

IN BOARD OF SELECTMEN

May 12, 2009

**Present: Selectmen Nancy Daly, Betsy DeWitt, Jesse Mermell,
Richard Benka and Kenneth Goldstein.**

**The Minutes of April 28, 2009 were approved as
amended. Selectman Goldstein abstained.**

ORGANIZATION OF THE BOARD

The Board considered the election of a Chairman for the ensuing year.

Town Administrator Richard Kelliher served as Chair Pro tem. Mr. Kelliher and the Board congratulated Selectman DeWitt on her re-election and Selectman Goldstein on his election.

Selectman Mermell made the motion to elect Selectman Daly as Chair. Selectman Benka seconded. Selectman Mermell stated that Selectman Daly has worked hard, pays attention to detail, listens to her constituents, and focuses on the little things that make a difference in the community. Selectman Mermell appreciates how well she works with the Board.

On motion, it was unanimously,

VOTED; To close the nominations.

On motion, it was unanimously,

VOTED: To elect Selectman Nancy Daly as Chair for a one year term.

EXECUTIVE SESSION

Upon motion duly made and seconded, it was moved that the Board of Selectmen go into EXECUTIVE SESSION.

The Chair then stated the reason(s) for the Executive Session: (SEE THE REASONS CHECKED)

- _____ (1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of a particular individual¹.
- _____ (2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual¹.
- X (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with non-union personnel, and to conduct collective bargaining sessions or contract negotiations with non-union personnel.
- _____ (4) To discuss the deployment of security personnel or devices.
- _____ (5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.
- _____ (6) To consider the purchase, exchange, lease or value of real property, if such discussion may have a detrimental effect on the negotiating position of the governmental body with a person, firm or corporation.
- _____ (7) To comply with the provisions of any general or special law or Federal grant-in-aid requirements.

The individual involved in such Executive Session must be notified in writing at least forty-eight (48) hours prior to such session and is (1) entitled to be present (2) to have counsel or other representative present and (3) to speak in his or her own behalf. Upon the request of the individual involved, no Executive Session shall be held and the meeting shall be held in open session. See G.L.c.39, §§23B(1) and (2).

- _____ (8) **To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtained qualified applicants: provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.**
- _____ (9) **To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a.) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b.) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.**

The Board of Selectmen, during a properly constituted and noticed meeting:

VOTED: to go into Executive Session

**Roll Call Vote: Voting in the Affirmative: 5
 Voting in the Negative: 0**

The Board of Selectmen (WILL) RECONVENE in Open Meeting after the Executive Session.

Selectman DeWitt absent

PUBLIC COMMENT

Public Comment period for citizens who requested to speak to the Board regarding Town issues not on the Calendar.

Chairman Daly noted that there have been three cases of the Swine Flu in the Brookline Schools. The Health Department recommends that the affected stay at home for at least seven days to recuperate. It has not been deemed serious enough to close schools or public buildings.

HANCOCK VILLAGE COMMITTEE

The Board considered the question of amending the vote of February 3, 2009 appointing the members of the Hancock Village Planning Committee to designate Robert Allen as Co-Chair.

Chairman Daly stated that when the Committee was drafted, Robert Allen was a Selectman and appointed as a Selectman representative. Mr. Allen is a resident of the neighborhood and a Town Meeting Member, he wishes to continue on the Committee as Co-Chair.

On motion, it was unanimously,

VOTED: To amend the vote of February 3, 2009 appointing the members of the Hancock Village Planning Committee to designate Robert Allen as Co-Chair.

**Board of Selectmen – Nancy Daly Chair
Town Meeting Member Robert Allen Co-Chair
ZBC – Roger Blood
School Committee – Dr. Ira Chan
Planning Board – Jerry Kampler
Housing Advisory Board – Mike Jacobs
Conservation Commission – Marcus Quigley
Preservation Commission - Linda Leary
Economic Development Advisory Board – Paul Saner
Transportation Board – Josh Safer
Residents (5 members) James Friedman TMM
Scott Galdstone TMM
Mike Berger TMM
Joyce Zak, Neighborhood Rep**

David Day, Neighborhood Rep

Alternates: Irene Scharf & Robin Koocher

MWRA REBATE

The Board considered the question of accepting a rebate from the MWRA in the amount of \$3,200 in connection with the Low-Flow Toilet Retrofit Grant Reimbursement Program.

Director of Public Buildings Charlie Simmons stated that the Town received a grant from the MWRA to replace toilets in older facilities with low-flow toilet retrofits.

On motion, it was unanimously,

VOTED: To accept a rebate from the MWRA in the amount of \$3,200 in connection with the Low-Flow Toilet Retrofit Grant Reimbursement Program.

CONTRACT

The Board considered the question of executing Contract PW/09-04 “Off-side Waste Relocation and Property Restoration” – Phase I in the amount of \$1,136,795.00 with I.W. Harding Construction Co., Inc. of West Bridgewater. Said contract was award on April 14, 2009 and is funded as follows:

4998WS09 6L0001	\$321,300.00
4997C147 6L0001	\$312,529.00
4997C157 6L0001	\$502,936.00

Director of Engineering Peter Ditto stated that the contact has previously been awarded and is now ready for execution. He will meet with the contractor to review the final work schedule.

On motion, it was unanimously,

VOTED: To execute Contract PW/09-04 “Off-side Waste Relocation and Property Restoration” – Phase I in the amount of \$1,136,795.00 with I.W. Harding Construction Co., Inc. of West Bridgewater. Said contract was award on April 14, 2009 and is funded as follows:

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4997C147 6L0001	\$312,529.00
4997C157 6L0001	\$502,936.00

CONTRACT

The Board considered the question of executing Contract PW/09-22 “Reconstruction of Five Streets” in the amount of \$833,261.17 with D&R General Contracting, Inc. of Stoneham. Said contract was awarded on April 28, 2009 and is funded as follows:

4998WS06 6H0026 40W06	\$ 4,682.99
4998WS07 6H0026 40W07	\$ 5,266.60
4998WS09 6H0026 40W09	\$823,311.58

Director of Engineering Peter Ditto stated that the streets include Heath Street from Hammond Street to Holly Lane, Pine Road, Reservoir Road from Heath Street to Boylston Street, Clark Road from Boylston Street to Sumner Road, and Somerset Road from Welland Road to Blake Road. National Grid is working in the area now.

Selectman Goldstein asked about Fisher Avenue. Mr. Ditto replied that he looked at the road and it is in need of repair. He will have to get a better assessment of the road.

On motion, it was unanimously,

VOTED: To execute Contract PW/09-22 “Reconstruction of Five Streets” in the amount of \$833,261.17 with D&R General Contracting, Inc. of Stoneham. Said contract was awarded on April 28, 2009 and is funded as follows:

4998WS06 6H0026 40W06	\$ 4,682.99
4998WS07 6H0026 40W07	\$ 5,266.60
4998WS09 6H0026 40W09	\$823,311.58

EXTRA WORK ORDER

The Board considered the question of approving Extra Work Order #1 in the amount of \$15,000.00 for Year End Adjustment work to be completed by Whitney Trucking, Inc. Said work order to be funded from account 40004300 5235909.

EXTRA WORK ORDER cont'd

Director of Engineering Peter Ditto stated that in the beginning of the year they do an estimate of the trash tonnage based on the previous year's figures. The estimate was short on the quantity of bulky items, and metals.

On motion, it was unanimously,

VOTED: To approve Extra Work Order #1 in the amount of \$15,000.00 for Year End Adjustment work to be completed by Whitney Trucking, Inc. Said work order to be funded from account 40004300 5235909.

AMENDMENT

The Board considered the question of approving and executing Amendment 7.1 for peer review services by the Town's Consultant for the private development at 888 Commonwealth Avenue. Said amendment to be funded from account 1720TA09 524055.

Director of Engineering Peter Ditto stated that there were more meetings required than anticipated. The developer at 888 Commonwealth Avenue has agreed to fund the Town's expenses for traffic consulting related to the project. The rear of the project is on St. Paul and Dummer Streets, where access and traffic issues needed to be addressed.

On motion, it was unanimously,

VOTED: To approve and execute Amendment 7.1 for peer review services by the Town's Consultant for the private development at 888 Commonwealth Avenue. Said amendment to be funded from account 1720TA09 524055.

CONTRACT

The Board considered the question of executing a contact for HVAC Renovations to Putterham Library in the amount of \$487,207.00 with Falite Bros. of Wakefield MA. Said contract to be funded as follows:

2599WS01 6B0088	\$ 42,797.97
2599WS05 6B0007	\$130,410.00
2599WS07 6B0007	\$150,000.00
2599WS09 6B0080	\$163,999.03

Program Administrator Tony Guigli stated that the contract has previously been awarded and is now ready to be executed. He hopes the project will start this week. Mr. Guigli added that there will be a need for an extension of one month to the contract. This is partially due to the recent election where the facility was used as a polling location.

On motion, it was unanimously,

VOTED: To execute a contact for HVAC Renovations to Putterham Library in the amount of \$487,207.00 with Falite Bros. of Wakefield MA. Said contract to be funded as follows:

2599WS01 6B0088	\$ 42,797.97
2599WS05 6B0007	\$130,410.00
2599WS07 6B0007	\$150,000.00
2599WS09 6B0080	\$163,999.03

CONTRACT

The Board considered the question of approving and executing a Contract in the amount of \$53,000 with Casby Bros., Inc. of Boston in connection with the Michael J. Driscoll School – Preschool Toilet at Room No. 107. Said contract to be funded from account 2594C141 6C0002

Program Administrator Tony Guigli stated that the contract is for the pre-school toilet at Driscoll School. Selectman Goldstein questioned the cost for a toilet, it seems high. Mr. Guigli replied that it requires plumbing, new pipes, walls, floors, and soffits, this is a Capital Improvement Project.

On motion, it was unanimously,

VOTED: To approve and execute a Contract in the amount of \$53,000 with Casby Bros., Inc. of Boston in connection with the Michael J. Driscoll School – Preschool Toilet at Room No. 107. Said contract to be funded from account 2594C141 6C0002

TRANSFER

Selectman Benka stepped out

The Board considered the question of approving the following transfer with in the Legal department appropriation:

FROM:	14101410 553010	\$ 95.00
	Professional Dues/Fees	
FROM:	14101410 553020	\$1,575.45
	Conferences	
TO:	14101410 528040	\$1,000.00
	Litigation	
TO:	14101410 531012	\$ 670.45
	Supplies	

Assistant Town Administrator Melissa Goff stated that the membership renewals have been satisfied for FY09, and there are no conferences on the agenda. This transfer of accounts will assist with anticipated litigation expenses and additional supplies.

On motion, it was unanimously,

VOTED: To approve the following transfer with in the Legal department appropriation:

FROM:	14101410 553010	\$ 95.00
	Professional Dues/Fees	
FROM:	14101410 553020	\$1,575.45
	Conferences	
TO:	14101410 528040	\$1,000.00
	Litigation	
TO:	14101410 531012	\$ 670.45
	Supplies	

COMMITTEE OF SEVEN

The Board considered the question of appointing a Committee of Seven for the Waterproofing Repairs to the plaza of the Main Library at 361 Washington Street as recommended by the Building Commission and Board of Library Trustees, and appointing a Selectman as Chair of the Committee.

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COMMITTEE OF SEVEN cont'd

Program Administrator Tony Guigli stated that the Committee is for the designer selection for the waterproof repairs to the plaza at the Main Library. Selectman Goldstein was appointed as Chairman to the Committee.

On motion, it was unanimously,

VOTED: To appoint a Committee of Seven for the Waterproofing Repairs to the plaza of the Main Library, 361 Washington Street.

On motion, it was unanimously,

VOTED: for reconsideration to add the appointed members.

On motion, it was unanimously,

VOTED: To appoint the Committee of Seven for the Waterproofing Repairs to the plaza of the Main Library, 361 Washington Street as follows:

Selectman Goldstein as Chair, Building Commission members, Janet Fierman, George Cole and George Cha. Library Trustees Michael Burstein, Judith Vanderkay and Chuck Flaherty.

Selectman Benka returned

COMMITTEE OF SEVEN

The Board considered the question of appointing a Committee of Seven for the Feasibility Study of Brookline Fire Stations Suitability to House Modern Firefighting Apparatus as recommended by the Building Commission and Fire Department and appointing a Selectman as Chair of the Committee.

Program Administrator Tony Guigli stated that the study is required due to the increasing size of fire apparatus. The equipment is getting heavier and larger, and the stations were built when horse and carriages were in use.

Selectman Benka added that he has been impressed when working on a Committee of Seven in the past. He asked if the study could include suitability on housing of the Firefighters. He would like to look at furniture, kitchens, mattresses, and other human habitation conditions. Selectman Benka was appointed as Chair of the Committee.

On motion, it was unanimously,

VOTED: To appoint a Committee of Seven for the Feasibility Study of Brookline Fire Stations Suitability to House Modern Firefighting Apparatus, all fire stations as follows:

Selectman Benka as Chair, Building Commission members Janet Fierman, George Cole and George Cha. Members from the Fire Department, Mike O'Reilly, Chris Merrick and Charlie Driver.

AMENDMENT

The Board considered the question of approving Amendment #1 in the amount of \$3,500 in connection with the contract for Additions to the John D. Runkle School for work to be completed by Design Partnership of Cambridge. Said amendment to be funded from account 2599WS09 6B108.

Program Administrator Tony Guigli stated that the amendment is for traffic and parking study work that was not in the original scope. It is a congested area, and they want to make sure that traffic safety is addressed.

On motion, it was unanimously,

VOTED: To approve Amendment #1 in the amount of \$3,500 in connection with the contract for Additions to the John D. Runkle School for work to be completed by Design Partnership of Cambridge. Said amendment to be funded from account 2599WS09 6B108.

DONATION

The Board considered the question of accepting a donation in the amount of \$250.00 from the Brookline Rotary Club to be used toward the dedication of an engraving at the Old Burial Ground wall commemorating the presence of African American Slaves. Donation to be deposited into the Diverse the Curse account 5900SH39 482030.

Director of Human Relations, Youth Resources Stephen Bressler stated that the Hidden Brookline Committee researched the history of slavery in Brookline, and discovered that the Old Burial Ground has some slaves buried there without any markers. The funds will be used towards providing a dedication engraving on a wall commemorating the presence of African American slaves. The Diverse the Curse account was set up during the Brookline 300, using the Red Sox slogan as a play on words.

Selectman Goldstein added that as a member of the Rotary Club, he is happy to support the donation.

On motion, it was unanimously,

VOTED: To accept a donation in the amount of \$250.00 from the Brookline Rotary Club to be used toward the dedication of an engraving at the Old Burial Ground wall commemorating the presence of African American Slaves. Donation to be deposited into the Diverse the Curse account 5900SH39 482030.

