before such a hearing, the Board shall make known to town meeting members and the general public estimates of any proposed changes to any such water and sewer fees, charges, and rates, in order to satisfy the requirements of this bylaw. The estimated changes shall be based on best available information using the most recent available preliminary MWRA water and sewer assessments. The Board of Selectmen shall distribute to all town meeting members and make available to the public an annual report on the operations of the Water and Sewer Division of the Department of Public Works. The report shall enumerate the estimated differential impact of the proposed fees on cost, as determined by the commissioner of public works.

ARTICLE 10

REVISED PETITIONER MOTION

VOTED: To amend the General By-Laws by amending Article 8.15 and Article 8.31.1 in Part VIII Public Health and Safety as follows:
(Additions are indicated in underlining, and deletions are indicated in strike-out. Revised language from this supplement is in bold.)

ARTICLE 8.15
NOISE CONTROL

SECTION 8.15.3 DEFINITIONS

(m) Leafblowers: Any powered ~~portable~~ machine used to blow leaves, dirt, and other debris off lawns, sidewalks, driveways, and other ~~horizontal~~ surfaces.

Article 8.31
Leaf Blowers

Section 8.31.1: STATEMENT OF PURPOSE

Reducing the use of gasoline and other oil carbon-emitting fuels and ~~reducing carbon emissions into the environment~~ is a public purposes of the Town; and the reduction of noise and emissions of particulate matter resulting from the use of leaf blowers are public purposes in that protecting the health, welfare, and environment 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: USE REGULATIONS

1. Leaf Blowers.

Leaf blowers are defined as any ~~portable gasoline~~ powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.

a. Leaf blowers shall not be operated in the town of Brookline with the following exceptions: except between March 15 and May 15 and between September 15 and December 15 in each year. The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors. The provisions of this section also do not apply to nonresidential property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean up associated with storms, hurricanes and the like.

Leaf blowers that are neither powered directly nor indirectly by a gasoline, diesel, or propane-powered machine may be operated between March 15 and May 15 and between September 15 and December 15 in each year. The provisions of this subsection

do not apply to the use of leaf blowers by the Town and its contractors. **The provisions of this section also do not apply to nonresidential property owners, but only with respect to parcels that contain at least five acres of open space.** The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean up associated with storms, hurricanes, and the like.

3. Regulations.

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Leaf Blower By-Law.

4. Enforcement and Penalties

a. This bylaw 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. ~~For the purposes of this section “person” shall be defined as any individual, company, occupant, real property owner, or agent in control of real property.~~ Each violation shall be subject to fines according to the following schedule:

- (a) a warning or ~~\$50.00~~ \$100.00 for the first offense;
- (b) ~~\$100.00~~ \$200.00 for the second offense;
- ~~(c) \$200.00 for the third offense;~~
- ~~(d)~~ (c) ~~\$200.00~~ \$300.00 for successive violations, plus
- ~~(e)~~ (d) court costs for any enforcement action.

Each Day of a continuing violation shall be considered a separate violation.

5. Effective Date.

The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

ARTICLE 10

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

CORRECTION TO ADVISORY COMMITTEE REPORT ON ARTICLE 10

The following two underlined sentences should be added at the very end of the report, so that the final paragraph reads as follows:

The Advisory Committee, by a vote of 12-10-1, did not reconsider the vote of NO ACTION taken on its earlier recommendation, and therefore did not vote on the petitioners' revised motion under Warrant Article 10. When it voted against reconsideration, the Advisory Committee was aware of the petitioners' revised motion. The failure of the motion to reconsider thus indicates that a majority of those voting also would have voted No Action on the petitioner's revised motion.

ARTICLE 10

TENTH ARTICLE

Submitted by: Richard Nangle and Irene Schraf

To see if the town will amend the General By-Laws by amending Article 8.15 and Article 8.31.1 in Part VIII Public Health and Safety as follows, to ban the use of leaf blowers (additions are indicated in underlining, and deletions are indicated in strike-out):

ARTICLE 8.15
NOISE CONTROL

SECTION 8.15.3 DEFINITIONS

(m) Leafblowers: Any powered ~~portable~~ machine used to blow leaves, dirt, and other debris off lawns, sidewalks, driveways, and other ~~horizontal~~ surfaces.

Article 8.31
Leaf Blowers

Section 8.31.1: STATEMENT OF PURPOSE

Reducing the use of gasoline and other oil carbon-emitting fuels ~~and reducing carbon emissions into the environment~~ is a public purposes of the Town; and the reduction of noise and emissions of particulate matter resulting from the use of leaf blowers are public purposes ~~in that~~ protecting the health, welfare, and environment 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: USE REGULATIONS

1. Leaf Blowers.

Leaf blowers are defined as any ~~portable-gasoline~~ powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.

a. Leaf blowers shall not be operated in the town of Brookline ~~except between March 15 and May 15 and between September 15 and December 15 in each year.~~ ~~The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors. The provisions of this section also do not apply to nonresidential property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean up associated with storms, hurricanes and the like.~~

3. Regulations.

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Leaf Blower By-Law.

4. Enforcement and Penalties

a. This bylaw 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. ~~For the purposes of this section "person" shall be defined as any individual, company, occupant, real property owner, or agent in control of real property.~~ Each violation shall be subject to fines according to the following schedule:

(a) a warning or ~~\$50.00~~ \$100.00 for the first offense;

(b) ~~\$100.00~~ \$200.00 for the second offense;

~~(c) \$200.00 for the third offense;~~

~~(d)-(c)~~ \$200.00 \$300.00 for successive violations, plus

~~(e)~~ (d) court costs for any enforcement action.

Each Day of a continuing violation shall be considered a separate violation.

5. Effective Date.

The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Seasonal and noise level restrictions were placed on the inappropriate use of leaf blowers by Town Meeting in November 2008, yet landscape companies, maintenance companies, and others have continued to use leaf blowers where unnecessary. The continued use of leaf blowers remains a nuisance and disturbance to residents of Brookline. Further, the enforcement of the current restrictions on the use of leaf blowers creates an undue burden upon the Brookline Police and unnecessary expense to the Town. People have lived for millennia, until about twenty five (25) years ago, without needing leaf blowers to survive); leaf blowers cause unnecessary pollution, dust, waste of fossil fuel, and carbon emissions in a time when we need to reduce carbon emissions to arrest climate change.

MOTION TO BE OFFERED BY THE PETITIONERS

VOTED: To amend the General By-Laws by amending Article 8.15 and Article 8.31.1 in Part VIII Public Health and Safety as follows:

(Additions are indicated in underlining, and deletions are indicated in strike-out):

ARTICLE 8.15
NOISE CONTROL

SECTION 8.15.3 DEFINITIONS

(m) Leafblowers: Any powered ~~portable~~ machine used to blow leaves, dirt, and other debris off lawns, sidewalks, driveways, and other ~~horizontal~~ surfaces.

Article 8.31
Leaf Blowers

Section 8.31.1: STATEMENT OF PURPOSE

Reducing the use of gasoline and other ~~oil~~ carbon-emitting fuels and ~~reducing carbon emissions into the environment~~ is a public purpose of the Town; and the reduction of noise and emissions of particulate matter resulting from the use of leaf blowers are public purposes ~~in that~~ protecting the health, welfare, and environment 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: USE REGULATIONS

1. Leaf Blowers.

Leaf blowers are defined as any ~~portable gasoline~~ powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.

a. Leaf blowers shall not be operated in the town of Brookline with the following exceptions: except between March 15 and May 15 and between September 15 and December 15 in each year. The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors. The provisions of this section also do not apply to nonresidential property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean up associated with storms, hurricanes and the like.

Leaf blowers that are neither powered directly nor indirectly by a gasoline, diesel or propane-powered machine may be operated between March 15 and May 15 and between September 15 and December 15 in each year. The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors. The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean up associated with storms, hurricanes and the like.

3. Regulations.

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Leaf Blower By-Law.

4. Enforcement and Penalties

a. This bylaw 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. ~~For the purposes of this section "person" shall be defined as any individual, company, occupant, real property owner, or agent in control of real property.~~ Each violation shall be subject to fines according to the following schedule:

- (a) a warning or ~~\$50.00~~ \$100.00 for the first offense;
- (b) ~~\$100.00~~ \$200.00 for the second offense;
- ~~(c) \$200.00 for the third offense;~~
- ~~(d) (c) \$200.00~~ \$300.00 for successive violations, plus
- ~~(e) (d)~~ court costs for any enforcement action.

Each Day of a continuing violation shall be considered a separate violation.

5. Effective Date.

The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

Explanation

We are sponsoring this Warrant Article, to stop the use of gas-powered leaf blowers in Brookline, exempting the Town and its contractors, because leaf blowers are both a public nuisance and a major source of high-level noise and other pollution.¹ Invented in Japan in the 1970s for use as commercial pesticide dispersants, it was soon discovered that when the dispersal units were removed these powerful blowing machines could be used for other purposes. It is important to remember that they were intended for commercial, not residential use.

Leaf blowers are no longer limited to use in major fall cleanups, but have expanded to become an all-purpose instrument, operated for a range of routine maintenance activities, from debris removal from paved surfaces, to cleaning gutters, to roofing clean up; to sweeping/blowing street shoulders, walking paths, planting beds, and most recently, snow removal. For those of us who work at home, are retired, or are disabled so at home during the day, leaf blowers are a serious annoyance affecting our ability to concentrate and otherwise enjoy our surroundings. Unlike many other noise sources, leaf blowers operate on a narrow frequency bandwidth that creates the piercing sound that so many people find so objectionable. They are obnoxious and intrusive in a way that power mowers and passing trucks can't even approach. They are also terrible for the environment. And in Brookline, we care enough about the environment to address unnecessary environmental harm. Also, the fumes and propelled debris are harmful to users and other unconsenting

¹ *Burlingame Citizen's Environmental Council Recommendations to the Burlingame City Council: Leaf Blowers and Our Public Health (2010)*. <http://www.burlingame.org/Modules/ShowDocument.aspx?documentid=7862> (last accessed Oct. 27, 2015).

pedestrians within their range. All of these concerns outweigh the convenience and unproven cost savings of one industry and the small sector of the population that employs this industry to tend their yards. In short, you don't need a scientific study to tell you that you can't breathe when someone is using a leaf blower to sweep the sidewalk.

There are several reasons to go further than the summertime gas-powered ban enacted in 2011. First, the will of Town Meeting in enacting the seasonal requirements has been frustrated by both widespread disregard of these requirements and by the extreme difficulty residents experience in having the bylaw enforced.

While there are a host of reasons to oppose the use of leaf blowers on health-related grounds, it should be enough that gas-powered leaf blowers simply are not in keeping with Brookline's sense of itself as a green community. Gas-powered leaf blowers waste gasoline at an alarming rate and are not the least bit environmentally friendly.

About the noise: Our current bylaw requires leaf blowers to be operated at a limit of 67 decibels from 50 feet away. Machines that do not exceed these noise levels on their own will do so in multiplicity.² And we see multiple users on streets and properties all the time and all over town.

Further, increased risk of hearing damage and deafness occurs from repeated exposure to noise above 75 dbA. Deafness caused by noise is irreversible.³ Notably, our By Law does not address the noise (or other exposure) suffered by workers. Thankfully, our Board of Health expressed concern about these threats to worker safety following our recent presentation.

Unfortunately, the landscapers have had free rein to use, and abuse, leaf blowers, even since implementation of our By Law – according to the 365 documented complaints provided us by the Police Department in mid-September,⁴ there were only 23 citations issued – this, in nearly 4 years. Or, as one frustrated elderly woman said of nearby leaf blower users, after she came out on her lawn in her nightgown to talk to Irene about the constant abuse of the By Law she witnesses - they act like they “own the Town.”

By enacting Warrant Article 10, we will join a growing number of communities around the nation that have taken a strong stand against these noisy and unnecessary machines.

The bottom line is that leaf blowers are a nuisance. If they could be used inside owners' homes, to pollute only the owners, that would be one thing; because they are used outside, in the air we share, in many cases a mere few feet from our closely-packed

² “The decibel scale is logarithmic – each increase of 10, say 60 to 70, represents a noise 10 times louder.” *Citizens for a Quieter Sacramento*, at 2. <http://www.nonoise.org/quietnet/cqs/leafblow.htm> (citations omitted) (last accessed Oct. 26, 2015).

³ *Green Facts: Facts on Health and the Environment* (Level 1, Sec. 5). <http://copublications.greenfacts.org/en/hearing-loss-personal-music-player-mp3/1-3/5-sound-induced-hearing-loss.htm> (last accessed Oct. 26, 2015).

⁴ Not all are recorded – one quarter of the calls Irene made this year about unlawful use were not. Others report the same problem.

homes, we have the obligation to say no to them. We have said no to second-hand smoke, plastic bottles, and Styrofoam. Four years into the summertime gas-powered ban, it is clear that there are other, cleaner options. Our By Law allows non-gas-powered leaf blowers in the spring and fall, accommodating homeowners and landscapers who want to continue to use these machines.

MOTION OFFERED BY CHUCK SWARTZ, TMM9

VOTED: That the subject matter of Article 10 be referred 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.

Explanation

Whether or not the leaf blower ban is in effect, there are often abuses and inappropriate uses. Examples include blowers being used during the ban, multiple blowers being used on small properties, leaves and debris being blown onto the streets and other peoples properties, overuse for minor tasks, etc.

It is time for a better by-law, one which may include some provisions used in other towns such as allowing only one blower on properties less than 10,000 sq. ft., blowing from the perimeter of the property towards the center, requiring the use of one specific brand of leaf blower. Also to be considered would be holding property owners responsible for violations as is done for snow removal, providing guidelines to make enforcement easier, and implementing the provisions outlined by the Selectman's Noise Bylaw Committee.

*Carried by an Electronic Record Vote of
143 In Favor, 57 Oppose and 2 Absentees*

**ADVISORY COUNCIL ON PUBLIC HEALTH (ACPH) REPORT AND
RECOMMENDATION**

The Advisory Council on Public Health (ACPH) convened a public hearing on Tuesday evening, October 6, 2015 at 6:00 pm in the Denny Room of the Public Health building to consider Warrant Articles 10 & 11. Article 10 seeks to ban leaf blowers in Brookline; Article 11 seeks to expand the time that leaf blowers may be operated and to provide for emergency waivers of the current leaf blower bylaw.

Prior to the meeting, ACPH members received a raft of documents provided by proponents and opponents of a ban.

Chairperson Dr. Bruce Cohen began the hearing by emphasizing that the charge of the ACPH was to determine whether or not a sufficient public health threat exists to recommend banning leaf blowers on that basis.

Testimony was taken from Article 10 petitioners Richard Nangle and Irene Sharf, who outlined their concerns, focusing on noise and fugitive dust exposure to workers who operate leaf blowers, high-risk individuals, and the general population. Other byproducts of leaf blower use include ozone effects, unburned fuel, and other emissions including a number of known carcinogens.

Both petitioners cited a number of studies which had been previously reviewed by Council members, as well as statements by several medical practitioners. Conditions exacerbated by exposure to leaf blower use include asthma, CVD, COPD, among others. They contended that leaf blowers present a significant public health threat, sufficient to warrant their being banned in Brookline.

Opponents of a ban included a number of residents, including landscapers and others. Faith Michaels offered a power point presentation that sought to counter the points made by the petitioners, and referred to statements by the Lincoln, Massachusetts and Greenwich, Connecticut Boards of Health; Burlingame, California's regulations; and other Massachusetts municipalities that have declined to ban leaf blowers.

Additional testimony focused on the "unintended consequences" of a ban, which could include less effective clean-ups of leaves and debris leading to increased standing water and proliferation of disease-causing vectors. It was suggested that the increased labor required in the absence of leaf blowers could also lead to increases in injuries.

One speaker questioned why, if we are concerned about particulates, we should not ban clothes dryers and wood-burning fireplaces, which generate far greater levels of particulate matter.

Another speaker focused on the effect of a less efficient way to maintain parks and open space which could lead to a return to what was characterized as "uninviting" open spaces that could have a negative impact on the physical activity options of Brookline residents. (The above represents only a sampling of testimony presented at the hearing.)

Advisory Council members asked the petitioners whether better enforcement would mitigate at least some of the problems outlined in their presentation. After listening to more than 1.5 hours of testimony, and having previously reviewed all of the documents presented, the ACPH offered the following:

1. By a 4-0 vote, the Council determined that there is no compelling public health threat posed by leaf blowers to support a ban. It was noted that Town Meeting may find other reasons to ban leaf blowers, but that public health should not be the reason.
2. By a 4-0 vote, the Council said that there were no compelling public health implications to expanding the window of time that leaf blowers may operate in town. Therefore, the Council had no opinion on it.

The Council did not consider the second part of Article 11 which would call for emergency powers by Town Officials to override the ban, but the sense of the members was that the idea made sense. No vote was taken.

3. By a 4-0 vote, the ACPH voted that leaf blowers do present an occupational health threat for the workers using them, and urged the Town government to develop (if they don't currently exist) specific policies and procedures to promote the health and safety of Town employees, private landscape contractor employees, and residents who use leaf blowers.

Further, the Council pressed for greater education on the potential risks associated with leaf blower use, and for more stringent enforcement of current Town regulations related to leaf blowers.

SELECTMEN'S RECOMMENDATION

Article 10 is a petitioned article that would make amendments to the Town's noise control and leaf blower by-laws effectively banning the use of leaf blowers in Town. The filing of Article 10 comes on the heels of a review of the noise control and leaf blower by-laws by the Selectmen's Noise By-Law Review Committee. The Committee was re-established following debate of two warrant articles that sought to make changes to the noise control bylaw at successive town meetings last year (Annual 2014 Town Meeting and November 2014 Special Town Meeting). The Committee studied the noise and leaf blower issues that Article 10 seeks to address, and offered a series of recommendations which were released this summer. Some of the recommendations are immediately implementable and can improve enforcement, provide clarity and improve the effectiveness of the existing by-law. For Town Meeting Members' convenience, the Final Report of the Selectmen's Noise By-Law Review Committee has been reproduced under Article 19 "Reports of Town Officers and Committees".

The Selectmen acknowledge that this likely won't be the last time a leaf blower article is brought before Town Meeting, but would like to see the impact of implementing some of the Noise-Law Committee recommendations before amending the by-laws further. The Committee did not conclude that an outright ban was necessary at this time, and this Board agrees that better education enforcement and clarity will improve the effectiveness of the existing by-law.

Therefore, by a vote of 5-0 also taken on the October 27, the Board recommends NO ACTION on Article 10.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 10 would change the seasonal restrictions on leaf blowers currently in place. The sections of the Town By-Laws involving leaf blowers are found under sections 8.31 and 8.15.6 (f). The effect of the article would result in a total ban of leaf blowers in the town. The Town of Brookline, which under the current law is exempt from the regulations, would be banned from using leaf blowers in all circumstances, as would all residential and commercial property owners. It would also increase the fines for violators.

BACKGROUND:

In 2008, Town Meeting rejected an attempt to regulate leaf blowers, but did vote to restrict the hours they could be operated to 8:00 a.m.–8:00 p.m. Monday-Friday, and 9:00 a.m.–8:00 p.m. on weekends and holidays. They also voted to lower the allowable maximum noise to 67 decibels. The current requirement for leaf blowers to have a label affixed to them from the manufacturer or the Town certifying the machine does not exceed 67 dBA (according to American National Standard Institute methodology) has been in place since 2010.

The current law dates from 2011, when Town Meeting narrowly passed Article 9, which restricted when leaf blowers could be used in Brookline. It instituted a fine structure for violators. There were exemptions for storm-related events, the Town was exempted, along with property owners who owned 5 acres or more, creating a system where in certain circumstances large landowners are able to operate leaf blowers while small landowners cannot. Another inconsistency in the existing law is that while gas powered leaf blowers are only allowed between March 15-May 15, and September 15 and December 15, electric units are allowed year- round.

DISCUSSION:

The petitioners' stated concerns included inappropriate use of leaf blowers, noise issues, particulate matter being blown into the air, use of fossil fuels and increased carbon emissions. The chief complaint, however, seemed to be a frustration with enforcement in the Town of the existing By-Law. They described the system as broken. They mentioned bicycle riders and walkers suffering risks of respiratory diseases, and workers not using safety gear when using the blowers. The proponents claimed that use of leaf blowers allows carbon emissions that contribute to global warming. Communities that banned leaf blowers did so for health reasons. The Centers for Disease Control, Environmental Protection Agency, American Heart and Lung Association and others all provide information on the health dangers of leaf blowers. The petitioner noted that he has gone from not liking leaf blowers because they are noisy and they disturb the peace to recognizing that they pose a serious health threat.

Parks and Open Space Director Erin Chute Gallentine spoke to the Advisory Committee on behalf of the Department of Public Works (DPW)/Parks and Recreation. She noted that the department uses leaf blowers for a variety of reasons, not just to blow leaves, and

they are used year-round. They are used intensively for 4–6 weeks during the fall and spring seasons for leaves and other lawn debris. Other non-leaf uses include prepping ice rinks, and removing organic debris from walkways and tennis courts. The department has 600 acres of property on more than 120 sites for which leaf blowers are used. She noted that there might be more repetitive stress injuries and fatigue with the use of rakes, and has not been aware of back or wrist/arm injuries related to the use of leaf blowers (as was cited in some of the reports about leaf blowers).

Ms. Gallentine described a 2011 experiment the department performed in Walnut Hill Cemetery to compare the time to clean up a quarter of an acre (estimated when asked the size) for a commercial grade leaf blower, a lesser-powered leaf blower, and a rake. They found that it would take 3 times more time with the lesser-powered leaf blower and 5 times more with a rake. She estimated that it would take \$500,000 and possibly more in additional labor expenses if there were to be a total ban on leaf blowers. She did not believe that changing the job requirements for DPW laborers (by having them do more manual labor) would require new negotiations. When asked about the utility of leaf sweepers, she said they were difficult to use on undulating surfaces.

The Advisory Council on Public Health (ACPH) also studied the issue and released the following votes:

1. By a 4-0 vote, the Council determined that there is no compelling public health threat posed by leaf blowers to support a ban. It was noted that Town Meeting may find other reasons to ban leaf blowers, but that public health should not be the reason.
2. By a 4-0 vote, the Council said that there were no compelling public health implications to expanding the window of time that leaf blowers may operate in town. Therefore, the Council had no opinion on it.
3. By a 4-0 vote, the ACPH voted that leaf blowers do present an occupational health threat for the workers using them, and urged the Town government to develop (if they don't currently exist) specific policies and procedures to promote the health and safety of Town employees, private landscape contractor employees, and residents who use leaf blowers.

Further, the Council pressed for greater education on the potential risks associated with leaf blower use, and for more stringent enforcement of current Town regulations related to leaf blowers.

Examples of Other Leaf Blower Regulations: Cambridge and Arlington

Cambridge: The leaf blower regulations for Cambridge are found in Ordinance Code 8.16.081. Leaf blowers are banned seasonally from June 15 to September 15, and from January 1 to March 14. (Sundays they are also banned, but Columbus Day and Veterans Day are allowed). They are allowed from March 15 to June 14, and from September 16 to

December 31. Only one leaf blower is allowed on lots of 10,000 sq. ft. or less, and homeowners of 2 acres or more may seek exemptions upon showing "severe hardship." Commercial operators must file operation plans with the city manager. Cambridge covers both gas and electric blowers, and has a 65 dB limit. They also exempt specific parks from the regulations, and have exemption provisions for emergencies like hurricanes.

Arlington: According to a source at Town Hall, the law described below is not currently enforced. Most of the online articles regarding the debate and law date from 2012-13. The vast majority of leaf blowers are used by residents on their own property, and the controversy has quieted down there.

The leaf blower regulations for Arlington are in Article 12, section 3. Leaf blowers are banned seasonally from June 15 to September 15 (the same as Cambridge) with the same exemption for emergencies. They have a higher decibel limit than Brookline (74 dB at 50 feet).

The Town is exempt from the regulations, which are for gas powered blowers only; electric blowers, as in Brookline, are not covered. Arlington has three interesting pieces to its regulations: (1) there is a 30-minute limit to using leaf blowers; (2) only one leaf blower can be used on a lot of 1,000 sq. feet or less; and (3) Arlington prohibits leaves, dust, etc. from being blown outside of a property's vertical property line (so blowing into the neighbor's yard or a sidewalk is not allowed). The same limitations are on Sundays, hours of operations, etc.

The Selectmen's Noise Bylaw Committee Report

The Selectmen's Noise Bylaw Committee issued its final report in August. Its charge was to come up with recommendations to improve enforcement and clarity of the current noise bylaw (Article 8.15) and the leaf blower bylaw (Article 8.31). The Committee came up with 12 recommendations, eight of which may be immediately implementable (e.g., instituting a registration system for all landscape contractors operating in Brookline) and four which would require public process.

Recommendations from the report's executive summary:

- 1) Implement a registration system for all landscape contractors operating in Brookline.*
- 2) Improve public education about the existing restrictions on the use of leaf blowers and other lawn care equipment by residents and contractors.*
- 3) Edit Article 8.31 of the Bylaws to improve its readability, to clarify whom and what it applies to, and to include a reference to Article 8.15 of the Bylaws.*
- 4) Edit Article 8.15.6(f) of the Bylaws to include a reference to Article 8.31.*
- 5) Encourage the police department to maintain its policy of proactive enforcement of*

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Articles 8.15 and 8.31 of the Town's Bylaws.

6) Encourage the police department to feel empowered to issue citations for violations of Articles 8.15 and 8.31 of the Town's Bylaws when it is appropriate. The objective of enforcement should be to control noise, and the department and its officers should feel comfortable using both warnings and citations to achieve this goal.

7) Encourage the Department of Public Works to continue purchasing replacement equipment that complies with the decibel levels set out in Article 8.15.

8) Encourage the Parks and Open Space Division of the Department of Public Works to develop a formal policy that identifies ways to minimize the use of leaf blowers, when it is practical.

The Brookline Police Department issued a report on calls regarding leaf blowers that can be accessed at <http://ma-brooklinepolice.civicplus.com/documentcenter/view/340>

The Advisory Committee discussed the problems with the warrant article as written as well as options to improve the existing By-Law. They included:

- The unreasonable burden on the DPW. As mentioned above, leaf blowers are used by the Town to clean sidewalks and paths of leaves and debris, playground equipment that cannot be raked, the skating rink, tennis courts, etc. The Town does not have the resources to hire the extra personnel needed to keep the parks and Town property clean.
- Conflicting and obsolete data. Finding objective data on leaf blowers on the internet is challenging. Most groups use data in ways that support their positions. Much of the data provided to the Advisory Committee by the petitioners came from towns in California (which have a different climate than Massachusetts). Some of the tests on leaf blowers that were presented used leaf blowers that are no longer on the market. The industry had been moving from 2 stroke to 4 stroke engines, and new federal regulations have addressed both noise and emission issues.
- Other machines used every day by property owners and landscapers would be unaffected by this ban, including gas powered lawn mowers and trimmers. The allowable noise limit on lawn mowers is higher, so there would still be noise from gas powered equipment.
- Landscape workers (and property owners) who would face harsher working conditions. Landscape workers work full days of hard labor. Depriving those workers of a tool that makes their jobs a little easier would result in more strenuous work, repetitive injuries and increased fatigue. There was also

testimony that landscapers might have to raise their prices or leave the Town altogether.

- The Country Club, private schools, commercial property owners and large landowners would be prohibited from using leaf blowers and face a daunting challenge to maintaining their properties.
- The private property issue. Small property owners who have a legitimate need to use leaf blowers (due to someone's physical condition for example) would not be allowed to use a legal product on their own property. Flower beds where you cannot use a rake would be much harder to maintain.
- The Police Department released data that indicated that only a small number of the noise complaints it received were regarding leaf blowers (about 9 per month). Their data indicated that often the noise came from a mower or trimmer, which would not be affected by a ban. The data also indicated that most of the calls came from a few people.
- It was noted that Cohasset, Framingham, Marblehead, Salem, Swampscott, Wellesley, and Lincoln have all considered and rejected bans. Newton is currently considering regulations, but it is unclear at this time what direction they will go.

There was discussion about limiting leaf blowers to one day a week (the same day as a neighborhood's trash pick-up day) but landscapers mentioned they would have a scheduling problem when it rained. There was also discussion about referring the issue to a Moderator's Committee. Since the Selectmen's Noise By-Law Review Committee had just issued their report, the Advisory Committee thought it should give the Selectmen a chance to implement their recommendations. In the end, it was thought that better education of both landscaping companies and the public would be the best option to address perceived enforcement issues.

The following votes were taken by the Advisory Committee:

- Motion to only ban gas-powered leaf blowers: Failed by a vote of 7 in favor, 12 opposed, 1 abstention.
- Motion to exempt the Town from the restrictions of this warrant article: Passed by a vote of 12 in favor, 8 opposed, 0 abstentions.
- Motion to refer the subject matter of Article 10 to a Moderator's Committee: Failed by a vote of 9 in favor, 11 opposed, 0 abstentions. Many members of the Advisory Committee felt that the narrow scope of the Selectmen's Noise By-Law Review Committee prevented it from looking at some of the broader issues raised by the petitioners of Warrant Article 10, and they would like to see those examined.

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RECOMMENDATION:

By a vote of 13-3-4, the Advisory Committee recommends NO ACTION on Article 10.

The Advisory Committee, by a vote of 12-10-1, did not reconsider the vote of NO ACTION taken on its earlier recommendation, and therefore did not vote on the petitioners' revised motion under Warrant Article 10.

XXX

ARTICLE 11

ELEVENTH ARTICLE

Submitted by: Faith Michaels and Peter Gately

To see if the Town will vote to amend
Article 8.31 of the Town's by laws as follows (new language appears in bold print and
deleted language appears as a strike-out):

Article 8.31
Leaf Blowers

Section 8.31.1: STATEMENT OF PURPOSE

Reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purpose of the Town and the reduction of noise and emissions of particulate matter resulting from the use of leaf blowers are public purposes in protecting the health, welfare and environment 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: USE REGULATIONS

1. Leaf Blowers.

Leaf blowers are defined as any portable gasoline powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.

a. Leaf blowers shall not be operated except between **March 15 and June 15 and between September 15 and December 31 in each year.** ~~March 15 and May 15 and between September 15 and December 15 in each year.~~ **The Commissioner of Public Works shall have the authority to temporarily permit the use of leafblowers during the period of time leafblower use is prohibited in order to aide in emergency operations and clean-up associates with storms, hurricanes and the like.**

The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors. The provisions of this section also do not apply to non- residential property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean-up associated with storms, hurricanes and the like

3. *Regulations.*

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Leaf Blower By-Law.

4. Enforcement and Penalties

a. This bylaw 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. For the purposes of this section “person” shall be defined as any individual, company, occupant, real property owner, or agent in control of real property. Each violation shall be subject to fines according to the following schedule:

(a) a warning or \$50.00 for the first offense; (b) \$100.00 for the second offense; (c) \$200.00 for the third offense; (d) \$200.00 for successive violations, plus (e) court costs for any enforcement action.

5. Effective Date.

The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

Or Act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

This article would alter the dates that gas powered leaf blowers would be able to be used so that it would reflect similar regulations in neighboring towns.

It would expand the time when blowers are permissible by one month in the spring and by two weeks in December. Aligning dates with nearby communities will help landscape companies to comply with the regulations. The late spring of 2015 made it particularly difficult to do clean ups since there was so much destruction and snow on the ground.

The cutoff date of March 15th was very difficult on the local landscape industry. The use of leafblowers will also reduce the labor costs to homeowners as broom cleanups are time consuming and costly. This article would also give the Commissioner of Public Works the discretion to lift the ban in the event of a damaging storm such as the recent ice storm in August which left a great deal of leaves and branches on the ground.

SELECTMEN’S RECOMMENDATION

Article 11 is a petitioned article that would make amendments to the Town’s leaf blower by-law to expand the time when leaf blowers are permissible and give the Commissioner of Public Works the discretion to lift the ban in certain emergency circumstances. The petitioner believes such amendments are necessary so that the dates are aligned with other communities which will help landscape companies comply with the by-law and also allow for cleanup during storm events and emergency situations.

The Board is concerned about the impact these proposed amendments would have on what is perceived as a balanced approach that seems to work for the community. While

the enforcement and consistency issues raised by the Noise-Bylaw Committee need to be addressed, the current time period of September 15–December 15 and March 15–May 15 does not seem to be the root of the problem. The Board did agree with the Advisory Committee that temporary use for emergency clean-up situations may be warranted, especially given the storm events last snow season and the hail storm this past August. Some members were concerned about how this authority might put the DPW Commissioner in a difficult situation of defining what events warrant a temporary lift of the ban, and about the potential confusion a temporary lifting of the restrictions might create about when leaf blower use was/was not permissible, but the Board ultimately decided to support the Advisory Committee’s recommended language.

Therefore by a vote of 5-0 the Board voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE’S RECOMMENDATION

SUMMARY:

By a vote of 20-0-0, the Advisory Committee voted FAVORABLE ACTION on an amended Warrant Article 11 that maintains the allowable periods of operation for handheld gas-powered leaf blowers under Section 8.31.2.2 of Article 8.31, the Leaf Blowers By-Law, but, like the originally proposed Warrant Article 11, authorizes the Commissioner of Public Works to temporarily allow the use of leaf blowers during normally prohibited time periods to aid in emergency operations and clean-up associated with severe weather incidents.

BACKGROUND:

Prior to 2011, the Town’s By-Laws did not restrict leaf blower use to specific times of the year, though they did place restrictions on hours of operation during the day and allowable decibel levels at 50 feet from the location of the leaf blower. In 2001, Town Meeting limited the maximum allowable noise from leaf blowers to 72 decibels at 50 feet and the permissible hours of operation to 8:00 a.m.–6:00 p.m. on weekdays and 9:00 a.m.–6:00 p.m. on weekends. In 2008, Town Meeting lowered the allowable maximum noise to 67 decibels, but extended the allowable hours of operation to 8:00 a.m.–8:00 p.m. weekdays and 9:00 a.m.–8:00 p.m. weekends and holidays. These restrictions on the use of leaf blowers are provided for in Section 8.15.6 of Article 8.15, which is the Noise Control By-Law. In 2011 Town Meeting enacted the Town’s Leaf Blower By-Law, which limits the times of year during which portable gas-powered leaf blowers may be used to five months of the year: September 15–December 15 and May 15–September 15. The petitioners of Article 11, Faith Michaels and Peter Gately, submitted this Warrant Article to make the following changes to the Leaf Blower By-Law:

- Extend the allowable times of year for leaf blower use to September 15–December 31 and March 15–June 15, thereby increasing the allowable time periods by two weeks in the fall and one month in the spring.

- Authorize the Commissioner of Public Works to lift the leaf blower ban in the event of extreme weather, which requires major clean-up efforts.

The petitioners assert that the proposed extension of allowable leaf blower usage would align Brookline's regulation of leaf blowers with those of neighboring communities. Having consistent regulations would make it easier for landscapers to comply with the various leaf blower laws in different communities. The petitioners noted that the ability to track the different regulations is particularly difficult for the many landscapers who do not understand English well. They also noted that the long winter this year made it difficult to complete the spring clean-up by the end of the currently allowable time period, which ends May 15.

The amendment to authorize the Commissioner of Public Works to lift on leaf blowers in the event of extreme weather was proposed because of the experiences of landscapers following the hail storm in August of this year. Many residents called their landscapers to clean up the debris from the storm, but the landscapers did not have permission to use leaf blowers to do the clean-up. By explicitly enabling the Commissioner of Public Works to authorize leaf blowers for emergency clean-ups, a mechanism would be in place to accommodate the needs of residents and landscapers in such circumstances.

DISCUSSION:

Since the primary reason given by the petitioners for extending the allowable time periods is consistency with regulations in neighboring communities, the Advisory Committee reviewed other towns' regulations and determined that the proposed change would not produce the intended effect.

Most neighboring communities have not implemented periods of time that leaf blowers may and may not be used. Newton is currently considering a time-limited ban. Newton's Aldermen likely will vote in November on time limits that prohibit leaf blowers from May 1 to October 1, but the outcome of this vote is uncertain. If we were to change Brookline's spring leaf blower season to terminate on June 15, this might, ironically, produce inconsistency—not consistency—with Newton. In 2012, Arlington's Town Meeting, by a close vote, implemented leaf blower seasons that were shorter than those in Brookline, but the following year, again by a close vote, Arlington eliminated such time restrictions. Cambridge alone has the same leaf blower seasons proposed for Brookline by Warrant Article 11. At the same time, Cambridge's leaf blower law has numerous other limitations on leaf blower use that are both inconsistent with and more restrictive than those in Brookline. For example, hours of operation are more limited and not permitted at all on Sundays and holidays, the maximum decibel level is slightly lower, at 65 dB, and only one leaf blower may be used within every 10,000 square foot area. Changing Brookline's By-Law to conform with only one aspect of the law in Cambridge when there are more differences than similarities has the potential of increasing confusion, particularly if landscape companies were to inform their employees of the consistency of the law between the two municipalities.

The other explanation provided by the petitioners for extending the time periods for leaf blower use is that there are years of unusual weather, such as last year, when snow

remained on the ground into May. Those members of the Committee who expressed a view on this issue felt that a more targeted way to address unusual weather circumstances would be to give the Department of Public Works the discretionary authority to allow leaf blower use in exceptional circumstances.

The Committee reviewed the position of the Advisory Council on Public Health (ACPH) with regard to Article 11. As with Article 10, the ACPH asserted that it did not find a public health threat to oppose Article 11, though it expressed concern about the health risk to landscapers, specifically hearing loss and respiratory problems. The ACPH also asserted that it did not take a position on other reasons to oppose the warrant article, such as public nuisance, since these are not within its jurisdiction.

No Advisory Committee member offered reasons to support the extension of the leaf blower seasons. Nonetheless, when the Committee voted on whether to support such an extension, the extension was only narrowly opposed. A unanimous Advisory Committee, however, supported the amended version of Warrant Article 11 that authorizes the Commissioner of Public Works to allow the use of leaf blowers in exceptional weather circumstances. Some members noted, however, that they supported this provision given the current law, which allows for the use of leaf blowers.

