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, November 16, 2004

at

7:00 P.M.

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

NOVEMBER 16, 2004 SPECIAL TOWN MEETING
INDEX OF WARRANT ARTICLES

1. Approval of unpaid bills. (Selectmen)

2. Approval of collective bargaining agreements. (Human Resources Board)

3. FY2005 Budget Amendments. (Selectmen)

4. Amendment to Town By-Laws - - establish a new By-Law creating the Information Technology Department. (Selectmen)

5. Amendment to Town By-Laws - - removing fee schedules of certain departments. (Town Counsel)

6. Amendment to Article 8.17 of the Town By-Laws – Focused Residence Picketing. (Selectmen)

7. Amendment to Town By-Laws - - establish Article 7.12 – Undergrounding Utilities. (Underground Wires Committee)

8. Amendment to Article 8.16 of the Town By-Laws – Recycling Waste Materials - - require all Brookline residents to recycle. (Solid Waste Advisory Committee)

9. Amendment to Article 3.8 of the Town By-Laws – Building Department - - new section requiring the Building Department to provide homeowners with an information bulletin on the Home Improvement Contractor Law (HICL). (Petition of Scott Gladstone)

10. Amendment to Article 5.6 of the Town By-Laws – Preservation Commission and Historic Districts - - creation of the Graffam-McKay Local Historic District. (Preservation Commission)

11. Authorize a Land Lease at the Walnut Hills Cemetery for a Telecommunications Antenna. (Police Chief and Fire Chief)

12. Discontinuance of a Portion of Reservoir Road. (Department of Public Works)

13. Acceptance of Massachusetts General Laws, Chapter 41, Section 81A - - establish an elected Planning Board. (Petition of Gary Jones)

14. Legislation to Offer Incentives to the Owners of Two- and Three-Family Dwellings to Rent Units to Low- or Moderate-Income Households. (Petition of Linda Dean and Martin Rosenthal)

15. Legislation to Establish a Public Safety Injured on Duty (IOD) Medical Expenses Trust Fund. (Finance Department)

16. Amendment to Section 4.07 of the Zoning By-Law – Table of Use Regulations - - amend Principal Use 6. (Department of Planning and Community Development)

17. Amendment to Section 4.07 of the Zoning By-Law – Table of Use Regulations - - amend Principal Use 33A. (Department of Planning and Community Development)

18. Amendments to Section 4.08 of the Zoning By-Law – Affordable Housing - - required affordable units. (Department of Planning and Community Development)

19. Amendment to the Zoning By-Law - - Establishment of a New Section 3.03 – Interim Planning Overlay District. (Department of Planning and Community Development)

20. Amendments to the Zoning By-Law with Respect to the Zoning Map. (Petition of Richard Benka)

21. Resolution Supporting the Overhaul of the Two-Hour Parking Ban, with Targeted and Codified Priorities. (Petition of Martin Rosenthal)

22. Resolution to Encourage Parents and Caregivers of Children to Refrain from the Use of Corporal Punishment. (Petition of Ronald Goldman)

23. Dedication of a Memorial Sign at Thorndike and Harvard Streets in Memory of Maxwell Adler. (Veterans Services)

24. To Name the Playground Now Known as Coolidge Park the Judge Sumner Z. Kaplan Playground and Park. (Petition of Thomas Robinson)

25. Reports of Town Officers and Committees. (Selectmen)

ARTICLE 1

FIRST 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. There are three unpaid bills from two departments totaling $2,092.10. The bills come from the Town Clerk's Office ($1,502.10) and the Human Resources Department ($590).

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on September 28, 2004, on vote offered by the Advisory Committee.

ROLL CALL VOTE:
Favorable Action
Allen
Geller
Hoy
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
When, for various reasons, bills for goods or services provided to the town in a given fiscal year are not paid before the books for that fiscal year are closed, payment from the budget in a following fiscal year requires a vote of approval by Town Meeting. A four-fifth's vote is needed at an Annual Town Meeting and a nine-tenth's vote is needed at a Special Town Meeting such as this. These requirements are quite stringent although as a practical matter, approval of unpaid bills from a prior fiscal year is almost always passed unanimously or nearly so. At this Town Meeting, approval is being sought for the payment of three bills from FY 2004.

15. Legislation to Establish a Public Safety Injured on Duty (IOD) Medical Expenses Trust Fund. (Finance Department)

16. Amendment to Section 4.07 of the Zoning By-Law – Table of Use Regulations - - amend Principal Use 6. (Department of Planning and Community Development)

17. Amendment to Section 4.07 of the Zoning By-Law – Table of Use Regulations - - amend Principal Use 33A. (Department of Planning and Community Development)

18. Amendments to Section 4.08 of the Zoning By-Law – Affordable Housing - - required affordable units. (Department of Planning and Community Development)

19. Amendment to the Zoning By-Law - - Establishment of a New Section 3.03 – Interim Planning Overlay District. (Department of Planning and Community Development)

20. Amendments to the Zoning By-Law with Respect to the Zoning Map. (Petition of Richard Benka)

21. Resolution Supporting the Overhaul of the Two-Hour Parking Ban, with Targeted and Codified Priorities. (Petition of Martin Rosenthal)

22. Resolution to Encourage Parents and Caregivers of Children to Refrain from the Use of Corporal Punishment. (Petition of Ronald Goldman)

23. Dedication of a Memorial Sign at Thorndike and Harvard Streets in Memory of Maxwell Adler. (Veterans Services)

24. To Name the Playground Now Known as Coolidge Park the Judge Sumner Z. Kaplan Playground and Park. (Petition of Thomas Robinson)

25. Reports of Town Officers and Committees. (Selectmen)

DISCUSSION

One of the bills was from University Products, Inc. of Holyoke, MA for supplies provided to the Town Clerk's office in the amount of $1502.10. The purchase order authorizing payment had been closed prematurely, preventing timely payment of this invoice.

The other two bills, for $295.00 each, totaling $590.00, were from David Wilson Associates, the recruitment advertising agent utilized by the Human Resources Department, for advertising two vacant positions with Boston.com. These bills were not received until September, too late to be paid from the FY 2004 budget. The Advisory Committee has determined that these bills all represent legitimate obligations of the town for goods or services provided for which payment has not yet been made.

RECOMMENDATION

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

VOTED: To authorize payment of the following unpaid bill from a prior fiscal year and appropriate and transfer $1,502.10 from the FY2005 Town Clerk budget for:

University Products, Inc. $1,502.10

By a vote of 17-0, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: To authorize payment of the following unpaid bill from a prior fiscal year and appropriate and transfer $590.00 from the FY2005 Human Resources budget for:

David Wilson Associates $590.00

XXX

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 FY2004 and/or FY2005 cost items in collective bargaining agreements between the Town and various employee unions; fund wage and salary increases for employees not included in the collective bargaining agreements; and amend the Classification and Pay Plans of the Town; or act on anything relative thereto.

To: Board of Selectmen
From: John Dunlap, Director of Human Resources
Date: September 17, 2004
Re: Article Two - Collective Bargaining – AFSCME Local 1358 School Traffic Supervisors

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The Town has completed negotiations with the School Traffic Supervisors, AFSCME Local 1358. The Union has ratified this contract. This agreement is for a three-year contract commencing on July 1, 2004 and ending on June 30, 2007. Currently this bargaining unit represents nine full-time employees and fourteen part-time employees.

General Wage Increase

This agreement includes the same general wage increase as the main AFSCME contract, which follows:

July 1, 2004	2%
July 1, 2005	3%
January 1, 2006	1%
July 1, 2006	2%
January 1, 2007	1%

Longevity

This agreement includes a $25.00 increase in longevity increments in the second and third year of the contract for eligible full-time employees. The total cost of this increase over the three-year period is estimated to be $675. The revised longevity schedule for the third year of the contract will be:

Ten years but less than fifteen:	$165
Fifteen years but less than twenty:	$195
Twenty years but less than thirty:	$225
Thirty or more years:	$300

Uniform Allowance

This agreement includes a $50.00 increase in the uniform allowance in both the first and second year of the agreement. This increase applies only to full-time employees. The total cost for this increase over the three-year period is estimated to be $3,139.

A complete copy of this Collective Bargaining Agreement and this Memorandum of Agreement is available in the Human Resources Office. The total appropriation requested to fund this agreement in Fiscal Year 2005 is $8,994. The three-year roll-out cost of this agreement is $76,698.

SELECTMEN'S RECOMMENDATION

As detailed in the Human Resources Director's memo, the Town has reached an agreement on a contract with the School Traffic Supervisors, AFSCME Local 1358. The agreement is for a three-year period beginning July 1, 2004 and ending June 30, 2007.

The agreement calls for a 2% wage increase for FY05; a 3% / 1% split for FY06; and a 2% / 1% split for FY07. This represents an 8% payout over the three-year period and a 9% increase going forward on general wages. Also included is a $25.00 increase in longevity increments in the second and third year of the contract for eligible full-time employees and a $50.00 increase in the uniform allowance for full-time employees in both the first and second year of the agreement. The FY05 cost of the agreement is $8,994, while the total roll-out cost is $76,698.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on September 28, 2004, on the following vote:

VOTED: To approve and appropriate and transfer $8,994 from Item #20 in the FY2005 budget approved under Article 8 in the Warrant of the 2004 Annual Town Meeting, for the cost items in the following collective bargaining agreement that commences on July 1, 2004 and ends on June 30, 2007:

AFSCME Local 1358 School Traffic Supervisors

all as set forth in the report of John Dunlap, Director of Human Resources, dated September 17, 2004, which report is incorporated herein by reference.

ROLL CALL VOTE:
Favorable Action
Allen
Geller
Hoy
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The Town and the School Traffic Supervisors, AFSCME Local 1358 have agreed to a new collective bargaining agreement for the period July 1, 2004 through June 30, 2007. This bargaining unit represents nine full-time employee and 14 part-time employees.

DISCUSSION

The wage portion of the agreement is the same as for the main AFSCME contract as follows:

July 1, 2004	2%	(Retroactive)
July 1, 2005	3%	
January 1, 2006	1%	
July 1, 2006	2%	
January 1, 2007	1%	

The agreement includes a $25 increase in longevity increments in the second and third year of the contract for eligible full-time employees. The cost of the increased longevity increment is estimated to be $675.

The agreement also includes a $50 increase in the uniform allowance for full-time employees in the first and second year of the agreement. The total cost of this provision is expected to be $3,139.

The total appropriation for FY 2005 to fund the contract is $8,994. The total three-year roll out cost is expected to be $76,698.

RECOMMENDATION

This agreement fits within the town's budget and financial planning and represents a good value to the town and fair compensation for both the town and our employees.

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

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ARTICLE 3

THIRD ARTICLE

To see if the Town will:

A) Appropriate additional funds to and from and adjust the various accounts in the fiscal year 2005 budget or transfer funds between said accounts;

B) Appropriate $568,739, 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, utilizing so-called Chapter 90 funding;

C) And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or provided by any combination of the foregoing; and authorize the Board of Selectmen, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants and aid from both federal and state sources and agencies for any of the purposes aforesaid;

or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

There are three issues related to the FY2005 budget, which was approved at the Annual Town Meeting in June. They are as follows:

1. Chapter 90 funding
2. Health Insurance savings
3. Estimated shortfall in Local Receipts

As part of the Transportation Bond Bill signed by the Governor on August 10, the Commonwealth approved $450M over three years for the Ch. 90 program. The Governor has authorized $120M for FY05, providing Brookline $568,739. These funds will go toward much-needed street repairs, which is positive news for the Town's capital improvements.

There is also good news on the operating budget side. As a result of the efforts of all involved with the move to a single carrier of health insurance (Blue Cross/Blue Shield),

there will be significant savings in the Group Health budget. The change-over began on October 1, resulting in eight months of savings, estimated to be $800K. The breakdown of the savings between the Town and Schools is $403,600 Town / $396,400 Schools.

Unfortunately, there is a projected revenue deficit for FY05. The FY05 Local Receipts budget included a $4.4M estimate for Parking Fines, an estimate that was based on the FY03 experience. The FY04 actual was $4 million, a decrease of more than $500K from FY03. This decrease is due to the fact that there were 44,000 fewer tickets issued in FY04 than in FY03. The first quarter of collections and ticket issuance are in line with the FY04 experience, so this revenue source will not meet its budget. Therefore, the Local Receipt budget needs to be reduced.

In order to bring the FY05 budget into balance, and to do so without negatively impacting the School budget, the proposal is to allocate to the Schools budget its share of the savings attributable to the Group Health budget ($396,400), with the balance ($403,600) used to compensate for the shortfall in Local Receipts.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2004, on vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The purpose of Article 3 is to make adjustments to the FY 2005 budget. The article has two sections. The first section deals with Chapter 90 funding and the second part addresses a shortfall in local receipts and savings in group health costs.

DISCUSSION

Chapter 90

The State provides funds under its Chapter 90 program for the maintenance of certain streets in the town. About 1/3 of the town's streets are eligible for 100% state reimbursement. As part of the Transportation Bond Bill approved by the State, Brookline will receive an additional $568,739 in Chapter 90 funds. This will be used for roadway projects, with approximately $300K going toward Beacon Street.

Local Receipts/Group Health

In the spring, the Advisory Committee mentioned there were early indications that anticipated revenues contributing to Local Receipts might not meet projections. That now seems to be the case. The actual figure of $4M in parking fines is 10% less than estimated ($4.4M). Therefore, we must reduce our FY05 Local Receipts budget by approximately $400K.

It appears, however, that Group Health costs will be less for FY05 than we had budgeted. The Town is changing to health coverage exclusively by Blue Cross/Blue Shield beginning October 1. Therefore, there will be an estimated savings of $800K in Group Health costs over the balance of FY 2005. The Town and Schools have agreed to apportion the health insurance savings, $403,600 for the Town and $396,400 for the Schools.

To effect the FY 2005 budget changes, Article 3 proposes the following changes:

Decrease Local Receipts $403,600 to $18,571,625
Increase Line 21 Schools $396,400 to $55,817,215
Decrease Line 22b Group Health $800,000 to $15,419,000

RECOMMENDATION
The Advisory Committee, UNANIMOUSLY, recommends FAVORABLE ACTION on the following vote:

VOTED:

A. That the Town amend the FY2005 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
#21 – School Department	$55,420,815	+ $396,400	$55,817,215
#22 – Employee Benefits			
b) Group Health	$16,219,000	- $800,000	$15,419,000

B. Raise and appropriate $568,739, 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, utilizing so-called Chapter 90 funding.

XXX

ARTICLE 4

FOURTH ARTICLE

To see if the Town will amend the Town By-Laws by amending ARTICLE 3.11 to 3.11A and by inserting a new Article 3.11B to read as follows:

ARTICLE 3.11B
INFORMATION TECHNOLOGY DEPARTMENT

SECTION 3.11B.1 ESTABLISHMENT

The Information Technology Department, hereinafter referred to as the Department, is hereby established. The Department is responsible for the integration of all activities and resources designated as: 1. systems and data processing, comprised of computer-based systems design and implementation, applications, and operating software; 2. telecommunications systems and networks, comprised of the integration of planning, development, and implementation of all systems and network services; 3. delivery of applications and other information services products that meet the users' specifications in terms of quality and cost; 4. protection of the Town's computer data and information assets and resources; 5. identification of opportunities in the development and support of new and existing technologies; 6. training of employees in the use of various aspects of information technology; and 7. formulation of an annual Information Technology Capital Plan as part of the Capital Improvements Program (CIP).

SECTION 3.11B.2 PURPOSE

It is the intent and purpose of this By-Law to establish a department whose mission it is to assure that technology is used to enhance the delivery of town and school services and information to the community. The Department will work to attain efficiencies and economies of scale; reduce or eliminate duplication and overlapping of services, responsibilities, and functions; improve the coordination of planning for the use of technology between and among various town departments; and manage the implementation of all technology-related projects.

SECTION 3.11B.3 CHIEF INFORMATION OFFICER

(A) Appointment & Term of Office. There shall be a Chief Information Officer, hereinafter referred to as the “CIO”, recommended by the Town Administrator in consultation with the Superintendent of Schools for appointment by the Board of Selectmen in accordance with the provisions in Chapter 270 of the Acts of 1985. The appointment shall be made annually for a term of one year, commencing July 1 of each year and continuing until the appointment and qualification of a successor.

(B) Qualifications. The CIO shall be a person especially fitted by education, training and experience to perform the duties and exercise the powers of the office.

(C) Powers & Duties. The CIO shall be responsible for the effective management, administration and coordination of all operations within the Department including financial affairs and the management, administration and control of all personnel assigned to the Department. The CIO shall review and approve hardware and software purchases for all Town departments. The CIO shall appoint and may remove all other personnel within the Department.

SECTION 3.11B.4 INFORMATION TECHNOLOGY ADVISORY COMMITTEE

The Board of Selectmen shall appoint three residents to serve on the Information Technology Advisory Committee, hereafter referred to as the "ITAC", for three-year staggered terms. The ITAC shall be responsible for providing community input to IT decision making, periodically reviewing the IT Strategic Plan including annual updates, and evaluating lessons learned from major IT initiatives. The ITAC shall meet quarterly, and at other times deemed necessary by the CIO and / or the Chairman of the ITAC.

SECTION 3.11B.5 INTERDEPARTMENTAL INFORMATION TECHNOLOGY COMMITTEE

The CIO shall form an Interdepartmental Information Technology Committee, consisting of representatives from town and school departments that use information technology. The Committee will be responsible for fostering cross-departmental collaboration, promoting multilateral communication relating to IT issues among departments, and reviewing all proposed IT capital projects, thereby ensuring that an enterprise-wide approach to technology is undertaken, duplication of services and/or systems is eliminated, and the purchase of incompatible systems is avoided. The Committee shall meet at the discretion of the CIO.

or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

Article 4 is the final step in the re-organization of the Information Technology Department (ITD), a process that began in 2001 with the issuance of an RRP for the development of an IT Strategic Plan. Since then, the following actions have occurred:

1. Completion of the IT Strategic Plan.
2. Approval of Article 8 of the 2002 Annual Town Meeting, which amended the Special Act that established the Finance Department to remove IT as a division of that unit and establish IT as a stand-alone department.
3. Execution of a MOU between the Town Administrator and the School Superintendent regarding the appointment of the newly created Chief Information Officer (CIO) position.
4. Hiring of a CIO.
5. Approval of Article 10 of the 2004 Annual Town Meeting, which amended the Town By-Law relative to the Finance Department by removing IT from under its umbrella. (This could not occur until #2 was approved by the State.)

Now that the ITD is fully operational, a by-law should be created that delineates the department's structure, roles, and responsibilities. Similar actions were taken when the Planning and Community Development Department and the Human Resources Department were re-organized. Key provisions of the proposed by-law include the codification of the following:

- the citizen-comprised Information Technology Advisory Committee (ITAC).
- the Interdepartmental Information Technology Committee.
- the powers and responsibilities of the CIO.

There are three changes from the original warrant article that are being recommended. The first more explicitly delineates the role of School Superintendent in the appointment process conducted by the Town Administrator and Board of Selectmen (SECTION 3.11.B.3(A)). The second increases the number of ITAC members from three to five (SECTION 3.11B.4). The third is found under part (C) of SECTION 3.11B.3, the section that details the powers and responsibilities of the CIO. The Library Trustees objected to the original language due to their concern that it would take away some of their authority. The recommended language alleviates their concern, while continuing to assure that the CIO has the authority to review requests of all departments for IT funds.

This warrant article is the final step in the very successful re-organization of a key department that services town departments, the schools, and the citizens of Brookline. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on September 28, 2004, on the following vote:

VOTED: That the Town amend the Town By-Laws by amending ARTICLE 3.11 to 3.11A and by inserting a new Article 3.11B to read as follows:

ARTICLE 3.11B
INFORMATION TECHNOLOGY DEPARTMENT

SECTION 3.11B.1 ESTABLISHMENT

The Information Technology Department, hereinafter referred to as the Department, is hereby established. The Department is responsible for the integration of all activities and resources designated as: 1. systems and data processing, comprised of computer-based systems design and implementation, applications, and operating software; 2. telecommunications systems and networks, comprised of the integration of planning, development, and implementation of all systems and network services; 3. delivery of applications and other information services products that meet the users' specifications in terms of quality and cost; 4. protection of the Town's computer data and information assets and resources; 5. identification of opportunities in the development and support of new and existing technologies; 6. training of employees in the use of various aspects of information technology; and 7. formulation of an annual Information Technology Capital Plan as part of the Capital Improvements Program (CIP).

SECTION 3.11B.2 PURPOSE

It is the intent and purpose of this By-Law to establish a department whose mission it is to assure that technology is used to enhance the delivery of town and school services and information to the community. The Department will work to attain efficiencies and economies of scale; reduce or eliminate duplication and overlapping of services, responsibilities, and functions; improve the coordination of planning for the use of technology between and among various town departments; and manage the implementation of all technology-related projects.

SECTION 3.11B.3 CHIEF INFORMATION OFFICER

(A) Appointment & Term of Office. There shall be a Chief Information Officer, hereinafter referred to as the “CIO”, recommended by the Town Administrator with the concurrence of the Superintendent of Schools for appointment by the Board of Selectmen in accordance with the provisions in Chapter 270 of the Acts of 1985. The appointment shall be made annually for a term of one year, commencing July 1 of each year and continuing until the appointment and qualification of a successor.

(B) Qualifications. The CIO shall be a person especially fitted by education, training and experience to perform the duties and exercise the powers of the office.

(C) Powers & Duties. The CIO shall be responsible for the effective management, administration and coordination of all operations within the Department including financial affairs and the management, administration and control of all personnel assigned to the Department. In conjunction with the preparation of the annual Financial Plan, the CIO shall review all hardware and software requests for all Town departments. The CIO shall appoint and may remove all other personnel within the Department.

SECTION 3.11B.4 INFORMATION TECHNOLOGY ADVISORY COMMITTEE

The Board of Selectmen shall appoint five residents to serve on the Information Technology Advisory Committee, hereafter referred to as the "ITAC", for three-year staggered terms. The ITAC shall be responsible for providing community input to IT decision making, periodically reviewing the IT Strategic Plan including annual updates, and evaluating lessons learned from major IT initiatives. The ITAC shall meet quarterly, and at other times deemed necessary by the CIO and / or the Chairman of the ITAC.

SECTION 3.11B.5 INTERDEPARTMENTAL INFORMATION TECHNOLOGY COMMITTEE

The CIO shall form an Interdepartmental Information Technology Committee, consisting of representatives from town and school departments that use information technology. The Committee will be responsible for fostering cross-departmental collaboration, promoting multilateral communication relating to IT issues among departments, and reviewing all proposed IT capital projects, thereby ensuring that an enterprise-wide approach to technology is undertaken, duplication of services and/or systems is eliminated, and the purchase of incompatible systems is avoided. The Committee shall meet at the discretion of the CIO.

ROLL CALL VOTE:
Favorable Action
Allen
Geller
Hoy
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
Article 4 is a continuation of the town's IT Strategic Plan that began several years ago. Town Meeting voted to amend the By-Laws at the 2004 Annual Town Meeting to remove the Division of Information Services from under the Department of Finance. The current proposed amendment to the By-Laws would establish a separate Information Technology Department, with a Chief Information Officer (CIO) responsible for running the IT Department and reviewing the resources of IT and their integration townwide. The proposed By-Law would also create an IT Advisory Committee (ITAC) and an Interdepartmental IT Committee which would both provide input and feedback to the CIO.

DISCUSSION

Most of the issues in Article 4 are housekeeping. For example, the CIO position already exists as does the ITAC. During the Advisory Committee's review of Article 4, two issues were raised. First, the original language had the position of CIO appointed by the Board of Selectmen after recommendation by the Town Administrator and "consultation" with the Superintendent of Schools [SECTION 3.11B.3(A)]. Given the CIO's responsibilities for both the town and the schools, and given that the School Committee (which selects the Superintendent) is independently elected, it was agreed that a prospective CIO should be appointed only after recommendation by both the Town Administrator and the Superintendent. The article was revised to reflect this change.

Second, concern was expressed by the Board of Library Trustees that the original language of SECTION 3.11B.3(c) requiring approval by the CIO for all IT purchases would usurp their independent authority for Library purchases. It was agreed that the language of the article would be changed to have the CIO provide input on all proposed IT purchases by town departments, including the Library, during the annual budget process. Such change allows the CIO to ensure that the town uses its IT resources in the most efficient manner possible and that all IT purchases are consistent with the goals of common, integrated and secure systems.

Finally, after the article was submitted, it was suggested to increase the number of members on the ITAC from three to five. The Advisory Committee agrees with this suggestion to increase citizen participation in IT planning and decision-making.

RECOMMENDATION

The Advisory Committee, by a vote of 11 in favor and 0 opposed, recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 5

FIFTH ARTICLE

To see if the Town will amend the town's By-Laws by deleting the following Sections:

SECTION 3.4.5	SCHEDULE OF FEES for the Office of the Town Clerk.
SECTION 3.8.3	BUILDING DEPARTMENT FEES

and by renumbering SECTION 3.4.6 in Article 3.4 to SECTION 3.4.5, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

This is a "house-keeping" article that eliminates references to departmental fees in the Town's By-Laws. These references are not needed, as the Town adopted the provisions of MGL Ch. 40 Sec. 22F in 1992, which authorizes the Board of Selectmen to set most departmental fees. Having fee schedules in the By-Laws while simultaneously having the Board of Selectmen modifying fee schedules can result in confusion as to what actual fees are. Eliminating references to fees in the by-laws will avoid any potential conflicting schedules.

The Board of Selectmen recommend FAVORABLE ACTION, by a vote of 4 – 0 taken on September 28, 2004, on the vote offered by the Advisory Committee.

ROLL CALL VOTE:
Favorable Action
Allen
Geller
Hoy
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
At present, Section 3.4.5 of the town's By-Laws lists a schedule of fees for the Office of the Town Clerk and Section 3.8.3 lists a schedule of Building Department fees. This article seeks to have these fee schedules removed from inclusion in the Town By-Laws.

DISCUSSION

The fees under discussion, which used to be established in the Town By-Laws by vote of Town Meeting, are now, like almost all other town fees, set by vote of the Board of Selectmen. Hence it is misleading to reference these fee schedules in the By-Laws, and it can be confusing to continue to so inasmuch as they would be outdated and inaccurate should the Selectmen vote to set new fees while the By-Laws continue to list the former fees. Moreover, the up-to-date fee schedules are readily available at the respective town departments, so there is no reason to have them independently (and perhaps erroneously) listed within the By-Laws.

RECOMMENDATION

By a vote of 16-0, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the town's By-Laws by deleting the following Sections:

SECTION 3.4.5 SCHEDULE OF FEES for the Office of the Town Clerk.

SECTION 3.8.3 BUILDING DEPARTMENT FEES

and by renumbering SECTION 3.4.6 in Article 3.4 to SECTION 3.4.5.

XXX

ARTICLE 6

SIXTH ARTICLE

To see if the Town will amend Article 8.17 in the town's By-Laws, entitled: "FOCUSED RESIDENCE PICKETING" as follows:

a. by deleting the last sentence that reads:
"This by-law shall expire on January 1, 2005.";

b. by amending the word "picketing" as it appears in the by-law;

c. by amending the words "taking place in front of or about" or "taking place solely in front of or about" as they appear in the by-law;

d. by amending the words "a particular residence" as they appear in the by-law;

e. by otherwise amending the language of the by-law; or

f. by any combination of the foregoing;

or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

At the November 2003 Special Town Meeting, Town Meeting enacted a new by-law to make it unlawful to engage in focused residential picketing. Article 8.17 provides as follows:

ARTICLE 8.17 FOCUSED RESIDENCE PICKETING

It is unlawful for any person to engage in picketing focused on, and taking place in front of or about, a particular residence in the town of Brookline. Focused picketing taking place solely in front of or about a particular residence is prohibited.

This by-law shall expire on January 1, 2005. The selectmen are requested by January 31, 2004 to constitute a study committee, which includes at least one representative of Planned Parenthood or other abortion providers, one of the

A.C.L.U., and one of the AFL-CIO or other broad-based labor union representative, to review and report to the selectmen on the following two issues:

1. the need for this article, as opposed to merely attempting other strategies to address the perceived problem; and

2. if the prohibition is needed, how to draft a narrowly-tailored and well-defined by-law which attempts to both address the problem and to protect civil liberties.

In response to enactment of the by-law, the Selectmen appointed a Committee comprised of the following individuals to report to Selectmen on the two matters to be studied under the by-law:

Michael Sher, Selectman and Chair;
David Lee Turner, Town Counsel;
Sarah Wunsch, Brookline resident and Staff Attorney, American Civil Liberties Union of Massachusetts (ACLUM);
Mark Michelson, Brookline resident and Board Member, ACLUM;
Gene Dahmen, Brookline resident and Board Member, Planned Parenthood League of Massachusetts (PPLM);
Diane Lubey, President of PPLM;
John Henn, outside counsel to PPLM;
Jesse Mermell, former TMM, Precinct 12, and Co-Chair, Brookline PAX
Mary Sullivan, Brookline resident and outside counsel to Greater Boston Labor Council (GBLC);
Shaari Mittel, TMM, Precinct 14 and Advisory Committee Member;
Shepherd Spundt, TMM, Precinct 14.

The Committee held six public meetings, including one public hearing, between April and October 2004. Representatives of ACLUM, PPLM, and GBLC submitted extensive briefs on the issues. On October 18, 2004, the Committee, by a vote of 6-3, with 1 abstention, made the following recommendations to the Selectmen:

1. To extend from December 31, 2004 until June 30, 2006 the “sunset” provisions of Article 8.17 of the Town By-Laws (which provide for a prohibition on “focused residential picketing” as that term is described in, and to the extent of the prohibition set forth in, Article 8.17); and

2. To recommend that the Selectmen during said extended period maintain the Committee so that the Committee may continue (i) to investigate various improvements, refinements, alternatives to, narrowed versions of, and the continuing need for Article 8.17; (ii) to work with and advise the Police Department as to methods for protecting reproductive health care workers in their homes, including methods used in other localities, either with or without local laws designed to protect such workers in their homes; and (iii) to make recommendations to the Selectmen, as Police Commissioners

and otherwise, as to other steps that might be taken by the Selectmen or the Police Department or other Town officials, whether or not involving a by-law, to protect such workers in their homes, including steps such as the following:

• sending a police cruiser to provide a presence and engage in observation in order to protect the safety and rights of providers and their families;

• ensuring that driveways, sidewalks, and streets are not being obstructed;

• making appropriate arrests for trespassing, civil rights violations, or other crimes;

• training all officers in understanding the history of violence and interference with the rights of providers of abortion, a service to which women are constitutionally entitled, and training them how to respond appropriately to calls from providers who feel threatened or feel their family members are threatened;

• conferring on a regular basis with civil rights and domestic anti-terrorism law enforcement officers in the FBI and state police to be up-to-date on information about threats to abortion providers and ways to counter those threats;

• encouraging and taking part in meetings with abortion providers residing in Brookline and their neighbors and friends to discuss ways to ensure their safety and protection of their rights; and

• devising a way to receive information from Planned Parenthood and other reproductive health organizations when providers are afraid to call the police directly for fear of information being made known publicly about their residence.

VOTING IN FAVOR	**VOTING AGAINST**
Gene Dahmen	Mark Michelson
Jesse Mermell	Mary Sullivan
Shaari Mittel	Sarah Wunsch
John Henn	
Diane Lubey	
David Turner	

ABSTAINING

Selectman Michael Sher, as Chairman

The majority and minority of the Committee each submitted reports to the Selectmen, which are found after the Advisory Committee's Recommendation below.

The Board extends its thanks and appreciation to the members of the Committee on Focused Residence Picketing for their reports and hard work.

The Board agrees, for the reasons set forth in the majority report, that the Focused Residence Picketing by-law, which is set to "sunset" on January 1, 2005, should be extended for a period of 18 months, until June 30, 2006. The Board further agrees with the unanimous recommendation of the Committee that the Committee should: (1) continue to work to oversee implementation of the by-law; (2) consider whether the by-law can be improved; and (3) work with the Police Department and other Town officials and departments to implement measures to protect workers of reproductive health clinics and their families (the primary targets of focused residence picketing) at their Brookline homes without the need for another extension of the by-law.

Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 26, 2004, on the following vote:

VOTED: To amend, from December 31, 2004 to June 30, 2006, the termination provision in Article 8.17 of the Town By-Laws (which provide for a prohibition on "focused residential picketing" as that term is described in, and to the extent of the prohibition set forth in, Article 8.17) and to adopt the following Resolution: **Be It Hereby Resolved**, that the Town Meeting requests that the Selectmen continue the Advisory Committee on Focused Residential Picketing and request that the Committee continue (i) to investigate various improvements, refinements, alternatives to, narrowed versions of, and the continuing need for Article 8.17; (ii) to work with and advise the Police Department as to methods for protecting reproductive health care workers in their homes, including methods used in other localities, either with or without local laws designed to protect such workers in their homes; and (iii) to make recommendations to the Selectmen, as Police Commissioners and otherwise, as to other steps that might be taken by the Selectmen or the Police Department or other Town officials, whether or not involving a by-law, to protect such workers in their homes, including steps such as the following:

- sending a police cruiser to provide a presence and engage in observation in order to protect the safety and rights of providers and their families;
- ensuring that driveways, sidewalks, and streets are not being obstructed;
- making appropriate arrests for trespassing, civil rights violations, or other crimes;
- training all officers in understanding the history of violence and interference with the rights of providers of abortion, a service to which women are constitutionally entitled, and training them how to respond appropriately to calls from providers who feel threatened or feel their family members are threatened;

- conferring on a regular basis with civil rights and domestic anti-terrorism law enforcement officers in the FBI and state police to be up-to-date on information about threats to abortion providers and ways to counter those threats;

- encouraging and taking part in meetings with abortion providers residing in Brookline and their neighbors and friends to discuss ways to ensure their safety and protection of their rights; and

- devising a way to receive information from Planned Parenthood and other reproductive health organizations when providers are afraid to call the police directly for fear of information being made known publicly about their residence.

ROLL CALL VOTE:
Favorable Action
Geller
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
The November, 2003 Special Town Meeting voted to amend Town By-laws by adopting a new Article 8.17 which states that "it is unlawful for any person to engage in picketing focused on, and taking place in front of or about, a particular residence in the Town of Brookline. Focused picketing taking place solely in front of about a particular residence is prohibited.

In response to concerns that this Bylaw might possibly be too vague or that it might abridge the civil liberties of picketers, Town Meeting inserted a "Sunset" provision into the Bylaw, so that it expires on January 1, 2005 unless Town Meeting takes some action to extend it. At that time, Town Meeting also requested that the Board of Selectmen set up a committee to study the potential problems with the Bylaw.

Recently, the Selectmen's Committee that has studied the Bylaw voted 6-3 with one abstention to:

> *To amend from December 31, 2004 to June 30, 2006, the termination provision in Article 8.17 of the Town By-laws (which provide for a prohibition on "focused residential picketing" as that term is described*

in, and to the extent of the prohibition set forth in, Article 8.17) and to adopt the following Resolution:
Be it Hereby Resolved, *that the Town Meeting requests that the Selectmen continue the Advisory Committee on Focused Residential Picketing and request that the Committee continue (i) to investigate various improvements, refinements, alternatives to, narrowed versions of, and the continuing need for Article 8.17; (ii) to work with and advise the Police Department as to methods for protecting reproductive health care workers in their homes, including methods used in other localities, either with or without local laws designed to protect such workers in their homes; and (iii) to make recommendations to the Selectmen, as Police Commissioners and otherwise, as to other steps that might be taken by the Selectmen or the Police Department or other Town officials, whether or not involving a bylaw, to protect such workers in their homes,*including steps such as the following:*

- *sending a police cruiser to provide a presence and engage in observation in order to protect the safety and rights of providers and their families;*
- *ensuring that driveways, sidewalks and streets are not being obstructed;*
- *making appropriate arrests for trespassing, civil rights violations, or other crimes;*
- *training all officers in understanding the history of violence and interference with the rights of providers of abortion, a service to which women are constitutionally entitled, and training them how to respond appropriately to calls from providers who feel threatened or feel their family members are threatened;*
- *conferring on a regular basis with civil rights and domestic anti-terrorism law enforcement officers in the FBI and state police to be up-to-date on information about threats to abortion providers and ways to counter those threats;*
- *encouraging and taking part in meetings with abortion providers residing in Brookline and their neighbors and friends to discuss ways to ensure their safety and protection of their rights; and*
- *devising a way to receive information from Planned Parenthood and other reproductive health organizations when providers are afraid to call the police directly for fear of information being made known publicly about their residence."**

[N.B. The Focused Residence Picketing Committee voted unanimously, with the Chair abstaining, for the amendment recommendations enclosed within the above asterisks.]

DISCUSSION

The Bylaw, which Town Meeting passed a year ago, is narrow enough to meet relevant Supreme Court decision guidelines. In Frisby v. Schultz, 487 U.S. 474, 486 (1988), the Supreme Court said "the devastating effect of targeted picketing on the quiet enjoyment of the home is beyond doubt." The Supreme Court decision stated that the restricted picketing must be directed solely at a single residence. Other avenues of communication

such as marching along the street through neighborhoods, distributing information and literature door to door, through the mail, by phone or via the internet are not banned. The Court held that individuals are not required to welcome objectionable speech into the sanctity of their own homes. The Supreme Court has specifically stated that an appropriate Bylaw must be content neutral, i.e. it cannot discriminate against one type of speech/picketing and allow another type that focuses on a different subject. The Focused Residence Picketing Committee has been struggling with the concerns of labor groups and the ACLU which have suggested that, although it would pass muster under the federal constitution, the Bylaw might not be sufficiently narrow to be found constitutional under what they contend are the more restrictive provisions of the Constitution of the Commonwealth of Massachusetts. In other words, they claim that the freedom of speech rights of people to protest and picket outside an individual's home, as protected under the state constitution, may be infringed by this Bylaw.

The Focused Residence Picketing Committee has focused primarily on the problems faced by the families of doctors and other health care workers providing abortion services. Planned Parenthood provided a number of examples of problems from focused picketing during the Committee's debate. They suggest that, by threatening and harassing doctors and their families at home, the objective of the anti-choice picketers appears to be to dissuade providers from performing abortion services. In support of their contention, Planned Parenthood provided statistical information about the large drop in the number of abortion providers, in addition to many specific incidents of violence and harassment against abortion providers. This, of course, notably includes the murders in Brookline a number of years ago at clinics that were known to perform abortions.

In Brookline there is only one report on record at the Police Department of someone complaining about such focused picketing outside their home. However, Town Counsel originally proposed the Bylaw at the request of several doctors who live in Brookline. According to Planned Parenthood, people are reluctant to call the police and report incidents of harassment at their homes for fear that the creation of a public record with their address and possible publicity about the incident may encourage additional protestors to target them and their family. Mr. Turner feels that we need this Bylaw particularly now in the current political climate.

The Committee heard evidenced of a physician with a private practice in Chestnut Hill who occasionally works with Planned Parenthood and Brigham & Women's Hospital. Her home in a neighboring Town has been picketed once a month for 7-8 years. Protestors often use the individual names of her young children to yell at them that their mother is a murderer. They block the driveway and make it hard for the family members to get in or out.

Those opposing the existing Bylaw and its extension feel that there is currently insufficient justification for it, due to the small number of incidents reported by Brookline citizens. They believe that this Bylaw restricts "peaceful and lawful speech outside of a residence, including labor, corporate, environmental, tenant and other political demonstrations." They also argue that there are already sufficient Town and State laws

to take care of such harassment. Others including Town Counsel and the Chief of Police do not believe that the existing laws on trespassing, harassment, intimidation, noise, offensive language, stalking, and assault, give them sufficient resources to deal with the types of issues that have or could come up at private homes. Opponents of the Bylaw do not have a specific instance in which protestors claim their rights have been violated or curtailed by enforcement of the Bylaw.

Supporters argue that Article 8.17 provides a helpful tool, which will be useful to the Brookline police. Police Chief O'Leary has continuously indicated his support of the Bylaw, although he states that he would like it to apply evenly to all homes. He believes that it will be too difficult for the police to know which homes get extra protection and which do not, if they are directed to provide enforcement only for the homes of reproductive health care workers.

Many other states and municipalities have adopted similar or identical laws to the original Article 8.17. According to the Supreme Court such a bylaw can represent a balance between the interests of free speech and those of avoiding unwelcome speech into one's home.

Some are concerned, however, with the Resolution as proposed by the majority of the Focused Picketing Committee in that it directs the Selectmen to focus the police protection toward one group of people, reproductive health care workers. This seems to take the enforcement of the Bylaw in the direction of being content specific and therefore in violation of the federal constitution. Due to the concern that Town Meeting should not be directing the police department to enforce a By-law, which involves some restrictions on free speech in a manner that is discriminatory, the Advisory Committee is only recommending favorable action on part of the language, which the Focused Picketing Committee passed. Advisory Committee members noted that this does not in any way curtail the area of study that that committee may undertake as it continues, nor does it proscribe the material that can be included in any report of that committee to the Selectmen.

RECOMMENDATION

The Advisory Committee, by a vote of 14 in favor, 1 opposed, and 2 abstentions, recommends FAVORABLE ACTION on the following vote:

> *To amend from December 31, 2004 to June 30, 2006, the termination provision in Article 8.17 of the Town By-laws (which provide for a prohibition on "focused residential picketing" as that term is described in, and to the extent of the prohibition set forth in, Article 8.17) and to adopt the following Resolution:*

The Advisory Committee by a unanimous vote of 17 in favor and 0 opposed, recommends FAVORABLE ACTION on the Resolution vote as follows:

Be it Hereby Resolved, *that the Town Meeting requests that the Selectmen continue the Advisory Committee on Focused Residential Picketing and request that the Committee continue (i) to investigate various improvements, refinements, alternatives to, narrowed versions of, and the continuing need for Article 8.17.*

XXX

MAJORITY REPORT OF THE BROOKLINE SELECTMEN'S COMMITTEE ON FOCUSED RESIDENCE PICKETING IN SUPPORT OF EXTENDING ARTICLE 8.17 UNTIL JUNE 30, 2006

I. INTRODUCTION

The majority of the Brookline Selectmen's Committee on Focused Residence Picketing recommends that Brookline's Article 8.17, the Focused Residence Picketing ordinance, should be extended to June 30, 2006, with the accompanying recommendation that the committee continue to work to consider improvements, refinements and alternatives.[1] The Article is currently scheduled to expire on January 1, 2005.

II. PURPOSE OF ARTICLE 8.17

The majority of the committee recommends extending the bylaw because it protects Brookline citizens from unwanted and offensive speech within their homes. Focused residential picketing is dissimilar from virtually all other forms of picketing. Its purpose is neither to disseminate information widely nor to persuade the public at large. Focused residential picketers do not bring their message to large population centers where audiences may or may not be receptive to their message. They target individuals in the privacy of their homes and do so with a message designed to be harassing and intimidating to the homes' occupants. Although no

[1] These include steps such as the following: (i) sending a police cruiser to provide a presence and engage in observation in order to protect the safety and rights of providers and their families; (ii) ensuring that driveways, sidewalks, and streets are not being obstructed; (iii) making appropriate arrests for trespassing, civil rights violations, or other crimes; (iv) training all officers in understanding the history of violence and interference with the rights of providers of abortion, a service to which women are constitutionally entitled, and training them how to respond appropriately to calls from providers who feel threatened or feel their family members are threatened; (v) conferring on a regular basis with civil rights and domestic anti-terrorism law enforcement officers in the FBI and state police to be up-to-date on information about threats to abortion providers and ways to counter those threats; (vi) encouraging and taking part in meetings with abortion providers residing in Brookline and their neighbors and friends to discuss ways to ensure their safety and protection of their rights; and (vii) devising a way to receive information from Planned Parenthood and other reproductive health organizations when providers are afraid to call the police directly for fear of information being made known publicly about their residence.

bylaw can or should completely shield individuals from such speech in all locations, this bylaw, in conjunction with other laws, is a useful tool in protecting Brookline residents in their homes.

