

ARTICLE 1

FIRST ARTICLE

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

I. With respect to the Village Square General Business District G-2.0 (VS):

- A. Amend the Floor Area Ratio Maximum and Height Maximum for the G-2.0 (VS) District within TABLE 5.01, TABLE OF DIMENSIONAL REQUIREMENTS as referenced in SECTION 5.00 – DISTRICT REGULATIONS of ARTICLE V DIMENSIONAL REQUIREMENTS, as follows (new in italics and bolded).

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,6}	Side 2	Rear	Landsc.	Useable ¹³
							60 45 (CA)	70 55(CA) 100(VS)	none	none ⁷	10 + $\frac{L^8}{10}$	none	none ⁵
G-2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0 4.0 (VS) ¹⁷	2.5	none ⁴	45 125(VS) ¹⁷	60 45 (CA)	70 55(CA) 100(VS)	none	none ⁷	10 + $\frac{L^8}{10}$	none	none ⁵

- B. Insert the following new footnote 17 after the Floor Area Ratio Maximum and Height Maximum permitted within the G-2.0 (VS) District, as shown in the above revised TABLE 5.01, TABLE OF DIMENSIONAL REGULATIONS and in the footnote section below the table.

17. See SECTION 5.06 – SPECIAL DISTRICT REGULATIONS, 4. *Village Square General Business District G-2.0 (VS)*.

- C. In ARTICLE V - DIMENSIONAL REQUIREMENTS, by adding a new paragraph 4 to SECTION 5.06, to read as follows:

4. Village Square General Business District G-2.0 (VS)
- a. All applications for new structures, outdoor uses, and exterior alterations or additions in the G-2.0 (VS) District **which exceed a floor area ratio of 2.5 or a height of 100 feet** shall be subject to the requirements of § 5.09, Design Review, obtain a special permit per § 9.03, and meet the following requirements.
1. The maximum height shall not exceed 125 feet and the maximum gross floor area ratio shall not exceed 4.0.
 2. no less than 20% of the Lot Area shall be devoted to landscaped open space.
 3. no less than 60% of the parking spaces required by the Board of Appeals shall be provided completely below grade.

4. no less than 25% of the provided parking spaces shall be offered to residents for overnight parking.
 5. no less than 1% of the hard construction costs of constructing a building on a Lot (exclusive of tenant fit-up) shall be devoted to making off-site streetscape improvements (such as, but not limited to, lighting, street furniture and widening sidewalks) and undertaking transportation mitigation measures. A plan of the proposed off-site streetscape improvements and a description of the proposed transportation mitigation measures shall be submitted for the review and approval of the Planning Board or its designee.
- b. The parking requirements for applications in the G-2.0 (VS) District in light of the proximity to rapid public transit shall be as follows:

retail use: one parking space per 350 g.s.f. of floor area

office use: one parking space per 600 g.s.f. of floor area

research laboratory use (Use 36A): one parking space per 1,000 g.s.f.

The number of parking spaces for the above uses in a G-2.0 (VS) District may be reduced by **special permit**, however, by no more than 15%, where it can be demonstrated to the Board of Appeals that it is warranted due to provisions in a Transportation Access Plan that includes recognized Transit Demand Management programs. A **Transportation Access Plan Agreement** shall be a condition of the special permit, shall be submitted for review to the Director of Transportation and the Director of Planning and Community Development, and shall require an annual report to the Director of Transportation. This **annual report** shall be accepted only after a determination by the Director of Transportation and the Director of Planning and Community Development that the Transportation Access Plan is working satisfactorily, and if not, that the plan will be changed and implemented to their satisfaction.

II. With respect to Section 4.07 – Table of Use Regulations:

In ARTICLE IV – USE REGULATIONS, by replacing the text of Principle Use 36A in SECTION 4.07 – TABLE OF USE REGULATIONS with the following:

36A. Research laboratory for scientific or medical research, **with a Biosafety Level of Level 1 or Level 2 as defined by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and National Institutes of Health**, provided the use is operated in compliance with all town, state and federal health and safety regulations, and that thirty days prior to a Board of Appeals hearing on the use, and annually, a report detailing hazardous materials operations, processes, disposal and storage **shall be reviewed and approved in writing** by the Fire Chief and Director of Public Health and Human Services.

or act on anything relative thereto.

PLANNING BOARD REPORT AND RECOMMENDATION

In accordance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, after due notice had been given, the Planning Board held a public hearing on February 5, 2004 in Town Hall on zoning amendments related to the Village Square General Business District (B-2 or Brookline Place Parcel) and changes to the definition of research laboratory use (Use 36A).

The advertisement for the public hearing appeared in the Brookline TAB on January 22 and 29, 2004. Copies of the notice were sent to all Town Meeting Members, neighborhood associations, Town agencies, Massachusetts Department of Housing and Community Development, Metropolitan Area Planning Council, Planning Boards of Boston and Newton, and others. The minutes of the hearing and record of citizen attendance are on file in the Planning Department.

At the close of its February 5th public hearing, the Planning Board voted favorably on the proposed amendments subject to the completion of a Memorandum of Understanding between the Town and the Owner before the March Town Meeting, with the following report and recommendation.

Introduction

Town Meeting Members, at the November 18, 2003 Special Town Meeting, considered Article 17, as proposed by the Board of Selectmen, to revise the dimensional and vehicular service use (parking) requirements pertaining to the G-2.0 (VS) Village Square zoning district. Article 17 also proposed amendments to the Zoning By-Law's Table of Use Requirements by amending the description and requirements associated with special permit use 36A Research Laboratories.

Town Meeting, after considering the combined reports from the Planning Board, Board of Selectmen and Advisory Committee on the proposed Zoning By-Law amendments, voted "To refer the zoning amendments proposed in Article 17 to the Planning Board for study and report to a future Town Meeting."

The following report summarizes the Planning Board's further findings and recommendation on the subject Article, which is proposed for revision based on the significant review process and report completed in January by the Brookline Village Gateway Project Review Team (PRT).

Background

As described by the Planning Board's previous report to Town Meeting, the proposed Article 17 to amend the Zoning By-Law was submitted to support the appropriate

redevelopment of the underutilized 2 Brookline Place property and to provide new zoning standards that would refine the current permitted building height, Floor Area (FAR), open space, parking and related regulations of the G-2.0 (VS) zoning district. The proposed Zoning By-Law amendments were drafted to insure that future development and design plans would be: harmonious with the surrounding land use pattern; reinforce this unique mixed use gateway area to Brookline Village; and to respond to the strategies identified in the Preliminary Comprehensive Plan for the Route 9 Corridor.

Two years ago, the Town's Economic Development Advisory Board (EDAB) formed an Office Space Task Force to encourage development of new office space in Brookline, motivated by a desire to both increase the commercial tax base and supply additional foot traffic for small businesses located in our commercial areas. The Task Force identified a few areas where office space could be feasible, and approached those property owners to invite them to work with the Town to generate good project proposals. When the owner of the 2 Brookline Place site expressed willingness to work with the Town, EDAB asked the Board of Selectmen to appoint a Project Review Team (PRT).

Since the formation of the PRT, there have been 12 public meetings and 3 design subcommittee meetings to consider issues related to: alternative building height, massing and development schemes; office and medical laboratory development options; off-street parking demands; transit oriented development programs; Route 9 traffic conditions and mitigation; shadow studies; pedestrian movements; open space and streetscape improvements; and economic and fiscal impact reports.

In January, the PRT submitted a comprehensive final report for consideration by the Board of Selectmen, Planning Board and Town Meeting. The final report includes the following comparison of key development, design and related issues addressed through the PRT process and as related to the proposed initial and current development programs for 2 Brookline Place.

Summary of PRT Design and Development Issues and Comparison of Initial and Current Development Proposals for 2 Brookline Place

Source: Final Report, Brookline Village Gateway Project Review Team, January 2004

PRT Issue	Pre-PRT Development Proposal	Current Development Proposal
Height	155 feet (plus the additional 10 feet zoning allows for penthouse)	125 (plus the additional 10 feet zoning allows for penthouse)
Floor area ratio	4.0	4.0
Massing	Structure on most of the site	Varying heights, step backs all around the building

Location of parking	1 floor ½ above, ½ below ground, 3 floors above ground	2 floors below ground (lab and office) plus one floor above ground (office only)
Pedestrian connections	Narrow, roofed pedestrian connection	From MBTA station through open space, across Route 9 and along Route 9
Open space	None	Approximately 25% of site
Lab Safety	No clarity about what types of labs were under consideration	Limited to Level 1 & 2 with regulatory controls recommended
Tax payment if bought by non-profit	PRT raised as big concern	Developer agreed to transfer land ownership to Town; lease will require rent equivalent to taxes due regardless of ownership
Taxes	Not quantified	\$830,000 - \$1,140,000 net new taxes per year
Sustainability	PRT proposes “green building”	Developer committed to “green” building principles
Gateway	No developer proposal; PRT defines as trees	Sidewalk widened on Route 9 to facilitate green row of trees, plus row of trees on Pearl Street
Off site improvements	Not defined	More definition to occur during Design Review; developer offers to improve the MBTA station, crosswalk on Pearl Street and Route 9 crossing; minimum of 1% project cost dedicated to these

In addition to the work of the PRT, the preliminary Brookline Comprehensive report was submitted in January of 2003. The Preliminary Plan defines the Route 9 Corridor as a primary focus area and advances the following preliminary objectives that are relevant to the subject Article.

Objectives for the Route 9 Corridor and Brookline Village Gateway from the Preliminary Comprehensive Plan

Source: Preliminary Comprehensive Plan
Goody Clancy & Associates, January 2003

- Advance significant new mixed-use commercial development and affordable housing along Route 9 in targeted areas.
 - Amend zoning to support additional commercial and residential development in selected locations.
- Gateway North: Create an attractive new gateway to the Town at Brookline Village.

- Create a visual gateway to the Town of Brookline at the Boston line with a signature new open space combined with new mixed-use development projects.
- Extend the Emerald Necklace to High Street.
- Preserve open space connection to station.



- Promote mixed-use with office/retail/restaurant focus; incorporate other public amenities/uses.
- Establish transit oriented development district overlay.
- Incorporate active uses at street level.
- Create wide and attractive sidewalks along Route 9.
- Locate taller buildings along Route 9, stepping down to Village.
- Enhance Pearl Street's character and improve the Station Street environment.

*Preliminary Vision for the Route 9 Corridor: Brookline Village Gateway.
January 2004.*

Findings and Recommendations

The Planning Board commends the significant review process that has been undertaken by the PRT. Based on the work of the PRT and a review of the objectives of the preliminary Comprehensive Plan, the Planning Board concludes that the resulting revised development program for the 2 Brookline Place site should serve as the basis for an amended warrant article to be considered by Town Meeting. The Planning Board submits the following findings related to the proposed redevelopment of the 2 Brookline Place site and the amendment of the G-2.0 (VS) Zoning By-Law requirements:

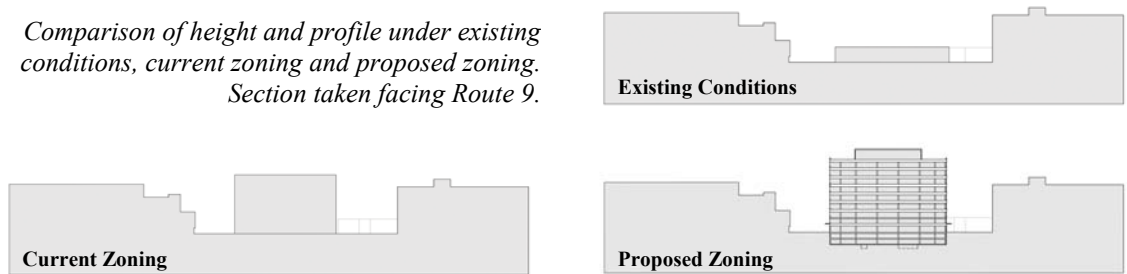
1. The proposed increase in FAR from 2.0 to 4.0 is appropriate given the scale of existing development within and adjacent to the G-2.0 (VS) zoning district. Development at this intensity should be focused within this location to provide an additional employment, visitor and customer base to benefit the Brookline Village commercial area.

*Comparison of scale under existing conditions and proposed zoning.
Section taken from Station Street to Brook House.*



2. The maximum increase in building height from 100 ft. to 125 ft. will also be appropriate given the height of surrounding structures and the sensitivity and orientation of the preliminary building design to shadows and views.

*Comparison of height and profile under existing conditions, current zoning and proposed zoning.
Section taken facing Route 9.*

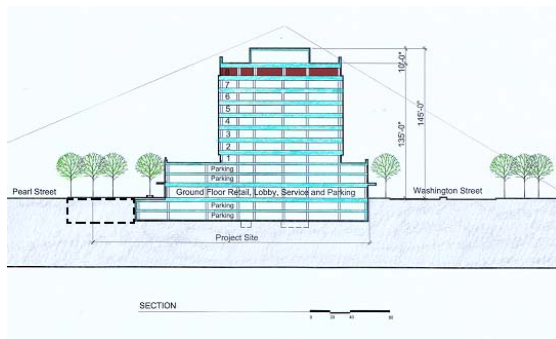


3. The proposed development provides well defined entrances and will enhance pedestrian movements and orientation to and from Brookline Village, the T station and along Route 9 leading to the Emerald Necklace.

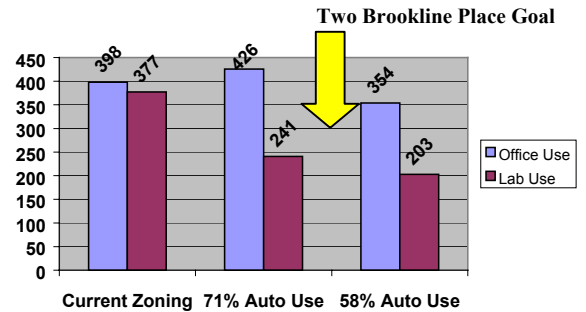


Transitions and connections between Brookline Village, the T station, Route 9, and the Emerald Necklace.