TEMPORARY WINE AND MALT BEVERAGE LICENSE

The Board considered the question of granting the following temporary Wine and Malt beverages license in connection with the following Boston University events to be held at 808 Commonwealth Avenue:

Student Activities Organization Banquet	May 13th 7:30 – 12:30
School of Communication Banquet	May 14th 3:00-7:00
Boston University Luncheon	May 16th 11:00-2:00
Boston University Reception	May 16th 5:00 – 8:00

On motion, it was unanimously,

VOTED: To grant the following temporary Wine and Malt beverages license in connection with the following Boston University events to be held at 808 Commonwealth Avenue:

Student Activities Organization Banquet	May 13th 7:30 – 12:30
School of Communication Banquet	May 14th 3:00-7:00
Boston University Luncheon	May 16th 11:00-2:00

TEMPORARY WINE AND MALT BEVERAGE LICENSE

The Board considered the question of granting a temporary Wine and Malt beverages license to Brookline High School Gridiron Club in connection with a Casino Night Fundraiser to be held on May 22nd from 7:00 p.m. – 11:00 p.m. at Brookline High School – Atrium/Main Lobby – 115 Greenough Street.

TEMPORARY WINE AND MALT BEVERAGE LICENSE cont'd

On motion, it was unanimously,

VOTED: To grant a temporary Wine and Malt beverages license to Brookline High School Gridiron Club in connection with a Casino Night Fundraiser to be held On May 22nd from 7:00 p.m. – 11:00 p.m. at Brookline High School – Atrium/Main Lobby – 115 Greenough Street.

TEMPORARY WINE AND MALT BEVERAGE LICENSE

The Board considered the question of granting a temporary Wine and Malt beverages license to Clinton Path Preschool in connection with a Fundraiser/Social Event to be held on May 29th from 7:00 p.m. -10:00 p.m. at St. Paul's Church 15 St. Paul Street.

On motion, it was unanimously,

VOTED: To grant a temporary Wine and Malt beverages license to Clinton Path Preschool in connection with a Fundraiser/Social Event to be held on May 29th from 7:00 p.m. -10:00 p.m. at St. Paul's Church 15 St. Paul Street.

TEMPORARY WINE AND MALT BEVERAGE LICENSE

The Board considered the question of granting a temporary Wine and Malt beverages license to Pine Manor College in connection with an Appreciation Dinner to be held on May 14th from 4:30 p.m. - 8:30 p.m. at 400 Heath Street.

On motion, it was unanimously,

VOTED: To grant a temporary Wine and Malt beverages license to Pine Manor College in connection with an Appreciation Dinner to be held on May 14th from 4:30 p.m. - 8:30 p.m. at 400 Heath Street.

PROCLAMATION

The Board considered the question of proclaiming the week of May 17 – 23, 2009 as National Public Works Week.

Department of Public Works Commissioner Tom DeMaio stated that May 17th through the 23rd is National Public Works Week. In celebration of that, the DPW will be hosting an Open House on May 19, 2009 at the Municipal Service Center. This is an annual event that allows the DPW to demonstrate their role in the community. Young students will participate as they have in the past. Mr. DeMaio added that this is an opportunity for the community to recognize public works employees while providing a fun and educational experience for school children and residents alike.

On motion, it was unanimously,

VOTED: To proclaim the week of May 17 – 23, 2009 as National Public Works Week.

**PROCLAMATION
National Public Works Week
May 17-23, 2009**

WHEREAS, National Public Works Week will be held May 17 to May 23, 2009, and;

WHEREAS, the Brookline Department of Public Works infrastructure, facilities, parks, open spaces, and services are of vital importance to the health, safety and well-being of the residents of Brookline; and

WHEREAS, it has been demonstrated on many occasions that public works provides critical response capabilities, experience and support to all levels of government and town agencies in times of natural and man-made disasters; and

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WHEREAS, it is in the public interest for the citizens and civic leaders of this community to gain knowledge of and to maintain a progressive interest in the public works needs and programs and employees; and

WHEREAS, in celebration of National Public Works Week the Department of Public Works has planned an Open House on May 19, 2009 at the Municipal Service Center, with tours of the facility, equipment demonstrations, flower plantings and many other interactive events; and

NOW, THEREFORE, in appreciation of the Department of Public Works contributions to the safety and enjoyment of the residents of Brookline,

BE IT THEREFORE RESOLVED, that we, the Board of Selectmen of the Town of Brookline do hereby designate the week May 17-23, 2009, as National Public Works Week; and urge all residents to join with representatives of governmental agencies and the American Public Works Association in activities and ceremonies designed to pay tribute to our public works employees and to recognize their substantial contributions to the health and welfare of our community and country.

BOARDS AND COMMISSIONS

The following candidates for appointment/reappointment to Boards and Commissions appeared for interview:

POSTPONED

Planning Board

**Lori Salkin
Al Hyman, MD
Maya French**

Tree Planting Committee

Susan Adams

Preservation Commission

Lee Cooke Childs

Planning Board - Lori Salkin is an editor/production assistant at WHDH-TV. She had previously interned at Rackemann, Sawyer & Brewster, LLC in Boston where she focused on land-use and zoning law, which she enjoys. Ms. Salkin has also worked as a real estate agent where she also became knowledgeable in zoning issues. Ms. Salkin is a recent Town Meeting Member in Precinct 10. She holds an M.B.A. in Business Administration, and a B.A. in Music.

Planning Board - Maya French was a contract attorney for Massachusetts Institute of Technology, where she worked on analyzing litigation risks related to contracts involving land use, utilities, tax, liabilities and City of Boston zoning requirements.

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Ms. French was an intern at the Massachusetts Superior Court, and had previously worked in St. Petersburg Florida in the Human Relations Department as an Americans with Disabilities Act Coordinator & Minority Business Enterprise Contract Compliance Manager. She is a resident of North Brookline.

Tree Planting Committee -Susan Adams works as a docent at the Arboretum, and has worked in the children's programs there in the past. She has completed the graduate certificate program at the Landscape Institute. She is studying at the Friends Horticulture Graduate certificate program at Wellesley College where she completed a Master Gardener program. Ms. Adams holds a Master's Degree in English and Education.

Preservation Commission - Lee Cooke Childs is a local real estate broker and a registered Massachusetts landscape architect. Ms. Childs is the co-chair of the Aspinwall Hill Neighborhood Association and treasurer of the Brookline Neighborhood Alliance. She is a Town Meeting Member in Precinct 12. Ms. Childs has attended many Preservation meetings over the past years and has an understanding of the Commission's duties and role.

The Board thanked everyone for their interest.

RESERVE FUND TRANSFER

The Board considered the question of approving and transmitting to the Advisory Committee the request of Town Counsel for a Reserve Fund Transfer in the amount of \$ 47,404.12 for the liability account.

Town Counsel Jennifer Dopazo stated that this is an annual request for a reserve fund transfer due to claims of vehicle and property damage accidents involving Town owned vehicles. The Town is self insured and all claims go through a review process which includes reports from the driver and police department, and photo inspection. The request is for the purpose of settling the property damage and personal injury claims that are pending, where Town liability is clear.

The Board noted that most of the claims involved snowplows and inclement weather.

On motion, it was unanimously,

VOTED: To approve and transmit to the Advisory Committee the request of Town Counsel for a Reserve Fund Transfer in the amount of \$ 47,404.12 for the liability account.

FY2010 BUDGET

Town Administrator Richard Kelliher reviewed the following memo:

Honorable Board of Selectmen and Members of the Advisory Committee

While the final House budget provided vitally important relief from the budget initially proposed by the House Ways & Means Committee, enough uncertainty remains in the overall fiscal environment that I do not intend at this time to present changes to the FY2010 Financial Plan, as suggested in my April 23rd letter. In light of current conditions and the likelihood of protracted State budget deliberations, it is reasonable to assume that the budget votes taken by the Advisory Committee and Board of Selectmen will be those presented to the Annual Town Meeting.

At the outset, I must gratefully acknowledge the willingness of Brookline's State Representatives who took the difficult action of earmarking new revenue for cities and towns. Of the \$900 million in estimated revenue to be realized by raising the sales tax from 5.0% to 6.25%, \$205 million was dedicated to Local Aid. If adopted, this would lessen Brookline's Unrestricted Aid cut initially proposed by the Governor. Unfortunately, worsening year-to-date experience for the Town's own Local Receipts, especially interest earnings, will require an offsetting downward adjustment.

In addition, the House budget proposed that the Governor increase the use of stimulus funds for Ch 70 Education Aid to provide at least \$50/pupil funding for each school district. If the Governor approves this recommendation, an additional \$309,000 could be allocated directly to the Brookline Schools. And finally, the House budget restored half the funding eliminated by the HWM proposal to discontinue support for the Quinn Bill. This recommended amount, though, remains lower than the funding level originally proposed by the Governor.

In a stark reversal of expectations it is now anticipated that Senate Ways & Means will release a budget next week based on revenue at least \$1 billion lower than the House budget. Revenue declines have also spurred reports that the Governor intends to file a revised FY2010 budget before the end of the month. And, of course, the sales tax increase must receive concurrence from the Senate and survive a potential veto by the Governor.

If the eventual Local Aid outcome is such that adjustments in appropriations beyond those recommended in the FY2010 Financial Plan are required, then changes would have to be addressed at the Fall Special Town Meeting, or at an earlier Special Town Meeting, if necessary. As I indicated in the April 23rd letter,

FY2010 BUDGET cont'd

the School Superintendent and I have come to a consensus approach as to recommendations for further budget reductions should such steps be necessary. Until the FY2010 revenue outlook stabilizes Town and School budget actions, especially with respect to collective bargaining, will have to be continuously and carefully measured against revenue realities.

Thank you for your forbearance in this uncertain budgetary climate.

Chairman Daly added that there is discussion concerning the Group Insurance Commission where local municipalities that do not join the group would be penalized by a reduction in local aid. She added that communities that do want to join, but are not able to do so because of union negotiations will be punished which is not fair. Chairman Daly will like to send a letter to the Representatives in this regard.

The Board thanked Mr. Kelliher for the update, but acknowledged the uncertainty of the budget during these fiscal challenges.

FY2010 CDBG ONE YEAR ACTION PLAN

Public Hearing to discuss the approval of the FY2010 One Year Action Plan for the Town of Brookline Community Development Block Grant Program.

Director of Planning & Community Development Jeff Levine presented the FY2010 CDBG One Year Action Plan. The allocation is divided up by Public Services, a 15% cap, Program Management/Planning a 20% cap, and Housing and Community Facilities a 65% cap. The Town received an extra \$29,419 which would be divided up with the same formula.

David Trietsch, Brookline Housing Authority Board member, and Brian Cloonan, Director of the Brookline Housing Authority spoke on the request for Colonel Floyd Façade Improvements. They requested \$213,157.75 and were allocated \$0 for this project. Colonel Floyd consists of 15 buildings, built in 1965 and houses elderly and disabled residents. The entry points of the buildings consist of single pane glass held in place by corroded metal. They are in dire need of replacement. They also would like to add canopies over the doorways for protection from the elements. Mr. Trietsch added that they have had challenges spending the block grant monies in the past, but all the CDBG funded projects are to be completed this calendar year. One issue has been that the funding was there, but no management for the project. The Authority did receive federal funds, but they cannot be used for this facility because it is State property not Federal. Chairman

FY2010 CDBG ONE YEAR ACTION PLAN cont'd

Daly added that if the monies are not used in a reasonable timeframe, it can affect the Town's grant receipts. She did note that the Authority has shown improvement on drawing down the funds.

Director of Planning & Community Development Jeff Levine added that there are timelines for expenditures with the grants. If the grant has unexpended funds, it could be taken away. The Housing Authority has funds not used yet, but they are heading in the right direction, they are continuing to fund down. Mr. Levine added that they could access funds through the affordable housing account.

Selectman Goldstein asked how it would affect the Affordable Housing Program if the money did not go in there. Mr. Levine replied that the Affordable Housing program is used for a few things. There is a 1st time homeownership fund that can be leveraged with Home Funds and CDBG funds. If there is an amount in there at the end of the year, and can be moved into another account. Mr. Levine feels that some funds can go to the Housing Authority.

Director of Council on Aging Ruthann Dobek spoke on the impact this recession has had on the elderly. While she appreciates that transportation areas being fully funded, she has concerns about the Jobs for Elders which was requested at \$14,040.00, and allocated at \$10,500.00. This is a very important program for the seniors.

Janet Selcer, Director of Steps to Success spoke on the youth programs. The Youth Employment Program was requested at \$81,400.00 and allocated at \$71,500.00. She added that these jobs help out families of low income households, which is critical in this economic climate.

Marian Parker, Chairman of the CDBG Committee stated that there is not enough funding for everyone. It is difficult to makes these decisions, She is aware that the Youth Employment Program benefits many residents.

Selectman Goldstein asked about the Microenterprise Assistance account. Director of Planning & Community Development Jeff Levine replied that during the 5 year consolidation plan it was recognized that there is a need to provide assistance to business owners, or those that employed low to moderate income citizens. The assistance would include start up, lease negotiations, and business plan assistance. An example would be that a business may need a fax, supplies, or access to a copy machine, or a business that has done well in the past and is now struggling could use assistance in lease negotiations. He hopes to work with three businesses this year to see which piece is most successful, and get a better idea of what is needed. It would be ideal to have each business in different stages of their process.

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Selectman Benka had concerns on the Project 112 Program. He stated that this is a subsidiary of a large successful non-profit, and feels they may not be in as dire a need as some of the other programs. He would like to see more funding allocated to public services.

Jeffrey Savit, a Social Worker at Center Communities of Brookline, stated that they have their own budget even though they are owned by Hebrew Life. Project 112 is a project that is at a section 8, HUD building, which is 122 Center Street. There are approximately 57 residents that are directly served by this funding. It funds a Russian speaking social worker. These are our most vulnerable residents that gain assistance by this part-time social worker. He feels it is unfair to categorize them as part of a wealthy organization. They are as favorable as any other services in the town.

Marian Parker, Chairman of the CDBG Committee, added that they would like to fund new or improved programs. Program 112 was a first time recipient last year.

Selectman Benka added that he does not challenge any of the programs. The caps make it difficult to fund everyone in need.

Selectman Mermell added that she would not support reducing the 112 Program. It would seriously impact the social and health services to the elderly.