Focused residential picketing is particularly problematic for the families of physicians who provide abortion services. Within the past year, anti-abortion advocates in the greater Boston area have engaged in a variety of intimidating behaviors while picketing in front of physicians' homes. They have yelled at physicians' children by name; they have told these children that "mommy is a murderer"; they have screamed that the children's parents/physicians are "baby killers"; and they have displayed signs in front of the parents'/physicians' residences featuring both graphic photographs of aborted fetuses and language such as "baby killer", "abortionist" and "murderer."[2] This behavior can cause emotional trauma to the doctors' children and families, potentially leading to the need for extensive and expensive counseling for the children, and/or to deterring physicians from continuing to provide abortion services. Physicians are, of course, an indispensable link to a woman's exercise of her constitutional right to chose abortion, and are at minimum vulnerable at the point where they see their own children at risk. Article 8.17 protects physicians who provide abortion services by forbidding focused picketing in the front of physicians' residences.

Focused residential picketing of physicians is especially problematic because the right to choose whether to terminate a pregnancy, unlike most or all other constitutional rights, completely depends on the willingness of doctors to provide the supporting medical services needed for its exercise. One of the shrewdest means of opposing a woman's constitutional right to reproductive choice has been to focus on perhaps the most vulnerable link in the exercise of that choice: physicians. That constitutional right can cease to exist not just by an overturning of

[2] *See* Security Incident Reports from Planned Parenthood Federation of America, Inc. (redacted for privacy and safety concerns) (**attached as Exhibit 1**).

Roe v. Wade, but by the success in "attempt[s] to force the doctor[s] to cease performing abortions." *Frisby v. Schultz*, 487 U.S. 474, 487 (1988).

Virtually all physicians who provide abortion services do so on a part time basis and otherwise practice in medical areas or specialties that do not involve the provision of such services. Many of these physicians already face substantial risk to their own personal safety and well-being by providing abortion services every day (several physicians have been killed). Threats directed toward children, including emotional threats (as in "your mother kills babies"), add a substantial incentive for a physician to cease providing abortion services, and limit one's medical practice to other areas. Naturally, there is a limit to the risks such a doctor can be expected to take to protect *someone else's* constitutional right.

The tactics used by anti-abortion protesters appear to have been effective in diminishing the number of abortion providers. Since 1982, the number of abortion providers has decreased by 37% nationally.[3] Massachusetts has experienced a similar decline. There were more than eighty abortion providers in Massachusetts in 1980, but there are now fewer than fifty such providers.[4]

Both Brookline and the Commonwealth of Massachusetts already have laws that prohibit a range of harassing and intimidating behavior, but none has been successful at providing the appropriate protection against residential focused picketing. Certain Brookline laws regulate noise, *see* Article 8.15 (Noise Control), prohibit offensive and disorderly language, *see* Section 8.5.3 (Language), and control public disturbances, *see* Section 8.5.4 (Present to Disturb).

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[3] The Abortion Access Project, Fact Sheet: the Shortage of Abortion Providers, *available at* www.abortionaccess.org/AAP/publica_resources/fact_sheets/shortage_provider.htm (**attached as Exhibit 2**).

[4] The Alan Guttmacher Institute, Trends in Abortion in Massachusetts, 1973-2000, *available at* www.guttmacher.org/pubs/state_ab_pt/massachusetts.pdf (**attached as Exhibit 3**).

Likewise, the Commonwealth criminalizes stalking, *see* M.G.L. c. 265 § 43(a) and assault, *see id.* at § 13A. Yet none of these laws has been effective in preventing picketers from forcing unwanted, harassing and intimidating speech into the private homes of individuals and their families by picketing directly in front of the home. Article 8.17, although it cannot entirely prevent the intrusion of all unwanted and harassing speech in one's home, as nearby picketing is not prohibited, nonetheless provides a very helpful tool in combating the problem, and one that the Brookline police also find useful to them. Protests taking place down the street will not be as intrusive or harassing as those in front of a home where picketers and their signs can, with ease, be seen from inside the house and address their targets by name.

Article 8.17 provides a minimal, but necessary, level of protection to Brookline citizens from unreasonable invasions of privacy in their home. So as not to unduly burden free speech, the bylaw is drafted the narrowest manner feasible in light of the objective to be served: preventing harassing and intimidating speech directed into the privacy of one's home, including harassing and intimidating speech directed at physicians' homes and their children, intended to interfere with women's constitutional right to choose abortion. Indeed, because Article 8.17 does not prevent all kinds of residential picketing -- *e.g.*, it does not prevent marches through a residential neighborhood or picketing on a street corner that is not focused on or about a house on that corner -- the bylaw represents a balance of interests, protecting the most harmful, focused kind of intrusion while still allowing for marches and for picketing in a broad range of venues.

II. THE BYLAW IS CLEARLY CONSTITUTIONAL

The majority of the Brookline Selectmen's Committee on Focused Residence Picketing also favor extending the current bylaw because it is clearly constitutional under both the United States and Massachusetts constitutions, and therefore is unlikely to involve the town in any litigation.

The United States Supreme Court's decisions in *Frisby v. Schultz* and *Hill v. Colorado* confirm as obvious that the Brookline's Article 8.17 does not violate the United States Constitution. In *Frisby*, the Supreme Court upheld a municipality's ordinance banning focused residential picketing whose wording and purpose was virtually identical to Article 8.17. *Frisby*, 487 U.S. 474, 488 (1988). In *Hill*, the Supreme Court again held that other interests, particularly the strong privacy interest in avoiding unwanted communications in certain settings, such as the entrance to a medical facility, were sufficient to constitutionally impose certain speech restrictions. *Hill v. Colorado*, 530 U.S. 703, 716-17. Numerous states and municipalities have faced similar residential picketing problems, and, as a result, have adopted laws like Article 8.17 that prohibit picketing in front of homes (often with similar language as Article 8.17).[5] Arguments that these focused picketing laws are too vague or lead to selective enforcement have repeatedly been rejected. *See, e.g., Frisby v. Shultz*, 487 U.S. 474 (1988); *Veneklase v. City of Fargo*, 248 F.3d 738 (8th Cir. 2001); *see also City of San Jose v. Superior Court*, 38 Cal. Rptr.2d. 205 (Cal. Ct. App. 1995)(ruling upheld on appeal and California and United States Supreme Courts denied *certiorari*); *City of Prairie Village v. Hogan*, 855 P.2d 949 (1993); *State v. Castellano*, 506 N.W.2d 641 (Minn. Ct. App. 1993); *Town of Barrington v. Blake*, 568 A.2d 1015 (1990).

The ordinance similarly does not run afoul of the Massachusetts constitution. Free Speech rights under the Massachusetts Constitution are coextensive with those under the U.S. Constitution. *In re Opinion of the Justices to the Senate*, 723 N.E.2d 1, 430 Mass. 1205, 1207 n.3 (2000) (holding that a proposed buffer zone around entrances, exits and driveways of reproductive health care facilities did not unconstitutionally restrict free speech under either the

[5] *See* **Exhibit 4 attached hereto** (other ordinances).

Massachusetts or U.S. Constitutions, and noting that the analysis under both constitutions was the same). Furthermore, the Massachusetts Constitution is even *more* protective than the United States Constitution of a woman's right of reproductive choice. *Planned Parenthood League of Mass. v. Attorney General*, 677 N.E.2d. 101, 104, 424 Mass. 586, 590 (1997) (citing *Moe v. Secretary of Admin. and Fin.*, 417 N.E.2d 387, 382 Mass. 629 (1981)). This clear trend in Massachusetts jurisprudence as regards the importance of the right to reproductive choice lends even more support to the interests underlying Article 8.17 and to its constitutionality.

Article 8.17 is a small but necessary step toward protecting a woman's constitutional right to reproductive choice. As drafted, it is undeniably constitutional under both federal and state law standards.

IV. CONCLUSION

The majority of the Brookline Selectmen's Committee on Focused Residence Picketing believes that Article 8.17 represents a fair and constitutional balance between the interests of free speech, the interests in avoiding intrusive and intimidating speech in one's home, and the interests of protecting access to abortion services. For that reason, we urge the extension of Article 8.17 until June 30, 2006. Over the next 18 months, the committee will continue to work to consider improvements, refinements and alternatives, to see whether a different law might be more effective or equally as effective while restricting less speech. Because the majority of the committee is not aware of any superior alternative at this time, and because the protections of the law are too important to allow it to lapse, we urge this extension.

EXHIBIT 1

Planned Parenthood®
Federation of America, Inc.

SECURITY INCIDENT REPORT

Please Submit A Separate Form For Each Incident

Submit completed form to: **Affiliate Incidents:** AffilSecurityIncidents@ppfa.org
National Offices: NatlSecurityIncidents@ppfa.org

Instructions:

- *To maintain a copy of the Incident Report Form, use the* **"Save As"** *function to rename the document.*
- *Complete the incident report in the renamed copy of the form.*
- *Use the* **TAB** *key to move around in the form.*
- *Place your cursor inside the shaded box before inserting information into the form.*
- *Fill-in boxes will expand to accommodate information and any length of incident description.*
- *For detailed help in filling out any section of the form, place your cursor in the shaded box and press* **F1**

Incident Date/# (PPFA assigns #) 5/10/04

Affiliate Name/National Office: PPLM (Private Practice)

Incident Location: Milton, MA

Submitted by: Melanie Lown **Email Address:** Melanie_Lown@pplm.org

Phone Number: 617-616-1686 **Fax Number:** 617-616-1652

Check the type of incident: (*Place cursor on the box and click to check. Press* **F1** *for definition*).

☐ Arson	☐ Bombing, Attempted	☐ Invasion
☐ Arson, Attempted	☐ Burglary	☐ Stalking
☐ Assault and/or Battery	☐ Chemical Attack (e.g. Butyric Acid)	☐ Suspicious Package
☐ Bio-Terrorism (e.g. Anthrax)	☐ Death Threat	☐ Trespass
☐ Blockade	☐ Hate Mail/Harassing Calls	☐ Vandalism
☐ Bomb Threat	☐ Internal Theft	☒ Other:Res.Picketing
☐ Bombing	☐ Internet/E-Mail Threat	

Detailed Incident Description: Dr. is a Brigham and Women's physician with a private practice in Chestnut Hill. PPLM works with and Brigham and Women's Hospital on an occasional basis. and her family have been picketed at home in Milton by Susan Gallagher, Gay Guptil and other Operation Rescue affiliated protestors approximately once a month for the last 7-8 years. In recent protests throughout the last 8 months, there have been an average of 15 protestors at any given picket. and her husband have 3 children, now ages 13, 18 and 19 years old. The picketing started when her youngest child was only 5 years old and her two other children were 10 and 11 respectively. 's home is situated at the end of a private driveway off of a residential street in Milton. The protestors will block her driveway with their car and stand at the end of the driveway with enormous signs that read, "Dr. is a murderer" that feature graphic photos of bloody fetuses. says the protests have been very "disturbing and distressing for her children and their development." The protestors will often yell at the children and the children's friends, and will call the children by name when they enter or exit the house. They will tell them that their "mommy is a murderer" and yell racial epithets about the family's Italian heritage. They will also yell about 's divorce to her husband. The Milton police have been generally unresponsive and and her husband are now looking into other possible means of recourse to curb the relentless harassment of her family in their home.

Damage Estimate: $

Law Enforcement Involved:

REDACTED

Planned Parenthood®
Federation of America, Inc.

SECURITY INCIDENT REPORT

Please Submit A Separate Form For Each Incident

Submit completed form to: **Affiliate Incidents:** AffilSecurityIncidents@ppfa.org
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- *Place your cursor inside the shaded box before inserting information into the form.*
- *Fill-in boxes will expand to accommodate information and any length of incident description.*
- *For detailed help in filling out any section of the form, place your cursor in the shaded box and press* **F1**

Incident Date/# (PPFA assigns #) 4/18/04

Affiliate Name/National Office: PPLM

Incident Location: Braintree, MA

Submitted by: Melanie Lown **Email Address:** Melanie_Lown@pplm.org

Phone Number: 617-616-1686 **Fax Number:** 617-616-1652

Check the type of incident: (*Place cursor on the box and click to check. Press* **F1** *for definition*).

☐ Arson	☐ Bombing, Attempted	☐ Invasion
☐ Arson, Attempted	☐ Burglary	☐ Stalking
☐ Assault and/or Battery	☐ Chemical Attack (e.g. Butyric Acid)	☐ Suspicious Package
☐ Bio-Terrorism (e.g. Anthrax)	☐ Death Threat	☐ Trespass
☐ Blockade	☐ Hate Mail/Harassing Calls	☐ Vandalism
☐ Bomb Threat	☐ Internal Theft	☒ Other:Res.Picketing
☐ Bombing	☐ Internet/E-Mail Threat	

Detailed Incident Description: Two of our regular protestors, Gay Guptil and Susan Gallagher picketed the home of , a PPLM clinician in Boston on Sunday, April 18, 2004. lives with her parents in Braintree and this is the first time she has been picketed in the 5 years she's worked for PPLM. and her parents were home at the time. A neighbor called to say that protestors had a video camera and a sign in front of the house that said, " , Abortion Worker." They were also screaming about being a "baby killer" to anyone who drove by. They spent considerable time filming outside of her house and then went to a spot to picket down the street next to a park. An officer was dispatched to the scene, ID'd the protestors and strongly encouraged them to leave. and her parents went down separately to see what the protestors were doing. A verbal altercation ensued between her parents and the protestors and her parents went to make satements at the police station immediately after the incident. The officer at the scene wrote a compelling case in her incident report after interviewing and her parents that included Kate's fears, the history of harassment and violence against Planned Parenthood employees at work and at home, and the unpredictablility of the protestors. The charges are criminal harassment and illegal wire-tapping. It is a felony in Massachusetts for individuals other than law enforcement to film anyone using a camera that has an audio componenet without first obtaining consent. (The protestors were filming conversations with neighbors, her parents and passerby.) The officer requested an expedited trial date, siting that the protestors could easily come back. In fact the protestors told the officer that they planned to come back with a bullhorn and inquired about acceptable noise levels. We are now just waiting for to get a notice in the mail about her hearing date and the police will be notified again if the protestors return.

Damage Estimate: $

Law Enforcement Involved: 2 Braintree Police Officers

Name of Arrested/Charges: **Charges against Susan Gallagher and Gay Guptil: Illegal Wire Tapping & Criminal Harassment.**

(For PPFA Use Only) Follow-Up:

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SECURITY INCIDENT REPORT

Please Submit A Separate Form For Each Incident

Submit completed form to: **Affiliate Incidents:** AffilSecurityIncidents@ppfa.org
National Offices: NatlSecurityIncidents@ppfa.org

Instructions:

- *To maintain a copy of the Incident Report Form, use the* **'Save As'** *function to rename the document.*
- *Complete the incident report in the renamed copy of the form.*
- *Use the* **TAB** *key to move around in the form.*
- *Place your cursor inside the shaded box before inserting information into the form.*
- *Fill-in boxes will expand to accommodate information and any length of incident description.*
- *For detailed help in filling out any section of the form, place your cursor in the shaded box and press* **F1**

Incident Date/# (PPFA assigns #) 4/29/04

Affiliate Name/National Office: PPLM

Incident Location: Braintree, MA

Submitted by: Melanie Lown **Email Address:** Melanie_Lown@pplm.org

Phone Number: 617-616-1686 **Fax Number:** 617-616-1652

Check the type of incident: (*Place cursor on the box and click to check. Press* **F1** *for definition*).

☐ Arson	☐ Bombing, Attempted	☐ Invasion
☐ Arson, Attempted	☐ Burglary	☐ Stalking
☐ Assault and/or Battery	☐ Chemical Attack (e.g. Butyric Acid)	☐ Suspicious Package
☐ Bio-Terrorism (e.g. Anthrax)	☐ Death Threat	☐ Trespass
☐ Blockade	☐ Hate Mail/Harassing Calls	☐ Vandalism
☐ Bomb Threat	☐ Internal Theft	☒ Other:Res.Picketing
☐ Bombing	☐ Internet/E-Mail Threat	

Detailed Incident Description: The same two protestors, Susan Gallagher and Gay Guptil returned to Avenue in Braintree to protest in front of 's residence on 4/29/04 and subsequently down the street in front of a park from approximately 3:30pm to 5:30pm. Their sign this time featured a giant blown-up picture of a dead, bloody fetus with severed limbs. 's sister who lives down the street reported the incident to the family and would not leave her house with her 1-year old daughter until the protestors had left. Due to the graphic nature of the sign and the many families who live on the street, neighbors reported that they would not let their young children outside to play after school while the protestors were present. The police were notified.

Damage Estimate: $

Law Enforcement Involved: Braintree Police

Name of Arrested/Charges:

(For PPFA Use Only) Follow-Up:

REDACTED

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SECURITY INCIDENT REPORT

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- *For detailed help in filling out any section of the form, place your cursor in the shaded box and press* **F1**

Incident Date/# (PPFA assigns #) 6/14/03

Affiliate Name/National Office: PPLM

Incident Location: Hingham, MA

Submitted by: Melanie Lown **Email Address:** Melanie_Lown@pplm.org

Phone Number: 617-616-1686 **Fax Number:** 617-616-1652

Check the type of incident: (*Place cursor on the box and click to check. Press* **F1** *for definition*).

☐ Arson	☐ Bombing, Attempted	☐ Invasion
☐ Arson, Attempted	☐ Burglary	☐ Stalking
☐ Assault and/or Battery	☐ Chemical Attack (e.g. Butyric Acid)	☐ Suspicious Package
☐ Bio-Terrorism (e.g. Anthrax)	☐ Death Threat	☐ Trespass
☐ Blockade	☐ Hate Mail/Harassing Calls	☐ Vandalism
☐ Bomb Threat	☐ Internal Theft	☒ Other:Res.Picketing
☐ Bombing	☐ Internet/E-Mail Threat	

Detailed Incident Description: Two regular PPLM protestors, Gay Guptil and Sheryl Fitzpatrick picketed the house of PPLM Boston GYN clinician, on 6/14/03 for approximately 2-hours. The protestors held a large sign that said, " is a baby killer" and featured a graphic picture of a dismembered fetus was out while the picketing occurred, but her husband and 14-year old son were home. The protestors first stopped for a considerable period of time in front of her house to videotape and show their sign. They then moved down the street to a more public area by an intersection. 's husband called the police.

REDACTED

Damage Estimate: $

Law Enforcement Involved: Hingham Police

Name of Arrested/Charges:

(For PPFA Use Only) Follow-Up:

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SECURITY INCIDENT REPORT

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Incident Date/# (PPFA assigns #) 5/18/03

Affiliate Name/National Office: PPLM

Incident Location: : Brookline, MA

Submitted by: Melanie Lown **Email Address:** Melanie_Lown@pplm.org

Phone Number: 617-616-1686 **Fax Number:** 617-616-1652

Check the type of incident: (*Place cursor on the box and click to check. Press* **F1** *for definition*).

☐ Arson	☐ Bombing, Attempted	☐ Invasion
☐ Arson, Attempted	☐ Burglary	☐ Stalking
☐ Assault and/or Battery	☐ Chemical Attack (e.g. Butyric Acid)	☐ Suspicious Package
☐ Bio-Terrorism (e.g. Anthrax)	☐ Death Threat	☐ Trespass
☐ Blockade	☐ Hate Mail/Harassing Calls	☐ Vandalism
☐ Bomb Threat	☐ Internal Theft	☒ Other: Res.Picketing
☐ Bombing	☐ Internet/E-Mail Threat	

Detailed Incident Description: Neighbors reported that they had received letters encouraging them to picket the house of Dr. the week of May 12, 2003. On Sunday, May 18, 2003, a group of 15 protestors with a few large signs that read, "Dr. is a baby killer," stopped in front of the house and then congregated at an intersection near Dr. s home on Road in Brookline. Dr. was away that weekend, but his wife and her children were at home. Neighbors called the family to report the picket and events as they transpired so that they would not have to leave the house. Police were notified.

Damage Estimate: $

Law Enforcement Involved: Brookline Police

Name of Arrested/Charges:

(For PPFA Use Only) Follow-Up:

REDACTED

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SECURITY INCIDENT REPORT

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- *For detailed help in filling out any section of the form, place your cursor in the shaded box and press* **F1**

Incident Date/# (PPFA assigns #) 1/22/03

Affiliate Name/National Office: PPLM

Incident Location: \, West Springfield

Submitted by: Melanie Lown **Email Address:** Melanie_Lown@pplm.org

Phone Number: 617-616-1686 **Fax Number:** 617-616-1652

Check the type of incident: (*Place cursor on the box and click to check. Press* **F1** *for definition*).

☐ Arson	☐ Bombing, Attempted	☐ Invasion
☐ Arson, Attempted	☐ Burglary	☐ Stalking
☐ Assault and/or Battery	☐ Chemical Attack (e.g. Butyric Acid)	☐ Suspicious Package
☐ Bio-Terrorism (e.g. Anthrax)	☐ Death Threat	☐ Trespass
☐ Blockade	☐ Hate Mail/Harassing Calls	☐ Vandalism
☐ Bomb Threat	☐ Internal Theft	☒ Other:Res.Picketing
☐ Bombing	☐ Internet/E-Mail Threat	

Detailed Incident Description: A mother and daughter picketed Dr. 's home on January 22, 2003. They stood in front of her house, took pictures and held a large sign that read, " is an abortionist." Pictures of Dr. 's house were placed on the Operation Rescue Website the following week (www.orboston.org). The protesors then moved nearby to a fairly busy intersection ( ) in West Springfield at the end of Dr. 's street. Dr. 's husband and children were at home, althouth she was not. A neighbor called the Springfield police at approximately 5:30pm who spoke to the protesters. The police told them that they needed to call the station before they showed up again. (The protestors indicated that they would be back.) Ms. Morris, Operations Supervisor for PPLM in Springfield also spoke with the Springfield police about the incident on 1.24.03. The police said that if Dr. sees protestors while driving home and doesn't feel safe that she should instead drive to the police station and the police will send a cruiser down first and then escort her home. The police mentioned that if Dr. is home at the time of the incident to immediately call 911.

REDACTED

Damage Estimate: $

Law Enforcement Involved:

Name of Arrested/Charges:

EXHIBIT 2

Fact Sheet:
The Shortage of Abortion Providers

- 87% of all U.S. counties and 97% of all rural U.S. counties have no abortion provider.[1]
- Since 1982, the number of abortion providers has decreased by 37%.[1]
- 58% of all OB/GYN doctors who provide abortions are 50 years of age or older. This means the number of providers will continue to decline as current providers reach retirement age, unless younger clinicians learn to perform abortions.[2]
- In 1983, 42% of all OB/GYN doctors performed abortions. In 1995, only 33% did. The overwhelming majority of abortions are performed by a small group of doctors: Only 2% of U.S. OB/GYN doctors perform more than 25 abortions per month.[3]
- 72% of OB/GYN residency programs do not train all residents in abortion procedures.[4]
- From 1982 to 2000, the number of hospitals providing abortions has decreased by 57%.[1]
- Only 15% of chief residents in family medicine residency programs have clinical experience providing first trimester abortions.[3]
- "Physician-only" laws in most states require careful legal research to ascertain whether advanced practice clinicians (nurse practitioners, nurse midwives, and physician assistants) can provide medical and/or surgical abortions under their professional regulations.
- Many nursing programs do not adequately prepare students to care for women having abortions, contributing to a shortage of nurses willing and trained to assist abortion providers. Lack of faculty qualified to teach about reproductive options, fear of anti-choice backlash, and the absence of appropriate didactic materials are barriers to incorporating abortion into existing curricula.
- Abortion is one of the only medical procedures with a "conscience clause" that allows medical providers to refuse to participate in the care of a patient.
- There have been 15,087 reported instances of violence and/or harassment against abortion providers since 1977, including 7 murders and 17 attempted murders (actual instances are most likely much higher.)[5] In 2000, more than half of all providers experienced anti-choice harassment.[6]

Sources:

1 S.K. Henshaw, "Abortion Incidence and Services in the United States, 2000," Family Planning Perspectives, 35:1, Jan/Feb 2003.

2 Kaiser Family Foundation Fact Sheet, "Abortion in the U.S." January 2003.

3 J. Hitt, "Who Will Do Abortions Here?", New York Times, 1/18/98.

4 Almeling, et al. "Abortion Training in Obstetrics and Gynecology Residency Programs, 1998," Family Planning Perspectives, 32(6) Nov/Dec 2000.

5 National Abortion Federation Fact Sheet, "Violence and Disruption Statistics," December 2002.

6 S.K. Henshaw, "The Accessibility of Abortion Services in the United States, 2001," Perspectives on Sexual and Reproductive Health, 35:1, January/February 2003.

Statistics compiled June 2003

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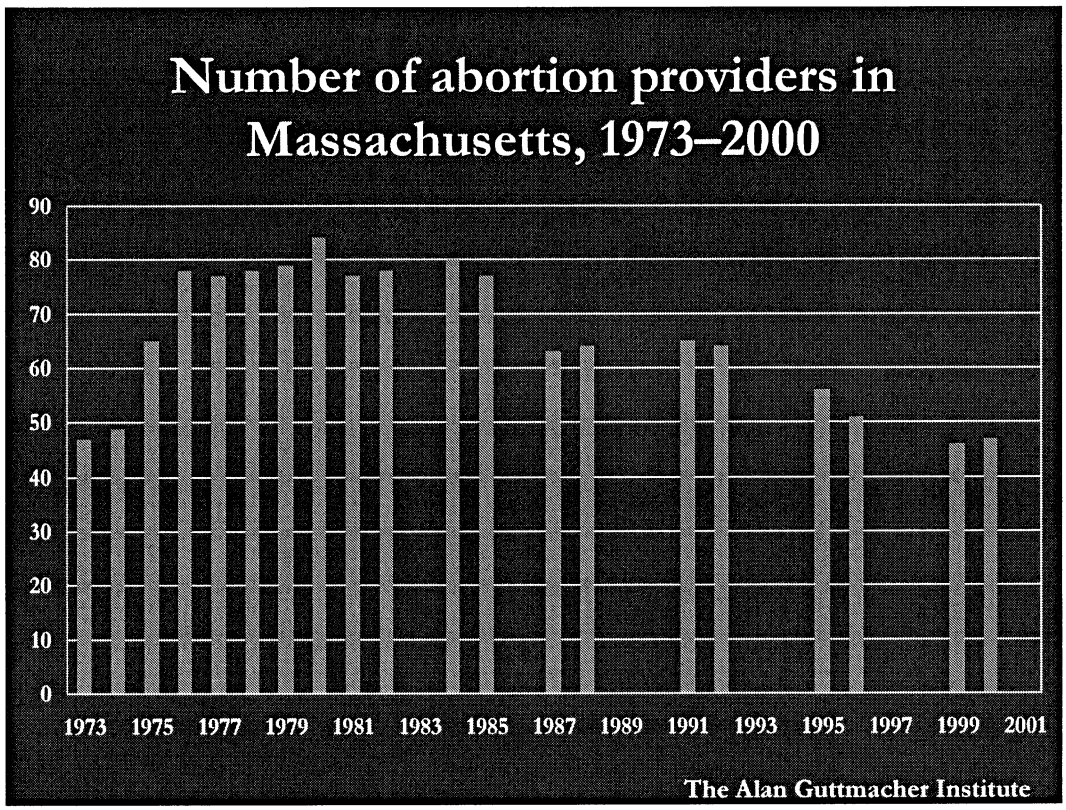
Updated May 06, 2004 07:48 PM

EXHIBIT 3

Trends in Abortion in Massachusetts, 1973–2000

The Alan Guttmacher Institute (AGI)

© January 2003



Slide #4

Note: Beginning in 1988, data were collected every four years; previously, data were collected more frequently.

Sources: **1973–1988:** Henshaw SK and Van Vort J, eds., *Abortion Factbook 1992 Edition: Readings, Trends and State and Local Data to 1988*, New York: Alan Guttmacher Institute (AGI), 1992, Table 11. **1992:** Henshaw SK and Van Vort J, Abortion services in the United States, 1991 and 1992, *Family Planning Perspectives*, 1994, 26(3):100–106 & 112, Table 4. **1996:** Henshaw SK, Abortion incidence and services in the United States, 1995–1996, *Family Planning Perspectives*, 1998, 30(6):263–270 & 287, Table 5. **2000:** Finer LB and Henshaw SK, Abortion incidence and services in the United States in 2000, *Perspectives on Sexual and Reproductive Health*, 2003, 35(1):6–15, Table 3. **1991, 1995 and 1999:** Unpublished tabulations from the 1992, 1996 and 2000 Abortion Provider Surveys.

EXHIBIT 4

State and Local Residential Picketing Laws

Locality/Ordinance	Relevant Provisions	Relevant Cases/Result
Arizona ARIZ. REV. STAT. ANN. § 13-2909 (West 1994)	Prohibits picketing or demonstrating before or about the residence or dwelling of an individual with intent to harass, annoy or alarm another person. Violation is a misdemeanor. Exception for residence used for principal place of business.	*State v. Baldwin*, 908 P.2d 483 (Ariz. Ct. App. 1995) (upholding constitutionality of §13-2909 as neither impermissibly vague nor overbroad, and therefore as not violative of the state or federal guarantees of free speech)
Arkansas ARK. CODE ANN. § 5-71-225 (Michie 1995)	Prohibits demonstrations of any type of picketing before or about any residence or dwelling place of any individual.	N/A
Burbank, California BURBANK, CAL., CODE § 20-303 (1990)	Prohibits picketing before or about the residence or dwelling of any individual.	N/A
Davis, California DAVIS, CAL., CODE § 35.06.020	Makes it unlawful for any person to picket before or about a residence if the picketing is focused on that particular residence. Violation is a misdemeanor.	N/A
Glendale, California GLENDALE, CAL., CODE § 9.20.080 (1992)	Makes it unlawful for any person or group of persons to picket solely in front of, or at, the residence of a single individual.	N/A
Huntington Beach, California HUNTINGTON BEACH, CAL., CODE § 9.20.030 (1993)	Makes it unlawful to engage in picketing within 300 feet of any residence or dwelling of any individual where such picketing is focused or targeted against that residence, dwelling or individual.	N/A
Los Angeles, California LOS ANGELES, CAL., CODE, CH. V, ART. 6.1, § 56.45(e) (1995)	Prohibits picketing that is focused upon, and at or about a private residence and that takes place within 100 feet of the private residence. Explicitly excludes peaceful picketing, distribution of pamphlets, or going door to door. Violation is a misdemeanor.	N/A

Locality/Ordinance	Relevant Provisions	Relevant Cases/Result
Palos Verdes Estates, California PALOS VERDES ESTATES, CAL., CODE § 9.05.010 (1990)	Prohibits picketing before or about the residence or dwelling of any individual.	N/A
Sacramento County, California SACRAMENTO COUNTY, CAL., COUNTY CODE § 9.83-000-.015 (1993)	Makes it unlawful for any person to picket within 100 feet of a residence or dwelling in the county when the picketing is focused on the residence or dwelling. Makes an exception for residences used as places of business, residences used for public meetings, and when the picketers are present at the invitation of the resident. Ordinance also specifically states that residential picketing not focused on a specific home is not prohibited by the ordinance.	N/A
San Diego, California SAN DIEGO, CAL., CODE § 52.2001-.2003 (1993)	Makes it unlawful to picket before or about the residence of an individual. Ordinance specifies that it does not preclude residential picketing not targeted at a particular residence.	N/A
San Jose, California SAN JOSE, CAL., CODE § 10.09.010-020 (1994)	Prohibits any person from engaging in picketing activity that is targeted at and is within 300 feet of a residential dwelling.	*City of San Jose v. Superior Court*, 38 Cal. Rptr. 2d 205 (Cal. App. 6th Dist. 1995) (upholding constitutionality of ordinance because protesters failed to show it was overbroad), *cert. denied*, 1995 Cal. LEXIS 3564 (May 25, 1995), *cert. denied sub nom*, *Thompson v. City of San Jose*, 516 U.S. 932 (1995).
Santa Ana, California SANTA ANA, CAL., CODE § 10-100 (1989)	Makes it unlawful to picket before or about the residence of any individual where the picketing is focused on that particular residence.	N/A
Tustin, California TUSTIN, CAL., CODE § 6510-6530 (1993)	Makes it unlawful to engage in picketing that is targeted at and is within 300 feet of a residential property.	N/A

Locality/Ordinance	Relevant Provisions	Relevant Cases/Result
Connecticut CONN. GEN. STAT § 31-120 (1994)	Prohibits picketing before or about the home or residence of any individual unless such home is adjacent to, or in the same building, or on the same premises in which such person was employed and which employment is involved in a labor dispute.	*French v. Amalgamated Local Union 376*, 526 A.2d 861 (Conn. 1987) (striking down residential picketing statute as violation of First and Fourteenth Amendments *because statute contained exception for labor picketing*) (emphasis added).
District of Columbia D.C. CODE ANN. §§ 22-1314.02 (b) (2004)	Makes it unlawful to "act alone or in concert with others with the intent to prevent a health professional or his or her family from entering or leaving the health professional's home."	N/A
Hawaii HAW. REV. STAT. § 379A-1 (1995)	Prohibits any person from picketing before or about the residence or dwelling place of an individual. Exceptions for when the dwelling place is also the place of employment involved in a labor dispute and for peacefully picketing the place of a meeting or premises commonly used to discuss subjects of general public interest.	N/A
Illinois 720 ILL. COMP. STAT. 5/21.1-2 (2004)	Prohibits picketing before or about a residence. Exceptions for when the residence is used as a place of business, when peacefully picketing one's own residence, and when picketing the place of a meeting or premises commonly used to discuss subjects of general public interest.	N/A
Clive, Iowa	Prohibits any person from engaging in picketing before, about or immediately adjacent to, the residence or dwelling of any individual in Clive.	*Douglas v Brownell*, 88 F.3d 1511 (8th Cir. 1996) (upholding the consitutionality of Clive ordinance).
Prairie Village, Kansas PRAIRIE VILLAGE ORD. NO. 1785, ART. 9.13	Prohibits picketing before or about the residence or dwelling of any individual in the city, or before or about any church in the city.	N/A

Locality/Ordinance	Relevant Provisions	Relevant Cases/Result
Topeka, Kansas TOPEKA, KAN., CODE § 54-126 (1993)	Prohibits picketing that is directed, focused, or targeted at a residence and that takes place before or about the residence.	N/A
Maryland MD. CODE ANN., CRIM. LAW., § 3-904 (2003)	Prohibits a person from intentionally assembling with another in a manner that disrupts a person's right to tranquility in his or her home. Exceptions for picketing in connection with a labor dispute, picketing when the home is also the sole place of business, and picketing in areas commonly used to discuss subjects of general public interest.	N/A
Michigan MICH. COMP. LAWS § 423.9f(4) (2004)	Prohibits picketing a private residence by any means or methods. Creates an exception for picketing that is otherwise authorized by the Constitution.	N/A
Shoreview, Minnesota SHOREVIEW, MINN., CODE § 1006.010-.060 (1995)	Prohibits marching, standing, or patrolling within 100 feet of a residence if carrying written material that identifies the dwelling's occupant or if verbalizing protests that identify the occupant of the dwelling. Prohibits any marching, standing, or patrolling that interferes with the ability to enter or exit the residence. Ordinance also prohibits standing or patrolling within 100 feet for a continuous period of five minutes or more.	N/A
White Bear Township, Minnesota WHITE BEAR, MINN., ORDINANCE NO. 63 (1990)	Prohibits "targeted residential picketing," which is defined as activity focused on a single residential dwelling without the consent of the dwelling's occupant.	*State v. Castellano*, 506 N.W.2d 641 (Minn. Ct. App. 1993) (upholding constitutionality of ordinance under *Frisby v. Schultz* when ordinance is interpreted narrowly "to proscribe only 'picketing activity' focused on or taking place in front of a particular single residential dwelling").

Locality/Ordinance	Relevant Provisions	Relevant Cases/Result
Minnesota MINN. STAT. ANN. § 609.748(2) (c)(1) (West 1994)	Prohibits "targeted residential picketing" as part of broader anti-harassment statute. Defines "targeted residential picketing" as marching, standing, or patrolling directed at a particular residential building that adversely affects the safety, security, and privacy of occupants or prevents occupants from entering or exiting	*Welsh v. Johnson*, 508 N.W.2d 212 (Minn. Ct. App. 1993) (relying on *Frisby* to uphold constitutionality of statute as applied to defendant who was enjoined from coming within two blocks of plaintiff's residence).
Nebraska NEB. REV. STAT., CH. 28, § 1317	Prohibits picketing that interferes with any person in the exercise of his or her lawful right to work, or right to enter upon or pursue any lawful employment by, among other things, picketing the place of residence of any person, or any street, alley, road, highway or any other place where such person may be, or in the vicinity thereof. Violation is a misdemeanor.	N/A
Lincoln, Nebraska, LINCOLN MUNICIPAL CODE, CH. 9.40, § 90	Prohibits picketing directed towards a specific person or persons in the portion of any street that abuts the property upon which the specific person's dwelling is located or abuts property within 50 feet of the property upon which the specific person's dwelling is located. This excludes sidewalk space on the opposite side of the street from the specific person's dwelling.	*Thornbarn v. Austin*, 231 F.3d 1114 (8th Cir. 2000) (upholding constitutionality of ordinance).
Artesia, New Mexico ARTESIA CITY CODE, TITLE V, CH. 113, §§ 19A-B	Prohibits picketing before or about the residence or dwelling of any individual.	*Garcia v. Gray*, 507 F.2d 539 (10th Cir. 1974) (upholding constitutionality of ordinance as permissible exercise of the city's power to protect residential privacy), *cert denied* 421 U.S. 971 (1975).
Fargo, North Dakota FARGO, N.D., MUNICIPAL CODE, ART.10-0802 (1985)	Prohibits picketing the dwelling of any individual in the City of Fargo.	*Veneklase v. Fargo*, 248 F.3d 738 (8th Cir. 2001) (*en banc*) (upholding constitutionality of 1985 ordinance).

Locality/Ordinance	Relevant Provisions	Relevant Cases/Result
Ohio OHIO REV. CODE ANN. § 715.49 (1995)	Grants authority to any municipal corporation to prevent noise and disturbance and disorderly assemblages to preserve the peace and order and to protect property of the municipal corporation and its residents.	N/A
University Heights, Ohio UNIVERSITY HEIGHTS, OHIO, CODIFIED ORDINANCES, Ch. 648, § 15 (1993)	Prohibits picketing that is directed at or conducted primarily before, or about or in the immediate vicinity of the land upon which a dwelling is situated and any activity that blocks entrance to and exit from the dwelling.	N/A
Barrington, Rhode Island CODE OF THE TOWN OF BARRINGTON, R.I., ART. V. 66, §§ 138-1-2 (2004)	Prohibits picketing in front of, adjacent to or with respect to any property used for residential purpose. Exception for when such picketing relates to a use or activity being carried on within such property.	*Town of Barrington v. Blake*, 568 A.2d 1015 (1990) (upholding consitutionality of ordinance under *Frisby v. Shultz*).
Providence, Rhode Island PROVIDENCE, R.I., CODE OF ORDINANCES § 16-13.1.	Prohibits picketing before or about the dwelling of an individual.	N/A
Dallas, Texas DALLAS, CITY CODE § 31-34 (1993)	Prohibits picketing within 200 feet of the property line of a residence when the picketing is directed or focused at the particular residence. Ordinance provides that before an arrest can be made for violating this section, the picketers must have been ordered to move either by a peace officer, fire fighter, or the picketer's target.	N/A

Locality/Ordinance	Relevant Provisions	Relevant Cases/Result
Virginia VA. CODE ANN., CH. 9, §§ 18.2-418-19	Prohibits picketing before or about the residence or dwelling place of any individual, or an assembly of people in a manner that disrupt or threatens to disrupt any individual's right to tranquility in his home. Exception for labor picketing of place of employment dispute, and for assemblies on premises commonly used for public discussion. Also authorizes equity court to issue injunctions. Violation is a misdemeanor.	*Virginia v. Hyatt*, 1995. Va. Cir. LEXIS 1120 (1995) (holding ordinance unconstitutional *because it excluded labor picketing*).
Brookfield, Wisconsin BROOKFIELD, WIS., GENERAL CODE, CH. 9.12.070	Makes it unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in Brookfield.	*Frisby v. Shultz*, 487 U.S. 474 (1988) (upholding constitutionality of ordinance).

Minority Report of the Selectmen's Committee on Focused Residential Picketing

October 19, 2004

Introduction and Summary of Conclusions

This is the report of three members of the Committee on Focused Residential Picketing which was appointed by the Selectmen pursuant to Warrant Article 23 of the November 2003 special town meeting. The Committee was charged with the task of determining the need for the "focused residence picketing" by-law which had been approved for one year with a sunset provision of January 1, 2005. A minority of the committee, after several meetings, and much discussion and reading, has reached the following conclusions:

1) There has been no adequate demonstration that Brookline needs a "focused residential picketing" by-law. The Brookline police have reported being aware of only one instance of abortion protesters at a residence since January 1, 2000, and that one was apparently rather peaceful and uneventful. Although all the members of the committee are deeply supportive of abortion rights, we do not believe that a restriction on peaceful and lawful speech outside of a residence, including labor, corporate, environmental, tenant, and other political demonstrations, should be on the books in Brookline without a substantial justification and none has been provided. It is also uncertain that a restriction like this on peaceful expression would be upheld by the Supreme Judicial Court as constitutional under the state constitution.

2) There has been no adequate demonstration that the by-law passed last November has been or would be effective in protecting the families of abortion providers from violence or from the very real emotional distress of seeing signs with pictures of purported fetuses or statements such as that the provider is a "murderer." In order to be constitutionally valid, the by-law cannot prohibit picketing on the sidewalk across the street from the residence in question, in front of neighboring houses, or up and down the street. Thus, there is no way, consistent with the First Amendment right of freedom of speech, to protect these residents from seeing the signs or hearing the upsetting statements.

3) There was evidence that abortion providers who live in Brookline feel unsafe and threatened and that their children and other family members feel threatened. There was also evidence that the Brookline police have responded to calls from these residents when anti-abortion picketers arrive by saying there is nothing they can do. The entire committee believes that given the history of violence against abortion providers in Brookline and nationally, the blocking of their driveways and sidewalks, the making at times of threatening statements against them, and the importance of protecting a woman's right to choose, that there are important steps the Brookline police need to take to respond to concerns about the safety of these residents. These steps include:

• sending a police cruiser to provide a presence and engage in observation in order to

protect the safety and rights of providers and their families;

• insuring that driveways, sidewalks, and streets are not being obstructed;

• making appropriate arrests for trespassing, civil rights violations, or other crimes;

• training all officers in understanding the history of violence and interference with the rights of providers of abortion, a service to which women are constitutionally entitled, and training them how to respond appropriately to calls from providers who feel threatened or feel their family members are threatened;

• conferring on a regular basis with civil rights and domestic anti-terrorism law enforcement officers in the FBI and state police to be up-to-date on information about threats to abortion providers and ways to counter those threats;

• encouraging and taking part in meetings with abortion providers residing in Brookline and their neighbors and friends to discuss ways to ensure their safety and protection of their rights; and

• devising a way to receive information from Planned Parenthood and other reproductive health organizations when providers are afraid to call the police directly for fear of information being made known publicly about their residence.

The undersigned members of the Committee believe that these measures would address directly the very real concerns about the safety and well-being of abortion providers and their families, unlike the focused residence picketing by-law which applies to all such picketing in Brookline and moves the picketers only a slight distance away. The Selectmen acting as Police Commissioners have the authority to make sure the police department carries out these and any other necessary steps.

<u>The Focused Residence Picketing By-Law</u> (adopted through approval of November 2003 town meeting warrant article 23):

ARTICLE 8.17 FOCUSED RESIDENCE PICKETING

It is unlawful for any person to engage in picketing focused on, and taking place in front of or about, a particular residence in the town of Brookline. Focused picketing taking place solely in front of or about a particular residence is prohibited.

This by-law shall expire on January 1, 2005. The selectmen are requested by January 31, 2004 to constitute a study committee, which includes at least one representative of Planned Parenthood or other abortion providers, one of the A.C.L.U., and one of the AFL-CIO or other broad-based labor union representative, to review and report to the selectmen on the following two issues:

1. the need for this article, as opposed to merely attempting other strategies to address

the perceived problem; and

2. if the prohibition is needed, how to draft a narrowly-tailored and well-defined by-law which attempts to both address the problem and to protect civil liberties.