4. The proposed design of the building base, retail frontage, streetscape and sidewalk enhancements and public plazas will provide for a significant and attractive open space and street level environment that will assist in redefining this important Brookline gateway.
5. The demand for parking and the projected traffic impacts can be effectively reduced through the introduction of Transportation Demand Management strategies.
6. The proposed redevelopment appropriately provides opportunities for shared parking during both the am and pm to serve employees, customers and residents.
7. The underground construction of supporting off-street parking assists in minimizing the increased height of the proposed building and insures that public open space and retail at street level will be the dominate ground level activities.

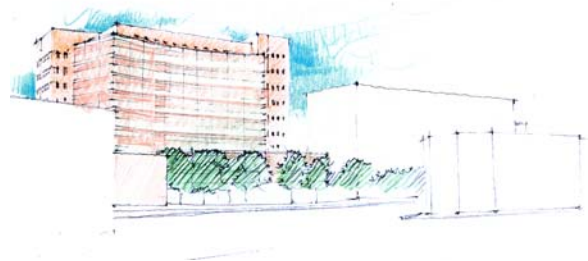
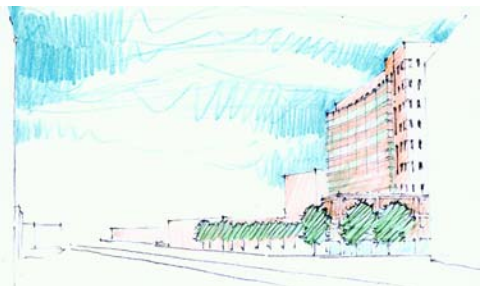


Possible underground parking and building height scheme.



Parking Demand Comparison.

8. As a major impact project subject to Section 5.09 Design Review of the Zoning By-Law, the proposed development will be subject to further design and architectural review enabling further refinement and public review of this important private investment that will enhance Brookline Village.



Views from Station Street and Brookline Village

- 9. Further modification of the Research Laboratory special permit use category will insure that, if in fact this use is pursued, the type and intensity of potential laboratory uses will be significantly limited and a high level of review and oversight will occur.

- 10. The inclusion of a minimum of 1% of construction costs for off-site improvements allows the Town significant opportunities for enhancing the general Village area in accordance with neighborhood objectives and assuring effective traffic mitigation measures are undertaken.

Therefore, the Planning Board, based on the above findings and review of the conclusions of the PRT meetings and report, unanimously recommends FAVORABLE ACTION subject to the completion of a Memorandum of Understanding between the Town and the Owner before the March Town Meeting, on the following zoning amendments.

- I. With respect to the Village Square General Business District G-2.0 (VS):
 - A. Amend the Floor Area Ratio Maximum and Height Maximum for the G-2.0 (VS) District within TABLE 5.01, TABLE OF DIMENSIONAL REQUIREMENTS as referenced in SECTION 5.00 – DISTRICT REGULATIONS of ARTICLE V DIMENSIONAL REQUIREMENTS, as follows (new in italics and bolded).

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G-2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0	2.5	none ⁴	45	60	70	none	none ⁷	10 + $\frac{L^8}{10}$	none	none ⁵
			4.0 (VS) ¹⁷	N/A		125(VS) ¹⁷	N/A 45 (CA)	100(VS) N/A 55(CA)					

- B. Insert the following new footnote 17 after the Floor Area Ratio Maximum and Height Maximum permitted within the G-2.0 (VS) District, as shown in the above revised TABLE 5.01, TABLE OF DIMENSIONAL REGULATIONS and in the footnote section below the table.

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research laboratory use (Use 36A): one parking space per 1,000 g.s.f.
- The number of parking spaces for the above uses in a G-2.0 (VS) District may be reduced by special permit, however, by no more than 15%, where it can be demonstrated to the Board of Appeals that it is warranted due to provisions in a Transportation Access Plan that includes recognized Transit Demand Management programs. A Transportation Access Plan Agreement shall be a condition of the special permit, shall be submitted for review to the Director of Transportation and the Director of Planning and Community Development, and shall require an annual report to the Director of Transportation. This annual report shall be accepted only after a determination by the Director of Transportation and the Director of Planning and Community Development that the Transportation Access Plan is working satisfactorily, and if not, that the plan will be changed and implemented to their satisfaction.

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In ARTICLE IV – USE REGULATIONS, by replacing the text of Principle Use 36A in SECTION 4.07 – TABLE OF USE REGULATIONS with the following:

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or act on anything relative thereto.

SELECTMEN’S RECOMMENDATION

The Board of Selectmen unanimously and enthusiastically recommends **FAVORABLE ACTION** on the warrant articles before this Special Town Meeting.

These warrant articles would support the continued evolution of a potentially exceptional project at 2 Brookline Place. This project is good for our Town for many reasons:

1. This represents **great economic development**, and Town Meeting gave a clear mandate to make economic development a key piece of the Town’s strategy to manage budgets in a post-Proposition 2 ½ environment. This one building would yield roughly \$1 million in net new taxes for the Town.
2. The project sets a standard for “**smart growth**”—sustainable, transit-oriented development with considerable new open space. The new open space proposed is roughly the same size as St. Mark’s Square, and would be the Town’s first “green building” by complying with forward-thinking international environmental goals.
3. Brookline Village clearly needs **new investment to prosper** and we cherish the town-like qualities the Village represents. The business owners of Brookline Village have expressed the need for new foot traffic, and the loss of office workers in the area has put many of these local owners at risk.

Before discussing these benefits, it’s important to be clear about what we are and are not doing at this Town Meeting. We are NOT approving a project, but rather setting the stage for a project to emerge along the lines of the concepts presented here. *The three warrant articles will enable this project to be developed further through a thoughtful and rigorous design review and approvals process.* The process going forward, like the

process that brought us here, will allow for extensive citizen input to shape an ultimate design that meets the needs of the neighborhood and broader community. We are committed to that.

This is different than other recent economic development initiatives, since it takes place on private land with another set of economic and political constraints. Through the cooperation of the owner of this parcel, we have been able to generate a good deal of information about what the project will include and some of the potential impacts it might create. However, at this stage we simply seek a zoning change to allow the developer to BEGIN the approvals process during which further details and mitigations will be defined, while authorizing the Town to take action to protect the Town's ability to permanently collect taxes from this site regardless of its ownership status.

Explanation of the Warrant Articles

Article 1 seeks a zoning change to the Village Square General Business District to:

1. Increase the allowable Floor Area Ratio (FAR) from 2.5 with undetermined public benefits to 4.0 with a clearly articulated minimum set of public benefits.
2. Increase the allowable maximum height from 100 feet to 125 feet.

Per the amendment proposed by the Advisory Committee, which the Selectmen will take action on as part of its March 2 meeting, both of these measures are applicable only if the site is between 50,000 and 65,000 square feet, meaning it applies to 2 Brookline Place only.

Further, these increases in density/height are allowed IF AND ONLY IF the development provides the following **minimum** public benefits:

1. 20% of the surface area dedicated to landscaped open space;
2. 60% of the parking underground;
3. 25% of parking available to neighbors for overnight use;
4. 1% of construction costs dedicated to off-site improvements.

In addition, the article sets forth *minimum parking standards*. It leaves in place the current townwide standards for retail and office use, at 1/350 gsf (gross square feet) and 1/600 gsf respectively. However, since there currently is no standard for laboratory use, it establishes that standard, for this site only, at 1/1000 gsf. This does not represent a reduction in the parking requirement per se; rather it takes the ratio of employees anticipated to parking supplied for our current office zoning and applies this factor to laboratory uses. Laboratories have lower "employee densities" than do office buildings – meaning that fewer employees/square foot are expected. In labs, more of the space is dedicated to bulky equipment. A lab building typically has 1.67 employees/1000 gross square feet where an office building has 4 people/1000 square feet. Thus, this zoning

proposes building roughly 1 space for each 1.7 lab employees, while our standard office zoning requires 1 space for each 2.4 office employees.

The zoning language also provides an opportunity for the Town, via the Zoning Board of Appeals, to grant up to a 15% reduction in parking requirements if a Transportation Access Plan, reviewed by the Town Traffic Engineer and Planning Director, demonstrates that the set of Transit Demand Management (TDM's) measures committed to by the developer will reduce auto usage by the equivalent amount. An annual report documenting actual auto usage and the impacts of the TDM's is submitted by the developer. If the reduction in auto use envisioned does not materialize as planned, the zoning language allows the ZBA to order further transit incentive or supply increase measures or any other remedies they devise.

Finally, the zoning article modernizes the definition of allowable laboratory use in the Town, but applies this new definition to 2 Brookline Place only. The laboratory uses allowed are limited to Level 1 and 2 biohazards, as defined by the National Institutes of Health, and are allowed by special permit only and only after the Director of Public Health and Fire Chief approve. Dr. Balsam has made it clear that his support for a special permit will be conditioned on the commitment of the developer to pay for any additional staff he needs to supervise construction and operation.

Articles 2 and 3 facilitate the conveyance of the land from the Winn Companies to the Town of Brookline, and then allow the Town to ground lease, for 95 years, the land back to Winn for the purposes of an approved development at 2 Brookline Place. This mechanism protects the Town from the possibility of the purchase of the building by a non-profit entity and the potential subsequent removal from the tax rolls. The ground lease will include a provision for rent, the amount of which will be set annually by the Assessors as equal to the taxes due. The developer will receive credit for any taxes paid, so that in a normal year there would be no rent. However, in the event the property did not pay taxes, there would be no credit against the rent and the rent due would be equal to the taxes due. Thus, the Town receives the full tax payment due no matter what. These transactions require Town Meeting authorization, first to accept the land conveyance and second to seek a home rule petition to allow the long-term ground lease.

While some questions have been raised about the certainty of this land transfer, the Board of Selectmen will have signed a binding agreement with the developer prior to the Town Meeting, committing him to transfer to the land to the Town as a condition of pulling a building permit. This legally enforceable document binds the developer to this ground lease solution.

Benefits to the Town - - the Fiscal Context

We believe strongly that this is great economic development, and we reaffirm Town Meeting's overwhelming mandate that economic development must be a part of the Town's strategy to manage budgets in a post-Proposition 2 ½ environment.

In 1994, faced with the impacts of the budget austerity inevitable after the property tax levy growth limitation established by Proposition 2 ½, Town Meeting overwhelmingly endorsed the creation of the Town's first Economic Development Office and Economic Development Advisory Board. Town Meeting defined two objectives:

1. Expand the commercial tax base to bring more revenue into Town coffers but not at the expense of the homeowners; and
2. Support existing small businesses.

Since that time, the commercial tax base has shrunk and the need for commercial tax growth enlarged. In 1994, commercial properties represented approximately 13% of the property values in Brookline; in 2004, they were at less than 9%.

The small business community continues to thrive, but also faces continued challenges from the homogenization of retail nationally. While Brookline maintains 75% of its storefronts for small, locally-owned businesses, the competition from mega stores and mega malls determines the climate. The Economic Development Office works closely with the various merchant associations and the Chamber of Commerce to promote shopping locally through the 1st Light Festival and area celebrations.

Economic development was never meant to stand alone as the Town's strategy to manage restricted tax growth. The Town embarked on a series of efficiency and revenue enhancement initiatives which was highly successful. The Town went from 800 employees in 1990 to 750 in 2004. When compared to the pre-Prop 2 ½ figure of 900 employees, the reduction is even more dramatic. Just recently, we reduced DPW sanitation staff by 1/3, combined Town/School information technology operations, and procured a long-term electricity contract in 1998 that saved the Town approximately \$700,000 while purchasing streetlights from Boston Edison resulting in more than \$400,000 in annual savings, just to provide a few examples.

On the revenue enhancement side, we increased the parking meter rates to yield an additional \$900,000/year, increased the fine structure for parking violations to yield an additional \$1,750,000/year and increased certain fees to generate an additional \$370,000/year. We aggressively pursue grants, including the \$6.9 million for Beacon Street Reconstruction, \$3.5 million for the Main Library rehab, and close to \$750,000 in education grants for kindergarten and early education. We plan to fund the Brookline 300 celebration with non-tax revenues, and gained \$3 million from the Ryder Cup tournament.

So we continue to seek all opportunities for increasing efficiency and securing outside revenues, while recognizing that pressures of cost increases and revenue losses outside the Town's control continue:

- FY05 will mark the fourth time in five years that health care costs escalated at double-digit rates;
- Between FY02 and FY04, state aid dropped by \$2.7 million;
- Special education continues to consume most of the School Department's annual growth;
- Utility costs continue to escalate, driven by external events outside of the Town's control.

New growth offers an important element in the budget-balancing exercise. Over the past six years, New Growth produced \$11.8 million that has been built into this year's budget -- to put that in context, the full 2 ½ % increases in the property tax levy for the same year was \$14.5 million. Or, said another way, without the new growth over the past five years, this year the Town would have faced the need to cut nearly \$12 million from programs. This new growth figure includes all new growth, meaning that encouraged by economic development efforts and projects that simply happen. However, there is reason to focus on economic development:

- Overwhelmingly, the new growth that was not sponsored by the Town's economic development program was luxury residential – it takes pro-active effort to get commercial growth such as at the Webster Street Hotel, the reuse of the Town Barn building at Kendall Crescent, and 1010 Commonwealth Avenue; and
- Even luxury residential growth is falling – building permits are the best indication of future growth and they are down \$400,000, or 33%, through the first six months of FY04 from where they were for the same period of FY03, suggesting falling new growth figures in the future.

This project promises to bring in roughly \$1 million in net new taxes each year. This alone, then, restores more than one-third of the state aid cuts faced last year.

Why do we care about maintaining revenues? Town programs affect people's lives very directly and profoundly. Brookline's schools and health programs offer opportunity to all. They keep our streets clean, free of snow and ice and potholes, and help make the experience of living and working in Brookline safe and pleasant. Public safety is obviously critical to us all. And while \$1 million may seem small compared to the overall budget, it can pay for:

- 20 police officers or firefighters; or
- 25 teachers; or
- 30 public works staff members.

