



**TOWN OF BROOKLINE
MASSACHUSETTS**

**REPORTS OF SELECTMEN
AND ADVISORY COMMITTEE**

on the

Articles in the Warrant

for the

SPECIAL TOWN MEETING

to be held in the High School Auditorium

Tuesday, November 12, 2002

at

7:00 P.M.

(Please retain this copy for use at the Town Meeting)

Town of Brookline

BOARD OF SELECTMEN

Deborah B. Goldberg, Chairman

Donna R. Kalikow

Joseph T. Geller

Gilbert R. Hoy, Jr.

Robert L. Allen

Richard J. Kelliher, Town Administrator

"The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services or activities. Persons with disabilities who need auxiliary aids and services for effective communication in programs, services and activities of the Town of Brookline are invited to make their needs and preferences known to: C. Stephen Bressler, ADA Coordinator and Director of the Human Relations - Youth Resources Commission, 11 Pierce Street, Brookline, Ma. 02445, 730-2300 Voice, 730-2327 TDD, 730-2296 FAX."

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
Kenneth W. Chin, 200 St. Paul Street #3.	739-2519
Robert H. DeVries, 18 Acron Road.	731-8595
Nadine Gerdts, 56 Linden Place.	731-0420
Jay Gonzalez, 33 Glenland Road	879-0194
L. Branch Harding IV, 145 Woodland Road.	738-0716
Gerard J. Hayes, 49 Gorham Road	277-0002
Sytske V. Humphrey, 46 Gardner Road.	277-1493
Mary Johnson, 286 Warren Street	566-7899
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
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
Leonard A. Weiss, 46 Hawthorn Road	277-8403
Karen Wenc, 84 Summit Avenue.	232-4983
Neil Wishinsky, 20 Henry Street.	739-0181
Robin E. Coyne, Budget Analyst, Town Hall	730-2115

NOVEMBER 12, 2002

SPECIAL TOWN MEETING

INDEX

ARTICLE NO.

TITLE

1. Approval of unpaid bills (Selectmen)
2. Approval of CDBG application (Department of Planning and Community Development)
3. Approval of collective bargaining agreements (Human Resources Board)
4. FY2003 budget amendments (Selectmen)
5. Appropriation of funds for textured, tinted concrete pedestrian crosswalks at various locations. (Petition of Anthony Andreadis)
6. Abolition of certain Fire Department inspectional services and associated fees. (Petition of Stanley Wayne)
7. Appropriation of funds to pay refunds for Fuel Storage Permit Fee bills paid since May 22, 2002. (Petition of Stanley Wayne)
8. Appropriation of funds for Personal Alert Safety System (PASS) Devices and flashlights by November 30, 2002. (Petition of Bobby Murphy)
9. Consolidation of the Financial Plan and Annual Report. (Petition of Stanley Wayne)
10. Amendments to Sections 5.22 and 7.06 of the Town's Zoning By-Law - Exceptions and Exemptions to Maximum FAR Regulations for Single- and Two-Family Residential Dwelling Units. (Department of Planning and Community Development)
11. Amendment to Section 6.14 of the Town's Zoning By-Law – Bicycle Space and Design Requirements. (Petition of Andrew Fischer)
12. Amendment to Section 5.52 of the Town's Zoning By-Law – Requirement for Design Review of Certain Front Fences and Walls. (Petition of Helen Braun)

13. Amendment to the Town's Zoning By-Law - amending the Zoning Map. (Petition of M.K. Merelice)
14. Amendment to Article 5.8 of the Town's By-Laws - Signs for Gasoline Service Stations. (Petition of Martin Rosenthal)
15. Contingent recommendation for the designation of a St. Aidan's Local Historic District. (Preservation Commission)
16. Designate and retain the Town-owned land at the end of and formerly a part of Reservoir Road, for park purposes. (Petition of John VanScoyoc)
17. Designate and retain the Town-owned land at the corner of Monmouth Street and Saint Mary's Street, Lots 27 and 28 in Block 112, for park purposes. (Petition of Cathleen Cavell)
18. Authorization to petition/request Boston's Metropolitan Planning Organization to plan and fund an underpass roadway on Route 9 (Boylston Street) at the intersection of Hammond Street. (Petition of Anthony Andreadis)
19. Appointment of a Town's Committee to study Town Meeting practices and procedures in comparison with other communities. (Petition of Jonathan Karon and Linda Dean)
20. Appointment of a Selectmen's Committee to investigate and report on the Town's options of removing civil service offices and positions from the requirements of the Massachusetts civil service law and regulations. (Petition of Fred Lebow)
21. Resolution appointing a Selectmen's Committee to investigate the Town's options regarding the elimination of overhead wiring along public streets. (Petition of Helen Braun)
22. Resolution concerning the disbursement of Town funds to religious organizations. (Petition of Stanley Wayne)
23. Approval of naming the Brookline Swimming Pool the Evelyn Kirrane Aquatics Center. (Recreation Department)
24. Dedication of a traffic island in memory of Joseph M. Tynan, Jr. (Petition of Ronny Sydney)
25. Acceptance of the provisions of General Laws Chapter 138, Section 33A – Sale of Alcoholic Beverages in the Town of Brookline on Sundays. (Selectmen)
26. Reports of Town Officers and Committees. (Selectmen)

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.

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. There are numerous unpaid bills submitted for approval, which can be broken down into two categories: 1.) Retirement System-related and 2.) Fire Department Injured on Duty Medical bills.

Retirement System Bill

There is one bill, in the amount of \$3,416.81, for the pro-rated pension of a former Brookline employee who is now a retired employee in the Newton retirement system. The bill was sent by the City of Newton on January 3, 2000, to the Brookline Retirement Board, where it was recently discovered. It has been determined to be a valid liability of the Town of Brookline.

Fire Department Injured on Duty Medical Bills

There are 34 bills from 14 different medical providers, totaling \$17,068.40, for medical expenses associated with firefighters injured while on duty. The Town is responsible for the payment of these expenses per MGL Chapter 41, Section 100. These bills, all for services rendered during FY2002, were not received by the Town until after the close of the fiscal year. It should be noted that most of the bills are related to the incident that occurred during the practice for the landing of the Presidential helicopter at Northeastern University's Parsons Field, and the Town is currently seeking reimbursement from the Federal government for these and other costs related to the accident.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 4-0, on the vote offered by the Advisory Committee.

October 29, 2002 Roll Call Vote:

Favorable Action

Kalikow
Geller
Hoy
Allen

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This article is necessary to cover any unpaid bills from prior fiscal years. 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. This article requires a 9/10's vote.

DISCUSSION

A. City of Newton Bill

Some town employees have worked for more than one municipality over their career. When this occurs, their pension may be paid by another community with Brookline reimbursing the other community for Brookline's share. The other community is supposed to submit a bill to the Comptroller's office which issues a check.

In one instance, the City of Newton submitted a bill for \$3,416.81 to the town's retirement board. The retirement board misplaced the bill and hence it was unpaid.

B. Medical Bills

The town is responsible for the medical bills of fire personnel injured in the line of duty. The 34 medical bills listed below are all bills for medical services of fire fighters injured in the line of duty. Most of these bills are attributable to a helicopter incident while practicing landing procedures for a visit by President Bush. The town is seeking reimbursement from the federal government. All the bills were received after the end of FY2002 for services rendered during that fiscal year. All the bills have been reviewed by the town and all have been adjusted downward in accordance with the rules of the Massachusetts Rate Setting Commission.

RECOMMENDATION

The Town is responsible for this bill and needs a favorable vote on this Warrant article to provide the legal authority to meet its obligations. The Advisory Committee by a 17-0 unanimous vote recommends FAVORABLE ACTION on the following vote:

VOTED: To authorize the payment of the following unpaid bill of a prior fiscal year and authorize payment from the Fiscal Year 2003 pension fund budget:

City of Newton

\$3,416.81

VOTED: To authorize the payment of the following unpaid bills of a prior fiscal year and authorize payment from the Fiscal Year 2003 Fire Department budget:

Brigham and Women's Hospital	\$14,429.43
Darel Moss, DDS	\$ 250.00
Fallon Ambulance	\$ 95.95
Walgreen's Pharmacy RX	\$ 98.25
Department of Radiology – Brigham and Women's Hospital	\$ 7.04
Deaconess Glover Hospital	\$ 153.23
West Suburban Imaging Center	\$ 82.44
Faulkner Hospital	\$ 36.58
Faulkner Pain Clinic	\$ 101.38
New England Baptist Hospital	\$ 582.78
Newton-Wellesley Hospital	\$ 49.50
Beth Isreal Deaconess – EMG Medicine	\$ 44.27
Orthopaedic Associates, Inc.	\$ 299.41
Sports and Physical Therapy Associates	\$ 838.14

XXX

ARTICLE 2SECOND 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 FY2004 (Federal FY2003) in the amount of \$1,872,000 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 a result of any said applications, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

For fiscal year 2004, which will begin on July 1, 2003, the amount of \$1,872,000 is currently estimated as the Town's entitlement for eligible community development activities, based on the HUD budget being considered by Congress. While there is some indication that the final amount may be \$1,937,000, or an increase of \$65,000 (3.5%), it is prudent to base recommendations on a level-funded basis.

The Community Development (CD) Committee has held its public hearings and has issued its recommendations. The Committee received requests totaling \$2.407 million, meaning some difficult decisions had to be made regarding which programs to continue, reduce, or create. The Board of Selectmen strongly supports the Committee's emphasis on encouraging new service applications and recommending funding, if appropriate. The diligence with which the Committee studied each program request and prepared its recommended budget is greatly appreciated.

Since the Board of Selectmen is the authorizing body for the application filing and fund expenditures, it reviews each application in depth. Particular emphasis is placed on the Public Services category, which is capped at 15% of the total dollars of the HUD grant. When there is a recommendation for a proposed significant funding reduction for a Brookline based non-profit organization, the Board attempts to balance the requests in a way that provides stability to proven program services and encourages new services for the citizens of Brookline. Based on that review, the Board concurs with all but five of the CD Committee's recommendations, each of which fall under the Public Services category:

- *Youth Employment Program* - this program should be reduced by \$8,568 from the amount recommended to \$76,432. Last year, the Selectmen requested that salaries and overhead for program administration within this category be covered within the Town's operating budget, thereby freeing up CDBG funds for direct program services. The reduction in the Youth Employment program of \$8,568 reflects salary administration costs, which will be covered by the Town's operating budget, and will not impact youth employment services.
- *Community-based Victim Advocacy and Shelter Services* - this program should be reduced by \$15,000 from the amount recommended to \$5,000. The Board recognizes that domestic violence is an ongoing problem in Brookline, but notes that services for the victims and their families are coordinated by the Domestic Violence Roundtable and supported by funding from the Town and other agencies within the Town. The recommendation of \$5,000 for seed funding for this new program is comparable to the CDBG funding provided by Newton and Waltham for this applicant.
- *BCMHC Adolescent Outreach Program* - this program should be increased by \$13,568 above the amount recommended to \$40,568. Over the last six years, this program has been funded by CDBG averaging \$42,500 each year. The Brookline Center has consistently provided crisis intervention/counseling services for over 200 teens and families and 185 individuals through the mediation and legal program and anticipates a 4% increase in clients in 2004. Based on data from the schools and the police, the Selectmen feel that a 15% cut in funding would seriously affect the critical needs of our teens.
- *Parent Child Home Program/Brookline* - this program should be reduced by \$5,000 from the amount recommended to \$5,000. This new program provides home-visiting, risk prevention services for low-income families in need in Brookline. The organization has developed strong relationships within Brookline and deserves seed funding of \$5,000 from CDBG funds to enhance their outreach efforts. The proposed funding of \$5,000 is comparable to the CDBG funding provided by Newton for this organization.
- *After Hours U/Cyber Kids/Steps to Success* - this program should be increased by \$15,000 above the amount recommended to \$15,000. This previously funded program by CDBG provides funding for an after school program for low-income 5th and 6th grade students at the Devotion and Lincoln School who are at risk for school failure. Based on the need and the program's documented success, the Board recommends \$15,000 funding for After Hours.

The result of the modifications to the Public Services category is a total of \$279,250 allocated to various programs that reach residents of all ages, from the very young to the school-aged to the elderly. If HUD grants additional funds, the Board of Selectmen concurs with the CD Committee's recommendation to increase Brookline Creative Start by \$7,000 and the Home Escort Linkage Program by \$2,000 within the Public Services category.

Within the other categories, a total of \$409,525 is included for ADA-related projects, specifically for Beacon Street accessibility improvements. Funded under the Parks/Open Space category is rehabilitation of the Lawton Street Playground. Under the Community Facilities category, \$115,700 is included for a pedestrian signal at 61 Park Street, a Creative Arts Center, and street tree removal and replacement. Finally, \$159,000 is included for improvements to the Trustman Apartments and Veterans Developments, both falling under the Housing category.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 22, 2002, 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 FY2004 (Federal FY2003) in the total amount of \$1,872,000, or 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 a result of any said applications as follows:

FY2004 CDBG RECOMMENDED BUDGET

<u>PROGRAM REQUEST</u>	<u>AMOUNT</u>
<u>A. Program Management/Planning</u>	
1. CD Grant Administration	\$145,000
2. CD Comprehensive Planning	\$ 87,500
3. Preservation Planning	\$ 69,800
4. Legal/Professional Services	<u>\$ 30,000</u>
	\$332,300
<u>B. Housing</u>	
1. Housing Division	\$207,900
2. Pedestrian Safety @ Veterans Developments	\$ 25,000
3. Site Improvements @ Rear of Trustman Apartments	<u>\$134,900</u>
	\$367,800
<u>C. Architectural Barriers Removal/ADA</u>	
1. Beacon Street Accessibility Improvements	<u>\$409,525</u>
	\$409,525

D. Community Facilities

1. Street Tree Removal and Replacement	\$ 30,000
2. Creative Arts Center	\$ 39,500
3. 61 Park Street Pedestrian Signal	<u>\$ 46,200</u>
	\$115,700

E. Parks/Open Space

1. Lawton Street Playground	<u>\$347,200</u>
	\$347,200

F. Public Services

1. Youth Employment Program	\$ 76,432
2. Brookline Creative Start	\$ 21,000
3. BCMHC Comp. Services for Children & Families	\$ 27,000
4. Community-based Victim Advocacy & Shelter Svcs.	\$ 5,000
5. Wellness Program	\$ 5,250
6. BCMHC Adolescent Outreach Program	\$ 40,568
7. Parent Child Home Program/Brookline	\$ 5,000
8. Home Escort Linkage Program (HELP)	\$ 10,000
9. Brookline Elder Taxi System (BETS)	\$ 37,000
10. Brookline Learning Project/Next Steps	\$ 10,000
11. After Hours U/Cyber Kids/Steps to Success	\$ 15,000
12. Family Day Care Program	<u>\$ 27,000</u>
	\$279,250

G. Contingency

1. Contingency	\$ 20,225
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GRAND TOTAL: \$1,872,000

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

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 (CDGB). The Town's Community Development Committee of the Council for Planning and Renewal ("CDBG Committee") met several times to determine which agencies met the CDGB criteria, to hear requests for funding from those agencies which had submitted applications, and to assess the eligibility and relative merits of those applicants. This Committee then prepared a set of recommendations to the Selectmen. This warrant article asks Town Meeting to authorize the Board of Selectmen to file an application for CDBG funds for FY04 in the amount of \$1,872,000 (the current estimate of the amount for which Brookline is eligible. This article would also grant

the Selectmen the authority to spend this money. Under the CDBG regulations and the power granted through this Warrant Article, the Selectmen would then have the ultimate authority to spend the money within the eligible projects as they saw fit. Neither the recommendation of the CDBG Committee, nor that of Town Meeting is binding on the Selectmen as to exactly how the money must be spent within the eligible uses. The total Brookline expects to receive has declined by approximately \$33,000 or a 1.7% decrease from FY03.

DISCUSSION

HUD funding guidelines specify that no more than 20% of total CDBG grant may be used in category A, Program Planning and Management, and 15% in category F, Public Services.

The CDBG Committee recommends full funding of Grants in the following categories:

Category A. Program Planning/Management (\$332,300);

Category B. Housing (\$367,800);

Category C. Architectural Barriers Removal/ADA (\$409,525); and

Category D. Community Facilities (\$115,700).

Under Category E. Parks/Open Space the committee recommends funding for the Lawton Street Playground (\$347,200). The proposal for St. Aidan's Acquisition and Preservation was denied because the proposal appears to be more focused on buildings than open space and no firm proposal for the project has been agreed upon.

Under Category F. Public Services Grants totaling \$279,250 were funded. The following items have been recommended for funding:

1. Youth Employment Program	\$85,000
2. Brookline Creative Start	\$21,000
3. BCMH Comprehensive Services for children & Families	\$27,000
4. Community-based Victim Advocacy and Shelter Svcs.	\$20,000
5. Wellness Coordinator	\$ 5,250
6. BCMHC Adolescent Outreach Program	\$27,000
7. Community Outreach Programs and Events (COPE)	\$ 0
8. Parent Child Home Program/Brookline	\$10,000
9. Home Escort Linkage Program (HELP)	\$10,000
10. Brookline Elderly Taxi Service (BETS)	\$37,000
11. Brookline Learning Project/Next Steps	\$10,000
12. After Hours U/Cyber Kids/ Steps to Success	\$ 0
13. Family Day Care Program	\$27,000
14. Early Childhood Outreach & Supportive Services	<u>\$ 0</u>
TOTAL	\$279,250

Several of these items were not funded at the levels requested. The proposal for Community Outreach Programs and Events was denied. HUD Funding in Category F is limited to 15% of the total. Therefore, the total allocations in this category cannot exceed \$280,800.00. Recommendations were made on the basis of a \$1,872,000 HUD GRANT. In the event of a FY2004 HUD CDBG grant of \$1,937,000.00 all cuts would be reconsidered for restoration.

Category G. Contingency will have \$20,225.

The Selectmen recently voted several changes within Category F. They would like to see the two programs dealing with adolescents, BCMHC Comprehensive Services for Children & Families and After Hours U, receive increased funding, due to what they perceive is a rising need. They would deduct from the amounts recommended for the Youth Employment Program, Community-based Victim Advocacy and Shelter Families, and the Parent Child Home Program/Brookline, to cover the increases in those two categories. The CDBG Committee feels that HUD guidelines say that more of the money should be directed to new initiatives, rather than providing a continual source of funding for the same programs. In addition, the CDBG Committee and some members of the Advisory Committee felt that the programs that the Selectmen would cut are very worthy. The Advisory Committee had voted on the CDBG recommendation prior to the Selectman's changes and members did not feel that they had sufficient information about the competing viewpoints to reconsider the matter. Ultimately, the Selectmen will allocate this money as they determine is appropriate.

RECOMMENDATION

The Advisory Committee by a vote of 15-1 to recommend FAVORABLE ACTION on the recommendation offered by the Community Development Committee for a total of \$1,872,000, reflected in the following vote, with the recommendation that should additional funds become available, item F12 - After Hours U/Cyber Kids/Steps to Success should be funded.

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 FY2004 (Federal FY2003) in the total amount of \$1,872,000, or 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 a result of any said applications as follows:

FY2004 CDBG RECOMMENDED BUDGET

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	\$332,300
<u>B. Housing</u>	
1. Housing Division	\$207,900
2. Pedestrian Safety @ Veterans Developments	\$ 25,000
3. Site Improvements @ Rear of Trustman Apartments	<u>\$134,900</u>
	\$367,800
<u>C. Architectural Barriers Removal/ADA</u>	
1. Beacon Street Accessibility Improvements	<u>\$409,525</u>
	\$409,525
<u>D. Community Facilities</u>	
1. Street Tree Removal and Replacement	\$ 30,000
2. Creative Arts Center	\$ 39,500
3. 61 Park Street Pedestrian Signal	<u>\$ 46,200</u>
	\$115,700
<u>E. Parks/Open Space</u>	
1. Lawton Street Playground	<u>\$347,200</u>
	\$347,200
<u>F. Public Services</u>	
1. Youth Employment Program	\$ 85,000
2. Brookline Creative Start	\$ 21,000
3. BCMHC Comp. Services for Children & Families	\$ 27,000
4. Community-based Victim Advocacy & Shelter Svcs.	\$ 20,000
5. Wellness Program	\$ 5,250
6. BCMHC Adolescent Outreach Program	\$ 27,000
7. Parent Child Home Program/Brookline	\$ 10,000
8. Home Escort Linkage Program (HELP)	\$ 10,000
9. Brookline Elder Taxi System (BETS)	\$ 37,000
10. Brookline Learning Project/Next Steps	\$ 10,000
11. After Hours U/Cyber Kids/Steps to Success	\$ 0
12. Family Day Care Program	<u>\$ 27,000</u>
	\$279,250
<u>G. Contingency</u>	
1. Contingency	\$ 20,225
 GRAND TOTAL:	 <u><u>\$1,872,000</u></u>

ARTICLE 3

THIRD ARTICLE

To see if the Town will raise and appropriate, or appropriate from available funds, a sum or sums of money to fund the FY2003 cost items in collective bargaining agreements between the Town and various employee unions; fund wage and salary increases for employees not included in the collective bargaining agreements; and amend the Classification and Pay Plans of the Town; or act on anything relative thereto.

To: The Board of Selectmen

From: John Dunlap, Director of Human Resources

Date: October 25, 2002

Re: **Collective Bargaining – Town Meeting – Article 3**

The Town has completed negotiations with the Brookline Police Association for a one-year contract. The contract period is July 1, 2002 through June 30, 2003.

The Town has already completed negotiations with the following three unions: AFSCME Council 93, Local 1358; the Staff Association of the Public Library of Brookline (AFSCME Council 93); and the Brookline Engineering Division Associates. These contracts were approved at last Spring's Annual Town Meeting. These three collective bargaining agreements were for a two-year contract commencing on July 1, 2002 and ending on June 30, 2004.

A summary of the major changes in the contract with the Brookline Police Association and all cost items are outlined below:

I. Fiscal Year 2003 - 3% General Wage Increase.

<i>Cost:</i>	
FY 03	\$269,984

II. Defibrillators

All employees shall be required to obtain and maintain defibrillator certification and shall use defibrillators as necessary. Effective July 1, 2002 the stipend for defibrillators shall be \$200/year payable on or about February 1, 2003 for the 2003 fiscal year. The stipend shall be \$400/year commencing with the 2004 fiscal year and shall be payable on or about December 1, 2003 and each December thereafter. Certification will be done in house.

<i>Cost:</i>	
FY 03	\$27,800
FY 04	\$55,600

III. Vests

All employees hired on or after October 4, 2002, including those employees in the police academy as of October 4, 2002, shall be required to wear a bullet-proof vest (body armor) whenever they are on duty, including private details, outside of the public safety building.

Cost:
No appropriation is required to fund this provision.

IV Labor – Management Committee for Performance Appraisals

The parties agree to establish a labor-management committee to negotiate and develop performance evaluation instruments to be used to evaluate all personnel. The parties shall endeavor to complete the development of such instruments by June 30, 2003, but nothing shall be implemented without mutual agreement.

Cost:
No appropriation is required to fund this provision.

A complete copy of the Collective Bargaining Agreement and the relevant Memorandum of Agreement with the above mentioned union is available in the Human Resources Office.

The total appropriation requested to fund this agreement for fiscal year 2003 is \$297,784.

SELECTMEN'S RECOMMENDATION

As detailed in the Human Resource Director's memorandum, the Town has reached agreement on a one-year contract with the Brookline Police Association. The agreement is for the period beginning July 1, 2002 and ending June 30, 2003 and calls for a 3% wage increase effective July 1, 2002 (FY03). Also included is the requirement that all employees obtain and maintain defibrillator certification and use defibrillators as necessary. Associated with this requirement is the establishment of Defibrillation Pay in the amount of \$200 for FY03. (In FY04, the stipend increases to \$400.)

Non-monetary aspects of the proposal include the requirement that all employees hired on or after October 4, 2002, including those employees in the police academy as of October 4, 2002, wear a bullet-proof vest (body armor) whenever they are on duty, including private details, outside of the public safety building. (No appropriation is required to fund this provision, as the vests are funded by state and federal grants.) The other non-monetary aspect is the agreement to establish a labor-management committee that will negotiate and develop performance evaluation instruments to be used to evaluate all personnel. The parties agree to complete the development of such instruments by June 30, 2003; however, nothing shall be implemented without mutual agreement.

The total cost of the proposal for FY03 is \$297,784. The funds needed to pay for the contract were included in the Town's FY03 budget approved at the 2002 Annual Town Meeting.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 15, 2002, on the following vote:

VOTED: To approve and fund by a transfer of \$297,784.00 from item No. 44, Collective Bargaining - Town, of the FY2003 Budget approved under Article 9 in the Warrant of the 2002 Annual Town Meeting, the cost items in the following collective bargaining agreement that commences on July 1, 2002 and ends on June 30, 2003:

Brookline Police Association

all as set forth in the report of John Dunlap, Director of Human Resources, dated October 25, 2002, contained in Combined Reports for Article 3 of the November 12, 2002 Special Town Meeting, which report is incorporated herein by reference.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The Town and the union representing our police officers, The Brookline Police Association, Local 1959, have reached an agreement for a one-year contract, the term of which is from July 1, 2002 (when the previous contract ended) to June 30, 2003. That contract is being voted on by the union membership as of the time of this publication.

DISCUSSION

This contract provides for a 3% annual pay increase and additional pay for defibrillator training and use. All police officers are now required to become certified in the use of defibrillators and shall use them as necessary. The additional defibrillator pay will be \$200 for this fiscal year as employees are getting certified. It is anticipated in the contract that defibrillator pay will rise to \$400 annually in future contracts beginning in FY04. The other noteworthy aspects of the contract include the following provisions: new employees hired on or after October 4, 2002 shall be required to wear bulletproof vests when on duty, including private details, unless assigned in the Public Safety building; Relief Lieutenants will now work the same shifts as other employees; and a committee will be set up to develop a performance evaluation system to evaluate all personnel. The total additional cost for FY03 is \$297,784, including the defibrillator pay.

Although the Town typically seeks two-year contracts with the employee unions, this is only a one-year contract for several reasons. Last spring the Town settled two-year collective bargaining agreements with AFSCME divisions representing Department of Public Works employees, Librarians, and School Traffic Supervisors, and additionally with the Brookline Engineer Division Association. Those agreements provided for a 3% pay increase in FY03 and a 2% increase in FY04, unless Brookline receives more state aid than anticipated or the Town settles with any other union for more than 2% in FY04. If either of the latter conditions occurs, the contracts which have already been settled would be reopened for further bargaining. The Brookline Police Association was unwilling to agree to a similar provision for FY04 and the Town was unwilling to agree to more than the terms for which the other unions settled.

The agreed upon 3% with extra defibrillator pay for this contract, places the Brookline police officers' pay comparable to that received by Cambridge police officers, slightly above Newton police officers, and roughly about \$7,000 higher than Needham police officers. The Town feels that the agreement to work on a performance evaluation system is a significant one. Further negotiation would be necessary before such a system is implemented.

RECOMMENDATION

The Advisory Committee, by a vote of 13-3 (1 abstention), recommends FAVORABLE ACTION on the motion offered by the Selectmen.

November 12, 2002
Special Town Meeting
Article 3 – Supplement No. 2

ARTICLE 3

THIRD ARTICLE

To see if the Town will raise and appropriate, or appropriate from available funds, a sum or sums of money to fund the FY2003 cost items in collective bargaining agreements between the Town and various employee unions; fund wage and salary increases for employees not included in the collective bargaining agreements; and amend the Classification and Pay Plans of the Town; or act on anything relative thereto.

To: The Board of Selectmen
From: John Dunlap, Director of Human Resources
Date: November 12, 2002
Re: **Collective Bargaining – Town Meeting – Article 3 (Addendum)**

This past Friday, the Town completed negotiations with Teamsters Local 25 for a two-year contract. The contract period is July 1, 2002 through June 30, 2004.

This is the first contract between the Town and the Teamsters. The Teamsters organized the employees who work in the newly created Public Safety Dispatch Center within the Police Department. This is a group of fifteen employees: one employee holds the title Chief Emergency Telecommunications Dispatcher, three hold the title Fire Alarm Operator/Emergency Telecommunications Dispatcher, and eleven hold the title Emergency Telecommunication Dispatcher (ETD).

The Chief ETD and the three Fire Alarm Operators/ETD's are all former Fire Alarm Operators and who were previously represented by the Fire Fighters Local 950. Local 950's representation ended earlier this year when the Dispatch Center became operational. Three of the ETD's were formally employed as Police Services Clerks in the Police Department and were represented by AFSCME Local 1358. AFSCME's representation of these employees ended when they accepted the new position of ETD. The remaining eight employees were all hired into the position of ETD in January of this year.

A summary of the major provisions and all cost items are outlined below:

- I. General Wage Increase**
 - A. Fiscal Year 2003 - 3% General Wage Increase.**

Cost: No Additional Appropriation Required

V. Cleaning Allowance

Employees with at least one year of service will receive a \$50.00 cleaning allowance. Effective September 15, 2003, the annual cleaning allowance shall be \$75.00.

Cost:
 FY 03 No Additional Appropriation Required
 FY 04 \$375

A complete copy of the Collective Bargaining Agreement with the above mentioned union is available in the Human Resources Office.