Information provided on the nature of the problem

To carry out our responsibility to determine the need for By-Law Article 8.17, adopted under Warrant Article 23 of the November 2003 town meeting, the Committee requested information about the nature and extent of the problems which the ban on focused residence picketing was intended to address. We asked the police department, representatives of Planned Parenthood and Town Counsel for data on complaints about problems relating to residential picketing.

A) Police Department Data

In response to a request from Selectman Michael Sher, Captain John O'Leary, Commanding Officer - Community Service Division - reported that the police department had only one record of residential picketing in Brookline during the period from January 1, 2000 up to June 03, 2004. The report was of an incident on March 20, 2003 at 4:30 p.m. According to Captain O'Leary, "the narrative read a woman reports that there are protesters in front of her house and in her driveway protesting an abortion doctor that lives across the street."

When Police Chief Daniel O'Leary appeared before our committee, he added to this report by stating that only one incident had been reported to the Police Department concerning anti-abortion protests held at the homes of Brookline residents, but there had been picketing at residences in Brookline relating to issues not concerning abortion, including labor actions and one protest at the home of a pharmaceutical company officer or director. No additional information about these incidents was provided to the committee.

B) Planned Parenthood Data

Representatives of Planned Parenthood League of Massachusetts (PPLM) provided information about only two specific incidents in Brookline. In one case, the wife of a physician complained in May 2003 of picketing by protesters who stopped in front of her house and then went on to protest elsewhere. The protesters held signs with her husband's name on it, calling him a murderer. A child in the home felt frightened. The woman reported that she called the Brookline Police "and they gave me a very nonchalant response." They offered her contact information for Operation Rescue in Milton but advised her not to contact them. The second report from a physician complained of groups of ten to twelve people three times a year for four years picketing at the end of a driveway. The physician complained of children in the family having to see signs with pictures of fetuses that called their father a murderer. The protesters sometimes made threatening remarks and also made it difficult to exit from the driveway. There was no indication that the Brookline police had been contacted to do anything about the threats of violence or to prevent the driveway from being blocked. The family member making the

complaint called for the renewal of the by-law as “the only protection I have for my children in their home.”

Planned Parenthood also provided information about incidents in Milton of residential picketing where a driveway was blocked, offensive signs were displayed, and yelling took place. The police were reported to be unresponsive. PPLM also reported on two incidents in Braintree, an incident in Hingham, and an incident of residential picketing in West Springfield. PPLM representatives stated at times that most incidents in Brookline were not reported to the police because they assumed that nothing could be done; at other times, it was stated that reports were not made to the police because providers did not want to reveal information about their residence or family situations.

C) Town Counsel data

Town Counsel David Turner was asked whether his office had received any complaints or requests for assistance from clinic workers who had been picketed at their homes. He replied that he had received one telephone call from a lawyer for one or more doctors asking if anything could be done to prevent anti-abortion activists from picketing outside their homes. He indicated he had information of a problem on Lee Street several years ago. This involved approximately six protesters carrying signs on a dirt berm in front of a house. He did not have information about how long the protesters remained.

Nature of the problem and lack of demonstrated need for this by-law

It was clear from the information provided that abortion providers and their families, including children, feel physically threatened and emotionally disturbed by the presence of anti-abortion demonstrators holding signs accusing them of being murderers and with graphic pictures purporting to be macerated fetuses, and shouting disturbing things to them, including threats. The focused residential picketing by-law which can only move demonstrators a short distance and cannot prevent upsetting speech and signs being displayed up and down the street, across the street, or next door cannot effectively address these concerns. The First Amendment to the U.S. Constitution protects the right to engage in disturbing, controversial speech, (although it does not protect the making of threats). Nor can this by-law do anything effective about threats of violence, although other measures such as those listed above can be taken that are directed at stopping the making of threats and, indeed, the carrying out of physical violence.

We note that in the City of Newton in 1994, a residential picketing ordinance was proposed but was not adopted. The Chief of Police there submitted a letter noting that such an ordinance was unnecessary. The National Organization for Women also submitted testimony opposing the proposed ordinance. Surely Brookline has the same concerns as Newton for both freedom of speech and protection of the constitutional right of women to obtain abortions and should not renew a by-law that infringes on peaceful expression while doing nothing to protect abortion providers from threats of harm, particularly when other steps can be taken that directly address the legitimate concerns of the providers.

For these reasons, the undersigned members of this Committee recommend that the by-law be allowed to expire and should not be renewed and also recommends that the Selectmen take steps to carry out the actions listed above in order to provide protection for the safety and well-being of abortion providers and their families who live in Brookline.

Respectfully submitted,

Sarah Wunsch
Mark Michelson
Mary Sullivan

ARTICLE 6

SELECTMEN'S RECOMMENDATION ON ARTICLE 6

The Board of Selectmen and the Advisory Committee agreed to amend the Town's Focused Residence Picketing By-Law by extending the sunset date from December 31, 2004 until June 30, 2006.

The Board of Selectmen and the Advisory Committee likewise agreed to recommend that Town Meeting adopt a resolution calling on the Selectmen's Committee on Focused Residence Picketing (the "Committee") to continue its work. The wording of the resolution recommended by the Selectmen differed in that the resolution (which had been unanimously approved by the Committee) requested that the Committee work with the Police Department and other Town departments to determine if alternatives to a permanent by-law might be found to protect, among others, doctors and employees of reproductive health care clinics – the most recent targets of focused residence picketing. The Selectmen believed that under the words of the Advisory Committee's resolution, the Committee would still be free to investigate these and other alternatives to a permanent Focused Residence Picketing By-Law. Therefore at its November 2 meeting, the Board of Selectmen reconsidered Article 6. By a vote of 5-0, the Board recommends FAVORABLE ACTION on the resolution language offered by the Advisory Committee, which is re-printed below.

Be it Hereby Resolved, that the Town Meeting requests that the Selectmen continue the Advisory Committee on Focused Residential Picketing and requests that the Committee continue to investigate various improvements, refinements, alternatives to, narrowed versions of, and the continuing need for Article 8.17

ARTICLE 7

SEVENTH ARTICLE

To see if the Town will amend the Town By-Laws by adding a new ARTICLE 7.12, to read as follows:

ARTICLE 7.12
UNDERGROUND UTILITIES

SECTION 7.12.1 PURPOSE

This Underground Utilities By-Law is subject to the provisions of General Laws, Chapter 166, Section 22A – 22N, and regulates or prohibits the new construction of overhead wires and structures and/or requiring the removal of overhead wires and structures and replacement with underground conduit on public ways throughout Brookline.

SECTION 7.12.2 DEFINITIONS

For the purposes of this Article, the definitions cited in Section 22A in Chapter 166 of the General Laws (G.L.) shall apply in addition to the following.

a) **Alternative Coordination Plan** – A plan to coordinate the implementation of the utility specific plans required by this underground By-Law. In the event that the utilities and the Town are not able to reach agreement on any aspects of a negotiated project coordination plan, the Town will use reasonable discretion to establish an alternative coordination plan. The objective of this alternative coordination plan will be to use a single qualified general contractor to perform the excavation and civil work necessary for the installation of all of the underground facilities, including cable facilities, electric facilities, telephone facilities and municipal facilities, contemplated by this underground By-Law, as well as a proposed formula for apportioning the cost of that qualified general contractor. This alternative project coordination plan will assume that each utility will directly install and energize its own cable and wire in the conduits and manholes constructed by the qualified general contractor. In establishing such alternative coordination plan, the Town shall be guided by the objective of achieving efficient coordination among the utilities, a cost effective underground project, with the minimum disruption of the public way.

b) **Company Specifications** – Detailed specifications provided by each utility regarding the number and size of duct banks, the type and quantity of cable or wire, and the number and precise specifications of manholes and hand holes, the description of and quantification of the equipment necessary to construct and install customer's service facilities, and all other specifications regarding all other facilities necessary to replace overhead service in the Town, with underground

services, all prepared in sufficient detail to be included in a request for bid from a qualified general contractor.

c) **Cost Per Linear Foot** – When reporting the cost of demolition or construction per linear foot, the cost should be reported per linear foot of the overhead or underground system. For example, the 1,000 feet of overhead or underground facilities that are located on 1,000 feet of one side of a public way would be reported as 1,000 feet of overhead facilities or underground facilities removed or constructed. If a particular utility has two lines or two conduits on a given set of poles or in a given duct bank, and therefore 2,000 feet of overhead wire or underground wire in this 1,000 foot span of the public way, the cost per linear foot must be reported using the 1,000 feet of the public way as the denominator, and must not be reported using the 2,000 feet of wires as the denominator.

d) **Customer Service Facilities** – The facilities required to connect a customer's building or structure to the underground services mandated by this By-Law, which customer's service facilities are more specifically defined in Section 22I in G.L., Chapter 166.

e) **Direct Cost of Demolition and Construction** – The direct cost of construction labor, construction materials and construction equipment to implement the demolition and construction mandated by this By-Law. This shall include the direct cost of construction labor, construction materials, and construction equipment used to install the customer's service facilities. Direct costs of demolition and construction shall also include the following costs: (A) the direct cost of completing and "Existing Conditions Plan", to the extent such cost is incurred at the request of the Town in order expedite said schedule, and then reimbursed by the utility; (B) interest on any amounts spent for such direct costs in excess of the required 2% annual expenditure, to the extent such excess expenditure is directly associated with an effort to expedite the actual construction schedule at the request of the Town; (C) the direct cost of any communication ducts installed at the request of the Town, which communication ducts are to be reserved municipal use.

f) **Petition** – The petition, timely filed, that is required by Section 22D in G.L., Chapter 166, relating to the permission to install underground facilities mandated by this By-Law. Such petition shall request permission for the shared common duct banks trenches by and among other utilities and the Town, or include a justification explaining why such shared use of common duct banks and common trenches is not possible.

g) **Plan for Continuation of its Service, for their Replacement with Underground Facilities** – The plan, timely filed, that is required by Section 22D in G.L., Chapter 166, relating to the removal of that particular utility's overhead wires and associated overhead equipment and the construction of a particular utility's underground service facility to provide service to its consumers. This utility specific plan that meets the requirements of this By-Law must include, at a minimum, the following components:

1) The company's specifications for the underground project
2) An estimate of the total direct cost of demolition and construction of the project which includes the cost of installing customer's service facilities
3) An estimate of the total salvage value of the overhead property to be removed
4) A statement of the total company revenues received in the community in the proceeding calendar year, and an estimate of the total company revenues to be received in the community in the current year
5) As estimate of the total duration of the demolition and construction project assuming that the company allocates and expends 2% of such annual revenues (plus the reasonable salvage value of the removed overhead equipment) to the direct cost of demolition and construction of that company's project
6) A proposed coordination plan that describes a plan for utilizing a single qualified general contractor to perform the excavation and civil work necessary for the installation of all of the underground facilities, including cable facilities, electric facilities, telephone facilities and municipal facilities, contemplated by this underground By-Law as well as a proposed formula for apportioning the cost of that qualified general contractor among the various users of the underground facilities constructed
7) A statement that the utility will participate in good faith in a negotiation conducted by the Town, that includes all of the utilities covered by this By-Law, in which the Town attempts to develop a negotiated coordinated plan is acceptable to each utility and to the Town
8) A statement that the company's plan will be implemented is a fashion that complies with any alternative coordination plan that may be established by the Town

Such plan must be filed no later than December of the calendar year prior to the calendar year in which the first expenditures for the direct cost of demolition and construction are required to be made.

h) **Negotiated Project Coordinated Plan** - The Town will review the coordination plans that are included in the cable company plan, electric company plan, and telephone company plan filed with the Board of Selectmen pursuant to this By-Law. The Town will host a project coordination meeting to be attended by representatives of the Town and each of said utilities, and use reasonable efforts to negotiate a project coordination plan that is acceptable to each of said utilities and the Town. The objective of this negotiated coordination plan will be to use a single qualified general contractor to perform the excavation and civil work necessary for the installation of all of the underground facilities, including cable facilities, electric facilities, telephone facilities, and municipal facilities, contemplated by this underground By-Law, as well as a proposed formula for apportioning the cost of that qualified general contractor. This negotiated project coordination plan will assume that each utility will directly install and energize its own cable and wire in the conduits and manholes constructed by the qualified general contractor. In negotiating such coordination plan, the Town shall be

guided by the objective of achieving efficient coordination among the utilities, a cost effective project, with minimum disruption of the public way.

i) **Qualified General Contractor** – A contractor appropriately licensed, insured and bonded with extensive experience in designing and constructing underground utilities in Massachusetts, as evidenced by letters of recommendation from Massachusetts utilities that have contracted for the services of such qualified general contractor in the past.

j) **Statement** – Annual statement, timely filed, that is required by Section 22D in G.L., Chapter 166. This annual statement must, at a minimum, include the following information regarding the removal of overhead facilities and construction of replacement underground facilities, completed by said utility in the prior calendar year:

1) Linear feet of overhead facilities removed
Street names on which such removal occurred
Direct cost of demolition associated with such removal for the calendar year in question
Direct cost of demolition associated with such removal per linear foot of overhead facilities removed

2) Linear feet of underground facilities constructed
Street names on which underground construction occurred
Direct cost of construction for the calendar year in question
Direct cost of construction per linear foot of such construction completed

3) Number of customer service facilities completed
Street names on which customer service facilities occurred
Direct cost of construction associated with customer service facilities demolition and construction spent in any year prior to the preceding calendar year, which amount was in excess of the 2% of the standard defined in Section 22D of G.L., Chapter 166. and which excess amount the utility is allocating as a credit to reduce the dollar expenditures required by this By-Law for the direct cost of demolition and construction in the calendar year that is the focus of this financial report

4) The dollar amount of the direct cost of demolition and construction spent in any year prior to the preceding calendar year, which amount was in excess of the 2% of the standard defined in Section 22D of G.L., Chapter 166 and which excess amount the utility is allocating as a credit to reduce the dollar expenditures required by this By-Law for the direct cost of demolition and construction in the calendar year that is the focus of this financial report

5) Gross revenues derived from that utility's customers in Brookline in the

calendar year preceding the expenditures reported in items 1,2 and 3 above.
Representation that the amounts spent by such utility for the direct cost of demolition and construction, as itemized above, in items 1,2 and 3 plus any credit as described in item 4, equals or exceeds the 2% of the gross revenue report in 5) above

SECTION 7.12.3 PROHIBITING INSTALLATION OF NEW POLES AND OVERHEAD WIRES

No utility shall install or construct, except by way of replacement or upgrading of existing facilities, any poles and overhead wires and associated overhead structures upon, along or across any public way within the Town. Any poles and overhead structures and associated overhead structures installed or constructed in violation of this By-Law shall be immediately removed by the utility responsible therefore.

Any person who installs or constructs any poles and overhead wires and associated overhead structures in violation of any such By-Law shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars. Any person who fails to remove immediately any poles and overhead wires and associated overhead structures in violation of any such By-Law shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars for each consecutive fifteen day period during which his failure continues.

SECTION 7.12.4 REMOVAL OF EXISTING POLES AND OVERHEAD WIRES

Any utility presently owning or operating poles and overhead wires and associated overhead structures along or across any public way within the Town shall begin to remove such poles and overhead wires and associated overhead structures following the effective date of this By-Law in accordance with G.L., Chapter 166, Section 22D.

SECTION 7.12.5 INSTALLATION OF CUSTOMER’S SERVICE FACILITIES

Any utility providing underground replacement facilities pursuant to this By-Law, shall also install customer’s service facilities as defined in Section 22I in G.L., Chapter 166. Such installation of customer’s service facilities shall be incorporated into the plan filed with the Board of Selectmen pursuant to this By-Law and the cost associated with such installation of customer’s service facilities shall be included in the report of direct cost of demolition and construction reported to the Board of Selectmen pursuant to Section 22D (d).

SECTION 7.12.6 SEVERABILITY

If any provision of this By-Law is determined to be invalid, such determination shall not affect the validity of the other provisions of this By-Law, which other provisions shall remain in full force and effect.

SECTION 7.12.7 EXEMPTION OF LOW-INCOME HOUSEHOLDS FROM SURCHARGE ON ELECTRICAL BILLS

The Town shall direct the electric utility company to exempt households from the surcharge on utility bills that qualify for a discount on electrical bills on the basis of a program mandated by the Massachusetts Legislature such as Section 193(1F)(4)(i) of the Electric Restructuring Act ("Act"), Chapter 164 of the Acts of 1997.

SECTION 7.12.8 UNDERGROUND WIRING COMMITTEE

a) Establishment

There is hereby established a standing Underground Wiring Committee, consisting of five (5) voting members. Members are to be appointed by the Board of Selectmen. The selectmen shall initially appoint two members for terms of one year, two for terms of two years and one for a term of three years from the first Monday of May. Thereinafter as the term of office of any member expires the selectmen shall annually, before the first Monday of May, appoint his/her successor for a term of three years. Any vacancy on the committee shall be filled by appointment by the selectmen for the remainder of the unexpired term.

b) Duties

(1) The Underground Wiring Committee shall, at least annually, review the status of the program, review progress on projects that are underway, and make recommendations to the Board of Selectmen regarding the sequencing of future projects. The committee shall consult with existing municipal boards, including the Planning Board, and the Tree Committee, and the Department of Public Works in developing recommendations for future projects. As part of its consideration of the sequencing of projects, the committee shall hold one or more public informational hearings on the benefits, costs, and obstacles associated with the burying of wires in various sections of the town. Meetings of the committee shall be called by the chairman in his motion, or on the request of two or more members. Notice of the hearing shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town.

(2) The Underground Wiring Committee shall monitor the spending of funds collected by utilities through the surcharge on utility bills to assure the financial integrity of the program. In carrying out this responsibility, the Committee shall consult with the Department of Public Works and other appropriate Town personnel. The Committee shall report annually to the Board of Selectmen regarding the financial status of the program.

(3) The Underground Wiring Committee shall assure attention to neighborhood concerns in the planning and implementation of projects to bury wires. In carrying out this responsibility, the Committee will work with the Department of Public Works. The Committee will assure that abutters are informed of proposed projects and that public hearings be held to provide abutters with the opportunity to participate in the planning process.

(4) The Underground Wiring Committee shall monitor the adequacy of provisions to exempt low income households from participating in the financing of the program including the Town's efforts to inform low-income households of opportunities to obtain an exemption. The Committee may also recommend modified measures to exempt low-income households that may be appropriate.

(5) The Underground Wiring Committee shall assure the protection of tree roots in the planning and implementation of projects. In carrying out this responsibility, the Committee will monitor projects to assure that the Town's tree warden is regularly consulted regarding the location of trenches for conduits.

(6) The Underground Wiring Committee may seek sources of financing other than the surcharge on utility bills to accelerate the pace of the program.

(7) The Underground Wiring Committee may facilitate efforts of neighborhood groups to persuade utility companies to eliminate poles on private property.

c) Requirement for a quorum

The Underground Wiring Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the members of the Committee shall constitute a quorum. The Underground Wiring Committee shall approve its actions by a majority vote of the members in attendance at a meeting.

d) Termination

The Underground Wiring Committee shall cease to exist when the program to eliminate utility poles and bury wires throughout Brookline is complete; or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

The Selectmen's Underground Wiring Committee was formed per the vote of Town Meeting on Article 21 of the 2002 November Town Meeting. The Committee was charged with investigating the Town's options with regard to the issues associated with overhead wiring, including the possibility of placing all wired utilities underground. The primary reasons for this investigation included:

- public safety -- downed wires can harm those who come in contact with them.
- reliability -- when wires go down, the electricity, telephone, and/or cable goes out.
- aesthetics -- the wires and poles are unsightly.

At the 2004 Annual Town Meeting in June, the Committee proposed a by-law that was evidence of their diligent work. The proposal was to place all overhead wires underground over a period of 50 – 100 years, to be funded by a 2% surcharge on all wired utility bills. This is allowable under M.G.L. Chapter 166, Section 22. The utilities would collect the 2% monthly surcharge and use those funds to pay for all construction costs associated with this major undertaking.

Town Meeting requested that the Committee perform additional public education, obtain additional public comment, analyze options regarding minimizing the impact of the surcharge on low-income residents, and then report back this November Special Town Meeting. Article 7 is the result of their work. There are two primary changes from the article filed at the Annual Town Meeting in June:

- the addition of a section to exempt low-income residents from the 2% surcharge on the electricity bill (SECTION 7.12.7); and

- the addition of a section that establishes a Committee that would perform the following:

    - review the status of the program, review progress on projects that are underway, and make recommendations to the Board of Selectmen regarding the sequencing of future projects;
    - monitor the spending of funds collected by utilities through the surcharge on utility bills;
    - assure attention to neighborhood concerns in the planning and implementation of projects to bury wires;
    - monitor the adequacy of provisions to exempt low income households from participating in the financing of the program;
    - assure the protection of tree roots in the planning and implementation of projects;
    - may seek sources of financing other than the surcharge on utility bills to accelerate the pace of the program; and
    - may facilitate efforts of neighborhood groups to persuade utility companies to eliminate poles on private property.

The scope of an undertaking of this magnitude is significant: of the approximately 100 miles of streets in the Town, about 76 miles of these streets have overhead wires. Based

on figures provided by NStar, the cost to underground is approximately $400 per foot, meaning the cost of burying one mile would be $2.1 million. Using this estimate, it would cost $158 million to underground all of the wires. With the 2% generating approximately $800,000 - $1,200,000 annually, the total time it would take to accomplish all of this work is more than 100 years.

The cost to residents would vary, depending on the number and types of utilities used by the house. For example, a house with a satellite dish, gas or oil heat, and a telephone would pay a minimal amount per month compared to a house with cable TV, a broadband connection, electric heat, and large monthly telephone bills. Based on the average monthly bills of customers statewide, the impact on an "average" house would be between $30 and $60 per year.

While the Board believes that burying all of the wires underground would be a lasting legacy – one that would improve the appearance of the Town for our children and our children's children – we are also concerned about the complexities of the project. It concerns us that no other community in the Commonwealth has successfully undergrounded its entire wired infrastructure. In some instances, it has taken close to a decade to just get a small area of a town center put underground. The Town will have to work very closely with NStar and the other utilities to assure that residents' money is spent on undergrounding in the most efficient and effective manner.

The 2% surcharge is also of great concern to us. This de facto tax will be in place until the undergrounding is complete (more than 100 years), unless Town Meeting votes to rescind it prior to the completion of the undergrounding. We always take great caution when recommending any action that would burden residents with additional expenses. In this case, we believe the benefits outweigh the cost.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4–0 taken on October 26, 2004 on the vote below. However, as of this printing, Selectmen Sher and Merrill have indicated that they will move to reconsider the Selectmen's recommendation of Favorable Action and will instead propose at the November 2 meeting of the Board that the question of enacting the proposed by-law be the subject of a referendum at the next regular Town election. The two Selectmen argue that, although the by-law would leave a legacy for future generations, the projected $158 million cost and the magnitude of the endeavor justify putting the question of the by-law's adoption to the voters.

VOTED: That the Town amend the Town By-Laws by adding a new ARTICLE 7.12, to read as follows:

ARTICLE 7.12
UNDERGROUND UTILITIES

SECTION 7.12.1 PURPOSE

This Underground Utilities By-Law is subject to the provisions of General Laws, Chapter 166, Section 22A – 22N, and regulates or prohibits the new construction of overhead wires and structures and/or requiring the removal of overhead wires and structures and replacement with underground conduit on public ways throughout Brookline.

SECTION 7.12.2 DEFINITIONS

For the purposes of this Article, the definitions cited in Section 22A in Chapter 166 of the General Laws (G.L.) shall apply in addition to the following.

a) **Alternative Coordination Plan** – A plan to coordinate the implementation of the utility specific plans required by this underground By-Law. In the event that the utilities and the Town are not able to reach agreement on any aspects of a negotiated project coordination plan, the Town will use reasonable discretion to establish an alternative coordination plan. The objective of this alternative coordination plan will be to use a single qualified general contractor to perform the excavation and civil work necessary for the installation of all of the underground facilities, including cable facilities, electric facilities, telephone facilities and municipal facilities, contemplated by this underground By-Law, as well as a proposed formula for apportioning the cost of that qualified general contractor. This alternative project coordination plan will assume that each utility will directly install and energize its own cable and wire in the conduits and manholes constructed by the qualified general contractor. In establishing such alternative coordination plan, the Town shall be guided by the objective of achieving efficient coordination among the utilities, a cost effective underground project, with the minimum disruption of the public way.

b) **Company Specifications** – Detailed specifications provided by each utility regarding the number and size of duct banks, the type and quantity of cable or wire, and the number and precise specifications of manholes and hand holes, the description of and quantification of the equipment necessary to construct and install customer's service facilities, and all other specifications regarding all other facilities necessary to replace overhead service in the Town, with underground services, all prepared in sufficient detail to be included in a request for bid from a qualified general contractor.

c) **Cost Per Linear Foot** – When reporting the cost of demolition or construction per linear foot, the cost should be reported per linear foot of the overhead or underground system. For example, the 1,000 feet of overhead or underground facilities that are located on 1,000 feet of one side of a public way would be reported as 1,000 feet of overhead facilities or underground facilities removed or constructed. If a particular utility has two lines or two conduits on a given set of poles or in a given duct bank, and therefore 2,000 feet of overhead wire or underground wire in this 1,000 foot span of the public way, the cost per linear foot must be reported using the 1,000 feet of the public way as the denominator, and must not be reported using the 2,000 feet of wires as the denominator.

d) **Customer Service Facilities** – The facilities required to connect a customer's

building or structure to the underground services mandated by this By-Law, which customer's service facilities are more specifically defined in Section 22I in G.L., Chapter 166.

e) **Direct Cost of Demolition and Construction** – The direct cost of construction labor, construction materials and construction equipment to implement the demolition and construction mandated by this By-Law. This shall include the direct cost of construction labor, construction materials, and construction equipment used to install the customer's service facilities. Direct costs of demolition and construction shall also include the following costs: (A) the direct cost of completing and "Existing Conditions Plan", to the extent such cost is incurred at the request of the Town in order expedite said schedule, and then reimbursed by the utility; (B) interest on any amounts spent for such direct costs in excess of the required 2% annual expenditure, to the extent such excess expenditure is directly associated with an effort to expedite the actual construction schedule at the request of the Town; (C) the direct cost of any communication ducts installed at the request of the Town, which communication ducts are to be reserved municipal use.

f) **Petition** – The petition, timely filed, that is required by Section 22D in G.L., Chapter 166, relating to the permission to install underground facilities mandated by this By-Law. Such petition shall request permission for the shared common duct banks trenches by and among other utilities and the Town, or include a justification explaining why such shared use of common duct banks and common trenches is not possible.

g) **Plan for Continuation of its Service, for their Replacement with Underground Facilities** – The plan, timely filed, that is required by Section 22D in G.L., Chapter 166, relating to the removal of that particular utility's overhead wires and associated overhead equipment and the construction of a particular utility's underground service facility to provide service to its consumers. This utility specific plan that meets the requirements of this By-Law must include, at a minimum, the following components:

1) The company's specifications for the underground project
2) An estimate of the total direct cost of demolition and construction of the project which includes the cost of installing customer's service facilities
3) An estimate of the total salvage value of the overhead property to be removed
4) A statement of the total company revenues received in the community in the proceeding calendar year, and an estimate of the total company revenues to be received in the community in the current year
5) As estimate of the total duration of the demolition and construction project assuming that the company allocates and expends 2% of such annual revenues (plus the reasonable salvage value of the removed overhead equipment) to the direct cost of demolition and construction of that company's project

6) A proposed coordination plan that describes a plan for utilizing a single qualified general contractor to perform the excavation and civil work necessary for the installation of all of the underground facilities, including cable facilities, electric facilities, telephone facilities and municipal facilities, contemplated by this underground By-Law as well as a proposed formula for apportioning the cost of that qualified general contractor among the various users of the underground facilities constructed
7) A statement that the utility will participate in good faith in a negotiation conducted by the Town, that includes all of the utilities covered by this By-Law, in which the Town attempts to develop a negotiated coordinated plan is acceptable to each utility and to the Town
8) A statement that the company's plan will be implemented is a fashion that complies with any alternative coordination plan that may be established by the Town

Such plan must be filed no later than December of the calendar year prior to the calendar year in which the first expenditures for the direct cost of demolition and construction are required to be made.

h) **Negotiated Project Coordinated Plan** - The Town will review the coordination plans that are included in the cable company plan, electric company plan, and telephone company plan filed with the Board of Selectmen pursuant to this By-Law. The Town will host a project coordination meeting to be attended by representatives of the Town and each of said utilities, and use reasonable efforts to negotiate a project coordination plan that is acceptable to each of said utilities and the Town. The objective of this negotiated coordination plan will be to use a single qualified general contractor to perform the excavation and civil work necessary for the installation of all of the underground facilities, including cable facilities, electric facilities, telephone facilities, and municipal facilities, contemplated by this underground By-Law, as well as a proposed formula for apportioning the cost of that qualified general contractor. This negotiated project coordination plan will assume that each utility will directly install and energize its own cable and wire in the conduits and manholes constructed by the qualified general contractor. In negotiating such coordination plan, the Town shall be guided by the objective of achieving efficient coordination among the utilities, a cost effective project, with minimum disruption of the public way.

i) **Qualified General Contractor** – A contractor appropriately licensed, insured and bonded with extensive experience in designing and constructing underground utilities in Massachusetts, as evidenced by letters of recommendation from Massachusetts utilities that have contracted for the services of such qualified general contractor in the past.

j) **Statement** – Annual statement, timely filed, that is required by Section 22D in G.L., Chapter 166. This annual statement must, at a minimum, include the following information regarding the removal of overhead facilities and construction of replacement underground facilities, completed by said utility in the prior calendar year:

1) Linear feet of overhead facilities removed
Street names on which such removal occurred
Direct cost of demolition associated with such removal for the calendar year in question
Direct cost of demolition associated with such removal per linear foot of overhead facilities removed

2) Linear feet of underground facilities constructed
Street names on which underground construction occurred
Direct cost of construction for the calendar year in question
Direct cost of construction per linear foot of such construction completed

3) Number of customer service facilities completed
Street names on which customer service facilities occurred
Direct cost of construction associated with customer service facilities demolition and construction spent in any year prior to the preceding calendar year, which amount was in excess of the 2% of the standard defined in Section 22D of G.L., Chapter 166. and which excess amount the utility is allocating as a credit to reduce the dollar expenditures required by this By-Law for the direct cost of demolition and construction in the calendar year that is the focus of this financial report

4) The dollar amount of the direct cost of demolition and construction spent in any year prior to the preceding calendar year, which amount was in excess of the 2% of the standard defined in Section 22D of G.L., Chapter 166 and which excess amount the utility is allocating as a credit to reduce the dollar expenditures required by this By-Law for the direct cost of demolition and construction in the calendar year that is the focus of this financial report

5) Gross revenues derived from that utility's customers in Brookline in the calendar year preceding the expenditures reported in items 1,2 and 3 above.
Representation that the amounts spent by such utility for the direct cost of demolition and construction, as itemized above, in items 1,2 and 3 plus any credit as described in item 4, equals or exceeds the 2% of the gross revenue report in 5) above

SECTION 7.12.3 PROHIBITING INSTALLATION OF NEW POLES AND OVERHEAD WIRES

No utility shall install or construct, except by way of replacement or upgrading of existing facilities, any poles and overhead wires and associated overhead structures upon, along or across any public way within the Town. Any poles and overhead structures and associated overhead structures installed or constructed in violation of this By-Law shall be immediately removed by the utility responsible therefore.

Any person who installs or constructs any poles and overhead wires and associated overhead structures in violation of any such By-Law shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars. Any person who fails to remove immediately any poles and overhead wires and associated overhead structures in violation of any such By-Law shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars for each consecutive fifteen day period during which his failure continues.

SECTION 7.12.4 REMOVAL OF EXISTING POLES AND OVERHEAD WIRES

Any utility presently owning or operating poles and overhead wires and associated overhead structures along or across any public way within the Town shall begin to remove such poles and overhead wires and associated overhead structures following the effective date of this By-Law in accordance with G.L., Chapter 166, Section 22D.

SECTION 7.12.5 INSTALLATION OF CUSTOMER’S SERVICE FACILITIES

Any utility providing underground replacement facilities pursuant to this By-Law, shall also install customer’s service facilities as defined in Section 22I in G.L., Chapter 166. Such installation of customer’s service facilities shall be incorporated into the plan filed with the Board of Selectmen pursuant to this By-Law and the cost associated with such installation of customer’s service facilities shall be included in the report of direct cost of demolition and construction reported to the Board of Selectmen pursuant to Section 22D (d).

SECTION 7.12.6 SEVERABILITY

If any provision of this By-Law is determined to be invalid, such determination shall not affect the validity of the other provisions of this By-Law, which other provisions shall remain in full force and effect.

SECTION 7.12.7 EXEMPTION OF LOW-INCOME HOUSEHOLDS FROM SURCHARGE ON ELECTRICAL BILLS

The Town shall direct the electric utility company to exempt households from the surcharge on utility bills that qualify for a discount on electrical bills on the basis of a program mandated by the Massachusetts Legislature such as Section 193(1F)(4)(i) of the Electric Restructuring Act ("Act"), Chapter 164 of the Acts of 1997.

SECTION 7.12.8 UNDERGROUND WIRING COMMITTEE

a) Establishment

There is hereby established a standing Underground Wiring Committee, consisting of five (5) voting members. Members are to be appointed by the Board of Selectmen. The selectmen shall initially appoint two members for terms of one year, two for terms of two years and one for a term of three years from the first Monday of May. Thereinafter as the term of office of any member expires the selectmen shall annually, before the first Monday of May, appoint his/her successor for a term of three years. Any vacancy on the committee shall be filled by appointment by the selectmen for the remainder of the unexpired term.

b) Duties

(1) The Underground Wiring Committee shall, at least annually, review the status of the program, review progress on projects that are underway, and make recommendations to the Board of Selectmen regarding the sequencing of future projects. The committee shall consult with existing municipal boards, including the Planning Board, and the Tree Committee, and the Department of Public Works in developing recommendations for future projects. As part of its consideration of the sequencing of projects, the committee shall hold one or more public informational hearings on the benefits, costs, and obstacles associated with the burying of wires in various sections of the town. Meetings of the committee shall be called by the chairman in his motion, or on the request of two or more members. Notice of the hearing shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town.

(2) The Underground Wiring Committee shall monitor the spending of funds collected by utilities through the surcharge on utility bills to assure the financial integrity of the program. In carrying out this responsibility, the Committee shall consult with the Department of Public Works and other appropriate Town personnel. The Committee shall report annually to the Board of Selectmen regarding the financial status of the program.

(3) The Underground Wiring Committee shall assure attention to neighborhood concerns in the planning and implementation of projects to bury wires. In carrying out this responsibility, the Committee will work with the Department of Public Works. The Committee will assure that abutters are informed of proposed projects and that public hearings be held to provide abutters with the opportunity to participate in the planning process.

(4) The Underground Wiring Committee shall monitor the adequacy of provisions to exempt low income households from participating in the financing of the program including the Town’s efforts to inform low-income households of opportunities to obtain an exemption. The Committee may also recommend modified measures to exempt low-income households that may be appropriate.

(5) The Underground Wiring Committee shall assure the protection of tree roots in the planning and implementation of projects. In carrying out this responsibility, the Committee will monitor projects to assure that the Town's tree warden is regularly consulted regarding the location of trenches for conduits.

(6) The Underground Wiring Committee may seek sources of financing other than the surcharge on utility bills to accelerate the pace of the program.

(7) The Underground Wiring Committee may facilitate efforts of neighborhood groups to persuade utility companies to eliminate poles on private property.

c) Requirement for a quorum

The Underground Wiring Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the members of the Committee shall constitute a quorum. The Underground Wiring Committee shall approve its actions by a majority vote of the members in attendance at a meeting.

d) Termination

The Underground Wiring Committee shall cease to exist when the program to eliminate utility poles and bury wires throughout Brookline is complete

ROLL CALL VOTE:
Favorable Action
Geller
Hoy
Sher
Merrill

_ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
This warrant article deals with a proposed amendment to the Town's By-Laws. Article 7.12 of the By-Laws and would bring Brookline under the provisions of Massachusetts General Laws chapter 166, sections 22A through 22N governing underground wiring. If passed, the By-Law would prohibit the construction of new overhead wires and govern the method by which all current overhead wires would be buried underground. A Selectmen's Committee on Underground Wiring ("the Committee") has been working on this issue and the proposed By-law is the result of their efforts.

The Committee was created after the fall 2002 Town Meeting directed the Board of Selectmen to appoint a committee to review and report on the proliferation of overhead wires in Town. At the spring 2004 Town Meeting, the Committee submitted a Warrant Article to bury overhead wires by adopting the surcharge under G.L. c. 166. Due to concerns raised about the impact on low-income residents, particularly those with electric heat, and on street trees as a result of burying wires, Town Meeting voted to refer the Warrant Article back to the Committee for further study. The revised Warrant Article addresses many of the concerns raised at the 2004 Annual Town Meeting.

DISCUSSION

The purpose of the proposed By-Law is to bury all overhead wires in Brookline. Currently, about 25 of the 100 miles of utility wires (electric, telephone, cable, etc.) are already underground. The cost to bury the other 75 miles of wires would be paid for by wired utility customers in Brookline, including residential and commercial customers, through a surcharge on their bill. Under G.L. c. 166, the surcharge is currently set at 2% of a wired utility bill (except the generation portion of the electric bill which is exempt from the surcharge, (i.e. the 2% surcharge would apply to the approximately 60% of the electric bill which is for distribution). According to the proponents, the proposed surcharge would bring in approximately $1,000,000 in surcharge revenue each year from all utilities. It should also be noted that there is a pending bill in the Legislature (House 4892), which would raise the surcharge to 7% on the distribution portion of the electric bill only. This bill has passed both the House and Senate and is awaiting enactment by both houses. The effect of the increase could be substantial, both in terms of the amount of revenue generated as well as the impact on ratepayers.

Presently Brookline has underground wires along Beacon Street and in some parts of Brookline Village. However, many areas of Town, which still have poles and overhead wires, would be affected by this By-law. The Underground Wiring Committee estimates that it would cost approximately $1,000,000 per mile to put the wires underground. Consequently, the proponents acknowledge that the proposal would take from 50 to 100 years to complete. Representatives from NStar gave substantially higher estimates for undergrounding wires ($400/linear foot, not including other charges such as wiring from the street to a customer's house).

The Underground Wiring Committee should be commended for producing a thorough and thoughtful proposal. The proposal to underground all overhead wires throughout the Town is a long-term project with several benefits. Please refer to the attached FAQs developed by the Committee for answers to many of the questions that arose throughout the Committee's review of this issue. Among the potential benefits to the Town include the following:

Public Safety – The proponents have asserted that putting the wires underground would result in increased public safety. Each year the Fire Department is called out approximately 100 times for downed wires. Bad weather, particularly ice, can cause live electric lines to fall, which present a serious danger. In addition, an internet search reveals that on occasion people have gotten electrocuted working outside when overhead wires are nearby, e.g. tree trimmer's metal ladders came into contact with overhead wire. The only risk from underground wires appears to be that there can be an occasional stray

current such as that which injured some dogs in Boston earlier this year. Therefore, on balance, underground wires appear to be safer than overhead wires.

Reliability – The proponents assert that underground wires are far more reliable than overhead wires. They cited long experience in Denmark and Holland in support of that contention. In fact, during storms there are often widespread power or telephone outages due to overhead wires being out. Representatives of NStar that appeared before the Subcommittee claim that underground wires may not be more reliable if the underground wire hooks up with overhead wires just over the Town line. In addition, underground wires are more subject to problems from flooding during heavy rain. The Commonwealth's Department of Telecommunications & Energy does not segregate outage records according to whether the lines were overhead or underground, so it cannot provide easy information as to the relative reliability of the wires. However, even the NStar representatives admit that the process of putting wires underground would entail replacing many old wires with new ones, so at least initially there should be an increase in reliability. In contrast, when there are problems with underground wires, they are harder to find and fixing them often requires ripping up the streets. Therefore, fixing problems with underground wires is both more expensive and more time consuming than fixing overhead wires.

Additional Revenue – The Town could realize additional revenue from personal property taxes from burying the wires. The Town cannot collect taxes on overhead wires, but can collect personal property taxes on underground utilities. The proponents state that Brookline currently takes in $1.5 million in personal property taxes from utilities. Extrapolating from this, in today's dollars, if all wires were underground, the Town could collect as much as $6 million (or $4.5 million in new revenue). However, there would be significant lag time before the Town would collect any additional personal property taxes. In the meantime, the Town will have to pay an additional estimated $30,000/year as a utility user for the surcharge

Aesthetics – Perhaps the most compelling reason for undergrounding the wires is the aesthetic consideration. All agree that the plethora of overhead wires, which has grown with the introduction of cable companies, is visually unattractive. The long disruption of opening streets to put the wires underground must be weighed against the better view, but on the aesthetic issue, undergrounding the wires clearly seems to win over overhead wires.

The negatives to the Town and ratepayers of putting wires underground include both the difficulties of implementation and the expense. The experience of other Towns has been that there are substantial delays from the time the utilities begin collecting the surcharge to when they see any substantial implementation of the program to put the wires underground. Other communities such as North Andover and Chelmsford have been frustrated at the slow pace of putting the wires underground. Therefore, ratepayers may be paying the surcharge for several years before they will see substantial benefit from the project. In addition, while most communities have only been trying to underground the wires in their downtown or main street areas, the Brookline project would be considerably larger since the goal is to underground all wires. Typically, the electric utility company is cited as the problem in moving forward expeditiously.

The process has worked more smoothly in communities that own their own electric plants. However, even in Wellesley where the Town does have its own Municipal Light Plant, they felt that Verizon slowed them down in their effort to underground wires in the area around Town Hall. Since the Town was the electric utility provider they did not use the surcharge method to pay for the project. They appropriated money to do this limited area. Dick Joyce the manager of the Municipal Light Plant said that a Town entering into an undergrounding project should expect the utilities to be aggressive in attempting to recover all their costs, including overhead costs for engineering, the remaining depreciable life of the poles that were being taken down as well as the disposal costs for those poles, and any ancillary infrastructure costs.

Notably, in Wellesley about 93% of the wires from the street to individual buildings are now underground. Wellesley requires new buildings or subdivisions to use underground wires, which is also required in this proposed bylaw, and it also requires that any homeowner who undertakes any work on the building which involves upgrading the electric system to underground the wires from the street to the house at the expense of the building owner. The latter provision is not included in the proposed Brookline bylaw.

Elizabeth Cellucci of the Massachusetts Department of Telecommunications & Energy confirms that utilities will not do any work on undergrounding wires prior to the collection of the necessary money through the surcharge. She explained that if the utility did work in advance or in excess of money collected, the State would not allow them to add that to the rate they charge, because the rate is set for all their users and the benefit would go only to one community. She also noted that the Town should not expect the State to help in dealing with the utilities in connection with an undergrounding project because the State agency only deals with service problems after the wires are installed.

The proposal is appealing not only for the reasons stated above, most importantly aesthetics, but also for the fact that it is a rare opportunity to plan the future of Brookline for generations. But, given the problems with implementation on this project; the very long-term nature of the project; remaining unanswered questions such as which part of Town would get their wires put underground first, and how to get the cooperation of the utilities; and the fact that the 2% (or possibly 7%) surcharge is very akin to a tax, like an override, a substantial minority of the Advisory Committee indicated that though they personally supported the concept of undergrounding the utility wires and were willing to pay the surcharge, they were uncomfortable imposing this charge on their neighbors. A proposal to recommend that the Selectmen put this issue on the ballot for the May Town election for a non-binding referendum, to get a more general sense of how people feel about this issue, was narrowly defeated. The majority, many of whom personally supported the concept of undergrounding the wires, felt that the expense and the remaining questions of how to get the cooperation of the utility companies to expeditiously implement this By-law weighed against passage of the By-law.

RECOMMENDATION

By a vote of 8 in favor, 12 opposed, and 1 abstention, the Advisory Committee recommends NO ACTION on Warrant Article 7.