Moreover, to get this level of revenue growth from residential construction, we would need to build more than ninety \$1 million homes - - with far more intrusive land use implications than this single commercial building.

If we want economic development at all, we don't have many opportunities as good as, or even close to, this one.

Benefits to the Town -- Great Economic Development Only

Regardless of the Town's fiscal needs, only good economic development would be worthy of our support. To define "good", the Economic Development Advisory Board (EDAB) sponsored 3 public forums and these criteria emerged:

- character – among other things, creates a pedestrian-friendly environment and enhances the streetscape;
- impacts – provides amenities such as open space, public art and/or locally identified needs while managing potentially negative impacts and generating a net increase in new revenues;
- sustainability – promotes the use of mass transit and environmentally-friendly practices; and
- process – provides real opportunities to work out concerns of affected parties.

To these criteria, we would add the collaboration with a developer with an established track record of excellent design, construction and maintenance.

The zoning change before Town Meeting offers the prospect of a project that excels in relation to all the above criteria:

- the site plan maximizes public open space, offering as much as 29% of the site for this purpose, with a mixture of green and plaza surfaces;
- the building design concepts promise an attractive building which visually enhances the neighborhood and entryway to Brookline, including a widened sidewalk at Route 9 to allow for the planting of a row of street trees;
- the commitment to fund off-site benefits, including improving connections between the Village and the other side of Route 9, as well as the promise of new overnight resident parking spaces, meet important neighborhood goals;
- generates roughly \$1 million in net new revenues while demanding minimal Town resources;
- promotes mass transit usage both through aggressive measures and by virtue of its location;
- supports Brookline Village merchants by bringing between 300-500 new workers into the Village to shop and dine during lunch/dinner hours and breaks.

One further aspect of this project is worth noting: the developer has a track record that engenders confidence. While in some ways a zoning vote is not about the property owner, this particular owner has demonstrated repeatedly good faith and a commitment to Brookline, giving confidence that any project developed on this site will be a long term credit to the Town. Four elements of their track record are significant:

- *They build to keep.* Unlike some developers who build and then immediately sell, the Winn Companies keep virtually all the buildings they build. They currently have 64 properties in their management portfolio that they developed -- 38 of these have been owned for more than 20 years. With a long term perspective that ownership brings, design/construction decisions keep the long view in mind -- no point in shoddy materials that deteriorate rapidly, energy conservation investments are worthwhile, and they intend to be in the neighborhood so good relations are important.
- *They are reputable property managers.* Winn has a national reputation for quality property management (Winn Residential manages 241 properties in 18 states). As manager of 2 Brookline Place, they have consistently maintained neighborhood retail and turned down requests for space from national chain stores. The neighborhood has repeatedly complimented Winn on the maintenance of the open space at 1 and 2 Brookline Place.
- *They are good corporate citizens.* Winn refinanced, without any Town incentives, to maintain 100% of the original affordability at The Village of Brookline for an additional 10 years beyond when their mortgage would allow them to convert to market rate units. Several million dollars were invested in the property to make it work better for its residents and more viable for the long run. The computer learning center they built there is staffed 3 days/week with classes for residents.
- *They are committed to Brookline.* Roger Cassin, managing partner of Winn Development, and Arthur Winn, founder, both live in Brookline and have raised their families here. Mr. Winn is a graduate of Brookline High School. They were one of the first companies to participate in the Town's Work Connections for Youth Partnership. The Village of Brookline hosts National Night Out for the entire Town, among other contributions.

The project clearly exceeds the criteria for good economic development, qualifying it as great economic development for our Town.

Benefits to the Town -- Smart Growth

There has been a lot of talk locally and nationally about “smart growth”—a movement that targets growth to already-busy areas in the hopes of avoiding the negative consequences of suburban sprawl. As Michael Dukakis reminds us, this project exemplifies what communities across this nation are clamoring for:

- The entrance to the proposed building will be within 200 feet of the Brookline Village “D” line stop, at the junction of 3 bus lines, on the route of the Longwood Medical Area Shuttle and a short walk to the “E” line stop at South Huntington Avenue. This is surely transit-oriented development at its best.
- Transit usage is further encouraged with a series of “Transit Demand Management” (TDM) measures such as subsidized T passes paid for by the developer, zipcar spots in the building and carpool rate and space preferences.

- New open space, landscaping and trees to enhance our environment;
- Brookline's first "green building", setting the standard for environmental sustainability by reducing greenhouse gas emissions and the use of toxics and increasing the use of recyclable materials and energy efficiency.

In the vein of "think globally, act locally", this project puts Brookline on the map in promoting environmentally responsible actions and advances our commitment to reducing the impacts of climate change.

Benefits to the Town -- Protect Brookline Village

Brookline Village is often seen as the heart of Brookline. Certainly not geographically, and not even commercially, but perhaps in the hearts and minds of Brookliners, the Village's collection of architecturally attractive small shops and streets reminds us of what we love about our Town.

Brookline Village as we know it is at risk. Just this February we lost shake the Tree Gallery, a store that sold art and crafts by local residents. Village Fish is contracting, reducing its space so it can hopefully survive on a smaller scale. No Kidding is up for sale. The Village Smokehouse, an old standard in the Village, has gone from serving 6 lunches/week to serving 2. The owner of the Smokehouse reminded us that when business was up he supported 10 sports teams in Town. Now he can support only two.

Fifteen business owners signed a letter stating they are at risk, and the cause is the absence of sufficient foot traffic in Brookline Village. Many tie this vacuum to the departure of Harvard Pilgrim's offices from 10 Brookline Place. With them went the foot traffic from workers purchasing lunch, gifts and other items during their breaks and after work. The promise of new office and/or lab workers filling the streets again gives hope and reason to hang on. Once they leave, experience shows that they will be replaced with real estate offices, insurance companies and doctor's offices, but not with new small retailers. And given the national trends towards large retail, it is unlikely that we'll get this "main street" character back.

This project can offer an attractive new building, with a plaza/open space linking the building to the Village. The developer has promised to provide space in the lobby to provide information about Brookline Village businesses. With 300-400 workers seeking lunch and errands mid-day, the Village businesses can attract new shoppers and diners to support their shops. As Alan Kaplan told us:

"the addition of 300 or 400 people working within walking distance of our businesses, looking for lunch, shopping for gifts, picking up a bottle of wine, buying flowers or getting their dry cleaning every single work day will be the difference between making it and not making it for some of us."

And this revitalization of the business climate will benefit the residents of Brookline Village by assuring an array of interesting dining and shopping opportunities survive for the weekends and evenings.

How Does this Fit with the Town's Emerging Comprehensive Plan?

The Town has for years engaged in many different long range planning efforts and the Comp Plan Committee made a special effort to incorporate these plans in the draft comp plan document. Four specific planning efforts are significant here:

1. the open space plan, which clearly articulates a need for increasing publicly-accessible open spaces especially in dense neighborhoods -- and specifically mentions the goal of an access greenway with an improved crossing at Route 9 to help provide a safe pedestrian/bicycle route linking significant public open spaces -- this proposal offers the chance to achieve this goal at private expense.
2. the development committee study, which argued that if you understand Proposition 2 ½, it's impossible to conclude anything but that economic development is essential to preserve the quality of life in our Town.
3. the economic development forums, whereby our citizens defined good economic development as transit-oriented, supporting local businesses, respecting neighborhood context and incorporating citizen input.
4. the Office Space Task Force Report, which argued that Brookline would not be a sought-after destination for office developers without action on the Town's part. The report specifically mentioned the sites identified by the Development Committee (including 2 Brookline Place) as good targets.

The Comp Plan forums further confirmed the development committee findings that the 2 Brookline Place parcel was an excellent location for redevelopment, and set some general parameters and objectives for the area. When we formed the PRT, it was with the understanding that this group could build on that work and flesh out ways for those general principles to apply to a real opportunity. The Project Review Team (PRT) took as a starting point many of the goals set for the Route 9 corridor. **The ONLY way real development can interact with Comp Plan objectives is through a process exactly like the one we've just been through. No comprehensive plan could set up the discussion more thoughtfully or usefully than what we just did.**

Comprehensive planning is meant to frame the community's overall objectives and priorities. It is not meant to micro-manage the development process for every site, especially in a vacuum from what real opportunities there are, which can only happen in dialogue with a real developer who can provide the resources to determine what can actually happen versus what is theoretically desirable.

There can be no better example of the futility of development planning without a reality check than the Town's own effort to spur redevelopment on this very site. Ten years ago the Development Committee wisely recognized that this was a good site. It worked tirelessly with neighbors and interested citizens to craft zoning for the site to encourage

development there. And they came up with an idea the citizens liked for zoning of 100 feet height and 2.5 FAR, but it was insufficient to spur any real development and so nothing happened for ten years and our citizens' wishes were frustrated. That's the last thing we want to repeat. The comp plan was never about designing abstractions, but rather for setting the context for real things to occur.

The time to seize the opportunity before us is NOW. The project to promote is the one that will emerge from the zoning change proposed for this Special Town Meeting. This is economic development at its best -- to turn this down is to turn our back on the path we chose 9 years ago -- to mitigate the impacts of Proposition 2 ½'s limitations on the growth of the Town budget, to enhance our ability to provide quality services. To turn this down is at odds with everything we've heard from the residents of Brookline who want their libraries open, their streets clean, their elders to have excellent programs and their children to attend the finest public schools. We urge you to embrace the unique opportunity before us by voting FAVORABLE ACTION on the warrant articles on March 4.

The Board of Selectmen unanimously voted **FAVORABLE ACTION** on February 10, 2004, on Article 1 as originally proposed. Since then, the Advisory Committee voted favorably on an amended version of Article 1. As of the writing of this recommendation, the Selectmen have not had an opportunity to vote on the amendments. The Board will do so at its meeting scheduled for March 2, at which time the Planning Board's report on the proposed amendments will be available. A supplemental report stating the Board's recommendation on the amended Article 1 will be made available prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

INTRODUCTION

These warrant articles would authorize construction of a taller and more massive building than would be currently permitted anywhere in Brookline. The proposed building would be located at Two Brookline Place. While the zoning amendments are intended to permit the construction of one building, the amendments, as proposed, would also apply to the entire zoning district, which includes the present buildings at One Brookline Place and Five Brookline Place. The Advisory Committee is offering language, which effectively limits the proposed mass and height changes to Two Brookline Place.

These Articles are offered as a result of the work of the Town's Economic Development Advisory Board (EDAB). In follow up to the work of EDAB's Office Space Task Force,

last Spring EDAB approached the owner of Two Brookline Place regarding opportunities for re-developing the site to create additional tax revenue. Two proposed uses have been suggested: a biolab or an office building, with a laboratory apparently being the developer's preferred option. EDAB submits that the proposed development will generate approximately \$1,000,000/year in new revenue. It is not anticipated, however, that this revenue stream will be fully available until approximately FY 2009. The proposed zoning changes were originally offered at the Fall Town Meeting, but due to many unanswered questions and concerns about the speed with which this was being pursued, the Selectmen requested that it be referred back to the Planning Board for re-consideration at a future Town Meeting. Town Meeting approved such referral.

In the intervening period, additional meetings of the Project Review Team were held. The warrant articles were modified and put on the warrant for the Special Town Meeting. The major changes to the original article are that the proposed height of the structure has been reduced by one floor (ten feet) by reducing parking requirements and moving some parking underground and the owner has agreed to convey the property to the Town which will then execute a ground lease to the developer. This is done in an attempt to circumvent the potential problem of future conveyance to a non-profit entity.

Set forth in this report is a very detailed analysis of the nature of the proposed zoning changes; the history of zoning at the site; the nature of the public process to date; how the articles relate to the Comprehensive Plan; how the articles might affect future development at other sites; whether the zoning changes can be limited to the Two Brookline Place site; what is known about potential impacts; the financial aspects of this proposal; legal aspects of the proposed lease arrangement; and finally, our recommendations.

ZONING AMENDMENTS

The zoning amendments originally proposed in Article 17 at last fall's Town Meeting are now presented in the form of three articles that refine the intent of the original article put forward at the fall Town Meeting. The bulk of the three articles concern the Village Square General Business District. Article 1 also addresses the types of laboratory uses allowed in town, addressing the question town-wide.

The Village Square General Business District was established in 1993 when the area was re-zoned to allow buildings up to 100' in height with a FAR of 2.5 with public benefit incentives. Articles 1, 2 and 3 were placed on the warrant for a March special Town Meeting after article 17 was referred back to the Planning Board for further review in the fall.

These articles are presented in response to a redevelopment proposal for 2 Brookline Place by Winn Development, the owner of 1, 2, and 5 Brookline Place. The articles include changes to the established height and FAR (floor area ratio) limits and also establish a number of conditions that must be satisfied for any buildings on lots within the district.

Zoning and land ownership considerations for the Village Square (VS) General Business District include the following:

- increase the allowable height and floor area ratio for buildings in the district to 125' plus 10' for a mechanical penthouse and a FAR of 4.0
- designate the district a Special District with the following conditions and allowances:
 1. New buildings with a FAR greater than 2.5 and a height greater than 100' will require the 5.09 Design Review process and must meet the 9.03 requirements for special permits
 2. 20% of the lot must be landscaped open space
 3. 60% of parking must be below grade
 4. 25% of parking shall be offered to residents for overnight parking
 5. 1% of hard construction costs will be designated for off-site streetscape improvements
 6. Specified parking requirements (outlined in §1. C. b.) may be reduced by 15% by special permit and demonstration of a viable Transportation Access Management Plan (TDM) approved annually by the Director of Transportation and the Director of Planning and Community Development

The proposed changes in building mass and height in the district are summarized in the following table:

FAR/HEIGHT - ALLOWABLE AND WITH RE-ZONING

	Existing	Proposed
FAR by right	2.0	2.0
FAR with public benefits	2.5	4.0
Height by right	45'	45'
Height with public benefits	100'*	125'*

****An additional 10' in height is allowable for mechanical penthouse***

Re-Zoning Town-wide

Part of the zoning amendment would be effective town-wide.