The Board discussed allocations, and it was decided to fund the Colonel Floyd Improvements from the Affordable Housing account, level fund the 112 Program, add to the Youth Employment Program, and Jobs for Elders,

On motion, it was unanimously,

VOTED: To approve the FY2010 One Year Action Plan for the Town of Brookline Community Development Block Grant Program as outlined in the following chart:

Proposed CDBG Entitlement Budget							
		FY 2008 Request	FY 2008 Allocation	FY 2009 Request	FY 2009 Allocation	FY 2010 Request	BOS Approved Budget
A.							
Program Management/Planning							
1.	CD Grant Administration	\$ 161,390	\$ 161,390.00	\$ 165,512.00	\$ 165,512.00	\$ 170,801.00	\$ 170,801.00
2.	CD Comprehensive Planning	\$ 88,868	\$ 88,868.00	\$ 77,397.00	\$ 77,255.00	\$ 85,414.00	\$ 85,414.00
3.	Preservation Planning	\$ 75,008	\$ 75,008.00	\$ 76,866.00	\$ 71,866.00	\$ 63,037.00	\$ 63,037.00
	Subtotal:	\$ 325,266.00	\$ 325,266.00	\$ 319,775.00	\$ 314,633.00	\$ 319,252.00	\$ 319,252.00 OK
B.							
Housing							
1.	Housing Division	\$ 228,737	\$ 228,737.00	\$ 279,068.00	\$ 273,956.00	\$ 282,525.00	\$ 282,525.00
2.	Affordable Housing Program	\$ 500,000	\$ 325,000.00	\$ 500,000.00	\$ 420,000.00	\$ 500,000.00	\$ 311,847.00
3.	Colonel Floyd Façade Improvements				\$ -	\$ 213,158.75	\$ 213,159.00
4.	Roof Replacement -- 1057 Beacon Street (BHA)				\$ -	\$ 52,000.00	\$ 52,000.00
	Subtotal:				\$ 693,956.00	\$ 1,047,683.75	\$ 859,531.00
C.							
Economic Development							
1.	Microenterprise Assistance					\$ 75,000.00	\$ 64,250.00
	Subtotal:					\$ 75,000.00	\$ 64,250.00
D.							
Community Facilities							
1.	Humanity House Kitchen II			\$ 91,000.00	\$ 30,000.00	\$ 60,000.00	\$ 60,000.00
2.	BCMHC Facilities: Window & Weatherproofing			\$ 184,650.00	\$ 50,000.00	\$ 88,000.00	\$ 88,000.00
	Subtotal:				\$ 80,000.00	\$ 148,000.00	\$ 148,000.00
E.							
Public Services							
1.	Parent Child HOME Program	\$ 15,000	\$ 12,000.00	\$ 15,000.00	\$ 13,500.00	\$ 15,000.00	\$ 15,000.00
2.	Next Steps	\$ 12,000	\$ 12,000.00	\$ 12,000.00	\$ 10,500.00	\$ 12,000.00	\$ 11,500.00
3.	Project 112			\$ 74,902.40	\$ 15,000.00	\$ 35,360.00	\$ 15,000.00
4.	Youth Employment Program	\$ 80,000	\$ 73,000.00	\$ 81,400.00	\$ 67,000.00	\$ 81,400.00	\$ 75,500.00
5.	Job Opportunites for Elders	\$ 14,025	\$ 10,000.00	\$ 14,040.00	\$ 10,000.00	\$ 14,040.00	\$ 11,913.00
6.	Brookline Learning Project	\$ 14,000	\$ 11,500.00	\$ 12,840.00	\$ 10,000.00	\$ 11,840.00	\$ 10,500.00
7.	Brookline Elder Taxi System	\$ 35,000	\$ 35,000.00	\$ 37,000.00	\$ 34,500.00	\$ 36,000.00	\$ 36,000.00
8.	Home and Escort Linkage Program	\$ 12,000	\$ 10,000.00	\$ 10,000.00	\$ 4,500.00	\$ 10,000.00	\$ 5,000.00
9.	BCMHC Adolescent Outreach Program	\$ 43,000	\$ 39,200.00	\$ 43,000.00	\$ 35,500.00	\$ 45,000.00	\$ 38,000.00
10.	BCMHC Comprehensive Services for Children & Fam	\$ 30,000	\$ 25,000.00	\$ 30,000.00	\$ 25,000.00	\$ 32,000.00	\$ 27,000.00
	Subtotal:	\$ 255,025.00	\$ 227,700.00	\$ 330,182.40	\$ 225,500.00	\$ 292,640.00	\$ 245,413.00 OK
	TOTAL FY 2010 REQUESTS					\$ 1,882,575.75	
15% Cap on Public Services: \$245,471						Entitlement:	\$ 1,636,476
20% Cap on Program Management/Planning: \$327,295						Recommended:	\$ 1,636,446 OK
65% on Housing and Community Facilities: \$1,063,709							

WARRANT ARTICLES

Further review and vote of the following Warrant Articles for the May 26, 2009 Town Meeting:

<u>NO.</u>	<u>TITLE</u>
24.	Resolution in Support of Surveillance Cameras (Selectmen)

Selectman DeWitt stated that the Advisory Committee added some language to the Article. The language added more detail in the last paragraph.

Chief O'Leary stated that he supports the Advisory's resolution.

In Board of Selectmen

May 12, 2009

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WARRANT ARTICLES cont'd

On motion, it was,

**VOTED: 3-2 Chairman Daly against
Selectman Mermell against**

That the Town adopt the following resolution:

Resolution to Support a Public Surveillance Camera Pilot Program

WHEREAS, the Town of Brookline, through its Police Department, along with eight other cities and towns in the metropolitan Boston area, is a member of the Metro Boston Homeland Security Region ("MBHSR"); and

WHEREAS, as a member of the MBHSR, the Town has assisted with drafting the MBHSR's Urban Areas Security Initiative ("UASI"), a plan to prepare and train for, respond to, and recover from a chemical, biological, radiological, nuclear, and/or explosive weapon incident in the Port of Boston and elsewhere in the region, as well as a catastrophic natural disaster; and

WHEREAS, the MBHSR has developed and received federal grant funding for a critical infrastructure video camera monitoring system ("CIMS") for the nine member communities to monitor major thoroughfares and evacuation routes that are deemed critical infrastructure; and

WHEREAS, once deployed, a CIMS may also prove effective in deterring criminal activity and public disorder, reducing fear of crime, identifying criminal activity and suspects, identifying and gathering possible evidence for use in criminal and civil court actions, documenting police actions, safeguarding citizen and police officer rights, aiding in Amber alerts and in the search for lost / missing children or elderly people, assisting emergency services personnel when responding to incidents, assisting with the monitoring of traffic conditions, otherwise assisting town officials with the provision of municipal services in order to enhance overall municipal efficiency, and assisting with the training of Department personnel; and

WHEREAS, the first year of operation of the CIMS program is without cost to the Town due to the availability of grant funding if accepted by February 1, 2009; and

WHEREAS, under Mass. Gen. Laws c. 41, § 97, which the Town adopted on March 15, 1921 at its Annual Town Meeting, the Brookline Police Department is established under the direction of the Selectmen and the Selectmen may make suitable regulations for its governance; and

In Board of Selectmen

May 12, 2009

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WHEREAS, the Brookline Police Department proposed to the Selectmen as suitable regulation for the implementation of a Brookline CIMS Program a proposed Special Order (now known as Special Order 2009-1); and

WHEREAS, in light of all of the foregoing, on January 13, 2009, a majority of the Selectmen voted to approve acceptance and deployment of the CIMS for a 12-month trial period in order to evaluate its effectiveness in serving any of the purposes described above and any detrimental impact of the program on civil liberties and constitutional rights and values, including privacy and anonymity, free speech and association, government accountability, and equal protection (hereinafter, the "CIMS Pilot Program"); and

WHEREAS, pursuant to the Selectmen's January 13, 2009 vote, the CIMS Pilot Program is subject to a) Special Order 2009-1 regarding the permissible and impermissible uses of cameras and other provisions that seek to safeguard residents' and visitors' interests in privacy and other constitutional values, and b) those other conditions set forth in the Selectmen's January 13, 2009 vote, including i) the establishment of a Surveillance Camera Oversight Committee to assist the Town with evaluating any impact (both favorable and unfavorable) of the CIMS program, and ii) regular reporting by the Chief of Police regarding any impact (both favorable and unfavorable) of the CIMS program; and

WHEREAS, it is clear from testimony given at the Selectmen's hearings that preceded the January 13, 2009 vote, from written testimony submitted to the Selectmen, and from other feedback from the public that there is a range of opinion within the Town about the presence of public surveillance cameras within the Town;

WHEREAS, in connection with executing their responsibilities under Mass. Gen. Laws c. 41, § 97, the Selectmen wish to have, and on January 13, 2009 voted to file an Article for the May 2009 Annual Town Meeting seeking, input from Town Meeting regarding the CIMS Pilot Program;

NOW, THEREFORE, BE IT RESOLVED THAT **the Town continue the CIMS Pilot Program as approved by the Board of Selectmen on January 13, 2009, and further that the Board of Selectmen report its findings relative to the evaluation conducted by the Camera Oversight Committee of the CIMS Pilot Program, for review and consideration by the first Annual Town Meeting to be held immediately following the conclusion of the CIMS Pilot Program's 12-month trial period; and further that such evaluation be based, among other things, on data collected to measure 1) the effectiveness of the cameras in achieving the intended emergency preparedness or law enforcement purposes, 2) future ongoing costs of the program, and 3) any potential impacts on civil liberties and constitutional rights and values, including privacy and anonymity, free speech and association, and equal protection, and on government accountability.**

WARRANT ARTICLES cont'd

<u>NO.</u>	<u>TITLE</u>
26.	Resolution on PAYT (Selectmen)

Selectman Mermell Stated that it is clear there are many questions and concerns on going to a Pay as You Throw system. She is glad to hear all the discussion that came out of it. She feels this is a topic that deserves thorough and informed information.

Selectman Mermell would like to refer the question of Article 26 to a Selectmen's Committee on Solid Waste and Recycling Implementation Committee (SWRIC). The Board of Selectman has the ultimate authority on rate and structures for solid waste so she feels this would be the appropriate Committee. Selectman Mermell hopes that the Committee will outline the process to show how broad the scope of the work was. Selectman Goldstein will be the Selectmen's representative. The Committee would be charged with further examining the resolution outlined in Article 26, including, but not limited to the issues of illegal dumping, disposal of bulky waste, implementation of a single stream recycling with or without PAYT, landlord/tenant responsibilities, adoption of automated trash collection with or without PAYT, and additional exploration of other methods to reduce solid waste and increase recycling.

Selectman Goldstein stated that he thinks a PAYT is a good idea, although he does have concerns about it, as described in Selectman Mermell's outline. He feels that a Selectmen's Committee is the appropriate committee. An entirely new committee may back track and double the work already done.

John Dempsey Co-Chair of the PAYT Committee has not decided if he wants to sit on the new committee. He feels that once residents are educated on the program, it will make sense this is the right way to go. He plans on being involved and wants to figure out where he would be best needed.

Selectman Benka stated that PAYT makes sense. If you need to pay for something, you use less of it. He looked at 14 communities that went to a PAYT system. Some communities increased their recycling, some did not. He suspects there will be a motion at Town Meeting for both a Selectmen's Committee, and a Moderator's Committee which is fine with him either way. He will be abstaining on tonight's vote because of this. He is concerned about putting too much of a time restraint on the Committee. He feels that the referral is the appropriate way to go.

Selectman DeWitt added that this issue hits everybody. The Committee could not have anticipated the breadth of interest in this issue. She hopes the work already done is not dismissed, but rather built upon. She supports the Selectmen's

In Board of Selectmen

May 12, 2009

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WARRANT ARTICLES cont'd

Committee which would represent leadership from the top, and they would make sure the vital members are appointed, for instance the DPW presence.

Selectman Mermell wanted to make sure that any previous Committee members that wish to continue on the new Committee be entitled to do so after all the research and hard work they presented.

Chairman Daly expressed concerns on the membership. There may be gaps from the previous Committee that would have to be determined after we know who wants to continue on the Committee. The membership will be determined before Town Meeting.

A date was discussed for when the report would be due. It was decided on reporting back to the Selectmen by January 31, 2010.

On motion, it was,

VOTED: 4-0-1- Selectman Benka abstained

**To refer the question in Article 26 to a Selectmen's Committee on Solid Waste and Recycling Implementation Committee (SWRIC).
To report to the Selectmen by January 31, 2010.**

The membership will be determined before Town Meeting.

There being no further business, the Chair adjourned the meeting at 10:20 p.m.

ATTEST

IN BOARD OF SELECTMEN

May 19, 2009

Present: Chairman Nancy Daly, Selectmen Betsy DeWitt, Jesse Mermell, Richard Benka, and Kenneth Goldstein

The Minutes of May 12, 2009 were approved as amended

PUBLIC COMMENT

Public Comment period for citizens who requested to speak to the Board regarding Town issues not on the Calendar.

Chairman Daly took a moment to announce the passing of Barbara Soifer, a prominent member of the Washington Square Merchant's Association. Ms. Soifer had been involved in many Town activities and events.

Selectman Benka announced that the Commission for the Disabled is supporting an event at WGBH studios, A Very Special Arts of Massachusetts, on May 26, 2009.

CDBG CLOSE-OUTS

The Board considered the question of approving the reallocation of the following closed-out FY 2008 CDBG program funds.

FROM:	
Preservation Planning	
1808G008 510101	\$1,981.81
Youth Employment	
1803G008 510901	84.74
Housing Division	
1805G008 510101	4,284.22
Brookline Learning Project	
1830G008 558070	1,452.88
After Hours U	
1895G008 558043	525.93
Contingency	
1814G008 558096	<u>4,408.00</u>
TOTAL:	\$12,737.58

Director of Planning & Community Development Jeff Levine stated that at the end of the fiscal year any funds not spent in the action plan, gets reprogrammed into an affordable housing account. These are requirements that need to be adhered to.

In Board of Selectmen

May 19, 2009

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CDBG CLOSE-OUTS cont'd

On motion, it was unanimously,

VOTED: To approve the reallocation of the following closed-out FY 2008 CDBG program funds.

FROM:	
Preservation Planning	
1808G008 510101	\$1,981.81
Youth Employment	
1803G008 510901	84.74
Housing Division	
1805G008 510101	4,284.22
Brookline Learning Project	
1830G008 558070	1,452.88
After Hours U	
1895G008 558043	525.93
Contingency	
1814G008 558096	<u>4,408.00</u>
TOTAL:	\$12,737.58

TRANSFER

The Board considered the question of approving the following transfer of funds from FY 2006 Coolidge Corner District Plan to FY 2006 Street Tree Removal and Replacement.

FROM: FY 2006 Coolidge Corner District Plan	
1840G006 558012	\$4,080.52
TO: FY 2006 Street Tree Removal & Replacement	
1819G006 6C0011	\$4,080.52

Director of Planning & Community Development Jeff Levine stated that the Coolidge Corner District Plan has been completed and no longer has need for use of these funds. The DPW is doing a comprehensive improvement to a street in an

GRANT

The Board considered the question of accepting a Grant in the amount of \$16,500 from the Massachusetts Historical Commission to fund the Community-Wide 20th Century FY2009 Survey & Planning Grant.

Jean Innanorati, Preservation Planner stated that this is a matching grant from the Massachusetts Historical Commission to conduct Phase 2 of the Community –wide 20th century survey that started 2 years ago. The grant will fund a consultant and staff.

On motion, it was unanimously,

VOTED: To accept a Grant in the amount of \$16,500 from the Massachusetts Historical Commission to fund the Community-Wide 20th Century FY2009 Survey & Planning Grant.

TEMPORARY WINE AND MALT BEVERAGE LICENSE

The Board considered the question of granting a temporary Wine and Malt beverages license to Boston University Ballet Russes in connection with a Reception to be held on May 20, 2009 from 5:30 p.m. – 7:30 p.m. at 808 Commonwealth Avenue.

On motion, it was unanimously,

VOTED: To grant a temporary Wine and Malt beverages license to Boston University Ballet Russes in connection with a Reception to be held on May 20, 2009 from 5:30 p.m. – 7:30 p.m. at 808 Commonwealth Avenue.

RESERVE FUND TRANSFER

The Board considered the question of approving and transmitting to the Advisory Committee the request of Health and Human Services Director Alan Balsam for a Reserve Fund Transfer in the amount of \$9,100 to cover the following energy accounts:

Electricity	\$3,000
Natural Gas	\$6,100

Deputy Town Administrator Melissa Goff stated that while the electricity consumption projected for the Health Building is consistent with budgeted levels the requested transfer is due to a higher than expected KWH.

