

# MODERATOR

Edward N. Gadsby, Jr.

## ADVISORY COMMITTEE

Nancy Daly, Chair, 161 Rawson Road. . . . .	232-0728
Harry K. Bohrs, Vice Chair, 97 Toxteth Street. . . . .	566-3556
Carla Wyman Benka, 26 Circuit Road. . . . .	277-6102
Michael Berger, 112 Wolcott Road. . . . .	734-6139
Acheson H. Callaghan, Jr., 258 Walnut Street. . . . .	731-4737
Robert H. DeVries, 18 Acron Road. . . . .	731-8595
L. Branch Harding IV, 145 Woodland Road. . . . .	738-0716
Sytske V. Humphrey, 46 Gardner Road. . . . .	277-1493
Jonathan Karon, 94 Naples Road. . . . .	232-2558
Estelle Katz, 41 Park Street. . . . .	566-3457
Frederick Lebow, 71 Colchester Street. . . . .	739-1930
Roger R. Lipson, 622 Chestnut Hill Avenue. . . . .	232-0408
Pamela Lodish, 195 Fisher Avenue. . . . .	566-5533
Shaari S. Mittel, 309 Buckminster Road. . . . .	277-0043
Sergio Modigliani, 134 Salisbury Road. . . . .	735-9197
Charles Moo, 1853 Beacon Street. . . . .	232-8796
William B. Powell, 16 Columbia Street. . . . .	731-0013
Stanley L. Spiegel, 39 Stetson Street. . . . .	739-0448
Ronny M. Sydney, 1443 Beacon Street. . . . .	232-8986
Karen Wenc, 84 Summit Avenue. . . . .	232-4983
Neil Wishinsky, 20 Henry Street. . . . .	739-0181
Robin E. Coyne, Budget Analyst, Town Hall . . . . .	730-2115

NOVEMBER 13, 2001

SPECIAL TOWN MEETING

INDEX

**ARTICLE NO.**

**TITLE**

1. Approval of unpaid bills (Selectmen)
2. FY2002 budget amendments (Selectmen)
3. Approval of CDBG application (Planning)
4. Approval of naming the School Committee Room in Town Hall the James F. Walsh Room. (Selectmen/School Committee)
5. Dedication of a Footbridge on Boylston Street between White Place and Boylston Playground in memory of Brookline Veteran, William F. Kelly. (Veterans' Services Director)
6. Dedication of a pole at the entrance of the Water/Sewer Division located at 44 Netherlands Road in memory of Lawrence F. Doheny. (Petition of Chou Chou Merrill)
7. Amendment to the Zoning By-Law - As recommended by the Zoning By-Law Review Commission to modify FEMA Flood Insurance Program, Code of Federal Regulations 60.3 (page 93 of the Zoning By-Law). (Planning)
8. Authorization to convey land on Woodland Road, LOT B25D. (Planning)
9. Amendment to Article 8.15 of the Town By-Laws - Noise Control - to limit the hours of use of leafblowers and similar landscaping devices. (Moderator's Committee on Leafblowers)
10. Amendment to Town By-Laws - Creation of a Living Wage By-Law. (Moderator's Committee on Living Wage)
11. Amendment to Town By-Laws – Creation of Living Wage By-Law. (Petition of Patricia Connors)

12. Appropriation of additional funds for the Carlton Street Foot Bridge. (Petition of Cathleen Cavell)
13. Appropriation of additional funds for the Main Library Renovation. (Petition of Ken Jacobson)
14. Renewal of Lease Agreements for Town-Owned Rental Properties. (Selectmen)
15. Appointment of a Moderator's Committee to study the possibility of creating a Municipal Power Company in Brookline. (Petition of Joseph Ross)
16. Resolution supporting school bus safety. (Petition of Nancy Erdmann)
17. Reports of Town Officers and Committees. (Selectmen)

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ARTICLE 1

FIRST ARTICLE

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

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SELECTMEN'S RECOMMENDATION

State statutes provide that unpaid bills from previous fiscal years may not be paid from the current year's appropriations without the specific approval of Town Meeting. The unpaid bills submitted for approval, totaling \$32,230.55, are for outside legal counsel and advertising.

The Board has reviewed the following bills and verified that they are valid obligations of the Town:

Kelly, Libby, and Hoopes	\$32,012.75
Banner Publications, Inc.	217.80

The Selectmen unanimously recommend FAVORABLE ACTION on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This Article seeks approval for payment of unpaid bills totaling \$32,230.55 for expenses incurred in prior fiscal years. At this Special Town Meeting, a nine-tenths vote is required for approval. Two of the bills are from Banner Publications for the insertion of two help wanted advertisements in the Bay State Banner newspaper. The dates that the ads were published and the respective amounts of each were January 27, 2000 for \$158.40 and May 4, 2000 for \$59.40, for a total of \$217.80. Due to apparent clerical oversight at Banner Publications, these bills were only recently received by the Town, despite year-end reminders from the Town asking that bills be sent out in a timely fashion.

The other bills, totaling \$32,012.75, were from the law firm of Kelly, Libby & Hoopes which was engaged by the Town to represent the individual defendants in a civil action brought against the Town and several Brookline police officers. Inasmuch as the interests of the Town might have conflicted with the interests of the individual defendants, the Office of Town Counsel, which represented the Town in this case, could not also represent the police officers and the Town was therefore required contractually to provide independent outside legal counsel for these officers.

The legal expenses at issue were incurred during the months of April, May and June, 2001, in preparing, with the collaboration of Town Counsel, a motion for Summary Judgment that resulted in the case being dismissed, with prejudice, on September 27, thus saving the Town the considerably greater expense of going to trial. The invoices for these expenses were received in early July at a time when neither the Town Counsel budget nor the Reserve Fund for fiscal 2001 had sufficient funds remaining to allow payment.

#### DISCUSSION

The Advisory Committee has reviewed these unpaid bills and determined that they represent legitimate obligations of the Town for services rendered and should be paid.

#### RECOMMENDATION

The Advisory Committee unanimously recommends FAVORABLE ACTION on the following vote:

- VOTED: To approve the payment of the following bills of previous years:
1. appropriate and transfer \$32,012.75 from the Liability Insurance Fund to the General Counsel Account to pay Kelly, Libby & Hoopes, for legal services rendered in Fiscal Year 2001, and 2. authorize the payment of \$217.80 from the Fiscal Year 2002 appropriation for Advertising in the Human Relations- Youth Services budget to pay Banner Publications, Inc. for advertising performed in Fiscal Year 2001.

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ARTICLE 2

SECOND ARTICLE

To see if the Town will raise and appropriate or appropriate from available funds additional funds to the various accounts in the fiscal year 2002 budget or transfer funds between said accounts, or act on anything relative thereto.

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SELECTMEN'S RECOMMENDATION

At this time, there are no amendments to the FY2002 budget. That may change, however, depending upon the final outcome of the state budget process. The state budget, late since July 1, includes many important funding items for the Town, most notably Chapter 70 funds and School Building Assistance program reimbursements.

Therefore, the Board unanimously recommends NO ACTION on the article.

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ADVISORY COMMITTEE'S RECOMMENDATION

Inasmuch as no amendments to the Town's fiscal 2002 budget are being offered, the Advisory Committee unanimously recommends a vote of NO ACTION under this Article.

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ARTICLE 3THIRD ARTICLE

To see if the Town will authorize the Board of Selectmen to file preapplications and applications under the Housing and Community Development Act of 1974, P.L. 93-383, as amended including an application for Community Development Block Grant funds for the general programs to be undertaken in FY2003 (Federal FY2002) in the amount of \$1,905,000 as the same may be amended; and authorize the Board of Selectmen to take such actions and file such other preapplications and applications as may be appropriate and necessary to obtain funds for such programs and such other funds to which the Town may be eligible; and to appropriate and to authorize the Board of Selectmen to expend funds received or to be received by the Town from the Department of Housing and Urban Development or other federal and/or state agencies as result of any said applications, or act on anything relative thereto.

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Since 1975, the Federal Department of Housing and Urban Development (HUD) has provided annual Community Development Block Grant funds to communities to develop comprehensive programs that meet one or more of the following statutory objectives.

1. BENEFIT LOW AND MODERATE INCOME PERSONS
2. PREVENT OR ELIMINATE SLUMS AND BLIGHT
3. MEET AN URGENT COMMUNITY NEED

For Brookline' Fiscal year 2003, which will begin on July 1, 2002, the amount of \$1,905,000 is estimated as Brookline's entitlement for eligible community development activities.

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SELECTMEN'S RECOMMENDATION

For fiscal year 2003, which will begin on July 1, 2002, the amount of \$1,905,000 is currently estimated as the Town's entitlement for eligible community development activities, based on the HUD budget being considered by Congress. The Community Development (CD) Committee has held its public hearings and has issued its recommendations. The diligence with which the Committee studied each program request and prepared its recommended budget is greatly appreciated.

The Board is in complete agreement with the CD Committee's recommendation, as the funding levels included in the budget allow for the continuation of important Public Service programs, much needed facility/playground improvements, and vital ADA-related projects.

Within the public services category, which is capped at 15% of total funding, a new Wellness Program is funded and the Youth Employment Program is increased by \$5,000 over the current fiscal year. These 11 programs span the various age groups of the Town, from the very young (Early Children Outreach) to the school-aged (Youth Employment Program) to the elderly (Brookline Elder Taxi System).

A total of \$475,000 is included for ADA-related projects. The funding will be used for elevators at two schools (Pierce and Driscoll) and for access-related issues at the Public Safety Headquarters Project. Coolidge Playground will be rehabilitated with \$200,000 of CD funding while various streets will be improved with \$219,720. Finally, \$111,200 is included for the BHA Child Safety Program, a new program under the Housing category that funds the installation of 3,120 child safety screens in three BHA family developments.

The Selectmen unanimously recommend FAVORABLE ACTION on the following vote:

VOTED: To authorize the Board of Selectmen to file preapplications and applications under the Housing and Community Development Act of 1974, P.L. 93-383, as amended, including an application for Community Development Block Grant funds for the general programs and in the amounts specified in the following chart to be undertaken in FY2003 (Federal FY2002) in the total amount of \$1,905,000, or as the same may be amended; and authorize the Board of Selectmen to take such actions and file such other preapplications and such other funds to which the Town may be eligible; and to appropriate and to authorize the Board of Selectmen to expend funds received or to be received by the Town from the Department of Housing and Urban Development or other federal and/or state agencies as a result of any said applications as follows:

#### FY2003 CDBG RECOMMENDED BUDGET

<u>PROGRAM REQUEST</u>	<u>AMOUNT</u>
<u>Program Management/Planning</u>	
1. CD Grant Administration	\$143,000
2. CD Comprehensive Planning	\$ 88,870
3. Legal/Professional Services	\$ 30,000
4. Preservation Planning	<u>\$ 67,160</u>
	\$329,030
<u>Housing</u>	
1. Housing Division	\$225,000
2. BHA Child Safety Program	<u>\$111,200</u>
	\$336,200



Architectural Barriers Removal/ADA

1. Primary School (ADA)	\$312,600
2. Police and Fire Safety Building	<u>\$163,000</u>
	\$475,600

Community Facilities

1. BCMHC Facilities Safety	\$ 31,900
2. Street Tree Removal and Replacement	\$ 30,000
3. Street Rehabilitation	<u>\$219,720</u>
	\$281,620

Parks

1. Coolidge Playground	<u>\$200,000</u>
	\$200,000

Public Services

1. BCMHC Adolescent Outreach Program	\$ 42,500
2. BCMHC Comp. Services for Children & Families	\$ 27,000
3. Early Childhood Outreach & Supportive Services	\$ 18,600
4. Wellness Program	\$ 5,250
5. Brookline Creative Start/Early Childhood	\$ 14,200
6. Youth Employment Program	\$ 80,000
7. Brookline Learning Project	\$ 8,000
8. After Hours U	\$ 15,000
9. Neighborhood Family Child Care	\$ 27,000
10. Brookline Elder Taxi System	\$ 35,000
11. Home Escort Linkage Program	<u>\$ 10,000</u>
	\$282,550

**GRAND TOTAL:****\$1,905,000**ADVISORY COMMITTEE'S RECOMMENDATIONBACKGROUND

The Federal Department of Housing and Urban Development makes money available to local communities each year in the form of a Community Development Block Grant (CDBG). Brookline's Community Development Committee of the Council for Planning and Renewal develops recommendations for the allocation of these funds. Article 3 asks that the Town

authorize the Board of Selectmen to file an application for CDBG funds for programs to be undertaken in FY 2003 in the currently estimated amount of \$1,905,000. This sum represents a \$34,000 (less than 2%) decrease from last year. Funding requests received and reviewed totaled \$3,521,680.

#### DISCUSSION

A summary of the proposed allocation of CDBG funds follows:

**Program Management/Planning.** The recommended amount of \$329,030 is less than both the 20% cap imposed by HUD and last year's allocation. The \$70,000 decrease in CD Comprehensive Planning is partially offset by the increase in Preservation Planning which reflects additional staff time and the CD portion of employee benefits.

**Housing.** Requests in this category totaled \$366,200; recommended funding is \$336,200. Although the Brookline Housing Authority's request for recreational sprinklers in two play areas went unfunded, \$111,200 has been allocated to install child safety screens in the apartments of three housing developments. Other funds have been allotted for staff salaries and benefits within the Housing Division of the Department of Planning and Community Development.

**Architectural Barriers Removal/ADA.** A total of \$475,600 has been recommended, part of which will be combined with Town capital funds to install elevators in the Pierce and Driscoll Schools, while other money will be spent on accessibility-related components in the Police and Fire Safety Building.

**Community Facilities.** Requests in this category totaled \$441,900; \$281,620 has been earmarked for Street Tree Removal and Replacement, Street Rehabilitation, and upgrading fire safety equipment at the main facility of the Brookline Community Mental Health Center.

**Parks.** Although Coolidge Playground was renovated in 1991, some features, including playground equipment, were not replaced at that time. A total of \$200,000 will be spent to remove and replace these remaining elements which do not meet code; to install new walkways; and to address drainage issues.

**Public Services.** The recommended amount of \$282,550 will fund various components of eleven programs, ranging from After Hours U (a program of the Brookline Community School Partnership which provides academic support for low income fifth and sixth graders at risk for school failure) to the Wellness Program (providing professional guidance in cardiovascular fitness and stress management to mentally retarded adults) to the Brookline Elder Taxi System. Funds for this category are capped at 15% by HUD.

