

ARTICLE 30

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

**Recommendation:**

On May 10<sup>th</sup>, the Advisory Committee voted 11-12-1 to recommend No Action on Warrant Article 30, as amended by the Ad Hoc Subcommittee.

Subsequent to its vote, the Committee learned that the Select Board voted Favorable Action on an amended resolution. Given that the Advisory Committee’s initial vote on Article 30 was essentially tied, the Committee will consider and possibly vote on the amended resolution at its meeting on May 24<sup>th</sup>.

<p><b>Executive Summary:</b></p>	<p>The November 2016 Town Meeting passed a resolution to have the Town pursue the development of affordable mixed-income housing for seniors using the air rights over the Town-owned 39-space parking lot on Kent and Station Streets. Air rights development was later found to be impracticable. Upon receiving proposals that incorporated the parking within the structure, the project was determined to be too costly for the Town, given that less expensive options for affordable senior housing likely could be available.</p> <p>The petitioners’ original version of WA30 would eliminate the requirement to maintain parking, which would reduce the cost of construction, thereby making the housing development more affordable. The Kent/Station Street lot, however, is the only permitted all-day parking currently available in Brookline Village and is relied on heavily by employees of businesses in the neighborhood and by residents who need parking for support services.</p> <p>An amended resolution drafted by the Ad Hoc Subcommittee urges the Town to continue pursuing the development of senior housing at that site and eliminates the requirement to maintain parking onsite, but requires that alternative permitted all-day parking be located within Brookline Village without reducing short-term metered parking for customers and visitors. The Advisory Committee had a tie vote on whether to recommend the amended version, with the Chair breaking the tie to recommend No Action.</p> <p>The Petitioners now support the amended resolution, though further amended by allowing for a “limited” amount of short-term metered parking to be used for all-day parking. The Select Board, which originally was not going to take a position, recommends favorable action on the amended resolution. The Advisory Committee will consider this amended resolution at its meeting on May 24<sup>th</sup>, prior to the convening of Town Meeting.</p>
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Voting Yes will...	<b>From a Town operations perspective, passage of the amended WA30 will require the Transportation Department and the Department of Planning and Community Development to identify appropriate alternative parking options, and for the latter department to issue a revised RFP, review proposals for the possible selection of a developer for senior affordable housing, provide oversight of construction, and provide Town services to residents of the new development. Depending on the location of the alternative parking, staff time will also be needed to enforce compliance.</b>
Voting No will...	<b>Voting No will have no impact on Town operations.</b>
Financial impact	<b>The cost of staff time required to work on developing both alternate parking options and a new RFP for the housing, selecting a developer and providing oversight over construction and providing services to the residents of the development. If alternative permitted parking is to be located on residential streets, the cost of staff time needed to enforce parking restrictions.</b>
Legal implications	<b>Review of proposals from a legal perspective and drafting of contractual obligations between the Town and the developer, as well as potential issues that may arise from the presence of a privately developed affordable senior housing development on Town property.</b>

**Introduction**

The November 2016 Town Meeting passed WA34, a resolution to have the Town “pursue a suitable air rights development of age-restricted affordable mixed-income housing over the existing Town-owned parking lot...situated between Kent and Station Streets...” A committee was formed, which determined that air rights development was not practicable, and so issued an RFP for the structure to incorporate the public parking that would otherwise be lost upon the redevelopment of the site.

The selected developer presented a high-quality but costly proposal for 54 units, plus replacement of the 54 public parking spots and 9 additional parking spots for the sole use of the housing development. The developer would obtain a 99-year ground lease. The Town would be required to provide a \$6.3 million subsidy for the residential component (54 units and 9 parking spots) and \$5.8 million for the replacement of the 54 public parking spots that are currently provided by the parking lot, for a total subsidy of \$12.1 million.

The estimate of the Town subsidy increased from \$7.1 million in 2019 to the \$12.1 million currently projected as a result of both increased construction costs generally and following a determination that the project would be subject to public bidding and prevailing wage requirements because the Town would be facilitating a “public project.”