The total appropriation to fund this agreement for Fiscal year 2003 is \$17,559. The two-year roll-out cost of this agreement, inclusive of the potential 1% in FY04, total \$53,580.

ITEM	FY03	FY04	TOTAL
FY03 3%	17,559	17,559	35,119
FY04 2%		12,057	12,057
Cleaning Allowance		375	375
TOTAL ROLL-OUT COSTS OF 2-YEAR PERIOD	17,559	29,992	47,551
Potential Additional 1%		6,029	6,029
TOTAL ROLL-OUT COSTS OF 2-YEAR PERIOD WITH ADDITIONAL POINT	17,559	36,021	53,580

NOTE: An additional \$25 for the 15 employees.

It is respectively recommended that Town Meeting adopt the following vote:

VOTED: To approve and fund by a transfer of \$17,559.00 from item No. 44, Collective Bargaining - Town, of the FY2003 Budget approved under Article 9 in the Warrant of the 2002 Annual Town Meeting, the cost items in the following collective bargaining agreement that commences on July 1, 2002 and ends on June 30, 2004:

November 12, 2002
Special Town Meeting
Article 3 – Supplement No. 2
Page 4

Teamsters Local 25

all as set forth in the report of John Dunlap, Director of Human Resources, dated November 12, 2002, contained in the Supplemental Report for Article 3 of the November 12, 2002 Special Town Meeting, which report is incorporated herein by reference.

SELECTMEN'S SUPPLEMENTARY REPORT AND RECOMMENDATION

Since this contract was finalized Friday evening, the Board has not had an opportunity to take a position on it. The Board is meeting prior to Town Meeting tonight to discuss the contract and will have a recommendation available when Article 3 is discussed.

ADVISORY COMMITTEE'S SUPPLEMENTARY REPORT AND RECOMMENDATION

Since this contract was finalized Friday evening, the Committee has not had an opportunity to take a position on it. The Committee is meeting prior to Town Meeting tonight to discuss the contract and will have a recommendation available when Article 3 is discussed.

ARTICLE 4

FOURTH ARTICLE

To see if the Town will:

- A. Appropriate additional funds to and from and adjust the various accounts in the fiscal year 2003 budget or transfer funds between said accounts;
- B. Appropriate sums of money for the following special purposes:
 - 1. Appropriate \$100,000, or any other sum, to be expended under the direction of the Director of Planning and Community Development, with the approval of the Board of Selectmen, for the construction of an information Kiosk;
 - 2. Appropriate \$750,000, or any other sum, to be expended under the direction of the Director of Finance, with the approval of the Board of Selectmen, for the reduction of short term debt service relating to the Baker School;
 - 3. Appropriate \$20,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the design of the Mountfort Street Traffic Signal;
 - 4. Appropriate \$30,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the painting and repair of the Brookline Village Pedestrian Walkway;
 - 5. Appropriate \$130,000, or any other sum, to be expended under the direction of the Chief Information Officer, with the approval of the Board of Selectmen, for School/Town Communications equipment.
- A. To amend the vote taken under sub-section (b.) of Section 8 (Public Buildings Revolving Fund) of Article 9 of the May, 2002 Annual Town Meeting so that the last line reads as follows:

“Annual expenditures from the fund shall not exceed \$100,000.”
- B. To amend the vote taken under Section 6 (Golf Enterprise Fund) of Article 9 of the May, 2002 Annual Town Meeting to read as follows:

GOLF ENTERPRISE FUND: The following sums, totaling \$1,329,166 shall be appropriated into the Golf Enterprise Fund, and may be expended under the

direction of the Park and Recreation Commission, for the operation of the Golf Course:

Salaries	\$225,763
Purchase of Services	\$559,504
Supplies	<u>\$ 70,585</u>
Total Appropriations	\$855,852
Indirect Costs	<u>\$473,314</u>
Total Costs	\$1,329,166

Total costs of \$1,329,166 to be funded from golf receipts with \$473,314 to be reimbursed to the general fund for indirect costs.

- C. To amend the vote taken under Section 7 (Water and Sewer Enterprise Funds) of Article 9 of the May, 2002 Annual Town Meeting to read as follows:

WATER AND SEWER ENTERPRISE FUNDS: The following sums, totaling \$19,585,147 shall be appropriated into the Water and Sewer Enterprise Funds, and may be expended under the direction of the Commissioner of Public Works for the Water and Sewer purposes as voted below:

	<u>Water</u>	<u>Sewer</u>	<u>Total</u>
Salaries	1,645,364	220,710	1,866,074
Purchase of Services	87,656	109,719	197,374
Supplies	94,815	8,535	103,350
Other	3,600	0	3,600
Capital	145,400	94,800	240,200
Intergovernmental	<u>3,357,567</u>	<u>8,691,514</u>	<u>12,049,081</u>
Total Appropriations	5,334,401	9,125,277	14,459,678
Indirect Costs	<u>3,692,591</u>	<u>1,432,878</u>	<u>5,125,469</u>
Total Costs	9,026,992	10,558,155	19,585,147

Total costs of \$19,585,147 to be funded from water and sewer receipts with \$5,125,469 to be reimbursed to the general fund for indirect costs.

- D. And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or provided by any combination of the foregoing; and authorize the Board of Selectmen, except in the case of the School Department Budget, and with regard to the School Department, the School

Committee, to apply for, accept and expend grants and aid from both federal and state sources and agencies for any of the purposes aforesaid.

or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

It has been an unprecedented year for the Town's FY 2003 Financial Plan. Preceding the development phase of the FY 2003 budget, a series of events, each having a negative impact, and cumulatively contributing to a national financial decline, presented us with a significant challenge. The downturn in the national economy, beginning in 2000, increased unemployment while reducing investment yields. This, in turn, reduced revenue flow to federal, state and local governments, effecting service levels and weakening the economy further. The events of September 11, 2001, further impacted the economy. Whole sectors of the economy, including airline travel, tourism and insurance, were seriously effected by this event.

In December 2001, while developing the FY 2003 Financial Plan, the economic environment had completely changed from the preceding twelve months. The intergovernmental revenue from federal and state sources was no longer certain. The growth in local revenues, generated from a healthy national, regional and local economy, began to decline. Expenditures were also effected by the economic crisis. Future Retirement Fund appropriations would increase as investment losses mounted. Insurance coverage for property, liability and Workers' Compensation was difficult to obtain and would show dramatic cost increases.

Within this context, it was recommended that the FY 2003 Financial Plan be based upon ongoing, consistent revenue available to the Town, rather than on speculation of additional intergovernmental revenue. The financial plan presented to Town Meeting, in May, 2002, assumed a 10% reduction in state aid, as was included in the original budget of the House of Representatives.

Throughout the spring, there was growing anticipation of a tax increase, which would restore all state aid reductions. However, it was agreed that no adjustments would be made to the FY 2003 Financial Plan until November, 2002. Many communities followed a different path, anticipating that all state revenue would be restored to local government budgets. The proposed FY 2003 Financial Plan was approved by Town Meeting in June with only one adjustment: a delay of two special capital appropriations, until November, 2002.

In the time between the authorization of higher state taxation/State budget authorization and the end of the fiscal year, the State's fiscal condition deteriorated further. This necessitated further use of the State's "Rainy Day Fund" and reductions in the State budget to bring it into balance.

The State budget, which was finalized at the end of July, 2002, did not restore all state aid to local government. Thus, while other communities must now reduce their FY 2003 budgets further, the Town of Brookline is thankfully in the position of being able to restore some items that were not included in the appropriations voted by the Town Meeting in May.

A sizable portion of the State's FY 2003 budget is based upon the use of non-reoccurring revenue from its "Rainy Day Fund" and other reserves. These funds, which stood at nearly \$3 billion less than two years ago, have been nearly depleted, with a mere \$316 million remaining as of September. Therefore, the State is sure to experience fiscal difficulties in FY 2004. There is a possibility that state aid funds being restored to the FY 2003 budget could be reduced again in FY 2004. With that in mind, some of the proposed budget increases are in areas that need additional funding, but could be removed from the FY 2004 Financial Plan without the disruption of services or loss of personnel.

The proposed FY 2003 Financial Plan adjustments are driven by a net increase in state and local revenues, the use of available funds, one time revenues, and a reduction in debt service. The proposed adjustments include changes in three areas of the Financial Plan: operating budget, capital budget and special reserves.

- 1.) **The FY 2003 Operating Budget** – A combination of State Aid increases and Local/Other receipt decreases (including the reduction of \$40,000 due to the elimination of the fuel oil storage permit fee) have created net available revenue of \$626,534. In addition, savings realized from State Assessment decreases, the delay in long-term Capital Financing of the Baker School Project, and refinancing of some existing debt at lower interest rates, creates \$194,084 in expenditure capacity. The total sum available for distribution is \$820,618.

Two fixed cost line items, Workers Compensation and Unemployment coverage, require increased appropriations of \$200,000 and \$24,500, respectively. These items were in the original budget proposal, but were eliminated when the Financial Plan was adjusted to cover the anticipated 10% cut in State Aid. The Town / School Partnership Agreement provides for a distribution formula for revenue (equally shared) and fixed cost expenditures (distributed by actual use). Per the Agreement, the Town is allocated an additional \$188,103 for Worker's Comp. and Unemployment, while the School is allocated an additional \$36,397 for these purposes.

The remaining sum of \$596,118 is distributed per the Agreement formula, \$403,665 to the School Department and \$192,453 to Town Departments. In deciding what should be added back to the Town Departments, the Administration looked first to items that were reduced or eliminated when it was assumed that State Aid would be reduced. Several items, such as Sidewalk Replacement (\$15,000), DPW Capital (\$66,885), Postage (\$18,000), and Police Capital (\$20,000), are recommended for additional funding. In addition, it is recommended that funding for the Liability Fund be increased by \$60,000.

As a direct result of the weakening national economy, the Town's liability exposure has more than doubled. This recommendation provides additional resources to protect the Town against the financial impact of a negative legal judgment.

- 2.) **The FY 2003 Capital Budget** – An amendment to the original proposed Capital Budget delayed funding on two projects, pending the receipt of further information, in the amount of \$280,000. That information, now obtained, allows the Town to appropriate \$200,000 of the remaining Free Cash. One of the delayed projects, commercial area Kiosks in the amount of \$100,000, is recommended for partial appropriation. It is recommended that this project be funded at this Town Meeting for \$20,000. It is anticipated that once the proto-type kiosks are installed and their success measured, the remaining \$80,000 may be funded at the Spring, 2003 Annual Town Meeting. The planning on the second capital project, streetscaping in the amount of \$180,000, is incomplete. This project will be postponed until FY 2004. Projects that were originally proposed for FY 2003, but delayed until FY 2004 due to lack of available funding, have been moved forward to utilize this appropriation capacity. The largest project in this category is Town/School Telecommunications Equipment in the amount of \$130,000.

When the original version of the House budget was published, one of the local aid reductions was School Building Assistance funding for first-year appropriations. That cut eliminated anticipated reimbursement for the Baker School, so it was decided to use short-term financing (BAN's) for another year for the Baker School. Postponement of the long-term borrowing on the Baker School project created appropriation capacity of \$750,000. It was agreed that savings generated from this delay would be used to reduce the future borrowing for this project from \$10.5 million down to \$9.75 million. It is therefore recommended that \$750,000 be reduced from Debt Service and be added for a Baker School special appropriation.

- 3.) **Special Reserves** – The insurance industry has been particularly effected by the downturn in the economy and the events of September 11. The Town's insurance premiums in property, liability, and Workers' Compensation have more than doubled while insurance coverage has been reduced. Previously, the Town created a Liability and Catastrophe Fund dedicated to fund settlements that are not covered by stop loss insurance. At a time when we are experiencing a loss in insurance coverage, we are experiencing a reduction in the Liability Fund due to prior settlements. We propose an appropriation of \$210,000 into the Liability and Catastrophe Fund from recently unencumbered Overlay Surplus funding.

Coupled with the \$60,000 appropriation described above in the Operating Budget description, the total addition of \$270,000 to this reserve will partially restore this fund to its prior level. (At the beginning of FY02 the balance in this fund was \$1.8 million. The Town started the current fiscal year with a balance of \$1.2 million, but recent settlements have reduced the balance. This addition will provide for partial at least restoration.)

The table on the following page summarizes the revenue and expenditure changes detailed above:

Revenue

State Aid	1,075,663
Local Receipts	(240,478)
Other Avail. Funds	1,350
<i>Parking Meters</i>	<i>(100,000)</i>
<i>MWRA Debt Asst.</i>	<i>(39,696)</i>
<i>W/S Overhead</i>	<i>(62,360)</i>
<i>Golf Overhead</i>	<i>(6,594)</i>
<i>Overlay Surplus</i>	<i>210,000</i>
Free Cash	200,000

TOTAL REVENUE	1,036,535
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Expenditures

Schools	403,665
Worker's Comp	200,000
Unemployment	24,500
DPW (Sidewalks)	15,000
DPW (Capital)	66,885
Purchasing (Postage)	18,000
Purchasing (Capital - Office Furn.)	2,868
Police (Capital - Hand Helds)	20,000
Liability Fund	270,000
Recreation (Capital - Van Equip.)	3,000
Comptroller (Capital - Scanner)	6,700
Cherry Sheet Assessments	(84,582)
Cherry Sheet Offsets	(40,547)
Debt Principal	(497,000)
Debt Interest	(610,954)
BAN Interest	289,000
Special Appropriations	950,000
<i>Kiosk</i>	<i>20,000</i>
<i>Baker School</i>	<i>750,000</i>
<i>Mountfort St. Traffic Signal</i>	<i>20,000</i>
<i>Brookline Village Pedes. Walkway</i>	<i>30,000</i>
<i>T/S Communication Equipment</i>	<i>130,000</i>

TOTAL EXPENDITURES	1,036,535
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VARIANCE	0
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The Selectmen unanimously recommend FAVORABLE ACTION, but a vote of 5-0 on October 15, 2002, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The FY03 budget was developed on the premise that the Town was going to receive a cut in local aid from the state of 10% or roughly \$1.5 million. After bouncing back and forth between the state legislature and the Governor, a significant portion of that money, \$1,075,663, has been restored to the Town. This is offset to a certain extent by some declines in local receipts, but the net result is that we do have some additional money to appropriate at this Town Meeting. Unfortunately, the mechanism the state legislature used to restore funding in FY03 was to almost deplete the state's Rainy Day fund. As revenues continue to be low this year, we anticipate cuts again in FY04.

DISCUSSION

1. Revenues

Available for Operating Budget

The following listing shows the revenues and offsets which the Town has experienced since the last Town Meeting which would pertain to the Operating Budget:

Additions	State Aid	\$ 1,075,663
Reductions	Deficit from FY'02	(40,175)
	Parking Meter Receipts	(100,000)
	MWRA Debt Service Assistance	(39,696)
	Decline in Interest Earned	(160,303)
	Reduction due to Elimination	
	Of Oil Storage Fee (See Warrant Art.)	(40,000)
	Enterprise Fund Overhead	(68,954)
	(Water & Sewer + Golf)	_____
	TOTAL	\$ 626,535

Also, we will be spending less than expected
for some state Assessments and Offsets \$ 125,129

Postponement of long-term borrowing for Baker School project (additional year of Bond Anticipation Notes due to uncertainty as to State funding of School Building Assistance money *N.B. Interest for additional year of BANS Has been deducted from the total money available*). Majority of the savings (\$750,000) is to be used to reduce the debt on the long-term project and therefore is included in Capital revenue below. \$ 68,954

TOTAL FUNDS AVAILABLE FOR OPERATING BUDGET APPROPRIATION \$ 820,618

Available for Capital Budget and One-Time Expenses

In addition, there is some money available to be appropriated for Capital and other one-time spending. In keeping with the policy of the Selectmen and the Town Administration, money that is considered “one time” money is not used for the operating budget. “One time” money comes from such items as Free Cash (the amount of money that is left at the end of the fiscal year due to revenues being higher than expected and/or spending being lower than expected), Tax Overlay Surplus (by law the Town must set aside money for tax abatements and if the full amount set aside is not needed, the excess can go to capital spending), and other unusual sums of money (such as the money the Town received from hosting the Ryder Cup Golf Tournament several years ago). These sources of funding can fluctuate widely from year to year. Therefore, if the operating budget was developed using these and similar sources of funds, employee layoffs and/or dramatic reductions in services could result when they dipped. Instead they are used for the Capital Improvements Plan (“CIP”), which includes new or substantial renovation building projects, and for other capital or long-term spending needs.

Additions or Reallocations	Money reserved in CIP for Information Kiosks in Public Areas and Streetscape Work but not Previously Appropriated pending Further Information	\$ 200,000
	Postponement of long-term borrowing for Baker School project (see note on same issue above in operating budget section).	750,000
	Tax Overlay Surplus	210,000

TOTAL FUNDS AVAILABLE FOR CAPITAL BUDGET
AND ONE-TIME APPROPRIATIONS \$ 1,160,000

2. Proposed Spending

Operating Budget Items

Worker's Compensation --Last year this account ultimately proved to be underfunded. Before this situation was clear, it was cut when the Town thought it was going to experience a severe cut in state aid. This sum reinstates the amount this line item would have received prior to the cuts. Under the Town/School Partnership Agreement, Worker's Comp is allocated by actual use. \$ 200,000

Unemployment Coverage --Unemployment Coverage was another item that was decreased in response to the cuts in state aid. Due to the economic recession, however, unemployment expenses have risen. The Town has not laid off any regular employees, but must provide unemployment for seasonal workers and workers who left the Town got another job and then got laid off. This amount also reinstates the Town's original Proposal. Under the Town/School Partnership Agreement Unemployment is also allocated by actual use. 24,500

School Budget --A total amount of \$403,665 is Recommended for the School Department budget. While Town Meeting cannot determine how the School Committee must allocate that amount within its budget, the School Committee has indicated that it will use this money to replenish some strategic reserves and in a number of areas that could carry over to FY04 due to the anticipated continuing budget crisis. 403,665

Comptroller Capital --The Comptroller's Office needs to replace its industrial grade scanner which it uses to scan in bills and invoices. This streamlines the bill paying process and helps to digitize the end-of-year audit. 6,700

DPW Sidewalk Repair --The program to fully rehabilitate the Town's sidewalks has been done and this addition-

al money is being added for use in the Spring. 15,000

DPW Capital --In the Spring budgeting process the DPW capital line item for trucks etc. had to be cut to below the amount specified in the 1994 General Override. (The Town is not legally obligated to continue following the Override guidelines but the Selectmen feel it is appropriate.) This money will allow that Department to lease a bucket truck for the Parks Department and several cars to replace aging vehicles. 66,885

Police Department --The Department has begun using hand held ticket devices for ticketing cars. This reduces the amount of manpower necessary to process parking tickets. This money will allow the Department to be fully outfitted with these devices. 20,000

Purchasing Postage --The original amount budgeted for postage for FY 03 did not take into account the recent increase in postal rates. This amount will cover the Difference. 18,000

Purchasing Capital --A new countertop and supporting cabinets are needed to replace a 40 year old set that is wearing out. 2,868

Recreation --Presently there is enough money to buy a car for a use for which the Recreation Department feels that it needs a handicapped-accessible van. This money represents the difference needed to get the van. 3,000

Liability/Catastrophe Fund --This fund was established by Town Meeting in 1997 via home rule legislation which was eventually signed into law in April 1998. The purpose of the fund is to set aside a reserve to cover legal settlements and judgments and to protect the Town from the negative financial impact of catastrophic loss or legal claims. It is particularly necessary in the wake of 9/11 since the insurance coverage available to Towns and Cities has decreased. The proposal is to put some additional money in this fund from Operating Funds (accounted for here) and another \$210,000 from the release of the Overlay Reserve (see below). 60,000

TOTAL RECOMMENDED FOR OPERATING BUDGET \$820,618

Capital and One-Time Budget Items

Baker School --As discussed above in the section on funds available for operating budget spending, the Town decided to delay the permanent financing on the Baker School project for one year due to the uncertainty over when state school building assistance would commence for that project. To keep the total cost of the financing in line with original estimates additional money is being added to the project now to reduce the amount for which we need long-term financing. \$ 750,000

Kiosks --Town Meeting originally voted to fund \$35,000 to design and develop a prototype of an information kiosk of a type that could be used in the commercial areas around Town to display notices of public events and other items of civic interest. The need for these was identified through the Comprehensive Plan process and through a special committee set up by the Town to look at how we could help our commercial areas. The original proposal was for \$100,000 to fully fund deployment of kiosks around Town but this has been reduced to a level of funding for one or two additional test kiosks so their effectiveness can be evaluated. 20,000

Mountford Street Traffic Signal --The 1965 signal at Carlton/Mountford Street needs modernization. 20,000

Brookline Village Pedestrian Walkway -- The DPW is going to replace lights on the pedestrian walkway over Route 9 to make it safer. They will also clean the graffiti, paint it with a graffiti resistant paint, and make the bridge fully compliant with ADA requirements. 30,000

Town/School Communication Equipment --This money will be used to replace some existing T-1 lines with new much less expensive lines. This exchange of lines should pay for itself within 2 years. In addition, the new equipment

will make it clear to 911 operators from which School or Town building a 911 is coming. Presently many of these calls all appear to be coming from Town Hall. 130,000

Liability/Catastrophe Fund --See the description of this Fund above in the Operating Budget spending section. In addition to the Operating Budget money that will be added to this fund, the money which has been released from the Tax Overlay Fund (money not needed for property tax abatements) will be used to bolster this strategic reserve fund. 210,000

TOTAL RECOMMENDED FOR CAPITAL AND ONE-TIME SPENDING ITEMS \$1,160,000

RECOMMENDATION

The Advisory Committee recommends FAVORABLE ACTION, by a vote of 19-1, on the following vote:

VOTED: That the Town approves the following:

A. To amend the FY2003 budget as shown below and in attached Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
# 4 – Finance Department	\$ 2,526,631	+ \$ 27,568	\$ 2,554,199
# 9 – Police Department	\$11,884,774	+ \$ 20,000	\$11,904,774
#12 – Department of Public Works	\$10,774,850	+ \$ 81,885	\$10,856,735
#18 – Recreation Department	\$ 1,203,956	+ \$ 3,000	\$ 1,206,956
#20 – School Department	\$52,002,463	+ \$403,665	\$52,406,128
#26 – Worker’s Compensation	\$ 895,000	+ \$200,000	\$ 1,095,000
#27 – Unemployment	\$ 75,500	+ \$ 24,500	\$ 100,000
#31 – Liability/Catastrophe Fund	\$ 441,589	+ \$270,000	\$ 711,589
#40 – Debt Principal	\$ 8,363,968	- \$497,000	\$ 7,866,968
#41 – Debt Interest	\$ 5,391,969	- \$610,954	\$ 4,781,015
#42 – Bond Anticipation Notes (BANs)	\$ 804,000	+ \$289,000	\$ 1,093,000

B. To make the following appropriations:

1. Raise and appropriate \$20,000, to be expended under the direction of the Director of Planning and Community Development, with the approval of the Board of Selectmen, for the construction of an information Kiosk;
2. Raise and appropriate \$750,000, to be expended under the direction of the Director of Finance, with the approval of the Board of Selectmen, for the reduction of short term debt service relating to the Baker School;
3. Raise and appropriate \$20,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the design of the Mountfort Street Traffic Signal;
4. Raise and appropriate \$30,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the painting and repair of the Brookline Village Pedestrian Walkway;
5. Raise and appropriate \$130,000, or any other sum, to be expended under the direction of the Chief Information Officer, with the approval of the Board of Selectmen, for School/Town Communications equipment.

C. To amend the vote taken under sub-section (b.) of Section 8 (Public Buildings Revolving Fund) of Article 9 of the May, 2002 Annual Town Meeting so that the last line reads as follows:

“Annual expenditures from the fund shall not exceed \$100,000.”

D. To amend the vote taken under Section 6 (Golf Enterprise Fund) of Article 9 of the May, 2002 Annual Town Meeting to read as follows:

GOLF ENTERPRISE FUND: The following sums, totaling \$1,329,166, shall be appropriated into the Golf Enterprise Fund, and may be expended under the direction of the Park and Recreation Commission, for the operation of the Golf Course:

Salaries	\$225,763
Purchase of Services	\$559,504
Supplies	<u>\$ 70,585</u>
Total Appropriations	\$855,852
Indirect Costs	<u>\$473,314</u>

Total Costs \$1,329,166

Total costs of \$1,329,166 to be funded from golf receipts, with \$473,314 to be reimbursed to the general fund for indirect costs.

- E. To amend the vote taken under Section 7 (Water and Sewer Enterprise Funds) of Article 9 of the May, 2002 Annual Town Meeting to read as follows:

WATER AND SEWER ENTERPRISE FUNDS: The following sums, totaling \$19,585,147, shall be appropriated into the Water and Sewer Enterprise Funds, and may be expended under the direction of the Commissioner of Public Works for the Water and Sewer purposes as voted below:

	<u>Water</u>	<u>Sewer</u>	<u>Total</u>
Salaries	1,645,364	220,710	1,866,074
Purchase of Services	87,656	109,719	197,374
Supplies	94,815	8,535	103,350
Other	3,600	0	3,600
Capital	145,400	94,800	240,200
Intergovernmental	<u>3,357,567</u>	<u>8,691,514</u>	<u>12,049,081</u>
Total Appropriations	5,334,401	9,125,277	14,459,678
Indirect Costs	<u>3,692,591</u>	<u>1,432,878</u>	<u>5,125,469</u>
Total Costs	9,026,992	10,558,155	19,585,147

Total costs of \$19,585,147 to be funded from water and sewer receipts with, \$5,125,469 to be reimbursed to the general fund for indirect costs.

- F. To amend the vote taken under Section 11 (Interfund Transfers) of Article 9 of the May, 2002 Annual Town Meeting by replacing the figure of “\$2,000,000” from the Parking Meter Special Revenue Fund with the figure “\$1,900,000”; and by eliminating the \$39,696 transfer from the Commonwealth Sewer Rate Relief Fund.
- G. To amend the vote taken under subsection a.) of Section 14 (Free Cash) of Article 9 of the May, 2002 Annual Town Meeting by replacing the figure of “\$4,608,983” with the figure “\$4,808,983”.

ARTICLE 5FIFTH ARTICLE

- A. To see if the Town will raise and appropriate, or appropriate from available funds, \$16,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for textured, tinted concrete pedestrian crosswalks on the north, south, east and west sides of the intersection of Hammond and Heath Street, or act on anything relative thereto.
- B. To see if the Town will raise and appropriate, or appropriate from available funds, \$8,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for textured, tinted concrete pedestrian crosswalks on the north and south side of Hammond Street at the intersection of Boylston Street (Route 9), or act on anything relative thereto.
- C. To see if the Town will raise and appropriate, or appropriate from available funds, \$4,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for a textured, tinted concrete pedestrian crosswalk on the south side of Tully Street at the intersection of Boylston Street (Route 9), or act on anything relative thereto.
- D. To see if the Town will, under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, petition/request the Massachusetts State Dept. of Public Works to install textured pedestrian crosswalks
1. on Boylston Street (Route 9) east and west side of the intersection at Hammond Street.
 2. on Boylston Street (Route 9) at the west side of Tully Street, and
 3. on Boylston Street (Route 9) at the present site of the painted crosswalk (1240 Boylston Street), or act on anything relative thereto.

The purpose of these warrant articles is to begin the process of restructuring the Route 9-Hammond Street village area as a pedestrian-oriented center of commerce more like Coolidge Corner and Washington Square.

The textured crosswalks have been successfully used in other areas of town to slow traffic and create a sense of place. Many who live near Hammond-Route 9 do not feel safe crossing the busy highway and believe motorists there have no regard for pedestrians. The crosswalks, as

they have in front of the high school and on Walnut Street, will slow traffic and serve as a warning to motorists that pedestrians are crossing the roadway.

The concrete crosswalks, while more expensive, are cost-effective because they last longer.

Raised crosswalks make a statement about how a community feels about foot traffic. Members for the Chestnut Hill Village Alliance and the people who live and work in the neighborhood believe the use of these crosswalks will serve as a model for the whole community. They will also help in the transformation of this busy intersection into a more livable village.

SELECTMEN'S RECOMMENDATION

This petitioned article requests \$28,000 for textured and tinted concrete pedestrian crosswalks at various sections of the Route 9-Hammond Street village area in order to begin the process of restructuring the area as a pedestrian-oriented center similar to Coolidge Corner and Washington Square. The Article also calls upon the Town to request/petition the State for the installation of textured pedestrian crosswalks at additional sections along Route 9. The petitioner believes that these improvements will help transform this busy area into a more livable village.

After meeting with Department of Public Works (DPW) staff and the Advisory Committee, the petitioner determined that a significant portion of the requests contained in the article could be accomplished without the formality of a warrant article for Town Meeting. The Town will be installing textured asphalt crosswalks at the intersection of Heath and Hammond Streets and Sheafe and Hammond Streets in lieu of concrete. Textured asphalt crosswalks will be used instead of the materials proposed in the article because of the following maintenance issues:

- The joint between the concrete and asphalt pavements tends to open up over time with changes in temperature, thereby allowing water to penetrate into the base. When this water freezes, the pavement “buckles”.
- Concrete is more susceptible to damage from salt than asphalt is. Once the salt penetrates the surface, the concrete tends to flake or crumble.