RECOMMENDATION:

By a vote of 20-0-0 the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 11:

VOTED: To amend the Town of Brookline General By-laws as follows:

1. Add the following highlighted provision to Section 8.31.2.2.a of Article 8.31:

SECTION 8.31.2 USE REGULATIONS

2. Limitations on Use.

- a. Leaf blowers shall not be operated except between March 15 and May 15 and between September 15 and December 15 in each year. **The Commissioner of Public Works shall have the authority to temporarily waive the limitations on the use of leaf blowers set forth in this section 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.**

XXX

Passed by a Majority Vote

ARTICLE 12

TWELVETH ARTICLE

Submitted by: Lee Selwyn

To see if the Town will amend Article II, Section 2.08, Paragraph 1 (Definition of "Habitable Space") in the Zoning By-Law as follows (new language appears in underline and deleted language appears as a strike-out):

HABITABLE SPACE—Space in a structure (a) intended for use, now or in the future, for living, sleeping, eating, ~~or~~ cooking or other human occupancy; or (b) otherwise used or usable for human occupancy; or (c) which meets or which could without significant alterations to the exterior of the building be modified to meet finished or built out and meeting the State Building Code requirements for height, light, ventilation and egress for human habitation or occupancy, whether or not finished or built out with respect to interior walls, drop ceilings, heating, plumbing, electrical fixtures and fittings, windows, dormers, and the like. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas shall not be excluded because excluded from the definition of habitable space under the State Building Code.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In November 2002, Town Meeting amended §5.22 of the Zoning Bylaw to allow homeowners who had received a certificate of occupancy pre-dating the adoption of the amendment the ability to increase the Floor Area Ratio ("FAR") of the building by up to an additional 50% by finishing out existing basement and attic spaces. A stated objective of the 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 Subsequent to the adoption of the November 2002 amendment, the Massachusetts Attorney General required the Town to delete the phrase "erected and configured prior to the adoption of this section" because, according to the Attorney General, it had the effect of treating homes built prior to 2002 differently from those built after 2002.

In May 2005, a second amendment to §5.22 was adopted by Town Meeting specifically to address the effect of the AG's ruling. Under the May 2005 amendment, the conversion of space for habitable use could be done as-of-right but only after ten years had elapsed

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

since the issuance of the original Certificate of Occupancy. As the Advisory Committee's Recommendation on that 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

The specific intent of the 2002 and 2005 amendments was to prevent "the building of new larger homes that are out-of-scale with the neighborhood" and to prevent developers from building homes that are ready for build outs.

Unfortunately, the 2005 amendment has failed to close the "McMansion loophole" or otherwise achieve its stated goals of preventing "the building of new larger homes that are out-of-scale with the neighborhood" and of preventing developers from building homes that are ready for build outs. The expectation, as stated by the Advisory Committee, "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" has proven to have been unduly optimistic. Developers are obtaining building permits for houses that contain large areas of purportedly "uninhabitable space" – much like the situation that existed prior to the 2005 amendment – except that these areas are being designed and intended for conversion to "habitable space" after the lapse of ten years, or potentially sooner if the owner proceeds to finish out such space without first obtaining a building permit.

The issue of what constitutes "unfinished" vs. "uninhabitable" space has been the subject of recent litigation. One such case was ultimately decided by the Supreme Judicial Court, which upheld a Land Court ruling that had determined that "unfinished space" is not necessarily to be considered "uninhabitable." In the *71 Spooner Road* case, the Land Court addressed the matter of "unfinished spaces" in attics and what gets included in Gross Floor Area:

The developer [argues] that the bylaw should be declared invalid because the Town is imposing limits on construction, and, in some cases, those limits may apply solely to the character or use of interior space. For example, they contend that under the bylaw, two identical single family residential structures could be proposed for the same lot, yet, depending solely upon the character and use of the interior space, one could be constructed as of right while the other would exceed the FAR for the zoning district. To determine the nature of the interior space, it may become necessary to debate whether certain uses of the attic or basement

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

would violate the zoning law, a debate that they contend is outside the scope of the town's authority under G.L. c. 41A, § 3. They claim that in the present action, the ZBA halted construction of the single family home on 71 Spooner Road based on nothing more than the homeowner's possible use of the attic as a livable area, as opposed to a "true" attic. While the developer agrees that municipalities may lawfully control density, it does not agree that the town may regulate density based on interior considerations, and contends the town's actions were, therefore, unlawful. ...

I agree with the Town, that the FAR limitations included in the bylaw ... are intended to regulate the exterior of structures. Any affect the FAR limits have on interior space in the building is purely incidental to the primary purpose of regulating the bulk of the building, a legitimate interest of the town. A close look at the bylaw reveals that the FAR provisions do not actually regulate or restrict the interior of the house at all; in fact, GFA is calculated based on the exterior of the house, and specifically upon the number of stories excluding basement and attic levels.

In this case, the ZBA determined that the attic area of the proposed construction at 71 Spooner Road was, in fact, not an attic, and was actually habitable space. Habitable space is measured based on the exterior faces of the walls and is counted without any concern for the use of that space inside the structure. The disputed so-called "attic" was located on the second floor of the house, the main factor in the ZBA's determination. Because the area was originally identified as an attic by the developer, it was not included in the original GFA calculations on which the building permit was based. Once the building commissioner determined that the so-called attic space should be included in the calculation, the house as it was proposed was going to be over 1000 square feet too large for the lot size, and for that reason alone the building permit was rescinded.³

On appeal, the Mass. Appellate Court was even more explicit as to what constitutes "habitable space" for purposes of calculating Gross Floor Area:

Drawing from the bylaw definitions of "attic" and "habitable space" and related FAR provisions, its study of building plans filed with the town, and its inspection of the partially-built 71 Spooner Road dwelling, the board concluded LLC 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

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, *slip. op.* at 8-11.

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. The board thus found the disputed unfinished second-floor space was not an exempt "attic" as defined by § 2.01(3) of the bylaw. The judge determined that the board's interpretation of the bylaw was reasonable and entitled to deference. The judge also shared the board's conclusion that the disputed unfinished space at 71 Spooner Road was not an "attic" as defined by the bylaw and, as such, was required to be included in the gross floor area enumeration for that structure. We agree.⁴

The Appellate Court also weighed in on the purpose of FAR – to regulate the "bulk" of a building and its effect upon the "density" of development:

A floor area ratio measures the gross floor space of a building in comparison to the area of its underlying lot. *Woods v. Newton*, 351 Mass. 98 , 102 (1966) (purpose or "essential scheme" of FAR ordinance is to maintain a certain ratio between lot area and bulk size of a structure on said lot); *81 Spooner Rd. LLC v. Brookline*, 452 Mass. 109 , 115 (2008) (regulating a building's "bulk," by way of floor area ratio, "is a generally recognized and accepted principle of zoning"). In this way, the bylaw's FAR requirement protects against undue building density, and promotes the bylaw's overarching policy to advance the health, safety, and welfare of the town's residents. To that end, the bylaw, among other things, seeks to foster the most appropriate use of land, prevent overcrowding of land, and encourage the preservation of historic and architecturally significant structures.⁵

While one might think that the *Spooner Road* ruling would have settled the point that "unfinished space" is not necessarily "uninhabitable space," developers continue to argue, in several recent cases to come before the ZBA and the Brookline Preservation Commission, that "unfinished" and "uninhabitable" are to be afforded the same meaning – i.e., as long as a space is "unfinished," it is to be excluded from Gross Floor Area when determining the building's compliance with applicable Floor Area Ratio ("FAR") requirements. The purpose of the proposed amendment to Article II, Section 2.08, Paragraph 1 (Definition of "Habitable Space") is to provide additional guidelines for the Building Department and the ZBA, so as to limit spaces that truly qualify as "uninhabitable" and excludable from GFA, and to assure that such spaces are not being designed so as to be "ready for build outs" upon completion of the ten-year waiting period.

⁴ *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.

⁵ *Id.*, at 235-6, notes omitted.

Several examples can be cited to illustrate the effect of the current “McMansion loophole.” The following recent Zillow listings confirm that developers do not even attempt to conceal the excessive GFA of their offerings:

85 Dean Rd

Advertised at 4,280 sq. ft. on a 7,405 sq. ft. lot, S-7 zone (.35 FAR).

Maximum GFA would be 2,592 sq. ft.

http://www.zillow.com/homedetails/85-Dean-Rd-Brookline-MA-02445/56569879_zpid/

33 Taylor Crossway

Advertised at 6,165 sq. ft. on a 10,454 sq. ft. lot, S-10 zone (.30 FAR).

Maximum GFA would be 3,136 sq. ft.

http://www.zillow.com/homedetails/33-Taylor-Crossway-Brookline-MA-02445/2107355381_zpid/

57 Cleveland Road

Advertised at 4950 sq. ft. on a 14,938 sq. ft. lot, S-10 zone (.30 FAR).

Maximum GFA would be 4,481 sq. ft.

http://www.zillow.com/homedetails/57-Cleveland-Rd-Chestnut-Hill-MA-02467/56570304_zpid/

232 Woodland Rd

Advertised at 8,174 sq ft on a 19,876 sq ft. lot, S-15 zone (.25 FAR).

Maximum GFA would be 4,969 sq. ft.

http://www.zillow.com/homes/for_sale/Brookline-MA/pmf.pf_pt/house_type/56573663_zpid/17188_rid/42.368564,-71.066008,42.27769,-71.218786_rect/12_zm/

Brookline is a built-out community with a high quality and well-maintained housing stock that was developed within the current FAR framework. Developers are buying up properties, demolishing FAR-compliant houses, and constructing new ones that effectively reinterpret FAR as being 50% greater than that shown in the by-law. Thus, a FAR of 0.30 is being interpreted by developers as 0.45, and large out-of-scale houses are being constructed. Brookline has a long history of taking affirmative steps to protect the character of its neighborhoods and preserve existing buildings and townscapes. This escalating replacement of our solidly-built established housing stock with often poorly constructed “developer houses” wastes resources, makes Brookline less affordable for young families, and threatens the character of our neighborhoods. The proposed amendment is intended to limit developers’ opportunities to “game” the existing zoning bylaw and, in so doing, will hopefully encourage the Building Department and the ZBA to critically assess and consider the developer’s true intent in the design of new or expanded houses that include large areas of purportedly “uninhabitable spaces.”

PETITIONER'S ADDITIONAL EXPLANATION

This additional explanatory material was prompted by discussions of Article 12 that occurred at the October 8 Planning Board hearing, at the October 14 Advisory Committee Planning and Regulation Subcommittee hearing, and at the full Advisory Committee discussion of Article 12 that took place on October 22.

THE "USABLE OPEN SPACE" ISSUE

At the P&R Subcommittee hearing, Polly Selkoe of the Planning Department expressed concern that the additional Gross Floor Area (GFA) that would apply to existing homes under the revised definition of "Habitable Space" as proposed in Article 12 would have the effect of making some properties nonconforming with respect to the "Minimum Usable Open Space" requirement at Sec. 5.91 of the Brookline Zoning Bylaw. This issue had not been previously raised either by Ms. Selkoe or by Building Commissioner Dan Bennett during a lengthy meeting I had with them on September 29, or at the Planning Board's hearing on Article 12 on October 8, or in the undated Planning Board's Report on Article 12 issued a few days following the October 8 hearing.

I have examined the "Usable Open Space" issue, and it is my conclusion that it is highly unlikely that any existing properties would become nonconforming as to this specific requirement as a result of the definitional change being proposed in Article 12. Notably, and perhaps in response to the information that I presented at the October 22 Advisory Committee meeting and that is being provided herein, Ms. Selkoe now concedes that this issue likely would have no effect on most single-family residential properties. For convenience, I am attaching two pages from the zoning bylaw that pertain to this issue.

Sec. 5.91 contains the following language:

Where a minimum usable open space is required in addition to landscaped open space, there shall be included in every lot used in whole or in part for dwelling units intended for family occupancy an area of usable open space provided at the rate specified in Table 5.01. The percentage specified in Table 5.01 shall be the percent of gross floor area of all buildings on the lot. In S, SC, T, and F Districts, a residential use with more dwelling units than are permitted as of right shall provide as much usable open space as required for the dwellings permitted as of right in that district.

Also attached is the first page of Table 5.01, which deals with S (Single-Family Residential) zoning districts.

Let me walk you through this. As Sec.5.91 provides, "[t]he percentage specified in Table 5.01 shall be the percent of gross floor area of all buildings on the lot." So, for example, if we look at Table 5.01 for S-10 districts, we see the Usable Open Space percentage of 40%. That is, 40% of the Gross Floor Area of the House must be "Usable

Open Space" of the Land. According to Ms. Selkoe's statement to the Planning and Regulation Subcommittee, Article 12 might make some properties non-conforming because, by increasing the GFA (by redefining existing unfinished spaces as "habitable"), the Usable Open Space percentage could drop below 40% of the increased GFA. Suppose, for example, that we have a 10,000 square foot lot with a house with a GFA of exactly 3,000 square feet (of "Habitable Space"), the maximum allowed at the 0.30 FAR. So in this example, the required Usable Open Space would be 1200 square feet (i.e., 40% of 3,000). Now suppose that Article 12 is adopted and that the revised GFA for this house increases to 4,500 square feet (i.e., 150% of FAR). The minimum Usable Open Space would then become 1,800 square feet (i.e., 40% of 4,500). Inasmuch as the minimum rear yard setback for S-10 lots is 30 feet, it is difficult to imagine that any S-10 lot would have less than 1,800 square feet of Usable Open Space. Thus, her concern is likely theoretical at best; there are going to be few, if any, instances where this "problem" would arise in actual practice.

However, there is another implication of this minimum Usable Open Space issue that would exist even in the absence of Article 12. The Sec. 5.22 provision allowing expansion of Gross Floor Area to 150% of FAR after 10 years makes no reference to Usable Open Space or to Section 5.91. If increasing the GFA to 150% of FAR were to result in insufficient Usable Open Space (as per Ms. Selkoe's stated concern), then the "as-of-right" increase in GFA that is currently allowed in Sec. 5.22 could result in a nonconforming situation, in that the Usable Open Space could drop below the minimum. Staying with the above example, suppose that the lot had 1,500 square feet of Usable Open Space. Before the as-of-right increase in GFA, that would exceed the 40% 1,200 square foot requirement. However, if the owner finished out the "uninhabitable space" up to the 4,500 square foot (150% of FAR) maximum allowed under the existing bylaw, the lot would become nonconforming because the 1,500 square feet of Usable Open Space would be only 33.3% of GFA, which is less than the required 40% minimum.

Thus, if this belatedly-raised Usable Open Space issue was actually operative in practice, it would apply just as much to the so-called "as-of-right" 50% increases in GFA under the present definition of "Habitable Space" as it would under the proposed revision in Article 12. If there was any substance to Ms. Selkoe's concern (which there is not), then Sec. 5.22 as it presently exists is defective, in that it would allow increases in GFA without regard to their impact upon the minimum Usable Open Space requirement. Thus, either this is not a problem because the allowed increase in GFA to 150% of FAR never results in a nonconforming situation regarding minimum Usable Open Space or, alternatively, if it does, that condition is not being addressed in the current bylaw and/or is not being enforced by the Building Department.

In order for the minimum Usable Open Space issue to be afforded any weight in the consideration of Article 12, the Planning Dept. would need to demonstrate that the situation described by Ms. Selkoe could actually arise in practice, *and also* that it has thus far *never arisen* with respect to any as-of-right conversions of unfinished uninhabitable space into habitable GFA.

REFERENCE TO THE NEWTON ZONING BYLAW AND THE PURPORTED "NEGATIVE IMPACT ON DESIGN OF HOMES" THAT WOULD ALLEGEDLY RESULT FROM ADOPTION OF ARTICLE 12

At the Planning and Regulation Subcommittee hearing, I noted that, unlike Brookline, the Newton zoning by-law makes no distinction between "habitable" and "unhabitable" space in determining Gross Floor Area. I also noted that the Newton zoning bylaw allowed for higher Floor Area Ratios than Brookline. My purpose in bringing Newton's treatment of GFA to the Subcommittee's attention was not to suggest that Brookline should adopt it in place of our own bylaw, but rather to respond to one of the three objections to Article 12 that had been included in the Planning Board's report, specifically, that "the design of new homes could be negatively impacted because lower pitched or flat roofs, used to avoid attic space being counted toward the floor area, could be unattractive." Like Article 12, Newton's definition of GFA includes attic spaces satisfying similar minimum standing height requirements. My purpose in citing the Newton bylaw was simply to observe that if the Planning Board's concerns about Article 12 creating disincentives for good design had merit, we should be observing that same effect in the design of houses in Newton. Inasmuch as Newton houses do not have "lower pitched or flat roofs," the Planning Board's concern is at best highly speculative and is certainly not supported by any actual evidence.

THE "SMALL ADDITIONS" ISSUE

The Planning Board report also asserts that if Article 12 is adopted, "a large number of homeowners would be restricted from expanding their existing older homes, no matter how small the addition, because counting unfinished basement and attic spaces [in Gross Floor Area] would result in exceeding the allowable floor area for a special permit." This concern becomes operational only if the existing house is already at 150% of FAR when the "uninhabitable spaces" under the current definition are included as "habitable." The *Spooner Road* court focused on the overall "bulk" of the house, which necessarily includes these unfinished and putatively "uninhabitable" spaces. Another outcome of Article 12 would be to encourage owners of existing homes to satisfy their space requirements by finishing out existing unfinished spaces rather than by further increasing the bulk of the building by an external addition, a highly desirable outcome that would help to maintain the existing scale of homes in each neighborhood.

THE "THERE ARE ONLY A FEW NEW HOUSES BUILT EACH YEAR" ARGUMENT

It was also suggested by speakers at the Planning and Regulation Subcommittee hearing that, because there are only a small number of new homes being built in Brookline each year, Article 12 is unnecessary. But Town Meeting has certainly not agreed with that perspective in the past. In both 2002 and 2005, Town Meeting adopted zoning amendments intended to address *new* construction. Several years later, Town Meeting voted to adopt yet another zoning amendment intended to address *new* construction or the enlargement of existing houses, by eliminating the "decommissioning" of

existing habitable space as a device to create "uninhabitable space" so as to reduce GFA and in so doing provide the ability to construct exterior additions or to subdivide an existing lot. More recently, Town Meeting amended the zoning bylaw to further address "bulk," by limiting the height of a single story to 12 feet for purposes of GFA. *By more than a two-thirds vote in each of these four prior cases*, Town Meeting has indicated its desire to limit the bulk of both existing and new houses. Town Meeting has also approved a number of Local Historic Districts and Neighborhood Conservation Districts to address residents' concerns regarding construction new houses or expansion of existing houses that were out-of-scale with the neighborhood. The Planning Board's concerns regarding the effect of Article 12 on homeowners' ability to construct exterior additions where the existing GFA would be at or above 150% of FAR (if Article 12 is adopted) is in direct disregard of these four recent zoning amendments on this subject as well as the numerous LHD and NCD votes by Town Meeting.

REFERRAL

In my capacity as a member of the Planning and Regulation Subcommittee and the Advisory Committee, I voted with the majority in each case to recommend Referral of this Article. However, I continue to believe that the various objections that have been advanced by the Planning Board and by several members of the public speaking at the hearing are meritless for the reasons stated above, and/or are inconsistent with the prior recent actions of Brookline Town Meeting on at least four separate occasions. For this reason, I believe that Article 12 can stand on its merits. However, since my overarching goal in submitting this Article is to limit the McMansion-ization of Brookline and to maintain the affordability of living in Brookline for most middle-class families, I will support Referral. However, time is of the essence, and it is important that Referral be used as a legitimate opportunity to refine the zoning bylaw and to address the legitimate concerns that have been raised, and that it not be used to accomplish an indefinite delay in addressing this important public interest issue.

Attachments

SETBACK OF TOP OF WALL

§5.80 – SETBACK REQUIREMENTS IN BUSINESS OR INDUSTRIAL DISTRICTS

In business or industrial districts where a minimum setback of top of wall from any lot line is specified in **Table 5.01**, the line of any parapet, cornice, eaves, or other top line of a wall that is perpendicular or within 45% of perpendicular shall not be located closer to any lot line to which it is parallel or substantially parallel than the distance specified in said section.

OPEN SPACE REGULATIONS

§5.90 – MINIMUM LANDSCAPED OPEN SPACE

Every lot in any residence district shall include landscaped open space with a total area not less than the percentage of gross floor area of all buildings on the lot as specified in **Table 5.01**.

§5.91 – MINIMUM USABLE OPEN SPACE

1. Where a minimum usable open space is required in addition to landscaped open space, there shall be included in every lot used in whole or in part for dwelling units intended for family occupancy an area of usable open space provided at the rate specified in **Table 5.01**. The percentage specified in **Table 5.01** shall be the percent of gross floor area of all buildings on the lot. In S, SC, T, and F Districts, a residential use with more dwelling units than are permitted as of right shall provide as much usable open space as required for the dwellings permitted as of right in that district.
2. In addition to the requirements of **§2.15, paragraph 3.**, open space shall be deemed usable only if:
 - a. At least 75 percent of the area has a grade of less than eight percent;
 - b. At least 75 percent of the area is open to the sky, except that roofed space separated from outdoor unroofed open space by doors and windows constructed of transparent material which can be opened in good weather to the extent of 40 percent of intervening wall area may be counted toward the 25 percent of usable open space not open to the sky provided such space is designed and maintained for recreational use;
 - c. Each dimension of such space is at least 15 feet;
 - d. Such space is at least 10 feet from the front lot line if it is required to serve a multiple dwelling; and
 - e. If such space is above ground level on a roof, terrace, or the like, and is designed and maintained for recreational use, it may be counted up to 50 percent of the usable open space requirement, provided that for every two percent counted toward that requirement an additional one percent of landscaped open space, beyond that required by **Table 5.01**, shall be provided at ground level.

ZONING BY-LAW

TOWN OF BROOKLINE, MA

Table 5.01 – Table of Dimensional Requirements		USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	LOT WIDTH MINIMUM (feet)	HEIGHT MAXIMUM (feet)	MINIMUM YARD ^{10,11} (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	FRONT ¹⁴						SIDE ¹⁵	REAR	LANDSC.	USABLE	
S-40	1-family detached dwelling subject to Section 5.11(a) Cluster		20,000	0.20	110	35	30	20	50	10%	80%
	1-family detached dwelling not subject to Section 5.11		40,000	0.15	150	35	30	20	50	10%	100%
	Any other structure or principal use ¹⁵		40,000	0.15	150	35	40	30	60	100%	none
S-25	1-family detached dwelling subject to Section 5.11(a) Cluster		12,500	0.25	90	35	30	20	50	10%	60%
	1-family detached dwelling not subject to Section 5.11		25,000	0.20	120	35	30	20	50	10%	80%
	Any other structure or principal use ^{14, 15}		25,000	0.20	120	35	40	30	60	80%	none
S-15	1-family detached dwelling subject to Section 5.11(a) Cluster		7,500	0.30	75	35	25	15	40	10%	60%
	1-family detached dwelling not subject to Section 5.11		15,000	0.25	100	35	25	15	40	10%	60%
	Any other structure or principal use ¹⁵		15,000	0.25	100	35	35	25	50	60%	none
S-10	1-family detached dwelling		10,000	0.30	85	35	20	10	30	10%	40%
	Any other structure or principal use ¹⁵		10,000	0.30	85	35	30	20	40	40%	none
S-7	1-family detached dwelling		7,000	0.35	65	35	20	7.5	30	10%	30%
	Any other structure or principal use ¹⁵		7,000	0.35	65	35	30	20	40	30%	none
S-0.5P	1-family detached dwelling subject to Section 5.11(a) Cluster		7,500	0.30	75	35	25	15	40	10%	40%
	1-family detached dwelling not subject to Section 5.11		15,000	0.25	100	35	25	15	40	10%	60%
	Other dwelling structure			0.50	75	40	25	15	40	10%	40%
	First dwelling unit		300,000								
	Each additional dwelling unit		1,000								
S-0.75P	Any other structure or principal use ¹⁵		15,000	0.25	100	35	35	25	50	60%	none
	1-family detached dwelling		7,000	0.35	65	35	20	7.5	30	10%	30%
	Other dwelling structure			0.75	65	40	20	$\frac{L}{10 + \frac{L}{30}}$	30	10%	30%
	First dwelling unit		140,000								
	Each additional dwelling unit		1,000								
SC-7	Any other structure or principal use ¹⁵		7,000	0.35	65	35	30	20	40	30%	none
	1-family detached dwelling		7,000	0.35	65	35	20	7.5	30	10%	30%
	Converted 1-family detached dwelling		7,000	0.50	65	35	20	7.5	30	10%	30%
SC-10	Any other structure or principal use ¹⁵		7,000	0.35	65	35	30	20	40	30%	none
	1-family detached dwelling		10,000	0.35	65	35	20	7.5	30	10%	30%
	Converted 1-family detached dwelling		10,000	0.50	65	35	20	7.5	30	10%	30%
S-4	Any other structure or principal use ¹⁵		10,000	0.35	65	35	30	20	40	30%	none
	1-family detached dwelling		4,000	1.0	40	35	15	7.5	30	10%	30%
	Any other structure or principal use		5,000	1.0	50	35	25	20	40	30%	none

Required Lot Frontage: 25' in S and SC districts and 20' in all other districts

(Additional regulations are contained in the text of Article 5.00)

PLANNING BOARD REPORT AND RECOMMENDATION

This article, submitted by citizen petitioner Lee Selwyn, proposes to modify the Brookline Zoning Bylaw's definition of "Habitable Space," Section 2.08.1, so that areas in a building that are intended for human occupancy, either now or in the future, and without regard to present finishes, would count toward gross floor area. The Zoning By-law uses gross floor area and floor area ratio limits to restrict the overall size of a building on a lot; minimum setbacks and maximum height limits also restrict a building's dimensions. Some neighborhoods, like Local Historic and Neighborhood Conservation Districts, are further protected by the jurisdiction of the Preservation Commission or the Neighborhood Conservation District Commission, which may further restrict a development's size, height and or setbacks.

Under the proposed amendment, habitable space would not only include finished floor area, but also any building area that either meets or could meet the requirements for habitable space under the Massachusetts Building Code. Currently, unfinished attic and basement space within a building is not counted towards a home's total gross floor area – this amendment would change that. The amendment's goal is to restrict new buildings from being constructed with large unfinished basements and/or attics in preparation for future conversion into finished floor area after 10 years.

Currently, the Town's Zoning By-law allows for single- and two-family homes to exceed the current floor area ratio (FAR) limits by up to 50 percent by-right when unfinished attic or basement space is converted to finished floor area. Such conversions are allowed by right to encourage homeowners to finish existing space, rather than construct an addition, where possible. Homes need to have been in existence for at least 10 years in order to take advantage of this, or any other, FAR exemption. The petitioner argues that developers are overbuilding new homes with large areas of unfinished space so that they can be converted after the 10-year time requirement.

Brookline has been working for years to develop appropriate ways for homeowners to expand into existing attics and basements to accommodate growing family needs, as well as offer incentives to retain existing structures. These regulations can largely be found in the Zoning By-law under Section 5.22, Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units. The current 10-year "waiting period" for both attic and basement conversions was adopted by Town Meeting in the spring of 2005 and 2006. When the warrant article was initially drafted, the proposed FAR exemptions under Section 5.22 were available only to structures already in existence when the amendment was passed; however, when the Attorney General's office reviewed the amendment, it was declared illegal to not treat existing structures and new structures equally. The 10-year waiting period was adopted to address the Attorney General's concerns.

The Planning Board recognizes that there have been a number of instances where new homes have been built with unfinished attics and basements, and often, these areas may have windows or dormers and adequate ceiling heights to allow for future conversion.

When investing money in the construction or renovation of a home, developers are working to maximize the home's value, which includes future expansion possibilities. Additionally, unfinished floor area is often used for mechanical and storage space. However, these new homes can feel too large for the neighborhood, and large areas of unfinished space can be concerning for neighbors who are impacted by the size of a new home.

Unfortunately, the current warrant article does not address these concerns directly and would have wider ranging implications. Including unfinished space in gross floor area would increase the non-conformity of many existing homes, thereby increasing the number of homeowners who are not able to take advantage of the existing FAR exemptions allowable by special permit. Since this amendment is really designed to limit the ability to expand homes under Section 5.22, a brief review of what those exceptions entail is appropriate. The explanation that accompanies the proposed amendment has already described the by-right conversion of attics and basements in single- and two-family homes up to 150 percent of allowed floor area. Section 5.22 also allows for the Board of Appeals to grant special permits for other expansion options: by exterior addition up to 120 percent; by interior conversion or a combination of interior conversion and exterior addition up to 130 percent; and for additions less than 350 square feet, up to 150 percent of allowed floor area. This last option is often useful for home owners whose homes are already over the 120 percent threshold, but still want a small addition, i.e. a mudroom or kitchen expansion. All of these options are available only by special permit, only for homes in certain residential zoning districts, and only if the home has not received prior grants for additional gross floor area, including the attic/basement expansion option.

The Planning Board is concerned that by changing the definition of habitable space, so that essentially any unfinished space that could meet occupancy standards must be counted towards gross floor area, a number of existing homes that have unfinished attics or basements could be made non-conforming in a way that restricts their expansion options under Section 5.22. For example, a large unfinished basement could push a home's FAR over 150 percent of allowed, and the homeowners would no longer be able to expand their kitchen, add a mudroom, or enclose a back deck, except by variance. Special permit applications for FAR exemptions are submitted relatively frequently by typical Brookline homeowners seeking to improve their homes.

The proposed warrant article introduces an element of uncertainty into the zoning process: the Building Commissioner would need to determine if there is intent to modify space for future living area. For example, when plans are submitted for a new home with an unfinished basement, the Building Department would determine if the home's future occupants will want to convert a portion of the basement for a playroom, or if the space is really designed for storage and mechanical space. Outside of the need to determine intent, redefining "habitable space" so that it includes unfinished space, but retaining the unfinished space exemptions in the "gross floor area" definition, even though they would no longer apply, generates confusion and complicates an already complicated Zoning By-

law. This lack of clarity could lead to inconsistent interpretation of regulations and a lack of predictability.

There are other alternatives more appropriate for addressing what seems to be the root of the problem: exceedingly large new homes. The Planning Board would prefer solutions that directly address the raised concerns, including modifying the overall allowed FAR or lowering the total allowed through attic and basement conversion. Other alternatives include requiring a special permit for attic/basement conversions similar to what is required for exterior additions; lowering the allowed 150 percent FAR for attics and basements to 130 percent, in line with what is currently allowed for other interior conversions; or lengthening the time required prior to conversion. If neighborhoods wish for new development to be smaller, then restricting the extent of existing FAR exceptions is a more direct way to address the issue.

The Planning Board does not support the proposed amendment. While the Board recognizes that developers are planning ahead for future expansion, the current amendment has broader ramifications for existing properties, adds complexity to an already confusing issue, and may have unintended negative consequences on the design of new homes, such as encouraging unattractive shallow roof pitches. The proposed amendment would likely prevent the construction of new homes with unfinished attics and basements. But the future expansion possibilities for existing homes could be dramatically limited; intent of future use cannot be measured objectively, and the amendment's terms and phrases promote inconsistent interpretation of the By-law. Finally, the Board foresees other unintended consequences, including changes in home design as a very likely result of this amendment. While the Board is opposed to this particular warrant article, it does support further discussion of the "McMansion loophole" issue, especially in the context of how much floor area is reasonable on a property, and how the Zoning By-law can best regulate floor area and still offer clear incentives for preserving a home.

Caution needs to be exercised in proposing zoning changes directed at the new construction of single- and two-family dwellings, since any new regulations are required to apply equally to existing and new structures. In 2014, the Building Department issued nine building permits for new detached single-family homes; in 2015, eight building permits have been issued to date. In contrast, 23 applications were submitted for special permit relief for FAR in 2014. The consequences of this amendment will have a far greater impact on existing homes than on the relatively few new single-families built each year.

In sum, the Planning Board is not in favor of this article for the following reasons: 1) a large number of homeowners would be restricted from expanding their existing older homes, no matter how small the addition, because counting unfinished basement and attic spaces would result in exceeding the allowable floor area for a special permit; 2) the amendment complicates rather than clarifies gross floor area regulations, because intent of future use cannot be measured objectively; and 3) the design of new homes could be negatively impacted because lower pitched or flat roofs, used to avoid attic space being counted toward the floor area, could be unattractive.

Notwithstanding the Planning Board's unanimous agreement that the Petitioner's solution is inappropriate, the Planning Board believes the wider issue that has been raised has merit and should be studied further.

Therefore, the Planning Board recommends REFERRAL on Article 12 to a committee for a report back to Spring 2016 Town Meeting.

SELECTMEN'S RECOMMENDATION

Article 12 is a citizen petition to modify the definition of "Habitable Space," under Section 2.08.1 of the Zoning By-law, so that unfinished space, typically in the basement and attic, would be counted toward habitable space if, in the future, it could be finished and meet building code specifications for habitable space, i.e. required minimum height and emergency egress. The goal of the petitioner is to limit the size of new homes, which are often built with large attics that have windows and dormers and may be out-of-scale with the surrounding homes in the neighborhood.

In 2005, a zoning amendment approved by Town Meeting allowed by-right conversion of attics, ten years after the date of construction, if the resultant floor area ratio (FAR) did not exceed 150% of the allowed FAR. Originally, in 2002, a previously proposed warrant article would have allowed conversions of the attic and basement up to 150% of allowed FAR if the dwelling had been constructed prior to the passage of the warrant article. However, the Attorney General ruled this earlier article invalid because it did not treat all dwellings, existing and new, equally.

The Selectmen agree with the recommendations of the Planning Board and the Advisory Committee's Subcommittee on Planning and Regulation that, if this article were approved as submitted, there could be significant negative impacts to homeowners if they wished to expand their living space because including the floor area of unfinished basements and attics would result in higher FAR calculations. Since the Zoning By-Law allows bonus floor area by special permit – up to 120% of the allowed FAR for an exterior addition and 150% for an exterior addition no greater than 350 square feet – counting unfinished basement or attic space toward the gross floor area would mean many homeowners would no longer be able to construct additions, such as converting an entry porch to a mudroom or enclosing a screen porch for extra living space. Allowing flexibility for homeowners to expand living space in their homes when their family needs change is an important element to retaining families in Brookline.

The Selectmen believe that there are other means available to prevent out-sized homes from being built without restricting existing homes, and these methods should be explored by a committee, which can report to Town Meeting in the spring.

Therefore, the Selectmen unanimously recommend FAVORABLE ACTION on the following:

VOTED: To refer the subject matter of Article 12 to a Moderator's committee with a report due for the Spring Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY

The Zoning By-Law uses gross floor area (GFA) and floor area ratio (FAR) limits, along with minimum setbacks and height limits, to restrict the overall size of a building on a lot. Section 5.22 of the Town's Zoning By-Law permits single and two-family homes to exceed FAR limits by up to 50% after a period of 10 years following the date of issuance of the initial Certificate of Occupancy, by converting unfinished attic or basement space into habitable space as-of-right. This space would otherwise not be included within the definition of GFA for purposes of computing FAR. Petitioner argues that developers are overbuilding new homes with large areas of unfinished space that are designed to be easily converted into habitable space after the 10 year time requirement or sooner. Article 12 seeks to change the definition of Habitable Space in the Zoning By-Law to close what some have called the "McMansion Loophole" by increasing the amount of unfinished attic and basement space to be included within the definition of Habitable Space.

The Advisory Committee agrees with the findings of the Planning Board and **recommends that the subject matter of Article 12 be referred to a Moderator's Committee with the request that a preliminary report be presented to Spring 2016 Town Meeting and the goal that a new warrant article be presented to Fall 2016 Town Meeting.**

BACKGROUND:

Article 12 was submitted as a citizen petition by Lee Selwyn. It seeks to change the definition of Habitable Space to more closely align with how that term is defined in the State Building Code.

Petitioner is concerned that developers are taking advantage of a loophole in the Zoning By-law by building new houses to the maximum allowable FAR and also building additional space under the guise of non-habitable space to take advantage of the 50% bonus under Section 5.22, which in some cases is actually being marketed to potential home buyers as readily usable space. Petitioner argues that the effect of the current language is to unnecessarily increase the bulk of new houses. Petitioner also argues that the Zoning By-Law, as written and interpreted by the Building Department, is changing the character of neighborhoods through a proliferation of oversized homes.

The purpose of the Zoning By-Law change that initially provided for the 50% bonus provision in Section 5.22 was to incentivize conversion of existing attic or basement space before building an addition, but it was originally written to apply only to existing

structures. Subsequently, the 10-year waiting period was introduced because the Massachusetts Attorney General ruled that the definition of habitable space must apply to *all* structures, regardless of whether they are new or existing.

The issue was highlighted in the case of 71 Spooner Road, which was the subject of extensive litigation involving the Town and ultimately reached the Supreme Judicial Court. The case affirmed the decision of the Town 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. Petitioner states that his proposed language amending the definition of Habitable Space merely tracks the holding of the courts that addressed the Spooner Road case, requiring that "intent" be considered when determining GFA and its conformity with the allowed FAR, adding that the Town has not implemented this aspect of the Spooner Road decision in its grant of building permits.

The Preservation Commission and NCD Commission have the ability to control the bulk of structures within Local Historic Districts and Neighborhood Conservation Districts, although the Advisory Committee was not provided information on how often this tool is deployed.

DISCUSSION:

The Advisory Committee expressed the following concerns about Article 12:

- It could result in many existing houses becoming non-conforming under the Zoning By-Law, with the result that obtaining special permits for other expansion possibilities under Section 5.22 might not be possible. No data was available on how many existing properties might be affected.
- It contains language that is overly broad and difficult to interpret because it involves a determination of intent.
- It could affect usable open space requirements under the Zoning By-Law, since these are also based on GFA. (See the petitioner's additional explanation of Article 12 for his analysis of this issue.)
- It could affect commercial properties as well as residential.
- The potential effect on assessed values and property taxes is unknown.
- Since only a handful of new houses are constructed annually, this may not justify a change in the definition of Habitable Space that could affect many, if not most, existing properties.
- While many were skeptical of the Planning Board's view that this change could result in a proliferation of low-pitched roofs, no data was provided on new house designs in other communities (such as Newton) that consider attics as habitable space.
- There might be more effective ways of controlling bulk, such as design review for large new residential projects, recognizing that the so-called "McMansion" issue is at least as much about the quality of the design as the size of the structure.