The Kent Street Negotiation Committee decided that the cost to the Town was too high to justify going forward with this project, stating that “it may be more prudent to invest

resources in multiple projects that could potentially yield many more affordable units rather than investing in one very expensive project.”

The petitioners filed WA30 to eliminate the requirement that public parking be maintained on site as part of the project. Without that requirement, the total subsidy that would be required would be reduced, thereby making the redevelopment of the site as senior housing more affordable. It would, however, eliminate the only available all-day permitted parking lot for all of Brookline Village.

### **Evaluation Methodology/Research**

November 2016 Town Meeting Warrant Article 34 and Explanation  
Amended Warrant Article 30 - Kent-Station Street Senior Affordable Housing Resolution  
AC Questionnaire for WA30, including supplemental answers  
Todd Kirrane Memo re WA30 Analysis of Parking - Available and Needed in Brookline Village  
Todd Kirrane May 4, 2022 Email in response to questions re WA30  
Housing Advisory Board Statement  
Brookline Village Businesses Association Letter  
Kent Station Street Project Negotiating Team 4.12.22 Memo  
Economic Development Advisory Board Article 30 Memo  
Brookline Chamber of Commerce Letter on WAs 22, 25 and 30  
Listing of businesses that oppose WA-30  
Petition signed by 73 Brookline Village residents and businesses: PROTECT OUR COMMUNITY AND PREVENT SHORT SIGHTED DEVELOPMENT  
Public Comment Letters from individual business owners and residents

### **Discussion**

The location of the Kent/Station Street lot has many attributes that make it well-suited for senior housing. It is walkable, making it possible for residents to have access to stores, restaurants, and green space on the Emerald Necklace without needing a car. It also is adjacent to the MBTA station, which facilitates accessibility for support staff. And, as the Petitioners noted, adding 50-60 affordable senior rental units in Brookline Village would provide opportunities for more lower-income seniors to remain in Brookline, while also increasing the customer base for neighborhood businesses.

At the same time, the Kent/Station Street parking lot is the only permitted all-day parking lot currently available in Brookline Village and is relied on heavily by employees of businesses in the neighborhood and by residents who need parking for support services. With continued construction of new homes and offices, parking needs will increase over the years. Moreover, businesses and residents supported the 2016 resolution because it committed to retaining parking.

At the well-attended public hearing of the Ad Hoc Subcommittee, Brookline Village business owners explained that their ability to survive as businesses requires parking options for their employees. Hiring sufficient numbers of employees has been

challenging and without the availability of all-day parking, it will be that much more difficult to attract employees. Many employees live in communities that are far from Brookline, and that translates into long commutes. One business owner has employees traveling from Providence, Worcester, Harvard and Milton, among other communities, and public transportation options are simply not adequate to enable them to use it on a daily basis to get to work. The Kent/Station Street lot is the only all-day parking available for these employees. Contractors and other persons who support the functioning of businesses must also have places to park for more than 2-3 hours. And with the increasing density of Brookline Village, finding any kind of parking has become more and more difficult. One business owner noted that because the One Brookline Place Garage is expensive, many customers park elsewhere, further restricting any available public parking. They noted that Brookline Village is known for its vibrant commercial area, and the Town as a whole benefits from the higher tax rates charged to businesses. But without parking for customers, they will go elsewhere.

Residents also made comments about their difficulties finding parking, and that, as the number of residential units and offices continue to grow in Brookline Village, the challenges have become increasingly difficult. One commenter noted that as an elderly resident who wants to age in place, the increasingly challenging parking situation might force her to move from Brookline, since she often has no place to park to unload her groceries, that her own car must be parked further and further from her home, and that persons providing support services have no place to park. Another resident noted that ever since COVID, she has been working from home. She has accepted paying parking tickets on a regular basis as a means to deal with parking constraints.

Several residents said that they had supported the 2016 warrant article because it did not replace parking but rather envisioned using the parking lot's air rights for the development. They urged the Town to find a workable solution prior to the loss of the lot.