#### RECOMMENDATION

The Advisory Committee unanimously recommends FAVORABLE ACTION on the vote offered by the Selectmen.

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ARTICLE 4

FOURTH ARTICLE

To see if the Town will name the School Committee Room, on the fifth floor of Brookline Town Hall, the “James F. Walsh Meeting Room” to honor the recently retired Superintendent of Schools for his distinguished service to the community, or act on anything relative thereto.

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SELECTMEN’S RECOMMENDATION

This article is to honor former Superintendent of Schools James F. Walsh. Dr. Walsh was the head of the Brookline school system for 13 years. He not only sustained educational excellence, but he fostered an unprecedented level of collaboration with the Town government. Naming the School Committee Room on the fifth floor of Town Hall will help serve as a reminder of Dr. Walsh’s efforts in improving education for the Town’s youth and his accomplishments in moving the educational experience into the 21<sup>st</sup> Century.

While the Board unanimously favors naming the School Committee Room in honor of Dr. Walsh, it does not believe that rooms, in general, are subject to the provision of Article 6.8 of Town By-Laws (Naming Public Facilities).

The Selectmen unanimously recommend FAVORABLE ACTION on the following vote:

VOTED: That the Town name the School Committee Room, on the fifth floor of Brookline Town Hall, the “James F. Walsh Meeting Room” to honor the recently retired Superintendent of Schools for his distinguished service to the community.

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ADVISORY COMMITTEE’S RECOMMENDATION

For more than a decade Jim Walsh has given a large part of himself to this community and, most importantly, our children.

He has faced every difficulty and every emotion with an eye toward translating them to a productive end. He has seized opportunities and paved new paths. All of us have benefited from his extraordinary efforts.

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Designating the School Committee room the "James Walsh" room is clearly a worthy honor for him. It is equally an honor for us.

The Advisory Committee unanimously recommends FAVORABLE ACTION on the vote offered by the Selectmen.

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ARTICLE 5

FIFTH ARTICLE

To see if the Town will authorize the dedication of a square in memory of a Brookline Veteran, William F. Kelly, who was killed in action in Korea while serving in the Armed Forces of the United States, to be located on the following public way in the Town of Brookline, pursuant to G.L.,c.40, section 5, clause 12 as follows:

Footbridge on Boylston Street between White Place and Boylston  
Playground,

or act on anything relative thereto.

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G.L. c.40, section 5, clause 12 states in part that the Town may at any Town Meeting appropriate money for the exercise of its corporate powers, for...”dedicating suitable memorials for the purpose of properly commemorating the services and sacrifices of persons who served” in Korea.

The idea of naming a square as close to the person’s home or place that they were associated with, has been the practice of other cities or town that have honored their servicemen killed in action.

The estimated cost to the Town is approximately \$225.00.

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SELECTMEN’S RECOMMENDATION

This article was submitted by the Veteran's Services Director at the request of the family of Private First Class William F. Kelly. It calls for the dedication of the footbridge on Boylston Street between White Place and Boylston Playground in memory of Mr. Kelly, a Brookline veteran who was killed in action in Korea on May 6, 1951 while serving in the Armed Forces of the United States.

The Board unanimously supports this well-deserved recognition for a Brookline resident who sacrificed his life for all of us. The Selectmen unanimously recommend FAVORABLE ACTION on the following vote:

VOTED: To authorize the dedication of the footbridge on Boylston Street between White Place and Boylston Playground in memory of Brookline veteran, William F. Kelly, who was killed in action in Korea while serving in the Armed Forces of the United States.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The petitioner Joan Kelly Sullivan requests that the town-owned footbridge on Boylston Street between White Place and Boylston Playground be named in honor of her uncle, Private First Class William F. Kelly, United States Army. Private Kelly was the first Brookline soldier to fall in the Korean War at the age of 21. Private Kelly was one of 12 Kelly children, several of whom served in World War II. Private Kelly spent all of his short life in Brookline, having graduated from the Lincoln School and Brookline High School. Several members of the Kelly family have served the community in the Fire Department, etc.

DISCUSSION

The commemoration involves virtually no expense to the community. The Advisory Committee supports this effort to recognize the sacrifice made by Private Kelly for his country.

RECOMMENDATION

The Advisory Committee unanimously recommends FAVORABLE ACTION on the vote offered by the Selectmen.

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ARTICLE 6

SIXTH ARTICLE

To see if the Town will vote to erect a commemorative pole at the entrance of the Brookline Water/Sewer Division located at 44 Netherlands Road in memory of Lawrence F. Doheny, or take any other action thereto.

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Mr. Doheny was born, raised and educated in Brookline. He fought in the Korean War and retired from the Water/Sewer Division with over 40 years of service with the Town of Brookline.

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SELECTMEN’S RECOMMENDATION

This petitioned article was submitted by a Brookline citizen who wishes to commemorate the services to the Town of Lawrence F. Doheny, who worked for the Water and Sewer Division for over 40 years and who also fought in the Korean War. It calls for a commemorative pole to be erected at the entrance of the Water and Sewer facility at 44 Netherlands Road.

The Board unanimously supports this well deserved recognition for a Brookline resident who dedicated his working career to the Town. The Selectmen unanimously recommend FAVORABLE ACTION on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

The petitioner Chou Chou Merrill is asking that a commemorative pole be erected at the entrance of the Brookline Water/Sewer Division located at 44 Netherlands Road in memory of Lawrence F. Doheny. Mr. Doheny was an employee of the Water/Sewer Division for over 40 years. He was a dedicated public servant, had served in the Korean War and had performed numerous acts of kindness for the community. He also served on the Town’s Celebration Committee. This petition has the support of the Directors of the Public Works and Water/Sewer Departments.

DISCUSSION

This commemoration will involve only a minimal cost to the town. The Advisory Committee is in full support of this tribute to Mr. Doheny.

RECOMMENDATION

The Advisory Committee unanimously recommends FAVORABLE ACTION on the following vote:

VOTED: To authorize the dedication of a commemorative pole in memory of Brookline resident Lawrence F. Doheny, who worked for the Town for more than 40 years, to be located at the entrance of the Water and Sewer facility at 44 Netherlands Road.

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ARTICLE 7

SEVENTH ARTICLE

To see if the Town will amend the Zoning By-Law as follows:

- 1. By deleting the Section entitled FEMA FLOOD INSURANCE PROGRAM CODE OF FEDERAL REGULATIONS 60.3 (pp. 93-94);
- 2. By deleting Section 4.30, Table of Use Regulations, Numbers 49, 49A, and 49B and replacing them with a revised Section 4.30, Table of Use Regulations, Numbers 49, 49A, 49B, and 49C to read as follows:

	S	SC	T	M	L	G	O	I
49. Any use hazardous to health because of danger of flooding, inadequacy of drainage, high water table, or inaccessibility to fire fighting apparatus or other protective services.	No	No	No	No	No	No	No	No
49A. In locations subject to periodic or occasional flooding by water from streams or brooks, including but not limited to the flood hazard district which is defined as all areas designated as flood hazard areas (Zones A, A8) in the H.U.D. Flood Insurance Study, Town of Brookline, Norfolk County, Massachusetts, November, 1976, including Maps H and I (1-10) dated May 2, 1977, and revised November 28, 1980, any structure erected or any filling undertaken in such manner as to reduce or impede the run-off of flood waters to an extent that would increase the 100 year flood elevation or the hazard of flood damage* (See under 49B.). Please refer to Section 4.60, Floodplain Overlay District, of the Zoning Bylaw for flood hazard requirements.	No	No	No	No	No	No	No	No
49B. Any new construction, substantial improvement (the cost of which equals or exceeds 50% of the market value of the structure), or land alteration within said flood hazard district shall be subject to a special permit issued by the Board of Appeals, in accordance with the requirements of this By-law, the Zoning Enabling statute and FEMA National Flood Insurance program as cited in the Code of Federal Regulations, Title 44, Chapter I, Subchapter B, part 60.* Please refer to Section 4.60, Floodplain Overlay District, of the Zoning Bylaw for flood hazard requirements.	SP	SP	SP	SP	SP	SP	SP	SP

\* **Please Note:** Any application under Use 49A or 49B shall be referred to the Conservation Commission. The Conservation Commission shall, within twenty days of the date of such filing, transmit to the Board of Appeals and applicant a report accompanied by such material, maps or plans as will aid the Board of Appeals in judging the application and determining special conditions and safeguards. The Commission's recommendations shall be based upon such flood and wetlands regulations as the Conservation Commission may adopt. The Board of Appeals shall not render any decision on an application until said report has been received and considered or until the twenty-day period has expired, whichever is earlier. Applications under this section may also be subject to Massachusetts General Laws, Chapter 131, Section 40 (as amended), the Wetlands Protection Act.

49C. Floodplain Overlay District Uses, See Section 4.60, Floodplain Overlay District, subsection (g), Permitted Uses, for specific uses in this district. and

- 3. by adding a Section 4.60 to read as follows:

## **Section 4.60 FLOODPLAIN OVERLAY DISTRICT**

### **(a) Purpose.**

**The general purpose of this section is to effectively protect the water resources of the Town with zoning provisions that regulate floodplains in a manner that, at a minimum, meet the requirements of the Federal Emergency Management Administration (FEMA) for their National Flood Insurance Program (NFIP) program. Specifically, the purposes of the Floodplain District are to:**

- (1) Ensure public safety through reducing the threats to life and personal injury;
- (2) Eliminate hazards to emergency response officials;
- (3) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- (4) Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
- (5) Eliminate costs associated with the response and cleanup of flooding conditions;
- (6) Reduce damage to public and private property resulting from flooding waters.

### **(b) Establishment and Applicability.**

- (1) Establishment. There is hereby established a Floodplain Overlay District which shall be governed by the regulations specified in this Section 4.60.
- (2) Applicability. No structure or building shall be erected, constructed, expanded, substantially improved, or moved and no earth or other materials shall be dumped, filled, excavated, transferred, or otherwise altered in the Floodplain Overlay District unless a special permit is duly granted by the Board of Appeals.
- (3) General Exemptions. For the purposes of this Section, a special permit shall not be required for all one-, two-, and three-family dwellings existing on or prior to July 5, 1982 or for any demolition or other activity that reduces impervious surface on a lot within the Floodplain Overlay District.
- (4) Setback Exemptions. Any required flood water retention systems or related facilities may be permitted to extend into required yard setbacks if deemed appropriate by the Board of Appeals.

(5) Emergency Repairs. The special permit required in this Section shall not apply to emergency repairs or projects necessary for the protection of the health, safety or welfare of the general public which are to be performed or which are ordered to be performed by a Town department, or the commonwealth, or a political subdivision thereof. In no case shall any filling, dredging, excavating, or otherwise extend beyond the time necessary to abate the emergency.

(c) **Definitions.**

**AREA OF SPECIAL FLOOD HAZARD:** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A.

**BASE FLOOD:** means the flood having a one percent chance of being equaled or exceeded in any given year.

**DEVELOPMENT:** means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**DISTRICT:** means floodplain district.

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA):** administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

**FLOOD BOUNDARY AND FLOODWAY MAP:** means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

**FLOOD HAZARD BOUNDARY MAP (FHBM):** means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A.

**FLOOD INSURANCE RATE MAP (FIRM):** means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**FLOODWAY:** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

**LOWEST FLOOR:** means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

**NFIP:** National Flood Insurance Program administered by FEMA.

**NEW CONSTRUCTION:** means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, **New Construction** means structures for which the "start of construction" commenced on or after the effective date of an initial **FIRM** or after December 31, 1974, whichever is later.

**ONE-HUNDRED-YEAR FLOOD:** see **BASE FLOOD**.

**REGULATORY FLOODWAY:** see **FLOODWAY**.

**SPECIAL FLOOD HAZARD AREA:** means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A.

**START OF CONSTRUCTION:** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. For a substantial improvements, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE:** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **Structure**, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as manufactured home on foundation. For the latter purpose, the terms includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

**SUBSTANTIAL DAMAGE:** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT:** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred substantial damage”, regardless of the actual repair work performed.

**ZONE A:** means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

**ZONES B AND C:** are areas identified in the community Flood Insurance Study as areas by moderate or minimal flood hazard.

**(d) Floodplain District Boundaries and Base Flood Elevation and Floodway Data.**

**(1) Floodplain District Boundaries**

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated on the Brookline Flood Insurance Rate (FIRM) I (1-10) and Flood Hazard Boundary Map H (1-10) issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated November 28, 1980 as Zone “A” which indicates the 100-year regulatory floodplain. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance study booklet date (FIS date November 1976). The FIRM and Flood Hazard Boundary Map and Flood Insurance Study booklet are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Department, Conservation Commission, and the Town Engineer.

**(2) Base Flood Elevation and Floodway Data**

**(a) Floodway Data**

In Zone “A”, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

**(b) Base Flood Elevation Data**

- (i)** Base flood elevation data is required for all subdivision proposals, all new buildings and development, and any other development that results in additional pervious surface within any floodplain overlay district; and
- (ii)** Base flood elevation data is required for all subdivision proposals greater than 5 lots or 1 acre, whichever is the lesser, in all zoning districts.

**(e) Notification of Watercourse Alteration.**

Notify, in a riverine situations, the following of any alteration or relocation of a watercourse:

- (1) Adjacent Communities
- (2) Bordering Communities
- (3) Massachusetts Office of Water Resources, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104
- (4) NFIP Program Specialist, FEMA Region I, Rm. 462, J.W. McCormack Post Office & Courthouse, Boston, MA 02109

**(f) Use Regulations.**

- (1) Reference to Existing Regulations

The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- (a) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 3107.0, "Flood Resistant Construction");
- (b) Wetlands Protection Regulations, department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- (c) Inland Wetlands Restriction, DEP (currently 302 CMR 6.00);
- (d) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);
- (e) Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

**(g) Permitted Uses.**

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

- (1) Agricultural uses such as farming, grazing, truck farming, horticulture, etc.

- (2) Forestry and nursery uses.
- (3) Outdoor recreational uses, including fishing, boating, play areas, etc.
- (4) Conservation of water, plants, wildlife.
- (5) Wildlife management areas, foot, bicycle, and/or horse paths.
- (6) Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- (7) Buildings lawfully existing prior to the adoption of these provisions.