In terms of the language contained in Section D of the proposed article, DPW can request that the State install these crosswalks without a warrant article directing the Commissioner to do so. Therefore, this language is unnecessary.

Based on the above, the Selectmen unanimously recommend NO ACTION, by a vote of 4-0, on the article.

October 1, 2002 Roll Call Vote:

No Action

Goldberg

Kalikow

Hoy

Allen

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Warrant Article 5 was filed by Precinct 15 Town Meeting Member Anthony Andreadis in an effort to get an appropriation to make the sidewalks in the general area of Hammond Street and Route 9 more visible for reasons of pedestrian safety and neighborhood beautification. After meeting with the Advisory Committee's capital subcommittee and Town Engineer Peter Ditto, the Petitioner was satisfied he could work with the Engineering Department of the Department of Public Works to accomplish his goals without a further appropriation. Therefore, he is not going to move the article at Town Meeting.

RECOMMENDATION

The Advisory Committee by a 16-0 vote (1 abstention) recommends NO ACTION on Article 5.

XXX

ARTICLE 6

SIXTH ARTICLE

To see if the Town will abolish the 1981 provision for “certain inspection services to be provided by the Fire Department”. These inspection and permit services have been discontinued for several years. The fees should be discontinued and abolished.

The inspection of fuel oil storage tanks have been taken over by state licensed fuel oil suppliers. The Town Fire Department no longer provides an inspection service nor does it have a list of permits for fuel oil tanks. The provision that a fee be collected by the Fire Department is obsolete and should be abolished.

SELECTMEN’S RECOMMENDATION

This article proposes the elimination of a fee for Fuel Oil Storage Permits that has been in existence since the Board of Selectmen originally enacted the fee on March 31, 1981. Subsequently, Town Meeting voted to continue the fee two times (in 1982 and 1983), and actually voted to increase the fee from \$5 to \$10 in May, 1989.

There is no legal requirement, per the provisions of MGL Chapter 148, Section 10A, for an inspection as part of the fee charged. Data concerning fuel oil storage is maintained by the Town in order to comply with state law. The cost of maintaining this database and making it available to the Fire Department was the original reason for creating this annual fee.

Because this annual fee is not linked to an ongoing service such as inspections, its necessity has come into question. Further, very few jurisdictions in the Greater Boston area have adopted this fee. Losing \$40,000 in the face of a FY04 budget cycle that stands to pose many challenges to the Town will likely add to the Town’s fiscal stress in the long-term. However, the restoration of state aid this fiscal year does afford the opportunity to absorb this reduction without eliminating any existing services.

Since the fee has already been eliminated, the Board of Selectmen unanimously recommends NO ACTION, by a vote of 5 to 0 taken on October 15, 2002, on the article.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Despite the broad wording of this Article, the petitioner's intent is solely to eliminate the Town's fuel oil storage fee. It was first imposed in 1981 by a vote of the Board of Selectmen, as allowed under MGL Ch. 148, Sec. 10A (and not by Town Meeting). The fee was originally set at \$5 per year, was raised to \$10 in 1989 and set at \$11, the current fee in 1992. At present, this fee, among other fire safety fees can be set by the Fire Chief with the approval of the Fire Commissioners (the Selectmen) as permitted under MGL Ch. 40, Sec. 22F. The fee currently provides some \$40,000 in local receipts. It is possible that the fee was originally imposed in order to boost Town revenues in the face of large losses of property tax revenue resulting from the initial effects of Prop. 2 1/2.

State law requires a permit for the storage of fuel oil, for which an annual fee is allowed even though no inspectional services are performed in connection with this fee. According to Fire Chief John Spillane, no further inspections are necessary for public safety beyond a one-time inspection when fuel tanks are installed or replaced. A separate \$25 inspection fee is imposed for such an installation or replacement, distinct from the annual fuel storage permit fee under discussion.

DISCUSSION

While this fuel storage permit fee is allowed by state law, there seems to be little justification in burdening town residents with this fee since no Town services are provided in connection with this permit and hence there is no cost to the Town. Additionally, there have been past and possibly present inaccuracies in town records causing bills being sent to some residents who don't have fuel oil tanks and no bills being sent to some residents who do heat with oil, resulting in considerable confusion and dissatisfaction with this fee. Moreover, the Fire Chief knows of no other community in Massachusetts that charges such a fee. Partly in response to this Article, the Selectmen have discussed instituting a study of the appropriateness of all Town fees.

It is hard to justify maintaining the fuel storage permit fee but it should be understood that abolishing it requires a \$40,000 reduction in Town expenditures in order to balance the FY03 budget. Further, this reduction will have to be addressed in future budget plans.

After hearing the discussion concerning this fee, the Selectmen have already voted to abolish it for Fiscal '03 and beyond. This is within their authority. Therefore, no further action is needed on this Warrant Article.

RECOMMENDATION

The Advisory Committee by a vote of 13 to 0 vote (1 abstention), recommends NO ACTION on Article 6.

ARTICLE 7

SEVENTH ARTICLE

To see if the Town will appropriate from available funds the sum of money required to pay refunds for single and double Fire Fee tax bills paid by tax payers to the Treasurer since May 22, 2002.

Two kinds of bills were mailed to tax payers to collect for Fuel Oil Storage Fire Fees on May 22, 2002. One bill was for \$11 and another bill was for \$22. Neither bill was correct as the service for which the bill sought payment had been discontinued years earlier. The payments paid to the Treasurer after May 22, 2002 should be refunded from the funds paid into the Town.

SELECTMEN'S RECOMMENDATION

Article 7 deals with the same fee discussed in Article 6. This citizen petition article proposes that all fees paid for Fuel Oil Storage Permits from May 22, 2002, be reimbursed. As of the end of August, 2002, this represented approximately \$35,000. While the Board believes it is acceptable to eliminate the fee for FY03 and beyond, it thinks it is ill-advised to make refunds for a legal fee that had been paid in the past. Also, the arbitrary selection of May 22, which coincides with the FY 2002 billing, leads to the issue of fairness, as those fee payers prior to that date would not be reimbursed.

The Selectmen unanimously recommend NO ACTION, by a vote of 5 – 0 taken on October 15, 2002, on the article.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This Article, filed by Precinct 11 Town Meeting Member Stanley Wayne is related to Article 6. It seeks a refund of the moneys collected by the Town in response to the bills sent out in May, 2002 for the annual fuel storage permit fee which was described in the Advisory Committee report on Article 6. The revenue collected as a result of this billing was part of the last fiscal year's budget (FY02), and amounts of about \$37,000 at present; refunding this amount from the current FY03 budget would require a corresponding reduction in either expenditures or the unappropriated free cash reserve, in addition to the cut in the FY 03 budget for the discontinuation of this fee.

DISCUSSION

While the Advisory Committee agrees that this fee should be abolished for the current and future fiscal years (see the Advisory Committee report under Article 6), on both philosophical as well as practical grounds we believe that the Town should not be required to refund moneys collected in past fiscal years when the fee was lawfully in effect, a period which extends back more than 20 years to 1981.

RECOMMENDATION

Accordingly, the Advisory Committee unanimously, by a vote of 15 to 0, recommends a vote of NO ACTION under Article 7.

XXX

November 12, 2002
Special Town Meeting
Article 7 – Supplement No. 1

MOTION TO BE OFFERED UNDER ARTICLE 7
STANLEY WAYNE – TMM Precinct 11

VOTED: To appropriate the sum of (\$34,111) for the purpose of refunding to taxpayers payments of fuel oil storage permit fees made since May 22, 2002.

ARTICLE 8EIGHTH ARTICLE

To see if the Town will vote to supply, or appropriate funds for the purpose of supplying, all Brookline fire fighters with a Personal Alert Safety System (PASS) Device and flashlight by November 30, 2002,

or act on anything relative thereto.

PASS devices and flashlights are safety devices that are intended to assist Brookline fire fighters in fighting fires as well as providing additional protection against injury and death in fire fighting conditions.

This article is submitted in response to the Town's refusal to supply each Brookline fire fighter with a PASS device and flashlight. PASS devices are designed to identify the location of fire fighters who have become immobilized during fire fighting operations. The petitioners do not believe that our fire fighters should have to go through the bargaining process for such lifesaving equipment. Further, the petitioners believe that the Town should not be spending tax dollars to pay a private law firm to represent the Town in bargaining or litigating this issue against our fire fighters over safety equipment. The NFPA Standard on Fire Department Occupational Safety and Health Program, a nationally recognized fire service standard which sets *MINIMUM* standards for fire fighter's safety, requires PASS devices to be provided for all personnel who are expected to operate on the fireground or in emergency situations. Under this standard, all personnel who are exposed to, or potentially could be exposed to, toxic or oxygen-deficient atmospheres must be provided a PASS device.

The present practice of not providing adequate numbers of PASS devices does not comply with NFPA 1500, the Standard on Fire Department Safety and Health Program. Brookline residents are very proud of our fire fighters. Our fire fighters enter smoke filled buildings, buildings on fire, and buildings containing unknown toxic substances. They respond to our senior citizens for medical assistant and our injured children. They respond to traffic accidents where there is bodily injury and toxic fluids spilled onto the roadway. They do this day in and day out. They do not complain. They do their job and do it well. They tell us "it's just their job."

Brookline fire fighters tell us that they need this equipment to help them help us as well as helping make them safer. Why would we question this reasonable, rational request? This is not a request for a pay raise, nor is it a request for more vacation time. Fire fighters tell us they want this safety equipment to help them fight fires, to help them perform their job and to help them to

be safer while they perform their jobs. Shame on us if we turn our backs on our fire fighters and their families. The tragedy of the Worcester warehouse fire where six fire fighters lost their lives and more recently the attacks of September 11, 2001, should increase our awareness of how much we appreciate and respect our fire fighters and the job they perform.

The estimated cost of PASS devices and personal flashlights for each Brookline fire fighter is approximately \$57,500.00; probably less if the Town was to purchase them in bulk.

The petitioners respectfully urge you to recommend FAVORABLE action on this article and support our firefighters.

SELECTMEN'S RECOMMENDATION

This petitioned article calls on the Town to supply, or appropriate funds for the purpose of supplying, all Brookline firefighters with a Personal Alert Safety System (PASS) Device and flashlight by November 30, 2002. There were enough of these devices for each on-duty firefighter during his/her shift. Further, the Brookline Fire Department's past practice confirms with NFPA standards and is consistent with the prevailing practice of fire departments throughout the area. (Fire Chief Spillane confirmed compliance with NFPA in July, 2002.)

However, no action needs to be taken on this article as the Fire Chief has procured additional numbers of both of these devices and will make them available to all firefighters. Funds were made available in the Town's Emergency Management budget when the Fire Department received a Mobile Decontamination Unit (MDU) from the State's Department of Fire Services on August 28, an item that was budgeted for within the Emergency Management budget. The Town used these freed-up funds to purchase 150 PASS Devices for \$26,250 and used its FY03 equipment budget to purchase 150 flashlights and chargers for \$16,500.

Since these devices have all been purchased, the Selectmen unanimously recommend NO ACTION, by a vote of 4-0, on the article.

October 8, 2002 Roll Call Vote:

No Action

Kalikow

Geller

Hoy

Allen

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This Article seeks to ensure that all Brookline firefighters are supplied with individual Personal Alert Safety System (PASS) devices and flashlights. The PASS devices are designed to signal the location of firefighters who have become immobilized during fire fighting operations. These devices and flashlights are safety devices intended to assist and provide additional protection for fire fighters in fire fighting operations. While the Town has had sufficient equipment to provide each on-duty firefighter with these devices, there were not enough to provide every firefighter with individual devices so that each firefighter could ensure that his or her own equipment was available and in good working order when going on duty, something Fire Chief John Spillane has stated would be an important safety advance.

DISCUSSION

Between the time the Warrant Article was filed and when the Advisory Committee discussed this matter, a sufficient PASS devices were acquired for each firefighter to have his or her own, according to Chief Spillane. They were purchased using certain Federal Emergency Management funds that were originally slated to purchase decontamination equipment but were no longer needed for that purpose since the Town has received comparable decontamination equipment from the state Executive Office of Public Safety. Hence the objective of Article 8 has already been achieved.

RECOMMENDATION

Accordingly, the Advisory Committee unanimously, by a vote of 11 to 0, recommends a vote of NO ACTION under Article 8.

XXX

ARTICLE 9

NINTH ARTICLE

To see if the Town will direct that the Financial Plan and Annual Report be coordinated and consolidated to reduce scatter, redundancy, and waste of paper.

Coordinating the arrangement of the Financial Plan and Annual Report would increase access to information by grouping information into easy to find pages.

Financial Plan

All the monetary facts, numbers, tables should be presented in one group of pages. Explanatory words should be minimal. The annual Financial Plan includes:

Town Administrator's Budget Message and Financial Plan.

Costs and Expenditures of the Divisions and Departments arranged in a set alphabetical or numerical order.

Personnel charts including grade levels; salaries for funded positions and those proposed for new funding for each Department.

Superintendent of Schools Budget Plan, Capital Improvement Plan, Water and Enterprise Funds, Miscellaneous Funds.

Annual Report

Department mission statements, objectives and achievements of this year and plans for the next year. The AR has the same Division and Department order as in the Financial Plan. Each department entry will site the page number for the relevant monetary figures described in the FP.

This AR contains the narrative reports that inform the Town about the Departments and about exemplary achievements of various individuals.

No pages or sections will be set aside for note taking. Clearly and simply headed pages will obviate the need for dividers. For example: "Planning and Community Development: should be a department heading in the FP and "Planning and Community Development" should be the department heading in the AR.

The FY 2003 Financial Plan scattered the number facts about the "Economic Development" Department on pages IV 56, IV 58 and IV 67.

Scatter, minutia and repetition are to be avoided. At least 100 pages can be saved by removing redundancy. Page turning would be reduced.

SELECTMEN'S RECOMMENDATION

Article 9 is a petitioned article that calls for the Town's Financial Plan and Annual Report to be "coordinated and consolidated to reduce scatter, redundancy, and waste of paper." It makes sense to discuss these two documents separately, as they are clearly two separate and distinct publications.

- The Town's annual Financial Plan is based on a fiscal year, which begins on July 1st and ends on the following June 30th. Per Town By-Laws, the Plan must be made available by February 15th of each year. It is presented to the Board of Selectmen and Advisory Committee by the Town Administrator, who is charged by Home Rule Legislation with the responsibility for its preparation. It is a "program budget", meaning the Financial Plan is not a simple line-item budget that, by virtue of its "simplicity", provides virtually no detail on what the funding is being recommended for. One needs simply to look at the State's annual budget to get a good understanding of how the line-item approach answers few questions, raises numerous others, and allows for no accountability by state agencies and departments.

The Town's Financial Plan provides important programmatic information that this Board, the Advisory Committee, and other Town Meeting Members use to get an understanding of what each department does, what its goals and objectives are, what its accomplishments have been, and what its Workload/Performance Indicators are. If this information were to be eliminated, there would be no way to judge the worthiness and effectiveness of programs, two key elements to budgeting. Lastly, the Town's administration is constantly asked by this Board, the Advisory Committee, and other residents, for more information, not less information, about the Town's operations.

While the Financial Plan is a superb document, improvements are made every year, whether they are small formatting enhancements or more noticeable additions like the inclusion of the Recreation Revolving Fund budget in the FY03 Financial Plan. The discussion of this warrant article has also prompted change, as additional improvements are currently being discussed within the Town administration, including consolidating some of the number presentations without sacrificing the amount of detail.

- State law, specifically Chapter 40, Section 49, requires municipalities to publish an Annual Report. Its purpose is quite different from the Financial Plan. To borrow a phrase that was used by the Advisory Committee during deliberation of this article, the Annual Report is

more of a public information document. It is similar to the annual report that both non-profit and for-profit corporations provide for their directors and members/shareholders. The Report highlights the major accomplishments and events that occurred the previous year. Just as additional information is continuously being requested for inclusion in the Financial Plan, each year new information is asked to be included in the Annual Report. A recent example is the requirement, passed by Town Meeting last year, that all actions related to Resolutions passed by Town Meeting be documented in the Report.

If a citizen desires a comprehensive view of what this Town's government does, that person would turn to the Annual Report, not the Financial Plan. This provides an example of why the Annual Report and Financial Plan are two separate documents. While some information is contained in both, taken as a whole, each document serves two entirely different purposes.

The quality of Brookline's Annual Report has been affirmed in the statewide Annual Report contest held by the Massachusetts Municipal Association (MMA): Brookline has placed either first or second each of the past several years. Similar to the Financial Plan, this does not mean that there is not room for improvement. Each year the Annual Report is improved, made more readable, and made more attractive.

The Selectmen unanimously recommend NO ACTION, by a vote of 5-0 taken on October 1, 2002, on the article.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The petitioner, Stanley Wayne of Precinct 11, would like to combine in one document both Brookline's annual financial plan and the annual report, with the goal of making the resulting document more user friendly and efficient. The petitioner expressed the sentiment that the financial plan document was overburdened with data, its organization difficult to follow, and its size and content larger than necessary. The thought was to see a single document, more in the format of the annual report, with the inclusion of selected information from the financial plan.

DISCUSSION

The town's annual financial plan is a working document used to formulate a proposed town budget which is presented to the Annual Town Meeting in May. It is an admittedly complicated document since it is intended to explain all aspects of an intricate \$170,000,000 budget in great detail. It is published in mid-February of every year by the Town Administrator, mailed to all Town Meeting Members and serves as a "road map" for the Advisory Committee's formulation (and the Selectmen's separate review) of the Town Budget. In addition to proposed spending, the document presents the prior year budget, actual spending from the latest prior fiscal year

when these numbers are available, workforce and workload tables, department accomplishments for the past year and objectives for the coming year.

The Advisory Committee uses the information in the financial plan to question each department head in great detail about their proposed spending and to evaluate whether to agree with the proposed budget or to propose a modification.

The format of the financial plan has evolved over the years in response to comments from Advisory Committee members, the Board of Selectmen and other interested citizens. The Advisory Committee has found the Town Administrator's office extremely receptive to suggestions for improvement. Notably, as members of the Advisory Committee have continually asked for more detail to explain the budgeting process, the budget book has gotten larger and more complex. Town Meeting Members (and others) with suggestions for improvement are encouraged to contact the Town Administrator's office.

The Annual Report is published pursuant to Article 4.2 of the town's by-laws just prior to the Annual Town Meeting in May and has a different purpose and focus from the financial plan. The Annual Report is intended to be a permanent record of the town's activities. While it conveys the accomplishments of departments, it focuses on the activities of the Selectmen, the town's Boards and Commissions, the Town Moderator, town celebrations and contains the Town Clerk's report of the town's statistics and Town Meeting results. The Annual Report was never intended to be used in the budget formulation process.

The Advisory Committee strongly encourages Town Meeting Members to become more active in the budget formulation process. To that end, each department budget is the subject of a public hearing and discussion by the full Advisory Committee. The dates of these public hearings and discussions are mailed to all Town Meeting Members and are posted on the town website.

While not perfect, the Advisory Committee feels very strongly that the financial plan is serving its intended purpose very well. The document's current format provides detailed information in a logical format which permits the Advisory Committee, Town Meeting Members and other interested citizens to make informed judgments on departmental budgets. This format has served us well for many years, and, in fact, is significantly better than the documentation provided by many other towns and cities.

RECOMMENDATION

The Advisory Committee believes that combining the financial plan with the annual report; documents with separate purposes, would be the equivalent of combining apples and oranges and would actually make the situation worse. The Advisory Committee also disagrees with some of the specific suggestions such as the elimination of dividers and note taking spaces. The financial plan has a number of audiences; the needs of each audience have to be met. The town administration has been extremely receptive to suggestions on improving the format of the financial plan and has pledged to continue that record of receptiveness.

The Advisory Committee by a 16-0 vote unanimously recommends a vote of NO ACTION on this Article 9.

XXX

ARTICLE 10

TENTH ARTICLE

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

- A. By creating new definitions for Attic and Porch to be consistent with the terms used in the proposed revisions to Section 5.22 as noted below:

§2.01 - “A” DEFINITIONS

3. **ATTIC—The space in a building between the roof framing and the ceiling of the rooms below and not habitable.**

§2.16 – “P” DEFINITIONS

3. **PORCH—A covered platform, usually having a roof, at an entrance to a dwelling, or an open or enclosed gallery or room, which is not heated or cooled, that is attached to the outside of a building.**
4. **PRIVATE CLUB OR LODGE**—A private club, lodge, or organization operated not for profit, and for members only.
5. **PROFESSION, RECOGNIZED**—Architecture, engineering, law, medicine, dentistry, or other activity in which specialized services to clients are performed by persons possessing a degree from a recognized institution of higher learning demonstrating successful completion of a prolonged course of specialized intellectual instruction and study, and also possessing evidence of professional capability such as membership in a professional society requiring standards of qualification for admission.

- B. By deleting the existing Section 5.22, Exceptions to the Floor Area Ratio Regulations for Residential Units and replacing it with the following:

§5.22 - EXCEPTIONS AND EXEMPTIONS TO MAXIMUM FLOOR AREA RATIO (FAR) REGULATIONS FOR RESIDENTIAL UNITS

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

Conversions of attics, cellars, or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing gross floor area of the dwelling, shall be allowed as-of-right under the following conditions:

- a. Any exterior modifications that are made to the structure to accommodate the conversion, except that provide for venting or other building, fire, health or safety elements required by the State building code, shall be subject to the façade and sign design review process as provided in **§7.3, paragraph 2** of the Zoning Bylaw. No such modifications may extend the building envelope nor may conflict with any other provision of the Zoning Bylaw.
- b. The conversion does not result in the existing use of the space being displaced to a location which is now exterior to the house, such as storage of equipment or materials
- c. Any increases in gross floor area through such a conversion shall be limited to 150 percent of the permitted gross floor area.
- d. The provisions of this paragraph shall be limited to single- and two-family dwellings erected prior to the adoption of this section.

2. Conversion of Side or Rear Porches or Sunrooms into Habitable Space

Owners of single-family or two-family dwellings may convert side or rear enclosed porches or sunrooms, conforming to zoning in all other respects, to habitable space whereby effectively increasing the gross floor area of the dwelling, only under the following conditions:

- a. That no increase to building footprint or envelope shall be permitted
- b. The project is subject to the façade and sign design review process as provided in **§7.3, paragraph 2** of the Zoning Bylaw.
- c. Any increases in gross floor area through such a conversion shall be limited to 150 percent of permitted gross floor area or 350 square feet, whichever is less.

3. Exemption from Maximum of Gross Floor Area for All Other Residential Dwellings

- a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than is permitted in **Table 5.01** for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in ' **5.09**, ' **9.05**, and this paragraph for an existing residential building which meets the following basic requirements:

- 1) The existing building(s) is located on a lot (or part of a lot) in a district with a maximum floor area ratio no greater than 1.5.

- 2) The existing building contains at least one residential unit but no more than four units. For the purpose of this Section, units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.
- b. The maximum increase in floor area allowed by special permit shall be granted in accordance with the following conditions, but in no case shall the resulting gross floor area of the building(s) be more than 150% of the permitted gross floor area:
- 1) In all S and SC Districts, a special permit may be granted for an increase in floor area above the permitted gross floor area for only one of the following:
 - a) an interior conversion not to exceed the permitted gross floor area by more than 30%;
 - b) an exterior addition not to exceed the permitted gross floor area by more than 20%; or
 - c) a combination of an interior conversion and exterior addition not to exceed the permitted gross floor area by more than 30% provided that the additional floor area attributable to exterior construction does not exceed 35% of the additional floor area allowed by special permit.
 - 2) In all T Districts, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area up to 20% above the permitted floor area, whether it be for an exterior addition, interior conversion, or a combination of the two.
 - 3) If the application of the percentages in **subparagraphs a. or b.** of this paragraph results in a floor area increase less than 350 square feet, a special permit may be granted for an increase in floor area up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. A grant of a special permit under either **paragraph 3, subparagraph a. or b.** shall preclude a subsequent grant of a special permit under this subparagraph.
 - 4) Interior conversion is defined as the conversion of existing interior space not previously used for human occupancy in areas such as basements, attics, unenclosed porches, or penthouses. The addition of any other area for human occupancy shall be deemed an exterior addition. In determining the appropriate amount of existing interior space to be converted for human occupancy, the Board of Appeals shall consider the extent of exterior modifications required to effectuate the proposed conversion and the impact therefrom on abutting properties.
 - 5) Any expanded unit (individual residential units subject to an increase in gross floor area as per this section) shall not be eligible to be subsequently divided into multiple units.
 - 6) Any expanded unit shall not be occupied by more than two unrelated individuals.

- 7) Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions.

C. By adding subparagraphs c and d to paragraph 1 of Section 7.06 as follows:

§7.06 - REGULATED FACADE ALTERATIONS

1. A regulated facade shall include:

- a. commercial building facades in all districts; and
- b. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, and T districts.
- c. **Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.**
- d. **Conversion of porches or sunrooms into habitable space as per §5.22 of the Zoning Bylaw.**

2. A regulated alteration shall be defined as any change in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway.

3. All regulated facade alterations shall be subject to the design review process of **§7.03, paragraph 2.**

or act on anything relative thereto.

**PLANNING BOARD REPORT AND RECOMMENDATION ON
WARRANT ARTICLE 10**

In accordance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, after due notice had been given, the Planning Board held a public hearing on October 3, 2001 in Town Hall on a

Zoning Bylaw text amendment as described below. The advertisement for the public hearing appeared in the Brookline TAB on September 19, 2002 and September 26, 2002. Copies of the notice were sent to all Town Meeting Members, neighborhood associations, Town agencies, Massachusetts Department of Housing and Community Development, Metropolitan Area Planning Council, Planning Boards of Boston and Newton, and others. The minutes of the hearing and record of citizen attendance are on file in the Planning and Community Development Department.

The Town of Brookline is currently in the process of updating its Zoning Bylaw in accordance with recommendations put forth by a duly appointed Zoning Bylaw Commission. The process conducted by the Zoning Bylaw Commission has resulted in a set of recommended projects and actions designed to meet the goals and objectives formulated by the Commission. The proposed Warrant Article meets the objectives of Project 2.2, Dimensional (Other), Action 2.2.2, Internal Floor Area Conversion found on page 31 of the Zoning Bylaw Commission's Work Program.

The current Section 5.22 of the Zoning Bylaw allows a special permit to be granted as a general means for residential units to increase the unit's FAR beyond the maximum permitted. The current section contains several requirements and conditions under which such an increase can be considered. All of this current language, modified slightly, is retained in the proposed new Section 5.22.

This article is designed to facilitate the as-of-right conversion of non-habitable interior single- and two-family residential dwelling space such as basements and attics to habitable space. It also shall allow the conversion of enclosed porches in side or rear yards into habitable space with design review scrutiny. Currently, conversion of attic or basement space that exceeds maximum FAR requirements requires a special permit and may be denied on that basis even though the building footprint or envelope would not be increased. This proposed change would allow such space conversion on an as-of-right basis as long as there are no exterior changes. The benefits of this proposed legislation are expected to be as follows:

1. To assist in the flexibility of interior renovation of existing single- and two-family dwelling units.
2. Encouraging current residents who may find their space needs increasing to remain in Brookline.
3. To be an incentive to retain existing structures that fit the scale of the neighborhood and minimize the demolition of existing homes and the building of new larger homes that are out-of-scale with the neighborhood.
4. To increase habitable space in the existing building footprint rather than expanding the footprint and losing open space, green spaces, and pervious surface.

Specifically, the proposed new Section 5.22 introduces two additional paragraphs in which only one-family and two-family dwellings may increase habitable space by finishing attic, porch, or basement space into living area. In addition to the proposed new paragraphs related to porches and basements & attics, the revised Section 5.22 also provides for a set of general provisions which are conditions that each of the two new proposed provisions plus the existing 5.22 provisions must all adhere to. Additionally, this Warrant Article proposes additions to Article II, Sections 2.01, 2.02, 2.08, 2.09, and 2.16 by adding five definitions relevant to the functioning of the changes to Section 5.22. Finally, two subparagraphs were proposed to be added to Section 7.06 to coordinate with the design review requirements proposed for Section 5.22.

On Monday, September 23, the Zoning Bylaw Commission convened to discuss and make recommendations on the zoning amendments proposed for Fall 2002 Town Meeting. In their review of this Warrant Article, they made the following recommendations:

1. Definitions for “basement” and “habitable space” should be added, the definition of “porch” should be modified, and the term “sunroom” should be removed from the proposed amendment.
2. The timing clause (Paragraph 1, subparagraph d) should be relocated into the general provisions and clarified to note that it shall only apply to the dwelling as configured upon adoption of this Section. This was designed to ensure that porches built subsequent to the adoption of this amendment could not be later converted into habitable space as per this provision.
3. Meet with Building Department to discuss the definition of “porch” and revise as necessary. This was done and revisions were made accordingly.
4. Reference to how projects would be handled that were finishing out attic, basement, or porch space but did not meet the criteria of paragraphs 2 and 3.
5. Discussion of modifications related to the building code need clarification.
6. The Title of paragraph 4 needs modification
7. Changes to paragraph 4, subparagraph b related to Board of Appeals action needs to be modified to reflect that approvals are not assured.
8. Elements of a general applicability need to be repositioned in a general requirements section.