Some residents spoke in opposition to the development, whether or not alternative parking were to be provided. They noted that the parking lot provides some open space in an increasingly crowded area, that it is used to provide access to the MBTA from Kent Street, that it is used for play by neighboring children during snow periods, that residents living adjacent to the parking lot would lose sunlight if the new structure were to be built on that small lot, and that the structure itself would have limited sunlight due to its configuration.

The amended version of WA30 arose as a way to balance the needs of the Brookline Village businesses and residents for parking with the Town's commitment to adding units of affordable senior housing to the overall housing stock. It supports the continued pursuit of building an affordable senior housing development on the site, but not before first identifying an alternative solution to replace the all-day public parking currently available at the site. In light of the need for customer and visitor parking, the amended warrant article also stipulated that the alternative all-day parking not replace other

metered parking used for short-term purposes. Half of the Advisory Committee members supported this amended warrant article as a good way to balance these varying needs.

An equal number of Advisory Committee members felt that even with the proposal to seek alternative parking, the decision to continuing the pursuit of the Kent/Station Street lot for an affordable housing development was not justified for the following reasons:

- The original proposal envisioned an air-rights development, and we have now learned that this is not feasible. As the businesses and residents have stated, the parking lot serves an important need and without the ability to make use of air rights, the reason to select this site in the first place is no longer applicable.
- Continuing to pursue this project without having any real plan for how to address the loss of parking could be a waste of staff time. The Town has already enquired about parking possibilities at the new garage at One Brookline Place and was told that it would not be available. On-street permitted parking, which is provided to teachers, is already at 40% usage, which, in general, is the maximum percent of on-street spaces taken for permitted all-day parking. Making use of an even higher percent of on-street parking for additional permitted parking will exacerbate further the already tight parking for customers and visitors to Brookline Village.
- Given the site's location by the MBTA, it could be more valuable to the Town if sold or leased for commercial use.
- An overarching concern is that the site was selected without an overall town planning process that includes analyses of parking needs and the most appropriate locations for additional housing developments. Even if lacking that, the Town is planning a Parking Management and Utilization study for Coolidge Corner, and the approach used there could be applied to Brookline Village before making any decisions about which site to identify for such a development.

With both Favorable Action and No Action receiving an equal number of votes by Advisory Committee members, the Chair voted in order to break the tie, resulting in a recommendation for No Action on WA30 as amended by the Ad Hoc subcommittee by a vote of 12-11-0. The amended article, with a modification to allow for the use of a limited number of metered parking to replace some of the parking lost on the Kent/Station Street lot, has since been supported by the Petitioners, and the Select Board has voted to recommend Favorable Action. In light of the close vote by the Advisory Committee for No Action, the Committee will take up and possibly vote on the petitioners' amended article on May 24<sup>th</sup>.

Article Description	Kent/Station Street Lot
<b>AC recommendation (Favorable Action unless indicated)</b>	<b>NO ACTION, 12-11-2</b>
Scott Ananian	N
Carla Benka	Y
Ben Birnbaum	A
Harry Bohrs	
Cliff Brown	N
John Doggett	Y
Katherine Florio	N
Harry Friedman	
David-Marc Goldstein	Y
Neil Gordon	A
Susan Granoff	N
Kelly Hardebeck	N
Anita Johnson	N
Georgia Johnson	Y
Alisa Jonas	N
Janice Kahn	N
Carol Levin	Y
Pam Lodish	N
Linda Olson Pehlke	Y
Donelle O’Neal, Sr.	Y
David Pollak	N
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	N
Dennis Doughty	Y

UPDATE:

On May 10<sup>th</sup>, the Advisory Committee voted NO ACTION on an amended version of Warrant Article 30, but the vote was very close, with a tie broken only upon a vote by the Advisory Committee Chair. On May 24, the Advisory Committee reconsidered its May 10<sup>th</sup> vote, continuing its discussion on May 31, at which time it voted to recommend FAVORABLE ACTION on the May 17 Select Board motion, with 11 votes in favor, 3 opposed, and 8 abstentions. The Select Board motion was for largely the same amended Resolution that the Advisory Committee had voted not to recommend during its May 10<sup>th</sup> meeting. The only change allows some short-term metered parking to be used to replace the lost full-day spaces.