In Board of Selectmen

May 19, 2009

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On motion, it was unanimously,

VOTED: To approve and transmit to the Advisory Committee the request of Health and Human Services Director Alan Balsam for a Reserve Fund Transfer in the amount of \$9,100 to cover the following energy accounts:

Electricity	\$3,000
Natural Gas	\$6,100

NATIONAL PARK SERVICE

A representative from the National Park Service will appear to invite Town officials, employees and residents to the May 30th-31st Open House at the JFK National Historic Site at 83 Beals Street.

Beth Wear, Acting Supervisor Park Ranger at John Fitzgerald Kennedy National Historic Site appeared before the Board to invite them and the public to attend the May 30th-31st open house at the JFK National Historic Site, 83 Beals Street, to celebrate the 40th anniversary of the site's May 29, 1969 dedication as a National Park Service Site.

The Board thanked her for the invitation.

BROOKLINE BIKES BEACON

Representatives of the Bicycle Advisory Committee, DPW, Transportation and Police Departments appeared to update the Board on plans for the Second Annual Brookline Bikes Beacon Parade scheduled for Sunday May 31st.

John Dempsey, of the Bicycle Advisory Committee updated the Board on the 2nd Annual Brookline Bikes Beacon Bicycle Event. Last year was an enjoyable event and this year with some minor improvements should be more successful. The ride will finish at Amory Park where it will hold a joint celebration of the park's re-opening.

Commissioner of Public Works Tom DeMaio added that the park has undergone some improvements that include renovated ball fields, new irrigation systems, updated pathways, and pedestrian entry.

The Board thanked them for the update.

BOARDS AND COMMISSIONS

The following candidates for appointment to Boards and Commissions appeared for interview.

Preservation Commission

Dr. Judith Selywn
Wendy Ecker

Planning Board

Nicole Forrest

Preservation Commission - Dr. Judith Selywn was a founding member of the Commission and served on it for over twenty years. Now that she has found more time to share she would like to return to the Commission. Ms. Selywn is a professional architectural conservator, and has worked on many historic projects.

Preservation Commission -Wendy Ecker is currently an alternate on the Commission, and was a full member at one time. Ms. Ecker would like to see more homes on the National Register. She has currently worked with the Local Historical Commission on a survey of residents that appeared before them within the last three years. 70% of those polled are happy with the Commission's work. Ms. Ecker would like to continue her work on the Commission.

Planning Board -Nicole Forrest is the founder of White Forrest, LLC, a real estate advisory company. Ms. Forrest was also a special partner at Genesis Companies, an urban real estate development company dedicated to sustainable development for mixed-income projects. She holds a Master in Business Administration from Harvard Business School, and B.A. of Arts in Politics from Princeton University. She has worked on many zoning related projects.

The Board thanked them for their interest.

MUDDY RIVER RESTORATION PROJECT

Public Works Commission A. Thomas DeMaio appeared to seek authorization to proceed with updating the cost estimates and timetable for the Carlton Street Footbridge project.

Commissioner DeMaio reviewed his following memo:

The Department of Public Works (DPW) was copied on the recent letter from Ian Bowles, Secretary of the Executive Office of Energy and Environmental

In Board of Selectmen

May 19, 2009

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Affairs (EOEA), dated May 15, 2009, and addressed to the Brookline Board of Selectmen, in which the Secretary urges Brookline to both sign the Memorandum of Understanding (MOU) pursuant to the funding of the Muddy River Restoration Project, and move forward on its associated commitment to the restoration of the Carlton Street Footbridge (CSF).

In order to assist the Board in developing a clear and confident response to EOEA's request for an update on the Town's progress towards the restoration of the footbridge, I would offer below a brief status on the footbridge project as it now stands, and a proposal to advance the Town's effort to secure outside funding for this restoration:

Status of Carlton Street Footbridge Project

DPW identified a viable outside funding source for the Carlton Street Footbridge Restoration, namely the Transportation Enhancement Program (TEP), a long-standing grant authorized and renewed every 6 years within the Federal Transportation Bill, by which the Town would be responsible for 10% of the cost of Final Design and Construction, the State a 10% share, while Federal dollars would cover the remaining 80%.

After significant public process and Town Meeting funding authorization, Brookline submitted a Pre-Application for a TEP grant in 2005 to the Metropolitan Area Planning Council's (MAPC) Enhancement Selection Committee for initial review and comment. The Pre-Application included preliminary plans and cost estimates for the restoration of the footbridge with full accessibility provided by appended wheelchair ramps.

MAPC identified three (3) issues enumerated within the Pre-Application requiring additional information and/or clarification:

- 1. Status of the Availability of the Town's \$90K TEP project match, appropriated by Town Meeting though contingent on the State's commitment to fully fund its share of the Muddy River Restoration project, proof of which rests with a signed MOU**
- 2. MBTA Permanent and Temporary Easements, as required, for construction**
- 3. Expanded section on the extent and scope of Public Opposition**

In the meantime, Brookline DPW has secured a commitment from the MBTA for necessary easements to restore the footbridge. With the continued help of the Board of Selectmen's project liaison, Chairman Daly, Brookline DPW feels that the Public Opposition section can be comprehensively portrayed. And similarly, at the discretion of the Board of Selectmen and direction of Town Counsel, a signed MOU would affirm the Town's 10% financial match.

Proposal to Update and Re-submit TEP Application

1. Update Footbridge Schedule for EOE A

DPW Engineering prepares an updated Footbridge Schedule (through actual restoration) that would accompany a status update on the footbridge project from the Board of Selectmen, together with their overarching MOU response.

2. Letter to MAPC

At the direction of the Board of Selectmen, Brookline DPW would direct its Engineering Division to draft a letter to MAPC containing responses to their 2005 issues with the Pre-Application, in order to both update the agency and re-open dialogue with the intention to re-submit the Pre-Application with requisite clarifications.

3. Secure Consulting Bridge Engineer

Brookline Engineering would simultaneously secure a design engineering contract with the bridge engineer, Andre Martecchini, of SEA Consultants, by whom the earlier studies and plans had been developed. A consultant is required as a part of this program, and justifiably relevant given the more specialized civil engineering concerns. The scope of work required to simply re-submit the Pre-Application would be limited to an updated structural conditions report, as well as resulting revisions to the plans and cost estimates. In addition, Brookline Engineering would include in the scope a comprehensive review of accessibility approaches and Massachusetts Architectural Access Board (MAAB) compliancy. And lastly, cost engineering would be a prudent component to this contract.

As this task would be considered Preliminary Design, Brookline is fully responsible for its funding, noting, however, that should the footbridge restoration receive TEP grant funding, Final Design monies would be included in the actual grant funding. In order to fund these interim, consulting engineering services, Brookline DPW would respectfully ask for authorization from the Board of Selectmen to draw on their discretionary funding accounts (i.e., Professional and Technical Services), within their Operating Budgets, to anticipate covering additional, preliminary design costs, a proposal for which has been requested of Mr. Martecchini at SEA Consultants.

4. Revisit Footbridge Plans and Cost Estimates

Brookline Engineering and their Consulting Bridge Engineer would assess the present conditions at the footbridge structure, and determine what, if any, modifications to the restoration plan and cost estimate should be made. In addition, a comprehensive review of accessibility provisions and

- alternatives for the footbridge and adjoining walkways would be conducted, revisiting the cost estimate as necessary.**
- 5. Cost Engineering and/or Plan Revisions, as necessary**
Should the updated cost estimate prove higher than the initial estimate, Brookline Engineering, together with their consultant, would explore cost engineering options, such as alternate approaches to accessibility and/or restoration, with the objective of reducing project cost. Preliminary Plans and Cost Estimates would then be revised accordingly.
 - 6. Update and Revise TEP Pre-Application**
Parallel to updating the plans and cost estimates, Brookline Engineering would update the TEP Pre-Application, working with public agencies such as the MBTA to finalize easements, and reaching out to local boards and commissions for their input and renewed commitments.
 - 7. Selectmen Re-submit TEP Pre-Application to MAPC**
Updated plans and cost estimates, together with a revised Pre-Application, would be delivered to the Board of Selectmen for their review and comment, and with their approval and signatures would be formally re-submitted to MAPC. Taking into consideration the process and tasks herewith outlined, Brookline DPW would realistically target the mid-November, 2009 submission date with MAPC (who maintains a quarterly, revolving submittal schedule for proposed TEP pre-applications).

DPW sincerely hopes that this sketch of a tenable process to restore the footbridge with outside funds provides the necessary level of comfort to the Board of Selectmen to undertake real considerations associated with the Muddy River MOU. And in closing, DPW would respectfully request the authorization of the Board of Selectmen to pursue outside funding for the restoration of the Carlton Street Footbridge, by undertaking those tasks as delineated above.

Selectman Goldstein asked if public opposition would be a non-starter in terms of receiving the grant. Commissioner DeMaio replied that there was some progress made on this issue. The MAPC will weigh the opposition and it will be worked out as we move forward. The process will not happen overnight, if approved; they can get the consultant on board and go from there. Commissioner DeMaio does not feel that this would hinder receiving the grant.

Selectman DeWitt asked about in-house cost estimates, and if the project would be ready to move forward. Mr. DeMaio replied that the same consultant will be working on the project and he would be ready to start. He hopes to come before the Board within the next couple of weeks with a contract to move forward.

Selectman Benka asked about the 25% design drawings. Is that a requirement of the application to the MAPC? Mr. DeMaio replied yes it is.

On motion, it was unanimously,

VOTED: consistent with the supplemental FEIR certificate of April 2005 in which the Secretary of Environmental Affairs reaffirmed the commitment of the State to work with the Town in seeking third party funding sources for the restoration of the Carlton Street Footbridge, the Board of Selectmen hereby authorizes the Commissioner of Public Works to carry out the actions recommended in his memorandum of May 18, 2009 including the expenditure of funds necessary for updated preliminary design and cost estimates for the footbridge and to identify third party funding sources; and

Further, should sufficient third party funding sources for the restoration of the footbridge not be identified as anticipated in the supplemental FEIR, the Board shall seek authorization from Town Meeting for additional resources as necessary.

MUDDY RIVER PROJECT MOU

The Board considered the question of executing a Memorandum of Understanding with the State and City of Boston concerning the local portion of the required non-federal matching funds for the Muddy River Restoration Project.

Chairman Daly stated that there were some issues in the original document about Brookline indemnifying Boston if they did not follow through with their share of the cost. Town Counsel has worked on the document to protect the Town from this happening. Another concern with the document had to do with a previous Town Meeting authorization. The Board does not have the authority to go against their vote; this also resulted in the delay.

Town Counsel Jennifer Dopazo made the following statement:

In 2007 the Town entered into an agreement detailing the roles and responsibilities of the various agencies with respect to the long-term maintenance of the Muddy River Project areas and in particular the maintenance of those areas within the custody and control of the Town of Brookline. That 2007 agreement commits the Town to using available resources in order to maintain the areas of the Project within Brookline once they are returned to the Town by the Army Corps of Engineers as the phases of the project are completed.

The Memorandum of Understanding now before you outlines the details of the financial piece with respect to funding for the Muddy River Project and the required non-federal match.

The State has authorized \$24 million and has committed to funding the first \$42 million of the non-federal share for this project. However, prior to the expenditure of these state funds the Town, City and State must execute an MOU

In Board of Selectmen

May 19, 2009

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detailing the funding responsibilities of the parties. This document aims to do just that.

At Page 4, pars. (c) and (d) you will see a break-down of the funding formula. Costs above the \$42 million will be shared 50% State and 50% City/Town of that municipal 50% portion: Boston shall pay 87% and Brookline 13%. This is based on Land owned within the Project area. Currently Boston has committed \$10.9 million for construction and Brookline has committed \$1.625 million.

The Parties acknowledge that no greater authorization exists on the part of Brookline or Boston for these construction costs and this is noted at page 5 of the MOU.

However, Boston and Brookline also have responsibilities separate and apart from the construction under the PCA. Brookline is responsible for restoring the Carlton Street Footbridge. Boston must conduct remediation and dredging work at Ward's Pond.

Currently the Town, by vote in June, 2003, has authorized \$90,000 toward restoration of the bridge with remaining funds to come from third party sources including, but not limited to grant money. This is consistent with the Secretary's Certificate and as evidenced by the Board's earlier vote this evening the Town will now move forward to seek outside funding.

Attached to the MOU are the votes of Town Meeting with respect to the Project Construction funds of \$1.65 million, as well as the \$90,000 for the bridge.

Under state law, c.40, sec. 4 the Board can only enter into contracts on terms authorized by Town Meeting. Similarly, the State in entering into a contract, pursuant to c.29, sec. 26 cannot exceed an appropriation made by the General Court and the State has included a reference to that State law on p. 4, para. (d) and has also requested the ACDE include similar language in the PCA.

Since the Board's authority at this time is limited with respect to its responsibility to restore the bridge, I have included a reference to the Town Meeting vote at the Board's signature line.

I want to make very clear that in no way should this be seen as any less of a commitment on the part of the Town to restore the bridge. In fact, should there be insufficient outside funding then further funding should be sought from Town Meeting in order to meet the Project requirements. I have not seen nor am I aware of any agreement that would prevent the overall Project from moving forward while funding for the bridge is sought. Without a signed MOU, however, the Town will not be able to complete its application for the Transportation Enhancement Funds that are being considered.

I recommend the Board execute the MOU this evening.

MUDDY RIVER PROJECT MOU cont'd

Former Governor Michael Dukakis stated that he has lived with this problem for a long time. There has been an accumulation of debris in the area, and floods have been an issue. He hopes that the Town could move forward with the project. He added that many years ago there was a plan for restoration of the Olmstead Project. The plan always assumed it would restore the Carlton Street Footbridge. He added that this is a public park, and the footbridge was designed for public access. Unfortunately the project does not meet the qualifications for stimulus funds; on the other hand, many people are ready to work with the Town to help locate outside funding.

Representative Frank Smizik hopes that Brookline supports the project, including the bridge. He urged the Board to move forward on the project.

Kate Bowditch, Conservation Commission member, stated that the project has been particular interest to the Commission to protect our natural resources, and open spaces. Ms. Bowditch added that flooding, and water quality has been a big concern. She hopes that Town Government will take all the necessary steps to move the project forward.

Pam Zelnick, direct abutter of the bridge stated that the abutters continue to oppose the restoration of the bridge. She feels that the Town is being blackmailed to restore the bridge in order to receive a long overdue cleanup of the park and river itself. Ms. Zelnick feels that in this economic climate the Town should not spend funds on a bridge with 29 steep steps and fencing that will be required by the MBTA, a clearing of trees that will make it look like the neighborhood eyesore. She feels that the bridge will hardly be used.

Fran Gershwin, Chair of the Public Oversight Committee in regards to the project, added that Brookline's commitment to the project began in 1999 which have not yet been fulfilled. Brookline's commitment to restoration of the Carlton Street Footbridge dates at least as early as 1984. Ms. Gershwin stated that Willow and Leverett ponds are contaminated, which the Town has not addressed and for which it bears total responsibility. To correct the contamination, it is necessary to dredge Willow and Leverett ponds. All of this work is included within the scope for the Muddy River Project, and all the costs are included in the project budget. For this reason alone, it is both environmentally and fiscally responsible for the Board of Selectmen to do everything that it can to ensure that the Muddy River Project proceeds expeditiously and that the Town's ability to have this very substantial clean up cost paid in full by others as a part of the Muddy River Project is not jeopardized. The restoration of the Carlton Footbridge, an access point to the park, is a small price to pay and brings its own rewards.