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The Advisory Committee is sympathetic to the concerns raised by the petitioner with respect to the so-called "McMansion Loophole," but believes that changing the definition of Habitable Space presents complex and potentially significant issues relating to existing structures and may have unintended consequences. There may be more effective ways of addressing the concerns about building bulk, such as requiring design review, lowering the allowable FAR bonus from 150% to 130%, or lengthening the time requirement prior to conversion. In the end, the Advisory Committee agreed with the Planning Board that the matter should be studied in more detail in order to find a holistic solution to controlling the bulk of new and existing structures.

RECOMMENDATION:

By a vote of 19-2-0, the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 12:

VOTED: That the subject matter of Article 12 be referred 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.

Passed by a ^{xxx} Council Vote of
188 In Favor and 20 Opposed

ARTICLE 13

THIRTEENTH ARTICLE

Submitted by: Board of Selectmen

To see if the Town will authorize the Board of Selectmen to commence a Community Choice Electrical Aggregation Program and contract for electric supply for Brookline residents and businesses as authorized by M.G.L. 164, Section 134, or to take any other action relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In 1997, the Commonwealth of Massachusetts enacted deregulation of the utility industry. As part of that effort an option was created for municipalities to "aggregate" electricity use and negotiate electric supply on behalf of residents and small businesses currently on basic service. Community Choice Aggregation also allows a community to purchase energy with a higher renewable content than currently required by the Massachusetts Renewable Portfolio standard. A vote of Town Meeting is required for Brookline to move forward and design a plan for Community Choice Aggregation. This warrant article seeks to gain that approval in order to engage with a broker who will work with the Town to design and implement a program.

CLIMATE ACTION COMMITTEE REPORT AND RECOMMENDATION

The Selectmen's Climate Action Committee recommends favorable action on Article 13. This article, submitted by the Board of Selectmen, would enable the Selectmen to develop a Community Choice Aggregation (CCA) program.

Through CCA, the Board of Selectmen can seek an alternate supplier for electricity for all basic-service ratepayers in Brookline. This option has been available since the electricity industry was deregulated in 1997. A number of other Massachusetts municipalities have since pursued aggregation, especially recently with fluctuating energy prices. This warrant article would allow the Board of Selectmen to proceed with partnering with an energy broker and developing its own CCA program. This process can be long and thorough, as CCA programs are reviewed by the state Department of Energy Resources and the Attorney General, and all CCA programs require approval from the state Department of Public Utilities. Once an aggregation plan is approved, the energy broker would seek pricing from energy suppliers and, if approved by the Selectmen, implement the CCA program, including marketing the program and all opt-out options.

The Climate Action Committee supports Article 13 and a move towards CCA in Brookline. Through CCA, the Town can explore the electricity supply options available for basic-service rate payers, including the opportunity to increase the portion of the electricity supply provided by renewable energy. With not only Selectmen review but also multiple levels of state review, any CCA program will be transparent and vetted so

rate payers can be confident the program is legitimate. Additionally, any rate payer that does not want to participate in CCA can opt out. The Climate Action Committee emphasizes that any CCA program should have easy opt-out options. Since the Selectmen have indicated that the ease of opting out is a priority, the Climate Action Committee is confident that any Brookline CCA program will be clear in this respect.

A CCA program is one of the most significant steps a municipality can take to reduce its greenhouse gas emissions if the electricity supply is required to include a significant portion of renewable energy. Article 13 is tied to Warrant Article 14, a resolution that asks the Board of Selectmen to commit to a large portion of renewable energy as part of any CCA program. The Climate Action Committee has long supported reasonable steps towards reducing Brookline's impact on climate change, and CCA is one way to substantially increase renewable energy, and thereby decrease the use of fossil fuels.

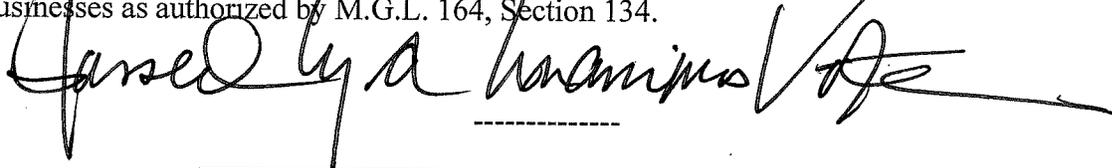
Therefore, the Selectmen's Climate Action Committee recommends FAVORABLE ACTION on Article 13.

SELECTMEN'S RECOMMENDATION

Article 13 would enable the Town to investigate and engage with a broker to design a Community Choice Electrical Aggregation (CCA) program on behalf of Brookline residents and business owners. This warrant article is the first step in the development of an aggregation plan which would ultimately be approved by this Board. All ratepayers on the utility's basic service who do not opt out of the CCA will be automatically enrolled in the plan. There would be a public process prior to approval of the program, which would have opt-out provisions laid out for customers who wish to remain on default service or seek supply elsewhere.

While the components of any CCA program have yet to be developed the Board agrees that having the ability to design a program that supports the goals of the community and increases the Town's renewable energy portfolio is a positive outcome. The Board recommends FAVORABLE ACTION on Article 13 by a vote of 5-0 taken on October 6, 2015 on the following:

VOTED: that the Board of Selectmen commence a Community Choice Electrical Aggregation Program and contract for electric supply for Brookline residents and businesses as authorized by M.G.L. 164, Section 134.



ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 13, submitted by the Board of Selectmen, asks for Town Meeting authorization to start the process of developing a Community Choice Aggregation (CCA) program. The Advisory Committee supports this step, which could give Brookline electricity consumers a better choice of electrical energy.

By a vote of 20-0-0, the Advisory Committee recommends FAVORABLE ACTION.

BACKGROUND:

Deregulation of the utility industry in 1997 led to M.G.L. 164 (Manufacture and Sale of Gas and Electricity), Section 134 (Load Aggregation): “*Any municipality or any group of municipalities acting together within the commonwealth is hereby authorized to aggregate the electrical load of interested electricity consumers [currently on basic service] within its boundaries...*” Under this statute, a municipality may solicit bids, broker and enter agreements to facilitate the sale of electric energy and related services to consumers in the municipality by suppliers other than the incumbent utility.

If Town Meeting approves Article 13, the Selectmen would have the necessary authority to start the process of developing a CCA program and to contract for a new source of electricity as the default choice for Brookline businesses and residents. The process would begin with the Selectmen engaging an energy broker or “aggregator” to work with the Town to design and implement the program.

The purposes of aggregation can vary. Some municipalities undertake aggregation programs to reduce the cost of energy for their residents while others look to provide rate stability. In Brookline the primary goal, as set forth by the petitioners of Article 14, would be purchasing energy with a higher renewable content.

Only five states allow the creation of CCAs. In Massachusetts, according to the Metropolitan Area Planning Council (MAPC), as of August 2015, 17 municipalities had taken advantage of Section 134 and had developed plans that had been approved by the Department of Public Utilities (DPU). In addition, one regional planning district and almost four dozen cities and towns had submitted plans for DPU approval. CCAs have been strongly supported by the MAPC, which worked with the city of Melrose to secure a consultant that could deliver an electricity supply that reduced emissions while keeping prices at or below the utility’s rates. The MAPC is in the process of procuring aggregation consultants on behalf of the MAPC region. If Article 13 is approved, Brookline may be able to participate in this undertaking.

More extensive comments regarding the potential goals and impact of a CCA in Brookline are set forth in the Advisory Committee’s discussion of Article 14.

DISCUSSION:

Advisory Committee members expressed support for Article 13, stating that the possibility of getting “a better deal” either with a group of other municipalities or by working with the MAPC should be explored. They also stressed the importance of ensuring that all consumers understand the default/opt out model that will be used, should the aggregator be successful in developing a CCA program for the consideration of residents and businesses.

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RECOMMENDATION:

By a vote of 20-0-0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Board of Selectmen under Article 13.

XXX

ARTICLE 14

FOURTEENTH ARTICLE

Submitted by: Carol Oldham and Thomas Vitolo

To see if the Town will adopt the following resolution:

A Resolution to Urge the Board of Selectmen to Increase the Use of Electricity from Renewable Sources of Energy Using a Community Choice Aggregation Plan

WHEREAS, the Earth is facing a climate crisis and, to avoid the worst impacts of this crisis, 97 percent of climate scientists have determined that the burning of fossil fuel must be dramatically curtailed;

WHEREAS, Brookline has shown significant awareness about the severity of the climate crisis, has shown an ongoing commitment to reducing its greenhouse gas emissions, and is committed to leading in the curtailment of greenhouse gas emissions in the future;

WHEREAS, approximately 21 percent of Brookline citizen's climate change-causing emissions come from generating electricity,¹ and changing the source of our electric generation is a single step that allows for an immediate and substantial decrease in emissions;

WHEREAS, in 1997 the Commonwealth of Massachusetts enacted a public policy called "Community Choice Aggregation" (CCA) enabling cities and towns to aggregate the buying power of individual electricity customers;

WHEREAS, 39 Massachusetts' cities and towns have already implemented CCA plans, and many more are in the process of passing CCA plans with the goal of reducing greenhouse gas emissions;

WHEREAS, Community Choice Aggregation also provides a layer of consumer protection both because plans are reviewed by the Massachusetts Attorney General's office and the Massachusetts Department of Public Utilities, and because any electric customer can opt out of the CCA plan at any time and at no cost.

NOW, THEREFORE, BE IT RESOLVED, that Town Meeting urges the Board of Selectmen to initiate a process to develop a Community Choice Aggregation plan that has, at a minimum, the below stated requirements of this resolution.

1. The Community Choice Aggregation plan shall include as a goal the increased use of renewable resources and corresponding decreased use of carbon dioxide emitting sources for the generation of electricity for Brookline participants.

¹ Article Explanation, Appendix A, Row 9

2. The Community Choice Aggregation plan shall increase participants' use of renewable sources of electricity by an estimated 25 percent of retail sales, at an incremental cost to the average participating household of approximately \$7.00 per month based on individual household consumption. Further, the Community Choice Aggregation plan shall include, if feasible and appropriate, provisions that entitle participants to charitable deductions on their income tax filings to give consumers the additional benefit of potential tax savings.
3. The Community Choice Aggregation plan shall include clear and easily executed steps allowing consumers to opt out of, or later to opt in to the Aggregation program corresponding to the Community Choice Aggregation plan, with no penalty or other cost, and at any time.
4. That, in addition to all other requirements for notice in Massachusetts General Laws or regulations of the Department of Public Utilities, the Town of Brookline will communicate directly with citizens about Community Choice Aggregation and the opt-out provision.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

We all want to do the right thing about climate change - but there is so much information, it can be confusing and overwhelming. The good news is that the Town has a tool to clean up our electricity sources, to protect consumers, and to cut our climate change impacts, with one vote.

One major source of climate change-causing pollution is electricity generation – 21% of Brookline's climate change causing pollution comes from making our electricity.² Moving to cleaner sources of electricity like solar, wind, and anaerobic digester gas (from manure, food waste, etc.) will result in a large reduction of our climate change causing air pollution. A Community Choice Aggregation plan for Brookline, structured as suggested in this resolution, will bring our proportion of clean electricity generation to 50 percent, doubling the current generation mix.

BROOKLINE'S EMISSIONS

Currently, emissions caused by Brookline residents come from

- heating our buildings (48%),
- personal vehicles (27%),
- solid waste (4%), and
- electricity use (21%).³

² Article Explanation, Appendix A, Row 9

³ Article Explanation, Appendix A, Rows 9 – 12

As a town and as a state, we are moving to increase the efficiency of our homes and buildings, to reduce our solid waste, and to make our transportation alternatives better. We have made significant gains and should continue to work towards reductions in emissions in those sectors, but our climate change impacts from our electricity use can be massively cut in one single action by Town Meeting and the Selectmen in passing a Community Choice Aggregation plan. Brookline can decrease the use of fossil fuels in generating its electricity by choosing to use renewable energy instead. This significant carbon emissions reduction doesn't require any change in our homes, our vehicles, or our behavior – it simply requires Community Choice Aggregation.

CCA: COMMUNITY CHOICE AGGREGATION

The Massachusetts General Law called the “Electric Utility Restructuring Act” enacted in 1997 provides a mechanism for cities and towns to reduce their climate change-causing emissions: a town or city can decide to voluntarily increase its use of renewable electricity by making this the goal of its Community Choice Aggregation (CCA) plan.

CCA IS VOLUNTARY

CCA is mandated by law to be a voluntary program for individuals, with an easy opt-out structure. If Brookline becomes a CCA community, individuals who do not wish to participate in Brookline's CCA can opt out via a simple procedure at any time, and at no cost. Those who opt out would continue to get or return to getting their electric energy from Brookline's current supplier, NSTAR Electric Company d/b/a Eversource.

CCA IS SIMPLE

No new paperwork is required to join a community's CCA program. Customers will continue to pay just one bill per month, and that bill will continue to be mailed to customers by Eversource. The electricity will arrive at each participant's home using the same wires it uses today. The only change is from where the electricity comes - more from solar, wind, and anaerobic digester gas, less from the current mix of predominantly fossil fuels.

USING CCA TO INCREASE RENEWABLE SOURCES OF ELECTRICITY MAKES SENSE FOR BROOKLINE

The current electricity mix that serves Brookline customers is approximately 25 percent renewable: small and large hydro, wind, solar, biomass, and methane fueled electric generation. The remaining 75 percent comes from natural gas, coal, oil, and nuclear power. For an extra \$7 per month, Brookline could replace 1/3 of that fossil and nuclear power with additional electricity from wind, solar, and anaerobic digester gas, and as a result half of Brookline's electricity would then come from renewable resources.

CCA PROVIDES CONSUMER PROTECTION

Electricity customers are being bombarded with advertisements about signing up for many different programs to help stop climate change. Some of these claims are legitimate and helpful, while others are legitimate but less helpful, and some are simply misleading. This situation is confusing for customers. The CCA approach proposed for this resolution will provide Brookline residents with consumer protection in two ways. Firstly, the CCA allows for the development of a legitimate plan that lowers Brookline resident's carbon footprint in a cost effective manner.

Secondly, the plan will ensure that customers can opt out at any time, for any reason, at no cost. Both the Massachusetts Attorney General's office and the Department of Public Utilities scrutinize each proposed CCA plan to ensure that it is well designed to achieve its described goals and to ensure that the opt-out provisions comply with state requirements.

CCA MAXIMIZES CARBON REDUCTIONS

Community Choice Aggregation is a remarkably powerful tool. For an optional small increase in the monthly electricity bill, every Brookline resident can ensure fully half of his or her electricity comes from renewable resources. No contractors required. No long term commitments. No regrets. Brookline would reduce carbon emissions by 8 percent of the town's total emissions, overnight.⁴ There's no other action the Selectmen or Town Meeting can take that can result in carbon emissions reductions of that magnitude.

THE CLIMATE CRISIS AND BROOKLINE

Climate change has already warmed the climate by about 1 degree Celsius. Glaciers are melting, threatening the loss of drinking water for millions of people. Mosquitoes are spreading to new territory, bringing with them malaria and dengue fever. Sea levels have begun to rise, and their continued rise will threaten both island nations and port cities, Boston included.

Brookline has showed significant leadership on local climate action. This town meeting has passed warrant articles and resolutions tackling various aspects of the climate crisis, we have a robust climate plan, and our selectmen and our selectmen's climate action committee are always looking at ways to be better on climate change.

The science is settled - the carbon emissions released by burning fossil fuels is what is causing climate change. The need is clear - we must reduce the quantity of fossil fuels that we use as individuals, communities, and nations. There is, simply put, no other way to reverse, stop, or even slow down climate change.

THE CHALLENGE

It is clear, serious steps must be taken immediately to reduce greenhouse gas emissions at all levels - from the individual, to households, to communities, to states, to countries. Emissions reductions must come from all three principal sectors: home heating, transportation, and electric generation.

Passing community choice aggregation, and setting up the program so that it focuses on increasing our use of clean energy, is a major step Brookline can take. We can stand with other towns that are passing similar plans, and together we can all move towards a clean energy future.

⁴ Article Explanation, Appendix A, Row 16

APPENDIX A

Row	Value	Unit	Description
1	730	lbs CO ₂ /MWh	Average electric generation CO ₂ intensity of ISO New England
2	275,625	MWh	Total annual Brookline electric consumption
3	100,603	short tons CO ₂ e	Brookline annual electric GHG emissions
4	230,321	short tons CO ₂ e	Brookline annual heating related GHG emissions
5	128,992	short tons CO ₂ e	Brookline annual motor vehicle GHG emissions
6	21,264	short tons CO ₂ e	Brookline annual solid waste GHG emissions
7	380,577	short tons CO ₂ e	Brookline annual non-electric GHG emissions
8	481,180	short tons CO ₂ e	Brookline annual GHG emissions
9	21	percent	Brookline electric GHG emissions
10	48	percent	Brookline heating related GHG emissions
11	27	percent	Brookline motor vehicle GHG emissions
12	4	percent	Brookline solid waste GHG emissions
13	1,125	lbs CO ₂ /MWh	Marginal electric generation CO ₂ intensity of ISO New England
14	25	percent	Incremental renewables proposed in resolution
15	38,760	short tons CO ₂ e	Brookline annual GHG emissions reduction due to CCA plan described above, assuming 100% participation
16	8	percent	Brookline GHG emissions reduction due to CCA plan described above, assuming 100% participation

Row	Source
1	"2013 ISO New England Electric Generator Air Emissions Report," page 2. http://www.iso-ne.com/static-assets/documents/2014/12/2013_emissions_report_final.pdf
2	NSTAR, courtesy of CAC member Alan Leviton, via direct communication.
3	(Row 1 x Row 2) / 2000
4	"Selectmen's Climate Action Committee Report To Town Meeting Fall 2013," page 11. http://www.brooklinema.gov/DocumentCenter/View/3891
5	"Selectmen's Climate Action Committee Report To Town Meeting Fall 2013," page 11. http://www.brooklinema.gov/DocumentCenter/View/3891
6	"Selectmen's Climate Action Committee Report To Town Meeting Fall 2013," page 11. http://www.brooklinema.gov/DocumentCenter/View/3891
7	Row 4 + Row 5 + Row 6
8	Row 3 + Row 4 + Row 5 + Row 6
9	Row 3 / Row 8
10	Row 4 / Row 8
11	Row 5 / Row 8
12	Row 6 / Row 8
13	"2013 ISO New England Electric Generator Air Emissions Report," table 1-3. http://www.iso-ne.com/static-assets/documents/2014/12/2013_emissions_report_final.pdf
14	A Resolution to Urge the Board of Selectmen to Increase the Use of Electricity from Renewable Sources of Energy Using A Community Choice Aggregation Plan, Brookline Town Meeting, Fall 2015
15	((Row 14 x Row 2) x Row 13) / 2000
16	Row 15 / Row 8

CLIMATE ACTION COMMITTEE REPORT AND RECOMMENDATION

The Selectmen's Climate Action Committee recommends favorable action on Article 14. This resolution, submitted by citizen petition by Tommy Vitolo and Carol Oldham, asks the Board of Selectmen to ensure that any Community Choice Aggregation (CCA) program in Brookline includes a large portion of renewable energy as part of its energy supply, at least 25 percent beyond the current ratio.

Article 14 is linked to Article 13, which was submitted for the warrant by the Board of Selectmen and would enable the Selectmen to proceed with developing a CCA program for Brookline. CCA, created as an option when the electricity industry was deregulated in Massachusetts in 1997, allows a municipality to seek a competitive electricity supplier for its basic-service rate payers. Without Article 13, which is also supported by the Climate Action Committee, Article 14 has little effect.

Article 14 emphasizes the main reason for pursuing CCA should be to increase the amount of renewable energy in the electricity supply, although the benefits of energy supply transparency and consumer protection are also quite valuable. Through CCA, a municipality can require a larger supply of renewable energy, and even require that the renewable energy be generated in the New England region if it wishes. These factors can affect the overall cost of electricity for Brookline rate payers, as well as encourage the additional development of renewable energy. Warrant Article 14 asks the Board of Selectmen to seek a significant increase in the supply of renewable energy, but only with a moderate cost to rate payers. The article also underscores the importance of marketing the opt-out options to ensure that those residents who do not want to participate in the CCA program can easily decline to be included. The resolution's broad language allows for flexibility in considering multiple renewable energy options, including type, location and cost. These are factors the Selectmen, in partnership with an experienced energy broker, can work out during the development of an aggregation plan.

The Climate Action Committee supports Article 14 because a CCA program that requires a significant increase in the amount of renewable energy supplied in Brookline would substantially reduce the town's greenhouse gas emissions and provide fundamental support for the future generation of renewable energy. Development of renewable energy is crucial to mitigating climate change by reducing the use of fossil fuels. Article 14 asks for a substantial but reasonable amount of renewable energy, and pairs that request with a call for opt-out provisions to be clear and easily available for those rate payers who don't want to participate in a CCA program.

Therefore, the Selectmen's Climate Action Committee recommends favorable action on Article 14.

SELECTMEN'S RECOMMENDATION

Article 14 is a petitioned resolution that seeks support for implementing a Community Choice Aggregation (CCA) program that would increase the amount of renewable energy supplied in Brookline. If authorization is given to the Selectmen under Article 13 to commence a CCA program the Town would engage with a broker who would design a program with the desired mix of electricity for the community. Both the Petitioners and the Board agree that the estimate of 25 percent of retail sales from renewable sources and an average cost per household of approximately \$7.00 per month is an appropriate goal for the program with the understanding that it is a goal and not a hard and fast number.

While a CCA program provides a certain level of consumer protection the Board understands the concerns on the opt-out provisions of the program and the desire to avoid

penalties for someone who wants to opt out. This would need to be explicit in the contract between the Town and the supplier and in the materials used to market the program. The Board anticipates engaging with an experienced energy broker who will provide the expertise which will allow residents to make informed decisions on program participation.

Community Choice Aggregation is a powerful program that will increase the level of renewable energy in Town. This resolution provides guidance to this Board that will be used as a program gets developed. Implementing a CCA program with these goals in mind is in line with the Town's overall strategy of reducing greenhouse gas emissions. Therefore, by a unanimous vote taken on October 20, 2015, recommends FAVORABLE ACTION on the following:

VOTED: that the Town adopt the following resolution:

A Resolution to Urge the Board of Selectmen to Increase the Use of Electricity from Renewable Sources of Energy Using a Community Choice Aggregation Plan

WHEREAS, the Earth is facing a climate crisis and, to avoid the worst impacts of this crisis, 97 percent of climate scientists have determined that the burning of fossil fuel must be dramatically curtailed;

WHEREAS, Brookline has shown significant awareness about the severity of the climate crisis, has shown an ongoing commitment to reducing its greenhouse gas emissions, and is committed to leading in the curtailment of greenhouse gas emissions in the future;

WHEREAS, approximately 21 percent of Brookline citizen's climate change-causing emissions come from generating electricity,⁵ and changing the source of our electric generation is a single step that allows for an immediate and substantial decrease in emissions;

WHEREAS, in 1997 the Commonwealth of Massachusetts enacted a public policy called "Community Choice Aggregation" (CCA) enabling cities and towns to aggregate the buying power of individual electricity customers;

WHEREAS, 39 Massachusetts' cities and towns have already implemented CCA plans, and many more are in the process of passing CCA plans with the goal of reducing greenhouse gas emissions;

WHEREAS, Community Choice Aggregation also provides a layer of consumer protection both because plans are reviewed by the Massachusetts Attorney General's office and the Massachusetts Department of Public Utilities, and because any electric customer can opt out of the CCA plan at any time and at no cost.

⁵ Article Explanation, Appendix A, Row 9

NOW, THEREFORE, BE IT RESOLVED, that Town Meeting urges the Board of Selectmen to initiate a process to develop a Community Choice Aggregation plan that has, at a minimum, the below stated requirements of this resolution.

1. The Community Choice Aggregation plan shall include as a goal the increased use of renewable resources and corresponding decreased use of carbon dioxide emitting sources for the generation of electricity for Brookline participants.
2. The Community Choice Aggregation plan shall increase participants' use of renewable sources of electricity by an estimated 25 percent of retail sales, at an incremental cost to the average participating household of approximately \$7.00 per month based on individual household consumption. Further, the Community Choice Aggregation plan shall include, if feasible and appropriate, provisions that entitle participants to charitable deductions on their income tax filings to give consumers the additional benefit of potential tax savings.
3. The Community Choice Aggregation plan shall include clear and easily executed steps allowing consumers to opt out of, or later to opt in to the Aggregation program corresponding to the Community Choice Aggregation plan, with no penalty or other cost, and at any time.
4. That, in addition to all other requirements for notice in Massachusetts General Laws or regulations of the Department of Public Utilities, the Town of Brookline will communicate directly with citizens about Community Choice Aggregation and the opt-out provision.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 14 gives Town Meeting the opportunity to endorse specific goals and requirements for Brookline's Community Choice Aggregation (CCA) program, including increasing participants' use of renewable sources of electricity by an estimated 25% of retail sales at an incremental cost to the average household of approximately \$7.00 per month.

By a vote of 23-0-0, the Advisory Committee recommends FAVORABLE ACTION on the motion found at the end of this report.

Article 14

This petitioned Warrant Article is a resolution in which the "Whereas" clauses:

- 1) stress the need to significantly reduce dependence on fossil fuels and greenhouse gas emissions;
- 2) note the Town's ongoing commitment to take action in addressing climate change; and
- 3) describe the benefits of CCA programs.

The resolution concludes by spelling out four components that should be part of any CCA program for Brookline. These include:

- 1) Increasing the use of renewable resources and decreasing carbon dioxide-emitting sources in the production of electricity for Brookline consumers;
- 2) Increasing participants' use of renewable sources of electricity by an estimated 25 percent of retail sales at an incremental cost to average households of \$7.00 per month;
- 3) Specifying simple steps for consumers to opt in or opt out of the CCA program at any time and with no penalty or any other cost; and
- 4) Identifying communication channels and presenting clear information about the CCA program and its opt-out provisions.

Additionally and if possible, the plan should include provisions that allow consumers to take charitable deductions on their income tax filings for participating in the program.

BACKGROUND:

Legislative History

As noted in the Advisory Committee's report on Article 13, deregulation of the utility industry in 1997 led to M.G.L. 164 (Manufacture and Sale of Gas and Electricity), Section 134 (Load Aggregation): "*Any municipality or any group of municipalities acting together within the commonwealth is hereby authorized to aggregate the electrical load of interested electricity consumers [currently on basic service] within its boundaries....*" Under this statute, a municipality may solicit bids, broker and enter agreements to facilitate the sale of electric energy and related services to consumers in the municipality by suppliers other than the incumbent utility.

Recommended CCA Program Components

Whereas Article 13 seeks Town Meeting's approval to enable the Selectmen to start the process of developing a CCA program and contract for a new source of electricity as the default choice for Brookline businesses and residents, Article 14 offers the Selectmen direction as to components and outcomes for the Town's CCA program.

Increasing the use of renewable sources of electricity by 25% of retail sales at an incremental cost of \$7.00 per month are two major components. Such a goal is believed to be achievable, based on the petitioners' research. A 25% increase would raise the amount of electricity generated by renewable sources to 50% of the total, thus not only reducing greenhouse gases emissions, but also adding more renewable energy to the grid.

Other elements in a Brookline CCA program, according to the Article, should include easily understood steps for consumers to opt in or opt out of the program at any time and without penalty or other cost and widespread information about the CCA, with a clear description of its opt-in and opt-out provisions.

Town of Brookline Participation

It should be noted that the Town itself would not participate in a CCA program at this time due to its contractual obligations to its suppliers that extend to 2018. At that time, the budgetary, environmental and other impacts of participation would have to be considered.

DISCUSSION:

A 25% increase at an Addition Cost of \$7.00

During the Advisory Committee's discussion, questions were raised about the likelihood of being able to achieve the goal of a 25% increase in the use of renewable sources of energy at a monthly additional cost of \$7.00. Members were reminded that these numbers are meant to provide direction but are not intended to be rigid. The overall goal is to increase the use of renewable sources among consumers without exceeding their financial tipping point. Article 14 refers to an "estimated" 25% increase in renewable energy and an additional incremental cost of "approximately" \$7.00 per month.

Sources of "Clean" Energy

Another area of inquiry related to the sources of "clean" energy. Although no geographical limits are recommended at this time, it is assumed that by increasing the demand for renewable sources, supply projects in Massachusetts and other New England states that "are waiting in the wings" will be launched in the near future.

Why a CCA Program

In response to questions about why a CCA program is necessary when consumers can already buy renewable energy from utility companies, the petitioners observed that a CCA "eliminates the homework" on the part of the customer. They further observed that any proposed CCA program would need the approval of the Department of Public Utilities and Attorney General before enrollment could start.

"Default" vs. "Green" Supplier

At the present time, customers who take no action in choosing a supplier are by default automatically supplied "generation" service by Eversource (formerly NStar), the electric utility that serves Brookline. If a CCA program were to begin under Article 14 and these customers took no action in choosing a supplier, their "generation" service would automatically be switched to the new "green" electric supplier chosen by the Town, with Eversource simply transmitting the electricity to them and continuing to charge for "delivery" service.

Some Advisory Committee members expressed a preference for offering consumers a choice, with one option being "green" energy and the other traditional energy, ideally at a lower cost than the current default "generation" service from Eversource. Although such an arrangement is not proposed in Article 14, the Massachusetts Department of Energy Resources' *Guide to Municipal Electric Aggregation* does recommend that during the development of a CCA program, the municipality "compare the price for energy from prospective Competitive Suppliers against each other and against projections of the average monthly market price of electricity."

Opt-In vs. Opt-Out

Other issues raised during the discussion pertained to the opt-in/opt-out provisions and effective methods of communicating the options to town residents and business.

Regarding the former, the State statute specifies that during the enrollment period and for

180 days after enrollment, customers may opt in and opt out at no cost. However, the statute does not prohibit a CCA supplier from imposing a penalty on a customer who opts out more than 180 days after enrollment.

It was noted that the sixth "Whereas" clause originally proposed by the petitioners stated that any customer could opt out of a CCA plan "at any time and at no cost." Because this unlimited opt-out right is not actually guaranteed by state statute, the Advisory Committee, upon reconsideration, voted to amend the language to eliminate the words "and because any electric customer can opt out of the CCA plan at any time and at no cost." An unlimited opt-out right could still be achieved, but would require that the CCA program developed by the Town and any contract negotiated by the Town have precise language that in fact guarantees the right to opt out "at any time and at no cost."

Notification of Customers

In terms of effective communication, according to one model, the time line of a CCA program, beginning with the approval of Town Meeting and extending to automatic enrollment of basic service customers, is approximately 16 months. Committee members urged that every opportunity during this time period be taken to explain the program and options available to the consumer. Clear communication about the CCA program is made even more imperative since the mandated approach requiring an affirmative "opt-out" is likely to be less familiar to residents and businesses than a more traditional opt-in or sign-up method.

Initial notification of customers would be the responsibility of the energy broker. It can also be assumed that Eversource (which, according to the petitioners, supplies electricity to 74% of Brookline residents and businesses) and other suppliers would likely alert their customers to the proposed changes. Other opportunities for notification are written notices piggybacked with such regular mailings from the Town as tax bills and water and sewer and solid waste disposal fees; social media; and information tables at the Senior Center, South Brookline Senior Socials, Brookline Day, and the Farmers Market. The responsible party for notifying new owners (i.e. those who purchase or rent properties after the initial CCA enrollment period) must also be clearly identified.

RECOMMENDATION:

In addition to amending the sixth "Whereas" clause, the Advisory Committee also made two minor changes to the original article, deleting "That" and replacing "will" with "shall" in the fourth requirement in the "Resolved" section.

Strongly encouraging the Town to incorporate the suggestions offered in this report, by a vote of 23-0-0, the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 14:

VOTED: That the Town adopt the following Resolution to Urge the Board of Selectmen to Increase the Use of Electricity from Renewable Sources of Energy Using a Community Choice Aggregation Plan:

WHEREAS, the Earth is facing a climate crisis and, to avoid the worst impacts of this

crisis, 97 percent of climate scientists have determined that the burning of fossil fuel must be dramatically curtailed;

WHEREAS, Brookline has shown significant awareness about the severity of the climate crisis, has shown an ongoing commitment to reducing its greenhouse gas emissions, and is committed to leading in the curtailment of greenhouse gas emissions in the future;

WHEREAS, approximately 21 percent of Brookline citizen's climate change-causing emissions come from generating electricity, and changing the source of our electric generation is a single step that allows for an immediate and substantial decrease in emissions;

WHEREAS, in 1997 the Commonwealth of Massachusetts enacted a public policy called "Community Choice Aggregation" (CCA) enabling cities and towns to aggregate the buying power of individual electricity customers;

WHEREAS, 39 Massachusetts' cities and towns have already implemented CCA plans, and many more are in the process of passing CCA plans with the goal of reducing greenhouse gas emissions;

WHEREAS, Community Choice Aggregation also provides a layer of consumer protection because plans are reviewed by both the Massachusetts Attorney General's Office and the Massachusetts Department of Public Utilities,

NOW, THEREFORE, BE IT RESOLVED, that Town Meeting urges the Board of Selectmen to initiate a process to develop a Community Choice Aggregation plan that has, at a minimum, the below stated requirements of this resolution.

1. The Community Choice Aggregation plan shall include as a goal the increased use of renewable resources and corresponding decreased use of carbon dioxide emitting sources for the generation of electricity for Brookline participants.
2. The Community Choice Aggregation plan shall increase participants' use of renewable sources of electricity by an estimated 25 percent of retail sales, at an incremental cost to the average participating household of approximately \$7.00 per month based on individual household consumption. Further, the Community Choice Aggregation plan shall include, if feasible and appropriate, provisions that entitle participants to charitable deductions on their income tax filings to give consumers the additional benefit of potential tax savings.
3. The Community Choice Aggregation plan shall include clear and easily executed steps allowing consumers to opt out of, or later to opt in to the Aggregation program corresponding to the Community Choice Aggregation plan, with no penalty or other cost, and at any time.
4. In addition to all other requirements for notice in Massachusetts General Laws or regulations of the Department of Public Utilities, the Town of Brookline shall communicate directly with citizens about Community Choice Aggregation and the opt-out provision.

Passed by a unanimous vote

November 17, 2015 Special Town Meeting

14-14

Additional information on Community Choice Aggregation may be found at:

<http://www.mapc.org/clean-energy-toolkit-topic/start-community-choice-aggregation-program>

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter164/Section134>

<http://www.mass.gov/eea/docs/doer/electric-deregulation/agg-guid.pdf>

XXX

ARTICLE 15

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 15 is a petitioned resolution that seeks to establish a “Blue Ribbon Committee” comprised of Brookline citizens to be appointed by the Moderator and Advisory Committee to study the possible taking by eminent domain of two green buffers near Beverly Road and Russett Road for permanently publicly-accessible recreation space.

At the Spring 2015 Annual Town Meeting, Town Meeting voted Favorable Action on Warrant Article 18, which requested the Board of Selectmen to study the potential taking of the parcels under the power of eminent domain. In response, the Board of Selectmen designated a staff team along with special counsel and a Selectman liaison to study the matter. This decision was based largely on what the Board of Selectmen saw as the major components of the study and the belief that Town staff was in the best position to address those components in the relatively short turnaround time that was proposed under the Article. Those components included analysis of (1) whether recreational space is needed in Precinct 16, where Hancock Village is located; (2) a history of efforts undertaken by the Town to date to protect the green buffer area within Hancock Village; (3) a “benchmark” valuation of the area proposed for a taking; and (4) a review of the legal issues that would likely arise, should the Town elect to proceed with such a taking.

The Board feels that Article 15 is unnecessary, because it represents a duplication of the efforts undertaken by the team comprised of staff, special counsel, and Selectman liaison Nancy Heller. The study under Article 18 has been completed, and the study report has been published and made available to Town Meeting members in these Combined Reports.

The Selectmen wish to note that in connection with the Article 18 study, Eminent Domain expert John Leonard, Esq. of Menard and Walsh, LLP was engaged to provide a legal opinion of the issues the Town would face if the Town elected to proceed with the contemplated taking. Attorney Leonard’s memorandum of opinion is attorney-client privileged, and therefore remains confidential. However, a number of risks have been raised by legal counsel in connection with the contemplated taking under both Articles. First, the Town should anticipate a legal challenge to the validity of a proposed taking. Of the number of issues that are likely to be raised by the property owner in such a challenge, the first is a determination of whether the taking was made in good faith. One issue that would weigh significantly in this determination is the fact that Article 18 was submitted after the property owner applied for a comprehensive permit seeking authorization to develop the property under the Affordable Housing Act. This could be seen by the reviewing Court as an effort not to preserve the space for the stated recreational purposes, but instead to prevent the permitted development. In the court case

that has been heavily relied upon by the petitioner of Article 18, the Court found in favor of the Town on this issue, but the circumstances were different. Based on the findings in the Article 18 study report, the Selectmen believe that a taking is at risk of being more closely aligned with another relevant court case which found that the taking was not made in good faith.

If the Town were to find itself in a legal battle with the property owner and the property owner were to prevail, the Town would be responsible for the costs of the litigation, likely amounting to hundreds of thousands of dollars, along with additional damages related to the property owner's inability to move forward with the project during the course of the litigation. On the other hand, if the Town were to prevail on the issue of good faith, a second trial would likely be required to determine the property's fair market value. Although the Chief Assessor has provided the Selectmen with a benchmark valuation of approximately \$14.5 million dollars, this figure could be significantly higher based on a number of factors that are raised in the opinion. For example, the benchmark valuation provided by the Assessor does not account for the comprehensive permit that was issued authorizing the construction of multi-family residential housing in the green buffer area. As the study articulates, the legal issues faced by the Town should it proceed with a taking represent "high stakes [and] costly and publicly acrimonious litigation for the Town, all of which must be seriously weighed by the Board [of Selectmen] before electing the volatile and unpredictable eminent domain option in these circumstances."

Given the Town's limited resources, the Board of Selectmen strongly believe that a citizen committee would be unlikely to contribute new information to the discussion. Multiple members of the Board expressed their desire to abstain, so that Town Meeting can decide as a body if a citizen committee is warranted.

By a vote of 0-3-2 taken on November 4, 2015, the Board recommends NO ACTION on the vote offered by the Advisory Committee.