XXX

ARTICLE 7

SELECTMEN'S RECOMMENDATION ON ARTICLE 7

As reported in the Selectmen's Recommendation for Article 7 as printed in the Combined Reports, the Board of Selectmen reconsidered its vote at their November 2 meeting. Selectmen Sher and Merrill moved that the proposed by-law be presented to the voters at the 2005 Town election as a non-binding ballot question. The motion failed by a vote of 2-3. While the two Selectmen believe that the Committee did an outstanding job and that burying utility wires is a legacy that the Town's leaders should leave to future generations, they do not think the Town should make a commitment to the particular approach suggested in this proposed by-law. Since the project will take 100+ years to complete, the Town can afford to wait two to three years to ascertain whether the legal and regulatory environment has improved, thereby reducing costs that do not go directly toward placing wires underground (such as attorneys and consultants fees) and making the project more feasible. With the utilities resisting undergrounding, it simply makes no sense to rush into this project and all the sense to wait a reasonable period of time to see if the utilities will cooperate or be forced by the courts or the Legislature to stop fighting and start helping to place existing wires underground.

Furthermore, no other community, served by an investor-owned utility, has pursued undergrounding in the manner recommended in the proposed by-law. Other communities have invoked Chapter 166 with the mandatory 2% surcharge on utility bills in conjunction with specific projects. Usually the projects are in commercial or historic areas and are typically involved undergrounding a quarter to one-half mile of wires. In the by-laws adopted by other Massachusetts towns and cities, specific projects are explicitly defined. No community has adopted a by-law granting carte blanche authority to a Board of Selectmen and an appointed committee to dictate the scope of an open-ended effort to underground all wiring in a community at an estimated cost of well over 100 million dollars to be raised by surcharges on utility bills. Concern about this unprecedented approach was also very much part of the motivation behind the failed motion to refer this item to a ballot question.

The majority of the Selectmen, however, believe that this proposed by-law has gone through an extensive public process and the citizens' representatives - - Town Meeting Members - - should take action now on the proposal. While there is concern about a 100+ year process that has been difficult to implement in other communities on an even much more limited basis, due primarily to the challenges of coordinating work among all utilities, the majority of Selectmen believes that Brookline is positioned for success: the

Town has a good relationship with its utilities, has a pavement management system that can integrate this process into it, and has very good managers who can get this job done.

The majority of the Board sees this as an opportunity to leave behind a legacy. The cost is high, but Town Meeting can stop the process - - and the surcharge - - at any time by revoking the by-law, so there is no real "permanent" tax. If the Town does not feel as though it is getting its money's worth, the process can end and the surcharge will cease.

The Board voted FAVORABLE ACTION, by a vote of 3-2, on Article 7 as originally filed, and as restated in the vote below:

VOTED: That the Town amend the Town By-Laws by adding a new ARTICLE 7.12, to read as follows:

ARTICLE 7.12
UNDERGROUND UTILITIES

SECTION 7.12.1 PURPOSE

This Underground Utilities By-Law is subject to the provisions of General Laws, Chapter 166, Section 22A – 22N, and regulates or prohibits the new construction of overhead wires and structures and/or requiring the removal of overhead wires and structures and replacement with underground conduit on public ways throughout Brookline.

SECTION 7.12.2 DEFINITIONS

For the purposes of this Article, the definitions cited in Section 22A in Chapter 166 of the General Laws (G.L.) shall apply in addition to the following.

a) **Alternative Coordination Plan** – A plan to coordinate the implementation of the utility specific plans required by this underground By-Law. In the event that the utilities and the Town are not able to reach agreement on any aspects of a negotiated project coordination plan, the Town will use reasonable discretion to establish an alternative coordination plan. The objective of this alternative coordination plan will be to use a single qualified general contractor to perform the excavation and civil work necessary for the installation of all of the underground facilities, including cable facilities, electric facilities, telephone facilities and municipal facilities, contemplated by this underground By-Law, as well as a proposed formula for apportioning the cost of that qualified general contractor. This alternative project coordination plan will assume that each utility will directly install and energize its own cable and wire in the conduits and

manholes constructed by the qualified general contractor. In establishing such alternative coordination plan, the Town shall be guided by the objective of achieving efficient coordination among the utilities, a cost effective underground project, with the minimum disruption of the public way.

b) **Company Specifications** – Detailed specifications provided by each utility regarding the number and size of duct banks, the type and quantity of cable or wire, and the number and precise specifications of manholes and hand holes, the description of and quantification of the equipment necessary to construct and install customer's service facilities, and all other specifications regarding all other facilities necessary to replace overhead service in the Town, with underground services, all prepared in sufficient detail to be included in a request for bid from a qualified general contractor.

c) **Cost Per Linear Foot** – When reporting the cost of demolition or construction per linear foot, the cost should be reported per linear foot of the overhead or underground system. For example, the 1,000 feet of overhead or underground facilities that are located on 1,000 feet of one side of a public way would be reported as 1,000 feet of overhead facilities or underground facilities removed or constructed. If a particular utility has two lines or two conduits on a given set of poles or in a given duct bank, and therefore 2,000 feet of overhead wire or underground wire in this 1,000 foot span of the public way, the cost per linear foot must be reported using the 1,000 feet of the public way as the denominator, and must not be reported using the 2,000 feet of wires as the denominator.

d) **Customer Service Facilities** – The facilities required to connect a customer's building or structure to the underground services mandated by this By-Law, which customer's service facilities are more specifically defined in Section 22I in G.L., Chapter 166.

e) **Direct Cost of Demolition and Construction** – The direct cost of construction labor, construction materials and construction equipment to implement the demolition and construction mandated by this By-Law. This shall include the direct cost of construction labor, construction materials, and construction equipment used to install the customer's service facilities. Direct costs of demolition and construction shall also include the following costs: (A) the direct cost of completing and "Existing Conditions Plan", to the extent such cost is incurred at the request of the Town in order expedite said schedule, and then reimbursed by the utility; (B) interest on any amounts spent for such direct costs in excess of the required 2% annual expenditure, to the extent such excess expenditure is directly associated with an effort to expedite the actual construction schedule at the request of the Town; (C) the direct cost of any communication ducts installed at the request of the Town, which communication ducts are to be reserved municipal use.

f) **Petition** – The petition, timely filed, that is required by Section 22D in G.L., Chapter 166, relating to the permission to install underground facilities mandated by this By-Law. Such petition shall request permission for the shared common duct banks trenches by and among other utilities and the Town, or include a justification explaining why such shared use of common duct banks and common trenches is not possible.

g) **Plan for Continuation of its Service, for their Replacement with Underground Facilities** – The plan, timely filed, that is required by Section 22D in G.L., Chapter 166, relating to the removal of that particular utility's overhead wires and associated overhead equipment and the construction of a particular utility's underground service facility to provide service to its consumers. This utility specific plan that meets the requirements of this By-Law must include, at a minimum, the following components:

1) The company's specifications for the underground project
2) An estimate of the total direct cost of demolition and construction of the project which includes the cost of installing customer's service facilities
3) An estimate of the total salvage value of the overhead property to be removed
4) A statement of the total company revenues received in the community in the proceeding calendar year, and an estimate of the total company revenues to be received in the community in the current year
5) As estimate of the total duration of the demolition and construction project assuming that the company allocates and expends 2% of such annual revenues (plus the reasonable salvage value of the removed overhead equipment) to the direct cost of demolition and construction of that company's project
6) A proposed coordination plan that describes a plan for utilizing a single qualified general contractor to perform the excavation and civil work necessary for the installation of all of the underground facilities, including cable facilities, electric facilities, telephone facilities and municipal facilities, contemplated by this underground By-Law as well as a proposed formula for apportioning the cost of that qualified general contractor among the various users of the underground facilities constructed
7) A statement that the utility will participate in good faith in a negotiation conducted by the Town, that includes all of the utilities covered by this By-Law, in which the Town attempts to develop a negotiated coordinated plan is acceptable to each utility and to the Town
8) A statement that the company's plan will be implemented is a fashion that complies with any alternative coordination plan that may be established by the Town

Such plan must be filed no later than December of the calendar year prior to the calendar year in which the first expenditures for the direct cost of demolition and construction are required to be made.

h) **Negotiated Project Coordinated Plan** - The Town will review the coordination plans that are included in the cable company plan, electric company plan, and telephone company plan filed with the Board of Selectmen pursuant to this By-Law. The Town will host a project coordination meeting to be attended by representatives of the Town and each of said utilities, and use reasonable efforts to negotiate a project coordination plan that is acceptable to each of said utilities and the Town. The objective of this negotiated coordination plan will be to use a single qualified general contractor to perform the excavation and civil work necessary for the installation of all of the underground facilities, including cable facilities, electric facilities, telephone facilities, and municipal facilities, contemplated by this underground By-Law, as well as a proposed formula for apportioning the cost of that qualified general contractor. This negotiated project coordination plan will assume that each utility will directly install and energize its own cable and wire in the conduits and manholes constructed by the qualified general contractor. In negotiating such coordination plan, the Town shall be guided by the objective of achieving efficient coordination among the utilities, a cost effective project, with minimum disruption of the public way.

i) **Qualified General Contractor** – A contractor appropriately licensed, insured and bonded with extensive experience in designing and constructing underground utilities in Massachusetts, as evidenced by letters of recommendation from Massachusetts utilities that have contracted for the services of such qualified general contractor in the past.

j) **Statement** – Annual statement, timely filed, that is required by Section 22D in G.L., Chapter 166. This annual statement must, at a minimum, include the following information regarding the removal of overhead facilities and construction of replacement underground facilities, completed by said utility in the prior calendar year:

1) Linear feet of overhead facilities removed
Street names on which such removal occurred
Direct cost of demolition associated with such removal for the calendar year in question
Direct cost of demolition associated with such removal per linear foot of overhead facilities removed

2) Linear feet of underground facilities constructed
Street names on which underground construction occurred
Direct cost of construction for the calendar year in question
Direct cost of construction per linear foot of such construction completed

3) Number of customer service facilities completed
Street names on which customer service facilities occurred
Direct cost of construction associated with customer service facilities

demolition and construction spent in any year prior to the preceding calendar year, which amount was in excess of the 2% of the standard defined in Section 22D of G.L., Chapter 166. and which excess amount the utility is allocating as a credit to reduce the dollar expenditures required by this By-Law for the direct cost of demolition and construction in the calendar year that is the focus of this financial report

4) The dollar amount of the direct cost of demolition and construction spent in any year prior to the preceding calendar year, which amount was in excess of the 2% of the standard defined in Section 22D of G.L., Chapter 166 and which excess amount the utility is allocating as a credit to reduce the dollar expenditures required by this By-Law for the direct cost of demolition and construction in the calendar year that is the focus of this financial report

5) Gross revenues derived from that utility's customers in Brookline in the calendar year preceding the expenditures reported in items 1,2 and 3 above.
Representation that the amounts spent by such utility for the direct cost of demolition and construction, as itemized above, in items 1,2 and 3 plus any credit as described in item 4, equals or exceeds the 2% of the gross revenue report in 5) above

SECTION 7.12.3 PROHIBITING INSTALLATION OF NEW POLES AND OVERHEAD WIRES

No utility shall install or construct, except by way of replacement or upgrading of existing facilities, any poles and overhead wires and associated overhead structures upon, along or across any public way within the Town. Any poles and overhead structures and associated overhead structures installed or constructed in violation of this By-Law shall be immediately removed by the utility responsible therefore.

Any person who installs or constructs any poles and overhead wires and associated overhead structures in violation of any such By-Law shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars. Any person who fails to remove immediately any poles and overhead wires and associated overhead structures in violation of any such By-Law shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars for each consecutive fifteen day period during which his failure continues.

SECTION 7.12.4 REMOVAL OF EXISTING POLES AND OVERHEAD WIRES

Any utility presently owning or operating poles and overhead wires and associated overhead structures along or across any public way within the Town shall begin to

remove such poles and overhead wires and associated overhead structures following the effective date of this By-Law in accordance with G.L., Chapter 166, Section 22D.

SECTION 7.12.5 INSTALLATION OF CUSTOMER'S SERVICE FACILITIES

Any utility providing underground replacement facilities pursuant to this By-Law, shall also install customer's service facilities as defined in Section 22I in G.L., Chapter 166. Such installation of customer's service facilities shall be incorporated into the plan filed with the Board of Selectmen pursuant to this By-Law and the cost associated with such installation of customer's service facilities shall be included in the report of direct cost of demolition and construction reported to the Board of Selectmen pursuant to Section 22D (d).

SECTION 7.12.6 SEVERABILITY

If any provision of this By-Law is determined to be invalid, such determination shall not affect the validity of the other provisions of this By-Law, which other provisions shall remain in full force and effect.

SECTION 7.12.7 EXEMPTION OF LOW-INCOME HOUSEHOLDS FROM SURCHARGE ON ELECTRICAL BILLS

The Town shall direct the electric utility company to exempt households from the surcharge on utility bills that qualify for a discount on electrical bills on the basis of a program mandated by the Massachusetts Legislature such as Section 193(1F)(4)(i) of the Electric Restructuring Act ("Act"), Chapter 164 of the Acts of 1997.

SECTION 7.12.8 UNDERGROUND WIRING COMMITTEE

a) Establishment

There is hereby established a standing Underground Wiring Committee, consisting of five (5) voting members. Members are to be appointed by the Board of Selectmen. The selectmen shall initially appoint two members for terms of one year, two for terms of two years and one for a term of three years from the first Monday of May. Thereinafter as the term of office of any member expires the selectmen shall annually, before the first Monday of May, appoint his/her successor for a term of three years. Any vacancy on the committee shall be filled by appointment by the selectmen for the remainder of the unexpired term.

b) Duties

(1) The Underground Wiring Committee shall, at least annually, review the status of the program, review progress on projects that are underway,

and make recommendations to the Board of Selectmen regarding the sequencing of future projects. The committee shall consult with existing municipal boards, including the Planning Board, and the Tree Committee, and the Department of Public Works in developing recommendations for future projects. As part of its consideration of the sequencing of projects, the committee shall hold one or more public informational hearings on the benefits, costs, and obstacles associated with the burying of wires in various sections of the town. Meetings of the committee shall be called by the chairman in his motion, or on the request of two or more members. Notice of the hearing shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town.

(2) The Underground Wiring Committee shall monitor the spending of funds collected by utilities through the surcharge on utility bills to assure the financial integrity of the program. In carrying out this responsibility, the Committee shall consult with the Department of Public Works and other appropriate Town personnel. The Committee shall report annually to the Board of Selectmen regarding the financial status of the program.

(3) The Underground Wiring Committee shall assure attention to neighborhood concerns in the planning and implementation of projects to bury wires. In carrying out this responsibility, the Committee will work with the Department of Public Works. The Committee will assure that abutters are informed of proposed projects and that public hearings be held to provide abutters with the opportunity to participate in the planning process.

(4) The Underground Wiring Committee shall monitor the adequacy of provisions to exempt low income households from participating in the financing of the program including the Town's efforts to inform low-income households of opportunities to obtain an exemption. The Committee may also recommend modified measures to exempt low-income households that may be appropriate.

(5) The Underground Wiring Committee shall assure the protection of tree roots in the planning and implementation of projects. In carrying out this responsibility, the Committee will monitor projects to assure that the Town's tree warden is regularly consulted regarding the location of trenches for conduits.

(6) The Underground Wiring Committee may seek sources of financing other than the surcharge on utility bills to accelerate the pace of the program.

(7) The Underground Wiring Committee may facilitate efforts of neighborhood groups to persuade utility companies to eliminate poles on private property.

c) Requirement for a quorum

The Underground Wiring Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the members of the Committee shall constitute a quorum. The Underground Wiring Committee shall approve its actions by a majority vote of the members in attendance at a meeting.

d) Termination

The Underground Wiring Committee shall cease to exist when the program to eliminate utility poles and bury wires throughout Brookline is complete

ROLL CALL VOTE:

Favorable Action	No Action
Allen	Sher
Geller	Merrill
Hoy	

Minority Report of the Board of Selectmen on Article 7 – Underground Wiring

Thinking Through Underground Wiring

Room with a View ... Not!

Our Back Yard

Reasons for Opposing Article 7

- Financing is regressive
- Process is flawed
- Feasibility of Town-wide undergrounding is unproven
- Costs outweigh the benefits
- There are more pressing Town priorities

Regressive Financing

- 2% flat tax on all wired utilities
- Only the poorest are excluded – What about elderly residents with fixed incomes?
- Imposes burden on the Town and non-profits, including churches and synogogues
- Municipalization of Light Plant financing is progressive – bond with interest payments included in property tax
- Don't forget hidden cost: residents pay to underground wires to their homes

Need Better Process

- $150 million open-ended authorization to tax and spend without any Town Meeting input on siting decisions
- Municipal Light Plant legislation requires 2 votes by Town Meeting “super majorities”, plus a 2/3’s majority for bond authorization

Unproven Feasibility

- No Town or City in MA has voted to underground all of its wires, including residential wires
- Winchester TM voted 2 weeks ago to reject a one-mile project
- Projects in other communities were limited in amount to be spent, siting (Town centers), and amount of tax to be collected.
- Utilities are deliberately slowing down projects

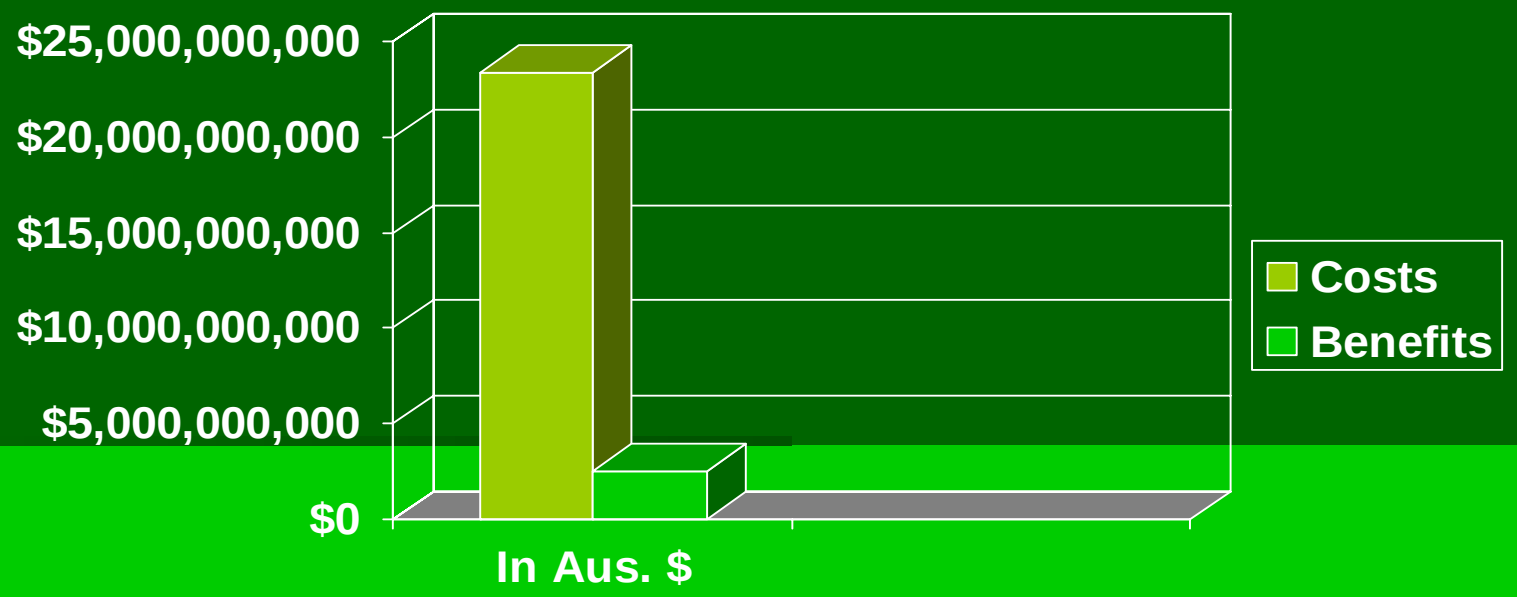
Cost Benefit Analysis

- One objective study: "Putting Wires Underground": Report to Australian Ministry of Communications, 1988
- Costs are 10 times the benefits
- Most benefits are unquantifiable urban amenities
- Recommended limited, not open-ended, undergrounding

"Putting Cables Underground": Report to Australian Minister of Communications 1998, Table 12: National Quantifiable Net Cost and Benefit

Quantifiable costs	Model cost estimates ($)	Model benefit estimates ($) (a)
Excavation	6 423 072 061	–
Installation and material	5 477 807 680	–
Service connection	3 331 486 582	–
Reinstatement	2 694 973 670	–
Transformers	2 861 364 186	–
Street lights	1 624 886 666	–
Dismantling and disposal	956 990 236	–
Quantifiable benefits (b) (c)	–	–
Avoidance of tree trimming	–	711 651 618
Savings on repairs and maintenance	–	168 083 215
Reduced revenue lost from outages	–	70 860 990
Reduced electrical losses	–	6 489 027
Avoidance of overhead capital Improvement expenditure	–	40 986 708
Reduced motor vehicle accidents	–	1 522 152 977
Other benefits (d)	–	127 594 085
Total quantifiable costs or benefits	**23 370 581 082**	**2 520 224 536**

Quantifiable Costs vs. Quantifiable Benefits



Source: Putting Wires Underground, Report to Australian Minister of Communications, 1998

Other Priorities Come First

- Present Value = $25 million
- Renovate Devotion and Runkle Schools
- Fix sidewalks that put elderly at risk
- Create a Municipal Light Plant and cut utility costs by an average of 30%
- Restore foreign language K-8 on non-grant basis
- Equivalent to about ½ of the School budget
- Equivalent to the combined budgets of the police and fire departments

ARTICLE 8

EIGHTH ARTICLE

To see if the Town will amend Article 8.16 in the Town's By-Laws to read as follows:

ARTICLE 8.16
COLLECTION AND RECYCLING OF WASTE MATERIALS

SECTION 8.16.1 PURPOSE

Article 8.16 is enacted to maintain and expand the Town's solid waste collection and recycling programs under its Home Rule powers, its police powers to protect the health, safety and welfare of its inhabitants and General Laws, Chapter 40, Section 21; Chapter 21A, Sections 2 and 8; Chapter 111, Sections 31, 31A and 31B and to comply with the Massachusetts Waste Ban, 310 CMR 19.

SECTION 8.16.2 SCOPE

This By-Law and the regulations adopted hereunder shall govern and control all aspects of the collection, storage, transportation and removal of solid waste and recyclable materials in the Town. The requirements in 8.16, and in the regulations adopted hereunder, are applicable to all owners and occupants of all property in the Town, including, without limiting the foregoing, owners and occupants of all residential units whose waste is collected as a Town service or by a permitted private hauler; all property managers acting on behalf of owners or occupants of residential units; all owners and occupants of commercial facilities whose waste is collected as a Town service; and all haulers permitted to collect municipal waste and recyclables in the Town.

SECTION 8.16.3 RULES AND REGULATIONS

The Board of Selectmen may adopt regulations governing the collection, storage, transportation and removal of solid waste and shall adopt regulations to implement a recycling program in the Town. The regulations adopted by the Board may be amended, from time to time, and may add other categories of waste materials to be separated and recycled, as the Town develops programs and the capacity to collect and recycle new categories of waste materials. Prior to the adoption or amendment of any such regulations the Board of Selectmen shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing such notice in a newspaper of general circulation in the town once in each of two successive weeks the first publication to be not less than fourteen days prior to the

date set for such hearing or by the posting of such notice on the town's bulletin board in the Town Hall not less than fourteen days prior to the date set for such hearing.

SECTION 8.16.4 SEPARATION OF WASTE MATERIALS

In order to implement recycling in conjunction with the Town's solid waste collection programs, owners, residents, and occupants of every household, residential unit, commercial facility or other building, whose waste is collected as a Town service or by a permitted hauler, shall separate for collection, in the manner set forth in this By-Law and the regulations adopted hereunder, the categories of waste materials defined as Recyclable Materials in the Town of Brookline Solid Waste Regulations.

SECTION 8.16.5 MANDATORY SYSTEMS FOR COLLECTION, STORAGE AND REMOVAL OF RECYCLABLES IN RESIDENTIAL BUILDINGS

All owners, landlords and property managers of residential buildings shall set up systems for the collection, storage, and removal of recyclables generated by the occupants and residents in their buildings, in accordance with the regulations adopted hereunder.

SECTION 8.16.6 PERMITTED HAULERS TO COMPLY WITH ALL REGULATIONS AND TO PROVIDE RECYCLING REMOVAL SERVICES FOR RESIDENTIAL PROPERTIES

Every permitted solid waste hauler, as a precondition to receiving a permit to collect solid waste within the Town of Brookline, shall be required to comply with Article 8.16, and the regulations adopted hereunder, and all Department of Public Works and Brookline Health Department regulations for the storage, collection and removal of solid waste and recyclables. Every permitted hauler shall be required to provide its residential customers with the services of collecting and properly disposing of recyclables.

SECTION 8.16.7 UN-SEPARATED WASTE MATERIAL

If solid waste (a) is not separated for recycling as required herein and in the regulations promulgated hereunder; or (b) is not separated for recycling, as described in (a) above, and is put out for waste collection; or (c) is not separated for recycling, as described in (a) above, is put out for waste collection and is not collected by the town or a permitted hauler, the owner, manager and occupants of the property (the Property) shall be individually and collectively responsible for removing that solid waste from on or about the public or private way, within twelve (12) hours after the scheduled collection time for such solid waste, and storing it on the Property in a sanitary and safe manner, until it is separated for recycling and removed by the town or a permitted hauler. The owner, manager or occupants of the Property responsible for any one or more of the conditions described in (a) or (b) or (c) above, shall be subject to the enforcement provisions in Article 10.2 and the non-criminal disposition provisions in Article 10.3. Each day any

one the conditions described in (a) or (b) or (c) continues shall constitute a separate violation.

SECTION 8.16.8 UNAUTHORIZED REMOVAL OF WASTE MATERIALS

No person, except those authorized by the Board of Selectmen, shall remove or otherwise disturb waste materials or recyclables placed for collection by the town or a permitted hauler, near or within a street, a public way or a private way, including, without limiting the foregoing, materials placed for collection as a part of the town's recycling program.;

or act on anything relative thereto.

The Solid Waste Advisory Committee (SWAC) proposes revisions to the Town's solid waste bylaw (Article 8.16) that would make recycling mandatory for all residents of Brookline regardless of whether their waste is collected by the Town or by a private hauler. Since 1990 the Town of Brookline has required that all residents on Town Disposal Service separate their recyclables for collection, in accordance with local, state and federal goals for reducing trash. There is no requirement that residents who contract with private haulers recycle, and no requirement that permitted private haulers provide recycling services at locations where they are collecting trash.

Town Disposal Service (TDS) is the optional collection of household waste by the DPW or its agent for an annual fee of $165 per household unit per year. This service includes the curbside collection of trash, recyclables, yard waste, items containing cathode ray tubes such as televisions and computer monitors, metal items and large bulky waste.

Any property in Brookline can subscribe to TDS; however most of the current residential subscribers are buildings with less than four household units. Currently, 13,256 of Brookline's 25,594 household units and +/- 50 businesses subscribe to TDS. This means that the remaining 12,338 household units, almost 50%, are not required to recycle, adding a significant burden to landfills and the stated public goal of reducing waste. Currently, some multi-unit buildings in Brookline that contract with a private hauler voluntarily separate their recyclables, proving the viability of such a process, but the vast majority does not simply because it is not required to.

The goals of the mandatory recycling program is to reduce the amount of trash generated in Brookline, and thereby improve the community's health, environment and quality of life; provide equal access to recycling for all residents; and to comply with the MA Department of Environmental Protection Waste Ban (310 CMR 19.017). In addition, there has long been a demand for recycling services in multi-unit buildings. Questions about recycling services for those not receiving Town Disposal Service are frequently posed to the Solid Waste Advisory Committee and the Town's Recycling Help-Line. The Town provides a recycling drop off center in the Centre Street parking lot which is very

heavily used; sixteen 95-gallon toters are emptied three times per week and are consistently full. The drop off can be used by any resident or business, and collection is provided by the Town's recycling contractor. In a sense, the Town is currently subsidizing free recycling services for residents not on Town Disposal Service. SWAC feels that the revised bylaw will result in a more equitable set of recycling rules and regulations.

The following is a brief overview of how the revised bylaw and regulations will work: Residents will continue to have the choice of subscribing to Town Disposal Service or contracting with a private hauler for collection of their solid waste. Those who subscribe to TDS will continue to pay the $165 fee for the curbside collection of trash, recycling, yard waste, CRTs and bulky items. Those who contract with private haulers will pay fees directly to the hauler. In order to receive a permit to operate in Brookline, a private hauler will be required to provide recycling collection services wherever it is collecting trash. The DPW will be able, with notice, to request tonnage information from the haulers to ensure that recyclables are being collected. In addition, property owners or building managers will be required to set up a system for the collection of recyclables within their buildings, much as they are currently required to set up a system for trash collection. Property owners or building managers will also be responsible for informing residents of the need to separate recyclable materials.

Brookline is not the first community to undertake a mandatory recycling bylaw. Close neighbors Boston and Cambridge both have mandatory recycling for all residents including those who live in large apartment buildings. Other MA communities that have mandatory recycling for residents regardless of whether their waste is collected by the municipal government or by a private hauler include Northampton, Amherst and Marshfield.

The Solid Waste Advisory Committee has surveyed private haulers about the proposed changes. Most private haulers say that their business would not be adversely affected by a mandatory recycling bylaw because they are already operating in communities where recycling is mandatory across the board. In addition, most private haulers indicated that their fees would not rise substantially if they had to provide recycling services. Some companies will charge a separate fee per pick up or per yard. Costs varied from $0 to $20. So, while the costs will vary amongst companies, it is likely that there will be an increased cost for recycling services. However, implementation of recycling programs may result in a cost savings from reduced trash collection. For example, since the implementation of a weekly recycling program at the 763 unit Brook House, the building management has been able to reduce the number of times their trash dumpster is emptied each week, resulting in cost savings.

Similar to the private haulers, many of the property management companies that own and manage residential property in Brookline also own property just over the border in Allston, Brighton, Jamaica Plain or West Roxbury, and have had to establish recycling programs there since Boston enacted a mandatory recycling ordinance in 2002.

The Department of Public Works and the Solid Waste Advisory Committee recognize that establishing and maintaining a building-wide recycling program in a large building can be a challenging task. DPW staff and SWAC members will be available for technical assistance to help better manage this process. The Solid Waste Advisory Committee has surveyed other communities such as Boston and Cambridge to see how the storage of recyclables is managed in large buildings. In addition, the DPW and SWAC, in conjunction with a private consultant have prepared a Recycling Guide for Large Multi-Unit Buildings. This guide contains suggestions for the central storage of collected recyclables, including the benefits and drawbacks of different approaches, and provides guidelines for projecting a building's need for storage space. The guide also contains information for property owners and building managers on how to promote a recycling program.

The Department of Public Works and the Solid Waste Advisory Committee feel that a Town wide recycling bylaw is essential to help divert significant quantities of materials from the solid waste stream. The proposed revisions to the solid waste bylaw will result in a worthwhile and achievable recycling program that will increase recycling rates and improve quality of life for Brookline residents.

SELECTMEN'S RECOMMENDATION

Article 8 is the result of the Solid Waste Advisory Committee's (SWAC) fine work over the past couple of years. It would establish a town-wide mandatory recycling program for those residential parcels and businesses that employ private trash haulers.

In 1990, the Town began requiring all residents who utilize the Town's disposal service to separate their recyclables for collection. However, there is no requirement that residents who contract with private haulers recycle, and no requirement that permitted private haulers provide recycling services at locations where they are collecting trash.

The goals of the mandatory recycling program are the following:

- reduce the amount of trash generated in Brookline, thereby improving the community's health, environment and quality of life;
- provide equal access to recycling for all residents; and
- comply with the Massachusetts Department of Environmental Protection Waste Ban (310 CMR 19.017).

There has long been a demand for recycling services in multi-unit buildings. Questions about recycling services for those not utilizing Town disposal service are frequently posed to SWAC and the Town's Recycling Help-Line. Evidence of the demand for recycling is the recycling drop-off center in the Centre Street parking lot that can be used

by any resident or business, with collection provided by the Town's recycling contractor. This drop-off center is very heavily used: sixteen 95-gallon toters are emptied three times per week and are consistently full.

During its extensive public process, SWAC learned that Brookline would not be the first community to undertake a mandatory recycling by-law. Boston and Cambridge both have mandatory recycling for all residents including those who live in large apartment buildings. Other communities in Massachusetts that have mandatory recycling for residents, regardless of whether their waste is collected by the municipal government or by a private hauler, include Northampton, Amherst, and Marshfield.

Legitimate concerns have been raised about the possibility of private trash haulers raising the price of trash removal if they were forced to offer recycling. SWAC surveyed private haulers about the proposed changes and most say that their business would not be adversely affected by a mandatory recycling by-law because they are already operating in communities where recycling is mandatory across the board. While it is likely that there will be an increased cost for recycling services, the implementation of recycling programs may result in a cost savings from reduced trash collection. Therefore, most private haulers indicated that their fees would not rise substantially if they had to provide recycling services.

The Board of Selectmen would like to thank SWAC for their hard and diligent work on this issue. The proposed by-law is very good public policy and we are pleased to recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2004 on the following vote:

VOTED: That the Town amend Article 8.16 in the Town's By-Laws to read as follows:

ARTICLE 8.16
COLLECTION AND RECYCLING OF WASTE MATERIALS

SECTION 8.16.1 PURPOSE

Article 8.16 is enacted to maintain and expand the Town's solid waste collection and recycling programs under its Home Rule powers, its police powers to protect the health, safety and welfare of its inhabitants and General Laws, Chapter 40, Section 21; Chapter 21A, Sections 2 and 8; Chapter 111, Sections 31, 31A and 31B and to comply with the Massachusetts Waste Ban, 310 CMR 19.

SECTION 8.16.2 SCOPE

This By-Law and the regulations adopted hereunder shall govern and control all aspects of the collection, storage, transportation and removal of solid waste and recyclable materials in the Town. The requirements in 8.16, and in the regulations adopted hereunder, are applicable to all owners and occupants of all property in the Town, including, without limiting the foregoing, owners and occupants of all residential units whose waste is collected as a Town service or by a permitted private hauler; all property managers acting on behalf of owners or occupants of residential units; all owners and occupants of commercial facilities whose waste is collected as a Town service; and all haulers permitted to collect municipal waste and recyclables in the Town.

SECTION 8.16.3 RULES AND REGULATIONS

The Board of Selectmen may adopt regulations governing the collection, storage, transportation and removal of solid waste and shall adopt regulations to implement a recycling program in the Town. The regulations adopted by the Board may be amended, from time to time, and may add other categories of waste materials to be separated and recycled, as the Town develops programs and the capacity to collect and recycle new categories of waste materials. Prior to the adoption or amendment of any such regulations the Board of Selectmen shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing such notice in a newspaper of general circulation in the town once in each of two successive weeks the first publication to be not less than fourteen days prior to the date set for such hearing or by the posting of such notice on the town's bulletin board in the Town Hall not less than fourteen days prior to the date set for such hearing.

SECTION 8.16.4 SEPARATION OF WASTE MATERIALS

In order to implement recycling in conjunction with the Town's solid waste collection programs, owners, residents, and occupants of every household, residential unit, commercial facility or other building, whose waste is collected as a Town service or by a permitted hauler, shall separate for collection, in the manner set forth in this By-Law and the regulations adopted hereunder, the categories of waste materials defined as Recyclable Materials in the Town of Brookline Solid Waste Regulations.

SECTION 8.16.5 MANDATORY SYSTEMS FOR COLLECTION, STORAGE AND REMOVAL OF RECYCLABLES IN RESIDENTIAL BUILDINGS

All owners, landlords and property managers of residential buildings shall set up systems for the collection, storage, and removal of recyclables generated by the occupants and residents in their buildings, in accordance with the regulations adopted hereunder.

SECTION 8.16.6 PERMITTED HAULERS TO COMPLY WITH ALL REGULATIONS AND TO PROVIDE RECYCLING REMOVAL SERVICES FOR RESIDENTIAL PROPERTIES

Every permitted solid waste hauler, as a precondition to receiving a permit to collect solid waste within the Town of Brookline, shall be required to comply with Article 8.16, and the regulations adopted hereunder, and all Department of Public Works and Brookline Health Department regulations for the storage, collection and removal of solid waste and recyclables. Every permitted hauler shall be required to provide its residential customers with the services of collecting and properly disposing of recyclables.

SECTION 8.16.7 UN-SEPARATED WASTE MATERIAL

If solid waste (a) is not separated for recycling as required herein and in the regulations promulgated hereunder; or (b) is not separated for recycling, as described in (a) above, and is put out for waste collection; or (c) is not separated for recycling, as described in (a) above, is put out for waste collection and is not collected by the town or a permitted hauler, the owner, manager and occupants of the property (the Property) shall be individually and collectively responsible for removing that solid waste from on or about the public or private way, within twelve (12) hours after the scheduled collection time for such solid waste, and storing it on the Property in a sanitary and safe manner, until it is separated for recycling and removed by the town or a permitted hauler. The owner, manager or occupants of the Property responsible for any one or more of the conditions described in (a) or (b) or (c) above, shall be subject to the enforcement provisions in Article 10.2 and the non-criminal disposition provisions in Article 10.3. Each day any one the conditions described in (a) or (b) or (c) continues shall constitute a separate violation.

SECTION 8.16.8 UNAUTHORIZED REMOVAL OF WASTE MATERIALS

No person, except those authorized by the Board of Selectmen, shall remove or otherwise disturb waste materials or recyclables placed for collection by the town or a permitted hauler, near or within a street, a public way or a private way, including, without limiting the foregoing, materials placed for collection as a part of the town's recycling program.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The Solid Waste Advisory Committee (SWAC), with the support of the Department of Public Works (DPW), has submitted this article. The proposed article would revise the town's Solid Waste By-Law (Article 8.16) to make recycling mandatory for all residents of Brookline.

DISCUSSION

Since 1990 the Town of Brookline has required that all residents subscribing to Town Disposal Service (TDS) separate their recyclables for collection. About half of Brookline's 25,594 residential units are under TDS. Most of these buildings have less than four household units. The residents in the remaining 12,338 units contract with private haulers.

The proposed revisions are in part a response to long-time demand for recycling from residents in multi-unit buildings. Mandatory recycling would not only provide equal access to recycling for all Brookline residents but also reduce the volume of solid waste for disposal. This reduction of trash helps to enhance the community's environment, health, and quality of life.

Residents not on TDS who wish to recycle currently make use of a recycling drop-off center that the town oversees in the Centre Street parking lot. The town's recycling contractor provides the collection for the center, which gets substantial use: sixteen 95-gallon toters, consistently full, are emptied three times a week. The new by-law provisions would distribute the burden of recycling costs and regulations more equitably, since the town essentially subsidizes a "free" recycling service through this center.

Under the new system, residents will continue to have a choice of subscribing to TDS (for the annual fee of $165) or contracting with a private hauler. The hauler, in order to receive a permit to operate in Brookline, must provide recycling collection services for its customers. Property owners or building managers are responsible for setting up a system for collection of recyclables within their buildings, as they are currently required to do for collection of trash. They are also responsible for informing residents of the need to separate recyclable materials.

Because many already operate in communities with mandatory recycling programs, private haulers surveyed by the SWAC do not foresee adverse effects on their businesses. Cost estimates for providing recycling services range from $0-$20 for each pick-up. Implementation of recycling programs could lower costs by reducing the amount or frequency of trash collections in large buildings.

Brookline would join Boston, Cambridge, Northampton, Amherst and Marshfield in requiring recycling collection for all residents. The state is working towards 60% recycling by the year 2010.

The DPW and SWAC suggest that the implementation of a townwide recycling by-law will not only "divert significant quantities of materials from the solid waste stream," but will also increase recycling rates and improve quality of life for Brookline residents. The proposed revisions exemplify the adage "think globally, act locally."

The town's Commissioner of Public Works, Director of Public Health, Director of Highway and Sanitation and Director of Environmental Health have reviewed and approved the proposed changes, and the Advisory Council for Public Health voted unanimously in favor of them.

RECOMMENDATION

The Advisory Committee, by a vote of 16 in favor and 0 opposed, recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 9

NINTH ARTICLE

To see if the Town will amend the Town By- Laws to insert a new Section 3.8.4 as follows:

SECTION 3.8.4 INFORMATION TO BE PROVIDED TO HOME OWNERS APPLYING FOR BUILDING PERMITS

The Building Department shall provide to all homeowner applicants for a building permit to perform residential contracting services an information bulletin created under the direction of the Building Commissioner, which describes the homeowner's rights under the Home Improvement Contractor Law, Massachusetts General Laws Chapter 142A ("HICL"). The Building Commissioner shall regularly update the information bulletin with guidance from Town Counsel, the Massachusetts Office of Consumer Affairs and Business Regulation and the Massachusetts Home Improvement Contractor Program.

Whenever a contractor applies for a building permit to perform residential contracting services as the agent for the owner, the information bulletin shall be sent to the homeowner by first class mail.

or act on anything relative thereto.

The Home Improvement Contractor Law, M.G.L. c. 142A ("HICL") is an important consumer protection law that is unknown to virtually all homeowners who enter into contracts with home improvement contractors. This lack of information can lead to critical mistakes. For instance, a homeowner may have the right to recover up to $10,000 in damages from the Massachusetts Guaranty Fund should their contractor abandon the job after becoming insolvent; however, the homeowner forfeits their right to access that fund if the homeowner applied for the building permit him/herself as opposed to through the contractor. Since the Building Department is the consumer's first line of defense against trouble home improvement contractors, it is appropriate that the Building Department be charged with the responsibility to provide basic consumer rights information to the Town's homeowners at the start of their home improvement projects.

MOTION TO BE OFFERED BY PETITIONER

To see if the Town will adopt the following Resolution:

RESOLUTION FOR THE PROVISION OF CERTAIN CONSUMER RIGHTS INFORMATION TO HOME OWNERS APPLYING FOR BUILDING PERMITS

NOW, THEREFORE, BE IT RESOLVED, that Brookline's representative Town Meeting requests that:

The Building Department use its best efforts to make available to all homeowner applicants for a building permit to perform residential contracting services an information bulletin (or other sources of information) procured from the Massachusetts Office of Consumer Affairs or other state agency, which describes the homeowner's rights under the Home Improvement Contractor Law, Massachusetts General Laws chapter 142A ("HICL").

or act on anything relative thereto.

The Home Improvement Contractor Law, M.G.L. c. 142A ("HICL") is an important consumer protection law that is unknown to virtually all homeowners who enter into contracts with home improvement contractors. This lack of information can lead to critical mistakes. For instance, a homeowner may have the right to recover up to $10,000 in damages from the Massachusetts Guaranty Fund should their contractor abandon the job after becoming insolvent; however, the homeowner forfeits their right to access that fund if the homeowner applied for the building permit him/herself as opposed to through the contractor. Since the Building Department is the consumer's first line of defense against trouble home improvement contractors, it is appropriate that the Building Department make efforts to provide basic consumer rights information to the Town's homeowners as near as possible to the start of their home improvement projects.

This article was converted from a proposed by-law to a resolution so as not to create the impression that the Town will have a duty to provide information (thus exposing the Town to the potential for being sued – groundless though that suit may be -- by a homeowner who is damaged by their contractor after not having receive the consumer information materials from the Town). The language was also changed to allow the Building Department more flexibility in the method of getting information to the consumers. For instance, the Building Department proposes giving copies of the state's information pamphlets to the inspectors so that they can bring information directly to the homeowner during one of the early inspections. The original article required mailing the information, which the Building Department and the Advisor sub committee thought would add too large of an administrative burden on the Building Department.

The resolution gets the word out about this little known consumer protection law, which was the intent of the original warrant article.

SELECTMEN'S RECOMMENDATION

Article 9 is a petitioned article that would amend Town By-Laws by requiring the Building Department to provide all homeowner applicants for a building permit an information bulletin that describes the homeowner's rights under the Home Improvement Contractor Law (HICL), MGL Ch. 142A.

