

---

ARTICLE 1

---

FIRST ARTICLE

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

---

This article is inserted in the Warrant for every Town Meeting in case there are any unpaid bills from a prior fiscal year that are deemed to be legal obligations of the Town. Per Massachusetts General Law, unpaid bills from a prior fiscal year can only be paid from current year appropriations with the specific approval of Town Meeting.

---



---

SELECTMEN'S RECOMMENDATION

State statutes provide that unpaid bills from previous fiscal years may not be paid from the current year's appropriations without the specific approval of Town Meeting. There are outstanding bills totaling \$1,525.40 incurred by the Zoning Board of Appeals, the budget for which falls under the Town Clerk. The services rendered were stenographic / transcription related to the 45 Marion Street hearing. These bills represent a legal liability and must be paid. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 11, 2005, on the vote offered by the Advisory Committee.

-----

---

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

When, for various reasons, bills for goods or service provided to the town in a given fiscal year are not paid before the books for that fiscal year are closed, payment from the budget in a following fiscal year requires a vote of approval by Town Meeting. At this Town Meeting, approval is being sought for the payment of four bills from 2004.

DISCUSSION

Usually someone appearing before the Zoning Board of Appeals is responsible for paying for transcription services. In one particular case the Board allowed an expense cap of \$2000. In this case the excess cost was \$1525.40. There was a minor delay as the

processing and definition of this unusual expense was calculated and verified. It has been determined to be accurate and a legitimate liability of the town and should be paid.

RECOMMENDATION

The Advisory Committee unanimously (20-0 with one abstention) recommends FAVORABLE ACTION on the following vote:

VOTED: To authorize the payment of the following unpaid bill of a previous fiscal year from the FY2006 Town Clerk budget:

Legalink Boston	\$1,525.40
-----------------	------------

**XXX**

ARTICLE 2

SECOND ARTICLE

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

---

This article is inserted in the Warrant for any Town Meeting when there are unsettled labor contracts. Town Meeting must approve the funding for any collective bargaining agreements.

---

TO:           Each Member of the Board

FROM:       Richard J. Kelliher, Town Administrator

RE:           Collective Bargaining – Firefighter Local 950

DATE:        October 24, 2005

---

On October 7, 2005 Arbitrator/Mediator Michael Ryan, assigned by the State Joint Labor Management Committee to the Town of Brookline negotiations with IAFF Local 950, recommended a “full settlement” of negotiations following fourteen straight hours of mediation with both parties. If his recommended settlement was not accepted by either party, he would then have taken control of the case as an Arbitrator with the statutory authority to impose contract terms on both the Board of Selectmen and Local 950. The Firefighters voluntarily ratified Arbitrator Ryan’s proposed Agreement on October 14<sup>th</sup> and the Selectmen voted (4-0) to approve it on October 20<sup>th</sup>.

This Settlement concludes negotiations for a successor Agreement to Local 950’s previous contract whose term ran through June 30, 2003. The first bargaining session for this successor Agreement took place a full two years ago in October 2003. This new Agreement covers the three-year period from July 1, 2003 to June 30, 2006. It was the one remaining unsettled contract for all town and school unions through this term.

Generally, the provisions of this mediator recommended settlement follow the pattern established with all the other unions. The general wage increase is the same as negotiated with the police, and the group health program changes implemented in October 2004 for all town/school employees have been accepted. Other language changes and adjustments in peripheral benefits are specific to this union.

The major provisions of the Settlement Agreement are summarized as follows:

#### GENERAL WAGE INCREASE

The settlement provides for retroactive pay increases of 2% on July 1, 2003; 2.5% on July 1, 2004 and increases in the current fiscal year of 3% on July 1, 2005 and 1% on January 1, 2006. This represents an 8% pay-out over a three- year period and an 8.5% increase going forward.

#### GROUP HEALTH INSURANCE

On October 1, 2004 the Town consolidated all employees under the coverage of a single insurer – Blue Cross Blue Shield of Massachusetts. This consolidation followed a two-year effort to competitively bid the Town’s coverage and to meet its bargaining obligations with the unions. The avoided premium costs realized through this consolidation in FY05 were approximately \$800,000. These savings were used to help offset costs associated with the general wage increase negotiated with all the unions. Additional savings also went to the direct benefit of employees.

Because Local 950 had not agreed to the consolidation, the Town attempted to continue providing the same options to members of Local 950 as had previously been provided. However, the other insurer was not willing to continue offering insurance to the few remaining enrolled employees and notified the Town that it would no longer provide such insurance. Local 950 declined in August, 2004 to respond to the Town’s offer to negotiate over the insurer’s decision to discontinue offering insurance to the 20-30 members of Local 950 who were effected by the change in plans. (For perspective, there are approximately 150 members of Local 950 and fewer than 30 of them were effected by this change. By September 2004 there were approximately 1,500 other town and school employees and retirees who had already proceeded with the enrollment procedures required by this consolidation.) This Settlement Agreement brings final closure to this change which has helped the Town come in under the average statewide group health increases experienced by other municipalities between FY01 and FY05.

#### LIMITED DUTY

The implementation of Limited or Modified Duty for firefighters on injury leave remains a long-term objective for the Town. The Arbitrator/Mediator recommended that this topic be referred to a joint labor-management Study Committee, which would also evaluate the presumption of causation regarding heart, lung cancer and contagious diseases. The Study Committee is to submit a report on May 1, 2006.

#### EXECUTIVE OFFICER

The Agreement acknowledges that the Town’s Executive Officer position is a confidential and managerial position excluded from the bargaining unit. This will be the first time there will be a command position in the Department other than Fire Chief, which will be a non-union position. The Agreement also acknowledges that one bargaining-unit position will be eliminated and that the Executive Officer position includes work that was formerly bargaining unit work.

WITHDRAWAL OF UNFAIR LABOR PRACTICE CHARGE

The Union agreed to withdraw its charge regarding former Chief Skerry from the Massachusetts Labor Relations Commission.

The Agreement also provides a number of other changes, including increasing HazMat pay by \$250 effective July 1, 2004; conversion of the HazMat stipend to a percentage on June 30, 2006 with such percentage frozen through FY 09; increasing the EMT stipend from 5% to 5.625% on July 1, 2005; changing the calculation of holiday pay on June 30, 2006; and establishing an enhanced longevity plan in FY06 at a maximum estimated cost of \$16,000.

The cost of the economic changes, both for wages and fringe benefits, in the contract is \$1,479,936 over the three-year term from July 1, 2003 – June 30, 2006. The total rollout costs including additional costs that emerge after FY06 are \$1,724,847. The amount required to be appropriated from the Collective Bargaining Reserve is \$841,997.

---

SELECTMEN'S RECOMMENDATION

The collective bargaining agreement between the Town and the Fire Union is presented under Article 2 for approval of funding. The agreement covers the previous two fiscal years (FY04 and FY05) and the current fiscal year (FY06). This three-year deal, the specifics of which are contained in the memo from the Town Administrator that precedes this Selectmen's Recommendation, is the result of a great deal of hard work by both the Town and the Fire union.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2005, on the following vote:

VOTED: To approve and fund by an appropriation of \$841,997, provided for in the FY2004 (\$182,653), FY2005 (\$272,633), and FY2006 (\$386,711) budgets, for the cost items in the following collective bargaining agreement that commences on July 1, 2003 and expires on June 30, 2006:

Local 950 of the International Association of Fire Fighters

all as set forth in the report of Richard Kelliher, Town Administrator, dated October 24, 2005, which report is incorporated herein by reference.

**ROLL CALL VOTE:**Favorable Action

Hoy

Sher

Merrill

Daly

-----

---

ADVISORY COMMITTEE'S RECOMMENDATIONBACKGROUND

A recommended settlement was reached after both sides spent an intense session with a mediator assigned by the State Joint Labor Board. If the parties had not come to an agreement then the next step was to have the mediator recommend an arbitrated decision. The Firefighters' contract had expired in June 2003. This Agreement will run from June 2003 to June 2006. It was the one remaining unsettled contract. It has been approved by the Union and by the Board of Selectmen on October 20<sup>th</sup>.

DISCUSSION

The agreement follows the pattern of the other unions with the general wage increase the same as that negotiated with the Police Union. The group health changes that were negotiated in 2004 have finally been accepted by all the unions with the acceptance of this contract. Now the town can consolidate all employees under a single insurer, BCBS.

The issue of Limited Duty for injured firefighters remains unresolved. The Mediator/Arbitrator recommended that this topic be referred to a joint labor-management Study Committee. The Agreement also includes the removal of one confidential and managerial position from the bargaining unit, similar to the Police Union. Now there will be an Executive Officer position, which along with the Chief, will be a non-union position. The Union also agreed to drop an unfair labor charge with the MLRC.

The Agreement includes a few other changes including an increase in HazMat pay. The cost of the economic changes for wages and fringe benefits is \$1,479,936 over the three-year term from June 2003 – June 30, 2006. The amount required to be appropriated from the Collective Bargaining Reserve is \$841,997.

RECOMMENDATION

This Agreement fits within the town's budget and financial planning, and represents a good value and fair compensation for both the town and the Union. This completes the negotiations with all the town unions and gives final agreement to the use of one health care carrier resulting in a great cost savings for the town and employees alike.

Therefore, the Advisory Committee unanimously (19-0) recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

*XXX*

---

ARTICLE 3

---

THIRD ARTICLE

To see if the Town will:

- A) Appropriate additional funds to the various accounts in the fiscal year 2006 budget or transfer funds between said accounts;
- B) Appropriate \$250,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for engineering or architectural services for plans and specifications for remodeling, reconstructing, or making extraordinary repairs to the Stephen Glover Train Memorial Health Building;
- C) Amend the vote taken at the 2004 Annual Town Meeting, under Article 8, Section 12, Item # 35, by deleting the words “engineering or architectural services for plans and specifications”; and
- D) And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or provided by any combination of the foregoing; and authorize the Board of Selectmen, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants and aid from both federal and state sources and agencies for any of the purposes aforesaid.

or act on anything relative thereto.

---

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required. For the current fiscal year (FY2006), the warrant article is necessary to appropriate additional revenue (from local aid and New Growth in the property tax levy) and re-allocate surplus debt service.

---



---

SELECTMEN’S RECOMMENDATION

Article 3 proposes amendments to the FY06 budget. The article is required for two reasons:

1. to appropriate additional revenue to help cover the Town’s growing energy deficit. (The revenue comes from additional Local Aid the Town received as part of the final state budget and from New Growth in the property tax levy above the amount estimated when constructing the FY06 budget.); and

- 2. to increase funding for the Health Center Renovation.

**ADDITIONAL REVENUE / ENERGY BUDGETS**

The final state budget approved by the Legislature included \$390,982 more in Local Aid than was included in the budget approved by Town Meeting. Of that amount, \$117,404 is “Offset Aid”<sup>1</sup>, meaning that \$280,985 is actually available for appropriation. The breakout of the additional funding is shown on the table below:

	<b>\$ VARIANCE FROM ADOPTED BUDGET</b>
<b>RECEIPTS</b>	<b>273,578</b>
Ch. 70	292,200
Charter Tuition Assesment Reimb.	(16,534)
Charter School Capital Facility Reimb.	(2,088)
<b>OFFSET AID</b>	<b>117,404</b>
Racial Equality	108,479
School Lunch	912
Libraries	8,013
<b>TOTAL ADD'L REVENUE</b>	<b>390,982</b>
<b>CHARGES</b>	<b>(7,407)</b>
County	0
SPED	25,430
Charter School Sending Tuition	(37,575)
School Choice Sending Tuition	4,738
<b>TOTAL AVAILABLE</b>	<b>398,389</b>
- Increase in "Non-Appropriated Expenses"	117,404
<b>TOTAL AVAILABLE FOR APPROP.</b>	<b>280,985</b>

Last Spring, the Town Administrator recommended that additional Local Aid, if any, be used for funding the remainder of a full-time Library position (a half-time position was included in the FY06 budget as approved by Town Meeting). To fulfill this recommendation, an additional \$2,753 is required to fund a Library Assistant II for seven months of the fiscal year. (Group Health and other benefits can be covered by existing appropriations for those purposes.) The balance of the additional Local Aid (\$278,232) is required to help offset an estimated deficit in town-wide utility accounts of more than \$800K.

<sup>1</sup> “Offset Aid” is offset 100% by expenditures (so-called “Non-Appropriated” expenses) since those monies go directly to the department without appropriation. This will result in additional capacity for the School and Library budgets, beyond what was expected to be available at the time of Town Meeting.

The deficit in utility accounts is caused by the terrible energy market we find ourselves in. The table below shows where the deficit is coming from:

<b>FY06 BUDGET</b>					
	<b>ELECTRICITY *</b>	<b>HEATING OIL</b>	<b>NATURAL GAS</b>	<b>GASOLINE</b>	<b>TOTAL</b>
<b>BUDGET</b>	<b>1,943,430</b>	<b>715,525</b>	<b>422,609</b>	<b>381,365</b>	<b>3,462,929</b>
Actual Incr in Price **	52%	68.97%	58.00%	32.76%	
Budgeted Incr in Price	0%	5.00%	5.00%	5.00%	
Variance		63.97%	53.00%	27.76%	
<b>FY06 NEED</b>	<b>42,000</b>	<b>458,000</b>	<b>196,000</b>	<b>106,000</b>	<b>802,000</b>
<b>FY07 NEED</b>	<b>503,000</b>	<b>458,000</b>	<b>245,000</b>	<b>106,000</b>	<b>1,312,000</b>
* The Town's electricity contract expires at the end of May, so there is just one month of exposure in FY06.					
** Increases in Electricity and Natural Gas are estimates.					

One bit of positive news is that since the Town entered into fixed-price contracts for gasoline/diesel and heating oil, our budget has not been further impacted negatively by the spike in energy prices post-Hurricanes Katrina and Rita.

To further help close the budget deficit, it is recommended to utilize New Growth in the property tax levy above what was projected when the FY06 budget was being developed. We are fortunate that the Chief Assessor reported New Growth for FY06 came in at \$2.23M, or \$484K more than anticipated. He was able to provide this information at this time, rather than the normal late-November timeframe, due to the fact that the Revaluation ("reval") was expedited in light of the pending departure of the Deputy Assessor Randy Kincaid. The Chief Assessor pushed to have this reval done in an expedited manner so as to not miss out on Randy's expertise. The end result is portions of the Tax Recapitulation ("Recap") being sent to DOR in mid-October rather than the mid-November timeframe. The Chief Assessor is confident that DOR will certify New Growth by the start of the November 15 Special Town Meeting.

It is strongly recommend that this additional New Growth be allocated to an Energy Reserve Fund for the virtually-certain year-end deficit in departments' utility accounts. An Energy Reserve is preferred to allocating the funds to individual departments because we are not sure at this time in which departments and in what amounts the deficits will occur. The Energy Reserve would be administered the same as the Budget Reserve: the Board of Selectmen recommends transfers to the Advisory Committee, which has final approval authority. This recommendation is not without precedent: in both FY91 and FY92, the last time the country faced a volatile energy market, an Energy Reserve was established and the mechanics for use were the same as those being proposed.

### **HEALTH CENTER RENOVATION**

This past May, Town Meeting approved \$4.1M for the renovation of the Health Center, with \$3.5M estimated for hard construction costs. The bids came in at \$3.95M, leaving a \$450K shortfall. This bid overage is reflective of a generally worsening environment for construction contracts. For example, the Beacon St. project was estimated at \$11.5M, but bids came in at \$15.8M, or 37% higher. Fortunately, the preponderance of that shortfall

was made up by state funds from the Mass Highway Department. This bidding experience has been seen in both public and private work, both locally and in the region.

The Director of Health and Human Services will be able to cover \$180K of the shortfall via a grant for the solar panels, fund-raising proceeds, and the use of a trust fund. That leaves \$270K, which will be covered by a combination of a.) the re-allocation of remaining design funds for use in construction<sup>2</sup> and b.) the re-allocation of \$250K in surplus debt service funding. The surplus debt service funding is the result of interest rates for the bonds offered this past Spring coming in lower than estimated. Since these monies are part of the overall 5.5% dedicated to the CIP, per the Town's fiscal policies, they must be used for the CIP.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2005, on the vote offered by the Advisory Committee.

**ROLL CALL VOTE:**

Favorable Action

Hoy

Sher

Merrill

Daly

-----

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The town has \$765,167 in additional revenue that is available for appropriation at this time. This amount is above what was incorporated in the FY2006 budget adopted at the Annual Town Meeting last May. Of this amount, \$484,182 represents more New Growth tax revenue than had been estimated by the Chief Assessor last spring. The final New Growth figure is known at this time because the town's annual revaluation was completed earlier than usual this year and has been reported to the state Department of Revenue; the Chief Assessor is confident that DOR will certify New Growth by the start of the November 15 Special Town Meeting.

Also, it was anticipated last May that there would be additional Local Aid revenue available for appropriation by the time of the November Fall Town Meeting. In fact, the final state budget passed by the legislature provided Brookline with \$390,982 more in Local Aid than had been included in the town budget passed last May. However \$117,404 of this amount is offset by dedicated increases in various non-appropriated expenditures that will go directly to the School (\$109,391) and Library (\$8,013) Department budgets.

---

<sup>2</sup> The wording included in the warrant article under (C), if approved by Town Meeting, allows for this.

There has been also a net reduction of \$7,407 in certain school-related charges that had been budgeted for in May. Hence there is a further net amount of revenue available for appropriation by Town Meeting at this time of \$280,985 (\$390,982 – \$117,404 + \$7,407).

Lastly, bids for hard construction costs related to the Health Center renovation have come in at \$3.95 M which is \$450,000 more than the \$3.50 M figure previously budgeted. On the bright side, the town currently has \$250,000 available in surplus debt service funding because the interest rate for bonds offered last spring came in lower than estimated.

### DISCUSSION

Last spring a good case was made for adding a full-time Library Assistant II position in the Library budget because of greatly increased usage at the Coolidge Corner Branch, instead of the half-time position, budgeted at \$15,000, which was actually voted in the FY2006 budget. The Town Administrator had agreed that if extra revenue became available, establishing this position would be a priority in November. Since the Coolidge Corner Branch has been closed for several months undergoing renovation, the full-time position can commence in December and can be funded for only seven months at a salary of \$17,753. This will require an increase in the Library budget of \$2,753 beyond the \$15,000 already budgeted. Note that by approving this position, Town Meeting will be authorizing a new permanent position with an annual salary of \$30,434.

Inasmuch as the dramatic recent increases in energy costs will leave Brookline with an estimated deficit of about \$750,000 in budgeted town-wide utility accounts, it makes sense to apply the remaining available funds -- \$762,414 -- to deal with this looming deficit. The Town Administrator recommends that \$484,182 be placed in an Energy Reserve line item to be transferred as required to the town's departmental budgets for energy-related expenses with the approval of the Board of Selectmen and the Advisory Committee. It's further recommended that the available balance of \$278,232 be added to the Building Department utilities budget to pay for expected increases in heating oil costs for town and school buildings.

As for the \$450,000 shortfall in budgeted hard construction costs for the Health Center renovation, this can be closed by re-allocating the \$250,000 in surplus debt service funding mentioned above, utilizing \$180,000 that the Director of Health and Human Services can supply from a combination of grant funds, trust fund monies, and fund-raising proceeds, and finally by re-allocating \$20,000 that remains in the previously budgeted amount for renovation design funds. This last step will require amending certain wording in the FY2004 budget to permit using funds that had been budgeted for design purposes to be used for construction purposes as well.

### RECOMMENDATION

The Advisory Committee agrees with the Town Administrator's recommendations regarding the appropriation of additional resources that have become available since last May's Annual Town Meeting and unanimously (18-0) recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town:

A. Amend the FY2006 budget in the following manner:

1. as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
12. Building Department	\$ 5,050,516	+ \$278,232	\$ 5,328,748
14. Library	\$ 3,037,290	+ \$ 2,753	\$ 3,040,043
24 (a). Energy Reserve	\$ 0	+ \$484,182	\$ 484,182
35. Borrowing	\$14,031,495	- \$250,000	\$13,781,495

2. by adding a new Section 14 to Article 7 of the 2005 Annual Town Meeting. Said Section 14 to read as follows:

14. ALLOCATION OF ENERGY RESERVE: Transfers from the central energy fund (line item #24 (a)) shall be made to Town departmental budgets, subject to the approval of the Board of Selectmen and Advisory Committee. Expenditure of said funds shall be for energy-related expenses only.

B. Raise and appropriate \$250,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for the cost of remodeling, reconstructing, or making extraordinary repairs to the Stephen Glover Train Memorial Health Building.

C. Amend the vote taken at the 2004 Annual Town Meeting, under Article 8, Section 12, Item # 35, by deleting the words “engineering or architectural services for plans and specifications”.

**XXX**

---

ARTICLE 4

---

FOURTH ARTICLE

To see if the Town will appropriate a sum of money to pay some or all of the Town's unfunded pension liability, so-called, and for the payment of any and all other costs incidental and related thereto, and to determine whether this amount should be raised by borrowing, as authorized pursuant to Chapter 485 of the Acts of 2004, or otherwise, or to see if the Town will take any other action relative thereto.

---

Pension Obligation Bonds (POBs) provide an alternative to the contributions to finance the unfunded liability of the pension system. Bond proceeds in the amount of the actuary's estimate of the unfunded liability are deposited with the retirement system. The amortization of the unfunded liability as determined by the actuary is replaced by debt service payments on the bonds. This is an extremely complex issue that requires careful analysis. Opinions about POBs are mixed, so it is critical that everyone involved with this decision familiarize themselves with the many aspects involved in POBs. Any decision made in this regard, either to act, or not to act, will affect the Town for years to come.

---

---

SELECTMEN'S RECOMMENDATION

Article 4 proposes that Town Meeting grant the authority for the Board of Selectmen to approve the issuance of up to \$103 million in bonds for the purpose of fully funding the Town's employee pension obligation. Town Meeting voted favorably on two separate occasions (1998 and 2003) to seek special legislation to allow the issuance of Pension Obligation Bonds, or POBs. POBs attempt to take advantage of the difference between the favorable rate of borrowing, estimated at 5.25%, and the assumed rate of return on the pension fund, estimated at 8.00%. The end result of a POB is a one-time payment to reach full-funding rather than spreading the cost over 17 years with annual appropriations.

If a matter of this magnitude and complexity were as simple as a rate of return of 8% on a principal financed at 5.25%, then the decision would be clear. Opinions about POBs, however, are mixed. It is important that everyone involved with this decision – Selectmen, Advisory Committee, and Town Meeting Members – familiarize themselves with the many aspects involved in POBs. Any decision made in this regard, either to act, or not to act, will affect the Town for years to come. Therefore, the Board is recommending that a Selectmen's Committee be formed to further analyze POBs.

As previously stated, this is a complicated but important subject matter. One needs to understand the underlying issues of the pension system prior to gaining an understanding the pros and cons of POBs. So, while we are recommending that a Committee review this issue, we believe that Town Meeting should be provided with some background on

the pension system and on POBs. The information that follows provides you with that background and should prove helpful in understanding why the Town is even contemplating POBs.

#### The Town's Legal Obligation to Fund Pension Costs

MGL Ch.32, Sec 22D (1) requires each community to adopt a funding schedule and make annual pension payments necessary to fully-fund the Retirement System. The schedule is designed to reduce the unfunded actuarial liability of the system and to bring the system to full-funding no later than June 30, 2028. The Brookline Retirement Board initially adopted a schedule intended to bring the system to full-funding by 2018. In 2002, the Retirement Board revised the schedule, adopting a full-funding date of 2023. The Retirement Board does have the option of postponing the schedule further to the maximum payment schedule of 2028. However, the extension of the schedule significantly increases the cost to fund the unfunded liability.

#### How the Unfunded Pension Obligation is Calculated

On a biennial basis, as required by M.G.L. Ch. 32, Sec. 21 (3), the Brookline Retirement Board contracts with a financial consultant to complete an actuarial analysis that estimates the amount required to fully-fund the Town's pension obligation. Included in this analysis are the current number of employees in the pension program, their ages, estimated retirement dates, projected wage increases, and life expectancy beyond their projected retirement dates. In addition, an estimate of the rate of return on investments is included. The Retirement Board approves a payment schedule and submits the plan to the Public Employee Retirement Administration Commission (PERAC) for approval.

The Retirement Board recently adopted a policy that requires an informal study to be completed during the year between the formally required biennial actuarial analyses. The informal study duplicates the required analysis in all ways except that the results are not submitted to PERAC to be incorporated into the next financial plan.

The last formal actuarial analysis submitted to PERAC, based upon the January 1, 2004 data, identified an estimated unfunded pension obligation of \$88,288,164. The informal study, based upon the January 1, 2005 data, identified an estimated unfunded pension obligation of between \$95,147,556 (assuming an 8.25% rate of return on investments) and \$102,194,744 (assuming an 8.00% rate of return on investments).

There are three principal factors that are increasing the unfunded liability. They are:

- The rate of return experience which the Retirement System has achieved of the last five years;
- The level of disability retirements that have occurred over the last five years;
- The change in the mortality tables.

The next formal analysis is scheduled to be conducted after January 1, 2006. Over the past year, several disability retirements have occurred that will increase the estimated unfunded pension obligation further.

#### The Current Pension Funding Plan

The Brookline Retirement Board is required to calculate the unfunded pension obligation, using reasonable assumptions, and to submit a report to PERAC outlining a plan to fully-fund the program by the FY2028. The Retirement Board has used the following assumptions:

- A schedule to fully fund the obligation by the year 2023;
- An estimated annual wage increase, including steps, of 5%;
- An estimated rate of return on investments of 8.25%;
- An average annual budget increase for pension costs of 3.5%

The two most critical assumptions are the term to full-funding and the rate of return on investments. The Retirement Board has chosen a plan that incorporates a shorter term than required to fully fund because the overall cost to fully-fund is less when the obligation is paid at a faster pace. This is similar to the effects on the total cost of a home mortgage if the term is dropped from 30 years to 20 years.

In 2003, the Retirement Board changed the assumed rate of return on investments from 8.00% to 8.25%. Currently, approximately 33% of the local retirement boards utilize an assumed rate of return of 8.25%. In the last two years the rate of return has averaged 15.83%. The average rate of return over the last five years has been 5.33%. This reflects the downturn in the world economy during the period between 2000 and 2003. As the rate of return can not be guaranteed and has fluctuated dramatically in the last few years, this variable becomes critical to the fully funded pension obligation estimate. In the event that the rate of return is greater than 8.25%, the total cost of fully funding the plan would be less. In the event that the rate of return is less than 8.25%, then the cost of fully funding the plan would be greater. During the biennial actuarial analysis, the Retirement Board reviews all of the assumptions currently being utilized, and makes adjustments as needed.

Once the Actuarial analysis is completed, a plan for full-funding is approved by the Retirement Board and submitted to PERAC for approval. Because this approval occurs as the local budget process is nearly completed, the effects on the Town budget of funding the pension plan are delayed until the subsequent budget cycle. The last formal analysis, based upon January 1, 2004 data, impacted the FY2006 and FY2007 annual budgets. The next Actuarial analysis, based upon January 1, 2006 data, will impact the FY2008 and FY2009 annual budgets. The effect of the cost increases being applied to future years creates a back loaded funding plan that will continue to place significant financial stress on future budgets leading to full-funding in FY2023.

#### A POB Funding Plan

At the point in the process when the Actuarial analysis is completed and an unfunded pension obligation is determined, the Town of Brookline can determine the method of paying the obligation. While the current method of payment is the standard practice utilized by most public pension systems, the Town can choose to make full payment of the pension obligation immediately. Because the amount owed is significant, this would require the Town to borrow the funds.

At the November 2003 Town Meeting, Home Rule legislation was approved that would allow the Town to issue Pension Obligation Bonds (POBs), a financing vehicle that has been utilized by municipalities, counties and states for approximately fifteen years. The bill was signed into law on January 6, 2005 as Chapter 485 of the Acts of 2004, thereby allowing the Town the option of substituting a POB for the current funding plan.

POBs are essentially one form of debt substituted for another form of debt (the unfunded pension liability). The logic behind them is simple: since local governments typically pay relatively high interest rates on their pension plans' unfunded liability (i.e., the assumed rate of return), why not refinance those liabilities with proceeds from less costly municipal bonds? In the event that Brookline proceeds with POBs, it would be equivalent to refinancing this liability debt from the current 8.25% assumed interest on earnings to an estimated 5.26% interest rate on borrowing.

POBs are not without risks. However, while there are risks, the cost avoidance that could be derived from POBs under certain market conditions would offset projected future increases in the pension system's unfunded liability. The Committee being recommended by the Selectmen will certainly analyze the risks and rewards of POBs.

Conclusion

The Town of Brookline's unfunded pension obligation has significantly increased due to increased costs and lower than expected rates of return. This unfunded liability is anticipated to have a substantial negative impact upon the annual operating budget, beginning in FY2008. The cost avoidance that could result from a POB would significantly improve the likelihood of avoiding the probable adverse impact on the operating budget resulting from growing pension obligations. As previously stated, this is a matter of great magnitude and complexity, and more work needs to be undertaken to make the risks and rewards clearer to all. As a result, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 25, 2005, on the following vote:

VOTED: To refer the subject matter of Article 4 to the Selectmen's Committee on Pension Obligation Bonds.

-----

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 4 seeks to authorize the Board of Selectmen to issue Pension Obligation Bonds (POBs).

Brookline, like other towns and cities, has an obligation to provide pension benefits to its employees. In order to fully fund our pension system, as per state statute, an actuarial

analysis is performed every two years and submitted to the state for review (the town performs its own informal analysis yearly).

This analysis takes into account such things as investment performance, life expectancy, early disability retirement, and estimated wage increases to name a few. The analysis determines how much funding to the system remains, and prescribes a schedule of annual payments to accomplish full funding. These payments are made annually as part of our town's budget appropriation. State law requires full funding of the pension system by no later than 2028. The Brookline Retirement Board has adopted a schedule that will accomplish full funding by 2023, reducing the full cost. This is similar to paying down your mortgage a bit earlier. The funding schedule is a bit of a moving target because of investment performance, life expectancy and other issues mentioned. This is why there is a new analysis and rescheduling of the debt every two years

Because of the variability of these components, the increase in people drawing on the pension system through early disability retirements, and several years of down markets (though Brookline performed well on a relative basis); we expect the amount of funding required, and therefore the necessary annual contribution from our operating budget, to increase starting in FY2008. The amount of the estimated remaining pension obligation is on the order of \$100M. Though the official actuarial analysis for state purposes is not until January 2006, we anticipate that we will require an additional \$1.3-2M in the annual contribution (on a pay-as-you-go basis) towards the pension obligation from our operating budget.

These are clearly sobering numbers.

### DISCUSSION

One *potential* means of meeting our obligation is to use POBs. Through this process, the town could make a single payment to fully, or partially, pay the remaining pension obligation by borrowing that amount through a bond offering. We would then have annual debt service payments for the term of the bonds (17 years), rather than amortized pay-as-you-go contributions, to meet our full funding requirement.

Driven to its simplest root, the concept is that you borrow money in a low interest-rate environment (now) and invest it at a higher rate of return. The cost of borrowing remains fixed while investment return would, no doubt, fluctuate. Historic returns support the contention that investment returns over the long term (17 years) will be higher than the current rate of borrowing. This difference in the cost of borrowing versus the amount earned on those funds could mean considerable savings to the town and our operating budget.

It should be so simple. But, as we have often been admonished: "past performance is no guarantee of future returns".

POBs can be a forceful financial lever, yet leverage can work both for and against you. If investment returns are less than your cost of borrowing, you are losing money on those funds. It gets back to what the long-term returns are likely to be, and the probabilities of those various levels of return – as well as the associated risks involved. The town has

contracted for a sophisticated computer modeling of these probabilities and risks in order that a more thoughtful appraisal can be made.

While the basic concept of Pension Obligation Bonds may seem straight forward at one level, they become very complicated in terms of timing, execution and properly weighing risks (and consequences). Borrowed funds are more at risk, and the greater the percentage of your pension that is funded through borrowing, the greater the risk is to your pension fund (through the borrowing term).

Members of the Advisory Committee have put considerable time and effort into looking at POBs – the intricacies and risk/reward. We have also considered the stark likelihood that beginning in FY2008, we will need to devote an additional \$1.3-2M from the operating budget towards our pension obligation. These are not simple issues, nor are there simple solutions. In light of this, the Advisory Committee believes that Pension Obligation Bonds deserve serious consideration.

While recognizing that POBs can be financial levers that work to our advantage, and that we are in a period of historically low interest rates, these financial instruments do not come without risk. Before our community commits one way or another on this issue, the Advisory Committee feels it both wise and prudent for a group of town leaders and financial experts from our community to make a careful analysis (particularly with regards to the computer modeling data) and provide a report to Town Meeting with a clear appraisal of the risks and benefits of POBs. The Board of Selectmen has already established such a committee.

#### RECOMMENDATION

After considering the structure of this committee, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

**XXX**

ARTICLE 5

FIFTH ARTICLE

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

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are **[bracketed]**.

**§9.04 - PROCEDURE FOR APPLICATION FOR SPECIAL PERMIT**

**[Prior to the filing of an application for a special permit, the applicant shall submit plans to the Building Commissioner, who shall advise the applicant as to the relevant sections of the Zoning By-law. Each application for a special permit shall be filed in triplicate with the Board of Appeals who shall transmit copies thereof to the Building Commissioner and the Brookline Planning Board. The Planning Board shall, within 20 days of the date of such filing, transmit to the Board of Appeals and to the applicant a report accompanied by such material, maps or plans as will aid the Board of Appeals in judging the application and in determining special conditions and safeguards. The Board of Appeals shall not render any decision on an application for a special permit until said report has been received and considered or until the 20-day period has expired, whichever is earlier.]**

**An applicant shall follow the following procedures when filing an application for a special permit.**

**1. Plan Review for Determination of Compliance with the Zoning By-Law**

**The applicant shall first submit plans to the Building Commissioner, who shall advise the applicant in writing as to whether the plans comply or do not comply with the Zoning By-Law. The application for Plan Review, including all associated plans, drawings and documents, shall be in a form specified by the Building Commissioner.**

**A written determination of non compliance, hereinafter referred to as the "Denial Letter", shall identify the following:**

- a. **All plans, drawing and documents submitted by the applicant that provided the basis for the review and determination by the Building Commissioner; and**
- b. **Each section of the Zoning By-Law that the plans do not comply with and which will require a special permit from the Board of Appeals.**

**The Building Commissioner shall issue the Denial Letter within thirty (30) days after the application for Plan Review is complete. Copies of the Denial Letter**

shall be submitted to the Town Clerk, Planning Board and Zoning Administrator as part of the application for a Special Permit.

## 2. Compliance with Prior Decisions and Conditions of the Board of Appeals.

As part of the Plan Review procedure, defined by §9.04 1., the Building Commissioner, in consultation with the Zoning Administrator, shall determine whether the applicant's plans are in compliance with any applicable decision and corresponding conditions previously issued by the Board of Appeals. The Denial Letter shall note whether or not the subject property is in compliance with any prior decision of the Board of Appeals.

## 3. Special Permit Application to Town Clerk

Four copies of each application for a Special Permit shall be submitted to the Town Clerk. The application shall be filed in a form approved by the Board of Appeals and as specified by the Board's Rules and Regulations adopted pursuant to Chapter 40A § 12.

## 4. Determination of Complete Application

Prior to scheduling a hearing before the Board of appeals, the Town Clerk shall submit one copy of the application to the Zoning Administrator who shall determine whether or not the application is complete. Within fourteen (14) days of receiving the application, the Zoning Administrator shall send a letter with a copy to the Town Clerk notifying the applicant that his/her application is complete or what additional information is required to complete the application. If the Zoning Administrator does not issue a letter within the fourteen day period, the application shall be deemed complete and the Town Clerk shall then proceed to schedule a hearing before the Board of Appeals. Applicants are encouraged to meet with the Zoning Administrator prior to filing with the Town Clerk to review the Rules and Regulations of the Board of Appeals that pertain to applications for Special Permits and to obtain a preliminary determination that all of the necessary information is contained in the application.

Once the Zoning Administrator determines that the application is complete or the fourteen day period has expired, whichever occurs first, the Town Clerk shall maintain a copy and forward copies to the Planning Board and Building Commissioner with the Zoning Administrator's determination, if any.

## 5. Planning Board Advisory Report

The Planning Board shall, within twenty (20) days of the date an application has been determined complete, submit an advisory report to the applicant and Board of Appeals. The advisory report, which shall be accompanied by appropriate plans, drawings and other supporting documents, will provide a recommendation and proposed conditions as warranted.

## **6. Time Extension for Completion of Planning Board Advisory Report**

**An applicant may submit a written request to the Planning Board to extend the 20 day period for filing the advisory report with the Board of Appeals. The Planning Board, following consideration of the request at a public meeting noticed pursuant to §9.08, may grant such a request and provide written notice of such action to the applicant, Board of Appeals, Town Clerk, Building Commissioner and Zoning Administrator.**

## **7. Board of Appeals Decision**

**The Board of Appeals shall not render a decision on an application for a special permit until the advisory report from the Planning Board has been received and considered or until the 20 day period, or any extension requested by an applicant and granted by the Planning Board for this period, has expired. The applicant may also submit a written request to the Board of Appeals requesting an extension of time or postponement of the public hearing on the application for a special permit. The Board of Appeals shall consider such a request at a public meeting noticed pursuant to §9.08. The Board may also seek a report from the Zoning Administrator regarding the requested extension or postponement. The Zoning Administrator shall provide written notice of the Board of Appeal's decision on the request to the applicant, with copies to the Planning Board, Town Clerk and Building Commissioner.**

or act on anything relative thereto.

---

A direct outcome of the Town's Zoning Administration and Enforcement project, this article would clarify the process for applying for a special permit. Many of the procedures outlined are already part of existing process, but are not part of the zoning by-law. This article puts in writing procedures that already exist for special permit applications. This article also outlines the role of the new Zoning Administrator in this overall process.

---



---

## **PLANNING BOARD REPORT AND RECOMMENDATION**

---

The Planning Board supports, Warrant Article 5, which was submitted by the Board of Selectmen. This proposed zoning amendment provides modifications that clarify and strengthen zoning administration and enforcement in the Brookline Zoning By-Law. It grew out of the recommendations of the Zoning Administration and Enforcement Project, especially from the strategies proposed by the July 2005 Implementation Progress Report.

**Article 5**, which modifies §9.04 - Procedure For Application For Special Permit, details the seven phases or procedures associated with the special permit process, which include: 1)

Plan Review by Building Commissioner for Determination of Compliance with the Zoning By-Law; 2) Compliance with Prior Decisions and Conditions of the Board of Appeals by Zoning Administrator and Building Commissioner; 3) Special Permit Application to Town Clerk; 4) Determination of Complete Application by Zoning Administrator; 5) Planning Board Advisory Report; 6) Time Extension for Planning Board Report; and 7) Board of Appeals Decision. For the most part, the steps are the same as in the current By-Law but greater detail is provided for each step, and this will serve to strengthen compliance with the requirements. For example, the denial letter must list any conditions from previous decisions which have not been met, and the Zoning Administrator must make a written determination to the completeness of the application **before** a Board of Appeals Hearing is scheduled. The Planning Board believes these modifications will improve the special permit/variance application process.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 5 with the minor revisions suggested by the Planning and Community Development Department and Zoning By-Law Committee as follows.

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are [bracketed]. Planning Board proposed revisions are in *bold, italics and underlined*.

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

#### **§9.04 - PROCEDURES FOR APPLICATION AND REVIEW OF SPECIAL PERMITS**

**[Prior to the filing of an application for a special permit, the applicant shall submit plans to the Building Commissioner, who shall advise the applicant as to the relevant sections of the Zoning By-law. Each application for a special permit shall be filed in triplicate with the Board of Appeals who shall transmit copies thereof to the Building Commissioner and the Brookline Planning Board. The Planning Board shall, within 20 days of the date of such filing, transmit to the Board of Appeals and to the applicant a report accompanied by such material, maps or plans as will aid the Board of Appeals in judging the application and in determining special conditions and safeguards. The Board of Appeals shall not render any decision on an application for a special permit until said report has been received and considered or until the 20-day period has expired, whichever is earlier.]**

**An applicant shall follow the following procedures when filing an application for a special permit.**

##### **1. Plan Review for Determination of Compliance with the Zoning By-Law**

**The applicant shall first submit plans to the Building Commissioner, who shall advise the applicant in writing as to whether the plans comply or do not comply with the Zoning By-Law. The application for Plan Review, including all associated plans, drawings and documents, shall be in a form specified by the Building Commissioner.**

A written determination of non compliance, hereinafter referred to as the “Denial Letter”, shall identify the following:

- a. All plans, drawing and documents submitted by the applicant that provided the basis for the review and determination by the Building Commissioner; and
- b. Each section of the Zoning By-Law that the plans do not comply with and which will require a special permit from the Board of Appeals.

The Building Commissioner shall issue the Denial Letter within thirty (30) days after the application for Plan Review is complete. Copies of the Denial Letter shall be submitted to the Town Clerk, Planning Board and Zoning Administrator as part of the application for a Special Permit.

## 2. Compliance with Prior Decisions and Conditions of the Board of Appeals.

As part of the Plan Review procedure, defined by §9.04 1., the Building Commissioner, in consultation with the Zoning Administrator, shall determine whether the applicant’s plans are in compliance with any applicable decision and corresponding conditions previously issued by the Board of Appeals. The Denial Letter shall note whether or not the subject property is in compliance with any prior decision of the Board of Appeals.

## 3. Special Permit Application to Town Clerk

Four copies of each application for a Special Permit shall be submitted to the Town Clerk. The application shall be filed in a form approved by the Board of Appeals and as specified by the Board’s Rules and Regulations adopted pursuant to Chapter 40A § 12.

## 4. Determination of Complete Application

Prior to scheduling a hearing before the Board of Appeals, the Town Clerk shall submit one copy of the application to the Zoning Administrator who shall determine whether or not the application is complete. Within fourteen (14) days of receiving the application, the Zoning Administrator shall send a letter with a copy to the Town Clerk notifying the applicant that his/her application is complete or what additional information is required to complete the application. If the Zoning Administrator does not issue a letter within the fourteen day period, the application shall be deemed complete and the Town Clerk shall then proceed to schedule a hearing before the Board of Appeals. Applicants are encouraged to meet with the Zoning Administrator prior to filing with the Town Clerk to review the Rules and Regulations of the Board of Appeals that pertain to applications for Special Permits and to obtain a preliminary determination that all of the necessary information is contained in the application.

Once the Zoning Administrator determines that the application is complete or the fourteen day period has expired, whichever occurs first, the Town Clerk shall maintain a copy and forward copies to the Planning Board and Building Commissioner with the Zoning Administrator's determination, if any.

5. Planning Board Advisory Report

The Planning Board shall, within twenty (20) days of the date an application has been determined complete, submit an advisory report to the applicant and Board of Appeals *after holding a public meeting*. The advisory report, which shall be accompanied by appropriate plans, drawings and other supporting documents, will provide a recommendation and proposed conditions as warranted.

6. Time Extension for Completion of Planning Board Advisory Report

An applicant may submit a written request to the Planning Board to extend the 20 day period for filing the advisory report with the Board of Appeals. The Planning Board, following consideration of the request at a public meeting noticed pursuant to §9.08, may grant such a request and provide written notice of such action to the applicant, Board of Appeals, Town Clerk, Building Commissioner and Zoning Administrator.

7. Board of Appeals Decision

The Board of Appeals shall not render a decision on an application for a special permit until the advisory report from the Planning Board has been received and considered or until the 20 day period, or any extension requested by an applicant and granted by the Planning Board for this period, has expired *and after holding a public hearing*. The applicant may also submit a written request to the Board of Appeals requesting an extension of time or postponement of the public hearing on the application for a special permit. *If the request is made after the legal notice for the hearing is published*, the Board of Appeals shall consider such a request at a public meeting noticed pursuant to §9.08. The Board may also seek a report from the Zoning Administrator regarding the requested extension or postponement. The Zoning Administrator shall provide written notice of the Board of Appeal's decision on the request to the applicant, with copies to the Planning Board, Town Clerk and Building Commissioner.

, or act on anything relative thereto.

---

SELECTMEN'S RECOMMENDATION

Article 5, a proposed amendment to the Town's Zoning By-Law, is based on the recommendations of the Zoning Administration and Enforcement Project, a high priority

of the Town. The purpose of the article is to further define the special permit application process in greater detail, thereby strengthening conformance with the required procedures. Two significant changes included in the proposed zoning amendment are:

- 1) requiring any conditions from previous decisions, which have not been met, to be listed in the denial letter, and
- 2) requiring a written determination as to the completeness of the application by the Zoning Administrator.