ROLL CALL VOTE:

No Action

Wishinsky

Heller

Greene

Abstention

Daly

Franco

ARTICLE 15

FIFTEENTH ARTICLE

Submitted by: Regina Frawley, TMM16

Resolution: Request the Town Moderator and Advisory Committee appoint a Good Faith “Blue Ribbon Committee” comprised of Town citizens, defined below, to study, consider and make recommendations concerning the use of Eminent Domain for two green space buffer belts along Russett and Beverly Roads, to be used as a publicly accessible park and recreation space(s)

Whereas Town Meeting, along with several Town Committees, voted in May to approve Article 18, a “Good Faith” study to consider the use of Eminent Domain for two green buffers along Russett and Beverly Roads, for the purposes of creating publicly-accessible recreation and park space(s), and

Whereas The Board of Selectmen and some staff are currently engaged in two law cases against the property owner, Hancock Village, and are at risk of charges of Conflict of Interest on any other matter regarding the property which Article 18 referenced, which could impact their own cases, and

Whereas Article 18 had requested the Board of Selectmen to study the matter, and had assumed a “citizens’ committee” would be appointed for that purpose, though the presentations and not the language referenced a “citizens’ committee”, **however**

Whereas all such studies historically were conducted by a citizens’ committee, whether appointed or elected, and

Whereas the Board of Selectmen voted not to create a citizens’ committee to study the possibility of using the green space(s) for public use as stated in Art. 18, and instead use staff, Selectmen and consultants reporting only to the Selectmen, using “citizen input” for factual information, thereby potentially exposing a “Good Faith” study of Eminent Domain for the two parcels to charges of “bad faith” due to the fact the Selectmen and some staff are parties or resources to the two existing legal cases, and

Whereas consideration of a “taking” by Eminent Domain is amongst the most serious use of municipal “police powers”, and thus consideration to use such powers must rest in a committee of the highest order or integrity, free and independent of any political, personal or economic influence, possessing various skills (including research capabilities), and/or recognition for public service of Good Faith and integrity,

Now, therefore, Be It Resolved That Town Meeting ask the Town Moderator and the Advisory Committee to appoint expeditiously an *ad hoc* “Blue Ribbon Committee” comprised of Town citizens, to study the possible taking by Eminent Domain of the two buffer strips behind Russett and Beverly Roads for use as “publicly-accessible recreation

and park space(s)", and that the following definition and conditions of appointment be observed: That the committee be an *ad hoc* committee of seven (7), four (4) to be appointed by the Moderator and three (3) to be appointed by the Advisory Committee, either by subcommittee or plenum, and that the definition of "Blue Ribbon Committee" include reputation(s) for integrity, political, economic/financial knowledge, and personal, economic and political independence, is*sue-oriented, unbiased mind and character, who may have skills in law, real estate, bond issuance, etc., relative to land use and acquisition, but who may have skills in research and judgement and be a reputable citizen of Brookline, and who will be tasked to study the possible Eminent Domain use on the two green strips, and make good faith recommendations for both the procedure of study, the hiring of consultants as needed in the opinion of the Committee, and report its findings and recommendations for May, 2016 Town Meeting.

Be it Further Resolved that the Committee will have access to all documents and resources that might assist their work, whether in Executive Session of Open Meeting, and that consultants as needed on an hourly basis (if paid rather than volunteer) will be economically supported by the Town, but whose responsibilities to and advice for will be solely for the Committee, and

Further, Be It Resolved that if any Committee appointment appears to lack independence, or if there is the perception of use of such a committee by any entity might be a means of "dodging responsibility", a standard used in many Blue Ribbon Committee creations across the country, *that appointee will be "subject to dispute", to be filed with both appointing authorities, that is, the Town Moderator and the Advisory Committee who will consider the nature of the complaint(s).

And Be It Further Resolved that the original arguments supported by Town Meeting in Article 18 sustain and incorporated by reference, save for the role of the Board of Selectmen and any affected conflicted staff, as noted above and below,

Finally, Be It Resolved that no Selectmen, staff (except to provide factual reports or information, as requested) or any officials involved in any role in any legal actions involving Hancock Village participate in the work of the *ad hoc* Blue Ribbon Committee, and, in any case, no sitting Selectmen, whether party to the aforesaid legal actions or not, be engaged in the work of the Committee, in order for the Committee to conduct business, both publicly and in Executive Session, with the independence and integrity appropriate for such a serious undertaking as a possible taking by eminent Domain, and further, that the possible perception of "cross-contamination", of one issue influencing the other, cannot be argued persuasively legally, should the Committee recommend the Eminent Domain taking of the two buffers (or any part thereof) and should the owner(s) bring the matter to court.

PETITIONER'S ARTICLE DESCRIPTION

Town Meeting overwhelmingly and generously voted to support a study of the possible "taking" by Eminent Domain, of the two green buffer strips behind Russett and Beverly Roads for a "publicly accessible recreation space, compassionately with the fact that Precinct 16 remains the only precinct in Brookline without "walkability" to such recreation space within town.

It was assumed, based on past practice historically, that a "citizens' committee" would be established by the Board of Selectmen" to study the matter. However, both the Selectmen and Town Administrator decided not to establish such a committee, pointing out to the Petitioner that Resolution Article 18 did not "specify" that a citizens' committee be established instead voted to use only staff for the bulk of the work and to hire consultant(s), as needed, to report to them only. Strangely, despite cautioning from the Petitioner, the Selectmen appointed a new Selectman who had just made public her opposition to Ch. 40B, the kind of housing desired by the owners of Hancock Village, running the risk of having their lawyers charge bias in court should an Eminent Domain taking be recommended.

Caution aside, in July the BOS asked the Advisory Committee to transfer \$15,000 to hire an attorney to advise on Eminent Domain. The Advisory Committee declined, and suggested that Town Counsel's budget had \$80,000 available, some of which could be used to hire the consultant. Town Counsel could come back at another time if necessary.

Besides the outside legal expert on Eminent Domain, the Town Administrator recommended that all work be done "in-house", possibly presenting findings for this Town Meeting. But, there has been no reports of any activity, and if there has been by Town Meeting, it is presumed to be the work product of Town staff, some of whom are involved in—and possibly compromised by-- the two legal actions involving the same land discussed for this Town Meeting.

Initially, it was disappointing that the Town Administrator wrote that to establish a "citizens' committee" asking them to hold confidential information from public knowledge lest it would impair negotiations on, for example, the value of property, etc., would, in his opinion prove "challenging". He did not think Executive Sessions a sufficient defense against information leakage. The Petitioner, herself under lifetime federal oath not to reveal certain information, disagreed and had faith that many others also could hold confidential information secret. It would of course depend on who the appointees were/are. It always does.

The Petitioner soon came to see a "blessing in disguise" and "lemonade" from lemons opportunity. The concept of creating an ad hoc Blue Ribbon Committee of Town citizens, a practice used across the country at every level of government, in this case tasked to study the substance of Article 18 seemed the only means of avoiding potentially successful legal challenges of "conflict of interest". The Committee must be independent of any influence, political, personal, economic, etc., some of whom might have

disciplinary skills (finance, real estate, bond issuance, etc.) but would include “ordinary” citizens with good repute and known research skills, for example.

With this action, both the two law cases now existing involving the Town would be sheltered from legal claims alleging the Selectmen are using this Article (along with May’s Article 18) as yet another means of achieving the same ends. However, the BOS cases are very different substantively from the Eminent Domain issue, which is exclusively limited to the feasibility—or lack thereof—of using the land to create a publicly-accessible recreation space(s).

This article has no relationship whatsoever to housing of any kind, whether “affordable” or single-family, etc. It has only to do with publicly accessible recreation and park space(s), and remains the only possible opportunity in Precinct 16 to have such “walkable” space. It is literally a “chance of a lifetime” and, if missed, will deny forever any other opportunity for such open space. It is long past the time for South Brookline’s children, families and elders to be granted the joys and pleasures—and community-creating spaces—that are available to every other area of town. As the Petitioner presented in May, it is a question of equity and fairness. It remains so. A Town- citizen “Blue Ribbon Committee” can begin the discernment as to whether this could, or even should, be done.

Or act on anything thereto.

MOTION TO BE OFFERED BY THE PETITIONER

(Note: Language is the same as the Advisory Committee motion)

VOTED: that the Town adopt the following resolution:

Resolution: Request the Town Moderator and Advisory Committee appoint a Good Faith “Blue Ribbon Committee” comprised of Town citizens, defined below, to study, consider and make recommendations concerning the use of Eminent Domain for two green space buffer belts along Russett and Beverly Roads, to be used as a publicly accessible park and recreation space(s)

Whereas Town Meeting, along with several Town Committees, voted in May to approve Article 18, a “Good Faith” study to consider the use of Eminent Domain for two green buffers along Russett and Beverly Roads, for the purposes of creating publicly-accessible recreation and park space(s), and

Whereas The Board of Selectmen and some staff are currently engaged in two law cases against the property owner, Hancock Village, and are at risk of charges of Conflict of Interest on any other matter regarding the property which Article 18 referenced, which could impact their own cases, and

Whereas Article 18 had requested the Board of Selectmen to study the matter, and had assumed a "citizens' committee" would be appointed for that purpose, though the presentations and not the language referenced a "citizens' committee", and

Whereas all such studies historically were conducted by a citizens' committee, whether appointed or elected, and

Whereas the Board of Selectmen voted not to create a citizens' committee to study the possibility of using the green space(s) for public use as stated in Art. 18, and instead use staff, Selectmen and consultants reporting only to the Selectmen, using "citizen input" for factual information, thereby potentially exposing a "Good Faith" study of Eminent Domain for the two parcels to charges of "bad faith" due to the fact the Selectmen and some staff are parties or resources to the two existing legal cases, and

Whereas consideration of a "taking" by Eminent Domain is amongst the most serious use of municipal "police powers", and thus consideration to use such powers must rest in a committee of the highest order or integrity, free and independent of any political, personal or economic influence, possessing various skills (including research capabilities), and/or recognition for public service of Good Faith and integrity,

Now, therefore, Be It Resolved That Town Meeting ask the Town Moderator and the Advisory Committee to appoint expeditiously an *ad hoc* "Blue Ribbon Committee" comprised of Town citizens, to study the possible taking by Eminent Domain of the two buffer strips behind Russett and Beverly Roads for use as "publicly-accessible recreation and park space(s)", and that the following definition and conditions of appointment be observed: That the committee be an *ad hoc* committee of seven (7), four (4) to be appointed by the Moderator and three (3) to be appointed by the Advisory Committee, either by subcommittee or plenum, and that the definition of "Blue Ribbon Committee" include reputation(s) for integrity, political, economic/financial knowledge, and personal, economic and political independence, issue-oriented, unbiased mind and character, who may have skills in law, real estate, bond issuance, etc., relative to land use and acquisition, but who may have skills in research and judgement and be a reputable citizen of Brookline, and who will be tasked to study the possible Eminent Domain use on the two green strips, and make good faith recommendations for both the procedure of study, the hiring of consultants as needed in the opinion of the Committee, and report its findings and recommendations for May, 2016 Town Meeting.

Be it Further Resolved that the Committee will have access to all documents and resources that might assist their work, whether in Executive Session of Open Meeting, and that consultants as needed on an hourly basis (if paid rather than volunteer) will be economically supported by the Town, but whose responsibilities to and advice for will be solely for the Committee, and

Further, Be It Resolved that if any Committee appointment appears to lack independence, or if there is the perception of use of such a committee by any entity might be a means of "dodging responsibility", a standard used in many Blue Ribbon Committee creations across the country, that appointee will be "subject to dispute", to be filed with

both appointing authorities, that is, the Town Moderator and the Advisory Committee who will consider the nature of the complaint(s).

And Be It Further Resolved that the original arguments supported by Town Meeting in Article 18 sustain and incorporate by reference, save for the role of the Board of Selectmen and any affected conflicted staff, as noted above and below,

Finally, Be It Resolved that no Selectmen, staff (except to provide factual reports or information, as requested) or any officials involved in any role in any legal actions involving Hancock Village participate in the work of the *ad hoc* Blue Ribbon Committee, and, in any case, no sitting Selectmen, whether party to the aforesaid legal actions or not, be engaged in the work of the Committee, in order for the Committee to conduct business, both publicly and in Executive Session, with the independence and integrity appropriate for such a serious undertaking as a possible taking by eminent Domain, and further, that the possible perception of "cross-contamination", of one issue influencing the other, cannot be argued persuasively legally, should the Committee recommend the Eminent Domain taking of the two buffers (or any part thereof) and should the owner(s) bring the matter to court.

Handwritten signature: Joseph Ryan Electronic Records
at 139 In Favor, 42 Oppose and 11
Abstentions

SELECTMEN'S RECOMMENDATION

A report and recommendation by the Board of Selectmen will be provided in the Supplemental Mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Warrant Article 15 is a resolution that seeks to establish a "Blue Ribbon Committee" comprised of Brookline citizens to be appointed by the Moderator and the Advisory Committee to study the possible taking of two green buffers near Beverly Road and Russett Road by eminent domain for permanently publicly-accessible recreation space.

While the Spring 2015 Annual Town Meeting voted Favorable Action on Warrant Article 18, which directed the Board of Selectmen to study the potential taking of the parcels under the power of eminent domain, the Board of Selectmen chose not to appoint a citizens' committee, but decided instead to hire a special counsel to study the matter.

Valid takings under Massachusetts Ch. 79 must satisfy two criteria: the taking must be for a valid public purpose or public necessity and it must be taken in good faith. The land in question is being sought for public recreation and therefore meets the public purpose requirement.

Because of current litigation over potential development at the site, any official action on the Town's part could be perceived as a conflict of interest or bad faith. The creation of a

citizens' committee allows for an independent evaluation that indicates good faith on the part of the Town.

The Advisory Committee voted FAVORABLE ACTION on Warrant Article 15 by a vote of 18-4-0.

BACKGROUND:

Article 15 was submitted as a follow-up to Warrant Article 18 from the Spring 2015 Town Meeting. That Town Meeting voted favorable action on Article 18, a resolution that called on the Board of Selectmen to undertake a feasibility study of the taking of the green buffers along Beverly and Russett Roads by eminent domain. It also directed the Board of Selectmen to consult with the Commonwealth of Massachusetts for potential funding sources for acquiring the property. The petitioner's presentations on Warrant Article 18 recommended the formation of a citizen's committee, but this recommendation was not specified in the terms of the resolution.

After the passage of Warrant Article 18, the Town Administrator recommended an independent consultant, rather than a citizens' committee, be appointed to study the matter. The special counsel would have a general mandate to examine potential parcels for eminent domain and was not specifically directed to examine the buffers in Precinct 16. In July, a Reserve Fund transfer request to fund this position was presented to the Advisory Committee for approval and the Advisory Committee rejected the request. The consultant was hired in early September and presented a draft report to the Town Administrator during the week of October 20. As of October 25, the contents of the draft document were not made public.

DISCUSSION:

While an eminent domain taking is possible while a Mass. General Laws (M.G.L.) Chapter 40B project is pending, the taking itself must be deemed to be in good faith and not done for the purpose of blocking development. A consultant, hired by and paid for by the Town, may not be seen as operating in good faith when the Town itself has been involved in litigation involving the Hancock Village 40B project. While the Appeals Court ruled against Brookline in its suit against MassDevelopment and the case is closed, a case in Land Court is still pending and any action taken by the Town to study the acquisition of the land may be seen as a bad faith gesture.

The South Brookline neighborhood where the parcels are located does not have any usable and easily-accessed Town-owned parkland and these buffers have served the neighborhood as recreational space for nearly 70 years. It is the potential loss of this open space that has prompted the petitioner to take action to protect it. The Advisory Committee recognizes that the process of evaluating an eminent domain taking is independent of any development, either existing or pending, and land may be taken under eminent domain regardless of its development status, but the Committee agreed with the petitioner that a study should be undertaken in good faith.

The Advisory Committee's Planning and Regulatory Subcommittee received more than 10 letters or emails in support of this resolution, including a letter from State

Representative Edward Coppinger who represents the 10th Suffolk District, which includes parts of Brookline.

The Advisory Committee feels a "Blue Ribbon Committee" of Brookline citizens appointed jointly by the Moderator and Advisory Committee would conduct an independent analysis and make recommendations based on its findings without any perceived conflict of interest.

RECOMMENDATION:

The Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 15, by a vote of 18-4-0:

VOTED: that the Town adopt the following resolution:

Whereas Town Meeting, along with several Town Committees, voted in May to approve Article 18, a "Good Faith" study to consider the use of Eminent Domain for two green buffers along Russett and Beverly Roads, for the purposes of creating publicly-accessible recreation and park space(s), and

Whereas The Board of Selectmen and some staff are currently engaged in two law cases against the property owner, Hancock Village, and are at risk of charges of Conflict of Interest on any other matter regarding the property which Article 18 referenced, which could impact their own cases, and

Whereas Article 18 had requested the Board of Selectmen to study the matter, and had assumed a "citizens' committee" would be appointed for that purpose, though the presentations and not the language referenced a "citizens' committee", and

Whereas all such studies historically were conducted by a citizens' committee, whether appointed or elected, and

Whereas the Board of Selectmen voted not to create a citizens' committee to study the possibility of using the green space(s) for public use as stated in Art. 18, and instead use staff, Selectmen and consultants reporting only to the Selectmen, using "citizen input" for factual information, thereby potentially exposing a "Good Faith" study of Eminent Domain for the two parcels to charges of "bad faith" due to the fact the Selectmen and some staff are parties or resources to the two existing legal cases, and

Whereas consideration of a "taking" by Eminent Domain is amongst the most serious use of municipal "police powers", and thus consideration to use such powers must rest in a committee of the highest order or integrity, free and independent of any political, personal or economic influence, possessing various skills (including research capabilities), and/or recognition for public service of Good Faith and integrity,

Now, therefore, Be It Resolved That Town Meeting ask the Town Moderator and the Advisory Committee to appoint expeditiously an *ad hoc* "Blue Ribbon Committee" comprised of Town citizens, to study the possible taking by Eminent Domain of the two buffer strips behind Russett and Beverly Roads for use as "publicly-accessible recreation

and park space(s)”, and that the following definition and conditions of appointment be observed: That the committee be an *ad hoc* committee of seven (7), four (4) to be appointed by the Moderator and three (3) to be appointed by the Advisory Committee, either by subcommittee or plenum, and that the definition of “Blue Ribbon Committee” include reputation(s) for integrity, political, economic/financial knowledge, and personal, economic and political independence, issue-oriented, unbiased mind and character, who may have skills in law, real estate, bond issuance, etc., relative to land use and acquisition, but who may have skills in research and judgment and be a reputable citizen of Brookline, and who will be tasked to study the possible Eminent Domain use on the two green strips, and make good faith recommendations for both the procedure of study, the hiring of consultants as needed in the opinion of the Committee, and report its findings and recommendations for May, 2016 Town Meeting.

Be it Further Resolved that the Committee will have access to all documents and resources that might assist their work, whether in Executive Session of Open Meeting, and that consultants as needed on an hourly basis (if paid rather than volunteer) will be economically supported by the Town, but whose responsibilities to and advice for will be solely for the Committee, and

Further, Be It Resolved that if any Committee appointment appears to lack independence, or if there is the perception of use of such a committee by any entity might be a means of “dodging responsibility”, a standard used in many Blue Ribbon Committee creations across the country, that appointee will be “subject to dispute”, to be filed with both appointing authorities, that is, the Town Moderator and the Advisory Committee who will consider the nature of the complaint(s).

And Be It Further Resolved that the original arguments supported by Town Meeting in Article 18 sustain and incorporate by reference, save for the role of the Board of Selectmen and any affected conflicted staff, as noted above and below,

Finally, Be It Resolved that no Selectmen, staff (except to provide factual reports or information, as requested) or any officials involved in any role in any legal actions involving Hancock Village participate in the work of the *ad hoc* Blue Ribbon Committee, and, in any case, no sitting Selectmen, whether party to the aforesaid legal actions or not, be engaged in the work of the Committee, in order for the Committee to conduct business, both publicly and in Executive Session, with the independence and integrity appropriate for such a serious undertaking as a possible taking by eminent Domain, and further, that the possible perception of “cross-contamination”, of one issue influencing the other, cannot be argued persuasively legally, should the Committee recommend the Eminent Domain taking of the two buffers (or any part thereof) and should the owner(s) bring the matter to court.

ARTICLE 16

SIXTEENTH ARTICLE

Submitted by: Frank I. Smizik and Lisa Guisbond , et al

To see if the Town will adopt the following Resolution:

**A RESOLUTION CALLING FOR A MORATORIUM ON HIGH-STAKES
STANDARDIZED TESTS IN PUBLIC SCHOOLS**

WHEREAS, our future well-being relies on a high-quality public education system that prepares all students for college, careers, citizenship and lifelong learning; and

WHEREAS, our school systems in Massachusetts and across the country have been spending increasing amounts of time, money and energy on high-stakes use of tests and other assessments in which student performance on standardized assessments is used to make major decisions affecting individual students, educators, schools and districts; and

WHEREAS, the overreliance on high-stakes assessment in state and federal accountability systems is undermining educational quality and equity in U.S. public schools by hampering educators' efforts to focus on the broad range of learning experiences that promote the innovation, creativity, problem-solving, collaboration, communication, critical thinking and deep subject matter knowledge that will allow students to thrive in a democracy and an increasingly global society; and

WHEREAS, it is widely recognized that standardized testing or other standardized assessment is an inadequate and often unreliable measure of both student learning and educator effectiveness; and

WHEREAS, the overemphasis on standardized testing has caused considerable collateral damage in too many schools, including narrowing the curriculum, teaching to the test, reducing a love of learning, pushing students out of school, driving excellent teachers out of the profession, and undermining school climate; and

WHEREAS, high-stakes standardized testing has negative effects on students from all backgrounds, and especially for low-income students, English language learners, children of color, and those with disabilities;

NOW, THEREFORE, BE IT RESOLVED that Brookline supports locally developed, authentic assessments written by educators or tailored by them to meet the needs of individual students, and more time for educators to teach and students to learn;

BE IT FURTHER RESOLVED that Brookline calls on state and federal officials to immediately adopt a moratorium on all high-stakes use of standardized tests so that educators, parents and other members of our communities can work together to develop assessment systems that support positive teaching practices and better prepare students

for lifelong learning; House Bill 340, before the Massachusetts General Court, would impose such a moratorium on high-stakes use of standardized tests in Massachusetts.

BE IT FURTHER RESOLVED, that Brookline expresses its support for a moratorium as stated by transmitting a copy of this resolution to the President of the United States, US Secretary of Education, Massachusetts Congressional delegation, Governor of Massachusetts, Massachusetts Secretary of Education, members of the Massachusetts Board of Elementary and Secondary Education, President of the Massachusetts Senate, Speaker of the Massachusetts House of Representatives, members of the Joint Committee on Education and the Brookline delegation to the Massachusetts General Court.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Resolution, if adopted, would put Brookline on record opposing current state and federal policies that require the use of standardized testing for high-stakes purposes, such as, high school graduation, educator evaluation and school and district performance. This Resolution would call for a state and federal moratorium on high-stakes use of standardized tests to allow for the development of assessment systems that help educators teach and students learn. (See, Whereas Clauses)

SELECTMEN'S RECOMMENDATION

Article 16 is a resolution that asks the town to express support for a three-year moratorium on the use of high-stakes standardized tests in public schools. The Board is very concerned with the use of high-stakes testing that is tied to teacher evaluation and school performance ranking. Some Selectmen felt that it should not be a prerequisite for high school graduation, while others disagreed.

The Selectmen wanted to shift teachers away from "teaching to the test." There is a need for this modification, because teachers have been altering their curriculum based on the high-stakes test. In addition, prospective teachers are choosing jobs based off of the test scores of a potential student population.

The Board was concerned about the stress that these high-stakes tests create for students and that there are negative effects of these forms of tests. Although all tests generate certain levels of stress on students, high-stakes testing brings an unnecessary amount of pressure and stress. Selectmen also noted that standardized testing should be part of student assessment, but it should not be the lynchpin in determining eligibility for high school graduation.

By a vote of 4-1 taken on October 27, 2015, the Board recommends FAVORABLE ACTION on the following:

VOTED: that the Town adopt the following resolution:

A RESOLUTION CALLING FOR A THREE YEAR MORATORIUM ON THE USE OF HIGH-STAKES STANDARDIZED TESTS IN PUBLIC SCHOOLS

WHEREAS, our future well-being relies on a high-quality public education system that prepares all students for college, careers, citizenship and lifelong learning; and

WHEREAS, our school systems in Massachusetts and across the country have been spending significant amounts of time, money and energy on tests and other assessments in which students performance on standardized assessments is used to make major decisions affecting individual students, educators, schools and districts; and

WHEREAS, there is legislation currently before the Massachusetts Legislature, House Bill 340, sponsored by Rep. Marjorie Decker of Cambridge and co-sponsored by Rep. Frank Smizik of Brookline and 53 other legislators, that would place a three-year moratorium on high-stakes usage of standardized tests, including high school graduation, teacher evaluation and school and district performance ranking, but would not prohibit the administration of these tests or the disaggregation of the results by student subgroup for review.

NOW, THEREFORE, BE IT RESOLVED that Brookline supports locally developed, authentic assessments written by educators or tailored by them to meet the needs of individual students, and more time for educators to teach and students to learn;

BE IT FURTHER RESOLVED that Brookline calls on state and federal officials to immediately adopt a three-year moratorium on all high-stakes use of standardized tests, including high school graduation, educator evaluation and school and district performance ranking, so that educators, parents and other members of our communities can work together to develop assessment systems that support positive teaching practices and better prepare students for lifelong learning; House Bill 340, before the Massachusetts General Court, would impose such a moratorium on high-stakes use of standardized tests in Massachusetts.

BE IT FURTHER RESOLVED, that Brookline express its support for a moratorium as stated by transmitting a copy of this resolution to the President of the United State, US Secretary of Education, Massachusetts Congressional delegation, Governor of Massachusetts, Massachusetts Secretary of Education, members of the Massachusetts Board of Elementary and Secondary Education, President of the Massachusetts Senate, Speaker of the Massachusetts House of Representatives, members of the Joint Committee on Education and the Brookline delegation to the Massachusetts General Court.

Or act on anything relative thereto.

*Passed by an Electronic Recorded Vote
of 120 In favor, 70 Opposed and
7 Abstentions.*

ROLL CALL VOTE:

Favorable Action

Daly

Franco

Heller

Greene

No Action

Wishinsky

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

By a vote of 10-9-2, the Advisory Committee voted NO ACTION on the motion under Warrant Article 16 that also was considered by the Board of Selectmen. After the Selectmen voted on this motion, the Advisory Committee did not vote to reconsider. This is an unusually close vote, and it reflects the fact that the Article has both significant merit and significant shortcomings. The discussion below reflects the points of view of both the majority and minority.

The Article as originally submitted was first amended by the petitioners at the suggestion of the Advisory Committee's Schools Subcommittee in order to clarify its intent. The Advisory Committee voted on a motion that incorporated additional changes. The Board of Selectmen subsequently voted on that motion, which the petitioners are now offering as their motion under Article 16 for Town Meeting's consideration.

BACKGROUND:

Article 16 is a resolution that would put Brookline's Town Meeting on record as supporting Massachusetts House Bill 340 (H. 340), which declares a three-year moratorium on the use of standardized tests such as MCAS (Massachusetts Comprehensive Assessment System) or PARCC (Partnership for Assessment of Readiness for College and Careers) for "high stakes" testing and creates an Educational Review Task Force to study the use of such testing in the public schools. Other communities already have taken similar action in support of this legislation, including Amherst, Boston, Danvers, Dudley-Charlton, Greenfield, Hampshire Regional, Oxford, Sharon, Worcester, Sudbury, Tantasqua, and more. H. 340 is available at malegislature.gov/Bills/189/House/H340, and is summarized below.

H. 340 would not stop the use of MCAS for insight into individual student progress, nor would it stop the dissemination of the results of testing that are aggregated by grade, school and district. It would solely place a temporary (three-year) moratorium on the implementation of PARCC (another testing mechanism) and the use of MCAS for "high stakes" purposes.

High-stakes testing is defined as testing that is:

1. Used to determine whether a student may graduate from high school;
2. Used in an educator's evaluation;
3. Used in the assessment of a public school or school district.

During the moratorium, an Educational Review Task Force composed of stakeholders from across the educational spectrum would be appointed; appointees are clearly defined in the bill, and range from the State Commissioner of Elementary and Secondary Education and other high-level administrators, to parents representing numerous constituencies, including urban and suburban school districts, and parents of English Language Learner (ELL) and disabled children.

The panel would, over the course of 18 months, “evaluate the use of standardized assessments, the implementation of the educator evaluation framework established..., and the use of student data on standardized tests for the purpose of evaluating students, educators, schools, and school districts” and further evaluate a variety of specific consequences of the current testing system, including:

1. Analysis of whether testing is achieving the goal of high-quality learning (as opposed to solely achieving rising test scores);
2. Analysis of the time and cost allocated to testing;
3. Analysis of the use of technology in teaching and testing, particularly given that PARCC is computer-based.

Brookline currently uses MCAS rather than PARCC, although Massachusetts helped develop PARCC as a potential replacement for MCAS. Some school districts have begun administering PARCC, which is promoted as being a better assessment of a student’s ability to solve problems, vs. MCAS’s emphasis on a student’s specific knowledge. MCAS has been criticized for creating a “teach to the test” atmosphere. PARCC has been criticized for the complexity of the test, on which even top students do not correctly answer more than half of the questions, as well as for being administered on a computer with a non-intuitive interface, raising questions as to whether children who do poorly have not mastered the material, or simply could not use the ill-designed software.

As recently as late October 2015, the State Commissioner of Elementary and Secondary Education has suggested that “MCAS 2.0”¹ should be developed to answer the criticisms of both tests, but he has not endorsed H. 340 or given any indication that the Department of Elementary and Secondary Education wants to back away from the “high stakes” use of standardized tests.

H. 340 is part of a broader bi-partisan national movement to evaluate the purpose of high-stakes testing in schools. On October 24, 2015, the Obama administration announced that high-stakes testing had gone too far and will also be seeking a recalibration, with clear guidance issued by January. Specifically and relevantly, the White House

¹“Education chief suggests a blend of assessment tests,” *Boston Globe*, October 20, 2015, <https://www.bostonglobe.com/metro/2015/10/20/chang-other-superintendents-tout-new-parcc-test/RVFnwTEQwjPya5muMIWHeL/story.html>

announcement said “no single assessment should ever be the sole factor in making an educational decision about a student, an educator or a school.”²

Financial Implications

In response to Advisory Committee request for information about any financial implications, the petitioners provided the following information:

In summer 2015, after a widespread student opt out movement, the U.S. Department of Education (DOE) acknowledged it has no plans to penalize districts or schools by withholding funds... New Hampshire has obtained a waiver from federal testing requirements expressly to pursue the development of an alternative assessment system, which is what House Bill 340 is designed to do.

DISCUSSION:

The Advisory Committee discussed Article 16 at length. The discussion centered on a few key themes, described below.³ Both the proponents and the opponents of Article 16 presented citations and data to support their position. In general, these data offset one another.

Whether High-Stakes use is achieving the intended goal(s) for evaluation of school systems

This concern was the main topic of debate.

Advocates of the resolution felt that testing creates a “teach to the test” environment to the detriment of students and teachers alike. Advisory Committee members who have children in the schools or who are teachers had anecdotes supporting this argument. Teachers are diverted from the curriculum for weeks ahead of MCAS, and the curriculum itself is distorted to focus most on the subjects that standardized tests cover. This reduces the amount of time spent on subjects other than math, English and science. This adversely affects education in Brookline schools, our main concern, but also other districts state-wide. The misplaced emphasis on standardized tests hurts disadvantaged students the most, because they end up with stunted educations.

Opponents of the resolution felt that testing puts a spotlight on the failings of school systems to provide a minimum education. Since the advent of MCAS 19 years ago, parents and education reformers have put pressure on Boston and other urban school districts with the result that graduation rates in Boston have steadily increased and drop-out rates correspondingly declined. When school systems fail, the State has taken control to force improvements, e.g. Chelsea (albeit before MCAS) and Lawrence, and Holyoke (in the last five years). Advisory Committee members were not concerned about the impact on Brookline of a three-year moratorium on high-stakes use of test scores, but felt

² “Obama Administration Calls for Limits on Testing in Schools,” *New York Times*, October 24, 2015, <http://nyti.ms/1PJiOPw>

³ The Advisory Committee only tangentially discussed the impact of this resolution on teacher evaluation, for a number of reasons, primarily because it is entangled with collective bargaining and because the use of MCAS for teacher evaluations has not yet been fully implemented.

that dropping standardized tests as a way of judging and potentially punishing failing districts may lead to a reversal of the progress that has been made.

Whether High-Stakes is achieving the intended goal(s) for evaluation of students (i.e. high-school graduation requirement)

Opponents of the resolution felt that testing is an appropriate way of determining whether students should be awarded a diploma. Those who grew up in New York State and took Regents Examinations as a requirement to graduate from high school did not find the requirement onerous.

Advocates of the resolution felt that linking graduation to MCAS scores is unfair to individual students; these students should not be punished for what is essentially a systemic failure (i.e. the failure of the school system to provide them with the knowledge/skills to pass the test). Students who fail the MCAS are disproportionately students with disabilities and/or ELL students; these populations are already at a disadvantage, and the lack of a high school diploma further disadvantages them in certain cases. Specifically, in Brookline, students who do not pass the MCAS requirement are awarded a Certificate of Completion, which is not accepted by the most affordable and accessible colleges and universities in the Massachusetts state system. (The Certificate of Completion is accepted by private colleges, however.)

Advocates also noted that tests like the Regents Examinations administered in New York State or others were perhaps better-designed or better-aligned with the curriculum, whereas, as noted above, there is some evidence that MCAS is distorting the curriculum.

Need for moratorium in addition to Task Force

Opponents of the resolution did not see why a three-year moratorium was justified when a Task Force could be convened in parallel with the continued high-stakes use of MCAS and/or roll-out of PARCC.

Advocates for the resolution saw two clear benefits to the moratorium.

1. The fact that there is enough justification to convene a Task Force because of questions about the validity of the Commonwealth's testing practices is also sufficient reason to not continue to impose the high-stakes outcomes for that same period. If the Task Force shows that the use is appropriate and balanced, then the high-stakes uses could be continued at the end of the moratorium.
2. The moratorium will allow for not just the study, but will pause the transition to the PARCC exam, which has significant, unstudied drawbacks, as cited above. This is an opportune moment to pause, as it will allow Massachusetts to go forward, hopefully with more data to understand the high-stakes testing landscape (During its deliberations, the Advisory Committee was confronted with conflicting and potentially incomplete data.)

November 17, 2015 Special Town Meeting

16-8

Conclusion

Ultimately, the Article has both significant merit and significant shortcomings. Among other arguments, the argument that a moratorium would lead to backsliding in schools other than Brookline was persuasive to a slim majority of Advisory Committee members.

RECOMMENDATION:

By a vote of 10-9-2 the Advisory Committee recommends NO ACTION on Article 16.

XXX

ARTICLE 17

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY

Article 17 is a petitioned resolution that urges the Town to request state and federal agencies to deny permits for both the Northeast Direct and the Access Northeast natural gas pipeline projects, to reject investments in the Access Northeast project proposed by National Grid and Eversource, and to deny their consideration for setting electricity rates. In the petitioner's view, these two projects would result not only in creating pipeline capacity far in excess of what will be needed by New England customers but also in subjecting these customers to large increases in their utility bills to pay for the projects' costs.

By a vote of 14–3–2, the Advisory Committee recommends FAVORABLE ACTION on Article 17.

BACKGROUND

Last November, Town Meeting approved a resolution opposing the construction of the Northeast Energy Direct Project of the Tennessee Gas Pipeline and similar projects proposed in the future. This November, Article 17 directs attention to the two largest natural gas transmission pipeline projects under review: Northeast Direct (Tennessee Gas Pipeline division of Kinder Morgan) and Access Northeast (Algonquin Gas Pipeline division of Spectra Energy). Northeast Direct's revised carrying capacity is 1.3 billion cubic feet of natural gas per day; the Access Northeast's is 1 billion cubic feet of natural gas per day. Currently New England is served by five long-distance pipelines that can carry up to 3.6 billion cubic feet of natural gas per day. In addition, four ocean terminals have the capacity to receive 3.2 billion cubic feet of liquefied natural gas per day.

In light of the above, the petitioner contends that the capacity of the two newly proposed pipelines, currently under active review, suggests that the pipelines aren't intended to serve New England so much as to move gas out of the country to Canada where it would be exported as liquefied natural gas to international markets. His research has shown that Eversource and National Grid have proposed to invest in 60% of the Access Northeast project and have asked Massachusetts to include pipeline costs as factors in electricity rates. Finally, the petitioner believes that New England's increased demands for electricity can be met through conservation, greater use of renewable sources, increased efficiency, and imports of natural gas.

Last summer, the Massachusetts Attorney General's (AG) office engaged the Analysis Group to undertake a regional study which, among other matters, would focus on whether more "natural gas capacity is needed to maintain electric reliability." The report,

originally scheduled to be completed by the end of October, is now expected to be released in mid-November.

The AG's office also urged the Massachusetts Department of Public Utilities (DPU) to "consider the interrelationship of gas and electric markets in Massachusetts and to conduct a factual analysis of future demand and cost-effective energy and efficiency resources before making any decisions regarding additional gas capacity investments" and to take into account "lasting consequences for Massachusetts ratepayers" before approving precedent agreements. The DPU did not honor the AG's request.

DISCUSSION:

The Advisory Committee was concerned that in the absence of the AG's report, there was limited information available on whether additional natural gas pipelines were necessary. Representatives from Kinder Morgan and from Spectra Energy did not respond to the subcommittee's requests for information so it is difficult to consider the arguments of "the other side."

Nevertheless, the Committee discussed the current energy market and its implications for natural gas pipelines. When it comes to energy, New England doesn't behave like other regions of the country. Our energy consumption doesn't increase as our economic output increases. We are actually managing to lower our energy consumption. In fact, energy consumption in New England has been falling during the last 10 years. We are using less coal and we are closing nuclear power plants. We are using more renewable sources of energy, although in 2014, renewables provided only 8.6% of New England's electricity generation. Overall, we have a favorable picture.