**(h) Procedures.**

- (1) Subsequent to the denial letter issued by the Building Department, an application for a special permit shall be made on a form prescribed by the Board of Appeals. In addition to information generally required for such a submittal, the applicant shall also present the following:
  - (a) a detailed landscape plan drawn to a scale of one inch equals twenty (20) feet showing the elevation and design of flood water retention systems as required by applicable law;
  - (b) Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
  - (c) base flood elevation data, where the base flood elevation is not provided on the FIRM;
  - (d) certification and supporting documentation by a Massachusetts registered professional engineer demonstrating that such encroachment of the floodway shall not result in any increase in flood levels during the occurrence of the 100-year flood; and
  - (e) four (4) copies of all application materials.
- (2) Upon receipt of the application and development plans, the application procedures for a special permit for land that meets the criteria specified in this Section shall proceed according to the procedures normally followed for special permits except that the routing procedures specified in subsection (4) below shall be adhered to.
- (3) There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Appeals, Board of Health, Town Engineer, Building Commissioner, and the Town Engineer for reports containing comments which will be considered by the appropriate permitting board prior to issuing applicable permits. The Board of Appeals shall not render any decision on an application for a special permit for development in the Floodplain Overlay District until said reports have been received and considered or until the review period has expired without receipt of a report.

- (4) Review all subdivision proposals to assure that:
  - (a) such proposals minimize flood damage;
  - (b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
  - (c) adequate drainage is provided to reduce exposure to flood hazards.

(i) **Criteria.**

The Board of Appeals may grant a Special Permit for development in the Floodplain Overlay District if the Board finds that such development has met all of the following criteria in addition to other criteria required for the granting of a special permit:

- (1) No filling or other encroachment shall be allowed in Zone “A” areas or in the floodway which would impair the ability of these special flood hazard areas to carry and discharge flood waters, except where such activity is fully offset by stream improvements such as, but not limited to, flood water retention systems as allowed by applicable law.
- (2) Displacement of water retention capacity at one location shall be replaced in equal volume at another location on the same lot, on an abutting lot in the same ownership, on a noncontiguous lot in the same ownership, or in accordance with the following requirements.
- (3) All flood water retention systems shall be suitably designed and located so as not to cause any nuisance, hazard, or detriment to the occupants of the site or abutters. The Board of Appeals may require screening, or landscaping of flood water retention systems to create a safe, healthful, and pleasing environment.
- (4) The proposed use shall comply in all respects with the provision of the underlying zoning district, provisions of the State Building Code, State Inland Wetland Act, and any other applicable laws.
- (5) Any development activity requiring a special permit from the Board of Appeals under other provisions of this Zoning Ordinance shall incorporate the requirements of this Section within the scope of that special permit and shall not require separate application to the Board of Appeals.

or act on anything relative thereto.

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## SELECTMEN'S RECOMMENDATION

The Town is in the process of updating its Zoning By-Law in accordance with recommendations put forth by a duly appointed Zoning By-Law Commission. The Commission generated a set of recommended projects and actions designed to meet a set of goals and objectives outlined in the Zoning By-Law Update Framework document.

Article 7 proposes an amendment to the Zoning By-Law for the purpose of updating the Town's floodplain requirements. It has been developed in conjunction with the original goals and objectives of the Zoning By-Law Commission as well as the Work Program for updating the Zoning By-Law adopted on September 24, 2001 by the Commission.

### **Validation for Proposed Amendment**

1. The proposed changes were recommended by the Massachusetts Department of Environmental Management (DEM).
2. The current By-Law reference to floodplain regulations is inadequate and confusing.
3. This amendment is designated as a high priority in the Zoning By-Law Commission Work Program.
4. This amendment is the first element of a planned water resources section of the By-Law.

### **Other Findings**

1. The geographical impact of this amendment is minimal, affecting at most 18 blocks inclusive of parts of 43 parcels in the Town. The majority of these blocks and parcels are located along Brookline's southern boundary along the Muddy River, Leverett Pond, etc. The remaining areas include parts of Amory Playground, Hall's Pond Sanctuary, Longwood Playground, and the area adjacent to Sargent Pond. The land area influenced by this amendment is estimated at 2% -3% of Brookline's total land area.
2. The Planning Board recommended the proposed Zoning By-Law amendment unanimously at their regular meeting on October 4, 2001.

### **Accomplishments of the Proposed Amendment**

The proposed amendment accomplishes a number of objectives including the following:

1. It meets the requirements of the National Flood Insurance Program (NFIP).
2. It addresses the recommendations of the Massachusetts Department of Environmental Management.
3. It places the floodplain requirements within the By-Law itself.

4. It is designed to subsequently be joined and coordinated with additional water resource provisions that address stormwater runoff, wetlands, and other water and environmental resources.
5. It provides clearer and more concise language specifically tailored to the Town. This language is intended to make the provisions function more effectively and be easier to follow.
6. It provides specific *purpose* and *establishment and applicability* subsections.
7. It provides a clear and relevant set of definitions that compliment rather than conflict with other Zoning By-Law definitions.
8. It clearly indicates the district boundaries and base elevations and floodway data by reference to the Flood Insurance Rate Maps (FIRM).
9. It lists the use regulations and recommended uses clearly.
10. It provides a clear description of the procedures that must be followed.
11. It provides references to State and Federal regulations that applicants need to be aware of.
12. It meets an important objective of the Zoning By-Law Commission's Work Program.

The Board agrees with the recommendations of the Planning Board and Advisory Committee and unanimously recommends FAVORABLE ACTION on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE'S RECOMMENDATION

OVERVIEW

This article proposes a revision of the Zoning Bylaw provisions regulating construction in the flood plain areas. The immediate occasion of the revision was a review by the state Department of Environmental Affairs (DEP) in 2000 which resulted in a recommendation that the Town revise its bylaw in order to bring it into compliance with the requirements of the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA). The Article inserts a new Section 4.60 in the Brookline Zoning Bylaw, which will permit the addition of provisions on related topics, as the Zoning Bylaw revision progresses. The language of the proposed Flood Plain Bylaw is based verbatim on the Model Bylaws recommended by FEMA.

BACKGROUND

The NFIP allows homeowners to purchase flood insurance, which may not be available in all locations or may be available only at high prices from commercial insurers. FEMA requires

cities and towns to adopt zoning and other regulations in order to limit construction in flood-prone areas and thus to reduce the losses incurred under the program. Compliance with the FEMA requirements is thus necessary to permit residents to purchase such insurance. FEMA regulations contain Model Zoning Bylaws which will satisfy their requirements, although towns are not required to adopt these verbatim.

### DISCUSSION

The proposed zoning amendment does not change the areas which are subject to the Flood Plain restrictions. Those areas which are subject to serious flooding in a 100-year storm are shown on the FEMA approved map and are unchanged. The Planning Department has determined a total of 43 parcels in Town, primarily along the Muddy River or adjacent to several ponds in Town, are included in the A-Zone and are included in the amended language. The land is already subject to substantial restrictions on development by other existing laws and regulations and the proposed language will not significantly add to those restrictions. Its principal purpose and effect is to permit owners of the parcels in the district to obtain flood insurance under the NFIP **if** they need and want it.

The Planning Department has slightly revised the language of the article from what was originally proposed in the Warrant to make it consistent with the ongoing review and revision of the Town's Zoning Bylaw.

### RECOMMENDATION

The Advisory Committee unanimously recommends FAVORABLE ACTION on the following vote:

VOTED:           That the Town amend the Zoning By-Law as follows:

1. By deleting the Section entitled FEMA FLOOD INSURANCE PROGRAM CODE OF FEDERAL REGULATIONS 60.3 (pp. 93-94);
2. By deleting Section 4.30, Table of Use Regulations, Numbers 49, 49A, and 49B and replacing them with a revised Section 4.30, Table of Use Regulations, Numbers 49, 49A, 49B, and 49C to read as follows:

	S	SC	T	M	L	G	O	I
49. Any use hazardous to health because of danger of flooding, inadequacy of drainage, high water table, or inaccessibility to fire fighting apparatus or other protective services.	No	No	No	No	No	No	No	No
49A. In locations subject to periodic or occasional flooding by water from streams or brooks, including but not limited to the flood hazard district which is defined as all areas designated as flood hazard areas (Zones A, A8) in the H.U.D. Flood Insurance Study, Town of Brookline, Norfolk County, Massachusetts, November, 1976, including Maps H and I (I-10) dated May 2, 1977, and revised November 28, 1980, any structure erected or any filling undertaken in such manner as to reduce or impede the run-off of flood waters to an extent that would increase the 100 year flood elevation or the hazard of flood damage* (See under 49B.). Please refer to Section 4.60, Floodplain Overlay District, of the Zoning Bylaw for flood hazard requirements.	No	No	No	No	No	No	No	No
49B. Any new construction, substantial improvement (the cost of which equals or exceeds 50% of the market value of the structure), or land alteration within said flood hazard district shall be subject to a special permit issued by the Board of Appeals, in accordance with the requirements of this By-law, the Zoning Enabling statute and FEMA National Flood Insurance program as cited in the Code of Federal Regulations, Title 44, Chapter I, Subchapter B, part 60.* Please refer to Section 4.60, Floodplain Overlay District, of the Zoning Bylaw for flood hazard requirements.	SP	SP	SP	SP	SP	SP	SP	SP
<p><b>* Please Note:</b> Any application under Use 49A or 49B shall be referred to the Conservation Commission. The Conservation Commission shall, within twenty days of the date of such filing, transmit to the Board of Appeals and applicant a report accompanied by such material, maps or plans as will aid the Board of Appeals in judging the application and determining special conditions and safeguards. The Commission's recommendations shall be based upon such flood and wetlands regulations as the Conservation Commission may adopt. The Board of Appeals shall not render any decision on an application until said report has been received and considered or until the twenty-day period has expired, whichever is earlier. Applications under this section may also be subject to Massachusetts General Laws, Chapter 131, Section 40 (as amended), the Wetlands Protection Act.</p>								
49C. Floodplain Overlay District Uses, See Section 4.60, Floodplain Overlay District, subsection (g), Permitted Uses, for specific uses in this district. and								

3. by adding a Section 4.60 to read as follows:

**Section 4.60 FLOODPLAIN OVERLAY DISTRICT**

(a) Purpose.

The general purpose of this section is to effectively protect the water resources of the Town with zoning provisions that regulate floodplains in a manner that, at a minimum, meet the requirements of the Federal Emergency Management Administration (FEMA) for their National Flood Insurance Program (NFIP) program. Specifically, the purposes of the Floodplain District are to:

- (1) Ensure public safety through reducing the threats to life and personal injury;
- (2) Eliminate hazards to emergency response officials;

- (3) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- (4) Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
- (5) Eliminate costs associated with the response and cleanup of flooding conditions;
- (6) Reduce damage to public and private property resulting from flooding waters.

**(b) Establishment and Applicability.**

- (1) Establishment. There is hereby established a Floodplain Overlay District which shall be governed by the regulations specified in this Section 4.60.
- (2) Applicability. No structure or building shall be erected, constructed, expanded, substantially improved, or moved and no earth or other materials shall be dumped, filled, excavated, transferred, or otherwise altered in the Floodplain Overlay District unless a special permit is duly granted by the Board of Appeals.
- (3) General Exemptions. For the purposes of this Section, a special permit shall not be required for all one-, two-, and three-family dwellings existing on or prior to July 5, 1982 or for any demolition or other activity that reduces impervious surface on a lot within the Floodplain Overlay District.
- (4) Setback Exemptions. Any required flood water retention systems or related facilities may be permitted to extend into required yard setbacks if deemed appropriate by the Board of Appeals.
- (5) Emergency Repairs. The special permit required in this Section shall not apply to emergency repairs or projects necessary for the protection of the health, safety or welfare of the general public which are to be performed or which are ordered to be performed by a Town department, or the commonwealth, or a political subdivision thereof. In no case shall any filling, dredging, excavating, or otherwise extend beyond the time necessary to abate the emergency.

**(c) Definitions.**

**AREA OF SPECIAL FLOOD HAZARD:** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A.

**BASE FLOOD:** means the flood having a one percent chance of being equaled or exceeded in any given year.

**DEVELOPMENT:** means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**DISTRICT:** means floodplain district.

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA):** administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

**FLOOD BOUNDARY AND FLOODWAY MAP:** means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

**FLOOD HAZARD BOUNDARY MAP (FHBM):** means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A.

**FLOOD INSURANCE RATE MAP (FIRM):** means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**FLOODWAY:** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

**LOWEST FLOOR:** means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

**NFIP:** National Flood Insurance Program administered by FEMA.

**NEW CONSTRUCTION:** means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, **New Construction** means structures for which the "start of construction" commenced on or after the effective date of an initial **FIRM** or after December 31, 1974, whichever is later.

**ONE-HUNDRED-YEAR FLOOD:** see **BASE FLOOD**.

**REGULATORY FLOODWAY:** see **FLOODWAY**.

**SPECIAL FLOOD HAZARD AREA:** means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A.

**START OF CONSTRUCTION:** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. For a substantial improvements, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE:** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **Structure**, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as manufactured home on foundation. For the latter purpose, the terms includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

**SUBSTANTIAL DAMAGE:** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT:** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred substantial damage”, regardless of the actual repair work performed.

**ZONE A:** means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

**ZONES B AND C:** are areas identified in the community Flood Insurance Study as areas by moderate or minimal flood hazard.

**(d) Floodplain District Boundaries and Base Flood Elevation and Floodway Data.**

**(1) Floodplain District Boundaries**

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated on the Brookline Flood Insurance Rate (FIRM) I (1-10) and Flood Hazard Boundary Map H (1-10) issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated November 28, 1980 as Zone “A” which indicates the 100-year regulatory

floodplain. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance study booklet date (FIS date November 1976). The FIRM and Flood Hazard Boundary Map and Flood Insurance Study booklet are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Department, Conservation Commission, and the Town Engineer.

(2) Base Flood Elevation and Floodway Data

(a) **Floodway Data**

In Zone “A”, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(b) **Base Flood Elevation Data**

- (i) Base flood elevation data is required for all subdivision proposals, all new buildings and development, and any other development that results in additional pervious surface within any floodplain overlay district; and
- (ii) Base flood elevation data is required for all subdivision proposals greater than 5 lots or 1 acre, whichever is the lesser, in all zoning districts.