Each of these changes were made and the final draft reflects the input of staff of the Planning and Community Development and the Building departments and the Zoning Bylaw Commission.

The Planning Board recommends the following additional changes:

1. Correct all typographical errors.
2. Remove from Section 5.22, paragraph (2), subparagraph (a) the phrase, “...*except that provide for venting or other building, fire, health, or safety elements required by the State building code...*”
3. Add to Section 5.22, paragraph (3) a new subparagraph (d) which reads: “*This paragraph shall not apply to covered or uncovered decks, or to unenclosed porches.*”

The full text of the proposed changes are provided below:

(1) New definitions are required to facilitate the adoption of the new language contained in the revised Section 5.22 as proposed below.

§2.01 - "A" DEFINITIONS

3. ATTIC—The space in a building between the roof framing and the ceiling beams of the rooms below and not considered habitable space.

§2.02 - "B" DEFINITIONS

1. BASEMENT—That portion of a building which is partly or completely below grade (780 CMR 502). Basement shall also include cellar.
2. BUILDING—A combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition "roof" shall include an awning or any similar covering, whether or not permanent in nature. The word "building" shall be construed where the context allows as though followed by the words "or part or parts thereof".

§2.08 - "H" DEFINITIONS

1. HABITABLE SPACE—Space in a structure for living, sleeping, eating, bathing, or cooking or otherwise used for human habitation.
2. HEALTH AND FITNESS CLUB—A private club operated for profit and for members only, solely for the purpose of providing physical fitness, exercise, therapy, rehabilitation and health-related services.

§2.09 - "I" DEFINITIONS

1. INTERIOR CONVERSION—Interior conversion is defined as the conversion of existing interior space not previously used for human occupancy in areas such as basements, attics, porches, or penthouses. The addition of any other area for human occupancy shall be deemed an exterior addition.

§2.16 – "P" DEFINITIONS

1. PORCH—A covered platform with a roof or an enclosed gallery or room, which is not heated or cooled.
2. PRIVATE CLUB OR LODGE—A private club, lodge, or organization operated not for profit, and for members only.
3. PROFESSION, RECOGNIZED—Architecture, engineering, law, medicine, dentistry, or other activity in which specialized services to clients are performed by persons possessing a degree from a recognized institution of higher learning demonstrating successful completion of a prolonged course of specialized

intellectual instruction and study, and also possessing evidence of professional capability such as membership in a professional society requiring standards of qualification for admission.

- (2) The existing Section 5.22 shall be deleted and replaced with a revised Section 5.22.

§5.22 - EXCEPTIONS AND EXEMPTIONS TO MAXIMUM FLOOR AREA RATIO (FAR) REGULATIONS FOR RESIDENTIAL UNITS

1. General Provisions

- a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be subsequently divided into multiple units.
- b. Any expanded unit shall not be occupied by more than two unrelated individuals.
- c. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions.
- d. The provisions of this section shall be limited to existing single- and two-family dwellings erected and as configured prior to the adoption of this section.
- e. The Board of Appeals may allow for the conversion of attic, basement, or porch space not meeting the requirements of paragraphs 2 or 3 below under the provisions of paragraph 4 below.

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

Conversions of attics, cellars, or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing gross floor area of the dwelling, shall be allowed as-of-right under the following conditions:

- a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw. No exterior modifications made under the provisions of this subparagraph may extend the building envelope nor may conflict with any other provision of the Zoning Bylaw,

including but not limited to the requirements of Article VI, Vehicular Service Use Requirements.

- b. The conversion does not result in the existing use of the space being displaced to a location which is now exterior to the house, such as storage of equipment or materials.
- c. Any increases in gross floor area through such a conversion shall be limited to 150 percent of the permitted gross floor area.

3. Conversion of Side or Rear Porches into Habitable Space

Owners of single-family or two-family dwellings may convert side or rear enclosed porches, conforming to zoning in all other respects, to habitable space whereby effectively increasing the gross floor area of the dwelling, only under the following conditions:

- a. That no increase to building footprint or envelope shall be permitted
- b. The project is subject to the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw.
- c. Any increases in gross floor area through such a conversion shall be limited to 150 percent of permitted gross floor area or 350 square feet, whichever is less.
- d. This paragraph shall not apply to covered or uncovered decks, or to unenclosed porches.

4. Special Permit for Exceeding Maximum Gross Floor Area for All Other Residential Dwellings

- a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than is permitted in Table 5.01 for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, §9.05, and this paragraph for an existing residential building which meets the following basic requirements:

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

b. The additional floor area allowed by special permit pursuant to this paragraph shall not include the floor area permitted by right under Table 5.01.

c. The maximum increase in floor area allowed by special permit may be allowed only in accordance with the following conditions, which shall be in addition to any other conditions that the Board of Appeals may prescribe. In no case shall the resulting gross floor area of the building(s) be more than 150% of the permitted gross floor area:

- 1) In all S and SC Districts, a special permit may be granted for an increase in floor area above the permitted gross floor area for only one of the following:
 - a) an interior conversion not to exceed the permitted gross floor area by more than 30%;
 - b) an exterior addition not to exceed the permitted gross floor area by more than 20%; or
 - c) a combination of an interior conversion and exterior addition not to exceed the permitted gross floor area by more than 30% provided that the additional floor area attributable to exterior construction does not exceed 35% of the additional floor area allowed by special permit.
- 2) In all T Districts, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area up to 20% above the permitted floor area, whether it be for an exterior addition, interior conversion, or a combination of the two.
- 3) If the application of the percentages in subparagraphs a. or b. of this paragraph results in a floor area increase less than 350 square feet, a special permit may be granted for an increase in floor area up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. A grant of a special permit under either paragraph 3, subparagraph a. or b. shall preclude a subsequent grant of a special permit under this subparagraph.
- 4) Interior Conversion—In determining the appropriate amount of existing interior space to be converted for human occupancy, the Board of Appeals shall consider the extent of exterior modifications required to effectuate the proposed conversion and the impact therefrom on abutting properties.

(3) Add a subparagraphs c and d to paragraph 1 of Section 7.06

§7.06 - REGULATED FACADE ALTERATIONS

1. A regulated facade shall include:

- a. commercial building facades in all districts; and
 - b. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, and T districts.
 - c. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.
 - d. Conversion of porches into habitable space as per §5.22 of the Zoning Bylaw.
2. A regulated alteration shall be defined as any change in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway.
 3. All regulated facade alterations shall be subject to the design review process of §7.06, paragraph 1.

At the close of the October 3, 2002 public hearing on the proposed amendment to the Zoning Bylaw, the Planning Board voted unanimously to recommend **FAVORABLE ACTION** of the proposed amendment with revisions as duly noted above:

SELECTMEN'S RECOMMENDATION

This proposed amendment to the Zoning By-Law extends the functionality of Section 5.22, which is a mechanism to allow maximum residential floor area ratio (FAR) to be exceeded in some special cases, to include the ability to convert basement and attic space to habitable space as-of-right with no exterior changes and to convert enclosed porches to habitable space with design review scrutiny. Anticipated benefits of Article 10 include the following:

- Assists in the flexibility of interior renovations of existing single- and two-family dwelling units;
- Encourages current residents who may find space needs increasing to remain in Brookline;
- Acts as an incentive to retain existing structures that fit the scale of the neighborhood and minimize the demolition of existing homes and the building of new larger homes that are out-of-scale with the neighborhood; and

- Focuses on increasing habitable space in the existing building footprint rather than expanding the footprint and losing open space, green space, and pervious surface.

Specifically, Article 10 proposes the following changes to the Zoning By-Law:

- Adds definitions of “ATTIC”, “PORCH”, “PORCH, ENCLOSED”, “BASEMENT”, “HABITABLE SPACE”, and “INTERIOR CONVERSION” to Article II of the Zoning By-Law.
- Creates a new paragraph one entitled “General Provisions”, which includes elements that apply globally to all three types of residential conversions.
- Creates a new paragraph two entitled “Conversion of Attic or Basement Space in 1 and 2 Family Dwellings”, which allows the as-of-right conversion of such space into habitable space under the following conditions:
 - No exterior modifications except that required by Building Code.
 - No exterior use displacement.
 - Gross Floor Area (GFA) increases limited to 150% of permitted GFA.
 - Limited to one- and two-family homes erected prior to adoption of this By-Law amendment.
- Creates a new paragraph three entitled “Conversion of Side or Rear Porches or Sunrooms into Habitable Space”, which allows the conversion of such space into habitable space under the following conditions:
 - No increase to building footprint or envelope.
 - Subject to façade and sign design review process.
 - Any GFA increase limited to 150% of GFA or 350 square feet (s.f.), whichever is less.
- Places the original text of Section 5.22 in a new paragraph four entitled “Exemption from Maximum of Gross Floor Area for All Other Residential Dwellings”. The language of this section is essentially unchanged from the original 5.22 language except for the removal of several elements that are no longer applicable to just this paragraph but have a more general applicability. These elements form the core of the new paragraph one.
- Modifies Section 7.06, Regulated Façade Alterations, by adding subparagraphs c. and d. to paragraph 1 of which reads:
 - i. Conversion of attic or basement space in single-family and two-family residential dwellings where exterior modifications beyond that required by the State building code are made.

- ii. Conversion of porches or sunrooms into habitable space as per Section 5.22 of the Zoning By-Law.

It is important to note that Article 10 meets a specific objective in the Work Program of the Zoning By-Law Commission and has been recommended for Favorable Action with conditions by both the Zoning By-Law Commission and the Planning Board. Therefore, the Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 4-0, on the following vote:

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

- A. By creating new definitions for Attic and Porch to be consistent with the terms used in the proposed revisions to Section 5.22 as noted below:

§2.01 - “A” DEFINITIONS

3. ATTIC—The space in a building between the roof framing and the ceiling beams of the rooms below and not considered habitable space.

§2.02 - “B” DEFINITIONS

1. BASEMENT—That portion of a building which is partly or completely below grade (780 CMR 502). Basement shall also include cellar.
2. BUILDING—A combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition "roof" shall include an awning or any similar covering, whether or not permanent in nature. The word "building" shall be construed where the context allows as though followed by the words "or part or parts thereof".

§2.08 - “H” DEFINITIONS

1. HABITABLE SPACE—Space in a structure for living, sleeping, eating, bathing, or cooking or otherwise used for human habitation.
2. HEALTH AND FITNESS CLUB—A private club operated for profit and for members only, solely for the purpose of providing physical fitness, exercise, therapy, rehabilitation and health-related services.

§2.09 - “I” DEFINITIONS

1. INTERIOR CONVERSION—Interior conversion is defined as the conversion of existing interior space not previously used for human occupancy in areas such as basements, attics, porches, or penthouses. The addition of any other area for human occupancy shall be deemed an exterior addition.

§2.16 – “P” DEFINITIONS

1. PORCH—A covered platform with a roof or an enclosed gallery or room, which is not heated or cooled.
2. PORCH, ENCLOSED – A structure attached to a building with a floor, roof, structural supports, and permanently, seasonally, or temporarily enclosed with solid materials, such as glass or lexan (a clear, durable, hard plastic material). Screens, curtains, or latticework made of wire-mesh, cloth, paper, strips of wood or metal, or other similar material shall not be considered "solid" for the purpose of this definition. A porch does not need to be heated or insulated to be considered “enclosed.”
3. PRIVATE CLUB OR LODGE—A private club, lodge, or organization operated not for profit, and for members only.
4. PROFESSION, RECOGNIZED—Architecture, engineering, law, medicine, dentistry, or other activity in which specialized services to clients are performed by persons possessing a degree from a recognized institution of higher learning demonstrating successful completion of a prolonged course of specialized intellectual instruction and study, and also possessing evidence of professional capability such as membership in a professional society requiring standards of qualification for admission.

B. By deleting the existing Section 5.22, Exceptions to the Floor Area Ratio Regulations for Residential Units and replacing it with the following:

§5.22 - EXCEPTIONS AND EXEMPTIONS TO MAXIMUM FLOOR AREA RATIO (FAR) REGULATIONS FOR RESIDENTIAL UNITS

2. General Provisions

- a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be subsequently divided into multiple units.
- b. Any expanded unit shall not be occupied by more than two unrelated individuals.
- c. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions.

- d. The provisions of this section shall be limited to existing single- and two-family dwellings erected and as configured prior to the adoption of this section.
 - e. The Board of Appeals may allow for the conversion of attic, basement, or porch space not meeting the requirements of paragraphs 2 or 3 below under the provisions of paragraph 4 below.
2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings

Conversions of attics, cellars, or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing gross floor area of the dwelling, shall be allowed as-of-right under the following conditions:

- a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to the façade and sign design review process as provided in **§7.06, paragraph 1** of the Zoning Bylaw. No exterior modifications made under the provisions of this subparagraph may extend the building envelope nor may conflict with any other provision of the Zoning Bylaw, including but not limited to the requirements of Article VI, Vehicular Service Use Requirements.
 - b. The conversion does not result in the existing use of the space being displaced to a location which is now exterior to the house, such as storage of equipment or materials.
 - c. Any increases in gross floor area through such a conversion shall be limited to 150 percent of the permitted gross floor area.
3. Conversion of Side or Rear Porches into Habitable Space

Owners of single-family or two-family dwellings may convert side or rear enclosed porches, conforming to zoning in all other respects, to habitable space whereby effectively increasing the gross floor area of the dwelling, only under the following conditions:

- a. That no increase to building footprint or envelope shall be permitted.
- b. The project is subject to the façade and sign design review process as provided in **§7.06, paragraph 1** of the Zoning Bylaw.
- c. Any increases in gross floor area through such a conversion shall be limited to 150 percent of permitted gross floor area or 350 square feet, whichever is less.
- d. This paragraph shall not apply to covered or uncovered decks, or to unenclosed

porches.

4. Special Permit for Exceeding Maximum Gross Floor Area for All Other Residential Dwellings

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than is permitted in **Table 5.01** for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in **§5.09**, **§9.05**, and this paragraph for an existing residential building which meets the following basic requirements:

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

b. The additional floor area allowed by special permit pursuant to this paragraph shall not include the floor area permitted by right under Table 5.01.

c. The maximum increase in floor area allowed by special permit may be allowed only in accordance with the following conditions, which shall be in addition to any other conditions that the Board of Appeals may prescribe. In no case shall the resulting gross floor area of the building(s) be more than 150% of the permitted gross floor area:

1) In all S and SC Districts, a special permit may be granted for an increase in floor area above the permitted gross floor area for only one of the following:

a. an interior conversion not to exceed the permitted gross floor area by more than 30%;

b. an exterior addition not to exceed the permitted gross floor area by more than 20%; or

c. a combination of an interior conversion and exterior addition not to exceed the permitted gross floor area by more than 30% provided that the additional floor area attributable to exterior construction does not exceed 35% of the additional floor area allowed by special permit.

2) In all T Districts, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area up to 20% above the permitted floor area, whether it be for an exterior addition, interior conversion, or a combination of the two.

- 3) If the application of the percentages in **subparagraphs a. or b.** of this paragraph results in a floor area increase less than 350 square feet, a special permit may be granted for an increase in floor area up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. A grant of a special permit under either **paragraph 3, subparagraph a. or b.** shall preclude a subsequent grant of a special permit under this subparagraph.
- 4) Interior Conversion—In determining the appropriate amount of existing interior space to be converted for human occupancy, the Board of Appeals shall consider the extent of exterior modifications required to effectuate the proposed conversion and the impact therefrom on abutting properties.

C. By adding subparagraphs c and d to paragraph 1 of Section 7.06 as follows:

§7.06 - REGULATED FACADE ALTERATIONS

1. A regulated facade shall include:
 - a. commercial building facades in all districts; and
 - b. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, and T districts.
 - c. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.
 - d. Conversion of porches into habitable space as per §5.22 of the Zoning Bylaw.
2. A regulated alteration shall be defined as any change in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway.
3. All regulated facade alterations shall be subject to the design review process of **§7.06, paragraph 1.**

October 22, 2002 Roll Call Vote:

Favorable Action

Goldberg

Kalikow

Hoy

Allen

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The Town's Planning and Community Development Department is proposing Article 10 to revise portions of the Zoning Bylaw. Sections 5 and 7 would be modified as to how they regulate exceptions to size limits and outside changes to existing residential dwellings. The purpose of the revisions would be to facilitate the as-of-right conversion of presently non-habitable space, such as basements and attics, into habitable space even though such a conversion might exceed the allowable FAR (Floor Area Ratio). It will also allow the conversion of "enclosed" porches in side or rear yards into habitable space with design review scrutiny. It will generally reduce the need for an owner to take the extra step of applying to the Zoning Board of Appeals for a special permit when current FAR limits are exceeded.

The department has worked for several years now with the Zoning Bylaw Commission to refine, update and improve the Bylaw for building and development regulation.

DISCUSSION

The changes are intended to make the process of getting approval for interior home renovations more flexible for homeowners, while guiding any exterior changes that may be involved. Because of increased allowable limits in maximum floor area, Single and Two-Family home owners would be able, as of right, to convert unfinished attics and basements and side or rear yard "enclosed" porches into fully usable living space. Generally, these areas are not considered habitable because they are unheated. This would allow more space without increasing the overall size of the houses "footprint" on the property.

Additions will remain an option for homeowners, but often they require Special Permit approval when the property already fills most of the lot. Usually, additions cost more than converting interior space. Also, the department feels this may have the added benefit of encouraging residents to stay in Brookline when their space needs increase, and also counter demolition and subsequent construction of large out of scale new houses. For all other types of dwellings, a Special Permit will still be required, but conversions will only be permitted in buildings with between one and four units.

Additionally, a qualifying structure must predate this change: for example, a new "enclosed" porch cannot be converted in the future. Increases in space can only be added to existing

dwelling units and not increase the number of units or be subdivided. The conversion cannot result in the displacing of storage or equipment to outside the dwelling.

Some concerns were raised that increased living space, including bedrooms, might increase the number of tenants in an apartment, and hence, the number of cars that need parking space. This would further tax Brookline's already overburdened parking situation. However, the Bylaw specifically limits the number of unrelated individuals that can occupy an expanded unit. The Building Department is charged with enforcement of the regulations proscribing an excessive number of unrelated people in a unit. It responds when a complaint is lodged about overfilled or illegal extra units.

Front porches cannot be converted in the same way that side or back yard "enclosed" porches could be converted. The Advisory Committee had some continuing concerns about enclosing porches in many tightknit neighborhoods, due to the negative effects on light and air. However, since any conversions of enclosed porches are subject to the Design Review Process, those issues could be addressed on a case by case basis.

The Planning Department recently proposed adding a definition of "Enclosed Porches." The definition it has suggested is as follows:

"A structure attached to a building with a floor, roof, structural supports, and permanently, seasonally, or temporarily enclosed with solid materials, such as glass or lexan (a clear, durable, hard plastic material). Screens, curtains, or latticework made of wire-mesh, cloth, paper, strips of wood or metal, or other similar material shall not be considered "solid" for the purpose of this definition. A porch does not need to be heated or insulated to be considered "enclosed."

RECOMMENDATION

The Advisory Committee was generally favorable to the Bylaw change but members felt that the definition of Enclosed Porch still needs some refining. Therefore, the Advisory Committee voted 13-2 (1 abstention) to table this matter until the Planning Board has a chance to review this language and perhaps offer some changes.

The Advisory Committee does not have a recommendation at this time. It will offer one at Town Meeting.

PLANNING BOARD REPORT AND RECOMMENDATION ON WARRANT ARTICLE 10

In accordance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, after due notice had been given, the Planning Board held a public hearing on October 3, 2001 in Town Hall on a Zoning Bylaw text amendment as described below. The advertisement for the public hearing appeared in the Brookline TAB on September 19, 2002 and September 26, 2002. Copies of the notice were sent to all Town Meeting Members, neighborhood associations, Town agencies, Massachusetts Department of Housing and Community Development, Metropolitan Area Planning Council, Planning Boards of Boston and Newton, and others. The minutes of the hearing and record of citizen attendance are on file in the Planning and Community Development Department.

The Town of Brookline is currently in the process of updating its Zoning Bylaw in accordance with recommendations put forth by a duly appointed Zoning Bylaw Commission. The process conducted by the Zoning Bylaw Commission has resulted in a set of recommended projects and actions designed to meet the goals and objectives formulated by the Commission. The proposed Warrant Article meets the objectives of Project 2.2, Dimensional (Other), Action 2.2.2, Internal Floor Area Conversion found on page 31 of the Zoning Bylaw Commission's Work Program.

The current Section 5.22 of the Zoning Bylaw allows a special permit to be granted as a general means for residential units to increase the unit's FAR beyond the maximum permitted. The current section contains several requirements and conditions under which such an increase can be considered. All of this current language, modified slightly, is retained in the proposed new Section 5.22.

This article is designed to facilitate the as-of-right conversion of non-habitable interior single- and two-family residential dwelling space such as basements and attics to habitable space. Currently, conversion of attic or basement space that exceeds maximum FAR requirements requires a special permit and may be denied on that basis even though the building footprint or envelope would not be increased. This proposed change would allow such space conversion on an as-of-right basis as long as there are no exterior changes. The benefits of this proposed legislation are expected to be as follows:

1. To assist in the flexibility of interior renovation of existing single- and two-family dwelling units.
2. Encouraging current residents who may find their space needs increasing to remain in Brookline.
3. To be an incentive to retain existing structures that fit the scale of the neighborhood and minimize the demolition of existing homes and the building of new larger homes that are out-of-scale with the neighborhood.
4. To increase habitable space in the existing building footprint rather than expanding the footprint and losing open space, green spaces, and pervious surface.

Specifically, the proposed new Section 5.22 introduces an additional paragraph in which only one-family and two-family dwellings may increase habitable space by finishing attic or basement space into living area. In addition to the proposed paragraph related to basements and attics, the revised Section 5.22 also provides for a set of general provisions which are conditions that the new proposed provisions plus the existing 5.22 provisions must all adhere to. Additionally, this Warrant Article proposes additions to Article II, Sections 2.01, 2.02, 2.08, and 2.09 by adding four definitions relevant to the functioning of the changes to Section 5.22. Finally, one additional subparagraph was proposed to be added to Section 7.06 to coordinate with the design review requirements proposed for Section 5.22.

On Monday, September 23, the Zoning Bylaw Commission convened to discuss and make recommendations on the zoning amendments proposed for Fall 2002 Town Meeting. In their review of this Warrant Article, they made the following recommendations:

1. Definitions for “basement” and “habitable space” should be added, the definition of “porch” should be modified, and the term “sunroom” should be removed from the proposed amendment.
2. The timing clause (Paragraph 1, subparagraph d) should be relocated into the general provisions and clarified to note that it shall only apply to the dwelling as configured upon adoption of this Section. This was designed to ensure that porches built subsequent to the adoption of this amendment could not be later converted into habitable space as per this provision.
3. Meet with Building Department to discuss the definition of “porch” and revise as necessary. This was done and revisions were made accordingly.
4. Reference to how projects would be handled that were finishing out attic, basement, or porch space but did not meet the criteria of paragraphs 2 and 3.
5. Discussion of modifications related to the building code need clarification.
6. The Title of paragraph 4 needs modification
7. Changes to paragraph 4, subparagraph b related to Board of Appeals action needs to be modified to reflect that approvals are not assured.
8. Elements of a general applicability need to be repositioned in a general requirements section.

Each of these changes were made and the final draft reflects the input of staff of the Planning and Community Development and the Building departments and the Zoning Bylaw Commission.

The Planning Board recommended the following additional changes following the meeting of the 23rd

1. Correct all typographical errors.

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2. Remove from Section 5.22, paragraph (2), subparagraph (a) the phrase, “...*except that provide for venting or other building, fire, health, or safety elements required by the State building code,...*”
3. Add to Section 5.22, paragraph (3) a new subparagraph (d) which reads: “*This paragraph shall not apply to covered or uncovered decks, or to unenclosed porches.*”

In addition, the Planning Board met to reconsider Article 10 on Thursday, November 7, 2002 and recommended unanimously that all references to porch conversions be removed and that these elements be referred to the Zoning Bylaw Commission for refinement. The Planning Board members also discussed whether or not this amendment would have the potential to result in some homeowners applying to build an addition prior to applying for a basement or attic conversion.

Any conflicting Planning Board recommendations from the meeting of September 23 are superceded by the new recommendation.

The full text of the proposed changes are provided below:

(1) New definitions are required to facilitate the adoption of the new language contained in the revised Section 5.22 as proposed below.

§2.01 - “A” DEFINITIONS

3. ATTIC—The space in a building between the roof framing and the ceiling beams of the rooms below and not considered habitable space.

§2.02 - “B” DEFINITIONS

1. BASEMENT—That portion of a building which is partly or completely below grade (780 CMR 502). Basement shall also include cellar.
2. BUILDING—A combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition "roof" shall include an awning or any similar covering, whether or not permanent in nature. The word "building" shall be construed where the context allows as though followed by the words "or part or parts thereof".

§2.08 - "H" DEFINITIONS

1. HABITABLE SPACE—Space in a structure for living, sleeping, eating, bathing, or cooking or otherwise used for human habitation.
2. HEALTH AND FITNESS CLUB—A private club operated for profit and for members only, solely for the purpose of providing physical fitness, exercise, therapy, rehabilitation and health-related services.

§2.09 - "I" DEFINITIONS

1. INTERIOR CONVERSION—Interior conversion is defined as the conversion of existing interior space not previously used for human occupancy in areas such as basements, attics, or penthouses. The addition of any other area for human occupancy shall be deemed an exterior addition.

- (2) The existing Section 5.22 shall be deleted and replaced with a revised Section 5.22.

§5.22 - EXCEPTIONS AND EXEMPTIONS TO MAXIMUM FLOOR AREA RATIO (FAR) REGULATIONS FOR RESIDENTIAL UNITS

1. General Provisions

- a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be subsequently divided into multiple units.
- b. Any expanded unit shall not be occupied by more than two unrelated individuals.
- c. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions.
- d. The provisions of this section shall be limited to existing single- and two-family dwellings erected and as configured prior to the adoption of this section.

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- e. The Board of Appeals may allow for the conversion of attic or basement space not meeting the requirements of paragraph 2 below under the provisions of paragraph 3 below.

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

Conversions of attics, cellars, or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing gross floor area of the dwelling, shall be allowed as-of-right under the following conditions:

- a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw. No exterior modifications made under the provisions of this subparagraph may project vertically above the ridge of the roof nor project horizontally beyond the eaves. Such modifications shall also not conflict with any other provision of the Zoning Bylaw, including but not limited to the requirements of Article VI, Vehicular Service Use Requirements.
- b. The conversion does not result in the existing use of the space being displaced to a location which is now exterior to the house, such as storage of equipment or materials.
- c. Any increases in gross floor area through such a conversion shall be limited to 150 percent of the permitted gross floor area.

3. Special Permit for Exceeding Maximum Gross Floor Area for All Other Residential Dwellings

- a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than is permitted in Table 5.01 for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, §9.05, and this paragraph for an existing residential building which meets the following basic requirements:

- 1) The existing building(s) is located on a lot (or part of a lot) in a district with a permitted maximum floor area ratio no greater than 1.5.

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- 2) The existing building contains at least one residential unit but no more than four units. For the purpose of this paragraph, units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

- b. The additional floor area allowed by special permit pursuant to this paragraph shall not include the floor area permitted by right under Table 5.01.
- c. The maximum increase in floor area allowed by special permit may be allowed only in accordance with the following conditions, which shall be in addition to any other conditions that the Board of Appeals may prescribe. In no case shall the resulting gross floor area of the building(s) be more than 150% of the permitted gross floor area:
 - 1) In all S and SC Districts, a special permit may be granted for an increase in floor area above the permitted gross floor area for only one of the following:
 - a) an interior conversion not to exceed the permitted gross floor area by more than 30%;
 - b) an exterior addition not to exceed the permitted gross floor area by more than 20%; or
 - c) a combination of an interior conversion and exterior addition not to exceed the permitted gross floor area by more than 30% provided that the additional floor area attributable to exterior construction does not exceed 35% of the additional floor area allowed by special permit.
 - 2) In all T Districts, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area up to 20% above the permitted floor area, whether it be for an exterior addition, interior conversion, or a combination of the two.
 - 3) If the application of the percentages in subparagraphs a. or b. of this paragraph results in a floor area increase less than 350 square feet, a special permit may be granted for an increase in floor area up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. A grant of a special permit under either paragraph 3, subparagraph a. or b. shall preclude a subsequent grant of a special permit under this subparagraph.

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- 4) Interior Conversion—In determining the appropriate amount of existing interior space to be converted for human occupancy, the Board of Appeals shall consider the extent of exterior modifications required to effectuate the proposed conversion and the impact therefrom on abutting properties.