These changes, coupled with the proposals found under Articles 6 – 9, will have a positive impact on the administration and enforcement of zoning in the Town of Brookline. Therefore, the Board recommends FAVORABLE ACTION, by a vote 5-0 taken on October 11, 2005, on the following vote:

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

#### **§9.04 - PROCEDURES FOR APPLICATION AND REVIEW OF SPECIAL PERMITS**

**[Prior to the filing of an application for a special permit, the applicant shall submit plans to the Building Commissioner, who shall advise the applicant as to the relevant sections of the Zoning By-law. Each application for a special permit shall be filed in triplicate with the Board of Appeals who shall transmit copies thereof to the Building Commissioner and the Brookline Planning Board. The Planning Board shall, within 20 days of the date of such filing, transmit to the Board of Appeals and to the applicant a report accompanied by such material, maps or plans as will aid the Board of Appeals in judging the application and in determining special conditions and safeguards. The Board of Appeals shall not render any decision on an application for a special permit until said report has been received and considered or until the 20-day period has expired, whichever is earlier.]**

**An applicant shall follow the following procedures when filing an application for a special permit.**

##### **1. Plan Review for Determination of Compliance with the Zoning By-Law**

**The applicant shall first submit plans to the Building Commissioner, who shall advise the applicant in writing as to whether the plans comply or do not comply with the Zoning By-Law. The application for Plan Review, including all associated plans, drawings and documents, shall be in a form specified by the Building Commissioner.**

**A written determination of non compliance, hereinafter referred to as the “Denial Letter”, shall identify the following:**

- a. **All plans, drawing and documents submitted by the applicant that provided the basis for the review and determination by the Building Commissioner;**  
**and**

- b. Each section of the Zoning By-Law that the plans do not comply with and which will require a special permit from the Board of Appeals.

The Building Commissioner shall issue the Denial Letter within thirty (30) days after the application for Plan Review is complete. Copies of the Denial Letter shall be submitted to the Town Clerk, Planning Board and Zoning Administrator as part of the application for a Special Permit.

2. Compliance with Prior Decisions and Conditions of the Board of Appeals.

As part of the Plan Review procedure, defined by §9.04 1., the Building Commissioner, in consultation with the Zoning Administrator, shall determine whether the applicant's plans are in compliance with any applicable decision and corresponding conditions previously issued by the Board of Appeals. The Denial Letter shall note whether or not the subject property is in compliance with any prior decision of the Board of Appeals.

3. Special Permit Application to Town Clerk

Four copies of each application for a Special Permit shall be submitted to the Town Clerk. The application shall be filed in a form approved by the Board of Appeals and as specified by the Board's Rules and Regulations adopted pursuant to Chapter 40A § 12.

4. Determination of Complete Application

Prior to scheduling a hearing before the Board of Appeals, the Town Clerk shall submit one copy of the application to the Zoning Administrator who shall determine whether or not the application is complete. Within fourteen (14) days of receiving the application, the Zoning Administrator shall send a letter with a copy to the Town Clerk notifying the applicant that his/her application is complete or what additional information is required to complete the application. If the Zoning Administrator does not issue a letter within the fourteen day period, the application shall be deemed complete and the Town Clerk shall then proceed to schedule a hearing before the Board of Appeals. Applicants are encouraged to meet with the Zoning Administrator prior to filing with the Town Clerk to review the Rules and Regulations of the Board of Appeals that pertain to applications for Special Permits and to obtain a preliminary determination that all of the necessary information is contained in the application.

Once the Zoning Administrator determines that the application is complete or the fourteen day period has expired, whichever occurs first, the Town Clerk shall maintain a copy and forward copies to the Planning Board and Building Commissioner with the Zoning Administrator's determination, if any.

5. Planning Board Advisory Report

The Planning Board shall, within twenty (20) days of the date an application has been determined complete, submit an advisory report to the applicant and Board of Appeals after holding a public meeting. The advisory report, which shall be accompanied by appropriate plans, drawings and other supporting documents, will provide a recommendation and proposed conditions as warranted.

6. Time Extension for Completion of Planning Board Advisory Report

An applicant may submit a written request to the Planning Board to extend the 20 day period for filing the advisory report with the Board of Appeals. The Planning Board, following consideration of the request at a public meeting noticed pursuant to §9.08, may grant such a request and provide written notice of such action to the applicant, Board of Appeals, Town Clerk, Building Commissioner and Zoning Administrator.

7. Board of Appeals Decision

The Board of Appeals shall not render a decision on an application for a special permit until the advisory report from the Planning Board has been received and considered or until the 20 day period, or any extension requested by an applicant and granted by the Planning Board for this period, has expired and after the Board of Appeals has held a public hearing.

The applicant may also submit a written request to the Board of Appeals requesting an extension of time or postponement of the public hearing on the application for a special permit. If the request is made after the legal notice for the hearing is published, the Board of Appeals shall consider such a request at a public meeting noticed pursuant to §9.08. The Board may also seek a report from the Zoning Administrator regarding the requested extension or postponement. The Zoning Administrator shall provide written notice of the Board of Appeal’s decision on the request to the applicant, with copies to the Planning Board, Town Clerk and Building Commissioner.

-----

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

A direct outcome of the town’s Zoning Administration and Enforcement project, this article would clarify the process for applying for a special permit. Many of the procedures outlined are already part of the existing process, but are not part of the Zoning By-law. This article puts in written procedures that already exist for special permit applications. This article also outlines the role of the new Zoning Administrator in this overall process.

DISCUSSION

This article only applies to applications that require Special Permits from the Board of Appeals, which on an annual basis range from 75 to 95 cases according to Planning and Community Development Director Duffy. These applications (75 – 95) represent about 1% of the 6,200 permits (the Director's estimate) that the Building Department will issue in 2005.

If approved by Town Meeting, the newly hired Zoning Administrator will be responsible for coordinating the Special Permit process. He or she will be the point person for members of the public. All documentation in the special permitting process will be processed by the Zoning Administrator. All parties involved will sign off on a single document in an effort to ensure greater accountability.

The Zoning Administrator will reside in the Department of Planning and Community Development and report to the Director of Planning and Community Development, and will assist in writing the Board of Appeals decisions including decisions which are passed with safeguards.

The procedures described in the article also apply to variances as spelled out in other sections of Article IX, Administration and Procedures.

Some concern was expressed about the need for the individual who will hold this new position to have full autonomy and be able to maintain independence while working with all the departments involved in the zoning and construction process.

We were assured that this position will likely evolve over time, and will be closely studied in the interest of re-establishing greater coordination and trust in the permitting and construction processes administered by the town.

RECOMMENDATION

The Advisory Committee unanimously (21-0) recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

**XXX**

---

ARTICLE 6

---

SIXTH ARTICLE

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

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are **[bracketed]**.

§9.08 - NOTICE TO TOWN MEETING MEMBERS AND OTHERS

At least seven days before any public hearing on an application for a variance, a special permit, or an extension of time pursuant to §9.07, the Board of Appeals, shall mail or deliver a notice of such hearing, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located and to those Town Meeting Members **within all immediately adjoining precincts [of a precinct which is within 200 feet of such property as to which such application has been made]**. At least seven days before any Planning Board meeting, whether preliminary or final, on an actual or future application for a variance, special permit, or extension of time, the Planning Board shall mail or deliver a notice of such meeting to the applicants, to immediate abutters to the subject property, to each elected Town Meeting Member for the precinct in which the subject property is located, **[and] to Town Meeting members within all immediately adjoining precincts [for a precinct which is within 200 feet of such property]**, to **[all] the** neighborhood associations registered with the Planning **and Community Development** Department **in which the property is located, to immediately adjoining neighborhood associations** and to all those specified on the Planning Board interoffice and distribution lists which may be amended from time to time. Notice to Town Meeting Members shall be in accordance with the names and addresses in the records of the Town Clerk.

or act on anything relative thereto.

---

A direct outcome of the Town's Zoning Administration and Enforcement project, this article will increase public knowledge of and participation in the zoning review process. It adds additional parties to the list of Town Meeting members and neighborhood associations that will be notified of a pending zoning application. It adds the Town Meeting members of adjoining precincts to the notification list. Currently, these Town Meeting members from adjoining districts are only notified if the property under review is within 200 feet of their district. This article also requires that additional neighborhood associations be informed of any public meetings held by the Planning Board.

---

---

PLANNING BOARD REPORT AND RECOMMENDATION

---

The Planning Board supports, Warrant Article 6, which was submitted by the Board of Selectmen. This proposed zoning amendment provides modifications that clarify and strengthen zoning administration and enforcement in the Brookline Zoning By-Law. It grew out of the recommendations of the Zoning Administration and Enforcement Project, especially from the strategies proposed by the July 2005 Implementation Progress Report.

**Article 6**, which modifies §9.08 – Notice to Town Meeting Members and Others, expands notice requirements to additional Town Meeting members and Neighborhood Associations. Currently, Town Meeting members from a precinct in which a development is located and any precinct within 200 feet of the development are notified of Planning Board meetings and Board of Appeals hearings. This amendment expands notice to all adjoining precincts. Additionally, notice of Planning Board meetings given to Neighborhood Associations in which a development is located will be expanded to include all adjoining Neighborhood Associations. The Planning Board believes the expanded notice will ensure that any precinct or neighborhood that might be affected by a development will be informed about the proposed development and have the opportunity to comment on it at a public meeting.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 6 with the minor revisions suggested by the Planning and Community Development Department and Zoning By-Law Committee as follows.

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are **[bracketed]**. Planning Board proposed revisions are in ***bold, italics and underlined***.

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

§9.08 - NOTICE TO TOWN MEETING MEMBERS AND OTHERS

At least seven days before any public hearing on an application for a variance, a special permit, or an extension of time pursuant to §9.07, the Board of Appeals, shall mail or deliver a notice of such hearing, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located and to those Town Meeting Members **within all immediately adjoining precincts [of a precinct which is within 200 feet of such property as to which such application has been made]**. At least seven days before any Planning Board meeting, whether preliminary or final, on an actual or future application for a variance, special permit, or extension of time, the Planning Board shall mail or deliver a notice of such meeting to the applicants, to immediate abutters to the subject property, to each elected Town Meeting Member for the precinct in which the subject property is located, **[and] to Town Meeting members within all immediately adjoining precincts [for a precinct which is within 200 feet of such property]**, to **[all] the** neighborhood associations registered with the Planning **and Community**

**Development** Department **in the precinct in which the property is located, to immediately adjoining neighborhood associations,** and to all those specified on

the Planning Board interoffice and distribution lists which may be amended from time to time. Notice to Town Meeting Members shall be in accordance with the names and addresses in the records of the Town Clerk.

, or act on anything relative thereto.

---

**SELECTMEN’S RECOMMENDATION**

Article 6, a proposed amendment to the Town’s Zoning By-Law, is based on the recommendations of the Zoning Administration and Enforcement Project, a high priority of the Town. The Article expands the notice requirement for Planning Board meetings and Board of Appeals hearings to include a wider circle of adjoining precincts and neighborhood associations. This will allow greater public participation at the Planning Board and Board of Appeals level and will allow more citizens in Brookline to be informed about development projects in the Town, both key components of the overall efforts to overhaul zoning administration and enforcement.

Therefore, the Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 4-1 taken on October 11, 2005, on the vote offered by the Advisory Committee.

**ROLL CALL VOTE:**

Favorable Action

No Action

Hoy

Allen

Sher

Merrill

Daly

---

**ADVISORY COMMITTEE’S RECOMMENDATION**

**BACKGROUND**

This proposed Zoning By-law amendment grew out of recommendations from the town’s Zoning Administration Study (“Stearns Report”). It represents a language change in Section 9.08 “Notice to Town Meeting members and others”.

This article, if passed, requires:

- 1) That at least seven days before any public hearing on an application for a variance, a special permit, or an extension of time pursuant to Section 9.07, **THE BOARD OF**

**APPEALS** shall mail or deliver a notice of such hearing with description of such application or a copy thereof to:

- a. Each elected Town Meeting Member for the precinct in which the property is located,
- b. Those Town Meeting Members within all immediately adjoining precincts.

2) That at least seven days before any Planning Board meeting, whether preliminary or final, on an actual or future application for a variance, special permit, or extension of time, **THE PLANNING BOARD** shall mail or deliver a notice of such meeting to:

- a. the applicants,
- b. immediate abutters to the subject property
- c. Each elected Town Meeting Member for the precinct in which the property is located
- d. Town Meeting Members within all immediately adjoining precincts
- e. The Neighborhood Associations registered with the Planning and Community Development Department in the precinct in which the property is located
- f. Immediately adjoining Neighborhood Associations
- g. All those specified on the Planning Board interoffice and distribution lists which may be amended from time to time.

Notice to Town Meeting Members shall be in accordance with the names and addresses in the records of the Town Clerk.

(The underlined passages represent the proposed amendments to the Zoning By-law.)

### DISCUSSION

This article attempts to define more clearly the intended recipients of the public notice and to make public participation more inclusionary. The Advisory Committee believes this is a worthy amendment to our Zoning By-laws.

The Committee did have difficulty in deciding where to draw the line with regards to the notification of Neighborhood Associations. The proposed language offered by the Planning Board, while expanding this notification beyond what it is currently, restricts this notification to Neighborhood Associations in the precinct of, or immediately adjoining, the subject property. The Committee's concern was that there might well be Neighborhood Associations that represent the concerns of several precincts. If a Neighborhood Association is officially registered as being in the far precinct of a three or four precinct community, it may not receive notice of activities on the other side of its interest area. How likely this is to occur, or how well good subjective judgment on the part of the Planning Department may help, is uncertain. The Advisory Committee felt that a standard of blanket notification to Neighborhood Associations registered with the Planning Department would safeguard against miscommunication of notices to those associations with an interest in a particular area.

There are approximately 40 registered Neighborhood Associations in town. Given the number of hearings for variances and special permits, there will be added mailing costs. The Advisory Committee was not convinced, though, that the associated costs would be so onerous as to outweigh the benefit of broader public notice.

RECOMMENDATION

The Advisory Committee unanimously (13-0 with one abstention) recommends FAVORABLE ACTION on the following vote:

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

§9.08 - NOTICE TO TOWN MEETING MEMBERS AND OTHERS

At least seven days before any public hearing on an application for a variance, a special permit, or an extension of time pursuant to §9.07, the Board of Appeals, shall mail or deliver a notice of such hearing, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located and to those Town Meeting Members **within all immediately adjoining precincts [of a precinct which is within 200 feet of such property as to which such application has been made]**. At least seven days before any Planning Board meeting, whether preliminary or final, on an actual or future application for a variance, special permit, or extension of time, the Planning Board shall mail or deliver a notice of such meeting to the applicants, to immediate abutters to the subject property, to each elected Town Meeting Member for the precinct in which the subject property is located, **[and] to Town Meeting members within all immediately adjoining precincts [for a precinct which is within 200 feet of such property]**, to **all** neighborhood associations registered with the Planning **and Community Development** Department **in the precinct in which the property is located, to immediately adjoining neighborhood associations** and to all those specified on the Planning Board interoffice and distribution lists which may be amended from time to time. Notice to Town Meeting Members shall be in accordance with the names and addresses in the records of the Town Clerk.

XXX

ARTICLE 6

**Brookline PAX Amendments to Article 6**  
Marty Rosenthal (TMM-9) & Frank Farlow, (TMM-4), co-chairs

[Proposed changes to main motions are in UPPER CASE.]

§9.08 - NOTICE TO TOWN MEETING MEMBERS AND OTHERS:

At least seven days before any public hearing on an application for a variance, a special permit, or an extension of time pursuant to §9.07, the Board of Appeals, shall mail or deliver a notice of such hearing, with a description of such application or a copy thereof, to **TO IMMEDIATE ABUTTERS AND, BY MEANS OF A GOOD FAITH EFFORT TO TENANTS OF SUCH ABUTTERS, TO THE SUBJECT PROPERTY, AND TO** each elected Town Meeting Member for the precinct in which the property is located and to those Town Meeting Members **within all immediately adjoining precincts [of a precinct which is within 200 feet of such property as to which such application has been made]**. At least seven days before any Planning Board meeting, whether preliminary or final, on an actual or future application for a variance, special permit, or extension of time, the Planning Board shall mail or deliver a notice of such meeting to the applicants, to immediate abutters **AND, BY MEANS OF A GOOD FAITH EFFORT TO TENANTS OF SUCH ABUTTERS,** to the subject property, to each elected Town Meeting Member for the precinct in which the subject property is located, **[and] to Town Meeting members within all immediately adjoining precincts [for a precinct which is within 200 feet of such property]**, to all neighborhood associations registered with the Planning **and Community Development** Department and to all those specified on the Planning Board interoffice and distribution lists which may be amended from time to time. Notice to Town Meeting Members shall be in accordance with the names and addresses in the records of the Town Clerk. **SAID NOTICES BY THE BOARD OF APPEALS AND PLANNING BOARD SHALL MAKE GOOD FAITH EFFORTS TO DESCRIBE THE APPLICATION AND PERTINENT ZONING ISSUES IN TERMS WHICH ARE COMPREHENSIBLE TO LAYPERSONS.**

ARTICLE 6

**Brookline PAX Amendments to Article 6**

Marty Rosenthal (TMM-9) & Frank Farlow, (TMM-4), co-chairs

MOVED: To refer the two subjects of the art. 6 PAX amendments , i.e. a good faith effort to notify tenants of nearby zoning cases and the overall format of notices by the ZBA and Planning Board -- to the Zoning By-law Review Committee, to report back to the TMM's either in a report by June 30, 2006 or in a proposed By-Law amendment for the Fall 2006 meeting.

EXPLANATION: PAX's amendments, while still seeming important in their intent, have generated a flurry of legal and administrative concerns by Town officials. PAX is willing to let these issues be studied this fiscal year, with the intent to try to resolve them one way or another in the fall 2006 TM. We hope the By-law Review Committee will propose the amendments at that time, but if they decide otherwise we want to know in time to work on another warrant article by citizen petition.

---

ARTICLE 6

---

There was an error on the vote as reported on page 6-5 of the Combined Reports. The vote approved by both the Board of Selectmen and the Advisory Committee did not include the words “**in the precinct in which the property is located, to immediately adjoining neighborhood associations**” in the 14<sup>th</sup> and 15<sup>th</sup> lines. It should read as follows:

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

§9.08 - NOTICE TO TOWN MEETING MEMBERS AND OTHERS

At least seven days before any public hearing on an application for a variance, a special permit, or an extension of time pursuant to §9.07, the Board of Appeals, shall mail or deliver a notice of such hearing, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located and to those Town Meeting Members **within all immediately adjoining precincts [of a precinct which is within 200 feet of such property as to which such application has been made]**. At least seven days before any Planning Board meeting, whether preliminary or final, on an actual or future application for a variance, special permit, or extension of time, the Planning Board shall mail or deliver a notice of such meeting to the applicants, to immediate abutters to the subject property, to each elected Town Meeting Member for the precinct in which the subject property is located, **[and] to Town Meeting members within all immediately adjoining precincts [for a precinct which is within 200 feet of such property]**, to **all** neighborhood associations registered with the Planning **and Community Development** Department and to all those specified on the Planning Board interoffice and distribution lists which may be amended from time to time. Notice to Town Meeting Members shall be in accordance with the names and addresses in the records of the Town Clerk.

---

ARTICLE 7

---

SEVENTH ARTICLE

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

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are [**bracketed**].

§5.09 – Design Review

3. Procedure

a. General

- 1) Preapplication—Prior to a formal submission to the Building Commissioner, the applicant is strongly encouraged to **take the following steps, and in the case of a Major Impact Project as defined in Section 5.09 3. b. such preliminary steps are required:**
  - a) consult with the Building Commissioner and Planning Director or their designees for technical advice relative to the community and environmental impact and design review standards of this section; and
  - b) meet with abutters, tenants of abutters, Town Meeting Members, neighborhood associations, and other interested citizen groups to review the project plans, and the applicant should actively promote citizen involvement throughout the review process. **In the case of Major Impact Projects, the meeting shall be convened prior to the Planning Board's preliminary meeting as required by Section 5.09 3. b. 4). The Department of Planning and Community Development will assist the applicant in identifying the parties to be notified;** and
  - c) meet with the Planning Director or his/her designee to determine if the Planning Board has adopted design guidelines which pertain to the proposed project; and
  - d) meet with the Transportation Director and the Planning Director or their designees for advice on the preparation of any required transportation studies.

or act on anything relative thereto.

---

A direct outcome of the Town's Zoning Administration and Enforcement project, this article increases the requirements of a Major Impact Project as defined in the Zoning By-

law. It requires that a public meeting be held on any such project by the applicant, working with the Planning & Community Development Department.

---

## PLANNING BOARD REPORT AND RECOMMENDATION

---

The Planning Board supports, Warrant Article 7, which was submitted by the Board of Selectmen. This proposed zoning amendment provides modifications that clarify and strengthen zoning administration and enforcement in the Brookline Zoning By-Law. It grew out of the recommendations of the Zoning Administration and Enforcement Project, especially from the strategies proposed by the July 2005 Implementation Progress Report.

**Article 7**, which modifies §5.09 – Design Review, 3. Procedure, a. General, 1) Preapplication, requires that a developer of a major impact project meet with abutters, tenants of abutters, Town Meeting Members, neighborhood associations, and other interested citizen groups before a preliminary Planning Board meeting is held on the project. Previously, this was strongly encouraged but not required. The Planning Board believes this will give the neighborhood the opportunity to learn about a proposed development at the earliest possible stage.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 7 with the minor revisions suggested by the Planning and Community Development Department and Zoning By-Law Committee as follows.

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are **[bracketed]**. Planning Board proposed revisions are in ***bold, italics and underlined***.

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

### §5.09 – Design Review

#### 3. Procedure

##### a. General

1.) Preapplication—Prior to a formal submission to the Building Commissioner, the applicant is strongly encouraged to **take the following steps, and in the case of a Major Impact Project as defined in Section 5.09 3. b. such preliminary steps are required:**

- a) consult with the Building Commissioner and Planning Director or their designees for technical advice relative to the community and environmental impact and design review standards of this section; and
- b) **[meet with] schedule a neighborhood meeting and make good faith effort to notify** abutters, tenants of abutters, Town Meeting Members,

neighborhood associations, and other interested citizen groups to review the project plans, and the applicant should actively promote citizen involvement throughout the review process. **In the case of Major Impact Projects, the meeting shall be convened prior to the Planning Board's preliminary meeting as required by Section 5.09 3. b. 4). The Department of Planning and Community Development will assist the applicant in identifying the parties to be notified;** and

- c) meet with the Planning Director or his/her designee to determine if the Planning Board has adopted design guidelines which pertain to the proposed project; and
- d) meet with the Transportation Director and the Planning Director or their designees for advice on the preparation of any required transportation studies.

,or act on anything relative thereto.

---

#### SELECTMEN'S RECOMMENDATION

Article 7, a proposed amendment to the Town's Zoning By-Law, is based on the recommendations of the Zoning Administration and Enforcement Project, a high priority of the Town. The Article requires that developers of major impact projects hold a neighborhood meeting prior to a formal application to the Building Department. Currently, such meetings were strongly recommended but not required. This will allow neighbors and Town Meeting Members to learn about a project at the earliest possible point and increase public participation during the approval process, a key component of the overall efforts to overhaul zoning administration and enforcement.

Therefore, the Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0, taken on October 11, 2005, on the vote offered by the Advisory Committee.

---

#### ADVISORY COMMITTEE'S RECOMMENDATION

#### BACKGROUND

Article 7 increases and codifies requirements regarding Major Impact Projects. This is borne out of recommendations from the town's Zoning Administration Study ("Stearns Report") and reflects a sentiment expressed by the community. Specifically, it requires developers to schedule a meeting with the neighborhood prior to a formal submission to the Building Commissioner, and encourages the same approach in other instances as well. In the case of Major Impact Projects, it requires that "the meeting shall be convened prior to the Planning Board's preliminary meeting".

DISCUSSION

This article codifies a practice that is encouraged by the town and community. While this by-law change specifies those who must be notified (e.g. TMMs, abutters, neighborhood associations, among others), it reasonably includes a “good faith” clause, understanding that some people may miss a notice even with the best of intentions.

The Advisory Committee believes this to be a reasonable, and perhaps overdue, revision to our Zoning By-laws. It provides an approach that can be beneficial to both a neighborhood and a developer by beginning a dialogue early in the process.

RECOMMENDATION

By a vote of 21-0, the Advisory Committee unanimously recommends FAVORABLE ACTION on the following vote:

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

§5.09 – Design Review

## 3. Procedure

## a. General

- 1) Preapplication—Prior to a formal submission to the Building Commissioner, the applicant is strongly encouraged to **take the following steps, and in the case of a Major Impact Project as defined in Section 5.09 3. b. such preliminary steps are required:**
  - a) consult with the Building Commissioner and Planning Director or their designees for technical advice relative to the community and environmental impact and design review standards of this section; and
  - b) **[meet with] schedule and hold a neighborhood meeting and make good faith effort to notify** abutters, tenants of abutters, Town Meeting Members, neighborhood associations, and other interested citizen groups to review the project plans, and the applicant should actively promote citizen involvement throughout the review process. **In the case of Major Impact Projects, the meeting shall be convened prior to the Planning Board’s preliminary meeting as required by Section 5.09 3. b. 4). The Department of Planning and Community Development will assist the applicant in identifying the parties to be notified;** and
  - c) meet with the Planning Director or his/her designee to determine if the Planning Board has adopted design guidelines which pertain to the proposed project; and

- d) meet with the Transportation Director and the Planning Director or their designees for advice on the preparation of any required transportation studies.

***XXX***

ARTICLE 7

**Brookline PAX Amendment to Article 7**  
Marty Rosenthal (TMM-9) & Frank Farlow, (TMM-4), co-chairs

[Proposed changes to main motions are in UPPER CASE.]

**ARTICLE 7** (on the motion offered by the Advisory Committee:)

§5.09 – Design Review

3. Procedure

a. General

1) Preapplication—Prior to a formal submission to the Building Commissioner, the applicant is strongly encouraged to **take the following steps, and in the case of a Major Impact Project as defined in Section 5.09 3. b. such preliminary steps are required:**

a) consult with the Building Commissioner and Planning Director or their designees for technical advice relative to the community and environmental impact and design review standards of this section; and

b) ~~[meet with] schedule and hold AT LEAST ONE neighborhood meeting and make good faith effort to notify~~ abutters, tenants of abutters, Town Meeting Members, neighborhood associations, and other interested citizen groups to review the project plans; and the applicant should actively promote citizen involvement throughout the review process. **In the case of Major Impact Projects, the meeting shall be convened prior to the Planning Board’s preliminary meeting as required by Section 5.09 3. b. 4). The Department of Planning and Community Development will assist the applicant in identifying the parties to be notified;** and

Deleted: a

Deleted: ,

c) meet with the Planning Director or his/her designee to determine if the Planning Board has adopted design guidelines which pertain to the proposed project; and

---

ARTICLE 8

---

EIGHTH ARTICLE

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

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are [bracketed].

§5.09.3.d. Design Advisory Teams

The Planning Board is authorized to appoint a Design Advisory Team (DAT) **consisting of the following: one or more Planning Board member(s); professional architect(s), landscape architect(s) or other related design professional(s); and a neighborhood representative** to provide [professional] design review assistance to the Planning Board and the Planning **and Community Development** Department in the review of certain §5.09 projects which may have a significant impact on the character of the area. **The Planning Board may, in its discretion, also appoint representatives from other appropriate Town boards and commissions to serve on a DAT, but only if deemed necessary to insure coordinated project review. The Planning Board may appoint a DAT at a regularly scheduled meeting where public notice has been provided pursuant to Section 9.08.** At the direction of the Planning Board, the applicant may be required to meet with the DAT to discuss resolution of design concerns. Following a meeting with the DAT, the applicant must include in any further submissions its response to issues raised by the DAT. The DAT may also submit a report to the Planning Board for its consideration.

or act on anything relative thereto.

---

A direct outcome of the Town's Zoning Administration and Enforcement project, this article would increase public involvement in the Design Advisory Teams (DAT's) created under the Zoning Bylaw to review major projects. The article adds neighborhood representatives to the list of persons who should participate in any DAT. While the practice recently has been to have neighborhood representatives on these DAT's, this article would require their participation.

---

PLANNING BOARD REPORT AND RECOMMENDATION

The Planning Board supports, Warrant Article 8, which was submitted by the Board of Selectmen. This proposed zoning amendment provides modifications that clarify and strengthen zoning administration and enforcement in the Brookline Zoning By-Law. It grew out of the recommendations of the Zoning Administration and Enforcement Project, especially from the strategies proposed by the July 2005 Implementation Progress Report.

**Article 8**, which modifies §5.09 – Design Review, 3. Procedure, d. Design Advisory Teams, authorizes the Planning Board to appoint one or more Neighborhood Representatives to serve on a Design Advisory Team (DAT), allow the Planning Board, at its discretion, to appoint representatives from other Town Boards and Commissions, and requires that the Planning Board appoint DAT members at a publicly noticed meeting. These procedures codify the process that the Planning Board is now using for Design Advisory Teams. The Planning Board believes that these measures strengthen the design review process and allow input, not only from professionals, but residents of the affected neighborhood.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 8 with the minor revisions suggested by the Planning and Community Development Department and Zoning By-Law Committee as follows.

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are **[bracketed]**. Planning Board proposed revisions are in *bold, italics and underlined*.

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

§5.09.3.d. Design Advisory Teams

**The Planning Board is authorized to appoint a Design Advisory Team (DAT) consisting of the followings: one or more Planning Board member(s); professional architect(s), landscape architect(s) or other related design professional(s); and *one or more neighborhood representative(s)*. *The DAT will provide [professional] design review assistance to the Planning Board and the Planning and Community Development Department in the review of certain §5.09 projects which may have a significant impact on the character of the area.* The Planning Board may, in its discretion, also appoint representatives from other appropriate Town boards and commissions to serve on a DAT, but only if deemed necessary to insure coordinated project review. The Planning Board may appoint a DAT at a regularly scheduled meeting where public notice has been provided pursuant to Section 9.08. At the direction of the Planning Board, the applicant may be required to meet with the DAT to discuss resolution of design concerns. Following a meeting with the DAT, the applicant must include in any further submissions its response to issues raised by the DAT. The DAT may also submit a report to the Planning Board and Board of Appeals for consideration.**

, or act on anything relative thereto.

---

SELECTMEN'S RECOMMENDATION

Article 8, a proposed amendment to the Town's Zoning By-Law, is based on the recommendations of the Zoning Administration and Enforcement Project, a high priority of the Town. The Article requires neighborhood representation on the Design Advisory

Teams (DATs), which are appointed by the Planning Board. The DAT reviews and makes recommendations on the design of major impact projects, so input on the design from those who will be most affected by the project will help strengthen the process.

Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 11, 2005, on the following vote:

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

#### §5.09.3.d. Design Advisory Teams

The Planning Board is authorized to appoint a Design Advisory Team (DAT) **[to] consisting of the following: one or more Planning Board member(s); professional architect(s), landscape architect(s) or other related design professional(s); and one or more neighborhood representatives. The DAT will [to] provide professional design review assistance to the Planning Board and the Planning and Community Development Department in the review of certain §5.09 projects which may have a significant impact on the character of the area. The Planning Board may, in its discretion, also appoint representatives from other appropriate Town boards and commissions to serve on a DAT, but only if deemed necessary to insure coordinated project review. The Planning Board may appoint a DAT at a regularly scheduled meeting where public notice has been provided pursuant to Section 9.08.** At the direction of the Planning Board, the applicant may be required to meet with the DAT to discuss resolution of design concerns. Following a meeting with the DAT, the applicant must include in any further submissions its response to issues raised by the DAT. The DAT may also submit a report to the Planning Board **and Board of Appeals** for [its] consideration.

-----

#### ADVISORY COMMITTEE'S RECOMMENDATION

##### BACKGROUND

The Planning Board is authorized to appoint a Design Advisory Team (DAT) but the exact composition of its members is not codified. If this revised article passes, the DAT will consist of one or more Planning Board member(s), professional architect(s), landscape architect(s), or other related design professional(s) and neighborhood representative(s). The neighborhood representative(s) may also have a professional background. The important skill for the neighborhood representative(s) to have is to know the needs of the neighborhood.

##### DISCUSSION

This article spells out what the Planning Board has already been doing vis-à-vis the appointment of a DAT. The DAT is appointed by the Planning Board to provide professional design review assistance to the Planning Board and the Planning and Community Development Department in the review of certain Section 5.09 projects, which may have a significant impact on the character of a particular area of Brookline. This article also adds the reference to the Community Development Department.

It should be noted that, although DATs have been regularly appointed for significant impact projects, the Planning Board "is authorized to appoint" one but not required to, by either the existing Section 5.09.3.d or these proposed amendments.

The Planning Board may, in its discretion, also appoint representatives from other appropriate town boards and commissions to serve on a DAT, but only if deemed necessary to insure coordinated project review. The Planning Board may appoint a DAT at a regularly scheduled meeting where public notice has been provided pursuant to Section 9.08. Also added to this section is that the DAT can submit a report to the Board of Appeals. The current zoning by-laws include a report to the Planning Board but not to the Board of Appeals.

The Advisory Committee suggested that the Planning Department create boilerplate language that can be added to the notices that go out regarding hearings on neighborhood projects. When a DAT is appointed, the Advisory Committee wanted to make sure that the neighbors were encouraged to get involved in a DAT if their interests and/or professional skills would be helpful to the neighborhood and the particular project.

#### RECOMMENDATION

The Advisory Committee unanimously (21-0) recommends FAVORABLE ACTION on the following vote:

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

#### §5.09.3.d. Design Advisory Teams

The Planning Board is authorized to appoint a Design Advisory Team (DAT) **[to] consisting of the following: one or more Planning Board member(s); professional architect(s), landscape architect(s) or other related design professional(s); and neighborhood representatives. The DAT will [to] provide professional design review assistance to the Planning Board and the Planning and Community Development Department in the review of certain §5.09 projects which may have a significant impact on the character of the area. The Planning Board may, in its discretion, also appoint representatives from other appropriate Town boards and commissions to serve on a DAT, but only if deemed necessary to insure coordinated project review. The Planning Board may appoint a DAT at a regularly scheduled meeting where public notice has been provided pursuant to Section 9.08.** At the direction of the Planning Board, the applicant may be required to meet with the DAT to discuss resolution of design concerns. Following a meeting with the DAT, the applicant must include in any further submissions its response to

issues raised by the DAT. The DAT may also submit a report to the Planning Board **and Board of Appeals** for [its] consideration.

*XXX*

ARTICLE 8

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

The Advisory Committee voted to amend its original vote under Article 8 by deleting the words “**neighborhood representatives**” in line 4 and replacing them with “**one or more neighborhood representatives.**” The recommended vote is now identical to the vote offered by the Board of Selectmen on page 8-3 of the Combined Reports.

ARTICLE 8

**Amendment offered by Myra Trachtenberg, TMM Prec. 3**

The amendment sent out as part of the Supplemental Mailing was incorrect. The following amendment is correct. [The proposed changes are in CAPITAL and ~~striketrough.~~]

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

§5.09.3.d. Design Advisory Teams

The Planning Board is authorized to appoint a Design Advisory Team (DAT) [to] **THAT SHALL CONSIST ~~consisting of the following: one or more Planning Board member(s); professional architect(s), landscape architect(s) or other related design professional(s); and one or more neighborhood representatives. The DAT will~~ [to] provide professional design review assistance to the Planning Board and the Planning and Community Development Department in the review of certain §5.09 projects which may have a significant impact on the character of the area. The Planning Board may, in its discretion, also appoint representatives from other appropriate Town boards and commissions to serve on a DAT, but only if deemed necessary to insure coordinated project review. The Planning Board may appoint a DAT at a regularly scheduled meeting where public notice has been provided pursuant to Section 9.08. At the direction of the Planning Board, the applicant may be required to meet with the DAT to discuss resolution of design concerns. Following a meeting with the DAT, the applicant must include in any further submissions its response to issues raised by the DAT. The DAT may also submit a report to the Planning Board and Board of Appeals for [its] consideration.**

ARTICLE 9

NINTH ARTICLE

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

A. The following amendments are proposed for §9.00 Enforcement. Please note that all proposed amendments appear in **bold** type and are **underlined**. Proposed deletions appear in **bold** type and are **[bracketed]**.

**§9.00 - ENFORCEMENT**

1. **Enforcement Authority** - This By-law shall be enforced by the Building Commissioner. The Building Commissioner shall not issue a permit for the erection or alteration of any building or part thereof, unless the plans, specifications and intended use of such buildings are in all respects in conformity with the provisions of this By-law.
2. **Conformance with Zoning By-Law** - No person shall use or permit the use of any building or part thereof hereafter erected, or altered in its use or construction in whole or in part, or any building when the open spaces in the lot upon which it stands have been reduced in area or shape, until the Building Commissioner has issued a certificate of occupancy and use under the Commonwealth of Massachusetts State Building Code, and until the Building Commissioner has issued a certificate to the effect that the building so erected or the part thereof so altered, the proposed use thereof, the size of the lot and its yards and setbacks, and all other applicable requirements, conform to the provisions of this By-law.
3. **Compliance with Board of Appeals Decision and Conditions** - In addition to the provisions of paragraphs 1 and 2 of this Section, no building permit or certificate of occupancy shall be issued by the Building Commissioner on an application or petition to the Board of Appeals until all of the conditions and safeguards imposed by the Board of Appeals in accordance with §9.05, paragraph 2, regarding such application or petition have been complied with **pursuant to the following §9.00 4.** **[or compliance with conditions to be met at a future date has been arranged. Compliance with conditions and safeguards to be reviewed or approved by a Designated Authority shall be determined by the following procedure:]**
  - (a) **Notice of Method of Compliance** —The applicant shall complete and submit for signature a separate notice of compliance which shall include revised plans or other supporting material if applicable, to each board, commission, department head, or other administrative body or official (hereinafter the "Designated Authority") designated by the Board of Appeals to review or approve a specific aspect of the application or petition. The notice of compliance shall document compliance with the condition and/or intent to comply provided that adequate assurances for compliance such as the

delivery of a bond or deposit as permitted in paragraph (d) are given. The sufficiency of the notice of compliance shall be within the discretion of the Designated Authority. If the Designated Authority fails to take action on the notice of compliance within 20 days of its receipt, compliance shall be determined by the Building Commissioner.

- b. **Declaration of Compliance**—The applicant shall deliver to the Building Commissioner all of the required notices of compliance. For any notice of compliance that has not been acted upon by a Designated Authority within the 20 day period, the applicant shall affix to that notice a statement to that effect. Upon a determination by the Building Commissioner that the requirements of paragraph 3, subparagraph a of this Section have been met, a declaration of compliance shall be issued by the Building Commissioner, copies of which shall be promptly forwarded to each Designated Authority.
- c. **Building Permit**—The Building Commissioner may issue a building permit once a declaration of compliance has been issued.
- d. **Certificate of Occupancy**—Prior to the issuance of a certificate of occupancy, the Building Commissioner shall send a notice of pending certificate of occupancy to each Designated Authority which shall have 14 days from the date of that notice to request that the certificate of occupancy be withheld. If such action is requested in writing or was requested in a notice of compliance, the certificate of occupancy shall not be issued until the Building Commissioner has received a notice of completion, which may incorporate provisions for a bond or deposit as permitted in paragraph 4, from the Designated Authority that requested such action.

In the event of disagreement on the procedural requirements of this Section, or in the event of unreasonable administrative delay, the matter shall be referred to the Board of Appeals for resolution.

- 4. The Building Commissioner shall not issue a certificate of occupancy until all required site improvements have been completed in accordance with the final project plans, except that the Building Commissioner may issue a certificate of occupancy if the applicant posts a bond or deposit with the Town in the amount of 1 1/2 times the total installed cost of uncompleted required at-grade site improvements at the time of issuance of the certificate of occupancy. If said improvements (such as landscaping and fences) are not completed within one year from the time of issuance of the certificate of occupancy, said bond or deposit shall be forfeited to the Town, and the Town shall utilize the bond or deposit to complete the required at-grade site improvements.
- 5. Whenever application has been made to the Building Commissioner for a permit or certificate and the interpretation of this By-law with respect to the granting of such application is not clear, the Building Commissioner is authorized and directed to submit the matter to the Planning Board for the expression of its opinion before making his/her decision.]

**4. Compliance Procedures- Compliance with a decision and associated conditions approved by the Board of Appeals shall be determined by the following procedures.**

**a) Zoning Administrator**

**An official of the Town of Brookline shall be designated as the Zoning Administrator. One of the primary responsibilities of the Zoning Administrator will be to assist the Board of Appeals with the compliance procedures defined by this Section of the Zoning By-Law.**

**b) Designated Authority**

**The Board of Appeals, pursuant to §9.05 2. shall define a Designated Authority to determine compliance with each condition associated with a decision regarding an application for a special permit, variance, time extension or other action. A Designated Authority may be a member of an appointed board, commission or other administrative body, a department head or Town Official. The Board of Appeals shall also state, as part of each condition, whether the Designated Authority is required to determine compliance prior to the issuance of a building permit or certificate of occupancy.**

**c) Declaration of Compliance**

**The Zoning Administrator shall, following a public hearing noticed pursuant to §9.08, prepare a Declaration of Compliance form, either in a typed or electronic format or both, that will list the conditions in the Board's decision and document an applicant's compliance with all the terms and conditions of the Board's decision. The form shall be signed by the appropriate Designated Authority and the Zoning Administrator to insure compliance with the terms and conditions of the Board's decision. The Zoning Administrator shall send the Declaration of Compliance Form to the Applicant.**

**d) Declaration of Compliance Form**

**The Declaration of Compliance Form, shall at a minimum include the following:**

- 1) Board of Appeals case number;**
- 2) Name and address of the applicant;**
- 3) Street Address and Assessor's book, page and parcel identification of the project;**
- 4) Project description from Board of Appeals decision;**
- 5) Identification of all surveys, plans, elevations and other drawings approved by the Board of Appeals;**
- 6) Each condition approved by the Board of Appeals;**

- 7) Determination of compliance or non-compliance by the Designated Authority or Zoning Administrator;
- 8) Title, signature and date of compliance determination by the Designated Authority; and Zoning Administrator;
- 9) Statement of compliance assurance by applicant; and
- 10) Signature of applicant and date signed by applicant.

#### e) Compliance Procedures

Prior to the issuance of a building permit or a certificate of occupancy, the applicant shall file with the Zoning Administrator a request for a determination of compliance that the project is in all respects in compliance with the terms and conditions of the Board's decision and any modifications thereto. The Zoning Administrator will circulate the request and the Declaration of Compliance form to all appropriate Designated Authorities for review and approval within twenty (20) days of the date the applicant requests a determination of compliance. If a Designated Authority fails to act within the prescribed period, the Zoning Administrator may determine compliance and make a recommendation to the applicant and Building Commissioner. The Zoning Administrator shall submit the completed Declaration of Compliance form to the Building Commissioner, with copies to the Town Clerk, applicant and each Designated Authority.

#### f) Plan Certain

As part of the Declaration of Compliance procedures above, the Zoning Administrator and the Building Commissioner shall jointly conduct a Plan Certain review of the site plan, landscape plan, building elevations and other drawings, details and documents that are subject to conditions approved by the Board of Appeals. The Plan Certain review shall determine that the final plans submitted, either as part of an application for a building permit or certificate of occupancy, are consistent with the plans and conditions approved by the Board of Appeals and the recommendations of the Designated Authorities.

#### g) Plan Revisions

Once the Board of Appeals public hearing on the proposal is closed, any plan revision, other than a change governed by a condition of the Board of Appeals approval, which in any way alters or modifies the plan, shall be reviewed by the Building Commissioner and the Town's Zoning Administrator. If such revision is deemed by the Building Commissioner and Zoning Administrator to constitute a change other than as authorized by the Conditions of the Board of Appeals, the matter shall be referred to the Planning Board for its recommendation in accordance with the Community and Environmental Impact and Design Review Standards of §5.09.4. and to the Board of Appeals as necessary.