(e) **Notification of Watercourse Alteration.**

The Town Clerk, in consultation with the Building Commissioner and Town Engineer, shall notify, in a riverine situation, the following of any alteration or relocation of a watercourse:

- (1) Adjacent Communities
- (2) Bordering Communities
- (3) Massachusetts Office of Water Resources, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104
- (4) NFIP Program Specialist, FEMA Region I, Rm. 462, J.W. McCormack Post Office & Courthouse, Boston, MA 02109

(f) **Use Regulations.**

(1) Reference to Existing Regulations

The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether



permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- (a) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 3107.0, "Flood Resistant Construction");
- (b) Wetlands Protection Regulations, department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- (c) Inland Wetlands Restriction, DEP (currently 302 CMR 6.00);
- (d) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);
- (e) Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

**(g) Encouraged Uses.**

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

- (1) Urban agricultural uses such as urban farming, grazing, horticulture, etc.
- (2) Nursery uses.
- (3) Outdoor recreational uses, including fishing, boating, play areas, etc.
- (4) Conservation of water, plants, wildlife.
- (5) Wildlife management areas, foot, bicycle, and/or horse paths.
- (6) Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- (7) Buildings lawfully existing prior to the adoption of these provisions.

**(h) Procedures.**

- (1) Subsequent to the denial letter issued by the Building Department, an application for a special permit shall be made on a form prescribed by the Board of Appeals. In addition to information generally required for such a submittal, the applicant shall also present the following:

- (a) a detailed landscape plan drawn to a scale of one inch equals twenty (20) feet showing the elevation and design of flood water retention systems as required by applicable law;
  - (b) Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
  - (c) base flood elevation data, where the base flood elevation is not provided on the FIRM;
  - (d) certification and supporting documentation by a Massachusetts registered professional engineer demonstrating that such encroachment of the floodway shall not result in any increase in flood levels during the occurrence of the 100-year flood; and
  - (e) four (4) copies of all application materials.
- (2) Upon receipt of the application and development plans, the application procedures for a special permit for land that meets the criteria specified in this Section shall proceed according to the procedures normally followed for special permits except that the routing procedures specified in subsection (4) below shall be adhered to.
- (3) There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Appeals, Board of Health, Town Engineer, Building Commissioner, and the Town Engineer for reports containing comments which will be considered by the appropriate permitting board prior to issuing applicable permits. The Board of Appeals shall not render any decision on an application for a special permit for development in the Floodplain Overlay District until said reports have been received and considered or until the review period has expired without receipt of a report.
- (4) Review all subdivision proposals to assure that:
- (a) such proposals minimize flood damage;
  - (b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
  - (c) adequate drainage is provided to reduce exposure to flood hazards.

**(i) Criteria.**

The Board of Appeals may grant a Special Permit for development in the Floodplain Overlay District if the Board finds that such development has met all of the following criteria in addition to other criteria required for the granting of a special permit:

- (1) No filling or other encroachment shall be allowed in Zone “A” areas or in the floodway which would impair the ability of these special flood hazard areas to carry and discharge flood waters, except where such activity is fully offset by stream improvements such as, but not limited to, flood water retention systems as allowed by applicable law.

- (2) Displacement of water retention capacity at one location shall be replaced in equal volume at another location on the same lot, on an abutting lot in the same ownership, on a noncontiguous lot in the same ownership, or in accordance with the following requirements.
- (3) All flood water retention systems shall be suitably designed and located so as not to cause any nuisance, hazard, or detriment to the occupants of the site or abutters. The Board of Appeals may require screening, or landscaping of flood water retention systems to create a safe, healthful, and pleasing environment.
- (4) The proposed use shall comply in all respects with the provision of the underlying zoning district, provisions of the State Building Code, State Inland Wetland Act, and any other applicable laws.
- (5) Any development activity requiring a special permit from the Board of Appeals under other provisions of this Zoning Ordinance shall incorporate the requirements of this Section within the scope of that special permit and shall not require separate application to the Board of Appeals.

XXX

ARTICLE 8

EIGHTH ARTICLE

To see if the Town will authorize and empower the Board of Selectmen to sell and convey, at public or private sale, in fee simple, subject to such terms and conditions as the Board of Selectmen deem to be in the best interests of the town, for consideration of not less than \$100.00, the land situated on the SOUTHERLY side of WOODLAND ROAD, shown as the land between Woodland Road and Lot B25D on the plan entitled: "LOT B25D WOODLAND ROAD," by Verne T. Porter, Jr., PLS, dated June 10, 1998, a copy of which is on file in the Town Clerk's Office, which plan is incorporated herein by reference, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

As of the printing of these Combined Reports, the Board had not received sufficient information to have a fully informed discussion on this article. Therefore, the Selectmen have voted to "hold" Article 8. A supplemental mailing will be made before Town Meeting, after a vote is taken on this article.

ADVISORY COMMITTEE'S RECOMMENDATION

OVERVIEW

This article, proposed by the Planning Department and written by Town Counsel, would authorize and empower the Selectmen to sell or convey a narrow strip of land between Woodland Road and Lot B25D, the adjoining residential property. They would establish the terms and conditions of its sale, and establish a price.

BACKGROUND

A 1998 land survey drawing for the adjoining 22,247 square foot buildable lot, showed that this small bordering strip of land was part of the public right of way. The 1500 square foot piece of land runs for about 210 feet along Woodland and tapers from a point at both ends to about 15 feet wide in the middle. The land is partially stone ledge and slopes downhill in the middle

about 8 feet to the street. It has traditionally formed a continuation of woods and ledge along this part of Woodland near the corner of Laurel Street.

The land was part of the original right of way laid out by the Town in the 18th century, when area landowners requested that a road be built. When the present day Woodland Road was constructed, it was laid out along a straighter path than the original survey had proposed and this strip became a leftover. According to the Planning Department, in other situations where land like this was not ultimately used, it was either sold or conveyed back to the adjoining landowner.

The owner of lot B25D is currently building a house on the site and would like to have control of all land out to the street line for landscaping, as is normally the condition. They approached the Town with a request to purchase this land in order to do so. The new house conforms to zoning setbacks and regulations for the basic property. This additional land does not currently add to the planned size of the house.

The Town land contains a number of mature White Pine and Oak trees. The Town arborist has determined that none of these trees are of "heritage" quality, and does not require that they be kept. He speculates however, that because the pines are growing out of the ledge, their roots may have been damaged by vibration during the digging of the house foundation and that they may die as a result within five years. Also, the loss of the forest canopy on the house site can adversely effect that type of tree. There are two deciduous street trees that will remain under the control of the Town, but the rest would then be on private property and are not currently regulated.

#### DISCUSSION

The Advisory Committee as a whole was not adverse to the sale of this land. It serves no practical use to the town any longer for road building purposes. If there is no compelling reason to keep it, it was suggested that the property should be sold for fair market value, as determined by the Town Assessor. Further, that might be based on the square-foot cost of adjoining Lot B25D.

There was concern that since this lovely area indeed still has a "woodland feel" from its heritage, loss of any trees is unfortunate. A new house is being built on a narrow, rocky site that without our current housing values likely would have been considered unbuildable. In itself that leads to the removal of a noticeable piece of the woods. Some of the houses in the area have a blanket of lawn from the house to the street, while others maintained the more woodland feel. The homeowner who seeks to buy the strip made a commitment to the Advisory Committee to submit the proposed landscaping plan for the site to the Town's Department of Planning and Community Development to alleviate concerns in that area.

#### RECOMMENDATION

The Advisory Committee, by a nearly unanimous vote (two abstentions), recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town authorize and empower the Board of Selectmen to sell and convey, at public or private sale, in fee simple, subject to such terms and conditions as the Board of Selectmen deem to be in the best interests of the town, for consideration of not less than \$7,000.00, the land situated on the SOUTHERLY side of WOODLAND ROAD, shown as the land between Woodland Road and Lot B25D on the plan entitled: "LOT B25D WOODLAND ROAD," by Verne T. Porter, Jr., PLS, dated June 10, 1998, a copy of which is on file in the Town Clerk's Office, which plan is incorporated herein by reference.

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ARTICLE 9

NINTH ARTICLE

To see if the Town will amend ARTICLE 8.15, Noise Control, in the town's By-laws, as follows:

1. by adding a new paragraph number "3." In part (a) in SECTION 8.15.4, to read as follows:

"3. Leaf Blowers and similar devices used for landscaping and yard upkeep and maintenance, shall be prohibited from use during the following hours:

Weekdays - 6:00 P.M. to 8:00 A.M.

Saturdays and Sundays - 6:00 P.M. to 9:00 A.M."

2. by amending part (c) in SECTION 8.15.4, by deleting "leaf blower" in the table

3. by amending SECTION 8.15.4, by adding a new part (l) to read as follows:

"(l) Leaf blowers and similar devices used for landscaping and yard upkeep and maintenance shall be warranted or certified by the manufacturer as designed not to exceed, and shall not, in fact, exceed a maximum noise level of 72 dB while in operation, provided, however, that in the event the user of such device demonstrates that it was purchased before January 1, 2002, it shall not exceed a maximum noise level of 80 dB when in operation. The first violation of this part (l) shall result in a Warning.

All other violations shall be subject to the provisions of SECTION 8.15.8"

or act on anything relative thereto.

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As a result of the vote of the 2000 Annual Town Meeting, a Moderator's Committee was formed to study the Town's Noise Control By-law, specifically as it relates to the operation of leaf blowers, their permissible noise levels, and their days and hours of operation. The Committee has met seven times, held a public hearing, and now proposes the following changes to Article 8.15 (Noise Control) of the Town By-Laws.

1. At present, leaf blowers may be used from 8 a.m. until 9 p.m. seven days per week. The Committee recommends that those hours of operation be reduced to 8 a.m. to 6 p.m. on weekdays and 9 a.m. to 6 p.m. on Saturdays and Sundays. These hours would not impact the

DPW's scheduling, would assure relief from leaf blower noise in the evening, and would provide an extra hour of quiet on Saturday and Sunday mornings.

2. The current permissible maximum noise level for leaf blowers in operation is 80dB. The committee's proposal requires that, with the passage of the Article, any leaf blower used in the Town be warranted or certified by the manufacturer as designed to operate at a maximum noise level of 72dB. Leaf blowers which, when shown by the user to have been purchased before January 1, 2002, would be exempted from this requirement. Their maximum noise level during operation would be 80dB.

3. Instead of a fine for the first violation of this section, a warning would be issued by the police. Subsequent violations could result in a \$50.00 fine.

The proposed amendments to the by-law represent the Committee's attempt to balance the need to provide some relief to residents from the noise of leaf blowers with the recognition that leaf blowers have become an essential tool for landscape maintenance, particularly for the Town and small commercial operators. The more stringent noise requirements are phased in by grandfathering existing leaf blowers. The proposed amendments are also intended to reduce the need for the use of noise meters by the police which, it has been learned, is cumbersome.

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#### SELECTMEN'S RECOMMENDATION

Article 9 is the result of the work performed by the Moderator's Committee on Leafblowers, which was established pursuant to Article 15 of the 2000 Annual Town Meeting. The Committee was formed to study the Town's Noise Control By-Law, specifically as it relates to the operation of Leafblowers, their permissible noise levels, and their days and hours of operation.

The proposed amendments to the Town's Noise Control By-Law (Article 8.15) would do the following:

1. reduce the time Leafblowers can be used, from the current 8 a.m. – 9 p.m. every day of the week to 8 a.m. – 6 p.m. during the weekday and 9 a.m. to 6 p.m. on the weekend.
2. reduce the permitted decibel level from 80 to 72.
3. change the penalty provision from a \$50 fine for the first violation to a warning for the first violation, with subsequent violations carrying the \$50 fine.



While a minority of the Board believes the proposed changes should not be adopted, a majority recommends approval of the Article, with one change: that the hours of use end at 8 p.m. instead of 6 p.m. during the weekdays. The change is recommended because stopping the use of Leafblowers at 6 p.m. poses too strict a requirement on those residents whose personal and professional life does not permit them to be home prior to 6:00 p.m. to perform leaf blowing activities. It would be unfair to tell our residents that you cannot go outside and use your leafblower if getting home from work and having dinner with your family results in your being unable to start the yard work before 6:00 p.m.

Therefore, a majority of the Board recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend ARTICLE 8.15, Noise Control, in the town's By-laws, as follows:

1. by adding a new paragraph number "3." In part (a) in SECTION 8.15.4, to read as follows:

"3. Leaf Blowers and similar devices used for landscaping and yard upkeep and maintenance excepting those listed in the Table found in Section 8.15.4 as amended by this section, shall be prohibited from use during the following hours:

Weekdays – 8:00 P.M. to 8:00 A.M.  
Saturdays and Sundays – 6:00 P.M. to 9:00 A.M."

2. by amending part (c) in SECTION 8.15.4, by deleting "leaf blower" in the table

3. by amending SECTION 8.15.4, by adding a new part (l) to read as follows:

"(l) Leaf blowers and similar devices used for landscaping and yard upkeep and maintenance excepting those listed in the Table found in Section 8.15.4 as amended by this section shall be warranted or certified by the manufacturer as designed not to exceed, and shall not, in fact, exceed a maximum noise level of 72 dB(a) while in operation, provided, however, that in the event the user of such device demonstrates that it was purchased before January 1, 2002, it shall not exceed a maximum noise level of 80 dB(a) when in operation. The first violation of this part (l) shall result in a Warning.

All other violations shall be subject to the provisions of SECTION 8.15.8"

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## ADVISORY COMMITTEE'S RECOMMENDATION

### BACKGROUND

At the Spring 2000 Town Meeting, Article 15, a proposal to amend the Town's Noise Control By-law, specifically as it relates to leaf blowers, was referred for study to a Moderator's Committee. That Committee was formed in August 2000 and held six public meetings as well as one public hearing. It met with representatives of DPW and the Police Department and sent out questionnaires to 30 landscape maintenance firms doing business in Brookline. It has proposed three changes to the Noise Control By-law: 1) to limit the hours of operation of leaf blowers to 8 a.m. to 6 p.m. on weekdays and 9 a.m. to 6 p.m. on weekends; 2) to lower the permissible decibel level for all leaf blowers purchased after January 1, 2002 and used in the Town to 72dB(A); and 3) to establish a warning rather than a financial penalty for the first violation of this part of the by-law.

Currently, the maximum decibel level, measured at a distance of 50 feet, is 80dB(A); the Permissible hours of operation are from 8 a.m. to 9 p.m. seven days a week; and all violations are punishable by a fine not to exceed \$50.00

### DISCUSSION

The Advisory Committee notes that through the proposed amendments, the Moderator's Committee has attempted to balance the desires of those who wish to live in a quieter environment with the needs of both home owners who use leaf blowers to maintain their properties and those who depend on leaf blowers to operate financially viable landscape maintenance firms. It has also tried to simplify the implementation of the by-law by minimizing the necessity of using noise measuring devices to record the decibel levels of the equipment. Finally, by recommending that a warning, rather than a fine, be issued for the first violation, the Moderator's Committee has proposed that the by-law be used as an educational tool, rather than just a punishment or deterrent.

