



**TOWN OF BROOKLINE  
MASSACHUSETTS**

**REPORTS OF SELECTMEN  
AND ADVISORY COMMITTEE**

on the

**Articles in the Warrant**

for the

**ANNUAL TOWN MEETING**

to be held in the High School Auditorium

**Tuesday, May 27, 2003**

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**

**Joseph T. Geller**

**Gilbert R. Hoy, Jr.**

**Robert L. Allen**

**Michael S. Sher**

**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
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

MAY 27, 2003

ANNUAL TOWN MEETING

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## 2003 ANNUAL TOWN MEETING WARRANT REPORT

The Board of Selectmen and Advisory Committee respectfully submit the following report on Articles in the Warrant to be acted upon at the 2003 Annual Town Meeting to be held on Tuesday, May 27, 2003 at 7:00 p.m.

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

ARTICLE 1

FIRST ARTICLE

To see if the Town will establish that the number of Measurers of Wood and Bark be two, to be appointed by the Selectmen, or act on anything relative thereto.

SELECTMEN’S RECOMMENDATION

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on March 25, on the vote offered by the Advisory Committee.

**ROLL CALL VOTE:**

Favorable Action

- Kalikow
- Geller
- Hoy
- Allen

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

This is the traditional Article 1. It authorizes the Selectmen to appoint two Measurers of Wood and Bark. These are historical positions. The holders can be called upon to determine if a cord of fire wood is actually a full measure.

DISCUSSION

This is a tradition which costs the town nothing.

RECOMMENDATION

The Advisory Committee by a vote of 16-4 recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town establish that the number of Measurers of Wood and Bark be two, to be appointed by the Selectmen.

ARTICLE 2

SECOND 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.

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To: The Board of Selectmen

From: John Dunlap, Director of Human Resources

Date: April 28, 2003

Re: **Collective Bargaining – Town Meeting – Article 2**

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The Town has completed negotiations with Local 950 of the International Association of Fire Fighters for a one-year contract. The contract period is July 1, 2002 through June 30, 2003.

The Town has already completed negotiations with AFSCME Council 93, Local 1358, the Staff Association of the Public Library of Brookline (AFSCME Council 93), and the Brookline Engineering Division Associates for a two-year contract commencing on July 1, 2002 and ending on June 30, 2004. These contracts were approved at last spring's Town Meeting. Additionally, the Town has completed negotiations with the Brookline Police Association for a one-year contract commencing on July 1, 2002 and ending on June 30, 2003. This contract was approved at last fall's Town Meeting.

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

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

*Cost:*

FY 03

\$268,994

**II. Hazardous Materials Stipend and Decontamination Unit**

**A. Hazardous Materials Stipend**

Add the following new provision:

Effective July 1, 2002, firefighters who acquire and maintain training in hazardous materials at the First Responder/Operations level shall receive

an annual stipend of two hundred dollars (\$200). Effective July 1, 2003 this stipend will increase to four hundred dollars (\$400) per year. (Such Hazardous Materials Stipend will be treated in the same manner as the EMT stipend.)

**B. Decontamination Unit**

Effective July 1, 2002, the Town has the right to implement the Decontamination Unit provided by the Massachusetts Emergency Management Agency and the Massachusetts Department of Fire Services in accordance with this provision. The Town agrees that when it deploys the MDU within the Town of Brookline, that it will assign 4 trained firefighters one of whom may also be assigned to tow the MDU to the site. It is understood that the Town may assign firefighters who are already on duty to the MDU assignment. However, if the MDU is deployed outside of Brookline, the Town may choose to provide only a transport vehicle with one operator to the recipient community if that community has sufficient available trained personnel to operate the MDU. If the Town operates the MDU outside of Brookline for the recipient community, it will use 4 trained firefighters (one of whom may be assigned to tow the MDU to the site) in the same manner that the Town provides other mutual aid. Firefighters who are injured in the line of duty outside of Brookline will have the same protection as injured firefighters on other mutual aid assignments.

<i>Cost:</i>	
FY 03	\$32,000
FY 04	\$64,000

**The total appropriation requested to fund these agreements for fiscal year 2003 is \$300,994.**

SELECTMEN’S RECOMMENDATION

As detailed in the Human Resource Director’s memorandum, the Town has reached agreement on a one-year contract with Local 950 of the International Association of Fire Fighters. 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 a new Hazardous Materials Stipend: in FY03, it is \$200 per firefighter; in FY04, it increases to \$400 per firefighter.

The total cost of the proposal for FY03 is \$300,994. 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 recommend FAVORABLE ACTION, by a vote of 5-0 taken on April 29, on the following vote:

VOTED: To approve and fund by a transfer of \$300,994.00 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:

Local 950 of the International Association of Fire Fighters

all as set forth in the report of John Dunlap, Director of Human Resources, dated April 28, 2003 contained in Combined Reports for Article 2 of the May 27, 2003 Annual Town Meeting, which report is incorporated herein by reference.

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### ADVISORY COMMITTEE'S RECOMMENDATION

#### BACKGROUND

The Town's Firefighters have been working under the terms of an expired contract in Fiscal 2003. Recently the Town and the Firefighters came to an agreement for a one-year contract which will expire on June 30, 2003. This contract has been ratified by the Union members. Although both parties originally wanted a longer contract, they were unable to agree on terms. They will begin negotiating again almost immediately. The Police officers are nearing the end of their one-year contract, which included a 3% raise for FY 03. Employees represented by the AFSCME union are in the first year of a two-year contract. They received a 3% increase in FY 03 and will receive a 2% increase in FY 04.

#### DISCUSSION

The Brookline Firefighters Union, Local 950, I.A.F.F., represents 160 firefighters. The contract between the Town and the Firefighters' Union extends the terms of the prior contract with the addition of a 3% raise for a the fiscal year that is almost over. This contract is for the year that began on July 1, 2002 and ends on June 30, 2003. In addition to the 3% pay increase for the year, Firefighters will receive extra pay for acquiring and maintaining training in hazardous material at the First Responder/Operations level. This should apply to all firefighters. The total cost for FY 03 is \$268,994 for the 3% and \$32,000 for the Hazardous Materials extra pay of \$200/per employee. That money was budgeted for in FY 03. The cost of the 3% increase will continue to roll forward into FY 04 and the Hazardous Materials pay will increase to \$400/per employee, since employees will then be trained for the entire year in dealing with the Hazardous Materials. The 3% is the same increase the Police officers received for FY 03 and the extra pay is similar to the pay for defibrillation training that Police officers can receive if qualified. The AFSCME workers also received 3% in FY 03 and are scheduled to get 2 % in FY 04. The Teachers who are on the last year of a multi-year contract which was negotiated some time ago, got 4% for FY 03, but in return for the extra percent, they added time to their schedules. So, the Firefighters contract is in line with other contracts in the Town.

However, the Advisory Committee continues to be troubled about the excessive use of sick leave time in the Fire Department. Firefighters have 24-hour tours. A missed tour is the equivalent of approximately 2 1/2 regular days. The Brookline Fire Department has an average of 7.5 sick tours. This is at least two more than any other comparable community with 24-hour shifts. Medford had an average of 5.5 tours and Newton had 5.4. Six other communities surveyed had less. Brookline's Police Officers averaged 8.3 8-hour days/officer. The high sick leave use in the Fire Department occurs in spite of the fact that the Brookline Firefighters are among the most well paid in the Commonwealth. Further, the pattern of sick leave use increases during the summer months and on weekends. This use of sick time results in many overtime tours necessary to cover the minimum manning requirements on fire engines. The Advisory Committee has expressed growing concern about this matter for a number of years now as it is having a significant financial impact on the budget. Therefore, it is with some reluctance that we are recommending approval of this contract.

Given the contracts already awarded to other unions, the 3% increase with extra pay for hazardous materials training at the First Responder/Operations level in this contract is reasonable. The Town has indicated a strong interest in addressing the sick leave problem, however, as a practical matter, it decided to settle for a one-year contract and continuing working and negotiating on the sick leave issue. The Advisory Committee strongly urges both the Town Administration and the Fire Department to address the sick leave issue either through administrative and management measures or in the language of the next contract.

#### RECOMMENDATION

The Advisory Committee by a vote of 16-2 recommends FAVORABLE ACTION on the Collective Bargaining Agreement with Local 950 I.A.F.F.

**XXX**

ARTICLE 3

THIRD ARTICLE

To see if the Town will authorize the Town Treasurer, with the approval of the Selectmen, to enter into Compensating Balance Agreement(s) for FY2004 in accordance with General Laws Chapter 44, Section 53F, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

Compensating balances are agreements between a depositor and a bank in which the depositor agrees to maintain a specified level of non-interest bearing deposits in return for which the bank agrees to perform certain services for the depositor. In order to incorporate such compensating balance agreements into the local budget process, the Commonwealth passed a law in 1986 mandating that all such arrangements be authorized by Town Meeting on an annual basis.

Funds have been included in the Treasurer's FY2004 budget to pay for these services directly and the Treasurer does not anticipate using this procedure at this time. This authorization, however, will give the Treasurer the flexibility to enter into such agreements if it should be in the best interest of the Town.

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on March 25, on the following vote.

VOTED: That the Town authorize the Town Treasurer, with the approval of the Selectmen, to enter into Compensating Balance Agreement(s) for FY2004 in accordance with General Laws Chapter 44, Section 53F.

**ROLL CALL VOTE:**

Favorable Action

Kalikow

Geller

Hoy

Allen

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Under a 1986 state law, Town Treasurers may not enter into a compensating balance agreement without an annual authorization from Town Meeting. Under a compensating balance agreement, the Town receives no-fee banking services in exchange for agreeing to maintain a specified level of deposits in an interest-free account.

DISCUSSION

To date, the Treasurer has not used this authority, finding it more advantageous to place Town funds in interest bearing accounts and negotiate service fees with the banks. The Treasurer has no specific plans to enter into any compensating balance agreements, but would like the flexibility to do so if conditions warrant.

RECOMMENDATION

The Advisory Committee by a 20-0 vote recommends FAVORABLE ACTION on the vote recommended by the Selectmen.

*XXX*

ARTICLE 4

FOURTH ARTICLE

To see if the Town will authorize the Comptroller to close out either all or a portion of the unexpended balances in certain Special Appropriations and return said sums to the Surplus Revenue accounts, and rescind the unused portion of prior borrowing authorizations, or act on anything relative thereto.

- 1) Special Appropriation Closeouts
- 2) Baker School Debt Rescission – Bond Authorization, in the amount of \$750,000, for renovations to the Baker School, authorized as Item #82 of Section 11 of Article 5 of the 1998 Annual Town Meeting, to be rescinded.
- 3) Main Library Debt Rescission - Bond Authorization, in the amount of \$7,912,000, for renovations to the Main Library, authorized as Item #88 of Section 12 of Article 4 of the 2000 Annual Town Meeting, to be rescinded.

SELECTMEN’S RECOMMENDATION

This is an annual article required by Section 2.1.4 of the Town’s By-Laws. The Comptroller has furnished the tables that appear on the following pages and detail the status of capital projects and special appropriations broken out by those that are debt financed and those that are funded with current revenues.

Under state statutes, any revenue funds declared surplus must be closed out to free cash at the end of the fiscal year. No action by Town Meeting is required. Surplus funds from bond-financed projects may be appropriated by Town Meeting for any purpose for which a loan may be taken only under a warrant article calling for an appropriation that meets these requirements. No such action is proposed for the Town Meeting.

Parts two and three of the article call for the rescission of two debt authorizations. Part two would rescind \$750,000 of the original \$10.5 million bond authorization approved by Town Meeting at the 1998 Annual Town Meeting for the Baker School renovation. This \$750,000 in debt authorization is no longer needed, as Town Meeting approved that same amount in a revenue-supported special appropriation at the 2002 Fall Town Meeting. Paying for \$750,000 of the project in cash instead of through a debt issuance results in long-term budgetary savings, the reason why such a proposal was recommended back in November.

Part three of the article would rescind \$7.912 million of the original \$11 million bond authorization for the Main Library Renovation Project, which was approved by Town Meeting in May, 2000. This bond authorization is no longer required, nor was it ever anticipated to be actually borrowed: having bond authorization in the full amount of the project was required to obtain the State grant. The \$7.912 million can now be rescinded because the Town is in receipt of the \$3.565 million State grant and \$3.5 million of private fund-raising proceeds.

The Selectmen recommend NO ACTION on part 1 of the article and FAVORABLE ACTION on the votes below related to parts 2 and 3 of the article, by a vote of 5-0 taken on April 29<sup>th</sup>:

VOTED: That the Town rescind the unused portion of the following prior borrowing authorizations:

- 1) Baker School Debt Recission – That the total Bond Authorization, for renovations to the Baker School, authorized as Item #82 of Section 11 of Article 5 of the 1998 Annual Town Meeting be reduced and \$750,000 thereof be rescinded.
- 2) Main Library Debt Recission – That the total Bond Authorization, for renovations to the Main Library, authorized as Item #88 of Section 12 of Article 4 of the 2000 Annual Town Meeting be reduced and \$7,212,000 thereof be rescinded.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This article calls for the rescission of some portion of two previous authorizations that Town Meeting granted to the Town Treasurer to borrow money by issuing bonds for capital or building projects.

DISCUSSION

Town Meeting by a 2/3 vote can grant the Town bond authorization to finance particular projects. In this case Town Meeting voted bond authorization for two projects that exceeded the actual need for borrowing. Favorable action on this article would rescind that portion of these two bond authorizations which was not needed. The projects are as follows:

Baker School Debt Rescission -- In 1998, Town Meeting originally authorized borrowing of up to \$10.5 million for the rehabilitation and expansion of the Baker School. Due to some uncertainty as to the timing of reimbursement by the State for this

project, the Town elected to finance \$750,000 of the project with tax revenues, while waiting an additional year before issuing long-term bonds. The decrease in the amount of the long-term bonds results in some modest savings to the Town in interest.

Main Library Debt Rescission--In 2000, Town Meeting authorized the Town to borrow \$11 million for renovations to the Main Library. We anticipated then that the Library Trustees would seek a State grant for the project for \$3.565 million and privately fund raise another \$3.5 million, which they did successfully. It was necessary to authorize the entire \$11 million in order to qualify for the State grant, but we did not expect to borrow that full amount. This rescission is for the \$7,912,000 that was covered by the State grant and by the private fund raising effort.

#### RECOMMENDATION

The Advisory Committee by a vote of 18-0 recommends FAVORABLE ACTION on the vote offered by the Selectmen.

**XXX**

ARTICLE 5

FIFTH ARTICLE

To see if the Town will, in accordance with General Laws, Chapter 44, Section 64, authorize the payment of one or more of the bills of the previous 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. The Police and Fire Departments have a number of unpaid bills related to the medical expenses for public safety employees who were injured in the line of duty. The Town is responsible for these expenditures under MGL Chapter 41, Section 100. These bills were received by the Town late due, in most cases, to the fact that they were mistakenly sent to the employees' insurance company, not the Town. These medical bills total \$7,449.84 (\$3,811.01 Police Department / \$3,638.83 Fire Department).

There is one additional unpaid bill from the Fire Department, a \$416.01 bill owed to Verizon for telephone services. This brings the total unpaid bills amount to \$7,865.85 (\$3,811.01 Police Department / \$4,054.84 Fire Department). The Board has reviewed the following bills and verified that they are valid obligations of the Town:

**POLICE DEPARTMENT**

Anesthesia Assoc. of Mass.	241.09
Medical Care of Boston	39.27
Beth Israel Deaconess	2,067.35
Brigham and Women's	224.27
Occupational Health Center. N.E. Baptist	885.85
Fallon Ambulance	327.26
Walgreens	25.92

**FIRE DEPARTMENT**

Occupational Health Center. N.E. Baptist	248.69
Brigham and Women's	1,286.55
Newton-Wellesley	38.37
Beth Israel Deaconess	618.61
New England Baptist	875.33
St. Elizabeth's	533.93
Surgi-Care, Inc.	19.35
Mass Eye and Ear	18.00
Verizon	416.01

The Selectmen recommend FAVORABLE ACTION, by a 5-0 vote taken on April 22, on the votes offered by the Advisory Committee.

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### ADVISORY COMMITTEE'S RECOMMENDATION

#### BACKGROUND

State law provides that unpaid bills from previous fiscal years may not be paid from the current year's funds without approval of Town Meeting.

#### DISCUSSION

Town officials are aware of \$7,449.84 of unpaid healthcare bills relating to police and fire personnel as detailed below, and a \$416.01 phone bill from Verizon from prior fiscal years. They represent that these bills are valid and proper, and that they should be paid.

Service Provider	Police	Fire	Total
Beth Israel Deaconess	2,067.35	618.61	2,685.96
Brigham and Women's	224.27	1,286.55	1,510.82
Occupational Health Center. N.E. Baptist	885.85	248.69	1,134.54
New England Baptist		875.33	875.33
St. Elizabeth's		533.93	533.93
Fallon Ambulance	327.26		327.26
Anesthesia Assoc. of Mass.	241.09		241.09
Medical Care of Boston	39.27		39.27
Newton-Wellesley		38.37	38.37
Walgreens	25.92		25.92
Surgi-Care, Inc.		19.35	19.35
Mass Eye and Ear		18.00	18.00
Totals	3,811.01	3,638.83	7,449.84

Many of the Fire Department bills relate back to injuries received when a presidential helicopter was practicing a landing in Brookline, which was done improperly. The Police Department medical bills are the result of a variety of smaller injuries. The telephone bill, which relates to the Fire Department, apparently got lost between departments. The Town now has a public health nurse who is closely monitoring bills for injured workers, so we anticipate that bills may be resolved in a more timely manner in the future.

#### RECOMMENDATION

The Advisory Committee by a vote of 18-0 recommends FAVORABLE ACTION on the following vote, which reflects medical bills outlined in the chart above totaling \$3,811.01

for the Police Department and \$3,638.83 for the Fire Department and on the Verizon telephone bill for \$416.01.

VOTED: To authorize the payment of the following unpaid bills of previous fiscal years from the FY2003 Police Department budget:

Anesthesia Assoc. of Mass.	241.09
Medical Care of Boston	39.27
Beth Israel Deaconess	2,067.35
Brigham and Women's	224.27
Occupational Health Center. N.E. Baptist	885.85
Fallon Ambulance	327.26
Walgreens	25.92

VOTED: To authorize the payment of the following unpaid bills of previous fiscal years from the FY2003 Fire Department budget:

Occupational Health Center. N.E. Baptist	248.69
Brigham and Women's	1,286.55
Newton-Wellesley	38.37
Beth Israel Deaconess	618.61
New England Baptist	875.33
St. Elizabeth's	533.93
Surgi-Care, Inc.	19.35
Mass Eye and Ear	18.00
Verizon	416.01

**XXX**

ARTICLE 6

SIXTH ARTICLE

To see if the town will elect to establish an additional property tax exemption for fiscal year 2004 which shall be uniform for all exemptions, in accordance with Section 4 of Chapter 73 of the Acts of 1986, as amended by Chapter 126 of the Acts of 1988, and accept said Section 4, as amended, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

This article provides for an increase in the property tax exemptions for certain classes of individuals, including surviving spouses, the elderly, the blind, and disabled veterans. The proposed increases, which require annual reauthorizations, have been approved annually since FY89. The estimated cost is approximately \$37,000 and is funded from the tax abatement overlay account. The law allows the Town to increase the exemption by up to 100% as indicated on the following schedule:

<u>Description</u>	<u>Ch. 59, Sec.5 Clause</u>	<u>Current Amount of Taxes Exempted</u>	<u>Proposed Amount of Taxes Exempted</u>
Surviving Spouse	17D	\$175	\$350
Veteran (10% Disability)	22	\$250	\$500
Veteran (loss of one hand, foot or eye)	22A	\$425	\$850
Veteran (loss of two hands, feet or eyes)	22B	\$775	\$1,550
Veteran (special housing)	22C	\$950	\$1,900
Veteran (certain widows of soldiers)	22D	\$250	\$500
Veteran (100% disability, cannot work)	22E	\$600	\$1,200
Blind	37A	\$500	\$1,000
Elderly	41C	\$500	\$1,000

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on March 25, on the following vote:

VOTED: That the town elect to establish an additional property tax exemption for fiscal year 2004 which shall be uniform for all exemptions, in accordance with Section 4 of Chapter 73 of the Acts of 1986, as amended by Chapter 126 of the Acts of 1988, and accept said Section 4, as amended.

**ROLL CALL VOTE:**

Favorable Action

Kalikow

Geller

Hoy  
Allen

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This Article would allow the Town to continue its current practice of increasing state-mandated property tax exemptions for several classes of taxpayers, including veterans with a 10% or greater disability, surviving spouses, blind taxpayers, and low-income elderly taxpayers. The town is required to give these taxpayers a basic exemption whose amount is specified in state law and which is partially reimbursed by the state. The Town also has the option to increase these exemptions by any amount up to 100%. The increase must be uniform across all the exemptions, and the increased exemption may not decrease an individual taxpayer's liability below the previous year's amount.

DISCUSSION

The proposed increases, tabulated below, require annual authorization and have been approved by Town Meeting each year since FY1989. The Assessor estimates that the cost for FY2004 will be about \$37,000 (down from \$56,000 in FY 2003) and has already built a reserve for this purpose in the FY2004 tax abatement overlay account.

Description	Clause	Base Amount (\$)	Proposed Amount (\$)
Surviving Spouse	17D	175	350
Veteran (10% disability)	22	250	500
Veteran (loss of one hand, foot or eye)	22A	425	850
Veteran (loss of two hands, feet or eyes)	22B	775	1550
Veteran (special housing)	22C	950	1,900
Veteran (certain widows of soldiers)	22C	250	500
Veteran (100% disability, cannot work)	22E	600	1,200
Blind	37E	500	1,000
Elderly	41C	500	1,000

RECOMMENDATION

The Advisory Committee by a 20-0 vote recommends FAVORABLE ACTION on the vote for Article 6 as recommended by the Selectmen.

XXX

ARTICLE 7

SEVENTH ARTICLE

To see if the Town will authorize the Commissioner of Public Works to establish, under General Laws, Chapter 44, Section 53E ½, a Revolving Fund,

- A.) for the purchase of town-owned vehicles and equipment;
- B.) to be funded with the receipts received from the auction of town-owned vehicles;
- C.) with expenditures from the Revolving Fund to be authorized by the Commissioner of Public Works, with the written approval of the Board of Selectmen; and
- D.) with the annual total expenditures from the Revolving Fund not to exceed \$250,000 in any fiscal year.,

or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

Article 7 would establish a revolving fund, to be under the auspices of the Department of Public Works (DPW), for the purchase of vehicles and equipment. The monies generated for deposit into the fund would come from the auction or sale of town-owned vehicles. This fund was requested by DPW as part of a change in the manner in which that department disposes of Town-owned vehicles (with the exception of Fire Department apparatus).

The primary change is that the used Town-owned vehicles will be auctioned instead of traded at the time of the purchase of a new vehicle. The fundamental logic behind this change is quite simple: DPW can get more value in return for a Town asset via an auction than a trade-in. This was proven in a pilot project that DPW conducted with the Town's Chief Procurement Officer, when a used vehicle was auctioned for approximately 50% more than was offered for a trade-in.

In order to utilize the proceeds generated from the auction, a mechanism must be established. The mechanism is a revolving fund, set up under Ch. 44, Sec. 53E ½ of Massachusetts General Laws. Once received, the funds would be deposited into the revolving fund and used to help pay for the purchase costs associated with the Department's vehicle / equipment replacement schedule.

The Selectmen recommend FAVORABLE ACTION, by a 5-0 vote taken on April 15, on the following vote:

VOTED: That the Town authorize the Commissioner of Public Works to establish, under General Laws, Chapter 44, Section 53E ½, a Revolving Fund,

- A.) for the purchase of town-owned vehicles and equipment;

- B.) to be funded with the receipts received from the auction or sale of town-owned vehicles;
- C.) with expenditures from the Revolving Fund to be authorized by the Commissioner of Public Works, with the written approval of the Board of Selectmen; and
- D.) with the annual total expenditures from the Revolving Fund not to exceed \$100,000 in any fiscal year.

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### ADVISORY COMMITTEE'S RECOMMENDATION

#### BACKGROUND

This article would allow the Town to set up a revolving fund for the proceeds from the sale of Town vehicles at auction which could then be used toward new vehicle purchases. By this method, the Town could receive maximum value for used Town vehicles at replacement time by sale of the vehicles at auction, in lieu of trade-in.

#### DISCUSSION

The Town currently appropriates \$700,000 annually for vehicle replacement as provided by the Proposition 2 1/2 Override that was effective in FY1995. This amount is effectively supplemented by the estimated trade-in value of each vehicle to be replaced in the fiscal year. The total amount, including the estimated trade-in values, is programmed annually as part of the Town budget process for new vehicles. The need for new vehicles is determined according to the schedule in the Vehicle Replacement Plan, which includes all Town vehicles (about 149 in number), except School Department vehicles and Fire trucks. Eight to ten vehicles are replaced each year on the average.

New vehicles are generally purchased from dealers selected through a competitive process by the Commonwealth of Massachusetts. Trade-in prices are negotiated by individual communities and selling dealers at the time of sale. These prices are typically low since dealers usually have little interest in the used vehicles and/or wish to maximize their own receipts from the subsequent resale of the vehicles. Department of Public Works managers recognize that the receipts for used vehicles at replacement time can be maximized if the vehicles are sold at one of several established vehicle auction sites instead of being traded in. This was demonstrated recently in a small pilot project in which a sedan was auctioned for approximately twice the estimated trade in value. Overall, the Department anticipates that the receipts from used vehicles will increase by use of the auction procedure by about 50 percent.

In the pilot case, receipts from the auction of the vehicle had to be deposited in the General Fund as there was no mechanism to retain them for future vehicle purchases as is the current practice with regard to trade in amounts. This actually left the individual departments with fewer purchasing dollars for new vehicles since they no longer had the trade-in value. The establishment of the revolving fund will provide the needed mechanism to continue the practice of retaining receipts from the disposition of used vehicles for use towards the purchase of new vehicles. Internal controls will segregate receipts from the sale of a given department's vehicles and limit the expenditure of those receipts towards replacement

vehicles for the same department. State law requires that revolving funds have a cap. The Warrant Article called for a cap of \$250,000 but the Advisory Committee recommends that this cap be set at \$100,000 initially. Expenditures from the revolving fund can be made only by the Commissioner of Public Works with written authorization by the Board of Selectmen.

RECOMMENDATION

A substantial majority of the Advisory Committee by a vote of 14-6 recommends FAVORABLE ACTION on the vote offered by the Selectmen.

**XXX**

ARTICLE 8

EIGHTH ARTICLE

To see if the Town will authorize the Director of Planning and Community Development to establish, under General Laws, Chapter 44, Section 53E ½, a Revolving Fund,

- A.) for a Façade Improvement Loan Program;
- B.) to be funded by appropriation and by the funds received from Façade Improvement Loan recipients;
- C.) with expenditures from the Revolving Fund to be authorized by the Director of Planning and Community Development, with the written approval of the Board of Selectmen; and
- D.) with the annual total expenditures from the Revolving Fund not to exceed \$30,000 in any fiscal year,

or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

As part of the budgets for FY02 and FY03, Town Meeting approved \$30,000 (\$20,000 for FY02 and \$10,000 for FY03) for a Façade Improvement Loan Program. While the votes of Town Meeting put the funding in place, there was no vehicle available into which the loan repayments could be deposited. A purely administrative article, Article 8 creates a revolving fund, under Chapter 44, Section 53E ½ of Massachusetts General Laws, for this purpose. It will be under the jurisdiction of the Director of Planning and Community Development.

The Façade Improvement Loan Program is modeled after the Main Streets Program, which is reported to be quite successful in transforming storefronts across the country. The Economic Development Advisory Board (EDAB) will oversee the program and plans to award five-year grants, up to a maximum of \$10,000, at an interest rate equal to five percentage points below prime, with a minimum interest rate of 1%. Of the grant amount, 10% can be used for design services.

The first grants are planned for helping business along the Town's first Community Street, Webster Street, improve their facades.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on April 15, on the vote offered by the Advisory Committee:

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Two years ago, a Façade Improvement Program for the storefronts of town businesses was created by the Planning Office as part of the overall commercial area improvements plan. The Capital Improvement Program has called for an allocation of \$20,000 in FY 02 and then \$10,000 in FY03. That has provided seed money to enable the funding of low cost loans to businesses to help finance storefront improvements.

DISCUSSION

Article 8 would now establish the continuation of the loan program with a revolving fund. It will be modeled after successful programs for main street areas that encourage improvements in local business districts. It will be self funding so that as loans are repaid, new ones can be financed. This will simply allow the program to continue without further funding from the town.

All loans would be authorized by the Director of Planning and Community Development and need the written approval of the Board of Selectmen; the total for any year cannot exceed \$30,000. The loans will have a small origination fee or very low interest rate, just to cover administration costs.

A likely first area of improvement is anticipated to be along Webster Street, where the backs of existing stores will soon be facing onto the new streetscape being developed as part of the hotel project.

RECOMMENDATION

The Advisory Committee by a vote of 18-0 recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town authorize the Director of Planning and Community Development to establish, under General Laws, Chapter 44, Section 53E ½, a Façade Improvement Revolving Fund,

- A.) for a Façade Improvement Loan Program;
- B.) to be funded by appropriation and by the funds received from Façade Improvement Loan recipients;
- C.) with expenditures from the Revolving Fund to be authorized by the Director of Planning and Community Development, with the written approval of the Board of Selectmen; and
- D.) with the annual total expenditures from the Revolving Fund not to exceed \$30,000 in any fiscal year, and
- E.) transfer \$20,000 from 1720WS02 6E0024 and \$10,000 from 1720WS03 6E0024 to the Revolving Fund.

ARTICLE 9

NINTH ARTICLE

To see if the Town will raise and appropriate or appropriate from available funds additional funds to the various accounts in the fiscal year 2003 budget or transfer funds between said accounts, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

The proposed amendment relates to the Chapter 90 program, which funds local road and bridge projects. During the development of the FY03 budget, the status of Chapter 90 funding was uncertain. On August 10, 2002, the Governor signed a long-awaited Transportation Bond Bill that included \$200 million statewide in Chapter 90 funding. The State plans to authorize this \$200 million in two annual \$100 million installments in FY03 and FY04.

On September 16, 2002, the Town received its award letter from MassHighway, which stated that the Town would receive \$484,117.27 in FY03. That amount is \$230,117.27 greater than the \$254,000 approved as part of the FY03 budget. Therefore, the Chapter 90 funded line within the Special Appropriations (CIP) portion of the budget needs to be increased by that amount.

Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 3-0 taken on April 8, on the vote offered by the Advisory Committee.

**ROLL CALL VOTE:**

Favorable Action

Goldberg

Hoy

Allen

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Many of the Town's road projects are financed with money received from the State through the Chapter 90 program. The budget for road projects for the current fiscal year, FY03 was

based on an estimate and this article is necessary to adjust the budget to the actual amount we received from the State.

DISCUSSION

This year we anticipated no increase or a drop in funding in this area. But in September 2002, the Town learned that it would receive \$484,117.27 for FY03 (we received \$242,058.64 in FY02). This is an increase of \$230,117.27 over the amount we approved in the budget vote at the Annual Town Meeting in May 2002. Therefore, we need to vote to increase the Special Appropriation for Street Rehabilitation for FY03.

RECOMMENDATION

The Advisory Committee, by a unanimous vote of 19-0 recommends FAVORABLE ACTION on the following vote:

VOTED: To amend the FY2003 budget to reflect a \$230,117.27 increase in Chapter 90 funding and authorizing the expenditure of such sum as follows:

<u>Item #</u>	<u>Voted</u> <u>5/28/02</u>	<u>Change</u>	<u>Revised</u> <u>Amount</u>
59. Street Rehabilitation (Ch. 90)	\$254,000	+\$230,117.27	\$484,117.27

**XXX**

ARTICLE 10

TENTH ARTICLE

To see if the Town will authorize and approve the filing of a Petition, in substantially the following form, with the General Court:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ALLOW NON-RESIDENT STUDENTS TO ATTEND ITS PUBLIC SCHOOLS

Be it enacted, etc., as follows:

Section 1. Notwithstanding any general or special law to the contrary, the Town of Brookline may allow non-resident students to attend its public schools, upon such terms and conditions as the school committee may determine, and without limiting the generality of the foregoing, including the establishment of fee and tuition expenses and charges and attendance and conduct standards.

Section 2. This act shall take effect upon its passage.

or act on anything relative thereto.

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School Committee comments:

Prior to the passage of the Education Reform Act, Brookline competed successfully with private schools for tuition-paying students. The Education Reform Act prohibited Massachusetts from enrolling tuition-paying students from within the state. It sought instead to create a state-wide school choice program. Under school choice, districts must accept non-resident students on the basis of a lottery. The receiving district receives additional funds from the state. Corresponding funds are deducted from the state aid received by the students' home district.

The School Committee has consistently voted not to participate in school choice for a variety of reasons. In addition to concerns about the program as a whole, the committee believes that the funding provided under school choice is inadequate to cover the cost of educating the students.

This proposed Home Rule petition would restore our right to accept within state non-resident students on a tuition-paying basis. Currently, the School Committee has set tuition for a small number of out-of-district students at \$9,500. The School Committee anticipates raising tuition substantially over the next few years to a level comparable to that set by private schools and that the tuition would exceed the full cost of the student's education by about \$5,000.

In 1995, Brookline enrolled 52 full-tuition paying students. If we were to enroll a similar number of students, the net subsidy to the schools would be approximately \$260,000.

SELECTMEN'S RECOMMENDATION

Article 10 is a Home Rule Petition, filed by the School Committee, that would allow the School Department to allow non-residents to attend the Brookline Public School System and charge them tuition to do so. Prior to the passage of School choice, the School Department did charge tuition to allow non-residents to attend Brookline Public School system. This Home Rule Petition would simply enable the School Department to do what it once was able to do.

The School Committee estimates that they could generate approximately \$250,000 a year under such a proposal, based upon a tuition of between \$12,000 and \$14,000. While the School Committee believes that they will have no problem attracting non-resident students to Brookline, based upon the reputation of the Brookline School system, they have assured the Selectmen that they will operate the program in a way such that a non-resident student would not displace a Brookline resident.

The Board welcomes the School Committee's creative approach during these tight financial times and supports this proposal. The Board did have some concerns regarding the impact of the proposal on class size and over-crowding, but during review of the article it became quite evident that the School Committee is cognizant of the concerns and has a framework for the implementation of this program that avoids such situations.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on April 29, on the following vote:

VOTED: That the Town authorize and approve the filing of a Petition, in substantially the following form, with the General Court:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ALLOW NON-RESIDENT STUDENTS TO ATTEND ITS PUBLIC SCHOOLS

Be it enacted, etc., as follows:

Section 1. Notwithstanding any general or special law to the contrary, the Town of Brookline may allow non-resident students to attend its public schools, upon such terms and conditions as the school committee may determine, and without limiting the generality of the foregoing, including the establishment of fee and tuition expenses and charges and attendance and conduct standards.

Section 2. This act shall take effect upon its passage.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 10 authorizes the Town to file the following Home Rule Petition with the General Court to allow non-resident students to attend its public schools.

"Notwithstanding any general or special law to the contrary, the Town of Brookline may allow non-resident students to attend its public schools, upon such terms and conditions as the school committee may determine, and without limiting the generality of the foregoing, including the establishment of fee and tuition expenses and charges and attendance and conduct standards.."

DISCUSSION

The "general or special law to the contrary" is the statewide interdistrict School Choice Statute, revised under the Education Reform Act of 1993, under which local communities are not allowed to charge tuition for out-of-district students who wish to attend their schools. If a community opts for Choice, it informs the Department of Education annually of available spaces in its school system and a lottery is then conducted to determine which out-of town applicants will occupy them. The State then cuts its Chapter #70 allocation to the sending community by 75% of the state-wide average cost per pupil up to a maximum of \$5,000 and sends it to the receiving community. Busing is not included.

Brookline has opted not to participate in this program as it would be too costly for us. It does not cover our cost per pupil. Our cost per regular day pupil for FY02 was \$8,405, excluding bilingual and Special Education ("SPED") costs. Total day costs were \$10,268 per pupil, including bilingual and SPED that is handled within the district but excluding Special Needs private placements and transportation. In addition, the School Committee has rejected the School Choice plan because it feels that the program could drain resources from neighboring urban school districts.

Brookline can, and does, charge tuition for out-of-state (mostly foreign) students. This year, it is \$7,800 and it will rise to \$9,500 for the 2003-04 school year. Children of Town employees are charged a materials fee which is \$850.00 this year and going to \$1,000 next year.

The main reason for this Home Rule Petition is economic. It would free Brookline from the constraints of the state School Choice program and allow us to charge tuition for any non-resident students who wish to attend the Brookline Public Schools.

Some possible arguments against this Article are that the public schools should not compete with private schools, that we lose the economic diversity that Choice allows, and that this funding would be at the expense of class size. (Brookline Schools Superintendent and School Committee Chair maintain that this last would not be so and

that the current average class size of 19.8 - 20 next year, could be maintained even with the introduction of some tuition student. It would also allow the School District to increase its financial resources in a time of shrinking budgets.

Brookline is very competitive with private schools and could attract many out-of-district students. We believe that, with all the fiscal constraints facing us, we need to maximize every opportunity to bring dollars into our school system. This could also be a way to help pay for non-Brookline students who come to us through METCO, for whom we receive a grant from the State that does not cover their full education. This type of fundraising is an approach which will allow us to protect the quality of our school system, without an increase in taxes.

RECOMMENDATION

The Advisory Committee unanimously by a vote of 14-0 recommends FAVORABLE ACTION on the vote offered by the Selectmen.

**XXX**

ARTICLE 11ELEVENTH ARTICLE

To see if the Town will:

A.) Fiscal Year 2004 Budget

Appropriate the sums, or any other sum or sums, requested or proposed by the Selectmen or by any other officer, board or committee, for the fiscal year 2004 budget, including without limiting the foregoing, all town expenses and purposes, debt and interest, out of state travel, operating expenses, stabilization fund as provided for in General Laws Chapter 41, Section 108; authorize the continuation of all revolving funds in accordance with G.L. Chapter 44, Section 53E ½, and all Enterprise Funds in accordance with G.L. Chapter 44, Section 53F ½; and provide for a reserve fund.

B.) Fiscal Year 2004 Special Appropriations

Appropriate sums of money for the following special purposes:

- 1.) Appropriate \$60,000, or any other sum, to be expended under the direction of the Chief Procurement Officer, with the approval of the Board of Selectmen, for furnishings and equipment for Town Buildings.
- 2.) Appropriate \$50,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for removal of asbestos from Town-owned buildings.
- 3.) Appropriate \$50,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for ADA renovations to Town-owned buildings.
- 4.) Appropriate \$45,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for the purpose of improving municipal building security.
- 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 the enhancement of town-wide hardware and software.
- 6.) Appropriate \$150,000, or any other sum, to be expended under the direction of the Chief Information Officer, with the approval of the Board of Selectmen and the School Committee, for an Instructional Technology Study.
- 7.) Appropriate \$180,000, 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 streetscape and civic space improvements.

- 8.) Appropriate \$325,000, or any other sum, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the purchase of a fire engine.
- 9.) Appropriate \$500,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for the construction of an Emergency Operations Center at the Municipal Service Center.
- 10.) Appropriate \$60,000, or any other sum, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for a training module and associated equipment.
- 11.) Appropriate \$30,000, or any other sum, to be expended under the direction of the Human Resources Director, with the approval of the Board of Selectmen, for physical fitness equipment for the Fire Department.
- 12.) Appropriate \$37,000, or any other sum, to be expended under the direction of the Police Chief, with the approval of the Board of Selectmen, for police radio improvements.
- 13.) Appropriate \$165,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for improvements to the Fire Training building.
- 14.) Appropriate \$45,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the Board of Library Trustees, for fire alarm improvements at the Coolidge Corner Library.
- 15.) Appropriate \$345,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the Board of Library Trustees, for the upgrade of the HVAC system at the Coolidge Corner Library.
- 16.) Appropriate \$120,000, 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 modernization of the traffic signal at the Mountfort Street / Carlton Street intersection.
- 17.) Appropriate \$100,000, 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 modernization of the traffic signal at the Independence Drive / Beverly Road / Russett Road intersection.
- 18.) Appropriate \$135,000, 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 installation of a traffic signal at the Grove Street / Allendale Road intersection.
- 19.) Appropriate \$25,000, 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 a traffic signal at the South Street / Grove Street intersection.

- 20.) Appropriate \$25,000, 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 study and design of traffic improvements at the Newton Street / West Roxbury Parkway intersection and/or neighboring streets.
- 21.) 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 a study and design of traffic improvements at Horace James Circle, Putterham Circle, and/or nearby streets.
- 22.) Appropriate \$60,000, 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 modernization of the traffic signal at Fire Station #6.
- 23.) Appropriate \$60,000, 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 modernization of the traffic signal at Fire Station #7.
- 24.) 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 purchase of parking meters.
- 25.) Appropriate \$1,000,000, 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 rehabilitation of streets.
- 26.) Appropriate \$484,117, 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 rehabilitation of streets.
- 27.) Appropriate \$200,000, 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 traffic calming studies and improvements.
- 28.) Appropriate \$150,000, 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 repairs to the Lincoln School Wall.
- 29.) Appropriate \$200,000, 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 sidewalk reconstruction.
- 30.) Appropriate \$1,000,000, 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 assessment and corrective action associated with the Newton Street Landfill.
- 31.) Appropriate \$100,000, 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 streetlight replacement and repairs.

- 32.) 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 cost of preliminary plans for and other preliminary costs associated with the reconstruction, relocation, and removal of the Carlton Street Footbridge, inclusive of mitigation, with provision, in the event of either reconstruction or relocation, for full ADA compliance.
- 33.) Appropriate \$90,000, 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 reconstruction, relocation, or removal of the Carlton Street Footbridge.
- 34.) Appropriate \$250,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Parks and Recreation Commission and the Board of Selectmen, for the renovation of playground equipment, fields, and fencing.
- 35.) Appropriate \$150,000, 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 rehabilitation of Town / School grounds.
- 36.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Parks and Recreation Commission and the Board of Selectmen, for improvements to Longwood Park.
- 37.) Appropriate \$35,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Park and Recreation Commission, for the design of Amory Field improvements.
- 38.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Park and Recreation Commission, for improvements to Coolidge Park.
- 39.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Tree Planting Committee, for the removal and replacement of trees.
- 40.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Park and Recreation Commission and the Board of Selectmen, for the replacement of lockers at the Municipal Swimming Pool.
- 41.) Appropriate \$45,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Park and Recreation Commission and the Board of Selectmen, for the study, design and repair of the roof of the Municipal Swimming Pool.
- 42.) Appropriate \$25,000, or any other sum, to be expended under the direction of the Chief Procurement Officer, with the approval of the School Committee and the Board of Selectmen, for school furniture upgrades.

- 43.) Appropriate \$30,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the School Committee and the Board of Selectmen, for the replacement of a burner and installation of an oil tank at the Lincoln School.
- 44.) Appropriate \$230,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the School Committee and the Board of Selectmen, for gutters and downspouts at the Old Lincoln School.
- 45.) Appropriate \$30,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the School Committee and the Board of Selectmen, for trash compactors at various schools.
- 46.) Appropriate \$50,000, 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 water meter replacement.
- 47.) Appropriate \$7,890,000, 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 capping of the Newton Street Landfill and the development of a park.
- 48.) Appropriate \$2,600,000, 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 reconstruction of Beacon Street.
- 49.) Appropriate \$1,425,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the School Committee, for the repair and improvements of the Driscoll School.

C.) Funding

And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or by any combination of the foregoing, and authorize the leasing, leasing with an option to purchase, or the installment purchase of any equipment or any capital items; 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, gifts, reimbursements, and aid from both federal, state, and other sources and agencies for any of the purposes aforesaid, or act on anything relative thereto.

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### SELECTMEN'S RECOMMENDATION

While the timing of the second Revised Financial Plan, which is predicated upon final budget action by the full House of Representatives, and the Board of Selectmen's schedule have combined to make it impossible for the Board to take a formal vote on the final budget, at this time the Board is in full agreement with the Advisory Committee on the FY2004 Town Budget as recommended under their vote. The Board is scheduled to take a vote at its May 13 meeting and will submit a supplemental report, if warranted.

The budget proposed by the Advisory Committee totals \$180,590,820, an increase of \$4,470,370 (2.5%) over the current fiscal year. This includes a General Fund operating budget of \$148,275,359, which represents an increase of \$4,219,296 (2.9%) over the current year. Also included are a free cash/tax-financed capital budget (\$7,066,117), enterprise fund budgets (\$21,762,946), and a non-appropriated budget (\$8,019,558)<sup>1</sup>.

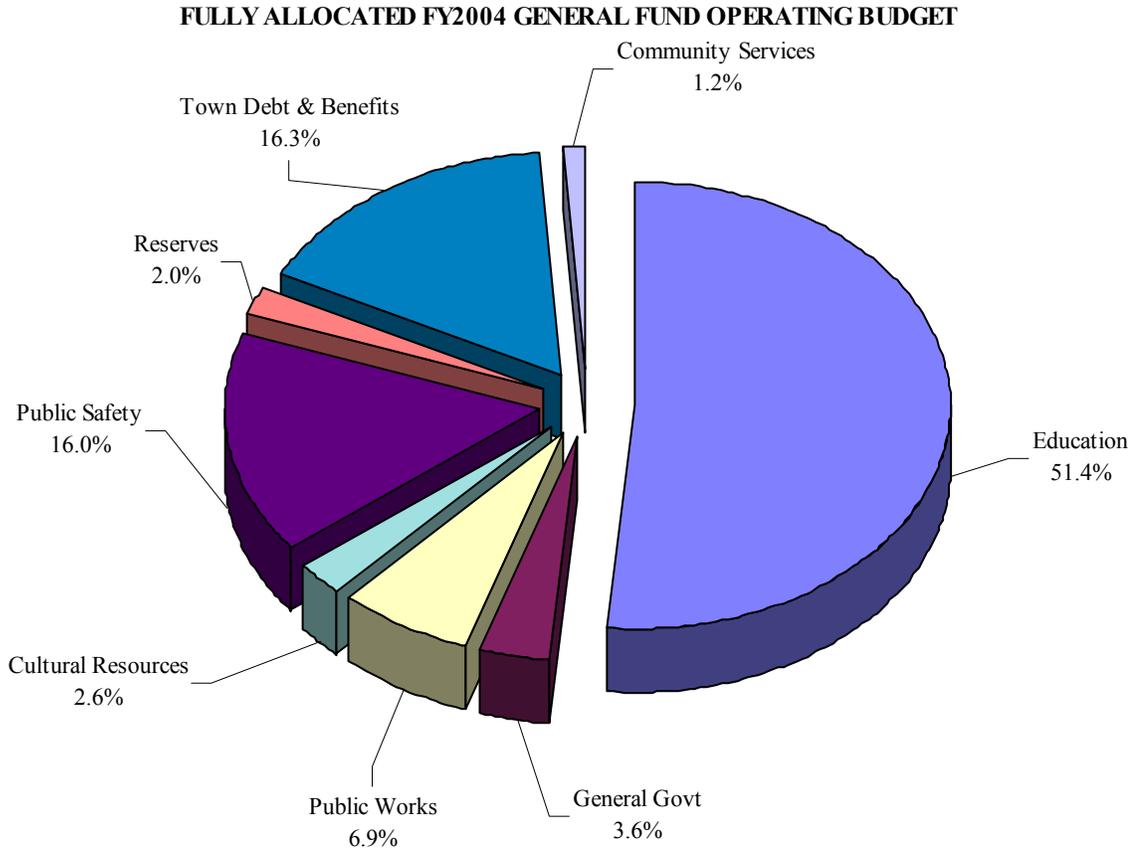
The major categories of General Fund revenues and expenses are summarized as follows:

<b>FY2004 GENERAL FUND SUMMARY</b>			
	FY2004 PROPOSED	<b>INCREASE/DECREASE</b>	
		\$	%
<b>REVENUE</b>			
Property Tax	114,151,367	4,619,309	4.2%
Local Receipts	18,572,844	1,128,866	6.5%
State Aid	16,968,927	(2,863,583)	-14.4%
Free Cash	5,602,961	341,164	6.5%
Other Available Funds	8,064,935	(39,628)	-0.5%
<b>TOTAL REVENUE</b>	<b>163,361,034</b>	<b>3,186,128</b>	<b>2.0%</b>
<b>(LESS) NON-APPROPRIATED EXPENSES</b>			
State & County Charges	5,430,882	(140,339)	-2.5%
Tax Abatement Overlay	1,500,000	(1,060,059)	-41.4%
Deficits & Judgments	50,000	(21,250)	-29.8%
Cherry Sheet Offsets	1,038,676	(109,843)	-9.6%
<b>TOTAL NON-APPROPRIATED EXPENSES</b>	<b>8,019,558</b>	<b>(1,331,491)</b>	<b>-14.2%</b>
<b>AMOUNT AVAILABLE FOR APPROPRIATION</b>	<b>155,341,476</b>	<b>4,517,619</b>	<b>3.0%</b>
<b>APPROPRIATIONS</b>			
Town Departments	52,369,686	416,445	0.8%
School Department	53,759,732	1,353,604	2.6%
Non-Departmental Total	42,145,941	2,449,247	6.2%
General Fund Non-Departmental	36,656,678	2,608,992	7.7%
Water and Sewer Enterprise Fund Overhead *	4,849,473	(275,996)	-5.4%
Golf Enterprise Fund Overhead *	512,642	39,328	8.3%
Recreation Revolving Fund Overhead *	127,148	76,923	
<b>OPERATING BUDGET SUBTOTAL</b>	<b>148,275,359</b>	<b>4,219,296</b>	<b>2.9%</b>
Capital & Special Appropriations	7,066,117	298,323	4.4%
<b>TOTAL APPROPRIATIONS</b>	<b>155,341,476</b>	<b>4,517,618</b>	<b>3.0%</b>
<b>BALANCE</b>	<b>0</b>	<b>0</b>	

\* These Overhead figures match the Water and Sewer Enterprise Fund Reimbursement, Golf Enterprise Fund Reimbursement, and Recreation Revolving Fund Reimbursement revenue sources found under the "Other Available Funds" revenue category.

Graphically, the fully-allocated \$148.3 million General Fund operating budget is shown below:

<sup>1</sup> The non-appropriated budget consists of State and County Assessments, Cherry Sheet offset items, and the Overlay.



### **FY04 BUDGET**

The FY04 budget process was complicated due to the later-than-usual submission of the Governor's budget proposal (House 1). Under the State Constitution, when a new Governor takes office, s/he is allowed to submit a budget proposal a month later than the usual deadline of the third week in January. Since the Town Administrator's Financial Plan is due by February 15, per Town By-Laws, and House 1 serves as the Town's benchmark for budgeting Local Aid, a late-February publication of House 1 places the Town in the awkward position of having no true estimate of Local Aid. Therefore, there is a strong possibility that the Town Administrator's Financial Plan could be out of balance shortly after publication, a reality that revealed itself this year<sup>2</sup>.

The original Financial Plan submitted by the Town Administrator included a Local Aid cut of \$2 million. House 1, which was published on February 26, included a Local Aid cut of \$2.4 million, creating a \$377,439 deficit in the Town Administrator's Financial Plan. A plan was developed to close the gap and a Revised Financial Plan was produced on March 3, just six days after Governor Romney's budget was submitted. This quick turnaround of a revised budget plan speaks clearly to the abilities of the Town's financial team and to the Town's financial policies.

The next step in the budget process was the release of the House Ways and Means (HWM) budget on April 23. That budget proposal resulted in an even larger Local Aid cut of \$2.9

<sup>2</sup> It is for these reasons that the Board of Selectmen unanimously recommend Favorable Action on Article 24.

million (as compared to the \$2.4 million cut included in the Governor's budget), creating a new deficit of \$481,204. As was the case after the publication of House 1, the Town Administrator was able to quickly produce a plan to close the budget gap. On Thursday, April 25, he made a presentation to the Advisory Committee outlining the impacts of the HWM budget and how he planned to handle them. Then on Tuesday, April 29, detailed presentations on the deficit closure plan were made to both the Board of Selectmen and the Advisory Committee. The plan was predicated upon the following four core components:

- No increase in class size
- No reduction in sworn public safety personnel
- No lay-offs of Town/School personnel supported by the General Fund
- No outright elimination of essential services

A key cutback included in the plan to close the final budget gap is the first-time proposal to reduce "pay-as-you-go" capital below levels called for in Town fiscal policies. Doing so brings the Town's commitment to its CIP below the policy of 5.5% of the prior year's net revenue (to 5.37%). Specifically, it is recommended that \$180,000 in revenue-financed CIP capacity be used to support the operating budget. It is imperative that this cutback in the capital budget be restored as soon as possible. This will not only bring CIP funding back in line with established policies, but it also is necessary to fund the increased debt service expected in FY06 due to additional permanent financing for the Landfill, Fisher Hill, and other projects.

The Town's financial policies, which are printed below in their entirety, have been instrumental in the Town's ability to withstand the current economic realities without resorting to massive service cuts and/or property tax increases above the Proposition 2 ½ limit. The hard work and foresight of the FPAC, and others who have helped shape fiscal policies, have proven invaluable, as the Town is proposing a FY04 budget that includes absorbing a reduction in Local Aid of close to \$3 million without reducing public safety presence, without reversing the recent gains in the quality of education, and without asking residents, who are already being squeezed financially by the economic slowdown and the recent tax increases at the state level, to bear more of a tax burden. These and other similar actions are being proposed across the Commonwealth by municipalities who did not position themselves for the inevitable economic contraction that many had predicted.