There also may be a global decline in demand for natural gas—at least temporarily. An October 25th article in the Boston Globe noted a decreased demand worldwide for natural gas due to a number of factors including Japan's nuclear reactors coming back online and China's economic slowdown.

On the other hand, future demands for natural gas are not easily calculable. The current nuclear reactors serving the Northeast are ageing and will require replacement in the next twenty years, or sooner. They might be replaced with next generation nuclear installations, with gas generating electric plants, or with some other alternative. The choice will influence the demand for natural gas. On peak demand days in the summer and winter, the Northeast does not have adequate electricity generation to handle demand and consequently prices increase for ratepayers.

Although it may be to the advantage of the United States to export natural gas to Europe, offering those countries an alternative to natural gas imported from Russia, ratepayers should not be asked to bear the costs associated with such exports.

Conclusion and Basis for Recommendation

There are already two other pipeline projects underway which will bring more natural gas energy to New England. Energy use in the region is atypically in decline compared to the rest of the country, so there is no clear evidence that Massachusetts or New England needs the two additional Northeast Direct and Access Northeast pipelines.

If the energy is not actually for the benefit of the New England region, we should not risk having to help pay for new pipelines in dollars or damage to the environment to further any corporate interest.

The fact that we do not yet have the report from the Attorney General should not prevent us from stating our opinion and general concerns as a Town, given the information we do have. Our vote will be viewed in context and with the “time stamp” of our Town Meeting relative to the Attorney General’s report.

Moreover, the fact that neither company would respond to any request for information from Brookline should not make us mute. Their silence speaks for itself.

RECOMMENDATION:

By a vote of 14–3–2, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Board of Selectmen.

ARTICLE 17

SEVENTEENTH ARTICLE

Submitted by: Craig Bolon, TMM8

To see if the town will adopt the following resolution or will take any other action with respect thereto:

Whereas the Northeast Direct pipeline proposal from Tennessee Gas Pipeline, a division of Kinder Morgan, presents unacceptable financial and environmental risks to Massachusetts, and

Whereas the Access Northeast pipeline proposal from Algonquin Gas Pipeline, a division of Spectra Energy, presents unacceptable financial and environmental risks to Massachusetts, and

Whereas investments in the Access Northeast project proposed by Eversource and National Grid encounter gross conflicts of interest and present unacceptable demands on Massachusetts utility customers,

Now, therefore, be it resolved:

The Town of Brookline calls on federal and Massachusetts agencies to deny permits for the Northeast Direct natural gas pipeline proposal and the Access Northeast natural gas pipeline proposal and calls on federal and Massachusetts agencies to reject investments in the Access Northeast project proposed by Eversource and National Grid and to deny their consideration for setting electricity rates, and

The Brookline town meeting asks the Brookline town administration to send copies of this resolution with the explanation of the article and federal docket numbers as available to Governor Charles Baker, to Attorney General Maura Healey, to Secretary of Energy and Environmental Affairs Matthew Beaton, to Commissioners of Public Utilities Angela O'Connor, Jolette Westbrook and Robert Hayden, to Secretary of the Department of Public Utilities Mark Marini, to Energy Facilities Siting Board Director Andrew Greene, to state Senator Cynthia Creem, to state Representatives Edward Coppinger, Michael Moran, Jeffrey Sanchez and Frank Smizik, to President Barack Obama, to Secretary of Energy Ernest Moniz, to Federal Energy Regulatory Commissioners Norman Bay, Tony Clark, Colette Honorable, Cheryl LaFleur and Philip Moeller, to Secretary of the Federal Energy Regulatory Commission Kimberly Bose, to U.S. Senators Edward Markey and Elizabeth Warren and to U.S. Representative Joseph Kennedy, III.

PETITIONER'S ARTICLE DESCRIPTION

The November 18, 2014, Brookline town meeting was asked for a resolution against a gas pipeline proposed across northern Massachusetts. However, the resolution adopted did not ask state and federal agencies to deny pipeline permits and could not have anticipated financial participation in a pipeline project by regional electricity distributors. The spirit of the 2014 resolution has only gained merit with adverse developments since an article was drafted in summer, 2014.

There were four gas pipeline projects being proposed through Massachusetts. They have not only potentials for environmental damage but also potentials to inflict deep and lasting financial harm on the state. This spring, Maura Healey, elected as Massachusetts attorney general in fall, 2014, urged caution on the state's Department of Public Utilities. Her office has underway a comprehensive study of energy options, to be completed by October, 2015. Gas pipeline issues are explored and documented in a local news article:

Craig Bolon, New England gas pipelines: need versus greed

Brookline Beacon, August 29, 2015

<http://brooklinebeacon.com/2015/08/29/new-england-gas-pipelines-need-versus-greed/>

The two largest New England pipeline projects are Northeast Direct, proposed by the Tennessee Gas Pipeline division of Kinder Morgan, and Access Northeast, proposed by the Algonquin Gas Pipeline division of Spectra Energy. Two smaller proposals also come from Algonquin. Both parent companies are located in Houston, TX. Final applications to the Federal Energy Regulatory Commission (FERC) are expected for the big proposals in October, 2015. Docket numbers will become available and submission of comments will become timely.

Northeast Direct would be a new pipeline on virgin territory with capacity up to 2.2 billion cubic feet per day (Bcf/d), routed across northern Massachusetts and southern New Hampshire. Access Northeast would be pipeline expansions with capacity up to 1.0 Bcf/d, mostly along the existing rights of way for the 1953 Algonquin pipeline across Connecticut, Rhode Island and eastern Massachusetts.

The combined proposals would double pipeline capacity into New England. There is no conceivable need for such an enormous flow of gas. Although loudly denied by both companies, their likely intents are to connect to pipelines extending into Canada and to send U.S. production there for export as liquefied natural gas. One terminal in Canada already has permits to export 0.8 Bcf/d, and another has applied for permits to export 0.75 Bcf/d. There is no reliable source for such large amounts of natural gas in eastern Canada.

An obvious result of such a scheme would be to couple marketing of U.S. natural gas in New England with international marketing and to jack up New England prices. However, that is not enough for the pipeline promoters. They also want New England utility customers to pay for their pipelines, although most of the proposed new capacity could not reasonably serve New England customers.

Since last year's warrant article, the two largest New England electricity distributors, Eversource (formerly NStar) and National Grid, have proposed to invest in 60 percent of the Access Northeast project. In particular, they have asked Massachusetts to include pipeline costs as factors in electricity rates.

Involvement in a long-distance gas pipeline is outside the charters of Eversource and National Grid. They are electricity distributors, not long-distance pipeline operators. They would encounter gross conflicts of interest, selling wholesale gas delivery to generating plants from which they buy wholesale electricity.

Massachusetts Assistant Attorney General Christina Belew of the Energy and Telecommunications Division called the proposed projects "an inefficient expense...units added would be minimally utilized." The Brookline town meeting should object to both the Access Northeast proposal and the Northeast Direct proposal--the latter called out in a warrant article in fall, 2014--and should object to financial participation by Massachusetts electricity distributors.

SELECTMEN'S RECOMMENDATION

Article 17 is a petitioned resolution that calls for the Town to implore federal and Massachusetts agencies to deny permits for the Northeast Direct natural gas pipeline proposal and the Access Northeast natural gas pipeline proposal. This article is a follow-up from Article 19 from the November, 2014 Special Town Meeting which called for the Town to oppose the Northeast Energy Direct Project of the Tennessee Gas Pipeline and all similar projects that may be later proposed. That resolution did not speak to the denial of permits or financial considerations which the current resolution seeks to address.

The Board of Selectmen supports this article. While it is a complicated issue the Board agreed that building these pipelines to support consumption outside of New England, but at New England ratepayer expense is not something we can support. This seems to be a good deal for the gas companies and a bad deal for the consumers from both a financial and economic perspective. We need to reduce our dependence on fossil fuels and continue to increase the use of renewable energy sources.

The Board voted 4-0-1 FAVORABLE ACTION on the following resolution:

VOTED: that the Town adopt the following resolution or take any other action with respect thereto:

Whereas the Northeast Direct pipeline proposal from Tennessee Gas Pipeline, a division of Kinder Morgan, presents unacceptable financial and environmental risks to Massachusetts, and

Whereas the Access Northeast pipeline proposal from Algonquin Gas Pipeline, a division of Spectra Energy, presents unacceptable financial and environmental risks to Massachusetts, and

Whereas investments in the Access Northeast project proposed by Eversource and National Grid encounter gross conflicts of interest and present unacceptable demands on Massachusetts utility customers,

Now, therefore, be it resolved:

The Town of Brookline calls on federal and Massachusetts agencies to deny permits for the Northeast Direct natural gas pipeline proposal and the Access Northeast natural gas pipeline proposal and calls on federal and Massachusetts agencies to reject investments in the Access Northeast project proposed by Eversource and National Grid and to deny their consideration for setting electricity rates, and

The Brookline town meeting asks the Brookline town administration to send copies of this resolution with the explanation of the article and federal docket numbers as available to Governor Charles Baker, to Attorney General Maura Healey, to Secretary of Energy and Environmental Affairs Matthew Beaton, to Commissioners of Public Utilities Angela O'Connor, Jolette Westbrook and Robert Hayden, to Secretary of the Department of Public Utilities Mark Marini, to Energy Facilities Siting Board Director Andrew Greene, to state Senator Cynthia Creem, to state Representatives Edward Copping, Michael Moran, Jeffrey Sanchez and Frank Smizik, to President Barack Obama, to Secretary of Energy Ernest Moniz, to Federal Energy Regulatory Commissioners Norman Bay, Tony Clark, Colette Honorable, Cheryl LaFleur and Philip Moeller, to Secretary of the Federal Energy Regulatory Commission Kimberly Bose, to U.S. Senators Edward Markey and Elizabeth Warren and to U.S. Representative Joseph Kennedy, III.

Passed by a majority ✓

ROLL CALL VOTE:

Favorable Action

Abstention

Daly

Wishinsky

Franco

Heller

Greene

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee will be provided in the Supplemental Mailing.

ARTICLE 18

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 18 is a non-binding Resolution submitted by petition that seeks to clarify and confirm the Town's commitment on expanding the racial diversity of the Town of Brookline's government workforce. Specifically, the Resolution seeks the Town's commitment to; 1.) have its workforce (both town and school) reflect the 23% makeup of Brookline residents who are "people of color" and 2.) to improve the detail and accuracy of annual data reports on Town employment.

Expanding the diversity of the Town's workforce to better reflect the racial makeup of Brookline's population is clearly a high priority goal of the Board of Selectmen. The only major concern for this Article is whether the clause that seeks a specific percentage of minority employees violates the "hiring quota" restrictions on the evolving legal status of affirmative action. Subsequent to the filing of the original Article, the petitioners agreed to modify the language to eliminate the specific percentage requirement. The Board of Selectmen voted unanimously on October 27 to replace the percentage language with language committing to seek an employee applicant pool that reflects the racial diversity of the metro Boston area.

At the Selectmen's meeting on November 3, the Board took up reconsideration of this Article in order to evaluate the merits of slightly different Advisory Committee language and to consider some additional language to clarify compliance with federal law. Ultimately, the Board felt that modified language was not essential and decided not to reconsider. The original vote of the Board which unanimously recommended favorable action on the motion included on pages 18-4 through 18-5 of the Combined Reports stands.

ARTICLE 18

EIGHTEENTH ARTICLE

Submitted by: MK Merelice, TMM6 and Ruthann Sneider, TMM6

To see if the town will adopt the following resolution:

WHEREAS the town is working to provide an environment that welcomes, develops, and retains workers with rich, diverse backgrounds, notably Blacks, Latinos, Asians, and other people of color;

WHEREAS, among town residents, there is growing scrutiny by and interest in the town's progress toward having and hiring a more diverse workforce, notably Blacks, Latinos, Asians, and other people of color in management/supervisory level positions;

WHEREAS evidence shows that diversity in the workforce contributes to better solutions to problems and more creative approaches to procedures and issues;

WHEREAS the Diversity, Inclusion, and Human Relations Commission has been tasked with studying the town's employment practices as they relate to achieving and maintaining diversity in the workforce;

WHEREAS the Human Resources Department is proceeding to revise its blueprint for increasing diversity in the town's workforce;

WHEREAS the town is working to provide meaningful and clear historical data about the level of diversity in its workplace;

WHEREAS there are case studies about business and public practices that indicate what steps are most successful toward developing diversity in the workplace;

WHEREAS the town is not an isolated island within a larger, more diverse region that has an impact on the town's future well-being;

WHEREAS the Brookline Community Foundation reports that 23% of town residents are Black, Latino, Asian, and other people of color;

WHEREAS defining a goal is an essential step in developing a program and helps us keep our "Eyes on the Prize"; NOW, THEREFORE, BE IT

RESOLVED that the Town of Brookline is committed to achieving the goal of having all school and town departments at all grade levels reflect the 23% of Brookline residents who are Black, Latino, Asian, and other people of color (as reported by the Brookline Community Foundation's study);

RESOLVED that the Town of Brookline will continue to improve annual data reports so that detailed and accurate reports enable us to determine and evaluate steady and significant progress toward this goal.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

When a private organization or public entity develops a program, one of its first responsibilities is to define the objective or goal of that program. Brookline seeks to bring more diversity into its workforce. This resolution would determine an achievable goal for the town's efforts, based on data gained from the Brookline Community Foundation's research on Brookline.

MOTION TO BE OFFERED BY THE PETITIONERS

VOTED: that the Town adopt the following resolution:

WHEREAS, this resolution reinforces Brookline's commitment to racial diversity in the workforce as reflected in the provisions of the Commonwealth Compact of Massachusetts which Brookline joined in 2010;

WHEREAS, among Town residents, there is growing interest in the Town's progress toward hiring a more diverse workforce, particularly in management and supervisory level positions;

WHEREAS, the Town is striving to identify, recruit, hire, promote, and retain workers from diverse backgrounds;

WHEREAS, the Town understands that the benefits of diverse perspectives include, among other benefits, better decision-making and creative approaches to problems;

WHEREAS, the Commission for Diversity, Inclusion, and Community Relations (the Commission) has been tasked with studying the Town's employment practices as they relate to achieving and maintaining a diverse workforce;

WHEREAS, the DICR Office in conjunction with the Commission is proceeding to revise the Town's Diversity and Inclusion Policy and is working with the Town's Human Resources Office to produce meaningful and clear historical data concerning the level of diversity in the Town's workforce;

WHEREAS, despite the Town's efforts, the racial makeup of the Town's workforce, particularly employees who are Black, Hispanic-Latino/a, Asian, American Indian, and other people of color, does not reflect the racial make-up and availability of workers in the metropolitan Boston region, comprised, for purposes of this Resolution, of the

Counties of Norfolk, Suffolk, and Middlesex ("Metro Boston."), from which the Brookline workforce would naturally be drawn.

NOW, THEREFORE, BE IT RESOLVED that the Town of Brookline is committed to seeking a diverse pool of available workers as it moves toward the goal of having all Town Departments, at all employment grade levels, reasonably reflect the racial diversity of Metro Boston;

BE IT FURTHER RESOLVED that the Town of Brookline, through its Commission for Diversity, Inclusion, and Community Relations and the DICR Office, the Town's Human Resources Department, and Town Department heads, shall continue to improve annual data reports and establish methods of measurement to enable the Commission and Office to evaluate progress toward that goal, as desired by Town residents.

Explanation

Having a job can keep employees out of poverty, motivate their children toward acquiring education and training, provide their families with basic human needs (food, shelter, clothing), avoid the prison pipeline, and correct centuries-long inequality in American society. Statistically, Massachusetts has a relatively low rate of people of color and they suffer the greatest level of discriminatory practices, as explained in the Massachusetts Compact which Brookline joined in 2010 in an effort to make the Commonwealth more welcoming.

This Resolution is timely in that it acknowledges Brookline has been embarking on a more conscious effort to address such discriminatory practices. The Resolution can help expand the public conversation and commitment toward making progress — especially highlighting the ongoing need to track and evaluate results of the Town's efforts and respond appropriately. The Resolution has been carefully crafted to avoid the legal pitfalls of 1) setting quotas instead of aspirational goals, and 2) using race as a qualification for hiring instead of an effort to greatly diversify the pool of candidates for jobs at all levels.

We see our Town, the largest employer in Town, and surrounded by a "majority/minority" city, as able to prepare for a future that can enhance the quality of life for all of us, producing a win-win not only for employees, but also for everyone who depends on a healthy economy to provide life-span human services.

Passed by an Electronic Recorded
Vote of 155 in Favor, 3 Opposed
and 6 Absentees.

SELECTMEN'S RECOMMENDATION

The Selectmen will be reconsidering Article 18 due to some language concerns raised by Town Counsel that were not presented at the time of their vote taken on October 27. The following language was voted FAVORABLE ACTION 5-0. A revised vote and report on this resolution will be presented in the supplement mailing.

VOTED: To see if the Town will adopt the following resolution:

WHEREAS, this resolution reinforces Brookline's commitment to racial diversity in the workforce as reflected in the provisions of the Commonwealth Compact of Massachusetts which Brookline joined in 2010;

WHEREAS, among Town residents, there is growing interest in the Town's progress toward hiring a more diverse workforce, particularly in management and supervisory level positions;

WHEREAS, the Town is striving to identify, recruit, hire, promote, and retain workers from diverse backgrounds;

WHEREAS, the Town understands that the benefits of diverse perspectives include, among other benefits, better decision-making and creative approaches to problems;

WHEREAS, the Commission for Diversity, Inclusion, and Community Relations (the Commission) has been tasked with studying the Town's employment practices as they relate to achieving and maintaining a diverse workforce;

WHEREAS, the DICR Office in conjunction with the Commission is proceeding to revise the Town's Diversity and Inclusion Policy and is working with the Town's Human Resources Office to produce meaningful and clear historical data concerning the level of diversity in the Town's workforce;

WHEREAS, despite the Town's efforts, the racial makeup of the Town's workforce, particularly employees who are Black, Hispanic-Latino/a, Asian, American Indian, and other people of color, does not reflect the racial make-up and availability of workers in the metropolitan Boston region, comprised, for purposes of this Warrant Article, Resolution of the Counties of Norfolk, Suffolk, and Middlesex ("Metro Boston."), from which the Brookline workforce would naturally be drawn.

NOW, THEREFORE, BE IT RESOLVED that the Town of Brookline is committed to seeking a diverse pool of available workers as it moves toward the goal of having all Town Departments, at all employment grade levels, reasonably reflect the racial diversity of Metro Boston;

BE IT FURTHER RESOLVED that the Town of Brookline, through its Commission for Diversity, Inclusions, and Community Relations and the DICR Office, the Town's

Human Resources Department, and Town Department heads, shall continue to improve annual data reports and establish methods of measurement to enable the Commission and Office to evaluate progress toward that goal, as desired by Town residents.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

The Advisory Committee voted Favorable Action on Article 18 as Amended by a vote of 19 in favor, 0 opposed, with 1 abstention. The Advisory Committee agreed with the general goals of the resolution, but felt that declaring that the Town's goal is to hire a workforce that reflects the "racial diversity of Metro Boston" would be too similar to embracing the use of hiring quotas. The Advisory Committee therefore amended the resolution to focus on the goal of "increasing racial diversity."

BACKGROUND:

Article 18 is a resolution that seeks to reaffirm the Town of Brookline's commitment to improving the level of diversity and inclusion in the Town workforce. The Petitioners are concerned that without ongoing support for a more diverse and inclusive workforce by Town Meeting diversity and inclusion will not remain a priority for Town managers. The Board of Selectmen worked with the petitioners to revise the article and the Advisory Committee moved forward with the revised article as its main motion.

DISCUSSION:

The Advisory Committee is sympathetic to the petitioners' concerns but several members of the Committee expressed reservations about the language in the first Resolved clause, which stated that "the Town of Brookline is committed to achieving the goal of having...all employment grade levels, reflect the diversity of Metro Boston..." Those members believed that the language as written implied that the Town of Brookline appeared to be establishing a quota for hiring minority workers. As a result of those reservations the Advisory Committee further amended the Article.

The petitioners objected to the amendment of the first Resolved clause because they felt that the proposed change in language watered down the Article. They felt that it was important that the Article referenced Metro Boston as the demographic area that should be used to determine the level of diversity that would meet the Town's goals for workforce diversity and inclusion.

When the revised Article was first moved a motion was made to amend the Article to include the following first Resolved clause:

NOW, THEREFORE, BE IT RESOLVED THAT THE Town of Brookline is committed to achieving the goal of having all Town Departments, at all employment grade levels, reflect the racial diversity of Metro Boston, as it seeks to fill needed positions from a diverse pool of available workers;

That Motion to Amend was defeated by a vote of 4 in favor, 15 opposed, with 1 abstention.

The Advisory Committee considered the motion on which the Board of Selectmen had, on October 27, voted to recommend Favorable Action, but decided to offer different language in the first Resolved clause.

RECOMMENDATION:

The Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 18, by a vote of 19-0-1:

VOTED: that the Town adopt the following resolution:

WHEREAS, this resolution reinforces Brookline's commitment to racial diversity in the workforce as reflected in the provisions of the Commonwealth Compact of Massachusetts which Brookline joined in 2010;

WHEREAS, among Town residents, there is growing interest in the Town's progress toward hiring a more diverse workforce, particularly in management and supervisory level positions;

WHEREAS, the Town is striving to identify, recruit, promote, and retain a workforce comprised of workers from diverse backgrounds;

WHEREAS, the Town understands that the benefits of diverse perspectives include, among other benefits, better decision-making and creative approaches to problems;

WHEREAS, the Commission for Diversity, Inclusion, and Community Relations (the Commission) has been tasked with studying the Town's employment practices as they relate to achieving and maintaining a diverse workforce;

WHEREAS, the DICR Office in conjunction with the Commission is proceeding to revise the Town's Diversity and Inclusion Policy and is working with the Town's Human Resources Office to produce meaningful and clear historical data concerning the level of diversity in the Town's workforce;

WHEREAS, despite the Town's efforts, the racial make-up of the Town's workforce, particularly employees who are Black, Hispanic/Latino/a, Asian, American Indian and other people of color, does not reflect the racial make-up and availability of workers in the metropolitan Boston region, comprised, for purposes of this Resolution, of the Counties of Norfolk, Suffolk, and Middlesex ("Metro Boston") from which the Brookline workforce would naturally be drawn.

NOW, THEREFORE, BE IT RESOLVED that the Town of Brookline is committed to seeking a diverse pool of available workers as it moves toward the goal of increasing racial diversity in all Town Departments, at all employment grade levels;

BE IT FURTHER RESOLVED that the Town of Brookline, through its Commission for Diversity, Inclusion, and Community Relations and the DICR Office, the Town's Human Resources Department, and Town Department heads, shall continue to improve annual data reports and establish methods of measurement to enable the Commission and Office to evaluate progress toward that goal, as desired by Town residents.

XXX

STUDY OF A PROPOSED EMINENT DOMAIN TAKING OF THE "BUFFER" WITHIN HANCOCK VILLAGE

November 6, 2015

I. SCOPE AND METHODOLOGY

At the 2015 Annual Town Meeting, a Resolution was passed under Warrant Article 18, asking "the Board of Selectmen to study, and consider in good faith the taking under the powers of Eminent Domain the two buffer zones presently zoned S-7 within the Hancock Village property... for a permanently publicly-accessible active recreational space."

In response to the Resolution, the Town Administrator under the direction of the Board of Selectmen established a team consisting of the Planning Director, Director of Parks and Open Space, Building Commissioner, Chief Assessor, Deputy Town Administrator and Town Counsel to conduct an objective analysis of the proposal presented in Warrant Article 18. Town Counsel engaged Special Counsel to provide additional advice to the Board of Selectmen based on his extensive experience and expertise in property acquisition under eminent domain in Massachusetts. Members of the team consulted with the Petitioner, identified and surveyed area residents, conducted extensive research, and reviewed relevant case law to generate this report.

The study is not exhaustive, but instead, is provided with the intent to present relevant and material information for the benefit of decision makers.

II. DESCRIPTION OF THE LAND PROPOSED FOR TAKING

As indicated in **Appendix A: Map of S-7 Area Proposed for Taking**, the land proposed for taking under Article 18 is the area in Hancock Village zoned as S-7, a single-family residential district east and west of Independence Drive. The S-7 area constitutes a portion of the parcels identified as 388A-01-00, 388C-01-00, and 388-01-00 in the Assessor's database, and are part of the 56-acre, 700-unit Hancock Village rental housing complex that straddles Brookline and Boston and is owned by Chestnut Hill Realty. The areas of the complex designated as the S-7 are not discrete parcels with established metes and bounds. Because the boundaries of the area proposed for taking follow

the delineation of the designated S-7 zoning district, this report will refer to the subject property as the "S-7 area" so that the extent of the pertinent area can be easily identified on the Town Assessor's map.

Three roadways intersect the S-7 area: Independence Drive, Thornton Road, and Asheville Road. The total land area within the S-7 zone has been calculated as 6.55 acres. The S-7 area begins west of Independence Drive, bounded by the Baker School parcel on its far left and abutting lots on Beverly Road (about 125,000 square feet). East of Independence Drive, the S-7 area abuts lots on Russett Road and is bounded by the VFW Parkway on its far right. The portion of the S-7 area between Independence Drive and Thornton Road is approximately 48,350 square feet; the portion between Thornton Road and Asheville Road is approximately 138,148 square feet; and the portion between Asheville Road and the VFW Parkway is approximately 66,738 square feet. The western portion is 900 feet long and its depth ranges from 90 to 147 feet. The three eastern portions are 215, 400, and 500 feet long respectively, and range from 70 to 150 feet deep.

Although the grading appears to be flat, contour maps show that the topography undulates gradually. In addition, the majority of the area consists of very shallow ledge. The S-7 area is mostly landscaped with a lawn and about 250 mature trees, located predominantly along the perimeter contiguous to the abutting single-family properties on Beverly and Russett Roads.

The majority of the S-7 area soil is classified as Wet Udorthents, according to U.S. Department of Agriculture's National Conservation Resource Service; however, the Town has confirmed that no wetlands or vernal pools are located within this area. The western portion of the S-7 area is within 350 feet of the D. Blakely Hoar Sanctuary, a 25-acre wooded conservation preserve that hosts various species of birds and other wildlife, wetlands; and a half-mile long walking trail; and the Edith C. Baker School, one of the most populated elementary schools in the town.

III. PLANNING HISTORY AND FUNCTION OF THE S-7 AREA

A timeline of planning, permitting, and conservation actions relative to the S-7 area spanning from the early 1900s to the issuance of the Comprehensive Permit are provided in **Appendix B: Planning History of the S-7 Area.**

Excerpts from official documents relative to the S-7 area are provided in **Appendix C: Excerpts from Sources that Describe the Function of the Land Proposed for Taking.**

A review of Planning Board records dating back to the 1940's indicates that the Hancock Village housing complex has historically consisted of two basic components in Brookline: an area zoned for multi-family (currently M-.05) and a significantly smaller area zoned for single-family homes (currently S-7). The entire property was initially zoned for single-family residences. Prior to purchasing the property, John Hancock Life Insurance sought approval from the Planning Board and Town Meeting to rezone most of the property to general residence, while leaving the northeasterly strip as single-family. That northeasterly strip is what has been and continues to be referred to as "the buffer" and, for the purposes of this study, "the S-7 or S-7 area."

There are relatively few references to "the buffer" or a "buffer" in official documents, since the S-7 area was not the subject of any rezoning during the 1940's when Hancock Village was constructed. However, the S-7 area was, in fact, intended as a buffer of single family homes. Consequently, the term "buffer" is either used without any qualification, or in the context of single-family homes, i.e. the "buffer of single family homes." The 1946 Agreement does not reference "the buffer"—the agreement is strictly and exclusively an agreement pertaining to the rezoned property, exclusive of "the buffer" or S-7 area.

Additionally, none of the references to the "buffer" in official Town records references "green" or "open space." The only reference in any of the available records was found in the minutes of a discussion of John Hancock's Bureau of Housing, dated May 9, 1946: "A 125-foot park is shown as the buffer zone...the park protects our development from anything that might be built on the other side of it..." However, staff has not been able to locate any written documentation that the developers or owners of Hancock Village or the Planning Board stated this in official Town meetings. Similarly, staff has been unable to locate any official documentation that substantiates a local newspaper account dated August 29, 1946 stating that "Another major change substitutes a natural screen of small trees and other shrubbery for a row of detached single houses which had been planned for the so-called buffer strip along the rear of houses fronting on Beverly and Russett roads."¹

¹ Petitioner's Power point dated April 9, 2015 relative to Warrant Article 18.

As expanded upon in **Appendix B**, Town records indicate that there have been several efforts by the owners of the property to seek Town authorization to create off-street parking within the S-7 area. In rejecting these petitions, Town boards consistently protected the space from encroachment by parking, although not for the express purpose of preserving the S-7 as greenspace. In fact, at its meeting on January 18, 1950, the Planning Board "...decided that....this [would be] a breach of the agreement between the John Hancock Mutual Life Insurance Co. and the Town of Brookline to maintain and use the buffer zone for single houses only..." and voted not to favor the change.²

However, the importance of preserving Hancock Village, in particular the S-7 area, has historically been recognized by the Town of Brookline:

- In 2010, the Brookline Conservation Commission prepared The Open Space and Recreation Plan for the Town of Brookline—2010, identifying "Hancock Village" as one of eleven "Priority Unprotected Open Space Parcels of 5+ Acres." Although "the buffer" is not referenced, Hancock Village was first identified in The 2005 Open Space Plan as one of (then) "thirteen large and significant parcels that should have priority for open space protection, whether through out-right acquisition, conservation restrictions, or agreements for protection by other means."³
- In 2013, Town Meeting established the Hancock Village Neighborhood Conservation District under Section 5.10.3 of the Town of Brookline General By-laws. In approving the establishment of the Conservation district, Town Meeting agreed that "any further development [in the district] shall be compatible with the existing development of the district and its relationship to the adjacent neighborhood....Any proposed Reviewable Project (including demolition, removal, new construction or other alteration)....shall not have a significant negative impact on historic architectural or landscape elements....significant negative impacts shall include, but not be limited to:...loss of the 'greenbelt' now serving as a buffer to the abutting single-family detached homes."⁴

No other municipal efforts to preserve the S-7 district as undeveloped green space could be identified. However, despite the lack of documentation, there

² Final Report and Recommendations to the Town Meeting re: Weld Golf Course (23rd Article)—January 11, 1946

³ Open Space and Recreation Plan for the Town of Brookline—2010. Page 138.

⁴ Town of Brookline General By-Laws, Section 5.10.3, d 1

is little doubt that members of the public, including past and current owners of abutting and nearby properties, believe and/or were under the impression that the buffer area was legally protected as public open space in perpetuity. Further, there is no dispute among those who are familiar with the area that the S-7 area or so-called "buffer" has been used for both passive and active recreational space by tenants of Hancock Village as well as non-tenants, likely since Hancock Village was first developed.

IV. EMINENT DOMAIN

The Power of Eminent Domain

Eminent domain involves the taking of property for a public benefit in exchange for providing the property owner with just compensation for the property that is taken. The Fifth Amendment to the U.S. Constitution provides that "private property shall not be taken for a public use, without just compensation." Thus, the right to the use and enjoy one's property is subject to the State's right of eminent domain. In Massachusetts, this authority comes in part from G.L. c. 79, which provides for a so-called "quick take" process that is outlined below. G.L. c. 79 explicitly provides authority for the Town of Brookline to take private property by eminent domain for a public use.

To exercise the power of eminent domain, the taking authority must meet the following basic conditions: the proposed use for the property must be a legitimate public use, the taking cannot be made in "bad faith", and the property owner must be provided with just compensation.

Procedures and Timeframe

Chapter 79 of the Massachusetts General Law requires that a municipality undertake the following steps in order to take property by eminent domain:

1. The land to be taken must be identified. If necessary, a plan of the land must be obtained from a surveyor for accurate identification;
2. Unless waived by the property owner, an independent appraisal must be obtained before the taking to determine fair market value. This appraisal allows the Town to understand what the property will cost and to budget accordingly. The Town may also need to use engineers and additional experts to determine the fair market value

- of the property. The appraisal will be the basis for the “just compensation” offered to the property owner.
3. Town Meeting must vote to both acquire the property and to appropriate sufficient funds to acquire the site (requiring a two-thirds vote). This is the first time that the Town must reveal publicly the site it has chosen to take. The Town is free to provide notice of, discuss and negotiate the acquisition of the property with the property owner at any time.
 4. A title examination of the property must be performed to confirm names of owners, mortgagees and other parties with an interest in the subject property.
 5. An order of taking, notice, offers, and other associated documents must be drafted. The order must describe the land taken accurately, the property interest taken, and the public purpose for which the property is taken.
 6. Relocation obligations under G.L. c. 79A, if any, must be met, which may require that assistance and benefits be provided to displaced residents and businesses as a result of a real estate acquisition by a public or private entity using public funds in a project.⁵
 7. The Order of Taking must be executed by the Board of Selectmen.
 8. Execution of the Order of Taking must be recorded in the Registry of Deeds within 30 days. Upon recording, title to the property immediately vests in the Town and, generally, all other interests in the subject property are extinguished. The order of taking thus acts like a deed.
 9. Notice of the taking and the taking authority’s opinion of just compensation (*pro tanto* payment) must be executed and served on every owner, mortgagee or other person with an interest in the property entitled to an award of compensation. Payments must be made within 60 days of the taking or within 15 days of demand for payment by anyone entitled thereto.
 10. Displaced residences and businesses must vacate the property within four months of the taking.

This process is designed to occur quickly, so that the public purpose for which the property has been taken may begin without delay. Assuming that all of the necessary steps have been carried out and that the taking has been for a

⁵ Since the S-7 does not include any houses or businesses, relocation would not be an issue.

valid public purpose, the legal challenges that remain include whether the taking was done in good faith, and whether compensation for the property was just.

The property owner may accept the municipality's offer as full compensation or as a "*pro tanto*" payment, thereby allowing the property owner to accept the payment while reserving his or her right to challenge the amount of the payment in court within three years of the date of taking. A judge or jury would decide the outcome of the lawsuit seeking just compensation and/or a determination of "bad faith." Such trials typically are a "battle of the experts." Each side typically presents real estate experts and other experts who can provide opinions of the fair market value and the facts supporting these opinions. Like all litigation, these cases can take years, and final resolution will take longer if appeals are filed.

If the former property owner prevails and is awarded additional compensation, the Town would be required to pay interest on the difference between the *pro tanto* offer and the amount awarded by the court. If the Town prevails and the court awards it damages, the former property owner would be required to pay interest to the Town. Interest is calculated from the date that the order of taking is recorded at the registry of deeds to the date that the Town makes a payment pursuant to a final court judgment. In cases that move slowly through the courts, the interest payment can be significant.

Finally, the Town may not reverse the taking—for any reason. If a final Judgment is more than the Town is willing to pay, the Town remains legally obligated to pay the Judgment, typically with interest.

V. PUBLIC USE: NEEDS ASSESSMENT FOR PRECINCT 16

Warrant Article 18 proposes that the Town take the land zoned as S-7 for use as "publicly accessible active recreational open space." The Parks and Open Space Director conducted a preliminary report assessing the need for active as well as passive recreational space in Precinct 16, a copy of which is included in **Appendix D: Park Needs Assessment for Precinct 16**, dated September 12, 2015. The report provides the Director's initial findings that there is in fact a need for space in Precinct 16 for both active and passive recreational use, and that the S-7 area would be a suitable option to respond to that need.

Needs Assessment Methodology

Two methods are typically used to assess park and open space needs in a community: First, demand-based needs (information derived from public input), and second, standards based on level of service targets set by the National Recreation and Park Association (NRPA). If a need for additional or alternative uses is identified, a subsequent study is usually undertaken to identify and analyze existing and potential resources to respond to the identified need. Typically, a needs assessment is accompanied by an analysis of methods to respond to any identified needs. The scope of the Resolution Article predetermines that decision and focuses exclusively on the S-7 area. This study expressly does not seek to identify alternative resources that could meet the asserted need for public open space.

A. Demand-based Needs Assessment

Under the leadership and direction of Selectwoman Nancy Heller, the Parks and Open Space Division interviewed seventeen individuals, including residents and Town Meeting members from Precinct 16 and members of the Greenspace Alliance and the Park and Recreation Commission. A list of participants is included in **Appendix D**.

Those interviewed shared the general belief that the public open spaces in Precinct 16 (the Baker School Playground, D. Blakely Hoar Sanctuary and Walnut Hills Cemetery) do not satisfy the need for recreational use for Precinct 16 residents. Independence Drive, a busy four-lane street, was viewed as a barrier to access the Baker School playground due to traffic volumes and speeds. In addition, the Baker School playground is perceived as mostly inaccessible when school is in session. Most participants felt that the 25-acre Hoar Sanctuary, although an excellent destination for walking, was too isolated and not suitable as a public space for social gathering. Similarly, the Walnut Hills Cemetery is appropriate for walks but not social gatherings or more active recreation. The Hynes Playground in West Roxbury is a popular destination for families, but requires crossing into West Roxbury via the VFW Parkway, another busy roadway.

Among recreational use possibilities, interviewees sought a combination of the following amenities: accessible walking paths, picnic areas and social gathering spaces, benches, open lawn and trees. The S-7 area was described as an opportunity to provide safe, connected routes in the neighborhood

between places for wildlife (D. Blakely Hoar Sanctuary), recreation, walking and cycling, and a safer route to the Baker School. Several people suggested that a connecting path from D. Blakely Hoar Sanctuary to “the buffer” should be provided to improve accessibility to the conservation area. There were also several individuals who felt that a playground would be an important addition to the neighborhood and that the “buffer” area was particularly well-suited for exercise stations due to its length.

The Needs Assessment report states that “while Warrant Article 18 specifically references ‘active recreation space,’ most interviewees expressed the need for both active and passive recreation space. A passive recreation area is generally a less developed space or environmentally sensitive area that requires minimal enhancement and might include open lawn for picnicking, benches for sitting or reading and paths for walking. Active recreational activities, such as organized sports or playground activities require extensive facilities or development such as: play structures, hard court play areas, athletic fields, and biking facilities.”