#### h) Alternative Means of Compliance

**The determination of compliance by a Designated Authority may include a recommendation for proceeding with an alternative means of compliance that may be secured by a bond, deposit or other appropriate financial commitment approved by the Zoning Administrator. The bond or deposit with the Town shall be in the amount of 1 1/2 times the total installed cost of uncompleted required at-grade site improvements at the time of issuance of either a building permit or certificate of occupancy. If said improvements (such as landscaping and fences) are not completed within one year, said bond or deposit shall be forfeited to the Town, and the Town shall utilize the bond or deposit to complete the required at-grade site improvements.**

**i) Compliance Disagreements**

**In the event of disagreement on the procedural requirements of this Section, or in the event of unreasonable administrative delay, the Zoning Administrator shall refer the matter to the Board of Appeals for resolution.**

**5. Interpretation of Board of Appeals Decisions**

**If, prior to the issuance of a building permit or certificate of occupancy, the Building Commissioner requires an interpretation of any of the terms or conditions of a Board of Appeals decision, he/she may consult with Town Counsel and/or the Zoning Administrator. The Zoning Administrator shall confer with Town Counsel prior to issuing any clarification or interpretation.**

**B. §5.09 3. e. Plan Revisions is proposed for deletion as follows:**

**[e. Plan Revisions**

**Any plans revised after a formal application has been made to the Building Commissioner shall be submitted in triplicate to the Building Commissioner prior to the Board of Appeals hearing. Once the Board of Appeals public hearing on the proposal is closed, any plan revision, other than a change governed by a condition of the Board of Appeals approval, which in any way affects or alters the visual appearance of the facade, roof, or cornice line, or modifies the site plan, shall be reviewed by the Building Commissioner and the Planning Director, or their designees. If such revision is deemed by either the Building Commissioner or Planning Director to constitute a change other than a minor modification, the matter shall be referred to the Planning Board for its recommendation in accordance with the community and environmental impact and design review standards of this section and to the Board of Appeals for any action it deems appropriate.]**

**C. §§ 2. of §9.05 Conditions for Approval of Special Permit is proposed for amendment as follows:**

If the Board of Appeals exercises its authority to attach conditions and safeguard which require expert review or approval by an administrative body or official, it shall appoint in its decision a Designated Authority as described in **§9.00, paragraph [3] 4.b).**

,or act on anything relative thereto.

---

A direct outcome of the Town's Zoning Administration and Enforcement project, this article, this article would improve the process of enforcing decisions of the Board of Appeals. This article outlines the role of the new Zoning Administrator in the process of enforcement as well as clarifying the role and responsibilities of the Building Commissioner in this process.

---

---

#### PLANNING BOARD REPORT AND RECOMMENDATION

---

The Planning Board supports, Warrant Article 9, which was submitted by the Board of Selectmen. This proposed zoning amendment provides modifications that clarify and strengthen zoning administration and enforcement in the Brookline Zoning By-Law. It grew out of the recommendations of the Zoning Administration and Enforcement Project, especially from the strategies proposed by the July 2005 Implementation Progress Report.

**Article 9**, which modifies §9.00 – Enforcement, defines compliance procedures and responsibilities, including: the Role of the Zoning Administrator, the Role of Designated Authorities (Boards, Commissions, and Departments), Declaration of Compliance Form and Procedures, Plan Certain Procedure, Plan Revision Procedure, Alternative Means of Compliance, Resolution of Compliance Disagreements, and Interpretation of Board Decisions. These modifications provide greater detail about compliance with the Board of Appeals decisions and conditions and create a new position, a Zoning Administrator, who will be responsible for coordinating review of approved developments by the different departments and designated authorities. Additionally, it provides a clear method for governing plan changes that occur subsequent to the approval of a development and resolving any disputes that arise. The Planning Board believes this amendment will provide greater compliance with the safeguard conditions that the Board of Appeals attaches to approvals of development proposals and supports the addition of a Zoning Administrator to oversee the special permit process from beginning to end.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 9 with the minor revisions suggested by the Planning and Community Development Department and Zoning By-Law Committee as follows.

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are **[bracketed]**. Planning Board proposed revisions are in ***bold, italics and underlined***.

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

### **§9.00 - ENFORCEMENT**

1. **Enforcement Authority** - This By-law shall be enforced by the Building Commissioner. The Building Commissioner shall not issue a permit for the erection or alteration of any building or part thereof, unless the plans, specifications and intended use of such buildings are in all respects in conformity with the provisions of this By-law.
2. **Conformance with Zoning By-Law** - No person shall use or permit the use of any building or part thereof hereafter erected, or altered in its use or construction in whole or in part, or any building when the open spaces in the lot upon which it stands have been reduced in area or shape, until the Building Commissioner has issued a certificate of occupancy and use under the Commonwealth of Massachusetts State Building Code, and until the Building Commissioner has issued a certificate to the effect that the building so erected or the part thereof so altered, the proposed use thereof, the size of the lot and its yards and setbacks, and all other applicable requirements, conform to the provisions of this By-law.
3. **Compliance with Board of Appeals Decision and Conditions** - In addition to the provisions of paragraphs 1 and 2 of this Section, no building permit or certificate of occupancy shall be issued by the Building Commissioner on an application or petition to the Board of Appeals until all of the conditions and safeguards imposed by the Board of Appeals in accordance with §9.05, paragraph 2, regarding such application or petition have been complied with **pursuant to the following §9.00.4.** **[or compliance with conditions to be met at a future date has been arranged. Compliance with conditions and safeguards to be reviewed or approved by a Designated Authority shall be determined by the following procedure:]**
  - [a] **Notice of Method of Compliance** —The applicant shall complete and submit for signature a separate notice of compliance which shall include revised plans or other supporting material if applicable, to each board, commission, department head, or other administrative body or official (hereinafter the "Designated Authority") designated by the Board of Appeals to review or approve a specific aspect of the application or petition. The notice of compliance shall document compliance with the condition and/or intent to comply provided that adequate assurances for compliance such as the delivery of a bond or deposit as permitted in paragraph (d) are given. The sufficiency of the notice of compliance shall be within the discretion of the Designated Authority. If the Designated Authority fails to take action on the notice of compliance within 20 days of its receipt, compliance shall be determined by the Building Commissioner.
  - b. **Declaration of Compliance**—The applicant shall deliver to the Building Commissioner all of the required notices of compliance. For any notice of compliance that has not been acted upon by a Designated Authority within

the 20 day period, the applicant shall affix to that notice a statement to that effect. Upon a determination by the Building Commissioner that the requirements of paragraph 3, subparagraph a of this Section have been met, a declaration of compliance shall be issued by the Building Commissioner, copies of which shall be promptly forwarded to each Designated Authority.

- c. **Building Permit**—The Building Commissioner may issue a building permit once a declaration of compliance has been issued.
- d. **Certificate of Occupancy**—Prior to the issuance of a certificate of occupancy, the Building Commissioner shall send a notice of pending certificate of occupancy to each Designated Authority which shall have 14 days from the date of that notice to request that the certificate of occupancy be withheld. If such action is requested in writing or was requested in a notice of compliance, the certificate of occupancy shall not be issued until the Building Commissioner has received a notice of completion, which may incorporate provisions for a bond or deposit as permitted in paragraph 4, from the Designated Authority that requested such action.

In the event of disagreement on the procedural requirements of this Section, or in the event of unreasonable administrative delay, the matter shall be referred to the Board of Appeals for resolution.

- 4. The Building Commissioner shall not issue a certificate of occupancy until all required site improvements have been completed in accordance with the final project plans, except that the Building Commissioner may issue a certificate of occupancy if the applicant posts a bond or deposit with the Town in the amount of 1 1/2 times the total installed cost of uncompleted required at-grade site improvements at the time of issuance of the certificate of occupancy. If said improvements (such as landscaping and fences) are not completed within one year from the time of issuance of the certificate of occupancy, said bond or deposit shall be forfeited to the Town, and the Town shall utilize the bond or deposit to complete the required at-grade site improvements.
- 5. Whenever application has been made to the Building Commissioner for a permit or certificate and the interpretation of this By-law with respect to the granting of such application is not clear, the Building Commissioner is authorized and directed to submit the matter to the Planning Board for the expression of its opinion before making his/her decision.]
- 4. **Compliance Procedures - Compliance with a decision and associated conditions approved by the Board of Appeals shall be determined by the following procedures.**

**a) Zoning Administrator**

**An official of the Town of Brookline shall be designated as the Zoning Administrator. One of the primary responsibilities of the Zoning Administrator will be to assist the Board of Appeals with the compliance procedures defined by this Section of the Zoning By-Law.**

**b) Designated Authority**

**The Board of Appeals, pursuant to §9.05 2. shall define a Designated Authority to determine compliance with each condition associated with a decision regarding an application for a special permit, variance, time extension or other action. A Designated Authority may be a member of an appointed board, commission or other administrative body, a department head or Town Official. The Board of Appeals shall also state, as part of each condition, whether the Designated Authority is required to determine compliance prior to the issuance of a building permit or certificate of occupancy.**

**c) Declaration of Compliance**

**The Zoning Administrator shall, following a public hearing noticed pursuant to §9.08, prepare a Declaration of Compliance form, either in a typed or electronic format or both, that will list the conditions in the Board's decision and document an applicant's compliance with all the terms and conditions of the Board's decision. The form shall be signed by the appropriate Designated Authority and the Zoning Administrator ~~prior to the issuance of a certificate of occupancy~~ to insure compliance with the terms and conditions of the Board's decision. The Zoning Administrator shall send the Declaration of Compliance Form to the Applicant.**

**d) Declaration of Compliance Form**

**The Declaration of Compliance Form, shall at a minimum include the following:**

- 1) **Board of Appeals case number;**
- 2) **Name and address of the applicant;**
- 3) **Street Address and Assessor's book, page and parcel identification of the project;**
- 4) **Project description from Board of Appeals decision;**
- 5) **Identification of all surveys, plans, elevations and other drawings approved by the Board of Appeals;**
- 6) **Each condition approved by the Board of Appeals;**
- 7) **Determination of compliance or non-compliance by the Designated Authority or Zoning Administrator;**
- 8) **Title, signature and date of compliance determination by the Designated Authority; and Zoning Administrator;**
- 9) **Statement of compliance assurance by applicant; and**
- 10) **Signature of applicant and date signed by applicant.**

**e) Compliance Procedures**

**Prior to the issuance of a building permit or a certificate of occupancy, the applicant shall file with the Zoning Administrator a request for a determination of compliance that the project is in all respects in compliance with the terms and conditions of the Board's decision and any modifications thereto. The Zoning Administrator will circulate the request and the Declaration of Compliance form to all appropriate Designated Authorities for review and approval within twenty (20) days of the date the applicant requests a determination of compliance. If a Designated Authority fails to act within the prescribed *twenty (20) day* period, the Building Commissioner shall within *ten (10) days* thereafter, make a final determination with respect to compliance. [The Zoning Administrator may determine compliance and make a recommendation to the applicant and Building Commissioner.] The Zoning Administrator shall submit the completed Declaration of Compliance form to the Building Commissioner, with copies to the Town Clerk, applicant and each Designated Authority.**

**f) [Plan Certain] Final Plan Review**

**As part of the Declaration of Compliance procedures above, the Zoning Administrator and the Building Commissioner shall jointly conduct a [Plan Certain] final review of the site plan, landscape plan, building elevations and other drawings, details and documents that are subject to conditions approved by the Board of Appeals. The [Plan Certain] final review shall determine that the final plans submitted, either as part of an application for a building permit or certificate of occupancy, are consistent with the plans and conditions approved by the Board of Appeals and the recommendations of the Designated Authorities.**

**g) Plan Revisions**

**Once the Board of Appeals public hearing on the proposal is closed, any plan revision, other than a change [governed] allowed by a condition of the Board of Appeals approval, which in any way alters or modifies the plan, shall be reviewed by the Building Commissioner and the Town's Zoning Administrator. If such revision is deemed by the Building Commissioner and Zoning Administrator to constitute a change other than as authorized by the Conditions of the Board of Appeals or other than a minor modification, the matter shall be referred to the Planning Board for its recommendation [in accordance with the Community and Environmental Impact and Design Review Standards of §5.09.4. ], and to the Board of Appeals [as necessary].**

**h) Alternative Means of Compliance**

**The determination of compliance by a Designated Authority may include a recommendation for proceeding with an alternative means of compliance that may be secured by a bond, deposit or other appropriate financial commitment approved by the Zoning Administrator. The bond or deposit with the Town**

shall be in the amount of 1 1/2 times the total installed cost of uncompleted required at-grade site improvements at the time of issuance of either a building permit or certificate of occupancy. If said improvements (such as landscaping and fences) are not completed within one year, said bond or deposit shall be forfeited to the Town, and the Town shall utilize the bond or deposit to complete the required at-grade site improvements.

i) Compliance Disagreements

In the event of disagreement on the procedural requirements of this Section, or in the event of unreasonable administrative delay, the [Zoning Administrator shall refer the matter to the Board of Appeals for resolution.] applicant may make a written request for determination with respect to such compliance disagreement to the Building Commissioner who shall issue his/her decision within ten (10) days of receipt of such written request. The Building Commissioner shall consult with the Zoning Administrator and/or Town Counsel prior to issuing his/her determination.

5. Interpretation of Board of Appeals Decisions

If, prior to the issuance of a building permit or certificate of occupancy, the Building Commissioner requires an interpretation of any of the terms or conditions of a Board of Appeals decision, he/she may consult with Town Counsel and/or the Zoning Administrator. The Zoning Administrator shall confer with Town Counsel prior to issuing any clarification or interpretation.

B. §5.09 3. e. Plan Revisions is proposed for deletion as follows:

[e. Plan Revisions

Any plans revised after a formal application has been made to the Building Commissioner shall be submitted in triplicate to the Building Commissioner prior to the Board of Appeals hearing. Once the Board of Appeals public hearing on the proposal is closed, any plan revision, other than a change governed by a condition of the Board of Appeals approval, which in any way affects or alters the visual appearance of the facade, roof, or cornice line, or modifies the site plan, shall be reviewed by the Building Commissioner and the Planning Director, or their designees. If such revision is deemed by either the Building Commissioner or Planning Director to constitute a change other than a minor modification, the matter shall be referred to the Planning Board for its recommendation in accordance with the community and environmental impact and design review standards of this section and to the Board of Appeals for any action it deems appropriate.]

C. §§ 2. of §9.05 Conditions for Approval of Special Permit is proposed for amendment as follows:

If the Board of Appeals exercises its authority to attach conditions and safeguard which require expert review or approval by an administrative body or official, it shall appoint in its decision a Designated Authority as described in **§9.00, paragraph [3] 4.b).**

, or act on anything relative thereto.

---

---

**SELECTMEN'S RECOMMENDATION**

Article 9, a proposed amendment to the Town's Zoning By-Law, is based on the recommendations of the Zoning Administration and Enforcement Project, a high priority of the Town. The Article provides greater detail about the special permit approval process, thereby ensuring greater compliance with Board of Appeals decisions and conditions by:

1. designating a specific authority responsible for each condition;
2. requiring a declaration of compliance form;
3. providing procedures for governing plan revisions occurring after Board of Appeals approval;
4. resolving compliance disagreements; and
5. creating a new position of Zoning Administrator to oversee all the steps of the special permit process from initial application to issuance of a building permit and certificate of occupancy.

As previously mentioned, Articles 5 through 9 are all direct outcomes of the Zoning Administration and Enforcement Project, and this article, perhaps more so than the others, overhauls the current framework within which zoning administration and enforcement is undertaken. A majority of this Board believes that the significant improvements contained in Article 9 will have a dramatic impact on the overall structure of how zoning administration and enforcement is implemented in Brookline, with the end result being a better process for concerned residents, developers, and the Town as a whole.

Therefore, the Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 4-1 taken on October 25, 2005, on the following vote:

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

**§9.00 - ENFORCEMENT**

1. **Enforcement Authority** - This By-law shall be enforced by the Building Commissioner. The Building Commissioner shall not issue a permit for the erection or alteration of any building or part thereof, unless the plans, specifications and

intended use of such buildings are in all respects in conformity with the provisions of this By-law.

2. **Conformance with Zoning By-Law** - No person shall use or permit the use of any building or part thereof hereafter erected, or altered in its use or construction in whole or in part, or any building when the open spaces in the lot upon which it stands have been reduced in area or shape, until the Building Commissioner has issued a certificate of occupancy and use under the Commonwealth of Massachusetts State Building Code, and until the Building Commissioner has issued a certificate to the effect that the building so erected or the part thereof so altered, the proposed use thereof, the size of the lot and its yards and setbacks, and all other applicable requirements, conform to the provisions of this By-law.
  
4. **Compliance with Board of Appeals Decision and Conditions** - In addition to the provisions of paragraphs 1 and 2 of this Section, no building permit or certificate of occupancy shall be issued by the Building Commissioner on an application or petition to the Board of Appeals until all of the conditions and safeguards imposed by the Board of Appeals in accordance with §9.05, paragraph 2, regarding such application or petition have been complied with **pursuant to the following §9.00.4.** [or compliance with conditions to be met at a future date has been arranged. Compliance with conditions and safeguards to be reviewed or approved by a Designated Authority shall be determined by the following procedure:]
  - (a) **Notice of Method of Compliance** —The applicant shall complete and submit for signature a separate notice of compliance which shall include revised plans or other supporting material if applicable, to each board, commission, department head, or other administrative body or official (hereinafter the "Designated Authority") designated by the Board of Appeals to review or approve a specific aspect of the application or petition. The notice of compliance shall document compliance with the condition and/or intent to comply provided that adequate assurances for compliance such as the delivery of a bond or deposit as permitted in paragraph (d) are given. The sufficiency of the notice of compliance shall be within the discretion of the Designated Authority. If the Designated Authority fails to take action on the notice of compliance within 20 days of its receipt, compliance shall be determined by the Building Commissioner.
  
  - b. **Declaration of Compliance**—The applicant shall deliver to the Building Commissioner all of the required notices of compliance. For any notice of compliance that has not been acted upon by a Designated Authority within the 20 day period, the applicant shall affix to that notice a statement to that effect. Upon a determination by the Building Commissioner that the requirements of paragraph 3, subparagraph a of this Section have been met, a declaration of compliance shall be issued by the Building Commissioner, copies of which shall be promptly forwarded to each Designated Authority.
  
  - c. **Building Permit**—The Building Commissioner may issue a building permit once a declaration of compliance has been issued.

- d. **Certificate of Occupancy**—Prior to the issuance of a certificate of occupancy, the Building Commissioner shall send a notice of pending certificate of occupancy to each Designated Authority which shall have 14 days from the date of that notice to request that the certificate of occupancy be withheld. If such action is requested in writing or was requested in a notice of compliance, the certificate of occupancy shall not be issued until the Building Commissioner has received a notice of completion, which may incorporate provisions for a bond or deposit as permitted in paragraph 4, from the Designated Authority that requested such action.

In the event of disagreement on the procedural requirements of this Section, or in the event of unreasonable administrative delay, the matter shall be referred to the Board of Appeals for resolution.

4. The Building Commissioner shall not issue a certificate of occupancy until all required site improvements have been completed in accordance with the final project plans, except that the Building Commissioner may issue a certificate of occupancy if the applicant posts a bond or deposit with the Town in the amount of 1 1/2 times the total installed cost of uncompleted required at-grade site improvements at the time of issuance of the certificate of occupancy. If said improvements (such as landscaping and fences) are not completed within one year from the time of issuance of the certificate of occupancy, said bond or deposit shall be forfeited to the Town, and the Town shall utilize the bond or deposit to complete the required at-grade site improvements.
5. Whenever application has been made to the Building Commissioner for a permit or certificate and the interpretation of this By-law with respect to the granting of such application is not clear, the Building Commissioner is authorized and directed to submit the matter to the Planning Board for the expression of its opinion before making his/her decision.]
4. **Compliance Procedures - Compliance with a decision and associated conditions approved by the Board of Appeals shall be determined by the following procedures.**

**a) Zoning Administrator**

**An official of the Town of Brookline shall be designated as the Zoning Administrator. One of the primary responsibilities of the Zoning Administrator will be to assist the Board of Appeals with the compliance procedures defined by this Section of the Zoning By-Law.**

**b) Designated Authority**

**The Board of Appeals, pursuant to §9.05 2. shall define a Designated Authority to determine compliance with each condition associated with a decision**

regarding an application for a special permit, variance, time extension or other action. A Designated Authority may be a member of an appointed board, commission or other administrative body, a department head or Town Official. The Board of Appeals shall also state, as part of each condition, whether the Designated Authority is required to determine compliance prior to the issuance of a building permit or certificate of occupancy.

**c) Declaration of Compliance**

The Board of Appeals shall, following a public hearing noticed pursuant to §9.08, prepare a Declaration of Compliance form, either in a typed or electronic format or both, that will list the conditions in the Board's decision and document an applicant's compliance with all the terms and conditions of the Board's decision. The form shall be signed by the appropriate Designated Authority and the Zoning Administrator prior to the issuance of a certificate of occupancy to insure compliance with the terms and conditions of the Board's decision. The Zoning Administrator shall send the Declaration of Compliance Form to the Applicant.

**d) Declaration of Compliance Form**

The Declaration of Compliance Form, shall at a minimum include the following:

- 1) Board of Appeals case number;
- 2) Name and address of the applicant;
- 3) Street Address and Assessor's book, page and parcel identification of the project;
- 4) Project description from Board of Appeals decision;
- 5) Identification of all surveys, plans, elevations and other drawings approved by the Board of Appeals;
- 6) Each condition approved by the Board of Appeals;
- 7) Determination of compliance or non-compliance by the Designated Authority or Zoning Administrator;
- 8) Title, signature and date of compliance determination by the Designated Authority; and Zoning Administrator;
- 9) Statement of compliance assurance by applicant; and
- 10) Signature of applicant and date signed by applicant.

**e) Compliance Procedures**

Prior to the issuance of a building permit or a certificate of occupancy, the applicant shall file with the Zoning Administrator a request for a determination of compliance that the project is in all respects in compliance with the terms and conditions of the Board's decision and any modifications thereto. The Zoning Administrator will circulate the request and the Declaration of Compliance form to all appropriate Designated Authorities for review and approval within twenty (20) days of the date the applicant requests a determination of compliance. If a Designated Authority fails to act within the prescribed twenty (20) day period,

the Building Commissioner shall within ten (10) days thereafter, make a final determination with respect to compliance. The Zoning Administrator shall submit the completed Declaration of Compliance form to the Building Commissioner, with copies to the Town Clerk, applicant and each Designated Authority.

f) Final Plan Review

As part of the Declaration of Compliance procedures above, the Zoning Administrator and the Building Commissioner shall jointly conduct a final review of the site plan, landscape plan, building elevations and other drawings, details and documents that are subject to conditions approved by the Board of Appeals. The final review shall determine that the final plans submitted, either as part of an application for a building permit or certificate of occupancy, are consistent with the plans and conditions approved by the Board of Appeals and the recommendations of the Designated Authorities.

g) Plan Revisions

Once the Board of Appeals public hearing on the proposal is closed, any plan revision, other than a change allowed by a condition of the Board of Appeals approval, which in any way alters or modifies the plan, shall be reviewed by the Building Commissioner and Town's Zoning Administrator. If such a revision is deemed by the Building Commissioner and Zoning Administrator to constitute a change other than as authorized by the Conditions of the Board of Appeals or other than a minor modification such as, but not limited to, a change which does not affect or alter the overall appearance of the facade, roof or cornice line, the site plan, or increase the Floor Area Ratio, the matter shall be referred to the Planning Board for its recommendation in accordance with the Community and Environmental Impact and Design Review Standards of S 5.09.4., where applicable, and to the Board of Appeals as necessary.

h) Alternative Means of Compliance

The determination of compliance by a Designated Authority may include a recommendation for proceeding with an alternative means of compliance that may be secured by a bond, deposit or other appropriate financial commitment approved by the Zoning Administrator. The bond or deposit with the Town shall be in the amount of 1 1/2 times the total installed cost of uncompleted required at-grade site improvements at the time of issuance of either a building permit or certificate of occupancy. If said improvements (such as landscaping and fences) are not completed within one year, said bond or deposit shall be forfeited to the Town, and the Town shall utilize the bond or deposit to complete the required at-grade site improvements.

i) Compliance Disagreements

**In the event of disagreement on the procedural requirements of this Section, or in the event of unreasonable administrative delay, the applicant may make a written request for determination with respect to such compliance disagreement to the Building Commissioner who shall issue his/her decision within ten (10) days of receipt of such written request. The Building Commissioner shall consult with the Zoning Administrator prior to issuing his/her determination.**

**Once the Board of Appeals public hearing on the proposal is closed, any plan revision, other than a change allowed by a condition of the Board of Appeals approval, which in any way alters or modifies the plan, shall be reviewed by the Building Commissioner and Town's Zoning Administrator. If such a revision is deemed by the Building Commissioner and Zoning Administrator to constitute a change other than as authorized by the Conditions of the Board of Appeals or other than a minor modification such as, but not limited to, a change which alters the overall appearance of the façade, roof or cornice line, the site plan, or increase the Floor Area Ratio, the matter shall be referred to the Planning Board for its recommendation in accordance with the Community and Environmental Impact and Design Review Standards of S 5.09.4., where applicable, and to the Board of Appeals as necessary.**

#### **5. Interpretation of Board of Appeals Decisions**

**If, prior to the issuance of a building permit or certificate of occupancy, the Building Commissioner requires an interpretation of any of the terms or conditions of a Board of Appeals decision, he/she may consult with Town Counsel and/or the Zoning Administrator. The Zoning Administrator shall confer with Town Counsel prior to issuing any clarification or interpretation.**

#### **B. §5.09 3. e. Plan Revisions is proposed for deletion as follows:**

##### **[e. Plan Revisions**

**Any plans revised after a formal application has been made to the Building Commissioner shall be submitted in triplicate to the Building Commissioner prior to the Board of Appeals hearing. Once the Board of Appeals public hearing on the proposal is closed, any plan revision, other than a change governed by a condition of the Board of Appeals approval, which in any way affects or alters the visual appearance of the facade, roof, or cornice line, or modifies the site plan, shall be reviewed by the Building Commissioner and the Planning Director, or their designees. If such revision is deemed by either the Building Commissioner or Planning Director to constitute a change other than a minor modification, the matter shall be referred to the Planning Board for its recommendation in accordance with the community and environmental impact and design review standards of this section and to the Board of Appeals for any action it deems appropriate.]**

C. §§ 2. of §9.05 Conditions for Approval of Special Permit is proposed for amendment as follows:

**If the Board of Appeals exercises its authority to attach conditions and safeguard which require expert review or approval by an administrative body or official, it shall appoint in its decision a Designated Authority as described in §9.00, paragraph [3] 4.b).**

**ROLL CALL VOTE:**

Favorable Action

No Action

Allen

Daly

Hoy

Sher

Merrill

-----

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 9 proposes a major revision to the enforcement sections of the Zoning By-law. It is intended to implement some of the recommendations of the Zoning Administration Project Report (more commonly known as the "Stearns Report") by clarifying many of the zoning enforcement procedures and defining much of the legal authority of the Zoning Administrator.

DISCUSSION

As we have seen, Article 5 changes the provisions of the Zoning By-law which govern the beginning of the zoning appeal process. This article changes provisions which govern enforcement which, perhaps, can be thought of as the end of the process to ensure that the decisions made and conditions imposed during the public processing actually happen. The two articles are intertwined and their affect needs to be considered together.

The big substantive change introduced by this article is the introduction of a new position called Zoning Administrator (ZA) into the process. The Building Commissioner is the primary zoning enforcement official (per state statute) but the Zoning Administrator will have a consulting and coordination role. The Zoning Administrator will reside in the Department of Planning and Community Development and report to the Director of Planning and Community Development.

The Zoning Administrator's enforcement duties and authorities as described by the proposed by-law are:

1. Assist the Zoning Board of Appeals (ZBA) with compliance procedures. (§9.00 Section 4a.)
2. Preparation and issuance of a Declaration of Compliance Form. (§9.00 Section 4c.)
3. Receives from the applicant a request for compliance prior to the issuance of a building permit or certificate of occupancy. Circulation of a request for determination of compliance to all Designated Authorities (DA) prior to the issuance of a Certificate of Occupancy (CO.) (§9.00 Section 4e.)
4. If a DA doesn't act within 20 days, the Building Commissioner will make a determination. The ZA will submit the completed determination of compliance to the Building Commissioner, the Town Clerk, each Designated Authority and the applicant. (Note: The original proposal had the Zoning Administrator making compliance decisions if the Designated Authorities didn't act in a timely manner. The revision has the Building Commissioner making such compliance decisions.) (§9.00 Section 4e.)
5. Jointly conduct the "Final Plan Review" to determine if the plans are in compliance (§9.00 Section 4f.).
6. Review plan revisions. (§9.00 Section 4g.)
7. Approve financial commitments for Alternative Means of Compliance. (§9.00 Section 4i.)
8. If Building Commissioner requires an interpretation of a ZBA decision, the ZA MAY be consulted. The ZA must consult with Town Counsel prior to issuing a decision. (§9.00 Section 5.)

The goal in adding this position is to insure that all aspects of zoning enforcement are coordinated between all the parties responsible for all aspects of the process. During the Advisory Committee's subcommittee hearing, concern was expressed as to where the position would reside on the organizational structure and how much actual authority the position would have relative to the Building Commissioner. During the Advisory Committee discussion, it was noted that the Building Commissioner is at the department head level whereas the Zoning Administrator reported to a department head and did not have the organizational stature to match the Building Commissioner.

Beyond the discussion of the Zoning Administrator, much of the Advisory Committee's discussion focused on the language of the Plan Revisions section. The original language did not account for minor changes in the plans. As such, any change no matter how minor (ie., changing the position of a sink) would require sending the project back to square one. Everyone seemed to agree that was undesirable and that minor changes should not have to go through the entire review process.

The Planning Board had a similar discussion and their solution gives the Building Commissioner and Zoning Administrator total discretion on what constitutes a minor revision. A majority of the Advisory Committee agreed that flexibility is required as to what constitutes a minor change, but is not comfortable with this grant of total discretion. We thus differ from the Planning Board. The Advisory Committee struggled with this problem and came up with the language indicated in the vote offered below in §9.00 Section G. This language is flawed, however, in that ANY change to the exterior could be classified as not minor requiring the project to be sent back to the Planning Board and

Board of Appeals. The Advisory Committee has worked with the Department of Planning and Community Development on better language which provides the Building Commissioner and Zoning Administrator flexibility but also provides some guidance as to what constitutes a minor revision. The Advisory Committee may consider further revisions to this language prior to Town Meeting. If revised language is voted, that will be included in a supplemental mailing.

### RECOMMENDATION

We currently have two differences with the Planning Board. In addition to the Plan Revision language described above, the Planning Board proposed changing the warrant language in §9.00 4 I, pertaining to Compliance Disagreements. The original language had any compliance disagreements referred by the Zoning Administrator to the ZBA. The Planning Board's language gives the Building Commissioner the final word on all disagreements. This tips the balance of power too much to the Building Commissioner in our view and thus the Advisory Committee voted to keep the original language, which has the ZBA as the arbiter of disagreements between the Building Commissioner and Zoning Administrator.

Some final comments. The Zoning Administrator's role as outlined in the By-law changes proposed by this article and Article 5, is one of coordination. Perhaps, as a result, we will have fewer instances where the procedures involved in zoning enforcement are not followed.

This doesn't address the substance however. Effective zoning enforcement will still take personnel knowledgeable in the building trades, building codes, construction practices and techniques. It will take personnel who can read plans and confirm that what has been specified and approved is actually what has been built. (As Ronald Reagan famously said: "Trust but verify.") A Zoning Administrator with legal or para-legal training is not going to have these skills. A Zoning Administrator looking at paper will not be able to tell whether a building has actually been built where it is supposed to be or whether a building has been built higher than in the plans. Town Meeting and the citizens we represent cannot expect the addition of a Zoning Administrator to the process to be a panacea and cure to all that is wrong with current zoning enforcement. In fact we run the danger that we are adding another layer of bureaucracy and thus delay and cost to all projects, no matter how small and uncontroversial.

Given that the Building Commissioner is the primary authority under state statute with respect to building and zoning enforcement, we are concerned about the potential organizational imbalance between the Building Commissioner and the Zoning Administrator. It will take cooperation and mutual respect between the Building Commissioner and the Zoning Administrator for this arrangement to work. Cooperation and respect cannot be legislated.

We understand that there is an internal workgroup of department heads working on zoning enforcement issues. We note, however, that the Building Commissioner has been absent from our public deliberation of Articles 5 and 9, to date. The Advisory Committee was assured that the Building Commissioner supports this article and sees the Zoning Administrator as a person who will assist him in meeting his responsibilities to enforce

the town's zoning bylaw. The cooperation of the Zoning Administrator, Building Commissioner and the staff of the Building Department with these efforts to improve zoning enforcement are crucial to its success. We trust that the Commissioner's absence from this public process thus far is not a sign of lack of support or commitment to its success given the assurances we have received.

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

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

### **§9.00 - ENFORCEMENT**

1. **Enforcement Authority** - This By-law shall be enforced by the Building Commissioner. The Building Commissioner shall not issue a permit for the erection or alteration of any building or part thereof, unless the plans, specifications and intended use of such buildings are in all respects in conformity with the provisions of this By-law.
2. **Conformance with Zoning By-Law** - No person shall use or permit the use of any building or part thereof hereafter erected, or altered in its use or construction in whole or in part, or any building when the open spaces in the lot upon which it stands have been reduced in area or shape, until the Building Commissioner has issued a certificate of occupancy and use under the Commonwealth of Massachusetts State Building Code, and until the Building Commissioner has issued a certificate to the effect that the building so erected or the part thereof so altered, the proposed use thereof, the size of the lot and its yards and setbacks, and all other applicable requirements, conform to the provisions of this By-law.
3. **Compliance with Board of Appeals Decision and Conditions** - In addition to the provisions of paragraphs 1 and 2 of this Section, no building permit or certificate of occupancy shall be issued by the Building Commissioner on an application or petition to the Board of Appeals until all of the conditions and safeguards imposed by the Board of Appeals in accordance with §9.05, paragraph 2, regarding such application or petition have been complied with **pursuant to the following §9.00.4. [or compliance with conditions to be met at a future date has been arranged. Compliance with conditions and safeguards to be reviewed or approved by a Designated Authority shall be determined by the following procedure:]**
  - [a) Notice of Method of Compliance** —The applicant shall complete and submit for signature a separate notice of compliance which shall include revised plans or other supporting material if applicable, to each board, commission, department head, or other administrative body or official (hereinafter the "Designated Authority") designated by the Board of Appeals to review or approve a specific aspect of the application or petition. The notice of compliance shall document compliance with the condition and/or intent to comply provided that adequate assurances for compliance such as the

- delivery of a bond or deposit as permitted in paragraph (d) are given. The sufficiency of the notice of compliance shall be within the discretion of the Designated Authority. If the Designated Authority fails to take action on the notice of compliance within 20 days of its receipt, compliance shall be determined by the Building Commissioner.
- b. Declaration of Compliance—The applicant shall deliver to the Building Commissioner all of the required notices of compliance. For any notice of compliance that has not been acted upon by a Designated Authority within the 20 day period, the applicant shall affix to that notice a statement to that effect. Upon a determination by the Building Commissioner that the requirements of paragraph 3, subparagraph a of this Section have been met, a declaration of compliance shall be issued by the Building Commissioner, copies of which shall be promptly forwarded to each Designated Authority.
  - c. Building Permit—The Building Commissioner may issue a building permit once a declaration of compliance has been issued.
  - d. Certificate of Occupancy—Prior to the issuance of a certificate of occupancy, the Building Commissioner shall send a notice of pending certificate of occupancy to each Designated Authority which shall have 14 days from the date of that notice to request that the certificate of occupancy be withheld. If such action is requested in writing or was requested in a notice of compliance, the certificate of occupancy shall not be issued until the Building Commissioner has received a notice of completion, which may incorporate provisions for a bond or deposit as permitted in paragraph 4, from the Designated Authority that requested such action.

In the event of disagreement on the procedural requirements of this Section, or in the event of unreasonable administrative delay, the matter shall be referred to the Board of Appeals for resolution.

- 4. The Building Commissioner shall not issue a certificate of occupancy until all required site improvements have been completed in accordance with the final project plans, except that the Building Commissioner may issue a certificate of occupancy if the applicant posts a bond or deposit with the Town in the amount of 1 1/2 times the total installed cost of uncompleted required at-grade site improvements at the time of issuance of the certificate of occupancy. If said improvements (such as landscaping and fences) are not completed within one year from the time of issuance of the certificate of occupancy, said bond or deposit shall be forfeited to the Town, and the Town shall utilize the bond or deposit to complete the required at-grade site improvements.
- 5. Whenever application has been made to the Building Commissioner for a permit or certificate and the interpretation of this By-law with respect to the granting of such application is not clear, the Building Commissioner is authorized and directed to submit the matter to the Planning Board for the expression of its opinion before making his/her decision.]

**4. Compliance Procedures - Compliance with a decision and associated conditions approved by the Board of Appeals shall be determined by the following procedures.**

**a) Zoning Administrator**

**An official of the Town of Brookline shall be designated as the Zoning Administrator. One of the primary responsibilities of the Zoning Administrator will be to assist the Board of Appeals with the compliance procedures defined by this Section of the Zoning By-Law.**

**b) Designated Authority**

**The Board of Appeals, pursuant to §9.05 2. shall define a Designated Authority to determine compliance with each condition associated with a decision regarding an application for a special permit, variance, time extension or other action. A Designated Authority may be a member of an appointed board, commission or other administrative body, a department head or Town Official. The Board of Appeals shall also state, as part of each condition, whether the Designated Authority is required to determine compliance prior to the issuance of a building permit or certificate of occupancy.**

**c) Declaration of Compliance**

**The Board of Appeals shall, following a public hearing noticed pursuant to §9.08, prepare a Declaration of Compliance form, either in a typed or electronic format or both, that will list the conditions in the Board's decision and document an applicant's compliance with all the terms and conditions of the Board's decision. The form shall be signed by the appropriate Designated Authority and the Zoning Administrator prior to the issuance of a certificate of occupancy to insure compliance with the terms and conditions of the Board's decision. The Zoning Administrator shall send the Declaration of Compliance Form to the Applicant.**

**d) Declaration of Compliance Form**

**The Declaration of Compliance Form, shall at a minimum include the following:**

- 1) Board of Appeals case number;**
- 2) Name and address of the applicant;**
- 3) Street Address and Assessor's book, page and parcel identification of the project;**
- 4) Project description from Board of Appeals decision;**
- 5) Identification of all surveys, plans, elevations and other drawings approved by the Board of Appeals;**

- 6) Each condition approved by the Board of Appeals;
- 7) Determination of compliance or non-compliance by the Designated Authority or Zoning Administrator;
- 8) Title, signature and date of compliance determination by the Designated Authority; and Zoning Administrator;
- 9) Statement of compliance assurance by applicant; and
- 10) Signature of applicant and date signed by applicant.

#### e) Compliance Procedures

Prior to the issuance of a building permit or a certificate of occupancy, the applicant shall file with the Zoning Administrator a request for a determination of compliance that the project is in all respects in compliance with the terms and conditions of the Board's decision and any modifications thereto. The Zoning Administrator will circulate the request and the Declaration of Compliance form to all appropriate Designated Authorities for review and approval within twenty (20) days of the date the applicant requests a determination of compliance. If a Designated Authority fails to act within the prescribed twenty (20) day period, the Building Commissioner shall within ten (10) days thereafter, make a final determination with respect to compliance. The Zoning Administrator shall submit the completed Declaration of Compliance form to the Building Commissioner, with copies to the Town Clerk, applicant and each Designated Authority.

#### f) Final Plan Review

As part of the Declaration of Compliance procedures above, the Zoning Administrator and the Building Commissioner shall jointly conduct a final review of the site plan, landscape plan, building elevations and other drawings, details and documents that are subject to conditions approved by the Board of Appeals. The final review shall determine that the final plans submitted, either as part of an application for a building permit or certificate of occupancy, are consistent with the plans and conditions approved by the Board of Appeals and the recommendations of the Designated Authorities.

#### g) Plan Revisions

Once the Board of Appeals public hearing on the proposal is closed, any plan revision, other than a change allowed by a condition of the Board of Appeals approval, which in any way alters or modifies the plan, shall be reviewed by the Building Commissioner and Town's Zoning Administrator. If such a revision is deemed by the Building Commissioner and Zoning Administrator to constitute a change other than as authorized by the Conditions of the Board of Appeals or other than a minor modification such as, but not limited to, a change which does not affect or alter the overall appearance of the façade, roof or cornice line, the site plan, or increase the Floor Area Ratio, the matter shall be referred to the Planning Board for its recommendation in accordance with the Community and

Environmental Impact and Design Review Standards of S 5.09.4., where applicable, and to the Board of Appeals as necessary.

h) Alternative Means of Compliance

The determination of compliance by a Designated Authority may include a recommendation for proceeding with an alternative means of compliance that may be secured by a bond, deposit or other appropriate financial commitment approved by the Zoning Administrator. The bond or deposit with the Town shall be in the amount of 1 1/2 times the total installed cost of uncompleted required at-grade site improvements at the time of issuance of either a building permit or certificate of occupancy. If said improvements (such as landscaping and fences) are not completed within one year, said bond or deposit shall be forfeited to the Town, and the Town shall utilize the bond or deposit to complete the required at-grade site improvements.

i) Compliance Disagreements

In the event of disagreement on the procedural requirements of this Section, or in the event of unreasonable administrative delay, the Zoning Administrator shall refer the matter to the Board of Appeals for resolution.

5. Interpretation of Board of Appeals Decisions

If, prior to the issuance of a building permit or certificate of occupancy, the Building Commissioner requires an interpretation of any of the terms or conditions of a Board of Appeals decision, he/she may consult with Town Counsel and/or the Zoning Administrator. The Zoning Administrator shall confer with Town Counsel prior to issuing any clarification or interpretation.

B. §5.09 3. e. Plan Revisions is proposed for deletion as follows:

**[e. Plan Revisions**

**Any plans revised after a formal application has been made to the Building Commissioner shall be submitted in triplicate to the Building Commissioner prior to the Board of Appeals hearing. Once the Board of Appeals public hearing on the proposal is closed, any plan revision, other than a change governed by a condition of the Board of Appeals approval, which in any way affects or alters the visual appearance of the facade, roof, or cornice line, or modifies the site plan, shall be reviewed by the Building Commissioner and the Planning Director, or their designees. If such revision is deemed by either the Building Commissioner or Planning Director to constitute a change other than a minor modification, the matter shall be referred to the Planning Board for its recommendation in accordance with the community and environmental impact and design review standards of this section and to the Board of Appeals for any action it deems appropriate.]**

**C. §§ 2. of §9.05 Conditions for Approval of Special Permit is proposed for amendment as follows:**

If the Board of Appeals exercises its authority to attach conditions and safeguard which require expert review or approval by an administrative body or official, it shall appoint in its decision a Designated Authority as described in §9.00, paragraph [3] 4.b).

**XXX**

---

ARTICLE 9

---

BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

The Zoning Administration Study conducted last year by Attorney Janet Stearns ([townofbrooklinemass.com/planning/pdfs/zoneadminsumreport.pdf](http://townofbrooklinemass.com/planning/pdfs/zoneadminsumreport.pdf)) identified a range of staff support needs for the Town’s system of zoning administration. Attorney Stearns suggested three separate additional staff positions that the Town could consider to buttress various aspects of zoning operations.

To establish a staff position with as wide-ranging support capacity as possible, the Town Administrator recommended the creation of a Zoning Administrator position, funding for which was provided in the budget approved by the 2005 Annual Town Meeting. The Board of Selectmen authorized the filling of the position on September 27<sup>th</sup> and the Human Resources Board approved the position rating on October 6<sup>th</sup>. It was advertised starting the week of November 6<sup>th</sup>.

In the course of the review of Article 9, which was drafted to reflect some of the responsibilities of the Zoning Administrator position, question arose as to whether the position as proposed should be vested with even more authority. (The responsibilities of the Zoning Administrator, as reflected in Article 9, and endorsed by the Selectmen and Planning Board, can still be carried out without their actual codification in Town By-laws.) Acceptance of certain provisions of G.L.c. 40A and perhaps special legislation might be required to provide the type of enhanced authority that was discussed during the Article 9 review.

In light of this discussion, the Board of Selectmen supports the vote as proposed by the Advisory Committee. Meanwhile, the process for filling the position as established can proceed. The position could be modified overtime if additional responsibilities are assigned. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on November 8, 2005, on the vote offered by the Advisory Committee.