(3) Add a subparagraphs c and d to paragraph 1 of Section 7.06

§7.06 - REGULATED FACADE ALTERATIONS

1. A regulated facade shall include:
 - a. commercial building facades in all districts; and
 - b. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, and T districts.
 - c. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.
 2. A regulated alteration shall be defined as any change in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway.
 3. All regulated facade alterations shall be subject to the design review process of §7.06, paragraph 1.
-

At the close of the November 7, 2002 public hearing on the proposed amendment to the Zoning Bylaw, the Planning Board voted unanimously to recommend **FAVORABLE ACTION** of the proposed amendment with revisions as duly noted above:

Jerome Kampler, Chairman

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Kenneth Goldstein

Linda K. Hamlin

Steven A. Heikin

Mark J. Zarillo

ARTICLE 11

ELEVENTH ARTICLE

To see if the town will amend the Zoning By-Law by deleting Section 6.14 and by replacing it with the following:

SECTION 6.14 BICYCLE SPACE AND DESIGN REQUIREMENTS

(a) Off street bicycle parking shall be provided as follows:

(1) Bicycle parking spaces shall be provided in accordance with the TABLE OF BICYCLE PARKING REQUIREMENTS set forth in part (b), or one bicycle parking space for every 15 automobile parking spaces provided for the uses set forth in said Table, whichever is greater.

(2) Each bicycle parking space shall be sufficient to accommodate a bicycle 7 feet in length and 2 feet in width and shall be provided with some form of steel frame permanently anchored to a foundation to which a bicycle frame and at least one wheel may be conveniently secured using a chain and padlock or standard bicycle U lock. The separation of the bicycle parking spaces and the amount of corridor space shall be adequate for convenient access to every space when the parking facility is full. Any bicycle parking space within a structure to be used for motorized bicycles shall be subject to regulations pertaining to interior storage of gasoline. Inverted U frame racks that support the bicycle at two or more points above and on either side of the bicycle's center of gravity are acceptable. An alternative style of rack or secured parking, such as a locked cage or locked area of a basement, that provides a comparable level of security and convenience may be provided.

(3) Long term parking shall be safe and secure from vandalism and theft, and protected from the elements. Short term (customer or visitor) parking shall be in spaces that are visible and convenient to building entrance.

(4) Any property owner required to have bicycle parking may elect to establish a shared bicycle parking facility with any other property owner within the same block to meet the combined requirements.

(5) These requirements may be varied by the Board of Appeals by Special Permit, based upon a determination that the proposed bicycle parking facilities will adequately address the purposes of this section.

(b) Bicycle parking spaces shall be provided in accordance with the following Table of Bicycling Parking Space Requirements.

TABLE OF BICYCLE PARKING SPACE REQUIREMENTS

<u>USE</u>	<u>AMOUNT REQUIRED</u>	<u>LONGTERM</u>	<u>SHORTTERM</u>
Multifamily Residential (4 Units or more)	1.5 PER UNIT	66%	33%
Hotels	1per 10 guest rooms	50%	50%
Educational uses	2 per 10 students	50%	50%
Other Public Assembly	1 per 20 seats	10%	90%
Hospitals	1 per 10 beds	50%	50%
Life Care Facility	1 per 5 units	50%	50%
Other Institutional	1 per 2,000 a.f.	25%	75%
Passive Recreational	1 per 5,000 a.f.	0%	75%
Active Recreational	1 per 2,000 a.f.	25%	75%
Commercial	1 per 2,000 a.f.	25%	75%
Office	1 per 2,000 a.f.	50%	50%
Industrial	1 per 5,000 a.f.	75%	25%

or act on anything relative thereto.

This warrant is intended to establish bicycle parking standards as part of the general parking requirements contained in the zoning bylaws. The intent of the warrant is to establish bicycle parking in an appropriate proportion to automobile parking.

**PLANNING BOARD REPORT AND RECOMMENDATIONS ON
ZONING BY-LAW AMENDMENT OF SECTION 6.14, BICYCLE SPACE
AND DESIGN REQUIREMENTS (CITIZEN'S PETITION)**

In accordance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, after due notice had been given, the Planning Board held a public hearing on 3 October 2002 in Town Hall on zoning amendments to Section 6.14, Bicycle Space and Design Requirements. The advertisement for the public hearing appeared in the Brookline TAB on 19 and 26 September 2002. Copies of the notice were sent to all Town Meeting Members, neighborhood associations, Town agencies, Massachusetts Department of Housing and Community Development, Metropolitan Area Planning Council, Planning Boards of Boston and Newton, and

others. The minutes of the hearing and record of citizen attendance are on file in the Planning Department.

The citizen petition proposes to amend the requirements of Section 6.14 by adding the following: a Table of Bicycle Parking Requirements; two sentences to the end of paragraph 2 regarding design of U frame and other style racks; paragraph 3 regarding the design of long-term bicycle parking facilities; and paragraph 4 regarding the allowance of shared bicycle parking. The proposed petition also rewords paragraph 5 regarding the allowance of a special permit.

The Planning Board believes that, although safe and convenient bicycle transportation should be strongly encouraged and the existing zoning requirements for bicycle facilities should be enhanced, the amendment as proposed needs significant modification to be viable.

The existing zoning regulations, under Section 6.14, require one bicycle parking space for every 5 dwelling units (not counting units with a ground floor entrance). The regulations also describe the preferred design of facilities and allow special permit relief to the regulations of this section.

According to the US Census 2000, approximately 1.8% of Brookline residents commute to work by bicycle. Since the average household size in Brookline is 2.23 persons (US Census 2000), the proposed requirement for 1.5 bicycle parking spaces per unit would effectively provide bicycle spaces for over 67% of the population living in these multi-family buildings. Even recognizing that bicycle use goes beyond the purposes of commuting, adding recreational or other transportation-related bicycle use to the 1.8% would clearly not result in a current rate of over 67% of residents regularly using bicycles. Therefore, the Planning Board recognizes that the intensity of the proposed amendments does not correspond to the current use rate of bicycles in our community.

To elaborate on this point, consider this: Under the proposed amendment, a new 15 unit residential building would require 23 bicycle parking spaces, whereas, based on the journey to work Census data, less than one resident would be likely to commute by bicycle. Likewise, a new 50 person office building (assuming 350 s.f. per person) would require 9 bicycle spaces, even though the building is likely to have less than one person commuting by bicycle. As this further exemplifies, the proposed amendments are intense when compared to the actual commuter usage rates.

In 1999, the Department of Planning and Community Development conducted case studies of bicycle requirements in other communities throughout the country. Since the percent of commuters using bicycles in Portland, Oregon, is the same as Brookline's (1.8%, US Census 2000), Portland's bicycle facility requirements could be used as a helpful precedent. Portland requires much lower bicycle space requirements than this article proposes: instead of 1.5 spaces per residential unit, Portland requires 2 spaces or 1 space per 10 auto parking spaces (whichever is greater); instead of 1 space per 2,000 s.f. of commercial/office, Portland requires 2 spaces or 1 per 20 auto spaces (whichever is greater). For example, a commercial building the size of Walgreens on Harvard Street (11,126 s.f.) would require 6 spaces under this proposed

amendment, and 3 spaces under the Portland ordinance (1 auto parking space per 200 s.f./20). In this example, the proposed amendment would require twice as much bicycle parking as the Portland ordinance would, even though Portland's bicycle commuting rate is the same as Brookline's.

Although the proposed amendment does not correspond to current use rates, it seems possible that new bicycle parking facilities could stimulate greater bicycle usage. However, a stronger and more effective way to encourage bicycle usage would be to pair a zoning amendment with initiatives to systematically improve the bicycling climate throughout Town. This could include increasing the availability of public bicycle facilities in commercial areas, parks, and other public spaces, and improving the safety and convenience of bicycle travel by expanding the availability of continuous bicycle lanes on targeted streets and creating separate bike paths.

The work of the Comprehensive Plan Committee and the Zoning By-law Update Commission identified the importance of encouraging safe and convenient bicycling by improving bicycle facilities and amenities. Specifically, the Zoning Commission recommends that consideration be given to the creation of a universal set of regulations for bicycle parking facilities, including requiring facilities for other land uses beyond residential, such as office, retail, and institutional. The Commission recommends this as a long-range project to be considered through the Comprehensive Plan, which is scheduled for completion in June 2003.

In addition, the Comprehensive Plan Committee, through the Issue and Opportunity Reports, has identified an opportunity to create a Bicycle Master Plan which would ideally integrate and coordinate recommendations for zoning amendments with improvements to on-street and off-street bicycle travel and better public bicycle amenities.

Although the Planning Board wants to encourage safe and convenient bicycle transportation and would support a further evaluation of our current bicycle requirements, the Board felt that this proposed amendment was not appropriate for Brookline particularly in terms of the intensity of the requirements as compared to actual bicycle usage. Ideally, a Bicycle Master Plan should be created that coordinates improvements to the zoning regulations related to bicycles with other town-wide improvements to bicycle facilities and amenities.

The Planning Board therefore recommends that a Committee should be created by the Board of Selectmen to study the zoning aspects of bicycle parking requirements, including what other communities require, and then recommend appropriate number of spaces, definitions, use table items, and other elements relevant to zoning. This Committee would report back to the Board of Selectmen in Spring 2003 and have a full set of recommendations by the end of August 2003 in anticipation of submitting a warrant article. This Committee should consist of representative members of the bicycling community, commercial tenants and building owners, and zoning professionals, etc.

At the close of the October 3, 2002 public hearing on the proposed amendment to the Zoning Bylaw, the Planning Board voted unanimously to recommend **NO ACTION** on this proposed

amendment with the understanding that further study would continue as described above in order to place a revised article on the Fall 2003 Town Meeting Warrant.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen is supportive of the effort to enhance and improve the bicycle parking space standards in the Zoning By-Law. However, as noted by both the Zoning By-Law Commission and the Planning Board, the language of the Article needs to be revised in order to be more appropriate for Brookline. The Zoning By-Law Commission should work with the petitioner and bring back a revised warrant article in the Fall of 2003.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0, on the following vote, which was taken on October 15, 2002:

VOTED: That the article be referred to the Zoning By-Law Review Commission for further study, with recommendations and any suggested action to be available for the 2003 Fall Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 11 is intended to establish bicycle parking standards as a part of the general parking requirements in the Zoning Bylaws. The proposed language defines the requirements of these spaces for different types of commercial, recreational, educational and multifamily residential properties. Further specifications divide the types of parking between either "short term" or "long term," and caps the rate at one bicycle parking space for every fifteen (15) automobile parking spaces. The requirements could be varied by the Zoning Board of Appeals by Special Permit.

DISCUSSION

The citizen Petitioner feels that examination of this issue is far overdue. This article has been drafted as his attempt to facilitate this process. The Planning Board and the Advisory Committee subcommittee that dealt with this issue has concerns about the specific language proposed by the Petitioner. Some of the definitions could easily cause significant disruption on many current sidewalks especially in the Coolidge Corner or Washington Square areas. In addition, some of the ratios might be at wide variance to what was either actually needed or desired. Further consideration of this issue is needed.

The Transportation Board also looked at this article. Members of that Board have indicated that the Board would shortly examine public parking areas with the specific intention of measuring availability of spaces for bicycles and developing some plan as to what bicycle parking standards are needed. The Transportation Board will then report back to the Planning Department. Some of the requirements may need to be significantly different for various areas in Brookline.

Given the complexity of the issue it is clear further study is needed. The Petitioner seems content the issue is under serious study, and is generally satisfied with this recommendation.

RECOMMENDATION

The Advisory Committee by a 17-0 vote recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 12

TWELFTH ARTICLE

To see if the Town will amend the Zoning By-Laws of the Town, Section 5.52, Fences and Terraces in Front Yards, by 1) replacing the word “six” with the word “four” in line two and 2) adding the following sentence to the end of the section: **“All fences or walls above four feet shall be subject to the design review procedures of Section 7.6”**.

and to see if the Town will amend the Zoning By-Laws of the Town of Brookline by adding to the included categories list of Section 7.6 (a) **“(3) all fences and walls over four feet high within the required front yard setback area as required by Section 5.52”**.

The intent of the Zoning By-Law to ensure a pleasant and consistent neighborhood character by the inclusion of front yard setback requirements is often frustrated when property owners erect high fences and walls that are inappropriate to the character of the neighborhood, create unwanted shadowing or block views and air movements. The unregulated construction of high fences and walls along the street line is adversely affecting the streetscape of many Brookline streets. The proposed changes to the By-Laws will allow the community and design professionals to consider the aesthetic and environmental impacts of proposed fences and walls over four feet in height.

**PLANNING BOARD REPORT AND RECOMMENDATIONS ON
WARRANT ARTICLE 12**

**ZONING BY-LAW AMENDMENT OF SECTION 5.52 FENCES AND
TERRACES IN FRONT YARDS (CITIZEN’S PETITION)**

In accordance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, after due notice had been given, the Planning Board held a public hearing on 3 October 2002 in Town Hall on zoning amendments to Section 5.52, Fences and Terraces in Front Yards, and Section 7.6, Regulated Facade Alterations. The advertisement for the public hearing appeared in the Brookline TAB on 19 and 26 September 2002. Copies of the notice were sent to all Town Meeting Members, neighborhood associations, Town agencies, Massachusetts Department of Housing and Community Development, Metropolitan Area Planning Council, Planning Boards of Boston and Newton, and others. The minutes of the hearing and record of citizen attendance are on file in the Planning Department.

This citizen petition proposes to amend the requirements of Section 5.52 by reducing the existing allowance of a 6-foot fence in the front yard to 4 feet. In addition, the petition proposes to add paragraph 3 to Section 7.6(a) which would require that any fence or wall over 4 feet high comply with the design review procedures of Section 7.3(b) which is a process conducted by the Planning Board. Although the Planning Board is sympathetic with the desire to enhance and protect the look of neighborhood streetscapes, the Board feels that the existing requirements for fences in front yards, as described below, serve this purpose.

The existing requirements for fences in front yards under Section 5.52 allow fences up to 6 feet high. Any proposal greater than 6 feet high would require a special permit by the Board of Appeals under Section 5.43 or a variance. In addition, any fence (of any height) on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street is already required to comply with the design review procedures of Section 7.3(b). Furthermore, any fence (of any height) on lots in the two local historic districts (Pill Hill and Cottage Farm) is required to receive a Certificate of Appropriateness from the Preservation Commission.

In effect, this petition would require all fences over 4 feet high (in any zoning district) to comply with the design review procedures of Section 7.3(b), but does not specify any upper threshold in which zoning relief would be required (special permit or variance). For example, a proposal for an 8 foot high fence would essentially be allowed by right once the application complied with the design review procedures. In this way, the proposed amendment creates less stringent standards than are already in place.

The Planning Board continually strives to protect and improve the unique look and feel of neighborhood streetscapes. The Board feels that the existing system of prioritizing the six main corridors in Town and the local historic districts for more stringent design review, and that maintaining the existing height threshold of 6 feet for fences in front yards in all districts serves the purpose as intended.

Therefore, after the close of the 3 October 2002 public hearing on the proposed amendment, the Planning Board voted to recommend **NO ACTION** on this amendment.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen concurs with the Planning Board that Section 5.52 of the Town's Zoning By-Law, Fences and Terraces in Front Yards, which sets the current threshold height of six feet for fences in front yards, is appropriate and serves the intended purpose of this provision. However, the Comprehensive Plan Committee should discuss the issue in more depth.

The Selectmen recommend **FAVORABLE ACTION**, by a vote of 4-0, on the language recommended by the Advisory Committee.

October 22, 2002 Roll Call Vote:

Favorable Action

Goldberg

Kalikow

Hoy

Allen

ADVISORY COMMITTEE'S RECOMMENDATION

OVERVIEW

This citizen's petition addresses aesthetic and environmental impacts of high fences and walls in front yards. The petitioners have requested that front yard fences over four feet in height be subject to the design review process as described in Section 7.6 of the Zoning Bylaws. Currently, front yard fences or walls over six feet high require a special permit or variance. Fences in the town's two historic districts are reviewed by the Preservation Commission and fences along the town's main thoroughfares follow design review procedures.

DISCUSSION

The petitioners are concerned about the adverse visual impact that unregulated fence and wall building materials have on the overall character of Brookline neighborhoods. They noted that fences at houses which are next door to each other can be of widely varying heights and materials. She suggested that if design review procedures were required for all front yard fences or walls over four feet in height, homeowners might then select higher quality fence or wall materials or they might opt to build a four foot wall or fence that would not be subject to design review.

This warrant article brings up two related although separate issues: appropriate front yard fence heights and choice of fencing and wall building materials. It was suggested that front yard fence heights could be reviewed on a neighborhood rather than town-wide basis as part of the Comprehensive Planning process. A thorough look at front yard fence heights in relation to neighborhood scale and density will be a welcome piece of the Comprehensive Plan. The Advisory Committee is in general agreement with the Planning Board that the current standards work to protect streetscapes while allowing for personal expression in materials and design. Although there was general sympathy for the petitioners desire for fences that are in keeping with neighborhood character, it was felt that regulating fence and wall styles and materials was not a role for the Planning Board or design review teams. Defining appropriate fence and wall building materials is fairly subjective and cannot be readily regulated without expanding the role of design review teams to include stylistic control.

RECOMMENDATION

The Advisory Committee recommends FAVORABLE ACTION by a vote of 12 to 6 on the following vote:

VOTED: To refer Article 12 to the Comprehensive Plan Committee for further study.

XXX

ARTICLE 13

THIRTEENTH ARTICLE

To see if the Town will amend the Zoning By-Law by amending the Zoning Map as follows: by rezoning the property located on the Northerly side of White Place, known and numbered as 9,11,13 and 15 White Place, from a G-2.0 to a T-5 zoning district, or act on anything relative thereto.

This is to correct the designated usage of these addresses. These are residential properties, and the homeowners and neighborhood would like the zoning to reflect residential, not commercial, use.

**PLANNING BOARD REPORT AND RECOMMENDATION
ON ARTICLE 13
ZONING BYLAW AMENDMENT MAP CHANGE ON WHITE PLACE
(CITIZEN PETITION)**

In accordance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, after due notice had been given, the Planning Board held a public hearing on October 3, 2002 in Town Hall on a zoning map amendment for the north side of White Place. The advertisement for the public hearing appeared in the Brookline TAB on September 19, 2002 and September 26, 2002. Copies of the notice were sent to all Town Meeting Members, neighborhood associations, Town agencies, Massachusetts Department of Housing and Community Development, Metropolitan Area Planning Council, Planning Boards of Boston and Newton, and others. The minutes of the hearing and record of citizen attendance are on file in the Planning and Community Development Department.

Petitioner Explanation

To see if the Town will amend the Zoning By-Law by amending the Zoning Map as follows: by rezoning the property located on the Northerly side of White Place, known and numbered as 9,11,13 and 15 White Place, from a G-2.0 to a T-5 zoning district, or act on anything relative thereto.

This is to correct the designated usage of these addresses. These are residential properties, and the homeowners and neighborhood would like the zoning to reflect residential, not commercial, use.

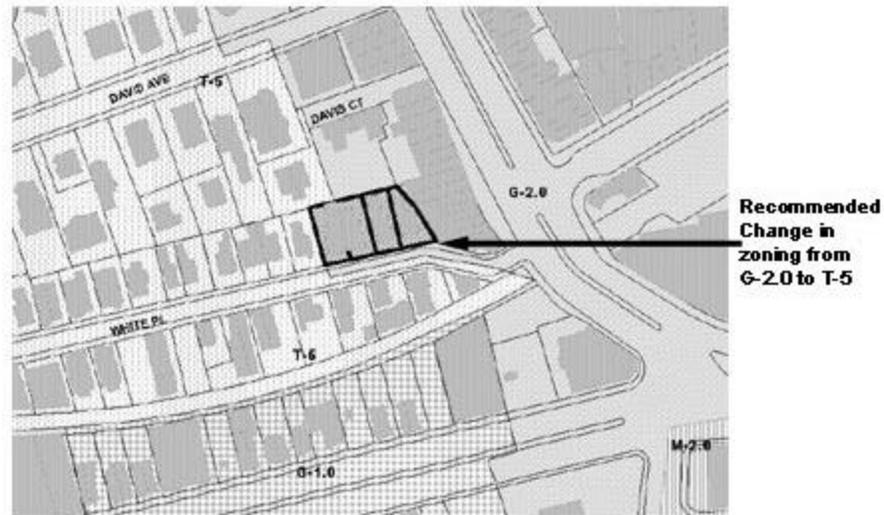


Figure 1 - Current Zoning

Staff Analysis

This request concerns Block 183, Lots 19, 21, 22, and 23 (Assessor's Atlas Page 37B) where the parcels in question are currently zoned G-2.0 (General Business). Figure 1 above shows the current zoning of the parcels on White Place. However, while these G-2.0 zoned parcels are adjacent to G-2.0 zoning along Washington Street which encompasses a number of commercial and office uses, the four White Place parcels are all in residential land use and are located adjacent to and across from residential uses on White Place. Thus, the petitioners are requesting that the four parcels be rezoned from G-2.0 to T-5 to reflect the current and anticipated future use of the parcels and to coordinate with the established T-5 zoning designation of the remainder of White Place. Figure 2 below shows how the map would change if this zoning map change is approved.

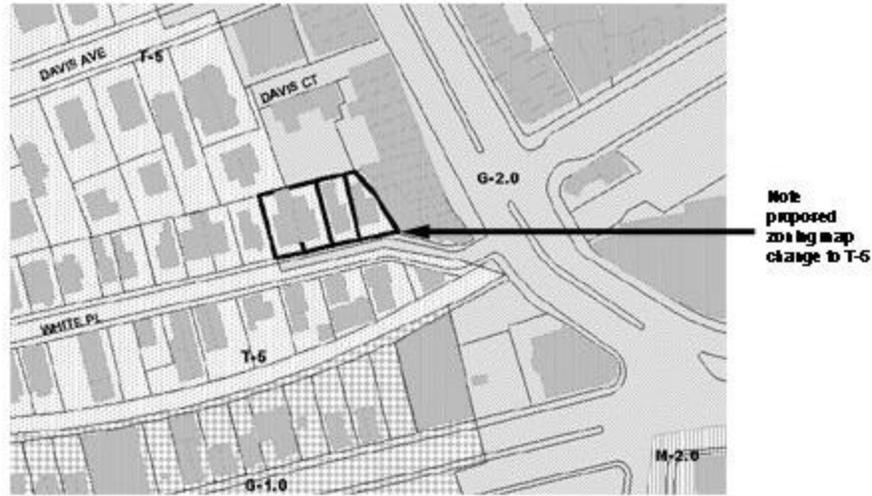


Figure 2 - Proposed Map Change

One of the important facets of the Zoning Bylaw Update Project is to facilitate the coordination of zoning designations with the underlying land uses for properties within the Town of Brookline. The document developed by the Zoning Bylaw Commission for Long Range Projects for the Zoning Bylaw Update Project notes on Page 6 that for Dimensions, a recommended action entitled “Development Consistency” reads:

“Review zoning district requirements in comparison to what is on the ground (what has actually been built there, especially prior to the enactment of the Bylaw) to elicit any discrepancies. Consider modifications to district dimensional requirements to better reflect the physical reality of the area.”

The following photographs show the existing residential land uses on the subject properties:



Figure 3

View from Washington Street shows residential uses.



Figure 4

View of 9 White Place.



Figure 5

View of 11 White Place



Figure 6

View of 13-15 White Place.

Another important aspect of the proposed amendment is that the area in question is part of a National Register Historic District of which the four parcels subject of this petition are contributing properties. The White Place National Historic District encompasses all of the White Place parcels except for 2 White Place (see Figure 7 below depicting the White Place National Historic District). The four parcels subject of this petition are contributing properties as residential uses. The current commercial zoning designation is incongruous with the historic designation.



Figure 7 - White Place National Historic District

Planning Board Recommendation

The petitioners request achieves an important objective of the Zoning Bylaw Update Work Program, is an important corrective action to coordinate the land use and zoning of the parcels,

and maintains the integrity of the contributing nature of the four parcels as part of the National Historic District. This recommendation is based on sound zoning and land use objectives including coordinating the zoning designation with current and expected future land use for the parcels in question.

At the close of the October 3, 2002 public hearing on the proposed map change, **the Planning Board voted unanimously to recommend FAVORABLE ACTION of the citizen petition to change the zoning on the aforementioned parcels on White Place from G-2.0 to T-5 with the stipulation that Planning & Community Development staff would contact the owner of 13-15 White Place to confirm that there is no opposition to the proposed rezoning amendment.**

SELECTMEN'S RECOMMENDATION

This petitioned article, if approved, would amend the Town's Zoning Map by rezoning the property located on the Northerly side of White Place, know and numbered as 9, 11, 13, and 15 White Place, from a G-2.0 (General Business) to a T-5 (Two-Family and Attached Single-Family Dwellings) zoning district. These four parcels are all in residential land use and are located adjacent to and across from residential parcels on White Place. The homeowners and neighborhood would like the zoning to reflect residential, not commercial, use. Amending the Zoning Map in this manner would correct the designated use of these addresses.

One of the primary concerns of the Board of Selectmen regarding Article 13 is to insure that none of the property owners in the area designated for rezoning have any objections to the proposed action. Staff noted that every effort has been made to notify all parties and that no specific objection has been voiced. In addition, the Board acknowledges that two of the three property owners in the area designated for rezoning have appeared before the Zoning By-Law Commission and Planning Board to express their support for the proposed rezoning.

A majority of the Selectmen believes that this is a "house-keeping" item that will make the neighborhood feel more comfortable. Also, since it is highly unlikely that the Comprehensive Plan Committee will be recommending changing the entire area to all commercial zoning, this zoning matter, unlike others this Board has discussed, need not to go through the Comp. Plan process.

The Board recommends FAVORABLE ACTION, by a 4-1 vote, on the vote offered by the Advisory Committee.

13-6

October 15, 2002 Roll Call Vote:

Favorable Action

Goldberg

Geller

Hoy

Allen

No Action

Kalikow

ADVISORY COMMITTEE'S RECOMMENDATION

OVERVIEW

White Place is a narrow, tightly developed one block residential street running between Harvard Street and Davis Avenue. Although nearly all of the street is part of a T-5 residential district, three residential properties on the northerly side of the street, numbered 9, 11, 13 and 15 White Place are part of a G-2, general business district. These properties are bordered on each side by residential properties. White Place is listed as a National Register Historic District in recognition of its unique 19th century residential fabric. The petitioners, residents of White Place, propose to rezone the three properties located at numbers 9,11 and 13-15 to reflect their residential character and use and to unify the street under one zoning district.

The proposed change in zoning has the support of the Department of Planning and Community Development. While this proposal came to the attention of the Department of Planning and Community Development by way of a neighborhood initiative, it addresses one of the central goals of the Zoning Bylaw Update project which is to coordinate zoning designations with actual land use. The change to a T-5 residential district would lead to consistent zoning for White Place and would protect the residential quality of the street for all residents.

DISCUSSION

A number of White Place residents have been concerned about this zoning discrepancy for some time but the recent development activity around town prompted the neighborhood initiative to formally protect the residential qualities of the street through the proposed zoning change. The Department of Planning and Community Development supports the rezoning of these properties as do many members of the Preservation Commission.

The owners of 9,11,13-15 were consulted and notified by the town of the public hearings regarding the proposed zoning changes. All property owners who responded, did so affirmatively. At the request of the Selectmen and Planning Board, the Department of Planning and Community Development was asked to make an extra effort to contact the one property owner who had not responded to notices. This effort was made and the Advisory Committee felt that full opportunity for comments or objections was given.

Although residents of White Place do not foresee any immediate commercial development threats to their block, they do feel it is in the best interest of all property owners on the street if

the zoning is corrected to reflect its current and expected future use. Rezoning would be consistent with the National Register Historic District designation. There are some existing nonconforming uses on the street, such as artists' studios, which would not be affected by this change.

RECOMMENDATION

The Advisory Committee by a vote of 17-1 recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the Zoning By-Law by amending the Zoning Map as follows: by rezoning the property located on the Northerly side of White Place, known and numbered as 9, 11, 13, and 15 White Place, from a G-2.0 to a T-5 zoning district.

XXX

ARTICLE 14

FOURTEENTH ARTICLE

To see if the Town will amend existing ARTICLE 5.8 SIGN BY-LAW by inserting a new SECTION 5.8.5 SIGNS FOR GASOLINE SERVICE STATIONS to insure that all signs that display gasoline pricing, including signs attached to a building, freestanding signs and signs affixed to gasoline pumps, shall incorporate clear and distinguishable gasoline prices, including prices, respectively, for both full and self service sale of gasoline, as follows:

_New Text

[] Deleted Text

ARTICLE 5.8 SIGN BY-LAW

SECTION 5.8.5 SIGNS FOR GASOLINE SERVICE STATIONS

All signs that display gasoline pricing, including signs attached to a building, freestanding signs and signs affixed to gasoline pumps, shall incorporate clear and distinguishable gasoline prices, including prices, respectively, for both full and self service sale of gasoline.

SECTION 5.8.[5] 6 PERTINENCE TO OTHER LAWS

All signs shall be subject to the Building Code of the Town of Brookline and when applicable, the Zoning By-law and the Regulations of the Board of Selectmen regulating signs, etc. projecting into, on, or over a public street or way.

The Sign By-law shall not be construed as to be inconsistent with or in contravention to Sections twenty-nine through thirty-three inclusive of Chapter 93 or Section 8 Chapter 85 of the General Laws, as amended.

Attention is called to the Rules and Regulations of the Outdoor Advertising Board for signs which may also be subject to the Rules and Regulations of said Board.