The Advisory Committee changed its position because Brookline Village business community representatives, when questioned by the Advisory Committee, stated that they were willing to support the amended compromise version since it guarantees replacement of the all-day parking spots if and when the senior housing development is built. Nonetheless, they continue to be concerned that there likely will be a net loss of public parking in the Village as all-day parking spots will likely replace those used for more short-term parking at the same time that both commercial and residential growth will put increasing pressure on parking needs. Partly for this same reason, as well as for the other reasons discussed in the original report of the Advisory Committee, many members of the Advisory Committee did not vote in support of FAVORABLE ACTION, with a few members voting in opposition and a substantial number of members voting to abstain.

Article Description	Amend recommendation to FAVORABLE ACTION on SB Motion on WA30
<b>AC recommendation (Favorable Action unless indicated)</b>	<b>11-3-8</b>
Scott Ananian	Y
Carla Benka	A
Ben Birnbaum	A
Harry Bohrs	
Cliff Brown	Y
John Doggett	A
Katherine Florio	Y
Harry Friedman *	Y
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Anita Johnson	Y
Georgia Johnson	
Alisa Jonas	Y
Janice Kahn	A
Carol Levin	
Pam Lodish	A
Linda Olson Pehlke	Y
Donelle O’Neal, Sr.	N
David Pollak	Y
Stephen Reeders	A
Carlos Ridruejo	A
Lee Selwyn	N
Alok Somani	A
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	

ARTICLE 34

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

**Recommendation:** The Advisory Committee recommends Favorable Action, by a vote of 17-3-0.

<b>Executive Summary</b>	<p>Warrant article 34 is a non-binding resolution to limit large group communications that are not publicly readable in real time during Town Meeting sessions. De minimis communications are not within the scope of the resolution, and enforcement relies on the judgment of Town Meeting members. The resolution calls for this change to be made immediately upon passage.</p> <p>Under Massachusetts law, the rational basis of a warrant article includes the written explanation of the article <b><u>and the public deliberations that occur during the Town Meeting session.</u></b> The public record of Town Meeting proceedings are likely to be used should a bylaw be legally challenged. The existence of large-scale private deliberations undermines the reliability of that otherwise public record.</p>
<b>Voting Yes will</b>	Adopt this resolution as the will of Town Meeting
<b>Voting No will</b>	Suggest that the will of Town Meeting is to allow private, group messaging during Town Meeting
<b>Financial</b>	There is no direct financial impact to the Town. The potential impact of a less than complete record of Town Meeting deliberations cannot be measured.
<b>Legal</b>	The potential impact of a less than complete record of Town Meeting deliberations cannot be measured.

**Discussion**

Warrant Article 34 is a Resolution of Town Meeting that seeks to limit electronic communications among large groups of Town Meeting Members during the proceedings of Town Meeting. It seeks to discourage such groups from communicating via private electronic channels, and thus create greater transparency during deliberations.

This article would only apply to exchanges that take place during Town Meeting and that are not visible to the public. They would not apply to de minimis communications. The resolution would be enforced only by the judgment of each individual Town Meeting Member.

During an in-person Town Meeting, each Member's behavior and their level of engagement is clearly visible to the group and, because of social norms, Members generally refrain from, *inter alia*, engaging in back-channel conversations. During remote meetings, such norms are less often adhered to, as it is easier for attendees to engage in side conversations without others noticing. The Town Meeting Handbook, which provides guidance on general Town Meeting conduct and conventions, presumed that the proceedings of Town Meeting would be conducted in-person, and, accordingly, guidance on the use of electronic devices is limited to a reminder to silence cell phones, and limits the use of cell phones only to access documents relevant to the proceedings.

Under Massachusetts law, the rational basis of a warrant article includes the written explanation of the article **and the public deliberations that occur during the Town Meeting session.** The public record of Town Meeting proceedings are likely to be used should a bylaw be legally challenged. The existence of large-scale private deliberations undermines the reliability of that otherwise public record. Additionally some tools that support group conversations offer encryption and/or automatic message deletion, which frustrates document production, whether it be a public records request or by subpoena.