---

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

As the Combined Report went to press, the Advisory Committee’s recommended vote for Article 9 differed from the Selectmen’s in 2 small but important ways. Our version permitted the Zoning Administrator in 2 limited situations to make referrals directly to the Zoning Board of Appeals (ZBA). Since publication, Town Counsel has made known

her concerns regarding the Advisory Committee's recommended language on the section 9.00 G (Plan Revisions) section and Section 9.00 I relating to Compliance Disagreements. It is Town Counsel's position that since the Zoning Administrator is not a "Zoning Administrator" as defined in Mass. Chapter 40A Section 13, the ZBA lacks standing to hear any referral made by him/her. She therefore believes that the Selectman's language is the appropriate language.

We believe that the net effect of the Selectmen's language is to remove the Zoning Administrator effectively as a check and balance in the zoning enforcement function. The language weakens the position significantly and does not, in our view, fulfill at least one of the stated purposes for the position.

We have been told that Watertown's Zoning Administrator position has been used as a model for how the Brookline Zoning Administrator could effectively function. Town Counsel has determined that the Watertown Zoning Administrator is, in fact, a Chapter 40A Zoning Administrator (thus their ZBA has standing to hear appeals from decisions of the Zoning Administrator) and that Watertown also sought and received special legislation giving the Zoning Administrator some of the functions normally reserved for the Building Commissioner. The attempt to structure the position outside of the framework of Chapter 40A is creating structural impediments to achieving the goals of the position. We can clearly do better.

We are therefore recommending that Article 9 be referred back to the Selectmen to work these issues out and consider whether the Zoning Administrator position should be structured as a Chapter 40A Zoning Administrator plus whether Brookline should seek special legislation as Watertown has.

We note that this referral should not delay the current recruitment of the Zoning Administrator. Most, if not all, of the coordination duties enumerated in the Selectmen's language can be assumed administratively by the person selected while the Selectmen study this further.

The Advisory Committee by a unanimous vote therefore recommends FAVORABLE ACTION on the following vote:

VOTED: To refer the subject matter of Article 9 to the Selectmen for further refinement with respect to the Zoning Administrator position. This referral and review should include but not be limited to considering whether the position should be a Zoning Administrator within the meaning of Mass. Chapter 40A, Section 13 and whether Brookline should additionally seek special legislation with respect to this position.

---

ARTICLE 10

---

TENTH ARTICLE

To see if the Town will amend Article 3.03. of the Zoning By-Law as follows:

By adding the following new section 3.03.6.1.:

3.03.6.1. *Coolidge Corner Interim Planning Overlay District*

- a. The Coolidge Corner Interim Planning Overlay District (CCIPOD) consists of the parcels outlined in the map titled “Coolidge Corner Interim Planning Overlay District- November 2005” prepared by the Town of Brookline, bearing the signatures of the members of the Planning Board and on file in the office of the Town Clerk.
- b. The area covered by the CCIPOD consists of M-2.5, M-2.0, M-1.5, M-1.0 and G-1.75 (CC) districts in the vicinity of the intersection of Beacon Street and Harvard Street. This area has a commercial core with dense residential neighborhoods surrounding it. Residential density in the area is very high-over 15 persons per acre. Most of the area is developed, although some open spaces remain on the periphery. Buildings in the area were generally constructed in the early to mid-1900’s, although some older buildings remain. This is an area of Brookline where significant development pressures particularly for denser residential developments are resulting in pressure to tear down existing structures and replace them with larger ones.
- c. The CCIPOD is being created to provide the Town with a window of opportunity to create a Coolidge Corner District Plan that will provide strategies for neighborhood conservation while maintaining and enhancing the commercial core of the area. The existing zoning districts permit a level of residential development in the area that threatens the character and quality of existing neighborhoods and the commercial core.
- d. The Brookline Comprehensive Plan calls for the creation of a Coolidge Corner District Plan, and that a CCIPOD should be created during the development of the District Plan. According to the Comprehensive Plan, “[t]he interim zoning regulations ... established during the study period will ensure that an area is not subjected to inappropriate development proposals. After the ... District Plan is complete, the interim zoning might be replaced with new, permanent zoning consistent with the findings of the planning study.” (*Brookline Comprehensive Plan*, p. 34)
- e. The Coolidge Corner District Plan will be a one year planning process directed by the Department of Planning and Community Development and guided by a District Planning Council of residents, businesspersons, and other interested parties. According to the Comprehensive Plan, “[d]istrict Plans would conduct buildout analyses and alternative development scenarios for each district, and then develop a vision for a preferred future of the district.

The District Plans would then develop strategies for these areas in a variety of subject areas, including regulatory tools, development preferences, transportation issues, and open space priorities.” (*Brookline Comprehensive Plan*, p. 34) A full scope for the district planning process is available from the Department of Planning & Community Development.

- f. The CCIPOD will be effective for a period of twelve months following its adoption by Town Meeting. It is anticipated that the Coolidge Corner District Plan and any new Zoning By-Law and Map Amendments will be complete for the Fall 2006 Town Meeting.
- g. For parcels within the CCIPOD, the following sections of the Zoning By-Law will be replaced or amended:
  - Replacing Principal Use 6 (multiple or attached dwelling units over 2 units) of Section 4 with the table in h. below;
  - Adding additional criteria outlined in h. below to those in Section 9.05, regarding conditions for approval of special permits.
- h.
  1. More than Two Dwelling Units on One Lot: For parcels within the CCIPOD, Principal Use 6 in Section 4 shall be governed by the following use table:

<p>6. Multiple or attached dwelling other than the preceding item divided into dwelling units each occupied by not more than one family but not including lodging house, hotel, dormitory, fraternity or sorority.</p> <p>* Compliance with <b>§4.08</b> required if containing 6 or more dwelling units.</p> <p>In L and G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use.</p> <p>A development of three to five units may be permitted by special permit as provided in Section 9.05 and Section 3.6.1.h.2.</p>	<p>No*</p>
--	------------

2. Special Permits in the CCIPOD: For parcels within the CCIPOD, any applicant for a special permit shall be required to demonstrate that the application is not in conflict with any of the findings of the Coolidge Corner District Planning process to date. In addition, the applicant must demonstrate that the proposed development will not conflict with any zoning amendments that are likely to result from the district planning process. All special permit applications must meet these conditions in addition to any conditions outlined in Section 9.05 or elsewhere in the Zoning By-Law.

3. Underlying Zoning: In all other ways the underlying zoning districts shall continue to apply to parcels within the CCIPOD. In cases of conflicts between this Section 3.03.6.1. and the remainder of the Zoning By-Law, this Section 3.03.6.1. shall govern.

,or act on anything relative thereto.

---

A direct outcome of the Brookline Comprehensive Plan adopted in January, this Article uses the enabling legislation adopted by Town Meeting last year to create an Interim Planning Overlay District (IPOD) for Coolidge Corner. The Comprehensive Plan recommended that the Town develop a “district plan” for Coolidge Corner that would look at issues of land use, transportation, housing, commercial development, open space, and neighborhood character. As part of this process, the Comprehensive Plan recommended that Town Meeting adopt an IPOD to provide temporary zoning controls to manage and guide development while that plan is developed. This proposed Coolidge Corner IPOD would limit residential development in M and G zoning districts near Coolidge Corner to 2 units by right and up to 5 units by special permit. It would also require the Planning Board to adopt interim design guidelines that would apply to all applications for special permits in the district, whether commercial or residential.

---

#### PLANNING BOARD REPORT AND RECOMMENDATION

The Planning Board supports Warrant Article 10, which adds under Article III Establishment of Zoning Districts, §3.03 Interim Planning Overlay District, a new section 3.03.6.1 Coolidge Corner Interim Planning Overlay District (CCIPOD). This article was submitted by the Planning and Community Development Department. Last year, Town Meeting approved a zoning amendment allowing IPODs to be created for a specific area, for up to a year, in order to provide time to complete a district planning study and recommend permanent zoning. Coolidge Corner is the first area to be proposed for study.

The proposed establishment of a Coolidge Corner Interim Planning Overlay District (CCIPOD) is a direct outcome of recommendations made by the Brookline Comprehensive Plan adopted in January 2004 to develop a “district plan” for Coolidge Corner and would look at issues of land use, transportation, housing, commercial development, open space, and neighborhood character. This proposed Coolidge Corner IPOD would limit residential development in M and G zoning districts near Coolidge Corner to two units by right and up to five units by special permit. It would also require the Planning Board to adopt interim design guidelines that would apply to all applications for special permits in the district, whether commercial or residential.

Therefore, the Planning Board unanimously recommends approval of Warrant Article 10 as revised.

To see if the Town will amend Article 3.03. of the Zoning By-Law as follows:

By adding the following new section 3.03.6.1.:

3.03.6.1 *Coolidge Corner Interim Planning Overlay District*

- a. The Coolidge Corner Interim Planning Overlay District (CCIPOD) consists of the parcels outlined in the map titled “Coolidge Corner Interim Planning Overlay District- November 2005” prepared by the Town of Brookline, bearing the signatures of the members of the Planning Board and on file in the office of the Town Clerk.
- b. The area covered by the CCIPOD consists of M-2.5, M-2.0, M-1.5, M-1.0 and G-1.75 (CC) districts in the vicinity of the intersection of Beacon Street and Harvard Street. This area has a commercial core with dense residential neighborhoods surrounding it. Residential density in the area is very high- over 15 persons per acre. Most of the area is developed, although some open spaces remain on the periphery. Buildings in the area were generally constructed in the early to mid-1900’s, although some older buildings remain. This is an area of Brookline where significant development pressures- particularly for denser residential developments- are resulting in pressure to tear down existing structures and replace them with larger ones.
- c. The CCIPOD is being created to provide the Town with a window of opportunity to create a Coolidge Corner District Plan that will provide strategies for neighborhood conservation while maintaining and enhancing the commercial core of the area. The existing zoning districts permit a level of residential development in the area that threatens the character and quality of existing neighborhoods and the commercial core.
- d. The Brookline Comprehensive Plan calls for the creation of a Coolidge Corner District Plan, and that a CCIPOD should be created during the development of the District Plan. According to the Comprehensive Plan, “[t]he interim zoning regulations ... established during the study period will ensure that an area is not subjected to inappropriate development proposals. After the ... District Plan is complete, the interim zoning might be replaced with new, permanent zoning consistent with the findings of the planning study.” (*Brookline Comprehensive Plan*, p. 34)
- e. The Coolidge Corner District Plan will be a one year planning process directed by the Department of Planning and Community Development and guided by a District Planning Council of residents, businesspersons, and other interested parties. According to the Comprehensive Plan, “[d]istrict Plans would conduct buildout analyses and alternative development scenarios for each district, and then develop a vision for a preferred future of the district. The District Plans would then develop strategies for these areas in a variety of subject areas, including regulatory tools, development preferences,

transportation issues, and open space priorities.” (*Brookline Comprehensive Plan*, p. 34) A full scope for the district planning process is available from the Department of Planning & Community Development.

- f. The CCIPOD will be effective for a period of twelve months following its adoption by Town Meeting. It is anticipated that the Coolidge Corner District Plan and any new Zoning By-Law and Map Amendments will be complete for the Fall 2006 Town Meeting.
- g. For parcels within the CCIPOD, the following sections of the Zoning By-Law will be replaced or amended:
  - Replacing Principal Use 6 (multiple or attached dwelling units over 2 units) of Section 4 with the table in h. below;
  - Adding additional criteria outlined in h. below to those in Section 9.05, regarding conditions for approval of special permits.
- h.
  1. Multiple or Attached Dwelling Units: For parcels within the CCIPOD, Principal Use 6 in Section 4 shall be governed by the following use table:

Property within the Coolidge Corner Interim  
Planning Overlay District

<p>6. Multiple or attached dwelling other than the preceding item divided into dwelling units each occupied by not more than one family but not including lodging house, hotel, dormitory, fraternity or sorority.</p> <p>* Compliance with <b>§4.08</b> required if containing 6 or more dwelling units.</p> <p>In L and G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use.</p> <p>A development of three to five units may be permitted by special permit as provided in Section 9.05 and Section 3.6.1.h.2.</p>	<p>No*</p>
--	------------

2. Special Permits in the CCIPOD: For parcels within the CCIPOD, any applicant for a special permit shall be required to obtain an additional finding that they meet CCIPOD Interim Guidelines. These Interim Guidelines shall be adopted by the Planning Board pursuant to Section

5.09.4.n. after holding a public hearing, and shall be adopted within 60 days of the approval of this CCIPOD by Town Meeting. All special permit and variance applications must meet these conditions in addition to any conditions outlined in Section 9.05 or elsewhere in the Zoning By-Law. These Interim Guidelines shall include, but need not be limited to, the following general items:

- Relationship of proposed developments to the existing neighborhood
  - Relationship of proposed developments to the street edge
  - Materials, massing and scale of proposed developments
3. Underlying Zoning: In all other ways the underlying zoning districts shall continue to apply to parcels within the CCIPOD. In cases of conflicts between this Section 3.03.6.1. and the remainder of the Zoning By-Law, this Section 3.03.6.1. shall govern.
  4. Applicability/Exemptions: The terms and conditions of the CCIPOD shall not apply to any proposed development within the area covered by the CCIPOD if the development review process - including the filing of an application for a special permit; variance or beginning the major impact project review process under Section 5.09.3.b. - began prior to September 15, 2005, the date when the Planning Board advertised the notice of hearing on the proposed CCIPOD.

or act on anything relative thereto.

---

#### SELECTMEN'S RECOMMENDATION

The Brookline Comprehensive Plan recommends the development of a Coolidge Corner District Plan, and further recommended that an Interim Planning Overlay District (IPOD) be put in place in order to control development while the planning process is under way. The creation of IPODs in Brookline is authorized by Section 3.09 of the Town Zoning Bylaw, which was added to the Bylaw by Town Meeting in Fall of 2004.

Article 10, creating a Coolidge Corner IPOD, is designed to create a reasonable level of interim land use control in the Coolidge Corner area while a district plan is developed. The proposed IPOD would apply to the M and G districts near Coolidge Corner. It will be in effect for one year following its passage, after which time it is anticipated that final zoning and/or other regulatory tools will be put in place to help achieve a shared vision for Coolidge Corner and its surrounding neighborhoods.

The proposed IPOD does two things. First, it limits new residential development to two units per lot by right, and up to five units by special permit. Second, it instructs the Planning Board to create new design guidelines that will apply to all special permit applications, commercial or residential, in the affected area. These design guidelines will address the relationship of any proposed development to the surrounding neighborhood; its relationship to the streetscape; and the appearance of the proposed development. The Planning Board, Advisory Committee, and Zoning By-Law Committee have all agreed to some amendments to the initial language that clarified the development of the design guidelines and the effect of the proposed IPOD on projects currently undergoing development review.

The Department of Planning and Community Development did considerable public outreach during the development of the IPOD, including meeting with stakeholders and reviewing the feedback gathered during the development of the Comprehensive Plan. In addition, Planning and Community Development staff has met with neighborhood groups in the Coolidge Corner area to explain the proposed IPOD and listen to comments. Generally, the response to the tool has been positive. While some feel that the proposed IPOD is not perfect, most feel that it is a useful tool during this planning process and that any final zoning proposed for Coolidge Corner can address concerns about the IPOD, which is temporary.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken October 25, 2005, on the motion offered by the Advisory Committee.

-----

#### ADVISORY COMMITTEE'S RECOMMENDATION

##### BACKGROUND

Town Meeting voted last November to add Interim Planning Overlay Districts (IPODs) to the Zoning By-law. An IPOD may be used as a tool for neighborhood and district planning in areas of town where there is intense development pressure and current zoning that does not adequately address the impacts of that potential development.

Coolidge Corner has been identified as an area that would benefit from an intensive study of development issues through the establishment of a Neighborhood District Plan, a planning process outlined in the Comprehensive Plan. As part of this process, an IPOD would provide the framework for a planning study while limiting residential development in the district during the one-year planning timeframe.

The proposed Coolidge Corner Interim Planning Overlay District (CCIPOD) consists of M-2-5, M-2.0, M-1.5, M-1.0 and G-1.75 (CC) districts centered on the intersection of Beacon Street and Harvard Street.

The IPOD regulations would be in place for a 12-month period, beginning after the November Town Meeting. During that time period, residential development in the included M and G zoning districts will be limited to two units by right and up to five units by special permit. The Planning Board will be required to adopt interim design guidelines that would apply to all applications for special permits in the district, whether commercial or residential.

### DISCUSSION

The formation of the proposed Coolidge Corner IPOD will be the first step in working towards a Coolidge Corner Neighborhood District Plan. The planning work will involve the public, town boards and commissions, neighborhood groups and businesses in the assessment and planning for critical land use, development and transportation issues. An eleven-member District Planning Council, to be created by the Board of Selectmen, will guide the district planning process which will be led by town staff and consultants in the areas of transportation analysis and real estate and land use analysis. The area of Coolidge Corner within the IPOD boundaries will be at the center of the planning process but the plan will also address issues affecting adjacent zoning districts not included in the M and G district IPOD.

Most members of neighborhood groups and Town Meeting members who have attended the Planning Department's preliminary meetings outlining the proposed planning process are generally supportive of the proposed planning process and IPOD strategy. However, some concerns have been heard regarding the scope and process to date. These include a sense that there has been a lack of neighborhood input and consensus regarding development guidelines and goals during the pre-planning process for the IPOD, the potential problems of meeting the tight one-year time frame imposed by the enabling legislation for IPODs, and a concern about areas not included in the IPOD study area, specifically the adjacent T zoning districts and the areas on the outskirts of Coolidge Corner most impacted by traffic, parking, and noise problems from the expanding Longwood Medical Area (LMA).

There is general agreement that since the CC IPOD framework is the first use of an IPOD as a planning tool for assessing and potentially changing details of our zoning districts, the town may find after the year's study that there is a need for additional IPOD districts or expansion of the 12-month planning time frame. Such changes are possible through future votes of Town Meeting.

Ideally, the benefit of the IPOD as a zoning tool is that its short, twelve-month duration should allow for intensive study and decisive action on specific problems through possible new permanent zoning proposals. Such proposals would then come before Town Meeting for consideration. The concentrated effort to address development pressures that have been identified in Coolidge Corner through the CCIPOD designation and the concurrent district planning process should be a positive step toward conservation of the valued mixed commercial and residential character at the heart of Coolidge Corner.

RECOMMENDATION

The Advisory Committee, by a vote of 16 in favor and 1 opposed, recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend Article 3.03. of the Zoning By-Law as follows:

By adding the following new section 3.03.6.1.:

3.03.6.1 *Coolidge Corner Interim Planning Overlay District*

- a. The Coolidge Corner Interim Planning Overlay District (CCIPOD) consists of the parcels outlined in the map titled “Coolidge Corner Interim Planning Overlay District- November 2005” prepared by the Town of Brookline, bearing the signatures of the members of the Planning Board and on file in the office of the Town Clerk.
- b. The area covered by the CCIPOD consists of M-2.5, M-2.0, M-1.5, M-1.0 and G-1.75 (CC) districts in the vicinity of the intersection of Beacon Street and Harvard Street. This area has a commercial core with dense residential neighborhoods surrounding it. Residential density in the area is very high- over 15 persons per acre. Most of the area is developed, although some open spaces remain on the periphery. Buildings in the area were generally constructed in the early to mid-1900’s, although some older buildings remain. This is an area of Brookline where significant development pressures- particularly for denser residential developments- are resulting in pressure to tear down existing structures and replace them with larger ones.
- c. The CCIPOD is being created to provide the Town with a window of opportunity to create a Coolidge Corner District Plan that will provide strategies for neighborhood conservation while maintaining and enhancing the commercial core of the area. The existing zoning districts permit a level of residential development in the area that threatens the character and quality of existing neighborhoods and the commercial core.
- d. The Brookline Comprehensive Plan calls for the creation of a Coolidge Corner District Plan, and that a CCIPOD should be created during the development of the District Plan. According to the Comprehensive Plan, “[t]he interim zoning regulations ... established during the study period will ensure that an area is not subjected to inappropriate development proposals. After the ... District Plan is complete, the interim zoning might be replaced with new, permanent zoning consistent with the findings of the planning study.” (*Brookline Comprehensive Plan*, p. 34)
- e. The Coolidge Corner District Plan will be a one year planning process directed by the Department of Planning and Community Development and guided by a District Planning Council of residents, businesspersons, and other

interested parties. According to the Comprehensive Plan, “[d]istrict Plans would conduct buildout analyses and alternative development scenarios for each district, and then develop a vision for a preferred future of the district. The District Plans would then develop strategies for these areas in a variety of subject areas, including regulatory tools, development preferences, transportation issues, and open space priorities.” (*Brookline Comprehensive Plan*, p. 34) A full scope for the district planning process is available from the Department of Planning & Community Development.

- f. The CCIPOD will be effective for a period of twelve months following its adoption by Town Meeting. It is anticipated that the Coolidge Corner District Plan and any new Zoning By-Law and Map Amendments will be complete for the Fall 2006 Town Meeting.
- g. For parcels within the CCIPOD, the following sections of the Zoning By-Law will be replaced or amended:
  - Replacing Principal Use 6 (multiple or attached dwelling units over 2 units) of Section 4 with the table in h. below;
  - Adding additional criteria outlined in h. below to those in Section 9.05, regarding conditions for approval of special permits.

h.

- 1. Multiple or Attached Dwelling Units: For parcels within the CCIPOD, Principal Use 6 in Section 4 shall be governed by the following use table:

Property within the Coolidge Corner Interim  
Planning Overlay District

<p>6. Multiple or attached dwelling other than the preceding item divided into dwelling units each occupied by not more than one family but not including lodging house, hotel, dormitory, fraternity or sorority.</p> <p>* Compliance with <b>§4.08</b> required if containing 6 or more dwelling units.</p> <p>In L and G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use.</p> <p>A development of three to five units may be permitted by special permit as provided in Section 9.05 and Section 3.6.1.h.2.</p>	<p>No*</p>
--	------------

2. Special Permits in the CCIPOD: For parcels within the CCIPOD, any applicant for a special permit shall be required to obtain an additional finding that they meet CCIPOD Interim Guidelines. These Interim Guidelines shall be adopted by the Planning Board pursuant to Section 5.09.4.n. after holding a public hearing, and shall be adopted within 60 days of the approval of this CCIPOD by Town Meeting. All special permit and variance applications must meet these conditions in addition to any conditions outlined in Section 9.05 or elsewhere in the Zoning By-Law. These Interim Guidelines shall include, but need not be limited to, the following general items:
  - Relationship of proposed developments to the existing neighborhood
  - Relationship of proposed developments to the street edge
  - Materials, massing and scale of proposed developments
3. Underlying Zoning: In all other ways the underlying zoning districts shall continue to apply to parcels within the CCIPOD. In cases of conflicts between this Section 3.03.6.1. and the remainder of the Zoning By-Law, this Section 3.03.6.1. shall govern.
4. Applicability/Exemptions: The terms and conditions of the CCIPOD shall not apply to any proposed development within the area covered by the CCIPOD if the development review process - including the filing of an application for a special permit; variance or beginning the major impact project review process under Section 5.09.3.b. - began prior to September 15, 2005, the date when the Planning Board advertised the notice of hearing on the proposed CCIPOD.

**XXX**

ARTICLE 10

**Amendment offered by Kenneth Jacobson, TMM Prec. 8**

*(Italicized words at the end of the first proposed amendment reflect the change from the previous Supplement)*

VOTED: To amend the proposed amendment to the Zoning By-Laws by modifying new section 3.03.6.1 Paragraph e by substituting the following language for the first sentence:

**The Coolidge Corner District Plan will be a one year planning process directed by the Department of Planning and Community Development and guided by a District Planning Council composed of three town meeting members from each of precincts 2,3,7,8,9 and 10. Those town meeting members shall be chosen by caucuses of such precincts' delegations, which caucuses shall be held in accordance with the requirements of the state Open Meeting Law. *The District Planning Council shall hold frequent public hearings to gather input from residents, business persons and other interested parties.***

And to further amend to amend the proposed amendment to the Zoning By-Laws by modifying new section 3.03.6.1 Paragraph e by adding the following language as its last sentence:

**The District Planning Council shall report to both the Selectmen and the Town Meeting.**

And to further amend the proposed amendment to the Zoning By-Laws by modifying new section 3.03.6.1 h.2 by substituting the following language after the sentence ending... “approval of this CCIPOD by Town Meeting.”

**The Interim Guidelines shall be prepared with input as feasible from neighborhood meetings sponsored by either or both of the Department of Planning and Community Development or neighborhood associations. The draft Interim Guidelines shall be drafted by a staff person from the Department of Planning and Community Development and shall be presented to the District Planning Council selected pursuant to paragraph e. above.**

The whole of paragraph e shall now read:

**The Coolidge Corner District Plan will be a one year planning process directed by the Department of Planning and Community Development and guided by a District Planning Council composed of three town meeting members from each of precincts 2,3,7,8,9 and 10. Those town meeting members shall be chosen by caucuses of such precincts' delegations, which caucuses shall be held in accordance with the requirements of the state Open Meeting Law. *The District Planning Council shall hold frequent public hearings to gather input from residents, business persons and other interested parties.* According to the Comprehensive Plan, “[d]istrict Plans would conduct buildout analyses and alternative development scenarios for each district, and then develop a vision for a preferred future of the district. The District Plans would then develop strategies for these areas in a variety of subject areas, including regulatory tools, development preferences, transportation issues, and open space priorities.” (*Brookline Comprehensive Plan, p. 34*) A full scope for the district planning process is available from the Department of Planning & Community Development. **The District Planning Council shall report to both the Selectmen and the Town Meeting.****

The whole of Paragraph 2 of Sub-Section h. shall now read:

2. Special Permits in the CCIPOD: For parcels within the CCIPOD, any applicant for a special permit shall be required to obtain an additional finding that they meet CCIPOD Interim Guidelines. These Interim Guidelines shall be adopted by the Planning Board pursuant to Section 5.09.4.n. after holding a public hearing, and shall be adopted within 60 days of the approval of this CCIPOD by Town Meeting. **The Interim Guidelines shall be prepared with input as feasible from neighborhood meetings sponsored by either or both of the Department of Planning and Community Development or neighborhood associations. The draft Interim Guidelines shall be drafted by a staff person from the Department of Planning and Community Development and shall be presented to the District Planning Council selected pursuant to paragraph e. above.** All special permit and variance applications must meet these conditions in addition to any conditions outlined in Section 9.05 or elsewhere in the Zoning By-Law. These Interim Guidelines shall include, but need not be limited to, the following general items:

- Relationship of proposed developments to the existing neighborhood
- Relationship of proposed developments to the street edge
- Materials, massing and scale of proposed developments

**Discussion of Proposed Amendments to Article 10**

Article 10 proposes an Interim Planning Overlay District for Coolidge Corner (CCIPOD). The purpose and ramifications of this proposal as well as the means for its implementation are detailed on pages 10-1 through 10-11 of the combined reports. The proposed amendments address only the implementation of the CCIPOD. Specifically, the amendments address the drafting of the guidelines for the IPOD and the District Planning Council to be created to guide the one year planning process.

The proposed amendments change the language of the warrant article by specifying that Town Meeting Members from the six impacted precincts will be the ones guiding both the drafting of the guidelines and the planning process. It specifies that those 18 Town Meeting Members will be chosen by their peers. Since the District Planning Council will in all likelihood be proposing new zoning changes for Coolidge Corner to be approved at the November 2006 Town Meeting, it seems appropriate that Town Meeting Members take an active role in the work leading to those zoning changes.

The proposed amendment to 3.03.6.1 paragraph “e” specifies that “the District Planning Council shall hold frequent public hearings to gather input from residents, business persons and other interested parties.” The amendment’s proponents have faith that our Town Meeting colleagues will: carry that brief out in a thorough manner; that they will consult with all interested parties; that those interested parties might be elected town officials, members of appointed boards or commissions, or representatives of community groups; that they will consult planning and development professionals when it is felt that their expertise will supplement that of the planning staff who will direct the one year planning process. We feel confident that the process will be transparent throughout, that all the information the District Planning Council gathers will be seriously considered, and that the wishes, views and opinions of the residents and businesses in the CCIPOD area will be reflected in any zoning changes that are brought to Town Meeting for its consideration. Who better than the elected representatives of those residents and business to guide the anticipated planning process?

Finally, the amendment specifies that the District Planning Council report to both the Selectmen and Town Meeting. Again, since Town Meeting will ultimately be asked to vote on the District Planning Council’s suggestions, it seems appropriate for Town Meeting as well as the Selectmen to be kept apprised of the Council’s work.

---

ARTICLE 11

---

ELEVENTH ARTICLE

To see if the Town will amend Articles IV Use Regulations, Section 4.08 Affordable Housing Requirements of the Zoning By-Law as follows:

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are **[bracketed]**.

It is recommended that the following current language of Subsection 4.08 3.a. below

3. *Applicability*

*In all zoning districts, the provisions of this §4.08 shall apply to the following uses:*

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

is revised to read as follows:

3. *Applicability*

*In all zoning districts, the provisions of this §4.08 shall apply to the following uses:*

*a. any project that results in the creation of six or more dwelling units, whether by new construction or by the alternation, expansion, reconstruction or change of existing residential or non-residential space, except that **the resulting number of pre-existing units remaining entirely within the envelope of the pre-existing space shall not contribute to such count;** and*

or act on anything relative thereto.

---

The current language was found to be insufficiently clear to accomplish its intended goals. The need for the above clarification was raised during a recent case in which the developer proposed incorporating an existing building within a new project. Because of the level of rehab work anticipated in the existing building – resulting in a decrease in the number of units – it could be argued that the “alteration, expansion, reconstruction or change of existing residential.... space” by that developer would result in an increase in

the number of units within the existing building envelope, it was important to clarify the original intention of the language.

---

---

PLANNING BOARD REPORT AND RECOMMENDATION

---

---

The Planning Board supports Warrant Article 11, which was submitted by the Planning and Community Development Department to clarify the definition of a pre-existing unit and whether it counts toward calculating the affordable housing requirements in Article IV Use Regulations, Section 4.08 Affordable Housing Requirements.

Section 4.08, Affordable Housing Requirements, requires developers of new residential projects with six or more units to contribute towards the Town's affordable housing supply. For developments of 6-15 units, a cash contribution may be made, and for developments of 16 or more units, affordable units are typically required.

This proposed warrant amendment clarifies which residential units in an existing building that is part of a proposed new development shall count toward calculating the affordable housing requirements. The By-Law currently states that residential units in a building retained as part of a project need not be counted toward the Affordable Housing Requirements; this serves as an incentive to retain older buildings. However, the current By-Law wording is unclear whether or not the existing units can be altered and whether they must be entirely within the building. The amendment clarifies this by stating that pre-existing units can be altered and must be primarily within the existing building. An amendment to the proposed By-Law by the Planning and Community Development Department further refines the language to allow the existing units to have up to 5% of the unit's floor space outside the existing building. This provides flexibility in the instance that a bay window or small addition is added to a unit in the existing building.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 11 with the revisions suggested by the Planning and Community Development Department, as follows.

Section 4.08 Affordable Housing Requirements

3. *Applicability*

*In all zoning districts, the provisions of this §4.08 shall apply to the following uses:*

- a. *any proposal that results in the creation of six or more dwelling units in a new building or six additional units, above what exists, in an existing building. A proposal that includes both a new and an existing building shall be considered a new building, except that the number of preexisting units within the existing building shall not be counted for purposes of this paragraph. A unit shall qualify as within the preexisting building if no more than five percent of the unit's floor area will be outside of the envelope of the preexisting building.*

SELECTMEN'S RECOMMENDATION

Section 4.08 of the Zoning By-law provides Affordable Housing Requirements for projects that result in “the creation of six or more dwelling units.” Article 11 seeks to clarify the intent of the requirements in the case of projects that are comprised of and/or incorporate residential buildings that existed on-site prior to redevelopment (i.e., “pre-existing buildings”).

According to the proposed clarification, the number of “pre-existing units” that are retained as part of the final project do not count for purposes of determining the affordable housing requirement. Furthermore, the amendment clarifies that “a pre-existing unit” will still be considered as such so long as no more than five percent of its floor area falls outside of the pre-existing building.

Thus, a developer may make renovations to existing units, and may even enhance the building façade or amenities by adding bay windows or balconies, or by enclosing porches, without triggering the Affordable Housing Requirements. However, should the number of units within the envelope of the pre-existing building increase, and/or should a substantial addition or a penthouse be added outside of the envelope of the building, then such additional or enhanced units will be counted for purposes of determining the Affordable Housing Requirements.

The Affordable Housing Requirements were intended to apply to newly created dwelling units and not to the renovation of existing units. As the Town attempts to encourage the retention of existing buildings, it is important that the Affordable Housing Requirements continue to reflect this original intention and not indirectly contribute to the teardown of existing buildings. This clarification is a step in that direction.

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on September 27, 2005, on the following vote:

VOTED: That the Town amend Articles IV Use Regulations, Section 4.08 Affordable Housing Requirements of the Zoning By-Law as follows:

3. Applicability

In all zoning districts, the provisions of this §4.08 shall apply to the following uses:

- a. any project that results in the creation of six or more dwelling units, whether by new construction or by the alternation, expansion, reconstruction or change of existing residential or non-residential space, except that **the resulting number of pre-existing units remaining within the pre-existing building** shall not contribute to such count. **A unit shall qualify as within**

**the pre-existing building if no more than five percent of the unit's floor area falls outside of the pre-existing building.**

-----

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This article attempts to clarify the obligations of developers in providing affordable units when adding new units to an existing building. It is a wording change that maintains the current by-law, and provides a provision for existing-unit increases of up to 5%.

Under the present law, developers who create six or more units must contribute to affordable housing. Those who develop between six and 15 units may opt for cash payments in lieu of on-site units.

Sixteen or more units require the developer to provide 15% on-site affordable units.

DISCUSSION

In an effort to encourage the preservation of existing buildings in preference to demolishing them, this article provides that only newly-added units will be counted towards the number of units applicable to the requirement for providing affordable units, e.g., if a developer owns a six-unit building and reconfigures it into a 12-unit building, only the six units would be counted towards the affordable housing requirement since six already existed. This rule would apply as long as the units are contained within the existing building.

A unit that is part of a larger project such as a new addition for which *greater* than five percent of the unit's floor area is located within the new addition or otherwise outside of the original building envelope, will be added to the project's count towards the affordable housing requirement.

RECOMMENDATION

The Advisory Committee unanimously (13-0) recommends favorable action on the vote offered by the Board of Selectmen

*XXX*

---

ARTICLE 12

---

TWELFTH ARTICLE

To see if the Town will amend the Zoning By-Law to add a new Section 5.23 as follows:

**§ 5.23 - SPECIAL PERMIT OVERLAY FOR SUBSTANTIAL INCREASES IN GROSS FLOOR AREA**

1. PURPOSE.

The purpose of this section is to provide a more detailed review of buildings that will be substantially larger than pre-existing or neighboring structures and thereby have a substantial impact on the character of residential neighborhoods.

2. SCOPE

In addition to compliance with the **Table of Dimensional Requirements**, new structures and exterior alterations, changes or additions in S, SC, SP, T or M districts shall be subject to a Special Permit process in the following circumstances:

- a. Where the total gross floor area of a proposed new building or enlarged building is at least 30% greater than the gross floor area of a pre-existing building, where the partial or total demolition of such pre-existing building was necessary, or would be necessary, to permit the proposed new construction; or
- b. Where the total gross floor area of a proposed new building or enlarged building is at least 30% greater than the average gross floor area of buildings existing, at the time of application for a permit for such new construction, either on adjacent lots or on lots on the same street any portion of which lots are within 100 feet of the lot on which new construction is proposed; or
- c. Where, after proposed exterior additions, the total gross floor area of a building will be at least 30% greater than the gross floor area of the same building prior to such exterior additions. Where there have been previous exterior additions after the effective date of this Section, the total gross floor area of the building after the addition which is being proposed shall be compared to the gross floor area of the building prior to all such exterior additions.

3. SPECIAL PERMIT.

Prior to granting a Special Permit, the Board of Appeals must hold a public hearing to determine:

- a. That the proposed new building, enlarged building or exterior additions will relate harmoniously to existing buildings in the vicinity that abut or have a visual relationship to the proposed building with respect to bulk, scale, siting, height,

- width, setbacks, roof and cornice lines, location and size of space for the parking of motor vehicles, size of spaces designated as attics or penthouses, and architecture.
- b. That the proposed new construction will preserve open space and the existing landscape by minimizing tree and soil removal, and that any grade changes shall be in keeping with the general appearance of neighboring lots.
  - c. In the case of a new building, enlarged building or exterior addition in a National Register District, necessitating the partial or total demolition of building on the National Register of Historic Places or eligible for the National Register of Historic Places, or having a visual impact on a building in a National Register District or eligible for the National Register of Historic Places, the Board of Appeals shall consult with the Brookline Preservation Commission and shall explain in writing any determination not to follow the recommendation of the Brookline Preservation Commission.
  - d. In order to ensure compliance with this Section, the Board of Appeals may impose floor area, height, setback, or open space requirements in addition to those set forth in the **Table of Dimensional Requirements**.

or act on anything relative thereto.

---

This amendment will also overlay existing FAR regulations with a public review process to promote uniformity among home sizes in a residential neighborhood. As described in the 2005-2015 Comprehensive Plan, this zoning amendment is consistent with key aspects whereas affected neighbors are invited to critically review development plans and provide feedback to appropriate town officials. The central goal is balancing new development in a way that best protects existing neighborhood character.

---

#### PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article 12 was submitted by citizen petition and adds a new section to Article V Dimensional Requirements, §5.23 Special Permit Overlay for Substantial Increases in Gross Floor Area. This article would require a special permit for new residential structures, additions, and alterations, which exceed the gross floor area of existing structures by 30%, even though they comply with the allowed floor area ratio (FAR) in §5.00 Table of Dimensional Requirements of the Zoning By-Law.

Although the Planning Board is sympathetic to the citizen petitioner's goal of limiting "McMansionization" - out-of-scale homes to the surrounding neighborhood - the Board believes that this proposed amendment should be referred to the already appointed Moderator's Committee, which was asked to study the best way to control the size of dwellings and to define habitable gross floor area and then propose zoning recommendations

for Town Meeting action. The Planning Board does not support Warrant Article 12, and the proposed revision by the citizen petitioner to exempt long-term property owners, because:

- It conflicts with other sections of the Zoning By-Law, such as Section 5.22 Exceptions to Maximum Floor Area Ratio Regulation for Residential Units, which allows by special permit exterior additions and/or interior alterations for houses that will exceed the FAR maximum in the Table of Dimensional Requirements.
- It doesn't treat property owners equally (distinguishing between owners of more than one year and developers), and
- It doesn't treat dwellings equally (an existing smaller structure would be allowed a more limited expansion than an existing larger structure since expansion would be controlled by a percentage of the existing floor area).

The Moderator's Committee is currently studying the appropriate size limits for single family homes and should be given the opportunity to explore different approaches other than FAR to control the size of homes, such as lot coverage. Additionally, the Moderator's Committee is analyzing how to strengthen and clarify definitions for what floor area should count toward the allowed gross floor area.

Therefore, the Planning Board unanimously recommends NO ACTION on Warrant Article 12 and recommends that it be referred to the Moderator's Committee on FAR for report to the Spring 2006 Town Meeting.

---

#### SELECTMEN'S RECOMMENDATION

Article 12 is a petitioned article that proposes regulations to limit the size of residential structures in Town by requiring a special permit for all new residential structures, additions, and alterations that expand an existing structure's floor area by 30%. In 2004, Town Meeting referred the study of the appropriate size of residential structures to a Moderator's Committee, and that Committee should be given the opportunity to evaluate the Town's current regulations and propose amendments to them.

Therefore, the Selectmen recommend FAVORABLE ACTION on following vote, by a vote of 4-0 taken on October 20, 2005:

VOTED: To refer the subject matter of Article 12 to the Moderator's Committee on FAR for report to the Spring 2006 Town Meeting.

#### **ROLL CALL VOTE:**

##### Favorable Action

Hoy

Sher

Merrill

Daly

---

## ADVISORY COMMITTEE'S RECOMMENDATION

### BACKGROUND

The stated purpose of this proposed new section is "to provide a more detailed review of buildings that will be substantially larger than pre-existing or neighboring structures and thereby have a substantial impact on the character of residential neighborhoods." The full text limits its controls to "new structures and exterior alterations, changes or additions in S, SC, SP, T or M districts"; it would affect all uses allowed in those districts, not just single family houses.

The petitioner brings this article to Town Meeting to address an issue in Brookline, and his own small neighborhood in Precinct 15. A neighboring property was sold and the new owner, a developer, had submitted plans to demolish the house (a 60's split-level single-family) and build a new one that would be much larger than the existing one, as well as the other five houses - which are consistent in style and size. The petitioner stated that the article is not intended to be "anti-development".

The subject house did not qualify for a one-year stay of demolition, since it is not considered historically significant. Based on the existing FAR of 0.30 (in an S-10 District) the lot size of approximately 16,700 square feet was big enough to support an increase in house size to over 5,000 (from 2,256 square feet) while maintaining the required setbacks - so it was a "by right" proposal - and would not have any Planning Board review nor need a Special Permit.

The petitioner's intent with this new section would be to overlay existing FAR regulations with a public review process to "promote uniformity among home sizes in a residential neighborhood". Borrowing from the 2005-2015 Comprehensive Plan, it "invites neighbors to critically review development plans and provide feedback to appropriate town officials. The central goal is balancing new development in a way that best protects existing neighborhood character."

Special Permit review would be required by this article if a proposed project would increase its existing size by 30% in overall gross square foot area; or if new, be 30% larger than the average size of neighboring structures within 100 feet of the site; or be 30% larger than the original size of the structure before any previous additions, as of the date of this Section (to allow some "grandfathering" of buildings). These multiple qualifiers would help in an M-district when a single family house exists next to an apartment building - but would effectively rule-out currently allowed, new apartment buildings. As written, the section uses the existing definition of gross square feet - which is the subject of much debate currently.

Finally the section would, during SP review, allow for several areas of examination during public hearings, and possible DAT sessions: to attempt to make it "relate harmoniously ... to its neighbors with respect to bulk, scale, ... roof and cornice lines, ... size of spaces designated as attics or penthouses, and architecture" - though the petitioner says he's not calling for the control of "architectural design choices". Also, it raises attention to National Historic Registry listed buildings (which have no special protection without a Local designation) by calling for comments from the Preservation

Commission and allows the ZBA to invoke additional requirements beyond the Table of Dimensional Requirements.

The petitioner intended the article to target real-estate developers, and proposed a possible amendment calling for a one-year residency requirement (to qualify for exception from the by-law) so that established homeowners would not be affected by this article. The Attorney General would likely not allow that for discrimination reasons and it might be gotten around anyway. Besides - not just developers want large houses.

#### DISCUSSION

"Mansionization" is not a recent phenomenon in communities like Brookline where smaller houses have been torn down and new, much larger, houses have been put up by developers. The excuse for the increased size is often the high cost of property acquisition and new construction, but the result is usually a new house that dwarfs its neighbors while seeming to overstuff its lot. The Advisory Committee fully sympathizes with this issue.

This very subject (based on another example - the Longyear development) is currently being studied by the Moderator's Committee on FAR, formed by last Town Meeting's vote.

Postscript: We heard from at least one resident with a different situation; having a larger than average sized lot with a small house. If this article goes forward they would not be able to expand from 1300 to 2600 square feet of space (a long way from a McMansion) because they would exceed its 30% maximum increase provision. The petitioner was encouraged to continue a dialogue with the developer and although after our hearing the house was demolished, the proposed house has since been scaled down to the satisfaction of the petitioner.

#### RECOMMENDATION

This article is a well intentioned attempt by citizen petition to address an important issue related to the character of our neighborhoods, though certainly developers don't see it as a problem.

Zoning By-law changes are almost always difficult to initiate by warrant article alone; they usually create ramifications running through several other sections of the overall document. This can make it too complex a matter for a standard article review and adjustment by amendment, as is true in this case. The Advisory Committee therefore unanimously (18-0) recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

**XXX**

---

ARTICLE 13

---

THIRTEENTH ARTICLE

To see if the Town will amend Section 4.09 of the Zoning By-Law as follows:

1. By adding the following language to Section 2. Scope: “or public utility poles” as follows:

Section 2. Scope

This §4.09 shall apply to all wireless telecommunication antennas and towers and related equipment, fixtures and enclosures, including any modifications to any of the proceeding, but shall not apply to dish or television antennas which receive and do not transmit; amateur ham radio antennas; citizens band radio antennas; fire, police, ambulance and other safety communication antennas; antennas utilized by the Town for its communications systems; and to antennas to be located on Town-owned property **or public utility poles**, except that paragraph 4., subparagraph c. of this section shall apply.