The interviewees provided important insight into the perspectives of residents and open space advocates. However, it should be noted that their comments were not limited to “active” open space, as identified in the warrant article. Although the sample for the stakeholder interviews for this study was admittedly small, there are existing plans undertaken by the Town that are based on extensive public participation. These plans confirm an overall need for both active and passive open space throughout the Town. The Town’s Comprehensive Plan—2010-2015, Open Space Plan 2010, and the Park, Recreation and Open Space Master Plan all confirm both the Town’s need for and commitment to creating and preserving open space for both active and passive recreational use.

The Master Plan states:

Brookline needs additional facilities and public spaces for both active and passive uses. The community survey revealed that Brookline residents strongly favor open space acquisition trailways in and between our parks and open spaces, additional athletic fields and the provision of indoor multi-generational community recreation activities...

B. Level of Service Targets

The Brookline Park, Recreation and Open Space Strategic Master Plan relies on the so-called GRASP™ (Geo-referenced Amenities Standards Program) methodology, which is designed to measure and portray the level of service (LOS) provided by parks and recreation systems. Capacity is only part of the LOS equation, which is typically defined in this context as the capacity of the various components and facilities that make up the system to meet the needs of the community. Other factors are brought into consideration, including quality, condition, location, comfort, convenience, and ambience. Parks, recreation facilities, and open space are evaluated as part of an overall infrastructure made up of various components, such as playgrounds, multi-purpose fields, passive use areas, etc. The results are presented in a series of maps and tables that make up the GRASP™ analysis of the study area. Copies of maps relevant to this study are included in **Appendix D**, as is a discussion of the implications of these maps relative to the availability of recreational resources within Precinct 16

The GRASP analysis confirms that Precinct 16 has a deficit of walkable open space. However, when the school grounds, cemeteries and nature sanctuaries are removed from the map, the limited availability of public park resources is compounded significantly.

Overview of Results

Precinct 16 has limited access to walkable public active open space per the Town's Park, Recreation and Open Space Strategic Master Plan and national standards. There was unanimity among the individuals who participated in the interview process that a neighborhood park for active and passive recreation is needed in Precinct 16. There was also a good deal of sentiment about the environmental, aesthetic and historic importance of "the buffer" and many stated their desire to protect and preserve this six-acre green landscape. Development of "the buffer" as a public park for active and passive recreation would provide a neighborhood destination for passive and active recreation that would meet that need.

While this preliminary study attests to a legitimate public need for recreational areas within Precinct 16, it expressly does not address whether or not the S-7 area is the most appropriate site to meet that demand.

Additional Considerations

If a more comprehensive analysis were deemed necessary, there are additional considerations to be addressed relative to establishing, evaluating and responding to the need for recreational space, most notably, but not exclusively:

- A more rigorous survey including but not necessarily limited to all households within a ½ mile radius;
- Availability of parking for recreational uses at the S-7 site;
- Distinguishing between demand for active and passive open space as well as the availability of each;
- Addressing the fact that Independence Drive essentially bisects the two components of the S-7 area, separating the S-7 into two distinct areas.

VI. MARKET VALUE

To establish an opinion of just compensation, the Town would need to engage an outside appraiser to conduct an independent appraisal, the cost of which is significant and beyond the scope of this study. Nonetheless, in order to provide the Board of Selectman with a working estimate for valuation, the Chief Assessor has generated an estimated market value for the land if it were for sale on July 1, 2015. The market value estimate does not take the place of the required independent appraisal, and therefore is not offered as the Town's opinion of just compensation. The Chief Assessor's objective was limited to providing a market value estimate of residential land in Brookline if it were available for sale for single family housing as of a set date. The Chief Assessor's market value report is attached as **Appendix E**.

Market Value Methodology

The valuation analysis that is provided estimates the market value of the subject land as if it were vacant and available for development. Because the subject land is not currently available to the open market and the property owner seeks to develop the land under a Chapter 40B comprehensive permit that has been issued by the Zoning Board of Appeals, the analysis is based solely on a hypothetical condition. Again, this is only a working estimate for valuation, and should the Town elect to proceed with a taking of the S-7 area under the power of eminent domain, the valuation process would be substantially different.

The hypothetical market value estimate was made based on an analysis of 25 residential land sales in Brookline over a period of 52 months, from March 2011 through July 2015. The residential property sales ranged in land area from 6,136 square feet to 228,168 square feet, and in price from \$390,000 to \$7,525,000. Sale prices were adjusted for changes in market conditions between the sale date and the valuation date using the Standard & Poor's Case-Shiller Home Price Index for the Boston Metropolitan Study Area. An explanation of the S&P-CS-Index from the July 2015 composite report is included in **Appendix E: Land Value Estimate of Certain Land in South Brookline.**

Overview of Results

An analysis of residential land sales was used to estimate the subject land value as of July 1, 2015, using a mass-appraisal approach. In total, the 25 sales included 978,008 square-feet of land, representing almost 22.5 acres. The total time adjusted sales price was \$49,773,140, or in aggregate, \$50.89 per square foot of land, on average.

If the average sale price of available residential land in Brookline was \$50.89 per square-foot as of July 1, 2015, under the same or similar conditions, the subject land area of 285,318 square feet would have an estimated market value of \$14,520,500 ($\$50.89 \times 285,318$ sf.), under the implied right to develop, general assumptions, and without any specific cost of development considerations or consideration of any known or unknown conditions limiting development, now or in the future.

The fact that a Comprehensive Permit has been issued to the property owner was also not incorporated into the analysis.

Just Compensation

The market value estimated by the Chief Assessor should serve only as a current working estimate. The price of actual just compensation could vary substantially. This is complicated by the fact that the property owner has been issued a Comprehensive Permit to construct 161 units on the Hancock Village property.. According to the plan that was approved by the Zoning Board of Appeals, the S-7 district includes 52 units and 193 surface parking spaces, some of which the developer has consistently maintained would support the apartment building in the M-.05 zoning district.

VII. COSTS and FUNDING

Capital Costs Estimate

The Parks and Open Space Division generated an estimated cost to improve the S-7 area to Town standards as both active and passive recreational space based on the recommendations of the seventeen interviewees. The cost estimate is conceptual, using a base plan and a variety of assumptions relative to conditions. The estimated cost includes installation of handicapped accessible entrances at all of the crossings, a six-foot wide walking/jogging path along the extent of the park, picnic areas, exercise stations, play areas, and pedestrian-scale safety lighting at the crossings. The total cost including construction, contingency and design is estimated at \$1,565,000, the details of which are set forth in **Appendix D**.

Operating and Maintenance Cost Estimate

Annual maintenance costs for the Town are estimated to be approximately \$14,000 for forestry services to include corrective, health and safety pruning and removals as necessary, and \$33,000 for annual landscape maintenance activities from March to December. Costs of snow removal, if necessary, should be incorporated into the cost estimate.

VIII. FUNDING SOURCES AND FINANCIAL IMPACT

There are two State funding grant programs that are designed to reimburse communities for costs associated with acquisition of open space: The Land and Water Conservation Fund (LWCF) Grant Program and the Massachusetts Parkland Acquisitions and Renovations for Communities (PARC)⁶ Program, both administered by the Executive Office of Energy and Environmental Affairs (EOEEA). While the state has not had a grant round for the former

⁶The PARC grant has a companion grant known as the "Massachusetts Local Acquisitions for Natural Diversity Program, aka LAND grant. The LAND grant provides funding to Conservation Commissions to help acquire land for natural resource protection and passive outdoor recreation purposes. The Town would not pursue a LAND grant for reimbursement to acquire the S-7 area given the intent of Warrant Article 18 is to study the acquisition of the property for active open space.

since FY13, EOEEA advises that it hopes to have a grant round in Fiscal Year 2016. While the maximum LWCF Grant has traditionally been set at \$250,000, a maximum award has not yet been established for FY16. The PARC grant, which is active, sets a maximum reimbursement to municipalities of \$400,000.

EOEEA has advised that there are currently no federal grants available for the purpose of acquiring land recreational uses.

If the Town proceeds to take the S-7 area by eminent domain, the Town would prepare application(s) for both the LWCF and PARC grants (assuming that they are active) and also avail itself of State Representative Edward F. Coppinger's offer to the Town dated March 24, 2015 to "zealously advocate for state funding or any other government agency, on behalf of said Eminent Domain taking." State Representative Edward F. Coppinger's letter to Town of Brookline Officials dated March 24, 2015 is included as **Appendix F: Letter from Rep. Edward F. Coppinger.**

Evaluation of Financial Impact

The Deputy Town Administrator evaluated the potential impact of a capital expenditure of \$14,520,500, based on the Chief Assessor's estimate of value. Her full report is attached herewith as **Appendix G: Capacity in the CIP for Certain Land in South Brookline.**

Because the FY2017-FY2022 Capital Improvement Program (CIP) is still in development, the Deputy Town Administrator based her evaluation on the assumptions used in the FY2016-2021 CIP, with funds borrowed during FY 2017 and debt service commencing in FY 2018. A \$14,520,500 million bond to fund the purchase of the S-7 area would cost the Town roughly \$1.6 million for the first year of debt service.

The Town's CIP policies call for 6% of the prior year's net revenue to be dedicated to the CIP. The goal is to have the 6% consist of both a debt-financed component and a revenue (or "pay-as-you-go") component, with 4.5% for debt-financed CIP and 1.5% for pay-as-you-go CIP. Adding the cost of a bond used to purchase this land to the debt service schedule would effectively eliminate the availability of tax-financed monies from that 6% financing. This would leave just Free Cash as the funding source for all pay-as-you-go projects, thereby generating a high level of uncertainty to the CIP. The

amount of free cash available for the CIP can fluctuate dramatically from year-to-year.

At a minimum, \$1.6M of pay-as-you-go projects would need to be cut from the CIP in FY2018, and in future years there would be less capacity for projects currently contemplated in the debt management plan (such as added capacity to the High School). Borrowing plans for future projects would likely need to be reconsidered or delayed in addition to the reductions in pay-as-you-go projects scheduled in the out-years of the CIP. Given the level of pressure this project would exert on the CIP, it could be more realistic to pursue debt exclusion for funding.

IX. LEGAL ISSUES

Should the Town elect to take the so-called S-7 area under the power of eminent domain, a legal challenge to the validity of the taking can and should be expected. Special Counsel with extensive experience in eminent domain takings was engaged by Town Counsel and requested to prepare an opinion on the legal issues that arise from eminent domain takings.

Special Counsel's opinion is not included with this report because it is confidential and protected from disclosure under the attorney-client privilege. Although the Board of Selectmen could choose to waive this privilege, it is not recommended that they do so, because disclosure of the opinion would be highly likely to compromise the Town's position regarding a potential taking. However, the legal questions analyzed by Special Counsel are discussed briefly below, to provide an understanding of what a legal challenge to the taking would likely involve. These issues include the following: First, whether the taking was for a valid "municipal purpose"; second, whether the taking was made in good faith; and third, what compensation the property owner is entitled to for the taking.

Municipal Purpose

Pursuant to *M.G.L. c. 40, §14*, a Town may take land by eminent domain for "any municipal purpose." Resolution Article 18 proposes taking the so-called S-7 area at Hancock Village for "permanently publicly accessible active recreation space. Because Massachusetts Courts have consistently held that recreational use is a legitimate municipal purpose, it is unlikely that a

challenge on this basis alone would be successful. Nonetheless, whether the Town's taking met the requirement is a judicial question; any declaration of purpose in the Town Meeting vote or vote by the Board of Selectmen would not, standing alone, be conclusive. See, *City of Boston v. Talbot*, 206 Mass. 82 (1910).

Good Faith

A taking by eminent domain, even if proper on its face, can be invalidated if a court finds that the taking was made in bad faith. *Pheasant Ridge Assoc. L.P. v. Town of Burlington*, 399 Mass. 771, 775 (1987). With respect to the eminent domain taking that is contemplated by Article 18, the likely legal question would be whether the taking was made in good faith, or whether the stated public purpose was merely a pretext because the actual purpose of the taking was to thwart the construction of affordable housing. Should a court find that the Town had made the taking in bad faith, the Town would be potentially liable for the challenging party's attorney's fees, costs and expenses, as well as reimbursement for any damages suffered due to the delay necessitated by the Town's taking.

Special Counsel's legal opinion includes his analysis of the likelihood of success, or failure, of a potential bad faith claim based on the material that is provided in this report.

Just Compensation

Any taking by eminent domain must also be accompanied by a payment of just compensation to the property owner in exchange for the taking. This amount would be equal to the property's "fair market value," defined as "the highest price which a hypothetical willing buyer would pay to a hypothetical willing seller in an assumed free and open market," with the hypothetical sale occurring on the date the eminent domain taking is recorded at the Registry of Deeds. In addition, this taking would represent a taking of only a portion of a much larger piece of property, and just compensation for the taking would also need to include the diminution of value of the remaining land, if any. *Kane v. Town of Hudson*, 7 Mass.App.Ct. 556 (1979).

While the Town would customarily extend an offer of payment alongside any eminent domain taking, the offered amount would almost certainly be challenged in court as inadequate. If this occurred, it would necessitate an

additional trial, likely before a jury, where both sides would employ expert witnesses in real estate valuation to argue that their proposed figure more accurately reflects the property's fair market value.

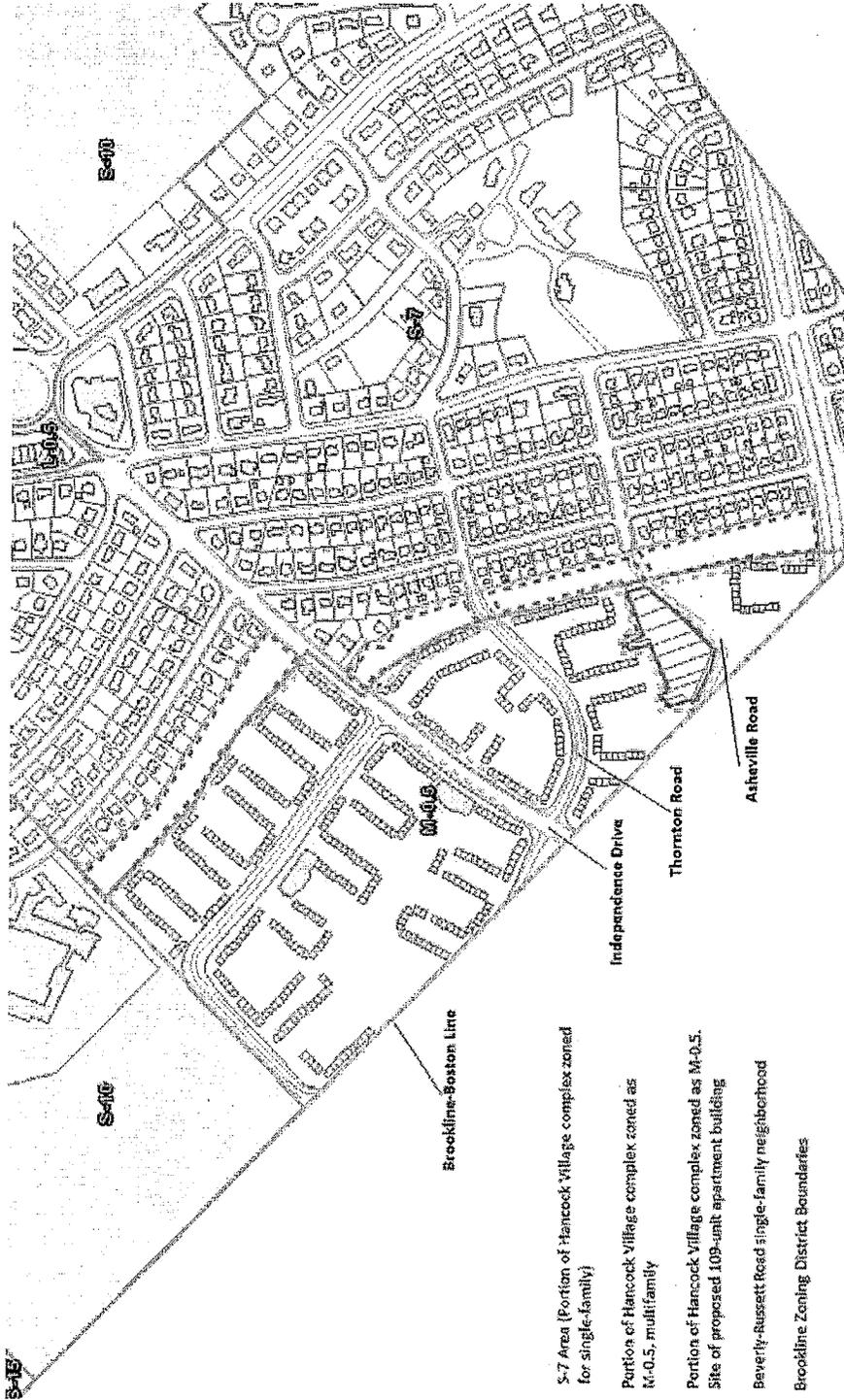
Special Counsel's legal opinion includes his analysis of the issues related to the payment of just compensation for the proposed eminent domain taking, based on the material that is provided in this report.

Conclusion

In concluding, Special Counsel advises us that "the probability of success in eminent domain cases is directly related to the experience of the trial judge; the quality of the attorneys and expert witnesses and the degree of sophistication of the jury in real estate valuation matters . . . the alleged bad faith taking case and the eminent domain damage case represent high stakes [and] costly and publicly acrimonious litigation for the Town, all of which considerations must be seriously weighed by the Board before electing the volatile and unpredictable eminent domain option in these circumstances."

APPENDIX A

Map of S-7 Area Proposed for Taking



Green dashed line delineates S-7 Area proposed for taking.

Map source: Brookline Tax Atlas

APPENDIX B

Planning History of the S-7 Area

Early 1900s	In the early 1900's, the property was owned by Francis C. Welch et al Trs. and Weld Real Estate Trust. An undated map indicates that the property was undeveloped.
1920s	The Weld Golf Club, owned by Weld Golf Course Trust Inc., was created. It was a private golf course, although records from 1927 indicate that Harvard students and faculty were allowed to buy a maximum of 100 tickets per day for a three-week period at \$1.50 per ticket.
Between 1927 and 1946 (precise date unknown)	"The area which is proposed to be rezoned from the 4D, single-family residence district, to the 3C, general residence district [and which] was formerly a part of the Weld Golf Course" ceased being "used for any purpose for several years." Presumably this statement applies to what is now the S-7 area as well.
January 11, 1946	The John Hancock Insurance Company entered into an option to purchase the entire property from a Mr. Engstrom subject to the Town supporting a zone change of "substantially the whole of the proposed site of Hancock Village" from a single family zone to a general residential zone. Specifically, according to the Planning Board's Final Report and Recommendations to Town Meeting dated January 11, 1946, approximately 43.13 acres were to be rezoned from 4D to a new 3C zone, with "the strip of land (containing about 8.25 acres) not to be rezoned, situated northeasterly of the area described in this article [which] will be developed for detached single-family residences and will form a buffer strip or area between the present single-family residences on Beverly and Russett Roads and the proposed new 3C district."
March 1946	John Hancock Insurance executed an Agreement relative to the property to be rezoned (i.e. not including the land currently zoned S-7.) The Agreement does not reference the so-called "buffer," which retained its single-family zoning designation. By its express terms, the Agreement addresses only the land that was rezoned from single to multi-family. "The town, at its annual meeting in 1946, voted to amend the by-law by rezoning substantially the whole of the proposed site of Hancock Village so that it became a 3C District, in which attached multiple family dwellings were permitted. A strip on the northerly and easterly boundaries of the site, of uneven width averaging a little over 100 feet wide, was allowed to remain in the 4D District to form a buffer between the detached single residence neighborhood lying to the north and east of the village the more closely built up village."
May 9, 1946	None of the official records identified by the Planning Department references "buffer," "green space," "natural screen," or "open" space." The only reference in any of the examined official documents to something other than a buffer for single family homes or "buffer" without any qualification was found in minutes dated May 9, 1946 from John Hancock's Bureau of Housing: "A 125-foot park is shown as the buffer zone...the park protects our development from anything that might be built on the other side of it..."
January 18, 1950	The Planning Board considered a request by John Hancock Insurance to establish an off-street parking area in a single family district "otherwise referred to as a 'buffer zone.'" "Appearing in opposition... were: Eli H. Clazett, who stated that he represented the Putterham Association and the South Brookline Center.... [and] that this request for change of zone was a breach of the agreement between the Town of Brookline and the John Hancock Mutual Life Insurance Co., as President Clark [of John Hancock Insurance] had stated on many occasions that this buffer zone was to be used solely for single houses." In Executive Session on the same date, the Planning Board "...decided that...this was a breach of the agreement between the John Hancock Mutual Life Insurance Co. and the Town of Brookline to maintain and use the buffer zone for single houses only..." and voted not to favor the change.
January 8, 1958	The Board of Appeals denied a variance for parking at the corner of Independence

	Drive and Russett, finding “that while the proposed variance would be of some help, it would not entirely eliminate the problem, and there is other parking space provided by the Hancock Village within reasonable walking distance which is now being enlarged.”
December 28, 1967	The Board of Appeals denied a petition for a variance to create a new accessory parking areas adjacent to 471-523 VFW, “said premises being located in a S-7 (Single Family) District, stating “[t]he burden is on the appellant, we think, to prove that no other solution is possible. This was not done, and the appellant’s hardship not proved.”
1980s	The single family 4D district was eventually rezoned to the existing S-7 (single family) district, presumably during town-wide rezoning process. In 1985, three parcels were “carved out” of the S-7 zone and three single-family houses were constructed (according to Assessors records): 14, 18 and 22 Independence Drive. These three houses were built as-of-right.
2005	Brookline Comprehensive Plan (2005 – 2010) includes one reference to Hancock Village asserting that the residential complex should be considered as an appropriate location for affordable housing.
2011	The Open Space and Recreation Plan for the Town of Brookline (2010), prepared by the Brookline Conservation Commission, identifies “Hancock Village” as one of eleven “Priority Unprotected Open Space Parcels of 5+ Acres.” Although “the buffer” is not referenced, Hancock Village was first identified in the 2005 Open Space Plan as one of (then) “thirteen large and significant parcels that should have priority for open space protection, whether through out-right acquisition, conservation restrictions, or agreements for protection by other means.”
Ongoing	Brookline residents have claimed that assurances were made by owners of Hancock Village and others that the buffer would remain as green space or as publicly-accessible open space in perpetuity.
2011-2013	A Neighborhood Conservation District Town Bylaw was established over the parcels that make up the Brookline portion of the Hancock Village complex to conserve an application of the Garden City planning theory espoused by English planner Ebenezer Howard. “Any further development shall be compatible with the existing development of the district and its relationship to the adjacent neighborhood....Any proposed Reviewable Project (including demolition, removal, new construction or other alteration)...shall not have a significant negative impact on historic architectural or landscape elements....Significant negative impacts shall include, but not be limited to:...loss of the ‘greenbelt’ now serving as a buffer to the abutting single-family detached homes.” Town Bylaw, Sec. 5.10.3
June 22, 2012	State determines that Hancock Village is eligible for listing in National Register of Historic Places.
August 2012-February 20, 2015	Zoning Board of Appeals files decision with 70 conditions with Town Clerk granting a Comprehensive Permit to construct 161 rental residential units (20% affordable housing) in 12 buildings and 293 parking spaces. Forty-eight (48) units in eleven (11) buildings and 194 surface parking spaces would be located in the S-7 area.
2014	Hancock Village was identified by Preservation Massachusetts as one of the Commonwealth’s ten “most endangered” historic resources.

Sources include:

- Planning Board records from 1940 to 1958. (Note: the Planning Board as opposed to the Board of Appeals was charged with the responsibility for land use decisions during this time frame.)
- Minutes of Meetings of Brookline Long Range Planning Committee 1943-1945
- Planning Board Reports binder from 1945 to 1947

- Agreement by John Hancock Life Insurance Company executed March 11, 1946 relative to the rezoned property
- Town responses to Chestnut Hill Realty's applications to MassDevelopment for a Project Eligibility letter in 2012 and 2013
- Hancock Village Olmsted Correspondence Files (1941-1948) re: John Hancock Housing Job No. 9703
- Owners' petitions to build parking within the buffer (1950, 1958 and 1967)
- Hancock Village Planning Committee binder
- Planning Department files on the Hancock Village property
- Open Space and Recreation Plan for the Town of Brookline 2010
- The Comprehensive Plan 2005-2015
- The Open Space and Recreation Plan for the Town of Brookline (2010)
- Neighborhood Conservation Districts, Article 5.10 of the General By-laws
- Petitioner's power point presentation dated April 29, 2015 relative to Warrant Article 18 from 2015 Annual Town Meeting

APPENDIX C

Excerpts from Sources That Describe the Function of the Land Proposed for Taking

EXCERPTS from Planning Board Records (leather binder #2—March 1940 to...)

“Final Report and Recommendations to the Town Meeting RE: Weld Golf Course Development (23rd Article)—January 11, 1946:

‘...The John Hancock Mutual Life Insurance Company holds an option to purchase the property described in the above article and an additional strip on the northeasterly side thereof, said areas together forming a single tract of about 51.38 acres in Brookline. This Company intends to purchase said tract, if the aforesaid article is favorably act upon, and plans to build on the rezoned portion thereof connected single and two-family dwellings. The strip of land (containing about 8.25 acres) not to be rezoned, situated northeasterly of the area described in this article will be developed for detached single-family residences and will form a buffer strip or area between the present single-family residences on Beverly and Russett Roads and the proposed new 3C district.’”

John Hancock Development—May 29, 1946

“The Chairman first took up the matter of new plans for the Garden Village development of the John Hancock Mutual Life Insurance Co., presented by the Ring Engineering Co., Inc., and called attention to the fact that these differed materially from the previous plans, and contained several undesirable features, namely: some buildings were shown as overlapping the buffer zone....After a thorough discussion, it was decided that the plan was not satisfactory to the Board.”

January 18, 1950

“The [Planning] Board then considered amendments (d) and (e) as proposed. The Chairman explained that these were requested by the John Hancock Mutual Life Insurance Co. so that it would be possible, if adopted, to establish an Off-Street Parking Area in a Single Family District; otherwise referred to as a ‘buffer zone.’

“Appearing in opposition to these proposed amendments were: Eli H. Clazett, who stated that he represented the Putterham Association and the South Brookline Center. He stated that this request for change of zone was a breach of the agreement between the Town of Brookline and the John Hancock Mutual Life Insurance co., as President Clark had stated on many occasions that this buffer zone was to be used solely for single houses.”

“Dan Daley also spoke in opposition, expressing the same reasons as Mr. Clazett.”

“Many letters were received by the Board in opposition to the change. A show of hands showed thirteen opposing amendments (d) and (e).”

“No one appeared in favor.”

January 18, 1950

“In EXECUTIVE SESSION, the Planning Board took up each proposed amendment as follows: HANCOCK VILLAGE. Proposed amendments (a), (b) and (c).

"The Board decided to take no action until Mr. Philip Nichols appeared at a later meeting and clarified the meaning as expressed in the amendment for 'Accessory Uses.'

"Referring to amendments (d) and (e), it was decided that as the opposition was unanimous, that this was a breach of the agreement between the John Hancock Mutual Life Insurance Co. and the Town of Brookline to maintain and use the buffer zone for single houses only, it was unanimously

VOTED: Not to favor the change."

January 25, 1950—FINAL REPORT ON AMENDMENT TO THE ZONING BY-LAW

"The town, at its annual meeting in 1946, voted to amend the by-law by rezoning substantially the whole of the proposed site of Hancock Village so that it became a 3C District, in which attached multiple family dwellings were permitted. A strip on the northerly and easterly boundaries of the site, of uneven width by averaging a little over 100 feet wide, was allowed to remain in the 4D District to form a buffer between the detached single residence neighborhood lying to the north and east of the village the more closely built up village.

**NOTES FROM OTHER CORRESPONDENCE--PLANNING DEPARTMENT'S FILES
(ALL RELATE TO EFFORTS BY OWNERS TO CONSTRUCT PARKING IN THE BUFFER)**

Board of Appeals—Case No. 583—January 8, 1958 (variance for parking denied)

"John Hancock Mutual Life Insurance Company applied to the Building Commissioner for permission to construct an open-air accessory parking lot on the Hancock Village property at the corner of Independence Drive and Russett Road, Brookline. The permission was denied and an appeal was seasonably taken from the decision of the Building Commissioner."

"Upon the foregoing evidence we find that whatever existing hardship there may be in the enforcement of the Zoning By-Law is not a hardship to the appellant but rather to the tenants of its buildings and to the Fire and Police Departments of the town. The Board finds that while the proposed variance would be of some help, it would not entirely eliminate the problem, and there is other parking space provided by the Hancock Village within reasonable walking distance which is now being enlarged."

Board of Appeals—Case No. 1465—December 28, 1967 (variance for parking denied)

"Westbrook Village Trust applied for a variance from Section 4.30 of Zoning By-Law to allow a new accessory parking area for 93 cars adjacent to 471-523 Veterans of Foreign Wars Parkway, said premises being located in a [sic] S-7 (Single Family) District."

Claim of appellant: "The appellant would be within its rights to build one-family houses on the proposed parking site, but a new road would have to be laid out to give access, and so this is not practical."

"Six persons spoke in opposition, including Representatives Backman and Dukakis, and the President of the Putterham Circle Association. They contended that when the John Hancock Petition to rezone certain land was voted for by the Town, it was represented that a buffer zone of S-7 restriction would be maintained between the development and other land, and that to vary those restrictions so as to allow parking would violate the spirit of the agreement then entered into."

Decision: "The burden is on the appellant, we think, to prove that no other solution is possible. This was not done, and the appellant's hardship not proved. Variance denied."

Letter from Town Counsel to attorney for Hancock Village dated February 2, 2006 re: proposed parking lot

"I am not in a position to overturn [the Building Commissioner's] decision."

**EXCERPTS FROM HANCOCK VILLAGE PLANNING COMMITTEE BINDER
(with green cover and spine)**

Letter from George F. Glacy of 57 South Street dated January 18, 1950

"It was further stated by Hancock that if single dwellings were not built on the buffer strip this buffer area would be maintained for parks and recreation purposes."

Brookline Planning Board—January 11, 1946 RE: Weld Golf Course Development

"The Company has complied with the suggestions of the Planning Board in regard to a buffer zone of one-family houses bordering the present development and the carrying of Grove Street through the property."

Meeting of the Planning Board—September 26, 1945

"Mr. Clark was told by the Planning Board that they would like to see Grove Street extended through the property to the Veterans of Foreign Wars Parkway and that something in the way of a buffer between their development and the adjacent Single Family Zone would be desirable."

Town's Response to MassDevelopment--2013

Page 11—Greenbelt within Single-Family Residence District

"The May 9, 1946 minutes of the Bureau of Housing Development of the Hancock Insurance Company noted that 'a 125-foot park is shown as the buffer zone....[which] protects our development from anything that might be built on the other side of it.' [see below]

BUREAU OF HOUSING [of Hancock Insurance Company] MINUTES

May 9, 1946

"The drawings were displayed. A 125-foot park is shown as the buffer zone. This will have to be approved by Brookline. Mr. Sprout brought out that the zoning amendment defined the northeasterly and easterly boundary of the new zone as 'the center line of proposed roads' as shown on a reproduction of the Olmsted plan. Colonel Ring said this street could be shown on a plan without it being built. The park protects our development from anything that might be built on the other side of it. Mr. Bates said that as Mr. Dana of Brookline suggested a buffer strip long ago, Colonel Ring's plan seems very practical."

EXCERPTS FROM POWER POINT DATED APRIL 29, 2015 PREPARED BY PETITIONER

"March, 11, 1946 Commitments by John Hancock Insurance Company 'agrees on behalf of itself, its successors and assigns to and with the Town of Brookline....that building coverage shall not exceed 20% of said area.' (Note: the 1946 Agreement does not apply to the buffer.)

Brookline Chronicle, 8/29/46

"100% Single-House Project with Natural Screen In Buffer Strip Now Planned for Hancock Development"

“Another major change substitutes a natural screen of small trees and other shrubbery for a row of detached single houses which had been planned for the so-called buffer strip along the rear of houses fronting on Beverly and Russett roads...”

John Hancock’s own Memo: May 1946

“A 125 foot park is shown as the buffer zone...(which) protects our development from anything that might be built on the other side.”

“Twice, in the 1950s, the Insurance Company attempted to add parking along the two green belts. Twice rejected, validating the inviolability of the 1946 agreement, and ‘revised’ plan submitted and approved by the Planning Board.

References to play equipment in the buffers, and “recently seen uses: football, soccer, bicycling, skating, cross-country skiing, etc.”

“It has ALWAYS been used by the neighborhood for active recreation: Football, soccer, ice skating, bicycling, movies, carnivals, sandboxes, merry-go-rounds, through early 60s, etc”

Letter from Herbert L. Shivek dated March 20, 2015

“I well recollect the agreement that the Town made with John Hancock which stipulated that the green space would be perpetual and, due to this agreement, approval was granted to build the apartments at Hancock Village.” (The 1946 agreement does not address the “green space.” No other agreement could be found.”)



TOWN OF BROOKLINE
Massachusetts
DEPARTMENT OF PUBLIC WORKS
PARKS AND OPEN SPACE DIVISION

Andrew M. Pappastergion
Commissioner

Erin Chute Gallentine
Director

Memorandum

To: Mel Kleckner, Alison Steinfeld
From: Erin Gallentine
Date: September 12, 2015
Re: Warrant Article 18: Analysis of Need for Open Space in Precinct 16

Below please find a report of the Parks and Open Space Division pertaining to the Park and Open Space needs of Precinct 16 and whether or not the area zoned as S-7 within Hancock Village and commonly referred to as “the buffer, which is owned privately, could help meet that need if converted to public use. The report is created in response to Resolution Warrant Article 18 of the 2015 Annual Town Meeting, asking the “Board of Selectmen to study and consider use of Eminent Domain for two green space buffer zones along Russett and Beverly Roads...for a permanent publicly-accessible active recreation space.” The Division was tasked with the following:

- a. Evaluate the need for active public recreational space in Precinct 16
- b. Analyze the suitability of referenced buffer zone parcel(s) for active public recreational use
- c. Provide a range of costs to convert the referenced buffer zone parcels to active recreational space consistent with Town standards
- d. Provide operating and maintenance cost estimates

Methodology

The Division, under the leadership and direction of Selectwoman Nancy Heller, interviewed residents and Town Meeting Members from Precinct 16, members of the Greenspace Alliance, and Park and Recreation Commission members. In addition, the Division references past work and analysis that expresses the Town’s open space values and preferences through three planning processes: The Parks, Open Space and Recreation Strategic Master Plan 2006 led by the Park and Recreation Commission and staff, The Open Space Plan 2010, a planning process led by the Conservation Commission, and the Brookline Comprehensive Plan 2005-2015, led by the Town's Department of Planning and Community Development.

Despite its urban character and proximity to Boston, Brookline has a substantial and diverse park system, ranging from small neighborhood playgrounds and public gathering places in commercial areas to grand historic landscapes and natural areas. Home to a working farm that has been in the same family since the 17th century, elegant estate properties from a bygone age, and two renowned Emerald Necklace Parks designed by Frederick Law Olmsted, Brookline highly prizes the grand, dramatic open spaces and natural areas that are rich in history as well as environmental values. Brookline also values the balance of density and accessible open space, in the form of small parks, pedestrian and bicycle-friendly ways and public gathering spaces that make for a vibrant community life in a more urban setting. The environmental, social and public health benefits that accrue from this collection of open space are considerable and its presence contributes greatly to the aesthetic appeal of the community.

Brookline, with approximately 4,355 acres, is surrounded by the City of Boston on three sides and the City of Newton on the southwest. Approximately 13% of Brookline's land area consists of parks, open space and recreation facilities owned and managed by the Town. The Parks and Open Space inventory in both The Master Plan and The Open Space Plan separate the open space properties into ten categories: community parks (11) including the Putterham golf course, historic parks (5), neighborhood parks (12), passive parks (11), school playgrounds (10), conservation areas (4), and other open space including traffic medians and islands, buffers, reservoirs and water supply lands. This report specifically addresses access to active and passive recreational public open space in Precinct 16. The public open spaces in Precinct 16 include the Baker School Playground, D. Blakely Hoar Sanctuary and Walnut Hills Cemetery.

The Need for Public Recreational Space in Precinct 16

Selectwoman Nancy Heller and Director Erin Gallentine conducted four meetings and several phone interviews with a range of residents including: Precinct 16 Town Meeting members (TMMs) and residents, and South Brookline Neighborhood Association (SBNA) members¹. Participants represented a range of interests, ages, family status and community experiences and were asked the following questions:

1. What are the recreational needs of Precinct 16?
2. What are the public recreational resources that the precinct uses?
3. What are the opportunities or possibilities for public recreational use in Precinct 16 that would be within about a 10-minute walk?
4. How has the area known as "the buffer" been used historically?
5. What would you see as being the best and highest use for the area known as "the buffer" if it were public land?

The results of the interviews revealed that a significant majority of participants shares similar opinions about the recreational needs of Precinct 16 and the opportunities to meet that need. The general consensus from the interviewees was that Precinct 16 needs a safe, walkable, multi-generational, and accessible public park to meet the active and passive recreational needs of the neighborhood. While Warrant Article 18 specifically references "active recreation space;" most interviewees expressed the need for both active and passive recreation space. A passive

¹ Participants included: Joyce Stavits Zac (TMM/SBNA), Scott Gladstone (TMM), Deb Abner, Alisa Jonas (TMM), Irene Scharf (TMM), William Pu (TMM), Robin Koocher, Judith Leichtner (TMM), Robert Cook (Planning Board/Walnut Hills Cemetery Trustee), William Varrell, Deborah Dong, Steven Chiumenti (TMM), Nancy Fulton, Thomas Gallitano (TMM), Hugh Mattison (Tree Planting Committee), Arlene Mattison (Greenspace Alliance)

recreation area is generally a less developed space or environmentally sensitive area that requires minimal enhancement and might include open lawn for picnicking, benches for sitting or reading and paths for walking. Active recreational activities, such as organized sports or playground activities require extensive facilities or development such as: play structures, hard court play areas, athletic fields, and biking facilities.