The petitioner wanted the Building Department, as the first line of defense against unscrupulous contractors, to make homeowners more aware of the HICL. While this Board is in agreement with the petitioner that homeowners should be made aware of their rights under the HICL, we do not believe that a by-law is necessary. In addition, having a by-law requiring the Department to provide the information may expose the Town to liability: if a homeowner were damaged by his or her contractor and the homeowner did not receive the information on the HICL, he or she could potentially seek action against the Town for not fulfilling the requirement of the by-law.

The Building Department worked with the petitioner and all agree about how to get the goal of the warrant article accomplished without a by-law. The Building Department inspectors will bring state-produced informational pamphlets directly to homeowners during one of the early inspections, thereby assuring that the information gets into homeowners' hands. Home contractors are not necessarily a reliable means of distributing these materials.

The proposed resolution reflects the work between the petitioner and the Building Department and we agree that this is the correct path to take to make homeowners aware of their rights under the HICL. Therefore, we recommend FAVORABLE ACTION, by a vote of 5 – 0 taken on October 5, 2004, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 9 was originally filed as an amendment to Article 3.8 of the Town By-Laws requiring the Building Department to provide an information bulletin to all homeowners applying for a building permit for home improvements concerning their rights under Massachusetts General Laws Chapter 142A, the Home Improvement Contractor Law

(HICL). Under the proposed amendment, the Building Commissioner would be responsible for creating such information bulletin and for updating it with legal assistance from Town Counsel. Further, if a contractor applied for the building permit, the Building Department would be required to mail such bulletin to the homeowner.

DISCUSSION

Since an information pamphlet on the HICL is already available through the Massachusetts Office of Consumer Affairs, which oversees compliance with the law, the Building Department believed that their efforts would be duplicative and could possibly subject the town to liability. In addition, the Building Department objected to having to mail such bulletins to homeowners as being "unnecessarily burdensome".

The Building Department, however, is agreeable to amending the current Application for Building Permit to require the contractor applicant to swear under oath that he/she provided the homeowner with the information bulletin. The Building Department also has expressed its willingness to distribute the information bulletins via their inspectors who visit the work sites as well as in the Town Hall Office.

Following the Advisory Committee Capital Subcommittee hearings on Article 9, the petitioner consulted with Town Counsel who suggested that, instead of a By-Law amendment, the proposal be adopted as a Resolution due to potential liability and cost of litigation issues, especially where injury results if the legal advice is in error or the bulletin is not updated to reflect recent changes in the law. As a result, the petitioner has decided to propose that Town Meeting adopt a Resolution instead of a By-Law amendment.

RECOMMENDATION

The Advisory Committee, by a vote of 21 in favor and 0 opposed, recommends FAVORABLE ACTION on the following vote:

VOTED: That Town Meeting adopt the following Resolution:

RESOLUTION FOR THE PROVISION OF CERTAIN CONSUMER RIGHTS INFORMATION TO HOME OWNERS APPLYING FOR BUILDING PERMITS

NOW, BE IT RESOLVED that Brookline's representative Town Meeting requests that:

The Building Department use its best efforts to make available to all homeowner applicants for a building permit to perform residential contracting services an information bulletin (or other sources of information) procured from the Massachusetts Office of Consumer Affairs or other state agency, which describes the homeowner's rights under the Home Improvement Contractor Law, Massachusetts General Laws Chapter 142A ("HICL").

XXX

ARTICLE 10

TENTH ARTICLE

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

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

"(c) Graffam-McKay Local Historic District

There is hereby established an Historic District, to be entitled the "Graffam-McKay Historic District", the boundaries of which shall be shown on the map entitled "Graffam-McKay Historic District", a copy of which is on file with the Town Clerk's office, which accompanies and is hereby declared to be part of this By-law.

(d) Other Historic Districts

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

or act on anything relative thereto.

At its regularly scheduled meeting on June 8, 2004 the Preservation Commission received a petition signed by a large group of neighbors who live within the Graffam Development National Register Historic District and certain abutting streets requesting that a local historic district, as defined by MGL 40C, be established for their neighborhood. The Commission voted to instruct the Commission's staff working with a sub-committee of the Commission to prepare a study report as required by 40C and to consider appropriate boundaries for such a local historic district.

A draft study report was prepared which describes the historical, architectural, and cultural significance of the residential neighborhood that includes Osborne Road, Abbottsford Road, Manchester Road and the south side of Winslow Road bounded by Babcock Street and Naples Road, including properties on both sides of those streets. The study report recommended that the entire Graffam Development National Register district be included, as well as properties on adjacent streets to the north and east that formed a significant concentration of residential buildings united historically and aesthetically by design and development, and that the proposed district be known as the Graffam-McKay Local Historic District.

Based on the conclusions in the report, the Brookline Preservation Commission voted at its July 13, 2004 meeting to accept the draft study report, and to authorize the subcommittee to finalize the draft and the district's boundaries for submission to the Massachusetts Historical Commission and the Brookline Planning Board as required by 40C, and to prepare a warrant article for fall town meeting.

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

SELECTMEN'S RECOMMENDATION

Article 10 calls for the establishment of the Town's third local historic district (LHD), the Graffam-McKay Local Historic District. There has been overwhelming support for this proposal, which will preserve the architectural character of this distinctive concentration of houses built between 1895 and 1905.

Brookline's diverse historic architecture is predominantly residential, representing different periods and the influx of differing socio-economic groups of the nineteenth and twentieth centuries. With the exception of the Cottage Farm neighborhood adjacent to the Back Bay tidal flats (now Kenmore Square), the northern area of town remained suburban estates and farms and escaped significant redevelopment until the 1890s. At that time, large tracts of land in an area bounded by Pleasant Street on the east, Beacon Street on the south, and Corey Hill on the west were transformed into streets of single-family homes and apartment blocks. Much of this new construction occurred during a short period of time between 1895 and 1920. One neighborhood in this area particularly stands out for its coherence and concentration of architecturally significant single-family homes. A portion of this area was recognized for its historic and architectural significance in 1985 through its listing in the National Register of Historic Places as the Graffam Development Historic District.

Over the past twenty years, many property owners in the neighborhoods of North Brookline have put considerable time and money into improvements of their homes. These neighborhoods experienced a period of economic decline during the Great Depression in which many single-family homes were converted for multi-family rental units, often with little regard for preserving the original architectural character of a building. This trend continued during the post-war period when many houses were altered with the removal of exterior architectural features and the application of non-historic material such as synthetic siding. In recent years, however, many houses in North Brookline have been renovated with exterior features restored. This is particularly true of the Graffam Development Neighborhood and adjacent streets. With the location of one of the Kennedy family houses at 51 Abbottsford Street, many visitors to Brookline include a walk through the neighborhood as part of the tour of the John F. Kennedy Birthplace on nearby Beals Street and the nearby St. Aidan's church where the Kennedys worshipped.

The establishment of the proposed Graffam-McKay Development Local Historic District would protect these improvements by preserving exterior architectural features and would guide future changes in the area.

Following a public hearing for a demolition application for 170 Babcock Street on May 11, 2004, a group of citizens approached the Brookline Preservation Commission about establishing a LHD in their neighborhood. An awareness of potential threats to the historic buildings in their neighborhood has increased in recent years. These citizens held a meeting at a neighbor's house on May 25, 2004, at which time members of the Preservation Commission were invited to discuss the implications of establishing a LHD. Following consultation with representatives of the commission regarding potential boundaries at a subsequent meeting in the neighborhood, a group of citizens decided to initiate a petition drive in support of the establishment of a LHD. At a public meeting on June 8, 2004, several neighbors presented a petition signed by a substantial number of homeowners in the area to the Preservation Commission, which unanimously voted to undertake a study report for the area.

The map at the end of this Warrant Article Report shows the boundaries of the proposed LHD. There has been very strong support for this proposed LHD from the residents of the area. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 19, 2004, on the following vote:

VOTED: That the Town amend Article 5.6 of the Town's By-laws, entitled Preservation Commission & Historic Districts By-law, in the following manner:

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

"(c) Graffam-McKay Local Historic District

There is hereby established an Historic District, to be entitled the "Graffam-McKay Historic District", the boundaries of which shall be shown on the map entitled "Graffam-McKay Historic District", a copy of which is on file with the Town Clerk's office, which accompanies and is hereby declared to be part of this By-law.

(d) Other Historic Districts

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

ROLL CALL VOTE:

Favorable Action

Allen
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

In the Spring of 2004, several neighbors who live within the Graffam Development National Register Historic District and some abutting streets presented the Preservation Commission with a petition, requesting that a local historic district, defined by MGL 40C, be established. The impetus for the petition was the filing of a demolition permit for a home in the neighborhood to make way for a three-unit condominium. A one-year delay was granted, and during that time, a subcommittee of the Preservation Commission prepared a study report as required by MGL 40C to consider appropriate boundaries for the local historic district. The Preservation Subcommittee designated the boundaries of the district as outlined in the attached map (found at the end of this Warrant Article report). The area includes Osborne Road, Abbottsford Road, Manchester Road, and the south side of Winslow Road bounded by Babcock Street and Naples Road including properties on both sides of those streets. The proposed local district would encompass an area already listed on the State and National Registers of Historic Districts. The general area of the proposed district was built by two developers (Graffam and McKay) over a four- to five-year period and contains, for the most part, a consistent Victorian architectural theme. In the summer of 2004, the full Preservation Committee accepted the report of the study committee and requested that the recommendations be finalized and submitted to the Massachusetts Historical Commission and the Brookline Planning Board for review and to prepare a warrant article for the Fall Town Meeting. In September 2004, the Preservation Commission held a public hearing and endorsed the proposal as it appears in the warrant. A 2/3's vote of Town Meeting is required to establish the local historic district.

DISCUSSION

The Preservation Commission estimates that over 80% of the neighbors support the proposed district and it is a strongly supported proposal. Some neighbors have not given their opinion on the proposal, others are not in town or are difficult to contact, and there are a small number of residents that would be in the local historical district who are opposed. Four owners have expressed opposition to the proposed district out of approximately 90 owners. Those owners opposing the local historic district include the owners of the building that was slated for demolition. They feel that this historic district was formed to block their project, even though they had requested a demo permit well before the district – if it is established – was created. The owner of an apartment building who is at one corner of the proposed district is also opposed to the article.

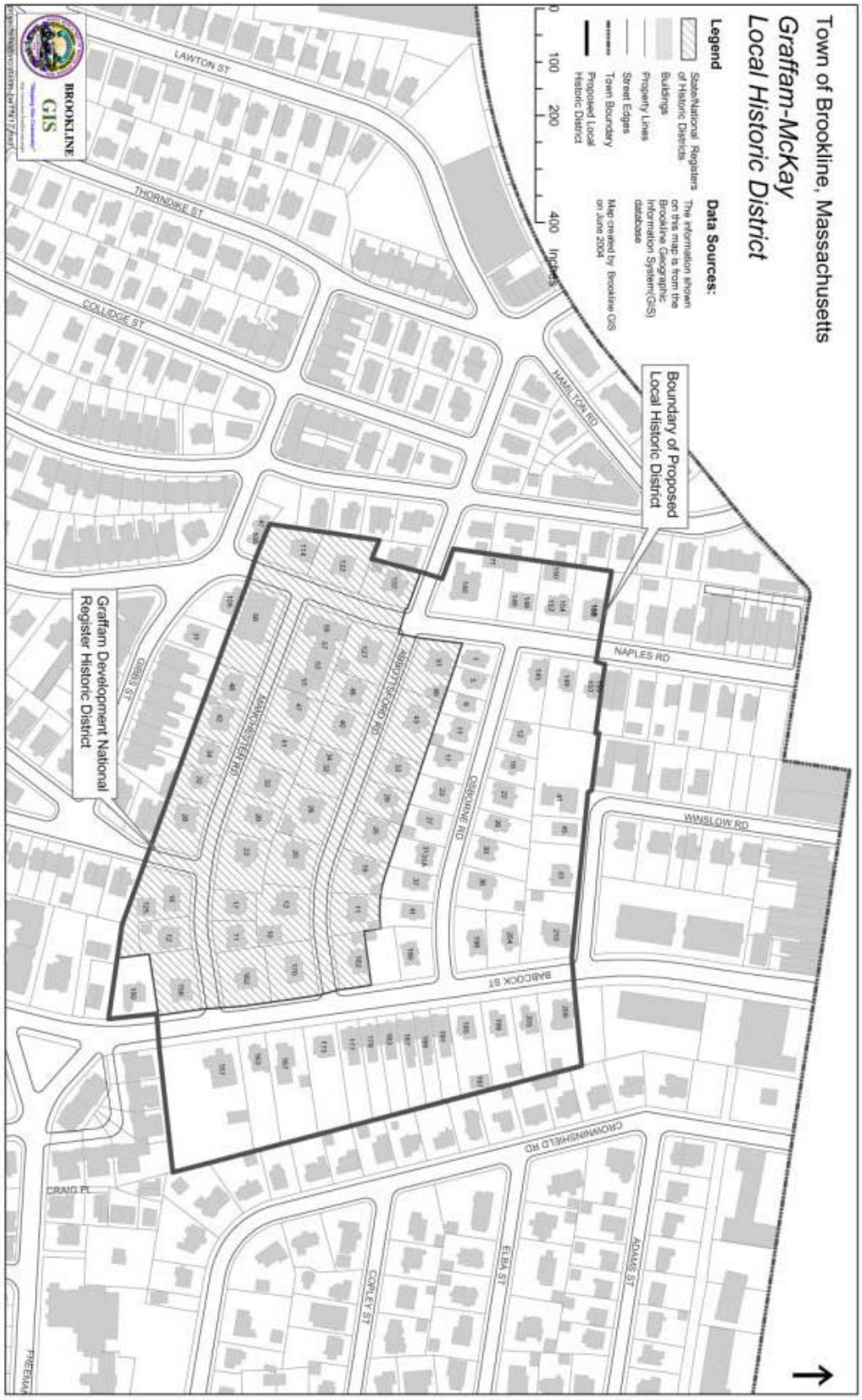
How were the boundaries of this historic district designated? Except for one apartment building and an MIT fraternity house, the proposed district would be largely homogeneous – consisting of single-family homes in the Victorian architectural style. The proposed district includes houses on both sides of a street, in order to have consistent architecture as viewed from either side of the street. Consistency is again the guideline. Boundaries were chosen to avoid a mix "gerrymandering" of abutting homes that were or were not in the district. Once again, consistency is a major consideration.

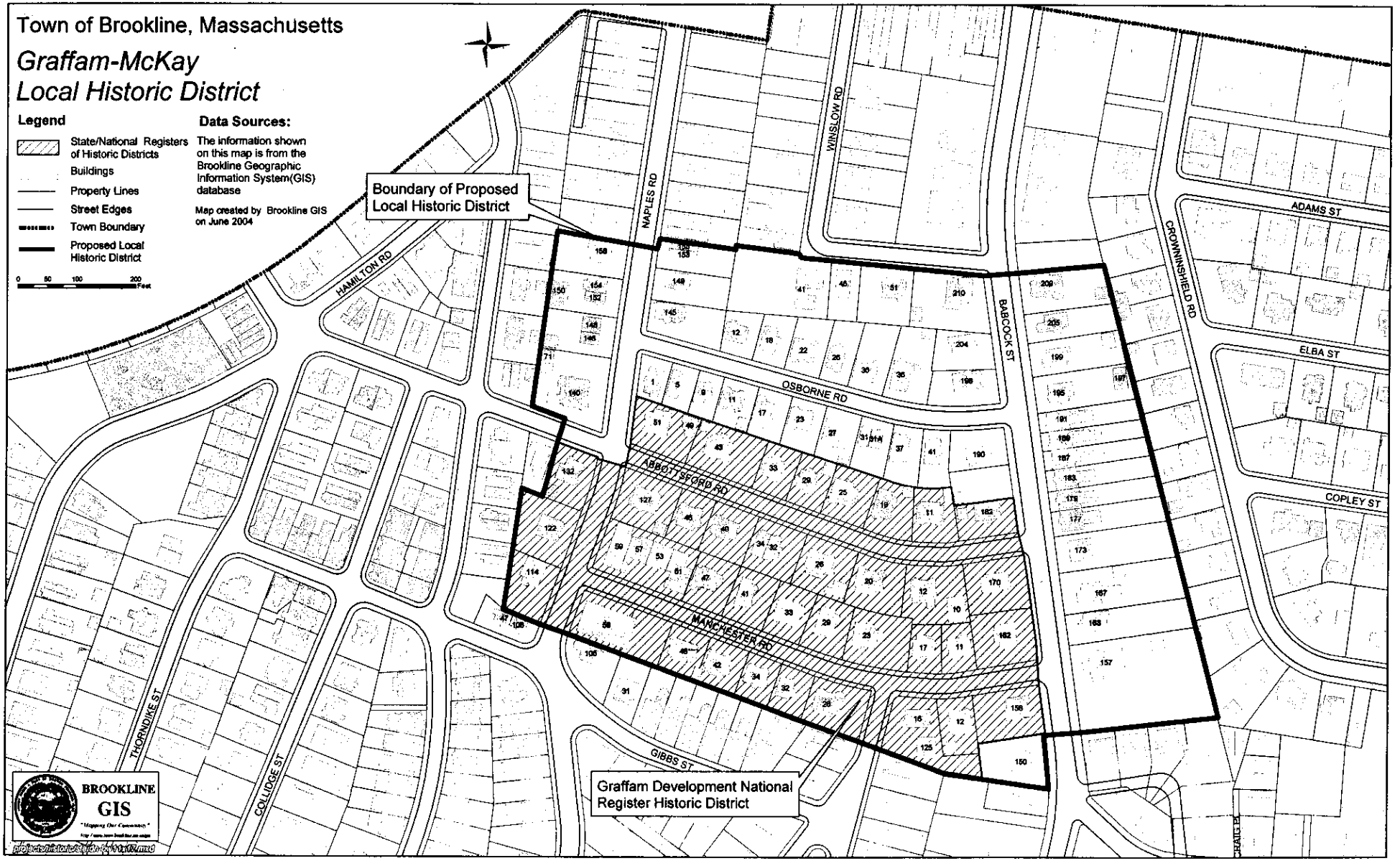
Many of the supporters of the local historic district mentioned that the neighborhood is very attractive to developers and that there is a fear of sprawl from Boston University into the area. The historic district helps the neighborhood to counter these trends. It was mentioned at the various hearings that MGL 40C (historic district) "trumps" MGL 40A (zoning and the Dover amendment) in terms of form, but not use. One reason for including some of the properties at the edge of the proposed historic district is apparently "defensive". That is, the fraternity and the apartment building are not Victorian single-family homes, but were included in the district in part because they abut other Victorian homes that would be in the district, and the fate of these buildings affects neighborhood buildings.

RECOMMENDATION

The Advisory Committee, by a vote of 16 in favor and 0 opposed, recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX


Town of Brookline, Massachusetts
Graffam-McKay
Local Historic District
Legend
State/National Registers of Historic Districts
Buildings
Property Lines
Street Edges
Town Boundary
Proposed Local Historic District
Data Sources:
The information shown on this map is from the Brookline Geographic Information System (GIS) database
Map created by Brookline GIS on June 2004
0 100 200 400 Inches
Boundary of Proposed Local Historic District
Graffam Development National Register Historic District
LAWTON ST
THORNDIKE ST
COLLIDGE ST
HAMILTON RD
NAPLES RD
WINSLOW RD
OSBORNE RD
BABCOCK ST
CROWNINSHIELD RD
CRAIG PL
ADAMS ST
ELBA ST
COPLEY ST
FREEMAN
BROOKLINE
GIS


Town of Brookline, Massachusetts
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Boundary of Proposed Local Historic District
Graffam Development National Register Historic District
HAMILTON RD
NAPLES RD
WINSLOW RD
BABCOCK ST
CROWNINSHIELD RD
ADAMS ST
ELBA ST
COPLEY ST
OSBORNE RD
ABBOTTSFORD RD
MANCHESTER RD
GIBBS ST
THORNDIKE ST
COLLIDGE ST
CRAIG PL
BROOKLINE GIS

ARTICLE 11

ELEVENTH ARTICLE

To see if the town will authorize the Board of Selectmen to lease, for not more than ten years, upon such terms and conditions as the Board of Selectmen determines to be in the best interest of the town, a portion of the town-owned land known as the Walnut Hills Cemetery, to a company that will install and be responsible for the operation of a wireless telecommunications facility and related equipment to be used for wireless telecommunications, for an annual payment to the Town of not less than $50,000, or act on anything relative thereto.

PLANNING BOARD REPORT AND RECOMMENDATION

The Planning Board (two to one) voted to recommend that if sanctity and historic issues related to the Walnut Hills Cemetery are resolved at Town Meeting, the Board would support FAVORABLE ACTION on Warrant Article XI, subject to safeguard conditions related to**:** noise, maintenance and long term appearance of the structures, fencing, landscaping (including size and type of plant material), access path (including width, location and paving material), and lighting.

The majority of the Planning Board believes that this proposal for Walnut Hills Cemetery is the lesser of two evils when weighing the aesthetic impact of this proposal versus the one for the Putterham Shopping Center and that this site would provide the best cell coverage for South Brookline. However, they felt that Town Meeting should decide the issues surrounding any impacts to the sanctity and historic nature of the cemetery. They acknowledged the feelings of those who are very opposed to the Putterham Shops location and expressed respect for those who have been involved in cell regulations in the Town since their inception.

Several good questions were raised during the hearing regarding how the tower and equipment would look and how their appearance would be maintained over time, and the Board requested that before Town Meeting, more graphic representations and more details about materials for screening, etc. should be provided. Additionally, the majority of the Board felt that their charge for the Planning Board with respect to cell towers has always been the aesthetic issue and not legal ones, and they noted that the approval process which requires approval by the Selectmen and Town Meeting is much more stringent than the Board of Appeals process. The process for this warrant article, while not perfect, has been good and has and will involve much public participation through the various committees, at least seven, who will vote on recommendations for this proposal at a public meeting or hearing.

With respect to evaluating aesthetics, the Board felt that this proposal complies with most of the standards in Section 4.09 of the Zoning By-Law. Cell towers will never completely blend in with their surroundings but a monopine does so much better than a metal cell tower. This proposal is the most comfortable of all of the options and has the least impacts. Town Meeting should have the opportunity to vote on it because the decision rightfully belongs to the community.

The dissenting Planning Board member stated that if it were not for a legal issue of whether or not a cell tower on Town-owned property is exempt from Zoning By-Law Section 4.09, he would support this proposal because of the public safety issue, the need for cell service in South Brookline, and the desire to avoid the proposal at the Shops at Putterham Shopping Center. However, he felt that Section 4.09.2, Scope, does not exempt "towers" on town-owned property, and Section 4.09.4.c. exempts towers only from the procedures of Section 4.09.4.a, not from the By-Law itself. He felt that a zoning variance from the restriction of Section 4.09.6.a.(3) prohibiting antennas and facilities from location within 50 feet of an historical site might be obtainable. Additionally, he did not find locating a cell tower in a cemetery objectionable – particularly in the area where this one is proposed, and he believed that the ten year lease would mitigate any harmful effects because Town Meeting would have the option not to renew it. Further, the Walnut Hills Cemetery site has the advantage that it would provide more complete coverage in South Brookline than, for instance, the Putterham Golf Course site, which would not provide coverage as far as Putterham Circle because of radio transmission interference from Walnut Hill.

All three of the Planning Board members strongly supported having this warrant article go to Town Meeting to afford the opportunity to discuss community standards, educate the townspeople on wireless issues, weigh the plusses and minuses of this proposal and compare alternatives, and consider the trade-offs between public safety cell coverage in South Brookline and the impacts.

Therefore, the Planning Board (two to one) recommends **FAVORABLE ACTION** on Article 11, if Town Meeting successfully resolves the legal, sanctity, and historic issuesand imposes safeguard conditions related to noise, maintenance and long term appearance of the structures, fencing, landscaping (including size and type of plant material), access path (including width, location and paving material), and lighting.

SELECTMEN'S RECOMMENDATION

Article 11 calls for the placement of a cell tower on a corner parcel in the Walnut Hills Cemetery. The warrant article is based upon the unanimous recommendation of the Working Committee on Cell Towers, which was created in response to the convergence of dangers posed by the lack of coverage for the Town's wireless public safety network with the community's demand for both improved cellular service and an appropriate location for wireless telecommunication service that minimizes potential neighborhood impacts.

The issue of a cell tower on Town-owned land is not new to Brookline. In 1999, Town Meeting discussed a proposal to locate a cell tower at the Putterham Meadows Golf Course. The proposal was ultimately rejected by Town Meeting. Below is a brief history of cell towers in Brookline:

- **1996** = Federal Telecommunications Act
- **May, 1997** = Town Meeting approval of a moratorium on antenna permits through November 26, 1997. (Article 16)
- **June, 1997 – October, 1997** = Antenna Zoning Sub-Committee, consisting of two Planning Board members and concerned citizens, worked to formulate a by-law.
- **November, 1997** = Town Meeting approval of the addition of a Wireless Communications section to the Town's Zoning By-Law. (Article 10. Article 11 was a citizen proposal that did not pass.)
- **January, 1999** = RFPs for a cell tower on Town-owned property is issued.
- **February – March, 1999** = RFP responses received and reviewed.
- **June, 1999** = Planning Board review of proposed 100' monopole at the Municipal Service Center (MSC).
- **July – August, 1999** = negotiations with Omnipoint for a monopole at the MSC.
- **September, 1999** = decision to postpone negotiating with Omnipoint until TM discusses proposal for "stealth" tower in the woods at the Putterham Meadows golf course.
- **November, 1999** = TM votes No Action on a "stealth" tower at the golf course (Article 11).

This past Spring, the Board discussed establishing a committee to explore long-term options regarding wireless technology, for a number of reasons:

- concerns raised by the Police and Fire Chiefs regarding the gaps in the wireless public safety network
- an increasing number of complaints received by the CIO regarding the lack of cell phone coverage in So. Brookline
- the possibility of taking advantage of "wi-fi", and
- future wireless applications for the schools and town departments.

At the same time, we began receiving numerous letters and emails from neighborhood residents objecting to the proposal for two cell towers at Putterham Circle. The residents did not want the towers located there - - as evidenced by the petition signed by more than 200 Brookline residents - - so they asked the Board at separate meetings in June to independently investigate potential locations that could address the issues.

The Board of Selectmen responded quickly by authorizing a competitive bid process. The Chief Procurement Officer then immediately convened a Selection Board to develop an RFP and review the responses to that RFP. Included in the Selection Board were four residents, three of whom are Town Meeting Members, and four Town Department Heads. Three of the Department Heads (Fire Chief, Recreation Director, and Commissioner of

Public Works) represented departments who were responsible for those town-owned lands that could potentially house a tower.

The Board was made well aware that the time-table would be accelerated, something that was necessary in order to have a warrant article ready for the Fall TM -- if, of course, the Selection Board agreed that a proposal existed that could be ranked "Highly Advantageous". The Selection Board reviewed a draft RFP prepared by Town staff and worked toward a final RFP. To summarize it, the RFP:

- left open the use of any Town-owned land
- laid out criteria that would minimize the impact on abutters, and
- gave preference to co-location, so as to avoid having to locate multiple towers around town to service the five major cell companies

The bids were due on September 3, and five were received, three of which chose the Walnut Hills Cemetery as their number one location. The Selection Board then met on September 9 and made its decision. The Selection Board determined that the proposal for a "monopine" at the Walnut Hills Cemetery offered the best chance of maximizing the positive impacts of a tower - - public safety coverage, improved cell phone coverage for residents, and minimizing the potential negative impacts on the neighborhood.

The Warrant for the 2004 Fall Town Meeting was signed on September 14 and included the proposal for the tower at the Cemetery. Since that time, there have been nine public discussions (as of the writing of this recommendation) on the proposal since the signing of the Warrant (the Cemetery Trustees, the Preservation Commission, the Public Safety Sub-Committee of the AC (three times), the Planning Board, the Board of Selectmen (two times), and the Advisory Committee). However, there is still much concern about the proposal and the process behind the proposal.

Since there are still many questions regarding the proposal and concerns about the public process, the Board of Selectmen is recommending that a Moderator's Committee be established to further study the alternatives for wireless service in South Brookline. Whether the Zoning Board of Appeals (ZBA) approves or denies the proposal for the two cell towers at the Shops at Putterham, the need for a Moderator's Committee still exists:

- if the proposal is approved, only two of the five major cell companies will have a presence in South Brookline, meaning the other three will be looking for a location. Therefore, it would be in the Town's best interest to have an analysis of all possible options.

- if the proposal is denied, the likely outcome is the cell companies taking the Town to federal court under the Telecommunications Act of 1996, a process that Town Counsel has advised could take 8 – 12 months to settle. If the Town is successful in defending such a lawsuit, there is still the issue of the lack of cell phone coverage and lapses in the Town's wireless public safety network. If the Town is unsuccessful, the towers would be located there, still leaving the issue discussed above about having only two of the five major cell providers located.

A Moderator's Committee provides the Town the time necessary to review alternatives and have a warrant article on the Warrant for the 2005 Annual Town Meeting, if necessary. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 26, 2004, on the following vote:

VOTED: To refer Article 11 to a Moderator's Committee for report to the 2005 Annual Town Meeting.

ROLL CALL VOTE:
Favorable Action
Geller
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
This article comes to us because of a lack of cellular communications coverage in South Brookline that has existed for some time. Recently however, concerns by the Town's Public Safety Services (a number of police communication capabilities are unavailable in S. Brookline), specific requests by large numbers of South Brookline residents, and an undesirable plan by a private developer to locate twin antennae towers atop the shops at Putterham Circle in very close proximity to homes, indicates it is time to comprehensively address this issue. The residents specifically asked the Town to find an alternate viable site on Town property to locate telecommunications antennas in the area.

After hearing from these residents, and listening to the concerns of the Police and Fire Chiefs, the Board of Selectmen authorized the Town's Chief Procurement Officer to convene a working committee of Town staff and citizens to issue and evaluate a public RFP [request for proposal] for siting a communication facility(s) on Town-owned property. The Committee issued the RFP specifying it consider all Town-owned properties with four examples given: the DPW garage, Fire House #6, the Putterham Golf Course, and the Walnut Hills Cemetery.

Cellular communication providers (Verizon, Cingular etc.) and telecommunication facility siting companies evaluated the South Brookline area through radio frequency testing and mapping. As a result of their testing, the area's natural topography and the specified goals in the RFP (achieve maximum coverage while minimizing negative neighborhood impacts, including disruption and visual aesthetics) three of the five RFP responses indicated the Walnut Hills Cemetery as the optimal choice. The first choice of the other two respondents was Putterham Golf Course.

After reviewing the RFP responses (received 9/9/04) the Committee recommended the proposal from Evergreen Company for a single *monopine* that co-locates five carriers on the edge of the Walnut Hill Cemetery at Grove Street. It was considered the least noticeable, most aesthetically sensitive, and was the most removed from homes. The following Tuesday, their recommendation was written as a Warrant Article for Town Meeting's consideration. Thus began the public discussion on the merits of sitting this equipment at Walnut Hills Cemetery.

DISCUSSION

This specific proposal is for 150' *monopine* that accommodates five carriers situated atop a pine knoll on rock ledge at the Walnut Hills Cemetery near the Grove Street entrance, behind the old receiving tomb. At the base of the proposed *monopine*, approximately six trees will need to be removed to accommodate a 2500 square foot area required for switching equipment. Evergreen Company proposes concealing the 8'-10' high equipment with a 10' high wooden fence landscaped with copious evergreen plantings. An access path approximately 6' wide is needed to provide site access (a dirt/sod/gravel surface suffices). An emergency generator would be located on the site that would be test-run remotely for one 10-minute period per month. Evergreen Company has made a public commitment to require that service providers use only newly-designed convection-cooled equipment so that the facility is virtually silent except during the once monthly test. Evergreen Company has confirmed it does not need to pull vehicles directly up to the base site after installation, and our Fire Chief has stated there is no need for fire apparatus at the base either.

Technicalities

Technical considerations drive the choice of cell tower sites. There are several issues to contend with in the case of S. Brookline. The height and size of the Walnut/Wolcott Hills (distinct from the cemetery location) blocks cellular signals into portions of S. Brookline. It was once pointed out that if Brookline were Kansas cellular service could be easily addressed since flat topography lends itself well to the line of sight requirements of cellular antennas. However, Brookline has several hills, and because of geography and geometry, many seemingly likely sites are not technically viable. The sites on Single Tree Hill (water tower), the DPW Garage, Fire House and others, cannot provide adequate penetration into the area. Private sites such as Allandale Farm and the Brandegee Estate have declined to erect a tower of the necessary height to provide the needed coverage. It may be possible to provide similar coverage from a site on Putterham Golf Course if the structure were sufficiently high (though the structure would be closer to homes). But, none of the responses to the RFP included proposals for a tower high enough to fully accomplish this. Lastly, even the proposal for two towers at The Shops at Putterham (which can accommodate only two carriers) will not provide full coverage nor equal carrier access – an additional tower(s) would be required to entirely fill the void.

Financials

Warrant Article 11 provides that the Town receives a minimum of $50K per year over the ten-year lifespan of the lease. The proposed agreement with Evergreen Company

stipulates a $50K annual base plus 15% of the five co-location charges with a 3% escalation in fees. This translates to approximately $700K to the Town over the term of the lease. This fee structure appears to be well within the range of the "going rate". While $700K is not an insignificant sum, the potential financial gain to the Town is not the prime motivator for siting telecommunications equipment on Town property. Rather, it's the issues of adequate coverage and community control.

Site Sanctity, Process and Passion

The process to determine a site was a direct response to the concerns of the Public Safety Chiefs and the public, and has been commendable in many ways. A working committee of staff and residents, using a public RFP process, was a thoughtful approach. It's a mechanism that requires the consideration of things other than simply money in evaluating proposals. Even so, the process has thus far been short and narrow.

The cemetery Trustees have, appropriately, taken a position pursuant to their role as guardians of the cemetery. They, and others, feel that siting a cell tower within the confines of a cemetery is a fundamental breech of the area's sanctity. Others maintain that it is *how* it's sited, not merely *that* it is sited there. Indeed, churches and cemeteries around the country have elected to install towers on their property. There is disagreement among both the laity and clergy on this sensitive issue. It is a very personal assessment, but bear in mind how deeply some hold these feelings.

The Preservation Commission also does not support this site. It points out that the Walnut Hills Cemetery is listed on the Register of National Historic Sites and that any move to put a cell tower here would trigger a Federal review process. They also feel that the monopine would tower over the cemetery like an ominous sentinel. Though it should be pointed out, that from most of the cemetery's rolling wooded grounds, the monopine would not be seen.

There are also the issues of the potential uses of the knoll and proximity of the proposed tower to the old receiving tomb. Currently the knoll is unused, and being rock ledge it is unsuitable for full body internments. It may be feasible to use it in some way for the internment for ash however. The receiving tomb is a low-slung handsome granite structure that is seldom used. The cemetery Master Plan specifically contemplates a possible future use of the tomb either as a crypt or reception center (currently attached to the caretaker's house). The Trustees have mentioned they may wish to place a columbarium and/or chapel in this area as well and that an adjacent tower would compromise the contemplative nature of those uses. The cemetery Trustees' landscape architects Walker/Kluesing Design Group states in a letter submitted by the Trustees the concept of a columbarium at this site "was not discussed in the Master Plan for the cemetery because it wasn't necessary to illustrate development beyond a 30-40 year time span". How long, or if, it may be until this area is needed is beyond the Committee to determine.

There are two points worth making relative to this however. First, the tower lease (by law) is for a maximum of ten years. After that, Town Meeting can have the lessee

(Evergreen) remove it and reclaim the area at the lessee's expense. Also, there is the question of how long it will be before newer technology supplants the need for this/these towers. What a future Town Meeting may or may not do is at best a wild guess. Second, the cemetery is only 45 acres, and the Trustees believe they will run out of lots in the next 25 – 40 years.

Some believe projects such as this in a cemetery should be off limits; others believe it can be respectfully sited within limits. The passions of conviction are the sole domain of the individual but a consensus must be derived by a community. It is now time for our community to come to a consensus on where to locate cellular communication facilities in South Brookline.

RECOMMENDATION

The issue is not whether cellular towers are coming to South Brookline; just where and how. The Federal Telecommunications Act of 1996 mandates that cellular coverage be permitted and that all carriers are granted equal access. Federal Court is generally not kind to municipalities in contested cases as Concord and other towns have learned the hard way. Thus far, our community has been effective in dealing constructively with cellular providers in the siting of antennas.

There are two primary issues we must resolve. First, are we willing to cede a large measure of control to private developers and thereby have less control over siting, aesthetics, numbers, and duration of operation? Or, do we wish to retain much greater control by providing technically-viable sites on Town property? Second, if we do wish to retain a measure of control by using Town-owned property, what trade offs and compromises are we willing to accept? There will be an impact – it's just a matter of how we minimize it.

We realize that the catalyst for Article 11 has been a pressing Public Safety services need and a large outpouring by the surrounding neighbors concerned about an impending private cell tower project in their backyards. While the process thus far has been a good faith effort, it has been short given the gravity of the issues. And, the Article before us is rather limiting. Therefore, with the intent and expectation that there be one or more Warrant Articles brought before Town Meeting at the 2005 Annual Town Meeting, with clear, reasonable, technically-feasible options to definitively decide this issue, the Advisory Committee UNANIMOUSLY recommends FAVORABLE ACTION on the following vote:

VOTED: Town Meeting, recognizing the need for a timely solution to improving wireless communication services in South Brookline, refers the issues of siting telecommunication facilities in the town to a Moderator's committee for study with a report of immediately actionable recommendations of distinct and technically feasible options for the siting of equipment for such purposes to be included in one or more warrant articles presented at the 2005 Annual Town Meeting.

XXX

ARTICLE 11

SELECTMEN'S RECOMMENDATION ON ARTICLE 11

While both the Selectmen and the Advisory Committee recommend that a Moderator's Committee should be established to deal with the issue of locating cell towers, different language was voted. Therefore, at its November 2 meeting, the Board of Selectmen reconsidered its vote under Article 11. The Board agrees that the Advisory Committee's recommended language provides the Moderator's Committee with more clear direction, so they recommend FAVORABLE ACTION by a vote of 5-0 on the Advisory Committee's vote, which is reprinted below.

VOTED: Town Meeting, recognizing the need for a timely solution to improving wireless communication services in South Brookline, refers the issues of siting telecommunication facilities in the town to a Moderator's committee for study with a report of immediately actionable recommendations of distinct and technically feasible options for the siting of equipment for such purposes to be included in one or more warrant articles presented at the 2005 Annual Town Meeting.

ARTICLE 12

TWELFTH ARTICLE

To see if the Town will discontinue as a public way that portion of Reservoir Road (the discontinued area) shown on the plan by Peter Ditto, Town Engineer, a copy of which is on file together with a copy of this article in the Town Clerk's office, which plan is incorporated herein and made a part hereof, bounded and described, according to said plan, as follows:

Northwesterly	by that portion of Reservoir Road discontinued May 16, 1978;
Northeasterly	by land of Fenton;
Southeasterly	by the intersection of Middlesex and Reservoir Roads; and
Southwesterly	by land of Feibel;

Containing 4,024.39 square feet, as shown on said Plan, entitled: PLAN OF DISCONTINUANCE OF A PORTION OF RESERVOIR ROAD, BROOKLINE MASS., dated September 9, 2004, with all of the boundaries, distances and courses shown on said Plan;

and designate and retain the discontinued area for park purposes, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

Article 12 calls for the discontinuance of approximately 70 feel of Reservoir Road and to retain the area for park purposes. Article 16 of the 2002 Special Town Meeting did the same for 1,362 square feet of Reservoir Road. At the May 16, 1978 Special Town Meeting, a 27.25' x 50' section of Reservoir Road was discontinued, effectively cutting off access to the MBTA bridge, which had been previously closed off for safety reasons. The MBTA has since removed the vehicular/pedestrian bridge and replaced it with a pedestrian-only bridge.

Prior to the MBTA starting this work, the MWRA was given permission from the Town to use this "dead end" portion of Reservoir Road as a staging area for their water main work. With further use of the area being for pedestrian travel, the Town asked the MWRA to remove the roadway pavement and replace it with landscaping and a walkway. The MWRA agreed to do this work as mitigation for using this as a staging area. The work was completed, although the MBTA must replace damaged shrubs, trees, and pavement resulting from their subsequent bridge construction. This article will discontinue the portion of Reservoir Road that has been reconstructed with landscaping,

curbing, and walkways. The map at the end of this Warrant Article report shows the area to be discontinued.

The Board of Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on September 28, 2004, on the vote offered by the Advisory Committee.

ROLL CALL VOTE:
Favorable Action
Allen
Geller
Hoy
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
Article 12 asks Town Meeting to discontinue as a public way the 4,024.39 square feet of Reservoir Road just north of Middlesex Road and to designate and retain it as park land. This parcel adjoins the 1,362 square feet of land next to the bridge. The town abandoned this small piece of land in 1978, and Town Meeting voted to designate it as park land in 2002.

DISCUSSION
Within the past two years and with the permission of the town, the 4,024 square foot parcel has been used by the MWRA as a staging area for its water main work on Reservoir Road. In exchange for the convenience, the MWRA agreed to remove the pavement and to landscape the area with plant material and a walkway leading to the new pedestrian bridge over the MBTA tracks. Although the landscape work was completed, it was subsequently severely damaged by the MBTA during the pedestrian bridge construction. The MBTA was requested to replace damaged shrubs, trees and pavement. The town's Department of Public Works has been assured the restoration work will be completed this fall.

RECOMMENDATION
Article 12 finishes a two-year-long effort to convert the discontinued and abandoned portion of Reservoir Road into park land, affording it protection from a future change in use under Chapter 97 of the General Laws.

The Advisory Committee, by a vote of 15 in favor and 0 opposed, recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town discontinue as a public way that portion of Reservoir Road (the discontinued area) shown on the plan by Peter Ditto, Town Engineer, a copy of which is on file together with a copy of this article in the Town Clerk's office, which plan is incorporated herein and made a part hereof, bounded and described, according to said plan, as follows:

Northwesterly	by that portion of Reservoir Road discontinued May 16, 1978;
Northeasterly	by land of Fenton;
Southeasterly	by the intersection of Middlesex and Reservoir Roads; and
Southwesterly	by land of Feibel;

Containing 4,024.39 square feet, as shown on said Plan, entitled: PLAN OF DISCONTINUANCE OF A PORTION OF RESERVOIR ROAD, BROOKLINE MASS., dated September 9, 2004, with all of the boundaries, distances and courses shown on said Plan;

and designate and retain the discontinued area for park purposes.

XXX

EXAMINED AND APPROVED

SELECTMEN OF BROOKLINE

I CERTIFY THAT THIS PLAN CONFORMS WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS

PETER K. DITTO ELS, P.L.S. DATE:
DIRECTOR ENGINEERING/TRANSPORTATION
TOWN OF BROOKLINE

BY BROOKLINE
PLANNING BOARD CHAIRMAN DATE:
APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED

PLAN OF DISCONTINUANCE OF A PORTION OF

RESERVOIR ROAD

BROOKLINE MASS.

SEPTEMBER 9, 2004

SCALE 1 INCH = 20 FEET

ARTICLE 13

THIRTEENTH ARTICLE

To see if the town will vote to establish a Planning Board under the provisions of General Laws, Chapter 41, Section 81A, as most recently amended. The Board as constituted would be abolished upon the next annual town meeting and replaced by an elected board. The board shall be made up of five members serving for a three-year term of office. At the next annual town election two members shall be elected for a one year term, two members for a two year term, and one member for a three year term.

or act on anything relative thereto.

This article would abolish the current planning board which is composed of appointed members. The planning board as set up by this article would be composed of five elected members serving staggered three year terms. At the next town election all five seats would be up for election with different terms of years, two seats for a one year term, two seats for a two year term, and one seat for a three year term. In each following town election as the seats came up the terms of office would be three years.