Further, the business of Town Meeting affects the Town's residents, businesses and the Town's future overall. These matters deserve the full attention of Town Meeting Members during the proceedings, as key information and pro and con arguments are shared, by speakers, with Members.

The Advisory Committee recognizes the First Amendment implications of limiting private conversations, but as noted by this Article's petitioners, free speech is not an unlimited right. **The Advisory Committee found the petitioners' arguments regarding both public deliberations and a complete public record thereof to be compelling.**

## **Recommendation**

The Advisory Committee, by a vote of 17-3-0, recommends Favorable Action on Article 34.

Article Description	Transparency during TM deliberations
<b>AC recommendation (Favorable Action unless indicated)</b>	<b>17-3-0</b>
Scott Ananian	N
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman *	
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O’Neal, Sr.	
David Pollak	Y
Stephen Reeders	N
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	

ARTICLE 35

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

**Recommendation:** The Advisory Committee did not make a recommendation on Warrant Article 35.

<b>Executive Summary</b>	Warrant article 35 is a non-binding resolution that seeks to make future email communications sent to the Town Meeting Members Association (TMMA) email list publicly readable. The resolution calls for this change to be made no later than September 1, 2022.
<b>Voting Yes will...</b>	Encourage the TMMA Board to make future email communications sent to the TMMA email list publicly readable. by September 1, 2022
<b>Voting No will...</b>	May send a message to the TMMA Board to not make the TMMA list publicly readable

**Introduction**

The goal of warrant article 35 is to improve the transparency of the discussions Town Meeting members have via email on the TMMA list by encouraging the TMMA board to make the list publicly readable by September 1, 2022. The resolution would apply only to communication made after the change to the list was implemented.

**Discussion**

The Advisory Committee discussion centered around three topics:

- whether a resolution of Town Meeting was an effective way to request this change
- the technological changes necessary to change access to the list
- the impact that making the TMMA list publicly readable might have on the openness of discussions

The Town Meeting Members Association (TMMA) is an independent organization that operates the TMMA email list, which all members of Town Meeting are invited to join. TMMA volunteers maintain and moderate the list. People who are not members of Town Meeting, i.e., at-large members of the Advisory Committee, are part of the list to better facilitate communication about upcoming meetings and hearings; and to provide additional detail on issues coming before Town Meeting. The petitioners feel this information should be more widely available as it will help members of the public better

understand the matters coming before Town Meeting and the positions taken by their TMMs. They also feel that bringing this warrant article will allow Town Meeting to discuss the change and provide input to the TMMA.

Members of the TMMA Board expressed concern about the warrant article itself and about the level of effort needed to implement this change. They noted this warrant article targets an independent organization and asks them to make a specific change. While the petitioners cited other warrant articles, such as the ban on crated veal and fur products, they felt were similar, none asked a single organization to make a change to the services they provide or operational processes. Requests have been made to the TMMA leadership in the past to make the list more widely readable and, historically, the Board has not taken action on those requests. Warrant article 35 is a nonbinding resolution and its passage at Town Meeting does not guarantee the requested change will be implemented.

There was recognition and appreciation that the TMMA list is maintained by volunteers and this change would require additional work to configure a separate read-only audience. Maintaining two lists would likely require additional ongoing work as well as it was unclear if each new member of the public wishing to read the list would need to be added manually via a request process.

Finally, there was some discussion about the potential effect that opening the list might have. The TMMA list is viewed as a safe space to ask questions and members might not feel as comfortable asking questions if the list was more widely readable. It was also pointed out that relatively few TMMs post in the list which could be viewed by voters as a lack of engagement and Select Board and Advisory Committee members are governed by the OML and cannot participate in discussions on the TMMA list.

The Advisory Committee (by a vote of 16-2-2) chose to not make a recommendation on this warrant article because it felt it had no better understanding of the subject matter of this Warrant Article and the decision should be left to individual Town Meeting Members.

Article Description	TMMA email list
AC recommendation (Favorable Action unless indicated)	No recommendation, 16-2-2
Scott Ananian	N
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman *	
David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	A
Kelly Hardebeck	
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	N
Janice Kahn	
Carol Levin	
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O’Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	