SECTION 5.8.[6] 7 NON-CONFORMING SIGNS

(a) Any accessory sign in any of the categories listed below which was legally erected prior to the adoption of this paragraph may continue to be maintained for a period of not longer than five years after the effective date of this paragraph:

(1) roof signs;

(2) projecting signs, unless such sign is approved by a variance subsequent to

January 1, 1970;

(3) any other sign, including facade and free-standing signs, which exceeds by more than 50% the applicable size limitations in the Zoning By-law as of the effective date of this paragraph, unless such sign is approved by a variance subsequent to January 1, 1970.

(b) Any non-accessory sign legally erected prior to the adoption of the by-law may continue to be maintained for a period of not longer than five years after the effective date of this by-law; provided however, that during said five-year period no such sign shall be enlarged, redesigned or altered except in accordance with the provisions of this by-law and provided further that any such sign which has been destroyed or damaged to such an extent that the cost of restoration would exceed thirty-five percent of the replacement value of the sign at the time of destruction or damage, shall not be repaired or rebuilt or altered except in accordance with the provisions of this by-law.

(c) The exemption herein granted shall terminate with respect to any sign which (1) shall have been abandoned; (2) advertises or calls attention to any products, businesses or activities which are no longer carried on or sold for at least sixty (60) days; or (3) shall not have been repaired or properly maintained within sixty (60) days after notice to that effect has been given by the Building Commissioner.

(d) Nonilluminated noncommercial public message signs may be placed on private property in all zoning districts. Such signs related to a specific event shall be removed by the property owner within 7 days following the event.

SECTION 5.8.[7] 8 ENFORCEMENT

This By-Law shall be enforced by the Building Commissioner. The Building Commissioner shall not issue a permit for the erection, maintenance, enlargement or alteration of any sign which is not in conformance with this By-Law.

SECTION 5.8.[8] 9 PENALTY FOR VIOLATION

Whoever violates any provision of this By-law shall be punished by a fine of not more than \$100, and whoever after conviction of such violations unlawfully maintains such a billboard, sign or other device for twenty (20) days thereafter shall be punished by a fine of not more than \$300.

SECTION 5.8[9] 10 SEVERABILITY

The invalidity of section or provision of this By-law shall not invalidate any other section or provisions thereof.

Although some self-service gas stations, including in Brookline, clearly indicate on their freestanding price signs that their prices are for "self-service," at least one such station, the Sunoco Station at Harvard and Thorndike Streets does not -- and has rejected neighborhood requests do so. Consumers, including seniors and handicapped drivers, sometimes drive up to Sunoco's pumps for gas, noticeably cheaper than that of nearby, full-service stations, expecting full service -- only to discover (often by sitting there for a while and hearing a loudspeaker announcement) that it's self- service; and then some of them leave to go to the other stations.

Such deceptive signage, essentially a bait-and-switch scam, seems to be "unlawful." See G.L.c. 93A, § 2, "Unfair practices ...:(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." See also, e.g., the c. 93A regulations, 940 CMR 3.02: False Advertising:

(2) No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, ... of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

This article remedies such a deceptive practice, not just for the Sunoco Station, but for any self-service station in Brookline, present or future. In spite of c. 93A, arguably adequate implicit authority to accomplish the purpose of this amendment, apparently there is neither any explicit law nor any simple enforcement mechanism, either in Brookline or the state. Town officials have stated that, without such an explicit law, they feel powerless to address this problem. This amendment would make the clear price signage requirement explicit, and very easy to enforce.

SELECTMEN'S RECOMMENDATION

Article 14 is a petitioned article that would amend the Town's Sign By-Law by mandating that self-service gas stations clearly indicate that the price shown is for self-service, not full-service. The petitioner contends that customers are being misled by gas stations who advertise a price for gas that is cheaper than a nearby competitor, whose price is actually for full-service, without indicating that the price is for self-service. Doing so lures the customer into that station, not knowing it is self-service.

The Board agrees that this may be a deceptive practice and the proposed by-law amendment would protect consumers. Therefore, the Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 4-0, on the vote offered by the Advisory Committee.

October 22, 2002 Roll Call Vote:

Favorable Action

Goldberg

Kalikow

Hoy

Allen

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This warrant article would mandate that all signs at Brookline gas stations that display self-service gasoline pricing clearly indicate that the price is for self-service sale of gasoline.

DISCUSSION

The petitioner, Marty Rosenthal of Precinct 9, found at least one self-service gas station in Brookline that does not clearly state on a freestanding sign that the prices for gas are for self-service. Consumers, including seniors and handicapped drivers, sometimes drive up to the station's pumps (with their noticeably cheaper prices) expecting full service only to learn after sitting for a while or hearing a loudspeaker announcement that the station is self-service. Some of these people then have to drive to another station to purchase gas.

The petitioner has learned from Town officials that without an explicit law requiring gas stations to clearly indicate when the price is for self-service, the Building Department is powerless to address the problem. This article would make the clear price signage for self-service gas an explicit requirement and very easy to enforce. The petitioner has the support of Mr. Nickerson, the Building Commissioner.

The Advisory Committee supported the petitioner's intent, but felt that the language being proposed would not remedy the situation. With the input of the petitioner, the Advisory Committee drafted new language. The Advisory Committee, the Board of Selectmen and the petitioner are in agreement and recommend favorable action on the proposed vote.

RECOMMENDATION

The Advisory Committee, by a vote of 14-2 , recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend its By-Laws, Article 5.8, Sign By-Law, as follows:

SECTION 5.8.5 SIGNS FOR GASOLINE SERVICE STATIONS

All signs that display self-service gasoline pricing, including signs attached to a building, freestanding signs and signs affixed to gasoline pumps shall clearly indicate that the price is for self-service sale of gasoline.

SECTION 5.8.6 PERTINENCE TO OTHER LAWS

All signs shall be subject to the Building Code of the Town of Brookline and when applicable, the Zoning By-law and the Regulations of the Board of Selectmen regulating signs, etc. projecting into, on, or over a public street or way.

The Sign By-law shall not be construed as to be inconsistent with or in contravention to Sections twenty-nine through thirty-three inclusive of Chapter 93 or Section 8 Chapter 85 of the General Laws, as amended.

Attention is called to the Rules and Regulations of the Outdoor Advertising Board for signs which may also be subject to the Rules and Regulations of said Board.

SECTION 5.8.7 NON-CONFORMING SIGNS

(a) Any accessory sign in any of the categories listed below which was legally erected prior to the adoption of this paragraph may continue to be maintained for a period of not longer than five years after the effective date of this paragraph:

- (1) roof signs;
- (2) projecting signs, unless such sign is approved by a variance subsequent to January 1, 1970;
- (3) any other sign, including facade and free-standing signs, which exceeds by more than 50% the applicable size limitations in the Zoning By-law as of the effective date of this paragraph, unless such sign is approved by a variance subsequent to January 1, 1970.

(b) Any non-accessory sign legally erected prior to the adoption of the by-law may continue to be maintained for a period of not longer than five years after the effective date of this by-law; provided however, that during said five-year period no such sign shall be enlarged, redesigned or altered except in accordance with the provisions of this by-law and provided further that any such sign which has been destroyed or damaged to such an extent that the cost of restoration would exceed thirty-five percent of the replacement value of the sign at the time of destruction or damage, shall not be repaired or rebuilt or altered except in accordance with the provisions of this by-law.

14-6

(c) The exemption herein granted shall terminate with respect to any sign which (1) shall have been abandoned; (2) advertises or calls attention to any products, businesses or

activities which are no longer carried on or sold for at least sixty (60) days; or (3) shall not have been repaired or properly maintained within sixty (60) days after notice to that effect has been given by the Building Commissioner.

- (d) Nonilluminated noncommercial public message signs may be placed on private property in all zoning districts. Such signs related to a specific event shall be removed by the property owner within 7 days following the event.

SECTION 5.8.8 ENFORCEMENT

This By-Law shall be enforced by the Building Commissioner. The Building Commissioner shall not issue a permit for the erection, maintenance, enlargement or alteration of any sign which is not in conformance with this By-Law.

SECTION 5.8.9 PENALTY FOR VIOLATION

Whoever violates any provision of this By-law shall be punished by a fine of not more than \$100, and whoever after conviction of such violations unlawfully maintains such a billboard, sign or other device for twenty (20) days thereafter shall be punished by a fine of not more than \$300.

SECTION 5.8.10 SEVERABILITY

The invalidity of section or provision of this By-law shall not invalidate any other section or provisions thereof.

XXX

November 12, 2002
Special Town Meeting
Article 14 – Supplement No. 1

RESOLUTION TO BE OFFERED UNDER ARTICLE 14 (IN ADDITION TO PROPOSED
VOTE)
MARTIN ROSENTHAL - TMM Precinct 9

VOTED: That the Town adopt the following resolution:

“The Town Meeting requests that the Board of Selectmen convey Brookline’s concern about this as a statewide issue to whatever statewide consumer protection officials the Board deems appropriate.”

ARTICLE 15

FIFTEENTH ARTICLE

To see if the Town will amend Article 5.6 of the Town's By-laws, entitled Preservation Commission & Historic Districts By-law, in the following manner:

By deleting Section 5.6.3. (c) and substituting new sections 3 (c) and 3 (d) therefor:

"(c) St. Aidan's Local Historic District

There is hereby established an Historic District, to be entitled the "St. Aidan's Historic District", the boundaries of which shall be shown on the map entitled "St. Aidan's Historic District" which accompanies and is hereby declared to be part of this By-law.

(d) Other Historic Districts

Other Historic Districts within the Town may be established from time to time in accordance with the procedures set forth in Chapter 40C of the Massachusetts General Laws, as amended from time to time."

or act on anything relative thereto.

On May 24, 2001, Town Meeting, Article 22 called upon

The Brookline Preservation Commission, acting under Article 5.6 of the By-laws of the Town and under Chapter 40c of the Generals Laws, to conduct an investigation and public hearing for designating the St. Aidan's Church property, ..., or any portion thereof or structures portions thereon, as an historic district in the Town of Brookline. It also called on the Commission to submit a report of its finds, together with proposed actions, if, any, to the next Special or annual Town Meeting held after July 31, 2001.

A study report prepared by the Commission staff was undertaken to describe the historical, architectural, and cultural significance of the property. After the report was completed, in accordance with M.G.L. Chapter 40C it was sent to the Massachusetts Historical Commission and the Brookline Planning Board for comment and a public hearing was held to gather public comment and input. The Commission at its January 15, 2002 meeting accepted the report with editorial revisions.

Based on the conclusions in the report, the Brookline Preservation Commission voted at its February 12, 2002 meeting to recommend the establishment of a St Aidan's Local Historic District and to forward to Town Meeting the report and a warrant article for the establishment of the Historic District. The Annual Town Meeting voted to refer the article back to the Preservation Commission, with a request to insert the article in the Warrant for consideration at a future Town Meeting if satisfactory progress on preserving St. Aidan's Church cannot be achieved by other means.

The Brookline Preservation Commission supports the efforts of the Board of Selectmen and the St. Aidan's Project Review Team to work with the Archdiocese to develop a plan that preserves the historic church building and the adjacent open space. We are very encouraged that progress is being made toward that end. However, in view of the absence of a signed preservation easement for the church building at this time, and the uncertainties entailed with any project dependant upon various funding sources, the Preservation Commission feels that it would be prudent to re-file the warrant article for the establishment of a St. Aidan's Local Historic District. If a development proposal consistent with the conditions outlined in the letter from the Board of Selectmen to the Archdiocese, dated May 29, 2002, shall have been agreed upon prior to the Fall Town Meeting, or if a proposal shall not yet have been agreed upon but the process appears to be continuing towards that end in good faith, the Preservation Commission would recommend no action on the warrant article at town meeting.

Under Article 5.6, Preservation Commission and Historic Districts By-law, of the Town By-law, any proposed local historic district must be approved by a 2/3 vote of Town Meeting. There are currently two local historic districts in Brookline: Cottage Farm, established in 1979, and Pill Hill, established in 1983.

SELECTMEN'S RECOMMENDATION

Article 15, which essentially is the re-filing of Article 22 previously considered at the Annual Town Meeting on May 24, 2001, proposes the establishment of a St. Aidan's Local Historic District. The Annual Town Meeting voted to refer the article back to the Preservation Commission, upon the condition that the article could be re-filed if satisfactory progress on preserving St. Aidan's church was not achieved.

Since that May, 2001 action by Town Meeting, significant progress has been made to preserve the St. Aidan's church structure for adaptive reuse as housing and to engage the Planning Office for Urban Affairs (POUA), the designated developer of the subject property by the Archdiocese of Boston, in an unprecedented process resulting in the design of an overall site development plan that responds to the Goals, Principles and Guidelines previously developed by the St. Aidan's Study Committee in February, 2002.

The POUA, as a result of an extensive public process led by a Project Review Team, convened by the Board of Selectmen in April, 2002, completed a preliminary plan in August, 2002 that preserves the St. Aidan's church building as part of an overall site plan for the development of 74 housing units that will include 58 units affordable to households not served by the Brookline housing market.

The plan is now the subject of a 40 B Comprehensive Permit application filed with the Brookline Board of Appeals on September 5, 2002. The plan, which has been further refined, continues to commit to the preservation of the St. Aidan's Church building. The Board of Appeals and the Project Review Team, which has been reconvened to assist with the final phase of overall site and project design review, are currently reviewing the Plan. This process, which was initiated by the Board of Appeals at its September 26, 2002 public hearing, is ongoing and will not be concluded prior to the start of the November 12, 2002 Fall Town Meeting.

As part of the Board of Appeals process, the Department of Planning and Community Development has been meeting with Town Counsel, the Brookline Preservation Commission, and the POUA to complete a Preservation Easement that will be used by the Board of Appeals as part of their final decision making process. The Preservation Easement will define the initial and ongoing design review responsibilities that will be assigned to the Preservation Commission and the specific elements of the St. Aidan's church building that will be subject to design review. It is anticipated that a Preservation Easement will be submitted to the Board of Appeals in November.

It is important to note that under the requirements of Chapter 40 B, the Board of Appeals, with advisory reports from the Preservation Commission and other Town boards, commissions, and departments, has the final authority to approve, approve with conditions, or deny the pending Comprehensive Permit application that, as submitted, preserves the St. Aidan's church building. The Preservation Easement can only be enabled as a condition of the Board of Appeal's decision, and, therefore, can not be recorded or enforced until after a decision is filed and finalized. Therefore, the executed Preservation Easement will be held in escrow until a decision is reached by the Board of Appeals. The Preservation Easement process will provide the Preservation Commission with the unique ability, as part of a 40 B Comprehensive Permit, to subsequently conduct design review of the construction drawings for proposed and future exterior modifications and ongoing design review if future improvements are proposed for the exterior of the church building.

In conclusion, as demonstrated above, significant progress has been made to preserve the St. Aidan's church building. In fact, the plan now under review by the Board of Appeals does preserve the church building. The Preservation Easement, which would be established through a condition of the Board of Appeals decision, would also provide the Preservation Commission with the ability to not only conduct initial design review, but also to serve as the ongoing steward of the easement.

The Selectmen recommend NO ACTION by a vote of 4 – 1.

October 8, 2002 Roll Call Vote:

No Action

Goldberg

Kalikow

Geller

Allen

Favorable Action

Hoy

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This Warrant Article concerns the proposed enactment of a Local Historic District on the St. Aidan's property. If adopted, the article would create a Historic District under Mass. Gen. Laws Ch. 40C consisting of the single property of St. Aidan's Church and the surrounding land, presently owned by the Archdiocese of Boston. Inclusion of the site in a historic district would only preserve the exterior features of the church structure. Creation of such a district requires a 2/3's vote of Town Meeting. It was originally on the warrant for last Spring's Town Meeting following a recommendation from the Preservation Commission for creation of such a district. Proponents of creation of the Local Historic District noted the architectural and historic significance of the property, particularly its association with the Kennedy family (and, in particular, as the site where President Kennedy was baptized). The Archdiocese has, at all times, been vigorously opposed to such a designation.

At the time of last Spring's Town Meeting, the Archdiocese was engaged in an ongoing dialogue with the Town regarding the future of the St. Aidan's property, and specifically the Archdiocese's desire to use the land for a mixed income housing development. The Board of Selectmen were in the process of convening a Project Review Team, which included neighborhood representatives and design professionals, to meet with the Planning Office of Urban Affairs (POUA), whom the Archdiocese designated as the developer for the proposed affordable housing project at the site, to attempt to reach consensus on the project. Based upon the progress which had been made in discussions with the Archdiocese and the expectation that a written Memorandum of Understanding would be entered into which explicitly committed the Archdiocese and POUA to preserve the church exterior, Town Meeting voted to refer the article back to the Preservation Commission, with a request that the article be inserted in the Warrant at a future Town Meeting if sufficient progress in preserving St. Aidan's Church could not be achieved.

DISCUSSION

In testimony before our Committee, representatives of the Preservation Commission provided the following rationale for resubmitting this article at this time. Specifically, at the time of the last Town Meeting, the Preservation Commission anticipated that the Town and the Archdiocese would agree to a preservation easement. Such an easement would offer specific protections for the church exterior and explicitly provide the Preservation Commission with authority to review and require Preservation Commission approval of any changes to the exterior of St. Aidan's. The easement would likely concern the character, massing, and distinctive materials of the project as well as issues concerning the impact of construction on open space. The Preservation Commission would like such an easement to also allow them to consider the impact of design elements of the development on the view of St. Aidan's (in other words does the development block the view of the church from the street) and develop guidelines on the impacts. The Commission believes that such a signed Preservation easement would likely provide greater protections to the exterior of St. Aidan's than a Local Historic District for two reasons: first that the preservation easement could be more specific and broader with respect to the authority granted the Preservation Commission and second, that a preservation easement would be more likely to be legally enforceable. (According to Director of Planning and Community Development Robert Duffy this easement would be recorded with the Registry of Deeds and thus would "run with the land"). Such an easement had not yet been signed or even drafted when this Warrant Article was submitted.

The Preservation Commission has indicated that it will move No Action on this article if an acceptable preservation easement is signed prior to Town Meeting. However, the members of the Preservation Commission have been working on drafting such an easement for some time. They were to have taken a final vote and presented the language of the proposed easement to the POUA several weeks ago, but they were unable to agree among themselves as to appropriate language.

In discussions with our Committee, Director of Planning Duffy emphasized the considerable progress which had already been made in the long process of redeveloping the St. Aidan's site. He noted that when this warrant article was first introduced there was no agreement that St. Aidan's would be preserved. Now, the Archdiocese has stated, in its application under Mass. Gen. Laws Ch. 40B, that it intends to preserve the church exterior. Mr. Duffy conceded that it was not clear if the church agreed with all of the goals of Article 15 regarding Preservation Commission review, but that it was clear that the Archdiocese had agreed to the primary goal of preserving St. Aidan's. He believes it would be hard at this stage for the Archdiocese to step back from their present plan which preserves the Church.

Mr. Duffy does not believe that enactment of a Local Historic District would result in greater protection for St. Aidan's. He believes that legally, any Local Historic District designation would be overridden by a comprehensive permit issued under Chapter 40B. Town Counsel agrees with Mr. Duffy's analysis. It should be noted, however, that the only reported case on this is presently on appeal, so there is presently no controlling appellate authority on this issue.

If the Town were to create a historic district out of the St. Aidan's property, it would be the first time that such a district was created without the approval of a great majority of the property owners within the proposed district. In fact, in connection with the proposal for a historic district on Fisher's Hill, which was defeated due to neighborhood opposition, the Preservation Commission stated that it did not like to move forward on creating a historic district unless about 90% of the property owners favored the proposition. In this case there is a single property owner which is vehemently opposing the creation of the district.

Representatives of the Committee to Preserve St. Aidan's, agree that progress had been made since the last Town Meeting with respect to the goal of preserving the church. Nonetheless, they are concerned because the Archdiocese has stated that it does not view the church structure as historic. Therefore, it might demolish the church building if its 40B comprehensive permit is not granted or if significant conditions for approval were imposed by the Zoning Board of Appeals. Other members of the public have indicated that they would like to see the church building converted into something other than housing. It does not appear that adoption of the Local Historic District would prevent these alternative uses.

Our Committee also heard from Lisa Alberghini of the POUA, who summarized the Archdiocese's objections to the Local Historic District. Specifically, the Archdiocese believes this would set a bad precedent for it with respect to future projects. The Archdiocese believes that it has acted in good faith to work with the Town in cooperative fashion to preserve the church (as well as other concerns with the project) and that adoption of the Article would create an adversarial relationship. In fact, due to the precedent set, the Archdiocese would be forced to commence legal action against the Town. Ms. Alberghini indicated that the POUA is willing to sign an appropriate preservation easement, but she noted that the delay in getting one signed was due to the long design review process with citizen input requested by the Town.

The overwhelming sentiment of the members of the Advisory Committee was that a legally binding preservation easement would be preferable to adoption of a Local Historic District. There were widely divergent views as to the best course for arriving at such an easement or what action should be taken if such an easement was not executed. There was an overwhelming consensus that if a binding preservation easement is signed that a vote of No Action would be warranted. In view of the delay in drafting such an easement from the Preservation Commission, Mr. Duffy and Town Counsel stated that they will take the lead in drafting an easement with help from the Preservation Commission and they will get it signed prior to Town Meeting. They would then hold the preservation easement in escrow, however, and it would only be recorded if the Zoning Board of Appeals grants a comprehensive permit under Ch. 40B for the St. Aidan's project.

RECOMMENDATION

The Advisory Committee by a vote of 17-3 recommends NO ACTION CONTINGENT UPON THE SIGNING OF A PRESERVATION EASEMENT BY 11/8/02. Should the easement not be signed by that time, this vote will be null and void, and the Advisory Committee will provide a further recommendation and analysis of this article at Town Meeting.

ADVISORY COMMITTEE'S SUPPLEMENTARY RECOMMENDATION

BACKGROUND

The Advisory Committee's vote and recommendation of No Action in the Combined Reports was contingent upon the signing of a Preservation Easement by November 8, 2002. It is now clear that while the development of such a Preservation Easement is in progress there is not going to be a mutually agreeable, signed easement prior to Town Meeting. Therefore, the Advisory Committee vote is nullified. The Advisory Committee will discuss this matter and take a new vote immediately prior to Town Meeting.

DISCUSSION

Please see the Advisory Committee recommendation in the Combined Reports for extensive background and discussion of the history and issues relating to the creation of a historic district on the St. Aidan's site. The Advisory Committee would first like to clarify the record as to responsibility for the development of the easement. In our original recommendation, we noted that the Preservation Commission had been unable to agree on the language of the easement. That report erroneously suggests that the delay in getting an appropriate Preservation Easement was the fault of the Preservation Commission. In fact, other Town departments had asked the Preservation Commission to hold off on developing an easement, so that Town employees could develop the easement in conjunction with the Zoning Board of Appeals process. When it appeared that a draft easement was not forthcoming in time for Town Meeting, the Preservation Commission set to work itself to develop appropriate language for such an easement.

Last week, a draft Preservation Easement, developed with input from the Preservation Commission, the Planning Department, and Town Counsel's office, was sent to the Planning Office for Urban Affairs ("POUA," the organization that does affordable housing projects for the Archdiocese of Boston). That document is both long and complex. The POUA is in the process of evaluating the draft Preservation Easement that it has received from the Town. Since it was apparent that the POUA had not had adequate time to respond to the draft Preservation Easement, the Preservation Commission unanimously voted on November 5, 2002 to recommend No Action on Warrant Article 15 if the POUA would agree in writing to an intent to sign a Preservation Easement. The language of the Preservation Commission's vote is as follows:

In view of the progress in preserving St. Aidan's church that has occurred to date, the Commission requests that no action be taken on the Warrant Article concerning St. Aidan's at fall Town Meeting, provided the owner of the property, or its agent, agree in writing to accept that a preservation easement acceptable to the Town will be required as part of the 40 B, Zoning Board of Appeals, process.

November 12, 2002
Special Town Meeting
Article 15 – Supplement No. 1
Page 2

In response, the POUA submitted the following letter to the Zoning Board of Appeals on November 6, 2002:

Planning Office *for* Urban Affairs

ARCHDIOCESE OF BOSTON

November 6, 2002

185 Devonshire Street, Suite 600
Boston, MA 02110
Tel. (617) 350-8885
FAX 617-350-8889

Diane Gordon, Esq., Chair
Brookline Zoning Board of Appeals
Brookline Town Hall
Brookline, MA

**RE: St. Aidan's Comprehensive Permit Application:
Preservation Easement**

Dear Madame Chair:

As you know, the Planning Office for Urban Affairs has agreed to keep the former church structure as part of its proposal to redevelop the St. Aidan's property into mixed-income housing, which was a major change from our initial plan. We have made this commitment in good faith, working together with the Town for nearly one and one-half years toward a plan that enables us to develop a significant amount of affordable housing within the context of guidelines and principles established by the Town. While it is unusual for a property owner to change its development plans so significantly in response to a town's preference for the development of privately owned property, we agreed to this approach in the spirit of cooperation, and because we believe the Town is also committed to providing significant affordable housing.

Given our discussions with the Town over the past several months, we clearly understand how very important preserving the existing church structure is to the community and to the Brookline Preservation Commission. On Tuesday, November 6, 2002, the Brookline Preservation Commission, as part of its regular meeting agenda, met to consider the proposed Town Meeting Warrant Article 15 that, if approved at the Fall Town Meeting, would establish a Local St. Aidan's Historic District. At that meeting, the Commission also continued their discussion of the importance of establishing a preservation easement that, in conjunction with our 40B Comprehensive Permit application currently under consideration by the Board of Appeals, would achieve the important community objective of preserving the St. Aidan's church structure.

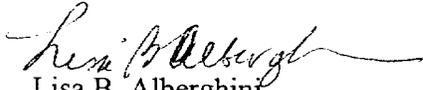
"Some men
see things as they
are and say, why?
I dream things that
never were and say,
why not?" RFK

It is my understanding that the Preservation Commission also acknowledged at that meeting the significant progress that has been made to date towards preserving the St. Aidan's church structure and recommended that no action be taken on the subject Warrant Article provided the owner, or its agent, agree in writing to accept that a preservation easement be required as part of the Chapter 40B Zoning Board of Appeals process.

In response to the Preservation Commission vote, and as further evidence of our commitment, I am writing on behalf of the Planning Office for Urban Affairs (designated developer of the St. Aidan's property by the Roman Catholic Archdiocese of Boston) to inform you that we agree to a condition of the Chapter 40B comprehensive permit requiring that a mutually acceptable preservation easement be executed. Based on the level of commitment and progress to date, I am confident that we will accomplish the goal of memorializing our commitment to significant preservation through a St. Aidan's preservation easement.

Thank you for your thoughtful consideration of our zoning application, and our agreement to enter into a preservation easement as a condition of the comprehensive permit. Please feel free to call me with any question you may have.

Sincerely,


Lisa B. Alberghini
Executive Vice President

CC: Maurice Childs, Chair Brookline Preservation Commission
Brookline Board of Selectmen
Brookline Advisory Committee
Robert J. Duffy, AICP, Director of Planning and Community Development

RECOMMENDATION

The Advisory Committee will review the updated information on Warrant Article 15, vote and offer a recommendation at Town Meeting.

November 12, 2002
Special Town Meeting
Article 15 – Supplement No. 1

MOTION TO BE OFFERED UNDER ARTICLE 15
PATRICIA A. CONNORS – TMM Precinct 2

VOTED: That the Town amend Article 5.6 of the Town's By-Laws, entitled Preservation Commission & Historic Districts By-Law, as follows:

By deleting Section 5.6.3 (c) and substituting new section 3 (c) therefor:

"(c) St. Aidan's Local Historic District

There is hereby established an Historic District, to be entitled the "St. Aidan's Historic District", the boundaries of which shall be shown on the map entitled "St. Aidan's Historic District" which accompanies and is hereby declared to be part of this By-law."

and redesignating the present Section 5.6.3 (c) as Section 5.6.3 (d).

ARTICLE 16

SIXTEENTH ARTICLE

To see if the Town will designate and retain the Town-owned land at the end of and formerly part of Reservoir Road, containing 1,362 square feet, shown on the plan on file in the Town Clerk's office, for park purposes, or act on anything relative thereto.

This article addresses the future of the so-called "Reservoir Road bridge." Years ago, after the bridge was closed for repairs, neighbors and the Town opposed reopening of the bridge to cars because through-traffic posed a danger to pedestrians, including children on their way to Heath School. The Town closed off the roadway leading to the bridge. Since then, the roadway portion of the bridge has been barricaded, while pedestrian pathways have been kept open on either side. Now the bridge is again due for repairs. Neighbors would like to work with the controlling authorities to have the current bridge replaced with a pedestrian-only bridge. Redesignating the roadway abutting the bridge for use as a park would enhance local safety and allow for an improved facility for pedestrians to be developed in the future.

SELECTMEN'S RECOMMENDATION

This petitioned article would grant park protection (under Article 97 of the State Constitution) to the Town-owned land at the end of and formerly part of Reservoir Road. The 1,362 square feet of land comprises the roadway abutting the bridge, which was closed years ago due to safety concerns.

Since the closing of the bridge, the roadway portion of the bridge has been barricaded, with pedestrian pathways open on either side. The bridge itself is scheduled for repairs and the neighborhood would like to work with the MBTA to have the existing bridge replaced with a pedestrian-only bridge. This is why re-designating the roadway abutting the bridge for use as park land is important: it would enhance local safety and allow for an improved facility for pedestrians to be developed in the future. A planning process for the land would thereby be initiated.