The importance of the Town's carefully crafted financial policies is why we are recommending that the deviation from the 5.5% policy be restored as soon as possible. This proposal should in no way be viewed as a permanent departure. The strong potential for another difficult year in FY05, in terms of Local Aid, further buttresses the argument for full adherence to the Town's financial policies. In addition, the Town Administrator has recommended, and this Board supports, that a committee be convened to review the financial policies in order to ascertain whether any modifications need to be made. It is within this "blue ribbon committee" framework that any permanent changes to fiscal policies should be made, reviewed, analyzed, and recommended.

This Board would like to again thank the Town Administrator and his financial team for their efforts and stewardship during this tough financial period. The Advisory Committee also deserves much credit for working with the Town administration, the Selectmen, and the School Committee to keep the budget process moving in a coherent and fair manner.

## FISCAL POLICIES

Brookline is one of just 12 communities in Massachusetts that has the Aaa credit rating, the highest possible. Among other factors contributing to this rating, Moody's Rating Services has cited the Town's "sound financial operations"; "well developed capital improvement plan"; and commitment to "previously dormant stabilization funds". Moody's findings are linked directly to the Town's Fiscal and Budgetary policies.

With the one temporary exception noted above, the FY04 budget continues the practice of adherence to the Selectmen's Financial Improvement Programs and formal Budget Guidelines, which include:

- Retention of increased reserves
- CIP Financing policies
- Town / School Partnership Agreement
- Collective Bargaining settlements within ability to pay
- Position freeze on total number of Town employees
- Directives re: use of Free Cash
- Override requirements of 1994

Reserve Policies – During the FY2002 budget process, a review of the Town's Reserve Fund policies was conducted and areas of possible adjustment were identified. The FY2004 budget continues these adjustments for appropriated reserves, non-appropriated reserves, Capital Stabilization Fund, Catastrophe and Liability Fund, and Retiree Group Health Insurance Trust.

· Appropriated Budget Reserve – In order to strengthen the ability of the Board of Selectmen and Advisory Committee to respond quickly to unforeseeable financial problems, this reserve is funded at the full amount (.75% of prior year net revenue). The funding comes from the property tax levy.

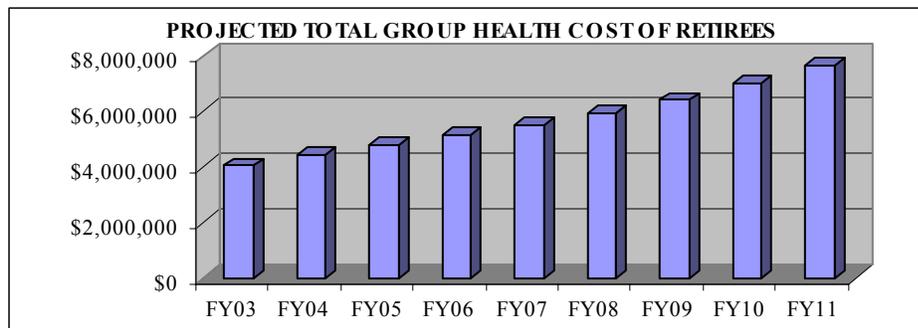
· Non-Appropriated Budget Reserve – Beginning in the FY 2002 budget and continued in the FY2004 Financial Plan, a reduction in the annual set aside from 0.75% of prior year net revenue to 0.5% is again recommended. The funding comes from free cash.

· Capital Stabilization Fund – The existing policy calls for a level of funding equal to 1% of the replacement value of municipal buildings and contents. The purpose of the fund is to provide revenue for capital improvements if Free Cash were to fall below \$2 million in any year. The Town has updated the value of its municipal buildings and contents to the present value of \$340 million. Due to investment yield, the fund currently has assets of approximately \$4 million. An adjustment to the present policy, allowing the fund value to rise above the previously established ceiling and provide at least four years of reserve, is being considered. No additional appropriation is recommended for FY04.

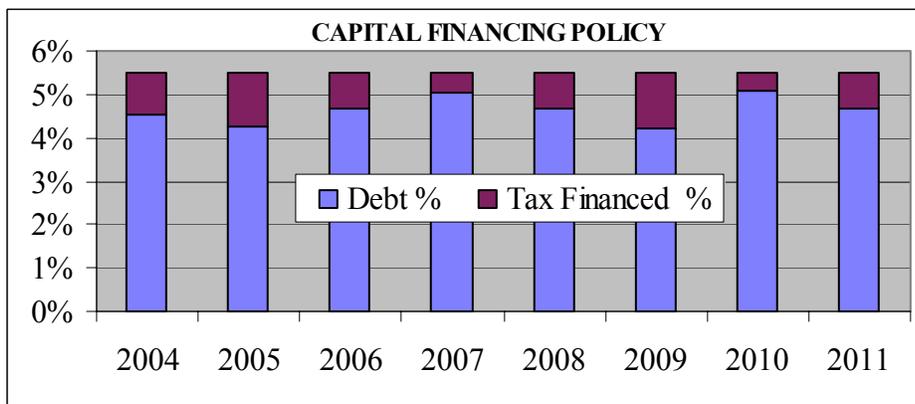
· Catastrophe and Liability Fund – The purpose of this fund is to protect the community against major facility disaster or from a substantial negative financial impact of a lawsuit. Due to the effects of September 11th, the insurance industry, overwhelmed with losses, has changed its coverage for terrorism related incidents. This reinforces the

Town’s practice of funding reserves to targeted levels. Currently, the fund is at approximately \$1.5 million. Included in the FY04 budget is \$100,000, funded by the property tax levy.

· Retiree Group Health Insurance Trust – According to a 1998 actuarial study, the Town had an un-funded post-retirement benefit obligation estimated at \$94 million. In 2001 another study updated this figure to \$118 million. In order to begin to address this issue, the Town adopted a strategy within the FY2000 Financial Plan to divert savings from Non-Contributory Retirement to this fund. Unmatched health insurance appropriations were also diverted to the fund at the end of the fiscal year. In order to continue progress in this area, several options have been included in the Financial Plan: departments with employees funded by non-property tax sources (Water/Sewer, Golf, Recreation Revolving Fund, and CDBG) shall include forward-funding for retiree health benefits in their budgets; when annual experience allows, unmatched funds will continue to be transferred into the fund; once the Town’s Pension Fund is fully-funded, the savings will be reallocated to this fund; and it is proposed that once both the Capital Stabilization Fund and Catastrophe and Liability Fund meet Town funding goals, savings from the non-appropriated reserve be diverted to this fund. A total of \$626,133 is recommended for appropriation into this fund, with only \$95,000 coming from the tax levy.

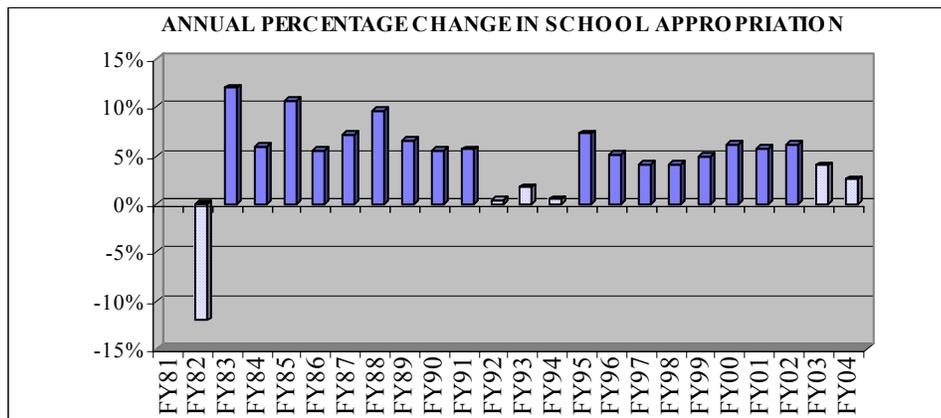


Debt Management Plan Adjustments – The Town's policy regarding capital financing is appropriate for a community of the size and needs of Brookline. Each year, 5.5% of prior year net revenue is dedicated to the improvement of capital and infrastructure. The guideline calls for 4.25% to be derived from debt financing and 1.25% from tax-financed sources. In recent years, a number of capital projects have received approval by Town Meeting for debt financing. Projects such as the Baker School, Library, Public Safety Building, and Lawrence School have added to the Town’s current debt levels.



In order to keep within the Capital Financing Guidelines, the FY2004 budget continues the commitment of not exceeding debt service guidelines. In the next several years new projects, such as the Driscoll School, Beacon Street reconstruction, Landfill closure, Fisher Hill Acquisition, Muddy River Project, and the Health Department/Town Hall Rehab, will come on-line. The timing of these projects allows the Town to remain within a 5.5% debt service guideline.

Town / School Partnership Agreement – Crucial to our annual Financial Plan is the Town / School Partnership Agreement, signed by the Superintendent and Town Administrator and approved by both the Board of Selectmen and School Committee in 1995. Perhaps unique in Massachusetts’s local government, the Partnership Agreement affirms the primacy of education in the annual budget process. The Agreement establishes the objective of committing planned levels of operating revenues for education regardless of the extent of other demands. The Partnership Agreement commits to education 50% of virtually all revenue that is not dedicated to fixed costs, with the remainder then allocated to other Town operating priorities.

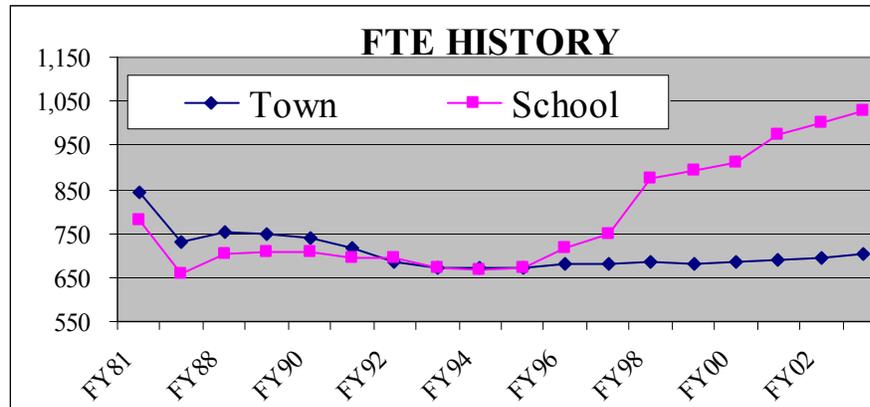


The FY04 budget contains a proposed 2.6% increase for school funding, which compares favorably to the level-funding or outright cuts that had to be imposed on the Brookline Schools in previous periods of fiscal decline. The graph above shows the annual percentage change of the education appropriation since 1982. The striped lines highlight years when the economy declined and/or fiscal conditions deteriorated.

Collective Bargaining Guidelines – Five municipal labor agreements have been settled through June 30, 2004. The Selectmen have adopted economic and language guidelines for use by the Town’s negotiating team. The economic guidelines are predicated upon cost of living indices, settlement patterns in comparable communities, and the Town’s ability to pay. Language proposals are designed to address attendance and leave trends along with other areas in which potential efficiencies and savings have been identified, including the group health program.

No Net Increase in Town Positions – Several years ago, the Selectmen adopted a position freeze policy on the number of Town personnel. This policy establishes a cap on the total number of Town (non-school) personnel. The purpose of this policy is to ensure that Town staffing corresponds to the Proposition 2 ½ cap on town revenue so that, even in favorable economic periods, staffing is not increased to unsustainable levels. Because of the implementation of the Public Safety Joint Dispatch operation, the FY02 budget experienced a

slight increase. A similar increase occurred in FY03 due to the reorganization of the Information Technologies Department. The total number of Town FTE's supported by the General Fund is currently 704.46 positions. Finally, in response to severe financial conditions, the Board of Selectmen has imposed a temporary hiring freeze in order to avoid lay-offs, if workforce reductions are necessary.



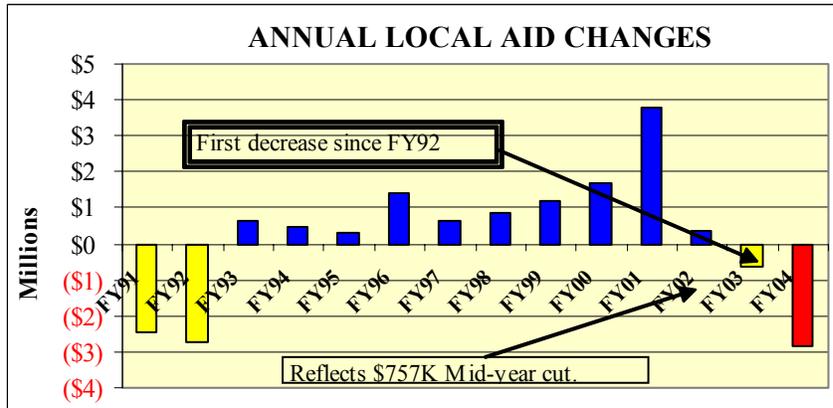
*Free Cash* - The Board's policy regarding Free Cash (that portion of undesignated fund balance certified as available for appropriation by the State Department of Revenue) requires that, after setting aside free cash in the amount of 0.75% of prior year net revenue as part of budget/strategic reserve funds, free cash will be used exclusively to fund capital or other one-time projects. Free cash for the fiscal year ending June 30, 2002 was certified by DOR in the amount of \$6.3 million.

*Override Requirements of 1994* – The Board of Selectmen convened a Committee to review the provisions of the FY1994 Override for the purpose of determining if the spending levels are appropriate to meet the needs of capital spending in FY2004. Please read the full report of the Committee, which can be found at the end of these Combined Reports, under Article 29, "Reports of Town Officers and Committees". The proposed FY04 budget preserves the 1994 override allocations in the budget base. In the School budget, the override funding of \$1.3 million is earmarked for the intended purpose of staffing, technology, supplies, and building maintenance. The \$460,000 allocated as a tax subsidy to offset the user fee charge for Refuse Collection and Disposal is continued. In the Town budget, funding in the amount of \$200,000 for building maintenance is fully earmarked. The Capital and vehicle replacement program within the Public Works, Police, and Fire Department budgets, in the amount of \$1 million, is included within the fiscal plan.

### **FY04 CHALLENGES**

The most obvious, and daunting, budget challenge facing the Town in FY04 was Local Aid cutbacks. As detailed above, the budget before Town Meeting includes a Local Aid cut of \$2.9 million, or more than 14% from the original FY03 amount. While Brookline is fortunate, in this instance, that Local Aid does not comprise a large portion of the Town's revenue pie, a cut of that magnitude can have a direct impact on the budgets of the Town and School Departments.

The scale of the overall Local Aid cutback we are experiencing is beginning to approach the levels of the massive reductions of the early '90's, but in an even more compressed period of time. Brookline endured several Local Aid cuts with the cumulative loss of approximately \$5 million between Fiscal Years '90 and '92. The \$2.9 million reduction in the House budget follows a \$286,459 cut already made in the FY03 base of Additional Assistance. While the cutbacks of 10 and 20 years ago were made against obviously smaller base budgets, the current reductions could be as intense as any ever experienced. The graph below shows the changes in Local Aid for Brookline since FY91.



Because of the effects of the various economic and fiscal downturns over the past 25 years, it can be reasonably argued that the Massachusetts local government has also undergone the same kind of downsizing experienced by other service industries in the region. While local government can not relocate, take-over, or merge in the corporate sense, the municipal transformation over the last two decades is not unlike the restructuring that has also occurred in banking, insurance, and health care. Some of the dimensions of change for Brookline can be measured as follows:

	<u>1981</u>	<u>2003</u>
DPW Employees	293	182
Uniformed Police	149	140
Uniformed Fire	209	160
<u>Fire Stations</u>	<u>8</u>	<u>5</u>
<b>Total Town Employees</b>	<b>850</b>	<b>704</b>

Although these and other permanent reductions in Town operations have been accompanied by an infusion of technology, along with more effective management structures and expanded training, all of which have contributed to increased productivity, the configuration of Brookline government service is markedly different than two decades ago. If there was ever a municipal “bubble”, it has long since disappeared.

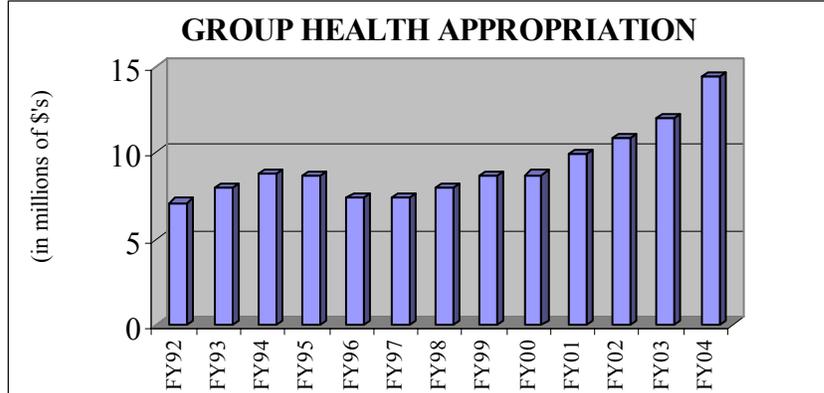
Fortunately, Town fiscal policies have provided a framework for specific preparatory steps to be taken in anticipation of the current cutback environment:

- Two years ago, a careful analysis of town revenue was undertaken to determine, in the event of a slowdown in the economy, what level of local receipts would be sustainable. The effort, which established a new revenue mix for the FY2002 budget, is helping to avoid erratic swings in service delivery.
- During the FY2003 budget deliberations, the publicly stated strategy of both Town and School administrations was to position certain assets in budget appropriations which could be extracted from the FY2004 budget plan in response to state aid reductions without elimination of basic services.
- On-going expenditure controls have been crucial in readying the Town for the downturn. Labor agreements have collaboratively balanced the Town's ability to pay with the goal of security and stability for our valued employees. The number of FTE's has been tightly controlled, with limited growth restricted primarily to public safety functions.
- Continued emphasis on community investment has reinforced the desirability of Brookline as a place to live and work, resulting in an extremely advantageous expansion of property tax "new growth" allowed under Prop 2 ½ . "New growth" in FY03 was the highest ever at \$2.49 million.
- For the FY2003 budget the Town further enhanced the revenue mix by increasing a series of local receipts, some of which aided in the FY2003 Financial Plan (Parking Meters), and some which resulted in a revenue capacity to be used in the FY 2004 Financial Plan (Parking Fines). This revenue capacity has helped offset the mid-year state aid reduction. Perhaps the single most immediate factor enabling the Town and Schools to avoid severe service reductions in FY04 is an anticipated \$1 million increase in parking fine revenue.
- The Public Works Commissioner concluded very successful negotiations for a multi-year refuse disposal contract, which controls the growth in this large cost center to 2.5% per year. This effort has spared the community significant cost increases while providing a predictable estimate of future costs.

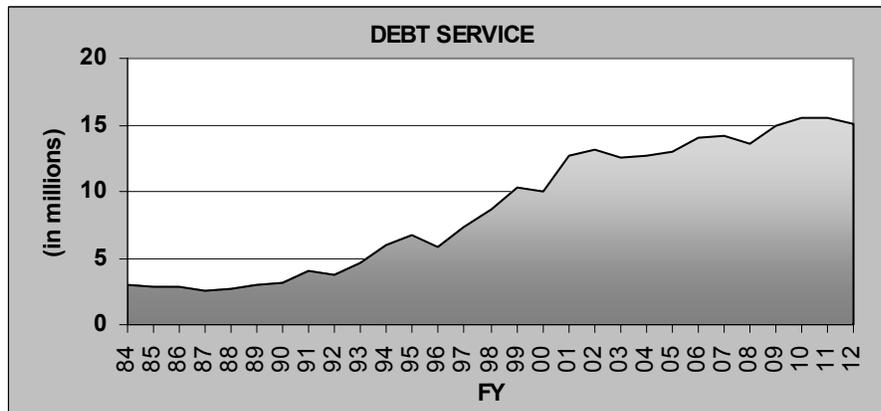
Other challenges faced in the FY04 budget include several perennial cost centers, which have, at various times, been characterized as "budget busters". These are addressed in deliberate fashion consistent with the Fiscal Policies and recent past practice:

- The financial turmoil in the managed care industry continues to drive inflation of **group health insurance** to rates far exceeding the growth in government revenue. HPHC is still proposing double-digit increases to many Massachusetts communities and has notified the Town of a rate increase for its premium-based product of 17.56% for next year. Blue Cross / Blue Shield has priced its self-insured program at a 20% increase for the next year. This cost increase is exacerbated by a significant rise in the health plan employee enrollment. As employees retire, particularly teachers receiving incentives to retire early, they remain on the Town's group health program before being covered by Medicare, if eligible, at age 65. Replacing the retired employee further adds to the group insurance enrollment. Finally, as School personnel levels

rise, the School Department, through its share of fixed costs, absorbs a greater cost of group insurance. The total increase in FY04 for group health is estimated at \$2.35 million.



- The Town makes an extraordinary commitment to **Special Education** funding. Under the Town/School Partnership Agreement, SPED is considered a fixed cost, just as debt service obligations are considered a fixed cost. It is unlikely that any other municipality in the state makes this type of commitment to the funding of special education. Included in the FY2004 Financial Plan is a commitment of an additional \$950,000 for this purpose. This follows increases of \$535,000 in FY03, \$730,000 in FY2002 and \$600,000 in FY2001.
- Currently, all but two town **collective bargaining** agreements have been settled for FY2004, in the amount of 2%. The total amount set aside in the FY04 Financial Plan for these purposes is \$1.1 million.
- In FY2004, **debt service** is expected to decrease by approximately \$275,000 (\$-1.9%). In FY2009, with the sale of debt for the Lawrence School, debt service is expected to increase by nearly \$2 million. As part of the capital planning and debt management process, steps have been taken to slow new debt commitments until debt levels fall back to within the guidelines established by financial policy.



- At a time of rising **energy** prices, it is impossible to maintain a conservation program comprehensive enough to offset rapidly increasing prices. A two-year natural gas contract was negotiated in FY2002 that includes prices similar to the prior year's contract. The recently-expired electricity contract was extremely favorable for the Town, and efforts are underway to secure an electricity supply contract that is in the best interests of the Town. As a number of municipal buildings are refurbished, it will be important to monitor consumption use and

adopt stringent conservation efforts to stabilize future price increases. \$200,000 has been appropriated for energy increases.

**FY04 CUTBACKS**

As noted earlier in this report, we have entered a period of very deep retrenchment for Local Aid. The Town Administrator’s original Financial Plan assumed a cumulative Local Aid reduction of \$2 million for FY04. Despite long-range planning, standing fiscal policies, and short-term preparatory steps by the Town and School administrations, cutbacks for FY04 were unavoidable. While the budgets for Town departments (non-School) are increasing 0.8%, operating requests had to be reduced by close to \$900,000:

- Virtually all accounts for materials and supplies have been frozen with cost inflation absorbed within departmental budgets at an estimated \$185,000.
- With only one exception, no recommendations for new staff have been accepted. This means that many requested, often repeated for years, such as expansion of the park rangers and library staffing, must go unfilled, with overall staffing savings of approximately \$212,000.
- With the exception of the mid-management pay plan, only two re-grading changes have been approved.
- Salary Reserve and Personal Services reserves have been cut by \$350,000 reflecting reduced wage adjustments for both unionized and non-union personnel.
- Public Safety injured-on duty accounts (Section 111F) are reduced by \$100,000 due to conclusion of a long-term injury case.
- Through both changed operator agreements and reduced usage, telephone accounts will be \$70,000 lower.

The first Revised Financial Plan resulted in a further reduction of \$377,439. These cuts were allocated in accordance with the Town / School Partnership Agreement. Both the School and Town absorbed \$188,720 of additional reductions. The reductions included the following:

<u>DEPARTMENT</u>	<u>ITEM</u>	<u>AMOUNT</u>	<u>NOTE</u>
DPW	Sidewalk Construction	\$100,000	(Funded in CIP)
	Street Light R & M	\$5,000	
Police	Capital	\$25,750	
	Medical Bills	\$5,000	
Finance	PT Sec	\$18,295	
Recreation	E-Commerce	\$17,500	(Transferred to Revolving)
ITD	Supplies/Conferences	\$4,550	
Human Resources	Clerical Pool	\$4,000	
Health	Visiting Nurse/Mental Health	\$2,000	
All Departments	Cell Phone 10% Reduction	\$6,625	
<b>Town Sub-Total</b>		<b>\$188,719</b>	
Schools		\$188,719	
<b>Grand Total</b>		<b>\$377,439</b>	

A second Revised Financial Plan was necessary to address an additional reduction of \$481,204. The reductions include the following:

DEPARTMENT	ITEM	AMOUNT	NOTE:
Selectmen	Assistant Town Administrator	\$5,554	Salary savings due to new hire.
			Savings from the downgrade of the vacant former \$86,706 School position from a management position to a mid-level technical position.
ITD	Dir. of IT Operations	\$25,000	
	Bottled Water	\$273	
Purchasing	Pooled Van	\$25,000	
	Telephone Operator	\$8,191	When Tele. Op. is not in, the automated attendant will be activated. Calls will bounce to Sel's Office, if necessary.
Treasurer/Collector	Bottled Water	\$158	
Economic Development	Bottled Water	\$322	
Police	Quinn	\$40,770	Town's share of State's Quinn cut.
	Temp PT Clerical funding	\$15,622	Reduction in the funding available for these seasonal positions.
DPW	Bottled Water	\$247	
	Household Hazardous Waste Day	\$23,224	A reduction in the amount of tonnage accepted, resulting in a possible cutback of hours.
Health	Mosquito Control Contract	\$8,000	Health Dept. employees to perform some mosquito control activities, including larviciding of catch basins with DPW employees.
Various	Dep. Head Steps	\$37,000	
Non-Departmental	Selectmen's Contingency	\$2,000	
Non-Departmental	Revenue-Financed CIP	\$180,000	Temporary reduction in the 5.5% policy of dedicated funding to CIP.
Non-Appropriated	METCO	\$104,945	Cherry Sheet Offset reduction.
Non-Appropriated	Library Aid	\$4,898	Cherry Sheet Offset reduction.
<b>Town Sub-Total</b>		<b>\$481,204</b>	
Schools		\$0	Schools to absorb \$104,945 METCO cut.
<b>Grand Total</b>		<b>\$481,204</b>	

### FY04 INITIATIVES

Despite the constraints of local aid cuts and reduced local receipts, the proposed FY04 budget includes a limited number of initiatives designed to advance to the Town's overall service program:

- Implementation of the **IT Strategic Plan**, as recommended by Pacific Technologies, Inc., continues. In the CIP, \$130,000 is recommended for projects recommended on the plan. In addition \$150,000 is included in the CIP for the Instruction Technology Study, also recommended by PTI.
- Continuation of the funding plan for the Town's **Post Employment Health/Life Insurance obligation**, estimated at \$118 million. In FY04, \$626,133 is recommended for this liability, of which only \$95,000 is funded by general tax revenue. The remainder is funded with Free Cash and overhead charges on enterprise/revolving funds.

Beyond adding a limited, but important, number of initiatives to our overall service plan, several standing priority commitments are supported to the maximum extent possible:

- Funding for **education** is increased \$1.35 million, or 2.6%, which is a significantly larger increase than provided in previous Town budgets in prior recessionary periods.
- Within the total \$1.35 million allocation for schools, **SPED funding** is increased by \$950,000, exclusive of collective bargaining, keeping pace with the needs described by the School administration.

- The accelerated replacement schedule of front-line **fire apparatus** is continued.
- The commitment to the **Affordable Housing Trust** is continued for a second year in the anticipated amount of \$316,455, per the policy adopted by the Board of Selectmen.

### **CAPITAL IMPROVEMENTS PROGRAM (CIP)**

Over the past several years, the Town has made a significant commitment to its Capital Improvements Program (CIP) to address the backlog of capital needs created by the under-investment in the infrastructure during the late-1970's and the 1980's. In the last 11 years, the Town has invested more than \$200 million in the CIP. Although there is more to do in the areas of street repairs, parks and open space improvements, and school facilities upgrades, the commitment to capital improvements is clearly showing positive results.

The recommended FY2004 – FY2009 CIP complies with the Board of Selectmen's CIP policies, with the one exception that has been previously noted: the provision of dedicating 5.5% of the prior year's net revenue has been reduced to 5.37%, due to the use of \$180,000 in revenue-financed CIP capacity for the operating budget. Doing so reduced the amount needed to cut from the Town and School budgets.

The recommended CIP calls for an investment of \$79.7 million over the next six years, for an average of \$13.8 million per year. This continues the Town's commitment to maintain and improve its infrastructure and to reduce the backlog of projects requiring funding. This compares with the figure of \$10.5 million per year noted by the CIP Policy Committee as the necessary spending level to maintain the Town's capital infrastructure. The total appropriations from all financial sources by year and by project category are shown on the table below.

<b>TOWN OF BROOKLINE CAPITAL IMPROVEMENT PROGRAM FY2004 - FY2009</b>									
	Total	Prior Year	Proposed 2004	2005	Future Capital Improvement Plan				Future Years
					2006	2007	2008	2009	
<b><u>GRAND TOTAL BY ALLOCATION</u></b>									
General Government	17,787,137	1,158,700	<b>485,000</b>	855,000	4,475,000	8,725,000	1,005,000	475,000	608,437
Economic Development	1,457,000	457,000	<b>180,000</b>	200,000	150,000	100,000	100,000	-	270,000
Public Safety	2,272,000	347,000	<b>1,117,000</b>	173,000	585,000	20,000	20,000	-	-
Library	798,500	-	<b>380,000</b>	143,500	215,000	50,000	-	-	-
DPW- Transportation	1,496,200	45,000	<b>621,200</b>	685,000	125,000	10,000	-	-	-
Engineering/Highway	41,264,049	7,035,705	<b>21,563,642</b>	2,134,117	2,234,117	2,074,117	2,074,117	2,074,117	2,074,117
Water / Sewer	15,700,000	8,980,000	<b>50,000</b>	2,580,000	50,000	2,050,000	50,000	2,000,000	-
Parks & Playgrounds	11,784,700	3,047,500	<b>3,982,200</b>	960,000	625,000	820,000	425,000	1,155,000	770,000
Conservation/Open Space	2,510,000	945,000	<b>130,000</b>	255,000	130,000	415,000	355,000	150,000	130,000
Recreation	4,967,500	2,480,000	<b>365,000</b>	497,500	430,000	275,000	620,000	200,000	100,000
Public Schools	36,232,120	22,021,238	<b>2,790,000</b>	629,001	546,881	1,345,000	3,070,000	1,200,000	4,630,000
<b>Grand Total</b>	<b>136,269,206</b>	<b>46,487,143</b>	<b>31,674,042</b>	<b>9,032,118</b>	<b>9,575,998</b>	<b>15,884,117</b>	<b>7,719,117</b>	<b>7,254,117</b>	<b>8,582,554</b>

Developing the CIP so as to stay within the Board's CIP financing policies was again very challenging this year. In recent years, the Town has committed debt financing for a number of large projects, including the High School, Baker School, the Public Safety Building, the Main Library, Landfill closure, the Lawrence School, and more. It is now believed that outstanding debt will exceed \$140 million with an annual debt service cost of \$15.9 million in FY2009.

While it is important that we maintain our commitment to the CIP, it is equally important that we remain committed to staying within our Capital Financing Policies. Given the rapid acceleration in our debt, and given that Brookline has the highest debt burden per capita of the Aaa communities in the state, it is crucial that we maintain fiscal discipline in this process. In order to remain within the Capital Financing Policies, there will be fewer tax-financed capital projects in the coming years. There is expected to be sufficient revenue from Free Cash, CDBG, and State/Federal Grants to provide adequate funding during this period. This will allow the Town the opportunity to pay down some of the existing debt service and re-establish the tax-financed source of capital funding.

Some of the major projects proposed in the Capital Plan are:

- Beacon Street Reconstruction - \$9.9 million
- Landfill / Park - \$8.4 million
- Various School Improvements - \$9.8 million
- Health Building - \$4.0 million
- Town Hall Rehab - \$8.2 million
- Parks, Open Space, Recreation – \$20 million
- Streets, Sidewalks, Traffic - \$3.1 million

It is important to note that the recommendations contained in the CIP are based upon our best estimates of future revenue. Budget reductions at the State or Federal levels could require significant cutbacks in the recommended program for future years. Also, the amount of Free Cash available for the CIP can fluctuate drastically from year to year. Should actual amounts be less than anticipated, then the CIP recommendations may have to be revised.

### **CONCLUSION**

As stated at the outset of this recommendation, the Board of Selectmen have not taken a formal vote on the final budget recommendations. The Town Administrator did review the plan with the Board, but a vote was not scheduled until May 13, a date which falls after the publication and mailing of these Combined Reports. This Board is in full agreement, in principle, with the Advisory Committee on the recommended budget. After the May 13 vote, a supplemental report will be produced, if warranted.

ADVISORY COMMITTEE'S RECOMMENDATION**I. TOWN BUDGET****A. Overview**

The FY2004 proposed budget is \$180,590,820. When you deduct the Water and Sewer Enterprise funds (\$20,403,917, minus \$4,849,473 in overhead) and the Golf Enterprise funds (\$1,359,029 minus \$512,642 in overhead), and the Recreation Revolving Fund (\$956,109, minus \$127,148 in overhead), this gives us a General Fund operating budget of \$163,361,034. From that budgeted amount, \$8,019,558 of non-appropriated expenses that the Town is legally obligated to pay or put aside must be deducted. (These expenses include such things as the State and County charges and the Tax Abatement Overlay). This leaves **\$155,341,476** available for appropriation by this Town Meeting. It is an increase from FY2003.

You may remember that we were told last year by the State that we, along with other Cities and Towns, would be receiving a 10% or \$1.5 million cut in the Local Aid we receive from the State. We voted the Town budget with the necessary cuts. Later the State said they were restoring that money and we re-voted a number of budget items at the November Town Meeting. After that, however, as the State budget picture continued to darken, the State made mid-year cuts in Local Aid and we had to cut \$756,647 out of the budget after the November Town Meeting. This year, since the State budget deficit has continued to mount, the Town Administrator built the proposed budget on the assumption that we would be receiving 10% less than in FY03. Cumulatively, with the mid-year cut in FY03, that amounted to a reduction of \$2 million. The new Governor put his budget proposal out late, as he is allowed to do as a newly elected Governor, and based on his budget, the Town began to anticipate a further cut in Local Aid of \$382,042 for a total of \$2,382,042 or 12%. Further cuts were made in the budget. The House version of the budget came out in mid-April and the Town made additional cuts of \$481,204, based on that budget for a total of \$2,863,246 or a 14.4% reduction in the amount of State Aid we receive from the prior fiscal year. Needless to say, the turmoil has made for a very stressful budgeting cycle.

We are fortunate in that we begin this year in relatively sound financial shape due to an adherence to the fiscal policies set forth by the Financial Planning Advisory Committee ("FPAC") in the early 1990s. In addition, we had high "new growth" in the property tax base of \$2.49 million, and by raising the rate on parking fines in FY03 we anticipate growth in local receipts of a further \$1 million. These increases have offset the \$2.86 million decrease in State Aid to a certain extent. However, as salaries and health care costs continued to rise, balancing the budget still involved making some cuts. This proposed budget does a good job in making cuts without substantially impacting services. Thus, while the Town does have a hiring freeze in effect and some positions will remain unfilled, employees are not being laid off and the cuts in programs will not be dramatic. This contrasts markedly with the surrounding cities and towns which are having to make some very difficult cuts in both personnel and programs.

The primary areas in which cuts are being made are: a \$6,625 reduction in cell phone usage by Town employees, a \$4,000 deduction in the clerical pool to cover absences; a reduction in sidewalk repair (an additional \$100,000 will be funded in the CIP, not from Operating); a reduction of \$5,000 in streetlight repair; some vehicle purchases are being delayed; a \$180,000 capital project for streetscape improvement is not being funded this year; and all Department heads and senior managers will not get any step increases for FY04. The School Department has also received the news that some of their grant money from the State may be withdrawn in addition to other budget cuts. The School Committee has a plan, however, to accomplish its cuts without increases in class size.

Unfortunately, the State's budget outlook continues to be grim. While we hope we have now seen the last of the cuts for FY04, we expect that we will have to cut several more millions from the budget in FY05, due to cuts in State Aid. It may be harder to avoid more serious service cuts next year. The Massachusetts Taxpayers Foundation, an independent non-profit organization that researches taxes and spending, has predicted that Massachusetts will trail the nation in economic recovery. Further, they have predicted that the State budget deficit for FY04 will be about \$2.4 billion, with reserves largely depleted.

While we believe that, in general, the Town's financial policies have served us well, the Advisory Committee has participated in many discussions about those policies. The Proposition 2 1/2 Override money from the 1994 General Override will continue to be spent on capital items as called for in the Override vote. However, the definition of those categories may be slightly adjusted to make the program more flexible so that we are not over-spending in some areas and under-spending in other areas.

Understandably, as we discuss cuts in the operating budget, a number of people have questioned other areas of the policy, such as the level of reserves we carry. The Selectmen have indicated that they will organize a committee similar to the Financial Planning Advisory Committee to review these financial policies and to determine if they should be reaffirmed or if they need some tweaking on the edges. We support this decision. In fact, this budget in its final revision moves \$180,000 from the tax-financed portion of the capital budget to the operating budget. The Streetscape Improvement project that the \$180,000 was originally scheduled to fund was not yet ready to move forward, in the opinion of the Advisory Committee, since there were no specific plans as to how the money would be used. This change, while a deviation from the Town's fiscal policies, recognizes that the Operating Budget was taking the full brunt of the budget cuts and the Capital budget was relatively unscathed. As our number of debt-financed projects is rising, there will not be as many tax-financed capital projects in the next several years, so this type of adjustment will be much more difficult. And, we believe it is worth having further discussion as to whether this type of variation is appropriate.

## **B. Long-term Financial Health**

### **1. Fiscal Policies**

After struggling and cutting services for several years in the wake of the state's adoption of Proposition 2 1/2 (which limited the ability of cities and towns to increase real estate taxes to 2 1/2 % of the previous year's tax levy, plus new growth, unless the Town voted to authorize an override of that limit), the Town heeded the recommendation of the FPAC and established

some disciplined fiscal policies. The Advisory Committee is strongly supportive of these policies which, together with the additional money provided by the 1994 General Override of \$2.5 million, have provided stability to the budgeting process, a method for financing the rehabilitation of our older buildings, a Partnership Agreement between the Town and Schools to work collaboratively on their budgets, and appropriate reserves to cover catastrophes and long-term obligations, such as the costs of providing health insurance to our retirees.

## 2. Reserve Funds

The Advisory Committee believes that the maintenance of these Reserve Funds at rational levels plays a critical role in the Town's long-term financial health for the following reasons:

a. Our policy in setting and maintaining these Reserve Funds is a critical factor in the Town's Aaa Bond Rating from Moody's the highest rating a municipality can have. This enables the Town to borrow money at the best possible rate for its large capital projects. As any homeowner knows, the change of a percentage point or two can make a huge difference in your monthly mortgage rates, and the Town's bond payment schedule is similar.

b. The Town is a self-insurer to a large extent. It has a deductible on its insurance policy which covers buildings and their contents that kicks in at \$100,000 for a single incident, but all smaller losses are paid for by the Town. The Town has many buildings, a fleet of vehicles including very expensive fire engines, and numerous other properties and assets that could be damaged. The Town saves money by not paying for more insurance coverage if it does not sustain losses, but it also assumes a significant risk. Therefore, money must be put aside to pay for such problems as they arise.

c. The Town is now funding a reserve for a large increase in Group Health Insurance costs for Retirees. This cost is expected to rise as group health costs rise in general and as the members of the baby boom generation retire in larger numbers. Left unfunded, this could amount to a crippling burden on the budget in future years, but with the schedule we've begun to follow, this burden can be spread over many years, and both our Town employees and future operating budgets will be protected.

d. The Town has been financing its building projects such as the new Fire/Police Headquarters, part of the Library renovation, the Senior Center, and school rehabilitation projects partly from Free Cash and partly from selling bonds. In the event that the Town does experience much lower Free Cash as a result of the continuing crisis with the state budget, ongoing building projects and other necessary capital improvements will not be jeopardized because we have a Capital Stabilization Fund of \$4 million which can be used to continue those projects.

The Budget proposes the following:

Appropriated Reserve Fund - This will continue to be set at .75% of the prior year's net revenue, or \$1,070,000 for FY2004. It is intended to be an operating reserve fund for unexpected costs. Expenditures from this fund require a majority vote of the Selectmen and then a majority vote of the Advisory Committee. In some years, such as FY01, almost the entire Reserve Fund was needed for unexpected expenses. In other years, such as FY02,

less than 1/2 of the fund was needed. Anything remaining unspent in the Reserve Fund at the end of the Fiscal Year rolls into Free Cash which funds our capital spending program in future years. This year, we anticipate there will be a number of additional requests for Reserve Funds that will arise at the end of the fiscal year.

Unappropriated Reserve Fund -In prior years, this fund, paid for with Free Cash, has also been set at an amount equal to the Appropriated Reserve Fund. It is to be used as an operating reserve in the event that the Appropriated Reserve Fund is fully expended. Getting money from the Unappropriated Reserve Fund would require a vote of Town Meeting. After review two years ago, the Selectmen decided to reduce the size of the Unappropriated Reserve Fund to .5% of the prior year's net revenue, and place the additional .25% in the Catastrophe and Liability Fund in order to build that fund. This is set at \$714,316 for FY04.

Capital Stabilization Fund -The goal is to maintain this fund at a rate of 1% of the replacement value of the Town buildings. This fund currently has assets of \$4 million and would provide revenue for capital improvements if Free Cash falls below \$2 million in a given year. No additional appropriation is recommended.

Catastrophe and Liability Fund -This fund is to provide protection from a major facility disaster or a large lawsuit. This budget proposes to add \$100,000 from the property tax levy to this fund for a total of \$ 1.5 million.

Retiree Group Health Insurance Trust - Brookline must provide healthcare coverage to 1,253 retirees. They amount to nearly 1/2 of the enrollees in our group health programs. The obligation to provide this coverage is growing due to the increasing number of retirees and the escalating costs of health care. The Town has an estimated \$118 million as an unfunded liability for present and future retirees as of a 2001 update of the actuarial tables. There is an appropriation in the budget to add \$626,133 to the Trust from part of the overhead for the Water and Sewer Enterprise Fund, the Golf Course Enterprise Fund, the Recreation Revolving Fund, from reductions in the non-contributory retirement obligations as more retiring employees fall into the contributory category, and a portion of the Town's Free Cash. Of this amount, \$357,159 comes from free cash.

### **3. Debt and Debt Service**

The Financial Trend Monitoring Report shows the Town's debt, and consequently debt service, continuing to rise as we continue to undertake the backlog of large capital projects. While each of these projects has been carefully scrutinized by the Advisory Committee and Selectmen and then voted by Town Meeting in the CIP (Capital Improvement Program), the total debt in the coming years is sobering. In FY1992 total outstanding debt was \$18 million; by FY2004 this is expected to rise to \$76 million, including the High School renovation project. In the proposed FY2004 budget,\$12,763,196 is devoted to debt service.

#### **C. FY2002 Budget**

##### **1. Revenue**

As stated above, total General Fund revenue for FY2004 is estimated to be \$163,361,034. The property tax levy, which comprises 69.67% of annual operating revenues, is anticipated

at \$114,151,367. This estimate includes the FY2003 levy limit of \$109,532,058, plus 2 1/2 % bringing the levy to \$112,222,058 plus \$1,300,000 new growth, plus \$660,943 for payments in lieu of taxes from nonprofits, plus debt exclusion costs for Lincoln School and the High School, which net at \$1,705,343 (\$5,312,023 in debt service for the two projects, minus \$3,606,680 in reimbursement money from the State's School Building Assistance funds). The property tax increase is 4.2 %. State Aid is \$16,968,927, a decrease of 14.4%. The Town's total anticipated revenue is as follows:

Property Taxes	\$114,151,367
Local Receipts	\$ 18,572,844
State Aid	\$ 16,968,927
Free Cash	\$ 5,602,961
Other Available Funds	\$ 8,064,935
<b>Total Revenue</b>	<b>\$163,361,034</b>

Free Cash was certified at \$6,317,277 by the State at the close of FY2002. Free Cash is generated when the actual operation costs for the previous year are less than anticipated in the budget or when more revenue is collected than anticipated. Because this source of revenue varies widely (from 1990-1994 we had four consecutive years of negative Free Cash), it has been the Selectmen's policy to deduct funding for the Unappropriated Reserve, then apply the remainder to Capital Improvements and other Reserve Funds or special one-time appropriations, rather than adding it to the Operating Budget. For FY2004, \$714,316 will be placed in the Unappropriated Reserve Fund. The proposed budget distributes the remainder as follows:

Capital Improvements	\$ 4,929,348
Stabilization Fund	\$ 0
Housing Trust Fund	\$ 316,455
<u>Retiree Group Health Trust Fund</u>	<u>\$ 357,158</u>
<b>Total</b>	<b>\$ 5,602,961</b>

## 2. Expenses

The amount available for appropriation is \$155,341,476. The FY2004 budget proposes that this amount shall be divided as follows:

Town Departments	\$ 52,369,686	+0.8%
School Departments	\$ 53,759,732	+2.6%
Non-Departmental	\$ 42,145,941	+6.2%
Op. Budget Subtotal	\$148,275,359	+2.9%
Capital and Special		
Appropriations	\$ 7,066,117	+4.4%
<b>Total Appropriations</b>	<b>\$155,341,476</b>	<b>+3.0%</b>

(Non-Departmental expenses include items such as Group Health insurance. Debt Service, Pensions, Group Life Insurance, Worker's Compensation, and Unemployment Compensation).

## 3. Items of Note

School Department Budget - The School Department budget is more fully detailed below. The Town and School Department have an agreement as to how new increases and decreases in the budget will be handled. This makes the relations between the two cooperative, rather than competitive as they are in most Towns and Cities. This year in the final round of cuts that were necessary due to the cuts in State Aid, the Town Administrator elected to have the Town side of the budget absorb more of the cuts, rather than share equally with the School side. This was in an effort to assist the School Superintendent in maintaining class size at an average of 20 students/teacher and in recognition of the fact that the State has also cut grants to the School Department.

Group Health - The financial turmoil among the health care industry continues to lead to significant increases in costs. For FY04 Harvard Pilgrim Health Care has notified the Town of a 17.56% premium increase. The Blue Cross/Blue Shield number which is a self insurance plan and based on actual experience is expected to rise by 20%. However, due to early retirements and some increase in the number of school department employees, the number of Town employees in the group health plans continues to grow. Teachers, who retire early, remain on the Town's health insurance until they are old enough to qualify for Medicare. At the same time the new teachers hired to replace them enroll in the health care plans. We may again see large growth in the cost of providing quality health insurance as that industry continues to struggle to contain costs. The total increase in FY04 for Group Health is estimated at \$2.35 million.

Collective Bargaining - The AFSCME union employees have a contract for 3% in FY03 and 2% in FY04. The Teachers in FY03 are in the final year of a multi-year contract in which they receive 4%, but for which they added additional time to their schedules. The Police in FY03 are in a one-year contract for 3% and the Firefighters recently agreed to a one-year contract for FY03 for 3%. Please see the report on Warrant Article 2 for discussion of the Advisory Committee's concerns about the rising costs of Overtime, particularly with reference to Sick Leave, in connection with the Fire Department's budget.

IT Department - The Town is presently entering into a major reorganization of its Information Technology assets with the hiring a Chief Information Officer who has begun to integrate the technology assets of both the Town and School Departments to avoid duplication and make everything run more smoothly. This is the initial phase of implementation of the Town's IT Strategic Plan as developed by our consultants, Pacific Technologies, Inc. We hope to realize savings over the longterm as these systems are better coordinated.

#### **D. Conclusion**

This was a tumultuous year in setting the budget. Due in large part to the fiscal management policies that the Town adopted several years ago, which have resulted in more budgeting certainty, a healthier infrastructure, and better long-range Planning, the Town is able to meet the problems from dramatic cuts in State Aid. The level of services should not be noticeably decreased, even with these cuts.

The Advisory Committee by a vote of 18-1 recommends FAVORABLE ACTION on the Fiscal2004 budget for the Town as presented by the Town Administrator.

## II. SCHOOL BUDGET

### Introduction

Town Meeting only has the authority to approve or disapprove the total funding from Town sources for the Schools. State law vests the School Committee with the authority to then determine how that money and other funds, such as grants that do not come from the Town, are allocated within the budget. Therefore, the following information, to the extent that it relates to specific items within the School budget, is given to you for informational purposes to help you determine whether the final total is appropriate.

This year marks an inflection point in Brookline's school budgets. For some years now, our school budgets have seen increases that allowed for program enhancements or expansion (though the increases in the State Chapter 70 funding were not always enough to even cover the increases in SPED costs). This year we are faced with service reductions and fee increases.

The FY'04 budget is based on the most accurate information to date, and allows for some contingencies. However, a final FY'04 budget has yet to be determined. The final figures for State Aid, school aid and grants may well change.

### Budget

This year's Total Budget of \$62.9 M (+0.20%) is made of the General Funds \$54.2 M (+2.46%) and the Special Funds \$8.7M (-12%).

<u>General Funds</u>		% Change
Town Appropriation	52,659,732	2.52
Override Funds	1,100,000	--
Tuition/Building Revenue	232,850	(24.43)
Adult Education Cont.	175,000	16.67
<u>Special Funds</u>		
Grant Funds	4,470,271	(18.55)
Revolving Funds	4,268,337	(3.57)
TOTAL FUNDS	\$ 62,906,190	0.20

### Maintenance of Effort

The Schools anticipate needing to increase expenditures by \$2.72 M in order to maintain the current level of services. This figure accounts for a number of items, among them the absorption of expired grants, contingencies for other grants, increases in collective bargaining, and increases in SPED costs to name a few. Also in this net figure are the offset Program Enrollment adjustments (\$441.5K). This offset is the result of decreases and shifts in enrollment, the result of the natural ebb and flow of the student population. Balanced against this \$2.72 M expenditure growth is the School Department's net revenue growth of \$1.4 M and other adjustments of \$270 K. This leaves the schools with a deficit of \$1.1 M that must be covered through a combination of personnel/service reductions and consolidations, and revenue/fee increases.

### Reductions & Fees

Some reductions will be to capital items such as computer equipment. Other reductions will come from the Central Administration with 0% increases in Senior Cabinet salaries, leaving vacant the position of Assistant Deputy Superintendent for Teaching & Learning, Central Clerical Staff reduction of 2.5FTE's, and reductions in training stipends and advertising.

Felt more acutely by students and families will be the loss of 4 Social Workers (now covered by an expiring Federal grant) and a 0.5 FTE reduction in a Library Assistant position at BHS. The schools will try to temper some of the effects by shifting responsibilities among remaining staff, looking to community groups to lend support. There are, as well some reductions to middle and elementary before and after school programs and sports.

Because of the School's commitment to maintaining small class sizes and programming, every effort is made to avoid cuts in the classrooms.

Additionally, there will be fee increases including after school sports fees, High School athletic fees, tuition fees and a \$0.25 increase in the school lunch price.

This is an ongoing process and these choices have been made after long discussions with staff, students, parents and the community. The extent of the reductions and fee increases in the future will be guided by our fiscal reality, as it becomes clearer and generally determined after the State finalizes its own budget.

### **Grants**

Grants are by their very nature double-edged swords. They can be the life blood of a program or a short lived financial narcotic that may induce painful withdrawal symptoms later. In a perfect world, employment and programming operations would not be built merely on the capricious flow of short-lived grant money. We do not live in a perfect world and grant money is essential to supporting programs.

Funds are granted by foundations and agencies for a variety of reasons. They may provide for a demonstration period to prove the value of a program, they may be granted as a "hook" to initiate new programming and a new dependency, or they may be used as a "jump start" to help create a needed program and give it critical mass so that it can be self sufficient. Regardless of the model, grants have a shelf life and eventually expire.

Grants (\$4.5 M) make up 7.1% of the FY'04 total budget. This compares to 8.7% in FY'03 and 9.4% in FY'02.

One exceptional reduction (expiration) is the nearly \$350 K for the extension of the Kindergarten day. Extension of the Kindergarten day has long been a priority goal, and while we may have hoped this to become a State-funded entitlement program, we did anticipate the grant expiring. Funding will now need to be provided from within our own General Fund.

Other notable grant reductions are to Title I, Elementary School Counseling, Enhance School Health (Tobacco money) and Early Literacy.

The total probable reduction in grants this year is \$ 1.5 M or more.

Finally, it should be noted that much of our Elementary Foreign Language instruction is grant-funded. The importance of early foreign language acquisition, and Brookline's commitment to providing it, has long been established. However, the day may come when granting agencies will no longer cover these expenses.

### **Personnel**

As with the Town and other service-oriented budgets, personnel costs account for the greatest share of the School budget (84%). The total combined FY'04 staffing is 1025.67 FTE's, 878.71 FTE's (+9.02) are allocated to the General Fund, and 146.96 FTE's (-22.02) are allocated to the External Funds. This represents a net decrease of 13 FTE's over FY'03. These positions break down into numerous categories. Teachers make up approximately 50% of the School's staffing, about 20% is attributable to aides and technicians, and 4% to central and school based administration combined. The remaining positions are allocated to school support, food service/custodial, and clerical. Cutting across these categories, approximately 27% of the total staffing is allocated towards State and Federally-mandated programs and services.