Opposition was expressed to various aspects of the amendments. It was stated that the manufacturer's decibel rating is not required by state or federal law to be noted on equipment and, in any event, is accurate only if equipment is properly maintained. In response, it was noted that the ratings of noise-complaint equipment a) are often recorded on newer models, and b) are public information, which can be readily collected and collated. On balance, the use of manufacturer ratings, even if imperfect, is more workable than the current cumbersome enforcement mechanism which requires the retrieval and use of a noise measuring device by a specially trained police officer.

It was also argued that because new models of leaf blowers are quieter, there is no need to lower the permissible decibel level because eventually everyone will own a quieter model. However, not all currently manufactured models meet the 72 dB(A) standard, and the Advisory Committee agreed with the Moderator's Committee that the use of noise-compliant models should be encouraged.

It was, in addition, asserted that the phrase “leaf blowers and similar devices used for landscaping and yard upkeep and maintenance” is ambiguous and could be interpreted to include lawn mowers and “weed whackers”. This issue was particularly troubling to the Department of Public Works and was addressed by adding language to further define “similar devices”.

Finally, concern was also expressed about the proposed reduction in hours of operation, particularly as it might affect the work schedule of the DPW and the activities of home owners who want to do yard work in the evening. In response to these concerns, first it was noted that should the DPW be faced with an emergency situation requiring extended hours, a waiver could be requested from the Selectmen. Second, the amendment does not change the weekday morning starting time, which remains 8 a.m. Third, the use of leaf blowers past 6 p.m. was deemed undesirable since 6 p.m. is considered the dinner hour, a time which should not be interrupted by objectionable noise. Finally, during the mid to late fall, when leaf blowers are actually needed for leaf clean-up, it is already dark at or shortly after 6 p.m.

For the foregoing reasons, a motion to change the cut-off time from 6 p.m. to 8 p.m. failed. A motion to exempt the Town from the proposed amendments also failed, on the grounds that the Town should not be exempted from laws designed to protect the public welfare.

#### RECOMMENDATION

By a decisive majority, the Committee voted to recommend FAVORABLE ACTION on the following vote:

VOTED: That the Town amend ARTICLE 8.15, Noise Control, in the town’s By-laws, as follows:

1. by adding a new paragraph number “3.” In part (a) in SECTION 8.15.4, to read as follows:

“3. Leaf Blowers and similar devices used for landscaping and yard upkeep and maintenance excepting those listed in the Table found in Section 8.15.4 as amended by this section, shall be prohibited from use during the following hours:

Weekdays – 6:00 P.M. to 8:00 A.M.

Saturdays and Sundays – 6:00 P.M. to 9:00 A.M.”

2. by amending part (c) in SECTION 8.15.4, by deleting “leaf blower” in the table

3. by amending SECTION 8.15.4, by adding a new part (l) to read as follows:

“(l) Leaf blowers and similar devices used for landscaping and yard upkeep and maintenance excepting those listed in the Table found in Section 8.15.4 as amended by this section shall be warranted or certified by the manufacturer as designed not to exceed, and shall

not, in fact, exceed a maximum noise level of 72 dB(a) while in operation, provided, however, that in the event the user of such device demonstrates that it was purchased before January 1, 2002, it shall not exceed a maximum noise level of 80 dB(a) when in operation. The first violation of this part (l) shall result in a Warning.

All other violations shall be subject to the provisions of SECTION 8.15.8”

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ARTICLE 10

TENTH ARTICLE

To see if the Town will amend the By-Laws of the Town of Brookline by adding a new ARTICLE 4.8, ENTITLED: LIVING WAGE BY-LAW to read as follows:

ARTICLE 4.8            LIVING WAGE BY-LAW

SECTION 4.8.1            LIVING WAGE

- a. Except as otherwise provided in this By-Law or in collective bargaining agreements with the town under G.L. c. 150E, section 7, the town of Brookline (the "Town") shall pay each of its employees in accordance with the subsections (b) and (c) of this section.
- b. The Town shall pay new employees, upon entrance into the Town's work force, a wage of not less than one dollar (\$1.00) per hour more than the existing State Minimum Wage. This would result in a minimum wage of no less than \$7.75 an hour currently.
- c. Any Town employee who is employed by the Town on July first of any year, who has been in the continuous service of the Town since the prior November thirtieth, shall be paid no less than \$8.59 an hour; if the same employee remains in the continuous service of the Town for another full year, the employee shall be paid no less than \$9.45 an hour; if the same employee remains in the continuous service of the town for another full year, the employee shall be paid no less than \$10.30 an hour. The amounts listed herein shall be adjusted annually in accordance with subsection (h).
- d. This provision notwithstanding, a Department Head, for good and sufficient cause related to an employee's performance, may deny a step increase to an existing employee which would result from the implementation of the minimum pay scale set forth in this subsection (c). Employees who are refused an increment shall be given a written and signed explanation of the reason for the denial.
- e. In the event that the State Minimum Wage is increased from its current \$6.75 per hour, the entrance salary set forth in subsection (b) above, shall be adjusted to maintain a one-dollar difference over the State Minimum Wage. In such event, if any pay step that is outlined in subsection (c) above falls below the then current minimum entrance pay, that pay step shall be increased to meet the then current minimum entrance pay rate.
- f. (*Credit for Prior Service*) A former employee of the Town, except an employee excluded from this By-Law under Section 4.8.3, who is reemployed in his/her former classification after continuous separation from the services of the Town for six (6)

months or less shall receive credit for prior service for the purposes of section (c) of this By-law.

- g. *(Credit for Service Upon Implementation)* All persons employed by the Town on the date of implementation will be given credit for all prior continuous service and given the appropriate pay rate as if this By-law has been in place on the employee's date of hire.
- h. *(Wage Adjustment)* The wage prescribed in paragraphs (b) and (c) of this section shall be known as the "living wage" and shall be adjusted annually by the same percentage and on the same schedule relative to wage adjustments granted to full-time non-union employees in the Town's general pay schedule.

#### SECTION 4.8.2 NOTICE

The Town shall provide each employee with a fact sheet about this By-Law and shall post notices about the By-Law in conspicuous locations in town buildings. These fact sheets and posters shall include:

- a. notice of the living wage amount;
- b. a summary of the By-Law provisions;
- c. notice that in the event that an employee of the Town believes this By-law has been violated, the employee may file a grievance with the Human Resources Board.
- d. notice that in the event that an employee of the school department believes this By-law has been violated, the employee may file a complaint the Assistant Superintendent of Schools for Personnel.
- e. Notice that in the event an employee continues to be aggrieved following the outcome of a grievance/complaint, he/she has the right to seek appropriate legal relief.

#### SECTION 4.8.3 LIVING WAGE EXCEPTIONS

The Living Wage Provision of this By-Law shall not apply to:

- a. Any employee who is employed in a seasonal capacity which does not exceed six months in duration in any twelve-month cycle; provided however that any employee who is employed by the Town on July first of any year, and has been in the continuously service of the Town since the prior November thirtieth, must be granted a pay increase in according with Section 4.8.1(c) of this By-law unless his/her Department Head has good and sufficient cause to deny said increase. However, any employee under this exemption must be paid in accordance with Section 4.8.1, subsection (b) of this By-Law;

- b. Any person participating in a work-study or cooperative education program or whose position is funded in full, or in part, by Community Development Block Grant or State Elder Services Grant monies. However, any employee under this exemption must be paid in accordance with Section 4.8.1, subsection (b) of this By-Law;
- c. All Putterham Meadows Golf Course Rangers;
- d. All volunteers and all person appointed or elected to Town committees;
- e. All elected officials of the Town.

#### SECTION 4.8.4 SEVERABILITY

If any portion or provision of this By-Law is declared invalid or unenforceable by a court of competent jurisdiction or the Office of the Attorney General, the remaining provisions shall continue in full force and effect. This By-Law shall take effect July 1, 2002.

or act on anything relative thereto.

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#### SELECTMEN'S RECOMMENDATION

The vote under Article 10 is the result of extensive research and compromise on the part of everyone who has been involved in the Living Wage discussion. This vote results in Brookline adopting a comprehensive living wage by-law, while at the same time addressing the major concerns that have been raised during the process.

The research that was conducted by the Moderator's Committee on Living Wage found that Brookline employees are well paid and that only a small number of employees would fall beneath the \$10.30 an hour wage on July 1, 2002. As a result of this by-law, those employee, who are not otherwise exempt will be paid \$10.30 an hour on July 1, 2002, and will have wage protection as provided for in this By-Law.

The Living Wage discussion has focused specifically on three areas, which include compression, the inclusion or exclusion of library pages from the Living Wage By-Law, and relationship between the Town's pay schedules and the state minimum wage. The Selectmen's recommended vote addresses each of these issues as follows:

### Compression and the Ripple Effect

When the lowest paid positions in an organization are increased, without a corresponding increase in the higher paid positions, the range of pay between positions becomes smaller. This process is known as compression. Invariably, employees who occupy positions just above those that have been increased seek a corresponding increase. In an attempt to maintain a sense of equity in the workforce, the employer may find it necessary to make such a secondary increase. This is known as the “ripple effect” that is associated with compression.

The Selectmen heard a range of opinions about the possible financial implication of the compression and ripple effect. Based on the information that has been provided, it appears that the only place within the Town that this issue could have a serious impact would be in the Library workforce. This is one of the reasons that the Board supports the exclusion of the Junior Library Page title, which is further explained below.

### Library Pages

Particular attention has been given to the Library Pages in the Public Library. While all parties agreed that the entrance salary of Library Pages needed to be increased, there were extensive discussions about whether or not Library Pages should be included in the Living Wage.

The Board had two major concerns regarding the inclusion of the Library Page Title in the Living Wage By-Law. The first concern is that a mandatory entrance salary for Junior Library Pages would result in a sense of inequity in the Library workforce and have a financial ripple effect, as was explained above. Second, a mandatory entrance salary of \$10.30 would result in this position no longer being occupied by high school students working their first after school job. The Library Page position has provided an ideal first job opportunity for students and this opportunity should continue.

The Human Resources Board has recently established a classification and pay plan that provides for three Library Page positions within the pay plan. Using the positions that are described in the Human Resources Board pay plan, the proponent of Article 11 proposed including the two higher rated pay positions within the purview of the Living Wage, while excluding the Junior Library Page. Since the largest number of Library Pages are included in the Junior Library Page title, the Selectmen believe that this compromise effectively addresses the major concerns that have been raised.

### Minimum Wage

During the Living Wage discussion, the Board became aware of the fact that there were a number of employees who were paid below the State Minimum Wage. Although municipalities are exempt from the State Minimum Wage, the Selectmen believes that all positions should be paid according to the State Minimum Wage.



It is important to note that the number of employees who are paid below the State Minimum Wage is very limited. This appeared to be an issue with a handful of library pages and one recreation employee. Furthermore, it is inaccurate to represent this as a long-standing practice of the Town. Prior to the two graduated minimum wage increases that took place on January 1, 2000 and January 1, 2001, the Library Page position was paid at or above the State Minimum Wage.

This vote includes a provision that would require the Town to pay a minimum of the State Minimum Wage plus one dollar to all paid positions, including those that are exempt under the Living Wage By-Law. This ensures that no position will fall below the State Minimum Wage. Section 4.8.3 of the proposed vote requires the Town to make an annual adjustment to these positions to ensure that the state minimum wage plus one dollar is maintained.

The Board of Selectmen unanimously supports the adoption of a Living Wage By-Law for the Town of Brookline. (However, the Board wants to emphasize that the preamble is not part of the by-law text and that the preamble is a statement by the petitioners.) This by-law represents a compromise that complies with the spirit of the Living Wage philosophy while at the same time addressing those concerns that would potentially have an adverse impact on our workplace.

VOTED: that WHEREAS, the wages of many workers nationwide have not kept pace with the cost of providing for themselves or their families;

WHEREAS, Town Meeting must ensure that taxpayers' dollars are used responsibly to improve the economic security and well-being of town employees;

WHEREAS, town government must lead town businesses and contractors by example to engage in and support fair wage practices in Brookline, as described in this vote;

NOW, THEREFORE, IN RECOGNITION OF THE FOREGOING, THE TOWN OF BROOKLINE AMENDS THE BY-LAWS OF THE TOWN BY ADDING A NEW ARTICLE 4.8, ENTITLED: LIVING WAGE BY-LAW, IN PART IV, TO READ AS FOLLOWS:

ARTICLE 4.8            LIVING WAGE BY-LAW

SECTION 4.8.1        TITLE

This By-Law shall be known as the "Living Wage By-Law."

SECTION 4.8.2 LIVING WAGE

- (a) The town of Brookline (“town”) shall pay each of its employees no less than \$10.30 an hour except as provided in SECTION 4.8.5 and in collective bargaining agreements with the town under G.L. c. 150E, section 7.
- (b) The wage prescribed in paragraph (a) of this SECTION 4.8.2 shall be known as the “living wage” and shall be adjusted annually by the same percentage and on the same schedule relative to wage adjustments given to full-time, nonunion town employees on the town’s general pay schedule, beginning in the year 2003.
- (c) The living wage shall also be adjusted annually at the time of and after the adjustment set forth in paragraph (b) of this SECTION 4.8.2 if necessary to insure that as so adjusted, it is at least one dollar more than the state minimum wage in effect under G.L. c.151 at the time of such adjustment.

SECTION 4.8.3. MINIMUM WAGE

The compensation of employees exempted from the living wage under paragraphs (a), (b), (c) and (d) of SECTION 4.8.5 shall be adjusted annually at the same time as the adjustment referred to in paragraph (b) of SECTION 4.8.2 if necessary to insure that the hourly wage is at least one dollar more than the state minimum wage in effect under G.L. c.151 at the time of such adjustment.

SECTION 4.8.4 NOTICE

The town shall provide each employee with a fact sheet about this By-Law and shall post current notices about the By-Law in conspicuous locations in town buildings. These fact sheets and posters shall include:

- (a) notice of the living wage amount;
- (b) notice of the town minimum wage amount under SECTION 4.8.3;
- (c) a summary of the By-Law provisions;
- (d) notice that a person claiming to be aggrieved by a violation of this By-Law may file a grievance under the town’s Human Resources By-Law (SECTION 3.15.11) or, if a School Department employee, a complaint with the Assistant Superintendent of Schools for Personnel; notice that upon exhaustion of this administrative remedy, such person may seek appropriate legal relief.