Selectman Mermell thanked everyone for the discussion she added that the footbridge should not be the main focal point. It is more important that the

MUDDY RIVER PROJECT MOU cont'd

residents, business, and parklands do not flood again. The project will protect our natural resources, and property.

Selectman Goldstein stated that he admires the work of Olmstead, and this is a National Historic Site. It is a worthwhile project as it relates to the water quality, and habitats. On a practical level flood control is obvious. The Carlton Street Footbridge condition does not outweigh the benefits from the rest of the project. It is a small price to pay to get this work done.

Chairman Daly added that Town Meeting is the fiscal appropriating authority, not this Board. The Board does recognize the importance of this project, and there is now language that we can move forward on, which recognizes Town Meeting's role. It is an important to point out that the clean up of Willow and Leverett Ponds is the Town's responsibility that alone makes it worthwhile to move forward with the project.

Selectman Benka stated that he is hopeful that the project will not run out of funding before it gets to Brookline's borders. Commissioner DeMaio replied that the Army Corps of Engineers will complete the project. He added that our legislative body has been very supportive and successful to date in securing funding.

On motion, it was unanimously,

VOTED: To execute the following Memorandum of Understanding with the State and City of Boston concerning the local portion of the required non-federal matching funds for the Muddy River Restoration Project:

**MEMORANDUM OF UNDERSTANDING
BY AND AMONG
THE EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS (EOEEA),
THE EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE (EOAF),
THE CITY OF BOSTON AND THE TOWN OF BROOKLINE
CONCERNING THE LOCAL PORTION OF THE REQUIRED NON-FEDERAL MATCHING
FUNDS AND ESTABLISHING A LONG-TERM MAINTENANCE AND MANAGEMENT
PROGRAM FOR THE
MUDDY RIVER RESTORATION PROJECT
IN THE CITY OF BOSTON AND THE TOWN OF BROOKLINE**

WHEREAS, Frederick Law Olmsted left the people of the nation, the Commonwealth of Massachusetts, the City of Boston and the Town of Brookline a magnificent historic, cultural and environmental legacy of public parks and open spaces;

In Board of Selectmen

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WHEREAS, in January of 1984 the Commonwealth of Massachusetts committed itself to reclaiming that legacy by creating the Olmsted Historic Landscape Preservation Program and the “Emerald Necklace Master Plan” of 1990, updated in 2001; and, the mission of the Commonwealth and the Program is to preserve significant historic landscapes and to encourage the public’s appreciation, understanding, wise use and maintenance of this historic legacy;

WHEREAS, the health, safety and quality of life of the residents and communities of Boston and Brookline have been threatened by flooding, impaired water quality and degraded habitat related to the Muddy River in the Emerald Necklace;

WHEREAS, in accordance with two Memoranda of Agreement, effective June 8, 1999 (hereinafter “1999 MOA”) and June 7, 2007 (hereinafter “2007 MOA”) both of which are referred to and incorporated herein, the City of Boston and the Town of Brookline accepted responsibility for the implementation and proper maintenance and management of the Emerald Necklace Environmental Improvements Master Plan and the Phase I Muddy River Flood Control, Water Quality, Landscape Restoration and Habitat Enhancement Project (EOEA# 11865) (the master plan and the projects contained therein and Phase I for the area between the Charles River and Perkins Street by Jamaica Pond, including specifically Charlesgate, the Back Bay Fens, the Riverway, Leverett Pond, Willow Pond and Wards Pond, collectively referred to as the “Project”, and the first portion of Phase I referred to as “Charlesgate”) with additional financial support from the Commonwealth and Federal Government;

WHEREAS, in accordance with the 2007 MOA the Department of Conservation and Recreation (DCR) recognized the critical importance of maintenance and management of the Project area and committed to maintaining and managing the parkways and other areas within and abutting the Project area that are subject to its care, custody and control to the same standard to which the City and the Town are obligated to maintain the areas subject to their respective care, custody and control;

WHEREAS, the goals of the Project include, but are not limited to, flood control, water quality improvements, habitat enhancements and historic preservation of the Project area defined as Charlesgate, Back Bay Fens, Riverway, Leverett Pond, Willow Pond and Wards Pond;

WHEREAS, the Executive Office of Energy and Environmental Affairs, the Department of Environmental Management (now DCR), the Massachusetts Emergency Management Agency, the Boston Water and Sewer Commission, the Town of Brookline (“Town”) and the City of Boston (“City”) committed to a Memorandum of Understanding, dated November 4, 1999, concerning the funding and administering of the planning, permitting, and design of Phase I of the Project and the construction and implementation of Charlesgate, and in which the City and Town accepted responsibility for their respective shares of future maintenance and management activities, including the implementation of best management practices, which are identified in a maintenance and management plan, submitted jointly by the City and the Town to the Secretary of Energy and Environmental

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Affairs, and reviewed as part of the review for adequacy of the environmental impact report pursuant to the Massachusetts Environmental Policy Act (“MEPA”), sections 61-62H of Chapter 30 of the General Laws and its associated regulations, and which maintenance and management plan is attached hereto and incorporated herein (the “Maintenance Plan”);

WHEREAS, pursuant to MEPA the Secretary of Environmental Affairs (the “Secretary”) issued a certificate, dated May 1, 2003 on the Final Environmental Impact Report, (FEIR) and a Certificate dated April 1, 2005 on the Supplemental Final Environmental Impact Report (the “SFEIR”), each of which reaffirms that maintenance and management are key to ensuring that the Project meets its long-term goals and that the significant public investment in the project is adequately protected;

WHEREAS, the MEPA Certificates further acknowledge the need and requirement to clearly define the structure, roles and responsibilities, and develop adequate enforceable commitments for maintenance and management of the Project area, including through required Section 61 Findings under MEPA, to protect over the life of the Project the substantial public investment, both incurred and anticipated, of federal, state, and local public funds to implement the Project;

WHEREAS, section 424 of the federal Water Resources Development Act of 1999, P.L. 106-53 directed the Corps to evaluate the Emerald Necklace Environmental Improvements Master Plan;

WHEREAS, section 522 of the federal Water Resources Development Act of 2000, P.L. 106-541, provides that “The Secretary shall carry out the project for flood damage reduction and environmental restoration, Muddy River, Brookline and Boston, Massachusetts, substantially in accordance with the plans, and subject to the conditions, described in the draft evaluation report of the New England District Engineer entitled ‘Phase I Muddy River Master Plan’, dated June 2000;”

WHEREAS, the Great and General Court of the Commonwealth, pursuant to St. 2002, c. 236, s. 2, item 2000-2030, authorized \$24 million “for the purposes of partially matching the federal funds committed by the army corps of engineers to undertake the emerald necklace muddy river restoration project, so-called, a project to provide flood protection to the Massachusetts Bay Transportation Authority and other parties, to provide environmental and historic preservation benefits to the commonwealth” but also required “prior to any expenditure of funds from this item, the city of Boston and the town of Brookline shall enter into a memorandum of understanding, so-called, with the executive office of environmental affairs and the executive office for administration and finance that details the local portion of the required non-federal matching funds and establishes a long-term maintenance and management program for said project;”

NOW, THEREFORE, in order to clearly define the responsibilities of the Executive Office of Energy and Environmental Affairs, the Executive Office for Administration and

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Finance, the Town of Brookline and the City of Boston (“Parties”) and to detail the local portion of the required non-federal matching funds and to affirm the establishment of the long-term maintenance and management program for the Project as set forth in the 2007 MOA, the Parties, including their respective successor organizations and successor agencies designated by law, agree as follows:

1. Purpose.

The Parties to this Memorandum of Understanding (the “Agreement”) hereby each commit to:

- (a) as applicable, protect the substantial public investment in, and restore, improve, and provide proper stewardship for the natural, recreational, and cultural resources in the Project area as provided in the 1999 MOA, the 2007 MOA and the MEPA Certificates;
- (b) detail the local portion of the required non-federal matching funds from the Commonwealth of Massachusetts, the City and the Town;
- (c) as applicable, comply with state, federal and local laws and permits, and the conditions and requirements of all existing and anticipated state and federal project agreements associated with the Project; and,
- (d) the enforceable commitment by the City and the Town for the implementation of the Maintenance Plan.

2. Local Portion of the Non-Federal Match, and Maintenance and Management

- (a) The Parties acknowledge that the cost share arrangement for such a project would normally require the Commonwealth of Massachusetts and the project proponents (the City and Town) to split equally and fund in advance to the United States Army Corps of Engineers the cash non-federal match for project costs under the Project Cooperative Agreement, including design and construction. For the Project, however, the Commonwealth agrees to assume and fund, using bond proceeds and authorization under St. 2002, c. 236, s. 2, item 2000-2030 the entire non-federal match for the first \$42 million in project capital costs subject to the limits set forth in paragraph (d) below. This obligation shall not extend to: (i) any costs for maintenance and management for lands under the care, custody and control of the City and Town connected with the 2007 MOA (which are solely the responsibility of the City and the Town); (ii) capital/structural best management practices and restoration of the Carlton Street Footbridge as set forth in the Secretary’s Certificate on the SFEIR (which are solely the responsibility of the Town); and, (iii) the proponents’ Project betterments, which are solely the responsibility of the Party having care, custody and control of such betterments (including work at Wards Pond which is solely the responsibility of the City).

- (b) In consideration of the Commonwealth's commitment to fund the City's and Town's portion of the entire non-federal match for the first \$42 million of the project costs, subject to the limits set forth in paragraph (d) below, the City and the Town hereby commit during the term of this MOU to implement maintenance and management obligations, as stated and required by the 2007 MOA, and the Maintenance Plan attached thereto and incorporated therein, and any conditions contained in relevant MEPA certificates of the Secretary, any Section 61 findings issued pursuant to MEPA, and the requirements of any permit or approval issued in connection with the Project, with respect to those portions of the Project area that are within the City's and Town's respective care, custody or control. The Town and the City agree to provide sufficient resources to implement the maintenance and management standards set forth in the Maintenance Plan for each portion of the Project area after full completion of improvements by the Army Corps of Engineers (ACOE) in that portion of the Project area and following ACOE's return of that portion of the Project area to their respective care, custody and control.

- (c) The Parties agree that the formula for the non-federal share of any project costs above the \$42 million will be assumed in a typical cost share arrangement (paragraph 2(d) includes the authorizations related to this formula): 50% by the Commonwealth, subject to the limits set forth in paragraph (d) below and 50% by the municipalities subject to the limits set forth in paragraph (d) below. Of the municipal 50%, Boston shall pay 87% and Brookline 13%, based on the agreed upon respective percentage of ownership of the land and waterways in the Project area.

- (d) All Parties acknowledge that in accordance with M.G.L. c.29, Section 26, no authorization exists on the part of the Commonwealth to fund costs and obligations of the non-federal sponsor in an amount greater than the \$24 million authorized in item 2000-2030 in Chapter 236 of the Acts of 2002. Corresponding to a total preferred project construction estimate of \$91 million as set forth in the 2007 MOA, Brookline has authorized \$1.625 million and Boston has authorized \$10.9 million for the non-federal proportionate share of the project's financial obligations for construction (which is separate from Boston's and Brookline's enforceable legal commitments under paragraph 2(a)(i) and (ii) and paragraph 2(b)). The Parties acknowledge that no greater authorization exists on the part of Brookline and Boston to fund the municipal portion of the project's financial obligations for construction under the PCA.

- (e) The Parties agree that no party to this agreement will agree to or make any material change to the Project that may impact its budget, without the prior written approval of Boston, Brookline, EOEEA and EOAF.

- (f) The City and the Town further warrant and represent that: 1) each is carrying the necessary funding in its operating budget and commits to continue carrying such funding in such operating budget at the levels needed to comply with its

- respective obligations under this Agreement; and, 2) funding of such items, as necessary, shall be paramount to the funding of other municipal responsibilities subject to the determination of Town Meeting in the case of the Town and the City Council in the case of the City.
- (g) (1) Compliance with and fulfilling maintenance and management obligations, as set forth in the 2007 MOA and the Maintenance Plan, and any conditions contained in relevant MEPA certificates of the Secretary, any Section 61 findings issued pursuant to MEPA shall be incorporated as conditions of any contract for state financial assistance associated with the Project, and any permits and approvals granted by any state agency with respect to the Project.
- (2) Compliance with and fulfilling the obligations under this MOU, the 2007 MOA and the Maintenance Plan shall be considered independent legal obligations under this MOU required under St. 2002, c. 236, s. 2, item 2000-2030, each of which shall be specifically enforceable by the Commonwealth, the City or the Town, and the rights of specific enforcement shall exist regardless of the adequacy of a remedy at law.
- (3) For addressing any lack of compliance with maintenance and management obligations set forth in the 2007 MOA:
- (a) Boston and Brookline hereby give EOEEA (meaning and including its designated agencies, employees and contractors) a right to enter, at reasonable times and in a reasonable manner, upon property that Boston or Brookline now or hereafter own or control for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, managing, repairing, rehabilitating, or replacing the Project and associated maintenance and management obligations. If an inspection shows that either Boston and Brookline for any reason is failing to perform its obligations under the 2007 MOA, and the EOEEA sends a written notice describing the non-performance to either Boston or Brookline and, if after 90 calendar days from receipt of such written notice by such party, the party continues to fail to perform, then the EOEEA shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Boston or Brookline now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the Project. No completion, operation, maintenance, repair, rehabilitation, or replacement by EOEEA shall relieve the either Boston or Brookline of responsibility to meet obligations as set forth in the PCA or under this Agreement or the 2007 MOA, or to preclude the EOEEA from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this MOU. Boston and Brookline shall be responsible for reasonable costs incurred under this paragraph.

- (b) In addition to and not in lieu of or a waiver of the rights and remedies specified above in this MOU or otherwise available, it is understood that EOEEA costs incurred under subsection (a) shall be considered a debt owed to the Commonwealth and recoupment of said debt may occur (i) through a civil action initiated by the Commonwealth; (ii) through a collection agency acting at the request of a Commonwealth; and (iii) by “intercept” via matching the debt owed to otherwise eligible payments to Boston or Brookline from the Commonwealth, consistent with M.G.L. c. 7A, s.3, and associated policies and procedures of the State Comptroller.

3. Dispute Resolution.

In the event of a dispute related to this Agreement or the appendices referred to herein, the Parties shall use the following as a condition precedent to any party pursuing other available remedies, including legal remedies. Notwithstanding the foregoing, the Parties are committed to trying in good faith to resolve all issues that relate to this Agreement and the Project informally and expeditiously directly or through the Cabinet, as established in the 2007 MOA, and agree that for the purposes of this Paragraph 3, there shall not be a dispute until such informal efforts have been deemed ineffective by any party in its sole discretion:

- (a) A party who believes a dispute exists (the “disputing party”) shall give written notice of such dispute in writing to the party or parties involved in the dispute (the “responding party” or the “responding parties”), and shall provide a copy of such notice simultaneously to each other party to this Agreement. Such notice shall clearly, though as briefly as practicable, state the substance and scope of the dispute, the disputing party’s position relative thereto, including legal and factual justifications therefore, the remedy sought, and any other pertinent matters.
- (b) The responding party or parties shall respond in writing to the disputing party within ten (10) business days of receiving such notice, and shall send a copy of such response to each of the other Parties to this Agreement. Such writing shall clearly, though as briefly as practicable, state the responding party’s (or parties’) response to each of the items included in the disputing party’s writing, and any other pertinent matters.
- (c) A conference shall be held within ten (10) business days between representatives of the parties having decision-making authority regarding the dispute, to negotiate in good faith a resolution of the dispute.
- (d) If, within ten (10) business days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, the parties’ representatives may submit the dispute to mediation by contacting the MA Office of Dispute Resolution (MODR), which will convene and coordinate the mediation process. Notwithstanding the foregoing, the parties agree that no public employee shall act as a mediator in connection with any dispute.