Personnel trends in the School Department are indicative of a changing landscape, particularly since 1995. Instructional staffing levels are about what they were a decade ago. Administrative support staff has been fairly flat during that same time frame. Where there have been noticeable increases in staffing is in the "mandated" category. These are positions required under such things as SPED and Bilingual Programming and Education Reform. The School Department, if not morally bound, is legally bound to staff these positions to support mandated programming.

Efforts have been made to consolidate, streamline or restructure certain areas. For instance, last year responsibilities were realigned within the Central Administration to add cohesion, and the prior year SPED Administration was restructured to provide better balance, coverage and efficiency system wide.

Also, last year's budget allowed for at least 0.6 FTE Vice Principals at each school. This was seen as essential due to the greater responsibilities placed on Principals by the Education Reform Act. Because of the Federal Government's increasing requirements for tracking and reporting, the goal is to preserve Vice Principal support.

The schools have seen a marked increase in turnover in teaching positions recently. This year there will be at least 20 retirements as well as greater mobility among teachers generally. There are trade offs between the loss of experienced teachers and the introduction of "new blood". The salary and benefit mix changes as well. New teachers, however, need mentoring, training and professional development programs. These are precisely the sorts of things that are apt to be pared back in restrictive budgeting times.

The allocation of positions in the FY'04 budget demonstrates the School's continued commitment to core services and optimal class sizes.

### **Chapter 70 Aid**

Chapter 70 Aid is a major contributor to school budgets across the State. Last year saw changes to the formula in an attempt to simplify the program and target aid, based on growth and local ability to pay. This year's Governor's Budget trumpets a 2% increase in Chapter

70 funding. However, this increase is paid for through a reduction in other items. The upshot for Brookline is a net \$1.3 M (20%) reduction, to a total of \$4.9M.

Interestingly, there is discussion of adopting a “Circuit Breaker” clause that would provide additional funding when the cost of a student went above 4x “foundation level”. Under this formula we could potentially see our net reduction lessened.

### **SPED**

SPED costs continue to have a great impact on the School Budget. At a total cost of \$13.8 M (inclusive of transportation and medical) this represents just over 25% of the General Fund. In 1990 this was just under 15%. Far outpacing growth in the overall budget, there has been a 60% growth in SPED over the last 6 years. This year will see an increase of \$922 K (inclusive of our share of residential placements). Increases in SPED costs are occurring across the State and across the Nation. School districts’ policies and practices have not driven this dramatic increase. Rather, the escalation has been driven by an increase in children with more severe needs.

State and Federal mandates require we make SPED provisions for students between 3-22 years of age. SPED provides at least part time services to over 1100 of our nearly 6000 students. Compressed, these portions of school time equal approximately 350 FTE students. The School Department endeavors to mainstream students into the least restrictive environment. It is often, though not always, less expensive to keep students in-house rather than enrolling them out of district.

While the US Supreme Court has recognized our moral obligation and codified our legal obligation to provide services (including medical and transportation), our Legislative bodies have severely lagged in assigning these costs to the proper portion of our State and Federal budgets. Massachusetts has one of the lowest contribution rates to SPED of any state in the Nation. And the current US Congress has signaled its resistance to fund in these areas. Additionally, the current State budget is an exercise in bailing a sinking ship. Therefore, the load on education budgets is not likely to be lightened soon.

The School Department continues its pursuit of providing the best services and the best value.

### **Bilingual/English Immersion**

With the passage of last fall’s “Unz” Amendment (requiring English immersion after one year) came a concern for the implications within the Brookline School System. For the most part, Brookline has always integrated non-English speaking students into the mainstream curriculum. As a result, there has been no shock to the system. Brookline’s approach has been, and continues to be, in compliance with the goals and approach of the State’s English immersion requirement. In fact, because of the nature of Brookline’s neighborhood schools and judicious placement of programs, the FY’04 budget will see a \$35K savings in bilingual busing costs.

### **MCAS**

Though this year’s senior class has not studied within the MCAS framework its entire career, it is the first class to be required to pass the MCAS to graduate and receive a diploma. Several students have made the choice not to take the MCAS, some of whom have been

admitted to selective colleges none the less. How they may have performed on the MCAS will not be known. There are, in addition, five seniors who took the test and did not pass or received waivers. There exists, in some cases, the opportunity to take the MCAS again or re-apply for a waiver. However, they may not graduate or receive their diplomas with their class.

The graduation rate this year is comparable to previous years when Brookline used its own graduation requirements. But, numbers tell quantity not quality. The MCAS has far more severe consequences for students with learning disabilities and language obstacles. Also, a first year experience gives very little data on which to predict the future.

For the past several years the State has increased educational funding while making it clear that certain objective measures would have to be met. In particular, the MCAS test. MCAS was not designed for towns such as Brookline, but for cities where it was perceived to have social promotion and curriculum problems. It was also viewed as a way to impart a level of curriculum commonality across districts. The inherent weakness is that it is a one-size-fits-all single determinant.

Brookline, like all communities, has had to grapple with a “standard” test in the real learning environment where there is no one standard student. As the effects of MCAS now hit us in earnest, some have called for Brookline to forego the MCAS requirement and issue local diplomas according to our own standards.

There are those who feel this approach is wholly appropriate, that it demonstrates to our children the importance of standing up for what is right and speaking truth to power. There are others who feel this would merely be a case of sacrificing the Town’s children on the altar of the public good for no actual benefit -- or even to a detriment.

A discussion of these points is well beyond the scope of this report. However, from a budgetary and staff perspective, there are some serious points to consider.

When Cambridge signaled its intent to grant local diplomas, the State’s response was fast and furious. It notified Cambridge that such a move would result in a loss of all State educational and Federal funding under the No Child Left Behind Legislation. Presumably, this would include SBA reimbursement for School Buildings. Also, students would be ineligible for student loans and grants. Additionally, the State threatened to revoke the credentials of the Superintendent and Headmaster.

Cambridge has not issued local diplomas.

It is unknown whether this would hold up in court (though recent rulings have supported the State), or what the effect of numerous municipalities doing this simultaneously would be. The potential financial liability, however, is enormous.

What is very clear is that the State views the granting of local diplomas as a threat to the entire State standards-based approach, and they will be both vigilant and forceful in dealing with this issue.



**45. MUNICIPAL BUILDING SECURITY****\$45,000 (T)**

This project is for small-scale improvements to all Public and School Buildings. As a response to September 11, 2001, there has been a need to improve the general security of all buildings in Town. Over the last few years, there have been several large capital projects that have improved the security situation at these buildings. This program will extend this effort and add to those areas where security may be lacking. In general, the plan calls for making all the doors around the perimeter of a building more secure by replacing, where appropriate, the doors, frames, door handles and locks. Only the front main entrance of the buildings would allow for general access. These doors would have electric locks and only be allowed to open on a specific schedule or with a keypad. At the front door a speaker will be added to interconnect to the buildings' existing intercom or phone system for those persons who are visitors. A doorbell will also be added. The lighting around each building will also be improved, and also be on a timer. A small camera system connected to a computer will be added at the main entrance to monitor access to the building. It is not the intent to install a large scale monitoring system due to complexity, monitoring issues, and costs. This is a first step at providing some assurances to the staff in the main office as to who is located at the front area of a building and to provide some means of recording activities. The school buildings would be a priority. Most schools are in good condition but based on an assessment conducted by the Police Department, things can and should be improved.

**46. TECHNOLOGY-HARDWARE/SOFTWARE ENHANCEMENTS \$130,000 (T)**

This \$130,000 is for funding projects detailed in the Information Technology Department's Long-Term Strategic Plan, which was prepared in FY 2002 and which serves as the basis for the re-organized department. These projects meet the short-term objectives set by the Chief Information Officer and appropriate committees. Included in these projects are the upgrade of the PermitsPlus database engine and the further deployment of the School's Pentamation system (student records) to teachers. The Five-Year IT CIP will be updated annually and integrated into the Town CIP.

**47. INSTRUCTIONAL TECHNOLOGY STUDY/IMPLEMENTATION \$150,000 (T)**

This appropriation will provide funding to facilitate the development, implementation and evaluation of a Long Range Instructional Technology Plan. This plan will include technology standards, performance standards, revised learning expectations, an implementation and evaluation process and associated project costs. There are no recurring costs.

As Brookline Public Schools invest additional resources in technology, the need becomes greater to establish plans that will both describe/clarify the expenditures for the future and provide a vision of what will be accomplished through the use of technology to improve student achievement for all learners in our district.

An Instructional Technology Plan encompasses many sub disciplines which include knowledge about and use of computers and related technologies in (1) integration of technology and curriculum to support learning; (2) delivery, development, prescription, and assessment of instruction; (3) effective use of computers as an aid to problem solving; (4) school and classroom management; (5) educational research; (6) electronic information access and exchange; (7) personal and professional productivity; (8) technical assistance and leadership; and (9) computer science education.

The Instructional Technology Plan that we create will be based on the most recently developed Massachusetts State Standards which must be met to continue to receive funding from the D.O.E.; standards must be identified by 2006.

This project develops a strategic Instructional Technology plan for the schools. The project will identify weaknesses and gaps within the existing program, develop recommendations and guidelines for efficient delivery, and create a timeline and associated budget to implement this plan. The plan will also drive project A9 to identify and recommend grade appropriate technology application software, and project T5 to identify the type and number of desktops per student to support access to instructional materials.

**48. FIRE ENGINE \$325,000 (T)**

This would provide for the replacement of Fire Engine #3, after 18 years first line service. Replacement of fire engines is generally recommended at 15 years.

**49. EMERGENCY OPERATIONS CENTER \$500,000 (T)**

The Emergency Operations Center (EOC) is the key to successful emergency response operations. With decision-makers together at one location, staff and resources can be utilized more effectively. Coordination of activities will ensure that all tasks are accomplished with little duplication of effort. During emergency situations certain departments will be required to relocate their center of control to the EOC. During large scale emergencies the EOC will become the seat of government for the duration of the crisis.

**50. FIRE DEPARTMENT TRAINING MODULE \$60,000 (T)**

This is a training module which would be purchased and installed at our fire training school at Station 6 on Hammond Street. It is a unit designed to withstand training fires without damage.

**51. FIRE DEPARTMENT PHYSICAL FITNESS EQUIPMENT \$30,000 (T)**

These funds are to purchase treadmills, one for each station. The treadmills will be used for physical fitness by the firefighters.

**52. POLICE RADIO IMPROVEMENTS \$37,000 (T)**

Recently, the Police Department conducted a study of the department's radio system. Through this study, it was determined that, overall, the radio system is in good shape. However, the department did identify several areas that need to be upgraded in order to ensure that communication capabilities will continue to operate without interruption. The current stand-by radio, which was installed in 1985, is used as a backup radio system to permit communications to take place in the event something disables the main channel. This system is out of date based on the fact that it is a "tube" system that is no longer manufactured. Parts are extremely hard to come by to make repairs when needed. This system must be on 24 hours a day, seven days a week. The standard life for a radio of this type is 8-10 years. This must be replaced. The department also has a series of receivers strategically placed throughout the Town. They allow transmissions to take place from all areas and buildings in Brookline. Two of the receivers, one installed in 1987 and the other in 1993, are no longer functioning properly and need to be replaced. This appropriation will also add playback capability for the dispatchers. This will allow them to replay a radio transmission and/or a telephone call to determine what exactly was said. The project will

also add at the Dispatch Center, the ability to remotely switch communications to a radio-frequency based system in the event we lose telephone lines.

**53. FIRE TRAINING BUILDING \$165,000 (T)**

The fire training buildings are in need of repair. Funds will be used to repair the masonry and make structural repairs. The other training buildings need exterior work. Painting and roof repairs are needed on the towers.

**54. COOLIDGE CORNER LIBRARY FIRE ALARM IMPROVEMENTS \$45,000 (T)**

**55. COOLIDGE CORNER LIBRARY HVAC UPGRADE \$345,000 (T)**

These funds will replace the fire alarm system and upgrade the HVAC system as recommended in the Capital Needs Assessment.

**56. MOUNTFORT ST./CARLTON ST. TRAFFIC SIGNAL \$120,000 (T)**

These funds are to modernize the existing 1969 semi-actuated signals. New signals will be fully actuated with pedestrian control. This location is a school crossing for the Baker School.

**57. INDEPENDENCE DR./BEVERLY RD./RUSSETT RD. TRAFFIC SIGNAL**

**\$100,000 (T)**

These funds are to modernize existing semi-actuated signal for a 1969 modified signal system. New signals would be fully actuated with pedestrian control for this signal, which is near the Baker School.

**58. GROVE ST./ALLANDALE RD. TRAFFIC SIGNAL \$135,000 (T)**

Both streets are heavily used collector streets. Installation of new signals at a nearby location (Grove at Newton) could change the function of the stop sign on Allendale Road requiring a signal.

**59. SOUTH ST./GROVE ST. TRAFFIC SIGNAL \$25,000 (T)**

This project calls for the modernization of aging (1964) traffic signal equipment and the re-design of approaches to the intersection to provide better visibility, control and safety.

**60. NEWTON ST./W. ROXBURY PARKWAY STUDY/DESIGN \$25,000 (T)**

This appropriation is for the study and design of traffic improvements in the area of Newton Street and West Roxbury Parkway and for neighboring streets. The study will consider neighborhood traffic and traffic safety issues as well as the impact of the Newton Street Landfill re-use, regional traffic, and the Town's Comprehensive Plan to develop specifications for the highest priority improvement.

**61. HORACE JAMES/PUTTERHAM CIRCLES STUDY/DESIGN \$20,000 (T)**

This appropriation is for a study and design of traffic improvements in the areas of Horace James Circle, Putterham Circle, and nearby streets. The study will consider neighborhood traffic and traffic safety issues as well as the impact of the Newton Street Landfill re-use, regional traffic and the Town's Comprehensive Plan to develop specifications for the highest priority improvement

**62. FIRE STATION #6 TRAFFIC SIGNAL \$60,000 (T)**

Modernization of the traffic signals (installed at this location in 1939) is necessary. Visibility signals are a major priority with this project.

**63. FIRE STATION #7 TRAFFIC SIGNAL \$60,000 (T)**

Modernization of the Washington Street Fire Station traffic signal near Washington Square is needed to provide greater visibility.

**64. PARKING METERS \$30,000 (T)**

With the Town reclaiming full control of the Kent/Station Street parking lot, 44 parking meters must be furnished and installed to implement the new parking program for the lot. A hybrid type or parking scheme will be established where 10-hour meters for commercial employee permit parking and 3-hour meters for business customers will be installed. In addition, an overnight parking program will be instituted.

**65. STREET REHABILITATION – TOWN \$1,000,000 (T)**

One of the goals of the Public Works Department is to bring the condition of the streets in the Town to a point where only periodic maintenance is required to keep the streets in good condition. With the pavement management program, the Department is able to establish a program to reach this goal.

**66. STREET REHABILITATION (CHAPTER 90) \$484,117 (G)**

Portions of Beacon Street fall within the CDBG eligible area and qualify for CDBG funding. This appropriation will be combined with state funding to reconstruct Beacon Street from Town line to Town line. The overall estimated cost for this project is approximately \$9 million.

**67. TRAFFIC CALMING STUDIES & IMPROVEMENTS \$200,000 (T)**

These funds will be used to implement approved traffic calming measures that have been reviewed, analyzed and designed by the Transportation Division using the Traffic Calming Policy as a guide.

**68. LINCOLN SCHOOL WALL REPAIR \$150,000 (T)**

The brick wall at the new Lincoln School which runs along Walnut Street and a small section of Kennard Road is in poor condition and needs to be rebuilt. In 1987 the DPW contracted to have approximately 250 feet of this wall rebuilt along Kennard Road. The DPW/Engineering Division will use the specifications developed for the 1987 contract to carry out this work.

**69. SIDEWALK REPAIR/RECONSTRUCTION \$200,000 (T)**

Within the last year, the DPW has received many complaints about the condition of the sidewalks. Some of the sidewalks are reconstructed as part of the street reconstruction program. However, this cannot keep up with the demand to replace deteriorated sidewalks. A consultant is inventorying and prioritizing the sidewalks so that a replacement program can be put in place.

**70. NEWTON STREET LANDFILL ASSESSMENT/CORRECTIVE ACTION \$1,000,000 (T)**

As a result of the Comprehensive Site Assessments for the landfills, environmental issues were identified which will require corrective actions. The Town's consultant is in the

process of more accurately determining the type and extent of the contaminants in order to identify and evaluate appropriate corrective actions. This appropriation will be used to implement the findings of the study.

**71. STREETLIGHT REPLACEMENT/REPAIRS \$100,000 (T)**

The Town recently purchased the street lights from NStar. This funding will be used to upgrade/replace both the existing Town-owned lights and the newly purchased lights from NStar.

**72. CARLTON ST. FOOTBRIDGE-PLANS & OTHER PRELIMINARY COSTS \$30,000 (T)**

At the May, 2002 Town Meeting a resolution was adopted which stated in part “That the Selectmen are requested to provide an article in a FY04 Warrant that requests \$30,000 be appropriated in the FY04 CIP for the cost of preliminary plans for and other preliminary costs associated with the reconstruction, relocation and removal of the Carlton Street Footbridge, inclusive of mitigation, with...” If approved, a portion of the \$30,000 would be used to expand the work being done by the Engineering Division in order to respond to the issue of mitigation. This additional information will be utilized at a further Town Meeting to develop a definitive scope of work for the footbridge.

**73. CARLTON ST. FOOTBRIDGE-TOWN SHARE OF PROJECT \$90,000 (T)**

Whatever the fate of the footbridge might be, funding will be required of the Town. The \$90,000 will either be the Town’s match for a State/Federal grant (Town 15%-\$90,000; Grant 85%-\$510,000) if restoration/relocation is selected, or if not, for the total cost of demolition. Should the decision be made not to demolish the footbridge, an application would be made to State/Federal agencies for funding to restore/relocate the existing footbridge.

**74. PLAYGROUND EQUIPMENT, FIELDS, FENCING \$250,000 (T)**

This is an ongoing Town-wide program for the repair and replacement of unsafe, deteriorating, playground, fence and field facilities or their components. Improvements include fence installations, backstops, masonry work, retaining walls, picnic furniture repairs, turf maintenance and restoration, bench replacements, play structures, safety surfacing, and drainage improvements. This program prevents more expensive rehabilitation that would be necessary if these items are continuously left to deteriorate.

**75. TOWN/SCHOOL GROUNDS REHAB \$150,000 (T)**

The Town/School grounds are in need of extensive landscaping, structural improvements and repair. These funds will be applied to create attractive and functional landscapes and hardscape improvements. These funds have been used to initiate small crucial landscape improvements at various schools and Town grounds including plant installation, regrading, reseeding, tree work, drainage improvements, and replacing or repairing concrete or asphalt walkways, trash receptacles, bike racks, retaining walls, steps, railings, benches, and other exterior structures.

**76. LONGWOOD (LAWRENCE) PARK IMPROVEMENTS \$100,000 (T)**

Improvements proposed include rebuilding the playfield, rehabilitating the older children’s playground, rehabilitating the center playground area, and grading and landscaping the Longwood entrance area.

**77. AMORY FIELD****\$35,000 (T)**

These funds will be used to design the Amory Field improvements. The three ballfields at Amory Park need to be rehabilitated due to heavy use. The irrigation system needs to be repaired and updated. The existing topsoil will be excavated, screened, and amended with soil, compost, and sand. The fields will be regraded to shed water to new area drains which will be tied into the new bypass pipe installed as part of the Hall's Pond project. The infields will have new clay material, backstops and player benches.

**78. COOLIDGE PARK****\$100,000 (T)**

Coolidge Park is located in a highly dense area abutting Brighton. The play equipment is outdated and does not meet safety and handicap access requirements. Park rehabilitation includes fencing, path replacement, landscaping and upgrading playground equipment, including the swings, climbing equipment, base of the spray pool, water fountain, and sandbox. Through the design process, the Design Review Committee determined that there was a need for park lighting, turf improvements and additional perimeter planting, fencing and updates to the tennis area. The request for \$100,000 will complete the renovations to Coolidge Park.

**79. TREE REMOVAL AND REPLACEMENT****\$100,000 (T)**

The tree removal and replacement project represents the Tree Planting Committee's effort to balance the Town's street trees removals with plantings. As trees mature or are impacted by storm damage or disease it is critical to remove them before they become public hazards. New tree plantings are also critical as they directly impact the tree-lined character of the community. It is crucial to expand the Town's commitment to plant the much needed trees. CDBG funds are used in CD eligible areas only.

**80. SWIMMING POOL LOCKER REPLACEMENT****\$100,000 (T)****81. SWIMMING POOL ROOF****\$45,000 (T)**

These funds will be used to replace the lockers and a section of the roof between the Pool and the Gym building.

**82. SCHOOL FURNITURE UPGRADES****\$25,000 (T)**

These funds will be used to upgrade furniture in all the schools. Much of the furniture in the schools is very old and worn. This replacement program, which will be ongoing for several years, will replace the most outdated and worn items.

**83. LINCOLN SCH. BURNER REPLACEMENT/OIL TANK INSTALLATION****\$30,000 (T)**

This item is to install an oil tank and replace burners with dual fuel burners.

**84. OLD LINCOLN SCHOOL GUTTERS/DOWNSPOUTS****\$230,000 (T)**

This work includes replacing gutters and downspouts and repairing masonry.

**85. SCHOOL TRASH COMPACTORS****\$ 30,000 (T)**

This project would permanently install trash compactors at the Unified Arts Building, Runkle School, and Driscoll School. Presently all three sites utilize open-air 20-yard containers. These would be replaced with 30-yard closed containers that would seal and compact the trash. These containers would be removed on a monthly schedule instead of the daily

schedule. The compactor installed at the High School has greatly improved the area and assisted with sanitation.

**86. WATER METER REPLACEMENT \$50,000 (EF)**

These funds are to purchase and install approximately 9,500 residential and commercial water meters to replace the existing metering system with state-of-the-art radio frequency transmitter remote reading meters. The useful life of the existing meter system is 15 years and it was installed in 1985. Installation of this new system will allow meters to be read from a central computer without the need to access each property and will provide the Town with the ability to bill monthly instead of quarterly for water and sewer service.

**87. NEWTON STREET LANDFILL CAPPING/PARK DEVELOPMENT  
\$7,890,000 (B)**

The Engineering Division completed, and DEP approved, the Initial site Assessment for both the front and rear landfills. The Town's environmental consultant completed the more encompassing Comprehensive Site Assessment for both landfills. Before completing the final design of the landfill cap, the post closure uses of the landfills must be established. After extensive public meetings, the Citizens Advisory Committee (CAC) recently approved a schematic plan to move the DPW operations currently being done on the front landfill onto a portion of the rear landfill and to construct an athletic field on the front landfill. In addition, improvements will be made to the incinerator and transfer station buildings which the DPW uses for processing and recycling municipal solid waste. The consultant has been directed to move forward with design development drawings based on the approved schematic plan. It is anticipated the construction on the rear landfill would start in the spring 2004.

**88. BEACON STREET RECONSTRUCTION TOWN \$2,600,000 (B)  
STATE \$6,900,000 (G)**

In general, the overall project consists of roadway improvements to the Beacon Street corridor from Town line to Town line. New signal installation as well as upgrading existing signals will be done, new roadway pavement and alignment will be installed, selective sidewalks will be replaced and made ADA compliant, landscaping and street amenities will be installed as well as appurtenances consistent with roadway construction. The State will fund \$5 million for the construction of the core project (traffic/pavement improvements) and \$1.9 million for the design and construction of the enhancements project (landscaping/street amenities). Because the design of this project has taken several years, and the scope of work has expanded from what was originally envisioned, the State funding is not sufficient to cover the construction costs. Hence the \$2,600,000 of local funding is required to cover short fall.

**89. DRISCOLL SCHOOL IMPROVEMENTS \$1,425,000 (B)**

This request is primarily to upgrade the current HVAC equipment which is over 50 years old and in very poor condition. Other significant elements of this request include \$350,000 to upgrade the cafeteria. The existing cafeteria space, part of the 1910 building, has been in disrepair for some time. The floor layout and use of space will be reorganized and better utilized. Also, this project will replace windows and improve safety maintenance and upkeep. Finally, the entire school will be painted.

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VOTED: To approve the budget for fiscal year 2004 set forth in the attached Tables I and II; to appropriate the amounts set forth for such fiscal year in the departments and expenditure object classifications within departments, as set forth in Tables I and II, subject to the following conditions; to raise all sums so appropriated, unless other funding is provided herein; and to establish the following authorizations:

**1.) TRANSFERS AMONG APPROPRIATIONS:** Transfers between the total departmental appropriations separately set forth in Tables 1 and II shall be permitted only by vote of Town Meeting. Within each separate departmental appropriation, expenditures shall be restricted to the expenditure object classifications set forth in the recommendation of the Advisory Committee, and voted by the Town Meeting, for each department, subject to the following exceptions:

- A) Expenditures within the appropriation for the School Department shall not be restricted.
- B) The following transfers within the appropriations for each department (other than the School Department and the Library Department), shall be permitted only with the prior written approval of the Board of Selectmen and Advisory Committee:
  - i) Transfers from the appropriation for the capital outlay object classification to any other object classification.
  - ii) Transfers to the appropriation for the personal services object classification from any other object classification.
  - iii) Any transfer which has the effect of increasing the number of positions or the Compensation for any position, exclusive of adjustments in wages and benefits voted separately by Town Meeting.
  - iv) Within the Building Department appropriation, any transfer of more than \$5,000 to or from the repairs to public building appropriations.
  - v) Transfers within the Department of Public Works from the Parks Division to any other purpose.
- C) Transfers within the Library Department appropriation shall be permitted with the approval of the Board of Library Trustees, and notice of such approval shall be submitted promptly to the Advisory Committee, Town Administrator and Town Comptroller.
- D) All other transfers within the total appropriation for a particular department shall be permitted with the written approval of the Town Administrator, subject to

review and approval of the Board of Selectmen, and written notice of each such approval shall be submitted promptly to the Advisory Committee.

**2.) PROCUREMENT CONTRACTS AND LEASES:** The Chief Procurement Officer is authorized to lease, or lease with an option to purchase, any equipment or capital item funded within the FY2004 budget, and to solicit and award contracts for terms of more than three years, provided that in each instance the longer term is determined to be in the best interest of the town by a vote of the Board of Selectmen.

**3.) ALLOCATION OF SALARY ADJUSTMENTS:** Appropriations for salary and wage adjustments (Item #20) shall be transferred by the Town Comptroller to the various affected departments within (60) days from the beginning of the fiscal year, or in the absence of duly approved collective bargaining agreements, within (60) days of the approval of the collective bargaining agreements by Town Meeting. The Board of Selectmen shall determine the salaries, which may include merit adjustments, for employees not included in any collective bargaining agreement.

Should a balance remain after the Town Comptroller has made the transfers specified herein, said balance shall be transferred by the Town Comptroller to a budget line entitled Personal Services Reserve, which shall be used to fund costs incurred over the course of the fiscal year pursuant to employee contracts and/or established personnel policies. The Town Comptroller shall include an accounting of all transfers made from this reserve in the Annual Financial Report.

**4.) SALARIES OF ELECTED OFFICIALS:** The salaries of members of the Board of Selectmen shall be at the rate of \$3,500 per year for the Chairman and at the rate of \$2,500 per year for each of the other four members. The annual salary of the Town Clerk shall be at the rate of \$81,011 effective July 1, 2003, plus any adjustment approved by vote of the Board of Selectmen. The Town of Brookline shall pay all fees received by the Town Clerk by virtue of his office into the Town treasury for use.

**5.) VACANT POSITIONS:** No appropriation for salaries, wages, or other compensation shall be expended for a position which has become vacant during the fiscal year unless the Board of Selectmen, at an official meeting, has determined that the filling of the vacancy is either essential to the proper operation of the Town or is required by law. This condition shall not apply to appropriations of the School Department.

**6.) GOLF ENTERPRISE FUND:** The following sums, totaling \$1,359,029 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	\$200,994
Purchase of Services	\$579,313
Supplies	\$65,500
Capital	\$580
Total Appropriations	\$846,387
Indirect Costs	\$512,642
Total Costs	\$1,359,029

Total costs of \$1,359,029 to be funded from golf receipts with \$512,642 to be reimbursed to the general fund for indirect costs.

**7.) WATER AND SEWER ENTERPRISE FUNDS:** The Water and Sewer Enterprise Funds shall be combined and the following sums, totaling \$20,403,917, shall be appropriated into the Water and Sewer Enterprise Fund, and may be expended under the direction of the Commissioner of Public Works for the Water and Sewer purposes as voted below:

	<u>Water</u>	<u>Sewer</u>	<u>Total</u>
Salaries	1,700,534	228,290	1,928,824
Purchase of Services	89,816	109,719	199,534
Supplies	94,815	8,535	103,350
Other	3,600	0	3,600
Capital	75,900	94,000	169,900
Intergovernmental	<u>3,684,636</u>	<u>9,464,601</u>	<u>13,149,237</u>
Total Appropriations	5,649,300	9,905,145	15,554,445
Indirect Costs	<u>3,602,743</u>	<u>1,246,729</u>	<u>4,849,472</u>
Total Costs	9,252,043	11,151,874	20,403,917

Total costs of \$20,403,917 to be funded from water and sewer receipts with \$4,849,472 to be reimbursed to the general fund for indirect costs.

**8.) REVOLVING FUNDS:**

- a.) The Park and Recreation Commission is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2, a revolving fund for special recreation programs and events. All receipts from said programs and events shall be credited to the fund. Annual expenditures from the fund shall not exceed \$1,100,000.
- b.) The Building Commissioner is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2, a revolving fund for the repair and maintenance of the Town's rental properties, including all those listed in the vote under Article 13 of the Warrant for the 1999 Annual Town Meeting plus the Brookline Public Health Center building. All receipts from said rental properties

shall be credited to the fund, except that one half of the proceeds from the Health Center shall be used to fund graduate student interns for the Health Department. Annual expenditures from the fund shall not exceed \$100,000.

- c.) The Commissioner of Public Works is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2, a revolving fund for the construction and reconstruction, upkeep, maintenance, repair and improvement of sidewalks and walkways along public streets and ways over, across and through town owned property. Annual expenditures from the fund shall not exceed \$400,000.
- d.) The Commissioner of Public Works is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2, a revolving fund for the purchase of town-owned vehicles and equipment. Annual expenditures from the fund shall not exceed \$100,000.
- e.) The Director of Planning and Community Development is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2, a revolving fund for the Façade Improvement Loan Program. Annual expenditures from the fund shall not exceed \$30,000.

**9.) SCHOOLHOUSE MAINTENANCE AND REPAIR:** The sum of \$3,003,713, included within the Building Department appropriation for school building maintenance, shall be expended for School Plant repair and maintenance and not for any other purpose. The listing of work to be accomplished shall be established by the School Department. The feasibility and prioritization of the work to be accomplished under the school plant repair and maintenance budget shall be determined by the Superintendent of Schools and the Building Commissioner, or their designees.

**10.) INTERFUND TRANSFERS:** In order to fund the appropriations voted for the various departments itemized on Table 1 and to provide funding toward the subsequent retiree healthcare obligation, the Town Comptroller is authorized to make the following interfund transfers:

Parking Meter Special Revenue Fund (to the Department of Public Works - \$950,000) (to the Police Department - \$950,000)	\$1,900,000
State Library Aid Special Revenue Fund (to the Library)	\$ 41,555
Cemetery Perpetual Care Expendable Trust Fund (to the Department of Public Works)	\$ 10,000
Cemetery Sales Special Revenue Fund (to the Department of Public Works)	\$ 40,000

Recreation Revolving Fund (to the General Fund for benefits reimbursement)	\$ 127,148
Adult Education (School Dept.) (to the General Fund for benefits reimbursement)	\$ 25,000
Title I (School Dept.) (to the General Fund for benefits reimbursement)	\$ 25,000
Refugee / Immigrant Grant (School Dept.) (to the General Fund for benefits reimbursement)	\$ 2,000
Special Education Grant (School Dept.) (to the General Fund for benefits reimbursement)	\$ 25,000
Gear-Up Grant (School Department) (to the General Fund for benefits reimbursement)	\$ 23,000
Group Health Insurance Unmatched Accrued Expense Account (to the Retiree Healthcare Liability Trust Fund)	\$ 360,793.10

**11.) BUDGETARY REPORTING:** The Town Comptroller shall provide the Advisory Committee with a report on the budgetary condition of the Town as of September 30, December 31, March 31, and June 30, within 45 days of said dates. This financial report shall include a summary of the status of all annual and special appropriations voted in this article; a report on the status of all special appropriations voted in prior years which remain open at the reporting date; and a summary of the status of all revenues and inter-fund transfers which have been estimated to finance the appropriations voted under this article.

**12.) SPECIAL APPROPRIATIONS:** The appropriations set forth as items 42 through 89, inclusive, in Table 1 shall be specially appropriated for the following purposes:

- 42.) Raise and appropriate \$60,000, to be expended under the direction of the Chief Procurement Officer, with the approval of the Board of Selectmen, for furnishings and equipment for Town Buildings.
- 43.) Raise and appropriate \$50,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for removal of asbestos from Town-owned buildings.
- 44.) Raise and appropriate \$50,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for ADA renovations to Town-owned buildings.
- 45.) Raise and appropriate \$45,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for the purpose of improving municipal building security.

- 46.) Raise and appropriate \$130,000, to be expended under the direction of the Chief Information Officer, with the approval of the Board of Selectmen, for the enhancement of town-wide hardware and software.
- 47.) Raise and appropriate \$150,000, to be expended under the direction of the Chief Information Officer, with the approval of the Board of Selectmen and the School Committee, for an Instructional Technology Study and its implementation.
- 48.) Raise and appropriate \$325,000, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the purchase of a fire engine.
- 49.) Raise and appropriate \$500,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for the construction of an Emergency Operations Center at the Municipal Service Center.
- 50.) Raise and appropriate \$60,000, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for a training module and associated equipment.
- 51.) Raise and appropriate \$30,000, to be expended under the direction of the Human Resources Director, with the approval of the Board of Selectmen, for physical fitness equipment for the Fire Department.
- 52.) Raise and appropriate \$37,000, to be expended under the direction of the Police Chief, with the approval of the Board of Selectmen, for police radio improvements.
- 53.) Raise and appropriate \$165,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for improvements to the Fire Training building.
- 54.) Raise and appropriate \$45,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the Board of Library Trustees, for fire alarm improvements at the Coolidge Corner Library.
- 55.) Raise and appropriate \$345,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the Board of Library Trustees, for the upgrade of the HVAC system at the Coolidge Corner Library.
- 56.) Raise and appropriate \$120,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for modernization of the traffic signal at the Mountfort Street / Carlton Street intersection.
- 57.) Raise and appropriate \$100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the modernization of the traffic signal at the Independence Drive / Beverly Road / Russett Road intersection.

- 58.) Raise and appropriate \$135,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the installation of a traffic signal at the Grove Street / Allendale Road intersection.
- 59.) Raise and appropriate \$25,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the design of a traffic signal at the South Street / Grove Street intersection.
- 60.) Raise and appropriate \$25,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for a study and design of traffic improvements at the Newton Street / West Roxbury Parkway intersection and/or neighboring streets.
- 61.) 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 a study and design of traffic improvements at Horace James Circle, Francis X. Ryan Circle (Putterham Circle), and/or nearby streets.
- 62.) Raise and appropriate \$60,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the modernization of the traffic signal at Fire Station #6.
- 63.) Raise and appropriate \$60,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the modernization of the traffic signal at Fire Station #7.
- 64.) 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 purchase of parking meters.
- 65.) Raise and appropriate \$1,000,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of streets.
- 66.) Raise and appropriate \$484,117, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of streets.
- 67.) Raise and appropriate \$200,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for traffic calming studies and improvements.
- 68.) Raise and appropriate \$150,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for repairs to the Lincoln School Wall.
- 69.) Raise and appropriate \$200,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for sidewalk repair and reconstruction.

- 70.) Raise and appropriate \$1,000,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for assessment and corrective action associated with the Newton Street Landfill.
- 71.) Raise and appropriate \$100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for streetlight replacement and repairs.
- 72.) 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 cost of preliminary plans for and other preliminary costs associated with the reconstruction, relocation, and removal of the Carlton Street Footbridge, inclusive of mitigation, with provision, in the event of either reconstruction or relocation, for full ADA compliance.
- 73.) Raise and appropriate \$90,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the reconstruction, relocation, or removal of the Carlton Street Footbridge.
- 74.) Raise and appropriate \$250,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Parks and Recreation Commission and the Board of Selectmen, for the renovation of playground equipment, fields, and fencing.
- 75.) Raise and appropriate \$150,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of Town / School grounds.
- 76.) Raise and appropriate \$100,000, to be expended under the direction of the Building Commissioner, with the approval of the Parks and Recreation Commission and the Board of Selectmen, for improvements to Longwood Park.
- 77.) Raise and appropriate \$35,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Park and Recreation Commission, for the design of Amory Field improvements.
- 78.) Raise and appropriate \$100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Park and Recreation Commission, for improvements to Coolidge Park.
- 79.) Raise and appropriate \$100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Tree Planting Committee, for the removal and replacement of trees.
- 80.) Raise and appropriate \$100,000, to be expended under the direction of the Building Commissioner, with the approval of the Park and Recreation Commission and the Board of Selectmen, for the replacement of lockers at the Municipal Swimming Pool.

- 81.) Raise and appropriate \$45,000, to be expended under the direction of the Building Commissioner, with the approval of the Park and Recreation Commission and the Board of Selectmen, for the study, design and repair of the roof of the Municipal Swimming Pool.
- 82.) Raise and appropriate \$25,000, to be expended under the direction of the Chief Procurement Officer, with the approval of the School Committee and the Board of Selectmen, for school furniture upgrades.
- 83.) Raise and appropriate \$30,000, to be expended under the direction of the Building Commissioner, with the approval of the School Committee and the Board of Selectmen, for the replacement of a burner and installation of an oil tank at the Lincoln School.
- 84.) Raise and appropriate \$230,000, to be expended under the direction of the Building Commissioner, with the approval of the School Committee and the Board of Selectmen, for gutters and downspouts at the Old Lincoln School.
- 85.) Raise and appropriate \$30,000, to be expended under the direction of the Building Commissioner, with the approval of the School Committee and the Board of Selectmen, for trash compactors at various schools.
- 86.) Raise and appropriate \$50,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for water meter replacement.
- 87.) To appropriate \$7,890,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for capping, cleaning up or preventing pollution and closing out the Newton Street Landfill and associated solid waste disposal facilities, including all costs incidental thereto, and to meet the appropriation authorize the Treasurer, with the approval of the Selectmen, to borrow \$7,890,000 under General Laws, Chapter 44, Section 8, Clauses (21), (23) and (24), as amended, and authorize the Selectmen to apply for, accept, receive and expend grants, aid, reimbursements, loans and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.
- 88.) To appropriate \$2,600,000, to be expended under the direction of the Director of Public Works, with the approval of the Board of Selectmen, for the construction with permanent pavement of Beacon Street, and to meet the appropriation authorize the Treasurer, with the approval of the Selectmen, to borrow \$2,600,000, under General Laws, Chapter 44, Section 7, Clause (5), as amended, and authorize the Selectmen to apply for, accept, receive and expend grants, aid, reimbursements, loans and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.
- 89.) To appropriate \$1,425,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the School Committee, for remodeling, reconstructing or making of extraordinary repairs to the Driscoll School, and to meet the appropriation authorize the Treasurer, with the

approval of the Selectmen. to borrow \$1,425,000, under General Laws, Chapter 44, Section 7, Clause (3A), as amended, or under General Laws, Chapter 70B, as amended, and all other enabling authority, and authorize the Selectmen or the School Committee to apply for, accept, receive and expend grants, aid, reimbursements, loans and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

13.) **FREE CASH:** Appropriate and transfer \$5,602,961 from free cash for the following purposes:

- a.) Reduce the tax rate (Capital Improvements)- \$4,929,348;
- b.) Housing Trust Fund - \$316,455;
- c.) Retiree Group Health Trust Fund - \$357,158.

XXX

May 27, 2003  
Annual Town Meeting  
Article 11 – Supplement No. 1

MOTION TO BE OFFERED BY JOSEPH ROSS (OR HIS NOMINEE) UNDER ARTICLE 11

Moved: to amend the main motion under Article 11 by reducing the appropriation made under line item 39 for "Printing Warrants and Reports"(shown on page 11-50 of the Combined Reports) from \$20,000 to \$19,205 and by adding an appropriation in the amount of \$795 under a new line item 39A for "Town Meeting Members' Association".

Monthly mailing to TMMA Executive Committee

Item	no.	unit	price/unit	frequency	total
monthly mailing postage	36	mailing piece	\$ 0.37	10	\$ 133.20
monthly mailing printing	144	pages	\$ 0.01	10	\$ 14.40
cost of paper					\$ 10.00
envelopes, labels					\$ 8.00
staff time (AM Cedrone)	1	hour	\$ 20.07	10	\$ 200.70
					\$ 366.30

source: Sean Cronin

Newsletter	1000	pages	\$ 0.01	2	\$ 20.00
Annual Meeting notice	250	pages	\$ 0.01	1	\$ 2.50
					\$ 22.50
Supporting materials	36	pages	\$ 0.02	20	\$ 14.40
Occasional mailings	240	pieces	\$ 0.38	1	\$ 91.20
Stationery					\$ 100.00
TMMA events					\$ 200.00
site visits, etc.					
					\$ 794.40

TMMA Executive Board has a full membership of 36 people: four officers and two delegates from each of 16 precincts.  
 Staff time for Newsletters, flyers, etc. not included.

ARTICLE 11

BOARD OF SELECTMEN'S SUPPLEMENTAL REPORT

**Final Appropriation Requests**

As mentioned in the Selectmen's original report on Article 11, the timing of the second Revised Financial Plan, which was predicated upon final budget action by the full House of Representatives, and the Board of Selectmen's schedule combined to make it impossible for the Board to take a formal vote on the final budget prior to the mailing of the Combined Reports. The Board of Selectmen formally acted on the budget at its May 13 meeting, as planned, based upon the final House of Representatives budget proposal, which was voted on Friday, May 9.

In terms of impact to Brookline, there was one difference between the House Ways and Means' Local Aid package and the one included in the full House of Representatives' proposal: the House budget fully-funded the Police Career Incentive Program (Quinn Bill), resulting in a restoration of \$81,540 for Brookline. This additional funding enabled the Town to fully fund its share of the Quinn Bill and restore the following cuts, all of which were detailed in the original report on Article (see page 11-17 of the Combined Reports):

- Household Hazardous Waste (DPW) -- +\$23,224
- Temporary Part-Time Clerical (Police Department) -- +\$15,622
- Reclassification of Director of IT Operations position (ITD) -- +\$1,924

The Board of Selectmen is in complete agreement with the Advisory Committee on all monetary aspects of the proposed FY04 budget, which are reflected in the Revised Tables I and II attached to this Supplemental Report, as evidenced by the 5-0 vote of FAVORABLE ACTION taken on May 13.

**Language on the Carlton Street Footbridge Appropriations**

There are two different votes being offered on the language of special appropriations 72 and 73, the items relating to the Carlton Street Footbridge (CSFB). The Advisory Committee voted to amend both appropriation items to restrict spending only for restoration of the CSFB, opposed to the original intent of enabling further analysis of / project funding for reconstruction, relocation, and/or removal of the CSFB. The Advisory Committee took this vote on May 15 after their review of the Final Environmental Impact Report (FEIR) issued by the State Secretary of Environmental Affairs.

This Board is seeking a meeting with the Secretary, prior to Town Meeting, in order to discuss and clarify several aspects of the FEIR. Among other matters, the Board wants to express concern about the apparent linking of the State's funding share of Phase I of the Muddy River Project with the CSFB. Since the meeting date will not coincide with the mailing of this supplemental mailing, the Board chose not to reconsider the two

appropriations and will not do so unless a meeting with the Secretary or other developments help clarify the Secretary's intentions. If warranted, a supplemental recommendation will be made available on the night of Town Meeting.

The Selectmen unanimously recommend FAVORABLE ACTION on the following appropriations found under Section 12 (Special Appropriations) of Article 11:

- 72.) 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 cost of preliminary plans for and other preliminary costs associated with the reconstruction, relocation, and removal of the Carlton Street Footbridge, inclusive of mitigation, with provision, in the event of either reconstruction or relocation, for full ADA compliance.
- 73.) Raise and appropriate \$90,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the reconstruction, relocation, or removal of the Carlton Street Footbridge.

#### ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

##### FY04 Operating Budget

In the course of developing the budget tables which you will find on pages 11-49 to 11-53 of the Reports of Selectmen and Advisory Committee, the Advisory Committee, along with the Town Administrator and Selectmen went through several rounds of making cuts in response to information first from the Governor's office and then from the State legislature as to the likely cuts in local aid we would receive from the Commonwealth. The budget published in the Combined Reports reflects an anticipated cut of \$2,863,246. After passing that budget, the Town learned that the State legislature, contrary to expectations, had fully funded the Quinn bill (the bill which provides some state money to augment local funding for educational incentive pay for police officers). The additional sum of \$81,540 was therefore available for appropriation. Upon reconsideration, the Advisory Committee voted 19-0 (with 2 abstentions) to recommend appropriation of that money to items which were originally in the Town Administrator's recommended budget but which were later cut, as follows:

1. Police Department + \$40,770 (the budget had already included funding for 1/2 of the educational incentive pay, per the contract with the police officers union, and since the state restored this funding the second half of the money must go to the police department)
2. Police Department + \$15,622 Part-time clerical staff (this funding is designed to provide clerical staff to cover for employees who are sick or on vacation)

3. Dept. Of Public Works + \$23,224 Adding funding to the annual Household Hazardous Waste Day Collection (the collection hours would have been substantially reduced under the earlier budget cut; this restores the full complement of collection hours)
4. Information Technology +\$ 1,924 Re-classification of IT position (there is a vacant position in the IT Department which had been downgraded due to budget cuts; this will add some of the reduction back to provide a more realistic salary to hire someone for the vacant position)

TOTAL \$81,540

The Advisory Committee voted 19-0-2 for a recommendation of FAVORABLE ACTION on the budget as reflected in the **amended Tables I and II** included in this Supplemental Report.

#### Special Appropriations

As originally voted, Article 11 included two appropriation items in the Special Appropriations that are related to the Carlton Street Footbridge. Specifically, item 72 is an appropriation for \$30,000 be appropriated for costs associated with preliminary plans associated with the reconstruction, relocation, and removal of the Carlton Street Footbridge. Item 73 is an appropriation for \$90,000 for the actual construction costs of reconstruction, relocation, and removal of the Carlton Street Footbridge. These items can be found on page 11-46 of the Combined Reports. The Advisory Committee's descriptions of these items can be found on page 11-36 of the Combined Reports. These requests followed the resolution adopted by the 2002 Annual Town Meeting, and reflected a compromise between the citizens who want the Footbridge torn down and those who want it restored. The Footbridge, which has been closed for many years, spans the MBTA tracks from Carlton Street into the Frederick Law Olmsted Riverway Park along the Muddy River. Restoration of that Park, along with dredging and other flood control measures, is the goal of the Muddy River Project. This project is projected to cost about \$96 million. The bulk of that funding, 65%, will be paid by the federal government, if passed by Congress, another \$24 million would be paid by the Commonwealth, if passed, and the remainder by the City of Boston and Town of Brookline. See the Advisory Committee's write ups on Articles 12 and 13 in the Combined Reports for more information on the history of this project, particularly as it relates to the Carlton Street Footbridge. The Footbridge has become a contentious point between neighbors in the Carlton Street area who do not want the bridge reopened and Park advocates who feel that the bridge is an important historical element and that it provides an important part of the Olmsted plan for access to the Park. The Footbridge can be found east of the Longwood MBTA stop.

On May 1, 2003, the Secretary of Environmental Affairs of the Commonwealth issued the Final Environmental Impact Report (FEIR) on the Emerald Necklace Environmental Improvements Master Plan and Phase I Muddy River Flood Control, Water Quality, Habitat Enhancement and Historic Preservation Project. In the FEIR, the Secretary voiced her

concerns on three primary areas: environmental improvements, maintenance and management structure and the Carlton Street Footbridge.

In the FEIR, the Secretary links the renovation of the Carlton Street Footbridge to the State's funding share (\$24 million) of Phase 1 of the project. Although the Carlton Street Footbridge was in Phase III of the Master Plan, the Secretary was apprised of the controversy surrounding this issue and apparently decided to move it up in importance and timing. Her decision to withhold the State portion of the money would be likely to derail the entire \$96 million project. Some Advisory Committee members feel that the Secretary is acting inappropriately and/or exceeding her authority with this demand. However, the requirement concerning the Footbridge was clearly and unambiguously made in her statement on the Final Environmental Impact Report, and in response the Advisory Committee felt it had to reconsider the budget items relating to the Carlton Street Footbridge. In the FEIR she states:

“...I am requiring that the SFEIR contain enforceable commitments and a timetable for restoration and reopening of the CSF in its current location.”

There is a difference of opinion as to how fully the Town has already committed itself to the restoration of the Carlton Street Footbridge. Some feel that in signing onto the Master Plan, as the Selectmen did in 1991, a firm commitment was made to restore the Footbridge. Others contend that the Master Plan is a “framework” rather than a “contract” and that the Master Plan and the Management and Maintenance Plan that was prepared with it reference “further public review” which was to “guide the final design of projects before they are constructed.” For instance, under the Master Plan, Netherlands Road is to be closed but that would cut off access to the Town's Water and Sewer Department on that road. Further discussion and review is obviously necessary on some of these items. See the Advisory Committee write up of Warrant Article 13 in the Combined Reports for further discussion of this issue.

The Advisory Committee was assured by Commissioner of Public Works that the Muddy River Project is very important to the Town. A majority of the Advisory Committee, viewing the possibility of losing the State's share, and possibly the Federal government's share, of the funding for the Muddy River project, voted to amend the language of items 72 and 73 to restrict spending to restoration of the Carlton Street Footbridge only - - not restoration, demolition or relocation as originally voted under the direction of Town Meeting's resolution adopted at the 2002 Annual Town Meeting. Some members of the Advisory Committee feel strongly that the Footbridge should be restored, regardless of the fate of the rest of the Muddy River Project. Others were willing to vote for this funding so as not to jeopardize the funding for the larger Project. The minority remained opposed to the restoration of the Footbridge.

In fact, in relation to Item 72 for plans for restoration, the Town has already determined the costs of demolition and relocation and the costs of mitigation (payment demanded by the State for the destruction of a historical site or object) is likely to be highly speculative in any case. Therefore, the Advisory Committee felt that the \$30,000 could be applied simply to plans for restoration, with ADA (Americans with Disabilities Act) compliance. This will allow the Town and proponents of restoration to determine if grant funding for this project

from federal and state sources will be forthcoming. Changing the wording of Special Appropriation 72 makes Warrant Article 12 redundant and unnecessary. The Advisory Committee did not reconsider the Warrant Article.

In relation to Item 73, the Advisory Committee also felt that the wording relating to demolition or reconstruction should be removed, although the vote was closer on this item. Again members were split on the issue; some simply feel that the Footbridge should be restored, others do not want to lose funding on the larger project, and others are opposed to the restoration, either on financial or neighborhood grounds.

The total restoration is likely to cost about \$1 million. In all previous discussions of restoring this Footbridge, the Town was only going to assume about 15% of the total cost and the project would be contingent on receiving grant funding for the remainder. The Secretary in her Statement seems to be demanding an unequivocal commitment from the Town to restore the Footbridge, whatever the cost, though she does say she "will work with the Town of Brookline and the Massachusetts Historical Commission to identify possible sources of additional funding for the restoration work." The "enforceable commitments" she is demanding could, therefore, entail a vast financial increase in the cost to the Town for this project. Proponents of the restoration insist that the Secretary does not mean that Brookline must move ahead if grant funding becomes illusory, but the plain wording of her statement suggests that she is making such a demand. The Town must seek further clarification on this issue. Before making an "enforceable commitment" to the total restoration of the project, the Town must review the consequences to the Capital Improvements Plan in the context of the constraints we are presently facing due to tight budgets, since the State is greatly reducing the local aid it sends to us.

The Advisory Committee again felt that the change in the Special Appropriation should be sufficient at this time. It did not reconsider Warrant Article 13 which is a resolution seeking full commitment to the restoration of the Footbridge.

[Please note that the Secretary's statement on the Final EIR also demands, in relation to maintenance of the Riverway Park and the Muddy River, that the Town "quantify the amount of resources (human, financial, and other) currently expended on maintenance and management, and how future obligations would increase in response to the requirements of this Certificate and the maintenance and management plan that finally emerges from the continuing review process." While this further requirement does not have an impact on the FY04 budget, it may have serious consequences in the future. If the Town is required to irrevocably commit certain funding and resources to the Riverway Park and the Muddy River maintenance, in a future year of budget cuts, other parks may suffer disproportionately since their maintenance could be cut but the Riverway/Muddy River maintenance could not.]

The Advisory Committee recommends FAVORABLE ACTION by a vote of 13-7 on the amended language for appropriation item #72 as reflected on the revised page 11-46 included in this Supplemental Report. The Committee also recommends FAVORABLE ACTION by a vote of 11-9 on the amended language for appropriation item #73 as reflected on the revised page 11-46 included in this Supplemental Report.