2. By adding the following language to Section 4 paragraph (c). Procedure: “or public utility poles” as follows:

Section 4, paragraph (c):

- c. All wireless telecommunications antennas, towers, and related equipment, fixtures, and enclosures to be located on Town-owned property **or public utility poles** shall be exempt from the procedures in subparagraph a. above, and shall require approval from the Board of Selectmen, after an advisory report from the Planning Board and a public hearing. Long term telecommunication leases are subject to G.L.c.30B and must be approved by Town Meeting. The submittal requirements and approval standards of this section shall serve to guide the Planning Board in its recommendation to the Selectmen.

or act on anything relative thereto.

---

The Moderator’s Committee on Wireless Communications has been meeting since fall Town Meeting, 2004, to evaluate how adequate wireless telecommunication services can be provided to South Brookline with minimal visual impacts. The Committee is supporting a Distributed Antenna System (DAS), which has been used in other communities, such as Nantucket, that are trying to avoid the negative impacts of large towers. A DAS system consists of small boxes and whip antennas placed on utility poles. Related mechanical equipment can be located at a distance from the poles and are connected by underground cables.

In order to facilitate this system, a zoning by-law amendment is being proposed by the Planning and Community Development Department, which would require the same

review and approvals for public utility poles that currently is required for wireless facilities on Town-owned property. These requirements include review and approval by the Board of Selectmen, after an advisory report from the Planning Board and a public hearing.

---

**PLANNING BOARD REPORT AND RECOMMENDATION**

---

The Planning Board supports Warrant Article 13, which was submitted by the Planning and Community Development Department to include public utility poles in Article IV Use Regulations, Section 4.09.2 Wireless Telecommunication Services, Scope, of the Zoning By-Law in order to facilitate a DAS wireless telecommunications system, which would place a box and whip antenna on utility poles within the public right of way. The Moderator's Committee on Wireless Communications has been meeting since fall Town Meeting, 2004, to evaluate how adequate wireless telecommunication services can be provided to South Brookline with minimal visual impacts. The Committee is supporting a Distributed Antenna System (DAS), which has been used in other communities, such as Nantucket, that are trying to avoid the negative impacts of large towers. Currently, wireless antennas proposed for Town-owned property must be approved by the Selectmen after a public hearing and an advisory report from the Planning Board, and public utility poles would have to undergo the same approval process. Additionally, long term leases must be approved by Town Meeting.

Therefore, the Planning Board unanimously recommends approval of Warrant Article 13 as proposed.

-----

---

**SELECTMEN'S RECOMMENDATION**

Articles 13 and 14 are the end result of more than 18 months of hard work by Town staff and residents who volunteered to help the Town find a solution to the serious issue of the lack of cellular coverage in South Brookline. Article 13 is a proposed Zoning By-Law amendment that would require the same review and approvals for the use of public utility poles for wireless facilities that currently are required for using Town-owned property for wireless facilities. These requirements include review and approval by the Board of Selectmen, after an advisory report from the Planning Board and a public hearing. This article is being proposed in order to facilitate a Distributed Antenna System (DAS), which has been used in other communities, such as Nantucket, that are trying to avoid the negative impacts of large towers.

The Moderator's Committee on Wireless Communications has been meeting since the 2004 Fall Town Meeting to evaluate how adequate wireless telecommunication services can be provided to South Brookline with minimal visual impacts. The Committee is supporting a Distributed Antenna System (DAS), which consists of small boxes and whip antennas placed on utility poles. Related mechanical equipment can be located at a distance from the poles and are connected by underground cables.

The Moderator's Committee was established in response to a proposal by the Town to construct a cell tower on land within the Walnut Hills Cemetery, which itself was in response to residents looking for an alternative to the proposed "stealth towers" on private property at the Shops at Putterham. The issue of cell towers is certainly not new to Brookline. Below is a brief history of cell towers in Brookline:

- **1996** = Federal Telecommunications Act
- **May, 1997** = Town Meeting approval of a moratorium on antenna permits through November 26, 1997. (Article 16)
- **June, 1997 – October, 1997** = Antenna Zoning Sub-Committee, consisting of two Planning Board members and concerned citizens, worked to formulate a by-law.
- **November, 1997** = Town Meeting approval of the addition of a Wireless Communications section to the Town's Zoning By-Law. (Article 10. Article 11 was a citizen proposal that did not pass.)
- **January, 1999** = RFPs for a cell tower on Town-owned property is issued.
- **February – March, 1999** = RFP responses received and reviewed.
- **June, 1999** = Planning Board review of proposed 100' monopole at the Municipal Service Center (MSC).
- **July – August, 1999** = negotiations with Omnipoint for a monopole at the MSC.
- **September, 1999** = decision to postpone negotiating with Omnipoint until TM discusses proposal for "stealth" tower in the woods at the Putterham Meadows golf course.
- **November, 1999** = TM votes No Action on a "stealth" tower at the golf course (Article 11).
- **June, 2004** = Staff recommends to the Board of Selectmen the establishment of a Wireless Communication Committee to review both the short-term and long-terms wireless needs.
- **June, 2004 / July, 2004** = Considerable correspondence sent to the Board of Selectmen by South Brookline residents regarding the proposed cell towers at Putterham Circle that was before the Planning Board. Residents asked the Board of Selectmen to identify an alternative cell tower location.
- **July, 2004** = Board of Selectmen approves the formation of a working committee on cell towers. The Chief Procurement Officer convenes a Selection Board to develop an RFP / review proposals for a cell tower on Town-owned land.
- **November, 2004** = TM votes No Action on a tower in the form of a "fake tree" at the Walnut Hills Cemetery (Article 11) and instead votes to establish a Moderator's Committee to deal with the issue.

The proposal of the Moderator's Committee for a DAS is a creative solution to a complex issue. The DAS is a set of inconspicuous antennae on utility poles sparsely placed in South Brookline that obviate the need for a traditional cell tower, which is far more intrusive and damaging to the aesthetics of the area. In order to facilitate the build-out of the network, the amendment to the Zoning By-Law proposed under Article 13 is necessary, as the current system of having different approval processes for proposals using Town-owned land and proposals using private property is unworkable. If approved, the Zoning By-Law would require proposals for wireless antennas on public utility poles

to be approved by the Selectmen after a public hearing and an advisory report from the Planning Board, the same process that is undertaken for proposals using Town-owned land.

The Board of Selectmen thanks the Moderator's Committee for its diligent work and recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2005, on the following vote:

VOTED: That the Town amend Section 4.09 of the Zoning By-Law as follows:

1. By adding the following language to Section 2. Scope: "or public utility poles" as follows:

Section 2. Scope

This §4.09 shall apply to all wireless telecommunication antennas and towers and related equipment, fixtures and enclosures, including any modifications to any of the proceeding, but shall not apply to dish or television antennas which receive and do not transmit; amateur ham radio antennas; citizens band radio antennas; fire, police, ambulance and other safety communication antennas; antennas utilized by the Town for its communications systems; and to antennas to be located on Town-owned property **or public utility poles**, except that paragraph 4., subparagraph c. of this section shall apply.

2. By adding the following language to Section 4 paragraph (c). Procedure: "or public utility poles" as follows:

Section 4, paragraph (c):

c. All wireless telecommunications antennas, towers, and related equipment, fixtures, and enclosures to be located on Town-owned property **or public utility poles** shall be exempt from the procedures in subparagraph a. above, and shall require approval from the Board of Selectmen, after an advisory report from the Planning Board and a public hearing. Long term telecommunication leases are subject to G.L.c.30B and must be approved by Town Meeting. The submittal requirements and approval standards of this section shall serve to guide the Planning Board in its recommendation to the Selectmen.

**ROLL CALL VOTE:**

Favorable Action

Hoy

Sher

Merrill

Daly

-----

---

---

### ADVISORY COMMITTEE'S RECOMMENDATION

Warrant Articles 13 and 14 together represent the enabling legislation necessary to install a distributed antenna system (DAS) to provide cellular telecommunication service in South Brookline.

Specifically, Warrant Article 13 amends Section 4.09 of the Zoning By-Law, "Wireless Telecommunications Services" to exempt all public utility poles (town-owned and privately-owned) from the restrictions of the current by-law. It further states that antennas and related equipment located on public utility poles require approval from the Board of Selectmen following an advisory report from the Planning Board and a public hearing

#### BACKGROUND

At the Special Town Meeting in the fall of 2004, a recommendation was made to establish a Moderator's Committee to review technically feasible options for the siting of telecommunication facilities in South Brookline to improve cellular coverage in that area, and to report back to the 2005 Annual Town Meeting with "immediately actionable recommendations." The Moderator's Committee on Wireless Facilities (MCWF) was established in the December 2004 and held its first meeting in January 2005. From January until October, the MCWF held ten meetings at which public comment was invited and recorded, as well as two public forums for the community.

After several preliminary meetings, an RFP was issued to retain independent consulting services to assist the Committee in evaluating the cellular coverage needs in South Brookline and the technical options for meeting those needs. Frederick G. Griffin Engineering (Philadelphia, PA), an engineering firm that consults with municipalities, responded. Edward Veal, General Manager of FGGE was invited to a meeting of the MCWF in March 2005 and, following an interview by members of the Committee and members of the public, FGGE was awarded the contract. A public forum at which Mr. Veal presented his preliminary findings was held at the Baker School on May 4, 2005.

FGGE's report to the Committee contained the following conclusions:

- There are existing coverage gaps in South Brookline
- Growth of wireless services will require more and more infrastructure
- Current sites cannot resolve the coverage issue
- No single tower approach can provide a solution to the problem, due to the topography of the area
- A DAS appears to be the most "innocuous" way of meeting both the needs of the service providers (WSPs) and the needs of the community

A DAS makes use of existing structures, such as utility poles and buildings for the mounting of shared, small antennas and boxes (antenna nodes). A DAS is scalable, which means that additional nodes can be added if service needs increase. The base station (host) housing the equipment can be placed at a remote location and attaches via

fiber optic cable to the distributed antennas. An additional feature of a DAS is that the common infrastructure can be tailored to the individual needs of each carrier and can be used to support other wireless services including a WiFi Hotspot Network and/or Public Safety voice and data communications.

FGGE divided South Brookline into three zones and found that all of the carriers had coverage gaps in at least one of the zones. The consulting firm recommended “it is in the best interest of South Brookline, and the town community at large, to at least consider and pursue a DAS solution.” DAS is not a new technology and has been in use in Europe and in the United States in indoor applications, such as tunnels, airports and on college campuses, where tower signals are impaired. Outdoor municipal DAS configurations are, however, very new and Brookline is considered a pioneer in this application of the technology. Nantucket is currently the only municipal outdoor DAS in operation in New England, and that has been in operation only since 2004. However, as communities become increasingly resistant to the siting of telecommunication towers, distributed antenna systems are likely to become the technology of choice. Recently, suburban Detroit has installed a DAS and New York City is planning a large scale DAS as well.

At the 2005 Annual Town Meeting the consultant’s findings were reported and the Moderator’s Committee for Wireless Facilities asked Town Meeting to approve an additional six months to complete its work.

FGGE’s consulting services were enlisted to help prepare an RFP to implement a Distributed Antenna System for South Brookline. The RFP was made available on August 4, 2005 and proposals were submitted on Monday, September 12<sup>th</sup>. Three vendors responded to the RFP and two of the vendors were selected for further interviewing. ClearLinx was considered the best choice by the Committee, on the basis of the aesthetics of the system they proposed. A public forum was held on October 6<sup>th</sup> at the Baker School to introduce the potential vendor to the South Brookline community and to answer questions about the DAS proposal. The community expressed strong support for this approach.

ClearLinx designs, implements and operates “open”/shared networks based on distributed antenna system architecture. At the public forum ClearLinx representatives told the community that its system would help wireless service providers (WSPs) improve coverage and capacity, while also addressing neighborhood concerns regarding the aesthetic (visual and noise) impacts of the wireless network infrastructure. A small 21” by 28” by 9” box (antenna node) would be installed on the light post ten feet above the ground and contain amplifiers for up to four carriers. ClearLinx would install a bracket allowing for two boxes to be placed on the pole, but would initially install just one box. At the top of the pole would be a small, cylindrical shared antenna, 10 inches in diameter and 21 inches tall, connected to the box by fiber optic cable. The box itself contains no mechanicals (e.g. cooling fans) and does not generate any noise. The carrier base station would be located at the Municipal Service Center on Hammond Street and would contain all the carrier equipment and an extra set of replacement parts for each carrier. Antenna nodes are connected to the base station via fiber optic cables. The hotel would contain small, portable generators which are tested monthly for up to two hours. The noise levels are expected to be unnoticeable in the ambient environment. The system can be expected

to be up and running within six months following approval by Town Meeting. This proposed system would use, nearly exclusively, existing fiber optic cable (whether suspended or buried).

### DISCUSSION

The town's Wireless Telecommunications Services By-law was passed by Town Meeting in the fall of 1997 in response to the Federal Telecommunications Act of 1996, which preserved a local municipality's authority to regulate the siting, construction and design of telecommunications facilities, as long as it did not "prohibit or have the effect of prohibiting the provision of personal wireless services."

The town's by-law was written to regulate the then-current standard in wireless telecommunications services, which was primarily line-of-sight analog equipment. In the intervening years, there has been a technology shift towards digital signals, which travel shorter distances and require more antennas. There has also been an increase in the number of wireless services being provided and the number of customers requesting service. This technology shift has disproportionately affected South Brookline, which to-date has a set of antennas for only one carrier installed at the Brandegee Estate abutting Allandale Farm.

It should be noted that the rejection late last year by the Zoning Board of Appeals of applications to place two 80-foot towers at The Shops at Putterham, triggered the filing of two lawsuits against the town. These lawsuits were filed earlier this year, while the Moderator's Committee has been working on a viable alternative for South Brookline. ClearLinx has informed the community that it has a carrier agreement signed and ready to go on the DAS in South Brookline, and has agreements out to every carrier in the area. Once the town offers a carrier a viable option for providing its services to the town, Brookline will no longer be in violation of the Federal Act, which is the basis for the lawsuits.

Warrant Article 13 represents the first time in eight years that the Telecommunications By-law is being amended. The 1997 town-wide by-law sets up separate procedures for reviewing applications on town-owned property and on private property. The Distributed Antenna System being proposed for South Brookline presents the town with a hybrid system because some public utility poles are town-owned and some are privately-owned (Nstar and Verizon). By placing all public utility poles in the same category as all town-owned property, a single review process can be established for a DAS.

### RECOMMENDATION

The South Brookline community has expressed support for a distributed antenna system, and the warrant articles now before Town Meeting will enable a build-out of that system.

The Advisory Committee unanimously (17-0 with 2 abstentions) recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

---

ARTICLE 14

---

FOURTEENTH ARTICLE

To see if the Town will authorize the Board of Selectmen to lease, for a term not to exceed ten years, the following property, including land, buildings and town owned light poles upon such terms and conditions the Selectmen determine to be in the best interest of the Town:

1. 870 Hammond Street (The Municipal Service Center); and
2. Town owned light poles on the following streets and ways:

Aston Road  
 Baker Circle  
 Bellingham Road  
 Clearwater Road  
 Grassmere Road  
 Grove Street  
 Hammond Street  
 Horace James Circle  
 Independence Drive  
 Lagrange Street  
 Ogden Road  
 West Roxbury Parkway  
 Woodcliff Road  
 Woodland Road  
 Zanthus Road

or act on anything relative thereto.

---

The Moderator's Committee on Wireless Communications has been meeting since fall Town Meeting, 2004, to evaluate how adequate wireless telecommunication services can be provided to South Brookline with minimal visual impacts. The Committee is supporting a Distributed Antenna System (DAS), which has been used in other communities, such as Nantucket, that are trying to avoid the negative impacts of large towers. A DAS system consists of small boxes and whip antennas placed on utility poles. Related mechanical equipment can be located at a distance from the poles and are connected by underground cables.

Directly related to Article 13, this article would authorize the Board of Selectmen to enter into lease agreements for Town-owned property. The use of Town-owned property is necessary so that the DAS provider can mount the equipment (on utility poles) and locate a base station for the DAS system (Municipal Service Center). Per Massachusetts

General Laws, Town Meeting approval is required for any long-term lease of Town-owned property.

---

SELECTMEN'S RECOMMENDATION

Articles 13 and 14 are the end result of more than 18 months of hard work by Town staff and residents who volunteered to help the Town find a solution to the serious issue of the lack of cellular coverage in South Brookline. Article 14 calls for leasing of Town-owned property, specifically land at the Municipal Service Center and Town-owned utility poles, that may be needed in order to facilitate a Distributed Antenna System (DAS) in the South Brookline area.

The Moderator's Committee on Wireless Communications has been meeting since the 2004 Fall Town Meeting to evaluate how adequate wireless telecommunication services can be provided to South Brookline with minimal visual impacts. The Committee is supporting a Distributed Antenna System (DAS), which consists of small boxes and whip antennas placed on utility poles. Related mechanical equipment can be located at a distance from the poles and are connected by underground cables.

The Moderator's Committee was established in response to a proposal by the Town to construct a cell tower on land within the Walnut Hills Cemetery, which itself was in response to residents looking for an alternative to the proposed "stealth towers" on private property at the Shops at Putterham. The issue of cell towers is certainly not new to Brookline. Please see the Selectmen's Recommendation under Article 13 for a history of cell towers in Brookline.

The Moderator Committee's proposal for a DAS is a creative solution to a complex issue. The DAS is a set of inconspicuous antennae on utility poles throughout South Brookline that obviate the need for a traditional cell tower, which is far more intrusive and damaging to the aesthetics of the area. Leasing of Town-owned property is required if the DAS is to be built-out. Specifically, land at the Municipal Service Center would be used for the so-called "carrier hotel", a structure that will house the equipment of the wireless providers. Estimated at 20 feet by 20 feet, the structure will include noise attenuation equipment so as to minimize noise to the greatest extent possible.

The second part of this leasing article is for Town-owned utility poles. There are approximately 3,800 utility poles in Brookline, of which the Town owns 1,380. The remaining poles are owned by either NStar or Verizon. If the final network architecture requires the use of Town-owned poles, they would have to be leased by the vendor. The streets listed in the article are those that fall within the study area and have at least one Town-owned pole.

The Board of Selectmen thanks the Moderator's Committee for its diligent work and recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2005, on the following vote:

VOTED: That the Town authorize the Board of Selectmen to lease, for a term not to exceed ten years, the following property, including land, buildings and town owned light poles upon such terms and conditions the Selectmen determine to be in the best interest of the Town:

1. 870 Hammond Street (The Municipal Service Center); and
2. Town owned light poles on the following streets and ways:

Aston Road  
 Baker Circle  
 Bellingham Road  
 Clearwater Road  
 Grassmere Road  
 Grove Street  
 Hammond Street  
 Horace James Circle  
 Independence Drive  
 Lagrange Street  
 Ogden Road  
 West Roxbury Parkway  
 Woodcliff Road  
 Woodland Road  
 Zanthus Road

**ROLL CALL VOTE:**

Favorable Action

Hoy  
 Sher  
 Merrill  
 Daly

-----

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Long-term telecommunication leases (defined as ten years) are subject to M.G.L.c.30B and require, according to the Town's By-law, the approval of Town Meeting. Warrant Article 14 authorizes the Board of Selectmen to lease the Municipal Service Center and town-owned light poles on certain streets in South Brookline.

DISCUSSION

A Distributed Antenna System will require the placement of a series of antennas and boxes on public utility poles, and an equipment shed for carrier mechanicals (a “hotel”). The hotel can be placed in a remote location, separate from the antennas, connected by fiber optic cable. The current warrant article recommends leasing a portion of the property at the Municipal Service Center (870 Hammond Street) to build a hotel, approximately 15’x 20’, to house the equipment for the various carriers that will use the DAS.

In addition, the proposed DAS may utilize a combination of town-owned and private light poles. The streets listed in Warrant Article 14 are all the streets and ways that contain town-owned light poles in the specified service area of South Brookline. ClearLinx, the vendor proposing to construct and maintain the system, has not yet determined which poles will best meet the South Brookline carrier requirements of the DAS. This article will allow a vendor, with town input, some flexibility in setting up the system. ClearLinx expects to be able to provide coverage in all three zones identified in the RFP with 17 antenna nodes.

It should be noted that this article does not specify the details of a lease agreement. Rather, it authorizes the Board of Selectmen to negotiate a lease on certain specified town-owned properties.

#### RECOMMENDATION

While Warrant Articles 13 and 14 are necessary to enable the build-out of a Distributed Antenna System in South Brookline, individually they are not sufficient. The passage of both warrant articles is required to enable a DAS to be constructed.

The Advisory Committee unanimously (17-0 with 2 abstentions) recommends FAVORABLE ACTION on the vote offered by the Selectmen.

**XXX**

ARTICLE 15

FIFTEENTH ARTICLE

To see if the Town will amend Articles I, V and IX of the Zoning By-Law as follows:

Please note that all proposed amendments appear in **bold** type and are underlined. Proposed deletions appear in **bold** type and are **[bracketed]**.

**1. Potential Amendments to Article I. Purpose and Scope**

§1.00 – Purpose and Interpretation

1. The purpose of this By-law is declared to be the promotion of the public health, safety, convenience, and welfare, by:
  - a. encouraging the most appropriate use of land,
  - b. preventing overcrowding of land,
  - c. conserving the value of land and buildings,
  - d. lessening congestion of traffic,
  - e. preventing undue concentration of population,
  - f. providing for adequate open space, light and air,
  - g. reducing the hazards from fire and other danger,
  - h. assisting in the economical provision of transportation, water, sewerage, schools, parks, public shade trees and other public facilities,
  - i. preserving and increasing the amenities of the Town, including trees and other landscape and natural features,
  - j. encouraging the preservation of historically and architecturally significant structures, and
  - k. encouraging housing opportunities for people of all income levels.

**2. Potential Amendments to Article V. Dimensional Requirements**

**§5.09 - DESIGN REVIEW**

**1. Purpose**

**The purpose of this section is to provide individual detailed review of certain uses and structures which have a substantial impact upon the character of the Town and upon traffic, utilities, other elements of the public infrastructure including public shade trees, and property values therein, thereby affecting the public health, safety and general welfare thereof. The design review process is intended to promote the specific purposes listed in §1.0, paragraph 1. of this By-law.**

## **2. Scope**

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior changes which require a building permit under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified. Exterior alterations, exterior additions and exterior changes, including fences, walls, and driveways, to residential uses permitted by right in S, SC, and T districts; signs as regulated in §§ 7.02, and 7.03; and regulated facade alterations as defined and regulated in §7.6 shall be exempt from the requirements of this section.

- a. Any structure or outdoor use on a lot any part of which is located in the G-1.75(CC) District or which fronts on or is within 100 feet of: Beacon Street Commonwealth Avenue, Boylston Street, Harvard Street, Brookline Avenue, or Washington Street.
- b. attached dwellings in groups of three or more
- c. designed groups of single-family dwellings as per §5.11, paragraph 2.
- d. multiple dwellings with 10 or more units on the premises, whether contained in one or more structures
- e. lodging houses and hotels
- f. gasoline service stations
- g. outdoor automobile sales and storage for sales
- h. non-residential uses in a non-residential district with more than 10,000 square feet of gross floor area or with 20 or more parking spaces, except municipal facilities in I-1.0 districts when authorized by a two-thirds vote of Town Meeting
- i. non-residential uses in a residential district with more than 5,000 square feet of gross floor area or with 10 or more parking spaces
- j. any exterior addition for which a special permit is requested pursuant to §5.22

k. any structure for which a variance is requested pursuant to §9.09, paragraph 1., subparagraph d.

l. all subdivisions of 10 lots or more.

3. Procedure

a. General

**1. Site Disturbance and Clearing – Pursuant to §3.c.2) and §4.a. of this Article, the applicant seeking a special permit or variance shall maintain all existing trees and other site features until a special permit or variance is approved.**

**In the event that site excavation, grading or clearing of trees and vegetation does occur on a property that is the subject of a pending application for a Special Permit or Variance, the Planning Board or Board of Appeals may take the following actions:**

**a) Request in writing that the Building Commissioner order the applicant to stop work and cease all activities associated with excavating grading, or tree and vegetation clearance.**

**b) Request that the Applicant engage the services of a Massachusetts Certified Arborist to inspect the subject property and file a written report with the Town's Tree Warden detailing the following:**

**1. The nature and extent of excavating, grading or clearing trees and vegetation that has occurred, including the species and caliper size of trees and plant material removed, where possible.**

**2. Preliminary recommendations, to the extent practicable, that will either restore the site or introduce replacement trees and landscape features as part of a landscape plan.**

**c) Based on the report and preliminary recommendations from the Director of Planning and Community Development, the Board of Appeals may, as part of its decision on an application for a Special Permit or Variance, include conditions that will require, to the extent practicable, the restoration or replacement of trees, landscape and other site features.**

**d) Either prior to or following the filing of an application for a Special Permit or Variance with the Town Clerk, the applicant may submit to the Building Commissioner, a request to**

**proceed with limited site disturbance or clearing necessary to conduct site surveys and other routine predevelopment investigations not associated with routine property maintenance. The request shall be in a form prescribed by the Building Commissioner. Upon receipt, the Building Commissioner shall convey the request to the Director of Planning and Community Development, Tree Warden and Planning Board. The Planning Board, in consultation with the Director of Planning and Community Development and Tree Warden, shall have 14 days to either recommend approval, approval with conditions or denial of the request. The applicant may appeal the determination of the Planning Board to the Board of Appeals.**

**2.** [1] Preapplication—Prior to a formal submission to the Building Commissioner, the applicant is strongly encouraged to:

- a) consult with the Building Commissioner and Planning Director or their designees for technical advice relative to the community and environmental impact and design review standards of this section; and
- b) meet with abutters, tenants of abutters, Town Meeting Members, neighborhood associations, and other interested citizen groups to review the project plans, and the applicant should actively promote citizen involvement throughout the review process; and
- c) meet with the Planning Director or his/her designee to determine if the Planning Board has adopted design guidelines which pertain to the proposed project; and
- d) meet with the Transportation Director and the Planning Director or their designees for advice on the preparation of any required transportation studies.
- e) **meet with the Town's Tree Warden and/or Tree Planting Committee if either the removal or relocation of existing public shade trees or the planting of new public shade trees is proposed. Removal of Public Shade Trees is governed by Massachusetts General Law Chapter 87.**

**3.** [2] Application—Applications for uses subject to community and environmental design review shall be submitted to the Building Commissioner and to the Board of Appeals in accordance with the procedure for special permits specified in §§ 9.03 and 9.04, including the requirements for public notice and hearing and referral to the Planning Board. The report of the Planning Board to the Board of

Appeals shall contain a specific evaluation or statement in relation to each of the following:

- a) fulfillment of the preapplication phase of this section;
- b) designation of the proposal as a major impact project (or exemption as such) as defined in paragraph 3., of this section;
- c) conformance with each of the standards listed in paragraph 4. of this section; and
- d) conformance with the goals and objectives of the Comprehensive Plan.
- e) conformance with the Affordable Housing requirements in §4.08, where applicable.

The Board of Appeals shall not deny a special permit for any use or condition which requires a special permit solely because it falls into one of the categories listed in §4.01, paragraph 3., unless it finds that the use or condition departs from the standards listed in paragraph 4. of this section to such an extent as to produce a serious adverse impact upon the character of the area or upon traffic, utilities and property values therein, thereby adversely affecting the public health, safety, and general welfare. In reviewing applications under this section, the Board of Appeals may require modifications, conditions and safeguards reasonably related to the community and environmental impact and design standards of this section.

- b. Major Impact Projects Only—Prior to formal submission of an application to the Building Commissioner pursuant to this section, the applicant shall consult with the Planning Director and the Building Commissioner or their designees to determine whether such application involves a major impact project which shall be defined as any residential development of 16 units or more, any nonresidential development containing more than 25,000 square feet, or any other project with the potential for substantial environmental impact on the community. If the proposal is deemed by either official to be a major impact project, then the following procedural requirements shall be completed prior to the filing of an application with the Building Commissioner.
  - 1) The applicant shall meet informally with the Planning Director and the Building Commissioner to discuss the development program and the relevant Zoning By-law requirements.
  - 2) The applicant shall submit to the Planning Director or his/her designee a program statement and zoning analysis of the proposed project, schematic site plan, massing model with a photo of the model, and perspective massing studies prior to a preliminary review by the Planning Board. If a floor area bonus is proposed, the applicant shall first present material for a

proposal without any bonus and then an alternative with the bonus, indicating the public benefit features possible, if the bonus is granted.

- 3) The Planning Director or his/her designee shall, in the normal course of notification of the Planning Board's preliminary meeting on the project, send the program statement, zoning analysis, and schematic site plan to the following departments and boards: Building, Engineering/Transportation, Fire, Police, Public Works, Conservation Commission, Economic Development Advisory Board, Preservation Commission, **Tree Planting Committee**, and, if a residential development, the Housing Advisory Board. The enumerated departments and commissions and any other entities with an interest in the project may at their discretion submit in writing a statement of their concerns and recommendations to the Planning Board and Board of Appeals.
  - 4) The Planning Board shall review these materials at a regular Planning Board meeting and shall issue an initial report to the applicant within three weeks of the preliminary meeting. Once the basic environmental aspects of the proposal, and in the case of a residential development project of sixteen units or more, the affordable housing aspects of the proposal, are reviewed by the Planning Board, the applicant may proceed with a formal submission to the Building Commissioner.
- c. All §5.09 Projects—To aid the Board of Appeals in making the findings required in §9.05 and the Planning Board in preparing the advisory report provided in §9.04, the applicant shall submit the following materials in addition to the usual drawings at the time of application to the Building Commissioner:
- 1) Model—An inexpensive study model or final presentation model at a minimum scale of 1 inch equals 20 feet showing the tract, abutting streets, proposed contours, proposed buildings, and the massing of abutting buildings. (Not required for additions, alterations, or changes which increase gross floor area by less than 100%.)
  - 2) Drawing of Existing Conditions—A drawing showing the location, type, size, or dimension of existing trees, rock masses, and other natural features with designations as to which features will be retained. In order to meet the conditions for approval of a special permit as specified in §9.05 all existing trees, rock masses, and other natural features shall be retained until a special permit is approved. **The location of existing public shade trees situated within the public right-of-way adjoining the subject property shall also be located on the drawing if any modification to the public sidewalk or a new or modified curb cut is proposed or required.**
  - 3) Drawing of Proposal

- a) Structure—A drawing including color and type of surface materials showing front and rear elevations, and side elevations where there are no adjoining buildings, and floor plans.
  - b) Landscaping—A drawing showing the location, dimensions, and arrangements of all open spaces and yards, including type and size of planting materials, color and type of surface materials, methods to be employed for screening, and proposed grades.
- 4) Photographs—Photographs showing the proposed building site and surrounding properties, and of the model (if required). Applications for alterations and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.
  - 5) Impact Statement—A statement by applicant with explanation of how each of the community and environmental impact and design standards is incorporated into the design of the proposed development. **In cases, where construction is located within 50’ of a public shade tree, the method that will be used to protect the tree during construction shall be submitted for review and approval of the tree warden.** Where a particular standard is not applicable, a statement to that effect will suffice. An environmental impact statement prepared in accordance with state or Federal regulations may be accepted as a substitute in lieu of this statement.
  - 6) Transportation Studies—Certain projects which, due to their size, use characteristics or location, may have a significant impact on traffic require the preparation of transportation studies. The following development threshold levels indicate the nature of studies required. However, additional studies may be required for projects of any size which the Transportation Director or the Planning Director consider may have substantial environmental effects on the community. Any required transportation studies must be prepared in accordance with the Transportation Access Plan Guidelines issued by the Transportation Department. An access Plan should include a transportation impact analysis and, as warranted, a proposed package of mitigation measures. Impact mitigation measures may include-but should not be limited to: construction management; traffic mitigation and encouragement of transit use; parking management; transit improvements; number and location of bicycle parking and storage facilities; parking and access for delivery and service vehicles, pedestrian amenities, and capital improvements.
4. Community and Environmental Impact and Design Standards

The following standards shall be utilized by the Board of Appeals and Planning Board in reviewing all site and building plans. These standards are intended to provide a frame of reference for the applicant in the development of site and building plans as well as a method of review for the reviewing

authority. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation. The specification of one or more particular architectural styles is not included in these standards. The standards of review outlined in paragraphs a through o. below shall also apply to all accessory buildings, structures, freestanding signs and other site features, however related to the major buildings or structures.

- a. Preservation of **Trees and Landscape**—~~[The] **Trees and other**~~ landscape features shall be preserved in [its] a natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas. **Public shade trees within the public right-of-way are governed by Massachusetts General Law Chapter 87 and, where feasible, shall be preserved and the appropriate addition of such trees encouraged.**
- b. Relation of Buildings to Environment—Proposed development shall be related harmoniously to the terrain, **trees, landscape, natural features,** and to the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. The Board of Appeals may require a modification in massing so as to reduce the effect of shadows on abutting property or on public open space and public streets. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph, 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.
- c. Open Space—All open space (landscaped and usable) shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing the site or overlooking it from nearby properties. The location and configuration of usable open space shall be so designed as to encourage social interaction, maximize its utility, and facilitate maintenance. All landscaped open space shall be continuously maintained.
- d. Circulation—With respect to vehicular, bicycle and pedestrian circulation, including entrances, ramps, walkways, drives, and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls and mass transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, demand for and availability of bicycle parking and storage facilities, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.

### 3. **Proposed Amendment to Article IX. Administration and Procedure**

### Section 9.05 – Conditions for Approval of Special Permit

1. The Board of Appeals shall not approve any such application for a special permit unless it finds that in its judgment all of the following conditions are met:
  - a. The specific site is an appropriate location for such a use, structure, or condition.
  - b. The use as developed will not adversely affect the neighborhood.
  - c. There will be no nuisance or serious hazard to vehicles or pedestrians.
  - d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
  - e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.
  
2. In approving a special permit, the Board of Appeals may attach such conditions and safeguards as are deemed necessary to protect the neighborhood, such as but not limited to the following:
  - a. Requirement of front, side or rear yards greater than the minimum required by this By-law.
  - b. Requirement of screening of parking areas or other parts of the premises from adjoining premises or from the street, by walls, fences, planting, or other devices, as specified by the Board of Appeals.
  - c. Modification of the exterior features or appearances of the structure.
  - d. Retention, replacement or planting of trees, including public shade trees as defined by Massachusetts General Law Chapter 87, and other landscape and natural features.**
  - e.** [d] Limitation of size, number of occupants, method or time of operation, or extent of facilities.
  - f.** [e] Regulation of number, design, and location of access drives or other traffic features.
  - g.** [f] Requirement of off-street parking [or other special features beyond the minimum required by this or other applicable By-laws.

If the Board of Appeals exercises its authority to attach conditions and safeguards which require expert review or approval by an administrative body or official, it shall appoint in its decision a Designated Authority as described in §9.00, paragraph 3.

or act on anything relative thereto.

---

This article was developed to respond to an interest in preserving green space in Brookline through the zoning process, and to discourage removal of vegetation from sites that are planned for redevelopment. The article amends three sections of the Zoning By-law to clarify that public shade trees need to be protected; to require that developers refrain from clearing their properties prior to receiving a special permit for their redevelopment; and to provide a method of enforcement should a developer clear their site before receiving zoning approvals for redevelopment of their property.

---

---

PLANNING BOARD REPORT AND RECOMMENDATION

---

The Planning Board supports Warrant Article 15, which was submitted by the Planning and Community Development Department, to strengthen green space guidelines in Article I Purpose and Scope, §1 Purpose and Interpretation, Article V Dimensional Requirements §5.09 Design Review, & Article IX Administration and Procedure §9.05 Conditions for Approval of a Special. This article was developed in conjunction with the Director of Parks and Open Space Division, Tree Warden, Tree Planting Committee and Brookline GreenSpace Alliance to respond to an interest in preserving green space in Brookline through the zoning approval process and to discourage removal of vegetation from sites that are planned for redevelopment.

The article amends three sections of the Zoning By-law to clarify that public shade trees (street trees) need to be protected, especially during construction; urge applicants prior to formal submissions to the Building Commissioner to meet with the Tree Warden and/or Tree Planting Committee to discuss removal, relocation, or replanting of street trees if necessary; require that developers refrain from clearing their properties prior to receiving a special permit for their redevelopment; and provide a method of enforcement should a developer clear their site before receiving zoning approvals for redevelopment of their property.

Therefore, the Planning Board unanimously recommends approval of Warrant Article 15 with the following revisions in ***bold, italics and underlined***.

To see if the Town will amend Articles I, V and IX of the Zoning By-Law as follows:

**1. Potential Amendments to Article I. Purpose and Scope**

§1.00 – Purpose and Interpretation

1. The purpose of this By-law is declared to be the promotion of the public health, safety, convenience, and welfare, by:
  - a. encouraging the most appropriate use of land,

- b. preventing overcrowding of land,
- c. conserving the value of land and buildings,
- d. lessening congestion of traffic,
- e. preventing undue concentration of population,
- f. providing for adequate **green space**, light and air,
- g. reducing the hazards from fire and other danger,
- h. assisting in the economical provision of transportation, water, sewerage, schools, parks, **street trees** and other public facilities,
- i. preserving and increasing the amenities of the Town, **including trees and other landscape and natural features**,
- j. encouraging the preservation of historically and architecturally significant structures, and
- k. encouraging housing opportunities for people of all income levels.

## 2. Potential Amendments to Article V. Dimensional Requirements

### **§5.09 - DESIGN REVIEW**

#### **1. Purpose**

**The purpose of this section is to provide individual detailed review of certain uses and structures which have a substantial impact upon the character of the Town and upon traffic, utilities, other elements of the public infrastructure including public shade trees, and property values therein, thereby affecting the public health, safety and general welfare thereof. The design review process is intended to promote the specific purposes listed in §1.0, paragraph 1. of this By-law.**

#### **2. Scope**

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior changes which require a building permit under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified. Exterior alterations, exterior additions and exterior changes, including fences, walls, and driveways, to residential uses permitted by right in S, SC, and T districts; signs as regulated in §§ 7.02, and

7.03; and regulated facade alterations as defined and regulated in §7.6 shall be exempt from the requirements of this section.

- a. Any structure or outdoor use on a lot any part of which is located in the G-1.75(CC) District or which fronts on or is within 100 feet of: Beacon Street Commonwealth Avenue, Boylston Street, Harvard Street, Brookline Avenue, or Washington Street.
  - b. attached dwellings in groups of three or more
  - c. designed groups of single-family dwellings as per §5.11, paragraph 2.
  - d. multiple dwellings with 10 or more units on the premises, whether contained in one or more structures
  - e. lodging houses and hotels
  - f. gasoline service stations
  - g. outdoor automobile sales and storage for sales
  - h. non-residential uses in a non-residential district with more than 10,000 square feet of gross floor area or with 20 or more parking spaces, except municipal facilities in I-1.0 districts when authorized by a two-thirds vote of Town Meeting
  - i. non-residential uses in a residential district with more than 5,000 square feet of gross floor area or with 10 or more parking spaces
  - j. any exterior addition for which a special permit is requested pursuant to §5.22
  - k. any structure for which a variance is requested pursuant to §9.09, paragraph 1., subparagraph d.
  - l. all subdivisions of 10 lots or more.
3. Procedure
- a. General

**1. Site Disturbance and Clearing – Pursuant to §3.c.2) and §4.a. of this Article, the applicant seeking a special permit or variance shall maintain all existing trees and other site features until a special permit or variance is approved.**

**In the event that site excavation, grading or clearing of trees and vegetation does occur on a property that is the subject of a**

**pending application for a Special Permit or Variance, the Planning Board or Board of Appeals may take the following actions:**

- a) **Request in writing that the Building Commissioner order the applicant to stop work and cease all activities associated with excavating grading, or tree and vegetation clearance.**
  
- b) **Request that the Applicant engage the services of a Massachusetts Certified Arborist to inspect the subject property and file a written report with the Town's Tree Warden detailing the following:**
  - 1. **The nature and extent of excavating, grading or clearing trees and vegetation that has occurred, including the species and caliper size of trees and plant material removed, where possible.**
  
  - 2. **Preliminary recommendations, to the extent practicable, that will either restore the site or introduce replacement trees and landscape features as part of a landscape plan.**
  
- c) **Based on the report and preliminary recommendations from the Director of Planning and Community Development, the Board of Appeals may, as part of its decision on an application for a Special Permit or Variance, include conditions that will require, to the extent practicable, the restoration or replacement of trees, landscape and other site features.**
  
- d) **Either prior to or following the filing of an application for a Special Permit or Variance with the Town Clerk, the applicant may submit to the Building Commissioner, a request to proceed with limited site disturbance or clearing necessary to conduct site surveys and other routine predevelopment investigations not associated with routine property maintenance. The request shall be in a form prescribed by the Building Commissioner. Upon receipt, the Building Commissioner shall convey the request to the Director of Planning and Community Development, Tree Warden and Planning Board. The Planning Board, in consultation with the Director of Planning and Community Development and Tree Warden, shall have 14 days to either recommend approval, approval with conditions or denial of the request. The applicant may appeal the determination of the Planning Board to the Board of Appeals.**

**2. [1] Preapplication-**Prior to a formal submission to the Building Commissioner, the applicant is strongly encouraged to:

- a) consult with the Building Commissioner and Planning Director or their designees for technical advice relative to the community and environmental impact and design review standards of this section; and
- b) meet with abutters, tenants of abutters, Town Meeting Members, neighborhood associations, and other interested citizen groups to review the project plans, and the applicant should actively promote citizen involvement throughout the review process; and
- c) meet with the Planning Director or his/her designee to determine if the Planning Board has adopted design guidelines which pertain to the proposed project; and
- d) meet with the Transportation Director and the Planning Director or their designees for advice on the preparation of any required transportation studies.
- e) **meet with the Town's Tree Warden and/or Tree Planting Committee if either the removal or relocation of existing public shade trees or the planting of new public shade trees is proposed. Removal of Public Shade Trees is governed by Massachusetts General Law Chapter 87.**

**3.** [2]) Application—Applications for uses subject to community and environmental design review shall be submitted to the Building Commissioner and to the Board of Appeals in accordance with the procedure for special permits specified in §§ 9.03 and 9.04, including the requirements for public notice and hearing and referral to the Planning Board. The report of the Planning Board to the Board of Appeals shall contain a specific evaluation or statement in relation to each of the following:

- a) fulfillment of the preapplication phase of this section;
- b) designation of the proposal as a major impact project (or exemption as such) as defined in paragraph 3., of this section;
- c) conformance with each of the standards listed in paragraph 4. of this section; and
- d) conformance with the goals and objectives of the Comprehensive Plan.
- e) conformance with the Affordable Housing requirements in §4.08, where applicable.

The Board of Appeals shall not deny a special permit for any use or condition which requires a special permit solely because it falls into one of the categories listed in §4.01, paragraph 3., unless it finds that the use or condition departs from the standards listed in paragraph 4. of this section to such an extent as to produce a serious adverse impact upon the character of the area or upon traffic, utilities and property values therein, thereby adversely affecting the public health, safety, and general welfare. In reviewing applications under this section, the Board of Appeals may require modifications, conditions and safeguards reasonably related to the community and environmental impact and design standards of this section.