In addition, designating this land as park land is a legal device that makes re-opening the bridge to vehicular traffic difficult. This has become a major concern of the neighborhood because of the proposed re-use of the Waterworks property.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 4-0, on the following vote:

VOTED: That the Town designate and retain the Town-owned land at the end of and formerly part of Reservoir Road, containing 1,362 square feet, shown on the plan on file in the Town Clerk's office, for park purposes.

October 8, 2002 Roll Call Vote:

<u>Favorable Action</u>	<u>No Action</u>
Kalikow	Kalikow
Geller	
Hoy	
Allen	

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This petitioned article asks that the 1,362 square feet of Town-owned land which was formerly part of Reservoir Road be designated for park purposes. Reservoir Road runs between Route 9 in Brookline to Beacon Street in Newton, crossing the Green Line Riverside MBTA tracks via a bridge which is owned by the MBTA but maintained by the State Highway Department. The bridge has been closed to vehicles since the mid 1970s. It is currently enclosed by a chain link fence while a portion of the former road leading to the bridge is currently being used by the MWRA for temporary storage of equipment for nearby work.

When the bridge was closed for repairs in the 70s, the Town concluded that reopening it to vehicular traffic would create conditions which were dangerous to pedestrians, particularly children walking to and from the Heath School. In 1978, through a vote of Town Meeting, the Town abandoned a 27'x50' parcel of land leading to the bridge. A barricade was put in place to prevent vehicular access to the bridge although pedestrian access remained.

DISCUSSION

Residents of this residential area, which also includes the Heath School, would like the assurance that the bridge, which is once again in need of repair, will not be used in the future for vehicular traffic. The issue is considered to be of greater concern now because of development activities which could take place at the nearby Chestnut Hill Reservoir. It is anticipated that support for reopening the bridge could come from efforts to relieve traffic traveling through Cleveland Circle in Boston or across Hammond Street in Newton.

Designating this part of the former street for park purposes would prevent a change in use unless approved by two-thirds vote of Town Meeting and the State Legislature. It would strengthen the Town's hand in dealing with any plans to reopen the bridge at any time in the future and would

limit the options contemplated for the bridge.

Other than having the parcel designated park land, there are at present no other specific plans being proposed for its future use. Although the ultimate objective is to create an improved facility for pedestrians, it appears that developing specific plans now for this piece of open space would be premature due to the three years of MWRA and MBTA construction activity currently scheduled in the area.

Because the issue of public safety, particularly with respect to the Heath School, is of paramount concern, an overwhelming majority of the Advisory Committee believes that the Town should take advantage of any opportunity to reduce the possibility of the bridge being reopened to vehicular traffic. It is noted that designating this parcel as park land is consistent with the goals of Open Space 2000 and that the Town Engineer, Parks Director, and Commissioner of Public Works support the article, expressing the hope that plans for the proposed park land will be shaped in cooperation with the MBTA and MWRA.

RECOMMENDATION

The Advisory Committee by a vote of 17-1 (1 abstention) recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

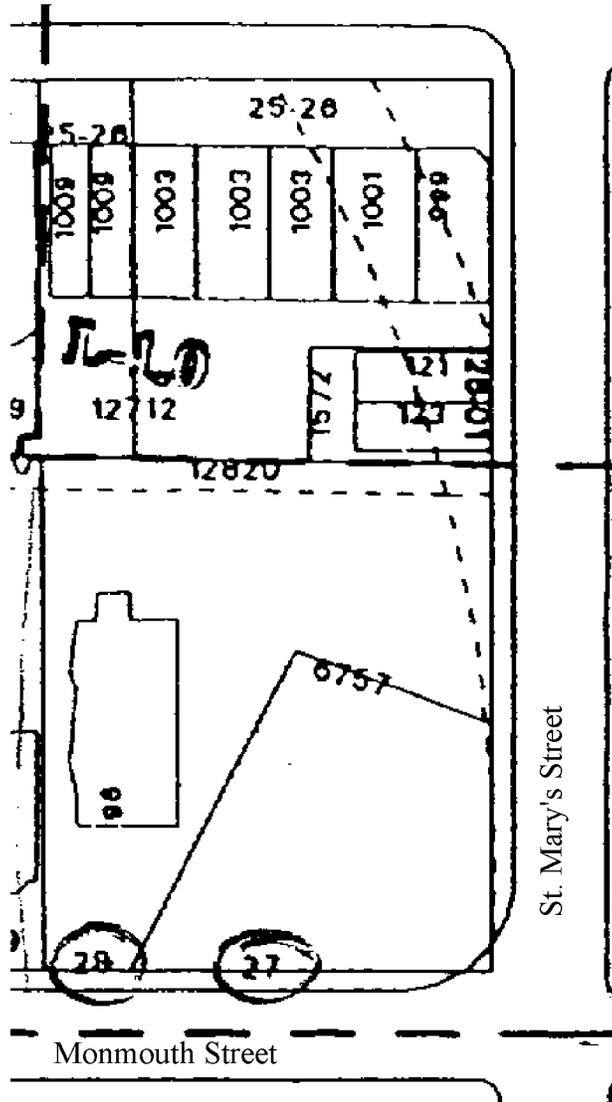
ARTICLE 17SEVENTEENTH ARTICLE

To see if the Town will designate and retain the Town-owned land at the corner of Monmouth Street and Saint Mary's Street, shown on the Town's Atlas as Lots 27 and 28 in Block 112, for park purposes, to be known collectively as Monmouth Park, with the existing structure within Lot 28 to be retained for public and community purposes compatible with and supportive of the operation of Monmouth Park, or act on anything relative thereto.

The Town owns two parcels of land (Lots 27 and 28 in Block 112) at the northwest corner of Monmouth and St. Mary's Streets (attached map). The parcels were acquired from William R. Lawrence for unspecified purposes in 1868. In the late 19th Century the Town constructed a school on the eastern portion of Lots 27 and 28 and in 1886 resited the school to accommodate a firehouse on Lot 28. The school was demolished in 1939 and the present park was constructed on its site. The Brookline Arts Center has occupied the Firehouse since 1968, and currently enjoys a lease that has eight years remaining. With the participation of the Arts Center, the structure was rehabilitated and the land around it landscaped in 1982. The properties are located within the Longwood Historic District, which is listed on both the State and National Register of Historic Places. The district designation means that the use of state or federal funds to alter the building would require consultation with preservation officials. They also lie within a T-5 district in the Town's zoning code, which allows two-family residential development at an FAR of 1. An organization known as the Friends of Monmouth Park, which has filed this article, has formed to collaborate with the Town in the renewal and long-term care of the park.

Monmouth Park has been operated and maintained by the Parks and Open Space Division as a permanent element of its inventory since the park's construction. The restoration of the park is included in the Town's capital budget for FY2005. Nevertheless, because the properties were not acquired for park purposes, Monmouth Park is now the only Brookline park not protected by Article 97 of the Massachusetts Constitution, which provides that land acquired for park purposes cannot be turned to non-park uses unless the change of use is supported by a two-thirds vote of the Massachusetts General Court.

The purpose of Warrant Article 17 is therefore to formally designate the two properties as a single park to be known as Monmouth Park, a designation that will give the park permanent protection under State Constitution Article 97. It also establishes that the structure on Lot 28 will continue to be used by the Town for civic and community uses compatible with a public park. The latter provision is broadly constructed to give the Town substantial flexibility in its use of the structure in the future, while insuring that future uses do not diminish the attractiveness or public character of Monmouth Park, to which this article grants permanent protection.



SELECTMEN'S RECOMMENDATION

This petitioned article would grant park protection (under Article 97 of the State Constitution) to the Town-owned land at the corner of Monmouth Street and Saint Mary's Street. Currently known as Monmouth Park, the land does have the same protection granted to other parks under Article 97.

Lot 27 is a 6,757 square foot corner parcel surrounded by Monmouth and Saint Mary's Streets on two sides and the Brookline Arts Center on its other two sides. The site originally housed the Longwood School, which was built in 1864 and was subsequently moved 25 feet and turned to face Saint Mary's Street in order to make room for the new Chemical Fire House on the adjacent parcel. In 1939, the school building was demolished.

Lot 28 is a 12,820 square foot parcel that surrounds Lot 27 on two sides and is the land upon which the building that houses the Brookline Arts Center is located. Built in 1886 as a home to the Chemical Fire House, the building was remodeled in 1968 and eventually leased to the Brookline Arts Center. The Town has a 30-year lease with the Arts Center, which expires in 2010. Both lots are located in the Longwood National Historic Register District.

The Town's "Open Space 2000" plan called for the preservation and rehabilitation of Lot 27 as a park. Based on that, the Town's FY03-FY07 Capital Improvements Plan (CIP) included a total of \$330,000 for FY06 (\$30,000) and FY07 (\$300,000) for rehabilitation of the park. This article would take care of the "preservation" piece of the Open Space 2000 recommendation.

When presented with the original language of the article, the Board did have some concerns about the imposition of Article 97 protections on the building and land currently occupied by the Brookline Arts Center. Specifically, the Selectmen wondered, if it was decided in the future to use the building for something other than the Arts Center, what restrictions would the article place on the building for such alternative uses. After discussions with the petitioner and Town Counsel, language was drafted that addressed these concerns. Based upon this language, the existing building and the land under that building would be exempt from the Article 97 designation and would be retained for public and community purposes.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 22, 2002, on the following vote:

VOTED: That the Town designate and retain the town-owned land at the corner of Monmouth Street and St. Mary's Street, shown on the Town's Atlas as Lots 27 and 28 in Block 112, for park purposes, to be known collectively as Monmouth Park, with the existing building on Lot 28 and the land under that building to be exempt from such designation and to be retained for public and community purposes.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 17 is a citizen petition article, filed by Cathleen Cavell of Precinct 1 and others, seeking both the designation of two Town-owned parcels, Lots 27 and 28 in Block 112, on Monmouth and St. Mary's Streets for park purposes and the retention of the Town-owned building on lot 28 for public and community purposes, compatible with and supportive of the park.

The two lots under consideration, which total 19,577 square feet, are partially landscaped and currently maintained by the Town. Within the boundaries of the Longwood National Register District, they are zoned for two family use (T-5). One lot was once the site of the Longwood School (demolished in 1939), while the other is occupied by an 1886 structure which was built as

a fire house and is now leased to the Brookline Arts Center. (There are eight years remaining in the current lease.)

The property has been the focus of a master planning process undertaken by students from the Radcliffe Seminars in Landscape Design. Based on that study, improvements, including flower beds, new fence and benches, and the installation of an irrigation system, are scheduled in the Town's Capital Improvement Program for FY 05.

Open Space 2000 Identifies this open space as a "passive park" and recommends preserving and protecting it.

DISCUSSION

If approved, Article 17 would extend the protection of Article 97 of the State Constitution to this open space, preventing another use for the property unless authorized by a majority vote of the Park and Recreation Commission, Board of Selectmen, and Town Meeting and a two-thirds vote of both houses of the State legislature. Because the Town has already spent money for some physical improvements and is slated to invest additional capital funds in two years, supporters of the article believe it is important to protect those investments and to preserve this small piece of open space in a densely developed neighborhood. It is noted that no opposition to designating the open space as park land has been expressed, no formal interest in the site for affordable housing purposes has emerged, and that the proposed action has support in the Open Space Plan for Brookline and among the residents of Precinct One.

However, substantial discussion among Advisory Committee members was generated by the article's provision regarding the structure at 86 Monmouth Street. Questions were raised concerning the meaning of the terms "compatible with" and "supportive of" and their implications regarding the future use(s) of the building. Because it was unclear as to whether the protection of Article 97 would extend to the building or merely to the land underneath the building, it was also unclear as to whether this section of Article 17 was critical to the building's preservation. What was evident was that approval of the article's language would both specifically indicate Town Meeting's intent that the building be preserved and limit flexibility in establishing future uses of the building. The petitioners, citizens who live near the park, indicated that the neighborhood was very happy to have the Brookline Arts Center in the building and would like that or a similar public use of the building to continue. A motion to amend the article with language which could create a wider range of options for the building's future use failed by a vote of 6 to 12.

RECOMMENDATION

The Advisory Committee, by a vote of 18-0 (1 abstention), recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town designate and retain the Town-owned land at the corner of Monmouth Street and Saint Mary's Street, shown on the Town's Atlans as Lots 27 and 28 in Block 112, for park purposes, to be known collectively as Monmouth Park, with the existing structure within Lot 28 to be retained for public and community purposes

compatible with and supportive of the operation of Monmouth Park.

XXX

November 12, 2002
Special Town Meeting
Article 17 – Supplement No. 1

MOTION TO BE OFFERED UNDER ARTICLE 17
CATHLEEN CAVELL – TMM Precinct 1

VOTED: that the Town designate and retain the Town-owned land at the corner of Monmouth Street and Saint Mary's Street, shown on the Town's Atlas as Lots 27 and 28 in Block 112, for park purposes, to be known collectively as Monmouth Park, with the existing building on Lot 28 and the land under that building to be exempt from such designation and to be retained for public and community purposes compatible with the operation of Monmouth Park.

ARTICLE 18

EIGHTEENTH ARTICLE

To see if the Town, under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, petition/request Boston's Metropolitan Planning Organization to plan and fund an underpass roadway on Route 9 [Boylston Street] at the intersection of Hammond Street, or act on anything relative thereto.

The purpose of creating an underpass on Route 9 at Hammond Street is to alleviate the traffic problems that plague the area for hours at a time during the morning and afternoon commutes. Obviously there are regional traffic concerns that contribute to the problems. We believe the IDEAL solution is to separate the through traffic from the local traffic. An underpass would accomplish this and more, recreating Hammond Street to serve pedestrians, and civilizing the surface and it's surroundings. Proof of this process is that within 3 miles west of Hammond Street, there are no less than 4 underpasses/overpasses on Route 9; Hammond Pond Parkway, Parker Street, Center Street, and Chestnut Street.

This project has the additional potential of increasing usable real estate for the town (air rights), and ties in with the town's current comprehensive plan.

We recognize that reconstructing the intersection is a potentially expensive and time-consuming project, but we believe it is well worth competing for available federal and state money. An underpass at this site would not only alleviate traffic on Hammond and Heath streets, and ease the commute to and from Boston for Route 9 traffic, it would be a plan that people, not cars mattered most.

SELECTMEN'S RECOMMENDATION

Article 18 is a petitioned article that attempts to help alleviate the traffic problems along Route 9 where it intersects with Hammond Street. As originally drafted, the article called for Boston's Metropolitan Planning Organization to plan and fund an underpass in this area. The petitioner is concerned about the traffic in that area during both the morning and afternoon commutes, specifically the impact it has on pedestrians.

The Selectmen certainly agree that traffic in the area is a major concern and something needs to be done to help fix the problem. However, after hearing discussion on the issue, this Board believes that there may be other avenues available to the Town in addition to the underpass. Therefore, the language of the article should not be restricted solely to that option. The Town should request that Boston's Metropolitan Planning Organization, or any other relevant planning organization, develop a series of alternatives to improve Route 9 at or near the intersection of Hammond Street.

This approach is also directly related to the "Open Space Plan 2000". Part of the five-year action plan was to review MIT/Chestnut Hill Village Alliance's plan for Route 9 at the Hammond Street crossing so that any successful components could be incorporated into the future planning for Route 9. The plan also calls for the development of a "green" Route 9, something that this more comprehensive approach to the article allows for.

Therefore, the Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 15, 2002, on the following vote:

VOTED: That the Town, under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, petition/request Boston's Metropolitan Planning Organization, or any other relevant planning organization, state or federal, to develop a series of alternatives to improve Route 9 (Boylston Street) at or near the intersection of Hammond Street. The request should be submitted to appropriate agencies by November 1, 2003.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The petitioners of the Warrant Article, Anthony Andreadis of Precinct 15 and others, have expressed a desire to see if constructing an underpass at Route 9 and Hammond Parkway is economically feasible. He believes the neighborhood would be greatly enhanced by creating new open space over Route 9.

DISCUSSION

Residents of the Route 9 and Hammond Park intersection area feel that their neighborhood is divided by the large and rapidly moving Route 9 corridor. If Route 9 could be depressed, they believe that the whole area could have a greater sense of community and that pedestrian and vehicular safety issues would be substantially improved.

However, design for on ramps and exit ramps, relocating underground utilities, making sure all the shops in the area are accessible by car from any direction, disruption during construction, and deep excavation could make this potential project a mini version of the “Big Dig.”

The petitioners would like Town Meeting to direct the Town to request that Boston’s Metropolitan Planning Organization or any other relevant state or federal planning agency study this issue for its feasibility. This request would have no cost implication to the Town or its future budgets and meshes well with our endeavor to create a Comprehensive Plan for Brookline. The Selectmen have indicated that they believe the study should not be confined simply to looking at an underpass, but rather if we can get help from such an agency or organization we should ask them to look at various alternatives to improve the intersection at Route 9 and Hammond Street. The Advisory Committee agreed.

RECOMMENDATION

The Advisory Committee by a vote of 12-2 (1 abstention) recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 19

NINETEENTH ARTICLE

To see if the Town will authorize the creation of a town committee, to be known as the Town Meeting Study Committee, with three members to be appointed by the Board of Selectmen and four members to be appointed by the Moderator, to study and to compare the organization, practices, policies and procedures observed for Brookline Town Meetings with those observed in other communities that have a representative form of town meeting, including the town of Framingham, and report the results of their study and comparison, including recommendations for possible changes, to a future town meeting, or act on anything relative thereto.

This Warrant Article is intended to promote good government by having an inclusive committee appointed to study the policies, procedures, and practices of other representative Town Meetings in the Commonwealth (and possibly in other communities in the Northeast) and compare them with those followed in Brookline. The Committee would report its findings to a future Town Meeting and, if warranted, make recommendations to Town Meeting on proposed improvements.

Both the Town Moderator and The Board of Selectmen would appoint a total of no greater than 11 members to the Committee with the majority appointed by the Town Moderator. It is anticipated that appointments to the Committee would be as inclusive as possible, and include representatives from the Committee on Town Organization and Structure, the Town Meeting Members Association, the Advisory Committee, the Board of Selectmen, and may also include other individuals able to contribute to this study.

The proposed Committee is designed to provide Town Meeting with useful information to allow it to be the most effective legislative body possible. Other towns may have useful ideas. For example, Framingham's Town Meeting has seven standing committees on different areas. It also tends to meet more frequently and for longer sessions. It is not known whether these practices are better, worse, or just different from the way we do things in Brookline. But it does seem worthy of investigation. We owe it to our constituents to explore ways to be as well informed and as involved as possible. The Committee would ultimately only have the power to make recommendations to Town Meeting, which would then decide whether any changes are appropriate.

This article is fiscally prudent as it will not cost the taxpayers of Brookline a nickel. It could provide significant rewards, however, by helping Town Meeting promote its role as an important and essential branch of Town government.

SELECTMEN’S RECOMMENDATION

Article 19 is a petitioned article that calls for the creation of a committee to study the practices, policies, and procedures of Brookline’s Town Meeting. According to the petitioners, the goal of the committee is to gather information that may be useful in helping make Town Meeting a more effective legislative body. The language adopted by the Advisory Committee, and supported by this Board, calls for the committee to consist of 6-8 people, with one Selectmen appointee and 5-7 Moderator appointees, of which one is a member of the Advisory Committee, one is a member of CTO&S, and one is a member of the Executive Board of the TMMA.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 4-0, on the vote offered by the Advisory Committee.

October 8, 2002 Roll Call Vote:

Favorable Action

Kalikow
Geller
Hoy
Allen

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

The petitioners provided the following information on their rationale in filing Article 19:

- The petitioners’ intent behind Article 19 is to establish a politically credible entity to evaluate the ways in which other representative town meetings are structured and operate for the purpose of determining whether different structures or modes of operating in other towns would, if implemented in Brookline, help to empower our Town Meeting or improve its effectiveness.
- The petitioners did not propose charging the committee with attempting to address specific concerns about our Town Meeting because they did not want to unduly limit the scope of the Committee’s evaluation and recommendations. Their goal is general – to empower Town Meeting and to improve its effectiveness as a legislative body. The purpose of the Committee is to identify, based on an evaluation of other representative town meetings, the structural and operational aspects of our Town Meeting that could be altered to meet that general objective.
- The petitioners proposed composition of the committee is intended to result in a committee that is represented by a breadth of Town interests and that has the political credibility to be taken seriously by Town Meeting. The petitioners propose establishing a new committee rather than giving this responsibility to existing entities with an interest in the matter, such as the Committee

on Town Organization and Structure or the Town Meeting Members Association (“TMMA”), because they feel such other entities would represent too narrow a perspective and their recommendations may not have the same level of political credibility.

DISCUSSION

Majority Position

A majority of the members of the Advisory Committee support the petitioners’ desire to explore ways to strengthen Town meeting as an institution and to empower Town Meeting Members (“TMMs”) to more effectively represent the interests and concerns of their constituents. To some extent, an imbalance of power between the Selectmen/Town Administration is inevitable due to the imbalance in the level of resources and information between the two bodies. I do believe, however, that Town Meeting has the potential to play a stronger role in connection with the development of the budget and the related policy decisions and to be more proactive in setting the Town agenda.

The real question raised by Article 19 is how best to accomplish this. Many TMMs and other Town activists have worked through the TMMA and other venues for a better informed, more proactive and more effective Town Meeting, and some progress has been made. Members of the TMMA Executive Board even visited Framingham’s Town Meeting and wrote an article about some of the differences between Framingham and Brookline Town Meetings in the Spring 2002 issue of the TMMA newsletter. Establishing a committee to evaluate other representative town meetings and to report on the differences and make recommendations for improvements will only serve to further these efforts. Therefore, a majority of the members of the Advisory Committee supports the purpose of the warrant article.

The Advisory Committee does have concerns, however, with the composition of the committee, as proposed by the petitioners. The purpose of the Committee is to identify steps that Town Meeting could take to enhance its power relative to the Board of Selectmen and Town Administration, a goal that is arguably contrary to the interests of the Selectmen. Consequently, a majority of the members of the Advisory Committee believe the number of appointments to the Committee made by the Selectmen should be limited to not more than one member. In addition, a majority of the members of the Advisory Committee believe that a member of the TMMA Executive Board, the Committee on Town Organization and Structure, and the Advisory Committee should be required appointments as each of those bodies has a vested interest in and will have a helpful perspective with respect to any potential changes in our Town Meeting structure or operation.

Minority Position

Some of the variety of concerns raised by members of the Advisory Committee who opposed favorable action on the motion presented below include the following:

1. Scope of Committee’s Charge Too Broad. The scope of the article’s language is too broad, in that virtually every aspect of the Town’s operation can be included within “...the

organization, practices, policies and procedures...” There is no focus on matters that are causal to the issue. Among other things, this could lead to inefficiency, dilution of significant matters and a generally unworkable, unsatisfying effort. If an effort were to be undertaken in a different vehicle, a top-down approach should be used, pre-identifying significant subsets of the central issue.

2. Scope of Committee’s Charge Too Limited. The article’s language limits the scope of the Committee’s evaluation and analysis to what is observed in communities with representative town meetings. The presumes that analysis of other forms of government and creative new ideas are not beneficial.

3. Improvements on Case by Case Basis. Rather than study other Town Meetings to determine how to improve Brookline’s Town Meeting, proposals for procedural and other improvements should be presented for Town Meeting’s consideration on a case by case basis as problems or areas for improvement are discovered.

4. No Need to Study Other Town Meetings. There is no need to study other Town Meetings because Brookline’s Town Meeting is already empowered. Town Meeting Members have the opportunity to attend public hearings and meetings on the issues they will consider, to obtain written information regarding such issues, and to propose their own issues for Town Meeting’s consideration. Town Meeting Members need only take advantage of the opportunities presented to them to act effectively.

RECOMMENDATION

The Advisory Committee, by a vote of 9-8 recommends FAVORABLE ACTION on the following vote:

VOTED: To establish a town committee to be known as the Town Meeting Study Committee, with one member to be appointed by the Board of Selectmen and not less than 5 members and not more than 7 members to be appointed by the Moderator, to study and to compare the organization, practices, policies and procedures observed for Brookline Town Meetings with those observed in other communities that have a representative town meeting form of government, and to report the results of its study and comparison, and to make recommendations to a future Brookline Town Meeting for possible changes to the organization, practices, policies and procedures of Brookline’s Town Meeting, provided that, of the Moderator’s appointments to the Committee, at least one shall be a member of the Advisory Committee, one shall be a member of the Committee on Town Organization and Structure and one shall be a member of the executive board of the Town Meeting Members’ Association.

November 12, 2002
Special Town Meeting
Article 19 – Supplement No. 1

MOTION TO BE OFFERED UNDER ARTICLE 19
DAVID-MARC GOLDSTEIN- TMM Precinct 8

To delete in the 7th line of the Advisory Committee motion the words "to a future Brookline Town Meeting" and replace with the words "to the Fall 2003 Town Meeting".

Explanation

A Standing Committee, while only slightly different from a Moderator's Committee, is new territory for us, and in the current language I feel it is too open-ended. Setting Fall 2003 as a date gives this committee plenty of time to study Town Meetings of comparable towns and report back. We might, in a future vote, decide to extend it if the committee needs more time, or even make it permanent. If we do, however, questions arise- for example, How long would the people appointed serve? Should such a committee replace the CTOS?

Shameless Advertisement: The Procedures Committee of the TMMA has spent some time looking into Standing Committees, and in fact has been doing what this article requests for 3 years now, studying frequency and lengths of our Town Meetings, and number of TM's recently attended other Town Meetings to compare methods. We're also working on improving meeting notification from Town departments. While article 19 calls for 5-7 people, the Procedures Committee meets once a month, and is always open on a non-partisan basis to all 248 of us.

Disclaimer: The Procedures Committee discussed this article at length but did not take a position on this article, and I propose this amendment as an individual TMM.

MOTION TO BE OFFERED UNDER ARTICLE 19
A. JOSEPH ROSS – TMM Precinct 12

I. To amend the motion offered by the Advisory Committee as follows, adding italicized language and striking crossed-out language:

VOTED: To establish a town committee to be known as the Town Meeting Study Committee, with one member to be appointed by the Board of Selectmen and not less than 5 members and not more than 7 members to be appointed by the Moderator, to study ~~and to compare~~ the organization, practices, policies and procedures *of observed for Brookline Town Meetings with those observed in other communities that have a representative town meeting form of government,* and to report the results of its study and comparison, and to make recommendations to a future Brookline Town Meeting for possible changes to the organization, practices, policies and procedures of Brookline's Town Meeting, provided that, of the Moderator's appointments to the Committee, at least one shall be a member of the Advisory Committee, one shall be a member of the Committee on Town Organization and Structure and one shall be a member of the executive board of the Town Meeting Members' Association.

II. To amend the motion offered by the Advisory Committee, or the motion as amended by the preceding amendment, by striking out the words "and not more than 7 members".

ARTICLE 20

TWENTIETH ARTICLE

To see if the Town will authorize and request that the Board of Selectmen appoint a seven person committee to investigate and report to a future town meeting the town's options concerning the removal of civil service offices and positions from the requirements of the Massachusetts civil service law and regulations, or act on anything relative thereto.

The town currently employs civil and non-civil service personnel. The purpose of this article is to have a Selectman's committee review the town's policy regarding civil service procedures. In particularly employment practices including hiring, firing, and disciplinary practices. Some departments have a full staff of civil service employees and others have a combination of civil service and some non-civil service employees.

According to the federal government the system is arcane and is in badly need of overhauling.

Disciplining civil service employees appears to be a major problem for the town administration. Town counsel alone spends between 75 to 100 man days a year just handling civil service matters.

The committee should examine which departments could work more efficiently with civil service employees and which departments would benefit by hiring non-civil service people. The committee should within a one period make recommendations to town meeting regarding the civil service employment practices. A warrant article should be filed by the committee reflecting these recommendations.

SELECTMEN'S RECOMMENDATION

Article 20 is a petitioned article that calls for the appointment of a seven-person committee to study civil service. As proposed, the Selectmen would appoint the committee. This Board believes that a capable and highly qualified group able to undertake this study already exists: the Human Resources Board.

The HR Board is comprised of members experienced in town personnel matters who, through the very nature of their duties, are able to perform an independent and comprehensive study. Section 3.15.6 of Town By-Laws details the seven primary functions of the HR Board, number five of which states: “perform special studies or projects as requested...”. Therefore, establishing a new committee would be duplicative and result in the under-utilization of a well-qualified existing entity.

Therefore, the Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 4-0, on the following vote:

VOTED: To refer Article 20 to the Human Resources Board, which will summarize the status of the civil service as it pertains to the employees of the Town of Brookline, and report and recommend any changes or modifications as deemed appropriate for Town Meeting action.

October 8, 2002 Roll Call Vote:

Favorable Action

Kalikow
Geller
Hoy
Allen

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

Warrant Article 20, a citizen petition, calls for the Board of Selectmen to appoint a seven person committee to “investigate and report to a future town meeting the town’s options concerning the removal of civil service offices and positions from the requirements of the Massachusetts civil service law and regulations.” The civil service system was set up by the state to cut down on patronage and to offer workers an appeal system if they felt they were being treated unfairly on the job. Brookline Town Meeting accepted the state law establishing civil service many years ago.