The Table of Use Regulations would be changed to allow federally designated biosafety Level 1 or Level 2 research laboratories through the special permitting process in General Business, Office Business Districts and Industrial Districts. Current zoning only allows research laboratories "not involving noxious or hazardous substances or processes". The Advisory Committee is offering language that effectively limits the applicability of this section to very few parcels in town.

Article 2

Article 2 requests a home rule petition authorizing the Town to enter into an up to 95 year lease agreement for Two Brookline Place including terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate taxes.

Article 3

Article 3 would authorize the Board of Selectmen to enter into an up to 95 year lease agreement for Two Brookline Place including terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate taxes. We have identified a technical defect in the language in the Article in that it doesn't authorize the Town to accept the conveyed land. Town Counsel was not available at the time of our vote to offer language to correct the technical defect. We are reviewing revised language for Article 3 and a Supplemental Report, if warranted, will be made available prior to Town Meeting.

BACKGROUND

Physical Boundaries

The Village Square General Business District is bounded by Brookline Avenue, Route 9 (Boylston/Washington Street) and Pearl Street. The zoning district was defined in 1992 when the site was upzoned by Town Meeting, following the work of the Brookline Development Committee's 1991-92 Brookline Townwide Development Study. Prior to 1992, this area of Brookline Village was zoned for general business G 2.0. The Village Square General Business District is in Precinct 4.

The neighborhoods abutting this zoning district include diverse parts of Brookline Village. These include:

- Station Street which abuts the MBTA Station and tracks and consists of mixed uses of residential and commercial space
- The Village at Brookline (owned by Winn Development) residential development
- Brook House, including commercial, office and residential development
- Juniper Street Coop residential development

Building heights in the VS district and surrounding the zoning district are as follows:

- Brookline Fire Station Tower 84' 10"
- 10 Brookline Place - 82' 5" and 58'-5"
- 1 Brookline Place - 92' 5" and 78' 10"
- Station Street buildings - 57' to 52'
- The Village at Brookline - 71' and 3 story townhouses
- Brook House - 115' and 112'

10 Brookline Place (Hearthstone Plaza) is directly adjacent to the district on the west side of Pearl Street. This building currently houses AI New England, a private college of technology and communication and medical offices.

Significant nearby open spaces include portions of the Emerald Necklace, including Leverett Pond/Olmsted Park and the Muddy River and the Brookline Avenue Playground. Within the zoning district itself, there is an area of lawn, shade and ornamental trees, benches and paths that forms a connection between the Brookline Village T Station and Route 9.

Winn Development is the owner of all the properties in the Village Square General Business District G-2.0 (VS). These properties include:

- 1 Brookline Place
- 5 Brookline Place- former Waterworks Bldg.
- 300 car above grade parking garage on Pearl St.
- 2 Brookline Place (proposed for redevelopment)

Historical Background

In 1900 much of the property in this current zoning district was owned by Brookline Gas Light Company and included a gas holding tank (gas holder). Pearl Street was lined with small residential buildings. In 1950, the district included a number of auto body shops, a filling station and some small residential properties. These properties, when re-development began in the late 1960s, were known as the Marsh Urban Renewal Project, part of Brookline's Community Renewal Program. At that time, Route 9 was to be a connector road to the Inner Belt, the highway project that was halted in the early 1970s.

The B-2 parcel, which is now known as the Village Square General Business District or Brookline Place was the last remaining parcel of the Marsh Urban Renewal Project Area. By 1973, this parcel had not been redeveloped because of the impoundment of federal renewal funds. A plan for a hotel/retail development was developed at that time but never executed. Winn Development Company later built 1 Brookline Place and its parking structure and developed 2 Brookline Place, mixing the existing buildings along Rt. 9 with new construction. Interestingly, the plan from the 70's proposed moving the 1908 Water Works building to the center of a public plaza on the site to serve as an architectural link to the brick commercial buildings on Station Street.

The name of this zoning district comes from the original "Village Square" that was centered on the intersection of Walnut Street, High Street, Washington Street and Boylston Street (Route 9). This area today includes the Fire Station, Brookline (Savings) Bank, Dunkin' Donuts and 10 Brookline Place (Hearthstone Plaza).

CONSIDERATION OF PLANNING PROCESS TO DATE:

The importance of improved economic development in Brookline Village has long been part of the Town's planning agenda. A 1968 report on the Brookline Village Improvement Area states, "If the problems affecting this commercial district cannot be remedied, it is likely that a community other than Brookline will be the recipient of this potential increase in retail sales." Additionally the report reads, "Some of the most serious problems in the Village concern the weakness of the area as a commercial district. The entire area is congested with traffic and there is a substantial shortage of parking space and loading areas. Clearly a rehabilitation program with some clearance is necessary."

The issues we are grappling with today are certainly not new. There is a long history of redevelopment of this district dating back 30 years. Recently, we have had skilled and experienced members of the Economic Development Advisory Board and the Economic Development office of the Planning and Community Development Department to help lead important initiatives for a more robust commercial tax base for the Town. This work is vital to the fiscal health of Brookline and is valued by all.

The proposed zoning amendments that were originally before Town Meeting in the fall, and as modified, are now the subject of the March Special Town Meeting. They are the results of a number of converging initiatives on the part of the town including the work of the Economic Development Advisory Board, the on-going Comprehensive Plan process, as well as the site owners' present development opportunity.

In response to a variety of market driven issues and EDAB's work in promoting office development in the town, the owner of the 2 Brookline Place site engaged an architectural firm to develop a marketable program and design for parcel A of the B-2 site- the Village Square General Business District (1, 2 and 5 Brookline Place).

The developer's architectural team has been assisted in the initial stages of developing a design and program for an office or laboratory project for the site through the dedicated work of a citizen based Project Review Team chaired by two Selectmen. The PRT was established last spring and worked through January 2004. The work of the PRT is outlined in their January 2004 report, which was distributed to all Town Meeting Members.

Issues before Town Meeting

Town Meeting will be voting on three articles that support the program of the proposed re-development of 2 Brookline Place by a private developer. The issues before Town Meeting, while specific to this proposed project, have brought forward questions regarding the purpose of zoning, how re-zoning should be brought to the public and how future plans for economic initiatives interface with the planning and zoning processes. Although these questions will not be answered in the scope of this report or during Town Meeting it is important that the Town look carefully at the process of zoning change and its implications for the preservation and vitality of our neighborhoods.

PROPOSED RE ZONING

Public Benefits

Specific public benefits relating to open space, neighborhood parking, below grade parking and off-site improvements are called for in the proposed Village Square Special District zoning regulations. Current zoning requires that any building from 45' to 100' in height with an FAR of 2.0 to 2.5 requires unspecified public benefits. This regulation will continue to exist under the proposed Special District requirements for buildings between 100' to 125' with FAR of 2.5 to 4.0.

Long-Term Impact of Re-zoning on the District and Adjacent Districts

The three zoning articles have been developed in coordination with the developer's vision for Lot A of the Village Square District. There has been concern regarding potential development of the district as a whole, which Winn Development addresses in attachment L of the PRT report. The developer states that development on the other parcels would be unlikely citing the profitability of the existing structures, leases running until 2017 and the historic nature of the Waterworks building.

If the project at 2 Brookline Place is approved it would be operational in 3-5 years, bringing us to 2009, 8 years until 2017 when some leases at 1 Brookline Place run out. The developers' perspective is drawn from medium term scenarios, not long-term possibilities.

Many are concerned that zoning for the district should address the many unknown potential development scenarios that may arise over the long term.

2 BROOKLINE PLACE PROJECT SCOPE

The developer's project proposal includes many benefits and objectives that are not covered by zoning regulation and they are not guaranteed through the scope of the re-zoning and regulatory articles before Town Meeting.

Among these are:

- development of a "green building" with LEEDS certification
- employing an independent consultant to monitor laboratory construction and safety paid for by the developer
- employing an independent clerk of the works with experience in laboratory construction paid for by the developer
- monitoring of the required Transportation Access Plan Agreement by town staff and boards
- defining a "gateway" on Pearl Street and Route 9

Graphic Presentations

Because the warrant articles before Town Meeting are directly related to a developer's re-development proposal, discussion has centered on how this specific project proposal will work within the existing immediate neighborhood context and how this project's scale compares with allowable height and density within the zoning district. The town has relied on the developer's architect to provide graphic materials and models to support and illustrate the potential impacts of the proposed project.

Attachment K in the PRT report shows a number of loose free-hand sketches designed to illustrate the sense of the building within a minimally rendered context.

The Massing Comparison diagrams dated 1/20/04 in this attachment do not accurately reflect the potential As of Right building mass with unspecified public benefits. These have been corrected in recent presentations but confusion remains regarding the as of right buildable area within the zoning envelope. Town Meeting needs a clear understanding of these changes.

As part of the developer's and architect's most current (at press time) slide presentation, photomontages of a computer-rendered model of the site have been shown. Questions remain regarding how fairly these images depict the full impact of the project. Some have questioned the accuracy of the full color renderings of the project.

It is unavoidable that all images come with a point of view, but the Town should work to ensure that the public is given the clearest and most accurate scale representation of the project possible.

Scale and Massing in Relationship to Zoning

Most proponents and opponents of the proposed re-development scheme for 2 Brookline Place seem to agree on two points.

1. Brookline Village would benefit from the increased foot traffic of greater commercial development in the Village Square district and
2. The proposed massing, necessary for the economic viability of the project program, is greater than one would ideally propose.

From the point of view of many in the immediate neighborhood, the impact of the scale of the proposed project is the greatest problem. The attached diagrams are designed to examine both the impact of the proposed zoning on the full district and the potential for an alternative building pattern and massing for the district. The diagrams are an examination of scale and approach **but are not assertions of economic feasibility.** Diagram A shows the neighborhoods adjacent to the district. Diagram B illustrates the potential full build out of large-scale development on large parcels in the district. Diagram C illustrates a potential street-based mid-scale planning and zoning scheme. Like the developer's proposal for Lot A, the Pearl Street based plan could provide first floor retail and commercial space on above street floors. The street based plan

emphasizes the public realm of the tree-lined street and use of the street as a connecting link between neighborhoods, the Emerald Necklace and Brookline Village. This is a diagrammatic study, but the estimated square footage of the Pearl Street-based buildings would be 30,000 ft for each floor, or 120,000 square feet for a 4-story building.

If the building on the corner of Pearl and Route 9 were equivalent in massing to 1 Brookline Place it would be approximately 101,500 square feet. Implementation of such a scheme would require demolition of the existing above grade parking structure adjacent to 1 Brookline Place. It could employ transit-oriented development zoning strategies.

SCALE AND MASSING DIAGRAMS

A. NEIGHBORHOOD ISSUES

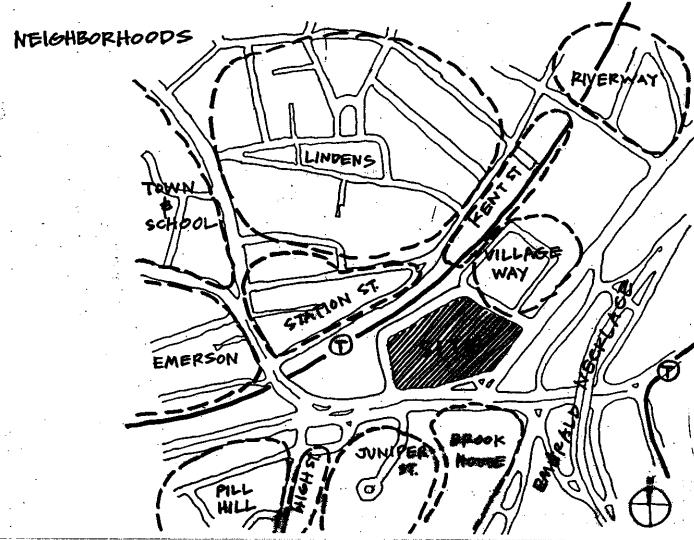
- preserving the quality of life of small-scaled residential streets
- supporting local businesses and improving economy of Brookline
- improving pedestrian and bicyclist routes for daily and recreational crossings of Route 9 to commercial and civic center and Emerald Necklace
- reconciling the difference in scale between the fabric of the small scale commercial /residential buildings on Station Street and Harvard Street with the large scale of existing urban renewal developments at Brookline Place
- identifying strategies for coping with increasing traffic along Route 9, Brookline Ave, High Street, Harvard Street, Kent Street, Walnut Street, Cypress Street and Washington Street

B. MAXIMUM BUILD OUT /PROPOSED ZONING FAR 4.0

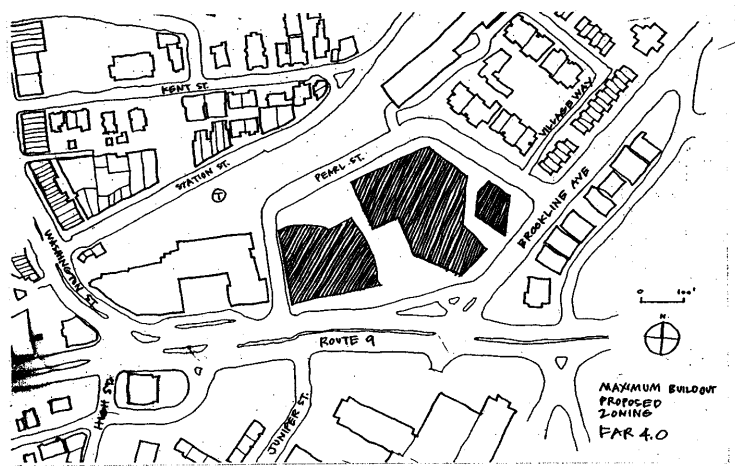
- footprint of proposed development at 2 Brookline Place = +/- 228,000 sq. ft.
- development potential on remainder of zoning district
- potential result of large-scale development in district – buildings create wall between N & S sides of Route 9
- pedestrians directed diagonally through district across plaza and existing greenspace on Rte. 9
- pedestrian route between Village T stop and Emerald Necklace remains as existing - crossing at primary intersection of Rte. 9 and Brookline Avenue