- b. Major Impact Projects Only—Prior to formal submission of an application to the Building Commissioner pursuant to this section, the applicant shall consult with the Planning Director and the Building Commissioner or their designees to determine whether such application involves a major impact project which shall be defined as any residential development of 16 units or more, any nonresidential development containing more than 25,000 square feet, or any other project with the potential for substantial environmental impact on the community. If the proposal is deemed by either official to be a major impact project, then the following procedural requirements shall be completed prior to the filing of an application with the Building Commissioner.
- 1) The applicant shall meet informally with the Planning Director and the Building Commissioner to discuss the development program and the relevant Zoning By-law requirements.
  - 2) The applicant shall submit to the Planning Director or his/her designee a program statement and zoning analysis of the proposed project, schematic site plan, massing model with a photo of the model, and perspective massing studies prior to a preliminary review by the Planning Board. If a floor area bonus is proposed, the applicant shall first present material for a proposal without any bonus and then an alternative with the bonus, indicating the public benefit features possible, if the bonus is granted.
  - 3) The Planning Director or his/her designee shall, in the normal course of notification of the Planning Board's preliminary meeting on the project, send the program statement, zoning analysis, and schematic site plan to the following departments and boards: Building, Engineering/Transportation, Fire, Police, Public Works, Conservation Commission, Economic Development Advisory Board, Preservation Commission, **Tree Planting Committee**, and, if a residential development, the Housing Advisory Board. The enumerated departments and commissions and any other entities with an interest in the project may at their discretion submit in writing a statement of their concerns and recommendations to the Planning Board and Board of Appeals.
  - 4) The Planning Board shall review these materials at a regular Planning Board meeting and shall issue an initial report to the applicant within three

weeks of the preliminary meeting. Once the basic environmental aspects of the proposal, and in the case of a residential development project of sixteen units or more, the affordable housing aspects of the proposal, are reviewed by the Planning Board, the applicant may proceed with a formal submission to the Building Commissioner.

- c) All §5.09 Projects—To aid the Board of Appeals in making the findings required in §9.05 and the Planning Board in preparing the advisory report provided in §9.04, the applicant shall submit the following materials in addition to the usual drawings at the time of application to the Building Commissioner:
- 1) Model—An inexpensive study model or final presentation model at a minimum scale of 1 inch equals 20 feet showing the tract, abutting streets, proposed contours, proposed buildings, and the massing of abutting buildings. (Not required for additions, alterations, or changes which increase gross floor area by less than 100%.)
  - 2) Drawing of Existing Conditions—A drawing showing the location, type, size, or dimension of existing trees, rock masses, and other natural features with designations as to which features will be retained. In order to meet the conditions for approval of a special permit as specified in §9.05 all existing trees, rock masses, and other natural features shall be retained until a special permit is approved. **The location of existing public shade trees situated within the public right-of-way adjoining the subject property shall also be located on the drawing if any modification to the public sidewalk or a new or modified curb cut is proposed or required.**
  - 3) Drawing of Proposal
    - a. Structure—A drawing including color and type of surface materials showing front and rear elevations, and side elevations where there are no adjoining buildings, and floor plans.
    - b. Landscaping—A drawing showing the location, dimensions, and arrangements of all open spaces and yards, including type and size of planting materials, color and type of surface materials, methods to be employed for screening, and proposed grades.
  - 4) Photographs—Photographs showing the proposed building site and surrounding properties, and of the model (if required). Applications for alterations and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.
  - 5) Impact Statement—A statement by applicant with explanation of how each of the community and environmental impact and design standards is incorporated into the design of the proposed development. **In cases, where construction is located within 50' of a public shade tree, the**

**method that will be used to protect the tree during construction shall be submitted for review and approval of the tree warden.**

Where a particular standard is not applicable, a statement to that effect will suffice. An environmental impact statement prepared in accordance with state or Federal regulations may be accepted as a substitute in lieu of this statement.

- 6) Transportation Studies—Certain projects which, due to their size, use characteristics or location, may have a significant impact on traffic require the preparation of transportation studies. The following development threshold levels indicate the nature of studies required. However, additional studies may be required for projects of any size which the Transportation Director or the Planning Director consider may have substantial environmental effects on the community. Any required transportation studies must be prepared in accordance with the Transportation Access Plan Guidelines issued by the Transportation Department. An access Plan should include a transportation impact analysis and, as warranted, a proposed package of mitigation measures. Impact mitigation measures may include-but should not be limited to: construction management; traffic mitigation and encouragement of transit use; parking management; transit improvements; number and location of bicycle parking and storage facilities; parking and access for delivery and service vehicles, pedestrian amenities, and capital improvements.

4. Community and Environmental Impact and Design Standards

The following standards shall be utilized by the Board of Appeals and Planning Board in reviewing all site and building plans. These standards are intended to provide a frame of reference for the applicant in the development of site and building plans as well as a method of review for the reviewing authority. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation. The specification of one or more particular architectural styles is not included in these standards. The standards of review outlined in paragraphs a through o. below shall also apply to all accessory buildings, structures, freestanding signs and other site features, however related to the major buildings or structures.

- a. Preservation of **Trees and Landscape**—~~[The] Trees and other~~ landscape **features** shall be preserved in [its] **a** natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas. **Public shade trees within the public right-of-way are governed by Massachusetts General Law Chapter 87 and, where feasible, shall be preserved and the appropriate addition of such trees encouraged.**
- b. Relation of Buildings to Environment—Proposed development shall be related harmoniously to the terrain, **trees, landscape, natural features,**

and to the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. The Board of Appeals may require a modification in massing so as to reduce the effect of shadows on abutting property or on public open space and public streets. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph, 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

- c. Open Space—All open space (landscaped and usable) shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing the site or overlooking it from nearby properties. The location and configuration of usable open space shall be so designed as to encourage social interaction, maximize its utility, and facilitate maintenance. All landscaped open space shall be continuously maintained.
- d. Circulation—With respect to vehicular, bicycle and pedestrian circulation, including entrances, ramps, walkways, drives, and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls and mass transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, demand for and availability of bicycle parking and storage facilities, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.

### **3. Proposed Amendment to Article IX. Administration and Procedure**

#### Section 9.05 – Conditions for Approval of Special Permit

1. The Board of Appeals shall not approve any such application for a special permit unless it finds that in its judgment all of the following conditions are met:
  - a. The specific site is an appropriate location for such a use, structure, or condition.
  - b. The use as developed will not adversely affect the neighborhood.
  - c. There will be no nuisance or serious hazard to vehicles or pedestrians.
  - d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.
2. In approving a special permit, the Board of Appeals may attach such conditions and safeguards as are deemed necessary to protect the neighborhood, such as but not limited to the following:
- a. Requirement of front, side or rear yards greater than the minimum required by this By-law.
  - b. Requirement of screening of parking areas or other parts of the premises from adjoining premises or from the street, by walls, fences, planting, or other devices, as specified by the Board of Appeals.
  - c. Modification of the exterior features or appearances of the structure.
  - d. Retention, replacement or planting of trees, including public shade trees as defined by Massachusetts General Law Chapter 87, and other landscape and natural features.**
  - e.** [d] Limitation of size, number of occupants, method or time of operation, or extent of facilities.
  - f.** [e] Regulation of number, design, and location of access drives or other traffic features.
  - g.** [f] Requirement of off-street parking or other special features beyond the minimum required by this or other applicable By-laws.

If the Board of Appeals exercises its authority to attach conditions and safeguards which require expert review or approval by an administrative body or official, it shall appoint in its decision a Designated Authority as described in §9.00, paragraph 3.

or act on anything relative thereto.

#### SELECTMEN'S RECOMMENDATION

Article 15 is a proposed amendment to the Town's Zoning By-Law that strengthens the open space requirements and emphasizes the need to provide both landscaped and usable open space in the Town. The article addresses the protection of public shade trees (street trees), especially during construction, and the need to work with the Tree Warden or Tree Planting Committee when a street tree needs to be relocated. The amendments also prohibit the clearing of trees on private property, if a development project requiring a special permit has not yet been approved and sets up enforcement procedures if these requirements are violated.

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-1 taken on October 25, 2005, on the vote offered by the Advisory Committee.

**ROLL CALL VOTE:**

Favorable Action

Hoy  
Sher  
Merrill  
Daly

No Action

Allen

-----

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 15 was submitted by the Planning and Community Development Department to strengthen guidelines regarding open space in the Zoning By-Laws. Town Meeting has voiced its interest in protecting street trees and recently established a Moderator's Committee on Street Trees. While this article does not address the specifics of the Moderator's Committee, it does contain amendments to Articles I, V, and IX of the Zoning By-Laws which were developed with input with the Planning Department, Tree Planting Committee and the Brookline GreenSpace Alliance to insure that public open space resources are properly considered when development is undertaken in the town. There are three modifications incorporated in Article 15: Article I – Purpose and Scope, Article V – Dimensional Requirements, Design Review and Article IX – Administration and Procedure - Conditions for Approval of a Special Permit.

DISCUSSION

1) Article I of the Zoning By-Laws describes the Purpose and Scope of the Zoning By-Laws. The Advisory Committee language recommends no changes to 1.f (which in standard language refers to building separation) and 1. h. (which refers to public facilities) in the current By-Law, but supports the addition to 1.i as submitted by the Planning and Community Development Department which adds “trees and other landscape and natural features” to amenities of the town. The terms “open” and “public shade” used by the Planning and Community Development Department are preferred to alternatives because they are consistent with Massachusetts General Law Chapter 87 and the town's other by-laws.

The Advisory Committee added a section

*1.1 “ providing for adequate open space, including landscaped and useable open space, public shade trees and other landscape and natural features.”*

This language incorporates all types of green space in a section of its own in Article I – Purpose and Scope.

2) Article V of the Zoning By-laws describes the Design Review process in regard to dimensional requirements. Article 15 offers amendments that specifically mention public shade trees as an element of the public infrastructure that must be considered when a

development project is undertaken. Language is added that requires an applicant seeking a special permit or variance to maintain all existing trees and other site features until a special permit or variance is approved. A process is described which requires that such an applicant must consult with the Town Arborist and the Tree Planting Committee for advice before trees are removed. (This process is not required unless a special permit or variance is required.) This procedure was added to provide technical guidance to developers and does not provide for fines. This procedure fits within the existing process Design Review process. The Advisory Committee recommends the removal of a modifying clause in V.3.c.2 [indicated by brackets] so that the developer will submit drawings indicating the location of public shade trees even if a curb cut is not anticipated. Thus the construction team is aware of sensitive public shade trees that must be protected from large equipment during construction. Town staff, the Zoning By-law Committee, and the Brookline GreenSpace Alliance endorsed this change.

3) Article IX of the Zoning By-Laws Section 9.05 describes the conditions for Approval of a Special Permit by the Board of Appeals. Article 15 adds open space considerations for approval of a special permit as the *“retention, replacement or planting of trees, including public shade trees as defined by MGL Chapter 87, and other landscape and natural features.”* In other words, the Board of Appeals should include conservation of trees and other landscape and natural features in their determination of a special permit.

The Advisory Committee unanimously (17-0 with one abstention) recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend Articles I, V and IX of the Zoning By-Law as follows:

## **1. Potential Amendments to Article I. Purpose and Scope**

### §1.00 – Purpose and Interpretation

1. The purpose of this By-law is declared to be the promotion of the public health, safety, convenience, and welfare, by:
  - a. encouraging the most appropriate use of land,
  - b. preventing overcrowding of land,
  - c. conserving the value of land and buildings,
  - d. lessening congestion of traffic,
  - e. preventing undue concentration of population,
  - f. providing for adequate light and air,
  - g. reducing the hazards from fire and other danger,

- h. assisting in the economical provision of transportation, water, sewerage, schools, parks, and other public facilities,
- i. preserving and increasing the amenities of the Town,
- j. encouraging the preservation of historically and architecturally significant structures,
- k. encouraging housing opportunities for people of all income levels, and
- l. providing for adequate open space, including landscaped and useable open space, public shade trees and other landscape and natural features.

## 2. Potential Amendments to Article V. Dimensional Requirements

### §5.09 - DESIGN REVIEW

#### 1. Purpose

The purpose of this section is to provide individual detailed review of certain uses and structures which have a substantial impact upon the character of the Town and upon traffic, utilities, **other elements of the public infrastructure including public shade trees**, and property values therein, thereby affecting the public health, safety and general welfare thereof. The design review process is intended to promote the specific purposes listed in §1.0, paragraph 1. of this By-law.

#### 2. Scope

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior changes which require a building permit under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified. Exterior alterations, exterior additions and exterior changes, including fences, walls, and driveways, to residential uses permitted by right in S, SC, and T districts; signs as regulated in §§ 7.02, and 7.03; and regulated facade alterations as defined and regulated in §7.6 shall be exempt from the requirements of this section.

- a. Any structure or outdoor use on a lot any part of which is located in the G-1.75(CC) District or which fronts on or is within 100 feet of: Beacon Street Commonwealth Avenue, Boylston Street, Harvard Street, Brookline Avenue, or Washington Street.
- b. attached dwellings in groups of three or more
- c. designed groups of single-family dwellings as per §5.11, paragraph 2.

- d. multiple dwellings with 10 or more units on the premises, whether contained in one or more structures
- e. lodging houses and hotels
- f. gasoline service stations
- g. outdoor automobile sales and storage for sales
- h. non-residential uses in a non-residential district with more than 10,000 square feet of gross floor area or with 20 or more parking spaces, except municipal facilities in I-1.0 districts when authorized by a two-thirds vote of Town Meeting
- i. non-residential uses in a residential district with more than 5,000 square feet of gross floor area or with 10 or more parking spaces
- j. any exterior addition for which a special permit is requested pursuant to §5.22
- k. any structure for which a variance is requested pursuant to §9.09, paragraph 1., subparagraph d.
- l. all subdivisions of 10 lots or more.

### 3. Procedure

#### a. General

**1. Site Disturbance and Clearing – Pursuant to §3.c.2) and §4.a. of this Article, the applicant seeking a special permit or variance shall maintain all existing trees and other site features until a special permit or variance is approved.**

**In the event that site excavation, grading or clearing of trees and vegetation does occur on a property that is the subject of a pending application for a Special Permit or Variance, the Planning Board or Board of Appeals may take the following actions:**

**a) Request in writing that the Building Commissioner order the applicant to stop work and cease all activities associated with excavating grading, or tree and vegetation clearance.**

**b) Request that the Applicant engage the services of a Massachusetts Certified Arborist to inspect the subject property and file a written report with the Town's Tree Warden detailing the following:**

- 1. The nature and extent of excavating, grading or clearing trees and vegetation that has occurred, including the species and caliper size of trees and plant material removed, where possible.**
  - 2. Preliminary recommendations, to the extent practicable, that will either restore the site or introduce replacement trees and landscape features as part of a landscape plan.**
- c) **Based on the report and preliminary recommendations from the Director of Planning and Community Development, the Board of Appeals may, as part of its decision on an application for a Special Permit or Variance, include conditions that will require, to the extent practicable, the restoration or replacement of trees, landscape and other site features.**
- d) **Either prior to or following the filing of an application for a Special Permit or Variance with the Town Clerk, the applicant may submit to the Building Commissioner, a request to proceed with limited site disturbance or clearing necessary to conduct site surveys and other routine predevelopment investigations not associated with routine property maintenance. The request shall be in a form prescribed by the Building Commissioner. Upon receipt, the Building Commissioner shall convey the request to the Director of Planning and Community Development, Tree Warden and Planning Board. The Planning Board, in consultation with the Director of Planning and Community Development and Tree Warden, shall have 14 days to either recommend approval, approval with conditions or denial of the request. The applicant may appeal the determination of the Planning Board to the Board of Appeals.**
- 2.** [1] **Preapplication** - Prior to a formal submission to the Building Commissioner, the applicant is strongly encouraged to:
- a) consult with the Building Commissioner and Planning Director or their designees for technical advice relative to the community and environmental impact and design review standards of this section; and
  - b) meet with abutters, tenants of abutters, Town Meeting Members, neighborhood associations, and other interested citizen groups to review the project plans, and the applicant should actively promote citizen involvement throughout the review process; and

- c) meet with the Planning Director or his/her designee to determine if the Planning Board has adopted design guidelines which pertain to the proposed project; and
- d) meet with the Transportation Director and the Planning Director or their designees for advice on the preparation of any required transportation studies.
- e) **meet with the Town's Tree Warden and/or Tree Planting Committee if either the removal or relocation of existing public shade trees or the planting of new public shade trees is proposed. Removal of Public Shade Trees is governed by Massachusetts General Law Chapter 87.**

**3.** [2]) Application—Applications for uses subject to community and environmental design review shall be submitted to the Building Commissioner and to the Board of Appeals in accordance with the procedure for special permits specified in §§ 9.03 and 9.04, including the requirements for public notice and hearing and referral to the Planning Board. The report of the Planning Board to the Board of Appeals shall contain a specific evaluation or statement in relation to each of the following:

- a) fulfillment of the preapplication phase of this section;
- b) designation of the proposal as a major impact project (or exemption as such) as defined in paragraph 3., of this section;
- c) conformance with each of the standards listed in paragraph 4. of this section; and
- d) conformance with the goals and objectives of the Comprehensive Plan.
- e) conformance with the Affordable Housing requirements in §4.08, where applicable.

The Board of Appeals shall not deny a special permit for any use or condition which requires a special permit solely because it falls into one of the categories listed in §4.01, paragraph 3., unless it finds that the use or condition departs from the standards listed in paragraph 4. of this section to such an extent as to produce a serious adverse impact upon the character of the area or upon traffic, utilities and property values therein, thereby adversely affecting the public health, safety, and general welfare. In reviewing applications under this section, the Board of Appeals may require modifications, conditions and safeguards reasonably related to the community and environmental impact and design standards of this section.

- b. Major Impact Projects Only—Prior to formal submission of an application to the Building Commissioner pursuant to this section, the applicant shall consult with the Planning Director and the Building Commissioner or their designees to determine whether such application involves a major impact project which shall be defined as any residential development of 16 units or more, any nonresidential development containing more than 25,000 square feet, or any other project with the potential for substantial environmental impact on the community. If the proposal is deemed by either official to be a major impact project, then the following procedural requirements shall be completed prior to the filing of an application with the Building Commissioner.
- 1) The applicant shall meet informally with the Planning Director and the Building Commissioner to discuss the development program and the relevant Zoning By-law requirements.
  - 2) The applicant shall submit to the Planning Director or his/her designee a program statement and zoning analysis of the proposed project, schematic site plan, massing model with a photo of the model, and perspective massing studies prior to a preliminary review by the Planning Board. If a floor area bonus is proposed, the applicant shall first present material for a proposal without any bonus and then an alternative with the bonus, indicating the public benefit features possible, if the bonus is granted.
  - 3) The Planning Director or his/her designee shall, in the normal course of notification of the Planning Board's preliminary meeting on the project, send the program statement, zoning analysis, and schematic site plan to the following departments and boards: Building, Engineering/ Transportation, Fire, Police, Public Works, Conservation Commission, Economic Development Advisory Board, Preservation Commission, **Tree Planting Committee**, and, if a residential development, the Housing Advisory Board. The enumerated departments and commissions and any other entities with an interest in the project may at their discretion submit in writing a statement of their concerns and recommendations to the Planning Board and Board of Appeals.
  - 4) The Planning Board shall review these materials at a regular Planning Board meeting and shall issue an initial report to the applicant within three weeks of the preliminary meeting. Once the basic environmental aspects of the proposal, and in the case of a residential development project of sixteen units or more, the affordable housing aspects of the proposal, are reviewed by the Planning Board, the applicant may proceed with a formal submission to the Building Commissioner.
- c. All §5.09 Projects—To aid the Board of Appeals in making the findings required in §9.05 and the Planning Board in preparing the advisory report provided in §9.04, the applicant shall submit the following materials in

addition to the usual drawings at the time of application to the Building Commissioner:

- 1) Model—An inexpensive study model or final presentation model at a minimum scale of 1 inch equals 20 feet showing the tract, abutting streets, proposed contours, proposed buildings, and the massing of abutting buildings. (Not required for additions, alterations, or changes which increase gross floor area by less than 100%.)
- 2) Drawing of Existing Conditions—A drawing showing the location, type, size, or dimension of existing trees, rock masses, and other natural features with designations as to which features will be retained. In order to meet the conditions for approval of a special permit as specified in §9.05 all existing trees, rock masses, and other natural features shall be retained until a special permit is approved. **The location of existing public shade trees situated within the public right-of-way adjoining the subject property shall also be located on the drawing if any modification to the public sidewalk or a new or modified curb cut is proposed or required.**
- 3) Drawing of Proposal
  - a. Structure—A drawing including color and type of surface materials showing front and rear elevations, and side elevations where there are no adjoining buildings, and floor plans.
  - b. Landscaping—A drawing showing the location, dimensions, and arrangements of all open spaces and yards, including type and size of planting materials, color and type of surface materials, methods to be employed for screening, and proposed grades.
- 4) Photographs—Photographs showing the proposed building site and surrounding properties, and of the model (if required). Applications for alterations and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.
- 5) Impact Statement—A statement by applicant with explanation of how each of the community and environmental impact and design standards is incorporated into the design of the proposed development. **In cases, where construction is located within 50' of a public shade tree, the method that will be used to protect the tree during construction shall be submitted for review and approval of the tree warden.** Where a particular standard is not applicable, a statement to that effect will suffice. An environmental impact statement prepared in accordance with state or Federal regulations may be accepted as a substitute in lieu of this statement.
- 6) Transportation Studies—Certain projects which, due to their size, use characteristics or location, may have a significant impact on traffic

require the preparation of transportation studies. The following development threshold levels indicate the nature of studies required. However, additional studies may be required for projects of any size which the Transportation Director or the Planning Director consider may have substantial environmental effects on the community. Any required transportation studies must be prepared in accordance with the Transportation Access Plan Guidelines issued by the Transportation Department. An access Plan should include a transportation impact analysis and, as warranted, a proposed package of mitigation measures. Impact mitigation measures may include-but should not be limited to: construction management; traffic mitigation and encouragement of transit use; parking management; transit improvements; number and location of bicycle parking and storage facilities; parking and access for delivery and service vehicles, pedestrian amenities, and capital improvements.

#### 4. Community and Environmental Impact and Design Standards

The following standards shall be utilized by the Board of Appeals and Planning Board in reviewing all site and building plans. These standards are intended to provide a frame of reference for the applicant in the development of site and building plans as well as a method of review for the reviewing authority. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation. The specification of one or more particular architectural styles is not included in these standards. The standards of review outlined in paragraphs a through o. below shall also apply to all accessory buildings, structures, freestanding signs and other site features, however related to the major buildings or structures.

- a. Preservation of **Trees and Landscape**—**[The] Trees and other landscape features** shall be preserved in [its] a natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas. **Public shade trees within the public right-of-way are governed by Massachusetts General Law Chapter 87 and, where feasible, shall be preserved and the appropriate addition of such trees encouraged.**
- b. Relation of Buildings to Environment—Proposed development shall be related harmoniously to the terrain, **trees, landscape, natural features,** and to the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. The Board of Appeals may require a modification in massing so as to reduce the effect of shadows on abutting property or on public open space and public streets. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph, 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

- c. Open Space—All open space (landscaped and usable) shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing the site or overlooking it from nearby properties. The location and configuration of usable open space shall be so designed as to encourage social interaction, maximize its utility, and facilitate maintenance. All landscaped open space shall be continuously maintained.
- d. Circulation—With respect to vehicular, bicycle and pedestrian circulation, including entrances, ramps, walkways, drives, and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls and mass transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, demand for and availability of bicycle parking and storage facilities, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.

### **3. Proposed Amendment to Article IX. Administration and Procedure**

#### Section 9.05 – Conditions for Approval of Special Permit

1. The Board of Appeals shall not approve any such application for a special permit unless it finds that in its judgment all of the following conditions are met:
  - a. The specific site is an appropriate location for such a use, structure, or condition.
  - b. The use as developed will not adversely affect the neighborhood.
  - c. There will be no nuisance or serious hazard to vehicles or pedestrians.
  - d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
  - e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.
2. In approving a special permit, the Board of Appeals may attach such conditions and safeguards as are deemed necessary to protect the neighborhood, such as but not limited to the following:
  - a. Requirement of front, side or rear yards greater than the minimum required by this By-law.

- b. Requirement of screening of parking areas or other parts of the premises from adjoining premises or from the street, by walls, fences, planting, or other devices, as specified by the Board of Appeals.
- c. Modification of the exterior features or appearances of the structure.
- d. Retention, replacement or planting of trees, including public shade trees as defined by Massachusetts General Law Chapter 87, and other landscape and natural features.**
- e.** [d] Limitation of size, number of occupants, method or time of operation, or extent of facilities.
- f.** [e] Regulation of number, design, and location of access drives or other traffic features.
- g.** [f] Requirement of off-street parking or other special features beyond the minimum required by this or other applicable By-laws.

If the Board of Appeals exercises its authority to attach conditions and safeguards which require expert review or approval by an administrative body or official, it shall appoint in its decision a Designated Authority as described in §9.00, paragraph 3.

**XXX**

---

ARTICLE 16

---

SIXTEENTH ARTICLE

To see if the Town will take appropriate action, including a by-law amendment or, if necessary, a petition for home rule legislation, to amend section 3.13.3 of the Town By-laws to provide that any expenditure of funds from the Housing Trust by the Housing Advisory Board for any of the purposes set forth in section 3.13.1 shall require the approval of both the Board of Selectmen and the Advisory Committee, or act on anything relative thereto.

---

The American system of government is one of checks and balances. This creates a natural tension between the executive and legislative branches; the legislative branch appropriates money and passes laws while the executive enforces the laws and spends the appropriated money. The genius of this system has been proven many times over the centuries at all levels of government. This is how the Brookline system operates; Town Meeting is the legislative branch and the Board of Selectmen heads up the executive branch. The general rule is that the Selectmen cannot spend any money without a specific appropriation from Town Meeting. Through its power to appropriate and oversee, Town Meeting exerts influence and control over the executive branch.

There are some exceptions to this general rule in Brookline. For example, Town Meeting makes a general appropriation to the Reserve Fund but leaves it to the Advisory Committee to determine exactly how to spend it. This was done in recognition that there will be emergencies and other unanticipated events where a quick decision on spending needs to be made. Since Town Meeting meets, generally, twice a year, it is structurally difficult to respond to emergencies. In effect, the Advisory Committee, as a standing committee of Town Meeting appointed by the Moderator, is serving as a proxy for Town Meeting and provides legislative oversight. Another example is the Liability/Catastrophe Fund, which also needs an Advisory Committee vote.

The Affordable Housing Trust Fund (AHTF) exists without any legislative oversight as to how the money is spent. It is funded by a combination of developer "contributions" pursuant to the inclusionary zoning by-law plus Town contributions when free cash is above a certain amount. The Town contributions are subject to a Town Meeting vote. (Town Meeting also voted a one-time infusion of cash last year when the fund received the net proceeds of the sale of a house the Town seized in a tax foreclosure.) The fund is then managed by the Board Selectmen pursuant to recommendations from the Housing Advisory Board (HAB). The HAB is appointed by the Selectmen. The fund was set up this way to allow the town to respond quickly and flexibly as housing opportunities arise. However, the lack of legislative oversight is an anomaly that violates the American rule of checks and balances and which needs to be fixed.

The challenge we face is how to achieve the legislative oversight necessary to correct this structural anomaly while maintaining the valid design concept which permits the Town to

respond quickly and flexibly as housing opportunities arise. We believe the answer is to require that all commitments to housing projects by the AHTF be subject to a vote of the Advisory Committee. The Advisory Committee can be convened quickly and since the Moderator appoints it, could independently review projects on a de novo basis. In the best of all worlds, we would have preferred a Town Meeting vote for every commitment of AHTF funds but we recognize that this would be contrary to the purpose of the Fund. We therefore believe that the requirement for an Advisory Committee vote is a good compromise and will restore the natural checks and balances inherent in the American form of government.

---

**PETITIONER'S MOTION UNDER ARTICLE 16:**

That the Town amend Section 3.13.3 of the By-Laws so that it reads, in its entirety, as follows (newly added wording in UPPER CASE):

**SECTION 3.13.3 HOUSING TRUST**

There is hereby created in the Town of Brookline a Housing Trust, whose funds are to be managed and expended under the supervision of the Housing Advisory Board. The Housing Trust may accept gifts, grants, aid, reimbursements, payments and appropriations for the purposes set forth in Section 3.13.1, and the Housing Advisory Board may expend the funds in the Housing Trust FOR SUCH PURPOSES with the approval of the Board of Selectmen, AND ALSO WITH THE APPROVAL OF THE ADVISORY COMMITTEE IN THOSE CASES WHERE THE REQUESTED EXPENDITURE, OR WHERE THE SUM OF THE REQUESTED EXPENDITURE PLUS ANY PREVIOUSLY APPROVED EXPENDITURES FOR THE SAME HOUSING PROJECT, IS EQUAL TO OR EXCEEDS ONE MILLION DOLLARS (\$1,000,000.). IF THE ADVISORY COMMITTEE FAILS TO ACT WITHIN TWO (2) DAYS OF ACTION BY THE BOARD OF SELECTMEN ON SUCH A REQUEST BY THE HOUSING ADVISORY BOARD FOR AN EXPENDITURE OF FUNDS, THE APPROVAL OF THE ADVISORY COMMITTEE SHALL BE DEEMED TO HAVE BEEN GIVEN. Without limiting the foregoing, and with the approval of the Board of Selectmen, the Board may employ consultants, full or part- time staff and contract for administrative and support services. All funds received for the Housing Trust shall be deposited with the Treasurer and held in a separate account known as the Housing Trust account. The Brookline Housing Trust fund shall be the sole designee and recipient of any and all developer cash contributions made to the Town for affordable housing purposes under Section 4.40 Affordable Housing Requirements of the Zoning By-law. No expenditures shall be made from the Housing Trust Fund without the prior approval of the Board of Selectmen.

**EXPLANATION**

It has been determined by Town Counsel that the objective of this Article can be achieved through a by-law amendment. The foregoing proposed by-law change would require Advisory Committee approval of Housing Trust fund expenditures, but only in those cases where the housing project for which the expenditure is being requested requires a total of one million dollars or more in approved Housing Trust funding requests. Such sizeable expenditures would have a substantial impact on the fund

balance in the Housing Trust, and the scale of projects being supported by such major expenditures could have a significant effect on their surrounding neighborhoods, thus deserving an additional layer of public review and approval.

The very prospect of this additional scrutiny could have a beneficial effect on how expenditure requests are proposed, presented and justified.

The amended language also calls for speedy review by the Advisory Committee, within two days of Selectmen approval, thus preserving the Town's ability to respond promptly to time-dependent housing opportunities that might arise. As a practical matter, Advisory Committee approval could ordinarily be given on the same day as Selectmen approval for non-controversial expenditures, provided that the Housing Advisory Board communicates its request for an expenditure to the Advisory Committee at the same time that it does so to the Selectmen.

---

### **HOUSING ADVISORY BOARD REPORT AND RECOMMENDATION**

The Housing Advisory Board (HAB) recommends NO ACTION on Article 16.

The petitioners would amend the Town By-law to provide that any recommendation by the Housing Advisory Board for expenditure of funds from the Housing Trust require the approval of both the Selectmen and the Advisory Committee. This Article is being offered, not as a means of fixing a recognized problem, but rather on the premise that an added layer of public review (without any claim to added expertise) will improve how Town government implements its affordable housing policies. Recently proposed amendments to the Article do not alter any of the reasons set forth below explaining the HAB's recommendation of NO ACTION.

The HAB believes that there is no justification for placing this added burden on the project review process or on the Advisory Committee. Implementation of this article would require a sequence of meetings to approve any one project, including the HAB, Selectmen, Advisory Committee Subcommittee and full Advisory Committee, all with the requisite quorums. Modification by any one party could require the process to be reinitiated.

#### **Background**

Brookline's Housing Trust was established by Town By-law in 1987 in Article 3.13, which also established the Housing Advisory Board (HAB). At the same time, Town Meeting adopted the Affordable Housing Requirements of the Zoning By-law, the Town's "inclusionary zoning" ordinance (now Section 4.08).

The first funds were received into the Housing Trust in 1999, and during the past six years, the Housing Trust has received a total of \$7.9 million, as follows:

- \$ 4.8 million from cash in lieu of units from developers of 12 projects
- \$ 2.0 million from “free cash”, voted by Town Meeting between 2001 and 2004
- \$ 0.7 million from net proceeds from the Town’s sale of a tax foreclosed property, voted by Town Meeting in 2004
- \$ 0.4 million from interest payments

The Housing Advisory Board makes recommendations for use of Housing Trust funds consistent with the Town’s affordable housing policies, as most recently updated and published in the Comprehensive Plan. Effective use of Trust resources requires that the Town be opportunistic and entrepreneurial, i.e., creating and responding to opportunities, acting nimbly and accepting prudent risks. In fact, no affordable housing project in the Town would have been completed within the past several years without the Town’s ability to commit resources during the acquisition phase, even before the project had a final program, full funding or even, in one case, a developer/owner. It has been the Town’s very willingness to commit early funding that has made acquisitions possible. This willingness has provided Brookline an important edge over competing proposals seeking State subsidies.

The principal use of Housing Trust funds is “gap” financing, that is, filling the gap between the cost of developing affordable housing and what income eligible tenants or buyers can afford to pay. The Town seeks to use its money in ways that leverage both Town-controlled federal funds and outside sources, while serving a range of households with regard to composition and income, and achieving the longest term of affordability. The Town’s ability to commit Housing Trust funds does not necessarily result in the expenditure of those funds, nor necessarily the long term use of the funds expended. For example, the Town has committed approximately \$6.6 million to four projects. By the time all projects are completed, only \$4.1 is expected to have been expended; of this amount, only \$3.3 million is expected to remain in the project as permanent gap financing following the end of construction. At the same time, the projects will have leveraged at least \$14 million in subsidies not controlled by the Town (see below).

In recognition of the Town’s successful use of its Housing Trust, last year the Commonwealth’s Department of Housing and Urban Development asked Brookline to present at its Best Practices conference. State housing agencies view our Town as one that is willing to “put its money where its mouth is.” The successes of the past few years have shown that the commitment of Housing Trust funds requires an understanding of affordable housing development and finance, that is, how affordable housing developments are put together. For these reasons, the Town By-law requires that the Town recruit members for the HAB who have knowledge or experience in government housing programs, housing or real estate finance, affordable housing development, design or urban planning, and real estate law.

Current members of the Housing Advisory Board are as follows:

- Roger Blood – mortgage insurance consultant
- Michael Jacobs – consultant experienced in affordable housing finance, assisting living and permitting (representative of the Brookline Housing Authority)
- Steven Heikin – architect and urban designer, a senior principal at ICON Architecture, Inc., experienced in affordable housing design (representative of the Planning Board)
- Kathryn Murphy – attorney at Palmer and Dodge specializing in real estate and finance, including affordable housing development
- David Rockwell – affordable housing lender, now Director of Lending at Massachusetts Housing Partnership, a quasi-public lender
- Kathy Spiegelman – Chief Planner for Harvard University; former head of Cambridge Department of Community Development and member of the Cambridge Housing Trust

During the next year, the Housing Advisory Board will discuss new state enabling legislation, signed into law early this year that enables municipalities to create Municipal Affordable Housing Trust Funds according to a specific model. This legislation was meant to provide an additional tool for municipalities that strengthens their participation in creating affordable housing. If the HAB determines that this format is likely to provide added benefits for Brookline, it will engage the public in discussions prior to proposing a warrant article to Town Meeting.

### **“Checks and Balances”**

As support for Article 16, the petitioners argue that the operation of the Town’s Housing Trust is a “structural anomaly”. The petitioners believe that the Advisory Committee, as a representative of the legislative branch of Town government, should be involved in decisions regarding commitments of Housing Trust funding because the American system of government is one of checks and balances. However, Brookline’s distribution of powers is not at odds with that of other levels of government with regard to the approval of funding for housing projects. Nor is its Housing Trust at odds with other local housing trusts or with those enabled under the new state legislation.

With regard to other levels of government, both the Congress and State Legislature approve budgets with allocations to specific housing programs. With very rare exceptions, the executive branches of these levels of government, respectively the U.S. Department of Housing and Community Development and the Commonwealth’s Department of Housing and Community Development, approve commitments to specific projects. In fact, to do otherwise would run the risk of interference from legislators, either supporting or opposing specific projects.

### **Housing Trust Models**

The role of the Brookline’s executive branch is also consistent with the operation of other known local housing trusts. The Cambridge Housing Trust, developed by home rule legislation in 1988, has received over \$50 million to date. The Trust was created by the City Council which, beginning after the end of rent control, appropriated City funds to the Trust on an annual basis. Since adopting the Community Preservation Act, a CPA

Committee recommends on an annual basis, and the City Council votes, the appropriation of a percent of CPA income to the Housing Trust. Trust membership includes the Town Manager, who appoints the other members; Trust members make all decisions regarding allocation of funds. The City of Boston's Neighborhood Housing Trust, which has distributed almost \$81 million in two decades, consists of seven trustees, including the president of the City Council (ex officio) or his/her designee, the collector-treasurer and five mayoral appointees. Somerville's housing trust is similarly organized, and Northampton, Provincetown, Quincy, Orleans, Truro, Reading and Tewksbury have variations on this theme. Only the last five require final approval by the mayor or board of selectmen which, in the case of Brookline, already is providing an additional layer of public exposure and review.

The petitioner has specifically cited Truro, Orleans, Tewksbury and Reading as having affordable housing trusts which require full town meeting approval for Trust fund expenditures. Staff has looked at the authorizing acts and spoken to representatives of each of these towns. The first question one might ask is how representative these towns are of Brookline. On the basis of housing units, Brookline is twice as large as all four communities combined. Collectively, their housing trusts have received \$610,000, less than 10 percent of that of Brookline, and spent very little of this.

Except for Truro, town meeting approval is required for an "allocation plan" which in all cases was described in the legislation and/or by staff as "general", for example, percentage breakdowns for feasibility studies, affordable housing, etc. The requirement of approval by town meeting of "specific capital purchases for land or buildings" in the case Orleans and Truro was found to apply to use of the housing trust fund for purchases by the town itself, not for its support of outside developers. In Tewksbury, Truro and Orleans, expenditures (other than town acquisitions) are approved by the Board of Selectmen. In Reading, a vote on expenditures is required by the combined memberships of the board of selectmen and the Reading Housing Authority.

In fact, we have not found any municipalities that require legislative approval – whether from town meeting, city council or board of aldermen -- for trust fund project expenditures. The use of housing trusts is seen as one more municipal tool to finance affordable housing. Its use is considered no more of a legislative function than the use of municipally controlled CDBG and HOME monies.

In fact, the role of Brookline's executive branch in the Housing Trust is entirely consistent with Section 1.b. of the Municipal Affordable Housing Trust Fund Bill. This enabling legislation places decision-making in the hands of a housing trust board comprised of no fewer than five trustees, to include the "chief executive officer" of the municipality (in Brookline's case, the entire Board of Selectmen) as well as other members appointed by the chief executive officer.

### **Brookline's Housing Trust Experience**

The success of Brookline's Housing Trust can best be described through experience to date.<sup>1</sup>

- 1754 Beacon Street. In 2001, this property -- which has become recognized locally and nationally for its successful achievements in both historic preservation and affordable housing -- was a poorly managed, deteriorated lodge house, on the market, and eyed by developers for condominium conversion. The Town made an early commitment of up to \$1.05 million to the Brookline Improvement Coalition (BIC) for property acquisition. By the time BIC actually purchased the property, the Town had used its access to federal HOME funds to reduce its Housing Trust expenditure to \$298,000. And by the time the Pine Street Inn -- selected as developer/owner by BIC with Town participation -- had completed redevelopment, it had used the Town's commitment to leverage an additional \$1.6 million in State subsidies, had reduced the Town's total commitment to \$908,000 in federal HOME funds, and had repaid the Housing Trust.
- Center Communities. In 2002, Hebrew Rehab was competing to purchase the Stern portfolio at 100 and 112 Centre Street and 1550 Beacon Street with for profit developers who could be expected to continue the current attrition in affordable units. The Town's early commitment of \$1 million helped place Hebrew Rehab in a competitive position. It also helped leverage \$4.9 million in state subsidies, and not only reversed the current attrition in affordable units, but substantially increased the number of affordable units as well as the duration of the owner's obligations.
- 154-156 Boylston Street. When the six unit property at 154-156 Boylston came on the market in 2003, the Town sought a nonprofit developer with which to partner. Its early commitment of \$525,000 from the Housing Trust allowed BIC to acquire the property and helped leverage almost \$500,000 in gap financing from the Massachusetts Housing Partnership. The entire Housing Trust expenditure was repaid with federal CDBG funds.
- St. Aidan's. The Town's willingness to commit up to \$2.5 million to St. Aidan's in 2002 allowed the Planning Office for Urban Affairs to submit an application to the Zoning Board of Appeals under Chapter 40B which both responded to the Town's design principles and guidelines and achieved a significant number of affordable units. The Selectmen then voted to increase that commitment to up to \$3.5 million in 2003 to replace revenue lost through a reduction of market rate units, required in order to preserve the entire courtyard and keep the historic beech tree in place. Again, the ability to commit Housing Trust resources early in the project both allowed the developer to raise additional subsidies (now totaling \$7 million). And as a result of the Town's ability to substitute HOME and CDBG funds for part of its current commitment of \$4.5 million, the final amount of Housing Trust funds expected to remain permanently in the project is \$2.3 million.
- 

---

<sup>1</sup> NOTE: Three of the four above uses of the Housing Trust involved commitments of \$1 million or more.

---

---

SELECTMEN'S RECOMMENDATION

Article 16 is a petitioned article that would amend the by-law outlining the approval process for expenditures from the Town's Affordable Housing Trust Fund (AHTF). Currently, Board of Selectmen approval, only upon the recommendation of HAB, is required for expenditures from the AHTF. If adopted, Article 16 would insert the Advisory Committee into the process with the authority to veto approvals. During review of the article, the petitioner made it quite clear that his proposal was motivated by his concerns with the St. Aidan's project. He believes that giving the Advisory Committee, a body on which he sits, the final authority for approval of AHTF expenditures "will restore the natural checks and balances inherent in the American form of government." We respectfully disagree with the petitioner, in small measure due to his single-issue motivation and in large part because of the complex and time sensitive issues surrounding affordable housing in the Town of Brookline.

The Housing Advisory Board (HAB) was established in 1987, along with the AHTF. HAB was formed to provide the Board of Selectmen with an advisory body of housing experts, in order to continue the work of the Affordable Housing Committee, a body that was disbanding at the time. With that Committee's disbanding, a void was created and Town Meeting approved the creation of a permanent HAB, as the issue of affordable housing was (and still is) too critical for the Town to not have a standing committee of experts.

As detailed in the HAB's report that precedes this Recommendation, the AHTF has received \$7.9 million since 1999, with 60% coming from cash in-lieu of units from developers, 25% from "Free Cash", and the rest from interest (5%) and the sale of a tax foreclosed property (10%). HAB has effectively used the proceeds to carry out the Town's affordable housing policies, utilizing "gap financing" as the primary vehicle to maintain and increase the Town's affordable housing stock. Under the current expenditure approval requirements, HAB is able to act quickly. Adding an additional layer of approval will slow down the process, jeopardize negotiations for housing and, ultimately, cause HAB to be less effective than they currently are.

One just needs to look at some of HAB's accomplishments to realize how successful they have been, from the Town/BIC project at 1754 Beacon Street to the projects at 100 and 112 Centre Street and 1550 Beacon Street that increased the number of affordable units and the duration of the owner's obligations. HAB has been extremely effective in utilizing the AHTF and we see no reason to change a successful system. While we have the utmost respect for the Advisory Committee and consistently look to their recommendations with great interest on issues ranging from the budget to zoning, we believe that the members of HAB are the housing experts and that their work could be impaired by another layer of oversight.

The Board of Selectmen therefore recommends NO ACTION by a vote of 5 – 0 taken on October 11, 2005, on the article. This vote followed a motion moved by Selectman Hoy for Favorable Action on an amended version of Article 16 , which failed by a 3 – 2 vote,

that would have given the Advisory Committee 48 hours to meet and take action; if they did not, the expenditure approval of the Selectmen would stand.

-----

## ADVISORY COMMITTEE'S RECOMMENDATION

### BACKGROUND

The Housing Advisory Board (HAB) derives its authority under Article 3.13 of the Town By-laws. Its purposes include recommending overall housing policy to the town, proposing plans for affordable housing and acting as trustees for administering the Housing Trust. The funds in the Housing Trust come mainly from mandated contributions from developers who opt for payment into the Housing Trust in lieu of providing a specific number of affordable housing units in their projects in accordance with Section 4.40 "Affordable Housing Requirements" of the town's Zoning By-laws and from annual Town Meeting appropriations from free cash of varying amounts each year. The appropriations from free cash to the Housing Trust are voted on by the Advisory Committee when it makes its recommendation to Town Meeting.

The HAB consists of seven members: five are appointed by the Board of Selectmen for three-year staggered terms, one is a representative of the Planning Board and one is a representative of the Brookline Housing Authority. The Selectmen are required to appoint a member who is a low- or moderate-income tenant who is familiar with tenant issues. The others must have knowledge or experience in either government housing programs, real estate finance, affordable housing development, design or urban planning or real estate law.