FY04 AMENDED RECOMMENDED BUDGET - TABLE 2

Department/Board/Commission	Personnel Services	Purchase of Services	Supplies	Other Charges/ Expenses	Capital Outlay	Debt Service	Agency Total
Board of Selectmen (Town Administrator)	514,164	10,638	6,750	2,300	7,301		541,153
Human Resources Department (Human Resources Director)	140,119	228,956	5,700	400	5,480		380,655
Information Technology Department (Chief Information Officer)	839,617	556,015	34,127	2,450	55,131		1,487,340
Finance Department (Director of Finance)	1,588,560	785,356	28,572	12,314	32,346		2,447,147
Legal Services (Town Counsel)	377,600	76,152	600	70,800	4,641		529,793
Advisory Committee (Chair, Advisory Committee)	17,170	251	250	275	581		18,527
Town Clerk (Town Clerk)	378,654	46,834	7,451	1,200	4,061		438,201
Planning and Community Department (Plan. & Com. Dev. Dir.)	462,947	32,051	11,050	1,600	10,445		518,093
Police Department (Police Chief)	11,190,285	526,851	235,050	2,200	457,736		12,412,122
Fire Department (Fire Chief)	9,727,602	221,149	95,200	15,850	69,680		10,129,481
Public Buildings Department (Building Comm.)	1,649,389	2,869,229	133,614	1,900	54,633		4,708,765
Public Works Department (Commissioner of Public Works)	6,414,568	3,015,263	892,371	9,039	700,000		11,031,241
Public Library Department (Library Board of Trustees)	2,080,141	343,673	464,009	1,502	25,461		2,914,787
Health Department (Health Director)	631,517	263,900	10,570	3,620	29,540		939,147
Veterans' Services (Veterans' Services Director)	75,733	2,173	650	84,995	1,162		164,713
Council on Aging (Council on Aging Director)	507,325	112,272	20,250	2,050			641,897
Human Relations/Youth Resources (Human Relations Dir.)	125,091	4,358	4,100	600	1,742		135,891
Recreation Department (Recreation Director)	1,013,380	162,477	40,846	2,400	5,220		1,224,323
Debt Service (Director of Finance)						13,623,696	13,623,696
School Department (School Committee)							53,759,732
<b>EMPLOYEE BENEFITS</b>							
Contributory Pensions Contribution (Director of Finance)	8,945,000						8,945,000
Non-Contributory Pensions Contribution (Director of Finance)	365,000						365,000
Group Health Insurance (Human Resources Director)	14,372,500						14,372,500
Retiree Group Health (Human Resources Director)	626,133						626,133
Employee Assistance Program (Human Resources Director)	25,000						25,000
Group Life Insurance (Human Resources Director)	100,000						100,000
Workers' Compensation (Human Resources Director)	895,000						895,000
Unemployment Insurance (Human Resources Director)	150,000						150,000
Ch. 41 100B Medical Benefits (Town Counsel)	35,000						35,000
Medicare Payroll Tax (Director of Finance)	1,102,634						1,102,634
<b>Total Employee Benefits:</b>	<b>26,616,267</b>						<b>26,616,267</b>
<b>UNCLASSIFIED</b>							
Reserve Fund (*) (Chair, Advisory Committee)	1,070,000						1,070,000
Liability/Catastrophe Fund (Director of Finance)	100,000						100,000
Housing Trust Fund (Planning & Community Development Dir.)	316,455						316,455
Audit/Professional Services (Director of Finance)	137,000						137,000
General Insurance (Town Administrator)	230,000						230,000
Printing of Warrants (Town Administrator)	20,000						20,000
Contingency (Town Administrator)	18,000						18,000
MMA Dues (Town Administrator)	11,523						11,523
Out of State Travel (*) (Town Administrator)	3,000						3,000

AMENDED PAGE

- 70.) Raise and appropriate \$1,000,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for assessment and corrective action associated with the Newton Street Landfill.
- 71.) Raise and appropriate \$100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for streetlight replacement and repairs.
- 72.) **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 cost of preliminary plans for and other preliminary costs associated with the reconstruction of the Carlton Street Footbridge with provisions for ADA compliance to the extent necessary**
- 73.) **Raise and appropriate \$90,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the reconstruction of the Carlton Street Footbridge.**
- 74.) Raise and appropriate \$250,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Parks and Recreation Commission and the Board of Selectmen, for the renovation of playground equipment, fields, and fencing.
- 75.) Raise and appropriate \$150,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of Town / School grounds.
- 76.) Raise and appropriate \$100,000, to be expended under the direction of the Building Commissioner, with the approval of the Parks and Recreation Commission and the Board of Selectmen, for improvements to Longwood Park.
- 77.) Raise and appropriate \$35,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Park and Recreation Commission, for the design of Amory Field improvements.
- 78.) Raise and appropriate \$100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Park and Recreation Commission, for improvements to Coolidge Park.
- 79.) Raise and appropriate \$100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Tree Planting Committee, for the removal and replacement of trees.
- 80.) Raise and appropriate \$100,000, to be expended under the direction of the Building Commissioner, with the approval of the Park and Recreation Commission and the Board of Selectmen, for the replacement of lockers at the Municipal Swimming Pool.

FY04 AMENDED RECOMMENDED BUDGET - TABLE 1

	FY00 ACTUAL	FY01 ACTUAL	FY02 ACTUAL	FY03 BUDGET	FY04 BUDGET	CHANGE FROM FY03
<b>REVENUES</b>						
Property Taxes	95,990,703	99,542,462	103,690,844	109,532,058	114,151,367	4,619,309
Local Receipts	39,669,445	39,109,205	19,390,029	17,443,978	18,572,844	1,128,866
State Aid	15,544,669	19,302,568	19,993,861	19,832,510	17,050,466	(2,782,044)
Free Cash	6,590,000	4,810,908	11,536,850	5,261,797	5,602,961	341,164
Other Available Funds	2,308,309	6,542,000	6,779,885	8,104,563	8,064,935	(39,628)
<b>TOTAL REVENUE</b>	<b>160,103,126</b>	<b>169,307,143</b>	<b>161,391,468</b>	<b>160,174,906</b>	<b>163,442,573</b>	<b>3,267,667</b>
<b>EXPENDITURES</b>						
<b>DEPARTMENTAL EXPENDITURES</b>						
1 . Selectmen	493,730	495,113	534,684	542,725	541,153	(1,572)
2 . Human Resources	328,014	328,271	262,432	383,727	380,655	(3,072)
3 . Information Technology	978,059	984,444	1,192,981	1,423,550	1,487,340	63,789
(2) 4 . Finance Department	1,476,759	1,458,385	1,615,755	2,554,199	2,447,147	(107,051)
a. Comptroller	329,168	324,523	367,452	315,597	323,546	7,949
b. Purchasing	194,412	191,548	222,325	1,062,726	1,004,842	(57,883)
c. Assisting	611,119	513,210	643,276	642,928	619,567	(24,361)
d. Treasurer	342,060	369,102	302,202	565,593	499,190	(66,403)
5 . Legal Services	586,907	689,422	705,734	546,278	529,793	(16,485)
6 . Advisory Committee	15,761	15,381	16,301	18,527	18,527	0
7 . Town Clerk	434,369	369,832	369,832	476,972	438,201	(38,771)
8 . Planning and Community Development	453,820	472,784	476,348	490,221	518,093	27,872
a. Planning	264,452	194,966	174,526	227,491	222,034	(5,457)
b. Housing	1,514	196,884	113,812	86,417	165,821	79,404
c. Preservation	46,426	47,620	50,323	27,960	36,178	8,218
d. Economic Development	141,428	123,314	127,687	161,224	160,060	(1,164)
9 . Police	10,440,888	10,911,612	11,400,777	12,273,801	12,412,122	138,320
10 . Fire	9,781,488	9,963,650	10,367,886	10,133,461	10,129,481	(3,980)
11 . Building	4,152,636	4,478,490	4,533,132	4,557,541	4,708,765	151,224
(2) 12 . Public Works	22,123,320	24,782,920	10,727,692	10,856,735	11,031,243	174,508
a. Administration	640,894	678,719	723,366	716,722	738,947	22,225
b. Engineering/Transportation	506,088	641,955	594,350	720,787	749,997	29,210
c. Highway	4,467,883	4,924,105	4,355,958	4,255,778	4,103,455	(152,322)
d. Sanitation	2,515,218	2,851,046	2,747,400	2,961,765	2,942,523	(19,241)
e. Water	4,439,207	4,681,783				0
f. Sewer	7,334,479	8,629,795				0
g. Parks and Open Space	1,873,625	1,937,227	1,917,502	2,382,818	2,496,318	113,500
h. Forestry	138,889	200,486	177,093			0
i. Cemetery	162,527	145,509	153,721			0
j. Transportation	44,510	42,265	58,212			0
13 . Library	2,590,909	2,657,648	2,714,330	2,891,630	2,914,787	23,156
14 . Health	837,151	849,320	937,363	935,200	939,147	3,948
15 . Veterans Services	147,969	141,276	144,672	169,771	164,713	(5,058)
16 . Council on Aging	397,334	494,320	568,110	626,099	641,897	15,798
17 . Human Relations	181,841	186,091	213,077	134,574	135,891	1,317
18 . Recreation	1,280,662	1,156,638	1,228,887	1,236,051	1,224,323	(11,728)
(3) 19 . Personal Services Reserve	1,282,641	766,756	790,000	1,474,526	600,000	(874,526)
(4) 20 . Collective Bargaining - Town	1,100,000	1,250,000	1,228,862	1,474,526	1,187,950	(286,576)
Subtotal Town	56,515,460	60,500,134	48,010,193	51,953,241	52,451,225	497,984
21 . Schools	45,179,096	48,174,790	51,243,151	52,406,128	53,759,732	1,353,604
<b>TOTAL DEPARTMENTAL EXPENDITURES</b>	<b>101,694,556</b>	<b>108,674,924</b>	<b>99,255,344</b>	<b>104,359,369</b>	<b>106,210,957</b>	<b>1,851,588</b>

		FY00 ACTUAL	FY01 ACTUAL	FY02 ACTUAL	FY03 BUDGET	FY04 BUDGET	CHANGE FROM FY03
	<b>NON-DEPARTMENTAL EXPENDITURES</b>						
(S)	22 . Pensions	8,334,161	8,516,628	8,463,099	8,711,938	9,310,000	598,062
	23 . Group Health	8,700,000	9,971,000	10,605,444	12,026,425	14,373,500	2,346,075
	24 . Retiree Group Health Trust Fund	35,000	60,000	120,000	229,750	626,133	396,383
	25 . Employee Assistance Program (EAP)	20,000	15,634	14,006	20,000	25,000	5,000
(S)	26 . Group Life	71,601	70,047	79,327	100,000	100,000	0
	27 . Worker's Compensation	800,000	800,000	825,000	1,095,000	895,000	(200,000)
	28 . Unemployment Compensation	110,000	60,799	155,000	100,000	150,000	50,000
	29 . Medical Disabilities	134,977	99,580	94,970	135,000	35,000	(100,000)
	30 . Medicare Coverage	597,051	679,672	749,195	958,813	1,102,654	143,822
	Subtotal Personnel	18,802,790	20,273,160	21,105,957	23,376,926	26,616,267	3,239,342
(3)	31 . Reserve Fund	527,947	874,880	930,687	1,024,730	1,070,000	45,270
	32 . Liability/Catastrophe Fund	0	0	410,239	711,589	100,000	(611,589)
	33 . Housing Trust Fund	0	0	1,000,000	311,225	316,455	5,230
	34 . General Services	628,304	727,569	629,255	0	0	0
	35 . General Insurance	96,741	134,839	187,164	180,000	230,000	50,000
	36 . Audit/Professional Services	95,000	110,492	104,007	137,000	137,000	0
	37 . Contingency Fund	19,996	13,973	16,882	20,000	18,000	(2,000)
	38 . Out-of-State Travel	3,000	1,494	539	3,000	3,000	0
	39 . Printing of Warrants & Reports	14,619	19,022	19,132	20,000	20,000	0
	40 . MMA Fees	10,000	10,444	10,533	11,242	11,523	281
	Subtotal General	867,660	1,017,633	2,377,747	2,418,786	1,905,978	(512,808)
	41 . Borrowing	9,826,766	13,183,004	12,752,494	13,900,983	13,623,696	
(2)	a. Funded Debt - Principal	5,551,408	7,346,408	7,328,518	7,866,968	7,515,518	(351,450)
(2)	b. Funded Debt - Interest	2,884,213	5,120,429	4,901,313	4,781,015	5,247,678	466,663
(2)	c. Bond Anticipation Notes	1,890,195	500,500	293,167	1,093,000	700,500	(392,500)
(2)	d. Abatement Interest and Refunds	950	15,667	29,496	160,000	160,000	0
	<b>TOTAL NON-DEPARTMENTAL EXPENDITURES</b>	<b>29,497,216</b>	<b>34,474,197</b>	<b>36,236,186</b>	<b>39,696,694</b>	<b>42,145,941</b>	<b>2,449,247</b>
	<b>TOTAL GENERAL APPROPRIATIONS</b>	<b>131,191,772</b>	<b>143,149,121</b>	<b>135,489,430</b>	<b>144,056,063</b>	<b>148,356,899</b>	<b>4,300,835</b>
	<b>SPECIAL APPROPRIATIONS</b>						
	42 . Public Buildings Furnishings and Equipment (tax financed)					60,000	
	43 . Asbestos Removal (tax financed)					50,000	
	44 . ADA Renovations (tax financed)					90,000	
	45 . Municipal Building Security (tax financed)					45,000	
	46 . Technology - Town-wide Hardware/Software Enhancements (tax financed)					130,000	
	47 . Instructional Technology Study/Implementation (tax financed)					150,000	
	48 . Fire Engine (tax financed)					325,000	
	49 . Emergency Operations Center (tax financed)					500,000	
	50 . Fire Department Training Module/Equipment (tax financed)					60,000	
	51 . Fire Department Physical Fitness Equipment (tax financed)					30,000	
	52 . Police Radio Improvements (tax financed)					37,000	
	53 . Fire Training Building (tax financed)					165,000	
	54 . Coolidge Corner Fire Alarm Improvements (tax financed)					45,000	
	55 . Coolidge Corner HVAC Upgrade (tax financed)					345,000	
	56 . Mountfort St./Carfoot St. Traffic Signal (tax financed)					120,000	
	57 . Independence Dr./Beverly Rd./Russell Rd. Traffic Signal (tax financed)					100,000	
	58 . Grove St./Allendale Rd. Traffic Signal (tax financed)					135,000	
	59 . South St./Grove St. Traffic Signal (tax financed)					25,000	
	60 . Study / Design of Traffic Improv. at Newton St. / West Roxbury Parkway / neighboring streets (tax financed)					25,000	
	61 . Study / Design of Traffic Improv. at Horace James Circle / Francis X. Ryan Circle (Putnam Circle) / neighboring streets (tax financed)					20,000	
	62 . Fire Station #6 Traffic Signal (tax financed)					60,000	

	FY00 ACTUAL	FY01 ACTUAL	FY02 ACTUAL	FY03 BUDGET	FY04 BUDGET	CHANGE FROM FY03
63 . Fire Station #7 Traffic Signal (tax financed)					60,000	
64 . Parking Meters (tax financed)					30,000	
65 . Street Rehabilitation (tax financed)					1,000,000	
66 . Street Rehabilitation (Chapter 90)					484,117	
67 . Traffic Calming Studies and Improvements (tax financed)					200,000	
68 . Lincoln School Wall Repair (tax financed)					150,000	
69 . Sidewalk Repair/Reconstruction (tax financed)					200,000	
70 . Newton St. Landfill Assessment / Corrective Action (tax financed)					1,000,000	
71 . Streetlight Replacements/Repairs (tax financed)					100,000	
72 . Carlton St. Footbridge - Plans and other prelim. costs (tax financed)					30,000	
73 . Carlton St. Footbridge - Town Share of project (tax financed)					90,000	
74 . Playground Equipment, Fields, Fencing (tax financed)					250,000	
75 . Town/School Grounds Rehab (tax financed)					150,000	
76 . Longwood (Lawrence) Park Improvements (tax financed)					100,000	
77 . Amory Field (tax financed)					35,000	
78 . Coolidge Park (tax financed)					100,000	
79 . Tree Removal and Replacement (tax financed)					100,000	
80 . Swimming Pool Locker Replacement (tax financed)					100,000	
81 . Swimming Pool Roof (tax financed)					45,000	
82 . School Furniture Upgrades (tax financed)					25,000	
83 . Lincoln School Burner Replacement/Oil Tank Installation (tax financed)					30,000	
84 . Old Lincoln School Gutters/ Downspouts (tax financed)					230,000	
85 . School Trash Compactors (tax financed)					30,000	
86 . Water Meter Replacement (enterprise fund budget)					50,000	
87 . Newton St. Landfill Capping / Park Development (bond)					7,890,000	
88 . Beacon St. Reconstruction - Town Share (bond)					2,600,000	
89 . Driscoll School Improvements (bond)					1,425,000	
(6) TOTAL SPECIAL APPROPRIATIONS	8,512,887	11,904,091	11,843,792	6,767,794	7,066,117	298,323
TOTAL APPROPRIATED EXPENDITURES	139,704,659	155,053,212	147,335,324	150,823,857	155,423,016	4,599,158
NON-APPROPRIATED EXPENDITURES						
Cherry Sheet Offices	986,362	1,171,140	1,189,066	1,148,519	1,038,676	(109,843)
State & County Charges	5,737,237	6,117,420	5,741,090	5,571,221	5,430,882	(140,339)
Overlay	3,212,154	2,096,864	2,393,355	2,560,059	1,500,000	(1,060,059)
Deficits-Judgments-Tax Titles	50,000	230,000	0	71,250	50,000	(21,250)
TOTAL NON-APPROPRIATED EXPEND.	9,985,753	9,605,424	9,323,481	9,351,049	8,019,558	(1,331,491)
TOTAL EXPENDITURES	149,690,415	164,658,636	156,658,803	160,174,906	163,442,574	3,267,667
SURPLUS/(DEFICIT)	10,412,711	4,648,507	4,734,665	0	0	0

(1) Free Cash was certified for FY02 in the amount of \$6,317,277. In accordance with Town Financial Policies, established in 1994 and revised in 2001, an unappropriated reserve is set aside in an amount equivalent to 0.5% of the previous year's net revenue, or \$714,316 in FY04. See page 11-9 of these Combined Reports for a detailed description of the Town's Reserve policies.

(2) Breakdown provided for informational purposes.

(3) FY00-02 figures provided for informational purposes. Funds were transferred to departmental budgets for expenditure.

(4) FY00-03 figures provided for informational purposes. Funds were transferred to departmental budgets for expenditure.

(5) Funds are transferred to trust funds for expenditure.

(6) Amounts appropriated. Bonded appropriations are not included in the total amount, as the debt and interest costs associated with them are funded in the Borrowing category (item #41).

FY04 AMENDED RECOMMENDED BUDGET - TABLE 2

Department/Board/Commission	Personnel Services	Purchase of Services	Supplies	Other Charges/ Expenses	Capital Outlay	Debt Service	Agency Total
Board of Selectmen (Town Administrator)	514,164	10,638	6,750	2,300	7,301		541,153
Human Resources Department (Human Resources Director)	140,119	228,956	5,700	400	5,480		380,655
Information Technology Department (Chief Information Officer)	839,617	556,015	34,127	2,450	55,131		1,487,340
Finance Department (Director of Finance)	1,588,560	785,356	28,572	12,314	32,346		2,447,147
Legal Services (Town Counsel)	377,600	76,152	600	70,800	4,641		529,793
Advisory Committee (Chair, Advisory Committee)	17,170	251	250	275	581		18,527
Town Clerk (Town Clerk)	378,654	46,834	7,451	1,200	4,061		438,201
Planning and Community Department (Plan. & Com. Dev. Dir.)	462,947	32,051	11,050	1,600	10,445		518,093
Police Department (Police Chief)	11,190,285	526,851	235,050	2,200	457,736		12,412,122
Fire Department (Fire Chief)	9,727,602	221,149	95,200	15,850	69,680		10,129,481
Public Buildings Department (Building Comm.)	1,649,389	2,869,229	133,614	1,900	54,633		4,708,765
Public Works Department (Commissioner of Public Works)	6,414,568	3,015,263	892,371	9,039	700,000		11,031,241
Public Library Department (Library Board of Trustees)	2,080,141	343,673	464,009	1,502	25,461		2,914,787
Health Department (Health Director)	631,517	263,900	10,570	3,620	29,540		939,147
Veterans' Services (Veterans' Services Director)	75,733	2,173	650	84,995	1,162		164,713
Council on Aging (Council on Aging Director)	507,325	112,272	20,250	2,050			641,897
Human Relations/Youth Resources (Human Relations Dir.)	125,091	4,358	4,100	600	1,742		135,891
Recreation Department (Recreation Director)	1,013,380	162,477	40,846	2,400	5,220		1,224,323
Debt Service (Director of Finance)						13,623,696	13,623,696
School Department (School Committee)							53,759,732
<b>EMPLOYEE BENEFITS</b>							
Contributory Pensions Contribution (Director of Finance)	8,945,000						8,945,000
Non-Contributory Pensions Contribution (Director of Finance)	365,000						365,000
Group Health Insurance (Human Resources Director)	14,372,500						14,372,500
Retiree Group Health (Human Resources Director)	626,133						626,133
Employee Assistance Program (Human Resources Director)	25,000						25,000
Group Life Insurance (Human Resources Director)	100,000						100,000
Workers' Compensation (Human Resources Director)	895,000						895,000
Unemployment Insurance (Human Resources Director)	150,000						150,000
Ch. 41 100B Medical Benefits (Town Counsel)	35,000						35,000
Medicare Payroll Tax (Director of Finance)	1,102,634						1,102,634
<b>Total Employee Benefits:</b>	<b>26,616,267</b>						<b>26,616,267</b>
<b>UNCLASSIFIED</b>							
Reserve Fund (*) (Chair, Advisory Committee)	1,070,000						1,070,000
Liability/Catastrophe Fund (Director of Finance)	100,000						100,000
Housing Trust Fund (Planning & Community Development Dir.)	316,455						316,455
Audit/Professional Services (Director of Finance)	137,000						137,000
General Insurance (Town Administrator)	230,000						230,000
Printing of Warrants (Town Administrator)	20,000						20,000
Contingency (Town Administrator)	18,000						18,000
MMA Dues (Town Administrator)	11,523						11,523
Out of State Travel (*) (Town Administrator)	3,000						3,000

FY04 AMENDED RECOMMENDED BUDGET - TABLE 2

Department/Board/Commission	Personnel Services	Purchase of Services	Supplies	Other Charges/ Expenses	Capital Outlay	Debt Service	Agency Total
Town Salary Reserve (*) (Director of Finance)	1,187,950						1,187,950
Personal Services Reserve (*) (Director of Finance)	600,000						600,000
Total Unclassified:	3,693,928						3,693,928
<b>TOTAL APPROPRIATIONS</b>	<b>68,044,057</b>	<b>9,257,598</b>	<b>1,991,161</b>	<b>215,495</b>	<b>1,465,161</b>	<b>13,023,696</b>	<b>148,356,899</b>

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

May 27, 2003  
Annual Town Meeting  
Article 11 – Supplement No. 2

MOTION TO BE OFFERED UNDER ARTICLE 11

MOVED: to amend special appropriation #73 by replacing it with the following:

73.) Raise and appropriate \$90,000 to be expended under the direction of the Commissioner of Public Works, with the approval of the Selectmen for the restoration and reopening of the Carlton Street Footbridge in its current location and with necessary ADA compliance; provided, however, that the expenditure of such funds shall be contingent upon the receipt of outside funds for the remaining costs of such restoration and reopening and upon the Commonwealth of Massachusetts fully funding the Commonwealth's share of the cost of undertaking Phase I of the Muddy River Restoration Project as more fully described in EOEA No. 11865, currently projected to be \$24 million.

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ARTICLE 12

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TWELFTH ARTICLE

To see if the Town will appropriate and transfer from available funds \$30,000, or any other sum, to be expended under the direction of the Board of Selectmen, for hiring consultants, determining costs, pursuing a feasible design to provide access for the mobility-impaired, and developing plans and specifications for the reconstruction and restoration of the Carlton Street Footbridge entrance to Riverway Park, and authorize the Selectmen to apply for, receive and expend state, federal or other grants, aid, loans or reimbursements for such project, or act on anything relative thereto.

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Proponents of this article include residents of Precinct One, where the Carlton Street entrance to Riverway Park is located, as well as Brookline residents who support restoration of the entrance consistent with the Master Plan for restoring the Emerald Necklace Parks.

Riverway Park was designed by Frederick Law Olmsted to be entered via a footbridge that brings the stroller from Carlton Street, over the tracks that divide the park from the neighborhood, into a carefully constructed vista of a pool and two flanking islands. The bridge was funded and constructed by the town in 1894. Due to Town neglect and deferred maintenance, it has been closed for approximately twenty-eight years, and is now in need of action to prevent further deterioration. Its restoration is specifically included in the Emerald Necklace Master Plan.

In 2000, the town undertook a feasibility study to determine whether it is feasible to restore the park entrance. The engineering consultant, Ammann & Whitney, established that the Carlton Street Footbridge is “a timeless and remarkable example of steel bridge engineering,” which is structurally sound and can be restored, and that with available State and Federal grants, the bridge could be renovated for less cost to the Town than its demolition.

In 2001, the Town retained four consultants to evaluate the historic significance of the entrance, the costs of restoration versus demolition, and the consequences to the neighborhood and the park of reopening the entrance. The preservation consultant reported to the Town that the bridge is an integral element of Olmsted’s park design, included within the Riverway Park’s designation on the State and National Registers of Historic Places. In April 2002, this opinion was confirmed in the Massachusetts Environmental Policy Administration’s (“MEPA”) Certificate on the Muddy River restoration project, which stated that “...the Carlton Street Footbridge is historically significant and is an integral component of the Olmsted Park System ....This Certificate assumes that the Town of Brookline will act in good faith to expeditiously implement the elements of the Master Plan within its control, including the rehabilitation and reopening of the Carlton Street Footbridge.” With respect to costs, the Town’s consultant projected that, with available grants, restoration would cost the Town \$110, 481 and demolition, which would not be eligible for outside funding, would cost \$140, 890.

The public safety study concluded that the area is a comparatively low crime area and that reopening the entrance would not affect public safety.

Relying on the Town's commitments to the Muddy River project, and supported by the conclusions of the Town's consultants, the proponents of this article presented an Article to the 2002 Annual Town Meeting requesting that the Town undertake the restoration of the Carlton Street park entrance, including provisions to make the reopened footbridge fully compliant with Americans with Disabilities Act requirements while respecting its historic design. The Selectmen, with the support of the Advisory Committee, proposed instead that additional studies be undertaken to verify the costs to the Town of restoration and demolition, as well as of relocation of the bridge in another location. These studies, which were to be undertaken between the 2002 and 2003 Annual Town Meetings, were to include the design of provisions for handicap accessibility, as proposed by the proponents, and consultation with the Massachusetts Historic Commission on whether relocation or demolition could be permitted, and if so, the costs of the Town's mitigation responsibilities.

At the 2002 Annual Meeting, a majority voted to adopt a resolution presented by the Selectmen, in which the Board was requested to submit an article in the FY04 Warrant that would reflect their conclusion concerning restoration, relocation, or demolition, based on the results of the studies and consultations to be carried out in the intervening year. The article would provide \$30,000 in the FY04 Capital Improvement Program ("CIP") for the preliminary design costs of the alternative selected through these studies and consultations, and the resolution authorized the Selectmen to apply for grants for the accepted option. In response to MEPA's requirement that Brookline proceed expeditiously with the restoration of the Carlton Street park entrance, the Town committed to meet this schedule in the Final Environmental Impact Report for the Muddy River restoration project.

The Town has now submitted an FY04 CIP that proposes a \$30,000 appropriation for park entrance designs and \$600,000 for the execution of the selected option, of which not more than \$90,000 is to come from Town funds. By the date for filing petition articles, however, the Town had not carried out the studies and consultations that would form the basis for recommending a preferred option, the undertaking that was the rationale for Town Meeting's adoption of the Selectmen's resolution.

In the absence of the process that was the basis for Town Meeting's adoption of the Selectmen's resolution, the proponents offer this article. It authorizes the Town to submit applications for State and Federal funds for the restoration of the Carlton Street entrance to the Riverway Park. In support of this application, the article requests that \$30,000 be provided for the initial designs and for consultations with the permitting bodies required for such an application. Among these permitting bodies is the MBTA, over whose tracks the restoration project would take place, and the Massachusetts Historical Commission, which would evaluate the restoration design and determine whether its handicap-accessible provisions could be permitted.

It is the proponents' intent that, if the Town's application is successful, construction funding would be obtained from the authorization submitted by the Town in its 04 CIP. Under the terms of the most auspicious federal grant program, the costs of initial design and permitting

would count toward and perhaps substantially constitute the Town's share of the restoration project costs.

To quote Dr. Charles Beveridge, Series Editor, The Frederick Law Olmsted Papers, "Clearly, the Carlton Street entrance to the Muddy River park in its present condition is a crucial 'missing link' in the Emerald Necklace, a feature that Olmsted carefully designed to provide both convenient access and landscape amenity for many users of his park." A restored footbridge will open the way for Longwood neighbors, the mobility-impaired, bicyclists, strollers and joggers, and those who work or attend school in the area to connect safely and conveniently to Riverway Park, a historic treasure soon to be restored as part of the Commonwealth's Muddy River Project.

We request that Town Meeting meet our longstanding commitment to that project by authorizing the steps necessary to let the work begin.

### SELECTMEN'S RECOMMENDATION

After the deliberation of Articles 12 and 13, the Secretary of Environmental Affairs issued the Final Environmental Impact Report (FEIR). The Selectmen were not able to review the FEIR, and assess its ramifications, prior to the mailing of these Combined Reports. If warranted, a Supplemental Report will be issued after further review of the FEIR. The discussion that follows does not take into account the FEIR.

Article 12 is a petitioned article requesting that \$30,000 be appropriated for costs associated with the reconstruction and restoration of the Carlton Street Footbridge (CSFB). The purpose for which this appropriation is proposed is already addressed in special appropriation #72 of Article 11. The significant difference between the two requested appropriations is that Article 12 calls for restoration only. However, this is not consistent with the resolution concerning the Footbridge voted by the Annual Meeting last year. The Selectmen are complying with this request through the inclusion of a \$30,000 appropriation within the CIP, found in Article 11, for costs associated with the reconstruction, relocation, and removal of the CSFB, inclusive of mitigation, with provision for full ADA compliance in the event of reconstruction or relocation.

While the Board of Selectmen views this article as unnecessary, following is a summary of recent actions regarding the CSFB. This information allows for a better understanding of the issues surrounding this article.

### **BACKGROUND**

#### Feasibility Study I – Structural Analysis and Recommendations

In FY98, \$25,000 was appropriated to study the structural integrity of the footbridge and explore the feasibility of various options, including removal, replacement, and restoration.

Ammann & Whitney, an engineering firm specializing in bridge structures, was selected for this charge by a Committee-of-Seven, chaired by the Commissioner of Public Works and composed of staff and interested citizenry.

At the appointment of the Board of Selectmen, the Carlton Street Footbridge Advisory Committee (CSFAC), composed of 17 concerned citizens, provided significant public input that helped to guide the development of the Final Report and Recommendations. Based on both report findings and public participation, the CSFAC, in a majority vote, concluded with a series of recommendations to the Board of Selectmen. The Selectmen held a Public Hearing, at which the consultant and CSFAC presented the initial report and recommendations. Public sentiment at the hearing was divided and further concerns and support were voiced.

#### Feasibility Study II – Related Issues Investigations

As a result of the issues raised at the first study's Public Hearing, and at the recommendation of the Board of Selectmen, Town Meeting voted to appropriate \$27,500 for further study. Six categorical issues were listed for additional study: 1) Universal Accessibility; 2) Transportation (Bike, Pedestrian, Vehicular); 3) Funding Strategies; 4) Historical Significance; 5) Cost Estimates; and 6) Public Safety. A Selectmen's Subcommittee-of-Seven, chaired by Selectman Gil Hoy and composed equally of neighborhood proponents for removal and restoration (drawn from the original CSFAC), was formed in order to oversee consultant selection and the additional studies.

Pressley Associates, a Cambridge landscape architectural firm, was chosen to review the historical significance of the footbridge and establish its relationship to Olmsted and the Emerald Necklace Master Plan. William Terrill, an Assistant Professor with Northeastern University's College of Criminal Justice, was charged with conducting the Public Safety study. Conley Associates, a Boston engineering firm specializing in transportation studies, was selected to review cost estimates, investigate outside funding strategies, report on approaches to accessibility compliance, and investigate pedestrian, bicycle, and vehicular transportation patterns/demands on and at both sides of the footbridge.

Consultant reports were prepared and Executive Summaries distributed to all Town Meeting Members. On January 22, 2002, the Board held a Public Hearing at which the consultant teams presented their findings and members of the Footbridge Subcommittee, along with other citizens, spoke to the report topics. The Engineering Division, as well as the Selectmen and the Subcommittee, agreed that the studies provided greater insight and more comprehensive answers to outstanding issues surrounding the footbridge; however, mitigation costs, if removed, remained uncertain and accessibility compliance, if restored, appeared a fundamental factor to cost, design, and functionality.

#### **DELIBERATION**

Subsequent to the January, 2002 Public Hearing, Warrant Articles 24 and 25 were filed, the first asking for an appropriation of funds for the removal of the Carlton Street Footbridge and the second for an appropriation of funds for the reconstruction and repair of the footbridge with full American with Disabilities Act (ADA) compliance.

Deliberations as to whether to rehabilitate or remove the footbridge identified the lack of clarity in the estimated costs of both these alternatives, specifically possible mitigation costs should the footbridge be removed, and the need for more solid figures for the provision of full accessibility compliance (not contained in the second study and only estimated in the first study).

At the Board's initial hearing on March 26, 2002 for Articles 24 and 25, the Selectmen specifically asked that steps be taken to clarify the issue of mitigation. On April 2, 2002, the Engineering Division wrote to MEPA requesting clarification on the process and obligations that the Town should expect if the footbridge were reconstructed or removed.

The Secretary of Environmental Affairs responded within the text of the MEPA Certificate, issued April 16 for the Draft Environmental Impact Report for Phase I of the Emerald Necklace Environmental Improvements Master Plan. Given the range of opinions within the Town about the Footbridge, the Secretary's response is printed virtually in full below for the direct review of all interested parties:

"I recognize that the Master Plan is a living document, intended to evolve to meet the changing requirements of proper resource stewardship and the needs of the surrounding communities. Some well-conceived changes to the Master Plan may be appropriate after careful review (e.g., reconsideration of a paved bicycle path on the Boston side of the River). Nonetheless, the decision to include the rehabilitation of the bridge within the Master Plan was made after careful consideration of the historic importance of the bridge, and its role in providing access to the Olmsted Park system as well as a link between the adjoining neighborhoods of Boston and Brookline. In recognition of the historic value of the bridge, MHC has determined that the demolition of the bridge would constitute an "adverse effect" on the State and National Register Olmsted Park System.

After review of the record, including the Master Plan and supporting materials, and the opinion of MHC, I find that the Carlton Street Footbridge is historically significant and is an integral component of the Olmsted Park System, and its eventual rehabilitation and reopening is an established part of the wider Emerald Necklace rehabilitation effort. This Certificate assumes that the Town will act in good faith to expeditiously implement the elements of the Master Plan within its control, including the rehabilitation and reopening of the Carlton Street Footbridge.

Any change in the Town's commitment to rehabilitate and reopen the footbridge will require, at a minimum, the filing of a Notice of Project Change (NPC) to the Muddy River Project. Upon review of the NPC, I will make a determination as to what alternatives require consideration, although any analysis would certainly include a requirement to study a no-action alternative and an alternative that involves rehabilitation of the footbridge. As part of the review, I would also make a determination, in consultation with MHC and other appropriate parties, as to how any adverse effects to historic resources might be avoided, minimized, or mitigated. Any analysis would also need to discuss the implication of obtaining future state funding for Master Plan elements

in light of any decision to abandon an important element of the Master Plan and demolish an historic resource such as the footbridge.”

As part of the March 26, 2002 hearing, the Board also received remarks from the Chairman of the Commission for the Disabled, Robert Sneirson. He followed up with a written request to delete from the proposed motion of the petitioners the words “consistent with its historic design”. His proposed change is printed below with the recommended deletion italicized so the intention of the Commission Chairman is clear:

“To see if the town will appropriate a sum of money, to be expended under the direction of the Board of Selectmen, for the cost of engineering services for plans and specifications for and for the reconstruction and repair of the Carlton Street Footbridge, with provision for full American With Disabilities Act *compliance consistent with its historic design*; determine whether such appropriation shall be raised by taxation, transferred from available funds, provided by borrowing or any combination of the foregoing; and authorize the Board of Selectmen to apply for, accept and expend grants, gifts, aid and reimbursements from federal, state and private sources and agencies for such purposes, provided that the project will only proceed if no less than 60% out side funding is obtained; or act on anything relative thereto.”

In his transmittal e-mail, the Commission Chairman stated “I will not give up hope that the bridge can be made accessible until an architectural firm that has a great deal of experience with historic preservation convinces me otherwise”.

### **2002 ANNUAL TOWN MEETING RESOLUTION**

As an alternative to either Article 24 or Article 25 of the 2002 Annual Town Meeting, the Selectmen adopted a resolution that was approved by Town Meeting. This approach was taken because of the growing emphasis on mitigation and accessibility, which resulted in increased attention being given to the issue of costs associated with any future option for the Footbridge. The Resolution, which is printed below, allowed for more opportunity to examine these cost factors.

WHEREAS, the future status of the Carlton Street Footbridge has been under active review by various Town departments, committees, and consultants for four years; and

WHEREAS, more than \$62,000 has already been expended on feasibility studies since FY98; and

WHEREAS, the funding plan for whatever future action is taken on the Footbridge should be consistent with the Town’s established schedule of the Capital Improvements Plan; and

WHEREAS, for the well being of the immediate neighborhood, the community at large and all other interested parties, various analyses should be prepared to permit a final resolution regarding the Carlton Street Footbridge to be adopted at a future Town Meeting.

NOW THEREFORE, BE IT RESOLVED:

That the Selectmen are requested to provide an article in a FY04 Warrant that requests that \$30,000 be appropriated in the FY04 CIP for the cost of preliminary plans for and other preliminary costs associated with the reconstruction, relocation and removal of the Carlton Street Footbridge, inclusive of mitigation, with provision, in the event of either reconstruction or relocation, for full ADA compliance; and

That the Selectmen are authorized to apply for grants, gifts, aid and reimbursements from federal, state and private sources and agencies for such purposes, provided that no Town funds in excess of those specifically authorized above shall be expended or committed without authorization at a future Town Meeting; and

That this Town Meeting's determination is that the Town's funding share is not to exceed the greater of \$100,000 or 13% of the total cost for all project phases subsequent to preliminary plans and other preliminary costs authorized above, including, but not limited to, final design, engineering, construction, relocation, or removal, and mitigation.

The plan was to have the Engineering Division of the Department of Public Works perform additional cost analysis of the various options that could eventually be pursued. Division staff was able to analyze three of the four outstanding issues: confirmation of cost estimates for demolition (\$123,000 - \$141,000); the estimated cost of relocation (\$943,475); and the estimated cost of making the existing structure ADA compliant, if renovated (\$741,300). The fourth issue, mitigation, required the expertise of an outside consultant, retention of whom would have required additional expenditures, an action which would not have been consistent with the Resolution. This analysis will be performed if the \$30,000 included in Article 11 is approved.

In addition, the Resolution recommended aligning any appropriation for the project with the CIP and capping the Town's eventual financial exposure. As previously stated, this has occurred: within Article 11, there is a \$30,000 appropriation request included for the cost of preliminary plans for and other preliminary costs associated with the reconstruction, relocation, and removal of the Carlton Street Footbridge, inclusive of mitigation, with provision, in the event of either reconstruction or relocation, for full ADA compliance. Also included in Article 11 is \$90,000 for the Town's share of the project.

## **CONCLUSION**

As stated at the outset of this recommendation, Article 11 already contains the funding necessary for what is proposed in this petitioned article. There is still work to be done. The

path originally started down by Town Meeting last year continues to be the proper path to follow, and the process needs to be completed. This article, if approved, would limit the scope of further study and analysis to reconstruction and renovation only. When all remaining questions are answered a decision best be reached. In order to get those remaining questions answered, the appropriations contained within Article 11 should be approved and this article should be denied.

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### ADVISORY COMMITTEE'S RECOMMENDATION

After the deliberation of Articles 12 and 13, the Secretary of Environmental Affairs issued the Final Environmental Impact Report (FEIR). The Advisory Committee was not able to review the FEIR, and assess its ramifications, prior to the mailing of these Combined Reports. If warranted, a Supplemental Report will be issued after further review of the FEIR. The discussion that follows does not take into account the FEIR.

#### BACKGROUND

Article 12 is a petitioned article which seeks to have the Town appropriate and transfer from available funds \$30,000, or some other sum, for developing plans and specifications (including "a feasible design" for Americans with Disabilities or ADA compatibility) for the reconstruction and restoration of the Carlton Street footbridge. The Article would also authorize the Selectmen to seek and expend state, federal or other grants, aid, loans or reimbursement for such project.

In FY98, \$25,000 was appropriated to study the structural integrity of the footbridge and explore the feasibility of various treatments, including removal, replacement, and restoration. A 17 member Carlton Street Footbridge Advisory Committee was appointed by the Selectmen to provide public input and contribute to the final report and recommendations. The public hearing held by the Selectmen for the presentation of the report and its recommendations raised concerns and issues significant enough to convince the Selectmen to recommend that \$27,500 be appropriated for further study of traffic, accessibility, funding strategies, public safety, historical significance, and cost estimates. The results of these studies were presented at a public hearing in January, 2002. Subsequently, two competing and incompatible articles concerning the ultimate disposition of the footbridge were submitted to the May 2002 Town Meeting. One article sought to have the Town appropriate money "for the removal" of the footbridge. The other article sought to have the Town appropriate money for plans and specifications "for the reconstruction and repair" of the footbridge, including full ADA compliance consistent with the design of the footbridge.

There continues to be vigorous debate between many neighbors who live near the bridge and who oppose having it reopened and supporters of the Frederick Law Olmsted plans for access to the Emerald Necklace, some of whom live in the neighborhood and some of whom do not, who wish to see the bridge restored and reopened.

The Advisory Committee noted the ongoing dispute over the ultimate disposition of the footbridge and concluded that, despite past expenditures on feasibility studies, a final decision regarding the future of the footbridge required information related to the cost of full accessibility compliance and the cost of mitigation in the case of removal or ADA-compliant restoration. It therefore unanimously recommended a resolution to the 2002 Annual Town Meeting stating that “various analyses should be prepared to permit a final resolution regarding the Carlton Street Footbridge to be adopted at a future Town Meeting.” As amended by the Selectmen and ultimately passed by Town Meeting, the resolution contemplated the further study in FY 04 of all three available options for the footbridge -- reconstruction, relocation, or removal:

NOW THEREFORE, BE IT RESOLVED:

That the Selectmen are requested to provide an article in a FY 04 Warrant that requests that \$30,000 be appropriated in the FY 04 CIP for the cost of preliminary plans for and other preliminary costs associated with the reconstruction, relocation and removal of the Carlton Street Footbridge, inclusive of mitigation, with provision, in the event of either reconstruction or relocation, for full ADA compliance ....

#### DISCUSSION

This article was filed because the petitioners believed that, prior to the time for filing petitions for the 2003 Annual Town Meeting, no action had been undertaken by the Town to determine the costs of future treatment of the footbridge including demolition, restoration with ADA compliance, and relocation. Proponents of Article 12 argue that the “Town had not carried out the studies and consultations that would form the basis for recommending a preferred option, the undertaking that was the rationale for Town Meeting’s adoption of the Selectmen’s recommendation” in May, 2002. Finally, the proponents assert in their written explanation that the resolution passed by the 2002 Annual Town Meeting requested that the Selectmen present an article in the FY 04 Warrant reflecting their conclusion regarding restoration, relocation, or demolition, based on studies and consultations which would be carried out during FY 03.

In response to the statements claiming that no action has been taken by the Town regarding the future treatment of the footbridge, the Advisory Committee notes that using the existing studies of Ammann and Whitney and Conley Associates as well as other information and documentation, the Engineering Division of the Department of Public Works has been able to prepare preliminary estimates for demolition, footbridge rehabilitation with ADA compliance, and footbridge relocation (to Monmouth Court) with ADA compliance. The Director of Engineering has noted that estimates of the cost of mitigation (in the case of removal or relocation) would need to be determined at a later date, probably by an outside consultant. There was some confusion as to the amount of information that the Town could gather in this area in FY03 without spending further money and, no doubt, some disappointment that the results do not move us further ahead in the process.

However, It is the Advisory Committee’s position that the Article misconstrues the May 2002 Town Meeting Resolution which made clear that three options -- reconstruction, relocation, and removal -- would be studied in FY 04. The Resolution did not contemplate that the

“preferred option” would be decided prior to further studies to be carried out in FY 04. In accordance with the 2002 Resolution, a budget item to be considered at the May 2003 Annual Town Meeting includes the recommended \$30,000 appropriation as part of the FY 04 CIP, and faithfully tracks the language of last year’s resolution by seeking \$30,000 for preliminary plans and costs associated with the “reconstruction, relocation and removal” of the footbridge. These funds, thus, would presumably be used for the analysis which would study all three potential outcomes and permit the “final resolution” of the footbridge controversy. These funds, moreover, would be expended in FY 04 as stated in the 2002 resolution.

In addition, another budget item includes \$90,000 for the Town’s share of the implementation of the option ultimately chosen, making clear that the “final resolution” has not been determined, since the \$90,000 can be expended for “reconstruction, relocation, or removal” of the footbridge. It is thus a placeholder in view of the fact that the “final resolution” has not yet been determined and is explicitly expected to depend on further analyses being conducted during FY 04.

As to the third point made by the petitioners, there is no language nor any instruction in the 2002 Resolution which instructed the Board of Selectmen to submit an article to the 2003 Town Meeting reflecting their conclusions concerning restoration, relocation or demolition.

Article 12 would short-circuit the process agreed upon in the May 2002 Town Meeting and proposed for implementation in the FY 04 CIP, a process which would take place in FY 04 and lead to a “final resolution” which could include reconstruction or relocation or removal. If approved, Article 12 would limit the expenditure of funds to developing plans and specifications for “reconstruction and restoration” of the footbridge, an option which has not yet been decided by Town Meeting. Because “reconstruction and restoration” has not been determined to be the “final resolution” or “preferred option” a majority of the Advisory Committee felt they could not vote for this warrant article.

#### RECOMMENDATION

The Advisory Committee by a vote of 9-6 with 1 abstention recommends NO ACTION on Article 12.

**XXX**

ARTICLE 13THIRTEENTH ARTICLE

To see if the Town will adopt the following resolution:

**WHEREAS**, the future status of the Carlton Street Footbridge entry to the Riverway Park has been under active review by various Town departments, committees, and consultants for four years;

**WHEREAS**, the Town has conducted studies totaling in excess of \$73,000 since FY98 that have found that the bridge is structurally sound and feasible to restore, that the bridge is an integral element of the Riverway Park and therefore enjoys designation on the State and National Registers of Historic Places, and that its restoration would meet the eligibility requirements of state and federal grants that are likely to make the cost to the Town of restoration less than that of demolition;

**WHEREAS**, funding for restoration was first scheduled in the FY2001 Capital Improvement Program for FY2003;

**WHEREAS**, the Dukakis administration implemented a statewide Olmsted Historic Landscape Historic Preservation Program and an Emerald Necklace Master Plan was begun in 1986. The Plan, which includes the Carlton Street Footbridge as a restoration element, was approved unanimously in 1991 by the Board of Selectmen after a process that included public comment, and presentations to the Conservation Commission, Preservation Commission, Park and Recreation Commission, and Planning Board. The Plan, updated in 2001, states

“The Master Plan has been formally adopted by both Brookline and Boston and has been the basis for all permitting and funding of park improvements implemented since 1989”;

**WHEREAS**, in 1986 the Town executed a Grant Agreement between the Commonwealth and Town of Brookline for the Olmsted Historic Preservation Program stating

“The City [Town] will agree to formally accept the Master Plan as the framework for all future park-related construction. Future funding for additional capital improvements by the Commonwealth will be contingent upon the City’s [Town’s] adherence to the Master Plan”;

**WHEREAS**, in 1999 the Environmental Notification Form Certificate for the Muddy River Flood Control, Water Quality and Habitat Enhancement, and Historic Preservation Project states

“The purpose of this project is to ensure the continued restoration of Olmsted’s Emerald Necklace in its entirety”;

**WHEREAS**, in 1999 the Town executed a Memorandum of Understanding with the Executive Office of Environmental Affairs signed by the Chair of the Board of Selectmen agreeing

“to cooperate relative to the Project to ensure the preservation and protection of this unique Olmsted park system”;

**WHEREAS**, in 2002 the Draft Environmental Impact Report (DEIR) Certificate issued by the Secretary of Environmental Affairs regarding the Carlton Street Footbridge states

“In recognition of the historic value of the bridge, MHC [Massachusetts Historical Commission] has determined that the demolition of the bridge would constitute an ‘adverse effect’ on the State and National Register Olmsted Park System”

and further states

“This Certificate assumes that the Town of Brookline will act in good faith to expeditiously implement the elements of the Master Plan within its control, including the rehabilitation and reopening of the Carlton Street Footbridge.”

**WHEREAS**, in 2003 the Final Environmental Impact Report (FEIR) for the Muddy River Project prepared and submitted jointly by Boston and Brookline makes the following statements:

“Proponents [Boston and Brookline] will be required to maintain the historic and character defining features of the restored parks.”

*“The historic and character defining features include what the National Park Service guidelines call the character defining features, which under the National Park Service (NPS) guidelines would include:*

- Spatial relationships;*
- Views and vistas;*
- Topography;*
- Circulation systems and site entries;*
- Vegetation;*
- Water features; and*
- Furnishings and structures.”*

*“The recommendations set forth in the document [The Master Plan for the Emerald Necklace Parks] are intended to provide a framework for decision-making and to lay the groundwork for preserving, rehabilitating and restoring these features.”*

*“The work proposed in the EIR will provide historical restoration, rehabilitation or preservation of the existing character defining features.”*

*“Scheduling of rehabilitation or repair work for each of these historic features should be included in the annual budget as an estimated contingency item.”*

**WHEREAS**, restoring and reopening the footbridge entrance to Riverway Park will implement a significant element of the Master Plan, and in conformity with the Town's 2003 commitment as a co-proponent of the Muddy River restoration, will restore a structure that is an historic and character defining element of the views and vistas, circulation system and site entry of the Emerald Necklace Parks; and

**WHEREAS**, it is in the interest of the Town to fulfill its commitments to the Commonwealth in order to continue Brookline's credibility and to avoid jeopardizing future funding;

**NOW THEREFORE, BE IT RESOLVED:**

That it is the will of Town Meeting, and the Selectmen are directed to act accordingly, to fulfill the commitments made by the Town between 1986 and 2003 to the Commonwealth by taking the steps necessary to restore expeditiously the Carlton Street Footbridge entry to Riverway Park, including the preparation and submission of applications for outside funds to restore the bridge and providing funding from grants, aid, loans, tax revenue, or any other source, as necessary to restore the Footbridge.

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In 1984, the Dukakis administration implemented a statewide Olmsted Historic Landscape Historic Preservation Program. A number of parks in Massachusetts designed by noted landscape architect Frederick Law Olmsted were designated for restoration. The Emerald Necklace, which extends from the Charles River to Franklin Park, was one of these.

The first phase was to develop a Master Plan, which was begun in 1986. That year, in a contract with the Massachusetts Executive Office of Environmental Affairs (EOEA), the Town agreed that future state funding for the entire project would be contingent upon Brookline's adherence to a Master Plan. In 1988, eleven Brookline citizens, as well as a representative from each of four commissions, (Conservation Commission, Preservation Commission, Park and Recreation Commission, and Planning Board), were appointed by the Board of Selectmen to serve on the Olmsted/Riverway Restoration Project Municipal Advisory Committee. After over two years of public meetings by the full committee, including two broadly advertised hearings, the Brookline portion of the Plan was complete.

In April 1991, the Plan was presented to and approved by the four Boards and Commissions. An advance copy of the Plan was distributed to each Selectman, and then presented publicly at a televised hearing before the Board of Selectmen. Because the Master Plan was detailed and comprehensive, a 20-minute videotape was created and shown to both the Boards and Commissions and to the Board of Selectmen to illustrate each detailed recommendation. This video was also aired on Brookline Access Television. The Board of Selectmen unanimously voted approval of the document in its entirety, with one Selectman making the statement that "I think it's an absolutely terrific job, and I intend to support it in its entirety."

The Carlton Street Footbridge is specifically included in the Master Plan as the designed entrance to Riverway Park, and appeared on the videotape as an important restoration element.

Restoration of Olmsted Park in the Pill Hill neighborhood has followed the Master Plan closely. Some neighbors initially expressed concern about the potential for increased traffic, illegal parking and crime if the existing barriers between Boston and Brookline were removed. However, the result has been the restoration of a park once derelict and shunned, now vibrant, attractive and safe.

Over the same period, Riverway Park has received little attention and the Carlton Street entrance has been closed for years as a symbol of this neglect. The footbridge's disrepair was the reason the Town closed the entrance in the mid-1970's.

Today, the Master Plan remains a document worthy of implementation. The official documents quoted in this Resolution are based on the Town's acceptance of, and anticipated implementation of, the Master Plan.

This Resolution asks Town Meeting to honor the numerous current agreements and commitments based on the Master Plan and made by the Town with the Commonwealth on behalf of Brookline citizens.

The Town has stated in the Final Environmental Impact Report for The Muddy River Project, submitted this year in February and now being reviewed by EOE, that "The recommendations set forth in the document [The Master Plan for the Emerald Necklace Parks] are intended to provide a framework for decision-making and to lay the groundwork for preserving, rehabilitating and restoring these features."