REPORT OF THE COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE (CTO&S)

After meeting with a representative of the petitioners, other interested citizens and representatives of Town government concerned with this Article, the Committee on Town Organization and Structure concluded that the proposed change to the Planning Board is a serious matter and should not be either adopted or rejected without a full understanding of the many corollary issues involved, such as available expertise, board responsiveness, transition plan, required changes in department staff support, legislative authority and enabling mechanism, to name a few. Further, we believe that in making an informed decision on this matter, Brookline should avail itself of the experience with elected or appointed Planning Boards in a few other communities similar to Brookline in size, citizen participation and issues of land use and development. Since there appears to be no pressing issue requiring an immediate change, and since the Board of Selectmen and the Advisory Committee as well as the petitioners appear to be in agreement that a more informed decision process would be beneficial, CTO&S agrees with the referral

vote printed under the recommendation of the Selectmen for CTO&S to perform that study and report its findings and recommendation to the 2005 Annual Town Meeting.

SELECTMEN'S RECOMMENDATION

Article 13 seeks to abolish the Town's current appointed five member Planning Board and establish in its place a five-member elected Planning Board. The new members would be elected at the annual Town election in April 2005 and the terms of the current Planning Board members would expire as of the Annual Town Meeting in May 2005.

The current Planning Board is fully qualified to carry-out its responsibilities. Of the five members, there are three professional architects, one is a real estate manager, and one an attorney. Collectively, they possess well over half a century of experience directly related to the land use responsibilities of a municipal planning board. This Board of Selectmen believes that shifting to an elected planning board would be inconsistent with best practices in local government and would not serve the best interests of Brookline.

In a 2002 survey conducted by the Planning Commissioners Journal, 97 percent of communities who responded indicated that their planning board members are appointed. This holds true for 51 of the 70 communities in Massachusetts with populations over 25,000. In Massachusetts communities that have made changes to the structure of their planning boards, the apparent trend has been a shift from elected to appointed. Over the past quarter century, as communities have adopted or revised their charters, they have tended to choose the appointed option.

When making a decision about an elected vs. appointed planning board, it is important to consider many factors, including the role of the Planning Board in Brookline. One of the principal roles of the Brookline Planning Board is to serve as the Town design review board. Unlike many communities, Brookline's Planning Board plays a significant role in shaping design details associated with project approvals. In addition, the Planning Board is not the ultimate authority in Board of Appeals cases. Rather, the Planning Board serves in an advisory capacity to the Board of Appeals. Town Meeting itself decides on actual zoning changes, again with the Planning Board in an Advisory capacity

Brookline's zoning by-laws are very complex. For this reason, it is of utmost importance to have a planning board with the experience and professional competencies to handle technical complexities. With an appointed Planning Board, the Selectmen have the ability to review resumes and evaluate credentials of candidates to ensure that there is a balance of skills and backgrounds on the Planning Board. This helps ensure a consistency of approach in land use planning over the long-term that might not be as continuous with elected planning boards.

The petitioners have asserted that an elected board would be more accountable to all the citizens of Brookline. This assertion has yet to be demonstrated. The contrary argument is that towns with elected planning boards might have a greater susceptibility to special interests and short-term situational pressures. This can result in a lack of community-wide focus. Furthermore, requiring planning board members to run for office would likely make the board politically motivated. That is exactly why Massachusetts does not have elected judges. Indeed, a majority of the incumbent planning board members have stated that they would not seek the position, if they had to undergo an election campaign.

Town Counsel has raised a concern about the feasibility of making such a change. According to Town Counsel, under the terms of Chapter 41, Section 81A, which was adopted by Town Meeting in 1958, there is a question whether no authorization exists to abolish the present appointed Planning Board. More emphatically, Town Counsel has issued the opinion that whatever change might be allowable can only be voted at an Annual Town Meeting not at a Special Town Meeting.

Finally, this warrant article was submitted without the prior review by the Committee on Town Organization and Structure, which is charged with reviewing and reporting on proposed changes in the organization and structure of municipal government in the Town. The review of this Article to date has revealed, not surprisingly, that this proposal could well have profound consequences for the future of Town governance in Brookline. Because of the scope of issues involved and the extent of additional information required to address concerns that have raised, the Board concurs with referring this item to CTO&S for further study.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 19, 2004, on the following vote:

VOTED: To refer Article 13 to the Committee on Town Organization and Structure (CTO&S) for report to the 2005 Annual Town Meeting.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 13 is the result of a citizen petition which proposes to abolish our current Planning Board consisting of five members appointed by the Selectmen and replace it with a five-member Planning Board elected by the public.

DISCUSSION

Massachusetts General Laws, Chapter 41, Section 81A provides that that cities should have Planning Boards appointed by the Mayor and that towns over 10,000 in population should establish Planning Boards that are either elected or appointed. The town had an elected Planning Board until 1958 when the Planning Board unanimously recommended to the Selectmen that an appointed board would best serve the town's interests and the subsequent Town Meeting voted to accept the provisions of MGL c. 41, s. 81A and establish a five-member board to be appointed by the Selectmen. It is Town Counsel's opinion that Town Meeting cannot now revoke its acceptance without a Charter change which must go through the State legislature. The case cited by Town Counsel, Del Duca v. Town Administrator of Methuen, 368 Mass. 1, 10-13 (1974), squarely supports Mr. Turner's position. Town Counsel is also strongly of the opinion that a change as significant as the change proposed here should go through the Committee on Town Organization and Structure (CTOS), prior to being decided by Town Meeting

Petitioner Gary Jones, a Town Meeting member and an elected member of the Board of Library Trustees, was prompted to file this warrant article due to his neighborhood's experience in connection with the renovation of the Lawrence School. He felt that elected members of the Board of Selectmen and School Committee were responsive to the concerns of the neighborhood over a proposed underground garage at that site in a way that appointed officials would not have been. Further, he believes that in the campaign process, candidates state their positions on issues in advance of holding office and offer their vision of what their board should do, and that this exposure is helpful in determining who should be elected.

Members of the Planning Board, including its chair, a ten-year member of the Board, Ken Goldstein, all opposed the change to an elected Board. They noted that much of their function is judicial in nature, i.e. they must apply the Zoning By-Law to specific situations. They universally felt that the Board, as appointed, has a high level of expertise on zoning matters. It is made up of two architects, one attorney, one landscaper, and one real estate broker. This expertise is necessary to properly and fairly review applications and apply the fairly complicated Brookline Zoning By-Law. All the members of the Planning Board, both past and present, said that the job of a Planning Board member is demanding and time consuming and they would not be inclined to spend time raising money and campaigning for the job. One Planning Board member noted that, as an architect, he has appeared before both elected and appointed Planning Boards. In general, he feels that the elected boards are much less organized and require

repeated meetings with those seeking decisions from them before they feel ready to act. Several of the Planning Board members said that there is a real learning curve to get familiar with the complexity of the Zoning By-Law and that having a very frequent turnover of members, as you might with elections, could be very detrimental to the decision-making process of the Board.

Director of Planning and Community Development Bob Duffy provided a chart of Massachusetts communities over 25,000 in size that indicated whether they have elected or appointed Planning Boards. Of those communities 19 have elected boards and 51 have appointed boards. Of the elected boards almost all are in communities considerably smaller than Brookline. Only Framingham, with a population of 66,910, and Plymouth, with a population of 51,701, had populations in the neighborhood of Brookline's and an elected board. The petitioner points out that if you separate the communities by towns vs. cities, rather than by population, the vast majority of towns have elected boards. However, the complexity of the zoning code and the number of cases before the Planning Board is probably linked much more closely to population and proximity to Boston than to the form of government. Mr. Duffy gave his opinion, based on his 25 years as a professional planner, that an appointed board is better than an elected one because you can ensure that the town gets the expertise it needs in its board.

Town Administrator Richard Kelliher stated his belief that the best practice in local government is to have an appointed board rather than an elected one. He said that the trend is to move from elected to appointed, citing Watertown and Weymouth, rather than the other way around.

Mark Zarrillo, a landscape architect and a current member of the Board, noted that he has appeared before many elected, as well as appointed boards. He said that many of the elected boards have to charge property owners that come before them larger fees than Brookline does, because they have to hire peer reviewers to provide expertise that they do not have on the board. These fees can be a hardship for smaller property owners.

Some members of the public asserted that the Board would be more independent if elected and therefore more responsive to the community. Planning Board members responded that they have not been told how to vote by the Selectmen once they are appointed and that they would find it inappropriate if the Selectmen did attempt to insert themselves into the Planning Board decision-making process.

Material obtained by the American Planning Association shows that throughout the country almost all Planning Boards are appointed. Only in Massachusetts, and somewhat less in neighboring New England states, are any Planning Boards elected. The arguments against the election of Planning Board members are that Planning Board members should take a long-term view and be somewhat insulated from politics. In addition, the process of soliciting support and campaign money may make Planning Board members beholden to particular constituents or developers. This is similar to the discussion of problems with elected judges.

Local communities that have elected boards report mixed results. In Framingham, Tom Mahoney, Chair of the elected Planning Board reports that his board is very good and diverse, at present. He does not feel that they are significantly influenced by campaign contributions there, since they are limited to $50 contributions. Their Zoning By-Law appears to be somewhat less complex than Brookline's. His board follows the same guidelines/laws as an appointed board. He believes that the fact that they are independent and answer to constituents, not the Selectmen, is a strength of the board. They are supported directly by a senior level planner and an administrative assistant, which he believes is not really sufficient. The town also has a separate Planning and Economic Development Department with a director and 3 senior planners. In Wellesley, Rick Brown, the Planning Director who supports the elected board, is similarly enthusiastic. He believes that the independence of the board is an asset and that an elected board can appoint Design Review Teams to provide the expertise that it may not have. The major problem that both communities have found is that not many people want to run for the Planning Board. In Framingham, Mr. Mahoney said that it is typical to have two or three people running for two open seats. In Wellesley, Mr. Brown said that they have a very good board now, but that in the past they have had some problems with their elected boards because seats were uncontested and people sometimes ran for the opportunity to be in the spotlight, rather than genuine interest in good planning. The consensus seems to be that getting a good elected board is partially a matter of luck. Both admit that the second issue is that decision-making tends to occur very slowly with elected boards. "That's the way we like it in Wellesley," said Mr. Brown.

In Franklin, the Town Manager Jeff Nutting feels that the experience with a very pro-development board has been negative. The town is considering moving to an appointed board. The present board made a decision that Mr. Nutting felt was so inappropriately favorable to a developer that the town appealed the board's decision in Court. Subsequently, the appeal was dropped after the town got a commitment from the developer to contribute $750,000 to the town for building roads and affordable housing; issues that did not interest the elected Planning Board. Mr. Nutting said that in his experience both in Franklin and over his career in other towns, people tended to run for the Planning Board because they favored or opposed a particular project, and that this was not the optimal criteria for Planning Board members.

In summary, the arguments in favor of elected boards include independence, the board serves as a balance against the Selectmen, and the Planning Board may be more responsive to the immediate concerns of individuals or groups in town. To a large extent in Brookline, however, since all zoning changes go before Town Meeting, we already have the community-wide balance on big issues. The major problem with elected Planning Boards in general seems to be the problem of getting the appropriately qualified people to run for the job. Making the Planning Board a popularity contest could have a negative effect on the judicial nature of many Planning Board decisions. The recent spate of controversial MGL c. 40B cases would be unaffected by how the Planning Board is picked, since those cases must be decided by the Zoning Board of Appeals, which must be an appointed board.

The Committee on Town Organization and Structure has held a hearing on this issue and it has voted that it finds the matter of sufficient complexity that it warrants further study.

A very substantial minority of the Advisory Committee feels that the case has not been made that there are sufficient problems with the present system of an appointed Planning Board that would be improved by moving to an elected board. A majority of the Advisory Committee, while not indicating support for the move to an elected board, felt that further study by CTOS might yield information of interest to Town Meeting.

RECOMMENDATION

The Advisory Committee, by a vote of 10 in favor and 8 opposed, recommends referral of the subject matter of Warrant Article 13 to the Committee on Town Organization and Structure to report prior to the next Annual Town Meeting, as reflected in the vote offered by the Board of Selectmen.

XXX

ARTICLE 14

FOURTEENTH ARTICLE

To see if the town will authorize and approve the filing of a petition with the General Court in substantially the following form:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO OFFER INCENTIVES TO THE OWNERS OF TWO AND THREE FAMILY DWELLINGS TO RENT UNITS TO LOW OR MODERATE INCOME HOUSEHOLDS

Be It Enacted, etc., as follows:

Section 1. Notwithstanding any general or special law to the contrary, in the town of Brookline (town), the owner (owner) of a two or three family dwelling (the dwelling) situated in the town, who occupies and resides in one of the units in the dwelling, who establishes, by a restriction recorded or registered with Norfolk County Registry of Deeds, another unit in the dwelling as a low or moderate income unit(eligible unit) for a period of not less than five (5) years or such other term, not to exceed ten (10) years, as determined by the town, and rents that unit to a qualified low or moderate income household, may annually apply for and is eligible to receive a residential exemption, under section five C in Chapter fifty-nine of the General Laws, for the eligible unit, if it is annually determined by the town's assessors (assessors), a. that the owner occupies and resides in one of the units in the dwelling, b. that the eligible unit is restricted as a low or moderate income unit under a current restriction, as referenced above, c. that the eligible unit has been and continues to be rented to a qualified low or moderate income household and d. that the rent to be collected for the eligible unit does not exceed the maximum rent permitted by the Brookline Housing Authority, based upon the size of the eligible unit under the federal voucher program for a tenant paying thirty per cent of its income on housing costs. The owner shall annually file with the assessors a notarized affidavit that certifies whether or not the conditions in a., b. c. and d., above, are and will continue to be satisfied.

Section 2. "Low or moderate income household" as used herein means households with gross household income less than or equal to eighty per cent of the area median income as determined, from time to time, by the United States Department of Housing and Urban Development.

Section 3. Each year the assessors shall certify to the director of planning and community development of the town the number of eligible units in the town.

The number of eligible units so certified shall be added to "Low or moderate income housing," as defined in section 20 in chapter forty B of the general laws, in determining whether or not low or moderate income housing exists in the town which is in excess of ten per cent of the housing units reported in the latest federal decennial census of the town.

Section 4. This act shall take effect upon its passage.;

or act on anything relative thereto.

This proposed home rule bill would authorize Brookline to offer incentives in the form of tax relief to the owner-occupants of two- and three-family dwellings to rent units to low or moderate income households. It would also, consequently, get credit towards the Town's chapter 40B quota -- by using existing housing units instead of new development.

SELECTMEN'S RECOMMENDATION

Article 14 is proposed Home Rule legislation that intends to increase the number of affordable units within the Town by offering cash incentives to owner-occupants of two- or three-family dwellings, in the form of an extra residential exemption. During the Board's review of the article, it became apparent that the article, as written, did not do what the petitioners had intended. As written, the income level of the tenant would qualify the landlord for an additional residential exemption on the additional units whereas the intention was to have the income level of the owner-occupants themselves qualify them for the reduction.

In order to draft an article that does what the petitioners intend, the Board recommends that a committee be established to study the issues and report to the 2005 Annual Town Meeting. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2004, on the vote offered by the Advisory Committee

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This article is a home rule petition that seeks legislative approval to authorize the town to offer incentives in the form of property tax relief to owner-occupants of two- and three-family dwellings who commit to renting to low- or moderate-income tenants, in the hope

of maintaining the dwindling stock of owner-occupied twos and threes in Brookline. The incentives would be in the form of additional residential exemptions for each qualifying rental unit. As an additional benefit, each such unit would count towards fulfilling the town's ten percent affordable housing quota required under Chapter 40B of the Massachusetts General Laws without the necessity for new development.

DISCUSSION

After this article was inserted into the warrant, one of the petitioners felt that its wording did not accurately reflect her intent and agreed to have the subject matter be studied by a committee to be appointed by the Board of Selectmen. It is envisioned that this committee will consist of a representatives from the Selectmen, Town Counsel, the Board of Assessors, the Housing Advisory Board, the Advisory Committee, and owner-occupied twos and threes. The committee is to report to the 2005 Annual Town Meeting whose warrant will presumably include a more appropriately worded article dealing with this subject.

RECOMMENDATION

By a vote of 17-0, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Board of Selectmen establish a committee to study the issues involved in Article 14 and report to the 2005 Annual Town Meeting.

XXX

ARTICLE 15

FIFTEENTH ARTICLE

To see if the Town will authorize and empower the Board of Selectmen to file a petition, in substantially the following form, with the General Court:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ESTABLISH A PUBLIC SAFETY INJURED ON DUTY MEDICAL EXPENSES TRUST FUND

Be It Enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline may appropriate an amount not exceeding in any one year one twentieth of one per cent of its equalized valuation as defined in section one of chapter forty-four, to establish and maintain a section one-hundred trust fund to provide indemnification payments, in accordance with section one hundred of chapter forty-one of the general laws, for fire fighters and police officers; but, no money shall be appropriated for such purpose while the fund equals or exceeds one per cent of such town's equalized valuation. The treasurer of the town shall be the custodian of the fund, that may be invested in accordance with the Prudent Man Rule. All interest or other income generated by the fund shall be added to and become a part of the fund. Expenditures from the fund may be made for such indemnification, upon request of the Chief of the Fire Department for fire fighters and of the Police Chief for police officers, with the approval of the Town Administrator.

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

or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

Article 15 is Home Rule legislation that would allow Brookline to create a trust fund from which the medical bills of police officers and firefighters who are injured while on duty are paid. This Public Safety IOD Medical Expenses Trust Fund is modeled after the Workers' Compensation Trust Fund statute (MGL, Ch. 40, Sec. 13A).

The need for this trust fund became apparent at the end of FY04, when the Town received large medical bills for an injured firefighter. We realized that the existing structure is insufficient to meet Police / Fire IOD medical requirements. There is a trust fund set up to cover the medical costs of employees injured on the job who are covered by Worker's Compensation, yet there is no fund in existence to pay for similar expenses for our public safety employees. A trust fund gives the Town the mechanism required to handle situations that cross over fiscal years or that arise late in the fiscal year.

The Town is also in the process of reviewing the possibility of stop-loss coverage for public safety IOD medical expenses. Such a policy would protect the Town from the large expenses realized in FY04.

The trust fund would not cause an increase in the Town's budget; instead, there would simply be a shifting of funds from the Police and Fire budgets, where IOD medical bills are paid for now, to the trust fund.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on September 28, 2004, on the following vote:

VOTED: That the Town authorize and empower the Board of Selectmen to file a petition, in substantially the following form, with the General Court:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ESTABLISH A PUBLIC SAFETY INJURED ON DUTY MEDICAL EXPENSES TRUST FUND

Be It Enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline may appropriate an amount not exceeding in any one year one twentieth of one per cent of its equalized valuation as defined in section one of chapter forty-four, to establish and maintain a section one-hundred trust fund to provide indemnification payments, in accordance with section one hundred of chapter forty-one of the general laws, for fire fighters and police officers; but, no money shall be appropriated for such purpose while the fund equals or exceeds one per cent of such town's equalized valuation. The treasurer of the town shall be the custodian of the fund, that may be invested in accordance with the Prudent Man Rule. All interest or other income generated by the fund shall be added to and become a part of the fund. Expenditures from the fund may be made for such indemnification, upon request of the Chief of the Fire Department for fire fighters and of the Police Chief for police officers, with the approval of the Town Administrator.

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

ROLL CALL VOTE:
Favorable Action
Allen
Geller
Hoy
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
Article 15 is home rule legislation to set up a trust fund to pay for public safety personnel Injured on Duty (IOD) medical expenses. Such medical expenses are not covered by Workers' Compensation, but the town remains responsible for the expenses. (Note that there is already a trust fund for non-public safety workers' compensation.)

DISCUSSION
Currently, IOD expenses are paid from the operating budgets of the police and fire departments respectively. The town's FY 2005 budget includes $80,000 in the police budget and $60,000 in the fire budget for a total of $140,000. By their very nature, these kinds of expenses are hard to predict in a specific year. The "normal" budget process is very inflexible. Police IOD money cannot be used for fire and vice versa. If we are unfortunate and there are heavy expenses (as has happened in the past couple of years), the only recourse is to seek a transfer from the Reserve Fund. Conversely, if there is a year with few IOD expenses, the money reverts to Free Cash.

This kind of "self insured" expense, which may be "predictable" over the long term, is unpredictable in any specific year and is just the kind of expense which should be funded with a trust fund. A trust fund will permit budget flexibility between police and fire IOD payments and will encourage more predictable budgeting over the long term. Monies not paid out in a particular year can be held in the trust fund until needed in future years. We note that the town is also analyzing whether this risk exposure should be covered by stop-loss insurance to limit the upside risk.

Lastly, this Article is revenue neutral. The IOD payments are what they are, whether or not this trust fund is in place. The trust fund will promote more sensible budgeting and accounting for these payments.

RECOMMENDATION

The Advisory Committee, by a vote of 16 in favor and 0 opposed, recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

XXX

November 16, 2004
Special Town Meeting
Article 15 – Supplement No. 1

ARTICLE 15

Last week, the Governor vetoed the Town's "Prudent Man Rule" bill, which was a Home Rule bill passed by Town Meeting this past June at the Annual Town Meeting. Article 15 includes language relative to investing the proposed trust fund according to the Prudent Man Rule. Since the Governor vetoed the Prudent Man Rule legislation, including this language in this bill could also result in a gubernatorial veto.

The Board of Selectmen and the Advisory Committee will be taking up this issue prior to the commencement of Town Meeting.

VOTED: That the Town authorize and empower the Board of Selectmen to file a petition, in substantially the following form, with the General Court:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ESTABLISH A PUBLIC SAFETY INJURED ON DUTY MEDICAL EXPENSES TRUST FUND

Be It Enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline may appropriate an amount not exceeding in any one year one twentieth of one per cent of its equalized valuation as defined in section one of chapter forty-four, to establish and maintain a section one-hundred trust fund to provide indemnification payments, in accordance with section one hundred of chapter forty-one of the general laws, for fire fighters and police officers; but, no money shall be appropriated for such purpose while the fund equals or exceeds one per cent of such town's equalized valuation. The treasurer of the town shall be the custodian of the fund. All interest or other income generated by the fund shall be added to and become a part of the fund. Expenditures from the fund may be made for such indemnification, upon request of the Chief of the Fire Department for fire fighters and of the Police Chief for police officers, with the approval of the Town Administrator.

Deleted: , that may be invested in accordance with the Prudent Man Rule

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

ARTICLE 16

SIXTEENTH ARTICLE

To see if the Town will amend the Zoning By-Law as follows **(additions in bold):**

A. In §4.07 Table of Use Regulations, Principal Use 6, add L (Local Business) districts to last sentence of footnote as follows "In **L and** G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use.

or act on anything relative thereto.

At Fall 2003 Town Meeting, a zoning amendment was approved requiring that for a residential building located in a General Business (G) district, the frontage along the street devoted to residential use shall be limited to no more than 40% in order to preserve the viability and continuity of Brookline's commercial areas. After this amendment was passed, it was realized that this is equally important in our Local Business (L) districts.

PLANNING BOARD REPORT AND RECOMMENDATION

In Brookline, unlike many other communities, the Zoning By-Law does not exclude residential buildings or uses from either General Business (G) or Local Business (L) zoning districts. In the fall of 2003, Town Meeting passed an amendment, not changing the right to have residential uses in General Business (G) zones, but restricting the amount of the ground floor use of a residential building to no more than 40% of a building's frontage along a street. The purpose of this amendment was to preserve the vitality and viability of our major commercial areas and to prevent gaps in the business area's streetscape. After this amendment was passed, the Planning Board considered that the application of this amendment was equally important for our local commercial areas. Therefore, this amendment proposes to add the same restriction in Local Business (L) districts.

Therefore, the Planning Board unanimously recommends **FAVORABLE ACTION** on Article 16.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen agrees with the Article as recommended by the Planning Board. The proposed Zoning By-Law amendment will require that no more than 40% of a building's ground level frontage along a street within a Local (L) Business zoning district be devoted to residential use. A Special Permit (SP) will be required from the Board of Appeals to expand the percentage of street level residential frontage beyond the 40% limitation.

The proposed amendment is consistent with a previous amendment approved by Town Meeting in September 2003 for General (G) Business districts. The amendment will reinforce the existing pattern of mixed use and commercial frontage that is predominant within the Town's twelve Local Business districts, including JFK Crossing and Harvard Street. The proposed amendment implements preliminary recommendations of the Brookline Comprehensive Plan.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 19, 2004, on the vote offered by the Advisory Committee.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
Article 16 revisits changes made to Section 4 of the Zoning By-Law approved by last fall's Special Town Meeting. At that time it changed the 4.07 Table of Use Regulations, for "Principal Use 6", approving a change of wording for the "G" (General Business) districts. It established that only a maximum of 40% of the ground level's existing store-front could be devoted to residential related uses in support of units above the first floor. The objective was to help to better maintain the predominance of commercial uses for the storefronts.

Within the group of all residence uses, Use 6 allows for a "Multiple and attached dwelling… divided into units each occupied by not more than one family." These uses

happen in the "M" Apartment House districts in many parts of town, but also in "G" and "L" Local Business Districts.

Article 16 proposes one more improvement: the additional inclusion of "L" Local Business Districts in this stipulation.

DISCUSSION

Director of Planning and Community Development Robert Duffy told us that in planning terms, it's a good rule to try and maintain at least a 50/50 ratio between storefront display space and solid wall surfaces and the more open and inviting it is - the better.

The Advisory Committee asked if the entire district would need to maintain the 60/40 ratio and if it was like an allowance, balanced across the district. He said that it would apply individually to properties as they proposed changes over time and that the department was concerned about larger buildings changing over dramatically with an introduction of residential uses above.

Since last year, it has been realized that "L" districts are just as vulnerable. These exist in North Brookline's JFK Crossing area along Harvard Street almost to the Allston line; "St. Mary's" area along Beacon Street at Audubon Circle; Harvard Street near United Parish Church and further from the Stop & Shop to the corner at Walgreen's. Along Harvard Street, it is interspersed with bits of "M" districts and linked together by the major "G's" of Coolidge Corner and Brookline Village. Elsewhere they happen along Cypress Street at three spots ending at Kendall Crescent, at Putterham Circle and out Route. 9 at Boylston Street and Reservoir Road.

RECOMMENDATION

The Advisory Committee felt that this was a worthwhile small change to the Zoning-Bylaw that could be very beneficial to all business areas in town; therefore the Advisory Committee, by a vote of 18 in favor, 0 opposed and 1 abstention, voted to recommend FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the Zoning By-Law as follows **(additions in bold):**

In §4.07 Table of Use Regulations, Principal Use 6, add L (Local Business) districts to last sentence of footnote as follows “In **L and** G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use.

XXX

ARTICLE 17

SEVENTEENTH ARTICLE

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

A. Modify ARTICLE IV USE REGULATIONS, §4.07- TABLE OF USE REGULATIONS, Principal Use #33A by deleting the special permit requirement exception for supermarkets: **[Deletions are bracketed and in bold. Additions in italics and bold]**

	Residence					Business		Industry
	S	SC	T	M	L	G	O	I
33A. Stores over 10,000 square feet of gross floor area serving the general retail needs of a major part of the Town, including but not limited to general merchandise department store, ***supermarket, grocery store***, furniture and household goods.	No	No	No	No	No	SP[*]	No	SP

[* supermarket over 10,000 sq. ft. is an allowed use in a G district.]

or act on anything relative thereto.

After a zoning amendment was approved by Fall 2003 Town Meeting requiring a special permit for stores over 10,000 s.f. in a G district, with an exception for supermarkets, the issue was raised whether or not supermarkets over 10,000 s.f. should also be required to obtain a special permit. This would allow a case-by-case evaluation of the appropriateness of locating a large grocery store in a specific area and whether the impacts to a neighborhood would be positive or negative.

PLANNING BOARD REPORT AND RECOMMENDATION

In the fall of 2003, Town Meeting passed an amendment, which created a new size maximum of 10,000 square feet for retail uses in General Business Zones. Large stores over 10,000 square feet were to be allowed not by-right, but by special permit, after a

case-by-case review, so that the Board of Appeals could determine the appropriateness of a large store for a particular neighborhood. However, supermarkets and grocery stores were excluded from the 10,000 sq. ft. limit because, at the time, it was felt that they typically are larger than other retail stores and provide a valuable service to the neighborhood. However, many citizens felt that even a supermarket should have extra review to determine if the use is appropriate for a particular area. Therefore, this amendment eliminates the exception for supermarkets and grocery stores and requires a special permit for those over 10,000 square feet.

Therefore, the Planning Board unanimously recommends **FAVORABLE ACTION** on Article 17.

SELECTMEN'S RECOMMENDATION

The proposed Article will require that supermarket and grocery store uses that would exceed 10,000 square feet in floor area, as proposed for locations within the Town's thirteen General (G) Business districts, obtain a Special Permit (SP).

This amendment was recommend by the Advisory Committee in 2003 when Town Meeting approved a general amendment to Section 4.07 Table of Use Regulations of the Zoning By-Law requiring all proposed retail uses within G districts to obtain Special Permits when exceeding 10,000 square feet in floor area. The proposed amendment is appropriate since it will enable both the Planning Board and Board of Appeals to assess the potential impacts of these large scale retail uses.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on taken on October 19, 2004, on the following vote:

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

B. Modify ARTICLE IV USE REGULATIONS, §4.07- TABLE OF USE REGULATIONS, Principal Use #33A by deleting the special permit requirement exception for supermarkets: **[Deletions are bracketed and in bold. Additions in italics and bold]**

	Residence				Business			Industry
	S	SC	T	M	L	G	O	I
33A. Stores over 10,000 square feet of gross floor area serving the general retail needs of a major part of the Town, including	No	No	No	No	No	SP[*]	No	SP

but not limited to general merchandise
department store, ***supermarket, grocery store***, furniture and household goods.

[* supermarket over 10,000 sq. ft. is an allowed use in a G district.]

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
Article 17 revisits changes made to Section 4 of the Zoning By-Law approved by last fall's Special Town Meeting. Last year we changed the 4.07 Table of Use Regulations in two ways. First an adjustment was made to Use 33 (Stores in "G" Districts) to limit the maximum store size to 10,000 square feet, which was felt would help preserve smaller stores. Second, we added new Use 33A which recognized situations where larger stores might be proposed, but set a requirement that all requests, except those for supermarkets, would need the extra levels of design review and neighborhood input inherent in the process of needing a "Special Permit". Neither change affected the much smaller limits in our "L" - Local Business areas.

However, the Advisory Committee stated in its report last fall to Town Meeting that it felt further examination of the supermarket exclusion would be helpful. The Planning Department has done that and now offers the current Art. 17 to address concerns raised. The present article would require that any proposed supermarket must also be reviewed by the Special Permit process and the Board of Appeals, as with all other 33A uses.

DISCUSSION
Members asked if any proposals were known of and if the existing two supermarkets in town were able to expand. Director of Planning and Community Development Robert Duffy knew of no new proposals and indicated that both the Star and Stop & Shop locations were difficult sites to expand. All in all, he felt that Article 17's requirement for a Special Permit would provide a better level of control over any future changes or new supermarkets in Brookline.

RECOMMENDATION
The Advisory Committee, by a vote of 18 in favor and 1 opposed, recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 17

Adopted by Planning Board on April 8, 2004

RETAIL USES OVER 10,000 S.F. IN GENERAL BUSINESS DISTRICTS

The following guidelines supplement the standards outlined in the Zoning By-Law under Section 5.09(4), Community and Environmental Impact and Design Standards and are intended to provide additional standards to the Planning Board and Board of Appeals when considering a special permit request for retail stores over 10,000 s.f. in a general business district.

- Not displace existing smaller retail stores through redevelopment
- Reinforce character, pattern and building rhythm of surrounding business district
- Have a design adaptable for future multiple storefronts
- Provide public amenities, such as pedestrian friendly streetscape improvements, landscaping, high quality materials, overnight parking for area residents and/or indoor amenities, such as public space, web-interactive health information kiosks in pharmacies, and ancillary cafes in bookstores
- Encourage retail use at second floor level where appropriate

ARTICLE 18

EIGHTEENTH ARTICLE

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

A. In ARTICLE IV USE REGULATIONS, SEC. 4.08, AFFORDABLE HOUSING REQUIREMENTS, Paragraph 3. Applicability, subparagraph a. substitute "the creation of" for "any net increase" and after the semi-colon and before "and" add a clause reading: "except that any pre-existing units that are retained as part of the project shall not contribute to such count;", so that the new paragraph reads:

"any project that results in the creation of six or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction or change of existing residential or non-residential space, except that any pre-existing units that are retained as part of the project shall not contribute to such count; and"

B. In ARTICLE IV USE REGULATIONS, SEC. 4.08, AFFORDABLE HOUSING REQUIREMENTS, Paragraph 5. Required Affordable Units, subparagraph a. in the first sentence substitute "the creation of six or more dwelling units in accordance with paragraph 3., above," for "any net increase of six or more dwelling units", so that the first sentence of the new paragraph reads:

"For projects resulting in the creation of six or more dwelling units in accordance with paragraph 3., above, the applicant shall be required to set aside 15% of the units so created as affordable units, except as the provisions of subparagraph d., below, shall apply."

C. In ARTICLE IV USE REGULATIONS, SEC. 4.08, AFFORDABLE HOUSING REQUIREMENTS, Paragraph 5. Required Affordable Units, subparagraph d. substitute "the creation of six to 15 dwelling units in accordance with paragraph 3., above," for "any net increase of six or more dwelling units", so that the new paragraph reads:

"For projects resulting in the creation of six to 15 dwelling units in accordance with paragraph 3., above, the applicant may choose to make a cash payment to the Housing Trust based on the Affordable Housing Guidelines."

or act on anything relative thereto.

Section 4.08, the affordable housing requirements, requires developers of new residential projects with six or more units to contribute towards the Town's affordable housing supply. For developments of 6-15 units, a cash contribution may be made, and for developments of 16 or more units, affordable units are typically required to be provided. This proposed warrant amendment clarifies exactly which residential units in a new project count toward calculating the affordable housing requirements. The proposed revisions are consistent with the original intention when changes were made to the Affordable Housing Requirements in the Zoning By-Law at Town Meeting, May, 2002 and are consistent with prior policies and practices.

The revised language explicitly states that residential units in a building retained as part of a project will not be counted toward the Affordable Housing Requirements, but that residential units demolished in order for the new project to be built have no applicability to the new project and should not be deducted from the new unit count before applying the Affordable Housing Requirements.

For example, if a developer refurbished a Victorian home with three dwelling units and attached a new building at the rear with seven units, only the seven new units would count toward the Affordable Housing Requirements. Conversely, if the three unit Victorian were demolished and a new residence built with seven dwelling units, all seven units would count toward the Affordable Housing Requirement, and the developer could not claim that only four new dwelling units were being created.

This clarification is consistent with the way in which the by-law has historically been applied, has the added benefit of discouraging teardowns of historic buildings, and is consistent with the draft Comprehensive Plan's neighborhood preservation goals.

PLANNING BOARD REPORT AND RECOMMENDATION

The Planning Board supports this clarification amendment that will assure that the language of the Affordable Housing Requirements (Section 4.08) is unmistakably in line with the intent of that section and consistent with prior policies and practices. The amendment clarifies how to count the number of units in a project, critical in order to determine if the project is subject to the Affordable Housing Requirements and, if so, what the obligation would be. More specifically, it replaces current language which refers to *any net increase of six or more* dwelling units.

By way of history, prior to redrafting the Affordable Housing Requirements, approved as Section 4.08 by Town Meeting in May 2002, questions had arisen regarding the unit count for projects which incorporated an existing residential building. As a result, the phrase *net increase* was used in order to exclude, from unit count, the number of pre-existing residential units to be <u>incorporated into</u> the new project, for example, where a developer refurbishes a Victorian home and attaches a new wing or building in the rear. Recent proposals from and discussions with developers of projects which include the

demolition of existing residential structures have used this phrase to exclude, from the project unit count, the number of pre-existing units that will be demolished.

This interpretation not only is inconsistent with the way in which the by-law has historically been applied, it is inconsistent with Town policies to discourage teardowns and encourage neighborhood preservation. Because of the scarcity of buildable land, more and more project proposals involving demolition are inevitable. The unintended consequences of this interpretation include not only fewer resources for affordable housing, but potentially the encouragement of teardowns, as the netting out of the units in a demolished building will save the project the costs associated with compliance with the Affordable Housing Requirements.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 18.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen fully supports this amendment recommended by the Housing Advisory Board (HAB). The basic purpose of Article 18 is to clarify how a developer calculates the number of residential units within a proposed development for the purpose of determining if a project must either contribute to the Affordable Housing Trust or provide on-site affordable housing units.

The phrase "net increase", which appears in several sections of Section 4.08 Affordable Housing Requirements, has been the basic test for determining the number of affordable units or financial obligation of a developer. Recently, Town Counsel has been called upon to correctly interpret these sections of the Zoning By-Law since several developments included the demolition of structures, which previously included residential units, and the developers interpreted the above phrase to mean that the demolished units could be excluded from the total number of new units to be constructed.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on taken on October 19, 2004, on the following vote:

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

A. In ARTICLE IV USE REGULATIONS, SEC. 4.08, AFFORDABLE HOUSING REQUIREMENTS, Paragraph 3. Applicability, subparagraph a. substitute "the creation of" for "any net increase" and after the semi-colon and before "and" add a clause reading: "except that any pre-existing units that are retained as part of the project shall not contribute to such count;", so that the new paragraph reads:

"any project that results in the creation of six or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction or change of existing

residential or non-residential space, except that any pre-existing units that are retained as part of the project shall not contribute to such count; and"

B. In ARTICLE IV USE REGULATIONS, SEC. 4.08, AFFORDABLE HOUSING REQUIREMENTS, Paragraph 5. Required Affordable Units, subparagraph a. in the first sentence substitute "the creation of six or more dwelling units in accordance with paragraph 3., above," for "any net increase of six or more dwelling units", so that the first sentence of the new paragraph reads:

"For projects resulting in the creation of six or more dwelling units in accordance with paragraph 3., above, the applicant shall be required to set aside 15% of the units so created as affordable units, except as the provisions of subparagraph d., below, shall apply."

C. In ARTICLE IV USE REGULATIONS, SEC. 4.08, AFFORDABLE HOUSING REQUIREMENTS, Paragraph 5. Required Affordable Units, subparagraph d. substitute "the creation of six to 15 dwelling units in accordance with paragraph 3., above," for "any net increase of six or more dwelling units", so that the new paragraph reads:

"For projects resulting in the creation of six to 15 dwelling units in accordance with paragraph 3., above, the applicant may choose to make a cash payment to the Housing Trust based on the Affordable Housing Guidelines."

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
The purpose of the article is to codify in the by-laws (Section 4.08) the policies and practices the Town has been following for determining affordable housing contributions when pre-existing residential units are significantly modified (as described in the by-laws). The language change makes explicit the Town's original intent, which, to date, has been sustained when challenged. And the new language explicitly supports the Town's policy of discouraging teardowns and encouraging neighborhood preservation.

DISCUSSION

Under the by-laws, developers of projects with six or more dwelling units are required to contribute to the affordable housing supply. The changed language makes clear that *retained* pre-existing units will not be counted as units, but *replaced* units will, in applying the affordable housing requirements. The existing language raises uncertainty with the use of the phrase "any net increase" and is replaced by the new phrase "the creation of".

Consideration of the article by the Committee generated discussion of the appropriateness of excluding *retained* units from the determination of affordable housing requirements. The consensus was that a change in this practice would encourage demolition, conflicting with the Town's preservation goals.

Developers have suggested that in applying the "any net increase" language, pre-existing units, even if demolished to make room for new structures, should be subtracted from the total units of the new project. This is clearly not the intent of the Town's by-law, and Article 18 proposes adding clarity to that intent.

RECOMMENDATION

The Advisory Committee UNANIMOUSLY recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

XXX

ARTICLE 19

NINTEENTH ARTICLE

To see if the Town will amend the Zoning By-law by inserting the following new Section 3.03 Interim Planning Overlay District as part of Article III, Establishment of Zoning Districts.

Section 3.03 – INTERIM PLANNING OVERLAY DISTRICT

1. Purpose and Objectives

The Zoning By-Law and Map may be amended by Town Meeting from time to time to address changes in land use, environmental and economic conditions that reflect the evolution of the Town and the recommendations of town-wide or district related plans and studies.

An Interim Planning Overlay District may be adopted for a specified period of time, no greater than twelve months, at an annual or special Town Meeting in accordance with the provisions of Chapter 40A of the General Laws in order to provide an opportunity to complete district or neighborhood level planning studies, including evaluation of land use, density, dimensional, parking and other requirements. If found warranted, revised zoning regulations and/or design guidelines shall be submitted to Town Meeting for adoption to better manage growth consistent with the Town's Comprehensive Plan or the recommendations of subsequent studies. The interim zoning regulations or design guidelines established during the study period will ensure that an area is not impacted by inappropriate growth.

2. Regulations

An Interim Planning Overlay District established in accordance with this section may apply to a district or sub-districts and may replace or amend the Zoning By-law related to use, density, dimensional, parking, design or other regulations for the specified time period, not to exceed twelve months from the date of adoption by Town Meeting.

3. Procedures

The Building Commissioner shall not approve applications for building permits that enable the construction or improvement of uses and/or structures during the time period during which the interim regulations or design guidelines apply.

If the Building Commissioner denies an application for a building permit, an applicant may appeal the decision of the Building Commissioner to the Board of Appeals in accordance with G.L.c. 40A, Section 8. In any such appeal, the Board of Appeals shall

seek an advisory report from the Planning Board. The Board of Appeals and Planning Board shall base its findings and recommendations in any such appeal on the specific regulations and guidelines established by Town Meeting for the Interim Planning Overlay District.

4. Establishment

An article proposing the establishment of an Interim Planning Overlay District shall, at a minimum, include the following:

a. physical boundaries of the proposed district through a survey or map delineating the boundary in relation to existing zoning, streets and property lines as defined by the Town's Zoning Map and Assessor's Atlas.

b. current land use, zoning and other physical characteristics of the area included within the proposed district.

c. purpose of the proposed district and why the existing underlying zoning may not be appropriate.

d. conformance of the proposed district with the Town's Comprehensive Plan or other land use and related studies or plans.

e. scope of work to be undertaken that will produce proposed Zoning By-Law and Map amendments for consideration by Town Meeting.

f. length of time, not greater than twelve months, from the date of passage by Town Meeting, for which the district will be effective and for the completion of the supporting study necessary to submit Zoning By-Law and Map amendments for consideration by Town Meeting.

g. use, dimensional, parking and other related regulations in the Zoning By-Law which will be replaced or amended during the effective period of the district; and

h. interim use, dimensional and related Zoning By-Law regulations or design review guidelines that will be effective during the interim period in which the district is in place.

5. Severability

The provisions of this section of the Zoning By-Law are severable, and if any such provision shall be held invalid by a court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of the Zoning By-law.

6. Districts

(To be inserted into the Zoning By-Law for a period no greater than twelve months following adoption of such districts at future Town Meetings.);

or any act relative thereto.

The proposed addition of Section 3.03, Interim Planning Overlay District, to Article III, Establishment of Zoning Districts of the Town of Brookline's Zoning By-law will provide for the establishment of an interim overlay zoning district that, for a period of not more than twelve months, would enable interim regulations and/or design guidelines to apply to Building Department applications, while revised zoning regulations are drafted as part of a neighborhood or special area study or plan.

PLANNING BOARD REPORT AND RECOMMENDATION

The Planning Board supports this zoning amendment for laying the framework in the Zoning By-Law for future creation of Interim Planning Overlay Districts (IPODS). The amendment itself does not establish a specific overlay district. The purpose of the amendment is to allow for a limited period of time only (no more than twelve months) for temporary regulations and/or design guidelines to be in effect that would apply only to development applications in a specified area while new zoning regulations are being drafted as part of a neighborhood or special area study or plan. The new zoning would then be proposed to Town Meeting for its approval.

Town Counsel has recommended some revised wording for the language under paragraph 3, Procedures. These revisions add a reference to MGL, Chapter 40A, the Zoning Act, and do not change the meaning of this section.

The Board of Selectmen has also recommended a revision under paragraph 4, Establishment, adding an interim step to the process before submission of an IPOD warrant article. The new language would require a Planning Board public meeting, at which the draft IPOD would be considered, and then an advisory report from the Planning Board to the petitioner.