SECTION 4.8.5       EXCEPTIONS

The town shall not be required to pay the living wage to the following persons:

- (a)     seasonal employees who work less than six months in any twelve-month cycle;
- (b)     employees participating in a work-study or cooperative educational program;
- (c)     employees whose positions are funded, in full or in part, by Community Development Block Grant or State Elder Services Grant monies;
- (d)     town library Junior Library Pages;
- (e)     Putterham Meadows Golf Course rangers;
- (f)     volunteers and all persons appointed or elected to town committees;
- (g)     elected officers of the town.

SECTION 4.8.6       SEVERABILITY

If any portion or provision of this By-Law is declared invalid or unenforceable by a court of competent jurisdiction or the Office of the Attorney General, the remaining provisions shall continue in full force and effect.

SECTION 4.8.7       EFFECTIVE DATE

This By-Law shall take effect July 1, 2002.

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ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee recommendation will be contained in a Supplemental Mailing.

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ARTICLE 11

ELEVENTH ARTICLE

To see if the Town will amend the By-Laws of the Town of Brookline by adding a new By-law, entitled: Living Wage By-Law, to be numbered by the Town Clerk, to read as follows:

ARTICLE X.X

SECTION X.X.1 TITLE

This By-Law shall be known as the “Living Wage By-Law.”

SECTION X.X.2 FINDINGS

Town Meeting finds the following:

- (a) The wages of many workers have not kept pace with the cost of providing for themselves or their families.
- (b) Town Meeting must ensure that taxpayers’ dollars are used responsibly to improve the economic security and well-being of town employees.
- (c) The town government must lead town businesses and contractors by example to engage in and support fair wage practices in Brookline as described herein.

SECTION X.X.3 LIVING WAGE

- (a) The town of Brookline (“town”) shall pay each of its employees no less than \$10.30 an hour except as provided in SECTION X.X.7 and in collective bargaining agreements with the town under G.L. c. 150E, section 7.
- (b) The wage prescribed in paragraph (a) of this SECTION X.X.3 shall be known as the “living wage” and shall be adjusted annually by the same percentage and on the same schedule relative to wage adjustments given to full-time, nonunion town employees on the town’s general pay schedule, beginning in the year 2003.

SECTION X.X.4 MINIMUM WAGE

The town shall pay employees exempted from the living wage under paragraphs (a), (b), (c) and (d) of Section X.X.7 no less than the effective state minimum wage under G.L. c. 151, plus one dollar.

#### SECTION X.X.5 NOTICE

The town shall provide each employee with a fact sheet about this By-Law and shall post current notices about the By-Law in conspicuous locations in town buildings. These fact sheets and posters shall include:

- (a) notice of the living wage amount;
- (b) notice of the town minimum wage amount under Section X.X.4;
- (c) a summary of the By-Law provisions;
- (d) notice that a person claiming to be aggrieved by a violation of this By-Law may file a grievance under the town's Human Resources By-Law (Section 3.15.11) or, if a School Department employee, a complaint with the Assistant Superintendent of Schools for Personnel; notice that upon exhaustion of this administrative remedy, such person may seek appropriate legal relief.

#### SECTION X.X.6 NONDISCRIMINATION

The town may not avoid the requirements of SECTION X.X.3 by laying off or otherwise terminating the employment of an employee with the intention of replacing such employee with an employee who, under SECTION X.X.7, is not eligible for the living wage. The town shall not fund wage increases required by this By-Law, or otherwise respond to the provisions of this By-Law, by reducing the health, insurance, pension, vacation, or other non-wage benefits of any of its employees unless such a reduction is consistent with a reduction of benefits negotiated for town employees by a collective bargaining unit. The town shall not discharge, reduce the compensation of or otherwise retaliate against any employee for making a complaint to the town or using any civil remedy to enforce rights under this By-Law.

#### SECTION X.X.7 EXCEPTIONS

The town shall not be required to pay the living wage to the following persons:

- (a) seasonal employees who work less than six months in any twelve-month cycle;
- (b) employees participating in a work-study or cooperative educational program;
- (c) employees whose positions are funded, in full or in part, by Community Development Block Grant or State Elder Services Grant monies;

- (d) Putterham Meadows Golf Course rangers;
- (e) Volunteers and all persons appointed or elected to town committees;
- (f) elected officers of the town.

#### SECTION X.X.8 SEVERABILITY

If any portion or provision of this By-Law is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

#### SECTION X.X.9 EFFECTIVE DATE

This By-Law shall take effect July 1, 2002.

or act on anything relative thereto.

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The Living Wage Moderator's Committee has continued to meet regularly since the last Town Meeting to narrow members' differences of opinion, define the exemptions, clarify the language and in general, attempt to resolve outstanding philosophical and economic issues. The fundamental question remaining is how low to set the rate.

Reliable published reports document, that in the Boston area, the minimum level of income required to meet the most elementary human needs of housing, food, clothing, transportation and medical expenses, ranges from \$8.11 to \$28.07 per hour, depending upon the number of persons to be supported.

The proponents of this By-Law have set Brookline's living wage at a modest, but fair, rate of \$10.30 per hour.

Surely, our town employees deserve to earn enough money to cover their essential needs. The fact that the town continues to pay, literally, the lowest wages in town to its lowest paid employees, is not sound fiscal or moral policy. An appropriately compensated work force is simply more efficient, more motivated and more productive than one paid at market or legal minimums.

A total of approximately 25 employees, primarily in the Library and Recreation Departments, will benefit directly from the implementation of a living wage of \$10.30 per hour, resulting in a cost of \$42,739 per year (estimate per town officials). The predicted additional "ripple effect" upon the next lowest paid group of employees will result in an aggregate estimated pay increase

of 5 to 20 percent of \$42,739 (\$2,137-\$8,548), as these employees take this opportunity to press for an equalization in their pay.

Both regionally and nation-wide, the wages of many workers are presently at near-term historic lows relative to purchasing power. As town meeting members -- our community's legislative elected officials -- it's now up to us to make sure that at least our own town's employees earn a living wage.

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Motion to be offered by the petitioner:

VOTE: that WHEREAS, the wages of many workers nationwide have not kept pace with the cost of providing for themselves or their families;

WHEREAS, Town Meeting must ensure that taxpayers' dollars are used responsibly to improve the economic security and well-being of town employees;

WHEREAS, town government must lead town businesses and contractors by example to engage in and support fair wage practices in Brookline, as described in this vote;

NOW, THEREFORE, IN RECOGNITION OF THE FOREGOING, THE TOWN OF BROOKLINE AMENDS THE BY-LAWS OF THE TOWN BY ADDING A NEW ARTICLE 4.8, ENTITLED: LIVING WAGE BY-LAW, IN PART IV, TO READ AS FOLLOWS:

ARTICLE 4.8 LIVING WAGE BY-LAW

SECTION 4.8.1 TITLE

This By-Law shall be known as the "Living Wage By-Law."

SECTION 4.8.2 LIVING WAGE

- (a) The town of Brookline ("town") shall pay each of its employees no less than \$10.30 an hour except as provided in SECTION 4.8.5 and in collective bargaining agreements with the town under G.L. c. 150E, section 7.
- (b) The wage prescribed in paragraph (a) of this SECTION 4.8.2 shall be known as the "living wage" and shall be adjusted annually by the same percentage and on the same schedule relative to wage adjustments given to full-time, nonunion town employees on the town's general pay schedule, beginning in the year 2003.

- (c) The living wage shall also be adjusted annually at the time of and after the adjustment set forth in paragraph (b) of this SECTION 4.8.2 if necessary to insure that as so adjusted, it is at least one dollar more than the state minimum wage in effect under G.L. c.151 at the time of such adjustment.

#### SECTION 4.8.3. MINIMUM WAGE

The compensation of employees exempted from the living wage under paragraphs (a), (b), (c) and (d) of SECTION 4.8.5 shall be adjusted annually at the same time as the adjustment referred to in paragraph (b) of SECTION 4.8.2 if necessary to insure that the hourly wage is at least one dollar more than the state minimum wage in effect under G.L. c.151 at the time of such adjustment.

#### SECTION 4.8.4 NOTICE

The town shall provide each employee with a fact sheet about this By-Law and shall post current notices about the By-Law in conspicuous locations in town buildings. These fact sheets and posters shall include:

- (a) notice of the living wage amount;
- (b) notice of the town minimum wage amount under SECTION 4.8.3;
- (c) a summary of the By-Law provisions;
- (d) notice that a person claiming to be aggrieved by a violation of this By-Law may file a grievance under the town's Human Resources By-Law (SECTION 3.15.11) or, if a School Department employee, a complaint with the Assistant Superintendent of Schools for Personnel; notice that upon exhaustion of this administrative remedy, such person may seek appropriate legal relief.

#### SECTION 4.8.5 EXCEPTIONS

The town shall not be required to pay the living wage to the following persons:

- (a) seasonal employees who work less than six months in any twelve-month cycle;
- (b) employees participating in a work-study or cooperative educational program;
- (c) employees whose positions are funded, in full or in part, by Community Development Block Grant or State Elder Services Grant monies;
- (d) town library Junior Library Pages;



- (e) Putterham Meadows Golf Course rangers;
- (f) volunteers and all persons appointed or elected to town committees;
- (g) elected officers of the town.

SECTION 4.8.6 SEVERABILITY

If any portion or provision of this By-Law is declared invalid or unenforceable by a court of competent jurisdiction or the Office of the Attorney General, the remaining provisions shall continue in full force and effect.

SECTION 4.8.7 EFFECTIVE DATE

This By-Law shall take effect July 1, 2002.

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SELECTMEN'S RECOMMENDATION

Please see the Selectmen's Recommendation under Article 10, as it clearly explains the reasons for the Board's unanimous support of the Living Wage By-Law.

Therefore, the Board unanimously recommends NO ACTION on this article.

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ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee recommendation will be contained in a Supplemental Mailing.

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ARTICLE 12

TWELFTH ARTICLE

To see if the town will appropriate a sum of money, to be expended under the direction of the Board of Selectmen, for the restoration, construction and reconstruction of the Carlton Street Foot Bridge, that runs from Riverway Park to Carlton Path; fund the appropriation by taxation, by transfer; by borrowing or by any combination of the foregoing; and authorize the Board of Selectmen to apply for, accept and expend grants, aid, loans, reimbursements and any other funding therefore, or act on anything relative thereto.

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SELECTMEN'S RECOMMENDATION

The Board believes that this petitioned article, calling for funding for the restoration, construction, and reconstruction of the Carlton Street Footbridge, is premature, due to the fact that the additional feasibility study that was funded at the 2000 Annual Town Meeting is not yet complete. The petitioner agrees and has requested that the Board vote NO ACTION, without prejudice.

History

In FY98, \$25,000 was appropriated to study the options surrounding the Footbridge. The original FY2001 Capital Improvements Plan (CIP) included an additional \$50,000 for the preparation of plans and specifications to implement the recommendations of the study. However, during budget deliberations in preparation for the 2000 Annual Town Meeting, the Board of Selectmen and the Advisory Committee further considered and discussed the issues surrounding the Footbridge. The result was the recommendation, subsequently approved by Town Meeting, to appropriate \$27,500 of the \$50,000 programmed in the FY01 CIP for an additional feasibility study, the purpose of which was to address the following issues raised by the Board:

- |           |   |                   |
|-----------|---|-------------------|
| <b>1.</b> | <b>Accessibility</b>  | <b>\$5,000.00</b> |
|           | 1. Review current HC access to Riverway Park  |                   |
|           | 2. Explore option of not providing HC access at a rehabilitated footbridge                          |                   |
|           | 3. Explore option and impacts of adapting existing structure to make HC accessible                  |                   |
|           | 4. Explore option of providing HC access at alternative location, namely the Longwood MBTA platform |                   |

5. Consult with Brookline Commission for the Disabled, Boston Parks and Recreation, and Massachusetts Architectural Access Board

2. **Transportation** **\$17,000.00**
  1. Study existing vehicular and pedestrian traffic conditions and patterns along the Carleton/Colchester/Chapel Street corridor
  2. Study existing pedestrian traffic patterns in Riverway Park and projected impacts should the footbridge be re-opened both with and without HC access
  3. Study existing and projected impacts on vehicular and pedestrian traffic in the neighborhood of the footbridge generated by both the existing Fenway Park and the new baseball facility
  4. Study the impacts on vehicular and pedestrian traffic in the footbridge precinct due to the opening of the new Landmark Center
  5. Explore proposed mitigation to impacts (if any) due to Fenway Park, the stadiums proposed expansion and Landmark Center
  6. Explore traffic calming along the Carleton/Colchester/Chapel Street corridor
  7. Explore measures to enhance pedestrian access and safety should the footbridge be re-opened
  8. Explore pedestrian access and safety measures in the region of the Longwood bridge and MBTA stop
  
3. **Funding** **\$1,500.00**
  1. Provide detail outline of possible funding sources for footbridge alternatives, highlighting concrete approaches to each proposed funding mechanism
  2. What combination of grants might be proposed for whichever alternative?
  3. How might a footbridge grant application/award impact other grant projects in Brookline?
  4. Provide a schedule of proposed Public Works projects to be funded by grant programs; this should be no less than a 5-year approach
  
4. **Emerald Necklace Master Plan** **\$500.00**
  1. Identify the relationship of the footbridge to the Master Plan and where it falls in order of prioritization
  2. Highlight how recommendations of the project's Citizen Advisory Committee might be incorporated into the Master Plan, specifically that of lighting destination paths within Riverway Park (similar to existing lighting in the area of Netherlands Road)
  
5. **Cost Estimates** **\$2,500.00**
  1. Re-visit proposed cost estimates each of the alternatives to incorporate any hidden or additional costs associated with staff time, necessary permits, required mitigation and review, accessibility provisions or accommodations, funding applications, and pedestrian facilities

2. Identify whether the selection of any alternative could detrimentally affect possible funding or commitments at other Public Works projects in the vicinity, specifically those associated with the Emerald Necklace and the Muddy River; any possible delays in project development or construction as well as mitigation requirements should be highlighted.