We merely ask that Brookline be true to its words and keep its commitments.

The most immediate outstanding commitment to historic preservation is the conclusion of the discussion of removal or relocation of the Carlton Street entrance to Riverway Park and the expeditious restoration of the Carlton Street Footbridge.

#### SELECTMEN'S RECOMMENDATION

After the deliberation of Articles 12 and 13, the Secretary of Environmental Affairs issued the Final Environmental Impact Report (FEIR). The Selectmen were not able to review the FEIR, and assess its ramifications, prior to the mailing of these Combined Reports. If warranted, a Supplemental Report will be issued after further review of the FEIR. The discussion that follows does not take into account the FEIR.

Article 13 is a petitioned article asking the Town to adopt a resolution concerning the restoration of the Carlton Street Footbridge (CSFB). Since much of the material included within the Selectmen's Recommendation for Article 12 is pertinent to Article 13, it is not necessary to restate it here. Please refer to the write-up for Article 12.

Similar to Article 12, this article is not necessary, as it asks the Town to take "the steps necessary to restore expeditiously the Carlton Street Footbridge". Upon the conclusion of all

outstanding study and analysis, a decision can be made regarding the footbridge. Therefore, a resolution calling solely for the restoration of the CSFB is premature.

The Board recommends NO ACTION, by a vote of 5-0 taken on April 22, on the article.

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### ADVISORY COMMITTEE'S RECOMMENDATION

After the deliberation of Articles 12 and 13, the Secretary of Environmental Affairs issued the Final Environmental Impact Report (FEIR). The Advisory Committee was not able to review the FEIR, and assess its ramifications, prior to the mailing of these Combined Reports. If warranted, a Supplemental Report will be issued after further review of the FEIR. The discussion that follows does not take into account the FEIR.

### BACKGROUND

For information concerning Town Meeting's action regarding the footbridge, please refer to the "Background" portion of the Advisory Committee's report on Article 12. Article 13 calls for Town Meeting to adopt a resolution directing the Selectmen to undertake whatever steps are necessary to "restore expeditiously the Carlton Street Footbridge entry to Riverway Park," asserting that the Town made "commitments" between 1986 and 2003 to the Commonwealth of Massachusetts to restore the footbridge.

### DISCUSSION

Article 13 cites six documents to support its assertions regarding the Town's commitment, relying primarily on the approval of the Emerald Necklace Master Plan by the Board of Selectmen in 1991 and on the fact that the restoration of the footbridge is one of the elements of that Master Plan. The proponents use a series of quotes to support the argument that the Town has made numerous agreements with and commitments to the Commonwealth of Massachusetts based on the Master Plan. There is a difference of opinion, however, as to what the Master Plan is, with the supporters of this article implying that adoption or acceptance of the Master Plan is the equivalent of signing a contract. The majority of the Advisory Committee, however, cannot agree with this concept, nor can they agree with a number of statements in the Resolution. Finally, they believe that this Article proposes to negate the process created at the 2002 Annual Town Meeting to address the ultimate disposition of the footbridge.

It appears that the Master Plan is not a contract but rather a document which "provides a preservation framework to guide all future planning and action" (p. x, Introduction, 2001 Updated Emerald Necklace Master Plan) and "sets forth a vision for the Emerald Necklace" (p. xii). It is not a definitive list of projects to which the Town is bound. If it were, there would be no point in the future to hold public hearings and seek public support for other components of the Plan because, according to the proponents' logic, the Town would be bound to implement all of them.

While it is true that the Master Plan was adopted by the Board of Selectmen in 1991, the Plan itself, in the updated version, makes clear that it is not cast in stone, but rather is a working document which only makes preliminary recommendations:

The final Master Plan and its accompanying Management and Maintenance Plan prepared together, but published separately lists high priority projects that have preliminary consensus, for implementation. .... Further public review will guide the final design of projects before they are constructed. (p.5)

In its discussion of implementation, the Master Plan states that it contains “recommendations,” and that these are subject to change:

The proposed projects delineated in this Master Plan are conceptual. As implementation progresses, they will require adjustment as to phasing and scope, further research, programming and design development. Therefore, the proposed scope of work for each project and the accompanying cost estimates are also conceptual, and will need to be refined when detailed plans and specifications are prepared for each project. (p. 181)

Finally, the Master Plan recognizes the ultimate need for community support for its recommendations:

It is essential that this plan, and the many individual project plans that will be developed out of it, receive the full and enthusiastic endorsement of community groups and individuals. (p.180)

Article 13 also quotes from the April 29, 1999 Environmental Notification Form Certificate (issued by then-Secretary of Environmental Affairs Bob Durand) for the Emerald Necklace Environmental Improvements Master Plan and Phase I Muddy River Flood Control, Water Quality, and Habitat Enhancement. That Certificate explains that environmental impact review (EIR) would be undertaken for only a few of the items listed in the Master Plan scheduled for initial implementation and makes clear the Secretary’s understanding that other projects, though contained in the Master Plan, may never occur:

This Certificate does not require the EIR to analyze the impacts of certain projects identified in the Master Plan attached to the ENF (for example, dredging in ponds above the Muddy River), as the proponent does not intend to move ahead with this work in the near-term, and background conditions may change significantly before that work is ready to proceed. ... Although I am sensitive to concerns about an appearance of segmentation of the project, the pieces of work hereby excluded from the EIR are discrete projects that may proceed independently of the main body of work, or not at all. (p.3, emphasis added).

The April 16, 2002 Draft Environmental Impact Report Certificate cited in the Article likewise makes clear that the Town is not bound to the restoration of the footbridge, for although then-Secretary Durand did state that he “assumed” that the Town would restore the

footbridge, he also made clear that such restoration was not inevitable, defining “no action” on the bridge as an alternative which could be pursued by the Town:

I recognize that the Master Plan is a living document, intended to evolve to meet the changing requirements of proper resource stewardship and the needs of the surrounding communities. ... Any change in the Town’s commitment to rehabilitate and reopen the footbridge will require, at a minimum, the filing of a Notice of Project Change (NPC) to the Muddy River Project. Upon review of the NPC, I will make a determination as to what alternatives require consideration, although any analysis would certainly include a requirement to study a no-action alternative and an alternative that involves rehabilitation of the footbridge. (pp. 12-13, emphasis added)

Finally, the Article quotes from the February 2003 Final Environmental Impact Report (FEIR). This document does not pertain to the entire project, but only to Phase 1 which does not involve the Carlton Street Footbridge but rather certain dredging and related riverbank stabilization activities. Moreover, that FEIR states that two agreements, including the 1999 Memorandum of Understanding cited in the petitioner’s Article, would have to be “renegotiated as part of continuing work on the Muddy River Project. ... [N]ew agreements are anticipated at the end of negotiations.” It is, therefore, again made clear that the Muddy River restoration is an evolving project.

Supporters of this Resolution have expressed the concern that the Town may be risking its “credibility” if it does not expeditiously pursue restoration of the footbridge. In response, it is noted that the Town has already invested substantial sums in projects connected with the Muddy River, including the removal of illicit cross connections and other improvements to the storm water system. In addition, \$500,000 in Town funds (committed by the Town in the 1999 Memorandum of Understanding) has been spent as part of the early action portion of Phase 1 of the Muddy River Improvement Project and an additional \$1,625,000 has been scheduled in the Town’s FY 04 CIP, reflecting the Town’s willingness to support the expansion of the project’s scope and costs. Beyond these sums, according to the updated Master Plan, Brookline has spent \$1 million in Olmsted Park, that portion of the Emerald Necklace adjacent to the Riverway, and another \$500,000 in a combination of Town and DEM funds have been used to restore the Allerton Overlook.

Supporters of this Resolution have also expressed the concern that if the footbridge is not restored, the Muddy River project and other improvement may not go forward. In this regard, they rely on a statement in a 1986 Grant Agreement that “Future funding for additional capital improvements by the Commonwealth will be contingent upon the [Town’s] adherence to the Master Plan.” As discussed above, the Master Plan itself makes clear that the Town is not contractually committed to undertake every potential project listed in it (for example the Master Plan includes the closure of Netherlands Road to vehicular traffic), but rather that it is a conceptual framework which is subject to ongoing review. That same point is made in the 1986 Grant Agreement, which recognizes that the Town will have ability in the future to select which projects it will undertake, stating that the Town “will select initial park improvement projects from [the] Master Plan,” and will “determine those park improvements

which are to be funded.” (p. 3, par. 5, 7).

While we recognize the frustration of the proponents of opening this bridge in moving the project forward, the majority of the Advisory Committee cannot accept many of the assertions of Article 13 and finds that the Town, contrary to the implications of the Article, has not bound itself to undertake specific projects identified in the Master Plan (including the restoration of the Carlton Street Footbridge) without further review and approval. Furthermore, the majority supports the process agreed upon in the 2002 Annual Town Meeting which includes consideration of three options regarding the treatment of the footbridge.

#### RECOMMENDATION

The Advisory Committee by a vote of 11- 5 with 1 abstention recommends NO ACTION on Article 13.

**XXX**

ARTICLE 14FOURTEENTH ARTICLE

To see if the Town will raise and appropriate, or appropriate from available funds, \$1,000, or any other sum, to be expended under the direction of the Selectmen, for the payment of town meeting related expenses of and support services for the Town Meeting Members Association, or act on anything relative thereto.

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The 1999 Annual Town Meeting passed a resolution which called for the establishment of a Town Meeting Members Association, and a founding meeting was convened shortly after. In the four years of its existence, the TMMA has provided many services for Town Meeting members. Many people believe that Town Meeting is much more effective today than it was four years ago, and that the TMMA has been a major part of that change.

The original Brookline Town Meeting Members Association went out of existence in the 1980s. It was funded by dues, and only those who paid dues were considered members. Those who remember it say that this was a major factor in its demise. The founders of the present TMMA chose a different route. Under the TMMA Bylaws all Town Meeting Members are members automatically, and no dues are charged.

In recognition of the public nature of the TMMA, the Town Administration has provided certain services for the TMMA, including regular printing and mailing of minutes and meeting notices to members of the TMMA Board and printing of TMMA notices for mailing to all Town Meeting Members with the Combined Reports.

While we are grateful to the Town Administrator for these services, many members of the TMMA Board have felt uncomfortable about these services being dependent on the generosity of the Town Administration. We feel that if the Town Meeting Members Association performs a public function, the support it receives from the Town should come from explicit provisions in the Town's budget.

While some have questioned the legality of a direct Town appropriation to the Town Meeting Members Association, we are informed that the state provides funds for professional associations for state legislators. In a city form of government, many of the services which the TMMA provides are provided directly to city counselors out of public funds. As a Town, Brookline spends very little on its legislature, and we feel that, even in tough fiscal times, the amount requested is small for the services which we provide to help Town Meeting Members to be better informed and better equipped to do their jobs. Much of it represents money that is already being spent on the TMMA.

The issue raised by this Article is not whether the Town should support the TMMA financially. It has done so for four years. The issue is whether the Town should do so as an explicit and regular part of its budget.

SELECTMEN'S RECOMMENDATION

Article 14 is a petitioned article requesting that \$1,000 be appropriated for the support of the Town Meeting Members Association (TMMA). The TMMA was re-established in 1999 after Town Meeting adopted a resolution in an effort to strengthen communications between Town Meeting Members and their constituents.

The TMMA has carried out a number of effective and helpful functions in their endeavor to follow out the mission as stated in the resolution, including informational sessions on how the budget is developed, how to write a warrant article, and how to run for Town Meeting. This Board supports all of the assistance the Town Administrator and his staff have provided to the TMMA. Even with reduced staffing levels, the Town Administrator's office has assisted the TMMA with the printing, copying, and mailing of various publications.

Some Selectmen strongly recommend that the TMMA consider individual dues as an alternative to Town support. In previous years, the TMMA followed this approach. Further, earlier this year the TMMA requested that the Town administration expand its support functions at an estimated annual cost of \$1,700 and tripling the amount of staff time required. This could not be accommodated. In addition, the Town Administrator has warned that further budget cuts could threaten TMMA support altogether.

Although the Selectmen support the TMMA, we cannot recommend favorable action on an appropriation of Town funds for this purpose. In the alternative, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on April 29, on the resolution offered by the Advisory Committee.

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ADVISORY COMMITTEE'S RECOMMENDATION

INTRODUCTION

Article 14 proposes an appropriation of Town funds, to be expended under the direction of the Selectmen, for "the payment of town meeting related expenses of and support services for the Town Meeting Members Association . . . ."

BACKGROUND

The Town Meeting Member's Association ("TMMA") was established by a resolution of Town Meeting at the 1999 Annual Town Meeting. Since that vote, the TMMA was organized by Town Meeting Members ("TMMs"), three annual meetings of the TMMA have been held, and bylaws have been adopted. Under the TMMA bylaws, all TMMs are members of the TMMA and are empowered to vote at annual meetings with respect to election of officers and bylaw amendments, among other matters. The governing body of the TMMA is an Executive Committee made up of two TMMs from each precinct (although there have been and currently are some vacancies) who are elected by members

of their respective precinct delegations at the TMMA annual meeting. Two co-chairs, a secretary and a treasurer are also elected at the TMMA annual meeting. The Executive Committee of the TMMA has held regular meetings on a monthly basis since the inception of the TMMA, with the exception of summer months. The organization does not presently charge dues of its members

Pursuant to the charge given to it by Town Meeting and its mission as stated in its bylaws, the TMMA has focused its efforts on trying to improve the effectiveness of Town Meeting by serving as a resource to better inform TMMs about the issues they face at Town Meeting and about Town Meeting procedures. Some of the things the TMMA has done to date include the following: updated and republished the TMM Handbook; prompted the Town to mail the financial plan to each TMM and to make certain other information available to TMMs; published newsletters for TMMs; initiated a TMM-only e-group for discussion of Town issues; and organized various informational sessions for TMMs, including sessions on how to write warrant articles, the formulation and substance of the Town budget, issues being presented at Town Meeting and an orientation for new TMMs. Unlike the Advisory Committee, the TMMA is prohibited from and does not take positions on issues, with the exception in certain circumstances of issues relating specifically to Town Meeting procedures that impact the effectiveness of Town Meeting.

To date, the Town administration has taken care of the cost and logistics of all TMMA mailings. The annual cost to the Town of these mailings has been approximately \$366. The Town has been charging this cost to the "Printing Warrants and Reports" line item in the unclassified budget which is generally used for printing and mailing materials related to Town Meeting. The Co-Chairs of the TMMA and the Town Administrator have met annually to discuss the resources and services the TMMA would like the Town administration to provide, and they have evidenced their mutual understanding of the resources and services the Town administration agrees to provide to the TMMA in writing each year. The working relationship between the TMMA and the Town Administrator has generally been cooperative, but there have been some requests made by the TMMA which the Town Administrator has not been willing to accommodate.

#### DISCUSSION

Specifically, the petitioners are requesting that Town Meeting appropriate \$795 for the TMMA in FY04 for the following costs: mailing meeting notices to Executive Committee members and notices to TMMs, including costs of postage, mailing supplies, and Town administration staff time required; printing of newsletters; and TMMA events.

The petitioners framed the issue presented by this request for a specific appropriation as a referendum on the status of the TMMA. As a body established by Town Meeting charged with increasing the effectiveness of Town Meeting as the legislative body of the Town, the petitioners believe that the effectiveness of the organization is in part dependent on its independence from the Town administration. They believe the TMMA could be more effective with a little more money and without having to go "hat in hand" to the Town Administrator every time they want to do a mailing or incur another

reasonable cost. By asking for this appropriation, the TMMA is asking Town Meeting to express its support for the function of and services provided by the TMMA and to make a statement that it does not feel its member services organization should be dependent on the good graces of the Town administration. The TMMA believes that this approach to funding the nominal costs of the organization is more appropriate than charging dues because the costs serve legitimate public purpose goals of the Town, membership should not be limited to dues-paying TMMs and the TMMA that used to exist years ago is thought to have become defunct in part because of the failure of members to pay dues.

The majority of the Advisory Committee has some concerns about including a line-item in the budget for the TMMA. First, in a year in which we are having to make cuts on both the Town and School sides of the operating budget, many thought that we should not be adding line items or increasing the amount of resources going to the TMMA. Another primary concern of the Committee is that the TMMA is not an official department, board, or commission of the Town; rather, it is essentially a private organization of TMM volunteers. Although different from other private interest groups in Town in the sense that it was created pursuant to a Town Meeting resolution and it does not take positions on issues, there is a concern among some members of the Advisory Committee that including a line-item in the budget for the TMMA might open the door to requests from other private organizations in Town that serve a public purpose (e.g., the League of Women Voters). It was pointed out that not all TMMs find the services provided by the TMMA to be useful, which is another reason some are uncomfortable with a specific appropriation for the TMMA. Some also felt that as a private organization the TMMA should charge dues. Members could thereby signal their commitment to the TMMA and the services it provides by paying their dues.

The majority of the Advisory Committee does believe, however, that the objectives of the TMMA are valuable and important to TMMs and to the Town. Not all TMMs find the services provided by the TMMA useful, and there is certainly room for improvement. On the whole, however, the TMMA's efforts are positive steps toward improving the effectiveness of Town Meeting and many TMMs have benefited from the efforts of the TMMA. There are a number of hard-working and well-respected TMMs who volunteer their time to the TMMA with the objective of providing useful services to TMMs to help them make themselves more effective Town Meeting representatives. The motives behind the organization when established by vote of Town Meeting and as implemented by TMMs are consistent with the best interests of the Town. For these reasons, the Advisory Committee believes that while it cannot support a line-item in the budget for the TMMA it would like to see the administration continue to support the organization to the extent that resources are available.

#### RECOMMENDATION

The Advisory Committee originally voted 10 to 2 with 2 abstentions against the language of warrant article 14 and then after reconsideration by a vote of 11 to 4 with 2 abstentions, the Advisory Committee moves FAVORABLE ACTION on the following resolution under Article 14, instead of the original language:

VOTED: That the Town adopt the following resolution:

WHEREAS, the Town Meeting Members Association has been effective and helpful in providing useful information to Town Meeting Members regarding Town Meeting procedures and the various matters that come before Town Meeting, including the formulation of the budget and the content of warrant articles, by holding information sessions, distributing pertinent written material, and encouraging the early distribution of the financial plan, the warrant, and the schedule of public hearings thereon, among other worthwhile activities,

NOW THEREFORE BE IT RESOLVED that the Brookline Town Meeting commends the Town Meeting Members Association for these efforts, and further that the Town Meeting urges the Town Administrator to continue the current practice of assisting the Town Meeting Members Association in matters such as the printing and mailing or other distribution of written matter, furnishing clerical help in this regard, providing space in public facilities for holding meetings, and, additionally, in providing reasonable future assistance to the Town Meeting Members Association in other suitable endeavors associated with its mission, provided that the provision of all such assistance is consistent with the Town Administrator's duty to perform other, official town functions, and with the constraints imposed by the limited resources available to the town.

**XXX**

ARTICLE 15FIFTEENTH ARTICLE

To see if the Town will establish a tax amnesty program, as authorized by Section 73 in Chapter 4 of the Acts of 2003, in substantially the following terms and conditions:

Section 1. The tax collector for the Town of Brookline is authorized to establish a tax amnesty program during which all penalties that could be assessed by the tax collector for the failure of the taxpayer to timely pay any tax liability to the Town of Brookline, or to pay the proper amount of any required estimated payment toward a tax liability to the Town of Brookline, shall be waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect, if the taxpayer, prior to the expiration of the amnesty period, voluntarily pays the full amount of the unabated tax shown on the taxpayer's assessments, including water rate or annual sewer use charge added to such assessment and interest due thereon, after which payment the tax collector shall waive all penalties associated with that assessment.

Section 2. The amnesty program shall be established for a period of 4 consecutive months within fiscal years 2003/2004 to be determined by the tax collector of the Town of Brookline, such period to expire not later than December 31, 2003.

Section 3. The tax amnesty program is not available to any person who, as of the time the amnesty period commences, is or was the subject of a criminal investigation or prosecution for failure to pay any tax liability to the Town.

Section 4. For purposes of this article, the term "interest due thereon" means the interest described in G.L. c. 59, Section 57 as follows: the rate of fourteen per cent per annum, computed from October first of the fiscal year in which it is payable, or from the date the bill for such tax was mailed if mailed after October first of the fiscal year in which it is payable, calculated on so much of the unpaid amount as is in excess of one-half of such balance.

For purposes of this article, the terms "penalties that could be assessed" and "penalties associated with that assessment" means the interest described in G.L. c. 59, Section 57 as follows: for assessments still due after May first of the fiscal year in which it is payable, the additional rate of fourteen per cent per annum calculated on so much of the balance of such tax not so paid as does not exceed one half of such tax balance as reduced by any abatement and computed from April first of such fiscal year.,

or act on anything relative thereto.

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The tax collector's records indicate that presently over \$400,000 of property taxes remains overdue. The Commonwealth's amnesty program brought in a great deal of money from overdue taxes very quickly, which helped to close the budget gap at the state level. The City of Boston is now considering a similar program.

While the Brookline tax collector has expressed some reservations about the success of such a program at the Town level, it is worth the minimal costs of advertising the program to see if we can quickly capture some of that outstanding revenue to help lessen the blow of the expected cuts in local aid.

The issue of fairness is also of concern as the overwhelming majority of Brookline's taxpayers pay their taxes on time. The proposed tax amnesty does not forgive **all** of interest due; it will only forgive those interest charges that are considered to be "penalties." Accordingly, to the extent that anyone takes advantage of this amnesty program, they will be paying their fair share plus some interest to reimburse the Town for the lost time value of the unpaid taxes. However, forgiving the penalty portion will give some incentive to tax payers to pay their tax arrearage now.

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The Petitioner recommends a vote of NO ACTION on the warrant article. As the warrant article was being reviewed by the advisory committee, it became clear that it would not achieve its intended purpose: getting money into the Town's coffers now. Because money collected under the proposed amnesty program would be considered free cash, it would not be released for spending until certified by the Commonwealth, which could take until fiscal year '06. Since the use of any recovered funds would be substantially delayed by this certification process, any advantage resulting from the slight increase in the timetable by which the Town would collect these funds does not outweigh the resulting loss in interest income.

#### SELECTMEN'S RECOMMENDATION

The petitioner filed the article with the intention of capturing some of the Town's uncollected taxes, through a tax amnesty program, in an effort to help the budget during these difficult financial times. Such a program was recently made available to municipalities by the State. However, after reviewing the article with the Town's Finance Director, Advisory Sub-Committee on Administration and Finance, and the full Advisory Committee, it became apparent that the tax amnesty program would not result in the original intentions of the petitioner.

The primary reasons for this conclusion are:

- Brookline has an extremely high collection rate, collecting close to 99% of its property taxes.

- Virtually 100% of all outstanding taxes are eventually collected by the Town, so there is no need to give taxpayers an “incentive” to pay their taxes.
- The Commonwealth allows communities to assume that all taxes filed in a fiscal year will be collected. Therefore, 100% of the tax levy is used to support the budget. Uncollected taxes affect Free Cash negatively in one year and positively affect Free Cash in the year in which is collected.

The petitioner understands that his goals cannot be met using this vehicle, so he has recommended that No Action be taken on the article. Therefore, the Selectmen recommend NO ACTION, by a vote of 4-0 taken on April 15. The Board fully appreciates the petitioner’s efforts in attempting to help the Town with its budget issues.

**ROLL CALL VOTE:**

**NO ACTION**

Goldberg  
Kalikow  
Geller  
Allen

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**ADVISORY COMMITTEE’S RECOMMENDATION**

**BACKGROUND**

This Warrant Article proposes that the town adopt local option legislation recently passed by the legislature and signed by the Governor which permits the town to offer a tax amnesty to delinquent real estate taxpayers.

The language in the warrant would waive all penalties which is defined as interest. The amnesty proposed would be for a 4 month period which needs to end by December 31, 2003. The December 31, 2003 deadline is imposed by the enabling legislation.

**DISCUSSION**

The petitioner stated that the warrant article was inspired by the successful tax amnesty program recently offered by the state plus the town’s current fiscal difficult fiscal situation and about \$400,000 in delinquent taxes on the town’s books . The state’s income tax amnesty program brought in millions of dollars of back taxes the state may not have otherwise received or would have been expensive to collect.

The town has an excellent record of collecting real estate taxes. According to Steven Cirillo, Director of Finance, of the approximately 15,000 taxable parcels, 19 parcels are in tax title and 43 parcels were recently advertised in the Brookline Tab as delinquent. Being advertised is the first formal step towards tax title. With real estate taxes, the town has the ultimate collection tool; a municipal tax lien on the property. The only party that can come ahead of a municipal tax lien is the IRS. (Mortgage liens are even subordinated to municipal tax liens.) The bottom line is that all the town’s back taxes will eventually be collected and the town has demonstrated that it will aggressively protect its interest.

The town has foreclosed on 1 property and uses the threat of foreclosure to reach agreement with the delinquent taxpayers.

A real estate tax amnesty will not generate ANY new revenue for the town. The petitioner recognizes this. A tax amnesty CAN potentially influence the timing of the payment. The petitioner's reasoning is, money received sooner while fiscal times are bad would benefit the town.

For revenue budgeting purposes, the town is permitted by DOR to budget real estate taxes on a 100% accrual basis. In other words, when the financial plan is constructed the town is permitted to plan on spending 100% of aggregate permitted tax collections even though a very small percentage may not be collected during the fiscal year. The effect on the financial plan of delinquent taxes is that they are subtracted at the end of year in the free cash certification. Given the timing of the free cash certification, delinquent taxes paid, say, in November, 2003, would increase the amount of free cash available for appropriation for FY 2006. Given the Selectmen's free cash policy which states that free cash will only be spent on capital or other one time expenses, the operating budget will not benefit from any revenue which may be achieved through the amnesty program..

Another piece of the puzzle is that the delinquent taxes are earning the town 14% interest (16% after the parcel is in tax title; 8% for a 41A parcels.) The interest income is projected and then included in revenue forecast for the operating budget. A reduction of interest income will have an adverse affect on the operating budget (albeit small given the numbers involved here.)

#### RECOMMENDATION

What will be the benefit of the proposal? It is clear that the proposal will not generate any new money for the town (unlike what happened at the state with income taxes.) The only benefit would be potentially receiving some delinquent taxes sooner than the town otherwise would. Given the relatively small amount involved, the benefit would be small, if any. The Advisory Committee questions whether the amnesty will be much of a motivator to taxpayers already in tax title. Given the consequences of a tax lien, if the taxpayers had the resources they surely would have already paid. Perhaps, some of the other 43 delinquent taxpayers could benefit from the program.

What could be the harm? Financially, the only harm is the loss of some budgeted interest income. (The additional costs of collection are small since all collection activity including the filing of tax liens are performed by in house staff.) Also, it is possible that having a tax amnesty up for discussion could motivate currently delinquent taxpayers who might be inclined to resolve their account now to wait until the amnesty period to make payment and thus cost the town some lost interest revenue it may have otherwise realized.

On the other hand, there is a fairness issue. It is the civic responsibility of all citizens to pay their taxes. The penalties for non payment are clearly stated. Taxpayers expect to have the penalties assessed and an argument can be made that by waiving the penalties

we have created an inequity for taxpayers who have paid on time, and for taxpayers who have already paid off their delinquent taxes.

In order to overcome the fairness issue, one must be able to show a clear benefit to the town in terms of new revenues or substantially faster collection of delinquent taxes. The Advisory Committee believes the proposal does not meet this standard and recommends by a 19-0 vote NO ACTION on Article 15.

**XXX**

ARTICLE 16SIXTEENTH ARTICLE

To see if the Town will adopt the following resolution:

**Whereas**, Brookline has high taxes for both commercial and residential properties, and;

**Whereas**, Brookline has been experiencing a shift of its aggregate tax responsibility from commercial to residential properties. The reasons for this shift are multi dimensional and include:

- a. an erosion of the town's commercial base due to the conversion of commercial properties to residential use;
- b. residential property value assessments have been rising at a greater rate of appreciation than commercial property;
- c. the fact that Brookline has hit the maximum tax classification limit of 175%, and;

**Whereas**, The existing small business exemption has never been implemented and is found to be inappropriate for Brookline, and;

**Whereas**, the Comprehensive Plan Committee is examining, in part, how town policies including zoning could be changed to strengthen the town's commercial base, and;

**Whereas**, maximum and minimum tax classification limits are set by the General Court on a statewide basis and are thus a statewide issue. However, each municipality chooses whether or not to classify its tax rate and by how much within the allowed limits, and;

**Whereas**, Brookline should not have a higher tax classification limit than other cities and towns in the Commonwealth, and;

**Whereas**, both the competing and complementary interests of all classes of taxpayers must be carefully considered.

**Therefore**, Town Meeting requests that the Comprehensive Plan Committee consider whether and how tax policies can be used as a tool to achieve the goals of the Comprehensive Plan with respect to enhancing the town's commercial base while balancing the interests of the residential base, and;

Town Meeting requests that the Town's legislative delegation file a bill to have the state's tax classification limit and small business exemption reviewed by the Mass. Department of Revenue Division of Local Services (DLS) and to have DLS recommend change(s) on a statewide basis, if deemed appropriate.,

or act on anything relative thereto.

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MODERATOR COMMITTEE'S REPORT

The Moderator's Committee on Tax Classification was created pursuant to the vote with respect to Article 19 of the May 2002 Annual Town Meeting which charged the Committee with:

- (i) reviewing the Town's commercial property tax
- (ii) if appropriate, proposing modifications designed to ensure equitable treatment of all classes of property, while encouraging local, small business and
- (iii) reporting to the next annual Town Meeting.

The tax classification limit governs how much higher the tax rate can be for commercial property than residential property. It is one of a number of limits which are in place which govern how the tax rate is set. Each of these limits must work together when the tax rate is set. Currently the classification limit is 175%. Article 19 of the May 2002 Annual Town Meeting proposed seeking home rule legislation to raise the classification limit to 200%. It also proposed a small business exemption. Article 16 of the May 2001 Annual Town Meeting also proposed home rule legislation to raise the classification limit to 200%. That article was defeated.

The Committee met 8 times including a public hearing. Each of the working meetings had a theme which included a history of tax classification, how the tax rate is set in Brookline, and the state of the business community and the commercial tax base. The Committee heard from many individuals with subject matter expertise including the former Chief of the Property Tax Bureau of the Division of Local Services, the Brookline Director of Finance, Brookline Deputy Chief Assessor, members of Brookline's Economic Development Advisory Board (EDAB) and the Chair of the Planning Board.

The Committee's public hearing was held on February 11 which was relatively well attended. Eight of the attendees signed up to speak. All the speakers but one expressed the concerns of the business community regarding tax classification.

The findings of the Committee are:

1. Homeowners have been paying an increasing share of the town's tax obligation. This has been driven by demographics, regional housing demand, and the desirability of Brookline as a residential community. These economic facts have manifested themselves

in residential property values rising faster than commercial values and conversion of some properties from commercial use to residential. Another factor in the shifting tax burden has been the fact that the town has hit the tax classification limit of 175%.

2. Addressing the issue of a shifting tax obligation requires us to consider a variety of factors. These include issues of equity among taxpayers, the integrity of the overall tax system, the comparative hardships on the different groups of taxpayers, the appropriateness of the measures used to determine tax rates for each group of taxpayers and concerns raised by the commercial sector. This raises the larger issue of what the town can and should do to ensure the viability of Brookline's businesses. This larger issue is clearly outside the charge of this Committee; however the Comprehensive Plan Committee is currently attempting to address this topic, and is armed with staff and consultant resources. The Comprehensive Plan Committee has been thinking in terms of traditional planning tools such as zoning to achieve the community's vision. This Committee believes that tax policy should be thrown into the mix and considered as to whether it can and should be used as a tool to achieve the community's goals.

3. Tax Classification and the small business exemption are statewide issues best handled at the state level. Brookline should not have a tax classification limit that is higher than other cities and towns in the state.

4. Data was presented to the Committee suggesting that the present income valuation methodology for commercial properties resulted in assessed values close to apparent arms length sales in most instances. However, data on commercial sales are limited at the town level so this issue bears further examination at the state level where more data should be available.

5. It would be in the town's best interest to avoid repeated debate of the tax classification issue and for Town Meeting to adopt a resolution, as proposed, asking the following:

- a. The Comprehensive Plan Committee to consider how tax policy can help facilitate the Comprehensive Plan, and;
- b. The town's legislative delegation to file a bill requesting DLS to examine tax classification.

This should bring the matter to closure at the Town Meeting level for the foreseeable future.

6. Of the 128 municipalities with commercial properties comprising less than 10% of overall property, Brookline is one of eight that classify and one of four that shift at a rate between 151 to 175%. Even so, Brookline's FY 2002 average single family tax bill of about \$8,856 is the third highest in the Commonwealth according to data published by the Massachusetts Department of Revenue Division of Local Services.

7. Based upon recent EDAB focus groups, Brookline values its unique commercial properties. The predominant "Mom and Pop" character of our retail stores is due to their relatively small size as compared to nearby comparable communities. Several structural challenges presently confront the commercial sector, including traffic and parking issues

in all of the town's major commercial areas, as well as the relative lack of economies of scale.

8. Based upon the assessor's income valuation methodology for determining commercial property assessments, any increase in taxes, including an increase due to a greater shift, will reduce that sector's value, everything else being equal. Likewise, further increases in residential taxes would, all things being equal, cause this property type's assessment to decline.

One of the points in the proposed resolution is that the existing small business exemption is not appropriate for Brookline. The existing small business exemption can be adopted as a local option but has never been adopted by Brookline. If adopted, an exemption of up to 10% can be offered to parcels which meet the following conditions:

1. The property is valued at under \$1 million
2. All businesses operated on the parcel must be "eligible businesses" generally defined as have under 10 employees. One ineligible business disqualifies the entire parcel.

The committee found that the exemption has some obvious weaknesses, not the least of which is that it doesn't help tenants which include most of the town's small businesses. It could, however, help small businesses that own their own building or business condominium; a small minority of such businesses.

Additionally, taxes within the commercial sector are a "zero sum game." An exemption will shift taxes within the classification. In other words, taxes not paid by commercial property owners that qualify for the exemption will be paid by commercial property owners (large and small) that do not qualify for the exemption. Many of the kinds of independent retailers the EDAB would like to encourage employ 10 or more employees which would not qualify for the exemption and would be further hurt by the shift within the commercial tax classification.

Respectfully submitted:  
Moderator's Committee on Tax Classification  
Neil Wishinsky, Chair  
Robert Allen  
Harvey Beth  
Polly Cornblath  
Robert Costrell  
Alisa Jonas  
Paul Saner  
Stanley Spiegel

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### SELECTMEN'S RECOMMENDATION

Each of the past two Annual Town Meeting Warrants included a petitioned article calling for Home Rule legislation that would enable the Town to increase the limits on Tax Classification – i.e., the amount of the property tax levy that can be shifted from the residential properties to the commercial properties. On both occasions, this Board, and Town Meeting, opposed making Brookline the only community in the state with a tax shift of greater than 175%.

At the 2002 Annual Town Meeting, it was voted to establish a Moderator's Committee on Tax Classification. The Committee's charge was to review the Town's commercial property tax and, if appropriate, propose modifications designed to ensure equitable treatment of all classes of property, while encouraging local small businesses. The Moderator's Committee undertook this task, put in many, many hours of work, and completed their work in time for this Town meeting. We are very appreciative of the quality work performed by the Committee.

The Committee made a number of findings, some of which are listed below:

- Homeowners have been paying an increasing share of the Town's tax obligation, which has been driven by demographics, regional housing demand, and the desirability of Brookline.
- Addressing the issue of a shifting tax obligation requires the consideration of many factors; factors that can be best addressed by the Comprehensive Plan Committee.
- The issues are statewide matters of concern and should be handled at the state level.
- It is in the Town's best interest to avoid repeated annual debates of the tax classification issue.
- Brookline values its unique commercial properties.

The Committee concluded that the best way to proceed is to have Town Meeting adopt a resolution that asks the Comprehensive Plan Committee to consider, as part of its work, how tax policy can help facilitate the Comp. Plan, and asks the Town's legislative delegation to file a bill with the Department of Revenue's Division of Local Services (DLS) to examine tax classification. The Selectmen concur with the Committee's recommendation and hope that the State will review this matter, an issue that is beginning to impact more and more communities.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on April 22, on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE'S RECOMMENDATIONBACKGROUND

The real estate tax classification limit of the Commonwealth is at the heart of this issue. It currently allows for the real estate tax rate imposed on commercial properties to be no more than 175% of the rate imposed on residential properties, and it contains a small business exemption. The Selectmen have set the Town's commercial tax rate at the maximum of 175% of the homeowners' rate, based on assessed valuation. This is a shift to place a greater tax burden on commercial property. This warrant article was submitted by a Moderator's Committee which studied these issues over the past year.

DISCUSSION

The long-term trend in the Town's economy is a widening gap between the valuations of residential and commercial properties, and the number of commercial properties is declining. Residential properties are valued higher than commercial properties, based primarily on selling prices. Accordingly, a greater share of the tax burden is being borne by residential property owners. There is a host of macro and micro quantitative data that indisputably supports this statement.

A Petitioner brought forward warrant articles in 2001 and 2002, seeking to have the Town get Home Rule legislation to increase the maximum rate that could be shifted to commercial taxpayers. The rationale behind those warrant article was the belief that there is an "inequity" and "unfairness" to the sharing of the real estate tax burden between the Town's residential and commercial taxpayers, and that it would be beneficial to residents if the tax classification shift could be increased, i.e. have commercial property owners pay property taxes at a higher rate to residential property, such as 200%. Town Meeting decided to have a Moderator's Committee study these issues, instead of moving forward to be the only Town or City in the Commonwealth that shifted more than 175%. Not only was there substantial opposition from the Town's business community but many felt that Brookline would be a bad position in terms of keeping and attracting new business if it taxed at a rate higher than any surrounding community.

However, in the course of studying these issues the Moderator's Committee learned that there was some interest in changing the law on a statewide level to allow communities to shift taxes to the commercial sector at a higher rate. If the Commonwealth were to establish a higher limit, then the Town's Selectmen would have license to adopt a higher limit if they so chose. This could somewhat mitigate the situation of having more of the total tax load move to residential property owners.

Thus, the Moderator's Committee filed this petition seeking the following two resolutions:

- that the Comprehensive Plan Committee consider tax policies in their work
- that a bill be filed to have the Commonwealth review on a statewide basis both the limit and the exemption, and recommend changes, if appropriate

The Advisory Committee's discussion focused on principally the level of concern for the perceived unfairness; the Town's commercial economic well being; and the differences between small and big business. While the residential property owners are beginning to absorb more of the tax burden because their properties are assessed at a higher value and the number of commercial properties is decreasing as more condominiums are built, the remaining commercial property owners and tenants (many of whom must pay all taxes as part of their lease) assert that they cannot afford to absorb any higher tax burden. Therefore, what effect any change to tax policy might have on local commerce is a concern. The Moderator's Committee also studied the various methodologies that can be used to determine assessed values.

Brookline is one of 128 towns or municipalities that have a commercial real property base of less than 10%, according to the Town's Economic Development Advisory Board. Of those, only 8 have set a different tax rate for commercial and residential property. At a shift of 175%, the Town at present shifts the greatest percentage of the Towns and Cities with less than a 10% commercial base.

As an example, if you assume a property tax levy of \$100 million split 90% residential/10% commercial: the commercial burden would be \$10 million if all property was taxed at the same rate, but the amount shifted at 175% is \$7.5 million. Therefore, the aggregate commercial burden would be \$17.5 million and the aggregate residential burden would be \$92.5 million. An additional \$2.5 million would be shifted if the limit was increased to 200%.

The Advisory Committee does not recommend that Brookline should be alone in shifting more than 175% of the tax rate to commercial properties. Nor would the Advisory Committee necessarily even urge the Selectmen to a greater shift if the option was available on a statewide basis. However, given the high tax burden that residential property owners in Brookline face, a majority of the Advisory Committee supports the position of the Moderator's Committee that the Town's tax policy should be studied within the context of the Comprehensive Plan and that if we urge the state legislature to review the limit and the exemption for small businesses, it could give the Selectmen greater flexibility in setting tax policy.

#### RECOMMENDATION

The Advisory Committee by a vote of 15-5 recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town adopt the following resolution:

**Whereas**, Brookline has high taxes for both commercial and residential properties, and;

**Whereas**, Brookline has been experiencing a shift of its aggregate tax responsibility from commercial to residential properties. The reasons for this shift are multi dimensional and include:

- a. an erosion of the town's commercial base due to the conversion of commercial properties to residential use;
- b. residential property value assessments have been rising at a greater rate of appreciation than commercial property;
- c. the fact that Brookline has hit the maximum tax classification limit of 175%, and;

**Whereas**, The existing small business exemption has never been implemented and is found to be inappropriate for Brookline, and;

**Whereas**, the Comprehensive Plan Committee is examining, in part, how town policies including zoning could be changed to strengthen the town's commercial base, and;

**Whereas**, maximum and minimum tax classification limits are set by the General Court on a statewide basis and are thus a statewide issue. However, each municipality chooses whether or not to classify its tax rate and by how much within the allowed limits, and;

**Whereas**, Brookline should not have a higher tax classification limit than other cities and towns in the Commonwealth, and;

**Whereas**, both the competing and complementary interests of all classes of taxpayers must be carefully considered.

**Therefore**, Town Meeting requests that the Comprehensive Plan Committee consider whether and how tax policies can be used as a tool to achieve the goals of the Comprehensive Plan with respect to enhancing the town's commercial base while balancing the interests of the residential base, and;

Town Meeting requests that the Town's legislative delegation file a bill to have the state's tax classification limit and small business exemption reviewed by the Mass. Department of Revenue Division of Local Services (DLS) and to have DLS recommend change(s) on a statewide basis, if deemed appropriate.

**XXX**

ARTICLE 17

SEVENTEENTH ARTICLE

To see if the Town will adopt the following resolution:

*A society that will trade a little liberty for a little order will lose both and deserve neither.*  
– Thomas Jefferson

**WHEREAS:** United States law is founded in the Declaration of Independence, the United States Constitution, and the Bill of Rights; and

**WHEREAS:** Brookline is a politically diverse and democratic community whose residents are committed to preserving the human rights and civil liberties enunciated in these founding documents; and

**WHEREAS:** Acts of terrorism against the United States on September 11, 2001, prompted President George W. Bush to declare a “war on terrorism,” many aspects of which, in its domestic implementation, constitute an assault with few precedents on the following constitutional amendments:

- The First Amendment, which provides that no law shall be made "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”;
- The Fourth Amendment, which declares, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”;
- The Fifth Amendment, which states that no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law”;
- The Sixth Amendment, which guarantees defendants "the right to a speedy and public trial, by an impartial jury... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense”;
- The Eighth Amendment, which states, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”;

- The Fourteenth Amendment, which prohibits the government from denying "to any person within its jurisdiction the equal protection of the laws"; and

**WHEREAS:** We believe these inalienable rights are now directly threatened by:

A. The **USA PATRIOT Act**, whose ambiguities and vast scope greatly strengthen the government's power to invade and control the everyday lives of citizens and non-citizens alike. This Act:

- Inhibits constitutionally protected speech through vague and overly broad definitions of "terrorism" and creation of the new crime of "domestic terrorism," the interpretation of which resides exclusively in the hands of the Attorney General and the President (Sections 411, 412, 802, 808);
- Virtually eliminates judicial supervision of telephone and Internet surveillance (Sec. 216);
- Greatly expands the government's authority to conduct secret searches (Sections 209, 213, 215, 218-220);
- Grants the FBI broad access to individual medical, mental health, financial, employment, and educational records without having to show evidence of a crime and without a court order; and
- Permits the FBI to track individual book borrowing in libraries and book purchases and video rentals in stores and makes it a crime for librarians and vendors to reveal their knowledge of such tracking (Sec. 215);

B. **Federal Executive Orders and governmental actions** since September 11, 2001, which

- Permit wiretapping of conversations between federal prisoners and their lawyers;
- Eliminate Justice Department regulations against illegal COINTELPRO-type operations by the FBI (covert activities that in the past targeted domestic groups and individuals);
- Establish secret military tribunals for terrorism suspects, including both citizens and non-citizens;
- Permit thousands of men, mostly of Arab and South Asian origin, to have been held for many months in secret custody, most without any charges filed against them, without publication of their identities and location in defiance of repeated congressional requests and court orders; and
- Limit the release of public documents and records in many subject areas under the Freedom of Information Act (FOIA); and

C. The **Homeland Security Act**, which violates fundamental principles of open governance by:

- Exempting the Department of Homeland Security from FOIA disclosure, thereby drastically restricting its responsibility to answer public questions;
- Empowering the Secretary of the Department to waive the safeguards contained in the federal Whistleblower Protection Act; and
- Empowering the Secretary of the Department to require vaccinations of the entire population with no exemptions (Sec 304c); and

**WHEREAS:** The provisions of the Constitution apply in wartime as in peace; and to violate or depart from them, under the plea of necessity or any other plea, is subversive of good government; and

**WHEREAS:** United States laws that pre-existed 9/11 would, if competently and effectively implemented, be sufficient to investigate terrorists and bring them to justice;

**NOW, THEREFORE, BE IT RESOLVED:** That the TOWN OF BROOKLINE, MASSACHUSETTS, in its 2003 Annual Town Meeting assembled:

1. declares and affirms that the USA PATRIOT ACT, the Homeland Security Act, and a number of recent federal Executive Orders contain provisions which, taken together, constitute an assault with few historic precedents upon the civil liberties and human rights established for the citizens of the United States of America;
2. maintains that its officials and employees must hold the United States Constitution, including the Bill of Rights, as the ultimate legal authority whenever its provisions conflict with those of the USA PATRIOT Act, the Homeland Security Act, or federal Executive Orders, thereby upholding all constitutional rights, including due process, equal protection of the laws, and the freedoms of speech, religion, assembly, and privacy of all Brookline residents;
3. urges that the Governor of Massachusetts, all state and federal legislators, jurists, law enforcement officers, and officials, and the citizens of Massachusetts take all legally appropriate action to revoke, rescind and eliminate those provisions of the USA PATRIOT ACT, the Homeland Security Act, and recent federal Executive Orders that diminish our civil liberties and human rights;
4. considers it vitally important that the U.S. Attorney's Office, the Federal Bureau of Investigation, the Massachusetts State Police, and any other Federal, State or local law enforcement officials in possession of any such information report to the Brookline Board of Selectmen regularly and publicly the extent to and manner in which they have acted under the USA PATRIOT Act, the USA PATRIOT Act, and recent Executive Orders, including but not limited to disclosing:
  - the names of any detainees held within the Commonwealth of Massachusetts and of any Brookline residents detained within the Town or elsewhere; the circumstances that led to

each detention; the charges, if any, lodged against each detainee; and the name of counsel, if any, representing each detainee;

- the number of search warrants that have been executed in the Town of Brookline without notice to the subject of the warrant pursuant to section 213 of the USA PATRIOT Act;
- the extent of electronic surveillance carried out in the Town of Brookline under powers granted in the USA PATRIOT Act;
- the extent to which federal authorities are monitoring political meetings, religious gatherings, or other activities within the Town of Brookline that are protected by the First Amendment;
- the number of times education records have been obtained from public schools and institutions of higher learning in the Town of Brookline under section 507 of the USA PATRIOT Act; and
- the number of times individual borrowing records have been obtained from libraries and purchasing records have been obtained from book and video stores in the Town of Brookline under section 215 of the USA PATRIOT Act; and

5. requests that the Town Clerk send a copy of this resolution to all Town residents and departments and to the Norfolk County District Attorney, the Massachusetts State Police, the Massachusetts Congressional and Statehouse delegations, the Attorney General and the Governor of the Commonwealth of Massachusetts, the local United States Attorney, the United States Attorney General and the President of the United States.

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The U.S. is still traumatized with grief, fear and rage in the wake of the unprecedented terrorist attacks of 9/11/01. The Bush Administration, in the guise of protecting citizens, has exploited this national trauma with draconian measures that severely diminish our civil liberties and human rights.

Many city and town governments across the country have been aroused to denounce the USA PATRIOT Act – passed by Congress with almost no time to read it, let alone debate it. This Act, the Homeland Security Act, and a series of Executive Orders have been condemned in resolutions passed by 64 municipalities, including such major cities as Detroit, Seattle, Denver and San Francisco. In Massachusetts four communities have followed suit, and nationwide at least 90 more are engaged in the same process. Now it is Brookline's turn.

#### SELECTMEN'S RECOMMENDATION

The U.S. Patriot Act and other measures adopted since September 11<sup>th</sup> are the subject of continued debate at all levels of government in this country. Balancing the preservation of our

collective security with the protection of individual rights has been, and always will be, a test for our democratic society.

By taking a position on this Article, the Selectmen explicitly acknowledge the relevance to local government of the issues raised in the Resolution. While these measures are federally based, their application will often taken place in local communities. Further, the Board concurs with the expressed sentiments of the lead petitioner that this resolution is a political statement and not a mandatory set of regulations.

In light of the shared sentiments with the petitioners, the Board, while sympathetic to the petition as originally submitted, found it necessary (with the petitioners concurrence) to adopt a modestly amended version that arose from the Advisory Committee. The amended version also stipulates methods of making the community aware of the resolution without the obligation of actually mailing it to every household.

More specifically on the amendments. First, there are several stylistic and editorial changes that can be observed when the amended version is compared with the original text. These do not alter the original intent in any way.

Second, members of the Board of Selectmen were concerned that the original text, especially with the passage of time, could be misinterpreted as imposing a set of mandatory obligations on the Town other than those Administrative agreements specified in Section 5. Particular concern was expressed about the potential for Section 4 to be construed as a directive or order to Town bodies and officials to act in an affirmative fashion that the proponents themselves indicated they do not expect. For example, some Selectmen felt that there could be an expectation that future Boards might be thought to be in some way obligated to seek out and maintain records on actions which state and federal agencies might be taking in Brookline under the aegis of homeland security. Also, there was concern that the original text could be misconstrued as imposing a mandatory reporting obligation of the Brookline Police Department.

The Board believes that the changes made to the introductory paragraph in Section 4 clarifies these concerns. Town Counsel has advised that this resolution is not an order or directive and does not have the effect of a by-law. The petitioners concur that the intent of the Resolution is “to urge and suggest, not to require”. Section 4 as amended more directly reflects these intentions.

Finally, Section 5 is changed to direct the Board and Town Clerk to publish the Resolution with as widespread dissemination as possible, thereby avoiding the costs associated with mailing to every household.

In light of the fact that the amended version continues to express the original political sentiments expressed in the initial petition and also clarifies the non-mandatory character which is inherent in any resolution, the Board of Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on April 29, on the following vote.