Therefore, the Planning Board unanimously recommends **FAVORABLE ACTION** on Article 19 with revised wording of paragraph 3. Procedures, and a new paragraph added to the end of 4. Establishment, as follows.

3. Procedures

The Building Commissioner shall not approve applications for building permits that enable the construction or improvement of uses and/or structures during the time period during which the interim regulations or design guidelines apply.

If the Building Commissioner denies an application for a building permit, an applicant may appeal the decision of the Building Commissioner to the Board of Appeals ***in accordance with MGL Chapter 40A, Section 8. In any such appeal****, the Board of Appeals shall seek an advisory report from the Planning Board. The Planning Board shall base its recommendations and findings* ***in any such appeal*** *on the specific regulations and guidelines established by Town Meeting for the Interim Planning Overlay District.*

4. Establishment

Prior to filing a warrant article for the establishment of an Interim Planning Overlay District, petitioners are encouraged to submit a preliminary article, including the above studies and documentation, for consideration by the Planning Board at a regularly scheduled public meeting. Notice of the meeting will be provided pursuant to Section 9.08 of the Zoning By-Law. Following the public meeting, the Planning Board will submit an advisory report to the petitioner.

SELECTMEN'S RECOMMENDATION

During the recent public meetings held to obtain citizen comments on the draft Brookline Comprehensive Plan, the need for interim zoning regulations was identified as a means to guide growth while recommended neighborhood and district planning studies are undertaken. The Advisory Committee, during the recent consideration of the Two Brookline Place zoning amendments, also recommended that the Department of Planning and Community Development draft enabling regulations that would provide Town Meeting with a framework for considering interim zoning regulations in specific areas.

Article 19 proposes a new Section 3.03 – Interim Planning Overlay District of the Town's Zoning By-Law that defines the purpose, objectives, regulations, procedures and submission requirements necessary to assist Town Meeting during the consideration of future articles for the application of interim zoning regulations. Potential applications of the interim zoning regulations could include one or more of the following during a twelve month period: suspension of specific use and/or dimensional regulations; suspension of special permit applications; establishment of interim use and/or dimensional regulations; and establishment of interim design guidelines and review processes.

The structure and application of this new section of the Town's Zoning By-Law is based in part on a review of the successful application of similar regulations in other communities throughout the greater Boston region. The final draft of the Comprehensive

Plan, which will be released prior to Town Meeting, will recommend the application of Interim Planning Overlay Districts.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on taken on October 19, 2004, on the vote offered by the Advisory Committee:

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
As the Town continues to assess and consider strategies for preserving neighborhood character and to plan for development pressures, various tools have been discussed as ways to strengthen our zoning and design guidelines. In the course of the discussions about the Village Square General Business District (the B-2 project) the idea of an IPOD (Interim Planning Overlay District) was brought up by members of the Advisory Committee's Planning and Regulation Subcommittee as a tool that theoretically would have allowed for the designation of a larger interim planning district to study the impact of development along a more extensive stretch of Route 9. These discussions led Director of Planning and Community Development Bob Duffy and the Planning Department to develop this proposed amendment to the Zoning By-Law that would add the category of Interim Planning Overlay District to Article III, which currently describes the division, classifications and boundaries of zoning districts.

No proposed Interim Planning Overlay Districts are proposed at this time. Should a district be proposed and supported by a 2/3's vote of Town Meeting, it would be adopted for no longer than 12 months with a specifically outlined scope of study relating to an evaluation of allowed uses, density, dimensional issues, parking, design guidelines or other regulations pertaining to the proposed Overlay District. During the period of time an Interim Planning Overlay District is established, interim zoning regulations and/or design guidelines would be in place, rather than the existing underlying zoning. The interim regulations would apply to Building Department applications in the designated area for the established interim planning period of 12 months or less.

After the interim planning process, any proposed new zoning would then require another 2/3's vote by Town Meeting before becoming part of the zoning code.

DISCUSSION

The purpose of the proposed IPOD is to provide a structure or format to formalize a rethinking of planning and zoning objectives for a defined area of town during a limited period of time. One of the primary benefits of this planning tool is that it establishes an intensive study period to develop new criteria to address a set of critical issues. It provides for boundary flexibility. It essentially allows for any configuration of new boundaries to be an "overlay" over existing zoning designations, defining the issues and physical area subject to review.

The Director of Planning and Community Development estimated that his department could provide the professional planning support needed for one IPOD a year. Areas of town that might benefit most immediately from this type of planning tool might be the Route 9 corridor and parts of Coolidge Corner that are under development pressure.

The Board of Selectmen has added language to the original warrant article suggesting that petitioners voluntarily consult with the Planning Board regarding the feasibility of a proposed IPOD article and that such proposals be reviewed at a regularly scheduled public meeting. This proposed step in the process may help prioritize proposed IPOD studies.

It was felt that Interim Planning Overlay Districts could potentially be a valuable mechanism for addressing neighborhood planning objectives and establishing zoning that protects the desired scale and density of various sectors of town under development pressure. Use of this tool would be consistent with planning strategies outlined in the Comprehensive Plan.

IPODs have been used in a number of Massachusetts cities and towns including Boston, Somerville, Cambridge, Chelsea, Lowell and Wayland. IPODS can be used both for the purposes of up-zoning and down-zoning. Often they are put in place for periods of one to five years; often to address zoning issues with major impact projects.

Our Director of Planning and Community Development Bob Duffy felt that providing a one-year period of study would be appropriate for the scale of Brookline neighborhoods that might be under review and would allow proposed zoning changes to take shape under a strict but manageable schedule. An IPOD designation could be extended, if necessary, again by a 2/3's vote of Town Meeting.

Each Interim Planning Overlay District that may be proposed will likely be unique in form and structure. Members of the Advisory Committee have suggested that the criteria for establishing a representative oversight committee for any IPOD study area be included in any IPOD proposal that comes before Town Meeting.

RECOMMENDATION

The Advisory Committee, by a vote of 14 in favor and 0 opposed, recommend FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the Zoning By-law by inserting the following new Section 3.03 Interim Planning Overlay District as part of Article III, Establishment of Zoning Districts.

Section 3.03 – INTERIM PLANNING OVERLAY DISTRICT

1. Purpose and Objectives

The Zoning By-Law and Map may be amended by Town Meeting from time to time to address changes in land use, environmental and economic conditions that reflect the evolution of the Town and the recommendations of town-wide or district related plans and studies.

An Interim Planning Overlay District may be adopted for a specified period of time, no greater than twelve months, at an annual or special Town Meeting in accordance with the provisions of Chapter 40A of the General Laws in order to provide an opportunity to complete district or neighborhood level planning studies, including evaluation of land use, density, dimensional, parking and other requirements. If found warranted, revised zoning regulations and/or design guidelines shall be submitted to Town Meeting for adoption to better manage growth consistent with the Town's Comprehensive Plan or the recommendations of subsequent studies. The interim zoning regulations or design guidelines established during the study period will ensure that an area is not impacted by inappropriate growth.

2. Regulations

An Interim Planning Overlay District established in accordance with this section may apply to a district or sub-districts and may replace or amend the Zoning By-law related to use, density, dimensional, parking, design or other regulations for the specified time period, not to exceed twelve months from the date of adoption by Town Meeting.

3. Procedures

The Building Commissioner shall not approve applications for building permits that enable the construction or improvement of uses and/or structures during the time period during which the interim regulations or design guidelines apply.

If the Building Commissioner denies an application for a building permit, an applicant may appeal the decision of the Building Commissioner to the Board of Appeals in accordance with G.L.c. 40A, Section 8. In any such appeal, the Board of Appeals shall seek an advisory report from the Planning Board. The Board of Appeals and Planning Board shall base its findings and recommendations in any such appeal on the specific regulations and guidelines established by Town Meeting for the Interim Planning Overlay District.

4. Establishment

An article proposing the establishment of an Interim Planning Overlay District shall, at a minimum, include the following:

a. physical boundaries of the proposed district through a survey or map delineating the boundary in relation to existing zoning, streets and property lines as defined by the Town's Zoning Map and Assessor's Atlas.

b. current land use, zoning and other physical characteristics of the area included within the proposed district.

c. purpose of the proposed district and why the existing underlying zoning may not be appropriate.

d. conformance of the proposed district with the Town's Comprehensive Plan or other land use and related studies or plans.

e. scope of work to be undertaken that will produce proposed Zoning By-Law and Map amendments for consideration by Town Meeting.

f. length of time, not greater than twelve months, from the date of passage by Town Meeting, for which the district will be effective and for the completion of the supporting study necessary to submit Zoning By-Law and Map amendments for consideration by Town Meeting.

g. use, dimensional, parking and other related regulations in the Zoning By-Law which will be replaced or amended during the effective period of the district; and

h. interim use, dimensional and related Zoning By-Law regulations or design review guidelines that will be effective during the interim period in which the district is in place.

Prior to filing a warrant article for the establishment of an Interim Planning Overlay District, petitioners are encouraged to submit a preliminary article, including the above studies and documentation, for consideration by the Planning Board at a regularly scheduled public meeting. Notice of the meeting will be provided pursuant to Section 9.08 of the Zoning By-Law. Following the public meeting, the Planning Board will submit an advisory report to the petitioner.

5. Severability

The provisions of this section of the Zoning By-Law are severable, and if any such provision shall be held invalid by a court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of the Zoning By-law.

6. Districts

(To be inserted into the Zoning By-Law for a period no greater than twelve months following adoption of such districts at future Town Meetings.)

XXX

November 16, 2004
Special Town Meeting
Article 20 – Supplement No. 1

ARTICLE 20

SELECTMEN'S RECOMMENDATION ON ARTICLE 20

The Selectmen's Recommendation for Article 20 as printed in the Combined Reports contained an error in the roll-call vote. The vote was actually 3-0-1, not 4-0, as reported. The roll call vote was as follows:

ROLL CALL VOTE:

No Action	Abstain
Geller	Hoy
Sher	
Merrill	

ARTICLE 19

USE OF INTERIM PLANNING OVERLAY DISTRICTS IN MASSACHUSETTS

Interim Planning Overlay Districts (IPOD's) are often used in Massachusetts as a way of managing new development and change in areas that require thoughtful planning. IPOD's are usually created for a limited period of time in a specific geographic area. They generally require certain types of new development in that area to seek an additional special permit that demonstrates that the new development is consistent with the planning goals in that area. During the existence of an IPOD, a planning effort such as a comprehensive rezoning or a district plan is often completed. Once the planning effort is concluded, new zoning for the area is usually submitted that will replace both the underlying zoning and the Interim Planning Overlay District.

Recent Examples

→ **Boston**: Beginning in 1984, Boston used has IPOD's in 15 neighborhoods while completing district plans. Most recently, Boston passed a South Boston Waterfront IPOD in 1999 and a Fenway IPOD in 2000. IPOD's were also used in Allston-Brighton from 1987 to 1991; West Roxbury from 1989 to 1994; and Jamaica Plain from 1989 to 1993.

→ **Cambridge**: Cambridge has used IPOD's in East Cambridge and along Massachusetts Avenue. The East Cambridge Interim Planning Overlay Petition (IPOP) controlled growth in that part of the City while the East Cambridge Planning Study was completed and a rezoning package for East Cambridge was drafted. There has also been an IPOD in the Alewife area of the City, for similar reasons.

→ **Chelsea**: Chelsea has used two IPOD's in recent years. A Shopping Center Interim Planning Overlay District (SCIPOD) was first passed in 1998 for a retail portion of the City. The most recent extension of the SCIPOD revised the language and also set forth an 18 month timetable for replacement with permanent zoning. Under this version, all large developments previously permitted by Site Plan Approval must be part of a "Planned Development," or mixed-use project. In addition to the SCIPOD, a Waterfront Interim Overlay District (WIOD) provided the City with regulatory review over development in its harbor areas. The WIOD was recently replaced with a permanent zoning district.

→ **Lowell**: Lowell recently passed as IPOD that applies to all multi-family residential districts in the City, in order to draft new zoning districts for these areas that are consistent with Lowell's 2003 Comprehensive Plan. This IPOD requires all developments of four or more residential units to receive an IPOD Special Permit including Site Plan Review. The IPOD will last for nine months, with a possibility for an extension of up to an additional one year.

→ **Somerville:** Somerville had an Assembly Square Interim Planning District (ASIPD) in the commercial district along I-93 from 2001 until 2004. Like Chelsea's SCIPOD, the ASIPD required that all large development be part of a mixed-use "Planned Unit Development." The ASIPD also required that new construction undergo extensive design review. After three years of study, the ASIPD was replaced with a permanent zoning district in 2004.

→ **Wayland:** Wayland had a Cochituate Interim Planning Overlay District from 1997 to 2002. This IPOD required special permits for large developments at the intersection of Commonwealth Avenue and Route 27.

ARTICLE 20

TWENTIETH ARTICLE

To see if the town will amend the Zoning By-law with respect to the ZONING MAP as follows:

1. Rezone from S-10 to S-15: Block 265, lots 36 and 37; Block 266, lots 01-01, 01, 02, 02-02, 03 and 04; Block 278C, lots 01, 02, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; Block 279; Block 280, lots 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, and 12; Block 281; Block 282; Block 283; and Block 284 (and any other lots zoned S-10 within Blocks 266, 278C, 279, 280, 281, 282, 283, and 284); and

2. Rezone from S-10 to S-15: Block 432, lots 25 and 26; Block 434; Block 435; Block 436; and Block 437, lots 01, 68, 69, 70, 71, 72, 73 and 74 (and any other lots zoned S-10 within Blocks 432, 434, 435, 436 and 437);

Or act on anything relative thereto.

This article seeks the rezoning to S-15 of two areas of an existing S-10 district. The proposal is separated into two parts to ensure the support of a majority of residents in each area.

All of Area (1) is within the Chestnut Hill National Historic Register District. It is north of Route 9, between Route 9 and the MBTA tracks and between Reservoir Road and Dunster Road. The rezoning is proposed in light of development plans in Area (1) that would subdivide existing lots, thus altering the historical context of existing structures and eliminating open space, often containing significant mature trees. Although Brookline has no direct control over certain development pressures surrounding this area (such as the expansion at Shaw's Market (Hammond Street and Route 9) and Brimmer and May School in Newton and the Waterworks Development in Boston), the town does have control over zoning within its borders.

The existing S-10 district in Area (l) is an anomaly. Of the lots entirely in Brookline (a number of lots are split between Brookline and Newton), almost two-thirds are actually larger than 15, 000 square feet, with several more over 14,000 square feet. In addition, the current zoning finds S-10 lots on one side of a street and smaller S-15 lots on the other side, and an S-10 lot next to an S-15 lot on the same street, with the lot in the S-10 district actually being larger than the S-15 lot. In a number of cases, the same blocks are split into S-10 and S-15 districts, with lots in different zoning districts sharing lot lines. The proposal would make the zoning more consistent in the area while serving to protect the area's historical context and open space.

Area (2) is south of Route 9, containing Randolph, Jefferson and Cary Roads and a portion of Heath Street. Several lots in Area (2) are in the Chestnut Hill National Historic Register District. In this area, approximately 1/3 of the lots are over 15,000

square feet. As with Area (1), the same block is divided into two zoning districts, in this case S-10 and S-25. Increasing the existing S-10 zoning to S-15 would provide greater protection to this area as well.

PROPOSED ACTION OF PETITIONER

The proponents of this article, filed on behalf of the Chestnut Hill Neighborhood Association, **will not be making a motion under the article**. During discussions of this article, the Advisory Committee (including its Planning and Regulation Subcommittee), the Preservation Commission, the Planning Board and the Planning Department recommended tools other than the proposed rezoning to address concerns regarding subdivision, demolition of historic structures, loss of open space and mature trees, and incompatible construction. Among other tools, these town Boards and departments recommended that the neighborhood consider establishing a local historic district, such as that proposed in Article 10 for the Graffam-McKay district in North Brookline, or a special zoning district, a planning tool recently authorized by Town Meeting. These other planning devices could focus on conservation and historic preservation issues that the proposed zoning change would not address, while avoiding problems which a broad zoning change might create. The proponents of this article are grateful for the suggestions and expect to pursue them with representatives of the town for presentation to a later Town Meeting.

PLANNING BOARD REPORT AND RECOMMENDATION

The Planning Board believes that more study is needed to evaluate the effects of changing the zoning designation of an area in Chestnut Hill from S-10 to S-15 before it could recommend approval on this citizen petition.

The area of the zoning map amendment is divided by Boylston Street: one section is north of Route 9, between Route 9 and the MBTA tracks and between Reservoir Road and Dunster Road and within the Chestnut Hill National Historic Register District; and the other, south of Route 9, containing Randolph, Jefferson and Cary Roads and a portion of Heath Street with several of the lots, but not all, in the Chestnut Hill National Historic Register District.

Based on comments at the Public Hearing and after further consideration, the Planning Board believes that more study is needed to determine if increasing the lot size would have a negative impact on homeowners whose lots become non-conforming under the new S-15 zoning. Having a non-conforming structure would restrict additions, because any alterations would need to meet the more restrictive yard setbacks and Floor Area Ratio (FAR). If they didn't, a special permit from the Board of Appeals would be required. [Front yard setback would be increased from 20' to 25', side yard from 10' to 15', rear yard from 30' to 40', and FAR from. .30 to .25.] Also impacted would be a homeowner who wished to demolish a house and build

a new one, or someone who lost a house in a fire. In these cases, a new home would need to meet the new yard and FAR requirements.

Furthermore, a Planning Board member noted that the adjacent area in Newton had been designated the Chestnut Hill Historic District and that the protections afforded by this Newton local historic district should be studied for its applicability to this Brookline area of Chestnut Hill.

Therefore, the Planning Board unanimously recommends NO ACTION on Article 20 and recommends that the petitioners work with neighborhood residents and property owners to further study alternatives to address the important issues of density, design, open space, and landscape conservation in the hope that a future article enjoying greater public consensus could be fashioned.

SELECTMEN'S RECOMMENDATION

Article 20, as submitted by citizen petition, would change the zoning map and regulations from Single Family Residential S-10 to S-15 in the vicinity of Middlesex, Spooner, Devon, Circuit, Norfolk and Reservoir Roads in the Chestnut Hill neighborhood. The petition, as presented during the Board's public hearing, is intended to address a number of key issues facing the neighborhood including residential density, design, open space conservation and landscape protection. The petitioners also cited the recent increase in applications for subdivisions with the Planning Board as an important issue.

While many residents within the area of the proposed zoning change support the Article, many others expressed concern that other alternative zoning or related strategies should be considered to maintain the neighborhood's character. Also, a report submitted by the Department of Planning and Community Development, indicated that the change in lot area and other dimensional regulations resulting form the proposed zoning change from S-10 to S-15 would create many nonconforming lots possibly resulting in the need for home owners to seek relief from the Board of Appeals for building permits to construct basic additions and alterations.

The Board supports the efforts of the petitioners seeking revised regulations to protect the character of their neighborhood. However, it appears that further study may lead to an alternative regulatory approach that could have broader neighborhood consensus and minimize the potential for creating new nonconformities with zoning requirements.

It is the Board's understanding that the petitioners also recognize that more time is necessary to study alternative zoning and related strategies and that they are prepared to recommend that Town Meeting consider No Action on the subject Article. The Board recommends that the petitioners and the neighborhood work with the Department of Planning and Community Development to devise an alternative approach for consideration at the Annual Town Meeting.

Therefore, the Board of Selectmen recommends NO ACTION, by a vote of 4-0 taken on October 26, 2004.

ROLL CALL VOTE:
No Action
Geller
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
In response to potential development pressures in their neighborhood, a citizens' petition was filed to down-zone an area in Precincts 13 and 15. The area in question is in Chestnut Hill. Roughly, it runs along Reservoir Lane, Spooner Road, Circuit Road, across Route 9 to Jefferson Road down to Heath Street and back across Route 9 at Dunster Road to Middlesex. The petitioners' intent was to change the zoning district from S10 (10,000 square foot minimum lots) to S15 (15,000 square foot minimum lots) and the Chestnut Hill Neighborhood Association supported this plan. Other changes that would result from a zoning change include setbacks (20 feet would become 25 feet); rear setbacks would change from 30 to 40 feet; and side yard setbacks would increase from 10 to 15 feet. In addition, there would be a decrease in the Floor Area Ratio (FAR) as a result of the down-zoning.

Of the approximate 140 lots that would be affected by this article, about half of the lots would become non-conforming, requiring their owners to appear before town boards to apply for a special permit for certain alterations such as the building of an addition. Several neighbors who support the drive to slow the move to subdivision and development were concerned about the increased burden on homeowners who would face additional costs, time and attorneys because of the zoning change.

DISCUSSION
The Planning Board and the Zoning and Regulation Subcommittee of the Advisory Committee held public hearings at which many neighbors expressed concern about potential development pressures. They have seen three proposals in the past six months. This area of town is listed on the Federal Historic District and has a rich architectural and landscape history. Some neighbors recognized that this proposed zoning change would not be a perfect solution, but it could be a start. They have seen encroachment in their historic neighborhood by developers who have torn off parts of houses and cut trees down to create a buildable lot. By filing this article, the petitioners were looking for a solution to encroachment in their part of town. Their objectives are to maintain trees and open space, to maintain the historical character of their neighborhood and to preserve existing density. Thus the three elements of concern are: retention of open space, integrity of design, and density.

One of the owners of a large lot spoke before the Planning Board hearing. She said that she doesn't plan to subdivide her lot but feels that down-zoning is the wrong way to deal with the present situation. She felt strongly that changing the zoning from S-10 to S-15 would put too many restrictions on existing homeowners who may no longer have setbacks or FAR to be able to make changes to their home without relief of a variance or a special permit. She noted that a zoning change will not affect design or landscaping. Creating a Local Historic District would create some design controls. Most of the speakers actually seemed to share the same goal of neighborhood preservation, but had divergent views on what was the best tool to achieve the goals that they share. It was also pointed out that the dilemma facing the Chestnut Hill neighborhood is being or will be faced by many other neighborhoods in town.

Possible options include down-zoning, the creation of a Local Historic District, the creation of a special district, or the application of an Interim Planning Overlay District (IPOD). Dennis DeWitt, from the Preservation Commission, pointed out that while a Local Historic District would achieve several of the goals, it would not address the issues of density or open space retention.

After the hearing held by the Planning Board and the hearing held by the Planning and Regulation Subcommittee, the Advisory Committee was informed that the principal petitioner would not be moving the article. The Planning Department, the Planning Board, the Preservation Commission and the Planning and Regulation Subcommittee of the Advisory Committee have all suggested alternative mechanisms for addressing the challenges facing the petitioners' neighborhood and other neighborhoods in Brookline as a result of pressures from the real estate market and developers. The Planning Department has agreed to work with the petitioners to craft a solution that best fits the goals while minimizing the potential negative effects. With the assistance of town boards and departments, they intend to develop and present to a later Town Meeting a proposal incorporating planning tools that best address issues such as the preservation of significant structures, the conservation of open space and mature trees, and the design of new development.

RECOMMENDATION

The Advisory Committee, by a vote of 14-0, recommends NO ACTION on Article 20.

XXX

ARTICLE 21

TWENTY-FIRST ARTICLE

To see if the Town will adopt the following Resolution:

Resolution supporting overhaul of 2-hour parking ban, with targeted and codified priorities

"If we make criminal that which people regard as acceptable, people's attitude toward the meaning of criminality changes." Professor Herbert Packer, Stanford Law School, 1968

WHEREAS: According to the Transportation Department, "the primary purpose of *both* the 2-hour parking rule and residential permit program is 'to prohibit non-residents and commuters from parking for extended lengths of time on designated residential streets ... .'" (emphasis in original); and

WHEREAS: While banning *all* 2-hour parking *may* make sense in some locations (including residents and their guests), in most places it is needed only for only non-resident cars, and in many places not at all; and

WHEREAS: For no reason specific to the 2-hour ban, enforcement of it has, at least in some (apparently random) areas, recently increased -- with about 24,229 tickets issued in 2003, many for residents; and

WHEREAS: In some (if not all) such areas, most residents don't mind neighbors parking near their own houses for over two hours, including e.g. residents who leave to do errands and return hours later to park (anywhere) on the same street (even for a moment, even if the street is empty). For almost two years, many of these residents have been voicing great frustration and anger; and

WHEREAS: Conversely, some residents have sought, without success, more ticketing on their specific streets, which would be better achieved if the rule were clearly prioritized according to real needs; and

WHEREAS: Brookline takes great pride in the overall professionalism of our Police Department; but neither "selective" nor "discretionary" nor (ad hoc) "complaint-driven" enforcement, is either fair or efficient; they are all inconsistent with "community policing"; and purposeless enforcement of laws can seem at best arbitrary and at worst like harassment; and

WHEREAS: On June 11, 2002, ostensibly to reevaluate the program, the Transportation Board established a "moratorium," still in effect, on the "Resident Permit Parking" program, the longstanding (but overly cumbersome) method for citizens to seek residents' exemptions from 2-hour ban in specific locales; and despite discussing the 2-hour ban four times over the last two years at the urging of many citizens and Town Meeting Members, the Transportation Board declines to reassess the overall policy; and

WHEREAS: Neither the 2-hour ban nor this Resolution affects the overnight parking ban,

NOW, THEREFORE, BE IT RESOLVED, that Brookline's representative Town Meeting urges that:
(1) the Board of Selectmen and the Transportation Board each declare as its policy a prompt and major overhaul of the 2-hour parking ban for residents (and where possible, their guests) in the vicinity of their own homes, creating instead targeted and codified enforcement priorities according to real needs; and

(2) specifically, the "default" rule should be reexamined to presumptively and explicitly allow residents (and where possible, some guests) to park in the daytime for over 2 hours in the vicinity of their own homes -- except for specific problems areas where particular problems are found. Or else, do so by resuscitating, simplifying, and widely publicizing the Resident Permit Program; and

(3) whatever regulations ensue, the now-spotty signage should be clear and fair in all areas.

, or act on anything relative thereto.

This Resolution is largely self-explanatory, as per the "Whereas" clauses. It seeks to show widespread interest in this issue, to encourage the Transportation Board ("Board") to make it a higher priority for meaningful action. As recognized in the text, the Board has devoted much time to this issue, which is appreciated. However, not being a simple issue, and without a clear mandate from the community, the Board is apparently reluctant to consider significant revisions. The petitioners believe that there is a need for a more nuanced policy that reflects the divergent needs of our neighborhoods. We recognize that developing such a policy will be a significant undertaking for the Board; but we hope that, with the urging of Town Meeting, they will undertake it. The language as to "the primary purpose of the 2-hour parking rule and residential permit program" is from a Board summary of its Dec. 17, 2003 meeting; see also a similar statement in a Sept. 12, 2002 memorandum to the Board from the Assistant Director for Transportation.

MOTION TO BE OFFERED BY THE PETITIONER

To see if the Town will adopt the following Resolution:

Resolution supporting overhaul of 2-hour parking ban, with targeted and codified priorities

"If we make criminal that which people regard as acceptable, people's attitude toward the meaning of criminality changes." Professor Herbert Packer, Stanford Law School, 1968

WHEREAS: According to the Transportation Department, "the primary purpose of *both* the 2-hour parking rule and residential permit program is 'to prohibit non-residents and commuters from parking for extended lengths of time on designated residential streets ... .'" (emphasis in original); *and*

WHEREAS: While banning *all* 2-hour parking *may* make sense in some locations (including residents and their guests), in most places it is needed only for only non-resident cars, and in many places not at all; *and*

WHEREAS: In some (if not all) such areas, most residents don't mind neighbors parking near their own houses for over two hours, including e.g. residents who leave to do errands and return hours later to park (anywhere) on the same street (even for a moment, even if the street is empty). For almost two years, many of these residents have been voicing great frustration and anger; *and*

WHEREAS: Conversely, some residents have sought, without success, more ticketing on their specific streets, which would be better achieved if the rule were clearly prioritized according to real needs; *and*

WHEREAS: Brookline takes great pride in the superb professionalism of our Police Department; but a flawed law cannot be salvaged by either "selective" or "discretionary" or (ad hoc) "complaint-driven" enforcement, none of which is either fair or efficient; and when residents consider enforcement of a flawed law to be purposeless and/or very sporadic, it can seem to them at best arbitrary and at worst like harassment (notwithstanding the lack of any such intent by the police officers); *and*

WHEREAS: On June 11, 2002, ostensibly to reevaluate the program, the Transportation Board established a "moratorium," still in effect, on the "Resident Permit Parking" program, the longstanding (but overly cumbersome) method for citizens to seek residents' exemptions from 2-hour ban in specific locales; and despite discussing the 2-hour ban five times over the last two years at the urging of many citizens and Town Meeting Members, the Transportation Board declines to reassess the overall policy; *and*

WHEREAS: Neither the 2-hour ban nor this Resolution affects the overnight parking ban,

NOW, THEREFORE, BE IT RESOLVED, that Brookline's representative Town Meeting urges that:

(1) the Board of Selectmen and the Transportation Board each declare as its policy a prompt and major overhaul of the 2-hour parking ban for residents (and where possible, their guests) in the vicinity of their own homes, creating instead regulations targeted and codified according to real needs; *and*

(2) specifically, except in locations where particular problems are found, it should be legal for Brookline residents (and where possible, some guests) to park in the daytime for over 2 hours in the vicinity of their own homes. For example, do so by resuscitating, simplifying, and widely publicizing the Resident Permit Program; *and*

(3) Brookline residents and business owners should be informed of temporary exemptions to the 2-hour rule, including for moving operations, construction activities, guests or visitors, healthcare providers, childcare providers; *and*

(4) whatever regulations ensue, the signage should be specific, clear, and fair in all areas.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen commends both the Petitioners and the Transportation Board for their continuing efforts to address the various, and often conflicting, considerations involved in the regulation of on-street parking. The original resolution, although well intended, and even the resolution, as amended by the Advisory Committee, does not plainly express the will of Brookline's citizens, at least as expressed to the Selectmen.

As of the printing of the Combined Reports, Selectmen Sher and Selectmen Merrill have recommended that Town Meeting adopt a simple and straightforward resolution expressing the widespread sentiment among residents that a Resident Permit Parking program be implemented as soon as possible on streets or in neighborhoods where at least 2/3rds of the residents petition the Transportation Board. The two Selectmen plan to bring before the Board the following substitute resolution:

WHEREAS: Residents of some streets and neighborhoods in Town have expressed a clear interest in a Resident Permit Parking program that would allow residents to park on their own streets or in their own neighborhoods during the day for periods of longer than two hours;

WHEREAS: The Town commends the Transportation Board for its hard work in analyzing the current regulations relating to day-time parking on the Town's streets;

WHEREAS: The Town thanks the Petitioners for bringing the issue of the two-hour parking ban before Town Meeting;

WHEREAS: The Department of Public Works and the Police Department have expressed a willingness to work toward an expanded Resident Permit Parking Program;

WHEREAS: It is the will of Town Meeting this resolution should in no way be construed as expressing a view on the overnight on-street parking ban in Brookline; and

WHEREAS: Town Meeting recognizes that the demand for resident on-street parking during the day must be balanced with other important quality of life considerations, such as curb-to-curb snow plowing, litter control, and pedestrian safety and security;

NOW THEREFORE: Town Meeting hereby calls upon the Transportation Board:

(a) To implement a Resident Parking Permit Program within no less than six months; and

(b) To provide for Resident Parking Permits on specific streets or in neighborhoods wherein no less than 2/3rds of the residents have petitioned the Transportation Board; and

(c) Report to Town Meeting in one year on the implementation of the Resident Permit Parking Program, presenting the results of the Transportation Board's own analysis, as well as that of the Police Department and the Department of Public Works.

The Board has not taken action on this article as of the writing of these Combined Reports. A vote will be taken at the November 2 meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 21 is a resolution that urges the Transportation Board to overhaul Brookline's policies regarding the two-hour daytime parking limit and to change the "default" rule on daytime parking so that residents generally would be allowed to park near their homes for longer than two hours. The article is a resolution because the Transportation Board (with potential appeals to the Board of Selectmen), not Town Meeting, makes transportation and parking policy.

Brookline limits on-street parking to a maximum of two hours between the hours of 6:00 a.m. of one day and 1:00 a.m. of the following day, except where otherwise posted. The limit does not apply on Sundays and holidays.

The two-hour limit has been in effect for many decades. Its purpose is to facilitate sharing of limited curbside parking in Brookline. The Transportation Board feels that the limit preserves the "livability" of Brookline's neighborhoods. In practice, it also enables users of commercial areas to park on nearby residential streets by preventing residents from parking there for more than two hours. The limit also prevents commuters or employees of Brookline business establishments from parking for the entire day on Brookline streets.

DISCUSSION

The question of two-hour parking is remarkably complex, as indicated by the time it has taken the Transportation Board to consider this issue and a detailed analysis of the multiple problems raised by the town's existing policies that was prepared for the Transportation Board by David Friend, assistant director for transportation at the Department of Public Works. (Note that the petitioner, Marty Rosenthal, called this report "one of the best pieces of staff analysis I've seen in 30 years" even though he does not agree with all of its conclusions.)

Article 21 focuses on two important issues raised by the two-hour parking limit: (A) whether enforcement of the two-hour limit should be changed because some Brookline residents are being unfairly ticketed, often for parking in front of their own residences; and (B) whether the two-hour "default" limit should be replaced, either in general or in designated areas in which residents could park for more than two hours.

A. Ticketing of Brookline Residents

Many residents have complained that they are unfairly affected by the two-hour limit. The petitioner is particularly concerned that residents are being ticketed excessively, often for parking near their residences.

Statistics compiled by the Brookline Police Department do not reveal a clear trend in the number of tickets issued for two-hour parking in recent years.

Year	Tickets	
2000	23,225	
2001	22,449	
2002	23,109	
2003	24,229	
2004	13,981	(1/1/04 through 10/06/04)

After falling in 2001, the number of tickets increased in 2002 and 2003, but it appears to have fallen in 2004. If tickets continue to be issued at the present rate (about 50 per day), only 18,225 will be issued in 2004. It is possible, however, that more tickets will be issued during the holiday shopping season. It is not clear whether changing patterns of enforcement, fewer violations, increased parking fines, or other factors have contributed to the apparent decline in the issuance of two-hour parking tickets.

At least some Brookline residents are being ticketed in the petitioner's neighborhood. According to the Police Department, between November 19, 2002, and February 3, 2003, 46 tickets for two-hour parking violations were issued on Verndale, Kenwood, Russell, and Columbia Street. Of these, 13 were issued to cars registered residents of those streets. The overwhelming majority of the others were issued to nonresidents of Brookline. Thus it appears that a significant number (more than 25%) of the tickets issued in one neighborhood are received by area residents.

The Brookline Police Department does not routinely maintain statistics on the number of two-hour tickets on particular streets and the proportion given to residents. Thus it is difficult to assess the severity of this problem in other neighborhoods or during other periods.

B. Potential Need for Resident Permit Parking or Other Changes

The petitioner's article suggests that Brookline residents be allowed to park for longer than two hours in the vicinity of their own homes, unless this is not possible because, for

example, all the nearby streets contain metered spaces. Implementing this policy would presumably require issuing parking stickers to Brookline residents so that the two-hour limit would only be enforced against nonresident vehicles. The article also suggests that this policy might be implemented by reviving and modifying the Resident Permit Parking Program.

Brookline has had a Resident Permit Parking Program that enables residents of specific areas to petition for permits to park for longer than two hours on the streets in that area. In most of the areas that have been designated for resident permit parking, residents with a permit/sticker can park for longer than two hours but nonresidents (including Brookline residents without a permit) must observe the two-hour limit. In one area, daytime parking by nonresidents is prohibited and only residents can park on the streets. This option for *exclusive* resident permit parking is not offered to other neighborhoods. In other areas, all parking is also prohibited during particular hours (e.g., 8:00-10:00 a.m.) in an attempt to limit all-day commuter parking.

The Transportation Board has since 2002 imposed a moratorium on the Resident Permit Parking Program on the grounds that the program needs to be studied and reevaluated. The Transportation Board was particularly concerned that the Resident Permit Program was being used to create too many long-term exemptions from the two-hour limit.

The two-hour limit serves a valuable purpose in Brookline—especially in areas near the Boston line—and the Advisory Committee was reluctant to call for changes that would, for example, allow *all* Brookline residents to park for longer than two hours *anywhere* in Brookline. Some form of resident permit parking might alleviate hardships for some or all of the residents in designated areas.

It is important to remember that calls for *ending* the two-hour parking limit and calls for *enforcing* the rule do not represent diametrically opposed points of view. In both cases, Brookline residents are usually expressing a desire to be able to park on the street near their homes. In some neighborhoods, enforcement of the two-hour rule means that residents receive tickets that they consider to be unfair. In other areas, insufficient enforcement means that residents cannot park on the street near their homes (even for less than two hours) because all the parking spaces are taken by cars of commuters or others who park for more than two hours.

Many members of the Advisory Committee agreed that Article 21 reflects some legitimate concerns about the two-hour limit and the town's parking policies. Several indicated that they would support the article as proposed by the petitioner. A majority felt that the issues raised by the two-hour parking limit should instead be addressed by an amended resolution.

These amendments are based on the following considerations.

Action Already Taken by the Transportation Board

First, the Transportation Board has taken action on the two-hour limit since the resolution was originally drafted. On September 28, 2004, the Transportation Board adopted a Statement of Purpose regarding the two-hour rule, indicating that "the Brookline Police

Department should—as its resources allow—focus its enforcement of the 2-hour rule on those residential streets in Brookline that abut commuter rail stations and bus stops, commercial areas, and other institutions."

The Transportation Board argues that this Statement of Purpose renders Article 21 "moot" by clarifying that enforcement of the two-hour rule will focus on commercial areas, streets near MBTA stations, and hospitals and other institutions.

The petitioner, on the other hand, feels that the Statement of Purpose is "neither legally binding, nor decipherable, nor effective, nor fair to many residents." He notes that much of Brookline is near a commercial area, MBTA station, or institution. He also thought it was wrong to have a rule that "doesn't say what it means and mean what it says," referring to the fact that the Transportation Board appeared to be requesting that the Police selectively enforce the two-hour limit in only some parts of Brookline. In his opinion, the policy will continue to make residents irate and undermine respect for the law.

The petitioner may be right, but it is impossible to assess whether the Transportation Board's Statement of Purpose will solve any problems associated with the two-hour rule until we have had a chance to gather information on how the new policy works in practice. The amended resolution therefore calls on the Transportation Board to monitor the implementation of the new policy outlined in its September 28, 2004, Statement of Purpose and to provide opportunities for public comment.

The Need to Inform Brookline Residents about Exemptions to the Two-Hour Rule

Second, it is clear that at least some of the concerns about the two-hour limit reflect lack of awareness of town policies. In particular, residents often are not fully informed about the various exemptions to the two-hour limit, including those for moving operations, construction activities, guests or visitors, healthcare providers, and childcare providers. The Department of Public Works currently makes a significant effort to inform Brookline residents about procedures for trash and snow removal. Similar efforts—using the town website and/or mailings—might enable Brookline residents and businesses to avoid unnecessary tickets for violations of the two-hour parking limit. The amended resolution accordingly urges the Transportation Board to take the lead in disseminating information on the town's policies regarding exemptions to the two-hour rule, and to remind residents of the circumstances under which they can (and cannot) contest parking tickets issued for violation of the two-hour rule.

The Need to Consider Resident Permit Parking

Third, there are at least some cases in which a Resident Permit Parking Program might alleviate objections to the two-hour limit. There are many categories of Brookline residents who might experience hardship without a long-term exemption from the two-hour limit. For example, residents who do not have overnight or daytime parking at the site of their residences may need to park on the street near their residences during the day. In particular, residents who park in the town overnight parking spaces must move their cars from these spaces during the day. The two-hour limit prevents such residents from parking on Brookline streets and may even have the unintended effect of forcing them to drive to

work when they otherwise would take public transportation. If enforcement of the two-hour rule will now focus on particular areas, residents of those areas may feel that a resident permit system would alleviate any hardship they experience.

Town Meeting should not attempt to "micromanage" these issues that are the province of the Transportation Board, but it is legitimate to encourage the Transportation Board to consider the options and, if necessary, to offer a new Resident Permit Parking Program to replace the one that was suspended in 2002. The issues are complicated and there are many alternative policies that could be considered: allowing *all* residents (with stickers) to park for two hours *anywhere* in Brookline; allowing *all* residents to park for more than two hours *in their own neighborhoods*; allowing *some* residents (who can show that the two-hour rule imposes hardships on them) to park *in their own neighborhoods*; restricting daytime parking to *residents only* in some neighborhoods; and so on. The Transportation Board has had the opportunity to deliberate on these issues for several years and it also has had access excellent staff analysis, so it is not unreasonable to expect a decision on a new Resident Permit Parking Program that would complement the Transportation Board's September 28, 2004 Statement of Purpose regarding the two-hour rule.

Inappropriate and Inaccurate Language

Finally, several of the "whereas" clauses have been amended to delete or modify language that did not seem appropriate (e.g., a reference to police "harassment") and to remove the potentially inaccurate claim that the number of tickets for violations of the two-hour limit has been increasing. The Advisory Committee agreed that signage regarding the two-hour rule should be clarified, but thought that the language on this point in the resolution also required clarification.

RECOMMENDATION

By a vote of 14 in favor, 2 opposed and 1 abstention, Advisory Committee recommends FAVORABLE ACTION on the following resolution:

VOTED: That the Town adopt the following resolution:

Resolution supporting overhaul of two-hour parking ban, with targeted and codified priorities

"If we make criminal that which people regard as acceptable, people's attitude toward the meaning of criminality changes." Professor Herbert Packer, Stanford Law School, 1968

WHEREAS: According to the Transportation Department, "the primary purpose of *both* the two-hour parking rule and residential permit program is 'to prohibit non-residents and commuters from parking for extended lengths of time on designated residential streets ... .'" (emphasis in original); and

WHEREAS: While banning *all* two-hour parking *may* make sense in some locations (including residents and their guests), in most places it is needed only for only non-resident cars, and in many places not at all; and

WHEREAS: In some (if not all) such areas, most residents don't mind neighbors parking near their own houses for over two hours, including e.g. residents who leave to do errands and return hours later to park (anywhere) on the same street (even for a moment, even if the street is empty). For almost two years, many of these residents have been voicing great frustration and anger; and

WHEREAS: Conversely, some residents have sought, without success, more ticketing on their specific streets, which would be better achieved if the rule were clearly prioritized according to real needs; and

WHEREAS: Brookline takes great pride in the superb professionalism of our Police Department; and

WHEREAS: On June 11, 2002, to reevaluate the program, the Transportation Board established a "moratorium," still in effect, on the "Resident Permit Parking" program, the longstanding (but overly cumbersome) method for citizens to seek residents' exemptions from two-hour ban in specific locales; and despite discussing the two-hour ban five times over the last two years at the urging of many citizens and Town Meeting Members, the Transportation Board declines to reassess the overall policy; and

WHEREAS: Neither the two-hour ban nor this Resolution affects the overnight parking ban, and

WHEREAS: The significant amount of time and attention that Transportation Board and its staff has devoted to the issue of two-hour parking is recognized and appreciated,

NOW, THEREFORE, BE IT RESOLVED, that Brookline's representative Town Meeting urges that:

(1) the Transportation Board monitor the implementation of its September 28, 2004, policy statement on two-hour parking to ensure that enforcement of the two-hour rule is fair, consistent, and clear to Brookline residents and provide opportunities for public comment on this matter; and

(2) the Transportation Board act to ensure that Brookline residents and owners of business establishments are informed of procedures for contesting citations for violation of the two-hour parking rule and of the procedures for requesting temporary exemptions to the two-hour rule, including exemptions for moving operations, construction activities, guests or visitors, health care providers, and childcare providers; and

(3) the Transportation Board consider a Resident Permit Parking Program that would allow residents (and where possible, some guests) who experience hardship as a result of the two-hour rule or as the result of excessive nonresident parking on their streets to petition for permits to park in the daytime for over two hours near their residences -- except in specific areas where particular problems are found; and

(4) all existing signage regarding the two-hour parking limit be reviewed and improved or replaced to make it clear and fair in all areas.