Those interviewed shared the general belief that the public open spaces in Precinct 16 (the Baker School Playground, D. Blakely Hoar Sanctuary and Walnut Hills Cemetery), pose recreational limitations to the residents. The Walnut Hills Cemetery has a very specific and private function and, while some in the neighborhood find it to be a peaceful place to walk and enjoy the landscape, most individuals said that they would not consider it a recreational destination for themselves or their families. The D. Blakely Hoar Sanctuary is considered an excellent location to take a nature walk, but not a destination for social gathering and recreation. A few individuals added that they were not comfortable going to the sanctuary because it was somewhat isolated. The Baker School grounds are generally designated for school use Monday-Friday from approximately 8:00 am to 5:30 pm and considered inaccessible during those times. In addition, residents on the east side of Independence Drive felt that it was also inaccessible due to the high speed and volume of traffic on Independence Drive, which felt like a barrier. For example, one interviewee noted that traffic is a deterrent when considering walking to Baker School from his house, especially having to cross Independence Drive, which can be dangerous. Another said that not only is the Baker School field heavily programmed with sporting events outside of school hours, it is not close enough for children to safely walk or bike to from the east side of Independence Drive. Another interviewee said that while school is in session, recess begins at 10 am and is closed to the public for the majority of the day. One interviewee said that her family would wait until evenings to go to the Baker School Playground, when it became available to the public. The small garden next to Putterham Library was mentioned by several individuals as a small area that was a nice visual amenity, but too small for any meaningful active recreation.

Several of the participants added that while there were other options, such as the larger community parks (Larz Anderson Park and Skyline Park) within one to two miles of the precinct, they also were not easily accessible and certainly not walkable, not only due to distance, but also due to busy streets with difficult crossings. They added that while these are important community resources due to size, distance and programming, they were not the type of spaces that easily foster the local connections and sense of community provided by neighborhood parks. One individual stated that he did not mind the short drive to various parks and personally preferred the larger tracts of land, but noted that walkability would be especially important to the elderly and parents of young children in the neighborhood. In addition, some residents (in particular those east of Independence Drive) stated that they would walk to Hynes Playground in Boston; while it was a popular park destination, it was difficult to access due to the need to cross VFW Parkway and did not build neighborhood connections and a sense of community due to it being outside of Brookline.

Overall, the participants opined that there was a need for a public park in Precinct 16 for active and passive recreation; a gathering place where neighbors form social ties that produce stronger, safer neighborhoods, have the opportunity to live healthier lifestyles, and build the overall sense of community that makes Brookline special. It was noted by several interviewees that many of the residential properties in the precinct had a very small footprint and were limited as far as any recreational use due to size and topography, such as rocky ledge. Additional comments about the need for a neighborhood park included the importance of the physical character of the neighborhood, providing safe places for children to play, opportunities for individuals to be in nature, physical exercise, environmental benefits, more efficient storm water management,

reduction of air and water pollution, and the opportunity for a safe connected route between the neighborhoods, D. Blakely Hoar Sanctuary and the Baker School. The concern about the changing demographics in Brookline was also raised. An increase in young and school age children has impacted the school population town-wide. The Baker School renovation and expansion only 10 years ago was insufficient to accommodate the number of children in the school and in the summer of 2015 additional classrooms were added. The increase in pre-school and school age children does not only impact the schools, but also the parks and open space. There is an even greater need for a neighborhood park to accommodate the changing community.

The Buffer Zone

The S-7 area, consisting of landscaped open space, serves as a buffer between the Hancock Village buildings and the adjacent detached single-family residential developments off Beverly Road to the north and Russett Road to the east. The residential superblocs of Hancock Village were arranged to preserve much of the natural landscape. The community green space at the highest point within Hancock Village, at the southeast corner between Thornton and Asheville roads, allows residents to take advantage of scenic views. To avoid the visual disruption of large surface parking lots, the designers placed discrete clustered parking areas at street edges and within communal garages. The S-7 area is a significant feature of the landscape on the north and east boundaries of the residential development. It maintains mature trees and features long, meandering paths, many with a sight line up the hill, that act as a park space for Hancock Village residents.

The individuals who participated in the interviews discussed the historical uses of “the buffer”. The activities that they either observed or participated in included: walking, biking, running, cross country skiing, sledding, volleyball, birthday/family parties and neighborhood gatherings, play, outdoor movies, barbeques, volleyball, Frisbee, ball playing, reading, sunbathing, birdwatching, and many other activities. Some of the interviewees felt comfortable to use the area as though it were public open space or an extension of their back yards. Other interviewees felt that the area was clearly private and while they observed these activities they were not sure if the individuals using the space were Hancock Village residents, guests of the residents or people from the neighborhood. The opinion as to whether the land was available for public use ranged widely; generally, individuals who were direct abutters viewed the land as open and welcoming and others who lived farther away had the perception that the land was private and intended for private use only.

The interviewees were asked for suggestions to meet the described recreational open space need within the precinct, but largely only had one recommendation, “the buffer”. It was generally described as the best option for public open space that would meet the recreational need of the neighborhood. The individuals interviewed described the primary need and best and highest use of the S-7 area to be a public neighborhood park that would have any combination of the following: accessible walking paths, picnic areas and social gathering spaces, benches, open lawn and trees. The area was described as an opportunity to provide: safe connected routes in the neighborhood to the D. Blakely Hoar Sanctuary); areas for recreation, walking and cycling; and a safer route to the Baker School. Several people suggested adding a connecting path from D. Blakely Hoar Sanctuary to “the buffer” for access and to encourage potential use. There were also several individuals that felt that a playground would be an important addition to the neighborhood and that the area, due to its length, was particularly well suited for exercise stations. One person advocated for a hard court area for basketball or street hockey.

Park and Recreation Needs Assessment of Precinct 16

Analysis of the existing parks, open space, trails and recreation systems helps to determine how they serve the public. The Brookline Park, Recreation and Open Space Strategic Master Plan uses a methodology called **GRASP™** (Geo-referenced Amenities Standards Program). This methodology has been applied in communities across the nation as a way of measuring and portraying the service provided by parks and recreation systems. In this methodology, capacity is only part of the Level of Service (LOS) equation. LOS is typically defined in this context as the capacity of the various components and facilities that make up the system to meet the needs of the community. Other factors are brought into consideration, including *quality, condition, location, comfort, convenience, and ambience*. Parks, recreation facilities, and open space are evaluated as part of an overall infrastructure made up of various components, such as playgrounds, multi-purpose fields, passive use areas, etc. The results are presented in a series of maps that make up the **GRASP™** analysis of the study area, copies of which are attached herewith.

For Brookline's LOS analysis, a service radius of 1/3 mile has been used, on the assumption that this radius encompasses an area from which the park or playground can normally be reached within an indirect route of approximately ½ mile or a walking time of 10 minutes. While an individual's willingness to walk varies greatly depending on age, health, time availability, quality of surroundings, safety, climate, and many other factors the Town's LOS standard is similar to the access analysis published by the Trust for Public Land that identified a half-mile, or 10-minute, walk to a park as a common national standard.

The *GRASP ANALYSIS WALKABILITY MAP* provides a composite picture of how the park system infrastructure, taken as a whole, offers residents access to recreation opportunities within an easy walk of home. On this map, darker shades represent places where there is greater availability of options, in terms of quantity and quality, for people to get out of their house and walk to. The map shows that over 90% of the town area has some walkable park, open space or recreation facility. This map is relevant because it demonstrates that Precinct 16 has a deficit of walkable open space. However, when the School Grounds, Cemeteries and Nature Sanctuaries are removed from the map, as shown in the *RECREATIONAL OPEN SPACE ACCESS BY PRECINCT MAP*, it further demonstrates the limited availability of public park resources to the neighborhood.

POPULATION ANALYSIS DENSITY PER SQUARE MILE MAP shows the population density in terms of number of persons per square mile for each census tract in Brookline. As the map indicates, densities are much higher in the northern parts of Brookline, ranging to more than 28,000 per square mile in some neighborhoods, and averaging at least 7,500 per square mile throughout the northern area. In the south, densities are consistently lower, less than 7,500 per square mile throughout. This map is useful in comparing the distribution of services shown on previous maps with where people live. It helps to explain why there may be fewer components located in the southern half of Brookline, and supports to some extent the differentiation of levels of service between the two areas. However, regardless of density, all residents deserve access to a basic level of service, within reasonable distance from home. This is where distribution of facilities becomes more important than the quantity or capacity of facilities.

Capital & Maintenance Costs

The attached *HANCOCK VILLAGE BUFFER PRELIMINARY COST ESTIMATE* dated September 17, 2015 shows a range of costs for improving the approximately six acres of land to Town standards as a public active and passive recreational space using the recommendations provided by the residents of Precinct 16 of \$1,565,000. The cost estimate is conceptual using a

base plan and a variety of assumptions on conditions. The estimate provides cost to install handicapped accessible entrances at all of the crossings, a six-foot walking/jogging path along the extent of the park, picnic areas, exercise stations, play and pedestrian scale safety lighting at the crossings.

Annual maintenance costs for the Town are estimated to be approximately \$14,000 for forestry services to include corrective, health and safety pruning and removals as necessary and \$33,000 for annual landscape maintenance activities from March to December. Snow removal costs should be discussed if that would be a requested service of the Public Works Department.

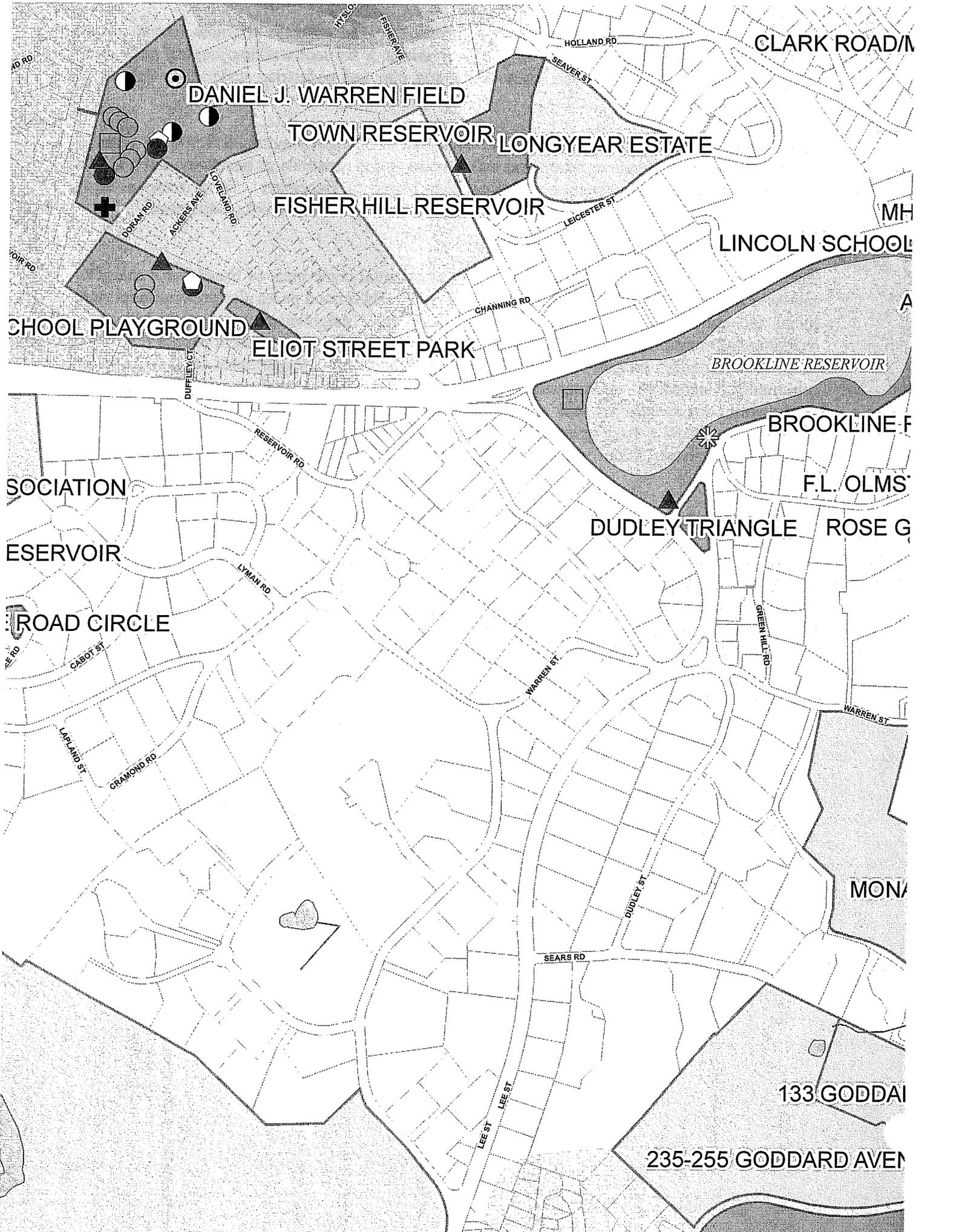
Summary

Parks, open space and recreation facilities form an essential component of Brookline's character and have a long and established history in the town. Neighborhood parks also produce important social and community development benefits. They make neighborhoods more livable; offer recreational opportunities for all ages and abilities; and provide places where people can feel a sense of community. Existing parks and conservation lands provide numerous advantages to the community, including environmental protection, passive and active recreation, historic preservation, social benefits, and enhanced aesthetic character. Together, the park and open space system forms a large greenspace system in Brookline. The presence and distribution of greenspace is closely linked with the quality of natural and cultural resources available to the community.

The Park, Recreation and Open Space Master Plan states:

Brookline needs additional facilities and public spaces for both active and passive uses. The community survey revealed that Brookline residents strongly favor open space acquisition, trailways in and between our parks and open spaces, additional athletic fields and the provision of indoor multi-generational community recreation activities. In areas of town that are more densely developed, residentially and commercially, the challenge is to maintain the quality of openness along with important natural resource values. Creating more pocket parks and public gathering spaces, enhancing green travel ways for pedestrians and bicycles and a variety of possible zoning modifications to protect openness in the context of built space are some of the recommendations of this Master Plan and the Open Space Plan.

Precinct 16 has limited access to walkable public open space per the Town's Park, Recreation and Open Space Strategic Master Plan and national standards. Through the interviews it was clear that there is unanimous consensus that a neighborhood park for active and passive recreation is needed in Precinct 16. There was also a good deal of sentiment about the environmental, aesthetic and historic importance of "the buffer" and many stated their desire to protect and preserve this six- acre beautiful green landscape. Development of "the buffer" as a public park for active and passive recreation would provide a neighborhood destination for passive and active recreation that would meet that need.



DANIEL J. WARREN FIELD

TOWN RESERVOIR

LONGYEAR ESTATE

FISHER HILL RESERVOIR

BROOKLINE RESERVOIR

ELIOT STREET PARK

BROOKLINE F

F.L. OLMS'

DUDLEY TRIANGLE ROSE G

SOCIATION

ESERVOIR

ROAD CIRCLE

MONA

133 GODDARD

235-255 GODDARD AVENUE

CLARK ROAD/M

HOLLAND RD

SEVER ST

FISHER AVE

LOVELAND RD

ACKERS AVE

DORAN RD

LEICESTER ST

CHANNING RD

DUPLETT CT

RESERVOIR RD

LYMAN RD

CABOT ST

GRAMOND RD

LAPLAND ST

WARREN ST

GREEN HILL RD

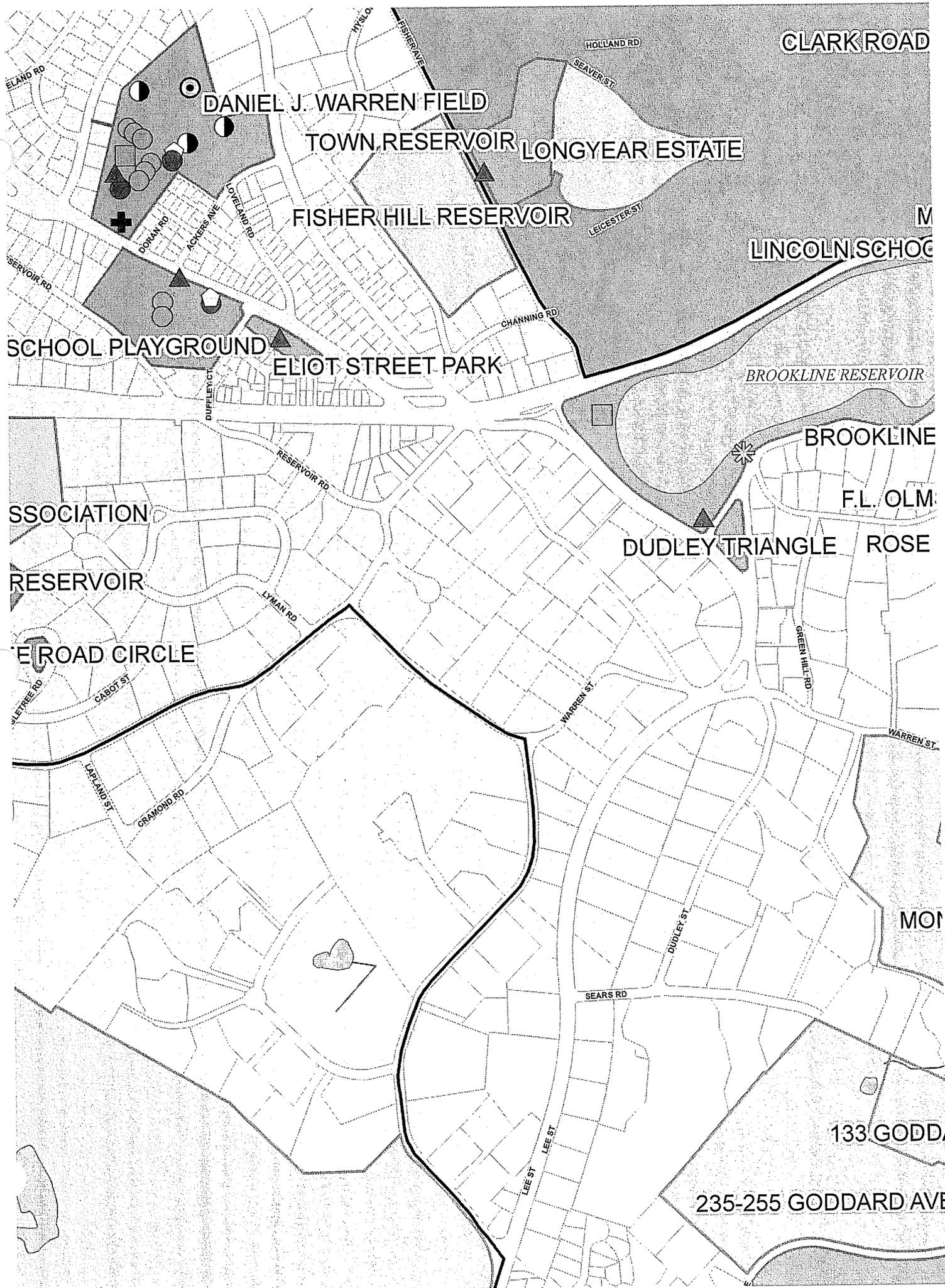
WARREN ST

DUDLEY ST

SEARS RD

LEE ST

LEE ST



CLARK ROAD

DANIEL J. WARREN FIELD

TOWN RESERVOIR LONGYEAR ESTATE

FISHER HILL RESERVOIR

LINCOLN SCHOOL

SCHOOL PLAYGROUND

ELIOT STREET PARK

BROOKLINE RESERVOIR

BROOKLINE

ASSOCIATION

F.L. OLM

RESERVOIR

DUDLEY TRIANGLE ROSE

THE ROAD CIRCLE

MON

133 GODD

235-255 GODDARD AVE

**Hancock Village Buffer
Preliminary Cost Estimate
September 17, 2015**

Note: This cost estimate is for funding purposes, and is being done prior to design. Today's dollars are used and inflation is not being carried. A construction contingency is shown separately.

Item	Cost	Subtotal
1. Site Preparation and Demo		
Construction entrance pad, 8 @ \$1,500	\$12,000	
Erosion control, 3,705 LF silt fence @\$8/LF + 3 silt sacks @ \$500 EA	\$31,140	
Construction fence and gates w/scrim, 6,005 LF @\$12/LF	\$72,060	
Tree pruning and removals, 15 days @ \$3,000/day	\$45,000	
Tree protection, 50 trees at \$150 EA	\$7,500	
General demo and removals, \$5000/day for 7 days	\$35,000	
Rock removal by hammer sledge, 100 CY @ \$300/CY	\$30,000	
Subtotal		\$232,700
2. Earthwork		
Includes strip & stockpile loam, excavation & reuse of material, removal of material to off-site, and rough grade, 375 CY @ \$40/CY	\$15,000	
3. Utilities		
Drainage allowance, 2 low areas, based on Waldstein costs	\$25,000	
Lighting, 6 pedestrian scale ornamental lights @ \$20,000 EA	\$120,000	
Drinking fountain w/bottle filler, no service necessary, 1 @ \$10,000 EA	\$10,000	
Drinking fountain w/bottle filler, incl. service, 4 @ \$18,000 EA	\$72,000	
Subtotal		\$227,000
4. Walls and Walk Paving		
Native stone retaining walls (for ADA), 100 LF @ \$200/LF	\$20,000	
Bit. Conc. Paths, 6 ft. wide, 4.5% slope, 14,460 SF @ \$7.25/SF	\$104,835	
Wheelchair ramps & line painting at Thornton Street, LS	\$5,000	
Subtotal		\$129,835
5. Site Improvements		
Exercise equipment & surfacing, 2 @ \$58,000 EA	\$116,000	
Site Furniture:		
Picnic sets, 3 @ \$8,000 EA	\$24,000	
8 ft. backed benches, 16 @ \$2,000 EA	\$32,000	
8 ft. backed gliders, 3 @ \$2,500 EA	\$7,500	
6 ft. backed benches, 4 @ \$1,800 EA	\$7,200	
Single chairs, 8 @ \$1,700 EA	\$13,600	
Side tables, 8 @ \$1,500 EA	\$12,000	
Bike bollards, 12 @ \$800 EA	\$9,600	
Big Belly receptacles, 4 pairs @ \$6,300 EA	\$25,200	
Entry treatments at 5 locations:		
Feature paving, 250 SF @ \$22/SF=\$5,500 x 5	\$27,500	
Ornamental piers, 2 @ \$4,000 EA=\$8,000 x 5	\$40,000	
Decorative fencing, 120 LF @ \$150/LF=\$18,000 x 5	\$90,000	
Subtotal		\$404,600

6. Play Equipment		
Play equipment for ages 2-5 years	\$80,000	
Play equipment for ages 5-12 years	\$100,000	
Processed wood carpet, 7,000 SF @ \$5/SF	\$35,000	
Concrete edging, 150 LF @ \$40/LF	\$6,000	
Rubberized resilient surfacing for accessibility and wear	\$20,000	
Subtotal		\$241,000
7. Lawns and Planting		
Fine grade, loam & seed, 667 SY @ \$10/SY	\$6,700	
Planting allowance:		
50 shade trees @ \$500 EA	\$25,000	
30 ornamental trees @ \$350 EA	\$10,500	
250 shrubs @ \$100 EA	\$25,000	
Subtotal		\$67,200
Construction Subtotal		\$1,302,335
Construction Contingency (10%)		\$130,234
Design		
Design review process and bid package, 10% of Construction Subtotal	\$130,234	
Subtotal		\$130,234
Total including construction subtotal, construction contingency, and design		\$1,562,802
TOTAL SAY		\$1,565,000



BROOKLINE BOARD OF ASSESSORS

333 Washington Street, Brookline, MA 02445 (617) 730-2060

MEMORANDUM

To: Alison C. Steinfeld, Planning Director
Copy: Mel Kleckner, Town Administrator
Joslin Ham Murphy, Town Counsel
From: Gary J. McCabe, Chief Assessor
Date: October 7, 2015
RE: Appendix E: Land Value Estimate of Certain Land in South Brookline

Per your request, I have prepared a market value estimate of certain land in south Brookline for the purposes of studying the potential financial impact of the Town acquiring the land through eminent domain. The land in question - the subject land - is an area of approximately 6.55 acres, or 285,318 square-feet, as determined by the Planning Department in a memorandum to the Chair of the Zoning Board of Appeals (see attached memo), and contained within multiple parcels currently owned by Hancock Village I LLC. The subject land falls within the S-7 land use zone (single family, 7,000 sq.ft. minimum), and is commonly known as the "buffer zone" between the Hancock Village apartment complex and neighboring residential areas along Russet Road and Beverly Road. A geographic image of the subject land is contained in the attached map as the 'green space' running east and west of Independence Drive.

Because the purpose of the valuation analysis is to estimate the market value of the subject land as if vacant and available for development, and because the land is not currently available to the open market, but is part of a redevelopment plan of the property owner, the analysis is based on a hypothetical condition, which is a condition directly related to a specific assignment, which is contrary to what is known by the analyst to exist on the effective date of the assignment results, but is used for the purpose of analysis. The selected valuation date is July 1, 2015.

The hypothetical market value estimate was made based on an analysis of 25 residential land sales in Brookline over a period of 52 months, from March 2011 through July 2015. The residential property sales ranged in land area from 6,136 square-feet to 228,168 square-feet and in price from \$390,000 to \$7,525,000. Sale prices were adjusted for changes in market conditions between the sale date and the valuation date using the Standard & Poor's Case-Shiller Home Price Index for the Boston MSA. An explanation of the S&P-CS-Index is attached from the July 2015 composite report.

The attached analysis of 25 residential land sales was used to estimate the subject land value as of July 1, 2015, using a mass-appraisal approach. In total the 25 sales included 978,008 square-feet of land, almost 22.5 acres. The total time adjusted sales price was \$49,773,140, or in aggregate, \$50.89 per square of land, on average. If the average sale price of available residential land in Brookline was \$50.89 per square-foot as of July 2015, under the same or similar conditions, the subject land area of 285,318 square-feet would have an estimated market value of **\$14,520,500** ($\$50.89 \times 285,318 \text{ sq.ft.}$), under the implied, right to develop, general assumptions, and without any specific cost of development considerations, or consideration of any known or unknown conditions limiting development, now or in the future.

The current use of the subject land area is as part of a 530 unit apartment complex contained within 44.54 acres in the Town of Brookline. The 'buffer zone' land is not currently improved, beyond landscaping and walking paths. A proposed development plan of the owner would incorporate the S-7 zoned land area for use as new apartment buildings and on-site parking under a comprehensive permit.



TOWN OF BROOKLINE

Massachusetts

DEPARTMENT OF PLANNING
AND COMMUNITY DEVELOPMENT

ALISON C. STEINFELD
Planning Director

MEMORANDUM

To: Jesse Geller, ZBA Chair
From: Alison C. Steinfeld
Date: October 20, 2014
Case: Residences of South Brookline Comprehensive Permit Application

Re: Estimates for As of Right Development

At the request of the ZBA, the Planning Department has estimated the number of single-family homes that could be built as-of-right, per zoning bylaw and excluding other design reviews (NCD), in the S-7 (greenbelt) portion of the Hancock Village property.

The estimates below were provided by Polly Selkoe, Assistant Director of Regulatory Planning; Michael Yanovitch, Chief Building Inspector; and Lara Curtis-Hayes, Senior Planner.

Note: The following estimates are not the basis of the formula for tax assessment. Please contact Chief Assessor, Gary McCabe, to discuss assessment queries.

Size of Area Studied

Total acres: 6.55 acres

Minimum Depth

S-7 / Greenbelt West: 90 feet

S-7 / Greenbelt East: 70 feet

Approximate Length

Baker School to Independence Drive: 880 feet

Independence Drive to Thornton Road: 215 feet

Thornton Road to Asheville Road: 440 feet

Asheville Road to VFW Parkway: 500 feet

Summary of Minimum Dimensional Requirement for S-7 Zoning District

Lot Size: 7,000 sf

Lot width: 65 feet

Frontage: 25 feet

Front yard setback: 20 feet

Side yard setback: 7.5 feet

Rear yard setback: 30 feet

Estimates for Single-Family Development

As of Right Case

8 single-family homes

ANR (Approval Not Required) Development Case

11 single-family homes

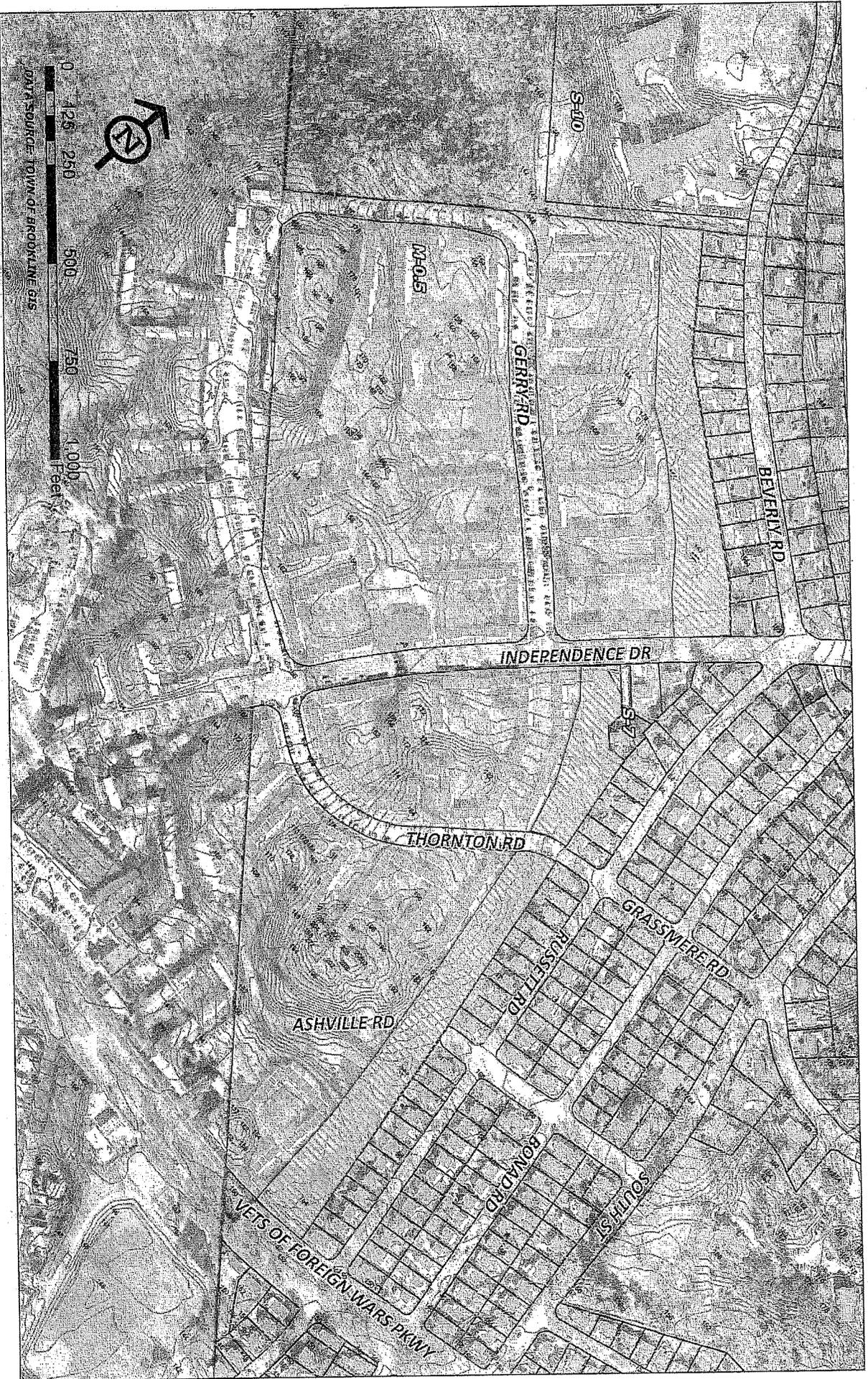
8 single-family homes (with VFW Parkway curb cuts)

Subdivision Case

A 40-foot roadway would be required; because of limited depth of the study area, it is unlikely that a subdivision could be developed here.

If you have further questions, we are happy to answer them.

HANCOCK VILLAGE



Market Value Analysis of S-7 Buffer Zone Land at Hancock Village

As of July 1, 2015

Total Area per Planning Department:

6.55 Acres

285,318 square-feet

This analysis is based on a Hypothetical Condition, which is a condition directly related to a specific assignment, which is contrary to what is known by the analyst to exist on the effective date of the assignment results, but is used for the purpose of analysis.

Current Use: Part of land owned by Hancock Village Apartment Complex made up of 530 units in the Town of Brookline. Total area in Brookline = 44.54 acres.

Description of the property: Land shown on attached map as within the S-7 buffer zone of Hancock Village Apartment Complex

Market Price Analysis of Residential Land Sales in Brookline, available for development or redevelopment.

Based on the results of the market analysis below, the value of residential land available for development in Brookline as of July 1, 2015, on average, is \$50.89 per square-foot.

Property Location	Land Area (Sq.Ft.)	Zoning	Sale Date	Sale Price	TASP*	SP/ SQ.FT.
5 Wellington Ter.	6,136	T-5	06/21/12	425,000	501,500	81.73
58 Cameron St.	6,397	S-10	02/14/14	800,000	840,000	131.31
42 Walnut Hill Rd.	7,499	S-7	11/09/12	495,000	579,150	77.23
26 Intervale Rd.	8,472	S-7	10/15/13	390,000	417,300	49.26
22 Cushing Rd.	10,131	S-7	09/17/13	950,000	1,026,000	101.27
18 Penniman Rd.	10,164	S-10	02/14/14	1,060,000	1,113,000	109.50
220 Wolcott Rd.	11,110	S-10	08/22/14	823,500	856,440	77.09
5 Kennard Rd.	13,647	S-10	01/18/13	600,000	690,000	50.56
93 Fisher Ave.	15,009	S-15	07/19/11	1,000,000	1,180,000	78.62
99 Fisher Ave.	15,117	S-15	03/15/11	1,000,000	1,180,000	78.06
77 Fisher Ave.	16,001	S-15	03/10/11	1,150,000	1,357,000	84.81
1 Olmsted Rd.	17,003	S-15	03/10/11	1,250,000	1,475,000	86.75
15 Cedar Rd.	19,196	S-15	09/20/13	1,725,000	1,863,000	97.05
160 Princeton Rd.	26,287	S-15	01/25/12	615,000	738,000	28.07
77-83 Leicester St.	51,247	S-15	07/15/15	3,400,000	3,400,000	66.35
48 Laurel Rd.	28,054	S-15	06/04/13	1,800,000	1,998,000	71.22
50 Lyman Rd.	33,172	S-25	03/26/13	2,000,000	2,240,000	67.53
324 Heath St.	40,255	S-40	09/07/12	1,400,000	1,624,000	40.34
17 Yarmouth Rd.	40,423	S-40	01/09/13	2,000,000	2,300,000	56.90
50 Yarmouth Rd.	42,055	S-40	04/03/13	2,400,000	2,664,000	63.35
77-83 Leicester St.	51,247	S-15	03/21/14	3,200,000	3,328,000	64.94
407 Warren St.	54,188	S-40	06/14/13	2,500,000	2,775,000	51.21
Off Warren St.	82,906	S-40	02/15/13	2,000,000	2,280,000	27.50
28 Fernwood Rd.	144,124	S-40	04/12/13	7,525,000	8,352,750	57.96
112 Woodland Rd.	228,168	S-40	05/23/13	4,500,000	4,995,000	21.89
TOTALS	978,008			45,008,500	49,773,140	50.89

TASP Aggregate Mean SP/SQ.FT.

Indicated Value = **\$ 14,520,508** 285,318 sq.ft. x 50.89 \$/sq.ft.

*TASP = Time Adjusted Sale Price to July 1, 2015 using the S&P Case-Shiller Home Price Index - Boston MSA

July Home Price Gains Concentrated in the West According to the S&P/Case-Shiller Home Price Indices

New York, September 29, 2015 – S&P Dow Jones Indices today released the latest results for the S&P/Case-Shiller Home Price Indices, the leading measure of U.S. home prices. Data released today for July 2015 show that home prices continued their rise across the country over the last 12 months. More than 27 years of history for these data series is available, and can be accessed in full by going to www.homeprice.spdji.com. Additional content on the housing market can also be found on S&P Dow Jones Indices' housing blog: www.housingviews.com.

Year-over-Year

The S&P/Case-Shiller U.S. National Home Price Index, covering all nine U.S. census divisions, recorded a slightly higher year-over-year gain with a 4.7% annual increase in July 2015 versus a 4.5% increase in June 2015. The 10-City Composite was virtually unchanged from last month, rising 4.5% year-over-year. The 20-City Composite had higher year-over-year gains, with an increase of 5.0%.

San Francisco, Denver and Dallas reported the highest year-over-year gains among the 20 cities with price increases of 10.4%, 10.3%, and 8.7%, respectively. Fourteen cities reported greater price increases in the year ending July 2015 over the year ending June 2015. San Francisco and Denver are the only cities with a double digit increase, and Phoenix had the longest streak of year-over-year increases. Phoenix reported an increase of 4.6% in July 2015, the eighth consecutive year-over-year increase. Boston posted a 4.3% annual increase, up from 3.2% in June 2015; this is the biggest jump in year-over-year gains this month.

Month-over-Month

Before seasonal adjustment, the National Index posted a gain of 0.7% month-over-month in July. The 10-City Composite and 20-City Composite both reported gains of 0.6% month-over-month. After seasonal adjustment, the National index posted a gain of 0.4%, while the 10-City and 20-City Composites were both down 0.2% month-over-month. All 20 cities reported increases in July before seasonal adjustment; after seasonal adjustment, 10 were down, nine were up, and one was unchanged.

Analysis

"Prices of existing homes and housing overall are seeing strong growth and contributing to recent solid growth for the economy," says David M. Blitzer, Managing Director and Chairman of the Index Committee at S&P Dow Jones Indices. "The S&P/Case Shiller National Home Price Index has risen at a 4% or higher annual rate since September 2012, well ahead of inflation. Most of the strength is focused on states west of the Mississippi. The three cities with the largest cumulative price increases since January 2000 are all in California: Los Angeles (138%), San Francisco (116%) and San Diego (115%). The two smallest gains since January 2000 are Detroit (3%) and Cleveland (10%). The Sunbelt cities – Miami, Tampa, Phoenix and Las Vegas – which were the poster children of the housing boom have yet to make new all-time highs.