C. POTENTIAL BUILD OUT/ EXISTING ZONING FAR 2.5

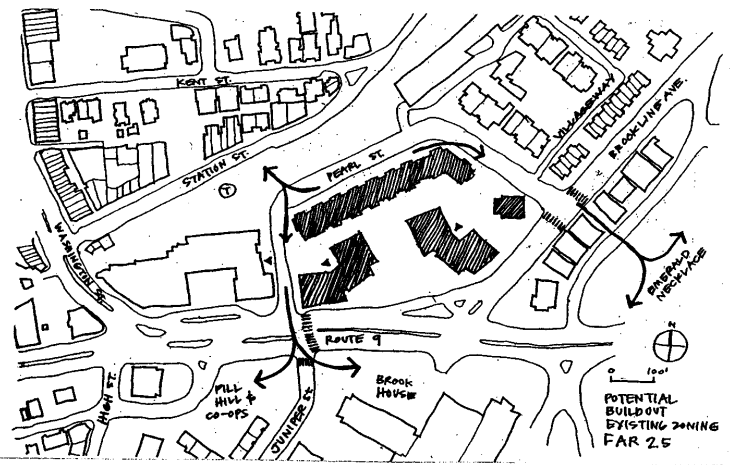
- street- based plan creating commercial streetscape for Pearl Street
- 2 Brookline Place new lab or office re-development matching scale of existing 1 Brookline Place
- new pedestrian crossings at Pearl Street directing pedestrians along street to desired destinations
- potential square footage – approx. 30,000 sq. ft /floor for Pearl Street massing (4 stories = +/-120,000 sq. ft.) 2 BP massing +/- 101,500 sq. ft. = +/- 221,500 sq ft
- Revitalized tree-lined Public Street with adjacent linear green space along T line
- Re-knit street fabric of Brookline Village on both sides of T tracks. Pearl Street and Station Street working together as two sided, similarly scaled commercial/residential area. Create connections to Emerald Necklace, Lynch Center, Brookline Avenue Playground, and Huntington Avenue along a vital commercial Pearl Street



A



B



C

Project Approval and Zoning

It has been stated that Town Meeting's consideration of this re-zoning is an "all or nothing" proposition. If Town Meeting approves re-zoning, then the developer and architect will proceed with design development working within the Town's usual review process.

If the re-zoning is not approved, it has been stated that the owner will re-lease the existing vacant retail spaces and the Town will not gain any additional economic benefits from the site.

Alternatively, the process since May 2003 may have opened up the opportunity for exploring a broader range of the problems and potential for this zoning district and its surrounding neighborhoods. This area may be the appropriate place to implement some of the planning tools suggested in the draft Comprehensive Plan. The end result may be a more integrated approach to the full district and broader neighborhood.

Project Environmental Impacts

The potential impacts of the proposed project at 2 Brookline Place point to the need for a comprehensive environmental and design review process. In addition to mass and height, some of the concerns that need to be addressed from an objective position include:

- wind
- shadow
- daylight
- pedestrian circulation
- air quality
- potential for existence of contaminated soil or groundwater
- construction impacts
- adjacent historic resources
- view corridors
- noise
- transportation/traffic/parking
- details of off and on site public benefits

If the proposed zoning amendments are supported by Town Meeting and this proposed project moves forward, we encourage the development of a design review team with members who have experience in environmental impact assessment for large scale urban design projects and have LEEDS and sustainable development experience.

The B2 Parcel and the Comprehensive Plan

There has been considerable discussion about whether the proposed zoning changes at the B2 Parcel and the specific project under discussion was influenced or is consistent with the Comprehensive Plan that has been in preparation for more than two years. This

section of the report examines the Draft of the Comprehensive Plan and addresses the interaction, if any, of the Plan and the Project.

Was the B2 Parcel or the current B2 project under consideration addressed in the Comprehensive Plan?

While the specific project before the Town was not addressed in detail during the preparation of the Comprehensive Plan, a change in the use for the site certainly was addressed in a couple of contexts: 1) Economic Development and 2) the Route 9 corridor.

Under the umbrella of “Quality of Life: Neighborhoods, Commercial Areas, and Open Space” one of the key recommendations of the Draft Comprehensive Plan was to:

Enhance commercial districts as lively, appealing, and functional community meeting places that attract customers and support a mix of businesses.

The Section of the Comprehensive Plan that addresses Regional and Local Needs: the Route 9 Corridor has a key recommendation:

Gateway East: Create an attractive new gateway to the Town at Brookline Village and reshape the overall character of the corridor between the Emerald Necklace and Cypress Street.

Although the project was not specifically mentioned in the Summary of Recommendations, there was reference to changes on the Route 9 corridor, especially at the Gateway East in Brookline Village:

Provide incentives for office development in Brookline Village/Route 9 and Coolidge Corner, including mixed-use development, and evaluate zoning changes suitable to attract development.

The Section of the Comprehensive Plan Draft: Brookline Tomorrow states the Goals and Policies for different Focus Areas. In this part of the Plan, goals and policies include:

Pursue projects with positive impacts for the community: new services or opportunities; net increase in new revenues; manageable traffic impacts; new streetscape and other amenities.

Encourage appropriate economic growth while preserving and enhancing the character of neighborhoods and fostering the prosperity of small businesses in commercial areas.

Create a visual gateway to the Town of Brookline at the Boston line with a signature new open space combined with new mixed-use development projects.

Advance planned development of 2 Brookline Place and 10 Brookline Place: revise zoning and design guidelines for this area.

There is a rendering of a concept of the Gateway East showing development of 2 Brookline Place with buildings as high as the Brook House. The Vision Plan for this Gateway recommends “Locate taller buildings along route 9, stepping down to the Village.”

In the Section on Action Plan elements, the site is mentioned specifically:

“Amend zoning regulations and design guidelines at Brookline Place to allow increased building height, contingent on meeting public benefit incentives and design guideline.”

In summary, examination of the Draft Comprehensive Plan shows that the specific project at 2 Brookline Place under consideration was discussed only in a very conceptual way. The B2 parcel was certainly considered for commercial development, but the specific project was not discussed. Increased building height was taken for granted as an essential element of any project in this area, although specific heights were not discussed at the Comprehensive Plan committee meetings in detail. Concerns voiced by committee members and citizens at these meetings about any project in this “Gateway East” were traffic, the need for retail, the need for tax revenue, and neighborhood betterment.

Is the current project consistent with the recommendations of the Draft Comprehensive Plan?

In many aspects, the proposed project is consistent with recommendations of the Draft Comprehensive Plan:

- encourage new commercial development with zoning changes;
- support a mix of businesses, including retail;
- attract customers to the Brookline Village area;
- increase revenues to the Town; create a visual gateway;
- allow increased building height.

However it has been argued by some that the neighborhood is negatively impacted and that the good to the community as a whole comes at a price borne by the neighborhood.

There is another concern. An important part of the action plan as recommended by the Comprehensive Plan are zoning changes that involve the creation of overlay districts that can more precisely accomplish what the community wants to achieve. The zoning changes as recommended in the Warrant to enable this specific 2 Brookline Place project are not as sophisticated and may leave other parts of Town vulnerable to possible unintended changes. In short, this specific project seeks to use available zoning mechanisms that are not as precise as those recommended by the Comprehensive Plan.

In summary, the proposed project is largely consistent with the recommendations of the Comprehensive Plan, but does not take advantage of suggested zoning tools that might

more precisely define the project and limit unintended adverse outcomes. The Advisory Committee is offering language, which attempts to limit unintended adverse outcomes.

PRECEDENT FOR FUTURE DEVELOPMENT

An important consideration is that the zoning changes themselves as well as the structure ultimately constructed on the site will affect the course of future development both on the re-zoned parcel and on surrounding parcels. Obviously, if One and Five Brookline Place sites are being re-zoned this can affect the future use of those sites. The choices made for this site, can, however, also affect the future development of other parcels. For example, the presence of Brook House and 10 Brookline Place is now used as partial justification for the increased height and massing sought by Article 1. At the Planning and Regulation Sub-Committee hearing, Mr. Duffy advised us that he did not believe that there were sites in Town, other than Two Brookline Place, where an FAR of 4 and a height of 135' would be appropriate. Accordingly, options were explored for ensuring that this height and massing were limited to the Two Brookline Place site.

LIMITING ZONING CHANGES

In its discussion of Article 1, The Advisory Committee discussed and ultimately voted language to limit the zoning changes to lots between 50,000 to 65,000 square feet. Other approaches conceived with the goal of more carefully defining the application and impact of the original zoning amendments were also considered but ultimately dismissed either because they would likely have prompted legal challenges or because they would have been too complicated to execute.

The Committee believes that limiting the proposed zoning to lots between 50,000 and 65,000 square feet accomplishes its objectives and improves the original article. It notes that the other two lots in the Village Square District are 88,503 square feet (One Brookline Place parcel) and 13,597 square feet (Five Brookline Place parcel). The smaller lot would be disqualified for obvious reasons, and it is highly unlikely that the larger one could be subdivided in such a way that an additional financially and physically developable lot could be created.

Regardless of whether Town Meeting votes to approve or reject the zoning articles, the Advisory Committee recommends that the creation of an Interim Planning, Design and Development Review Overlay District (IPDDROD) be explored, preferably in time to create a warrant article for the Annual Town Meeting. This planning tool, which could be used to shape future development in an area including and extending beyond the Village Square General Business District, has been raised by a number of people, including the Director of Planning and Community Development. Such interim districts are used to establish temporary zoning controls for an area while comprehensive planning, development of design guidelines, and a rezoning process are underway (usually a 12-18 month period). Although there is insufficient time to include in the warrant for the March 2004 Special Town Meeting an amendment to the zoning by-law to establish an interim

district, there is technically enough time to do so for the Town Meeting in June.

It may be true that the impact of the IPDDROD process on the enlarged area would be diminished if Articles 1 and 2 are approved and 2 Brookline Place, excluded from the process, is redeveloped under the new zoning provisions because once built, the new structure would play a major role in shaping the area around it. Nevertheless, pursuing the IPDDROD process would lead to the creation of a refined plan for the Village Square District and beyond, and to defining future development opportunities within that larger area. As a result, rezoning to accommodate a particular future development project, which was not in keeping with an overall plan, would be specifically discouraged.

The proposed zoning change also changes the definition of an allowed biolab for all G and I zoning districts throughout the Town. It is the intent of these warrant articles to permit such labs only on the 2 Brookline Place site. We have not studied or debated the impact of such a Townwide change. Therefore, we explored language, which would limit the labs to 2 Brookline Place. The language in the Advisory Committee vote was given to us by Town Counsel and the Director of Community Planning and Development. The only other sites affected by this language are:

- Peter Fuller Building on Commonwealth Ave, now owned by BU, which could build a lab right now because that would be protected under the Dover Amendment.
- Main Library (Town owned.)
- Old Lincoln School (Town owned)
- 2 Brookline Place
- 824 Boylston Street
- 1244 Boylston Street (where the Ming Garden used to be and where a new office building is currently under construction)

The Committee believes that this language is an improvement over the original language, which affected the entire Town.

Traffic

Since November, the preliminary study by the developer's consultant, *Howard, Stein-Hudson* (H/S-H) "Two Brookline Place - Traffic Impact Study" has been finalized with additional analysis and was subsequently reviewed the by Town's Transportation Engineer.

H/S-H's major conclusions about the Traffic Impacts are as follows:

1. "Route 9 is congested under existing No Build conditions"
2. "Project does not change intersection Level of Service (LOS factors - amount of time a driver waits at an intersection, from an acceptable of 10 seconds, to an unacceptable of 80 seconds) from No Build, but does slightly increase delay"

3. "Traffic impacts for existing zoning (are) similar to proposed zoning";
and
4. "Project mitigation will be developed with Town input"

The study also opines that over 60% of the current and anticipated visitors to the site will be traveling on Route 9.

DPW Transportation Planner David Friend's review of the H/S-H study is summarized in a memo to the Sub-Committee, Selectmen and Planning Board dated January 27th entitled "Traffic and Parking Implications of Proposed Zoning Amendment - Redevelopment of B2 Parcel". He begins with the premise that "uncertainties surrounding these issues [traffic and parking] are more difficult to resolve than other issues at this early stage in the process". A central theme of his analysis is that detailed information and studies concerning traffic and parking impacts as well as specific mitigation measures are not necessary at the re-zoning stage but can appropriately be left to the design review process. Rather, he submits "it is not essential to eliminate these uncertainties at this time with respect to the B2 parcel". Instead, he believes that the only questions which need be answered at this stage are whether the re-zoning would "overwhelm" the available or proposed transportation facilities or if the transportation facilities would not correspond to what is needed for safe and efficient circulation and access.

Mr. Friend's major findings include:

"Conclusion: The vehicular and transit trips generated by redevelopment of the B2 parcel will not overwhelm the existing street and transit systems".

He points out that the preparation of a traffic impact study is not typically required until the actual site plan review or special permit process is initiated. He again emphasizes that this is a proposed zoning change rather than approval of a specific project.

Mr. Friend estimates that the office use would generate an additional 212 entering vehicle trips and an additional 41 exiting vehicle trips during the morning peak hour. During the evening peak hour there would be an additional 156 exiting vehicle trips and 23 additional entering trips. During the morning peak period the transit system (i.e. bus and green line) would have to accommodate an additional 70 persons.

Other important conclusions are: (1) a potential Lab use would generate 75% of the peak hour traffic generated by an office use; (2) even the higher population of an Office would not "overwhelm" the immediate area (beyond existing traffic volumes) as they would be split between the two Pearl St. intersections and those beyond; and (3) that the anticipated 70 additional "T" riders will not "overwhelm" the D-line or buses to the site.