DISCUSSION

Over the past decade, the State has cut funding of the civil service system and problems have developed. Several years ago, at the request of Town Meeting, the Moderator appointed a committee to study civil service in Brookline and to look at whether any other towns or cities had a better system. That committee concluded that there were some problems and some

benefits from the civil service system and that the variations used in some other towns and cities were at least as problematical as the civil service system used here. No significant changes were made as a result of that study.

There seems to be some agreement that the Civil Service System works fairly well for hiring in the police and fire departments. AFSCME representatives indicated that the unions feel very strongly that the appeals process for workers who are already employed by the Town is very important. They described it as a “second skin” for workers who feel they are being treated unfairly. However, there also seems to be significant agreement that the Civil Service hiring requirements for departments other than police and fire are not working well, or in some cases, at all.

Jim Nickerson, the Town’s Building Commission, related that many years ago when he, as a qualified person, wanted to apply for the position of plumbing inspector in Town, he was told that he had to get on the civil service list. He did get on the list and ten years later, when he was already Building Commissioner in Brookline, he finally got a call from Cambridge which had gotten his name off the list for a plumbing inspector’s job. He said that the State does not even maintain lists in many areas now and that in some cases the exams they give are significantly out-of-date. In areas where the State does maintain a list, the Town must hire from the list, even though it is out-of-date and often doesn’t have the most qualified applicants. He finds the Civil Service requirements in hiring a serious problem in hiring qualified people into the Building Department. The Petitioners also indicated that they believe the Civil Service presents serious problems for many departments in the hiring area and consequently costs the Town money. He believes that it does need further study and that the committee should not be looking at other Towns and Cities, but rather studying what works and what doesn’t in Brookline and how we might fix the parts that don’t work.

The Advisory Committee agreed that the Civil Service system in Brookline seems to have some problems which need to be addressed but it also has some aspects that appear to work fairly well. Therefore, a study should focus, not on eliminating positions from civil service as the wording of the Warrant Article suggests, but rather more generally on civil service system as it pertains to Brookline.

RECOMMENDATION

The Advisory Committee by a 12 to 1 vote (1 abstention) recommends FAVORABLE ACTION on the vote offered by the Selectmen.

ARTICLE 21

TWENTY-FIRST ARTICLE

To see if the Town will adopt the following resolution:

WHEREAS, a significant portion of the town of Brookline is not serviced by underground wired utilities;

WHEREAS, above ground wired utility facilities are subject to weather related injury and interruption and constitute visual blight within the community;

NOW, THEREFORE, this Town Meeting requests that the Board of Selectmen appoint a seven person committee to investigate and report to the spring 2003 town meeting the town's options with regard to under grounding of all wired utilities, together with its recommendations concerning the adoption of a By-Law that requires all public utility companies within the community to underground their distribution systems within the town.

or act on anything relative thereto.

The recent addition of new wired-service providers utilizing existing electric and telephone poles has exacerbated the unsightliness of those areas of Brookline that currently have overhead wiring. Such wiring and the required poles are unsightly, interfere with proper street planting and sidewalk layout, and can be dangerous in storm and high wind conditions. Overhead wiring was originally installed in order to quickly and inexpensively bring electric power and telephone access to Brookline. It has since been replaced with underground wiring in parts of the Town. It is time to develop a program that will eventually convert the remaining areas.

SELECTMEN'S RECOMMENDATION

The proposed resolution calls on the Selectmen to appoint a seven-person committee to investigate the issue of "under-grounding" all wired utilities. The petitioner believes such a study is needed because electric and telephone poles have become increasingly unsightly. While this Board agrees that they are becoming more and more of an eye-sore, we think that a more comprehensive study should be undertaken. Possibilities other than under-grounding may exist, and limiting the scope of the committee's study would stop any such options from being reviewed and analyzed.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 4-0, on the vote offered by the Advisory Committee.

October 15, 2002 Roll Call Vote:

Favorable Action

Goldberg

Kalikow

Geller

Allen

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 21 is a citizen petition article seeking a Selectmen's Committee to study the possibility of replacing the Town's aboveground utility wires with all underground service. Forty-eight percent of the Town's utility wire service is underground; the rest is aboveground, hung on telephone/utility poles. The Selectmen's Committee would report back to the Spring 2003 Town Meeting with its conclusions.

DISCUSSION

Currently there is no policy as to any wiring program for the Town. Aboveground cables on utility poles consist of wire carrying 13,900 AC volts and transformers supplied by NStar, Verizon telecommunications wires including fiber optic cables, Cablevision and RCN wires, and any other cable company that wishes to use utility poles. The Town is obligated by law to allow any utility company to use existing overhead wiring procedures where poles currently exist for that purpose.

This overhead wiring is unattractive to view. In addition, it is unsafe in high wind conditions. It is also unreliable when compared with underground wire services. On the other hand, underground utilities can result in the street surfaces being torn up more frequently. The Town needs to review these issues and to develop a wiring policy that utility companies, builders, and developers can follow with consistency throughout the Town and ultimately provide a better streetscape for the residents of the Town.

The original article focused solely on investigating options with regard to placing all wired utilities underground. The Advisory Committee agreed with the Selectmen's amendment, which recognized that while we are looking at the possibility of placing wires underground we should also look at what wires are currently on our poles and in what ways we might want to address wire issues in addition to placing the wires underground. The vote below incorporates this amendment and also includes some grammatical changes.

RECOMMENDATION

The Advisory Committee, by a vote of 16-1, recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town adopt the following resolution:

WHEREAS, a significant portion of the town of Brookline is not serviced by underground wired utilities;

WHEREAS, above ground wired utility facilities are subject to weather related injury and interruption and constitute visual blight within the community;

NOW, THEREFORE, this Town Meeting requests that the Board of Selectmen appoint a seven person committee to investigate and report to the Spring 2003 Town Meeting the Town's options with regard to the issues associated with overhead wiring, including the possibility of placing all wired utilities underground, together with its recommendations concerning the adoption of a By-Law that requires all public utility companies within the community to place their distribution systems underground within the Town.

XXX

ARTICLE 22

TWENTY-SECOND ARTICLE

To see if the Town will direct the Selectmen not to provide any Town funds to any religious organization, religious school or any intermediary doing work on behalf of a religious organization as the First Amendment of the US Constitution requires separation of church and state.

The separation of church and state is an absolute requirement of the First Amendment to the US Constitution. Town funds, including Town held trust funds, must not be given to any religious fund or subsidiary fund to benefit in any way, directly or indirectly, any sectarian religious organization. The Constitution unities all citizens of the community by requiring the government to be separate from any and all sectarian entanglements.

SELECTMEN'S RECOMMENDATION

This petitioned resolution would direct the Town to not provide any Town funds to any religious organization, religious school, or any intermediary doing work on behalf of a religious organization. The petitioner filed this article because he believes the Town's agreement with the Archdiocese for the development of affordable housing at the site of St. Aidan's Church violates the First Amendment of the United States Constitution.

Affordable housing is often "sponsored" by religious institutions as an outgrowth of their charitable purposes. For example, the Planning Office of Urban Affairs (POUA), a non-profit institution that sponsors and develops affordable housing, has sponsored nearly 2,270 affordable units in 24 developments located in 13 cities and towns since 1975, including about 400 units that are currently underway. Other examples include Hebrew Rehab, Jewish Community Housing, and B'nai Brith, all of which have sponsored senior housing.

There will be NO religious criteria for renters or owners at St. Aidan's. The Civil Rights Act of 1968, as amended, prohibits discrimination on the basis of religion in the private housing market. Where state and federal funds are involved, resident selection processes must be pre-approved and are monitored by the funding agency. In the case of St. Aidan's, if funded according to the plan, the affordable housing is expected to be monitored by the State, both for its funding and on

behalf of the federal government for the federal low-income housing tax credits. In addition, public lenders, such as MassHousing, will also monitor the process.

The POUA has signed a purchase and sales agreement with the Roman Catholic Archbishop of Boston, the current owner of St. Aidan's, to purchase the property. The POUA asked the Town to support affordable housing on the property. If approved, this financial assistance will go directly to the project owner, which will be set up by the POUA; it will not go directly to either the Archdiocese or the POUA. The ownership entity at St. Aidan's will be similar to those that own affordable housing in general.

The POUA has developed affordable housing in other municipalities across the state, stretching from Lynn to Worcester and North Andover to Scituate. Many of these developments were carried out under governmental programs that paid for development costs. During the past decade, the scarcity of federal funding has meant that most affordable housing development has required multiple "layers" of subsidy, including funding from various state, local, and private sources. The proposed development at St. Aidan's is no different.

Simply put, these types of arrangements are not an infringement of the separation of church and state. They are modern tools used for the development of much needed affordable housing.

The Selectmen unanimously recommend NO ACTION, by a vote of 4-0, on the article.

October 8, 2002 Roll Call Vote:

No Action

Goldberg

Kalikow

Geller

Allen

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Warrant Article 22, a citizen's petition article filed by Stanley Wayne of Precinct 11 and others, is born out of frustrations specific to the St. Aidan's issues, yet its scope, effect and longevity are far greater than the current issues swirling around this potential development. It asks that Town Meeting vote to direct the Selectmen not to provide any Town funds to any religious organization, religious school, or any intermediary doing work on behalf of a religious organization, citing the First Amendment separation of Church and State clause.

DISCUSSION

St. Mary's Parish will be selling (through the Boston Archdiocese) the St. Aidan's parcel for a mixed income housing development. St. Mary's can sell this property to any entity it chooses,

and with the proceeds do as it wishes. The parish has chosen to sell the site to the Planning Office of Urban Affairs Inc. (POUA). This is a separate legal entity, incorporated as a 501(c)(3) non-profit, that was established by the Archdiocese, and is overseen by Cardinal Law, for the purpose of secular real estate development. The POUA has sponsored 24 such developments in 13 cities and towns since 1975, including Worcester, Watertown and Boston. Many of these projects were carried out with the use of Federal funds. Similar sponsorships of housing have come from Hebrew Rehabilitation (Center Street, Brookline), Jewish Community Housing and B'Nai Brith to name a few. There are not, nor can there be, religious overtones to these developments.

The POUA has signaled its intent to construct a mixed income housing development at the St. Aidan location. Because it proposes to have a high percentage of affordable housing units (as well as moderate and market rate) it can apply, as can any organization, for zoning relief under the State's Chapter 40B provisions. The POUA will set up a Limited Dividend Entity to be the project owner of the St. Aidan development. Long term management will be overseen by the St. Aidan's Limited Partnership. As explained by Brookline's Housing Development Manager, "The limited partnership will conform to the laws of the Internal Revenue Service governing the Low Income Tax Credit Program: approximately 99 percent of that partnership will be owned by investors (such as banks and insurance companies which provide revenue for developing the property through their purchase of Federal Low Income Housing Tax Credits), and one percent will be owned by St. Aidan's Inc., a managing partner controlled by the POUA which is responsible for the long term management of the partnership property."

The St. Aidan parcel contains what many consider to be an historic structure. It also provides open space, features a substantial beech and maple tree, and is currently zoned for single family home use. The proposed development brings to this already congested neighborhood issues of appropriate size/scale, added traffic, historic preservation, school pressures and further loss of open space. Added to these concerns are pressures to satisfy the Town's dire need for affordable housing.

Balancing the Town's need for additional affordable and moderate housing units, limiting the size of this development to one that can reasonably be accommodated in this neighborhood, and satisfying the developer's wish for a certain return on their investment... all while allowing for a measure of historic preservation, has proven a difficult task. The Town's plans to subsidize part of the development costs is an attempt to help strike this balance.

What distresses some, and has motivated the petitioner to author this warrant article, is the idea that the Town will contribute funds to construct this development; and that St. Mary's Parish, a religious institution, will profit from its sale of the land. The close affinity of the various entities involved creates some unease that this is merely a contrivance for conveying funds to St. Mary's and thereby directly supporting the Parish and its school. The assertion of the petitioner is that this is a violation of the U.S. Constitution and the notion of the separation of Church and State.

In fact, there is local precedent for Town participation with organizations with religious affiliations. Also, among the largest recipients of Federal funds to charitable organizations are

Catholic Charities, Jewish Family Services and Lutheran Relief. There is a distinct difference between religiously affiliated charitable organizations and proselytizing sectarian organizations. Interestingly, this warrant article could pose a different sort of legal dilemma. That is, discrimination on the *basis* of religion.

Legal Perspectives

The U.S. Constitution seeks to prevent the establishment of state-sponsored religion. It does not prevent public participation with religious organizations in non-religious matters. As noted, government entities can and have collaborated with religiously affiliated organizations for the benefit of the public good in non-religious situations. The Town of Brookline's arrangement with Hebrew Rehabilitation (clearly a religious affiliate as evidenced by its own publishing) subsidizing senior housing on Center Street with \$1,000,000 is a prime example. The POUA has sponsored developments with the use of public funds since 1975. The Commonwealth of Massachusetts Department of Housing and Community Development has reaffirmed POUA's status by recently informing them that site eligibility for the St. Aidan development has been approved under the Low Income Housing Credit Program and the Federal HOME Program.

The Advisory Committee does not see that the Town's contribution to a mixed income housing development, with the intention of maintaining a certain minimum number of affordable units, is a violation of the U.S. Constitution's prohibition of the establishment of a State Religion or an intention to prevent "the free exercise thereof." We are also not convinced that it requires a Town Bylaw to instruct the Selectmen to comply with the law and the U.S. Constitution. The mechanisms for that have long been in place.

Effect

This warrant article is very broad and if passed would have an ongoing effect. It would forbid the Town from providing funds to any entity with a religious affiliation. We feel *this* warrant could well be a violation of the law, in that it discriminates against any organization that may have some affinity with a religious group. Furthermore, we feel this would be a violation of good public policy and we must always be mindful that the choices we make now may circumscribe constraints on our future.

Had this constraint been in place, we would have not been able to enter into what has been a very successful agreement with Hebrew Rehabilitation to ensure housing units on Center Street. Nor would we have been able to purchase the old Hebrew College site, had the option been available. Should this article pass, it will potentially prohibit the Town from purchasing any religiously affiliated properties, provide funds to any religiously-sponsored public charity that may provide services to the Town, or lease property, such as parking spaces, from a religious organization.

Summary

The Advisory Committee recognizes that there remain many serious and emotional issues with the proposed St. Aidan's development, and that the associated public frustration is high. However, this article, as crafted, is a blunt instrument aimed at dealing with a near-term situation at St. Aidan's and does not contemplate the long-term and potentially unfavorable consequences. We must consider these much greater ramifications in that larger context.

The Advisory Committee feels that Warrant Article 22 is potentially discriminatory legislation that fails both in terms of law and responsible public policy – regardless of the genesis of the underlying frustrations that prompted it. We believe our judicial system is capable of sorting out legal and constitutional issues without the help of this legislation.

RECOMMENDATION

Therefore, the Advisory Committee unanimously recommends **NO ACTION** on Article 22.

XXX

November 12, 2002
Special Town Meeting
Article 22 – Supplement No. 1

MOTION TO BE OFFERED UNDER ARTICLE 22
STANLEY WAYNE – TMM Precinct 11

VOTED: That no Town funds shall be provided to St. Mary's Church, St. Mary's Church School, the Archdiocese of Boston or any agent or instrumentality of any of the foregoing for the purpose of the construction of housing and related matters of St. Aidan's Church.

ARTICLE 23

TWENTY-THIRD ARTICLE

To see if the Town will name the Brookline Swimming Pool the “Evelyn Kirrane Aquatics Center” to honor Dr. Kirrane for her distinguished service to the community, or act on anything relative thereto.

PROPOSAL TO NAME THE BROOKLINE SWIMMING POOL
IN HONOR OF DR. EVELYN KIRRANE

Information concerning Dr. Kirrane:

Director of Recreation, Town of Brookline, 17 years
Assistant Director of Recreation, Supervisor, Recreation Leader, 24 years
Employee, Town of Brookline, 41 years.

Dr. Kirrane was a leader in the field of Health, Physical Education and Recreation. Having served in the Brookline Recreation Department for over 40 years, Evelyn was very active in her professional associations. She served as President of the Sargent College Alumnae, Vice-President of Recreation for the Massachusetts Association for Health, Physical Education and Recreation, Board of Directors of the Massachusetts Recreation Society, President of the Boston Board of Officials, and an active member of the Massachusetts and National Park and Recreation Society.

Evelyn Kirrane has been acclaimed nationally for her work in advancing the concept of the “Golden Age” phase of recreation. We in Brookline still benefit from Evelyn’s future vision through our present Brookline Golden Age Club. She was a pioneer in programming for the mentally challenged and was the recipient of numerous awards in this area such as, the National Service Award of the American Red Cross, the Boston Association for Retarded Children Recognition Award, the Joseph P. Kennedy Award for service to the Mentally Retarded and the Brookline Rotary Award for service to Brookline. Dr. Kirrane was also the founder of the “Hammerman House”, for the mentally challenged.

Dr. Kirrane was an avid swimmer and strong supporter of all the many programs and swim teams located at the Brookline Swimming Pool. The Park and Recreation Commission voted unanimously to support the passage of this article.

Therefore, in recognition of her many years of achievement in the field of recreation in Brookline, and her innovative, creative programs which gained national recognition; with

particular attention given to her courageous and optimistic personality which inspired countless children and lifted the spirit of the elderly, we hereby recommend naming the Brookline Swimming Pool “**THE EVELYN KIRRANE AQUATICS CENTER**”, in recognition of this lifelong citizen of Brookline.

Education:

Heath School, Brookline, MA

Brookline High School, Class of 1943

Boston University, Sargent College – Bachelor of Science - 1947

Boston University, School of Education, Masters in Education, 1949

Boston University, School of Education, Doctorate in Education, 1960

Guest lecturer and faculty member of the Boston University School of Education

Athletics:

Brookline High School -

Captain of the Varsity: Field Hockey, Basketball, Volleyball, and Softball Teams.

Member of the All Scholastic Field Hockey Team – 1943

Boston University -

Team member in: Field Hockey, Soccer, Speedball, Lacrosse and Softball.

Captain of the Boston University Softball Team – 1947

All-Collegiate Field Hockey Team – 1947

Honors and Awards:

National Capital Award for Services to Senior Citizens – 1970

National Conference of Christians and Jews Humanitarian Award – 1976

Boston University Alumni Public Service Award 1974

Boston University Athletic Hall of Fame Award - 1981

Mass. Association of Parks and Recreation “Hall of Fame Award” – 1983

Brookline High School Alumni Athletic Achievement Award – 1985

Former President of Massachusetts Association for Girls’ and Women’s Sports

Former President of Massachusetts Association of Health, Physical Education and Recreation

Former President of the Sargent College Alumni Association

Former Chairman, Mass. Board of Officials.

SELECTMEN’S RECOMMENDATION

Article 23 proposes to rename the Brookline Swimming Pool in honor of Evelyn Kirrane, a well-respected life-long resident and an extremely dedicated former employee and Department Head who served the Town for 41 years. A leader in the field of health, physical education, and

recreation, Dr. Kirrane worked in the Recreation Department for over 40 years, 17 of which were as Director of the department. Members of this Board have fond memories of Evelyn and unanimously agree that this is a well-deserved honor for a woman who dedicated herself to improving the lives of children and senior citizens.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 1, on the following vote:

VOTED: That the Town name the Brookline Swimming Pool the “Evelyn Kirrane Aquatics Center” to honor Dr. Kirrane for her distinguished service to the community.

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

This Article has been submitted by the Park and Recreation Commission at the request of the Kirrane Family and asks that the Brookline Swimming Pool be named the Evelyn Kirrane Aquatics Center.

For over forty years, Dr. Kirrane served the Town of Brookline, first as a Recreation Leader, and subsequently as a Supervisor, Assistant Director of Recreation, and finally as Director of Recreation, a position which she held for seventeen years. As a leader in the fields of Health, Physical Education, and Recreation, she initiated programming for the mentally challenged and advocated for recreational activities for senior citizens. Our own Golden Age Club is one result of her vision in this area.

In addition to her professional associations with the field of Recreation, Dr. Kirrane was an impressive athlete, having been captain of the Varsity Field Hockey, Basketball, Volleyball, and Softball teams at Brookline High School and a member of the Field Hockey, Soccer, Speedball, Lacrosse and Softball teams at Boston University. She was an avid swimmer and, in her adult years, used the Brookline pool on almost a daily basis, both for recreational purposes and, after contracting polio, for physical therapy. Dr. Kirrane was an enthusiastic supporter of swimming programs and the founder of the Town’s Recreational Swim Team, the Dolphins.

DISCUSSION

There are no written guidelines or criteria for the naming of public facilities, but approval of this article would be consistent with the Town’s practice of honoring and expressing its gratitude to a citizen by naming a public facility which is associated with that person. Contributions to the recreational life of the community by Brookline citizens or Park and Recreational

Commissioners or Directors are reflected in the previous naming of eight recreational facilities including the Lynch and Soule Recreation Centers and Waldstein and Murphy Playgrounds.

Given Dr. Kirrane’s many personal and professional accomplishments, naming the pool the

Evelyn Kirrane Aquatics Center would be an appropriate way to reflect the community's recognition and appreciation of her contributions to Brookline. The cost to the Town would be minimal.

Although no questions were raised concerning the contributions of Dr. Kirrane to the Town, a very small minority expressed the belief that a separate committee should be established and given the charge to make recommendations to Town Meeting concerning the naming of public facilities.

RECOMMENDATION

The Advisory Committee, by a vote of 13-2, recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 24

TWENTY-FOURTH ARTICLE

To see if the Town will authorize the dedication of the following described public island in memory of Brookline firefighter, Joseph Tynan, who was permanently injured in the line of duty and passed away on May 8, 2002:

The island at the intersection of Kendall Street and Chestnut Street,
or act on anything relative thereto.

SELECTMEN’S RECOMMENDATION

Article 24 proposes to dedicate a traffic island in memory of Joseph M. Tynan, a former Brookline resident and firefighter. In 1982, Joseph Tynan fell off a moving fire apparatus and was critically injured. He spent the remainder of his life in acute care facilities where he was supported by his family and friends. Former firefighter Tynan passed away this past May. To remember his ultimate sacrifice, the Selectmen unanimously recommend that the traffic island at the intersection of Kendall Street and Chestnut Street, the area in which he grew up, be dedicated in his honor.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 1, on the following vote:

VOTED: That the Town dedicate and name the island at the intersection of Kendall Street and Chestnut Street the Joseph M. Tynan, Jr. island, in memory of Joseph M. Tynan, Jr.

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

This article, brought before the Town Meeting at the request of the Tynan family, asks that the small traffic island at the intersection of Chestnut and Kendall Streets be named and dedicated the Joseph M. Tynan Jr. Memorial Square.

Joseph Tynan Jr., a life-long Brookline resident, grew up at 48 Kendall Street. He was a Brookline firefighter for twelve years before becoming permanently injured in the line of duty in

1982. He passed away last May.

It has been a tradition for Town Meeting to name public land or buildings to show recognition or appreciation for contributions, accomplishments, or achievements that have benefited the Town.

DISCUSSION

Approval of this article would be consistent with the Town's practice of honoring its citizens by naming public land or another type of public facility which is close to the person's home or which is associated with that person. Past examples include Murphy Playground, Judge Henry Crowley Park at St. Mark's Square, and the Robert Sperber Education Center. The request has the full support of Fire Chief Spillane, and its cost to the Town would be minimal.

RECOMMENDATION

The Advisory Committee, by a vote of 13-0 (1 abstention), recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 25

TWENTY-FIFTH ARTICLE

To see if the Town will accept the provisions of General Laws, Chapter 138, Section 33A, that provides, in essence, that on-premises license holders for the sale of alcoholic beverages, may be authorized to sell alcoholic beverages on Sundays and certain legal holidays between 1:00 A.M. and 2:00 A.M., or act on anything relative thereto.

If Section 33A in General Laws, Chapter 138, the Liquor Control Act, is accepted by the town, the local licensing authority, the Board of Selectmen, MAY authorize licensees under Section 12 to sell alcoholic beverages to be consumed on the premises on Sundays and certain holidays between the hours of 1:00 A.M. and 2:00 A.M. A copy of Section 33A is set forth below.

§ 33A. Sales of alcoholic beverages by on-premise licensees on Sundays and certain legal holidays; sales between 1:00 A.M. and 2:00 A.M.

The local licensing authority of any city or town which accepts this section may authorize licensees under section twelve to sell alcoholic beverages between the hours of one o'clock ante meridian and two o'clock ante meridian on Sundays, the last Monday in May and on Christmas day or on the day following when said day occurs on Sunday.

SELECTMEN'S RECOMMENDATION

Article 25 recommends that the Town accept the provisions of Chapter 138, Section 33A of Massachusetts General Law, which give the Town's licensing authority the ability to authorize licensees under Section 12 to serve alcohol until 2:00 a.m. on Sundays (Saturday evening), on Memorial Day, and on Christmas Day. Current state law does not allow such establishments to serve alcohol after 1:00 a.m. Saturday evening/Sunday morning or these other two days/nights.

This past May, the 2002 Annual Town Meeting approved Article 20, a petitioned Home Rule Legislation that would allow bars, restaurants, and hotels in Brookline to sell alcohol between 1:00 a.m. - 2:00 a.m. Saturday evening/Sunday morning. After the Legislature's Committee on Governmental Regulations heard the bill, it was determined that this Home Rule Legislation was not necessary; adopting the provisions of Chapter 138, Section 33A would give the licensing authority the same ability.

There is a difference between the Home Rule Legislation and the provisions of Chapter 138, Section 33A: the licensing authority has the option of granting the 2:00 a.m. stop-serving time on Memorial Day and Christmas Day, two additional dates that the Home Rule Legislation did not include. However, this Board does not have an issue with those additional dates, as it is not an “all-or-none” provision. In other words, the Selectmen can grant an establishment the 2:00 stop-serving time for Saturday evening/Sunday morning without having to grant the same for Memorial Day or Christmas Day. This simply provides the Selectmen additional flexibility.

The logic behind this article, as it was for Article 20 of the 2002 Annual Town Meeting, is that allowing these establishments this additional hour will help them stay competitive with the surrounding communities that currently are allowed to serve until 2:00 a.m. (Cambridge and Boston). In addition, Police Chief O’Leary has appeared before the Board on this in the past and indicated that he has no reservations about the 2:00 stop-serving time.

Lastly, it should be noted that accepting the provisions would give the Board of Selectmen the authority to issue licenses with a 2:00 a.m. serving stop time. It does not automatically give the establishment the ability to do so. The Board, as part of its licensing duties and responsibilities, will use discretion when granting the one hour extension.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 1, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

This Article asks the Town to accept the provisions of Section 33A of the Massachusetts General Laws, Chapter 138 the Liquor Control Act). This would allow the Board of Selectmen, the local licensing authority, to permit establishments licensed to serve alcoholic beverages to serve alcoholic beverages between 1 A.M. and 2 A.M. on Sunday mornings and on the mornings of Memorial Day and Christmas Day or the following when Christmas falls on a Sunday. Ordinarily, licensees are only permitted to serve until 1 A.M. on those days At last May’s Annual Town Meeting, the Town approved a home rule petition that would allow the Board of Selectmen, at their discretion, to extend the hours of service until 2 A.M. on Sunday mornings. It is expected that this home rule petition will soon receive legislative approval and be signed into law by the Acting Governor. However, this would not affect the 1 A.M. closing time required for Memorial Day (a Monday) or for Christmas when celebrated on a day other than Sunday.

DISCUSSION

Acceptance of this legislation would give the Board of Selectmen the same authority to allow 2 A.M. closings on Memorial Day and Christmas that Town Meeting has indicated it favors for

other Sundays. Acceptance of this legislation would nullify the need for the home rule petition, since the legislation under consideration would allow 2 A.M. closing on Sundays as well. This would be a help to local restaurants and taverns who are permitted to serve until 2 A.M. on all other days, and would serve the interests of Brookline residents who wished to be served an alcoholic beverage during the 1 A.M. to 2 A.M. time period on the affected days. Passage of this Warrant Article does not direct the Selectmen to necessarily adopt these hours. The Chief of Police has no objections to this legislation and none were raised by other town officials or private citizens, the only cautionary note being a reminder of the need for due diligence in preventing sales to underage or intoxicated patrons during the extended hour of operation, which the Advisory Committee is confident will take place.

RECOMMENDATION

The Advisory Committee believes that the Selectmen should be granted this discretionary authority to allow later closing hours on Memorial Day and Christmas (in addition to Sundays) and is confident that they will use this authority judiciously and consistent with the public interest. Therefore the Advisory Committee unanimously, by a vote of 11 to 0, recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town accept the provisions of General Laws, chapter 138, Section 33A, that provide, in essence, that on-premises license holders for the sale of alcoholic beverages may be authorized to sell alcoholic beverages on Sundays and certain legal holidays between 1:00 A.M. and 2:00 A.M.

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ARTICLE 26

TWENTY-SIXTH ARTICLE

Reports of Town Officers and Committees

BOARD OF SELECTMEN

Deborah B. Goldberg, Chairman
Donna R. Kalikow
Joseph T. Geller
Gilbert R. Hoy, Jr.
Robert L. Allen

ADVISORY COMMITTEE

Nancy Daly, Chair