"The economy grew at a 3.9% real annual rate in the second quarter of 2015 with housing making a major contribution. Residential investment grew at annual real rates of 9-10% in the last three quarters (2014:4th quarter, 2015:1st-2nd quarters), far faster than total GDP. Further, expenditures on furniture and household equipment, a sector that depends on home sales and housing construction, also surpassed total GDP growth rates. Other positive indicators of current and expected future housing activity include gains in sales of new and existing housing and the National Association of Home Builders sentiment index. An interest rate increase by the Federal Reserve, now expected in December by many analysts, is not likely to derail the strong housing performance."

Graphical Representations of the U.S. Housing Market

Chart 1 below shows the seasonally adjusted changes in home prices from June to July 2015 with cities sorted by price change from highest on the left to lowest on the right. As evidenced by the chart, the strongest price gains are in the west. The only eastern city with a positive gain was Boston, while Los Angeles and Seattle were only western cities with weaker prices in July than in June.

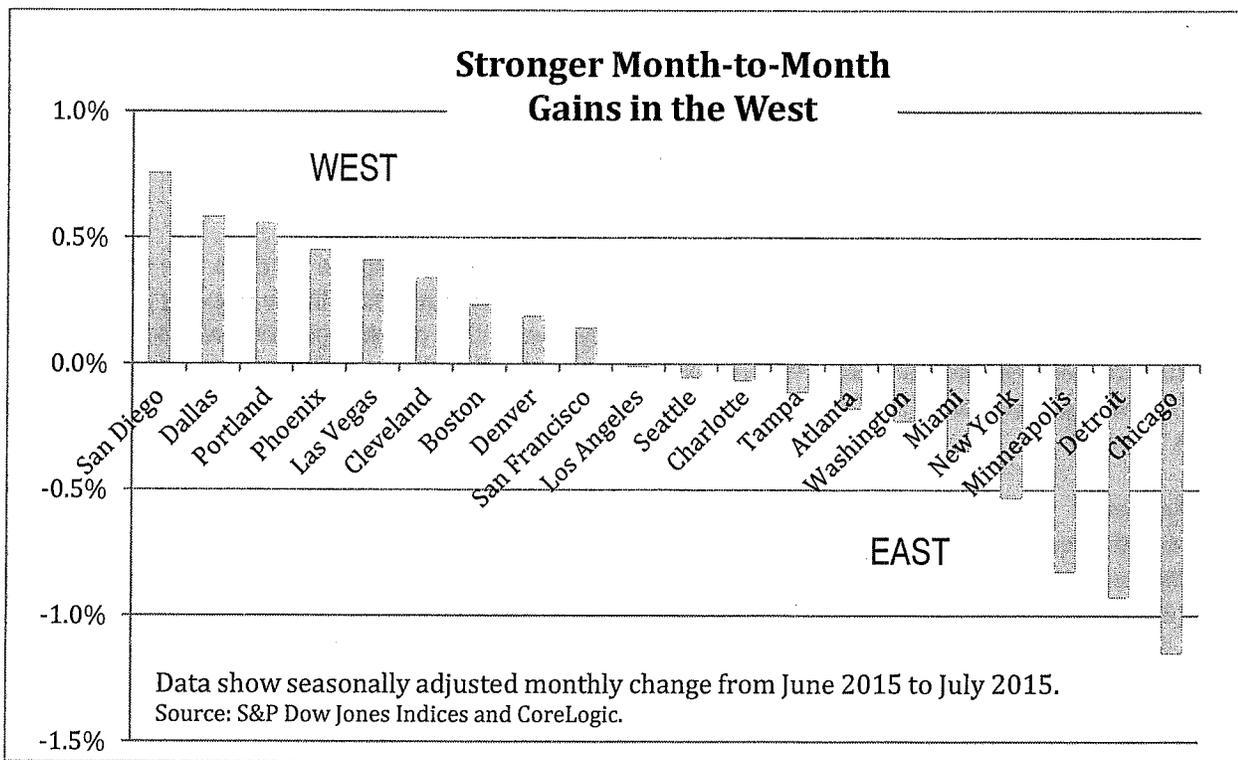


Chart 2 below depicts the annual returns of the U.S. National, the 10-City Composite and the 20-City Composite Home Price Indices. The S&P/Case-Shiller U.S. National Home Price Index, which covers all nine U.S. census divisions, recorded a 4.7% annual gain in July 2015. The 10- and 20-City Composites reported year-over-year increases of 4.5% and 5.0%.

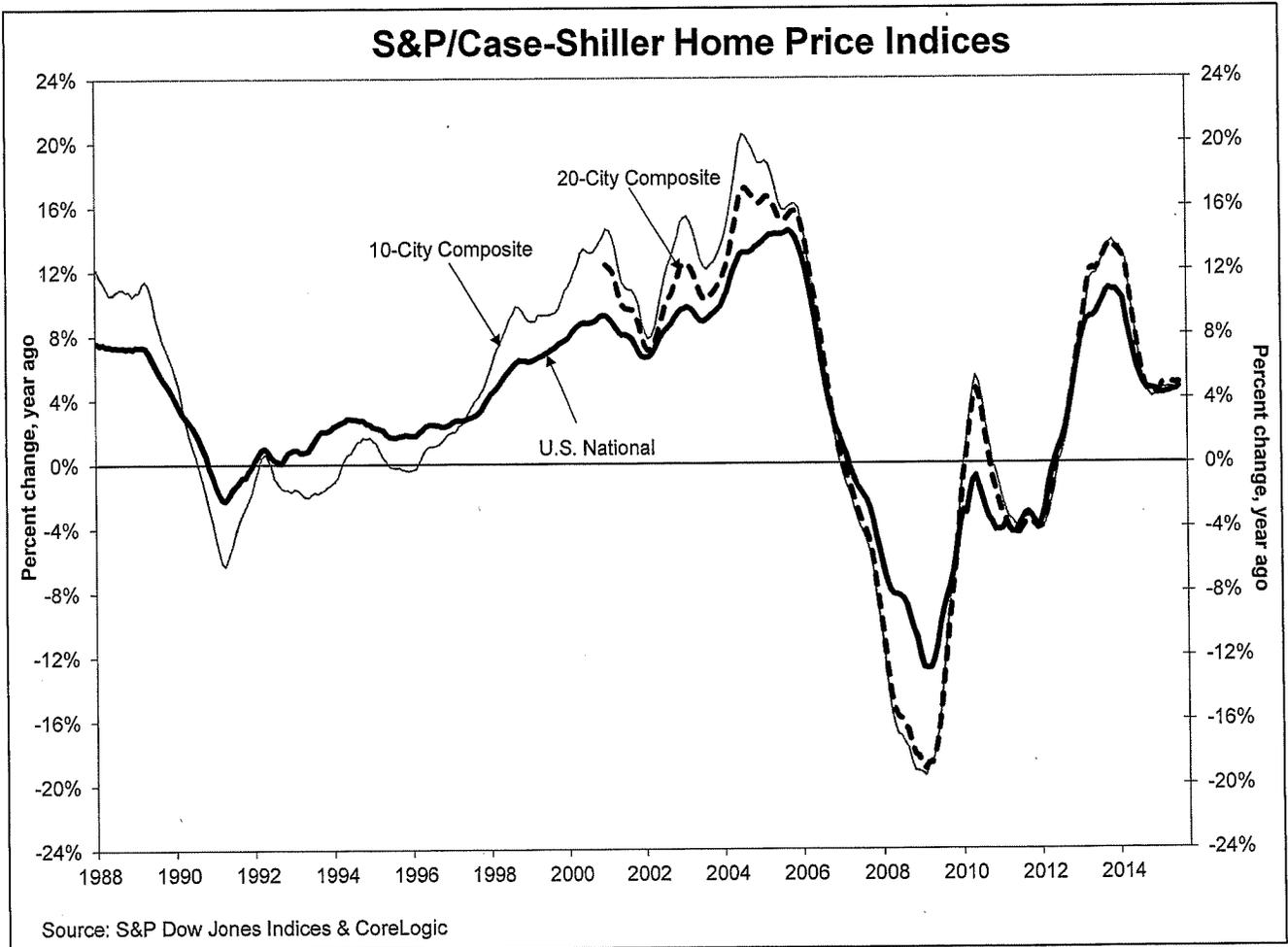


Chart 3 below shows the index levels for the U.S. National, 10-City and 20-City Composite Indices. As of July 2015, average home prices for the MSAs within the 10-City and 20-City Composites are back to their winter 2005 levels. Measured from their June/July 2006 peaks, the peak-to-current decline for both Composites is approximately 11-13%. Since the March 2012 lows, the 10-City and 20-City Composites have recovered 34.4% and 35.7%.

S&P/Case-Shiller Home Price Indices

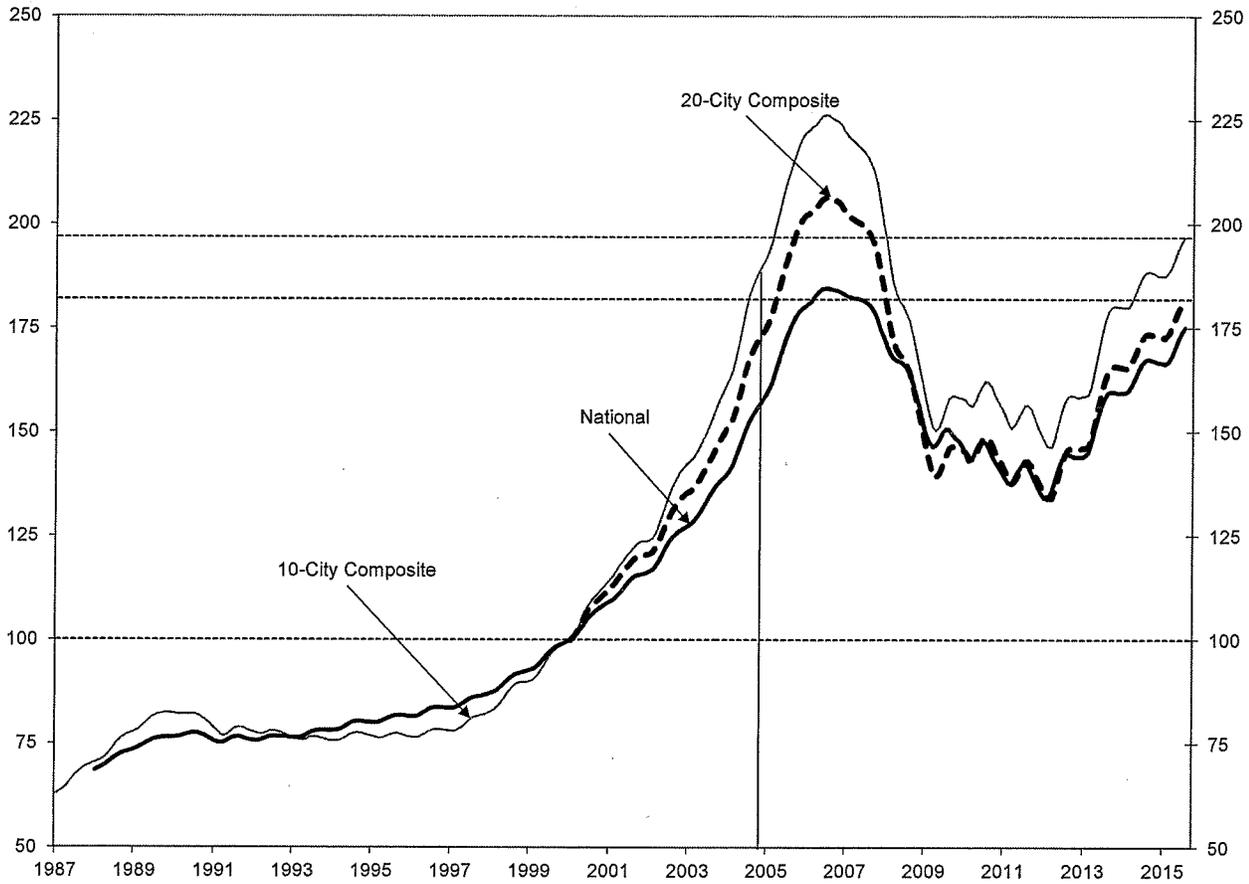


Table 1 below summarizes the results for July 2015. The S&P/Case-Shiller Home Price Indices are revised for the prior 24 months, based on the receipt of additional source data.

Metropolitan Area	July 2015 Level	July/June Change (%)	June/May Change (%)	1-Year Change (%)
Atlanta	125.88	0.8%	1.3%	5.8%
Boston	183.95	1.1%	1.4%	4.3%
Charlotte	134.47	0.1%	0.6%	4.9%
Chicago	133.36	0.9%	1.0%	1.8%
Cleveland	110.47	0.8%	1.4%	3.1%
Dallas	153.47	1.2%	0.9%	8.7%
Denver	171.31	0.7%	1.3%	10.3%
Detroit	103.42	0.7%	1.6%	5.4%
Las Vegas	144.39	0.8%	0.7%	6.2%
Los Angeles	238.24	0.4%	0.8%	6.1%
Miami	201.30	0.4%	0.3%	7.3%
Minneapolis	147.15	0.8%	1.1%	3.6%
New York	180.44	0.5%	1.1%	1.9%
Phoenix	154.03	0.7%	0.9%	4.6%
Portland	184.56	1.3%	1.5%	8.5%
San Diego	214.68	1.1%	0.3%	5.4%
San Francisco	215.84	0.6%	0.4%	10.4%
Seattle	183.31	0.5%	1.1%	7.3%
Tampa	170.88	0.6%	0.3%	5.5%
Washington	214.00	0.5%	0.8%	1.7%
Composite-10	196.85	0.6%	0.9%	4.5%
Composite-20	181.90	0.6%	0.9%	5.0%
U.S. National	175.11	0.7%	0.9%	4.7%

Source: S&P Dow Jones Indices and CoreLogic
Data through July 2015

Table 2 below shows a summary of the monthly changes using the seasonally adjusted (SA) and non-seasonally adjusted (NSA) data. Since its launch in early 2006, the S&P/Case-Shiller Home Price Indices have published, and the markets have followed and reported on, the non-seasonally adjusted data set used in the headline indices. For analytical purposes, S&P Dow Jones Indices publishes a seasonally adjusted data set covered in the headline indices, as well as for the 17 of 20 markets with tiered price indices and the five condo markets that are tracked.

Metropolitan Area	July/June Change (%)		June/May Change (%)	
	NSA	SA	NSA	SA
Atlanta	0.8%	-0.2%	1.3%	-0.5%
Boston	1.1%	0.2%	1.4%	0.1%
Charlotte	0.1%	-0.1%	0.6%	-0.2%
Chicago	0.9%	-1.2%	1.0%	-1.3%
Cleveland	0.8%	0.3%	1.4%	0.0%
Dallas	1.2%	0.6%	0.9%	0.1%
Denver	0.7%	0.2%	1.3%	0.3%
Detroit	0.7%	-0.9%	1.6%	-0.6%
Las Vegas	0.8%	0.4%	0.7%	0.2%
Los Angeles	0.4%	0.0%	0.8%	0.1%
Miami	0.4%	-0.3%	0.3%	-0.1%
Minneapolis	0.8%	-0.8%	1.1%	-0.8%
New York	0.5%	-0.5%	1.1%	-0.5%
Phoenix	0.7%	0.5%	0.9%	0.3%
Portland	1.3%	0.6%	1.5%	0.5%
San Diego	1.1%	0.8%	0.3%	-0.3%
San Francisco	0.6%	0.1%	0.4%	-0.4%
Seattle	0.5%	-0.1%	1.1%	0.1%
Tampa	0.6%	-0.1%	0.3%	-0.7%
Washington	0.5%	-0.2%	0.8%	-0.1%
Composite-10	0.6%	-0.2%	0.9%	-0.2%
Composite-20	0.6%	-0.2%	0.9%	-0.2%
U.S. National	0.7%	0.4%	0.9%	0.1%

Source: S&P Dow Jones Indices and CoreLogic

Data through July 2015

For more information about S&P Dow Jones Indices, please visit www.spdji.com.

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Appendix F: Letter from Rep. Edward F. Coppinger



The Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02153-1084

EDWARD F. COPPINGER
STATE REPRESENTATIVE
10th SUFFOLK DISTRICT
STATE HOUSE, ROOM 106
TEL: (617) 722-2504

Committee
Voter Education
Scheduling, Policy and Scheduling
Financial Services
Some Administration & Regulatory Oversight

March 24, 2015

Dear Town of Brookline Officials,

If the appropriate Brookline authorities legally and in good faith vote for an eminent domain taking of any or all of the two green 5-7 "buffer zones" also known as 5-7 "green belts" of Hancock Village, I, Edward F. Coppinger, a Massachusetts State Representative representing the 10th Suffolk District in the legislature, including Brookline precincts 14, 15, and 16 of the Town, will zealously advocate for state funding or any other government agency, on behalf of said Eminent Domain taking.

Sincerely,

Edward F. Coppinger
Edward F. Coppinger
State Representative
10th Suffolk District

To Brookline Officials:
If Eminent Domain is voted "I,
Edward F. Coppinger, a
Massachusetts State
Representative representing
the 10th Suffolk District in the
Legislature, including
Brookline precincts 14, 15,
and 16 of the Town, will
zealously advocate for state
funding on behalf of said
Eminent Domain taking."

4/9/2015

DRAFT

APPENDIX G: Capacity in the CIP for Certain Land in South Brookline

OFFICE OF SELECTMEN

MEMORANDUM

TO: Alison Steinfeld, Planning Director

FROM: Melissa Goff, Deputy Town Administrator

RE: **Capacity in the CIP for Certain Land in South Brookline**

DATE: 10/13/15

I have been asked about the potential financial impact on the Town's CIP if the Town sought to purchase the land in South Brookline described in Assessor Gary McCabe's 10/7/15 memo and valued at \$14,520,500. Because the FY2017-FY2022 is still in development I chose to examine this question within the assumptions used in the FY2016-2021 CIP, with funds borrowed during FY 2017 and debt service commencing in FY 2018. A \$14,520,500 million bond to fund the purchase of greenspace would cost roughly \$1.6 million for the first year of debt service.

As you know, the Town's CIP policies call for 6% of the prior year's net revenue to be dedicated to the CIP. The goal is to have the 6% consist of both a debt-financed component and a revenue (or "pay-as-you-go") component, with 4.5% for debt-financed CIP and 1.5% for pay-as-you-go CIP. Adding the cost of a bond used to purchase this land to the debt service schedule will effectively eliminate the availability of tax-financed monies from that 6% financing. This leaves just Free Cash as the funding source for all pay-as-you-go projects. This provides a high level of uncertainty to the CIP. The amount of free cash available for the CIP can fluctuate dramatically from year-to-year. At the very least \$1.6M of pay- as-you-go projects would need to be cut from the CIP in FY2018 and in future years there will be less capacity for projects currently contemplated in the debt management plan (like the High School). Borrowing plans for future projects would need to be reconsidered or delayed in addition to the reductions in pay-as-you-go projects scheduled in the out-years of the CIP. Given the level of pressure this project would exert on the CIP it may be more realistic to pursue a debt exclusion for funding.

ARTICLE 19

NINETEENTH ARTICLE

Reports of Town Officers and Committees

Final Report of the Selectmen's Noise Bylaw Committee
June 24, 2015

Executive Summary

The Selectmen's Noise Bylaw Committee was established by the Board of Selectmen in October, 2014 in response to community desire to review Article 8.15 and 8.31. The Selectmen charged the committee with:

- Examining enforcement of the two articles
- Determining whether the articles are inconsistent with each other
- Making recommendations to improve enforcement and the clarity of the articles

In carrying out its charge, the Selectmen's Noise Bylaw Committee recognizes the importance of the current rules governing the generation of noise in the Town of Brookline. The committee offers twelve recommendations that, if implemented, will improve the clarity and effectiveness of the existing Brookline bylaws governing generation of noise. The committee's recommendations can be divided into two types – those immediately implementable and those that require additional public process.

The committee's recommendations that are immediately implementable are as follows:

1. *Implement a registration system for all landscape contractors operating in Brookline.*
2. *Improve public education about the existing restrictions on the use of leaf blowers and other lawn care equipment by residents and contractors.*
3. *Edit Article 8.31 of the Bylaws to improve its readability, to clarify whom and what it applies to, and to include a reference to Article 8.15 of the Bylaws.*
4. *Edit Article 8.15.6(f) of the Bylaws to include a reference to Article 8.31.*
5. *Encourage the police department to maintain its policy of proactive enforcement of Articles 8.15 and 8.31 of the Town's Bylaws.*
6. *Encourage the police department to feel empowered to issue citations for violations of Articles 8.15 and 8.31 of the Town's Bylaws when it is appropriate. The objective of enforcement should be to control noise and the department, and its officers, should feel comfortable using both warnings and citations to achieve this goal.*
7. *Encourage the Department of Public Works to continue purchasing replacement equipment that complies with the decibel levels set out in Article 8.15.*
8. *Encourage the Parks and Open Space Division of the Department of Public Works to develop a formal policy that identifies ways to minimize the use of leaf blowers, when it is practical.*

The committee's recommendations that require additional public process and, possibly, the formation of a successor committee(s) are as follows:

1. *The committee recommends that Article 8.15 of the Bylaws be reviewed and, possibly, rewritten to update its requirements and improve its clarity.*
2. *The committee recommends that a public process be undertaken to consider whether the restrictions that currently apply to gasoline powered leaf blowers in Article 8.31 of the Bylaws should be extended to leaf blowers powered by other means.*
3. *The committee recommends that the word "portable" be explicitly defined in Articles 8.15 and 8.31 of the Bylaws.*
4. *The committee recommends that consideration be given to citing both the contractor and homeowner when a landscape contractor violates Article 8.15 and/or 8.31 of the Bylaws.*

Introduction

The Selectmen's Noise Bylaw Committee was established by the Board of Selectmen in October, 2014. The committee was established following the filing by a citizen petitioner of two warrant articles at successive town meetings (Annual 2014 Town Meeting and November 2014 Special Town Meeting). The articles sought to amend the existing noise bylaw (Article 8.15 of the Town's Bylaws). The town meetings voted No Action on the articles indicating rejection of the changes sought. Still, the Board of Selectmen felt it appropriate to form a committee to review Article 8.15 and 8.31 because of comments received during the warrant article review processes.

The Board of Selectmen appointed eight Brookline residents to serve on the Selectmen's Noise Bylaw Committee (see Appendix 1). The committee met five times and invited affected and interested parties to its meetings to help the committee carry out its charge and to provide personal and expert testimony.

The Noise Bylaw Committee charge adopted by the Selectmen was:

1. Reviewing the enforcement provisions and procedures of the existing By-Law to ensure effective and efficient regulation of excessive noise;
2. Considering whether inconsistencies exist in the town's general by-law between the noise by-law – Section 8.15 – and the leaf blower by-law – Section 8.31;
3. Recommending to the Board of Selectmen in the form of a warrant article or policy changes, if appropriate:
 1. Changes to the noise by-law enforcement provisions and procedures
 2. Remedies to inconsistencies that may exist between Sections 8.15 and 8.31 of the general by-laws.

To the extent any of the recommendations or issues discussed in this report goes beyond the Selectmen's charge, it is the result of comments received from the public and impacted parties during the committee's meetings.

Summary of Meetings

The Committee held five meetings to conduct its work and fulfill its charge. A summary of the meetings and the conversation follows. For a more complete record of individual meetings please refer to the committee's meeting minutes (<http://brooklinema.gov/1221/Noise-Bylaw-Committee>).

- March 19, 2015: Organizational meeting that included discussion of the Selectmen's charge to the committee, how the committee planned to approach its work, and the committee's schedule.
- April 16, 2015: Meeting with Police Chief Dan O'Leary to learn about the Police Department's experience with noise issues in Town, including Articles 8.15 and 8.31 of the Bylaws, and the department's approach to enforcement.
- April 29, 2015: Meeting with Town Counsel Joslin Murphy to discuss Articles 8.15 and 8.31 and Counsel's interactions with the Articles. Specific attention was paid to the question of whether Articles 8.15 and 8.31 are in conflict with each other, as was suggested during the warrant review processes that took place after the two Warrant Articles were filed.
- May 18, 2015: Meeting with Commissioner of Public Works Andy Papastergion to discuss enforcement of Articles 8.15 and 8.31, testing of equipment to ensure it meets the requirements set out in Article 8.15, and the Public Works Department's interactions with the Articles. Committee members also reviewed draft committee recommendations.
- June 24, 2015: Public meeting at which the committee reviewed a draft committee report.

The minutes of the committee's meetings are posted on the Town website. To view them, visit www.brooklinema.gov, navigate to the "Boards/Commissions" section of the website, and then select "Noise Bylaw Committee."

Fact Base

After meeting five times and having conversations with Town staff, residents, and interested parties the Selectmen's Noise Bylaw Committee established the following:

- There is no apparent general dissatisfaction with the regulation of noise in Town except in the area of noise generated by lawn care equipment. This statement is made based on the lack of testimony from residents about noise generated from sources other than from lawn care equipment. Some residents believe too much noise is being generated when lawn care is performed.
- Violations of Articles 8.15 and 8.31 of the Bylaws stemming from the inappropriate use of lawn care equipment do occur, but there is no evidence to suggest one group (residents vs. contractors) offends at a greater rate than the other.

- Members of the public are confused about what Articles 8.15 and 8.31 say; what the rules governing noise are, particularly noise generated by lawn care equipment; and to whom Articles 8.15 and 8.31 apply.
- The rules that govern gasoline powered leaf blowers are not clear because (1) they are divided between two articles in the bylaws and no mention of the companion article is currently included in either of the articles, and (2) the language used to set out the rules is, at times, unclear and confusing.
- Article 8.15 is written in a confusing way and in part its content is possibly outdated.
- There is desire by some residents to see additional restrictions on the use of leaf blowers and other lawn care equipment discussed and implemented.
- There is dissatisfaction among some residents with the enforcement of Articles 8.15 and 8.31.
- Efforts to educate residents and impacted parties about the rules governing the generation of noise in the Town of Brookline are ongoing, but could be expanded.

Recommendations

The Selectmen's Noise Bylaw Committee developed two types of recommendations:

- Those that fall within the scope of the committee's charge from the Board of Selectmen and can be implemented immediately
- Those that go beyond the charge, and, therefore, require additional public process

The eight recommendations that fall within the committee's charge are concrete recommendations that can be implemented immediately or with minimal additional work. These recommendations were developed in direct response to the Selectmen's request of the committee.

The four recommendations that fall outside of the committee charge will require the Selectmen to implement additional public process, if they wish to proceed with the recommendations.

Immediately Implementable

Recommendation 1: Implement a registration system for all landscape contractors operating in Brookline.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend the Town implement a registration system for all landscape contractors operating in Brookline.

The City of Cambridge, MA currently requires all private landscape contractors to register with the city before they are allowed to operate there. The committee recommends that the Town of Brookline implement a similar registration system. The committee suggests implementing a

registration system will improve the enforcement of Articles 8.15 and 8.31. Contractors would be required to:

- Pay a small registration fee
- Provide proof that their equipment complies with the Town's Bylaws (Article 8.15)
- Provide proof that their staff has been made aware of the rules governing the use of landscaping equipment in Brookline (Articles 8.15 and 8.31)
- Provide a list of properties at which their firm has been contracted to provide landscaping services

Recommendation 2: Improve public education about the existing restrictions on the use of leaf blowers and other lawn care equipment by residents and contractors.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend the Town improve public education about the existing restrictions on the use of leaf blowers and other lawn care equipment by residents and contractors.

The committee heard that residents and contractors operating in Brookline lack an awareness of the Brookline specific restrictions on noise generated by lawn care equipment. In fact, it was represented to the committee that some residents believe the noise and use restrictions found in Articles 8.15 and 8.31 of the Bylaws only apply to contractors. Separately, the committee observed that there is no single easy-to-reference document that outlines the rules. In order to address these issues the committee recommends:

- For the time being, the Town continues its current practice of mailing notices to all contractors about the existence of Articles 8.15 and 8.31 and that the mailing list be updated and expanded to capture additional contractors.
- That a pamphlet be developed that explains the rules that govern the use of leaf blowers and lawn care equipment in Brookline and that the pamphlet be printed in multiple languages (English and Spanish, at a minimum). The pamphlet should be used as an educational tool and distributed to multiple audiences throughout the year (at enforcement calls, at Brookline Day, and year round at Town Hall and in the libraries).
- The Town partner with neighborhood associations and civic groups to improve awareness of the current rules governing the generation of noise and to whom the rules apply.
- Specific to the times of the year it becomes permissible to use/not use portable leaf blowers, increased advertising should occur to make the public aware that it will soon become permissible/impermissible to use leaf blowers. Advertising could take the form of:
 - Sandwich boards at key intersections (as is done for Town elections)
 - Posting notice at the Town dump around hazardous waste disposal days
 - Placing an insert in Townwide mailings (property tax and/or motor vehicle excise tax)

- Social media posts on the Town's social media accounts (Twitter and Facebook)
- An advertisement in the TAB

Recommendation 3: *Edit Article 8.31 of the Bylaws to improve its readability, to clarify whom and what it applies to, and to include a reference to Article 8.15.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend the following Bylaw amendment.

The committee believes Article 8.31 is confusing and difficult to understand in its current form. Also, the lack of reference in it to Article 8.15 which also sets out rules governing the use of leaf blowers gives readers the mistaken impression that Article 8.31 is the only article in the bylaws that addresses leaf blowers.

Underlined text is proposed for addition; struck through text is proposed to be eliminated.

Article 8.31
Gasoline Powered Leaf Blowers

Section 8.31.1: STATEMENT OF PURPOSE

Reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purpose of the Town and the reduction of noise and emissions of particulate matter resulting from the use of gasoline powered leaf blowers are public purposes in protecting the health, welfare and environment of the Town. Therefore, this by-law shall limit and regulate the use of gasoline powered leaf blowers as defined and set forth herein.

Section 8.31.2: USE REGULATIONS

1. Gasoline Powered Leaf Blowers.

Gasoline Powered leaf blowers are defined as any portable gasoline powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.

a. Gasoline Powered leaf blowers ~~shall not~~ may be operated ~~except~~ between March 15 and May 15 and between September 15 and December 15 in each year. ~~The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors. The provisions of this section also do not apply to non-residential property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of leaf blowers by the~~

~~Town or its designees for performing emergency operations and clean-up associated with storms, hurricanes and the like.~~

b. The provisions of Articles 8.15 shall also apply to gasoline powered leaf blowers.

3. Regulations.

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Gasoline Powered Leaf Blower By-Law.

4. Enforcement and Penalties

a. This bylaw 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. For the purposes of this section "person", as referenced in Articles 10.1, 10.2 and/or 10.3, shall be defined as any individual, company, occupant, real property owner, or agent in control of real property. Each violation shall be subject to fines according to the following schedule:

- (a) a warning or \$50.00 for the first offense;
- (b) \$100.00 for the second offense;
- (c) \$200.00 for the third offense;
- (d) \$200.00 for successive violations, plus
- (e) court costs for any enforcement action.

5. Exemptions

The provisions of this subsection shall not apply to the use of leaf blowers by the Town and its contractors when said contractor is working pursuant to its contract with the Town. The provisions of this section also do not apply to commercial and industrial property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of gasoline powered leaf blowers by the Town or its designees for performing emergency operations and clean-up associated with storms, hurricanes and the like.

~~5.~~ 6. Effective Date:

The provisions of this Gasoline Powered Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

Recommendation 4: Edit Article 8.15.6(f) of the Bylaws to include a reference to Article 8.31.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend the following Bylaw amendment.

The insertion of reference to Article 8.31 in Article 8.15 is recommended in hopes of making it clear that additional restrictions on the use of leaf blowers exist beyond those found in Article 8.15.

Underlined text is proposed for addition; struck through text is proposed to be eliminated.

(f) Leaf Blowers

No person shall operate any portable Leaf Blower(s) which does not bear an affixed manufacturer's label or a label from the town indicating the model number of the Leaf Blower(s) 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. Any Leaf Blower(s) which bears such a manufacturer's label or town's label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, any 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 portable Leaf Blower(s) that have been modified or damaged, 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. Any portable Leaf Blower(s) must comply with the labeling provisions of this By-law by January 1, 2010. However, the owner's of any Leaf Blower(s) operating after January 1, 2010 without a manufacturer's ANSI label on the 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. The testing will be provided by the town's designated person for a nominal fee and by appointment only. Testing will be provided only between the months of May and October. If the equipment passes, a town label will be affixed to the equipment indicating Decibel Level.

Whether the equipment passes or not, the testing fee is non-refundable. Leaf blowers may be operated only during the hours specified in Section 8.15.6(a)(1). In the event that the label has been destroyed, the Town may replace the label after verifying the specifications listed in the owner's manual that it meets the requirements of this By-law.

Gasoline powered leaf blowers are further regulated in Article 8.31.

Recommendation 5: Encourage the police department to maintain its policy of proactive enforcement of Articles 8.15 and 8.31 of the Town's Bylaws.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend that the police department continue to proactively enforce Articles 8.15 and 8.31 of the Town's Bylaws.

Proactive enforcement of these Articles is the current policy of the Brookline Police Department. Proactive enforcement in the eyes of the committee means that enforcement should not be solely complaint driven. Officers should anticipate where problems might occur based on past experience and should not wait to receive a complaint before undertaking enforcement activities in these areas or locations.

Recommendation 6: Encourage the police department to feel empowered to issue citations for violations of Articles 8.15 and 8.31 of the Town's Bylaws when it is appropriate. The objective of enforcement should be to control noise and the department, and its officers, should feel comfortable using both warnings and citations to achieve this goal.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend that the police department rely upon officer discretion when deciding how to enforce Articles 8.15 and 8.31.

Currently, there is a perception by members of the public that officers are encouraged to issue warnings for violations of Articles 8.15 and 8.31 as opposed to citations. To the extent such encouragement has been given, it should cease. While those enforcing the Articles should not be encouraged to write warnings, they should also not be encouraged to solely write citations. The committee recommends that enforcement be carried out using appropriate discretion.

Recommendation 7: Encourage the Department of Public Works to continue purchasing replacement equipment that complies with the decibel levels set out in Article 8.15.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend that the Department of Public Works continue to purchase equipment that complies with Article 8.15 when it is available.

Recommendation 8: Encourage the Parks and Open Space Division of the Department of Public Works to develop a formal policy that identifies ways to minimize the use of leaf blowers, when it is practical.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend that the Parks and Open Space Division of the Department of Public Works develop and adopt a formal policy that identifies ways to minimize the use of leaf blowers when possible. The Parks and Open Space Division is exempt from Articles 8.15 and 8.31, but this should not prevent the division from striving to reduce its use of leaf blowers.

Additional Process Required

Recommendation 1: *The committee recommends that Article 8.15 of the Bylaws be reviewed and, possibly, rewritten to update its requirements and improve its clarity.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend that Article 8.15 of the Town's Bylaws be reviewed and, possibly, rewritten.

After listening to testimony and reviewing the Bylaw, the committee believes that Article 8.15 is confusing and outdated. This led to the conclusion that a comprehensive review of the noise levels permitted by the Article should occur to ensure they reflect technological improvements and efficiencies that have been realized since the bylaw was written. The comprehensive review should also consider whether Article 8.31 of the Town's Bylaws should be folded into Article 8.15. Currently, the rules that govern gasoline powered leaf blowers are found in Articles 8.15 and 8.31. Finally, the comprehensive review should specifically consider what the appropriate noise level is when two or more leaf blowers are operating simultaneously in close proximity. Currently, this practice is permissible even if the cumulative noise is greater than the amount allowed for a single leaf blower.

Recommendation 2: *The committee recommends that a public process be undertaken to consider whether the restrictions that currently apply to gasoline powered leaf blowers in Article 8.31 of the Bylaws should be extended to leaf blowers powered by other means.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend a public process be convened to discuss extending the restrictions on leaf blowers to non-gasoline powered equipment.

The committee heard passionate testimony on this issue that touched on quality of life, and scientific and operational lawn care needs. Because a recommendation to extend the rules currently in place for gasoline powered leaf blowers to leaf blowers powered by other means was outside the committee's charge and because the committee lacked the technical expertise to make a fully informed recommendation, the Selectmen's Noise Bylaw Committee did not take the question up. Instead the committee recommends that a public process informed by the technical and practical knowledge necessary to address this question be convened and that appropriate action be taken.

Recommendation 3: *The committee recommends that the word "portable" be explicitly defined in Articles 8.15 and 8.31 of the Bylaws.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend a definitive definition of the word "portable" in Articles 8.15 and 8.31 be created.

After considering this question from several angles and examining the legislative record, the Selectmen's Noise Bylaw Committee was unable to arrive at a clear conclusion about what

devices are intended to be classified as portable in Articles 8.15 and 8.31. This question needs to be resolved to address issues of clarity in both Articles.

Recommendation 4: *The committee recommends that consideration be given to citing both the contractor and property owner when a landscape contractor violates Article 8.15 and/or 8.31 of the Bylaws.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend consideration be given to citing both the contractor and property owner when a landscape contractor violates Article 8.15 and/or 8.31.

The committee heard from landscape contractors that they are often pressured by their clients to violate Articles 8.15 and 8.31 of the Bylaws. Committee members observed that property owners are not punished when their contractor operates a gasoline powered leaf blower outside of the allowed times of year or when a non-dBA compliant leaf blower is used. In these situations only the contractor is warned or cited. Brookline's Nuisance Control Bylaw - Article 8.29 – allows for citations for violations of the bylaw to be issued to a property's owner as well as the violating occupant(s). The committee believes adopting the same enforcement strategy for Articles 8.15 and 8.31 could lead to better compliance by landscape contractors; citing property owners as well as the violator could decrease client pressure to violate these two articles.

Acknowledgements

The Selectmen's Noise Bylaw Committee thanks all Brookline residents, Town Meeting Members, landscape contractors, and community leaders that offered their views to the committee. The committee thanks Chief of Police Dan O'Leary, Commissioner of Public Works Andy Papastergion, Town Counsel Joslin Murphy, and, especially, Patty Parks for their assistance to the committee in discharging its responsibilities.

Appendix 1: Committee Membership

Selectman Ben Franco, Chair
Daniel Reuven Fishman
Neil Gordon
Judy Meyers
Richard Nangle
Irene Scharf
Beth Shuman*
Maura Toomey

*Beth Shuman served as a member of the committee until her resignation on June 10, 2015.

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