His analysis also suggests that there will be opportunities to mitigate the increased vehicle trips by the use of various transportation management demand (TDM) measures including but not limited to: subsidized transit passes for employees, ridesharing

matching programs, preferential parking for carpool, secure bicycle storage facilities, expanded shuttle bus services (ed. -if linked to the MASCO area) and the imposition of market rate parking fees. Some operational improvements at selected intersections may also be possible through the coordination and optimization of existing traffic signals or the installation of new signals." He points out that this will all take place during the Special Permit Design Review process, and that oversight will be required by the developer in the future over the ongoing effectiveness of TDM measures.

His report summarizes the additional significant work to be accomplished during the design review process. "During the § 5.09 Design Review process, the developer of 2 Brookline Place will be expected to respond to the questions and informational needs identified by town officials in response to the Phase One Traffic Study. The more detailed assessment of impact will provide the basis for a transportation access and mitigation plan..."

We believe that this is a very complex site with respect to transportation issues. The draft of the Comprehensive Plan noted significant peak and off-peak hour congestion already experienced in the Route 9 corridor. "Delays are most significant at locations where cross streets intersect the corridor at Brookline Avenue, Washington Street, Cypress Street" and other cross streets in Chestnut Hill. Moreover, "regional traffic is anticipated to continue to grow based on continued employment growth in downtown Boston and the Longwood Medical and Academic area and in the City of Newton." Against this background, we are concerned with the level of "uncertainty" regarding impacts and specific mitigation measures, which Mr. Friend submits is customary at this stage. We would note that approval of these articles would take resolution of these issues away from Town Meeting and solely into the hands of the Planning Board and the Zoning Board of Appeals.

Parking

The revised warrant article changes our zoning regulations to reduce the amount of parking required for a laboratory use. The current requirement calls for 1 space per 600 square feet of gross floor area and the change would decrease the requirement to 1 space per 1000 square feet.

In his memo of 1/27, Mr. Friend reviews and summarizes his assessment of the parking issues. He notes that some community members feel that the changes in increased height and FAR should not be approved because a final traffic and parking study has not been prepared, the exact impacts of a "change on area parking and traffic flow have not been determined and a suitable and feasible transportation mitigation package has not been developed."

He submits these concerns are "unfounded for a number of reasons": that level of study is not typically required by most communities until the site plan or special permit review stage; that the goal at the re-zoning stage is to determine if proposed uses and the transportation systems are not "mismatched" causing them to be "overwhelmed"; and that

by nature there is uncertainty because a final use and project has not been developed.

Further, he seeks to assure the community that it is not essential or necessary at the re-zoning stage to know the exact details in terms of numbers of transit riders, parking spaces, or the specific mitigation measures but again submits that there are sufficient measures available during the project review processes to address any anticipated impacts. The studies to date have used scenarios based on the existing and proposed zoning which have modeled the extent of the peak impact demand compared with existing conditions.

Mr. Friend opines that the number of parking spaces should "ideally be sufficient to meet peak demand for the use proposed but not be so excessive that large numbers of spaces go unoccupied." Overbuilding of parking can "waste valuable urban land" increasing the cost of development and might even negatively encourage MBTA park-and-riders commuting into Boston. In contrast, providing too little could encourage spillover onto the neighboring streets even where prohibited. He also notes that it is an accepted practice now to assume slightly elevated levels of transit use thereby allowing for a reduction in required spaces "in hopes of encouraging" "T" ridership, carpooling and bikers.

His final stated conclusion is that "the peak parking demands generated by redevelopment of the B2 parcel can be accommodated on the site."

We are concerned that Mr. Friend's analysis portrays an unduly rosy scenario with respect to the parking situation. One of the key anticipated elements of the developer's transit demand management program would be to make on-site parking expensive in an effort to encourage use of public transportation. We believe this is highly likely, however, to encourage commuters to park on nearby residential streets to avoid the high parking charges. When asked at the public hearing how the Town intended to address this, Mr. Friend advised us that the Town would use the same measures presently employed, i.e. enforcement and possibly the use of resident sticker parking. The Committee notes that these approaches have already proven ineffective at addressing a present problem of overflow business and commuter parking on these streets. No other proposals were suggested and it is clear to us that there is no effective plan to address the problem of parking on residential streets.

SHADOWS /REDUCED DAY LIGHT

The effect of the anticipated shadow from the proposed development for 2 Brookline Place has been studied by the developer's architect. The architect's shadow studies illustrate shadows beginning at 9 am on specific days in December, March, June and September for a building mass approximating the proposed project (135' and FAR of 4.0).

The comparative studies are made against the building mass of an unspecified structure of 100' in height within FAR of 2.5.

No comparison is made between the shadows cast by the existing structure on 2 Brookline Place and the proposed project even though members of the PRT had asked for such studies.

Comparative shadow studies for a building mass between 45' and 100' and an FAR of 2.0 and 2.5 have not been made.

December shadows

The December shadow studies are the most significant. They show that at 9:00 am the difference between a 100' building and a 135' is negligible.

At noon in December the difference is greater. A 100' building's shadow ends at the T tracks. A 135' building's shadow crosses the T track and shades Station Street.

At 3:00 in December the shadow of a 100' building hits the middle of Pearl Street. The shadow of the 135' building crosses Pearl Street and shades the sidewalk that runs between the T and the residential neighborhood of the Village at Brookline/Village Way and Pearl Street.

March and September shadows

The difference in the spring and fall shadows of a 100' building and a 135' building have the greatest impact on the T station in the morning.

The 9 am shadow of the 100' building does not shade either the inbound or outbound side of the T stop. It does shade the developer's proposed open plaza and Pearl Street.

The 9 am shadow for a 135' building fully shades both sides of the T stop. Although we don't have a 7 am study, we can presume the T will also be in shadow at the beginning of the morning commuting time.

The noon spring and fall shadows of both a 100' and a 135' building shade the developer's proposed open space.

The 3 pm shadows shade the east side of the Brookline Place open space. The proposed new open space is in half shadow.

The 6 pm shadows fully shade the existing open space at 1 Brookline Place. The proposed new open space is in nearly full sun.

June Shadows

The morning shadows of buildings at both heights shade Pearl Street between the proposed project and 10 Brookline Place.

The noon and 3 pm shadows are negligible.

The 6 pm evening shadow for buildings of both heights shades the existing open space at 1 Brookline Place.

What does this mean for the streets and the Brookline Village T stop in spring, fall and winter?

Sunlight in New England during the spring, fall and winter is precious. We all seek it out whenever we are walking through town, waiting for a train or bus, or enjoying a park or street bench. Sidewalks, plazas and streets in shade remain icy and slippery far longer than areas receiving direct winter sun. Access to sun and direct daylight is an important quality of life issues for an urban village environment.

Shadows cast on the T station are significant because they influence the experience of public transit use. Waiting for the T is never ideal but it can be positively mitigated by the opportunity to enjoy the sunlight of a fall or spring day. Shadows can produce a small but significant decrease in quality of life for Brookline Village residents and transit users.

Likewise, children and adults walking along Pearl Street to school and the commercial area of Brookline Village will do so on dark, shaded and potentially icy sidewalks in winter. A building built within the current allowable zoning for a 100' tall building would not cast shadow on the T stop in spring or fall or the sidewalk of Pearl Street in the winter.

BIOLAB SAFETY

Article 1 specifies that only a Biosafety Level 1 or Level 2 laboratory can be applied for. There are four levels of biological laboratories based on the types of organisms studied. Level 1 studies agents not known to consistently cause disease in healthy adults. Level 2 studies agents associated with human disease hazards from ingestion, mucous membrane exposure, or breaking the skin. Level 3 and 4 laboratories study very dangerous organisms, which can be transmitted through the air.

Dr. Alan Balsam, Director of our Health Department has had extensive experience regulating and monitoring biolabs when he worked for the City of Cambridge. Dr. Balsam put these risk levels in perspective. High school science labs are Level 1. Even level 2 labs pose only a very small risk to people outside the lab. Level 2 labs are often located near residential areas. There are, in fact, also presently a dozen Level 3 laboratories within a mile of Brookline. The greatest risk is for persons who work in or visit the labs.

Each laboratory would have to meet safety standards, would have to have a lab safety officer available to meet with town officials, and would be subject to periodic inspections by the Town.

Dr. Balsam advised us that in his opinion, the risks of a Level 2 laboratory are manageable, but would involve significantly more work for his department. His department would be required to review the proposed laboratory at three different stages: design; construction; and throughout the life of the laboratory. Each of these reviews would require the use of outside expert consultants as we presently lack personnel with the necessary credentials (with the possible exception of Dr. Balsam himself) and the available staff time. Review of laboratory operations would include examining the tenants' safety plan; site checks twice a year; and having a seat on the tenants' Internal Bio-Safety Committee. At our meeting, Dr. Balsam advised us that these services would be performed by an outside consultant retained by the Town and that the cost of these services would be paid for by the developer.

Acting Fire Chief Skerry has advised us that the Fire Department is currently prepared for Level 1 and Level 2 laboratories. They would not require outside assistance from a HazMat team unless a Level 3 laboratory was contemplated.

CRIME/POLICE ISSUES

Police Chief O'Leary advised us that he is not concerned about any significant increase in crime due to the proposed development. He did note, however, that increased traffic details would be needed during construction of the project. It is our understanding that the cost of these details would also be underwritten by the developer.

NOISE

We have conferred with an architect, who confirmed that biological laboratories require extra ventilation equipment with significant additional noise (the phrase "jet engine" was used). He advised however, that the noise could be addressed by proper design, typically by increasing the height of the building to allow additional shielding to channel the noise upwards. This could require an additional 20 feet instead of an additional 10 feet for the ventilation equipment. The PRT discussions regarding the size of the mechanical "penthouse" seem to acknowledge the need for this additional structure. This should be taken into account in the initial design and be made part of the regulatory process to ensure that the necessary additional extra work (which adds additional cost) is performed. We have been advised by the Economic Development Officer that any noise issues would be addressed in the Section 5.09 design review process. In other words, ensuring that noise concerns have been adequately addressed would be left solely to the discretion of the Planning Board and/or the Zoning Board of Appeals.

SECTION 5.09 DESIGN REVIEW AND THE SPECIAL PERMIT PROCESS

Section 5.09 of the Zoning By-Law presently requires any proposed “non-residential use in a non-residential district with more than 10,000 square feet of gross floor area or with 20 or more parking spaces” to obtain “a special permit subject to the community and environmental impact and design review procedures and standards herein specified.”

Mass. Gen. Laws Ch. 40A § 9 allows municipalities to permit certain uses in zoning districts only upon the issuance of a “special permit” which may (but need not) impose conditions, safeguards, or limitations on the proposed use. In Brookline, special permits are granted by the Zoning Board of Appeals (“ZBA”) which must vote unanimously in favor of granting the special permit. By statute the ZBA must conduct a public hearing on the special permit within sixty-five days of the date of filing of the application and must render a decision within ninety days of the date of hearing. These deadlines can be extended by agreement between the applicant (developer) and the ZBA. Although the ZBA is given broad discretion in its decision making power, any issuance or denial of a special permit is appealable in Court.

Before consideration by the ZBA, initial Section 5.09 design review is conducted by the Planning Board. As part of its analysis, the Planning Board may appoint a Design Advisory Team to “provide professional design review assistance” to the Planning Board and Planning Department. Based upon its review of the developer’s application and detailed required submissions, the Planning Board then issues an advisory report to the ZBA regarding the special permit application.

Legal Issues Concerning Transfer to a Tax Exempt Entity

A major concern has been that if the zoning changes are approved and the project constructed, the property might be conveyed to a tax-exempt entity. A laboratory would seem a particularly attractive acquisition for various non-profit entities. This would, of course, defeat the primary purpose of the zoning changes, which is to generate additional revenue. To address this, the original warrant article in November provided that as part of the zoning change the developer execute a deed restriction or covenant running with the land which would be recorded and which would prohibit transfer of the property to a tax exempt entity. Both Town Counsel and the Sub-Committee concluded that any such restriction would not be enforceable. Specifically, this would violate Mass. Gen. Laws Ch. 40A § 3 (the “Dover Amendment”) which prohibits “any zoning ordinance or by-law” from prohibiting, regulating, or restricting, “the use of land or structures for religious purposes or for educational purposes”. We concluded that as long as the owner retained title to the property, there was no mechanism available to prevent transfer of the property to a tax-exempt entity.

In response to this problem, the property owner has agreed to convey the property to the Town. It is contemplated that the Town will execute a ninety-four year ground lease to the developer with the amount of rent equaling the property tax assessment each year. The developer would get a credit for any property tax payments made (in other words the

developer would not have to pay both property taxes and rent). Should the lease be assumed by a non-profit entity, they would still be required to make the required lease payments.

Authority for a ground lease of that length would require a home rule petition. Accordingly, Article 2 seeks authority for a home rule petition authorizing a ninety-five year ground lease which includes, “terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate tax obligations.” Article 3 seeks authority to actually enter into such a lease.

Right before press time we were advised that the owner would provide the Town with a binding Memorandum of Understanding to convey the property.

No lease documents have been prepared or are anticipated to be available for review prior to Town Meeting. Town Counsel advised us that the anticipated ground lease is not particularly difficult to draft and would be similar to that which was prepared for the Webster Street Hotel. It would not specify an exact amount to be paid each year as rent, but rather would provide that the rent equal each year’s real estate tax assessment. (Mass. Gen. Laws Ch. 59 § 2B provides that the lessee of property owned by a municipality, which is used for a for-profit business, shall be taxed as though it owned the property). It will also require the developer to provide a certificate of insurance listing the Town as a named insured and agreeing to indemnify and hold the Town harmless for any liabilities for personal injuries, property damage, or environmental liabilities.