VOTED: That the Town adopt the following resolution:

*They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety. – Benjamin Franklin, Historical Review of Pennsylvania, 1759*

*You need only reflect that one of the best ways to get yourself a reputation as a dangerous citizen these days is to go about repeating the very phrases which our founding fathers used in the struggle for independence. – Charles Austin Beard*

**WHEREAS:** United States law is founded in the Declaration of Independence, the United States Constitution, and the Bill of Rights; and

**WHEREAS:** Brookline is a politically diverse and democratic community whose residents are committed to preserving the human rights and civil liberties enunciated in these founding documents; and

**WHEREAS:** Acts of terrorism against the United States on September 11, 2001, prompted President George W. Bush to declare a “war on terrorism,” many aspects of which, in its domestic implementation, constitute an assault with few precedents on the following constitutional amendments:

- The First Amendment, which provides that no law shall be made "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”;
- The Fourth Amendment, which declares, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”;
- The Fifth Amendment, which states that no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law”;
- The Sixth Amendment, which guarantees defendants "the right to a speedy and public trial, by an impartial jury... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence”;
- The Eighth Amendment, which states, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”;
- The Fourteenth Amendment, which prohibits the government from denying "to any person within its jurisdiction the equal protection of the laws”;

**WHEREAS:** We believe these inalienable rights are now directly threatened by:

A. The **USA PATRIOT Act**, whose ambiguities and vast scope greatly strengthen the government's power to invade and control the everyday lives of citizens and non-citizens alike. This Act:

- Inhibits constitutionally protected speech through vague and overly broad definitions of "terrorism" and creation of the new crime of "domestic terrorism," the interpretation of which resides exclusively in the hands of the Attorney General and the President (Sections 411, 412, 802, 808);
- Virtually eliminates judicial supervision of telephone and Internet surveillance (Sec. 216);
- Greatly expands the government's authority to conduct secret searches (Sections 209, 213, 215, 218-220);
- Grants the FBI broad access to individual medical, mental health, financial, employment, and educational records without having to show evidence of a crime and without a court order; and
- Permits the FBI to track individual book borrowing in libraries and book purchases and video rentals in stores and makes it a crime for librarians and vendors to reveal their knowledge of such tracking (Sec. 215);

B. **Federal Executive Orders and governmental actions** since September 11, 2001, which

- Permit wiretapping of conversations between federal prisoners and their lawyers;
- Eliminate Justice Department regulations against illegal COINTELPRO-type operations by the FBI (covert activities that in the past targeted domestic groups and individuals);
- Establish secret military tribunals for terrorism suspects, including both citizens and non-citizens;
- Permit thousands of men, mostly of Arab and South Asian origin, to have been held for many months in secret custody, most without any charges filed against them, without publication of their identities and location in defiance of repeated congressional requests and court orders; and
- Limit the release of public documents and records in many subject areas under the Freedom of Information Act (FOIA); and

C. The **Homeland Security Act**, which violates fundamental principles of open governance by:

- Exempting the Department of Homeland Security from FOIA disclosure, thereby drastically restricting its responsibility to answer public questions;
- Empowering the Secretary of the Department to waive the safeguards contained in the federal Whistleblower Protection Act; and
- Empowering the Secretary of the Department to require vaccinations of the entire population with no exemptions (Sec 304c); and

**WHEREAS:** The provisions of the Constitution apply in wartime as in peace; and to violate or depart from them, under the plea of necessity or any other plea, is subversive of good government; and

**WHEREAS:** United States laws that pre-existed 9/11 would, if competently and effectively implemented, be sufficient to investigate terrorists and bring them to justice;

**NOW, THEREFORE, BE IT RESOLVED:** That the TOWN OF BROOKLINE, MASSACHUSETTS, in its 2003 Annual Town Meeting assembled:

1. declares and affirms that the USA PATRIOT ACT, the Homeland Security Act, and a number of recent federal Executive Orders contain provisions which, taken together, constitute an assault with few historic precedents upon the civil liberties and human rights established for the citizens of the United States of America;
2. maintains that its officials and employees must be permitted to hold the United States Constitution, including the Bill of Rights, as the ultimate legal authority whenever its provisions conflict with those of the USA PATRIOT Act, the Homeland Security Act, or federal Executive Orders, thereby upholding all constitutional rights, including due process, equal protection of the laws, and the freedoms of speech, religion, assembly, and privacy of all Brookline residents;
3. urges that the Governor of Massachusetts, all Massachusetts state and federal legislators, jurists, law enforcement officers, and officials, and the citizens of Massachusetts take all legally appropriate action to seek the revocation and elimination of those provisions of the USA PATRIOT Act, the Homeland Security Act, and recent federal Executive Orders that diminish the civil liberties and human rights of the residents of the Town of Brookline and the Commonwealth of Massachusetts in contradiction of the Constitution of the United States;
4. declares that the actions of the federal government under the USA PATRIOT Act, the Homeland Security Act, and recent Executive Orders in holding US citizens and residents secretly and without due process of law, in secretly investigating and compiling information on its own citizens without probable cause, and in impairing freedom of association are among the very abuses that led to the formation of our

nation and adoption of the Constitution and Bill of Rights, and it therefore urges the federal, state, and local governments to regularly make public and available to the Board of Selectmen at least the following information relevant to the above-referenced Acts and Executive Orders:

- the names of any detainees held within the Commonwealth of Massachusetts and of any Brookline residents detained within the Town or elsewhere; the circumstances that led to each detention; the charges, if any, lodged against each detainee; and the name of counsel, if any, representing each detainee;
- the number of search warrants that have been executed in the Town of Brookline without notice to the subject of the warrant pursuant to section 213 of the USA PATRIOT Act;
- the extent of electronic surveillance carried out in the Town of Brookline under powers granted in the USA PATRIOT Act;
- the extent to which federal authorities are monitoring political meetings, religious gatherings, or other activities within the Town of Brookline that are protected by the First Amendment;
- the number of times education records have been obtained from public schools and institutions of higher learning in the Town of Brookline under section 507 of the USA PATRIOT Act; and
- the number of times individual borrowing records have been obtained from libraries and purchasing records have been obtained from book and video stores in the Town of Brookline under section 215 of the USA PATRIOT Act; and

5. requests that the Town Clerk and the Board of Selectmen jointly endeavor to publish this resolution and post it in public places, e.g., kiosks, bulletin boards, and the lobbies of Town Hall, the libraries and the public schools; and that the Town Clerk send a copy of this resolution to the Norfolk County District Attorney, the Massachusetts State Police, the Massachusetts Congressional and Statehouse delegations, the Attorney General and the Governor of the Commonwealth of Massachusetts, the local United States Attorney, the United States Attorney General and the President of the United States.

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#### ADVISORY COMMITTEE'S RECOMMENDATION

##### BACKGROUND

Article 17 is a resolution offered on behalf of Brookline PAX, opposing post September 11, 2001, federal legislation and executive orders infringing on civil liberties. The resolution has a lengthy preamble of "Whereas" clauses which identify the specific legislation, executive orders, and actions complained of, followed by a 5 paragraph resolution which: condemns the assault on civil liberties (paragraph 1); expresses that town officials and employees "must be permitted to hold the United States Constitution, including the bill of rights as the ultimate legal authority" if

it conflicts with the legislation or executive orders (paragraph 2); urges various federal and state elected and appointed officials and citizens to take all appropriate action to rescind these provisions (paragraph 3); declares that actions taken by the federal government under these acts and executive orders are among the abuses that led to the adoption of the Bill of Rights and urges that federal, state and local governments regularly make public and available to the Board of Selectmen detailed information concerning government actions pursuant to these statutes and executive orders (paragraph 4); and requests that a copy of the resolution be published and posted in public places and sent to the Norfolk County District Attorney, the Massachusetts State Police, Massachusetts Congressional and Statehouse delegations, the Attorney General; Governor; the U.S. Attorney for Massachusetts, the U.S. Attorney General, and the President (paragraph 5).

### DISCUSSION

The Petitioner submits that as part of its "war on terrorism" the federal government has engaged in an unprecedented assault on civil liberties. In response to the tragic and scary events of September 11<sup>th</sup>, Congress passed the USA Patriot Act and the Homeland Security Act. These statutes broadened federal power to conduct searches. This included allowing the government to obtain information from libraries and bookstores on an individual's book borrowing or purchases (while making it a crime for librarians or booksellers to reveal that such information had been requested); loosening protections on interception of telephone and internet communications; expanding the authority to conduct searches of someone's dwelling without notice to the person; and blurring the lines between foreign and domestic intelligence gathering. Similarly, President Bush has issued executive orders which claim the right to designate American citizens, arrested in the United States, as "enemy combatants" and to hold them without charges and without access to an attorney, until the President decides that the "war on terrorism" has concluded. Secret military tribunals have also been established for terrorism suspects and covert activities targeting domestic groups have also been authorized. Most importantly, the present Administration has not just claimed this authority, but has exercised it, for example by secretly detaining hundreds of individuals, and monitoring conversations between prisoners and their attorneys.

The proposed resolution is intended to send a strong message of Town Meeting's sense that these actions are wrong and to add our voice to over eighty other communities around the country (including Amherst, Everett, Cambridge, and Northampton) which have passed resolutions opposing this attack on civil liberties. It was submitted that this is essential as further legislation restricting civil liberties is anticipated.

A large majority of the Advisory Committee finds the legislation and governmental actions at issue highly troubling. Of particular concern are the detention of citizens without charges and without access to counsel and secretly monitoring someone's reading matter. To some, detention without trial or charges is reminiscent of the Star Chamber and suggests that one could be jailed merely for being an "enemy of the state." Others are reminded of Joseph McCarthy and Red Scares. We also received public comment from a librarian horrified at the prospect of receiving a search warrant. This resolution is not concerned with support for the War in Iraq or actions against terrorism, but rather whether such policies must be followed with respect for civil

liberties guaranteed by the Constitution and the Bill of Rights. The Advisory Committee feels that just as the detention of Japanese Americans in World War II was wrong, so too is the present assault on civil liberties, regardless of one's opinion on Iraq or terrorism issues. Accordingly, there was broad agreement with the sense of the resolution that this assault on civil liberties must stop.

A small minority of the Advisory Committee argued that sacrificing civil liberties was necessary post 9/11 or that this subject should be left to the courts. This was not persuasive to a majority of Committee members who felt that expressing opposition to these practices could favorably shape the environment in which future legislative and judicial actions are taken.

As initially presented, the Advisory Committee felt that there were some problems with some of the wording (as opposed to the spirit) of the resolution. The petitioners spent extensive time consulting with the Advisory Committee, the Chair of the Board of Selectmen, and Town Counsel to address these concerns. The resolution now being offered reflects the input of all these sources and is an improved document. Although many members felt that they might have drafted the resolution differently, all who supported the spirit of the resolution were comfortable with the final wording.

As this is a resolution expressing the sentiment of Town Meeting, it does not create binding legal obligations. It was our understanding that Police Chief O'Leary initially had some objections to the Resolution, but he has since withdrawn those objections. A majority of the Advisory Committee believe that adoption of the resolution will send an important message that the freedoms upon which our country was founded must be preserved.

#### RECOMMENDATION

The Advisory Committee by a vote of 15 - 4, with one abstention, recommends FAVORABLE ACTION on the vote offered by the Selectmen.

**XXX**

ARTICLE 18

EIGHTEENTH ARTICLE

To see if the Town will amend the by-laws of the Town of Brookline as follows:

- A. by adding a new ARTICLE 8.25, entitled: “Stormwater Management” in PART VIII, to read as follows:

ARTICLE 8.25  
STORMWATER MANAGEMENT

SECTION 8.25.1 DISCHARGES TO THE MUNICIPAL DRAIN SYSTEM

1. Purpose

The purpose of Section 8.25.1 is to eliminate non-stormwater discharges to the Town of Brookline’s Municipal Storm Drain System (storm drain). Non-stormwater discharges contain contaminants and supply additional flows to the Town of Brookline’s Storm Drain System. Non-stormwater discharges are major causes of:

- a. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, and groundwater;
- b. contamination of drinking water supplies;
- c. alteration or destruction of aquatic and wildlife habitat; and
- d. flooding.

Regulation of illicit connections and discharges to the storm drain system is necessary for the protection of the Town of Brookline’s, natural resources, municipal facilities, general health, safety, welfare, and the environment.

The objectives of this section are:

- a. to prevent pollutants from entering the storm drain;
- b. to prohibit illicit connections and unauthorized discharges to the storm drain
- c. to remove all such illicit connections;
- d. to comply with state and federal statues and regulations relating to stormwater discharges; and
- e. to establish the legal authority to ensure compliance with the provisions of this section through inspection, monitoring, and enforcement.

## 2. Definitions

Unless a different definition is indicated in sections 8.25.2 and 8.25.3, the following definitions and provisions shall apply throughout Article 8.25, also referred to in Article 8.25, as this by-law.

- a. **AUTHORIZED ENFORCEMENT AGENCY** – The Department of Public Works (hereafter DPW), its employees or agents designated to enforce this by-law.
- b. **BEST MANAGEMENT PRACTICE (BMP)** – An activity, procedure, restraint, or structural improvement that helps reduces the quantity or improve quality or stormwater runoff.
- c. **CLEAN WATER ACT** – The Federal Water Pollution Control Act (33 U.S.C. section 1251 *et seq.*) and as it amended from time to time.
- d. **DISCHARGE OF POLLUTANTS**: The addition from any source of any pollutant or combination of pollutants into the storm drain or into waters of the United States or Commonwealth from any source.
- e. **GROUNDWATER**: Water beneath the surface of the ground.
- f. **ILLICIT CONNECTION**: A surface or subsurface drain or conveyance, which allows an illicit discharge into the storm drain, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law.
- g. **ILLICT DISCHARGE**: Direct or indirect discharge to the storm drain that is not composed entirely of stormwater, except as exempted in Section 6. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire fighting activities exempted pursuant to Section 7, subsection d, part 1, of Section 8.25.1
- h. **IMPERVIOUS SURFACE**: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.
- i. **MUNICIPAL STORM DRAIN SYSTEM (storm drain) or Municipal Separate Storm Sewer System (MS4)**: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Brookline.

- j. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT: A permit issued by the United States Environmental Protection Agency or jointly with the State of Massachusetts that authorizes the discharge of pollutants to waters of the United States or Commonwealth.
- k. NON-STORMWATER DISCHARGE: Discharge to the storm drain not comprised entirely of stormwater.
- l. PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.
- m. POLLUTANT: Any element or property of sewage, residential, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drain system, waters of the United States, and/or Commonwealth. Pollutants shall include without limitation:
- 1) paints, varnishes, solvents;
  - 2) oil, grease, antifreeze, other automotive fluids and/or products;
  - 3) non-hazardous liquid and solid wastes;
  - 4) refuse, garbage, litter, rubbish, yard wastes, or other discarded or abandoned objects, ordnances, accumulations and floatables;
  - 5) pesticides, herbicides, and fertilizers;
  - 6) hazardous materials and wastes;
  - 7) sewage;
  - 8) dissolved and particulate metals;
  - 9) metal objects or materials;
  - 10) animal wastes;
  - 11) rock, sand, salt, soils, or other products/materials that mobilize in surface water runoff;
  - 12) and construction wastes and/or residues.
- n. PROCESS WASTEWATER: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.
- o. RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.
- p. STORMWATER: Runoff from precipitation or snowmelt.

- q. **TOXIC OR HAZARDOUS MATERIAL or WASTE:** Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare or to the environment. Toxic or hazardous material including without limitation:
1. any synthetic organic chemical;
  2. petroleum products;
  3. heavy metals;
  4. radioactive or infectious waste;
  5. acid and alkali substances;
  6. any substance defined as Toxic or Hazardous under G.L. Ch.21C and Ch. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000;
  7. and any substance listed as hazardous under 40 CFR 261.
- r. **WATERCOURSE:** A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.
- s. **WATERS OF THE COMMONWEALTH:** All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.
- t. **WASTEWATER:** Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

### 3. Applicability

This section shall apply to flows entering the municipally owned and/or operated storm drainage system.

### 4. Authority

Article 8.25 is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes,

and the regulations of the federal Clean Water Act found a 40 CFR 122.34.

#### 5. Responsibility for Administration

The DPW shall administer, implement and enforce Article 8.25. Any powers granted to or duties imposed upon the DPW to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

#### 6. Regulations

The DPW may promulgate rules and regulations to effectuate the purpose of Article 8.25. Failure by the DPW to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

#### 7. Prohibited Activities

**ILLCIT DISCHARGES** - No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the storm drain system, into a watercourse, or into waters of the United States and/or Commonwealth.

**ILLCIT CONNECTIONS** – No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

**OBSTRUCTION OF THE MUNICIPAL STORM DRAIN SYSTEM** – No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior approval from the DPW.

##### EXEMPTIONS

Discharge of flow resulting from fire fighting activities and DPW ice and snow control operations:

The following non-stormwater discharges or flows are considered exempt provided that the source is not a significant contributor of pollution to the municipal storm drain system:

- i. waterline flushing;

- ii. flow from potable water sources;
- iii. springs;
- iv. natural flow from riparian habitats and wetlands;
- v. diverted stream flow;
- vi. rising groundwater
- vii. uncontaminated groundwater infiltrating as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- viii. water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- ix. discharge from landscape irrigation or lawn watering;
- x. water from individual residential car washing;
- xi. discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- xii. discharge from street sweeping;
- xiii. dye testing, provided verbal notification is given to the DPW prior to the time of the test;
- xiv. non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;
- xv. and discharge for which advanced written approval is received from the DPW as necessary to protect public health, safety, welfare, and the environment.

#### 8. Emergency Suspension of Storm Drainage System Access

The DPW may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public, health, safety, welfare or the environment.

#### 9. Notification of Spills

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at the facility or operation resulting in or

which may result in discharge of pollutants or non-stormwater discharge to the municipal storm drain system, waters of the United States, and/or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and clean-up of the release. In the event of release of oil or hazardous materials, the person shall immediately notify the municipal fire, police, and health departments. The person shall notify the Authorized Enforcement Agency no later than the next business day. The reporting person shall provide to the Authorized Enforcement Agency written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall take all necessary steps to ensure containment, clean-up of the release, retain on-site a written record of the discharge, and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

#### 10. Enforcement

The DPW or an authorized agent of the DPW shall enforce Article 8.25, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

- a) Civil Relief – If a person violates the provisions of this by-law, regulations, permit, notice, or order issued thereunder, the DPW may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- b) Orders – The DPW or an authorized agent of the DPW may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:
  - a) elimination of illicit connections or discharges to the MS4;
  - b) performance of monitoring, analyses, and reporting;
  - c) that unlawful discharges, practices, or operations shall cease and desist;
  - d) and remediation of contamination in connection.

If the enforcing person determines that abatement or remediation of contaminations is required and is the responsibility of the property

*owner*, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Brookline may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Brookline, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with The DPW within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the DPW affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owners property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, section 57 after the thirty-first day at which the costs first become due.

- c) **PENALTY** – Any person who violates any provision of this by-law, regulation, order or permit issued thereunder, shall be punished by a fine as set forth in Part X “ Penalties and Enforcement “ of the By-laws of the Town of Brookline.
- d) **ENTRY TO PERFORM DUTIES UNDER THIS BY-LAW** – To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the DPW, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under Article 8.25 and may make or cause to be made such examinations, surveys or sampling as the DPW deems reasonably necessary
- e) **APPEALS** – The decision or orders of the DPW shall be final. Further relief shall be to a court of competent jurisdiction.
- f) **REMEDIES NOT EXCLUSIVE** – The remedies listed in Article 8.25 are not exclusive of any other remedies available under any applicable federal, state or local law.

## 11. Severability

The provisions Article 8.25 are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of Article 8.25 or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of Article 8.25.

### SECTION 8.25.2 EROSION AND SEDIMENT CONTROL

#### 1. Purpose

The purpose of this section is to eliminate or reduce the adverse effects of soil erosion and sedimentation on the environment, public welfare/health, and municipal facilities. These adverse effects may be the result of managed construction and other activities including but not limited to earth alteration, excavation, removal of vegetation and general construction activities.

#### 2. Definitions

**AGRICULTURE** – The normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Massachusetts Wetlands Protection Act and its implementing regulations

**CLEARING**—Any activity that removes the vegetative surface cover

**DRAINAGE WAY**—Any channel that conveys surface runoff throughout the site

**EROSION CONTROL**—A measure that prevents erosion

**EROSION AND SEDIMENT CONTROL PLAN**—A set of plans prepared by or under the direction of a licensed professional engineer, certified professional in erosion and sediment control, or other appropriately licensed and experienced professional, indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction

**GRADING**—Excavation or fill of material, including the resulting conditions thereof

**OWNER** – a person with a legal or equitable interest in property

**PERIMETER CONTROL**—A barrier that prevents sediment from leaving a site

by filtering sediment-laden runoff or diverting it to an on-site sediment trap or basin

**PHASING**—Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next

**SEDIMENT CONTROL**—Measures that prevent eroded sediment from leaving the site or entering off-site drainage structures

**SITE**—A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation

**STABILIZATION**—The use of practices that prevent exposed soil from eroding

**START OF CONSTRUCTION**—The first land-disturbing activity associated with a development, including but not limited to land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages

**WATERCOURSE**—Any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water

**WATERWAY**—A channel that directs surface runoff to a watercourse or to the public storm drain

### 3. Jurisdiction

No person shall excavate, cut, grade or perform any land-disturbing activities of significance, without an approved Erosion and Sediment Control Plan. Activities of significance are those which meet or exceed the following thresholds:

- a. Change of existing grade on more than 2500 sq. ft. or 25% of the lot whichever is smaller.
- b. Removal of existing vegetation of more than 2500 sq. ft. or 25% of the lot whichever is smaller
- c. Storage of more than 75 cubic yards of excavate or fill.

Activities which are exempt from the requirement of an approved Erosion and Sediment Control Plan are as follows:

- a. Emergency activities for the protection of life, property, or natural resources
- b. Existing permitted nursery and agricultural operations
- c. Construction and maintenance of public/private streets and utilities within the Town approved roadway layout and easements.

#### 4. Erosion and Sediment Control Plan

- a. Activities which require the change of existing grade or removal of exiting vegetation on any parcel of between 2500 and 20,000 sq. ft. or storage of excavate or fill between 75 and 1300 cubic yards shall be deemed a project of minor significance and will require that the following information to be included on the Erosion and Sediment Control Plan:
  - 1) Name, address and telephone number of owner, civil engineer and person responsible for implementation of the plan
  - 2) Property lines.
  - 3) Location of all existing and proposed building and impervious surfaces.
  - 4) Location of all existing and proposed stormwater utilities, including structures, pipes, swales and detention basins.
  - 5) Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sediment transport, including provisions to preserve topsoil and limit disturbance.
  - 6) Design details for both temporary and permanent erosion control structures.
  - 7) The Department of Public Works may require any additional information or data deemed appropriate and/or may impose such conditions thereto as may be deemed necessary to ensure compliance with the provisions of Chapter 52, the Manual of Standards, or the preservation of public health and safety.
- b. Activities which require the change of existing grade or removal of exiting vegetation on more than 20,000 sq. ft. shall be deemed a project of significant impact and will require that the Erosion and Sediment Control Plan include all of the information required of projects of minor significance plus the following additional information:
  - 1) An attached vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures.
  - 2) Suitable contours for the existing and proposed topography.
  - 3) A clear and definite delineation of any areas of vegetation or trees. Note all vegetation that is to be removed and all vegetation that is to be saved.

- 4) A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site.
- 5) A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities; infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, and establishment of permanent vegetation.

#### 5. Performance Standards

A construction project shall be considered in conformance with this section if soils or other eroded matter has been prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or wetland or watercourse. The design, testing, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to the standards and specifications contained in the Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas dated March 1997 or the latest edition thereof.

#### 6. Review and Approval

An Erosion and Sediment Control review is triggered by a building permit application or other activity that falls within the jurisdiction described in paragraphs 3 and 4 above. Applicants are referred by the permit issuing agency to the Engineering Division of the Department of Public Works to conduct the Erosion and Sediment Control review. Activities that fall within the jurisdiction described in paragraphs 3 and 4 above that do not require a permit from any Town department are not exempt from this provision. In this situation, the applicant must seek Erosion and Sediment Control review directly from the Department of Public Works.

The Department of Public Works will review each Erosion and Sediment Control Plan to determine its conformance with the provisions of this section. Within 30 calendar days after receiving an application, the Department of Public Works shall, in writing:

- a. Approve the plan as submitted.
- b. Approve the plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or

- c. Disapprove the plan, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Failure of the Department of Public Works to act on an original or revised plan within 30 calendar days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the Department of Public Works. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Department of Public Works.

## 7. Inspections

The Commissioner of Public Works, or designated agent shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the owner or person responsible for the implementation of the plan wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the Department of Public Works shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Department of Public Works at least two working days before the following:

- a. Installation of sediment and erosion control measures<sup>1</sup>
- b. Start of construction
- c. Completion of site clearing
- d. Completion of rough grading
- e. Close of the construction season
- f. Completion of final landscaping

The person responsible for implementation of the plan shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Department of Public Works at the time interval specified in the approved permit.

The Commissioner of Public Works or its designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed as noted above.

## 8. Enforcement

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<sup>1</sup>Only Notification required on minor projects.

- a. Suspension of Construction or Site Alteration Activity—In the event that the activity at a site violates the conditions as stated or shown on the approved Erosion and Sediment Control Plan in such a manner as to adversely affect the environment, public welfare/health and municipal facilities, then the Commissioner of Public Works may suspend work until the violation are corrected.

### SECTION 8.25.3 POST CONSTRUCTION STORMWATER MANAGEMENT

#### 1. Purpose

The purpose of this section is to establish minimum requirements and controls to protect and safeguard the environment, natural resources, general health, safety, and welfare of the public residing in watersheds within the Town's jurisdiction from the adverse impacts of stormwater runoff. Stormwater management controls are typically permanent features of a complete project, and as such require maintenance and management. This section seeks to meet that purpose through the following objectives:

- a. to minimize stormwater runoff from any development;
- b. to minimize nonpoint source pollution caused by stormwater runoff from development;
- c. to provide for groundwater recharge where appropriate; and
- d. to ensure controls are in place to respond to objectives a and b and are properly operated and maintained.

#### 2. Definitions

**ACCELERATED EROSION**—Erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away by the action of water, wind, or chemical action.

**APPLICANT**—For the purpose of this Section, APPLICANT shall refer to a property owner or agent of a property owner who has filed a stormwater management plan.

**BUILDING**—For the purpose of this Section, BUILDING shall refer to any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property and occupying more than 100 square feet of area.

**CHANNEL**—A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

**DEDICATION**—The deliberate appropriation of property by its owner for general public use.

**DETENTION**—The temporary storage of storm runoff in a stormwater management facility with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

**DETENTION FACILITY**—A detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

**DEVELOPER**—A person who undertakes land disturbance activities.

**DRAINAGE EASEMENT**—A legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

**EROSION AND SEDIMENT CONTROL PLAN**—A plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

**FEE IN LIEU**—A payment of money in place of meeting all or part of the storm water performance standards required by this section.

**HOTSPOT**—An area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

**HYDROLOGIC SOIL GROUP (HSG)**—A Natural Resource Conservation Service classification system in which soils are categorized into four runoff potential groups. The groups range from A soils, with high permeability and little runoff production, to D soils, which have low permeability rates and produce much more runoff.

**IMPERVIOUS COVER**—Those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

**INDUSTRIAL STORMWATER PERMIT**—A National Pollutant Discharge Elimination System (NPDES) issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

**INFILTRATION**—The process of percolating stormwater into the subsoil.

**INFILTRATION FACILITY**—Any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.

**JURISDICTIONAL WETLAND**—An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophilic vegetation.

**LAND DISTURBANCE ACTIVITY**—Any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural man-made watercourse.

**LANDOWNER**—The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

**OPERATION AND MAINTENANCE PLAN** – A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.

**NONPOINT SOURCE POLLUTION**—Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, mining, construction, subsurface disposal and urban runoff sources.

**ON-SITE FACILITY**—A stormwater management measure located within the subject property boundary described in the permit application for land development activity.

**PERSON**—For the purpose of this Section, PERSON shall refer to any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth of Massachusetts or other political subdivision thereof to the extent subject to Town by-laws, administrative agency, public or quasi-public corporation or body, the Town of Brookline and any other legal entity, its legal representatives, agents or assigns.

**RESOURCE AREA**—Any area protected under the Massachusetts Wetlands Protection Act or Massachusetts Rivers Act

RECHARGE—The replenishment of underground water reserves.

REDEVELOPMENT—Any construction, alteration, or improvement exceeding one acre in area where existing land use is high density commercial, industrial, institutional or multi-family residential.

STOP WORK ORDER—An order issued which requires that all construction activity on a site be stopped.

STORMWATER MANAGEMENT—The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality and habitat.

STORMWATER RETROFIT—A stormwater management practice designed for the existing development site that previously had either no stormwater management practice in a place or a practice inadequate to meet the stormwater management requirements of the site.

STORMWATER RUNOFF—Flow on the surface of the ground, resulting from precipitation.

STORMWATER TREATMENT PRACTICES (STPs)—Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

WATER QUALITY VOLUME (WQ)—The storage needed to capture and treat 90% of the average annual stormwater runoff volume. Numerically (WQ) will vary as a function of long term rainfall statistical data.

WATERCOURSE—A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

### 3. Jurisdiction

No person shall conduct land disturbance activities which would exceed the following thresholds without an approved Stormwater Management Plan:

- a. Any land disturbance activity greater than 2500 sq. ft. which would result in an increased amount of stormwater runoff from the property to public/private property or resource areas.
- b. Any activity which would increase the flow to the municipal storm or sanitary sewer systems.

- c. Any activity which would alter or modify an existing drainage system.

Activities which are exempt from the requirements of an approved Stormwater Management Plan are:

- a. Emergency repairs to any stormwater structure.
- b. Maintenance of existing gardens or lawns.
- c. Construction of utilities, other than drainage, which would not alter the terrain, ground cover or drainage patterns.

#### 4. Stormwater Management Plan

A Stormwater Management Plan, which meets the design requirements of this By-Law, shall be prepared by a licensed professional engineer and submitted to the Department of Public Works. The plan shall include, but not be limited to, the items listed below and, at a minimum, be designed to provide sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures proposed for managing stormwater runoff. The applicant shall certify on the drawings that all clearing, grading, drainage, construction, and development shall be conducted in strict accordance with the plan. The minimum information, in addition to the Name, address and telephone number of the owner, civil engineer and person responsible for implementation of the plan, submitted for support of a stormwater management plan shall be as follows:

- a. Locus map.
- b. Drainage area map showing drainage area and stormwater flow paths.
- c. Location of existing and proposed utilities.
- d. Location of all existing and proposed stormwater utilities, including structures, pipes, swales and detention basins.
- e. Topographic survey showing existing and proposed contours.
- f. Soils investigation, including borings or test pits, for areas where construction of infiltration practices will occur.
- g. Description of all watercourses, impoundments, and wetlands on or adjacent to the site or into which stormwater flows.
- h. Delineation of 100-year floodplains, if applicable.

- i. Groundwater levels at the time of probable high groundwater elevation (November to April) in areas to be used for stormwater retention, detention, or infiltration.
- j. Existing and proposed locations, cross sections, and profiles of all brooks, streams, drainage swells and the method of stabilization.
- k. Location of existing and proposed easements.
- l. Proposed improvements including location of buildings or other structures, impervious surfaces and storm drainage facilities, if applicable.
- m. Structural details for all components of the proposed drainage systems and stormwater management facilities.
- n. Timing schedules and sequences of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization.
- o. Operation and maintenance schedule.
- p. Notes on drawings specifying materials to be used, construction specifications, and typicals.
- q. Location of areas to be cleared of more than 50 percent of the vegetation.

The applicant should review the scope of work of the proposed project with a representative of the Department of Public Works to determine the requirements of the Stormwater Management Plan.

## 5. Design Requirements and Performance Standards

- a. Performance Standards—Control of stormwater runoff shall meet the performance standards for both flood control (volume and peak discharge) and nonpoint source pollution reduction as defined in the Massachusetts Stormwater Management Policy dated March 1997 as amended. All assumptions, methodologies and procedures used to design BMP's and stormwater management practices shall accompany the design. All activities, project design, BMP's, and stormwater management practices should aim to minimize stormwater runoff, maximize infiltration and recharge where appropriate, and minimize pollutants in stormwater runoff.
- b. Major and Minor Projects—Activities will be classified as major and minor projects. Major projects are defined as projects which have activities result in the land disturbance of one (1) acre or more. All other activities will be

considered minor projects. Requirements for major and minor projects are as follows:

- 1) Major projects must either meet the requirements of the stormwater management standards or demonstrate that an equivalent level of environmental protection is provided in the event that one or more of the standards are not met.
- 2) Minor projects must meet, to the maximum extent feasible, the stormwater management standards. In general, projects which fall into this category will not require the submission of an operation and maintenance plan.

#### 6. Review and Approval

The Department of Public Works will review the Stormwater Management Plan to determine its conformance with the provisions of this section. For major projects, the Conservation Commission shall also review the Stormwater Management Plan. Within 30 days after receiving the plan, the Department of Public Works shall, in writing:

- a. Approve the plan as submitted.
- b. Approve the plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation and approve the plan subject to these conditions.
- c. Disapprove the plan indicating the reason(s) and procedure for submitting a revised plan and/or submission.

Failure of the Department of Public Works to act on an original or revised application within calendar 30 days of receipt shall authorize the applicant to proceed in accordance with the plan as filed unless such time is extended by agreement between the applicant and the Department of Public Works. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Department of Public Works.

#### 7. Inspections

The Commissioner of Public Works, or designated agent shall make inspections as hereinafter required. To obtain inspections, the applicant shall notify the Department of Public Works at least two working days before the following:

- a. Start of construction

- b. Installation of Stormwater controls
- c. Close of construction season
- d. Completion of final grading and landscaping

The applicant shall submit an “as-built” plan for the stormwater controls after the final construction is completed. The plan must show the final design specifications of all stormwater management controls and must be prepared by a professional engineer.

#### 8. Enforcement

When the Department of Public Works determines that an activity is not being carried out in accordance with the requirements of this by-law, a written notice of non compliance to the applicant shall be issued which , at a minimum, will contain the following:

- a. The name and address of the applicant
- b. The street address or description of the building, structure or land upon which the non compliance is occurring
- c. A statement specifying the nature of the non compliance
- d. A description of the remedial measures necessary to bring the activity into compliance with this by-law and a time schedule for the completion

Applicants receiving a notice of non compliance will be required to halt all construction activities. This “stop work order” will be in effect until the Department of Public Works confirms that the activity involved in the non compliance has been satisfactorily addressed. Occupancy permits, if applicable, will not be granted until the requirements of this by-law are complied with.

In the event that damages occur to the environment, natural resources, municipal facilities, and/or general health, safety and welfare of the public due to improper installation, operation or maintenance of stormwater controls, a fine may be imposed by the Town in accordance with the appropriate sections of Part X “Penalties and Enforcement” in the By-Laws of the Town of Brookline.

- B. by amending the second reference of “Part VII” under “COMMISSION OF PUBLIC WORKS” in Article 10.2 to “Part VIII – Public Health Safety” and by adding at the end thereof after “8.24”, 8.25.

- C. by adding to the Table of Specific Penalties under ARTICLE 10.3, after “SECTION 8.24.6 ENFORCEMENT \$100.00”, the following:

ARTICLE 8.25 STORMWATER MANAGEMENT

First Violation	\$100.00
Second Violation	\$200.00
Third and Subsequent Violations	\$300.00

or act on anything relative thereto.

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SELECTMEN’S RECOMMENDATION

Article 18 amends the general by-laws of the Town by adding a new section relative to stormwater management, soil erosion, and municipal storm drain discharge. This by-law is necessary to meet the requirements and timetable of U.S. Environmental Protection Agency (EPA) for the development of a stormwater management program, which includes the adoption of local regulations that meet their minimum requirements.

The purpose of this by-law is to comply with the National Pollution Discharge Elimination System (NPDES) stormwater Phase II program requirements. In general, the permit requires the Town to reduce the pollutants discharged to the storm drain system to the maximum extent practicable. The Phase II permit program regulates stormwater discharges from municipal storm systems in order to protect and safeguard the environment, natural resources, and the health, safety, and welfare of the general public. The stormwater management by-law is comprised of three sections: Discharges to the Municipal Storm Drain System, Erosion and Sediment Control, and Post-Construction Storm Water Management.

The specific objectives of these sections are as follows:

- Discharges to Municipal Storm Drain System
  - Prevent pollutants from entering the Town storm drain system.
  - Prohibit illicit connections (i.e. sanitary sewer to storm drain).
- Erosion and Sediment Control
  - Require practices that reduce soil erosion and control storm water runoff on construction sites.
  - Ensure that erosion and sediment control practices are incorporated into the site planning process.
  - Require control of construction waste.
- Post-Construction Storm Water Management

- Require practices that control flow of storm water from new and redeveloped sites into the Town's storm drain system.
- Promote groundwater recharge.
- Ensure proper operation and maintenance of structural stormwater controls.

Many of the requirements of the Stormwater By-Law are already being done; however, the Department of Public Works has minimal legal authority to ensure compliance. An important part of this by-law is the codification of procedures for enforcement and penalties for noncompliance.

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

VOTED: That the Town amend the by-laws of the Town of Brookline as follows:

- A. by adding a new ARTICLE 8.25, entitled: "Stormwater Management" in PART VIII, to read as follows:

ARTICLE 8.25  
STORMWATER MANAGEMENT

SECTION 8.25.1 DISCHARGES TO THE MUNICIPAL DRAIN SYSTEM

1. Purpose

The purpose of Section 8.25.1 is to eliminate non-stormwater discharges to the Town of Brookline's Municipal Storm Drain System (storm drain). Non-stormwater discharges contain contaminants and supply additional flows to the Town of Brookline's Storm Drain System. Non-stormwater discharges are major causes of:

- a. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, and groundwater;
- b. contamination of drinking water supplies;
- c. alteration or destruction of aquatic and wildlife habitat; and
- d. flooding.

Regulation of illicit connections and discharges to the storm drain system is necessary for the protection of the Town of Brookline's, natural resources, municipal facilities, general health, safety, welfare, and the environment.

The objectives of this section are:

- a. to prevent pollutants from entering the storm drain;

- b. to prohibit illicit connections and unauthorized discharges to the storm drain
- c. to remove all such illicit connections;
- d. to comply with state and federal statues and regulations relating to stormwater discharges; and
- e. to establish the legal authority to ensure compliance with the provisions of this section through inspection, monitoring, and enforcement.

## 2. Definitions

Unless a different definition is indicated in sections 8.25.2 and 8.25.3, the following definitions and provisions shall apply throughout Article 8.25, also referred to in Article 8.25, as this by-law.

- a. **AUTHORIZED ENFORCEMENT AGENCY** – The Department of Public Works (hereafter DPW), its employees or agents designated to enforce this by-law.
- b. **BEST MANAGEMENT PRACTICE (BMP)** – An activity, procedure, restraint, or structural improvement that helps reduces the quantity or improve quality or stormwater runoff.
- c. **CLEAN WATER ACT** – The Federal Water Pollution Control Act (33 U.S.C. section1251 *et seq.*) and as it amended from time to time.
- d. **DISCHARGE OF POLLUTANTS**: The addition from any source of any pollutant or combination of pollutants into the storm drain or into waters of the United States or Commonwealth from any source.
- e. **GROUNDWATER**: Water beneath the surface of the ground. Except where the water under the ground is the result of a perched water table.
- f. **ILLICIT CONNECTION**: A surface or subsurface drain or conveyance, which allows an illicit discharge into the storm drain, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law.
- g. **ILLICT DISCHARGE**: Direct or indirect discharge to the storm drain that is not composed entirely of stormwater, except as exempted in Section 7. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire fighting activities exempted pursuant to Section 7, subsection d, part 1, of Section 8.25.1
- h. **IMPERVIOUS SURFACE**: Any material or structure on or above the ground that prevents water infiltrating the underlying soil.

- Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.
- i. MUNICIPAL STORM DRAIN SYSTEM (storm drain) or Municipal Separate Storm Sewer System (MS4): The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Brookline.
  - j. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT: A permit issued by the United States Environmental Protection Agency or jointly with the State of Massachusetts that authorizes the discharge of pollutants to waters of the United States or Commonwealth.
  - k. NON-STORMWATER DISCHARGE: Discharge to the storm drain not comprised entirely of stormwater.
  - l. PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.
  - m. POLLUTANT: Any element or property of sewage, residential, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drain system, waters of the United States, and/or Commonwealth. Pollutants shall include without limitation:
    - 1) paints, varnishes, solvents;
    - 2) oil, grease, antifreeze, other automotive fluids and/or products;
    - 3) non-hazardous liquid and solid wastes;
    - 4) refuse, garbage, litter, rubbish, yard wastes, or other discarded or abandoned objects, ordnances, accumulations and floatables;
    - 5) pesticides, herbicides, and fertilizers;
    - 6) hazardous materials and wastes;
    - 7) sewage;
    - 8) dissolved and particulate metals;
    - 9) metal objects or materials;
    - 10) animal wastes;
    - 11) rock, sand, salt, soils, or other products/materials that mobilize in surface water runoff;
    - 12) and construction wastes and/or residues.

- n. PROCESS WASTEWATER: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.
- o. RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.
- p. STORMWATER: Runoff from precipitation or snowmelt.
- q. TOXIC OR HAZARDOUS MATERIAL or WASTE: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare or to the environment. Toxic or hazardous material including without limitation:
  - 1. any synthetic organic chemical;
  - 2. petroleum products;
  - 3. heavy metals;
  - 4. radioactive or infectious waste;
  - 5. acid and alkali substances;
  - 6. any substance defined as Toxic or Hazardous under G.L. Ch.21C and Ch. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000;
  - 7. and any substance listed as hazardous under 40 CFR 261.
- r. WATERCOURSE: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.
- s. WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.
- t. WASTEWATER: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

### 3. Applicability

This section shall apply to flows entering the municipally owned and/or operated storm drainage system.

#### 4. Authority

Article 8.25 is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and the regulations of the federal Clean Water Act found a 40 CFR 122.34.

#### 5. Responsibility for Administration

The DPW shall administer, implement and enforce Article 8.25. Any powers granted to or duties imposed upon the DPW to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

#### 6. Regulations

The DPW may promulgate rules and regulations to effectuate the purpose of Article 8.25. Failure by the DPW to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

#### 7. Prohibited Activities

**ILLCIT DISCHARGES** - No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the storm drain system, into a watercourse, or into waters of the United States and/or Commonwealth.

**ILLCIT CONNECTIONS** – No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

**OBSTRUCTION OF THE MUNICIPAL STORM DRAIN SYSTEM** – No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior approval from the DPW.

##### EXEMPTIONS

Discharge of flow resulting from fire fighting activities and DPW ice and snow control operations.

The following non-stormwater discharges or flows are considered exempt provided that the source is not a significant contributor of pollution to the municipal storm drain system:

- i. waterline flushing;
- ii. flow from potable water sources;
- iii. springs;
- iv. natural flow from riparian habitats and wetlands;
- v. diverted stream flow;
- vi. rising groundwater;
- vii. uncontaminated groundwater infiltrating as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- viii. water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- ix. discharge from landscape irrigation or lawn watering;
- x. water from individual residential car washing;
- xi. discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- xii. discharge from street sweeping;
- xiii. dye testing, provided verbal notification is given to the DPW prior to the time of the test;
- xiv. non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;
- xv. and discharge for which advanced written approval is received from the DPW as necessary to protect public health, safety, welfare, and the environment.

#### 8. Emergency Suspension of Storm Drainage System Access

The DPW may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to public health, safety, welfare or the

environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public, health, safety, welfare or the environment.

#### 9. Notification of Spills

Any spills or releases that require notification under local, state or federal law will be the responsibility of the person responsible for a facility or operation, or for an emergency response for a facility or operation (i.e., construction). In the event of a spill or release which may result in a discharge of pollutants or non-stormwater discharge to the municipal storm drain system, waters of the United States, and/or waters of the Commonwealth, the responsible parties, potentially responsible parties, or any person or persons managing a site or facility shall take all necessary steps to ensure containment, and remediate any municipal storm drains that have been impacted. However, if in the opinion of DPW, there is an excessive amount of pollutants in the stormdrain system, the DPW can require remediation by the responsible party regardless of other state or federal regulations. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall take all necessary steps to ensure containment, clean-up of the release, retain on-site a written record of the discharge, and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

#### 10. Enforcement

The DPW or an authorized agent of the DPW shall enforce Article 8.25, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

- a) Civil Relief – If a person violates the provisions of this by-law, regulations, permit, notice, or order issued thereunder, the DPW may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- b) Orders – The DPW or an authorized agent or the DPW may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:
  - a) elimination of illicit connections or discharges to the MS4;

- b) performance of monitoring, analyses, and reporting;
- c) that unlawful discharges, practices, or operations shall cease and desist;
- d) and remediation of contamination in connection.

If the enforcing person determines that abatement or remediation of contaminations is required and is the responsibility of the property *owner*, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Brookline may, at its option, undertake such work, and expenses times three thereof shall be charged to the violator.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Brookline, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with The DPW within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the DPW affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owners property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, section 57 after the thirty-first day at which the costs first become due.

- c) PENALTY – Any person who violates any provision of this by-law, regulation, order or permit issued thereunder, shall be punished by a fine as set forth in Part X “ Penalties and Enforcement “ of the By-laws of the Town of Brookline.
- d) ENTRY TO PERFORM DUTIES UNDER THIS BY-LAW – To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the DPW, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under Article 8.25 and may make or cause to

be made such examinations, surveys or sampling as the DPW deems reasonably necessary

- e) APPEALS – The decision or orders of the DPW shall be final. Further relief shall be to a court of competent jurisdiction.
- f) REMEDIES NOT EXCLUSIVE – The remedies listed in Article 8.25 are not exclusive of any other remedies available under any applicable federal, state or local law.

## 11. Severability

The provisions Article 8.25 are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of Article 8.25 or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of Article 8.25.

## SECTION 8.25.2 EROSION AND SEDIMENT CONTROL

### 1. Purpose

The purpose of this section is to eliminate or reduce the adverse effects of soil erosion and sedimentation on the environment, public welfare/health, and municipal facilities. These adverse effects may be the result of managed construction and other activities including but not limited to earth alteration, excavation, removal of vegetation and general construction activities.

### 2. Definitions

**AGRICULTURE** – The normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Massachusetts Wetlands Protection Act and its implementing regulations

**CLEARING**—Any activity that removes the vegetative surface cover

**DRAINAGE WAY**—Any channel that conveys surface runoff throughout the site

**EROSION CONTROL**—A measure that prevents erosion

**EROSION AND SEDIMENT CONTROL PLAN**—A set of plans prepared by or under the direction of a licensed professional engineer, certified professional

in erosion and sediment control, or other appropriately licensed and experienced professional, indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction

**GRADING**—Excavation or fill of material, including the resulting conditions thereof

**OWNER** – a person with a legal or equitable interest in property

**PERIMETER CONTROL**—A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to an on-site sediment trap or basin

**PHASING**—Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next

**SEDIMENT CONTROL**—Measures that prevent eroded sediment from leaving the site or entering off-site drainage structures

**SITE**—A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation

**STABILIZATION**—The use of practices that prevent exposed soil from eroding

**START OF CONSTRUCTION**—The first land-disturbing activity associated with a development, including but not limited to land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages

**WATERCOURSE**—Any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water

**WATERWAY**—A channel that directs surface runoff to a watercourse or to the public storm drain

### 3. Jurisdiction

No person shall excavate, cut, grade or perform any land-disturbing activities of significance, without an approved Erosion and Sediment Control Plan. Activities of significance are those which meet or exceed the following thresholds:

- a. Any change of existing grade of more than 2500 sq. ft. or 25% of the lot whichever is smaller.

- b. Removal of existing vegetation of more than 2500 sq. ft. or 25% of the lot whichever is smaller
- c. Storage of more than 100 cubic yards of excavate or fill.

Activities which are exempt from the requirement of an approved Erosion and Sediment Control Plan are as follows:

- a. Emergency activities for the protection of life, property, or natural resources
- b. Existing permitted nursery and agricultural operations

#### 4. Erosion and Sediment Control Plan

- a. Activities which require the change of existing grade or removal of existing vegetation on any parcel of less than 20,000 sq. ft. or storage of excavate or fill between 100 and 1300 cubic yards shall be deemed a project of minor significance and will require that the following information to be included on the Erosion and Sediment Control Plan:
  - 1) Name, address and telephone number of owner, civil engineer and person responsible for implementation of the plan
  - 2) Property lines.
  - 3) Location of all existing and proposed building and impervious surfaces.
  - 4) Location of all existing and proposed stormwater utilities, including structures, pipes, swales and detention basins.
  - 5) Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sediment transport, including provisions to preserve topsoil and limit disturbance.
  - 6) Design details for both temporary and permanent erosion control structures.
  - 7) The Department of Public Works may require any additional information or data deemed appropriate and/or may impose such conditions thereto as may be deemed necessary to ensure compliance with the provisions of Chapter 52, the Manual of Standards, or the preservation of public health and safety.
- b. Activities which require, 1.) the change of existing grade or removal of exiting vegetation on more than 20,000 sq. ft. or 2.) storage of excavate or fill in excess of 1300 c.y. shall be deemed a project of significant impact and will require that the Erosion and Sediment Control Plan include all of the information required of projects of minor significance plus the following additional information:
  - 1) An attached vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures.

- 2) Suitable contours for the existing and proposed topography.
- 3) A clear and definite delineation of any areas of vegetation or trees. Note all vegetation that is to be removed and all vegetation that is to be saved.
- 4) A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site.
- 5) A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities; infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, and establishment of permanent vegetation.

#### 5. Performance Standards

A construction project shall be considered in conformance with this section if soils or other eroded matter has been prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or wetland or watercourse. The design, testing, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to the standards and specifications contained in the Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas dated March 1997 or the latest edition thereof.

#### 6. Review and Approval

An Erosion and Sediment Control review is triggered by a building permit application or other activity that falls within the jurisdiction described in paragraphs 3 and 4 above. Applicants are referred by the permit issuing agency to the Engineering Division of the Department of Public Works to conduct the Erosion and Sediment Control review. Activities that fall within the jurisdiction described in paragraphs 3 and 4 above that do not require a permit from any Town department are not exempt from this provision. In this situation, the applicant must seek Erosion and Sediment Control review directly from the Department of Public Works.

The Department of Public Works will review each Erosion and Sediment Control Plan to determine its conformance with the provisions of this section. Within 30 calendar days after receiving an application, the Department of Public Works shall, in writing:

- a. Approve the plan as submitted.
- b. Approve the plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
- c. Disapprove the plan, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Failure of the Department of Public Works to act on an original or revised plan within 30 calendar days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the Department of Public Works. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Department of Public Works.

## 7. Inspections

The Commissioner of Public Works, or designated agent shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the owner or person responsible for the implementation of the plan wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the Department of Public Works shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Department of Public Works at least two working days before the following:

- a. Installation of sediment and erosion control measures<sup>2</sup>
- b. Start of construction
- c. Completion of site clearing
- d. Completion of rough grading
- e. Close of the construction season
- f. Completion of final landscaping

The person responsible for implementation of the plan shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Department of Public Works at the time interval specified in the approved permit.

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<sup>2</sup>Only Notification required on minor projects.

The Commissioner of Public Works or its designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed as noted above.

#### 8. Enforcement

- a. Suspension of Construction or Site Alteration Activity—In the event that the activity at a site violates the conditions as stated or shown on the approved Erosion and Sediment Control Plan in such a manner as to adversely affect the environment, public welfare/health and municipal facilities, then the Commissioner of Public Works may suspend work until the violation are corrected.

### SECTION 8.25.3 POST CONSTRUCTION STORMWATER MANAGEMENT

#### 0. Purpose

The purpose of this section is to establish minimum requirements and controls to protect and safeguard the environment, natural resources, general health, safety, and welfare of the public residing in watersheds within the Town's jurisdiction from the adverse impacts of stormwater runoff. Stormwater management controls are typically permanent features of a complete project, and as such require maintenance and management. This section seeks to meet that purpose through the following objectives:

- a. to minimize stormwater runoff from any development;
- b. to minimize nonpoint source pollution caused by stormwater runoff from development;
- c. to provide for groundwater recharge where appropriate; and
- d. to ensure controls are in place to respond to objectives a and b and are properly operated and maintained.

#### 4. Definitions

**ACCELERATED EROSION**—Erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away by the action of water, wind, or chemical action.

**APPLICANT**—For the purpose of this Section, APPLICANT shall refer to a property owner or agent of a property owner who has filed a stormwater management plan.

**BUILDING**—For the purpose of this Section, BUILDING shall refer to any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property and occupying more than 100 square feet of area.

**CHANNEL**—A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

**DEDICATION**—The deliberate appropriation of property by its owner for general public use.

**DETENTION**—The temporary storage of storm runoff in a stormwater management facility with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

**DETENTION FACILITY**—A detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

**DEVELOPER**—A person who undertakes land disturbance activities.

**DRAINAGE EASEMENT**—A legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

**EROSION AND SEDIMENT CONTROL PLAN**—A plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

**FEE IN LIEU**—A payment of money in place of meeting all or part of the storm water performance standards required by this section.

**HOTSPOT**—An area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

**HYDROLOGIC SOIL GROUP (HSG)**—A Natural Resource Conservation Service classification system in which soils are categorized into four runoff potential groups. The groups range from A soils, with high permeability and little runoff production, to D soils, which have low permeability rates and produce much more runoff.

**IMPERVIOUS COVER**—Those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

**INDUSTRIAL STORMWATER PERMIT**—A National Pollutant Discharge

Elimination System (NPDES) issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION—The process of percolating stormwater into the subsoil.

INFILTRATION FACILITY—Any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.

JURISDICTIONAL WETLAND—An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophilic vegetation.

LAND DISTURBANCE ACTIVITY—Any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural man-made watercourse.

LANDOWNER—The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

OPERATION AND MAINTENANCE PLAN – A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.

NONPOINT SOURCE POLLUTION—Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, mining, construction, subsurface disposal and urban runoff sources.

ON-SITE FACILITY—A stormwater management measure located within the subject property boundary described in the permit application for land development activity.

PERSON—For the purpose of this Section, PERSON shall refer to any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth of Massachusetts or other political subdivision thereof to the extent subject to Town by-laws, administrative agency, public or quasi-public corporation or

body, the Town of Brookline and any other legal entity, its legal representatives, agents or assigns.

**RESOURCE AREA**—Any area protected under the Massachusetts Wetlands Protection Act or Massachusetts Rivers Act

**RECHARGE**—The replenishment of underground water reserves.

**REDEVELOPMENT**—Any construction, alteration, or improvement exceeding one acre in area where existing land use is high density commercial, industrial, institutional or multi-family residential.

**STOP WORK ORDER**—An order issued which requires that all construction activity on a site be stopped.

**STORMWATER MANAGEMENT**—The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality and habitat.

**STORMWATER RETROFIT**—A stormwater management practice designed for the existing development site that previously had either no stormwater management practice in a place or a practice inadequate to meet the stormwater management requirements of the site.

**STORMWATER RUNOFF**—Flow on the surface of the ground, resulting from precipitation.

**STORMWATER TREATMENT PRACTICES (STPs)**—Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

**WATER QUALITY VOLUME (WQ)**—The storage needed to capture and treat 90% of the average annual stormwater runoff volume. Numerically (WQ) will vary as a function of long term rainfall statistical data.

**WATERCOURSE**—A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

## 5. Jurisdiction

No person shall conduct land disturbance activities which would exceed the following thresholds without an approved Stormwater Management Plan:

- a. Any land disturbance activity greater than 2500 sq. ft. which would result in an increased amount of stormwater runoff from the property to public/private property or resource areas.
- b. Any activity which would increase the flow to the municipal storm or sanitary sewer systems.
- c. Any activity which would alter or modify an existing drainage system.

Activities which are exempt from the requirements of an approved Stormwater Management Plan are:

- a. Emergency repairs to any stormwater structure.
- b. Maintenance of existing gardens or lawns.
- c. Construction of utilities, other than drainage, which would not alter the terrain, ground cover or drainage patterns.