- (e) The parties hereby agree to mediate in good faith for a minimum period of ten (10) business days from the actual commencement of the mediation. At the end of the ten day period or any extension thereto, the parties shall be free to pursue all available legal remedies.
 - (f) The parties may mutually agree to extend any of the time periods stated herein.
 - (g) The parties agree that the mediation provided for here is a compromise negotiation for purposes of all international, federal and state rules of evidence. The entire procedure will be confidential to the extent permitted by law. All conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, representatives or other invitees to the mediation and by the neutral, who is the parties' joint agent for the purpose of these compromise negotiations, are confidential and shall, in addition and where appropriate, be deemed to be privileged. Such conduct, statements, promises, offers, views and opinions shall not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the parties and shall not be disclosed to anyone not an agent, employee, expert, witness, or representative for any of the parties. However, evidence otherwise discoverable or admissible in a later proceeding is not excluded from discovery or admission as a result of its use in the mediation. If not entirely enforceable, the Parties intend that the court enforce this provision to the extent enforceable by such court.
 - (h) The Parties agree that nothing contained herein shall affect or limit, in any way, any party, as applicable, from independently exercising or enforcing its authority under any applicable statute, regulation or other provision of law that it is charged with administering.
4. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered: a) in person; b) by certified mail, postage prepaid, return receipt requested; or, c) by commercial overnight courier that guarantees next day delivery and provides a receipt. Such notices shall be addressed as follows:

Secretary of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Secretary for Administration and Finance
State House Room 373
Boston, MA 02133

Board of Selectmen, Attn: Town Administrator
333 Washington Street
Brookline, MA 02445

City of Boston Parks & Recreation Department
Commissioner Antonia Pollak
1010 Massachusetts Ave, 3rd Floor
Boston, MA 02118

5. U.S. Army Corps of Engineers Project Agreement Conditions.

The Parties recognize that certain obligations and conditions associated with the Project must be fulfilled by certain parties independent of this Agreement as part of any project agreement for the Project with the United States Army Corp of Engineers and local, state and federal project permits. The Parties agree, however, that fulfillment of those conditions and obligations (in force or as lawfully modified) by the relevant parties shall be considered binding obligations under this Agreement, enforceable by the parties to this Agreement as if such obligations were set forth in full herein.

The Parties recognize that the Project Cooperative Agreement (PCA) with the ACOE, to be signed by Brookline, Boston and EOEEA with the approval of EOAF, will require the Parties to accept obligations associated with the Project for operation, maintenance, repair and rehabilitation and replacement (for example, without limitation, under Article VIII of the PCA). With regard to those obligations, within this MOU, the City and the Town accept responsibility, including providing funding, for those obligations, which is consistent with the intent of the 2007 MOA, the MEPA certificates and the modified cost-share for the Project, and agree to fulfill such obligations of the Non-Federal Sponsor and timely respond and address any notice of non-performance issued by the ACOE to the Parties for areas within their respective care, custody and control.

In the event that the final cost of implementation of the “structural flood control” portion of the Project (as defined in the PCA) shall come in under budget, the Parties agree that any potential reimbursement of any portion of funds would occur to each Party in pro rata shares with regard to the actual cash contribution funded and tendered by that Party. The Parties agree that said reimbursement shall remain within the Project and be carried over with ACOE as a credit towards that specific Party’s cost share obligation of the “Environmental Restoration” portion of the Project (as defined in the PCA).

6. Rights and Liabilities of the Parties.

Nothing in this Agreement, except as expressly stated, shall be construed to diminish, enlarge or modify any right or liability of any of the Parties, or create liability on the part of any public agency for the act or omission of another public agency or a private person. Nothing in this Agreement shall be construed to amend, repeal or otherwise alter the authority or jurisdiction of any public agency. Nothing in this Agreement, including any process established herein, shall be construed to amend, repeal or otherwise alter any mitigation commitment, obligation or requirement pursuant to MEPA.

7. Effective Date and Term.

The effective date of this Agreement shall be the date of execution by the last of the Parties to sign. The Agreement shall remain in effect from the effective date and shall expire thirty (30) years from the completion date of the capital investments of the Project (completion date is defined as the time when the property is returned to the parties), unless the term is extended or modified with the unanimous written agreement of all of the Parties. This duration of the Agreement represents the currently estimated expected life of the capital investments implemented, if maintained as anticipated, as part of the Project.

Each of the Parties signing below represents and warrants that it is authorized to sign on behalf of and to bind their respective Party to this Agreement. Attached to this Agreement is the authorization approved by Brookline Town Meeting. Each of the Parties signing below agrees that they have had the opportunity to consult with legal counsel, and that they have not been induced to execute this Agreement by any warranties or representations other than those contained in writing in this Agreement.

Signed as a sealed instrument on the dates set forth below.

**For the Executive Office of Energy
and Environmental Affairs:**

Secretary Ian Bowles

Date: _____

**For the Executive Office for
Administration and Finance:**

Secretary Leslie A. Kirwan

Date: _____

For the City of Boston:

Mayor Thomas Menino

Date: _____

**For the Town of Brookline, by its
Selectmen to the extent authorized
by Town Meeting; and per the
attached vote relative to the
restoration of the Carlton Street
Footbridge,**

Nancy Daly, Chair

Commissioner Antonia Pollak

Date: _____

Betsy DeWitt

Jesse Mermell

Richard Benka

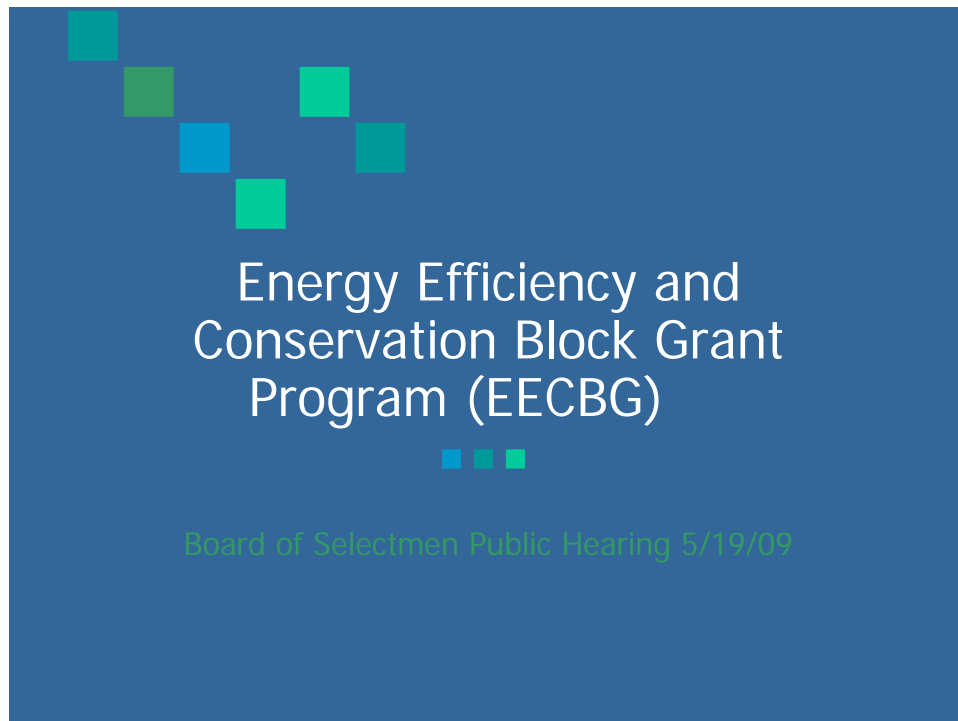
Kenneth M. Goldstein

Date: _____

ENERGY EFFICIENCY CONSERVATION BLOCK GRANT (EECBG)

Public Hearing to discuss qualifying projects that could receive funding under the federal Energy Efficiency and Conservation Block Grant (EECBG) program

Director of Planning & Community Development Jeff Levine presented the following:



EECBG history

- The Energy Efficiency and Conservation Block Grant (EECBG) program was created in 2007 with the passage of the Energy Investment and Securities Act (EISA). Although EISA proposed to appropriate \$2 billion per year to the EECBG program through 2012, the program recently received its first funding allocation through the American Recovery and Reinvestment Act (ARRA). It is unknown if the EECBG program will receive future appropriations.

2

Purpose of EECBG funding

- To reduce fossil fuel emissions in a manner that is environmentally sustainable and, to the maximum extent practicable, maximizes benefits for local and regional communities;
- to reduce total energy use;
- to improve energy efficiency in the transportation, building, and other appropriate sectors.

3

Funding:

- \$2.8 billion nationally under formula grants; \$42 million for Massachusetts
- 42 Massachusetts communities with more than 35,000 residents are eligible for direct funding from the US DOE. The amount of funding available to applicable cities and towns has been predetermined based on a formula contained in the ARRA Opportunity Notice
- Brookline's formula grant amount = \$494,400

4

Eligible Activities

- Development of an Energy Efficiency and Conservation Strategy
- Technical Consultant Services
- Residential and Commercial Building Energy Audits
- Financial Incentive Programs
- Energy Efficiency Retrofits
- Energy Efficiency and Conservation Programs for Buildings and Facilities
- Development and Implementation of Transportation Programs
- Building Codes and Inspections
- Energy Distribution
- Material Conservation Programs
- Reduction and Capture of Methane and Greenhouse Gases
- Traffic Signals and Street Lighting
- Renewable Energy Technologies on Government Buildings

5

Reporting Requirements


- There will be an unprecedented level of transparency and accountability for projects or programs funded under ARRA. The reporting requirements will be extensive and include documentation of compliance with the Davis Bacon Act and the Buy-American provisions, among others. Due to the extensive reporting requirements, a unit of local government or county may want to consider the amount of time and resources they are able to devote to projects and programs seeking EECBG funding. More information will be provided about the reporting requirements as the programs are developed.
- Funds must be obligated within 18 months and expended in 36 months.

6

Potential Municipal Activities

- Building retrofits
- Feasibility study for municipal solar program
- Bike Paths
- Street Light Retrofit Program
- Public Outreach / web development
- Idle reduction technologies
- Hybrid vehicle purchases
- Big Belly solar trash compactors
- Training for Town staff
- Grants/loans to operators of low income housing for energy efficiency programs

7

A blue presentation slide with a decorative pattern of small squares in various shades of blue and green. The title "CAC/CCAB Recommended Potential Activities" is centered at the top in white. Below the title is a bulleted list of eight items, each preceded by a small blue square. The number "8" is in the bottom right corner.

CAC/CCAB Recommended Potential Activities

- Hire consultant to refine Town energy strategy, make program and staffing recommendations, and assist in implementation
- Increase staff resources dedicated to energy and climate change activities
- Web site, marketing and communication campaign
- Energy audit and remediation program
- Revolving loan and incentive fund for residential energy improvements
- Fund staff for community organizing efforts (CoolMass)
- Town-wide Transportation Demand Management program
- Bicycle and pedestrian improvements

8

Representative Frank Smizik stated that this is a very important program and strategy. Local communities will be responsible for most of the work. The home renovation is a major problem with older homes in Massachusetts, converting older heating sources to newer efficient ones. This program can assist in addressing these kinds of issues. Mr. Smizik added that bike paths are also an important subject that would be a great benefit to the community.

Selectman Mermell, Chair of the Climate Action Committee stated that this Committee is very committed to using their talents and resources to come up with creative and impactful ways to use these funds. She thanked everyone for their hard work in coming up with their suggestions.

Don Weitzman co-chair of the Climate Action Committee thanked the Board for continuing to support reducing fossil fuel emissions. Brookline is on the right path. The recommendations stem from taking a hard look at what Brookline would benefit from. Residential assistance provided with a town-wide campaign to spread information on how to reduce home heating oil, electricity, and natural gas. The large amount of these funds should be allocated to the residential factor.

Chairman Daly added that there seems to be some overlap between what the municipality plans and the committee plans. Mr. Weitzman replied that the main issue would be to get out of Town Hall and into the community.

ENERGY EFFICIENCY CONSERVATION BLOCK GRANT EECBG (cont'd)

Selectman Benka asked if the MBTA could use these funds to enhance public transportation.

Seth Kaplan, from Conservation Law Foundation, replied that there are separate sources for transportation; but not within these funds. Mr. Kaplan spoke on where the grants came from and the formulas that were made to make the allocations to localities. He added that Brookline is out ahead of other municipalities in looking at the best way to allocate these monies. He hopes that the community will look at leveraging the existing programs. Massachusetts has good programs in place and more experience in energy efficiency delivery. He hopes to get these existing programs up into the public eye.

Werner Lohe, member of the Climate Action Committee, stated that Brookline has been thinking about climate change and planning for ten years. There should be more focus on residential use, insulation of attics, home heating etc. These funds give us an opportunity to take the next steps, it is an opportunity to hire people to reach out to residents.

David Lowe of Climate Action Brookline stated that the Committee has received some small grants in the past which has been helpful. He added that the committee looks at creative ways to engage the public in getting involved in energy efficiency programs.

M.K. Merelice, White Place, stated that there is a large population in Brookline that would like to get involved and welcome opportunities that would help them implement what they are in favor of.

Linda Olson Pehlke TMM#2 stated that using homes for demonstrations could be beneficial to the residents. She hopes the funds are expended into the community. The recommendation for expenditure of the Energy Efficiency and Conservation Block grant funds represent a comprehensive, broad-based and effective strategy that will maximize the impact of these funds throughout segments of our community.

Kate Bodwitch, Conservation Commission spoke on water quality and how these funds could help improve the quality and conservation. There are simple changes that could make a great impact.

Town Administrator Richard Kelliher added that changing behavior patterns can make a big difference. Mr. Kelliher hopes that there is a mix of approaches across the board that would benefit the community.

CHANGE IN MANAGER

Selectman Goldstein recused himself

The Board considered the question of approving the application of Roadhouse, Inc., David Ciccolo, Owner, holder of an All Kinds of Alcoholic beverages license as a Common Victualler at 1700 Beacon Street for a change in manager as follows:

**From: Helen Jacques
To: Christopher J. Sheridan**

Chairman Daly stated that the Town takes underage drinking very seriously, and noticed that the new manager has many years of experience in the food and beverage industry.