## 6. Security

**\$1,000.00**

1. Review existing patrol plans for the Riverway Park and footbridge neighborhood
2. Study available crime data for park and neighborhood
3. Study existing access routes to neighborhood that might be used for criminal activity
4. Study existing conditions in the precinct of footbridge and determine what influence these might have on crime; what impact on crime does a closed or removed footbridge have? What impact on crime does an unimproved landscape and pedestrian path have, if any?
5. Explore what impacts on criminal activity a re-opened footbridge might have
6. Study data or reports available from other communities or Emerald Necklace Park projects that have re-opened or improved access points between park and neighborhoods or simply introduced pedestrian facilities such as paths and footbridges; look specifically for any increases or decreases in criminal activity as well as impacts on “quality of life”

### Status

A sub-committee of the full Carlton Street Footbridge Advisory Committee was chosen to oversee the feasibility study. This group of seven, Chaired by Selectmen Hoy, consists of three Precinct 1 residents who oppose removal of the Footbridge and three Precinct 1 residents who favor removal, thereby assuring a balanced view of the issue. The sub-committee developed Requests for Proposals and selected three highly specialized consultants to study the six issues detailed above. The consultants selected were:

- ?? Pressley Associates – responsible for the Emerald Necklace Master Plan piece.
- ?? Professor William Terrill, Northeastern University – responsible for the security issue.
- ?? Conley Associates – responsible for the remaining four areas (accessibility, transportation, funding, and cost estimates).

All three consultants have submitted final reports and a public hearing will be held by the Board of Selectmen to hear them. This will allow for a decision to be made regarding how the footbridge fits into the Town’s FY03-FY08 CIP.

Recommendation

Since the results of the feasibility study have not been presented to the Board in a public hearing, the Selectmen believe it is premature to take any action on the footbridge and unanimously recommend NO ACTION on this article.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This article was filed with the expectation that the Board of Selectmen would be ready to make a recommendation to the November Fall Town Meeting as to whether the town should rehabilitate or remove the Carlton Street Foot Bridge. The Selectmen's Subcommittee, chaired by Selectman Gilbert Hoy, has received final drafts from the three consultant teams, chosen by the Selectmen, on the following issues (Phase II Studies): 1) historical; 2) public safety; 3) transportation; 4) cost estimates; 5) funding; and 6) accessibility. The Subcommittee's original timetable required several meetings with each consultant team for discussion and review of their investigations, collection of final written comments by the Subcommittee members, preparation by the consultants of final reports, conducting a public hearing to hear the findings of the consultant teams and to solicit views from members of the public, Town Meeting members, relevant town boards and commissions, and a final review of all of the foregoing by the Selectmen before making their recommendation.

DISCUSSION

It has become apparent to the petitioner that there is not adequate time to fulfill all of these steps prior to the Fall Town Meeting, and, therefore, she has requested that the Advisory Committee recommend no action on her article at this time.

RECOMMENDATION

The Advisory Committee unanimously recommends NO ACTION on Article 12.

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ARTICLE 13THIRTEENTH ARTICLE

To see if the town will appropriate an additional sum of money, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the Library Trustees, for remodeling, reconstructing or making of extraordinary repairs to the Main Library, including original equipment and landscaping, paving and other site improvements incidental or directly related thereto; fund the appropriation by taxation, transfer, by borrowing or by any combination of the foregoing; and authorize the Library Trustees or the Board of Selectmen to apply for, accept and expend grants, aid, loans, reimbursements and any other funding therefore, or act on anything relative thereto.

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The Brookline Public Library has a proud history of serving the citizens of Brookline. More citizens use library facilities than all other town provided services combined. The Trustees of the Public Library have worked diligently for a considerable period of time to bring about the badly needed re-habilitation of the 100 year old Main Library on Washington Street, an architectural gem which has become somewhat tarnished; and whose functionality badly requires attention. Greatly increased public spaces, including the children's room and opened stack spaces, as well as state of the art technology will facilitate improved services. At this time state and private funds exceed the amount of money to be contributed to the project by the town by at least \$1,000,000. This effort comes in the midst of a town wide effort to improve/rebuild many town facilities. That work is being undertaken in a manner such that the buildings meet high standards mechanically and esthetically. Unfortunately, the town's contribution appears to be inadequate to finish the library project up to the esthetic standards of these other projects. This warrant article seeks to redress that imbalance by asking that the town's contribution be increased so that this gem can be restored in an historically appropriate fashion. Funds are requested at this time because these inadequacies were not apparent until after construction had commenced.

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SELECTMEN'S RECOMMENDATION

This petitioned article calls for the appropriation of additional funds for the Main Library Renovation project. The petitioner believes that the Town's contribution to the project "appears to be inadequate to finish the library project up to the esthetic standards" of other town building projects.

In September, a walk-through of the project was held with the architect by the Library Trustees and Project Oversight Committee, during which time numerous questions were asked of and answered by the architect. Because there was insufficient time to address all questions during the tour, the architect agreed to have all remaining questions e-mailed to him. The petitioner e-mailed 13 questions, all of which were answered in a memorandum dated September 21, 2001. However, the petitioner still has concerns, particularly the following seven items:

1. Removal of the stucco wall in the corridor between the lobby and the reference room.
2. Covering up the 1970's brick walls on the main floor.
3. Installing cork flooring instead of carpeting.
4. Using a hard ceiling instead of acoustical ceiling tiles in some areas.
5. Using wood trim instead of rubber base trim.
6. Transforming the dock and staff work space on the lower level into public reading space.
7. Covering up the curved glazed brick wall in the basement.

These issues were forwarded to the Library Building Consultant at the Massachusetts Board of Library Commissioners (MBLC) for opinion. In her September 26, 2001 response, the consultant commented, in detail, on all seven of the petitioner's recommended changes, each of which are summarized below:

1. "It seems risky and counterproductive to open up a wall that is intact and then cover it up again and then hang shelving on the resulting new wall."
2. "Covering the 1970's brick walls on the main floor incurs an additional cost to conceal a durable finish with one that will need to be repainted."
3. "Cork flooring has little acoustic value and is difficult to clean and maintain...No project funded under the Massachusetts Public Library Construction Program has installed cork flooring."
4. "I recommend that acoustical ceiling tiles be used in the Periodicals Room. I have no opinion on a hard ceiling in the Trustee's room, beyond noting that a change order will incur additional costs."
5. "In libraries, wood trim is generally invisible...This seems a foolish expenditure of limited funds."
6. "The proposal to make this remote space into public reading space would adversely impact the security of the library in many ways."
7. "It seems unwise to spend money to cover it up since it is intact and easily maintained."

She also noted that "each change order is likely to cause delays and extra charges", a comment that echoes a statement made by Janet Fierman, Building Commission Chairman, in her August 8, 2001 memorandum to Library Trustee Chairman Peter Epstein: "Recently the Building Commission has been told that the Library Trustees may be considering significant scope

changes. Based on the strong likelihood of additional costs, substantial delays and contractor claims, the Building Commission recommends the Trustees reconsider this approach.”

On October 2, the Library Trustees voted 8-1 for NO ACTION on Article 13. This confirms the belief of the Selectmen that the project is sufficiently funded and will result in a renovated Main Library that all residents of Brookline will be proud of. However, this will not be the case if changes, similar to the ones proposed by the petitioner, are requested and the inevitable cost increases and delays occur.

If it is determined by the Project Oversight Committee that some finishing details need to be done, they can be done after the construction is substantially completed, with funding coming from the contingency or other sources that could be available at that time.

Therefore, the Board unanimously recommends NO ACTION on the article.

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#### ADVISORY COMMITTEE’S RECOMMENDATION

This warrant article seeks an “additional sum of money, to be expended under direction of the Building Commission, with the approval of the Board of Selectmen and the Library Trustees, for remodeling , reconstructing or making extraordinary repairs to the main library...”

**Background:** The Renovation of the Main Library has been underway for many years and is being funded from a number of sources, including private funds raised by the Library Trustees, CDBG funds, state funds, and tax revenues. The library renovation project is slated to be substantially completed by August 2002 and is at this time on budget. During a walk – through last summer, some of the library trustees noticed deficiencies in the work underway. At a subsequent August 2001 meeting of the Library Trustees, the subject of more funding to correct these deficiencies was discussed; however, the Trustees voted by a 5 – 4 vote not to draft a warrant article for additional funding. The petitioner, who is also a library trustee, did file the article in question. The petitioner has concerns that “work is being undertaken in a manner such that does not meet the esthetic standards set in improvements of other town buildings. This warrant article “seeks to redress that imbalance by asking that the Town’s contribution be increased so that this gem can be restored in an historically appropriate fashion. Funds are requested at this time because these inadequacies were not apparent until after the construction had commenced.”

**Discussion:** The petitioner described several items which should be addressed with the additional funding to be obtained through the proposed article:



- 1) Removal of a stucco wall.
- 2) Covering all exposed brick walls.
- 3) Replacement of rugs with cork flooring.
- 4) Acoustical ceiling tiles not be used.
- 5) Replacement of rubber trim with wood trim.
- 6) Alternate use of a space near the children's reading room.

Some of the items, such as 1) and 6), are design changes and would require unspecified additional monies including architectural fees and a delay of the project. The other items are finishing details that would require additional monies and incur penalties, since the items specified by the architect have been already contracted.

It's important that citizens are concerned with the quality of the capital projects undertaken by the town, and the earnest desire of the petitioner for excellence in this project is a good example. The Committee examined the library renovation design process and considered how the agencies involved in this project viewed the Article. These are the questions we endeavored to answer:

- 1) Has there been an open, fair, and effective design review process for the main library?
- 2) What is the scope of monies involved in the warrant article?
- 3) What is the position of the relevant agencies on the petitioner's requests?

1) The Process: The renovation of the main library has been underway for over 5 years. Over the course of the project there have been many public meetings and agencies involved in the process: Library trustees, town officials, the building department, the state board of library commissioners. There has been a Project Oversight Committee (POC), as mandated by law, including selectmen and library trustees. The POC has met many times throughout the process, every 4 or 5 weeks in an open meeting. As with any major project, some change orders have been issued during the project. A design Advisory Committee of Trustees has been working on the finishing details of the project and has met 5 times.

It is the opinion of the Advisory Committee that the review process has been open and fair. Some of the finishing details and design elements were not readily appreciated until the work was considerably underway, which is not uncommon in such a complex project, especially to those not trained in architecture / design.

2) Scope of funding required:

a) Finishing Details: The total amount of items listed as finishing details is not precisely known, but could easily exceed \$50K. It is not clear if the contingency fee would cover these expenses. Janet Fireman, Chairman of the Building Commission, suggested in a Sept 13 memo to the Library Trustees that if there are funds available for changes, that the Building

Commission will entertain those changes; however they will not know if funds will be available until the “project is much further along.”

b) Design Elements: Suggested design elements would require substantially more funding, and additionally include penalties, architect fees, and a delay of the project. Again, at this time there is not an estimate of the required funding.

3) Comments by the relevant agencies:

a) Library Trustees: This agency is the authorized to “apply for, accept and expend grants, aid, loans, reimbursements...” as mentioned in the article. At a special meeting of the Trustees on October 2, the Trustees recommended NO ACTION on Article 13 by a vote 8 for NO ACTION, 1 opposed, and 2 abstentions. As a whole the Library Trustees are concerned with completing the project on time and on budget, which Article 13 will, in their opinion, jeopardize.

b) Building Commission: This agency is identified in the Article as the agency to direct the expenditure of funds. In a letter of August 8, Janet Fireman, Chairman of the Building Commission, warned the Library Trustees to avoid changes to the scope of the library renovation that could result in substantial delays and contractor claims.

c) Library Building Consultant, Board of Library Commissioners: Patience Jackson, MBLC, recommends that “because of extra costs and timing, once a project is under construction, change orders should be limited to those matters without which the project cannot proceed or would be severely impaired.” Her comments imply that the items mentioned by the petitioner are not mission –critical, and in fact, she specifically recommended against a change from carpeting to cork flooring due to the reduction in acoustical value.

**Summary:** It appeared that the review process has been fair and open, and there exists a process to recommend changes. Some finishing details can be done after the construction is substantially completed; funding may be available from the contingency or other sources at this time. There was a great deal of concern about substantial changes at this time which might result in unspecified significant costs. The Article specifies no amount of funding, making it dangerous to approve. And the agencies which would use the funds do not support it or have serious concerns about the Article. The Advisory Committee feels that oversight and completion of the project is properly in the purview of the Library Trustees - and not Town Meeting.

**Recommendation:** The Advisory Committee unanimously recommends NO ACTION on Article 13.

ARTICLE 14

FOURTEENTH ARTICLE

To see if the Town will authorize and empower the Board of Selectmen to lease, any one or more of the following town owned properties, known and numbered as:

- 9 Newton Street
- 15 Newton Street
- 55 Newton Street
- 29 Avon Street

for not more than ten years, in accordance with proposals submitted in response to Requests for Proposals and procedures required under General Laws, Chapter 30B, and such additional terms and conditions determined by the Board of Selectmen to be in the best interest of the town, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

This article calls for authorizing the Board of Selectmen to lease certain town-owned properties for not more than 10 years.

The Town has issued Requests for Proposals, in accordance with procedures required under General Laws, chapter 30B, for two of the properties (15 Newton Street and 29 Avon Street) and will be issuing an RFP for the other property (9 Newton Street) soon, as the current lease expires on May 31, 2002. No action needs to be taken on 55 Newton street at this time, as that lease does not expire until June 30, 2004.

The Selectmen unanimously recommend FAVORABLE ACTION on the following vote:

VOTED: That the Town authorize the Selectmen to lease, for not more than ten years, the land and buildings located at 15 Newton Street, 9 Newton Street, and 29 Avon Street, in accordance with the request of the Building Commissioner, and upon such other terms and conditions the Selectmen determine to be in the best interest of the Town.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND AND DISCUSSION

Article 14 would authorize the Selectmen to lease any or all of four Town-owned properties for not more than 10 years each. Town Counsel has advised that a Town meeting vote of approval is required under M.G.L. C. 40, sec. 3 for the Selectmen to enter into such leases on behalf of the Town. In the absence of such a Town Meeting vote, the Supreme Judicial Court has held that such a lease transaction was invalid. Cranberry Growers Service, Inc. V. Town of Duxbury, 415 Mass. 354 (1993).

By way of information, 9 Newton Street currently is leased for a term of five years, ending on May 31, 2002, to Vinfen Corporation, a Massachusetts non-profit corporation and serves as a residence for a maximum of four mentally retarded persons; 15 Newton Street is leased to the Antique Auto Museum of Massachusetts at Larz Anderson Park, Inc., and apparently, the Town is in the process of negotiating a new lease; 55 Newton Street is leased through June 30, 2004 to Long Bow Group, Inc., a business of researching and editing films, television broadcasts and cultural programs at museums; and 29 Avon Street is vacant but the Town recently has received a proposal for leasing which is under review. The Selectmen are deleting permission to lease 55 Newton Street from their original request since it is leased until 2004.