The HAB may use the Housing Trust Fund to provide rent subsidies, mortgage interest payments, mortgage principal payments, development subsidies and conversion subsidies. HAB's duties include acting as a negotiating agency with developers and owners in regard to the financing of its projects. It may hold title to both real and personal property and may hold interests in mortgages, leases easements and options. The HAB has the authority to apply for, receive and expend grants, aid, reimbursements, gifts and other funding for their housing projects.

The HAB's spending of funds is subject to the prior approval of only the Board of Selectmen. The HAB's expenditure approvals do not require Town Meeting approval. The Advisory Committee does not have oversight of HAB's expenditures. HAB is required by by-law to report each year to the Selectmen and to Town Meeting on its progress in achieving its goals.

The HAB came under public scrutiny in the summer of 2005 when it recommended increased trust fund support for the St. Aidan's project. Critics complained that the HAB and the Board of Selectmen acted without sufficient provisions for public comment prior to their actions. The merit of the decision was also questioned.

## DISCUSSION

Article 16 would amend the Town By-laws to require that any expenditure of funds from the Housing Trust proposed by the Housing Advisory Board receive prior approval of both the Board of Selectmen and the Advisory Committee. The proposed motion under Article 16 stipulates that Advisory Committee approval “shall be deemed to have been given” if the Advisory Committee “fails to act within ten days of action by the Board of Selectmen.”

The central issue raised by Article 16 is whether the potential costs of delays in expenditures recommended by the HAB outweigh the potential benefits of an additional review by the Advisory Committee.

The case for providing the Advisory Committee with responsibility for reviewing proposed Housing Trust expenditures rests on the argument that a second level of review will assure greater opportunity for public discussion of HAB proposals and improve the quality of decisions. Town Meeting has responsibility for establishing the town’s budget. The Board of Selectmen generally cannot spend town funds without a specific appropriation from Town Meeting. The Reserve Fund is an exception in that spending does not require Town Meeting action. However, expenditures from the Reserve Fund require approval by the Advisory Committee acting as a representative of Town Meeting.

The petitioner also is concerned that the Board of Selectmen’s review of proposed HAB expenditures may lack desired independence since the Board of Selectmen appoints members of the HAB.

The petitioner also is confident that the Advisory Committee could conduct its reviews quickly so that the HAB’s need to act in a timely manner would not be jeopardized.

Current members of the HAB strongly oppose Article 16. Members of the HAB emphasize their specialized expertise, extensive experience, strong commitment to affordable housing, enviable track record, and demonstrated ability to act quickly and decisively when necessary. According to its members, the HAB is uniquely qualified to carry out its duties and functions by virtue of its diversified and expert membership and its specialized knowledge of housing. HAB representatives point to their track record, which includes the early commitment of funds that enabled Hebrew Seniorlife to purchase three buildings and to preserve affordable units that would have been lost if a for-profit developer had bought the buildings, as well as successful partnerships with the Brookline Improvement Coalition to purchase buildings on Beacon and Boylston Streets and to subsequently redevelop them as affordable housing. These transactions depended on knowledge of real estate finance and law.

According to HAB members, early action by the HAB is often necessary to intervene in the real estate market in a nimble, entrepreneurial, and opportunistic manner. The HAB often makes commitments to spend Housing Trust funds but later finds it possible to substitute federal funds and to leverage additional housing substitutes. Nevertheless, the early commitment by HAB is essential to acquiring buildings for affordable housing. Requiring additional layers of review might prevent the HAB from acting quickly.

HAB members argue that Article 16 would add an unnecessary layer of oversight which would create substantial extra work for the HAB and could cause delay and potential loss of pending projects without improving the quality of decision making. HAB leaders also argue that improvements in public notification of meetings will assure greater opportunities for public input before the HAB makes its recommendations. HAB members report that in other nearby communities, including Boston, Cambridge, and Somerville, housing trust expenditures do not require the level of review that is being proposed by Article 16.

#### RECOMMENDATION

After extensive discussion, Advisory Committee members were divided in their assessment of the proposed by-law amendment. Some members are attracted to the proposal because it is consistent with Brookline's strong commitment to extensive public participation in decisions made by town government. Advisory Committee members were also impressed with the specialized expertise of HAB members, and the HAB's need to act quickly. Some members concluded that the risks associated with delayed decision making outweigh the potential benefits of another level of review. The Advisory Committee's vote on this article reflects its ambivalence.

The Advisory Committee, by a vote of 12 in favor of the motion for no action, 7 opposed, and 2 abstentions, recommends NO ACTION on Article 16.

**XXX**

---

ARTICLE 16

---

---

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

---

The petitioner of Article 16 has submitted a motion that differs from the warrant article in that it sets a threshold of \$1 million for projects proposed by the Housing Advisory Board to be reviewed by the Advisory Committee. The motion also establishes a narrow time frame for the Advisory Committee's review by giving the Committee no more than 48 hours from the time of Board of Selectmen's approval of a proposed expenditure to complete its review. The intent of the \$1 million threshold is to limit the Advisory Committee's involvement in reviews of expenditure proposals to large projects. The requirement of prompt action by the Advisory Committee addresses concerns that its review might be a source of significant delays that could jeopardize time-sensitive projects.

The Advisory Committee's discussion of the petitioner's motion largely paralleled the Committee's earlier deliberations on Article 16. Proponents argued that review by the Advisory Committee was a "good government" measure to assure adequate public discussion of projects with the potential to have an adverse effect upon neighborhoods. Proponents argued that the Advisory Committee's review would add attention to important political considerations that might otherwise be overlooked by the Housing Advisory Board and the Board of Selectmen. Proponents point to the precedent of the Advisory Committee's review of proposed expenditures from the town's Reserve Fund.

Critics of the motion were concerned that the Advisory Committee would find it difficult to conduct a useful review of proposed expenditures within a short time frame. Critics also point to the Committee's lack of expertise in housing finance. Critics were also concerned that the Advisory Committee's participation in the process might disrupt delicate negotiations. Serious questions were also raised about the significance of the \$1 million threshold since nearly all projects considered by the Housing Advisory Board involve expenditures that exceed \$1 million. In sum, the critics were skeptical about the value added by the Advisory Committee's review and concerned about the risk that the Advisory Committee's involvement might have negative effects.

A motion to recommend favorable action on the petitioner's motion failed by a vote of 6 in favor and 14 opposed.

---

ARTICLE 17

---

SEVENTEENTH ARTICLE

To see if Town Meeting will add to the General By-Laws of the Town of Brookline Article 7.12 *Street Signs*.

**Article 7.12 Street Signs**

The Town will maintain in place the cast aluminum signs designating the names of streets. Where these signs have been replaced by other signs designating street names, the Town will restore the original cast aluminum sign, if it still exists, or seek to replicate it with a new cast metal sign.

If state or federal law requires a different kind of street sign, the Town will seek a waiver of the requirements so that the cast metal sign can remain.

or act on anything relative thereto.

---

Prior to 1937, Brookline's street signs were made of wood. In the spring of that year, cast aluminum signs were introduced to replace the wooden ones. It was felt that these signs would last longer. They have, until the DPW started replacing them several years ago. They are slowly disappearing. In this year of the town's tricentennial, it would be nice to save something that contributes to the historical character of the town. It would also save time, labour, and money by not replacing signs that do not need to be replaced.

---



---

SELECTMEN'S RECOMMENDATION

Article 17 is a petitioned article that would amend Town By-Laws to mandate that the Town retain the cast aluminum signs designating the names of streets. It would require the Town to restore or replicate the original cast aluminum signs in locations where they have been replaced, and mandate that the Town seek any necessary waivers of state or federal law in order to retain the cast metal signs.

It is important to mention that new federal guidelines contained in the 2003 Manual on Uniform Traffic Control Devices (MUTCD) stipulate that by 2012 all street signs will be required to have six-inch letters, be retro-reflective, and on breakaway poles. The Board agrees with the petitioner that the cast aluminum street signs located throughout the Town have a certain historic character that is not present in the new sign design outlined in the MUTCD. However, the Commissioner of Public Works has received confirmation from federal highway officials that eventually all street signs in Brookline will need to conform to this new standard. In addition, the Massachusetts Highway Department has

indicated that the new sign standard will be applied on any streets involved in their projects (which includes the Beacon Street reconstruction).

The Selectmen understand that there is a strong sentiment to see the old signs preserved around Town for their historical value. Therefore, we recommend that this matter be referred to a Selectmen's Committee to study and recommend ways to preserve this piece of Brookline's history.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0, taken on October 25, 2005, on the vote offered by the Advisory Committee.

-----

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 17 seeks to maintain the town's traditional cast aluminum street signs, as well as replace those that have been removed.

Prior to 1937, Brookline's street signs were wooden. The town opted to replace these less durable signs with cast aluminum signs made in the town's own foundry (the signs now can be obtained from commercial vendors). There are approximately 4,500 of these signs today. They are a silver/gray painted background with raised 4" letters (legend) and border painted in black. Brookline's DPW, seeking to conform to the 2003 Manual on Uniform Traffic Control Devices (MUTCD), has been replacing the older cast aluminum signs with newer, and larger, flat panel aluminum signs. These signs are fabricated by the DPW and are a retro-reflective gray paint with 6" black letters and border meant to mimic the older style sign.

Research on older drivers conducted in the 1980s and 1990s led to an increase in minimum letter height for all signs to meet the needs of drivers with diminished vision. The concern is that the 4" legend height may not be adequate for a portion of the driving population; that drivers with diminished vision may not be able to read a sign soon enough, leading to unexpected or dangerous driver actions at intersections.

DISCUSSION

Brookline has long grown accustomed to its distinctive street signs. Many find them charming historical elements. The Massachusetts Historical Commission (MHC) notes that these unique street signs contribute to the community's historical and architectural significance. The MHC concurs that "... the signs are eligible for listing and would constitute contributing objects in Brookline's National Historic Register Districts, which are listed in the National Register in 1985 as part of the Brookline Multiple Resource Area (MRA)."

Balancing these issues of historical aesthetics, is cost and safety.

The 2003 MUTCD states “Lettering on ground-mounted street name signs *should* be at least 6 inch high in capital letters or 6 inch uppercase letters with 4.5 inch lowercase letters.”

The MUTCD also states “The street name sign *shall* be retro-reflective or illuminated to show the same shape and similar color both day and night. The legend and background shall be of contrasting colors.”

These two sections illustrate the “should”/”shall” dilemma. The use of “should” in the first instance (rather than shall) may be to accommodate a 4.5 inch option for local roads. None the less, MUTCD lists a compliance date for letter height of January 9, 2012. It is not clear whether this applies to all signs, or only new and replaced signs. Mass Highway requires 6” letters for new or replaced signs.

The second instance makes use of the term “shall” – a more definitive requirement. Again, the compliance date for the use of retro-reflective paint is 2012.

There is room for interpretation as to the intent and requirements of the MUTCD, and the earliest compliance date is six years away.

#### RECOMMENDATION

To come to a satisfactory resolution, the Commissioner of the Department of Public Works has agreed to a temporary moratorium on changing any of the old signs unless the old signs are beyond repair. A Selectmen’s committee of five will be established to determine how the old signs will be used. No action regarding the signs will be taken by the Department of Public Works until the committee makes a recommendation. No action is required by Town Meeting to implement this plan.

The petitioner agrees this moratorium and the establishment of a Selectmen’s committee is satisfactory.

As such, the Advisory Committee unanimously (20-0) recommends FAVORABLE ACTION on the following vote.

VOTED: That the subject matter of Article 17 be referred to a Committee to be appointed by the Board of Selectmen.

**XXX**

---

ARTICLE 18

---

EIGHTEENTH ARTICLE

To see if the Town of Brookline will amend Article 8.15, Noise Control, in the town's Bylaws as follows:

1. By deleting the last paragraph in Article 8.15.4 (Prohibitions and measurements of Noise Emissions) subsection (e) Electronic Devices and Musical Instruments as follows:

By deleting the wording:

"Any and all decibel levels of sound caused by playing non-electrical musical instruments between 9 A.M. and 9 P.M. shall be exempt."

By appropriately renumbering any other subsequent subsection of said section, or act on anything relative thereto.

---

The Town of Brookline has adopted the policy to prevent excessive sound which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life. The Town has also recognized that people have a right and should be ensured an environment free from excessive sound that may jeopardize their health or welfare or safety or degrade the quality of life.

Currently there is an exemption for non-electrical instruments. There is not regulation of the noise level on non-electrical instruments. By deleting this exemption, all musical instruments, both electrical and non-electrical will be regulated so that their playing at the level of noise pollution will not effect the quality of life of neighbors and the people of Brookline.

---

SELECTMEN'S RECOMMENDATION

Article 18 is a petitioned article that would amend the Town Noise Control By-Law by eliminating the exemption from noise limits currently afforded to non-electrical musical instruments between the hours of 9 a.m. – 9 p.m.

Adoption of this article would impose upon non-electrical instruments the same restrictions as those currently imposed upon electrical instruments. The Board of Selectmen recognizes that all residents are entitled to a home environment free from excessive noise. However, the Board does not view the playing of non-electrical instruments as noise pollution. Members of the Board have offered the opinion that the quality of life in the community is enhanced by such musical expression.

The School Department has reinvigorated its instrumental music program in the elementary schools in recent years and the Town has always supported the work of the Brookline Music School, where many Brookline students take individual lessons. These students, as well as the many fine adult musicians in Town, need to practice and play their music. Brookline has a reputation for being a place where the arts are nourished and flourish. The Board does not wish to stifle the development and creativity of the many children, young adults, and adults in the community who play or are learning to play non-electrical musical instruments. The intent of this article could best be accomplished via neighbor-to-neighbor communications, rather than through an amendment to Town By-Laws.

The Board of Selectmen recommends NO ACTION, by a vote of 4-0 taken on October 20, 2005, on the article.

**ROLL CALL VOTE:**

No Action

Hoy

Sher

Merrill

Daly

-----

**ADVISORY COMMITTEE'S RECOMMENDATION**

**BACKGROUND**

Article 18 seeks to amend Article 8.15, Noise Control, of the town's by-laws by deleting the last paragraph in Article 8.15.4 (prohibitions and measurements of noise emissions) subsection (e) Electronic Devices and Musical Instruments as follows:

By deleting the words: *“Any and all decibel levels of sound caused by playing non-electronic musical instruments between 9 am and 9 pm shall be exempt.”*

This particular warrant article was filed because of an interaction between neighbors dwelling in the same condominium. According to the petitioner, an upstairs neighbor in the petitioner's condominium created objectionable noise playing a musical instrument, a piano, and would not modulate the volume. The petitioner notified the police who visited the premises, but felt they could take no action, since the source of the noise was coming from a non-electronic musical instrument – which the current by-law permits. The petitioner feels that if the by-law were to be amended by deletion of the words above, the police then would be able to take appropriate action in such cases. The pianist appeared before the Advisory Committee and mentioned that he had tried to modulate the sound by the installation of carpets and other acoustic modifications, but did not satisfy his neighbor.

DISCUSSION

Some members of the Advisory Committee felt that the article was not appropriate, since it addressed a personal situation. However, the petitioner felt that the warrant article is addressing a town-wide issue and although the warrant article is not perfect, it will allow the police more power to enforce the Noise By-law. In Advisory Committee hearings, it was pointed out that the petitioner already has existing redress and might bring legal action against the musician under existing state law that ensures “quiet enjoyment” for its citizens; hence there is no need for this warrant article. Some members of the public contacted the Advisory Committee warning that passage of the article would threaten the future of music in the Town of Brookline. Several members of the Advisory Committee found the phrase “any and all decibel levels of sound” in the current by-law to be vague, unrealistic and in need of revision; however, others found that language to be very protective of non-electronic classical music

However, after examining the text of the current Noise By-law, several members of the Advisory Committee felt that several significant deficiencies exist in the by-law, especially with respect to metrics (how to measure the intensity of sound objectively), enforceability, and relationship to current state law concerning noise. Updated and clear standards are needed.

A referral to a committee to review the entire by-law was discussed. The Advisory Committee considered referral to either a Selectmen’s Committee or a Moderator’s Committee and on a 12-11 vote, the Advisory Committee favored referral to a Selectmen’s Committee. It was pointed out that with consideration by either committee, Town Meeting would have the final say on any proposed changes to the Noise By-law.

RECOMMENDATION

The Advisory Committee, by a vote of 14 in favor and 8 opposed, recommends favorable action on the following vote:

VOTED: To refer the subject matter of Article 18 to a Selectmen’s Committee which shall be established to review the Noise Control By-Law (Article 8.15) in its entirety. Said Committee shall prepare any recommendations for amendments to Article 8.15 after a comprehensive review and study of noise control in the town.

*XXX*

ARTICLE 18

BOARD OF SELECTMEN'S SUPPLEMENTAL REPORT

As reported in the Combined Reports, the Board of Selectmen voted NO ACTION, by a vote of 4-0, on Article 18 for the reasons contained in the Recommendation. At its November 1, 2005 weekly meeting, the Board voted to reconsider its vote in light of the fact that the Advisory Committee had voted to refer the subject matter of Article 18 to a committee. That committee would also study the entirety of the Noise Control By-Law. The Board supports the formation of a committee to review the Noise Control By-Law, but does not support referring the subject matter of Article 18 to that committee. Therefore, the Board voted FAVORABLE ACTION, by a vote of 4-0, on the following vote:

VOTED: That the Board of Selectmen establish a committee to review the Noise Control By-Law in its entirety. Said Committee shall prepare any recommendations for amendments to Article 8.15 after a comprehensive review and study of noise control in the town..

**ROLL CALL VOTE:**

Favorable Action

Allen

Hoy

Merrill

Daly

---

ARTICLE 19

---

NINETEENTH ARTICLE

To see if Town Meeting will amend Town by-law Section 2.1.9 CONDUCT OF THE MEETING by adding, Section 2.1.9 (a) Debate Procedure

SECTION 2.1.9 (a) DEBATE PROCEDURE

In the absence of a two-thirds vote to override, debate shall be heard on both sides of a question. After the main motion has been initially moved and seconded, the Moderator shall announce the numbers of scheduled speakers for each side of the main motion and any scheduled amendments that are to be offered. During the course of the debate the Moderator shall recognize speakers on both sides of the question, alternating between proponents and opponents, until there are no further speakers on either side or a motion to close debate is voted, or act on anything relative thereto.

---

WHEREAS, the debate portion of Town Meeting shall be conducted in accordance with the handbook of parliamentary law, "Town Meeting Time" published by the Massachusetts Moderators Association; and

WHEREAS the constitutional authority for representative town meetings provides that the members are elected to "meet, **deliberate**, act and vote," (Town Meeting Time, p. 103); and

WHEREAS, at Brookline Town Meeting, the process of deliberation categorized as "**debate**," is a discussion and consideration by a group of Town Meeting Members and Town Residents of the reasons for and against a measure; and

WHEREAS, a public debate within a democratic system provides for proponents and opponents the equal opportunity to be heard; and

WHEREAS, a motion to close debate can be called before all scheduled speakers have spoken; and

WHEREAS, in accordance with the constitutional authority granted representative town meetings, it is the Moderator's duty to provide for the democratic process of debate at Town Meeting; and

WHEREAS, it is the Moderator's duty to recognize both proponents and opponents on an issue to insure that both sides of a question are heard;

THEREFORE, the petitioner, in an effort to insure a full and impartial deliberation of warrant articles, offers amendment, Section 2.1.9 (a) to Section 2.1.9 of the Town By-laws.

---

---

SELECTMEN'S RECOMMENDATION

Article 19 is a petitioned article that would amend debate procedures at Town Meeting. The article would require the Moderator to alternate between proponents and opponents, without the ability to institute more helpful formats or roles in appropriate circumstances. The Moderator is ultimately responsible for the conduct of Town Meeting, so in the course of debate on this subject matter, we took his comments into consideration. He opposes the article based on the following reasons:

1. Much of the art of moderating Town Meetings involves the application of the relevant rules and traditions in a flexible manner that makes common sense and that properly takes into account the many different circumstances and situations that arise during the proceedings. Absent a compelling reason to do so, it would be a mistake to incorporate into Town By-Laws detailed procedures for the conduct of Town Meeting that would be strictly and legally binding on the Moderator and TMMs under all circumstances.
2. There is no need for a by-law requiring debate on issues and alternating pro and con speakers since this is in substance already provided for in the Town Meeting Handbook.
3. The proposed article describes, in essence, what already occurs at Town Meeting. The Moderator reviewed his records of the past three years and, in virtually all instances in which there were significant numbers of speakers on both sides of an issue, Town Meeting heard from an equal number of speakers on each side.
4. The requirement of alternating between proponents and opponents is too rigid and does not allow for any flexibility. For example, the current practice of hearing consecutively from several proponents of a complex issue, followed by a similar block of time to hear from opponents, would not be permissible. It would also require that the Moderator alternate speakers even in situations in which a large number of people had signed up on one side of an issue and very few on the other, which might give inappropriate weight at the beginning of the debate to the latter group.
5. The proposal would undermine the current tradition of giving speaking priority to TMMs over non-TMMs, at least non-TMMs who are not directly and substantially affected by a proposal.

This Board concurs with the Moderator and, therefore, recommends NO ACTION, by a vote of 5 – 0 taken on October 11, 2005, on the article.

-----

### ADVISORY COMMITTEE'S RECOMMENDATION

#### BACKGROUND

A petitioned article, seeking to amend the Town By-laws by incorporating a new section detailing procedures for the conduct of debates at Town Meeting, Article 19 aims "to insure a full and impartial deliberation of warrant articles."

The article would impose two requirements. First, the Moderator would be obligated to announce both the number of speakers for each side of the main motion and any amendments scheduled to be offered. Second, the Moderator would be obligated to recognize scheduled speakers - Town Meeting members, Town officials, and non-Town Meeting Members - on both sides of the question, alternating between proponents and opponents, until all the speakers had been heard or until a motion to close debate had been offered and approved. The article also offers suspension of these requirements via "a two-thirds vote to override."

The section of the Town By-laws regarding the conduct of Town Meeting (Section 2.1.9) is short and sweet, stating that "The proceedings of Town Meetings shall be conducted in accordance with the handbook of parliamentary law, 'Town Meeting Time', published by the Massachusetts Moderators Association, the traditions in Brookline and these by-laws." Brookline's Town Meeting Handbook, expressing many traditions and past practices, is used as a guide to Town Meeting procedures. The Handbook states "... to the extent feasible, the Moderator will usually alternate between proponents and opponents of the motion."

#### DISCUSSION

In discussing Article 19, Advisory Committee members noted that when a Town Meeting debate ends before all scheduled speakers have been heard, it is because a motion to call the question has been approved by a required two-thirds of Town Meeting members. It was also pointed out that there have been numerous occasions when the Moderator has declared a motion to call the question to be premature and has determined that more debate needed to be heard.

Finally, as noted in a September 16th memo to the Board of Selectmen and Advisory Committee from the Town Meeting Moderator, to require the Moderator to alternate speakers "even in situations in which a large number of people had signed up on one side

of an issue and very few on the other [which] might give inappropriate weight at the beginning of the debate to the latter group."

The importance of debate and hearing both sides of an issue was recognized by the Advisory Committee, and several members expressed disappointment that on a number of occasions, a question has been called before all scheduled speakers have been heard from. The responsibility of Town Meeting members to listen to a thorough discussion of matters which come before them was acknowledged. However, the Committee was not persuaded that the provisions of Article 19 would accomplish the expressed goals of the petition, given the ability of Town Meeting to overrule the Moderator. The Committee endorsed the discretion and flexibility afforded the Moderator under current practices which allow him to create more useful and appropriate formats as a particular situation may warrant. The Committee's discussion reflected the view that any alleged problem did not appear to rest with existing procedures or with the Moderator.

RECOMMENDATION

The Advisory Committee unanimously (18-0 with 2 abstentions) recommends NO ACTION on Article 19.

*XXX*

---

ARTICLE 20

---

TWENTIETH ARTICLE

To see if Town Meeting will:

A. Appropriate sufficient funds to create an efficient and reliable electronic tabulation system to securely record all roll call votes at Town Meeting; and

B. Amend by-law 2.1.9 by adding 2.1.9 (b) VOTING PROCEDURE APPROPRIATION and 2.1.9(c) VOTING PROCEDURE.

2.1.9(b) VOTING PROCEDURE APPROPRIATION

The town will appropriate funds sufficient during the current year to fund and will create an electronic system to efficiently tabulate roll call votes conducted at town meeting or act on anything relevant thereto.

2.1.9 (c) VOTING PROCEDURE

All votes taken at Town Meeting and Special Town Meeting shall be taken by a roll call vote and a show of hands. The total of the roll call vote will be the official tabulation. The Town Clerk shall record and post a permanent public record of each roll call vote on the Town Web Site. The show of hands shall be recorded by Videotape suitable for showing on Cable Access Television. New policy shall take place after the system mentioned in 2.1.9(b) is created or one year from the passage of this warrant or at the Fall 2006 Town meeting whichever occurs first. The town may act on anything relevant to the provisions of this warrant.

or act on anything relative thereto.

---

Currently, the Brookline electorate lacks sufficient information regarding their representatives' positions on the issues. This lack is a consequence of the voting methods, such as the "show of hands" or "standing head count" methods most commonly used at Town Meeting. To increase information, provide accessibility and to facilitate informed choices at the polls, voting at Town Meeting should be taken by roll call, recorded by the Town Clerk and subsequently posted as a permanent record for public dissemination on the Town's website.

---

---

SELECTMEN'S RECOMMENDATION

The Moderator's Committee on Alternative Voting Methods, established by vote of the November 2000 Special Town Meeting, issued an excellent report on the very subject matter of this petitioned Article. Its charge was:

“To investigate and report to a future town meeting the available options for forms of voting that record and/or display the votes of each town meeting member on matters at Town Meeting, without the necessity of a so-called roll call vote.”

After nearly two years of thorough work and extensive research, that Committee requested that the Moderator employ a color-coded card recording system on a trial basis for the 2003 Annual Town Meeting. The Committee also requested that the Board of Selectmen include funds in the FY04 budget to rent an electronic group response system to be used on a trial basis at the November 2003 Special town Meeting. Neither request was implemented.

The current petitioned Article 20 would mandate the allocation of funds to “create an electronic system to efficiently tabulate roll call votes....”. It would also require that all votes either be conducted by roll call or by a show of hands. The Board of Selectmen argues that it would be ill advised to mandate these proposals without the benefit of further analysis.

The Board believes that there is a widespread inclination on the part of those involved in Brookline Town Government to conduct proceedings as transparently as possible. The former Moderator's Committee documented in great detail the extensive history of various proposals to create a record of voting by Town Meeting Members. However, this inclination is tempered by two other very significant considerations documented by the previous Moderator's Committee: practicality and cost.

Indeed, problems associated with practicality and cost interfered with the adoption of even the two trial steps proposed by the 2000-2002 Moderator's Committee. That Committee's budget recommendation fell into the very budget cycle when the Governor implemented mid-year so-called “9C” local aid cuts. Ultimately that year, the Town experienced a \$2.7 million loss in local aid. That simply was not a year for additional budget items, particularly when the trial manual card system was not employed for the 2003 Annual Town Meeting.

The Board of Selectmen endorses the vote taken by the Advisory Committee on Article 20. This vote literally replicates the charge given to the 2000-2002 Committee and is appropriate for several reasons. First, technology has undoubtedly advanced in this area even in just the three years since the Moderator's Committee's report. Second, the previous Committee Report does not describe what voting practices are utilized in other Towns. While some earlier reports make mention of researching the methods of other Town Meetings, there does not appear to be a current inventory of best practices in this area. A more thorough investigation into other communities might further reveal how constraining the factors of practicality and cost really are. And finally, despite the desire

for even greater transparency, there does not yet appear to be the political consensus for taking such major steps. The previous Moderator's Committee identified several factors inherent in the culture of Brookline Town Meeting that need to be addressed, but presumably only after Town Meeting Members themselves have the opportunity to evaluate specific methods and devices.

Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 25, 2005, on the vote offered by the Advisory Committee.

-----

### ADVISORY COMMITTEE'S RECOMMENDATION

#### BACKGROUND

Article 20 is a citizen's petition which seeks to amend Section 2.1.9 of the Town By-laws to 1) appropriate funds to create an electronic tabulation system to record all roll call votes at Town Meeting and 2) require that all votes taken at the annual Town Meeting and Special Town Meetings be via a roll call vote and a show of hands. If approved, the article would also require that the Town Clerk post a permanent public record of each roll call vote on the town's website and that a show of hands for each roll call vote be recorded by videotape which can be shown on cable access television.

The intent of the article is four-fold: 1) to enable constituents to easily ascertain how their representatives have voted on issues before Town Meeting; 2) to enable residents to easily ascertain how all representatives have voted on issues before Town Meeting; 3) to increase both public interest in local government and the percentage of voter turnout at elections; and 4) to encourage more citizen involvement in local government.

#### DISCUSSION

The Advisory Committee raised a number of concerns with the article. First, the budget and budgeting process, rather than the Town By-laws, constitute a more appropriate approach for funding capital items. Second, roll call votes are time consuming, each taking between 25 and 30 minutes, according to one estimate. Third, it is not clear that every vote taken at Town Meeting should be a roll call vote; the annual articles establishing the Measurers of Wood and Bark or addressing unpaid bills come to mind as examples for which roll call votes seem unnecessary.

However, the Committee agreed with a number of points made by the petitioner, particularly the importance of public accountability. Believing that approaches other than the color-coded card system and an electronic group response system mentioned by the petitioner may be available and recalling that the issue of alternative voting methods was investigated several years ago, the Advisory Committee concluded that the subject should be referred to a Moderator's Committee.

RECOMMENDATION

By a unanimous vote of 21-0, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That Town Meeting authorize the Moderator to appoint a committee to investigate and report to the 2006 Fall Town Meeting the available options for forms of voting that record and/or display the votes of each Town Meeting member on matters at Town Meeting, without the necessity of a so-called "roll call" vote.

*XXX*

ARTICLE 21

TWENTY-FIRST ARTICLE

To see if Town Meeting will amend Town by-law Article 3.1 of the by-laws by adding a new section 3.1.6 PUBLIC BROADCAST IN BOARD OF SELECTMEN.

3.1.6 PUBLIC BROADCAST IN BOARD OF SELECTMEN

The Board of Selectmen shall request Brookline Access Television to broadcast their meetings. The Board of Selectmen shall conduct all meetings in the sixth floor public hearing room to provide public access and the ability to televise the meetings.

or act on anything relative thereto.

\_\_\_\_\_

To increase public access to government affairs.

\_\_\_\_\_

SELECTMEN’S RECOMMENDATION

This petitioned article proposes to fix by By-law the place and format of meetings held by the Board of Selectmen. While its intention is to mandate that all Board meetings be televised it far overreaches that effort by requiring meetings take place in the Hearing Room on the 6<sup>th</sup> Floor of Town Hall. Theoretically, the Board would need a By-law amendment to hold a meeting in any other location whether outside of Town Hall or simply in another room in Town Hall, both of which has happened on occasion.

Further, even if the proposed By-law amendment were more practical in its effect, its mere enactment would go far beyond standard practice in Massachusetts’s local government. One would be hard pressed to find town by-laws or city ordinances so perceptive concerning the meeting of local governmental bodies. The much more common practice is for such bodies to adopt their own rules and regulations setting out such provisions. Literally legislating meeting procedures goes far beyond the norm of setting the operating conditions for a local executive Board.

As to the question of televised meetings, this matter should be resolved with the upcoming renovation of Town Hall. Brookline Access Television has indicated it can provide the broadcast staff for coverage earlier than 8:00 p.m., but that it does not have the capability at this time to broadcast from the Selectmen’s Conference Room where the 4:00 p.m. sessions are conducted. This condition is what led the petition to propose

holding all Board meetings in the Hearing Room in the first place. The Hearing Room already has broadcasting capability in place.

As a practical matter when Town Hall offices temporarily relocate to the Old Lincoln School while the renovation is underway provisional broadcasting capability will have to be established there anyway. This temporary arrangement is expected to begin before the end of December 2006. BAT offices are also located in the Old Lincoln, so full-meeting coverage might, ironically, occur during this temporary location.

Ultimately this matter will be finally resolved when the Town Hall renovation is complete. The renovation could well have a far-reaching effect on not only the room location, but also the format of Board meetings. Depending on the scope of renovations to the interior of the 6<sup>th</sup> floor of Town Hall, it should not necessarily be assumed that Board meetings held during the Town Hall Renovation will be carried out in the same manner as currently conducted.

In the interim, the resolution recommended by the Advisory Committee provides a useful framework for proceeding. It urges that calendar items with the greater levels of public interest be scheduled in the Hearing Room where they can be televised. Subject to come constraints, the wishes of the citizens most directly involved and potential costs in overtime and other matters this is a practice that the Board will continue to attempt to observe.

Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 25, 2005, on the following vote:

VOTED: That Town Meeting adopts the following Resolution:

Whereas, a portion of the Board of Selectmen's meetings take place in the smaller conference room as well as the larger hearing room;

Whereas, the portion of the Selectmen's meetings that take place in the hearing room is televised to be repeated on several occasions;

Whereas, the portion of the Selectmen's meetings that are not held in the hearing room are not televised and can only be witnessed by those present;

Whereas, some of the meetings that are not held in the hearing room are late in the afternoon when many of Brookline's citizens are still at work and are not able to be present; therefore be it:

Resolved that Town Meeting requests that the Board of Selectmen investigate and propose ways of making their weekly meetings more accessible with provisions for increased televised broadcast; therefore

Be it further resolved that until such time as there may be increased televised broadcast, the Selectmen's agenda shall be set with the intention of having controversial items on the agenda during the televised portion of the meeting.

-----

---

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's report on Article 21 will be included in the Supplemental Mailing, which will be received by Town Meeting Members prior to the commencement of Town Meeting.

**XXX**

ARTICLE 21

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

BACKGROUND

This article seeks to amend the Town's by-laws to require the Board of Selectmen meetings to be held in the 6<sup>th</sup> floor hearing room of Town Hall, providing both improved access and television coverage beginning at 4PM.

The Board of Selectmen's 4PM sessions are held in the smaller Selectmen's Conference Room and are not televised.

The petitioner feels that important issues are taken up during these earlier sessions that are not available to those who can't be present during standard business hours.

DISCUSSION

There was sympathy for the petitioner's concerns. Some Committee members felt that substantive issues are being covered in the afternoon without broad participation or the ability of the public to view the proceedings on television. It was noted, however, that there are times when a more intimate environment serves as a better venue for a true give-and-take conversation. It was also noted that standing at a podium in front of bright lights could intimidate people to the point of not wishing to fully participate in a public discussion with the Selectmen. The trick is to find a balance.

Many members felt that a little re-balancing might be helpful. Specifically, it was felt that much of the evening session was devoted to ceremonial items and not enough on some larger issues that might deserve being televised for broader community understanding and input.

Nonetheless, the Advisory Committee felt a by-law amendment to address these concerns was inappropriate. Also, it was pointed out that Town Hall would be undergoing renovations, with an eye toward better facilitation of Selectmen hearings.

RECOMMENDATION

In order to affirm a number of concerns without the use of rigid or onerous by-law changes, the Advisory Committee, by a unanimous vote of 17-0 (2 abstentions), recommends FAVORABLE ACTION on the following *resolution*:

November 15, 2005  
Special Town Meeting  
Article 21 – Supplement No. 1  
Page 2

Whereas, a portion of the Board of Selectmen's meetings take place in the smaller conference room as well as the larger hearing room;

Whereas, the portion of the Selectmen's meetings that take place in the hearing room is televised to be repeated on several occasions;

Whereas, the portion of the Selectmen's meetings that are not held in the hearing room are not televised and can only be witnessed by those present;

Whereas, some of the meetings that are not held in the hearing room are late in the afternoon when many of Brookline's citizens are still at work and are not able to be present; therefore be it:

Resolved that Town Meeting requests that the Board of Selectmen investigate and propose ways of making their weekly meetings more accessible with provisions for increased televised broadcast; therefore

Be it further resolved that until such time as there may be increased televised broadcast, the Selectmen's agenda shall be set with the intention of having controversial items on the agenda during the televised portion of the meeting.

---

ARTICLE 22

---

TWENTY-SECOND ARTICLE

To see if Town Meeting will set up a non-paid commission to run forums and to recommend methods to the Town Advisory Committee methods to oppose the Iraq War by adding to the By-Laws the following Article 3.19:

Article 3.19 – Iraqi War Effort

- I) The board of selectmen will appoint five members of a Commission without pay for an annual term ending January 2007 which will be responsible for the following tasks.
  - A) Planning Quarterly Public Meetings focused on the human, economic, and budgetary impact of the war and occupation for the citizens of Brookline Massachusetts, and the State of Massachusetts including Massachusetts's veterans and National Guard.
  - B) Draft a Plan to study how the town might act to speed our withdrawal from Iraq by making the war effort more difficult including but not limited to:
    - 1) Impeding the ability of the Federal Government to recruit students for the war in Iraq in Brookline High Schools
    - 2) Block members of the National Guard of Brookline Massachusetts from being sent to Iraq
    - 3) Prevent information about Brookline High School Students, and Readers of the Public Library from being sent to the Federal Government as a result of the Patriot Act
- II) This plan shall be presented to Brookline Town Meeting during its next session for ratification.
- III) The term of this Commission and of this Article will end January 1, 2008 unless otherwise renewed by Town Meeting.

or act on anything relative thereto.

---

In public opinion polls a majority of Americans view the invasion and occupation of Iraq as unwarranted, a mistake, or "not worth it"; Furthermore, in recent polls ~70 percent of Iraq's Shiites and ~80 percent of Iraq's Sunnis favor "near-term U.S. Withdrawal. This is the same view of the Massachusetts Congressional Delegation which favors U.S withdrawal from Iraq.

In addition, the war in Iraq was launched amidst false claims that Iraq had Weapons of Mass Destruction, which posed an imminent threat to U.S. security, and was falsely tied to the 9/11 attacks, is costing well over one billion dollars per week, has undermined America's moral and diplomatic standing in the world, and has led to widespread suffering. Furthermore, in going to war, the President did not meet the conditions imposed by Congress, failing to show why diplomatic and/or peaceful means could not protect the national security of the United States.

Moreover, the invasion of Iraq has resulted in serious and potentially long-lasting adverse consequences for the United States, such as increasing the climate for terrorism, has removed critical funds from needed domestic programs, and has contributed adversely to long term US debt. Furthermore, the invasion and occupation of Iraq has undermined the chances for a just and durable peace in Iraq and the Middle East.

There are things which can be done to promote withdrawal on a local or statewide scale. The United States Constitution provides that Congress shall have the power to "provide for calling forth the Militia to execute the Laws of the Union, to suppress insurrections and repel Invasions," which are criteria that have not been met by the war in Iraq, and the Massachusetts Constitution provides that no armies shall be maintained without the consent of the State Legislature. **Local Governments can make an enormous difference in pressure for withdrawal if the members of the local legislatures are willing to take a stand.**

---

SELECTMEN'S RECOMMENDATION

Article 22 is a petitioned article that would amend the Town By-Laws to create a non-paid commission to run forums and make recommendations on opposing the Iraq War.

The Selectmen acknowledge that any discussion about the Iraq War involves deeply held philosophical and personal beliefs. We also acknowledge that the Iraq War has resulted in profound human, economic, and budgetary impacts at all levels of society. However, we believe that the myriad issues surrounding the Iraq War are so complex that we question the ability of a volunteer citizen commission to formulate realistic proposals to resolve the conflicts and end the war. In addition, we question the need to amend Town By-Law to establish such a commission. For these reasons, we are unable to recommend the establishment of the commission called for in this article.

The Board of Selectmen recommends NO ACTION, by a vote of 2-2, taken on October 20, 2005.

**ROLL CALL VOTE:**

Favorable Action

Hoy

Daly

No Action

Sher

Merrill

-----

---

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's report on Article 22 will be included in the Supplemental Mailing, which will be received by Town Meeting Members prior to the commencement of Town Meeting.

*XXX*

---

ARTICLE 22

---

---

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

---

BACKGROUND

The petitioner is requesting that the Board of Selectmen set up a commission to plan educational forums and recommend methods to the town to oppose the Iraq War. The plan would include quarterly meetings focused on the negative impact of the war on the citizens of Brookline and the State of Massachusetts. The plan would include ways that the town could take action by limiting the information given to military recruiters at Brookline High School, shielding public library users from disclosure of information to governmental agencies, and lending support to returning authority over the National Guard to the State. These were some of the tasks that would become the purview of the Commission.

DISCUSSION

The petitioner presented petitions signed by many citizens of the town expressing support for the article and great concern and disapproval of the war in Iraq. In spite of this and the fact that many on the Advisory Committee may agree with the position that the USA should not be fighting a war in Iraq, there were many who expressed the opinion that it is not the role of the Selectmen to set up a Commission. There are organizations that are doing this right now and are better suited for this purpose. There is a Resolution that will be presented at Town Meeting and this is a better vehicle to express an opinion on the Iraq War.

RECOMMENDATION

The Advisory Committee recommends NO ACTION by a vote of 12 in favor of the motion for no action, 3 opposed, and 1 abstention.

---

**MOTION TO BE OFFERED BY THE PETITIONER**

To see if Town Meeting will:

Set up a non-paid commission to educate the public about the local and national economic and social impact of the Iraq War.

Add to the By-Laws the following Article 3.17

Article 3.17 – Iraqi War Effort

- I) The board of selectmen will appoint five non-paid members of a commission for a two-year term ending January 2008, which commission will be responsible for the following task.

The commission will plan and hold town wide quarterly public forums to educate the citizens of Brookline about the human, economic, and budgetary impact of the war in Iraq on the citizens of Brookline and the people of the state of Massachusetts including Massachusetts Iraq War veterans and the Massachusetts National Guard. Such forums may also address the War's national impact.

The commission may also suggest other ways, consistent with all state and national laws, that the town might protect its citizens from the negative consequences of the War.

- II) The term of this Commission and of this Article will end January 1, 2008 unless otherwise renewed by Town Meeting.

The town may act on anything relevant to the provisions of this Article.

### **Explanation**

In public opinion polls a majority of Americans view the invasion and occupation of Iraq as unwarranted, a mistake, or "not worth it"; Furthermore, in recent polls ~70 percent of Iraq's Shiites and ~80 percent of Iraq's Sunnis favor "near-term U.S. Withdrawal. This is the same view of the Massachusetts Congressional Delegation, which favors U.S withdrawal from Iraq.

In addition, the war in Iraq was launched amidst false claims that Iraq had Weapons of Mass Destruction, which posed an imminent threat to U.S. security, and was falsely tied to the 9/11 attacks, is costing well over one billion dollars per week, has undermined America's moral and diplomatic standing in the world, and has led to widespread suffering, Furthermore, in going to war, the President did not meet the conditions imposed by Congress, failing to show why diplomatic and/or peaceful means could not protect the national security of the United States.

Moreover, the invasion of Iraq has resulted in serious and potentially long-lasting adverse consequences for the United States, such as increasing the climate for terrorism, has removed critical funds from needed domestic programs, and has contributed adversely to long term US debt. Furthermore, the invasion and occupation of Iraq has undermined the chances for a just and durable peace in Iraq and the Middle East.

There are things which can be done to promote withdrawal on a local or statewide scale. The United States Constitution provides that Congress shall have the power to "provide

for calling forth the Militia to execute the Laws of the Union, to suppress insurrections and repel Invasions," which are criteria that have not been met by the war in Iraq, and the Massachusetts Constitution provides that no armies shall be maintained without the consent of the State Legislature. **Local Governments can make an enormous difference in pressure for withdrawal if the members of the local legislatures are willing to take a stand. .**

ARTICLE 22

**Amendment offered by David Klafter, TMM Prec. 12**

VOTED: That Town Meeting:

Set up a non-paid commission to educate the public about the local and national economic and social impact of the Iraq War.

Add to the By-Laws the following Article 3.17

Article 3.17 – Iraqi War Effort

- I) The board of selectmen will appoint ~~a non-paid commission, whose members shall~~ serve for a two-year term ending January 2008, which commission will be responsible for the following task.

Deleted: five

Deleted: members of a

The commission will plan and hold ~~a series of town-wide~~ public forums to educate the citizens of Brookline about the human, economic, and budgetary impact of the war in Iraq on the citizens of Brookline and the people of the state of Massachusetts including Massachusetts Iraq War veterans and the Massachusetts National Guard. Such forums may also address the War's national impact.