On motion, it was unanimously,

VOTED: To approve the application of Roadhouse, Inc., David Ciccolo, Owner, holder of an All Kinds of Alcoholic beverages license as a Common Victualler at 1700 Beacon Street for a change in manager as follows:

**From: Helen Jacques
To: Christopher J. Sheridan**

Selectman Goldstein returned

CHANGE IN MANAGER

The Board considered the question of approving the application of Matt Murphy's Pub, Inc., d/b/a Matt Murphy's, Siobhan Carew, Owner, holder of an All Kinds of Alcoholic beverages license as a Common Victualler at 14 Harvard Street for a change in manager as follows:

**From: Siobhan Carew
To: Gianpaolo Blower**

Gianpaola Blower stated that he looks forward to his new position, and to re-organize the restaurant to go back to its main roots with more of a focus on the food menu and less on the live music and entertainment.

On motion, it was unanimously,

CHANGE IN MANAGER cont'd

VOTED: To approve the application of Matt Murphy's Pub, Inc., d/b/a Matt Murphy's, Siobhan Carew, Owner, holder of an All Kinds of Alcoholic beverages license as a Common Victualler at 14 Harvard Street for a change in manager as follows:

**From: Siobhan Carew
To: Gianpaolo Blower**

BUDGET UPDATE

Town Administrator Richard Kelliher and Deputy Town Administrator Sean Cronin updated the Board on the FY2010 Budget.

Deputy Town Administrator Sean Cronin reviewed his following memo:

The Senate Ways and Means (SWM) Committee released its FY10 budget Wednesday. As a result of the continued deterioration of state revenues, the tax estimate used to build the \$26.7B proposed budget is \$1.5B less than the amount used in the Governor's and House's budgets. The proposal uses \$1.1B in additional Federal Medicaid Assistance Percentage (FMAP), draws down approximately \$500M from the Rainy Day fund¹, and does not include any new taxes. The table below shows the major differences between the various state budget proposals:

	<u>GOVERNOR</u>	<u>HWM</u>	<u>HOUSE</u>	<u>SWM</u>
Tax Base Estimate	\$19.53B	\$19.53B	\$19.53B	\$17.989B
Add'l Meals / Lodging Taxes Used?	YES (\$149M)	NO	NO	NO
Sales Tax Increase Included?	NO	NO	YES (\$900M) ²	NO
Stabilization Fund Use	\$586M	\$0	\$0	\$500M
Sec. 3 Aid Cut – Statewide	\$375M	\$424M	\$219M	\$563M
Total Local Aid Cut – Brookline	\$2.6M	\$3.4M	\$1.9M	\$3.9M
Use of AARA for Ch. 70	\$168M	\$181M	\$181M	\$181M
METCO Funding - Statewide	\$18.5M	\$20M	\$20M	\$18.5M
METCO Funding – Brookline*	\$1.5M	\$1.6M	\$1.6M	\$1.5M
Circuit Breaker Funding – Statewide	\$224.6M	\$184.9M	\$184.9M	\$105.1M
Circuit Breaker Funding – Brookline*	\$1.9M	\$1.7M	\$1.7M	\$1M
Changes in Employee Health Insurance Contributions	Range from 15% to 25%	30%	30%	30%

* Estimates

¹ This includes both withdrawals and forgone deposits into the fund.

² \$275M is earmarked for Transportation, leaving \$625M for the operating budget.

In Board of Selectmen

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As was included in both the Governor's and House's budgets, the SWM "Section 3" Local Aid proposal combines Lottery and Additional Assistance into one category (Unrestricted General Government Aid) and cuts it. The SWM proposal cuts it by \$484M (37%) from the original FY09 appropriation, compared to a \$375M (29%) in the Governor's budget, \$424M (32%) in the HWM budget, and \$219M (17%) in the final House budget. The Governor's and House's budgets all level-funded Chapter 70; the SWM proposal cuts it statewide by \$79M (2%). The tables on the following page compare the proposals for the major local aid accounts that impact Brookline in each of the various state budget proposals for both the state as a whole and for Brookline:

STATEWIDE

	<u>FY09 FINAL CHERRY SHEET</u>	<u>FY10 Governor</u>	<u>FY10 HWM</u>	<u>FY10 House Final</u>	<u>FY10 SWM</u>
Ch. 70	3,948,824,061	3,948,824,061	3,948,824,061	3,948,824,061	3,869,847,585
Unrestricted General Gov't Aid	1,313,546,271	944,836,706	889,159,663	1,094,084,412	829,882,390
Quinn	56,134,801	42,202,122	0	25,000,000	0
TOTAL RECEIPTS	5,318,505,133	4,935,862,889	4,837,983,724	5,067,908,473	4,699,729,975
\$ Change from FY09		(382,642,244)	(480,521,409)	(250,596,660)	(618,775,158)
% Change from FY09		-7.2%	-9.0%	-4.7%	-11.6%

BROOKLINE

	<u>FY09 FINAL CHERRY SHEET</u>	<u>FY10 Governor</u>	<u>FY10 HWM</u>	<u>FY10 House Final</u>	<u>FY10 SWM</u>
Ch. 70	7,473,142	7,473,142	7,473,142	7,473,142	7,323,679
Unrestricted General Gov't Aid	7,901,739	5,645,898	5,348,809	6,543,709	4,992,221
Quinn	734,914	550,604	0	324,697	0
TOTAL RECEIPTS	16,109,795	13,669,644	12,821,951	14,341,548	12,315,900
\$ Change from FY09		(2,440,151)	(3,287,844)	(1,768,247)	(3,793,895)
% Change from FY09		-15.1%	-20.4%	-11.0%	-23.6%

IMPACT ON BROOKLINE

Both the Financial Plan presented in February and the budget going to Town Meeting incorporate the Local Aid figures included in House 1, exclusive of the \$900K from the additional statewide meals and lodging taxes. The SWM's local aid proposal is approximately **\$1.35M less than the amount used in the budget**. This proposal results in a total local aid cut of \$3.9M from the original FY09 Cherry Sheet. The table on the following page shows how the SWM Cherry Sheet compares to both the FY09 Cherry Sheet and what we assumed in our budget.

In Board of Selectmen
 May 19, 2009
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Sch Constr now a non-Cherry Sheet, Off-Budget item.

	FY09 FINAL CHERRY SHEET	FY10 CHERRY SHEET BASED ON HI *	FY10 SWM	VARIANCE FROM HI	%VARIANCE FROM HI	VARIANCE FROM FY09	%VARIANCE FROM FY09
RECEIPTS							
Ch. 70	7,473,142	7,473,142	7,323,679	(149,463)	-2.0%	(149,463)	-2.0%
School Constr.	3,267,372	3,267,372	3,267,372	0	0.0%	0	0.0%
Unrestricted General Govt Aid	7,901,739	5,645,898	4,992,221	(653,677)	-11.6%	(2,909,518)	-36.8%
Quinn	734,914	550,604	0	(550,604)	-100.0%	(734,914)	-100.0%
Vets Benefits	51,062	61,624	69,387	7,763	12.6%	18,325	35.9%
Exemptions	42,059	41,896	41,896	0	0.0%	(163)	-0.4%
Charter School Reimbursements	30,537	4,534	6,017	1,483	32.7%	(24,520)	-80.3%
TOTAL RECEIPTS	19,500,825	17,045,070	15,700,572	(1,344,498)	-7.9%	(3,800,253)	-19.5%
CHARGES							
County	604,546	622,569	622,569	0	0.0%	18,023	3.0%
Retired Empl. Health Ins.	3,932	3,413	3,413	0	0.0%	(519)	-13.2%
Air Pollution Dist.	21,659	21,556	21,556	0	0.0%	(103)	-0.5%
MAPC	16,191	16,265	16,265	0	0.0%	74	0.5%
RMV Surcharge	242,540	311,200	311,200	0	0.0%	68,660	28.3%
MBTA	4,455,062	4,489,015	4,490,108	1,093	0.0%	35,046	0.8%
SPED	32,583	48,791	48,791	0	0.0%	16,208	49.7%
Charter School Sending Tuition	48,005	30,615	33,086	2,471	8.1%	(14,919)	-31.1%
TOTAL CHARGES	5,424,518	5,543,424	5,546,988	3,564	0.1%	122,470	2.3%
OFFSETS							
School Lunch	19,642	21,913	21,913	0	0.0%	2,271	11.6%
Libraries	103,224	90,198	82,974	(7,224)	-8.0%	(20,250)	-19.6%
TOTAL OFFSETS	122,866	112,111	104,887	(7,224)	-6.4%	(17,979)	-14.6%
NET LOCAL AID	14,199,173	11,613,757	10,258,471	(1,355,286)	-11.7%	(3,940,702)	-27.8%
NET LOCAL AID W/O OFFSETS	14,076,307	11,501,646	10,153,584	(1,348,062)	-11.7%	(3,922,723)	-27.9%
GROSS LOCAL AID	19,623,691	17,157,181	15,805,459	(1,351,722)	-7.9%	(3,818,232)	-19.5%

* Excluding the aid that would have come back to Brookline if the statewide meals & lodging taxes were approved.

CHERRY SHEET ACCOUNTS

Statewide, total Cherry Sheet Aid would total \$5B³, a decrease of \$677M (12%). As explained above, Additional Assistance and Lottery are cut by 37% and combined into one account. Chapter 70 is cut by \$79M (2%) to \$3.87B, Quinn Bill Reimbursements are eliminated, Charter School Reimbursements are cut by \$50M (63%), and Regional Transportation is cut \$28M (48%). In addition, Regional Libraries are cut \$4.7M (49%) while Public Libraries are cut \$2.9M (29%).

³ This figure does not include SBA reimbursements, which are off-budget.

The specifics of the individual accounts are listed below:

- **Chapter 70** – total statewide funding is \$3.87B, an amount that is \$79M (2%) less than FY09. Neither the Governor’s budget nor the House budget cut Ch. 70 funding. For Brookline, the reduction is \$149K (2%).
- **Lottery** – the SWM budget proposes combining Lottery and Additional Assistance into one category called Unrestricted General Government Aid and cut it by \$484M (37%). The Governor’s budget also combined Lottery and Additional Assistance into Unrestricted General Government Aid, but the cut was \$375M (28.5%). That proposal also offset \$148M of that cut by instituting an additional 1% meals and hotel/motel tax statewide and dedicating the proceeds exclusively to local aid. The HWM proposal cut was \$424M (32%) and did not include the additional meals and lodging taxes. After the approval of an increase in the sales tax to 6.25%, the final House budget ended up cutting Unrestricted Aid by \$219M (17%). For Brookline, the impact of the SWM proposal is a cut of \$2.9M (37%) from the original FY09 revenue budget, a cut that is \$654K more than what resulted from House 1. The table below shows the impact on Brookline of each of the budget proposals:

	FY09 FINAL CHERRY SHEET	FY10 Governor	FY10 HWM	FY10 House Final	FY10 SWM
Unrestricted Gen Gov't Aid	7,901,739	5,645,898	5,348,809	6,543,709	4,992,221
\$ Change from FY09		(2,255,841)	(2,552,930)	(1,358,030)	(2,909,518)
% Change from FY09		-28.5%	-32.3%	-17.2%	-36.8%

- **Additional Assistance** – see the explanation under Lottery above.
- **Quinn Reimbursement** – this \$56M line-item is eliminated by the SWM budget. As a result, the Town will lose approximately \$750K. The Governor’s budget reduced funding by \$8M (15.9%), or \$184,310 (25.1%) for Brookline, while the HWM proposal eliminated it. The House final budget included \$25M, or \$325K for Brookline.
- **Veterans’ Benefits** – this line-item is increased \$6.8M (33%) to \$27.9M. This is the same proposal as all other budget proposals, which results in \$61,624 for the Town, an increase of \$10,562 (20.7%).
- **Property Tax Exemption Reimbursements** – these accounts, which reimburse municipalities, to a certain extent, for property tax exemptions for particular categories of taxpayers (elderly, veterans, widows, blind), total \$25.3M, an increase of \$434K (1.7%). Each of the budget proposals have been approximately \$25M. The Town will receive \$41,896, a decrease of \$163 (0.4%).
- **Charter School Tuition Assessment Reimbursement** – this account, which funds the reimbursement of the state assessment for students attending a Charter School according to the following schedule, is cut by \$50M (62.6%):
 - 100% of the assessment in year 1;

- 60% of the assessment in year 2;
- 40% of the assessment in year 3; and no reimbursement after that.

All other budget proposals level-funded the account at \$79.8M. The Town will receive \$7,803, a decrease of \$22,734 (74.4%).

- **School Lunch** – this offset item is level-funded at \$5.4M, the same proposal as the HWM and House final budgets. The Governor’s budget cut it by \$209K (4%). The Town will receive \$21,193, an increase of \$2,271 (11.6%).
- **Library Assistance** – this offset item is cut by \$2.9M (28.9%) to \$7.1M. The \$7.1M is \$1.5M below both the Governor’s and House Final budgets. The Town will receive \$83K, an amount that represents a cut of \$20K (19.6%).
- **PILOT Payments** – this account is cut by \$3M (10%) to \$27.3M. Brookline receives no funding from this account.

OTHER LOCAL GOVERNMENT-RELATED ACCOUNTS / ISSUES

1. **SPED “Circuit Breaker”** – the SWM proposal decreases funding by \$119M (53.2%) from the original FY09 appropriation to \$105.1M. The Governor funded this line-item at \$224.6M while the House final funded it at \$184.9M. The Schools estimate this cut will reduce their reimbursement by approximately \$900K.
2. **METCO** – this account is \$853K (4.4%) less than the FY09 post-9C figure. This is the same proposal as the Governor’s, but is \$1.5M (7.5%) less than what was included in the final House budget.
3. **MSBA** – due to the major reform approved in the Summer of 2004, there is no line-item in the budget for SBA reimbursements - - the funding has been moved off-budget. The transfer from the State’s General Fund to the SBA Fund is \$641M, an amount that is the same as the final House budget but \$28M less than the \$669M included in House 1. This represents a decrease of approximately \$61M (8.7%). [This is the 6th year of the 7-year phase-in of the dedication of 1 cent of the 5 cent sales tax for SBA.]

There are four outside sections that impact the MSBA and, by default, cities and towns. The most significant of these proposals is outside section #33, which eliminates the minimum 40% reimbursement rate. This would impact those communities, of which Brookline is one, who have a base reimbursement rate that is below the 40% threshold. If this were to become law, our reimbursement rate would be 34.58%. Outside section #34 would effectively reduce the amount of incentive points a community could receive. Outside section #65 appears to have \$150M that was transferred to the MSBA in 2004 sent back to the General Fund, which would reduce the funds the MSBA has available for project reimbursements. Lastly, outside section #89 would authorize the MSBA to manage the Qualified School Construction Bond program, which was part of the American Recovery and Reinvestment Act (ARRA). It is not yet known whether this means they would be the beneficiary of the no-interest loans or if municipalities would be.