We believe that when the owner does convey the property to the Town, this approach (ground lease with rents equaling real estate taxes) should be effective in preserving the income stream from a new development. Although it does not seem that this approach would be in conflict with the Dover Amendment in any event, approval of home rule legislation would provide a legislative stamp of approval, which would be a strong argument in favor of its validity. Town Counsel believes that approval of this home rule petition would not be difficult and a brief conversation with one of Brookline’s State Representatives gave us no cause for concern on this front.

We were also troubled that the zoning changes as proposed would also apply to One and Five Brookline Place, without any agreement to convey those properties to the Town. This provides further support for limiting the zoning changes to the Two Brookline Place parcel as we are proposing.

FINANCIAL ISSUES

The months since the Fall Town Meeting have provided additional time to refine and understand the project financial analysis prepared by Ken Lewis for the EDAB and the PRT. The revised analysis reflects the latest project proposal, includes some new assumptions and now includes a complete pro forma for the lab scenario, which we

highlighted as a serious omission in the fall. Another difference is an examination of one of the points of sensitivity in the analysis; lender interest rates. This examination of the effect of different lender interest rate assumptions is a bit troubling and points to the danger of relying on support of a particular project or even specific details of design in making zoning decisions.

The EDAB and the PRT is fortunate to have Mr. Lewis, a real estate development professional, among its members. Mr. Lewis has applied his own experience plus some key development assumptions provided by the developer (under pledge of confidentiality) to construct a Pro Forma Summary to evaluate the project. Mr. Lewis came to the following conclusions, which were presented to the PRT and to the Advisory Committee in the fall.

1. The project will produce a significant tax benefit to the town.
2. New office development is not financially feasible under existing zoning
3. The proposed project will be able to support payment of the public benefit specified in the proposed bylaw change
4. The pro forma assumptions support a quality building

The Planning and Regulation subcommittee of the Advisory Committee reviewed Mr. Lewis' analysis in the fall and essentially agreed with his analysis but highlighted some weaknesses, the assumptions used, and pointed out the model examined the financial characteristics of a building which hadn't yet been fully designed.

Mr. Lewis' revised memo was included in the PRT package mailed to Town Meeting Members as Attachment F.

Our review of these conclusions is below

Important Caveat-When Do We Get Paid

It is not anticipated that this project, if approved, would generate substantial additional tax revenues until approximately FY 2009, accordingly, it is not a solution to any budgetary concerns in the immediate future.

Assertion: The project will produce a significant tax benefit to the town

Intuitively, if a larger building replaces a smaller building, there should be a net tax benefit to the town. How much additional tax benefit will, for many, be a major factor in forming an opinion on the project. The EDAB analysis estimated that the net tax benefit of a FAR of 4.0 would be \$1,000,000 per year.

In reviewing the EDAB's model, the subcommittee saw that assessed valuation was computed a bit differently than how the Assessor computes the assessed valuation. The

subcommittee then asked the Assessor's office to analyze the developer's proposal to estimate the tax benefit to the town using his methods of valuation.

Since both the EDAB and the assessor's forecasts attempt to predict the future, they must make a series of assumptions. **If any of the assumptions change, the end result changes.**

Key financial assumptions made by the Assessor (derived by taking the developer's assumptions with adjustments as necessary to bring them in line with his view of current market conditions):

	Office	Lab
Rentable Office/Lab Sq/ft	199,554	188,722
Rent Sq/ft	\$40.00 Gross*	\$40 Triple Net*
Retail Sq/Ft	18,272	17,485
Retail Rent Sq/ft	\$30.00 Triple Net*	\$25.00 Triple Net**
# Parking Spaces	355	272
Parking Rent/Month	\$225	\$225
Tax Rate/Thousand	\$17.26	\$17.26
Capitalization Rate	10.65% Gross Rents 8.90% Triple Net 10.63% Parking	8.90% Triple Net 10.63% Parking

****With Gross rents, the owner is responsible for most building expenses including taxes. With Triple Net rents, the tenant is responsible for most building expenses including taxes***

*****A lower retail rent figure is being used for the lab scenario under the theory that general office space will create a greater flow of visitors and have a larger number of employees, therefore making the retail space more valuable.***

Using these assumptions, after subtracting the taxes paid by the existing building, the Assessor's office estimates approximate net revenue increases per year as:

	Estimated Value	Estimated Taxes	Net Increase
Office Use:	\$58,986,000	\$ 1,018,098	\$ 862,000
Lab Use:	\$81,486,000	\$ 1,346,901	\$1,190,000

Using conservative estimates of project start and finish, the full tax benefit may not be realized until FY 2009. Note that the Net Increase figures are rounded to highlight the fact that these are estimates 5 or more years into the future with absolutely no guarantees.

Also note that the assessor's office believes that there will be not any loss of tax revenue during the period of construction because of the increased value of the land should the proposed upzoning be passed.

The large difference in estimated values between the 2 uses are due to the different kinds of leases (gross vs. triple net) between the two uses. This will be discussed further in the next section.

A change in any of these assumptions (or a change in the accepted capitalization rate) can have a profound effect on this tax benefit projection. Two examples are:

1. The tax rate has been steadily decreasing in recent years because the percentage increase in assessed valuation has been rising faster than the town's ability to increase its taxation (as capped by Proposition 2 1/2.) In FY 2003, the commercial tax rate was \$18.18. In the current fiscal year, FY 2004, it is \$17.26. If this trend continues, the expected net tax benefit could be lower than indicated in this projection.
2. The Selectmen have the authority today to reduce or eliminate the tax classification shift. Additionally, the Selectmen could take advantage of their new temporary ability to increase the tax classification shift beyond 175% at any time over the next 4 years. If they do, by the time the project comes on line, the maximum shift will be 170%. (The enabling legislation permits exceeding the 175% during the next 4 years but if Brookline takes advantage of the increased shift, during the 5th year and thereafter the maximum allowable shift is reduced to 170%.) This would reduce the commercial tax rate a bit and therefore reduce the realized tax revenue from the project somewhat. Given that we don't know what the Selectmen will do in this regard, we have not built this reduction into this projection. The Assessor's office estimates that should the maximum shift be 170%, the revenue enhancement due to the project would be reduced by 2.86% from the numbers stated above.

According to this analysis, the 2 Brookline Place project, if built, should produce a significant tax benefit to the town. This tax benefit will not fully appear, however, until approximately FY 2009. Based on the assumptions used in the analysis, it appears that a lab will produce a much higher tax benefit than an office building. Given the uncertainties of long-term projections of this type, the numbers computed by the assessor should be used as an indication of magnitude rather than a promise of a specific revenue enhancement number.

Lastly, according to the Assessor's office, to achieve a \$1 million property tax revenue enhancement, the tax rate would need to be increased by \$.09 per thousand. That is assuming, of course, that the necessary Proposition 2 ½ override would pass.

Assertion: New office development is not financially feasible under existing zoning

The developer has asserted that new office development is not financially feasible under the current zoning. Should this assertion be true, then Town Meeting is presented with an all or nothing choice. It can either change the zoning as proposed to get a project or reject the bylaw change and maintain the status quo for the foreseeable future; or at least until any of the major market assumptions change to make a project of the scale

envisioned by the current zoning financially feasible. There would be no middle ground with respect to the FAR, which governs the allowed square footage.

Mr. Lewis, using his Pro Forma analysis believes that, essentially, the developer is correct. He stated that part of the reason for the necessity of a high FAR is that developing this site has high fixed costs including an existing income producing building plus the fact that the site is a filled in marsh, which makes construction more complicated and thus expensive. He did state last July that some “marginal” reduction may be possible; a reduction in scale by about 10% (about 1 floor) or reducing height by construction of sub grade parking. He believed that both are not feasible. Based on this analysis, the PRT chose to push the developer to include underground parking rather than reduce the scale of the project. The design being presented is using sub grade parking as a key element (which is a requirement of the proposed bylaw.)

A key point in a determination of whether a project is financially feasible, is computing the projected return on equity (ROE) and the debt service coverage ratio. These are two key elements a lender reviews before making a decision to finance the project.

Return on equity, at its most simple level is $\text{Income}/\text{Investment}$. So if for example you have \$100 in the bank and you earn 10%, your return on equity is: $10/100$ or 10%. If you earn \$9 instead of \$10, the new equation is $9/100$ or 9%. On the other hand, if you invested \$99 instead of \$100, the new equation is $10/99$ or 10.1%. The point to remember is that the ROE equation is more sensitive to changes in the numerator. In this example, a \$1 change in the numerator (the top number in the division) changed the ROE by 100 basis points. A \$1 change in the denominator (the bottom number in the division) changed the ROE by 10 basis points. In a real estate project, determining what goes into the calculation of income and investment is quite complex and full of assumptions but in the end, it comes down to this simple equation.

The debt service ratio is $\text{Net Cash Flow}/\text{Yearly Debt Service (Principal and Interest)}$. This shows a lender how much cash a property owner will have after the debt is paid. Buildings have many expenses and the higher the projected ratio; the more viable a lender will believe the project to be.

Mr. Lewis has been using a target ROE of over 9% and a target debt service ratio of over 1.30. In the fall, the subcommittee also received information from John P. Sullivan, an attorney and CPA who stated that in his discussions with a banker the required ROE should be 11-13% and the required debt service ratio should be 1.40 to 1.50. (Mr. Sullivan’s numbers would yield a larger project.)

The Planning and Regulation sub-committee has again reviewed the Lewis analysis. The model appears to make conceptual sense. The subcommittee then recreated the Lewis model substituting certain numbers from the Assessor’s report where available.

Some key assumptions in the subcommittee’s recreation of the Lewis analysis are:

	Office	Lab
Office/Lab Rents (from Assessor)	\$40 sq/ft Gross*	\$40 sq/ft Triple Net*
Retail Rents	\$30 Sq/ft Triple Net	\$25 Sq/ft Triple Net
Office/Lab Shell Construction Costs including Tenant Improvement Allowance (from Mr. Lewis)	\$175 Sq/ft	\$265 Sq/ft
Imputed Value of Existing Building (from Mr. Lewis)	\$8,000,000**	\$8,000,000**
Lender Interest Rate Assumption	6.5%	6.5%

** The Lewis analysis uses \$42 sq/ft gross for the office rent and \$44 sq/ft triple net for the lab rent respectively. We have chosen to use the Assessor's rent figure as a measure of current market conditions as it yields a more conservative analysis. We believe that both figures are aggressive and reflect the "edge of the envelope" of what rents can reasonably be charged.*

***The assessed valuation of the existing building is \$9,050,000. For this portion of the analysis, we are using Mr. Lewis' lower imputed value of the existing building.*

Using the model, we saw that both the office and lab scenarios at FAR 4.0 exceeded Mr. Lewis's stated target levels.

We asked Mr. Lewis to remove 1 floor from the analysis. In analyzing the cost associated with such a reduction, he saw that there would be no reduction to certain fixed costs such as the general conditions, site work, foundations, underground parking, main lobby, roof, elevators, and mechanical systems. There would be some savings for the materials and labor associated with the top floor, such as masonry, steel and windows. Given this, he used a marginal cost reduction of 33% of the total shell costs per sq/ft. He cautioned, however, that to get a truly accurate figure a professional cost estimator would have to be engaged. Once the floor was removed from the model, the project did not meet the target ROE and Debt Service Ratio.

At the urging of Paul Saner, an EDAB member and formerly with the real estate lending group with Fleet Bank, the analysis was also done with a less optimistic lending interest rate figure of 8%. **With the assessor's rent figure of \$40 per sq/ft, both the Office and Lab scenarios begin to come under the target ROE and Debt Service ratios.**

This sensitivity analysis highlights that the project financial feasibility is close to the edge. So close, that seemingly modest changes in assumptions could affect whether or not this project is feasible.

We also note that the developer has committed to a "green" building. The developer has represented that there would be a modest increase in up front costs but there would be a quick payback in energy saving to the extent that the effect on the Pro Forma would be negligible. We have not confirmed this but a research paper by Gregory H. Kats sponsored by the Mass. Technology Collaborative, among other sponsors, indicates that the average premium for a green building is less 2% of total cost or \$3-5 sq/ft.

Lastly we note that the Lewis model includes a 1% of hard construction cost public benefit payment in the denominator of the ROE calculation. Mr. Lewis also stated that his model includes design fees commensurate with a sophisticated architecture and engineering team.

In summary, the model used is an attempt to predict future profitability of a project, which will come to completion in 3-7 years. The model appears to make conceptual sense. Mr. Lewis has applied his experience of many years in real estate development in constructing the model, so he has a high degree of credibility with respect to the office scenario. The model appears to support his conclusion that only marginal reductions in scale to the proposed project are financially feasible in today's marketplace. Given that information, the PRT chose to push the developer to increase underground parking rather than decrease the project scale. On the other hand, we note that it is extremely difficult to construct a financial model for a building that hasn't yet been designed. This fact requires the use of assumptions, which at this point appear reasonable, but as the design is firmed up could change the analysis.

This analysis assumes that the aggressive rent assumptions will pan out and the favorable borrowing environment will continue or at least not change dramatically.

What if the favorable assumptions assumed in the model change? As seen above, there will be a point where the economic characteristics of the project will change to the extent where it isn't feasible anymore. But there also will be a grey area where the project is still feasible with a reduction in some of the project costs. The 1% of hard construction cost public benefit is written into the proposed bylaw so that will not be cut. It could be in this scenario that the town could be asked to accept "value engineering" design revisions that could make the project less attractive but still doable. Good, high quality design is not written into the zoning bylaw but is a product of a committed developer and a good design team working within the Design Review Process should the zoning change be enacted. The "grey area" scenario will place the Planning and Appeals Boards in the unenviable position of trying to balance high quality design and materials with tax revenue enhancement.