XXX

ARTICLE 21

SELECTMEN'S RECOMMENDATION ON ARTICLE 21

As noted in the initial Report of this Board, the Selectmen commend the Transportation Board and the Petitioners for their continuing efforts to address the very complex mix of issues associated with the regulation of on-street parking. While ultimately it remains up to the Transportation Board to adopt the actual measures to regulate on-street parking, the Board of Selectmen believes that an expression of policy by Town Meeting on this matter is important due to town wide calls to allow residents to park on their own streets or in their own neighborhoods for more than 2 hours without receiving a citation.
The Resolution proposed by the Selectmen offers the most straightforward and simple statement of the intentions underlying the Resolutions suggested by the Petitioners, the Advisory Committee and the Board's own perspective on this matter. The lead petitioner himself has expressed a willingness to endorse this compromise measure.

Our Resolution is predicated upon the following conditions:

- Satisfaction with the work conducted thus far by the Transportation Board on the 2-hour parking regulation itself.
- A commitment by the Transportation Board to proceed with the development and implementation of a residential permit parking program.
- The willingness of the Police Department and Department of Public Works to assist with the design, monitoring, and evaluation of the residential permit parking program.
- The understanding that whatever program is implemented will <u>not</u> adversely affect the overnight parking ban.
- The eventual program will be implemented within six months and comprehensively evaluated within a year of operation.
- Citizen petition must be a pre-condition for the activation of the program in any given street and/or neighborhood.

The Board believes that these assumptions and conditions provide the necessary safeguards to ensure that any attempt to change the way on-street parking has been

regulated for more than 50 years will not adversely affect the quality of life on our residential streets. Curb to curb snow plowing, street sweeping, pedestrian safety, and security are every bit as vital to our quality of life as on-street parking. Continuous monitoring and evaluation will help ensure that adverse effects are avoided.

Again, The Board commends the efforts of all involved and unanimously recommends FAVORABLE ACTION by a vote of 5-0 taken on November 2, 2004, on the following vote:

VOTED: That the Town adopt the following resolution:

WHEREAS: Residents of some streets and neighborhoods in Town have expressed a clear interest in a Resident Permit Parking program that would allow residents to park on their own streets or in their own neighborhoods during the day for periods of longer than two hours;

WHEREAS: The Town commends the Transportation Board for its hard work in analyzing the current regulations relating to day-time parking on the Town's streets;

WHEREAS: The Town thanks the Petitioners for bringing the issue of the two-hour parking ban before Town Meeting;

WHEREAS: The Department of Public Works and the Police Department have expressed a willingness to work toward an expanded Resident Permit Parking Program;

WHEREAS: It is the will of Town Meeting that this resolution should in no way be construed as expressing a view on the overnight on-street parking ban in Brookline; and

WHEREAS: Town Meeting recognizes that the demand for resident on-street parking during the day must be balanced with other important quality of life considerations, such as curb-to-curb snow plowing, litter control, and pedestrian safety and security;

NOW THEREFORE: Town Meeting hereby calls upon the Transportation Board:

(a) To implement a Resident Parking Permit Program within six months; and

(b) To provide for Resident Parking Permits on specific streets or in neighborhoods wherein residents have petitioned the Transportation Board; and

(c) Report to Town Meeting in one year on the implementation of the Resident Permit Parking Program, presenting the results of the Transportation Board's own analysis, as well as that of the Police Department and the Department of Public Works.

ARTICLE 21

Prior to the commencement of Town Meeting last evening, both the Board of Selectmen and the Advisory Committee unanimously recommended FAVORABLE ACTION on the following amended resolution for Article 21:

VOTED: That the Town adopt the following resolution:

WHEREAS: Residents of some streets and neighborhoods in Town have expressed a clear interest in a Resident Permit Parking program that would allow residents to park on their own streets or in their own neighborhoods during the day for periods of longer than two hours;

WHEREAS: The Town commends the Transportation Board for its hard work in analyzing the current regulations relating to day-time parking on the Town's streets;

WHEREAS: The Town thanks the Petitioners for bringing the issue of the two-hour parking ban before Town Meeting;

WHEREAS: The Department of Public Works and the Police Department have expressed a willingness to work toward an expanded Resident Permit Parking Program;

WHEREAS: It is the will of Town Meeting that this resolution should in no way be construed as expressing a view on the overnight on-street parking ban in Brookline; and

WHEREAS: Town Meeting recognizes that the demand for resident on-street parking during the day must be balanced with other important quality of life considerations, such as curb-to-curb snow plowing, litter control, and pedestrian safety and security;

NOW THEREFORE: Town Meeting hereby calls upon the Transportation Board:

(a) To implement a Resident Parking Permit Program within six months; and

(b) To provide for Resident Parking Permits on specific streets or in neighborhoods wherein residents have petitioned the Transportation Board; and

(c) To report to Town Meeting in one year on the implementation of the Resident Permit Parking Program, presenting the results of the Transportation Board's own analysis, as well as that of the Police Department and the Department of Public Works; and

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(d) To ensure that Brookline residents and owners of business establishments are informed of the procedures to petition for resident parking permits and to apply for temporary exemptions to the two-hour rule, including exemptions for moving operations, construction activities, guests or visitors, healthcare providers, and childcare providers; and

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(e) To review all existing signage regarding the two-hour parking limit.

ARTICLE 22

TWENTY-SECOND ARTICLE

To see if the Town will adopt the following resolution:

WHEREAS the nation's pediatric professionals and children's advocates advise against the use of corporal punishment of children;

WHEREAS research shows that corporal punishment teaches children that hitting is an acceptable way of dealing with problems and that violence works;

WHEREAS there are effective alternatives to corporal punishment of children;

WHEREAS national surveys show that corporal punishment is common and 25% of infants are hit before they are 6 months old;

WHEREAS adopting national policies against corporal punishment has been an effective public education measure in various countries;

WHEREAS accumulated research supports the conclusion that corporal punishment is an ineffective discipline strategy with children of all ages and, furthermore, that it is sometimes dangerous;

WHEREAS studies show that corporal punishment often produces in its victims anger, resentment, low self-esteem, anxiety, helplessness, and humiliation;

WHEREAS research demonstrates that the more children are hit, the greater the likelihood that they will engage in aggression and anti-social behavior as children imitate what they see adults doing;

WHEREAS in a study of 8000 families, children who experience frequent corporal punishment are more likely to physically attack siblings, develop less adequately-developed consciences, experience adult depression, and physically attack a spouse as an adult;

WHEREAS, according to human rights documents, children, like adults, have the right not to be physically assaulted;

WHEREAS the U.N. Committee on the Rights of the Child has consistently stated that persisting legal and social acceptance of corporal punishment is incompatible with the U.N. Convention on the Rights of the Child;

WHEREAS this resolution is supported by the Massachusetts Society for the Prevention of Cruelty to Children, Massachusetts Citizens for Children, and the Massachusetts Chapter of the National Association of Social Workers;

BE IT HEREBY RESOLVED that Town Meeting encourages parents and caregivers of children to refrain from the use of corporal punishment and to use alternative nonviolent methods of child discipline and management with an ultimate goal of mutual respect between parent and child.

Town Meeting requests that appropriate Town groups such as the Advisory Council on Public Health and PTOs explore how they can raise awareness of this issue, and organizations that deal with children's welfare shall be informed of this resolution;

Or any act relative thereto.

Note: Any attempt to delay or avoid a vote on this resolution may result in resubmission of the resolution to a subsequent Town Meeting.

This voluntary resolution is in no way intended to undermine parental authority or familial autonomy. Its goal is to promote and advocate mutual respectful relationships between children and their parents and encourage thoughtful determination of discipline methods. It seeks to bring attention to this issue and is meant to be a gentle, reasonable, and respectful suggestion. It could result in more support and discussion of options for disciplining children.

Corporal punishment is the intentional infliction of physical pain for the purpose of punishment. Examples of corporal punishment include slapping, spanking, hitting with objects, shaking and pinching. Such incidents are not reported to any agency. Child abuse is already subject to State law and is not the focus of this resolution. Discipline is training to act in accordance with rules of conduct.

A large-scale meta-analysis of 88 studies published by the American Psychological Association, found strong associations between corporal punishment and ten negative outcomes, including eroded trust between parent and child, more aggression toward siblings, bullying, spousal abuse as adults, and other anti-social behavior.

Gershoff, E. (2002). Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review. Psychological Bulletin, 128, 539-579.

American Academy of Pediatrics Recommendations

Parents should be encouraged and assisted in the development of methods other than spanking for managing undesired behavior. According to the American Academy of

Pediatrics, the following consequences of spanking lessen its desirability as a strategy to eliminate undesired behavior.

- Spanking children <18 months of age increases the chance of physical injury, and the child is unlikely to understand the connection between the behavior and the punishment.
- Although spanking may result in a reaction of shock by the child and cessation of the undesired behavior, repeated spanking may cause agitated, aggressive behavior in the child that may lead to physical altercation between parent and child.
- Spanking models aggressive behavior as a solution to conflict and has been associated with increased aggression in preschool and school children.
- Spanking and threats of spanking lead to altered parent-child relationships, making discipline substantially more difficult when physical punishment is no longer an option, such as with adolescents.
- Spanking is no more effective as a long-term strategy than other approaches, and reliance on spanking as a discipline approach makes other discipline strategies less effective to use. Time-out and positive reinforcement of other behaviors are more difficult to implement and take longer to become effective when spanking has previously been a primary method of discipline.
- A pattern of spanking may be sustained or increased. Because spanking may provide the parent some relief from anger, the likelihood that the parent will spank the child in the future is increased.

Consequences of Corporal Punishment

- Children whose parents use corporal punishment to control antisocial behavior show more antisocial behavior themselves over a long period of time, regardless of race and socioeconomic status, and regardless of whether the mother provides cognitive stimulation and emotional support (Gunnoe & Mariner, 1997; Kazdin, 1987; Patterson, DeBaryshe, & Ramsey, 1989; Straus, Sugarman, & Giles-Sims, 1997).
- A consistent pattern of physical abuse exists that generally starts as corporal punishment, and then gets out of control (Kadushin & Martin, 1981; Straus & Yodanis, 1994).
- Adults who were hit as children are more likely to be depressed or violent themselves (Berkowitz, 1993; Strassberg, Dodge, Pettit, & Bates, 1994; Straus, 1994; Straus & Gelles, 1990; Straus & Kantor, 1992).
- The more a child is hit, the more likely it is that the child, when an adult, will hit his or her children, spouse, or friends (Julian & McKenry, 1993; Straus, 1991; Straus, 1994; Straus & Gelles, 1990; Straus & Kantor, 1992; Widom, 1989; Wolfe, 1987).
- Corporal punishment increases the probability of children assaulting the parent in retaliation, especially as they grow older (Brezina, 1998).
- Corporal punishment sends a message to the child that violence is a viable option for solving problems (Straus, Gelles, & Steinmetz, 1980; Straus, Sugarman, & Giles-Sims, 1997).
- Corporal punishment is degrading, contributes to feelings of helplessness and humiliation, robs a child of self-worth and self-respect, and can lead to withdrawal or aggression (Sternberg et al., 1993; Straus, 1994).

- Corporal punishment erodes trust between a parent and a child, and increases the risk of child abuse; as a discipline measure, it simply does not decrease children's aggressive or delinquent behaviors (Straus, 1994).
- Children who get spanked regularly are more likely over time to cheat or lie, be disobedient at school, bully others, and show less remorse for wrongdoing (Straus, Sugarman, & Giles-Sims, 1997).
- Corporal punishment adversely affects children's cognitive development. Children who are spanked perform poorly on school tasks compared to other children (Straus & Mathur, 1995; Straus & Paschall, 1998).

Alternatives to Corporal Punishment

- Set firm, consistent, age-appropriate, and acceptable limits. For example, although a 5-year-old child may be able to resist the urge to touch things, it is not reasonable to expect that a 2-year-old will be able to handle such limits. Therefore, parents may need to childproof their homes to protect breakable items, and to keep children away from dangerous objects.
- Teach children conflict resolution and mediation skills, including listening actively, speaking clearly, showing trust and being trustworthy, accepting differences, setting group goals, negotiating, and mediating conflicts.
- Reason and talk with children in age-appropriate ways. Verbal parent-child interactions enhance children's cognitive ability.
- Model patience, kindness, empathy, and cooperation. Parents and teachers should be aware of the powerful influence their actions have on a child's or group's behavior.
- Provide daily opportunities for children to practice rational problem solving, and to study alternatives and the effect of each alternative.
- Encourage and praise children. A nonverbal response such as a smile or a nod, or a verbal response such as "good" or "right" not only provides incentives for accomplishment, but also builds primary grade children's confidence.
- Allow children to participate in setting rules-and identifying consequences for breaking them. This empowers children to learn how to manage their own behavior.
- Provide consistency, structure, continuity, and predictability in children's lives.
- Encourage children's autonomy-allow them to think for themselves, and to monitor their own behavior, letting their conscience guide them.

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Responses to Cultural Myths

"Spanking is an effective way to manage behavior."

Hitting a small child will usually stop misbehavior. However, other ways of discipline such as verbal correction, reasoning, and time-out work as well and do not have the potential for harm that hitting does. Hitting children may actually increase misbehavior. One large study showed that the more parents spanked children for antisocial behavior, the more the antisocial behavior increased (Straus, Sugarman, & Giles-Sims, l997). The more children are hit, the more likely they are to hit others including peers and siblings and, as adults, they are more likely to hit their spouses (Straus and Gelles, l990; Wolfe, l987). Hitting children teaches them that it is acceptable to hit others who are smaller and weaker. "I'm going to hit you because you hit your sister" is a hypocrisy not lost on children.

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spanked "turned out OK," it is likely that not being spanked would have helped us turn out to be healthier.

"If we don't spank children, they'll grow up rotten."

Children in eleven countries are growing up without being hit in homes, in daycare or in schools. Norway, Sweden, Germany, Denmark, Austria, Israel, Finland and other countries that have banned corporal punishment of children have remarkably low rates of interpersonal violence compared to the United States. Professor Adrienne Haeuser who studied these educational laws in Europe in l981 and l991 said, "Children are receiving more discipline since the law in Sweden passed. Parents think twice and tend to rely more on verbal conflict resolution to manage their children." Discipline is important. We need more discipline of children such as explaining and reasoning, establishing rules and consequences, praising good behavior in children and being good models for our children. Such methods develop a child's conscience and self-control. Children are then less likely to misbehave and more likely to become self-disciplined adults.

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Ethics

The harmful consequences of corporal punishment are not primary for some people. For them it is enough that corporal punishment breaches ethical principles by deliberately causing pain to another person. From this perspective, if it is not acceptable to hit a person who is 18 years old or over, then it should not be acceptable to hit a person who is under 18 years old.

Statements from Professionals

"If we are ever to turn toward a kinder society and a safer world, a revulsion of physical punishment would be a great place to start." –Dr. Benjamin Spock

"After nearly two decades of research on the causes and consequences of family violence, we are convinced that our society must abandon its reliance on spanking children if we are to prevent intimate violence."

–Richard J. Gelles, Ph.D. and Murray A Straus, Ph.D., sociologists

"The cultural acceptance of violence should be decreased by discouraging corporal punishment at home."

–U.S. Surgeon General's Workshop on Violence and Public Health

"Americans need to re-evaluate why we believe it is reasonable to hit young, vulnerable children, when it is against the law to hit other adults, prisoners and even animals."

–Psychologist Elizabeth Gershoff, Ph.D., author of comprehensive study on corporal punishment

Penelope Leach, John Bradshaw, and Alice Miller have also advised against corporal punishment.

MOTION TO BE OFFERED BY THE PETITIONER

WHEREAS the nation's pediatric professionals and children's advocates oppose the use of corporal punishment of children;

WHEREAS research shows that corporal punishment teaches children that hitting is an acceptable way of dealing with problems and that violence works;

WHEREAS there are effective alternatives to corporal punishment of children;

WHEREAS national surveys show that corporal punishment is common and 25% of infants are hit before they are 6 months old;

WHEREAS adopting national policies against corporal punishment has been an effective public education measure in various countries;

WHEREAS accumulated research supports the conclusion that corporal punishment is an ineffective discipline strategy with children of all ages and, furthermore, that it is sometimes dangerous;

WHEREAS studies show that corporal punishment often produces in its victims anger, resentment, low self-esteem, anxiety, helplessness, and humiliation;

WHEREAS research demonstrates that the more children are hit, the greater the likelihood that they will engage in aggression and anti-social behavior as children imitate what they see adults doing;

WHEREAS in a study of 8000 families, children who experience frequent corporal punishment are more likely to physically attack siblings, develop less adequately-developed consciences, experience adult depression, and physically attack a spouse as an adult;

WHEREAS, according to human rights documents, children, like adults, have the right not to be physically assaulted;

WHEREAS the U.N. Committee on the Rights of the Child has consistently stated that persisting legal and social acceptance of corporal punishment is incompatible with the U.N. Convention on the Rights of the Child;

BE IT HEREBY RESOLVED that Town Meeting encourages parents and caregivers of children to refrain from the use of corporal punishment and to use alternative nonviolent methods of child discipline and management with an ultimate goal of mutual respect between parent and child.

Town Meeting requests that appropriate Town groups such as the Advisory Council on Public Health and PTOs explore how they can raise awareness of this issue, and organizations that deal with children's welfare shall be informed of this resolution.

EXPLANATION

Note: Any attempt to delay or avoid a vote on this resolution may result in resubmission of the resolution to a subsequent Town Meeting.

This voluntary resolution is in no way intended to undermine parental authority or familial autonomy. Its goal is to promote and advocate mutual respectful relationships between children and their parents and encourage thoughtful determination of discipline methods. It seeks to bring attention to this issue and is meant to be a gentle, reasonable, and respectful suggestion. It could result in more support and discussion of options for disciplining children.

Corporal punishment is the intentional infliction of physical pain for the purpose of punishment. Examples of corporal punishment include slapping, spanking, hitting with objects, shaking and pinching. Such incidents are not reported to any agency. Child abuse is already subject to State law and is not the focus of this resolution. Discipline is training to act in accordance with rules of conduct.

This resolution is supported by the Massachusetts Society for the Prevention of Cruelty to Children, Massachusetts Citizens for Children, and the Massachusetts Chapter of the National Association of Social Workers.

A large-scale meta-analysis of 88 studies (Gershoff, 2002) published by the American Psychological Association, found strong associations between corporal punishment and ten negative outcomes, including eroded trust between parent and child, more aggression toward siblings, bullying, spousal abuse as adults, and other anti-social behavior.

American Academy of Pediatrics Recommendations

Parents should be encouraged and assisted in the development of methods other than spanking for managing undesired behavior. According to the American Academy of Pediatrics, the following consequences of spanking lessen its desirability as a strategy to eliminate undesired behavior.

- Spanking children <18 months of age increases the chance of physical injury, and the child is unlikely to understand the connection between the behavior and the punishment.
- Although spanking may result in a reaction of shock by the child and cessation of the undesired behavior, repeated spanking may cause agitated, aggressive behavior in the child that may lead to physical altercation between parent and child.
- Spanking models aggressive behavior as a solution to conflict and has been associated with increased aggression in preschool and school children.
- Spanking and threats of spanking lead to altered parent-child relationships, making discipline substantially more difficult when physical punishment is no longer an option, such as with adolescents.
- Spanking is no more effective as a long-term strategy than other approaches, and reliance on spanking as a discipline approach makes other discipline strategies less effective to use. Time-out and positive reinforcement of other behaviors are more difficult to implement and take longer to become effective when spanking has previously been a primary method of discipline.
- A pattern of spanking may be sustained or increased. Because spanking may provide the parent some relief from anger, the likelihood that the parent will spank the child in the future is increased.

Consequences of Corporal Punishment

- Children whose parents use corporal punishment to control antisocial behavior show more antisocial behavior themselves over a long period of time, regardless of race and socioeconomic status, and regardless of whether the mother provides cognitive stimulation and emotional support (Gunnoe & Mariner, 1997; Kazdin, 1987; Patterson, DeBaryshe, & Ramsey, 1989; Straus, Sugarman, & Giles-Sims, 1997).
- A consistent pattern of physical abuse exists that generally starts as corporal punishment, and then gets out of control (Kadushin & Martin, 1981; Straus & Yodanis, 1994).
- Adults who were hit as children are more likely to be depressed or violent themselves (Berkowitz, 1993; Strassberg, Dodge, Pettit, & Bates, 1994; Straus, 1994; Straus & Gelles, 1990; Straus & Kantor, 1992).
- The more a child is hit, the more likely it is that the child, when an adult, will hit his or her children, spouse, or friends (Julian & McKenry, 1993; Straus, 1991; Straus, 1994; Straus & Gelles, 1990; Straus & Kantor, 1992; Widom, 1989; Wolfe, 1987).

- Corporal punishment increases the probability of children assaulting the parent in retaliation, especially as they grow older (Brezina, 1998).
- Corporal punishment sends a message to the child that violence is a viable option for solving problems (Straus, Gelles, & Steinmetz, 1980; Straus, Sugarman, & Giles-Sims, 1997).
- Corporal punishment is degrading, contributes to feelings of helplessness and humiliation, robs a child of self-worth and self-respect, and can lead to withdrawal or aggression (Sternberg et al., 1993; Straus, 1994).
- Corporal punishment erodes trust between a parent and a child, and increases the risk of child abuse; as a discipline measure, it simply does not decrease children's aggressive or delinquent behaviors (Straus, 1994).
- Children who get spanked regularly are more likely over time to cheat or lie, be disobedient at school, bully others, and show less remorse for wrongdoing (Straus, Sugarman, & Giles-Sims, 1997).
- Corporal punishment adversely affects children's cognitive development. Children who are spanked perform poorly on school tasks compared to other children (Straus & Mathur, 1995; Straus & Paschall, 1998).

Alternatives to Corporal Punishment

- Set firm, consistent, age-appropriate, and acceptable limits. For example, although a 5-year-old child may be able to resist the urge to touch things, it is not reasonable to expect that a 2-year-old will be able to handle such limits. Therefore, parents may need to childproof their homes to protect breakable items, and to keep children away from dangerous objects.
- Teach children conflict resolution and mediation skills, including listening actively, speaking clearly, showing trust and being trustworthy, accepting differences, setting group goals, negotiating, and mediating conflicts.
- Reason and talk with children in age-appropriate ways. Verbal parent-child interactions enhance children's cognitive ability.
- Model patience, kindness, empathy, and cooperation. Parents and teachers should be aware of the powerful influence their actions have on a child's or group's behavior.
- Provide daily opportunities for children to practice rational problem solving, and to study alternatives and the effect of each alternative.
- Encourage and praise children. A nonverbal response such as a smile or a nod, or a verbal response such as "good" or "right" not only provides incentives for accomplishment, but also builds primary grade children's confidence.
- Allow children to participate in setting rules-and identifying consequences for breaking them. This empowers children to learn how to manage their own behavior.
- Provide consistency, structure, continuity, and predictability in children's lives.
- Encourage children's autonomy-allow them to think for themselves, and to monitor their own behavior, letting their conscience guide them.

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SELECTMEN'S RECOMMENDATION

The Board of Selectmen voted favorable action on a virtually identical Resolution presented to the 2004 Annual Town Meeting earlier this year. Members of the Board continue to endorse the Resolution's core concept, which encourages parents and caregivers to refrain from the use of corporal punishment. And, the Selectmen continue to commend the petitioner for attempting to heighten awareness of the issue.

However, the fact that this item, which is essentially a political question and not a matter of town governance, was so recently addressed by Town Meeting introduces a significant new process question into this debate. In the review of the current Resolution Selectmen expressed concern that an issue which Town Meeting has taken up so recently should not be supported for re-submittal to Town Meeting. In addition, Selectmen continue to take note the ongoing reservation about Town Meeting debate of social issues, as opposed to focusing on matters more directly related to municipal governance, even though the traditional practice of Town Meeting occasionally engages in such matters is acknowledged.

The Board recommends NO ACTION, by a vote of 2-2 taken on October 19, 2004 on the Article.

ROLL CALL VOTE:

No Action	Favorable Action
Selectman Allen	Selectman Hoy
Selectman Merrill	Selectman Sher

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
Article 22 proposes a resolution discouraging the use of corporal punishment in much the same form as a similar resolution proposed at the 2004 Annual Town Meeting this past May.

DISCUSSION
This issue has recently been presented and discussed at Town Meeting. The Advisory Committee feels it can offer nothing new to this familiar discussion.

RECOMMENDATION
The Advisory Committee offers no recommendation on Article 22.

XXX

ARTICLE 23

TWENTY-THIRD ARTICLE

To see if the Town will consider dedicating a memorial sign at Thorndike and Harvard Street in honor of Maxwell Adler, Korean War Veteran. (Richard L. Bargfrede, Veterans' Services)

EXPLANATION

Korean War Veteran Maxwell Adler has met all Selectmen's criteria to be honored with a Memorial Sign. Mr. Adler is also listed on the Word War Monument in front of Town Hall.

SELECTMEN'S RECOMMENDATION

Article 23 is a petitioned article that would dedicate a memorial sign at Thorndike and Harvard Street in honor of Maxwell Adler, a Korean War Veteran who lost his life while serving the United States in the armed forces. The Board of Selectmen agrees that Mr. Adler should be remembered by having a memorial sign dedicated in his honor. We are all grateful for the sacrifice he made for our country.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on Octover 19, 2004, on the vote offered by the Advisory Committee.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
This article was submitted by the Director of Veterans' Services at the request of Alan Adler, brother of Maxwell Adler. It asks that the town install and dedicate a memorial

sign with traditional wreath and four flags to the memory of Maxwell Adler, a Brookline resident who was killed in action n the Korean War. Mr. Adler has requested that the memorial sign be placed on the street sign located at the southwest corner of the intersection of Harvard and Thorndike Streets, near the former home of the Adler family.

DISCUSSION

Pfc. Adler, who lived at 25 Thorndike Street, graduated from Brookline High School and subsequently enlisted in the U.S. Air Force. He was killed in action in March 1951 and buried in Korea. At the request of his parents, his body was returned to the United States.

Although a very small minority of the Advisory Committee believes that such matters should be referred to and handled by a committee outside of Town Meeting, the remaining members of the Committee recommend favorable action on this article.

RECOMMENDATION

The Advisory Committee, by a vote of 16 in favor, 2 opposed and 1 abstention, recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town dedicate a memorial sign at Thorndike and Harvard Street in honor of Maxwell Adler, Korean War Veteran.

XXX

ARTICLE 24

TWENTY-FOURTH ARTICLE

To see if the Town will rename the Town Park, designated as Lot 11, Block 73 in the Town Atlas, now known as the Coolidge Playground, located on Columbia Street, between Kenwood and Russell Streets, the "Judge Sumner Z. Kaplan Playground and Park",

or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

Article 24 is a petitioned article that would rename Coolidge Playground in honor of Judge Sumner Z. Kaplan. Judge Kaplan is a well-known resident who dedicated many years of service to the Town as a Town Meeting Member, a Selectman, and as a State Representative. He also served in the United States Army during World War II, further evidence of his love of his town and country.

The Park and Recreation Commission's procedures for naming a park or recreational facility stipulates that in order to respect the historical tradition and community values that previous generations bestowed on these resources, no officially named park or facility shall be renamed. However, the procedures do allow renaming Coolidge Playground the "Judge Sumner Z. Kaplan Park at Coolidge Playground".

The Board of Selectmen is pleased to be able to honor Judge Kaplan in this manner. We recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 19, 2004, on the following vote:

VOTED: To rename the Town Park, designated as Lot 11, Block 73 in the Town Atlas, now known as the Coolidge Playground, located on Columbia Street, between Kenwood and Russell Streets, the "Judge Sumner Z. Kaplan Park at Coolidge Playground".

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
The purpose of the original warrant article was to rename Coolidge Playground the Judge Sumner Z. Kaplan Playground and Park in honor of Judge Sumner Z. Kaplan, former Selectman and State Representative from Brookline.

DISCUSSION
Judge Kaplan and his family resided on Russell Street, which is close to the park, for over 40 years. Both his daughters, one of whom now serves on the Brookline School Committee, went through the Brookline school system. He was active in the community in many areas, having served as Selectman for 12 years, following which he was elected State Representative from Brookline. He was appointed as a Judge and also rose to the rank of Brigadier General in the United States Army Reserve.

In April of 2003, the Park and Recreation Commission approved a Procedure for Naming Park and Recreation Facilities. The procedures specify that "…no officially named park and/or facility shall be renamed". The staff of the Recreation Department and the Preservation Commission looked at historical records and discovered that the name had always been "Coolidge Playground", not "Coolidge Park", as was previously thought.

The guidelines also state that "A park facility, within a park (ball field, playground) may be named to memorialize a living person whose contribution or significant gift to Brookline's parks and recreation system is of a most extraordinary nature."

In light of the Park and Recreation Commission's guidelines and in recognition of Judge Kaplan's outstanding contributions to the town, the Park and Recreation Commission unanimously voted to rename Coolidge Playground as "Judge Sumner Z. Kaplan Park at Coolidge Playground".

RECOMMENDATION
Judge Kaplan has been an outstanding citizen and he has served as an example for all of Brookline. He certainly merits this recognition.

The Advisory Committee, by a vote of 12 in favor, 1 opposed and 1 abstention, recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 25

TWENTY-FIFTH ARTICLE

Reports of Town Officers and Committees

Final Report of the Committee on Town Meeting Procedures

Introduction

The Town Meeting Procedures Committee was created by the Fall 2002 Town Meeting. The charge to the Committee was to study the procedures in other representative Town Meetings, compare them to the procedures followed in Brookline and report to Town Meeting on the results of its study, together with any recommendations or proposals that in the Committee's opinion might improve the functioning of the Brookline Town Meeting.

The persons appointed to the Committee were: Harry Bohrs; Robert Stein; Betsy DeWitt; Jesse Mermell; Betsy Shure Gross; Cathleen Cavell; and Jonathan Karon, who was elected chair by the other members of the Committee. The Committee met seven times: on January 15, 2003; February 26, 2003; April 30, 2003; July 17, 2003; December 1, 2003; February 25, 2004; and March 24, 2004. The December 1, 2003 meeting was a public hearing to obtain comments on which areas of focus were of most concern to Town Meeting Members and to the general public. At the request of the Town Meeting Members Association, the Committee also made a presentation to the May 13, 2004 TMMA Board Meeting.

The Committee's work included: a visit to Framingham's Town Meeting, and interviews of the Chair of its Finance Committee; its Standing Committee on Rules; and one of its Selectmen; attendance at Concord's pre-Town Meeting Workshop; informal inquiries into other Town Meetings including Needham and Plymouth; and review of published literature on representative Town Meetings.

The Committee's meetings were frequently attended by other TMM's and, on two occasions, by the Town Moderator, who asked to be kept advised of the Committee's work. The Committee viewed its charge broadly to include not only the careful examination of Brookline's Annual and Special Town Meetings, but also the role of Town Meeting Members throughout the year and the flow of information to Town Meeting Members. Using the information and models it gained from the examination of other representative Town Meetings as a springboard, the Committee sought out areas of potential improvement in Brookline's procedures. Although numerous issues were discussed and examined throughout the Committee's deliberations, the most significant issues that were raised during our examination are presented below. They are followed with a brief summary of our findings regarding those issues and our recommendations for consideration or possible implementation by Town Meeting and/or the Moderator.

The minutes of the Committee's meetings (with the exception of the brief 3/24/04 meeting) are on file at the Town Clerk's Office should anyone desire further details about the Committee's inquiries and discussions.

Issues

1. Does Town Meeting operate at a reasonable balance between inclusiveness of TMM participation and efficiency of doing business?

2. Is Town Meeting process and debate dominated by a few individuals?

3. Is there more that should/can be done to educate new TMM's and help bring them up to speed more quickly?

4. Do Town Meeting Members have sufficient ability to respond to fresh issues raised on the floor during debate?

5. Can today's technology be better employed to facilitate discussion of issues at Town Meeting?

Findings and Recommendations

Issue #1- Does Town Meeting operate at a reasonable balance between inclusiveness of TMM participation and efficiency of doing business?

Findings:

There was widespread agreement that this was a central issue and resulted from the inherent tension between allowing everyone to "have their say" and doing the Town's business in a timely and reasonably efficient manner. However, although there was agreement on the issue, there was a wide variety of views as to what constituted the proper balance between these two objectives both within the Committee and among those who provided us with their comment. New Town Meeting members may be particularly susceptible to feeling left out of the process. Framingham makes use of "standing TM committees" to provide additional avenues of TMM participation, but the committee's investigations did not lead it to believe that this resulted in an increase in the quality of information generated, additional participation by the majority of TMMs and any increase in the breadth or efficiency in decision making (it actually appeared to decrease efficiency somewhat). The Committee did feel that key to achieving this balance is having (and becoming familiar with) sufficient information prior to Town Meeting to fully understand the issues and positions involved prior to arriving at the meeting. Indeed, the Committee would like to emphasize that Town Meeting is the last opportunity to become involved in the process and that Members should avail themselves of the many opportunities that exist to intervene and become involved at earlier stages of the process such as the Advisory Subcommittee and Full Committee discussions, Selectmen discussions and, in many situations, discussions of various Town Boards and Commissions.

Recommendations

Although we recognize that this is a sensitive and important issue with many individuals, we believe that it fundamentally is up to the Moderator and his or her judgment to try to achieve the correct balance between these competing interests. Therefore, we do not specifically recommend any structural or procedural changes to address this tension. However, we believe that consideration of our recommendations on other issues, particularly those concerning the flow of information and encouraging TMM's to get involved at critical pre-Town Meeting decision points are relevant to this issue and should be considered.

Issue # 2- Is Town Meeting process and debate dominated by a few individuals?

Findings

This perception is quite widespread. However, when examining some statistics provided by the Moderator on who spoke on which issues at a number of previous Town Meetings, the statistics do not strongly support the perception. There appears to be a larger number of persons speaking at any given Town Meeting than is generally perceived and no one TMM spoke on more than five articles at the 2003 Annual Town Meeting. Closely related to this issue, however, was a general feeling that by the time a recommended vote on a warrant article reaches the floor of Town Meeting, it is a "done deal" and that Town Meeting essentially serves as a rubber stamp for the conclusions reached previously between the Board of Selectmen and the Advisory Committee. These feelings are particularly acute with respect to discussion of the budget.

Recommendations

An article reaches Town Meeting for a vote only after a lengthy and sometimes arduous process prior to the actual Meeting. Town Meeting Members who want to be more involved in the decision process need to be aware of and become familiar with that process and learn those stages during which they can intervene meaningfully and have their presence felt (Advisory Committee hearings, Selectmen discussions and hearings, Board and Commission hearings, etc.). The Committee believes that individual Town Meeting members should and can have an impact without necessarily becoming a Selectman or joining the Advisory Committee, but to do so they should try take advantage of the entire process, not just the last few hours. Seasoned TMMs know how to do this, but those new to the process could benefit from more effort on the part of the Town in educating them on how, when and where to have an impact. This thought appears as a specific recommendation in Issue 3 below concerning education of new TMM's.

We also believe that the Combined Reports generally do a good job of providing TMM's with necessary background, issues, ramifications and Selectman and Advisory Committee positions and rationale on all articles before Town Meeting with the exception of the budget article. Here we recommend that the Advisory Committee, as the primary mover of the budget article, consider providing short explanatory write-ups on Town Department budgets, giving an overview of the Department (perhaps from the Annual Report) and brief explanations of any significant changes in budget from the previous year and any issues of contention that arose either within the Committee or between the Committee, the Selectmen and/or the Department. We are fully aware of the burden already imposed on members of the Advisory Committee in doing their job, particularly for the Annual Town Meeting, but feel that this is at least worth an experiment during the coming budget cycle to see if it can be handled by the Committee and if TMMs feel that they benefit from the additional information. This report would presumably be included in the Combined Report for the Annual Town Meeting, as it does for every other warrant article.

Lastly, although once again we feel that the Moderator has to be free to exercise his or her judgment in how to run Town Meeting, we suggest that the Moderator be particularly sensitive to this concern, given its widespread nature (the current Moderator assured the Committee that he is aware of this concern), and try to spread debate as much as possible.

Issue # 3- Is there more that should/can be done to educate new TMM's and help bring them up to speed more quickly?

Findings

Brookline tries to prepare new TMMs through material provided by the Moderator and an evening of education provided by the TMMA prior to the annual Town Meeting. Other communities (e.g. Concord) do this more formally and completely, both by providing a very comprehensive one night educational session (over four hours) and a very complete set of bound handouts on topics including governmental structure, the role and functions of every board and department, the workings and terminology of Town Meeting, the budget process (including a schedule and points of possible interaction), and key players.

Recommendations

We believe that it is important that Brookline have a “Town Government 101" brochure, which in a concisesingle document, outlines the structure of Town Government, the constituent components of Town finances and their inter-relationships (including not just internal components but external ones as well such as the Cherry Sheet and county assessments, the requirements under Proposition 2 ½, etc.), the budget process, the non-budget legislative process, the conduct of TM and the duties/obligations of being a TMM. It has been suggested that much, if not all, of this information is already provided in the present Town Meeting Handbook and/or in other available documents. We recommend that the TMMA, working with the Moderator and the Town Administrator, carefully examine the present Town Meeting Handbook and consider further improvements to ensure that Brookline has the best possible document. This document would be available to all candidates taking out papers and would be followed up after the election by two TMMA evenings of education: one going over the Town Government 101 material and another focusing on the upcoming warrant.

We also suggest the use of name tags for TMMs as is done in Framingham so that all TMMs may become better acquainted and to break the anonymity that some new members feel during their first year or even two. We have been advised that the Town Clerk’s Office will be providing name tags starting with the November 2004 Town Meeting.

Issue # 4- Do Town Meeting Members have sufficient ability to respond to fresh issues raised on the floor during debate?

Findings

There is a sense among some TMMs that sometimes debate at Town Meeting consists of a number of prepared speeches from the "usual suspects" followed by a motion to call the question, before any questions or comments related to the information just presented can be heard. We also heard some concern that it is difficult to offer responsive amendments from the floor. As discussed under issue 2 above, this also ties into the concern that debate at Town Meeting is dominated by a few "same individuals" who also seem to have an inside edge on working the process. In this regards, however, we do believe that the Board of Selectmen and the Advisory Committee merit special consideration, the former because of their executive position in the Town and the latter because of their lengthy research and preparation on the articles before Town Meeting. Thus, regardless of whether or not it appears that the same individuals from these two boards seem to talk time and time again, the boards need to be heard on the articles. We do feel, however, that one speaker from each board should suffice to present and discuss the majority position and that the minority position, if any, should not be given special consideration and should take its place with other speakers on the issue.

Upon investigation into the responsiveness of TM debate, we found that the current moderator has used an approach in recent Town Meetings to take some prepared remarks from signed up speakers, then go to the floor for questions and/or brief comments, then return for prepared remarks and return once again to the floor. The Committee encourages this practice. On the issue of taking "responsive" amendments, some of us felt that TM should go further than it has in allowing for "spontaneous" amendments to respond to issues raised on the floor, but others felt that the current level of restrictions was a necessary protection against ill considered amendments. This lack of unanimity within the Committee underscores the fact that nothing can take the place of good judgment on the part of the Moderator in determining what is a "simple" or "technical" floor amendment unlikely to have unknown ramifications and what is more substantive amendment with as yet unknown or unanticipated consequences.

Recommendations

The committee fully supports the method used by the current moderator in alternating between calling speakers off the speakers list and recognizing TMMs who wish to speak spontaneously from the floor. We urge the Moderator to continue to use it as a way of promoting responsive debate rather than simply having speeches which may not address any of the issues raised by other speakers.

As in our recommendations on Issue 2, we would again urge

the Moderator to be sensitive to the need to "spread debate around". We do not believe that any change to the procedure for terminating debate and calling the question is warranted.

We would also recommend that consideration be given to scheduling Town Meeting on non-consecutive nights which might avoid fatigue and allow consideration of information raised on a previous evening. This would only make sense if it were possible to table consideration of an article or amendment to a subsequent night.

We also refer to our discussion of use of technology below.

Issue # 5. Can today's technology be better employed to facilitate discussion of issues at Town Meeting?

Findings

To most of the Committee members, the use of audio visual technology at Brookline's Town Meeting seems primitive by today's standards. The use of electronic Power Point, Spreadsheet and other readily available media presentations should be the rule rather than the exception to facilitate understanding of issues and to respond to issues raised. Additionally, the use of computer-driven projectors to display proposed amendments, either prepared or from the floor, would increase comprehension whether or not substantive amendments are permitted from the floor.

The Committee also found it hard to believe, despite the fact that the issues has been studied recently, that with today's technology of wireless communications and handheld devices, recorded votes could not routinely be taken. Ideally, each TMM would be given a wireless device that would record "yea," "nea," or "present" votes which could then be instantly tallied and flashed on a screen. It is our understanding that so far no cost effective or sufficiently secure or foolproof system has been identified, but at the pace at which technology in this area evolves, we believe it should be considered again.

Recommendations

The Moderator should set up a committee and/or utilize any existing standing committees to further study alternative technologies to aid in audio visual enhancements to the TM process as well as re-examine methods for facilitating recorded TMM votes and tallies. Based upon its studies, the committee(s) should report its findings and alternative recommendations for increased use of technology at Town Meeting, along with some planning guidelines as to the anticipated acquisition costs involved. The present Moderator has indicated his interest in continued examination of these issues.

Conclusion

Overall, from what we determined from other communities, we believe that Brookline does a better job than most towns at providing timely information to TMM's. We also found no structural or significant procedural flaws in the way Town Meeting is conducted.

There is bound to be a tension between every person having their chance to present his or her views before the body and the ability to maintain an efficient process that does not drag on beyond the patience of a majority of the TMMs. This latter cannot be casually dismissed as unnecessary "tidiness," because a process that lingers on too long or that loses the interest of a large number of TMMs may ultimately lose its quorum at some subsequent session, undoing the work of many people and possibly requiring the calling of yet another special town meeting to finish unfinished business. Worse, a process that is largely viewed as highly inefficient or wasteful of TMMs' time may result in fewer people interested in running for Town Meeting, undercutting the entire process. All recent moderators appear to have been fully aware of this necessary tension and have called upon their own judgment in achieving a reasonable balance. We commend all of them in giving so much of their time to the process and of always striving, above all, to be "fair" in their exercise of that judgment. It is an extremely difficult job.

For those members who feel that the process somehow excludes them from meaningful participation, we urge them to become part of the full legislative and budgetary process and avail themselves of the many significant opportunities for individual TMMs to influence the process prior to Town Meeting. That is where much of the real action is. The Town can help in this regard by better disseminating knowledge about how to intervene both in terms of scheduling and in terms of structure. This is particularly important for budget and CIP issues.

Lastly, we emphasize again our unanimous feeling that being a TMM is a year long commitment and not just a commitment for a few nights of two Town Meetings a year.

We were delighted with the interest we found among TMMs regarding our work and hope that this report will be part of a continuing discussion on how Brookline's Town Meeting may best serve our community. We encourage interested TMM's and citizens to review the minutes of our meetings (available at the Town Clerk's Office) and continue discussion of these important issues.

STATUS OF HOME RULE LEGISLATION APPROVED BY TOWN MEETING

Bill	Bill Number	Date of TM Vote	Status
Tuition / Out-of-Town Students	3991	May-03	05/18/04 H Accompanied a study order, see H4740
25-Yr. Lease of Certain Town-Owned Properties	4164	May-02	Became law 9/30/04 (Ch. 357 of 2004)
Investment of Trust Funds / Prudent Man Rule	4400	Nov-03	10/25/04 H Enacted -HJ 2530
Increase Certain Fire Fees	4403	Nov-03	Became law 8/10/04 (Ch. 292 of 2004)
POB's	4404	Nov-03	Committee on Long-Term Debt Approved. 5/10/04 Referred to HWM.
Fire Chief Appointment	4405	Nov-03	Committee on Public Service Referral to Study. 4/02/04 S Senate concurred -SJ 1744
Purchase of Fisher Hill Reservoir	4429	Nov-03	4/5/04 Reported Favorably by Committee on Local Affairs and Referred to HWM.
Increase of Revolving Fund Ceiling		May-04	Not filed yet: waiting for new legislative session to begin in January.
2 Brookline Place Lease		May-04	Not filed yet: waiting for new legislative session to begin in January.