4. **Community Policing** – this appropriation is eliminated (\$21.4M). All versions of the budget have eliminated this program. Until being reduced by \$15K in October as part of the 9C cuts, the Town was receiving a \$59K grant.
5. **Shannon Grants** – the SWM proposal eliminates all funding (\$13M), the same proposal as the HWM. House 1 level-funded these anti-gang grants at \$13M while the House final approved \$6.5M. Brookline received \$30K in FY09.
6. **SAFE** – this program is eliminated. In FY09, \$1.25M was budgeted and the Town received \$7K. All versions of the budget have eliminated this program.
7. **Firefighter Equipment Grants** – this program is eliminated. In FY09, Town received \$16K. All versions of the budget have eliminated this program.
8. **CJTC Fee** – the line-item language requires the CJTC to charge municipalities \$2,500 per recruit, an amount that is \$200 less than the current charge. This is the same proposal as the House. The Governor’s budget included a proposal to fund police training through an automobile insurance surcharge.
9. **Chapter 90 (Road Construction)** – in April, 2008, the Governor signed an “immediate needs” transportation bond bill that included \$150M for FY09. In August, 2008, the Governor then signed a transportation bond bill that included \$350M in bond authorizations for FY10 and FY11.
10. **MWRA Debt Service** – all funding (\$20M) is eliminated. This is the same proposal as the House. The Governor’s budget included \$10M, which was contingent upon expansion of the bottle bill. This will negatively affect Brookline’s MWRA Assessment in FY10.

A number of School grant accounts have been cut, including the following:

- School Health (\$10.6M, 37%)
- Universal Pre-School (\$7.6M, 66%)
- Kindergarten Expansion (\$4M, 13%)
- Early Literature (\$3.2M, 100%)
- MCAS Assistance (\$3.3M, 26%)

CONCLUSION

By using \$1.5B less in base revenue, and not including any sales tax proposals, the SWM had to cut deeply across all state budget line-items, far more than either the Governor or House did in their budgets. The statewide Cherry Sheet aid cut is approximately \$677M, or 12%. If you add Circuit Breaker, METCO, and other school grant programs, the cut to local government is at least \$800M, or 13%. To say the SWM presents a challenge to municipalities is an understatement. Even if the Senate eventually adopts a sales tax increase similar to what the House did, the fact that the SWM budget uses \$1.5B less in base revenue means that it will be nearly impossible to get to the local aid level of the Governor’s budget, let alone the final House budget, which resulted in the Town receiving \$737K more in state aid than assumed in our budget.

The result of the SWM budget for Brookline is an additional \$1.35M in local aid cuts above what was included in the Governor's budget. This would bring the total FY10 local aid cut to \$3.9M, or 28%. As we have discussed with the School Administration, contingency plans are necessary and should be adopted if the final state budget results in a net local aid figure that is less than what is in the budget going to Town Meeting. If you have any questions on any of the above and/or other information related to the Governor's proposal, please let me know.

Town Administrator Richard Kelliher added that the budget deficit is now reflecting a difference of \$1.25 million dollars if the Senate Ways and Means budget holds up. Both the Town and the School Department have been working closely together on this deficit. Mr. Kelliher added that the Fall Town Meeting or a Special Town Meeting, additional budget adjustments would be made if needed.

Selectman DeWitt asked about the Quinn Bill, would the program be eliminated or the funding? Mr. Kelliher replied that the House budget eliminated half the funding, but also eliminated any new enrollment of the Quinn as of July 1, 2009. Final language would need to be taken up. Brookline has contractual agreements on the Quinn Bill, which the Town agrees to share in the under-funding by the State.

Selectman Benka asked about any meals and sales tax discussions. Mr. Cronin replied that State House News indicates that there is a possibility of an increase there.

The Board thanked the Town Administrator, and Deputy Town Administrator for the update.

COMMENT

A member of the audience wanted to comment on the change of manager for the Roadhouse Inc.

Selectman Goldstein recused himself

Mathew Jakubowski stated that he has an issue with the establishment for noting that his wife was a recent manager there. He stated that his wife Helen Jacques has not been employed there since November of 2008, but she has appeared on record up until recently. He is dismayed that the establishment took so long to take action on changing the Manager's name on the license.

There being no further action, the Chair adjourned the meeting at 10:00 p.m.

ATTEST

IN BOARD OF SELECTMEN

MAY 26, 2009

**Present: Chairman Nancy Daly, Selectmen Betsy DeWitt, Jesse Mermell,
Richard Benka and Kenneth Goldstein.**

PUBLIC COMMENT

Public Comment period for citizens who requested to speak to the Board regarding Town issues not on the Calendar.

There was no public comment.

COMMON VICTUALLER RENEWAL

The Board considered the question of renewing the Common Victualler license held by Allen Gellerman d/b/a Rubin's at 500 Harvard Street for the remainder of 2009.

On motion, it was unanimously (5-0)

VOTED: to renew the Common Victualler license held by Allen Gellerman d/b/a Rubin's at 500 Harvard Street through the end of the year

CONTRACT

The Board considered the question of awarding and executing Contract No. PW/09-21 "Landscape Improvement to Juniper Playground" in the amount of \$298,991.00 with Emanouil Brothers, Inc. of Chelmsford. Said contract to be funded from account 1842G008 6C0007.

On motion, it was unanimously (5-0)

VOTED: to award and execute Contract No. PW/09-21 "Landscape Improvement to Juniper Playground" in the amount of \$298,991.00 with Emanouil Brothers, Inc. of Chelmsford. Said contract to be funded from account 1842G008 6C0007.

APPROPRIATION TRANSFER

The Board considered the question of approving the following appropriation transfer within the Recreation Department budget:

FROM:	6304SL04 539020	\$13,840.00
	Youth Sports	
TO:	6308SL04 525250	\$13,840.00
	Teen Programs	
FROM:	6304SL04 539020	\$14,201.00
	Youth Sports	
TO:	6312SL04 539020	14,201.00
	Adult Programs	

On motion, it was unanimously (5-0)

VOTED: to approve the following appropriation transfer within the Recreation Department budget:

FROM:	6304SL04 539020	\$13,840.00
	Youth Sports	
TO:	6308SL04 525250	\$13,840.00
	Teen Programs	
FROM:	6304SL04 539020	\$14,201.00
	Youth Sports	
TO:	6312SL04 539020	\$14,201.00
	Adult Programs	

CDBG FUND CHANGES

The Board considered the question of making the following changes to the FY2009 CDBG Funds:

End the FY2009 After Hours U Program grant agreement with the Town for use of CDBG funds.

Approve an amendment to the FY2009 Home and Escort Linkage Program (HELP)

Approve an amendment to the FY2009 Jobs Opportunities for Elders Program (JOBS)

Approve the transfer within the FY2009 CDBG Funds:

**FROM:
FY2009
After Hours U \$3,550.00
1895 G009 558043**

**TO:
FY2009 Home Escort
and Linkage Program \$3,550.00
1872 G009 510101**

Approve the transfer within the FY2009 CDBG funds

**FROM:
FY2009 After Hours U \$2,511.00
1895 G009 558043**

**TO:
FY2009 Job Opportunities
for Brookline Elders \$2,511.00
1872 G009 510101**

Director of Planning and Community Development Jeff Levine presented this request after consultation with the Town's HUD representative. Ruthann Dobek stated she was pleased to have the opportunity to continue these programs at the proposed levels through the end of this fiscal year.

CDBG FUND CHANGES

Jeff Levine noted that the HUD representative cautioned about ensuring that the Town proceed within HUD regulations. Selectmen Benka thanked everyone for their work in getting this done in a timely fashion.

On motion, it was unanimously (5-0)

VOTED: to make the following changes to the FY2009 CDBG Funds:

End the FY2009 After Hours U Program grant agreement with the Town for use of CDBG funds.

Approve an amendment to the FY2009 Home and Escort Linkage Program (HELP)

Approve an amendment to the FY2009 Jobs Opportunities for Elders Program (JOBS)

Approve the transfer within the FY2009 CDBG Funds:

FROM:
FY2009
After Hours U \$3,550.00
1895 G009 558043

TO:
FY2009 Home Escort
and Linkage Program \$3,550.00
1872 G009 510101

Approve the transfer within the FY2009 CDBG funds

FROM:
FY2009 After Hours U \$2,511.00
1895 G009 558043

TO:
FY2009 Job Opportunities
for Brookline Elders \$2,511.00
1872 G009 510101

COMMITTEE OF SEVEN

The Board considered the question of amending their vote of May 12, 2009 appointing Michael Burstein as a Library designee for the Committee of Seven for the Waterproofing Repairs to the Plaza of the Main Library and appointing Karen Livingston in his stead.

On motion, it was unanimously (5-0)

VOTED: to amend the Board's vote of May 12, 2009 appointing Michael Burstein as a Library designee for the Committee of Seven for the Waterproofing Repairs to the Plaza of the Main Library and appointing Karen Livingston in his stead.

TEMPORARY WINE & MALT LIQUOR LICENSE

The Board considered the question of granting a temporary Wine and Malt beverages license to Pine Manor in connection with the following events to be held 400 Heath Street.

**Bar Mitzvah (Falk) June 6th
6:00 p.m. – 11:00**

**Party (School Teachers) June 11th
4:30 p.m. – 6:30 p.m.**

On motion, it was unanimously (5-0)

VOTED: to grant a temporary Wine and Malt beverages license to Pine Manor in connection with the following events to be held 400 Heath Street.

**Bar Mitzvah (Falk) June 6th
6:00 p.m. – 11:00**

**Party (School Teachers) June 11th
4:30 p.m. – 6:30 p.m.**

TEMPORARY ALL KINDS LIQUOR LICENSE

The Board considered the question of granting a temporary All Kinds of Alcoholic beverages license to Larz Anderson Auto Museum in connect ion with a Wedding Reception to be held on June 13, 2009 from 3:30 p.m. to 12M at 15 Newton Street.

On motion, it was unanimously (5-0)

VOTED: to grant a temporary All Kinds of Alcoholic beverages license to Larz Anderson Auto Museum in connect ion with a Wedding Reception to be held on June 13, 2009 from 3:30 p.m. to 12M at 15 Newton Street.

BCMH SUPPORT LETTERS

The Board considered the question of approving and executing a letter to Senator Edward M. Kennedy and Senator John Kerry supporting the Brookline Community Mental Health Center's FY10 request for a federal appropriation for its Women's Fund initiative, serving our Town's most vulnerable women and teen girls.

On motion, it was unanimously (5-0)

VOTED: to approve and execute a letter to Senator Edward M. Kennedy and Senator John Kerry supporting the Brookline Community Mental Health Center's FY10 request for a federal appropriation for its Women's Fund initiative, serving our Town's most vulnerable women and teen girls.

POLICE PERSONNEL

The Board considered the question of authorizing Chief Daniel O'Leary to requisition the State Human Resource Division for a promotional list for the rank of Permanent Police Sergeant.

Chief O'Leary explained the background on the Sergeant vacancy. Town Administrator Richard Kelliher noted that promotions are exempt from the hiring freeze.

On motion, it was unanimously (5-0)

VOTED: to authorize Chief Daniel O’Leary to requisition the State Human Resource Division for a promotional list for the rank of Permanent Police Sergeant.

POLICE PERSONNEL

The Board considered the question of authorizing conditional employment to the following student officers:

**Duane Danforth
James Ballard
Elbert Jordan
Lauren O’Connor
Brandon Stone
Michael Fay**

Chief O’Leary explained that these vacancies had been authorized to be filled long before the current hiring freeze was instituted. The conditional offers of employment will enable the Department to conduct full medical and psychological examinations of these candidates. Members of the Board commented on the diverse backgrounds that the appointees bring to the Department.

On motion, it was unanimously (5-0)

VOTED: offer conditional employment to the following student officers:

**Duane Danforth
James Ballard
Elbert Jordan
Lauren O’Connor
Brandon Stone
Michael Fay**

TOWN MEETING WARRANT ARTICLES

The Board considered reconsideration of the following Town Meeting Warrant Articles:

- | <u>NO.</u> | <u>TITLE</u> |
|-------------------|-------------------------------|
| 8. | Annual Appropriations Article |

Virginia LaPlant explained the background of the proposed Resolution to urge the Transportation Board to proceed with traffic calming measures on Welland Road as soon as possible. Todd Kirrane described the history of these items going back to Transportation Board actions in April 2000. He noted that the Transportation Board returned to this matter at its most recent meeting on May 7, 2009 after re-conducting traffic flow measurements in April in response to requests from neighbors.

Members of the Board expressed support for the traffic issues on Welland Road to be addressed. However, after Todd Kirrane explained that the \$100,000 budget for 2010 is already programmed for projects at the Devotion School and Riverway neighborhood, Chairman Daly suggested that the matter be referred to the Transportation Board accompanied by a letter from the Selectmen urging expeditious action on the Welland Road request.

On motion, it was (5-0)

VOTED: To refer the Welland Road traffic issue back to the Transportation Board with a letter from the Board of Selectmen urging expeditious action.

- | <u>NO.</u> | <u>TITLE</u> |
|-------------------|---|
| 9. | To Amend the Budget to Adequately Fund Five Engine Companies and Two Ladder Companies for the Entire FY10 (Inchierca) |

Selectmen Mermell moved reconsideration of Article 9. (4-0-1) Goldstein

VOTED: to reconsider Article 9

TOWN MEETING WARRANT ARTICLES (CONT'D)

Nancy Daly stated that this Resolution would have the effect of positioning the particular subject matter as having greater priority than other important budget needs. Other member of the Board concurred.

Selectmen Mermell moved NO ACTION on Article 9 (5-0)

On motion, it was unanimously

VOTED: NO ACTION on Article 9 - To Amend the Budget to Adequately Fund Five Engine Companies and Two Ladder Companies for the Entire FY10 (Inchierca)

<u>NO.</u>	<u>TITLE</u>
10.	To Amend the Budget to Adopt NFPA Standard 1710 for the Entire FY10 (Inchierca)

No Reconsideration moved.

<u>NO.</u>	<u>TITLE</u>
15.	Planning Board Membership (Mattison)

Selectmen Mermell moved reconsideration (4-0-1) (Goldstein)

VOTED: to reconsider Article 15

Selectman Daly expressed continued preference for referral to the Committee on Town Organization and Structure.

Selectman DeWitt moved referral with the petitioners' amended language.

On motion, it was (4-0-1) Goldstein

VOTED: to refer Article 15 with the petitioners amended language to the Committee on Town Organization and Structure.

NO. TITLE

23. Resolution concerning the Citizen Complaint Policy (Farlow)

Marty Rosenthal explained his amendment as a clarification that would separate Civil Service procedure from policy considerations that the Board is urged to make. Chief O'Leary argued that Article 23 would diminish the advantages set of the CRC proposals.

Selectman DeWitt stated as a non-attorney she believes the approach recommended by the CCRC as drafted by Associate Town Counsel Patricia Correa constitutes a significant improvement over past policy.

Selectman Benka also expressed his reservations about Article 23. Chairman Daly noted that while she is still sorting out the various issues associated with the policy revisions, she does not need a Warrant Article to instruct her how to proceed.

Chairman Daly moved reconsideration of Article 23 (4-0-1) Goldstein

VOTED: to reconsider Article 23

Chairman Daly moved **NO ACTION** on Article 23. (5-0)

VOTED: NO ACTION on Article 23 Resolution concerning the Citizen Complaint Policy (Farlow)

24. Resolution to Support a Public Surveillance Camera Pilot Program (Selectmen)

There was no reconsideration moved on Article 24.

25. Resolution Opposing Police Surveillance Cameras from the Department of Homeland Security (Wunsch/Farlow)

There was no reconsideration moved on Article 25.

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**26. Resolution calling for the adoption of a Pay As You Throw
(PAYT) Municipal Waste System (Selectmen)**

There was no reconsideration moved on Article 26

Meeting adjourned at 6:53 p.m.

A T T E S T

**Richard J. Kelliher
Town Administrator**