Remember, in voting Favorable Action on this zoning change, you are voting to permit an increase in height and density in return for specific public benefits. **It is conceivable**

(perhaps probable) **that the project we get will be different in its detail than what is being proposed currently.**

RECOMMENDATION

The Advisory Committee fully supports the need to pursue potential economically viable commercial projects in Town and we see Brookline Place as a likely location for such development. We both appreciate the efforts of the committed citizens on the PRT and recognize that the role of the EDAB is to promote increased revenue through development. We are mindful that the Advisory Committee is Brookline's finance committee and part of our responsibility is to ensure that resources are available for important budgetary priorities. This project, if approved, has the potential of producing additional tax revenue of somewhere in the neighborhood \$800,000-\$1,100,000 per year once completed. Unlike residential development, this will come with little demand for increased town services. It will also shore up our declining commercial tax base.

However, we also believe, that economic development is only one of many factors, which must be considered in proper municipal planning. Proper zoning involves multiple considerations, not merely a desire for increased revenue. Protecting neighborhoods against undesirable impacts and promoting a cohesive vision for future development are just a few of the equally important goals. To some extent the strong push by EDAB (which is its role) for these articles has not been met with the detailed and detached planning analysis that should be required. Moreover, the warrant articles represent a clear case of project based zoning; that, it is commonly accepted, is not the way in which planning should take place. Moreover, isolated consideration of this parcel can lock in future uses of other parcels.

To a large extent, Town Meeting is being asked to take on faith that the Design Review Process controlled by the Planning Board and reviewed by the Zoning Board of Appeals will address any adverse impacts. Once Town Meeting approves these zoning changes it will have lost any control over the process or outcome.

It is essential that Town Boards and Departments handle projects such as this with the sophistication and sensitivity necessary to hear and address neighborhood concerns and to protect the Town's interests. It is also essential that our confidence in these bodies be maintained and, for some, restored. Even if necessary conditions are imposed for granting a Special Permit, these will be meaningless if mechanisms are not put in place to ensure that these requirements are enforced to the letter. Even under ideal conditions, with relevant enforcement, there will be some adverse impacts to the surrounding neighborhoods. Should these warrant articles be approved by Town Meeting, all interested citizens are encouraged to observe and participate in the design review process.

The Advisory Committee voted overwhelmingly to support the zoning change with revised, limiting language. There was, however, diversity in how members arrived at their vote. Some members enthusiastically support the project and these enabling warrant articles on the basis that the site is appropriate for “smart growth”, will increase foot traffic in the village, and significantly enhance revenue. In addition, they believe that the opportunities for commercial development at other sites in Town are limited. Some agree with these reasons but are uneasy with the project size. Others agreed but express concern about the Design Review Process and the Town’s ability to enforce conditions imposed by the resulting special permit. At least one member stated that he was undecided but wanted to ensure that limiting language in the Advisory Committee vote was the language to be voted at Town Meeting.

The two members who recommend No Action do so for slightly different reasons. One member believes that the proposed project is simply too massive for the Village area and will be accompanied by impacts such as traffic and parking that will adversely affect the neighborhoods. The other member was primarily concerned that thin financial margins will likely create margins for future cost cutting and had no confidence that the Design Review Process would protect against adverse impacts or guarantee that today’s promises are kept in the future.

Many on the Advisory Committee do not believe that the approach taken here represents desirable planning. Whether or not these articles pass we strongly urge the Department of Planning and Community Development to submit a warrant article to the Annual Town Meeting calling for the creation of an IPDDROD for the Village Square General Business District and the surrounding area. This will be less effective if the articles are approved, but in either case, such an approach should promote better planning of future development.

With respect to Article 1, the Advisory Committee by a vote of 20-2 recommends FAVORABLE ACTION on the following vote (changes from the original are in ***bold italics***):

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

I. With respect to the Village Square General Business District G-2.0 (VS):

- A. Amend the Floor Area Ratio Maximum and Height Maximum for the G-2.0 (VS) District within TABLE 5.01, TABLE OF DIMENSIONAL REQUIREMENTS as referenced in SECTION 5.00 – DISTRICT REGULATIONS of ARTICLE V DIMENSIONAL REQUIREMENTS, as follows (new in italics and bolded).

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,6}	Side ²	Rear	Landsc.	Useable ¹³
G-2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0	2.5	none ⁴	45	60	70	none	none ⁷	10 + $\frac{L^8}{10}$	none	none ⁵
			4.0 (VS) ¹⁷	N/A		125 (VS) ¹⁷	N/A 45 (CA)	<i>100 (VS)</i> N/A 55 (CA)					

- B. Insert the following new footnote 17 after the Floor Area Ratio Maximum and Height Maximum permitted within the G-2.0 (VS) District, as shown in the above revised TABLE 5.01, TABLE OF DIMENSIONAL REGULATIONS and in the footnote section below the table.

17. See SECTION 5.06 – SPECIAL DISTRICT REGULATIONS, 4. *Village Square General Business District G-2.0 (VS)*.

- C. In ARTICLE V - DIMENSIONAL REQUIREMENTS, by adding a new paragraph 4 to SECTION 5.06, to read as follows:

4. Village Square General Business District G-2.0 (VS)
- a. All applications for new structures, outdoor uses, and exterior alterations or additions in the G-2.0 (VS) District **which exceed a floor area ratio of 2.5 or a height of 100 feet shall be permitted only on a lot with no less than 50,000 square feet and no more than 65,000 square feet in area** and shall be subject to the requirements of § 5.09, Design Review, obtain a special permit per § 9.03, and meet the following requirements.
11. The maximum height shall not exceed 125 feet and the maximum gross floor area ratio shall not exceed 4.0.
 12. no less than 20% of the Lot Area shall be devoted to landscaped open space.
 13. no less than 60% of the parking spaces required by the Board of Appeals shall be provided completely below grade.
 14. no less than 25% of the provided parking spaces shall be offered to residents for overnight parking.

15. no less than 1% of the hard construction costs of constructing a building on a Lot (exclusive of tenant fit-up) shall be devoted to making off-site streetscape improvements (such as, but not limited to, lighting, street furniture and widening sidewalks) and undertaking transportation mitigation measures. A plan of the proposed off-site streetscape improvements and a description of the proposed transportation mitigation measures shall be submitted for the review and approval of the Planning Board or its designee.
- b. The parking requirements for applications in the G-2.0 (VS) District in light of the proximity to rapid public transit shall be as follows:

retail use: one parking space per 350 g.s.f. of floor area

office use: one parking space per 600 g.s.f. of floor area

research laboratory use (Use 36A): one parking space per 1,000 g.s.f.

The number of parking spaces for the above uses in a G-2.0 (VS) District may be reduced by **special permit**, however, by no more than 15%, where it can be demonstrated to the Board of Appeals that it is warranted due to provisions in a Transportation Access Plan that includes recognized Transit Demand Management programs. A **Transportation Access Plan Agreement** shall be a condition of the special permit, shall be submitted for review to the Director of Transportation and the Director of Planning and Community Development, and shall require an annual report to the Director of Transportation. This **annual report** shall be accepted only after a determination by the Director of Transportation and the Director of Planning and Community Development that the Transportation Access Plan is working satisfactorily, and if not, that the plan will be changed and implemented to their satisfaction.

- c. *A special permit granted under this section shall lapse within 2 years, of its effective date, if a building permit is not issued and construction has not begun by such date except for good cause.*

II. With respect to Section 4.07 – Table of Use Regulations:

In ARTICLE IV – USE REGULATIONS, by replacing the text of Principle Use 36A in SECTION 4.07 – TABLE OF USE REGULATIONS with the following:
 36A. Research laboratory for scientific or medical research, **with a Biosafety Level of Level 1 or Level 2 as defined by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and National Institutes of Health**, provided the use is *located on a lot with no less than 50,000 square feet and no more than 65,000 square feet in area and is* operated in compliance with all town, state and federal health and safety regulations, and that thirty days prior to a Board of Appeals hearing on the use, and annually, a report detailing hazardous materials operations,

processes, disposal and storage **shall be reviewed and approved in writing by** the Fire Chief and Director of Public Health and Human Services.

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ARTICLE 2

SECOND 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 LEASE
CERTAIN TOWN OWNED LAND.

Be It Enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline is hereby authorized to lease any part or portion of the property generally known and referred to as Lot A in the B-2 Parcel, shown as Parcel 1 in Block 138 on Sheet 29B of the Town's 2001 Assessors Atlas, now or hereafter owned by it, for a period not to exceed 95 years, to Village Plaza Limited Partnership or its designee, upon such terms and conditions as the board of selectmen shall determine to be in the best interests of the town, including terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate tax obligations.

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

or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

Article 2 is a Home Rule petition that would allow the Town to enter into a lease agreement for a period of up to 95 years. It is required because Massachusetts General Laws do not allow leases of public property for more than 10 years. A similar Home Rule petition was adopted by Town Meeting for the Webster St. Hotel development. This type of legislation is regularly approved by the Legislature.

The language contained in the petition protects the Town from the possibility of the purchase of the building by a non-profit entity and the potential subsequent removal from the tax rolls. The ground lease will include a provision for rent, the amount of which will be set annually by the Assessors as equal to the taxes due. The developer will receive credit for any taxes paid, so that in a normal year there would be no rent. However, in the event the property did not pay taxes, there would be no credit against the rent and the rent

due would be equal to the taxes due. Thus, the Town receives the full tax payment due no matter what.

The Selectmen unanimously voted **FAVORABLE ACTION** on the article as proposed on February 10, 2004.

ADVISORY COMMITTEE'S RECOMMENDATION

Article 2 requests a home rule petition authorizing the Town to enter into an up to 95 year lease agreement for Two Brookline Place including terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate taxes.

The Advisory Committee by a 19-2-1 vote recommends FAVORABLE ACTION on the following vote:

VOTED: To 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 LEASE CERTAIN TOWN OWNED LAND.

Be It Enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline is hereby authorized to lease any part or portion of the property generally known and referred to as Lot A in the B-2 Parcel, shown as Parcel 1 in Block 138 on Sheet 29B of the Town's 2001 Assessors Atlas, now or hereafter owned by it, for a period not to exceed 95 years, to Village Plaza Limited Partnership or its designee, upon such terms and conditions as the board of selectmen shall determine to be in the best interests of the town, including terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate tax obligations.

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

ARTICLE 3

THIRD ARTICLE

To see if the Town will authorize the Board of Selectmen to lease any part or portion of the property generally known as Lot A in the B-2 Parcel, shown as Parcel 1 in Block 138 on Sheet 29B of the Town's 2001 Assessors Atlas, now or hereafter owned by said town, for a period not to exceed ninety five (95) years, to Village Plaza Limited Partnership or its designee, upon such terms and conditions as the Board of Selectmen shall determine to be in the best interests of the town, including terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate tax obligations, or act on anything relative thereto.

SELECTMEN'S RECOMMENDATION

Article 3 would allow the Town to enter into a lease agreement with the developer, for a period of not more than 95 years. The language protects the Town from the possibility of the purchase of the building by a non-profit entity and the potential subsequent removal from the tax rolls. The ground lease will include a provision for rent, the amount of which will be set annually by the Assessors as equal to the taxes due. The developer will receive credit for any taxes paid, so that in a normal year there would be no rent. However, in the event the property did not pay taxes, there would be no credit against the rent and the rent due would be equal to the taxes due. Thus, the Town receives the full tax payment due no matter what. These transactions require Town Meeting authorization, first to accept the land conveyance and second to seek a home rule petition to allow the long-term ground lease.

The Selectmen unanimously voted **FAVORABLE ACTION** on the article on February 10, 2004. During the Advisory Committee's February 12th discussion on Article 2, questions arose regarding whether the language as proposed is specific enough to authorize the conveyance of the land. As a result, amended language has been prepared and will be taken up by the Advisory Committee on February 24. A Supplemental report will be mailed if a vote is taken on this technical amendment. The Board of Selectmen will take up the amended language, if adopted by the Advisory Committee, on March 2. Supplemental materials reporting any additional votes will be provided prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

Article 3 would authorize the Board of Selectmen to enter into an up to 95 year lease agreement for Two Brookline Place including terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate taxes. We have identified a technical defect in the language in the Article in that it doesn't authorize the Town to accept the conveyed land. New language has been provided and we will be voting on it at our February 24 meeting. A supplemental mailing will be made prior to Town Meeting.

The Advisory Committee by a 19-2-1 vote recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town authorize the Board of Selectmen to lease any part or portion of the property generally known as Lot A in the B-2 Parcel, shown as Parcel 1 in Block 138 on Sheet 29B of the Town's 2001 Assessors Atlas, now or hereafter owned by said town, for a period not to exceed ninety five (95) years, to Village Plaza Limited Partnership or its designee, upon such terms and conditions as the Board of Selectmen shall determine to be in the best interests of the town, including terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate tax obligations, or act on anything relative thereto.

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ARTICLE 3

ADVISORY COMMITTEE'S RECOMMENDATION

Article 3, as originally worded, authorized the Board of Selectmen to enter into an up to 95 year lease agreement for Two Brookline Place including terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate taxes.

At the time of the Committee's original vote on Article 3, it identified a technical weakness in the language in that it did not authorize the Town to accept the conveyed land. New language has since been devised that retains the original provisions *and* authorizes the Town to accept the conveyance of land.

The Advisory Committee by an 11-0-1 vote recommends FAVORABLE ACTION on the following vote:

VOTED: To authorize the Board of Selectmen to enter into a sale-leaseback arrangement, pursuant to which: (a) the Town acquires, in consideration for the benefits to be derived by the Town thereby, any portion or all of the property generally known as Lot A in the B-2 Parcel, shown as Parcel 1 in Block 138 on Sheet 29B of the Town's 2001 Assessors' Atlas (the "Property"); and (b) the Town leases the portion of the Property so acquired by the Town for a period not to exceed ninety-five (95) years to Village Plaza Limited Partnership or its designee, upon such terms and conditions as the Board of Selectmen shall determine to be in the best interest of the Town, including terms and conditions regarding the payment of real estate taxes or payments in lieu of real estate tax obligations, and that this authorization shall be implemented if and only if the General Court passes the special act approved under Article 2 of the warrant for this meeting.