#### 4. Stormwater Management Plan

A Stormwater Management Plan, which meets the design requirements of this By-Law, shall be prepared by a licensed professional engineer and submitted to the Department of Public Works. The plan shall include, but not be limited to, the items listed below and, at a minimum, be designed to provide sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures proposed for managing stormwater runoff. The applicant shall certify on the drawings that all clearing, grading, drainage, construction, and development shall be conducted in strict accordance with the plan. The minimum information, in addition to the Name, address and telephone number of the owner, civil engineer and person responsible for implementation of the plan, submitted for support of a stormwater management plan shall be as follows:

- a. Locus map.
- b. Drainage area map showing drainage area and stormwater flow paths.
- c. Location of existing and proposed utilities.
- d. Location of all existing and proposed stormwater utilities, including structures, pipes, swales and detention basins.
- e. Topographic survey showing existing and proposed contours.

- f. Soils investigation, including borings or test pits, for areas where construction of infiltration practices will occur.
- g. Description of all watercourses, impoundments, and wetlands on or adjacent to the site or into which stormwater flows.
- h. Delineation of 100-year floodplains, if applicable.
- i. Groundwater levels at the time of probable high groundwater elevation (November to April) in areas to be used for stormwater retention, detention, or infiltration.
- j. Existing and proposed locations, cross sections, and profiles of all brooks, streams, drainage swells and the method of stabilization.
- k. Location of existing and proposed easements.
- l. Proposed improvements including location of buildings or other structures, impervious surfaces and storm drainage facilities, if applicable.
- m. Structural details for all components of the proposed drainage systems and stormwater management facilities.
- n. Timing schedules and sequences of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization.
- o. Operation and maintenance schedule.
- p. Notes on drawings specifying materials to be used, construction specifications, and typicals.
- q. Location of areas to be cleared of more than 50 percent of the vegetation.

The applicant should review the scope of work of the proposed project with a representative of the Department of Public Works to determine the requirements of the Stormwater Management Plan.

## 5. Design Requirements and Performance Standards

- a. Performance Standards—Control of stormwater runoff shall meet the performance standards for both flood control (volume and peak discharge) and nonpoint source pollution reduction as defined in the Massachusetts Stormwater Management Policy dated March 1997 as amended. All assumptions, methodologies and procedures used to design BMP's and stormwater management practices shall accompany the design. All

activities, project design, BMP's, and stormwater management practices should aim to minimize stormwater runoff, maximize infiltration and recharge where appropriate, and minimize pollutants in stormwater runoff.

- b. Major and Minor Projects—Activities will be classified as major and minor projects. Major projects are defined as projects which have activities result in the land disturbance of one (1) acre or more. All other activities will be considered minor projects. Requirements for major and minor projects are as follows:
- 1) Major projects must either meet the requirements of the stormwater management standards or demonstrate that an equivalent level of environmental protection is provided in the event that one or more of the standards are not met.
  - 2) Minor projects must meet the stormwater management standards, however, at the discretion of the DPW, certain aspects of the Stormwater Management Plan may be waived. In general, projects which fall into this category will not require the submission of an operation and maintenance plan.

## 6. Review and Approval

The Department of Public Works will review the Stormwater Management Plan to determine its conformance with the provisions of this section. For major projects, the Conservation Commission shall also review the Stormwater Management Plan. Within 30 days after receiving the plan, the Department of Public Works shall, in writing:

- a. Approve the plan as submitted.
- b. Approve the plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation and approve the plan subject to these conditions.
- c. Disapprove the plan indicating the reason(s) and procedure for submitting a revised plan and/or submission.

Failure of the Department of Public Works to act on an original or revised application within calendar 30 days of receipt shall authorize the applicant to proceed in accordance with the plan as filed unless such time is extended by agreement between the applicant and the Department of Public Works. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Department of Public Works.

## 7. Inspections

The Commissioner of Public Works, or designated agent shall make inspections as hereinafter required. To obtain inspections, the applicant shall notify the Department of Public Works at least two working days before the following:

- a. Start of construction
- b. Installation of Stormwater controls
- c. Close of construction season
- d. Completion of final grading and landscaping

The applicant shall submit an “as-built” plan for the stormwater controls after the final construction is completed. The plan must show the final design specifications of all stormwater management controls and must be prepared by a professional engineer.

## 8. Enforcement

When the Department of Public Works determines that an activity is not being carried out in accordance with the requirements of this by-law, a written notice of non compliance to the applicant shall be issued which , at a minimum, will contain the following:

- a. The name and address of the applicant
- b. The street address or description of the building, structure or land upon which the non compliance is occurring
- c. A statement specifying the nature of the non compliance
- d. A description of the remedial measures necessary to bring the activity into compliance with this by-law and a time schedule for the completion

Applicants receiving a notice of non compliance will be required to halt all construction activities. This “stop work order” will be in effect until the Department of Public Works confirms that the activity involved in the non compliance has been satisfactorily addressed. Occupancy permits, if applicable, will not be granted until the requirements of this by-law are complied with.

In the event that damages occur to the environment, natural resources, municipal facilities, and/or general health, safety and welfare of the public due to improper installation, operation or maintenance of stormwater controls, a fine may be

imposed by the Town in accordance with the appropriate sections of Part X “Penalties and Enforcement” in the By-Laws of the Town of Brookline.

B. by amending the second reference of “Part VII” under “COMMISSION OF PUBLIC WORKS” in Article 10.2 to “Part VIII – Public Health Safety” and by adding at the end thereof after “8.24”, 8.25.

C. by adding to the Table of Specific Penalties under ARTICLE 10.3, after “SECTION 8.24.6 ENFORCEMENT \$100.00”, the following:

ARTICLE 8.25 STORMWATER MANAGEMENT

First Violation	\$100.00
Second Violation	\$200.00
Third and Subsequent Violations	\$300.00

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

The EPA has promulgated guidelines that are intended to improve the general water quality of the United States through an aggressive Storm Water Management Program. These programs are guidelines for cities and towns throughout the United States. Brookline, using the guide lines set forth by the EPA, has generated a Town By-law that gives DPW the enforcement capability to control the inflow of contaminates and storm water to the Town's municipal storm water drain system.

The proposed By-law contains regulations in three areas:

**Discharges to the Municipal Drain System**

The regulations in this area would reduce illicit connections and discharges to the municipal storm drain system. [The town has separated sewer and stormwater piping in all but 4 miles of combined pipe. It is economically infeasible for the town to separate these remaining combined pipes]. Specifically, the regulations encompass:

1. Reducing discharges of contaminates by mandating contact with DPW in the event of a release to the municipal stormwater system.
2. Prohibiting illegal connections.

3. Working toward compliance with all state and federal regulations relating to storm water discharges.
4. Establishing the DPW as the legal authority for enforcement to ensure compliance.

### **Erosion and Sediment Control**

The purpose of the regulations in this section is to reduce or eliminate soil or sediment entering the municipal storm drain system. Town sanding and snow removal is exempt from this regulation. The regulations cover:

1. Ensuring erosion and sediment controls on appropriate construction sites. Construction sites that may be under the jurisdiction of DPW involves changing grades, removing vegetation, or the stockpiling of soil. Sites that would fall under the jurisdiction of DPW would relate to the size of the excavation or the size of stockpiled soil or both. Other exemptions from these regulations include emergency activities, existing nurseries, and agricultural operations.
2. Requiring erosion and sediment control plans to be filed with DPW for approval prior to construction work.
3. Establishing DPW as the legal authority to enforce regulations by suspending construction or altering site activities.

### **Post Construction Stormwater Management**

The regulations in this area require that appropriate newly constructed projects establish practices to control the amount of stormwater runoff and contaminants entering into the municipal drain system by engineered measures approved by the engineering department. Also, the regulations will protect areas that require the proper recharging of the groundwater. Activities that are exempt from these regulations are emergency repairs to stormwater structures, existing lawns and gardens, and construction of utilities and non-related drainage issues. They include:

1. Requiring responsible parties of certain sites to provide to the DPW calculations of predicted stormwater runoff. If the stormwater runoff exceeds town requirements, the site must contain some type of storage.
2. Requiring waste water from commercial operations be treated prior to entering the municipal drain system.
3. Regulating any discharges to a combination sewer and storm drain.

4. Granting DPW the authority to suspend construction, alter site activities, and/or fine

the responsible parties as follows:

First Violation	\$100.00
Second Violation	\$200.00
Third and Subsequent Violations	\$300.00

The Advisory Committee believes that these regulations are beneficial to the Town and may ultimately save the Town money in reducing the number of problems in this area that DPW has to handle. They will also bring the Town into compliance with State and Federal regulations.

RECOMMENDATION

The Advisory Committee unanimously by a vote of 21-0 recommends FAVORABLE ACTION on the vote offered by the Selectmen.

**XXX**

PROPOSED AMENDMENT TO THE SELECTMEN'S MOTION  
UNDER ARTICLE 18  
SCOTT C. GLADSTONE, TMM, PRECINCT 16

On Page 18-40 of the Combined Reports,

Replace the first paragraph of sub-section 4 of proposed by-law section 8.25.3 with the following:

4. Stormwater Management Plan

The Department of Public Works may require a Stormwater Management Plan, which meets the design requirements of this By-Law, be submitted to the Department of Public Works. The Department of Public Works may further require, if the Department of Public Works deems it appropriate, that the plan be prepared by a licensed professional engineer. The Department of Public Works may require that the plan include, but not be limited to, the items listed below and, at a minimum, be designed to provide sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures proposed for managing stormwater runoff. The applicant shall certify on any drawings required by the Department of Public Works that all clearing, grading, drainage, construction, and development shall be conducted in strict accordance with the plan. The Department of Public Works may require, in addition to the Name, address and telephone number of the owner, civil engineer (if one is required by the Department of Public Works) and person responsible for implementation of the plan, the following information on a stormwater management plan if one is deemed necessary by the Department of Public Works:

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EXPLANATION: As presently worded, the proposed by-law requires a full blown Stormwater Management Plan (at potentially significant expense) for every project that diverts water to the storm-drain. This could include paving a ten-foot long gravel driveway graded to the street or pumping stormwater from the bottom of a driveway graded away from the street. After speaking with the Director of Engineering, it is clear that the DPW intended to have sufficient flexibility to impose de minimus requirements when there is a de minimus impact on the storm drains. This amendment seeks to give the DPW the flexibility to appropriately tailor the requirements of a plan to be commensurate with the size of the proposed project. Under the current language, the DPW arguably does not have the authority to waive any of the elements of a full-blown stormwater management plan.

ARTICLE 19

NINETEENTH ARTICLE

To see if the Town will amend ARTICLE 6.8, NAMING PUBLIC FACILITIES, in the By-Laws of the Town, to read as follows:

ARTICLE 6.8  
NAMING PUBLIC FACILITIES

Town Buildings, parks, squares and other facilities, EXCEPT AS HEREINAFTER PROVIDED, may be named only by Town Meeting, in appropriate circumstances, when such action is proposed in a Warrant Article. THE LIBRARY TRUSTEES MAY, IN ACCORDANCE WITH GUIDELINES ADOPTED AND FROM TIME TO TIME AMENDED BY THE LIBRARY TRUSTEES, NAME ROOMS IN LIBRARY BUILDINGS IN APPROPRIATE CIRCUMSTANCES. THE SCHOOL COMMITTEE MAY, IN ACCORDANCE WITH GUIDELINES ADOPTED AND FROM TIME TO TIME AMENDED BY THE SCHOOL COMMITTEE, NAME ROOMS IN SCHOOL BUILDINGS AND OTHER SCHOOL DEPARTMENT FACILITIES IN APPROPRIATE CIRCUMSTANCES.

or act on anything relative thereto.

SELECTMEN’S RECOMMENDATION

Article 19 amends Article 6.8 of the Town’s By-Laws, the section pertaining to the naming of public facilities. The amendment would allow the School Committee and the Library Trustees to name rooms and associated spaces of the facilities under their custody. Currently, in order to do so, Town Meeting approval is required.

According to the petitioner of the original warrant article that established the current by-law, the intent was to have Town Meeting approve the naming of buildings, parks, squares and other facilities, not the naming of individual rooms.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on April 29, on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Several years ago Town Meeting voted to amend the Town By-laws so that Town Buildings, Parks, Squares and other Facilities may be named only by Town Meeting through Warrant Articles. This is found in Article 6.8 of the By-laws. Article 19 seeks an exemption within this By-law to allow the Library Trustees to name rooms and associated spaces of library buildings and to allow the School Committee to name rooms and associated spaces of school buildings without Town Meeting approval.

DISCUSSION

Library Director Chuck Flaherty asserted that he believes the Library has lost several significant donations because he could not assure the donors that a room or area of the library would definitely be named after them. The School Committee has developed a policy under which it would contemplate naming a room after an individual if he or she is a figure of national or public reputation who reflects the core value of the school system; or who has demonstrated lengthy and/or exemplary service to the students of Brookline; or significant funds are donated to honor that individual or group. The Advisory Committee heard from the petitioner of the article which originally made "naming" a Town Meeting prerogative that he had never intended the "naming" of individual rooms to be subject to Town Meeting approval. The intent of the By-law was directed at buildings, parks, and larger public spaces.

RECOMMENDATION

The Advisory Committee by a vote of 14-0 (with 1 abstention) recommends FAVORABLE ACTION on the following vote:

VOTED: To amend ARTICLE 6.8, NAMING PUBLIC FACILITIES, in the By-Laws of the Town, to read as follows:

ARTICLE 6.8  
NAMING PUBLIC FACILITIES

Except as hereinafter provided, town buildings, parks, squares and other facilities, may be named only by Town Meeting when such action is proposed in a Warrant Article. THE LIBRARY TRUSTEES MAY, IN ACCORDANCE WITH GUIDELINES ADOPTED AND FROM TIME TO TIME AMENDED BY THEM, NAME ROOMS AND ASSOCIATED SPACES OF LIBRARY BUILDINGS. THE SCHOOL COMMITTEE MAY, IN ACCORDANCE WITH GUIDELINES ADOPTED AND FROM TIME TO TIME AMENDED BY THEM NAME ROOMS AND ASSOCIATED SPACES OF SCHOOL BUILDINGS.

**XXX**

ARTICLE 20

TWENTIETH ARTICLE

To see if the Town will amend Article 5.6.8 of the Town By-Laws concerning the Preservation Commission and Historic Districts By-Law. “The Preservation Commission shall propose changes in Brookline Historic boundaries as it deems appropriate. However, A BROOKLINE HISTORIC BOUNDARY MUST BE APPROVED IN WRITING BY 90 PERCENT OF THE RESIDENTIAL OR COMMERCIAL PROPERTY OWNERS WITHIN THE PROPOSED HISTORIC DISTRICT. Massachusetts General Laws, Chapter 40C, will guide the procedures for these activities.”

or act on anything relative thereto.

The publicly stated policy of the Preservation Commission has been that the commission would bring a proposed Historic District to Town Meeting only with a 90% approval from the property owners within the proposed district. In fact, the commission would not have proceeded with the Fisher Hill Historic District until it had 90% of the approval of the property owners within the proposed district. However, the Commission recently recommended to Town Meeting that a Historic District be designated with no one (0%) in the proposed district approving such a designation.

Every commission and board in Brookline hopefully treats every person affected by actions taken by a commission or board as fairly and as just as possible. Having the Preservation Commission change its stated policy from 90% to 0% has denied due process from some citizens. The purpose of this article is to ensure consistent due process for all citizens.

SELECTMEN’S RECOMMENDATION

This petitioned article would amend Section 5.6.8 of the Town’s By-Laws, which deals with the establishment of local Historic Districts. Specifically, the amendment would require that 90% of the residential or commercial property owners located within a proposed Historic District approve such a designation.

The petitioner contends this is an issue of fairness and of consistent due process. Using recent examples of proposed Historic Districts, he pointed to inequities in the decisions of the Preservation Commission: in one case, less than 90% of the neighborhood opposed the designation, and the Preservation Commission voted against it; in another case, 0% supported the designation and the Preservation Commission voted in favor of it.

While this Board acknowledges some of the petitioner’s concerns and seeks equitable treatment of all residents by Town boards and commissions, Town Counsel has ruled that the proposed amendment is beyond the authorization set forth in Massachusetts General Laws

(Chapter 40C, Section 3). The proposed by-law condition for the creation or amendment of Historic Districts would be in conflict with the intent and purpose of the Historic Districts Act. Therefore, the Board must vote No Action on the article.

As previously stated, the Selectmen do agree with the petitioner's contention that Historic District proposals should be handled consistently. The Preservation Commission should adopt rules and regulations for the conduct of its business regarding Chapter 40C, a requirement of Section 5.6.8. Ideally, the Commission should establish guidelines and publish them.

The Selectmen recommend NO ACTION, by a vote of 5-0 taken on April 22, on the article.

The Selectmen did not have an opportunity to review the proposed resolution being offered by the Advisory Committee. The resolution will be reviewed and a recommendation will be made prior to Town Meeting.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

As originally offered, this warrant article would have amended the Town By-laws to require the written consent of 90% of the property owners in any future proposed historic district before any new historic district could be established. The article appeared to conflict with the State law governing the establishment of Historic Districts and it served to withdraw almost all discretion from the Preservation Commission. In response to these concerns the Petitioner submitted an amended version in the form of a resolution. The resolution offered requests that the Preservation Commission, after hearing, adopt guidelines for adoption or changing the boundaries of local historic districts. The Advisory Committee is offering a further amendment to this resolution. The issues raised by all three versions are discussed below.

Mass. Gen. Laws Ch. 40C provides that a town may, by a 2/3 vote of Town Meeting, establish a local historic district. If such a district is established, local Preservation Commission approval is required for changes to the exterior features of structures within the historic district.

Prior to any Town Meeting vote to establish a local historic district, the Preservation Commission is required to investigate and prepare a report on the historic and architectural significance of the structures within the proposed district. Presently there are two local historic districts in Brookline: the Cottage Farm and Pill Hill neighborhoods. In the mid-1990's a proposed local historic district for the Fisher Hill area was considered, but not adopted. More recently Town Meeting considered but decided to delay a vote on whether to enact a local historic district on the St. Aidan's property.

## DISCUSSION

### The Original Warrant Article

The original warrant article was directed to the authority of the Preservation Commission in proposing local historic districts and would have required the consent of 90% of the affected property owners before a local historic district could be adopted. The proponent submitted two major arguments in support of this. The first was that the Town should have a consistent and explicit criteria for establishment of a local historic district. The proponent argued that this was essentially a due process question, as all property owners should be treated equally. He submitted that the proposed Fisher Hill historic district was handled differently than the proposed St. Aidan's historic district despite property owner opposition in both cases. Accordingly, the proponent is not rigidly committed to the 90% threshold but believes there should be some explicit numerical criteria which is the same in every case.

The proponent's second major argument was that it was, as a practical matter, impossible to impose preservation on an unwilling property owner. Specifically, if the owner was unwilling to voluntarily preserve the property, the owner would simply refuse to maintain it.

The Advisory Committee by a large margin voted to recommend No Action on this original version of the warrant article. Three main reasons were articulated for this decision. The first was that Town Counsel concluded that the article was in conflict with the provisions of Mass. Gen. Laws Ch. 40C regarding the process by which historic districts are created (i.e. was illegal).

The second was that the article seemed to misinterpret the function of the Preservation Commission. Specifically, the primary role of the Preservation Commission is the technical function of investigating and reporting upon the historic and architectural significance of structures within a proposed historic district. The Committee was advised by the Chair of the Preservation Commission during consideration of Fisher Hill and during consideration of St. Aidan's that in both cases recommendations were made solely on that basis. Consideration of issues of fairness to property owners are presently left to Town Meeting which must vote by a 2/3 margin to enact a historic district. This seems a far more appropriate and representative forum for these issues to be discussed.

The third reason, and the one which elicited the most public comment, was that a strict requirement of consent from 90% of the property owners in a proposed historic district seemed arbitrary and likely to prevent enactment of future historic districts. The local historic district process is essentially the only tool the Town has to require preservation of historic structures. Although the recent Supreme Judicial Court case of Dennis Housing Corp. v. Zoning Board of Appeals of Dennis (March 31, 2003, SJC docket # SJC-08856) could be construed to hold that a comprehensive permit issued pursuant to Chapter 40B would override local historic district protection, creation of such a district can still be an important tool to protect historic structures from non Chapter 40B development. While it is true that an unwilling owner may neglect its property, enactment of such a district could be particularly useful where the present owner intends to sell the property. It is believed that Town Meeting is an effective check against abuse of this power. Our Committee did not receive any information indicating that any other communities have adopted a strict numerical

requirement regarding the number of affected owners who must consent.

#### The Petitioner's Resolution

The Petitioner then offered an amendment to substitute a resolution for the original proposed By-law change. The resolution calls upon the Preservation Commission to formulate guidelines for adopting or changing local historic districts, including for "the minimum approval required of property owners" within such an proposed or existing historic district.

The petitioner submits that the resolution is intended to address his primary concern that written guidelines be adopted so that all property owners are treated fairly. As a resolution, rather than a By-law amendment, it does not conflict with State law. Although not committed to a specific percentage, the petitioner still believes that there should be some guideline setting forth what percentage of property owner approval is required.

The Preservation Commission is opposed to this resolution. They remain concerned that the article misunderstands the nature of their technical function of investigating and reporting on the historical and architectural significance of structures within a proposed historic district. The Preservation Commission does not see itself as a "gatekeeper" but rather a conduit to the local historic district process. Nonetheless, a representative of the Preservation Commission indicated that they are sensitive to the issues raised by the warrant article, and accordingly, they would issue, after public hearing, a more detailed written description of the local historic district process, the Preservation Commission's role in this process and the basis upon which its decisions are taken. However, this would be a description of the process rather than guidelines. The Preservation Commission believes that Town Meeting could then revisit the guideline issue if it is dissatisfied with written product produced by the Preservation Commission.

The Advisory Committee finally reached a compromise position. It is clear that substantial confusion exists regarding the precise role of the Preservation Commission in enacting a local historic district. For example, only the Preservation Commission can offer a warrant article proposing a local historic district. Moreover, although Preservation Commission reports and recommendations are confined to the architectural and historic significance of structures within a proposed historic district, the Commission does survey affected property owners to determine if they are in favor of the proposed district. There was general agreement that further written clarification of the Preservation Commission's role and the manner in which it fulfills that role, would be useful.

A majority of Advisory Committee members felt that, if adopted, the resolution should be amended to eliminate the reference to "the minimum approval required of property owners." This was based both on concerns (as discussed in connection with the original warrant article) that a rigid numerical approval requirement was unwise and upon the fact that the Preservation Commission could (and it appeared would) set the requirement at 0%. A majority also voted to clarify the language to make it clear that the resolution only concerned the Preservation Commission's actions with respect to local historic districts and not any of its other functions.

The question remained, however, whether the Preservation Commission should be given the

opportunity to promulgate its own written product before adoption of this resolution. The Advisory Committee by a narrow majority felt that the written process description offered by the Preservation Commission might not be the same as the desired guidelines, and therefore, favored the following version of the resolution which should result in some guidelines.

RECOMMENDATION

The Advisory Committee by a vote of 10-9 (with 2 abstentions) recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town adopt the following resolution:

WHEREAS, the establishment of and changes in Historic District boundaries can have a profound effect upon the character of a neighborhood and the property values of regulated structures;

WHEREAS, the owners of regulated structures and neighborhood property should have the benefit of Preservation Commission guidelines that establish the basis for Commission determinations and action;

WHEREAS, the guidelines, aforesaid, may change as existing conditions and circumstances change;

NOW, THEREFORE, the Annual Town Meeting hereby adopts the following Resolution:

BE IT HEREBY RESOLVED, that the Preservation Commission is requested to formulate and adopt, after a public hearing, guidelines that it will observe in the discharge of its duties with respect to the adoption or changing of Historic District Boundary Lines.

**XXX**

Annual Town Meeting  
May 27, 2003  
Article 20 – Supplement No. 1

MOTION TO BE OFFERED UNDER ARTICLE 20  
BY FRED LEBOW – TMM PRECINCT 1

Move to amend the main motion under Article 20 by adding the following words at the end of the resolution:

“and the minimum number of property owners within a proposed or changed district, who support the proposal, before such proposal can be adopted or presented to a Town Meeting.”

ARTICLE 21

TWENTY-FIRST ARTICLE

To see if the Town will amend Article 8.15 – Noise Control of the By-Laws of the Town of Brookline in the following manner:

By amending Section 8.15.4 (a) (1) by striking the words “every day of the year” and in substitution thereof, adding the following words: “Monday through Friday, and from 7 (seven) P.M. to 8:30 (eight-thirty) A.M. on Saturdays, Sundays and holidays.”

and

By amending Section 8.15.4 (a) (2) by striking the words “every day of the year” and in substitution thereof, adding the following words: “Monday through Friday, and from 6 (six) P.M. to 8:30 (eight-thirty) A.M. on Saturdays, Sundays and holidays.”

or act on anything relative thereto.

\_\_\_\_\_

Under the current By-law, electric motor and internal combustion devices may be used from 8 A.M. until 9 P.M. every day of the week, and devices employed in construction or demolition may be used from 7 A.M. until 7 P.M. every day of the week. The proposed amendment seeks to limit the use of such devices on weekends and holidays to 8:30 A.M. until 7 P.M. and 8:30 A.M. until 6 P.M., respectively.

The proposed amendment seeks to address a quality of life issue for many residents of Brookline. This amendment will allow residents of our Town to enjoy more peace and tranquility on weekend and holiday mornings and evenings without noise that they are otherwise exposed to every day of the week.

SELECTMEN’S RECOMMENDATION

This petitioned article proposes an amendment to the Town’s Noise Control By-Law (Article 8.15). Specifically, the article would do the following:

- 1) change the time electric motor and internal combustion engine devices employed in yard and garden maintenance and repair can be used on weekends and holidays from the current 8 a.m. – 9 p.m. to 8:30 a.m. – 7 p.m.
- 2) change the time construction and demolition equipment can be used on weekends and holidays from the current 7 a.m. – 7 p.m. to 8:30 a.m. – 6 p.m.

In effect, the times these devices can be used on weekends and holidays would be further restricted. The petitioner believes such amendments are necessary so that residents can enjoy more of their weekends and holidays without the noise they are exposed to every day of the week.

The Board is concerned about the impact these proposed amendments would have on the operations of town departments, specifically the Department of Public Works. If these amendments were adopted, DPW could not commence any operations that involve these devices until 8:30 a.m. on weekends and holidays. This would negatively impact DPW, as oftentimes it is on these days that they undertake important clean-up / maintenance operations.

The Selectmen recommend NO ACTION, by a vote of 4-1 taken on April 29, on the warrant article.

**ROLL CALL VOTE:**

No Action

Favorable Action

Goldberg

Hoy

Kalikow

Geller

Allen

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 21 proposes to amend Article 8.15 of the Town By-laws, the "Noise Control" By-law, by amending Section 8.15.4, entitled "Prohibitions and Measurement of Noise Emissions," to restrict further the hours during which electric and internal combustion engine equipment used in yard and garden maintenance and construction and demolition equipment can be used. The proposed amendment applies to Saturday, Sunday and holiday hours only and does not change the current By-law restrictions imposed on such uses from Monday through Friday.

The By-law currently restricts the use of electric and internal combustion engine equipment used in yard and garden maintenance during the hours from 9:00 P.M. to 8:00 A.M. every day of the year. The proposed amendment would change the restricted hours for Saturday, Sunday and holidays only from 7 P.M. to 8:30 A.M.

The use of construction and demolition equipment is currently prohibited between the hours of 7:00 P.M. to 7:00 A.M. every day of the year. The proposed amendment would prohibit such use from 6:00 P.M. to 8:30 A.M. on weekends and holidays.

Currently exempted from the noise control by-law are "turf maintenance equipment employed in the maintenance of golf courses, snow blowers and snow removal equipment."

### DISCUSSION

The petitioner's main objective is to improve the quality of life for citizens of the town on weekends and holidays when people generally are considered to be in need of a respite from the stress and strain of the normal work week. Living in a busy, congested, noisy, urban environment can be damaging to the psyche. People who work the night shift and sleep in the morning hours or who sleep in the early evening hours are especially affected by such disturbances. The noise control by-law was adopted 30 years ago by Town Meeting as a means of preserving the health and welfare of the community by prohibiting unusually loud noises from intruding upon people's quiet times.

No persons testified at the Capital Subcommittee hearing in opposition to the proposed amendment. However, a communication was received from Tom DeMaio, the DPW Commissioner, which expressed the department's opposition to Article 21 on the grounds that such restrictions would hinder the "customary" overtime work by DPW employees on weekends during heavy cleanup season in the Spring and Fall. DPW crews which work on Saturdays in open spaces and the cemetery start at 7:00 A.M. and highway crews cleaning sidewalks and roadways start at 7:00 A.M. The Advisory Committee's response to this opposition is that the noise control by-law allows the DPW, or anyone else, to apply to the Board of Selectmen for a special permit exempting them from the By-law. In fact, DPW has sought such waivers in the past and they have been granted. Since snow blowers and snow removal equipment are exempt under the By-law, there should be no problem for DPW during emergency snow removal situations.

The proposed amendment keeps intact the current hourly restrictions during the weekdays and imposes modest changes during weekend and holiday hours. The Advisory Committee believes that these proposed hourly changes will be beneficial to the community as a whole, are reasonable in scope and that no significant economic losses will be suffered by landscaping companies, gardeners, contractors or town employees who may find it necessary to work on weekends and holidays.

### RECOMMENDATION

The Advisory Committee unanimously by a vote of 19-0 recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend Article 8.15 – Noise Control of the By-Laws of the Town of Brookline in the following manner:

By amending Section 8.15.4 (a) (1) by striking the words “every day of the year” and in substitution thereof, adding the following words: “Monday through Friday, and from 7 (seven) P.M. to 8:30 (eight-thirty) A.M. on Saturdays, Sundays and holidays.”

and

By amending Section 8.15.4 (a) (2) by striking the words “every day of the year” and in substitution thereof, adding the following words: “Monday through Friday, and from 6 (six) P.M. to 8:30 (eight-thirty) A.M. on Saturdays, Sundays and holidays.”

**XXX**

ARTICLE 22

TWENTY-SECOND ARTICLE

To see if the Town will amend the General By-Laws by deleting Section 2.1.7 and replacing it with the following section:

SECTION 2.1.7      THE ANNUAL TOWN ELECTION

Annually, not later than the third Monday in January, the Selectmen shall determine a date for the Annual Town Election. Said election shall be called on either the first or second Tuesday in May. The Selectmen may alter the date of the Annual Town Election to conform to the date of any Special State Primary or Special State Election without regard to the limitations of this by-law.,

or act on anything relative thereto.

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This warrant article is inserted at the request of the Town Clerk to update the by-law language, by replacing the current language that was appropriate when the Annual Town Election was held in March.

SELECTMEN'S RECOMMENDATION

Article 22, filed by the Town Clerk, is technical in nature. It replaces existing language that was appropriate when the Annual Town Election was held in April. The proposed amendment updates the current by-law, thereby removing any conflicts with the current election calendar. It also maintains scheduling flexibility while continuing the tradition of mid-winter notice.

The proposed article proposes the following:

1. eliminates the need for the issuance of an election warrant. According to the Town Clerk, the requirement for the Board of Selectmen to issue a warrant "no later than the third Monday in January" should have been removed as part of a 1984 amendment to this by-law. It is unnecessary to have an election warrant issued in January when the election must, per the requirements of this by-law, be set for either the first or second Tuesday in May.
2. changes the date by which the Selectmen must set the Annual Town Election date from the third Monday in January to the third Tuesday in January . This is proposed simply because of the fact that the Selectmen meet on Tuesdays.

- 3. limits the ability of the Selectmen to alter the date of the Annual Town Election to conform with any special elections (state primary, presidential preference primary, or state election). The amendment would only allow the Selectmen to changes the date if a special election occurs during April or May.

The Selectmen recommend FAVORABLE ACTION, by a vote of 3-0 taken on April 8, on the vote offered by the Advisory Committee.

**ROLL CALL VOTE:**

Favorable Action

Goldberg

Hoy

Allen

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

This article was inserted in the Town Meeting Warrant at the request of Pat Ward, Town Clerk. The amendment is a technical correction which replaces existing language that was appropriate when the Annual Town Election was held in April. The amendment updates the by-law, thereby removing any conflicts with the current election calendar. It also maintains scheduling flexibility, while continuing the tradition of mid-winter notice.

DISCUSSION

The current by-law section (last substantively changed in 1984) states:

SECTION 2.1.7 THE ANNUAL TOWN ELECTION

Annually, not later than the third Monday in January, the Selectmen shall issue a Warrant calling for the Annual Town Election. Said Election shall be called on either the first or second Tuesday in May. If after the issuance of a Warrant for the Annual Town Election, the Legislature alters the date of the Presidential Preference Primary Election, the Selectmen may alter the date of the Annual Town Election to conform to the date of the Presidential Preference Primary Election without regard to the limitations of this by-law.

Mr. Ward explained that it is impractical to “issue a warrant” in January. A warrant is the legal document which actually calls the election and under state law must be signed and posted at least 7 days before the election. He further explained that the warrant should be issued after the period of making changes to the ballot has passed.

The last sentence of the 1984 section was necessary since the voting machines in use at the time were impounded for 30 days after an election. If the presidential primary were held within the 30 days impoundment period, then both the town election and the primary would need to be held together for practical reasons.

The new language preserves the traditional January notification of town election. It also preserves the early May election date. It has the Town Clerk issuing a “warrant” a week before election after the period of possible changes to the ballot has passed. The new language adds 2 other state elections to the presidential primary which, if they occur, could be held at the same time as the town election and thus permit changing the date of the town election to a date other than the first or second Tuesday in May.

The language the Advisory Committee is offering has some changes from the language in the Warrant Article. The offered language changes the date to set the election from the 3<sup>rd</sup> Monday to the 3<sup>rd</sup> Tuesday to correspond with an actual meeting of the Selectmen. The original language also states a requirement for posting the warrant 7 days prior to the election. This is a requirement stated in state law and is redundant in the town by-law so the Advisory Committee (with the agreement of the Town Clerk) has removed this sentence.

In the last sentence, the Advisory Committee added the term “Special” to more accurately name the elections specified. Also added was a qualifier to indicate that the town election could only be moved if any of the specified elections occur during April or May. The original language theoretically permitted the Selectmen to shift the town election to June, July, August, or even September etc. if one of the other elections were being held. It was not the intent of the Town Clerk to change the date of the election. It was his intent to modernize the language and have the language correspond with current practice.

### RECOMMENDATION

The Advisory Committee by a 19-0 vote offers the following vote: (the changes from the Town Clerk’s original language are in ***bold italic***):

VOTED: That the Town amend the General By-laws by deleting Section 2.1.7 and replace it with the following section:

#### SECTION 2.1.7 THE ANNUAL TOWN ELECTION

Annually, not later than the third ***Tuesday*** in January, the Selectmen shall determine a date for the Annual Town Election. Said election shall be called on either the first or second Tuesday in May. The Selectmen may alter the date of the Annual Town Election to conform to the date of any ***Special*** State Primary, ***Special*** Presidential Preference Primary or ***Special*** State Election, ***which occur during April or May***, without regard to the limitations of this by-law.

**XXX**

ARTICLE 23

TWENTY-THIRD ARTICLE

To see if the Town will amend Article 2.2 of the by-laws of the Town of Brookline by deleting the fourth sentence of Section 2.2.5 of said Article and by replacing it with the following:

“The Superintendent of Schools (in the case of school appropriations) and the Town Administrator (in the case of all other appropriations) shall submit their requests for appropriations to the Committee PRIOR TO THE THIRD TUESDAY IN FEBRUARY OR SEVEN DAYS AFTER THE GOVERNOR SUBMITS THE ANNUAL BUDGET TO THE GENERAL COURT, WHICHEVER IS LATER.”

or act on anything relative thereto.

SELECTMEN’S RECOMMENDATION

Article 23 proposes an amendment to the section of the Town’s By-Laws relating to the requirements for submission of the annual Financial Plan by the Town Administrator. Currently, Section 2.2.5 requires the Town Administrator to submit his/her budget recommendation by February 15<sup>th</sup>. The proposed amendment makes two changes:

- 1) If February 15<sup>th</sup> falls on a weekend or holiday, the Financial Plan would be published on the next town business day.
- 2) If the Governor’s budget (House 1) is filed late, then the Financial Plan will not be published until seven days afterward.

While the first change is minor in nature, the second change is more significant. When a new Governor takes office, s/he is allowed, per the State Constitution, to submit a budget proposal within eight weeks of the convening of the legislative, which translates into the end of February. This provides the new Governor with an additional four weeks to prepare the budget. When this does occur, as it did this budget cycle, it puts the Town in the awkward position of having to publish a Financial Plan prior to the Governor’s budget, which serves as the benchmark for state aid estimates. In effect, the Town publishes a financial plan that may be out of date less than two weeks later.

This happens very infrequently (this year was the first time it occurred in close to two decades); but when it does, it adds a significant level of uncertainty to the budget process. This year serves as a great example: on February 15<sup>th</sup>, the Town Administrator published his FY2004 Financial Plan with an estimated local aid cut of \$2 million. Less than two weeks later, on February 26<sup>th</sup>, the Governor’s budget was made public, and it included a \$2.4 million local aid cut for Brookline, putting the Town’s proposed budget out of balance. The

Town administration then had to produce a Revised Financial Plan, reflecting the plan to close the \$400,000 deficit. If additional time was granted, the Town Administrator could have submitted an original budget based on the Governor’s budget, thereby eliminating the need for, and costs associated with, publishing a Revised Financial Plan.

During the article review process, the Advisory Committee voiced its concerns regarding the impact such a change would have on its schedule. An early-March financial plan would delay their work by two to three weeks, pushing the budget review period into the warrant article review period. This Board is very concerned with the scheduling requirements of the Advisory Committee and is very pleased that the Committee is willing to take whatever steps are necessary to accommodate a later financial plan submission on these rare occasions. Such steps may include holding the Annual Town Meeting later when this scenario comes into play, something the Selectmen would support. (If this were to happen, Town Meeting would be held in early-June instead of late-May).

The Selectmen thank the Advisory Committee for their support on this article and recommend FAVORABLE ACTION, by a vote of 3-0 taken on April 8, on the following vote:

VOTED: That the Town amend Article 2.2 of the by-laws of the Town of Brookline by deleting the fourth sentence of Section 2.2.5 of said Article and by replacing it with the following:

“The Superintendent of Schools (in the case of school appropriations) and the Town Administrator (in the case of all other appropriations) shall submit their requests for appropriations to the Committee BY FEBRUARY 15TH OR THE NEXT TOWN BUSINESS DAY IF SAID DATE FALLS ON A WEEKEND OR HOLIDAY; OR SEVEN DAYS AFTER THE GOVERNOR SUBMITS THE ANNUAL BUDGET TO THE GENERAL COURT, WHICHEVER IS LATER.”

**ROLL CALL VOTE:**

Favorable Action

Goldberg

Hoy

Allen

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

Currently, the Town Administrator is required to submit the Financial Plan to the Advisory Committee on February 15. The original Warrant Article changes the date of submission to

the 3<sup>rd</sup> Tuesday in February or 7 days after the governor submits the annual budget to the General Court.

## DISCUSSION

The uncertainty of the current budget cycle has highlighted the inflexibility of the current by-law which requires the town administrator to transmit the request for appropriation by February 15. The Town budget is based on many assumptions. A key assumption is how much state aid the town will be receiving. That figure is not known for sure until after completion of the state budget cycle which may not be done until well after town meeting (or even well into the fiscal year!), but a key milestone is transmission of the Governor's budget proposal to the legislature (known as House 1.)

House 1 is normally submitted by the end of January except, under the Massachusetts constitution, a new Governor can have an extra month to submit House 1. For the first time in many years (perhaps decades), Governor Romney chose to avail himself of this provision and submitted the budget late, after the Town Administrator was due to release his budget request. The timing created a problem for the Town administration. It was well known that local aid was going to be cut but the Governor's office was not revealing the exact level of the proposed cut until the actual release of the budget.

The Town Administrator released the FY 2004 Financial Plan on schedule by February 15 stating the local aid assumptions. The Advisory Committee began its budget review. When the governor released House 1, which included slightly deeper cuts than the Town Administrator had previously assumed, the Town Administrator released a revised FY 2004 Financial Plan. Fortunately, the original assumptions in the FY 2004 Financial Plan were close enough to House 1 not to require a complete rewrite of the Financial Plan. If the Financial Plan needed to be completely rewritten, the Town would have incurred substantial costs for new printing and the Advisory Committee would have needed to start all over.

This Warrant Article changes two deadlines; the first is a change to the normal release of the financial plan from February 15 to the third Tuesday in February, the day after President's Day. According to Sean Cronin, Acting Deputy Town Administrator, this was intended to adjust for the fact that February 15 (or any other specific date) sometimes falls on a weekend or even the President's Day holiday. In looking at the calendar, this language can result in the financial plan being released as late as February 20.

The Advisory Committee is proposing language which moves the release of the financial plan back under normal circumstances to the next business day if February 15 falls on a weekend or holiday. This meets the intent of the warrant article without permanently moving back the budget submission.

The more substantive change, from the Advisory Committee's point of view is the change to accommodate a late release of House 1 by a new governor. This change could push the release of the financial plan back into March.

The issue from the Advisory Committee perspective is whether such a late release gives the Committee sufficient time to perform its budget review plus the review of Town Meeting Warrant Articles. As this year demonstrates, it is going to be tight but it is doable. We were assisted by having a relatively late town meeting which is scheduled to begin right after Memorial Day. If necessary (though certainly an option to avoid, if possible), portions of the budget write up could be issued in supplemental mailings to Town Meeting Members. It should be noted that it has been decades since a new governor has exercised the option to submit a late budget and it may be a long time before this happens again.

#### RECOMMENDATION

The Advisory Committee by a 17-2 vote recommends FAVORABLE ACTION on the vote recommended by the Selectmen.

The Committee would also like to express its desire for the Town Administrator and the Selectmen to assist it in years where a late financial plan is anticipated by deferring Town Meeting to as late in the spring as possible.

**XXX**

ARTICLE 24TWENTY-FOURTH ARTICLE

To see if the Town will authorize and empower the Board of Selectmen to execute, acknowledge, deliver and record a PRESERVATION RESTRICTION AGREEMENT that runs from the Town to the Commonwealth of Massachusetts, by and through the Massachusetts Historical Commission, for the former Larz and Isabel Anderson Carriage House, now known as the Larz Anderson Auto Museum, located in Larz Anderson Park.

The Preservation Restriction Agreement to be upon such terms and conditions as the Board of Selectmen determines to be in the best interests of the Town, and authorize the Board of Selectmen to take whatever action is necessary to perfect and establish said Preservation Restriction Agreement, or act on anything relative thereto.

This article, submitted by the Larz Anderson Auto Museum is required to sign a maintenance and preservation agreement with the Massachusetts Historical Commission on the Larz Anderson Carriage House (Museum building). This agreement is a requirement for obtaining a matching capital improvements grant of \$69,250 from the Massachusetts Historical Commission. The grant program requires that a preservation restriction be implemented to ensure that projects supported by state money will be preserved and maintained after work is completed.

The scope of the proposed project includes the following:

1. Reconstruction of the original balustrades and balconies at the Newton Street side, one story wing.
2. Installation of a lightning protection system.
3. Restoration of the dormers
4. Repair and painting of windows and wood trim.
5. Cleaning, re-pointing and flashing repair at the chimneys.
6. Restoration of the wrought iron yard lantern and support.

The Town of Brookline is the owner of the Museum building, the former Larz Anderson Carriage House. Funding the proposed capital improvements is in partial fulfillment of the Museum's lease obligation with the Town.

A similar preservation restriction was previously executed between the Town and the Commonwealth in 1998 for improvements to the landscape features of Larz Anderson Park.

The Museum is working with Roger T. Panek, a local architect specializing in architectural restoration and with Greer Hardwick of the Brookline Preservation Commission.

SELECTMEN'S RECOMMENDATION

This petitioned article recommends that the Town place a Preservation Restriction on the former Larz and Isabel Anderson Carriage House located in Larz Anderson Park. The building, which is owned by the Town, is currently leased to the Auto Museum. According to the petitioner, the restriction is required in order to file for, and potentially be awarded, a \$69,250 matching grant from the Massachusetts Historical Commission.

The Selectmen are very concerned by reservations expressed by the Building Commissioner and Town Counsel about placing a preservation restriction on the building, as it is a restriction that goes on in perpetuity. If approved by Town Meeting and recorded at the Registry of Deeds, any and all changes to the exterior of the building must be approved by the State. The Town loses flexibility, potentially to the point where uses of the building currently permissible under the will of Isabel Anderson would not be possible.

This Board is also concerned about the process surrounding the placement of the article on the Town Meeting warrant. The article was filed without any consultation with the Building Department. As a result, there was no discussion about the ramifications of such a restriction. It appears as though there was a breakdown in communication, something that can be remedied by having the Auto Museum engage in a discussion with the Building Commissioner and Preservation Commission staff. Discussions concerning long-term planning for the building, including potential grant opportunities similar to this one, can take place over the next few months.

The Selectmen appreciate the Auto Museum's efforts in seeking outside funding to help it more readily meet the requirements of its lease, but believe that the requested preservation restriction is too restrictive and that the long-term costs outweigh the short-term benefits. Therefore, the Board recommends NO ACTION by a vote of 5-0 taken on April 29<sup>th</sup>.

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ADVISORY COMMITTEE'S RECOMMENDATION

OVERVIEW

The Larz Anderson Museum of Transportation has leased the former Larz and Isabel Anderson Carriage House in Larz Anderson Park from the Town for the last 52-53 years, renewing the lease in ten year increments. During the course of their tenancy and as part of their lease agreement with the Town, the Museum has worked toward preserving, conserving, maintaining and improving the building. The building is an important landmark in the Town and is listed on the National Register of Historic Buildings. The Larz Anderson Collection, housed by the Museum in the carriage house, is the oldest collection of motorcars in the country, and has been open to the public since 1927.

In June, the Museum of Transportation is planning to apply to the Massachusetts Historical Commission for a \$70,000 capital improvements grant that will be matched with funding from the Museum to undertake a number of exterior building improvements. The Museum has hired a preservation architect who has developed plans for the restoration and remedial work. In order to be considered for the grant, the state requires that the building be protected by a preservation restriction agreement to ensure a commitment to longterm preservation and maintenance to the building. The Museum is asking the Town to enter into such an agreement with the Massachusetts Historical Commission (MHC) so that the Museum would be eligible for this, and perhaps other matching MHC capital improvement grants in the future.

## DISCUSSION

The Town's Building Commissioner does not support this article because he feels that the terms of the Massachusetts Historical Commission preservation agreement would require the Town to be held to restrictions that would be monitored by the Massachusetts Historical Commission rather than the guidance currently provided by the local Preservation Commission. In addition, the Commissioner did not believe it was appropriate for a tenant of the Town to apply for a grant with permanent restrictions for a town-owned building. In addition, he feels that the Town has already granted the Museum substantial concessions on rent so that they would undertake the repairs and maintenance of the Carriage House. The lease between the Town and Transportation Museum provides that the Museum shall pay an annual rent of \$40,000 to be increased by 3% annually, but the Museum does not have to make any actual payment of rent, so long as the combined total spent on maintenance, improvements and repairs and those sums expended for its cultural and educational contribution to the Town (such as free tours and lectures for Brookline school children) equals or exceeds the \$40,000, plus the annual 3%.

In a memo in response to the Building Commissioner's opposition to the warrant article, the staff of the Brookline Preservation Commission states that "The Larz Anderson Carriage Barn is one of the most architecturally spectacular 19<sup>th</sup> century carriage barns in the United States. It is a major intact landmark of its type, especially in a time when carriage barns are typically being converted for residential use. The building, the largest surviving component of the Larz Anderson Estate, is of exceptional historical significance as well." The Preservation Commission staff suggests that support for the article would indicate a commitment to the significance of the building as an integral part of Larz Anderson Park. The Preservation Commission stated that the standards for historic preservation and restoration already in place by the Brookline Preservation Commission were equal to those required by the Massachusetts Historical Commission. The Preservation Commission felt that despite the added layer of review that would be required by the MHC, there would be little change or inconvenience to the town. The Brookline Preservation Commission would work closely with the MHC, as it has in the restoration of the Italianate Garden, also in Larz Anderson Park, that is under a similar agreement granted by the Town in 1997-98.

The Advisory Committee was originally told that the preservation easement did not include the interior of the building. However, significant concern arose when it was stated that the language of the standard preservation restriction agreement did include the interior, if those

characteristics originally qualified the building for listing in the National Register of Historic Places. If at some future time the building was to be occupied by another tenant, the long-term implications for limiting any interior renovations was considered a significant constraint on the Town.

Despite the generally accepted importance of this landmark building, it was felt that the Town's Preservation Commission should take a more thorough review of the merits of a potential MHC preservation restriction agreement. If the possibility of grant monies were considered appropriate and would assist the town in maintaining this historic building, the Town's Preservation Commission should work directly with the various Town departments and commissions including the Parks and Recreation Commission and the Building Commission to clarify the terms of such an agreement and any collaboration with the building's tenant.

#### RECOMMENDATION

The Advisory Committee by a vote of 18-0 (with 4 abstentions) recommends NO ACTION on Article 24.

**XXX**

ARTICLE 25

TWENTY-FIFTH ARTICLE

To see if the Town will accept the provisions of General Laws, Chapter 40, Section 8G, which provides, in essence, authorization for the Town to enter into mutual police aid programs, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

Article 25 requests the acceptance of Massachusetts General Laws, Chapter 40, Section 8G. If adopted, the Brookline Police Department would be able to enter into Mutual Aid agreements with neighboring police departments. Mutual Aid agreements are basically agreements between police departments in which one department's resources are made available to another's. They usually include the furnishing of personnel services, supplies, materials, contractual services, and equipment when such resources readily available to any participating municipality are not sufficient to cope with a situation that requires police action. Similar arrangements are commonplace among fire departments in the state. Such programs, which Brookline participate in, have been successful in protecting the lives, safety, and property of the people in these mutual aid areas.

Mutual Aid agreements allow for departments to better plan for emergencies. In today's post-9/11 world, police departments are faced with various potential incidents involving large numbers of people. With Mutual Aid agreements in place, departments can better handle these challenges. The Selectmen fully support such an instrument that allows the Brookline Police Department to be proactive in providing public safety to the citizens.

The Selectmen recommend FAVORABLE ACTION, by a vote of 3-0 taken on April 8, on the vote offered by the Advisory Committee:

**ROLL CALL VOTE:**

Favorable Action

Goldberg

Hoy

Allen

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This Article asks the Town to accept the provisions of General Laws, Chapter 40, Section 8G, quoted below, which authorizes the Town to enter into mutual police aid programs:

Chapter 40: Section 8G. Mutual police aid programs; agreements.

Section 8G. A city or town which accepts this section may enter into an agreement with another city or town, or other cities and towns, to provide mutual aid programs for police departments to increase the capability of such departments to protect the lives, safety, and property of the people in the area designated in the agreement. Said agreement may include the furnishing of personal services, supplies, materials, contractual services, and equipment when the resources normally available to any municipality in the agreement are not sufficient to cope with a situation which requires police action.

If accepted by the Town, the Police Department would then be able to enter into mutual aid agreements with neighboring police departments in a manner similar to the mutual aid agreements Brookline's Fire Department currently has with fire departments in nearby municipalities.

DISCUSSION

Police Chief Daniel O'Leary and Town Counsel David Turner have provided testimony explaining the desirability for Brookline's Police Department to enter into mutual aid agreements with surrounding communities, presently envisioned to be Boston, Newton and Cambridge. Briefly, Brookline would benefit by being able to call upon the resources of neighboring police departments in the event of terrorist acts or other incidents requiring police action that might exceed the capability of the Town's police force. For example, Boston has a S.W.A.T. (Special Weapons and Tactics) team and mounted police (for crowd control) capabilities that Brookline lacks but could call upon under a mutual aid agreement should the need arise. If police from outside Brookline were called upon to serve within the Town, they would be commanded by their own officers but under the orders and direction of the Brookline police; the reverse would be true if Brookline police were requested to serve out of town.

There is a potential cost to the Town in overtime expenses if Brookline officers were deployed elsewhere and had to extend their tours of duty, and if off-duty Brookline officers had to be called upon as replacements to maintain the safety of the Town. Occasions such as this would likely be quite rare – in fact, it's thought likely that Brookline will more often call upon outside resources such as Boston's than the reverse -- and the small risk of extra expense must be weighed against the added security provided by being able to call upon additional external police resources should they be needed to protect Brookline. In any event, it would be up to the Brookline Chief of Police to decide whether or not to respond to a

request for assistance from another community.

There is also concern about the procedures for handling potential citizen complaints of Brookline residents against police officers from outside Brookline, and also of potential complaints against Brookline police officers when serving outside of Brookline. These details will be incorporated into the terms of any resulting mutual aid agreement, just as was done in the "500 yard police powers" agreement of 1999. It is our understanding that there have been no complaints of police misconduct arising from that existing police powers agreement between Brookline, Boston and Newton.

The Advisory Committee believes that there is a potentially great benefit and minimal if any risk to Brookline and surrounding communities to be able to combine police resources to meet the public safety demands that might arise from terrorist or other substantial threats to civic well being.

#### RECOMMENDATION

By a unanimous vote of 20 to 0, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town accept the provisions of General Laws, Chapter 40, Section 8G, which provides, in essence, authorization for the Town to enter into mutual police aid programs.

**XXX**

ARTICLE 26

TWENTY-SIXTH ARTICLE

To see if the Town will ask the Moderator to select a Committee to study how to simplify the tax collection of the present two parts of the present DPW budget – “Sanitation” and “Refuse Fee”.

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The two names have confused many citizens and their representatives. Sanitation and Refuse have been confused during Town discussions and in Town billing procedures. Can the two be combined into one step? A committee could clarify the issues and suggest how to simplify collection and disbursement.