RECOMMENDATION

The Advisory Committee unanimously recommends FAVORABLE ACTION on the vote offered by the Selectmen.

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ARTICLE 15

FIFTEENTH ARTICLE

To see if the Town will vote to establish a Moderator’s Committee, or to expand the scope of an existing committee, to study the feasibility, desirability, and cost of forming a Municipal Power Company in Brookline. The study shall include or act on anything relative thereto.



This Article is submitted in response to the continued frequency of power outages in Brookline and the feeling that NStar has not been responsible in maintaining its delivery systems. At this time, we do not know whether a municipal power company would be feasible or whether it would be helpful in providing more reliable electric power to Brookline. We hope that this study can produce those answers.



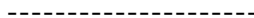
SELECTMEN’S RECOMMENDATION

This petitioned article calls for either the establishment of a new Moderator’s Committee or the expansion in scope of an existing Moderator’s Committee to study the issues surrounding the formation of a Municipal Power Company in Brookline. The 2000 Fall Town Meeting approved Article 26, thereby creating the Moderator’s Committee on Community Electricity Franchising, which is charged with the following:

“To explore the creation of a community electricity franchise either within Brookline or in conjunction with nearby communities in order to take advantage of public utility deregulation and permit Brookline residents to lower costs and to purchase electricity which is produced from renewable sources, minimizing greenhouse gas emissions which contribute to world climate change.”

The Board believes that this Moderator’s Committee is capable of including this issue in its study. The Moderator has stated that the Committee could expand its scope, and the Committee has agreed to undertake the task. Therefore, no new Moderator’s Committee needs to be established.

Therefore, the Board unanimously recommends FAVORABLE ACTION on the vote offered by the Advisory Committee:



ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The petitioners request that a committee investigate the possibility of a Municipal Power Company being operated by the town for the purpose of reducing power outages.

DISCUSSION

Electric power utility companies have three basic modes of operation: generation, distribution, and billing of customers. While it is highly unlikely that a power plant can be built and operated in Brookline, leased electric lines and billing are a possibility. However, the recent power losses in the town were a result of sub-station failures located in the City of Boston. Per a November 2000 vote of Town Meeting, the Moderator established a Committee on Community Electricity Franchising. This Committee is studying similar matters in the context of an immensely complicated national, regional, economic and political problem.

RECOMMENDATION

VOTED: To refer the matter of a Municipal Power Company in Brookline to the Moderator's Committee on Community Electricity Franchising.

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ARTICLE 16SIXTEENTH ARTICLE

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

WHEREAS, there have been and continue to occur serious traffic accidents involving school buses and buses used for transporting students to school-sponsored activities which have brought about severe injury or death in school children due to failures to meet basic safety precautions on such buses,

WHEREAS no school buses, in particular, are required by law to provide three-point lap and shoulder restraint systems with retracting seat belts as is standard in automobiles of recent manufacture,

And WHEREAS the Town of Brookline has never hesitated to lead in matters of public safety and especially the safety of its school children,

NOW THEREFORE BE IT RESOLVED

THAT THE TOWN OF BROOKLINE call upon the Great and General Court of the Commonwealth of Massachusetts to adopt legislation requiring that all school buses and all buses used for the purpose of transporting school children provide a three-point lap and shoulder restraint system with retracting seat belts in precisely the wording and manner set out specifically in House Bill No. 1084 as offered by Timothy J. Toomey, Jr., of Cambridge (attached herewith) with one exception, that the date mentioned will in all cases read "July first, two thousand and three" and not "July first, two thousand and five,"

AND FURTHER, that the Town of Brookline call upon its representatives in matters of the transportation of school children (whether the Brookline School Committee, its designated administrators, or a special task force appointed by the School Committee including parents, citizens, Selectmen, consultants or others) to research, negotiate, and arrange compliance with the provisions of the aforementioned House Bill No. 1084 (with the exception that the date mentioned in all regards be "July first, two thousand and three") for the children of Brookline

OR if such an undertaking by the Brookline School Committee has commenced by the time of Fall Town Meeting 2001, that the Town of Brookline through its Town Meeting offer a vote of support and confidence to such an undertaking.

or act on anything relative thereto.

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HOUSE, No. 1084

By Mr. Toomey of Cambridge, petition of Timothy J. Toomey, Jr., and other members of the General Court for legislation to require the use of seat belts on school buses. Public Safety.

The Commonwealth of Massachusetts  
In the Year Two Thousand and One.

**AN ACT TO PROMOTE SAFETY IN THE TRANSPORTATION OF STUDENTS.**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 7B of chapter 90, as most recently amended by section one of chapter 247 of the Acts of 1996, is hereby amended by adding after the word "seated" in line 143, the following:-and, after July first, two thousand and five, a three-point lap and shoulder restraint system with retracting belts which is properly adjusted and fastened according to the manufacturer's instructions shall be worn by every child riding as a passenger in said bus, and prior to said date if such bus is equipped with a safety restraint system, no child shall ride as a passenger in such bus unless such child is wearing such restraint system which is properly adjusted and fastened according to the manufacturer's instructions.

SECTION 2. Said section 7B of chapter 90 is hereby further amended by adding after the word "year" in line 254, the following:-; (18) Every school bus may, prior to July first, two thousand and five, and shall, after July first, two thousand and five, be equipped with a three point lap and shoulder restraint system with retracting belts for each permanent seating accommodation approved by the National Highway Transportation Safety Administration and installed in compliance with United States motor vehicle D.O.T. safety standards, which shall be fastened about each passenger at all times during vehicle operation.

SECTION 3. Section 7I of chapter 90, as appearing in the 1996 Official Edition, is hereby amended by adding after the word "seated" in line 5, the following:-and, after July first, two thousand and five, a three point shoulder and lap safety restraint system with retracting belts which is properly adjusted and fastened according to the manufacturer's instructions shall be worn by every child riding as a passenger in said bus, and prior to said date if such bus is equipped with a safety restraint system, no child shall ride as a passenger in such bus unless such child is wearing a three point lap and shoulder restraint system which is properly adjusted and fastened according to the manufacturer's instructions.

SECTION 4. Section 7AA of chapter 90, as most recently amended by chapter 470 of the acts of 1996, is hereby amended by adding, in line 33 after the word "bus" the words:-, prior to July first, two thousand and five.



SECTION 5. Chapter 175 E., Section 4 of the General Laws is hereby amended by adding the following section at the end thereof.

(f) for motor vehicle insurance rates for school buses, the commissioner shall develop and promulgate a schedule of appropriate reductions in premium charges to account for the decreased risk of injury associated with the installation of a three-point lap and shoulder restraint system approved by the National Highway Transportation Safety Administration in any such bus so equipped. Said schedule shall, for those rates applicable prior to July first, two thousand and seven, contemplate reductions sufficient to equal any costs associated with the installation of such a restraint system over a seven-year period.

SECTION 6. No claim for damages shall arise from the failure of a school bus operator to ensure that a passenger of a school bus was wearing the restraint system prescribed by Sections 7B, 7I and 7AA of Chapter 90 of the General Laws, provided that instruction in the use of such system and practice in its use is provided to all existing and prospective passengers not less than every six months.

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SELECTMEN'S RECOMMENDATION

The terrible bus tragedy that took the lives of four Newton school children on April 27, 2001 shed further light on the obvious need to enhance bus safety. This petitioned article is part of Brookline's attempt to push the agenda forward and help garner support for State Representative Timothy J. Toomey, Jr.'s (D-Cambridge) House Bill 4241, a piece of legislation that would require the use of seat belts on school buses by July 1, 2005.

The proposed resolution also calls on the School Committee, its designated administrators, or a special task force to research, negotiate, and consider compliance with the provisions of House Bill 4241, and report to Town Meeting in 2002. It is the Selectmen's desire that this research be comprehensive, including issues surrounding long-haul buses and windows.

The Board unanimously recommends FAVORABLE ACTION on the vote offered by the Advisory Committee.

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## ADVISORY COMMITTEE'S RECOMMENDATION

### HISTORY

The latter third of the 20<sup>th</sup> century saw a variety of remarkable safety improvements in automobiles. These included seatbelts, energy absorbing crumple zones, air bags, side curtains, anti-lock brakes, all-wheel drive, traction control, stability control and laws requiring seatbelt use.

School bus safety improvements were less remarkable. The most notable improvement came in 1977 with the institution of "compartmentalization". This approach is often referred to as "egg crating". Largely it is a system of adding height and padding to seatbacks to reduce the injuries incurred during impact. By increasing padding and maintaining close seating, movements and injuries imposed by collisions can be reduced. While this has certainly been a safety enhancement, many consider it to be a less than stellar engineering feat. And, they believe we can easily do more to increase safety for school bus occupants, principally through the use of 3 point seatbelts. Those organizations strongly supporting this goal include the National Parent Teacher Association, The Association of Oral & Maxillo Facial Surgeons, the American Academy of Pediatrics and the American Medical Association.

Article 16 is a proposed resolution that supports that aim. Specifically, it asks Brookline to support House Bill 1084, now designated House Bill 4241, which would require 3 point seat belts in school buses by 2006, and supports the creation of a School Committee-coordinated study group to evaluate this and stricter safety measures, and report back to Town Meeting.

The notion of 3 point seatbelts in school buses is not without controversy. While all support the objective of fewer injuries to riders, there is a dearth of good data on which to evaluate the situation and formulate a response. The National Transportation Safety Board (NTSB) states that school buses are the "safest form of transportation", pointing out that on average only 9 school bus passengers are fatally injured each year nationally as opposed to 42,000 in car and truck accidents on highways. 9 school bus fatalities in the nation annually unfortunately does not compel action.

The data the NTSB analyzes, however, is from the Fatality Analysis Reporting System (FARS). NTSB states that FARS is "not a reliable source" and that "school bus accident injury data are incomplete, and therefore, cannot be reliably estimated". While NTSB doubts the effectiveness of seatbelt use (it is not clear whether this is 2 point, 3 point, or both), it asserts that "current compartmentalization is incomplete... passengers do not always remain completely within the seating compartment".

There is also very little comprehensive crash test data. Most data looks at front-end collisions, which serve to support the notion that compartmentalization is sufficient. Computer simulations by NTSB, however, seem to support the benefit of a 3 point seatbelt, particularly for side impacts.

Clearly there are many things to consider when evaluating school bus safety, and a 3 point seatbelt is only one aspect. At a minimum; however, the 3 point belt works toward NTSB's stated goal of keeping passengers within the seating compartment. It is important, however, that any system achieves the NTSB's requirement of being "tested to uniform performance standards developed by the National Highway Traffic Safety Administration" (NHTSA). A report from NHTSA is pending.

### **House Bill 1084 (now designated HB 4241) and Article 16**

There are about 7,000 school buses in Massachusetts. Currently Chapter 90, ss7B requires that seatbelts be installed for school bus operators, but not the other occupants (i.e. children).

House Bill 1084, now designated HB 4241, would require 3 point self-retracting lap and shoulder belts that are approved by NHTSA be installed in all Massachusetts school buses by July 1, 2006.

Article 16 is a resolution of support for the House Bill and for the creation of a School Committee-mediated study group to assess the provisions of the House Bill, as well as school bus safety concerns generally.

### DISCUSSION

The Committee understands that there is legitimate debate with regard to the effectiveness of seat belts with the "compartmentalization" system. There are, in fact, some studies to suggest that a lap belt-only system could actually be detrimental in some situations. However, the discussion here is about the lap/shoulder belt configuration.

While the statistical enhancement of safety with seatbelt use may be debated, all sides agree that "current compartmentalization is incomplete" and that occupants must remain completely within the seating compartment.

The Advisory Committee feels that a 3 point seatbelt system for school buses is a reasonable and realistic goal.

### RECOMMENDATION

While the Committee supports the intent of the resolution (Article 16), we have reservations about portions of the original wording. Specifically, we are concerned about accelerating the time frame for implementation as proposed in the resolution. We believe it is unrealistic to believe all districts in the State can meet that goal. We also feel Brookline should not be compelled to implement this ahead of the State as a whole. As stated before, standardization will be important. Implementation prior to the establishment of State-wide standards could have

unforeseen consequences. Brookline should encourage this measure on the same terms as the rest of the State.

Additionally, the Advisory Committee was uncomfortable about broadening the application to include “all buses used for the purpose of transporting school children”. This would affect MBTA buses, and may prove a fatal hurdle in passing the proposed legislation.

We understand maintaining the pending legislation restriction to “school buses” may not technically encompass chartered coaches or team buses.

However, it is important to remember that the rewording of the resolution to more closely follow the pending legislation, in no way precludes us or any other town from implementing these measures early. Nor does it bind us to an artificially early date if safe and adequate standards have not yet been established.

The School Department may implement measures early and may require those buses it leases for travel to be suitably equipped with restraints. We have an elected School Committee of intelligent, thoughtful members who are committed to the well being of our children. The Advisory Committee feels recommendations should come from them, rather than be imposed on them. We ask them to present us their recommendations next year. The Advisory Committee also feels that rewording the resolution will make it more effective at adding momentum to the pending State Legislation.

The Advisory Committee unanimously recommends FAVORABLE ACTION on the following vote:

VOTED:           that the Town adopt the following resolution:

WHEREAS there have been and continue to occur serious traffic accidents involving school buses and buses used for transporting students to school-sponsored activities which have brought about severe injury or death in school children due to failures to meet basic safety precautions on such buses.

WHEREAS no school buses, in particular, are required by law to provide three-point lap and shoulder restraint systems with retracting seat belts as is standard in automobiles of recent manufacture.

And WHEREAS the Town of Brookline has never hesitated to lead in matters of public safety and especially the safety of its school children,

NOW THEREFORE BE IT RESOLVED

THAT THE TOWN OF BROOKLINE call upon the Great and General Court of the Commonwealth of Massachusetts to adopt legislation requiring that all school buses provide a three-point lap and shoulder restraint system with retracting seat belts in precisely the wording and manner set out specifically in House Bill No. 1084, now designated House Bill 4241, as offered by Timothy J. Toomey, Jr., of Cambridge (attached herewith).

AND FURTHER, that the Town of Brookline call upon its representatives in matters of the transportation of school children (the Brookline School Committee, its designated administrators, or a special task force appointed by the School Committee including parents, citizens, Selectmen, consultants or others) to research, negotiate, and consider compliance with the provisions of the aforementioned House Bill and school bus safety in general for the children of Brookline, and report to the Town Meeting in 2002.

XXX

ARTICLE 17

SEVENTEENTH ARTICLE

Reports of Town Officers and Committees