SELECTMEN’S RECOMMENDATION

Article 26 is a petitioned article calling for the creation of a Moderator’s Committee “to study how to simplify the tax collection of the present two parts of the present DPW budget – ‘Sanitation’ and ‘Refuse Fee’.” According to the petitioner, “the two names have confused many citizens and their representatives. Sanitation and Refuse have been confused during Town discussions and in Town billing procedures.” What seems to be confusing the petitioner is the budgetary structure where there exists a “Sanitation” Sub-program within the DPW budget and a “Refuse Fee”, which is part of the Town’s General Fund revenue budget and goes to fund the Sanitation operation. This has never surfaced as a point of confusion for anyone in the past.

Based upon review of the warrant article with the petitioner, however, this is clearly not the point of the article. The petitioner focused his attention on the fact that there exists a Refuse Fee. He would like to see the issue of having a Refuse Fee studied, something that is clearly outside of the scope of his warrant article as worded. If, as he seems to be proposing, the fee is eliminated, \$2.1 million of General Fund revenue would be lost, and the only way to make up for it would be to cut \$2.1 million of town and school services or pass a Proposition 2 ½ Override in the amount of \$2.1 million.

The Refuse Fee is one of many fees on the Town’s fee schedule that is under review by a Selectmen-appointed committee. Therefore, a Moderator’s Committee does not need to be established to look into this issue; nor does a Moderator’s Committee need to be established “to study how to simplify the tax collection of the present two parts of the present DPW budget – ‘Sanitation’ and ‘Refuse Fee’.”

Therefore, the Selectmen recommend NO ACTION, by a vote of 5-0, on the warrant article.

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ADVISORY COMMITTEE'S RECOMMENDATION

INTRODUCTION

Article 26 proposes a Moderator's Committee be established to study "how to simplify the tax collection of the present two parts of the present DPW budget – "Sanitation" and "Refuse Fee"."

BACKGROUND

Sanitation, which includes trash and recycling pick-up and disposal services, is a subprogram of the Department of Public Works budget appearing on page IV-60 of the FY2004 Financial Plan. The total budgeted amount for the sanitation subprogram for FY04 is \$2,942,523. According to the Town administration, the total cost to the Town of such services, including personnel salaries and benefits, administration and other costs allocable thereto, is approximately \$3.3 million.

Sanitation services are funded from 2 sources: (1) approximately \$2.1 million from a refuse fee and (2) approximately \$1.2 million from the property tax, a portion of which was provided for through the 1994 property tax override. The refuse fee is charged to all property owners who use the Town's sanitation services. The fee is \$165 per year and is billed quarterly and separately from any other bills for taxes or fees issued by the Town. As shown on page II-11 of the FY04 Financial Plan, the portion of the cost of sanitation services being financed from the refuse fee has been decreasing over time because the cost of providing such services has been rising, the refuse fee amount has remained the same, and the number of users of sanitation services paying the refuse fee has remained relatively constant.

DISCUSSION

Although it is not clear from the language of the article, the petitioner verbally proposed three different changes related to the sanitation budget and the source of funding thereof to the Advisory Committee: (1) use the word "sanitation" or "refuse" to describe both the budget subprogram and the fee charged; (2) eliminate separate mailings for refuse fee bills and property tax bills to save the Town money; and (3) fund sanitation services entirely from property taxes, thereby eliminating the need for separate bills.

The petitioner's first proposal is inconsistent with his last proposal, as the elimination of the refuse fee would eliminate any need to reconcile the name of the fee with the name of the budget subprogram. In any event, the Advisory Committee does not believe the use of the word "refuse" to describe the fee and the use of the word "sanitation" to describe the budget subprogram cause confusion so as to warrant the establishment of a Moderator's Committee.

Assuming the continuance of a refuse fee as a source of funding for the sanitation budget, information provided by the Town administration regarding the costs and benefits of combining the refuse fee bill with the property tax bill differed from the information provided by the petitioner and suggested that implementing such an initiative would actually cost the Town more money. State law prohibits the Town from including the refuse fee on the property tax bill, unless and until such fee is unpaid and a lien is imposed on the delinquent property owner's property. Although the Town could include the separate refuse fee bill in the same mailing as the property tax bill, it would cost the Town more to do so because (1) property tax bills are generated and collected by an outside vendor who does not have the capacity to also administer the billing and collection of refuse bills without significant cost to the Town, and (2) if the Town were to bring the property tax administration in house for the purpose of combining the bills, the increased cost to the Town for the necessary personnel, software and other administrative expenses would outweigh any potential savings (about \$9,200 in postage).

The Town administration did indicate that the Town could save money by billing the refuse fee in less than quarterly installments (e.g., semiannually). The cost of mailing each quarterly bill is approximately \$2,200 (there are only 7,500 refuse fee bills sent each quarter, as opposed to over 14,000 property tax bills). There is a countervailing concern that many people may prefer to spread these charges out over the year.

The discussion becomes more complex when we consider the policy questions as to whether sanitation services should be funded from refuse fees or property taxes (i.e., costs borne by users only or all property taxpayers), or by a mixture as we currently fund them? If all sanitation fees were to come from property taxes the full amount would be tax deductible by the property owner but the \$2.1 million of the total \$3.3 million for sanitation services that is currently raised by the refuse fee would have to be covered either by an override or by serious cuts in operating expenses at a time in which we are already making extensive cuts due to decreases in local aid from the state. existing services or from override? etc.). Further, many property owners already pay for private pickup of their refuse.

These issues are sufficiently complex that the establishment of a Moderator's Committee for the purpose of studying the appropriate means for funding sanitation services, whether it be solely from refuse fees, solely from property taxes or a combination of both, might be a worthwhile and reasonable step to take. However, as a result of the poorly drafted warrant article, the Moderator has indicated that he did not believe a motion to establish a Moderator's Committee for that purpose would be within the scope of the warrant article. Consequently, the Advisory Committee did not debate or form an opinion on the establishment of a Moderator's Committee for that purpose. Some on the Advisory Committee did indicate, however, that they believe any such examination of this issue should be conducted only in the context of a broader evaluation of the Town's revenue sources and financial policies.

26-4

RECOMMENDATION

The Advisory Committee, by a unanimous vote of 13 to 0, recommends NO ACTION on Article 26.

XXX

ARTICLE 27

TWENTY-SEVENTH ARTICLE

To see if the Town will amend Article 8.6 of the by-laws of the Town of Brookline by deleting the words “fenced-in” in the second paragraph of Section 8.6.7 of said Article and by changing the words “dog run” to “designated off leash area” throughout the entire article,

or act on anything relative thereto.

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The Town of Brookline By-laws pertaining to the control of dogs are embodied in Article 8.6. Currently, Section 8.6.7 of Article 8.6 authorizes the Park and Recreation Commission to establish dog runs in areas of the Town that are fenced-in. There is significant public interest in establishing a policy where dogs can exercise off leash. The proposed amendment would permit the Commission to pursue establishing designated off leash areas of the Town during designated off-peak hours. Dog runs are not a viable option for Brookline. Dog runs would carve up valuable play areas, create serious maintenance problems leading to undesirable places and incur extensive fencing costs.

By leaving the remainder of the Article intact, dog owners would still be required to accompany, control, and pick up after their dogs at all times. The Park and Recreation Commission have held many public meetings to discuss what programs would be appropriate and effective for Brookline. Off-leash programs have been established in other places for achieving better dog control. Using other programs as examples, the Commission could develop a program to establish designated off-leash areas at off-peak hours, subject to dog owner etiquette and education, public review and annual evaluation.

**PROCEDURE FOR DECLARING A PARK, PLAYGROUND OR OPEN SPACE  
AS AN “OFF-LEASH AREA FOR DOGS”,  
AS OUTLINED IN BY-LAW NUMBER 8.6.7.  
Presented by the Park and Recreation Commission**

Prior to any park, playground, and/or open space being designated as an “Off-Leash Area for Dogs”, the Park and Recreation Commission will conduct a meeting to discuss the possibility of such action, during which all in attendance may voice their suggestions, objections, and support for a proposed Off-Leash Area. Items to be discussed may include duration of Off-Leash time, rules and regulations associated with Off-Leash Areas, notification methods to all dog owners and citizens, special considerations in each proposed area, development of a Green Dog program, self-policing by dog owners, that in each designated Off-Leash area signs will be posted, in a

conspicuous place, stating the authorized hours when that area can be used and any other conditions concerning the use of that area, etc.

The Park and Recreation Commission shall notify all abutters, Town Meeting Members (in the affected precinct), Neighborhood Associations, the School Committee, School Principals, PTO's, the Conservation Commission, the Tree Planting Committee, the Board of Selectmen, the Police Department, identified users, and all those requesting notification. The meeting shall be posted in the Town Clerk's Office, in the newspaper, on cable television, on Brookline's homepage ([www.townofbrooklinemass.com](http://www.townofbrooklinemass.com)) and bulletin board, and in all prominent locations in the area affected. This initial meeting shall be conducted as part of a regularly scheduled Park and Recreation Commission meeting.

Attendance will be taken at all meetings and if additional meetings are required, all of those listed above will be notified, as well as all of those who sign the attendance sheet. Only after such meeting as described above is held will the Park and Recreation Commission make a decision concerning proposed areas. The Park and Recreation Commission may, at any time, reconsider the designation of any area as an Off-Leash Area, as they deem necessary. Monitoring and evaluation of all such designated areas shall be conducted on a regular basis.

#### SELECTMEN'S RECOMMENDATION

Article 27 was filed by the Park and Recreation Commission in response to the significant public interest expressed to them at their public meetings. It would amend the Town's Dog Control By-Law (Article 8.6 of the Town's By-Laws) to allow the Commission to expand off-leash areas for dogs. Currently, the Commission is authorized to establish dog runs in areas of the Town that are fenced-in; however, very few of the Town's parks are fully enclosed by fencing, so the ability to establish dog runs is greatly hindered. The proposed amendment would permit the Commission to establish off-leash areas in areas and during times deemed appropriate, without incurring the costs associated with fencing.

Numerous issues have been raised regarding this article, most of which have been resolved. However, one primary area of concern has yet to be fully addressed: the issue of using school playgrounds for these off-leash areas. The School Committee has expressed their concerns regarding the health and safety of children. They are concerned that using playgrounds for these purposes may result in children being bit by dogs, in addition to the possibility that health issues related to dog feces may arise. Based upon these outstanding issues, the School Committee believes that there should be further review of this proposal before any changes to the Dog Control By-Law are made.

The Selectmen share the concerns of the School Committee and, therefore, have not yet taken a position on the warrant article. The Board urges the School Committee and Park and Recreation Commission to work together prior to Town Meeting in an effort to

resolve these matters. If they do, then a recommendation will be made available in time for Town Meeting.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Through this article, the Park and Recreation Commission seeks to allow dog-owners the opportunity to become compliant with the Town's leash by-law by establishing designated off leash areas in parks and recreation areas during authorized hours, on a trial basis, set to expire June 30, 2005.

The current By-law requires that "in any public place or street" dogs must be "effectively restrained by a chain or leash not exceeding 7 feet in length and is attended by a person of adequate age and discretion to properly control its actions."

Its language (with proposed additions underlined and deletions struck out) includes a provision for dogs to run off-leash as follows:

"However, in ~~fenced-in~~ areas officially designated as ~~dog runs~~ designated off leash areas by the Park and Recreation Commission, or its designee, a dog shall be allowed to be off the leash under the following conditions:

- (a) the dog must at all times be accompanied by and under the control of a person;
- (b) any dog left unattended must be impounded,
- (c) the person in charge of a dog inside a ~~dog run~~ designated off leash area must remove any fecal material deposited by that dog in the ~~dog run~~ designated off leash area, before taking the dog from the ~~dog run~~ designated off leash area; and
- (d) the person in charge of a dog inside a ~~dog run~~ designated off leash area must control the animal so that it does not disturb the surrounding area by barking or other action and so that it does not disturb or threaten others using the ~~dog run~~ designated off leash area and the area surrounding the ~~dog run~~ designated off leash area.

The By-law would also have the following words in connection with this change from dog runs to designated off lease areas: with the amendment set forth herein to expire on June 30, 2005, at which time Article 8.6 shall revert to the language existing immediately prior to the within amendment. Currently, the Town does not actually have any of the "dog runs" mentioned in the By-law.

DISCUSSION

Since this was described by the Parks and Recreation Commission as a pilot program, a majority of the Advisory Committee, along with the Board of Selectmen, felt that the

change needed a sunset provision--to allow this program to take place within a prescribed test period. Town Meeting would then have to act again affirmatively to make this change permanent, if the pilot program is successful. There was also a request to the Parks and Recreation Commission for more specific language with respect to procedure (including signage) as its primary concerns, which they have provided. A copy of their plan is included under the description of the warrant article at the beginning of this report (pages 27-1 – 27-2).

The School Committee has indicated that it is opposed to including the parks which also serve as school playgrounds and are contiguous or adjacent to schools in the pilot program. This was due to concerns they had heard from parents and school principals about student safety. Members of the Parks and Recreation Commission responded by emphasizing the importance of including these parks--precisely for the purpose of bringing some degree of regulation to what is now an unruly situation in these areas and because they feel that several of these parks are in areas where some provision for dogs is essential. The Commission indicated that initially it is planning to allow this only from 5-7 a.m., before school is in session. Furthermore, they noted that these parks should be available on weekends, holidays and school vacations when the schools are again not in session. The Advisory Committee was also concerned that proper signs be put up, so that both the dog owners and other users of the Parks know exactly what the new policy allowed. The Parks and Recreation "Procedure for Declaring a Park, Playground of Open Space as an 'Off-leash Area for Dogs', as Outlined in By-law Number 8.6.7" includes specific language on posting of signs, and the Advisory Committee has included a reference to signs in its proposed vote.

While there was extensive debate and some disagreement as to whether the school playground parks should be included in order for the proposed pilot-program to be a feasible test for the program in general, a majority of the Advisory Committee eventually concluded that they should be included. Some stated that parks contiguous to schools are also "neighborhood parks." Three parks contiguous to schools--Devotion, Lawrence and Pierce--are proposed to be included in the program. Members also voiced the need for regulation, especially in the school-related areas, to establish some order where at present there exists a chaotic and unruly situation, in which dogs are running off leash during school and after-school recreation times. The status quo "Prohibition" does not work, and dog-owners clearly violate the law.

Need for enhanced enforcement of the by-law was also discussed. The Commission stressed that self-enforcement is a means of accomplishing this. The Town does not have a dog officer at this time, and the leash law is enforced inconsistently when it is enforced at all.

The Advisory Committee expressed the sentiment that we should give this pilot-program a chance and that dog-owners want to be able to comply with the Town by-law. A significant number of dog-owners attended the Advisory Committee meeting.

#### RECOMMENDATION

The Advisory Committee by a vote of 17-2 vote recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend Article 8.6 of the by-laws of the Town of Brookline by deleting the words "fenced in" in the second paragraph of Section 8.6.7 of said Article and by changing the words "dog run" to "designated off leash area" throughout the entire Article, provided that in each designated off leash area a sign, conspicuously displayed, shall state the authorized hours when that area can be used as such and the other conditions concerning such use of the area with the amendment set forth herein to expire on June 30, 2005, at which time Article 8.6 shall revert to the language existing immediately prior to the within amendment.

XXX

May 27, 2003  
Annual Town Meeting  
Article 27

PROPOSED AMENDMENT TO THE ADVISORY COMMITTEE MOTION  
UNDER ARTICLE 27:

by  
Stanley L. Spiegel, Town Meeting Member, Precinct 2

After the words "provided that ", insert the words: "the designated off leash areas shall not be allowed in any park or recreation area which is contiguous to a Brookline Public School playground or school building site, and further provided that "

EXPLANATION:

Concerns have been raised by members of the School Committee, PTO presidents and others that information should be obtained about how well the pilot off leash program is working in other parks, especially with regard to health and safety issues, before the program is put in place in parks that are especially utilized by school children. If the program is found to work well in other parks, it can be expanded with some confidence into the parks adjacent to school grounds, but it is reasonable to protect the safety of children by excluding such parks unless and until the pilot program has been found to be successful elsewhere.

ARTICLE 27

BOARD OF SELECTMEN'S SUPPLEMENTAL REPORT

In the Board's report under Article 27 in the Combined Reports, it was urged that the School Committee and the Park and Recreation Commission work together prior to Town Meeting to resolve the issue of using parks adjacent to school properties as part of the proposed pilot off-leash program. We are pleased to report that the School Committee and the Park and Recreation Commission did come to an agreement. Through the hard work of these two bodies, it was agreed that school grounds will not be used during the pilot program.

The agreement also included the possibility of using school grounds in the future as designated off-leash areas. At the end of the pilot program, which "sunssets" on June 30, 2005, the program will be reviewed and, if it were deemed to have been successful, properties adjacent to schools will then become eligible for consideration as off-leash areas, through the community process as originally outlined in the Park and Recreation Commission's description found under the warrant article in the Combined Reports.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on May 20, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

Since the printing of the Combined Reports, the Park and Recreation Commission has met with members of the School Committee and other concerned citizens who expressed their strongly held views that the parks adjacent to public school grounds should be excluded from the two year pilot program allowing off leash activity permitted by the By-law change proposed under Article 27. In response, the Park and Recreation Commission voted unanimously to exempt these parks from the pilot program, with the understanding that if the program were to prove successful, the School Committee would not object to including these parks for future consideration as possible sites for off leash activity. The School Committee has concurred with this understanding.

With these developments, the Advisory Committee has reconsidered its position on this Article and now supports language excluding the parks adjacent to schools in the By-law change.

**RECOMMENDATION**

By a vote of 15 to 1 the Advisory committee recommends FAVORABLE ACTION on the following vote:

**VOTED:** That the Town amend Article 8.6 of the By-laws of the Town of Brookline by deleting

the words "fenced in" in the second paragraph of Section 8.6.7 of said Article and by changing the words "dog run" to "designated off leash area" throughout the entire Article, provided that during the pilot program, areas adjacent to all schools will not be used as off leash areas. In each designated off leash area a sign, conspicuously displayed, shall state the authorized hour when that area can be used as such and the other conditions concerning such use of the area. The amendment set forth herein shall expire on June 30, 2005, at which time Article 8.6 shall revert to the language existing immediately prior to the within amendment.

#### ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

Since the printing of the Combined Report, the Park and Recreation Commission has met with members of the School Committee and other concerned citizens who expressed their strong belief that the parks adjacent to public school grounds should be excluded from the two year pilot program allowing off leash activity permitted by the By-law change proposed under Article 27. In response, the Park and Recreation Commission voted unanimously to exempt these parks from the pilot program, with the understanding that if the program were to prove successful, the School Committee would not object to including these parks for future consideration as possible sites for off leash activity. The School Committee has concurred with this understanding.

With these developments, the Advisory Committee has reconsidered its position on this Article and now supports language excluding the parks adjacent to schools in the By-law change.

#### RECOMMENDATION

By a vote of 12 to 1 the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend Article 8.6 of the By-laws of the Town of Brookline by deleting

ARTICLE 28

TWENTY-EIGHTH ARTICLE

To see if the Town will name the playground at Emerson Park the Daniel F. Ford Playground at Emerson Park, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

On October 21, 2002, the Town lost a warm-hearted, family-oriented, and valued member of the community. Daniel F. Ford, a life long resident of Brookline, passed away suddenly, leaving a huge void in many lives. Mr. Ford served on the Brookline Advisory Committee from 1964 through 1970, after which time he was appointed to the Park and Recreation Commission, a position he held until his untimely passing. Just one week earlier, he had appeared before the Board of Selectmen for reappointment to the Commission.

A former Chairman of the Commission, Mr. Ford was very proud of his record of only missing two meetings in 32 years. Many times during the summer months, he would leave his family's home on the Cape to attend a Commission meeting. He also served many years as a youth sports coach within the Town.

Dan Ford was a tremendous diplomat who devoted his abundant energy and expertise to his hometown. He will always be remembered as a true Brookline advocate, someone who made Brookline a better place to live, work, visit, and play. The Board of Selectmen can not think of a more fitting honor for Mr. Ford than to have the playground of his favorite park bear his name.

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

VOTED: That the Town name the playground at Emerson Gardens the Daniel F. Ford Playground at Emerson Gardens.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Through this article the Selectmen seek to have the playground area at Emerson Gardens (a.k.a. Emerson Park) on Davis Avenue named in honor of Daniel F. Ford. It would not change the name of the entire park, but a plaque would be erected at the playground area.

DISCUSSION

Dan Ford was a lifelong resident of Brookline who served on the Parks and Recreation Commission for 33 years. In that time, he missed only two meetings. He was the son a Brookline Firefighter who died in the line of duty. Dan lived on Davis Avenue and attended the Brookline schools as did his daughter. He was particularly protective of Emerson Park and spent many happy hours in the playground area with his granddaughter. In addition to the Parks and Recreation Commission, he served on the Advisory Committee from 1964 to 1970. He later appeared before the Advisory Committee many times on behalf of the Parks and Recreation Commission. He was a pleasure to work with. We recognize his devotion to Brookline, its Parks, and its youth recreation programs.

RECOMMENDATION

The Advisory Committee by a unanimous vote of 19-0 recommends FAVORABLE ACTION on the vote offered by the Selectmen.

*XXX*

ARTICLE 29

TWENTY-NINTH ARTICLE

Reports of Town Officers and Committees



# Town of Brookline

## Massachusetts

### HOUSING ADVISORY BOARD

Roger F. Blood, Chair  
Amy Anthony  
Leslie Fabian  
Kenneth M. Goldstein  
Joan B. Lamphier  
Kathryn Cochrane Murphy  
Kathy A. Spiegelman

333 Washington Street  
Brookline, MA 02445  
(617) 730-2130  
FAX (617) 730-2442

## Annual Affordable Housing Update

### Town Meeting

### May, 2003

Beginning in 1997 and pursuant to a warrant article adopted by Town Meeting, the Housing Advisory Board provides Town Meeting with an annual progress report on Brookline's work in support of affordable housing.

The Town seeks to

- preserve existing affordable housing;
- increase the supply of housing affordable to low and moderate income households through the encouragement of
  - the purchase and/or underwriting of affordability in existing rental buildings and
  - appropriate, mixed-income new development;
- apply Town-controlled resources to leverage, to the extent possible, other public and private sources of funding; and
- assure that housing so created is maintained affordable for the longest period legally possible.

During the past year the Town has accomplished the following:

1. Assisted Hebrew Rehabilitation Center for Aged, including providing \$1 million from the Housing Trust, to acquire three existing senior housing complexes, which will reverse the on-going attrition in affordable units, increasing the number of units offered at below market rents to 339 units of a total of 515, and extending the term of affordability for at least 40 additional years.
2. Worked with Pine Street Inn to complete its acquisition (from Brookline Improvement Coalition, the project sponsor) and financing of a deteriorated lodging house on upper Beacon Street. The building will provide 15 affordable rooms and studio apartments as permanent affordable housing for individuals with a range of lower incomes, potentially up to \$43,850. The Town's investment of almost \$908,000 in HOME funds leveraged \$1.6 million from the Commonwealth. The building is now undergoing renovation, and will be ready for occupancy in July.
3. Assisted Caritas Communities to preserve 14 rooms as permanent affordable housing in another deteriorated upper Beacon Street lodging house. The Town's \$450,000 in CDBG funds plus the private collaboration of Longyear LLC, in partial completion of its off-site affordable housing obligation, together leveraged an additional \$816,000 in gap financing from the Commonwealth and from the Massachusetts Housing Partnership. Renovations are underway, and occupancy – for individuals with a range of lower incomes, potentially up to \$56,560 -- will begin in September.
4. Initiated conversations regarding the future of the Brookline Co-op, a 116 unit affordable housing project, built under urban renewal, which will complete its obligations to the U.S. Department of Housing and Urban Development (HUD) in 2006.

5. Worked with the Planning Office of Urban Affairs of the Archdiocese in an unprecedented public planning process, begun in advance of its application for a comprehensive permit under Chapter 40B, and including neighbors, and local design and financing professionals. The process achieved a “friendly 40B”, in which the Town has committed up to \$3.5 million to a development which will provide 50 rental and condominium units affordable to a range of incomes from low to upper moderate, while preserving the historic St. Aidan’s church building through adaptation to market rate housing, and conserving and dedicating for public use the existing church forecourt. The Town’s commitment is expected to leverage a considerably higher amount in state, federal and private gap funding.
6. Worked with developers of new market rate housing subject to the inclusionary zoning provisions of the Zoning By-law to (a) select buyers and tenants for four new affordable rental units and three new affordable condominium units; (b) permit a new development including eight affordable condominiums; and (d) review another new development likely to provide four affordable rentals.
7. Completed the work on the Fisher Hill Master Plan Committee, recommending affordable housing as a potential use for the Town-owned reservoir on Fisher Hill, and initiated a planning process for that site.
8. Because of the importance of affordable housing to the Town’s Comprehensive Plan, designated an Affordable Housing Work Group which held four public sessions to further refine the Town’s goals, strategies and potential tools. The results will contribute to a housing plan which preserves the character of Brookline’s neighborhoods while seeking to increase the affordable housing inventory. The plan will aim at encouraging a blend of strategies involving both existing buildings and new development; satisfying the requirements of the State to articulate a path towards 10 percent affordability; and providing guidance to the Board of Appeals as it evaluates whether specific proposals for mixed income developments filed under Chapter 40B are appropriate to the neighborhood context.
9. Continued to counsel low and moderate income tenants and Town employees regarding home buying in Brookline, and provided and/or coordinated subsidized financing for five buyers.
10. Continued to speak with residential brokers and property owners in an effort to identify rental housing which might be transferred in ways which would achieve long term affordability; and with developers seeking opportunities to build affordable housing.
11. Achieved Housing Certification by the Commonwealth under Executive Order 418, giving Brookline a priority for discretionary grant funds, based upon taking proactive steps to encourage housing production.
12. Was awarded an additional allocation of the Commonwealth’s Soft Second Program funding to complement the Town’s low and moderate income homebuyer program.
13. Received approximately \$939,000 into the Housing Trust, including \$628,000 from private developers of small projects eligible to choose to make a cash payment in lieu of providing units, and \$311,225 from last year’s allocation of free cash.
14. Adopted, and worked on the State level to advance, certain improvements to current Chapter 40B provisions that would apply to Brookline and other communities that are high cost, built-up and/or with a track record in producing affordable housing (see attachment).



# TOWN of BROOKLINE

## *Massachusetts*

### BOARD OF SELECTMEN

DEBORAH B. GOLDBERG, CHAIRMAN  
DONNA R. KALIKOW  
JOSEPH T. GELLER  
GILBERT R. HOY, JR.  
ROBERT L. ALLEN, JR.

RICHARD J. KELLIHER  
Town Administrator

April 22, 2003

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Jane Wallis Gumble  
40B Task Force Chair  
Director, DHCD  
One Congress Street, 10<sup>th</sup> Floor  
Boston, MA 02114

Dear Ms. Gumble,

We are pleased that Governor Romney has convened a Task Force to consider possible improvements to Chapter 40B, the Commonwealth's "anti-snob zoning" statute.

For over thirty years, the Town of Brookline has expended considerable effort and resources to create and preserve a substantial supply of affordable housing - both owner-occupied and rental - for the betterment of the community. Yet, our affordable housing inventory as counted under Chapter 40B, at about 8 percent, falls short of the 10 percent goal established for all Massachusetts cities and towns under Chapter 40B. Furthermore, after considerable study, the Town has concluded that because of the high-cost and high-density character of our community and a lack of adequate state and federal housing subsidies, the remaining 600+ affordable units needed to progress from 8 to 10 percent cannot be achieved quickly, despite our best efforts.

Brookline has adopted, and willingly continues to support, the 10 percent goal locally, including explicitly stating this goal in our current Comprehensive Plan. Furthermore, Brookline continues to use all available tools to preserve and increase our affordable housing inventory, including the commitment of resources from the Town's operating budget and - since 1987 - a strong inclusionary zoning bylaw. We are fully supportive of the Commonwealth's efforts to encourage and recognize local communities' adoption of affordable housing plans that will chart a course toward achieving the 10 percent goal, and are moving toward adopting such a plan.

That said, we would submit that the current Chapter 40B regulation, which offers individual communities temporary protection against overrides of local zoning ordinances by the Housing Appeals Committee—currently based upon an arbitrary rate of progress toward the 10 percent goal—might be considerably improved upon in order to meet its stated objectives.

In this regard, we would offer the following core proposal for the Committee's consideration:

**Change the basis for measuring the rate of progress toward the 10 percent Chapter 40B goal from .75% of the community's total housing inventory over a one-year period to 10% of the community's affordable housing deficit over a two-year period.**

The current measure that will allow a city or town a one-year moratorium on processing new comprehensive permits is based upon an annual rate of affordable housing production equal to 0.75 percent of the community's total housing stock. For example, if a town's total housing stock were 10,000 units (the denominator), the required rate of annual progress would be  $10,000 \times 0.75$ , or 75 new affordable housing units per year (the numerator).

We suggest that a more appropriate denominator for this type of measure, rather than a community's total housing inventory, should be the total number of units that constitutes the remaining deficit between the community's current 40B inventory and the 10 percent goal. For example, if the above community with a total 10,000 unit housing stock currently has 200 affordable units under Chapter 40B, the remaining deficit to be closed (our recommended denominator) would be 800 units ( $10,000 \times .10 - 200 = 800$ ).

In other words, a city or town would submit an affordable housing plan that would project its rate of progress from its currently credited inventory (e.g., 200 units) to its Chapter 40B goal (e.g., 1,000 units).

This alternative method not only builds directly from the more relevant base (the gap), but it introduces an important fairness element that is absent under the current fixed standard. That element would be a positive recognition for communities that have already made good progress toward the 10 percent goal and, conversely, it would establish a proportionately higher annual threshold for a one year moratorium for communities that have done little to produce affordable housing on their own.

We suggest the following specific standard to receive temporary relief: ***That the required rate of progress be a 10 percent reduction of a community's affordable housing deficit during any given two year period.*** To continue with the example introduced above, the community with 10,000 total housing units and an 800 unit affordable housing deficit would need to produce 80 net new eligible affordable housing units over the previous 24-month period to secure temporary Chapter 40B relief.

In addition to the above core recommendation, we would offer the following three additional suggestions for revision and improvement to the current Chapter 40B requirements.

- 1. For counting affordable housing inventory under Chapter 40B, allow high cost municipalities to adopt, with DHCD approval, a definition of moderate income up to 100% of median area income.**

Because "low and moderate income" is not statutorily defined (and because authorizing legislation for other state initiatives such as the Affordable Housing Trust and the Community Preservation Act, has more inclusive income definitions), we believe this change might be possible through regulation. However, if DHCD is not prepared to recognize the needs of high cost communities in its overall administration of Chapter 40B, it could do so through the Local Initiative Program only. That is, DHCD could grant a community Chapter 40B credit for incomes up to 100 percent of median if the community determines that it is warranted by local need, specifically for those units which are produced on "local initiative", such as through local inclusionary zoning laws.

Brookline has one of the largest per-unit affordability gaps in the state, as is well documented in a recent CHAPA study. Despite our history as a diverse community, our substantial area zoned for multifamily housing, and ongoing efforts to create and preserve affordable housing, we are becoming a town of "haves and have-nots" -- those who are able to pay full market rates, and those fortunate enough to have subsidized housing -- leaving an enormous gap. Not only does the Town believe this to be an unhealthy situation, housing staff at Town Hall receives many calls from residents who face displacement by rising rents, thereby disrupting their community ties and in some cases their children's education. Often, their incomes exceed the 80 percent cap under Chapter 40B. While we wish to use our inclusionary housing policy to assist such residents, our concerns about meeting the 10 percent threshold under Chapter 40B deter us from doing so.

- 2. Count 100% of units in multi-family buildings that contain at least 25% affordable units, whether rental or condominiums, in communities with little vacant land, a significant proportion of units already rental and/or a significant portion of land already zoned for multifamily.**

Brookline would appreciate additional affordable rental housing, and encourages developers to consider this alternative. However, with rare exception, neither the Town nor other affordable housing funding sources are sufficient to address the reality of Brookline's market, which provides a high differential in return to developers of market rate condominiums over rental housing. As a practical matter, the Town is in no position to cause developers to propose rental rather than owner-occupied housing.

**3. Elevate the consideration of site and building design 31.07 (3) (b) to take into account impact on adjacent sites, once a project reaches the Housing Appeals Committee level.**

Because our Town is so built up, developers in Brookline who apply or who consider Chapter 40B tend to look to teardowns and/or small infill lots in already densely developed neighborhoods. In such cases, they are tempted to consider Chapter 40B as a license to design to the property line and/or at heights which directly impact the lives of neighbors on adjacent properties. Because Chapter 40B was developed as a tool for suburban and exurban areas, these adverse effects upon built-out communities may not have been anticipated.

We respectfully submit these suggestions in the spirit of making Chapter 40B more responsive to local conditions, while continuing to produce much-needed affordable housing statewide.

Thank you for your consideration. We would be pleased to discuss the above ideas further with the Committee and or DHCD staff.

Sincerely,



Roger Blood, Chair  
Housing Advisory Board



Deborah Goldberg, Chair  
Board of Selectmen

cc: Senator Cynthia Creem  
Representative Frank Smizik  
Representative Jeffrey Sanchez  
Representative Michael Rush  
Representative Brian Golden  
Geoff Beckwith, Executive Director MMA  
Aaron Gornstein, Citizens Housing and Planning Association

## **Report of the Moderator's Committee on a Tree Ordinance**

**Findings:** The Moderators Committee concludes that both public and private trees add significant value to the community and that a tree protection bylaw similar in scope and purpose to that attached as part of this report would be a beneficial and reasonable addition to the Town's bylaws. However, despite the value of protecting both public and private trees in Brookline, the Committee does not believe that a tree protection bylaw should shift existing resources from the maintenance and management of over 50,000 existing public trees or cause undue delay in development projects.

The Committee researched the staff time required to administer tree protection bylaws in other communities such as Newton and Lexington and determined that an additional staff person would be necessary to manage the permitting, inspections, mitigation and enforcement required for private tree protection in Brookline. Due to the current economic climate and the Town's "no-net hire" policy, the Committee was informed that additional staff can not be hired in the near future for the purpose of implementing this bylaw. Without sufficient staff administration, implementation of the tree protection bylaw would be both cumbersome and ineffective. The Committee recommends that a bylaw be adopted as soon as the Town has the financial resources to afford the personnel (estimated as .75-time equivalent) required for enforcement of the bylaw.

The Committee prepared a draft bylaw that it believes fairly balances trees' value to the community with other concerns, which could be proposed at a later date if staff resources become available to allow for adequate administration and enforcement. In the absence of a bylaw, the Committee recommends that the Planning Board, Conservation Commission, Zoning Board of Appeals, Preservation Commission and other town boards consider the value of trees to the community when settling policies and procedures and otherwise when such considerations are legally before them.

**Report:** As a result of the Fall Town Meeting 2001, a Moderator's Committee was established to evaluate the feasibility, effectiveness and possible benefits of a tree protection bylaw in Brookline. In Massachusetts, any person must obtain a permit to remove any tree in the public right-of-way, commonly referred to as street trees, however no such permit is required for the removal of trees on private property. The Committee held more than eight working meetings and one public hearing to consider the purpose, applicability, jurisdiction, implementation and enforcement of a tree protection bylaw in Brookline.

The Committee and the public engaged in extended discussions regarding potential goals of a bylaw, the necessary level of protection for private trees and the extent to which a bylaw might impact the rights of the property owner and impact development activity. As a guiding principle the Committee agreed that mature trees have aesthetic appeal, contribute to the distinct character of the community, improve air quality, provide glare and heat protection, reduce noise, aid in the stabilization of soil, provide natural flood and climate control, create habitats for wildlife, enhance property values and provide natural privacy to neighbors. The Committee attempted to balance those values against

anticipated concerns regarding private property rights, as well as the perceived statutory limits of authority with respect to such a bylaw. Finally, the Committee considered whether a bylaw could be implemented in an efficient and effective manner.

The Committee determined that the process of drafting a bylaw would help clarify whether such a bylaw would be desirable and would help the Committee better understand implementation and effectiveness issues in Brookline.

The Committee reviewed a wide range of categories that could be protected including heritage trees, residential landscape trees, natural wooded areas and unique trees. The draft tree protection bylaw does not discriminate between residential and non-residential properties, but rather sets conditions based upon the magnitude of the development project in comparison to existing development on the site and its associated impact on the community. The draft bylaw requires that roots, trunks and canopies of trees be protected during construction and that pruning of protected trees adhere to appropriate arboricultural standards. The draft bylaw requires that trees 8" caliper or greater being removed for construction or development purposes be replaced on an inch-per-inch basis. The bylaw permits a contribution to a tree replacement fund if trees cannot be maintained or planted on the site. This fund would be used to plant and maintain trees on public property.

The draft bylaw requires permits for removal of protected trees. The tree removal permit process would have a 20 business day turnaround, which would balance the need for timely issuance of permits with the need to properly administer the bylaw. The bylaw creates enforcement options including a notice, a stop-work order, and injunctive relief. It also sets penalties for removal of protected trees without a permit and failure to replace protected trees.

The tree protection bylaw provides for the creation of a Tree Preservation Plan, and a combination of pre-construction planning, onsite monitoring and mitigation measures during construction and post-construction, monitoring and maintenance. Mitigation requirements need to be strong, comprehensive and fair. Without these components the tree protection bylaw would be ineffective. The bylaw also contains provisions for replacing trees that cannot be saved, and obligations to maintain and monitor the replacement trees.

The policies created by the bylaw need to be flexible and responsive to a variety of situations. The Committee decided that the bylaw should be supplemented with a set of Rules and Regulations established by the Tree Planting Committee. The rules would allow for more detailed consideration of the issues identified in the bylaw.

Finally, the Moderator's Committee evaluated the viability of a more stringent tree protection bylaw, however concluded the public will to pass such a bylaw did not exist in light of competing considerations.

**Conclusion:** A tree protection bylaw in Brookline would establish trees as a valued resource that is threatened by development pressures and recognize that continued, uncontrolled loss of trees has broad public health, economic, and quality of life implications for the entire Town. The bylaw would set community-based procedures and incentives for retaining and protecting trees during development, whenever reasonably possible.

The Committee considered the success and viability of existing tree bylaws in other communities and concluded that if permitting is difficult, costly and time-consuming it can potentially discourage compliance with the tree bylaw. The Tree Warden should be vested with the authority and time necessary to carry out his or her responsibilities associated with this bylaw. Without the infrastructure and related programs to support this bylaw its effectiveness will be quite limited.

The Committee evaluated the possible avenues for implementation, including the use of existing permitting and bylaw mechanisms within the Town. The Town should not implement a tree protection bylaw until there is appropriate staffing in place that can ensure the process is fair, equitable, performed within a realistic time period and adds value to the community. With careful thought, implementation and public education, the tree protection bylaw can be effective in preserving trees that are determined to be significant to the Town. The Committee recommends that at some future point this bylaw be presented to Town Meeting for adoption with consideration of appropriate staffing. Again, in the absence of a bylaw, the Committee recommends that all Town Boards and Commissions consider the value of trees to the community when settling policies and procedures and otherwise when such considerations are legally before them.

# **Town of Brookline DRAFT Tree Bylaw**

## **Section 1: Preamble**

The Town of Brookline finds that mature trees have aesthetic appeal, contribute to the distinct character of the community, improve air quality, provide glare and heat protection, reduce noise, aid in the stabilization of soil, provide natural flood- and climate-control, create habitats for wildlife, enhance property values and provide natural privacy to neighbors.

## **Section 2: Intent and Purpose**

This by-law is enacted for the purpose of preserving and protecting both Public Shade Trees pursuant to General Law Chapter 87 and certain designated trees on private property. It is desirable to plant more public shade trees than are removed to compensate for tree losses and the length of time to maturity.

## **Section 3: Definitions**

When used in this by-law, the following definitions shall apply:

- 3.1 Demolition: Any act of pulling down, destroying, removing or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.
- 3.2 Caliper: Diameter of a tree trunk (in inches) measured 6 inches above the ground for trees up to and including 4-inch diameter, and 12 inches above the ground for larger trees.
- 3.3 DBH ("Diameter at Breast Height"): The diameter (in inches) of the trunk of a tree (or, for multiple trunk trees, the aggregate diameters of the multiple trunks) measured 4 ½ feet from the existing grade at the base of the tree.
- 3.4 Person: Any person, firm, partnership, association, corporation, company or organization of any kind including public utility and municipal department.
- 3.5 Public Shade Tree: Any tree within the public right-of-way except for state highways that, as determined by the Tree Warden, has any portion of the stem between 6 inches and 4 ½ feet above grade actively growing into the public right-of-way.
- 3.6 Tree Removal: Any act that will cause a tree to die within a three (3) year period.
  - 3.6.1 A protected tree is any tree that is greater than eight inches in diameter measured at 4.5' off the ground.
  - 3.6.2 Structure: 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".

## **Section 4: Applicability of the By-law**

- 4.1 Applicability: The circumstances under which the tree removal and replacement regulatory process delineated in this by-law shall apply are as follows:
- (a) the proposed demolition of an existing residential structure and its replacement with a new dwelling/structure.
  - (b) the proposed construction of an addition to the existing residential structure that constitutes a 10% or greater increase in the building footprint
  - (c) the proposed demolition of an existing non-residential structure and its replacement with a new dwelling/structure.
  - (d) the proposed construction of an addition to the existing non-residential structure that constitutes a 10% or greater increase in the building footprint.
  - (e) the proposed new construction of a residential or non-residential structure on any lot.
  - (f) the proposed removal and replacement of existing public shade trees by the town or their agents or contractors.
  - (g) Section 509 or special permit process.

**Section 5: Tree Warden**

The duties or responsibilities of the Tree Warden shall conform to General Law Chapter 87 and shall include, but not be limited to the following: management of all trees within public rights-of-way and adjacent to public buildings and commons; care and control of trees on Town property if so requested by the Commissioner of Public Works or the Director of Parks and Open Space

- (a) expending funds, in coordination with the Tree Planting Committee, appropriated for planting trees on Town land under the jurisdiction of the Tree Warden;
- (b) enforcement of this by-law;
- (c) work with the Building Commissioner his or her designee to review proposed tree removals as regulated by this by-law.

Moreover, the Commissioner of Public Works or the Director of Parks and Open Space may authorize the Tree Warden to undertake other responsibilities consistent with the intent of this by-law.

**Section 6: Regulation of Public Shade Trees**

6.1 Scope

A Public Shade Tree may not be cut, pruned, removed or damaged by any person other than the Tree Warden or his or her designee until and unless the Tree Warden issues a written permit pursuant to this section.

6.2 Procedures

Any person seeking to remove a Public Shade Tree shall submit an application to the Tree Planting Committee in accordance with any application requirements issued by the Warden. The Tree Planting Committee shall hold a public hearing on applications for removal, at the expense of the applicant, in accordance with the provisions outlined within General Law Chapter 87. The permit issued by the Tree Planting Committee may specify schedules, terms, and conditions, including requiring the planting of replacement trees.

### 6.3 Planting of Trees on Public Land

Any person seeking to plant a Public Shade Tree on Town land under the jurisdiction of the Tree Warden must obtain written permission from the Tree Warden. Such permission may specify schedules, terms, and conditions as deemed appropriate by the Tree Warden.

## **Section 7: Regulation of Protected Trees**

### 7.1 Scope

The removal of Protected Trees is prohibited unless authorized by the Tree Warden or the Tree Planting Committee as set forth below.

### 7.2 Procedures

In connection with Major Construction or Demolition, the owner of the property shall submit a proposal for tree removal and mitigation to the Building Commissioner with the application for a demolition or building permit. As part of the permit process, the property owner shall submit to the building commissioner a site plan drawn and stamped by a registered land surveyor showing all existing trees 8" DBH or greater.

The Building Commissioner shall refer the tree proposal to the Tree Warden. The Tree Warden shall conduct a site visit. If the applicant's proposal is consistent with the mitigation requirements herein, the Tree Warden will issue a permit within twenty (20) business days of receipt to authorize the tree work. If the proposal does not meet or satisfy these requirements, the Tree Warden shall so notify the applicant and deny the permit.

An applicant may appeal the denial or grant of a tree permit to the Tree Planting Committee. The Tree Planting Committee shall conduct a public hearing on the appeal and shall give the public notice thereof, at the expense of the applicant. Public notice shall include all persons owning land within 300 feet of any part of applicant's land at least fourteen (14) days before said hearing. The Tree Planting Committee shall rule within twenty business (20) days of the public hearing.

Appeals of final decisions of the Tree Planting Committee shall be to the Board of Selectmen.

### 7.3 Mitigation

A Protected Tree shall not be removed unless at least one of the following provisions is satisfied:

(a) Replanting of trees: such replanting shall be on the basis of ½ inch caliper of new tree(s) for each inch of DBH of tree(s) removed, and each replanted tree must have a minimum caliper of 3 inches. The replanting shall occur no later than 12 months after completion of the construction work, either on applicant's land or on land abutting applicant's land with express approval of the owner of such abutting land; or other site as approved by the Tree Warden

(b) Contribution into the Tree Replacement Fund: such contribution shall be \$50 per DBH inch of Protected Tree removed not already mitigated as per section 7.3 (a); or

(c) The applicant demonstrates that the removal of a Protected Tree does not adversely impact the interests identified in section one of this by-law.

#### 7.4 Tree Replacement Fund

The Director of Parks and Open Space with input from the Tree Warden, shall have sole discretion concerning the use of funds from the Tree Replacement Fund which shall be disbursed by the Tree Warden for the planting (and maintenance, as necessary) of trees on public land or private property with express approval of the owner of such private property.

### **Section 8: Emergencies and Exemptions**

Provisions of this by-law shall not apply to:

- (a) emergency projects necessary for public safety, health and welfare as determined by the Commissioner of Public Works or the Director of Parks and Open Space; and
- (b) trees that are hazardous (threat to life and/or property) as determined in writing by the Tree Warden and/or the Town Arborist; and
- (c) trees identified by the Commonwealth that pose a risk due to insect/disease infestation.

### **Section 9: Enforcement/Penalties**

#### 9.1 Enforcement:

Any person violating this by-law is subject to the penalties under Article I, Section 6 as amended in this warrant article; General Law Chapter 87 (for violating Section 6 of this by-law); and other legal enforcement action by the Town. The Tree Warden is authorized to enforce the provisions of Article I of the General By-laws and the provisions of General Law Chapter 87. Any other legal enforcement action shall be determined by the Board of Selectmen in consultation with the Tree Planting Committee, the Tree Warden and Town Counsel.

#### 9.2 Penalties:

Any person who removes or trims a public shade tree without a permit or hearing as required by law shall be subject to cumulative fines as follows:

- up to \$500 as provided by Massachusetts General Laws Chapter 87, § 6.
- Triple damages as set forth in Massachusetts General Laws Chapter 242, § 7.

Each instance in which a Protected Tree is removed without a Tree Permit shall constitute a violation of this by-law and shall be subject to a fine of \$300 and \$50 per caliper inch.

A violation of the provisions of this by-law shall result in the revocation of a building permit.

### **Section 10: Rules and Regulations**

The Selectmen may promulgate, after public notice and hearing, Rules and Regulations to effectuate the purposes and intent of this By-law. Failure by the Selectmen to promulgate such Rules and Regulations shall not act to suspend or invalidate the effect of this By-law.

### **Section 11: Severability**

If any section, paragraph or part of this by-law is for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force.

**Section 12: Relationship to Other By-laws**

Nothing in this by-law shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing Town of Brookline by-laws or Commonwealth of Massachusetts laws.

**SELECTMEN'S COMMITTEE  
ON THE PROVISIONS OF THE  
1994 OVERRIDE**

**Overview**

The Town of Brookline's FY 2003 budget development process can best be described as dynamic and fluid. The intergovernmental dependencies of cities and towns to the State financial condition became even more evident. The Gubernatorial election also added to the uncertainty of the process. The Acting Governor submitted a budget that incorporated a level funding of State Aid. The House of Representatives notified communities that a 10% Aid reduction in aid should be assumed. Tax increases were debated and enacted after most communities concluded their annual budget process. The confusion in the State budget process initially created difficult choices at the local government level on which services to offer while presenting a balanced financial plan.

In this atmosphere of confusing messages from State leaders, the Town submitted a Financial Plan that proposed modest reductions in the annual amount appropriated for capital outlay in the Department of Public Works. This initial proposal exposed a difference of opinion in regard to the interpretation of the legislative intent of a General Override that occurred nearly 10 years ago, in 1994. The Override allocated the increased property tax for the following purposes:

School Enrollment	\$500,000
School Technology	400,000
School Education Supplies	200,000
School Building Maintenance	200,000
Town Building Maintenance	200,000
Refuse Collection Fee Reduction	460,000
Department of Public Works Capital Outlay	700,000
Police Department Capital Outlay	200,000
Fire Department Capital Outlay	100,000
Total Override	\$2,960,000

Three interpretations of the original legislative intent surfaced. There were some who believed that the 1994 Override had a commitment to adhere to the above allocations on an annual basis. Another opinion was that the increase in appropriations for capital outlay was an attempt to bring the quality of capital equipment up to appropriate levels. Finally, there were those who believed that the allocations of the 1994 Override bound the Town for the initial year, but revenue could be reallocated to other areas if need warranted.

In the end, State leaders temporarily resolved the fiscal dilemma and provided additional State Aid. The Town allocated some of this increased aid to restore Public Works capital outlay to the original 1994 Override amount of \$700,000. This action was followed by a commitment of the Board of Selectmen, as part of the FY 2004 Budget Guidelines, to review the issue, and provide recommendations as to how the Town should interpret the legislative intent of the 1994 override for future financial

planning. A Committee was formed, with representatives of the Board of Selectmen, School Committee and Advisory Committee, to review the policy and make recommendations for change that would be relevant to the current needs of the community. The committee met during the period of January through April 2003. Representatives of the School Department, Building Department, Public Works, Police Department, and Fire Department met with the committee to discuss how the additional funding had been used in the last 10 years; what the current condition is of capital outlay, instructional supplies, building maintenance and technology; and what changes to the current policy could be made to meet current needs. The committee did not review the issue of what the appropriate revenue mix should be between property tax and user fees to support refuse collection and disposal services. Nor did they review the Override revenue allocated for school teachers.

## **Findings**

The Committee believes that the goals and objectives of the Override to maintain the quality of school and town buildings, to support school technology, to provide for adequate education learning supplies, and to maintain capital equipment of Police, Fire, and Public Works are as relevant today as they were in 1994. There are some adjustments to the implementation of the policy that are appropriate to meet today's needs. These recommended changes are as follows:

- School and Town Building maintenance is currently sufficient to meet the needs of the community. However, as the Town has shifted to contracted services for specialized services, it loses flexibility in the use of the remaining funds. It is recommended that in future years, this allocation be increased by \$100,000 to meet both specialized needs and general repair needs.
- School instruction materials are adequately funded. The School Administration should develop a plan of systematic replacement of instructional materials on a scheduled basis.
- School technology allocations have recently been increased by an additional \$150,000. However, much of the present allocation supports technology staff. A review of equipment is currently included in the FY 2004 Capital Improvement Program. This review should help to determine the levels of equipment required in this area.
- The needs of capital outlay for both the Police and Fire Departments have changed from those existing in 1994. The objective of the \$100,000 allocation to the Fire Department capital outlay was to provide for hoses, nets, nozzles, and other equipment to equip the fire apparatus. Currently, when the Town purchases a Fire Pumper/Ladder, as part of the CIP budget, the vehicle is fully equipped with radios, hoses, and other equipment. The Town has adopted a systematic replacement of its fire apparatus, which is vital to our efforts to assure excellence in fire protection. The fully equipped vehicles allow the Town to be flexible in its revenue allocation for capital outlay.

The Police Department has dramatically expanded its use of technology in an effort to provide excellence in public safety. Cars are now equipped with computers, location devices, and improved communication equipment. The combined amount of appropriations in the Police budget prior to the override and the additional revenue

allocation from the override is \$312,000. The annual replacement cost of this equipment has exceeded this amount.

It is recommended that the future allocation for Police and Fire capital outlay be combined and labeled as public safety override funding and set at \$412,000, the current level. In this way, Town Financial and Capital planners will have added flexibility in preserving the quality of public safety equipment while adhering to the 1994 Override appropriation target.

- The original allocation for Public Works capital outlay focused upon vehicle replacement. The original allocation was \$700,000. Currently, the Public Works fleet is in excellent condition. The Department has adopted a systematic replacement of equipment and maintains a strong preventative maintenance program. Inflation has been relatively stable in the last 10 years. Nevertheless, increased inflation reduces the purchasing power of the original allocation. In future years, the level of allocation should be reviewed to address the effects of inflation. The current level of appropriation is adequate for Town needs.

In order to increase the flexibility of the Town to address future capital outlay needs, the use of the appropriation should be expanded to include expenditures for sidewalk improvements.

Finally, an issue has been raised about the types of vehicles being purchased by the department and the domestic garaging of vehicles. During times of financial stress, the style of vehicles and domestic garaging of vehicles can take on symbolic dimensions of waste and inefficiency. There are universally accepted criteria in both the private and public sectors for some vehicles to be domestically garaged. This is often associated with emergency response to situations that arise and/or it can be a condition of employment. It is recommended that the Town Administrator review the current policy of domestic garaging of vehicles and ascertain which employees fall within these criteria in order to justify the authorization for domestic garaging of vehicles. It is further recommended that the model of vehicles be established in the mid-size range. The Committee does not believe it necessary for the Town to purchase additional SUVs or large sedans in every other instance.