Deleted: town wide quarterly

The commission may also suggest other ways, consistent with all state and national laws, that the town might protect its citizens from the negative consequences of the War.

- II) The term of this Commission and of this Article will end January 1, 2008 unless otherwise renewed by Town Meeting.

The town may act on anything relevant to the provisions of this Article.

---

ARTICLE 23

---

TWENTY-THIRD ARTICLE

Biosafety Level 2 labs shall conform to public health standards for biosafety Level 4 as recorded in State Representative, Gloria L. Fox's Legislation House Bill 1397 "A Legislative Act to Protect the Public Health And Environment from toxic Biological Agents."

---

The need for detailed requirements for BSL2 reflects the potential for unexpected appearance of Level 3 or Level 4 agents, known to occur in BSL2 labs. Some Level 2 agents have also been identified as lethal. The regulations must incorporate the flexibility to adopt to more stringent requirements to adapt the program to changing conditions over time, including the recognition that the unexpected may occur and that areas where residential and commercial use are mixed may have special requirements.

---

PLANNING BOARD REPORT AND RECOMMENDATION

---

Warrant Article 23 was submitted by citizen petition and seeks to require that Biosafety Level 4 Public Health Standards be applied to Biosafety Level 2 Labs, which are permitted in the Zoning By-Law, under Article IV Use Regulations, §4.07 Table of Use Regulations, Use #36B, Research Laboratory. Use 36B, approved by Town Meeting on June 2, 2004, allows Biosafety Level 1 and 2 research laboratories by special permit in the GMR-2.0 zoning district **if specific safeguard requirements are met**. These include:

- compliance with all town, state and federal health and safety regulations, and
- a written report detailing hazardous materials, operations, processes, disposal and storage to be approved by an independent recognized expert, the Fire Chief, and Director of Public Health and Human Services, prior to the Board of Appeals Hearing and then annually.

Further, the Town has agreed to require four additional safety measures, the following to be paid for and regulated by the Town:

- review of preliminary laboratory specifications and design by an independent consultant with a background in architectural laboratory design/construction and safety

and the following to be paid for by the developer and/or tenant but regulated by the Town, as follows:

- retention by the Town of an independent Clerk of the Works with experience in construction of medical research laboratories to ensure that all

specifications and designs are fully implemented in conformance with the approved construction plans

- retention by the Town of a bio-safety expert to serve on the tenant’s Institutional Bio-Safety Committee, to do periodic inspections and reports, and to ensure adherence to all NIH guidelines, and
- Annual review and permitting of laboratory operation.

With the above safeguard requirements already in place, the Planning Board does not support Article 23 and believes it is unnecessary and inappropriate to require Biosafety Level 4 requirements for a lab that is only a Biosafety Level 2 lab.

Therefore, the Planning Board unanimously recommends NO ACTION on Warrant Article 23.

SELECTMEN’S RECOMMENDATION

Article 23 is a petitioned article that seeks to require that Biosafety Level 4 Public Health Standards be applied to Biosafety Level 2 Labs, which are permitted in the Zoning By-Law, under Article IV Use Regulations, §4.07 Table of Use Regulations, Use #36B, Research Laboratory. As a result of the approval of Use 36B by Town Meeting in June, 2004, Biosafety Level 1 and 2 research laboratories are allowed by special permit in the GMR-2.0 zoning district only if specific safeguard requirements are met. Since the Town already has safeguard requirements built into the Zoning By-Law, the Board sees no reason to support Article 23.

Therefore, the Board recommends NO ACTION, by a vote of 5-0 taken on October 11, 2005, on the article.

-----

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

Article 23 seeks to apply to bio-safety level 2 facilities the public health standards applicable to bio-safety level 4 laboratories. On June 2, 2004, Town Meeting approved a zoning by-law that allowed a bio-safety level 2 laboratory to be operated at 2 Brookline Place. There are four bio-safety levels for laboratories, based on the characteristics of the agent being studied, as defined by the Center for Disease Control and National Institutes of Health:

- 1 – Not known to consistently cause disease in healthy adults
- 2 – Associated with human disease hazards from ingestion, mucous membrane exposure and breaks in skin
- 3 and 4 – Very dangerous and can be transmitted through the air

Level 2 facilities deal with moderate-risk agents, whereas level 4 laboratories involve dangerous and exotic agents, which pose a high individual risk of life threatening disease.

#### DISCUSSION

The article reflects the petitioner's concern that despite the controls that will be implemented to manage the level 2 risks, there could be accidental or willful departures that would endanger occupants, responders and the general public. The offered remedy is prescribing the controls associated with level 4 risks. At the May 2005 Annual Town Meeting, the petitioner did not offer a motion on an article seeking to rescind the zoning by-law allowing for the level 2 facility.

The town's plan to control the inherent risks spans the life cycle of the project. Initially, it will be involved in the specifications and design of the facility, and in construction, with the objective that statutory requirements and best practices are followed. Then, there will be involvement in the underlying tenant lease and licensing. Among other matters, there will be requirements for compliance with National Institutes of Health standards and participation on a bio-safety committee. This will provide the town with a day-to-day awareness of the activities taking place and agents present at the biolab. The town's resources to discharge its responsibilities in the control structure need to be supplemented by incremental expertise and resources, and additional funding for such was expected from the developer or tenant as part of future negotiations.

Despite the controls, there is always the potential for an incident from willful or accidental improper performance and execution. The town's plans, however, are comprehensive of this potential. The Advisory Committee believes requiring that level 4 safety standards be applied to level 2 facilities is not appropriate and would not be cost beneficial.

#### RECOMMENDATION

The Advisory Committee unanimously (19-0 with 2 abstentions) recommends NO ACTION on Article 23.

**XXX**



ARTICLE 23

**Motion to be Offered by the Petitioner**

**A RESOLUTION TO PROTECT THE PUBLIC HEALTH AND ENVIRONMENT  
FROM TOXIC BIOLOGICAL AGENTS**

\*Note: Resolution is a modified version of Gloria Fox's proposed legislation for BSL4 for Town of Brookline BSL2

\* (BSL2 = Biosafety Level 2)

VOTED: That the Town adopt the following resolution:

1. WHEREAS, there are inadequate laws and regulations to protect laboratory workers, the community, and environment from mistakes, accidents, and intentional nefarious acts that could infect workers or allow toxic biological agents to escape the laboratory into the nearby community and environment; and
2. WHEREAS, as recently as in 2004 an infectious Tularemia, a BSL3 agent, appeared unauthorized in a BSL2 lab at Boston University; and
3. WHEREAS, it is the mission of The Town of Brookline to provide and facilitate the highest level of service to its residents, businesses and institutions through: through proactive service, programs and projects to improve our community's overall quality of life; and
4. WHEREAS, it is the Town of Brookline's published policy not to **discriminate**, but instead to foster social justice by through the creation of policies that respond to the problems of the disadvantaged; and
5. WHEREAS, it is the Town of Brookline's published mission to provide environmental safety for all Brookline residents, equally it follows that locating a BSL2 lab in a thickly settled low-income minority area is contrary to the spirit of the town's gallant mission for social justice.
6. WHEREAS, locating a BSL2 lab in an area characterized by low-income minority populations violates the Fourteenth Amendment, which prohibits states from enforcing which denies citizens equal protection under the law.

7. WHEREAS, the lowest-income, highest minority populations live in Precinct 4. Therefore, enacting a town by-law approved by the state which locates a BSL2 lab solely in Precinct 4 places low-income and minority residents there at a disproportionate risk over the population as a whole given the increased risk for exposure to biohazardous contamination in their immediate vicinity over time.

8. WHEREAS, the majority of citizens of The Town of Brookline want a fair, non-discriminatory land use policy that protects low-income and minority populations equally with the overall population and deprecates policies that strengthen zoning protections in the wealthiest areas and weaken them in the poorest areas.

9. WHEREAS, residents have been opposed to the proposed lab because of concerns over health and safety risks, and lack of public accountability and oversight.

10. WHEREAS, the public has been denied information and a real dialogue about the threats posed by the lab.

11. WHEREAS, The Town of Brookline, published mission seeks to insure insures the political, educational, social and economic equality of minority groups and citizens; equality of rights and eliminates race prejudice among the citizens of Brookline; removes all barriers of racial discrimination through the democratic processes; seeks to enact and enforce federal, state, and local laws securing civil rights; informs the public of the adverse effects of racial discrimination and seeks its elimination; educates persons as to their constitutional rights and to take all lawful action in furtherance of these principles it adopts regulations to provide stringent requirements to protect Brookline's environment from toxic biological agents to ensure the safety of all of its residents, democratically and equally.

Therefore, Town Meeting resolves that in order to maintain citizens' Fourteenth Amendment rights which protects our low-income and minority populations' by granting them equal protection under the law, the Town of Brookline adopts the following resolution.

#### PROTECTION FROM TOXIC BIOLOGICAL AGENTS

The Department of Environmental Protection and The Brookline Department of Public Health shall adopt regulations that are protective of worker and public health and safety and the environment for facilities with BSL2 laboratories. Those regulations shall include following requirements concerning operation and maintenance and permitting, and other provisions as follows:

Protection from Toxic Biological Agents, as follows:  
Section 1 Definitions

As used in this Chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

“Biosafety Level 2 (BSL2),” that level of containment as defined as BSL2 by the United States National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules, unless otherwise defined by the Department of Public Health.

“Biosafety Level 3 (BSL3),” that level of containment as defined as BSL3 by the United States National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules, unless otherwise defined by the Department of Public Health.

“Biosafety Level 4 (BSL4),” that level of containment as defined as BSL4 by the United States National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules, unless otherwise defined by the Department of Public Health.

“BSL4 facility,” a building or project that includes a BSL4 laboratory component.

“Toxic biological agent,” a biological agent that under federal or state laws, regulations, or guidance requires BSL2, BSL3, or BSL4 containment.

#### Section 2 Siting of BSL4 Facilities

(a) The Department of Environmental Protection, in cooperation with the Department of Public Health, shall adopt regulations establishing criteria for the selection of superior sites for the location of BSL4 laboratories, guidelines for their application, and procedures for the conduct of site selection. The primary consideration in adopting such regulations shall be the protection of public health, safety, and the environment. The site selection criteria and application guidelines shall ensure, at a minimum, that any superior site satisfies the following site suitability requirements:

- (1) Sites shall be capable of being characterized, modeled, and monitored;
- (2) Sites shall be located so that tectonic processes in the vicinity, such as faulting, folding, seismic activity or volcanism, will not occur which will significantly effect the ability of the site to meet any performance objectives;
- (3) Sites shall be located so that surface geologic processes in the vicinity, such as mass wasting, erosion, slumping, land sliding, or weathering will not occur which will significantly affect the ability of the site to meet any performance objectives;
- (4) Sites shall be located so that nearby activities will not adversely affect the ability of the site to meet any performance objectives adopted by the department of public health, or significantly impair any environmental monitoring program;
- (5) Sites shall be located in an area with minimal wind that would exacerbate the spread of released pathogens;
- (6) The BSL2 laboratory should not be sited next to a known fire hazards (e.g., solvent storage) or be in danger of flooding; and

- (7) Sites shall have sufficient land available to provide for a reasonable buffer around the BSL2 facility, at a minimum 150 feet in every direction. The procedures for the conduct of site selection shall include a quality assurance program designed to ensure data reliability, validity, traceability, and retrievability, as well as completeness and technical adequacy, for use in making any site selection decisions or subsequent permitting determination.
- (8) Sites shall not be located in Brookline Precincts disproportionately represented by minority or low-income populations than on the population as a whole.
- (9) Sites shall not be located in areas that would result in any greater impacts on minority or low-income populations than on the population as a whole.
- (10) Sites shall not be located in areas that disproportionately high and adverse impacts on minority or low-income populations would be expected.
- (11) Sites shall not be located in thickly settled areas.

(b) The Department of Environmental Protection, in cooperation with the Department of Public Health, shall promulgate rules and regulations for the siting of BSL4 facilities. Said rules and regulations shall establish site suitability standards and criteria and shall include, but not be limited to, the following considerations:

- (1) The location, nature and extent of any existing or potential sources of public or private drinking water supplies in relation to the site, including the recharge area of a sole source aquifer;
- (2) The relationship of the site to groundwater elevations;
- (3) (3) The proximity of wetlands, as defined in section forty of chapter one hundred and thirty-one;
- (4) (4) The proximity of surface water bodies;
- (5) The proximity of flood plains;
- (6) The nature and extent of residential areas in proximity to the site;
- (7) The availability and suitability of access roads to the site;
- (8) Whether areas adjacent to the proposed site have been previously used for solid waste disposal;
- (9) The potential for adverse impact on air quality;

- (10) The potential for creation of a nuisance from noise, windblown litter, or the proliferation of rodents, flies or other vermin;
- (11) The potential for the adverse public health and safety impacts;
- (12) The potential impact on agricultural uses;
- (13) The potential adverse impact on wildlife and on wildlife habitat;
- (14) The potential impact of increased traffic volume on roads to the site;
- (15) The extent to which existing BSL4 facilities are located within a municipality. Site assignments for new facilities are preferred in municipalities without existing facilities; and
- (16) The potential adverse impacts on communities within thirty miles of the proposed site, including the potential adverse impacts on the considerations stated within this section for which site suitability standards and criteria are established.

(c) The determination of the Departments of Environmental Protection and Public Health on an application for a BSL4 facility site assignment is not binding upon the local board of health of the municipality where the prospective site is located. The local board of health shall make an independent review and determination of whether the proposed site complies with statutory criteria.

### Section 3 Construction of BSL2 Facilities

- (a) No BSL2 facility shall be constructed or operated within the Commonwealth unless:
- (1) Construction and operation of the proposed facility has been approved by the municipality in which the facility would be sited;
  - (2) Construction and operation of the proposed facility has been approved by the Department of Environmental Protection and the Department of Public Health;
  - (3) An adequate emergency preparedness plan for the proposed facility has been developed, approved, and implemented by the Commonwealth; and
  - (4) Effective standards applicable to the proposed facility have been promulgated by the Commonwealth to protect the public against health and safety hazards attributable to BSL2 materials within the Commonwealth.

(b) At a minimum, the following shall be submitted to the Department of Public Health, Department of Environmental Protection, and municipality in which the facility will be sited for review and approval, before beginning construction of a BSL4 facility:

- (1) Small-scale layout drawing showing possible arrangement of space, conceptual designs, and schematic designs;
- (2) Topographic data, including seismic data or other pertinent information;
- (3) Existing utilities information;
- (4) Construction schedule;
- (5) Project Plan including: Description of Project, Project Implementation Strategy, Quality Assurance and Quality Surveillance Plans, Environmental Control Plan, Occupancy Plan, Community Relations Plan, and Commissioning Plans; and
- (6) Worst case release scenarios for the toxic biological agents that might be in the BSL2 laboratory.**

(c) All construction contractors engaged in BSL2 projects shall have recent and relevant experience in the planning and construction of biocontainment facilities. Records and references of such experience shall be submitted to the Department of Public Health, Department of Environmental Protection, and municipality in which the facility will be sited for review and approval.

(d) The Department of Environmental Protection, in cooperation with the Department of Public Health, shall promulgate additional regulations for the construction of BSL2 facilities that are at least as stringent and protective of the public health, safety, and the environment as applicable federal requirements and guidelines for construction of such facilities. At a minimum, the regulations shall assure that the facility is constructed to **minimize the potential that a toxic biological agent might infect a person or escape laboratory containment**. The regulations shall also require the facility to have redundant utilities and systems to prevent and minimize the possibility of a release of a toxic biological agent.

#### Section 4 Operation and Maintenance of BSL2 facilities

(a) The Department of Public Health, in cooperation with the Department of Environmental Protection, shall promulgate regulations for the operation and maintenance of BSL2 laboratories, laboratory procedures, and the handling of biological materials to be used in BSL2 laboratories that shall be at least as stringent and protective of worker and public health, safety, and the environment as applicable federal requirements and guidelines. At a minimum, the regulations shall assure that research is

performed, the laboratory is operated, and its containment systems and procedures maintained, **to minimize to the maximum extent practicable the potential that a toxic biological agent might infect a person in the laboratory or escape laboratory containment.** The regulations shall include at a minimum that:

- (1) All BSL4 experiments shall occur in a facility independent of or in an area completely isolated from other research areas;
- (2) All personnel working on BSL2 experiments must conduct them in Class III Biosafety cabinets;
- (3) Standard Microbiological Practices are adopted, documented, and implemented;
- (4) Special Practices for BSL4 laboratories are adopted, documented, and implemented;
- (5) Standards for Safety Equipment (Primary Barriers). All procedures within the facility are conducted in the Class III biological safety cabinet

(b) The facility shall have specific procedures to ensure compliance with all applicable BSL4 health and safety criteria and research standards. They shall include that the facility develop and maintain a manual of operations and maintenance that contains and complies with all applicable Federal, State, and municipal regulations and requirements and that shall be publicly accessible with reasonable safety limitations.

(c) The facility shall provide adequate training for site workers in the proper handling of BSL2 materials. Such training shall include, but not be limited to basic BSL2 principles, basic BSL2 protection; BSL2 biology; decontamination methods; personnel safety precautions and work habits; and **accident response actions and notifications.**

(d) Any accidental or intentional release of a toxic biological agent outside the containment area and any laboratory acquired infection shall be reported to the local police, fire, and health department and the Department of Public Health and Department of Environmental Protection immediately, and in no case more than twenty-four (24) hours after the release or infection.

(e) Every BSL4 facility shall have a **security plan** that shall take into account the basic security threats to the facility and that shall ensure protection against the design basis threat. The plan shall be developed in coordination with state and local officials. The basic security threats shall include but not be limited to threats equivalent to the events of September 11, 2001; a physical, cyber, biochemical, or other terrorist threat; an attack on a facility by multiple coordinated teams of a large number of individuals; assistance in an attack from several persons employed at the facility; a suicide attack; a water-based or air-based threat; the use of explosive devices of considerable size and other modern

weaponry; an attack by persons with a sophisticated knowledge of the operations of a sensitive BSL4 facility; internal terrorism and sabotage; and fire, especially a fire of long duration; and any other threat that the Department of Environmental Protection, Department of Public Health, or local and state police determine should be included as an element of the design basic threat. The security plan shall prescribe the deployment of security guards, the numbers of the members of the guards at each facility, the tactics of the guards at each facility; and the capabilities of the guards at each facility; and other protective measures, including, Coordination of security response with Federal, State, and Local authorities; restricted personnel access to each BSL2; perimeter site security, internal site security, and fire protection barriers; a security barrier of at least 150 feet; and background security checks for employees and prospective employees. If at any time the facility determines that the implementation of the requirements of the security plan for a BSL2 facility is insufficient to ensure the security of the sensitive facility against the design basis threat, the facility shall immediately submit to the Commonwealth a report that identifies the vulnerability of the facility; and recommends actions by Federal, State, or local agencies to eliminate the vulnerability. If the facility is incapable of defending itself from a security threat the Commonwealth may supply protection to the facility at cost to the facility or may require the facility to close immediately and destroy its stock of toxic biological materials.

(f) The Department of Public Health, in cooperation with the Department of Public Safety, shall promulgate regulations for security guards for facilities with BSL2 laboratories. At a minimum, those regulations shall include: qualification standards; training requirements; examination; criminal and security background checks; disqualification of individuals who present security risks; and annual proficiency review.

#### Section 5 Permit Required for Operation of BSL2 facilities

(a) For purposes of this section, "permit proceeding" includes the consideration of any application for a permit and of any proposal or request to suspend, revoke, modify or renew a permit. "Permit determination," means the decision of the director upon such application, proposal or request.

(b) No person or persons shall operate a BSL2 facility without a currently valid permit issued by the Department of Public Health. No person or persons shall operate a facility that engages in any activity that may reasonably be expected to result in or require BSL4 containment without a currently valid permit issued by the Department of Public Health.

(c) The Department of Public Health shall adopt regulations with respect to permit proceedings and determinations. Applications for permits shall be submitted within times and on forms prescribed by the director and shall contain such information as he may require.

(d) Public notice of every permit proceeding shall be given in the manner provided by section three of chapter thirty A. The Department of Public Health shall circulate information received concerning the matter pending and hold a public hearing because such hearing is in the public interest. The public hearing shall held at least thirty days after giving notice thereof.

(e) The Department of Public Health shall grant a permit only if it determines that the facility will not be a threat to the public health, safety, and the environment and that the facility will comply with the requirements of federal and state laws and regulations for BSL2 facilities.

(f) Every permit shall specify limitations on use and possession of biological agents that require BSL4 containment, interim and final deadlines where appropriate for compliance, the term for which the permit is issued, which may not be in excess of five years, and such requirements of proper operation and maintenance, monitoring, reporting, and inspection as the Department of Public Health may prescribe. Permits may specify additional requirements that the Department of Public Health deems necessary to safeguard the community from dangers posed by the BSL2 facility.

(?)

The permit must specify when, and under what circumstances, Recombinant DNA (rDNA) in the BSL2 is authorized. A municipality may adopt similar and more stringent rDNA requirements and restrictions. Effective rodent and insect control programs must be in place in facilities where rDNA use and research takes place. The permit holder shall report to the Department of Public Health and Department of Environmental Protection within thirty days of any significant problems in complying with and any violations of the permit and of any significant accidents.

(g) The Department of Public Health may, upon request of a permittee, revise a schedule of compliance in an issued permit if the Department of Public Health determines that good and valid cause, for which the permittee is not at fault, exists for such revision, and in such cases the provisions of this paragraph for public notice and hearing shall not apply. If the Department of Public Health has proposed to suspend or revoke a permit, in whole or in part, and if the permittee requests an adjudicatory hearing on the proposed determination, the requested hearing shall be held as part of the public hearing to be afforded under this paragraph.

(h) The renewal of permits after their expiration, which is not to exceed five years, must be submitted in a timely manner.

(i) A facility that continues operation with an expired permit or without a permit shall be penalized by the Department of Public Health for every day it operates without a permit and shall be shut down until a new permit is issued.

(j) A permit for a BSL2 facility shall require compliance with federal and state requirements and standards and other safeguards that the Department of Public Health may require to prevent a release of a toxic biological agent.

(k) A permit for a BSL2 facility shall require the facility to comply with all provisions of this chapter.

(l) A permit granted under this section shall require the permittee to report periodically to the Department of Public Health concerning each experiment undertaken at or proposed for the BSL2 facility. The BSL2 facility shall have its permit suspended or revoked if it undertakes any work requiring BSL2 containment that it does not report to the Department of Public Health. **If the BSL2 facility is not allowed to disclose to the Department of Public Health the nature of any of its work by the federal agency that funds it, the facility may not accept the funding or conduct the work.** Nothing in this paragraph shall be construed as superseding the powers of The Town of Brookline to enact and enforce restrictions on BSL2 and other biological experimentation consistent with the provisions of this section and any regulations issued hereunder.

(m) The Department of Public Health may propose and determine to modify, suspend, or revoke any outstanding permit, in whole or in part, for cause, including, but not limited to, violation of any permit term, obtaining a permit by misrepresentation or failure to disclose fully all relevant facts or any change in or discovery of conditions that calls for reduction or discontinuance of the authorized discharge. The Department of Public Health may also modify a permit at the request of the permittee upon a showing, satisfactory to the Department of Public Health, that the requested modification is appropriate in view of circumstances for which the permittee is not at fault.

## **Section 6 Packaging and Transportation of BSL2 Biological Agents**

- (a) No person or persons may transport BSL2 toxic biological agents within the Commonwealth without a **license** allowing such transport. A general license is hereby issued to any common or contract carrier to receive, possess, transport, and store BSL2 toxic biological agents in the regular course of their carriage for others or storage incident thereto, provided the transportation and storage is in accordance with applicable federal and state requirements.
- (b) The Department of Public Health, in cooperation with the Department of Environmental Protection, shall promulgate regulations for the packaging, storage, and transport of toxic biological agents within the Commonwealth. The regulations shall be at least as stringent and protective of the public health, safety, and environment as federal standards. At a minimum, the regulations shall ensure that each package

meets stringent packaging requirements, is appropriately labeled and stored, and is tracked from sender to receiver; persons who transport BSL2 toxic biological agents receive appropriate training; persons who transport BSL2 toxic biological agents are not known threats to the Commonwealth; procedures are in place to minimize terrorist access to toxic biological agents during transport; and notification of an incident during transport shall be made to the Department of Public Health and Department of Environmental Protection immediately and in no event later than 24 hours after the incident.

#### Section 7 Emergencies

The Department of Public Health, in cooperation with the Department of Environmental Protection, shall establish regulations for emergency preparedness plans for BSL2 facilities that will require the facility to consult with Local, State, and Federal officials to develop an emergency preparedness plan to respond to security threats and an emergency response plan to respond to actual or potential releases and infections. No BSL2 facility without an emergency preparedness plan shall receive a permit. All emergency response plans shall be approved by the Department of Public Health and included in each facility's operation and maintenance manual.

#### Section 8 Insurance

(a) Each BSL2 facility shall establish a contingent liability account and an institutional control account. The Institutional Biosafety Committee shall determine annually the amount that shall be deposited within each account subject to the approval of the Department of Public Health; provided, however, that after such deposits, no amounts so deposited may be transferred between such accounts. The contingent liability account shall be used to pay compensation for injuries to persons, land, or property resulting from the possession and use of BSL2 materials. The institutional control account shall be used to pay for institutional control. The account shall be used by the facility to purchase insurance coverage or otherwise to ensure the availability of funds to meet liability claims during the institutional control period; provided, however, that no portion of the monies held in the institutional control account may be used to satisfy judgments or settlements for any other purpose other than institutional control of a facility.

(b) The Department of Public Health shall conduct an annual review and analysis of the adequacy of available funds and insurance protection against personal injury and property damage, including third-party liability insurance attributable to any BSL2 facility and may promulgate regulations setting forth liability insurance requirements for BSL2 facilities.

#### Section 9 Penalties

(a) A person who violates this chapter or regulations promulgated thereunder is subject to judicially imposed criminal and civil penalties as well as civil administrative penalties

imposed by the Department of Environmental Protection or Department of Public Health. Each day that a violation occurs or continues constitutes a separate violation.

(b) A violation may be punished by the imposition of a penalty that does not exceed \$25,000 for each day of violation. A violation may be punished by the administrative imposition of a penalty of no less than \$100 and not more than \$25,000 for each day of violation. A violation may be punished by a fine of not more than \$25,000, or by imprisonment for not more than two years in a house of correction. Punishment imposed under the chapter is in addition to any other penalty prescribed by law.

(c) A facility's BSL2 permit may be permanently or temporarily revoked for any violation of this chapter.

#### Chapter 21 L: Section 10 Institutional Biosafety Committee

(a) Each BSL2 facility shall have an Institutional Biosafety Committee (IBC). At least one member of the IBC **shall be a resident living in the Brookline Precinct in which the facility is located** and shall be an outside member who is independent of the facility, as approved by the Department of Public Health. The IBC shall comply with federal requirements for an IBC.

(b) The Department of Public Health shall establish further regulations for the composition, operation, and requirements of the IBC. Those regulations shall require that the IBC **keep public minutes of its meetings** and file an annual public report of its operations and decisions with the Department of Public Health and with the municipality in which the BSL4 facility is located.

#### Section 11 Community Oversight Board

(a) Each BSL2 facility shall have a community oversight board comprised of at least three and no more than five persons appointed by the Director of Public Health; three persons, who live in the Precinct where the BSL2 facility is located; appointed by the neighborhood association where the facility is located and one person appointed by the facility. The community oversight board shall have the authority to approve in advance all research to be conducted in the BSL2 component, receive reports on ongoing research in the BSL2 component, inspect the laboratory at least annually, and stop BSL2 research in the event of a potential problem subject to the review of the Department of Public Health. The BSL2 facility shall provide the community oversight board with adequate funding to hire an independent expert to advise and assist it in its work.

(b) The Department of Public Health shall promulgate regulations concerning the membership on and authority and responsibility of community oversight boards. Those regulations shall require that the community oversight board to keep public minutes of its meetings and file an annual public report of its operations and decisions with the Department of Public Health and with the municipality in which the BSL2 facility is located.

#### Section 12: Inspections

To assure compliance with this chapter, and to protect the public health, safety, and the environment, the Department of Public Health, Department of Environmental Protection, and Department of Public Safety are authorized to inspect the BSL2 laboratory, and review and have a copy of its records, during normal working hours and at other times as required by exigent circumstances.

#### Section 13: Authority Granted for Additional Regulation

The Town of Brookline enact laws and regulations in addition to those established by this chapter to regulate, limit, or prohibit the BSL2 facilities located within their jurisdiction and to regulate, limit, or prohibit rDNA usage in biological laboratories or any components of laboratories.

#### Section 14: Adoption of Initial Regulations

The Town of Brookline resolves to adopt these regulations within 180 days after the successful passage of this resolution. Construction and operation of any BSL4 facility shall not begin until the regulations required by this act have taken effect.

#### The Legislation

The legislation creates a comprehensive regulatory public health and safety program for high containment biological laboratories, based on existing state laws for hazardous and polluting facilities and federal guidance.

Key points of the resolution are:

- The Department of Environmental Protection (DEP) and The Town of Brookline Department of Public Health (DPH) adopt BSL2 lab regulations for location, construction, operation, maintenance, security, emergencies, permits, reporting, insurance, and transport.
- Laboratory inspections to ensure that the laboratories are operated to protect the public health and the environment.
- Penalties of up to \$25,000 per violation per day for violations of the law and regulations.
- The Town of Brookline may enact by-laws and regulations in addition to the state law.
- A community oversight board for each BSL2 laboratory to help ensure transparency of operations and research.
- A moratorium on construction and operation of BSL2 labs until regulations are adopted.
- DEP and DPH also adopt regulations for lower level high containment labs (BSL2 and 3) to protect worker and public health and safety and the environment.

- The legislation does not prohibit BSL2 laboratories or limit the research done.

The legislation will close the many gaps that now exist. The detailed requirements for BSL2 labs reflect the increased risk of inadvertent appearance of a BSL3 agent in a BSL2 lab. Requiring DPH and DEP to adopt regulations provides the necessary flexibility to adapt the program to changing conditions over time. Allowing municipalities to adopt more stringent requirements recognizes that Boston and Cambridge regulate rDNA research, including prohibiting rDNA in BSL4, and that municipalities may have special requirements and need flexibility.

ARTICLE 24TWENTY-FOURTH ARTICLE

To see if the Town will vote to establish a CPA Study Committee for the general purposes of studying the potential financial and other consequences of adopting the Massachusetts Community Preservation Act in Brookline and making a recommendation to the Brookline Town Meeting Members with respect thereto; to determine whether the CPA Study Committee will be composed of the following individuals and co-chaired by the member of the Board of Selectmen and the member of the School Committee:

1. one member of the Board of Selectmen, to be appointed by the Chair of said Board;
2. five members selected from among the members of the Conservation Commission, Housing Advisory Board, Parks and Recreation Commission, Planning Board, Preservation Commission, and Economic Development Advisory Board, to be appointed by the Board of Selectmen;
3. one member of the School Committee, to be appointed by the Chair of said Committee;
4. one member of the Housing Authority, to be appointed by the Chair of said Authority;
5. one member of the Advisory Committee, to be appointed by the Chair of said Committee;
6. four residents of Brookline who shall have expertise in finance, to be appointed by the Town Moderator;

to determine whether the appointments of the members to the CPA Study Committee will be made so that the Committee shall hold its first meeting not later than January 10, 2006; to determine whether the Town Administrator's office will provide technical support to the CPA Study Committee; to determine whether the CPA Study Committee will be charged with studying the following specific questions or issues with respect to the Massachusetts Community Preservation Act:

- (a) the administration and use of the CPA in neighboring or comparable municipalities that have adopted it;
- (b) alternatives to CPA for financing the affordable housing, open space, recreation and historic preservation objectives of the Town;
- (c) the ways in which the CPA could be used to further Town objectives identified in the Comprehensive Plan or other plans of the Town;
- (d) opportunities to use CPA revenues to fund projects that would otherwise be

funded with general revenues of the Town and thereby “free up” those general revenues for other purposes including potentially reducing the tax rate;

(e) projects eligible for funding with CPA revenues, including an inventory of school/town buildings that constitute “historic resources” under the CPA;

(f) alternatives for the administration of the CPA, including the composition of the Community Preservation Committee that would be required under the CPA;

(g) projected surcharge tax revenues if the Town adopted the CPA at different surcharge rates and with or without different exemptions from the surcharge, and the projected impacts on taxpayers;

(h) projected state matching fund revenues that would be available to the Town if the Town adopted the CPA at different surcharge rates and with or without different exemptions from the surcharge; and

(i) the implications of adopting the CPA for the Town’s established financial policies;

to determine whether the CPA Study Committee will be charged with reporting its findings regarding the Massachusetts Community Preservation Act and with making a recommendation as to whether the Town should adopt the Act to the Brookline Town Meeting Members by not later than the 2006 Annual Town Meeting; or to take any other action relative thereto.

---

For the following reasons, the proponents of the attached warrant article believe that the Town should establish a committee representative of a broad range of Town interests that is knowledgeable about Town affairs and finances to engage in a thorough and objective study of the potential financial and other consequences of adopting the CPA in Brookline:

- There are significant state funds available to the Town if it adopts the CPA. Although Brookline property owners have contributed approximately \$2,000,000 to the state CPA trust fund through registry of deeds filing fees, the Town currently receives none of those funds back from the state. It would be fiscally irresponsible for the Town to forego this significant revenue source without having a clear understanding of the amount of state funds that would be available to the Town and without thoroughly and objectively analyzing the potential financial and other consequences of adopting the CPA.
- As identified in the Town’s Comprehensive Plan, there are significant community preservation needs in Brookline. The CPA presents an option for financing needed neighborhood protection projects, and the Town should consequently evaluate whether it is an option that makes sense for the Town.
- A number of capital projects the Town intends to fund from existing tax and

other revenues are eligible for funding under the CPA. The Town should consequently determine which planned projects would be eligible for CPA funding and the extent to which the use of CPA funds for such projects could “free-up” other Town revenues for Town or school operating budget needs or otherwise impact Town and school finances.

- There are many options available to the Town for implementing and administering the CPA. The Town should consequently have a clear understanding of the potential revenues and impacts on taxpayers under the various options and of the different means for administering the use of the funds.

Since the Town last considered a proposal to adopt the CPA in 2002, a lot has changed. One hundred cities and towns have adopted the CPA, there have been 4 years of experience with the CPA in other communities, the state matching money has remained constant and the CPA has been amended to expand the scope of projects that are eligible for CPA funding. The Town should consequently evaluate the CPA in light of the experience in other communities and these other developments.

---

#### SELECTMEN’S RECOMMENDATION

Article 24 is a petitioned article would establish a Community Preservation Act (CPA) Study Committee. The CPA was passed by the State in 2000 for the purposes of supporting open space, historic resources, and affordable housing via a dedicated funding source. The dedicated funding source is a surcharge of up to 3% on property tax bills matched, to some extent, with state funds.

Town Meeting debated the CPA in 2002 when a warrant article was filed for the Annual Town Meeting in May. At that time, Town Meeting determined that the CPA was not in the best interests of the Town. Since then, much has changed, and the CPA should be reviewed again. In this period of budgetary stress, the potential of a dollar-for-dollar match by the State on Town money should be considered.

In an effort to stress the importance of such a study, the Board, at its October 20 meeting, voted to establish a Selectmen’s CPA Study Committee, the composition of which is identical to the petitioner’s. The 13 member committee would consist of the following:

- Board of Selectmen
- School Committee
- Housing Authority
- Advisory Committee
- 5 Members from among the Conservation Commission, HAB, Parks and Recreation Commission, Planning Board, Preservation Commission, and EDAB
- 4 residents with a finance background

The petitioner informed the Board that the supporters of Article 24 are pleased to have a Selectmen's Committee study the matter, and, therefore, are in agreement with the vote of the Advisory Committee, by a vote of 5 – 0 taken on November 1, 2005.

-----

### ADVISORY COMMITTEE'S RECOMMENDATION

#### BACKGROUND

Article 24 revisits the subject of the Massachusetts Community Preservation Act (M.G.L. c. 44B, effective December, 2000) which came before the May, 2002 Annual Town Meeting for acceptance and was defeated (Article 23). The previous article requested that Town Meeting approve a referendum question on the adoption of the Community Preservation Act (CPA) to be considered by voters in November, 2002. The adoption of the CPA would have resulted, effective in 2004, in a surcharge on real property as a percentage of the annual real estate tax levy of 2% (the statute allows a maximum of up to 3%) against such property for the purposes of creating affordable housing opportunities, creation and preservation of open space, recreational use, historic resources and the rehabilitation and restoration of any of the foregoing that might be acquired or created. The petitioner's proposal also included a provision to offset the general real property taxes by the amount of the CPA surcharge. The CPA's adoption would have allocated a required minimum of 10% of the resulting funds for each of the categories with the remaining 70% to be allocated to one or more of the permitted uses by an independent 5 to 9 member CPA Committee established by a by-law approved by Town Meeting. The CPA also provided that the funds could not be utilized to replace operating funds and that the Town Meeting would also have to approve annually the recommendations of the Committee. The proposed article also provided that the Town Meeting could determine the acceptance of exemptions from such surcharge as permitted under the statute, e.g., exemptions for property owned by low-income and low-moderate senior households. The creation of the Community Preservation Fund (CPF) would have enabled the Town to annually seek State grant funds resulting from the \$20.00 surcharge on filings at the Registry of Deeds, which, in 2002, was estimated to generate approximately \$26.4 million annually. The proposed article also provided that if within the first 5 years, State matching funds dropped below 50% of the local surcharge funds raised, Town Meeting and the voters could reduce the surcharge to an infinitesimal percentage that would effectively revoke the CPA. Otherwise, once adopted, the surcharge can be revoked only in the same manner by which it was approved but only after 5 years. Anytime after approval, Town Meeting and the voters can amend the surcharge and the exemptions.

The Selectmen recommended no action by a vote of 5-0 based primarily upon the fear that the independent CPA Committee could contravene the annual recommendations for appropriations, potentially affecting the annual budget and/or the tax levy. The Selectmen expressed the view at the time that the matter would be reviewed by the new Comprehensive Plan Committee which would evaluate the virtues of the CPA's application to Brookline's needs and priorities. The Advisory Committee by a substantial majority recommended no action stating, amongst other reasons, that the process of a

small committee controlling a substantial portion of the budget without true accountability had an “extra-governmental feeling to it that was seriously counter to our ways of public process and review which have been fairly successful in the budgeting process in Brookline.”

### DISCUSSION

Article 24 is a request for Town Meeting to appoint a CPA Study Committee to review and evaluate the experiences of the 100 municipalities that have adopted the CPA since it became effective in December, 2000. In the intervening years, the petitioners point out that the state matching grants have been constant and that the legislature has amended the CPA to expand the types of projects that are eligible for CPA funding. The petitioners believe that the time is appropriate now for Brookline to study the effects of the CPA on those communities which have adopted the CPA. The Advisory Committee agrees that this study will be beneficial.

Some of Brookline’s neighboring communities, such as Cambridge and Newton, adopted the CPA just prior to the Town’s consideration of the matter in 2002 which limited the amount of information to be gleaned from their experience. Newton adopted a 1% CPA surcharge and Cambridge adopted a 3% surcharge. Cambridge actually reduced their tax levy by the same amount as their surcharge so that taxpayers received a tax bill equal to what they would have been paying if the CPA had not been adopted. Apparently, this did not affect their operating budget since the funds that were transferred to their Community Preservation Fund were funds that met the criteria for CPA projects. In fact, the proponents of the previous CPA article in 2002 used the identical approach in their proposal although it may have been contrary to the law which prohibits CPA funds from replacing operating funds. The DOR, which administers the program, stated that it would not withhold state matching funds from Cambridge although it expressed their opinion that such an approach was not within the intent or the spirit of the CPA. These and other experiences, both good and bad, of the 100 plus municipalities, which have adopted the CPA, will provide invaluable information to the Study Committee. This information was not available to the Town Meeting in 2002.

The initial discussion in 2002 by the Selectmen and the Advisory Committee of the advantages and disadvantages of the CPA raised numerous valid questions for which there were no definitive answers at the time. The DOR itself was uncertain as to interpretation of several of the provisions such as whether or not the Town could use CPA funds to preserve and rehabilitate existing historic buildings already owned by the Town or whether CPA funds could be used for CIP projects that were probably maintenance rather than preservation. These and other questions made opponents of the CPA leery of its uncertain effects on the Town and contributed to the Town Meeting’s hesitancy to jump into the water. The petitioners want to know whether these and other issues have been clarified.

The proponents of a CPA Study Committee point out that the revenue from the Registry of Deeds surcharge fees contributed to the State CPA Trust Fund from sales of Brookline properties is approximately \$2 million, none of which has been returned to Brookline but has been distributed to communities which have adopted the CPA. As more communities adopt the CPA, the question is raised as to what amount of state funds

will be available for Brookline and its resulting effect on CPA eligible projects. The proponents assert that a number of CIP projects that are, or will be, funded under the Town's budget are eligible for CPA funding.

Article 24 proposes a 13 member Committee comprised of a broad representation of the Town and co-chaired by a member of the Board of Selectmen and a member of the School Committee. In addition to the co-chairs, the proposed Committee would consist of 11 other members including five representatives appointed by the Selectmen from the following six Commissions/Boards: Conservation Commission, Housing Advisory Board, Parks and Recreation Commission, Planning Board, Preservation Commission and the Economic Development Advisory Board; one representative each, appointed by their respective Chairs, from the Brookline Housing Authority and the Advisory Committee; and four residents with expertise in finance, appointed by the Moderator. Article 24 also proposes that the CPA Study Committee, upon the final determination and appointment of its members, would hold its first meeting no later than January 10, 2006.

The Advisory Committee, prior to its vote, were informed that the Selectmen had voted 4-0 to establish a Selectmen's CPA Study Committee consisting of the membership as proposed under Article 24 and also that the petitioners did not intend to move Article 24 at Town Meeting.

RECOMMENDATION

The Advisory Committee by a vote of 11-7-1 recommends FAVORABLE ACTION on the following vote:

VOTED: To refer the subject matter of Article 24 to the Selectmen's CPA Study Committee.

**XXX**

---

ARTICLE 25

---

TWENTY-FIFTH ARTICLE

To see if the Town will accept the provisions of General Laws, Chapter 59, Section 5, Clause 5B in order to increase the property tax exemption for the real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of war which provides in relevant part as follows:

The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of seven hundred thousand dollars, if used and occupied by such association, and if the net income from said property is used for charitable purposes; provided, however, that such estate shall not be exempt for any year in which such association or the trustees holding for the benefit of such association willfully omit to file with the assessors the list and statement required by section twenty-nine.

or act on anything relative thereto.

---

Chapter 59, Section 5, Clause 5B of Massachusetts General Laws allows for municipalities to increase the property tax exemption for the real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of war from \$200,000 to \$700,000.

---



---

SELECTMEN'S RECOMMENDATION

Article 25 calls for the acceptance of MGL Chapter 59, Section 5, Clause 5B, which would increase the property tax exemption, from \$200,000 to \$700,000, for real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, if used and occupied by the association and if the net income from the property is used for charitable purposes. In Brookline, only one property falls within these guidelines: the VFW Post 864/American Legion Post 11 located at 384 Washington Street.

Due to an oversight by the Assessor's Office, this property has been fully-exempted. Now that the oversight has been realized, the property, currently assessed at \$629,000, would be taxed at \$429,000 (\$629,000 - \$200,000 exemption), for a tax bill of approximately \$6,800. If the community desires to keep this type of property tax exempt, something this Board strongly recommends, the increased exemption (to \$700,000) must be adopted.

Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5 – 0 taken on September 20, 2005, on the following vote:

VOTED: That the Town accept the provisions of General Laws, Chapter 59, Section 5, Clause 5B.

-----

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The town's Assessing Department recently became aware of an oversight with regard to the VFW Post 864/American Legion Post 11 at 384 Washington Street, which for years has been considered fully exempt. G.L. c. 59, s. 5 only allows an automatic \$200,000 exemption in valuation for veterans' organizations. However, a city or town can elect to exempt up to \$700,000 in valuation. The purpose of this article would be to opt-in to the full \$700,000 exemption for veterans' organizations.

DISCUSSION

If Town Meeting does not pass this article, the Assessor will be required to collect on the valuation of the property less the \$200,000 exemption. Since the property is assessed at \$629,000 for FY2006, the Posts would be required to pay the tax on the excess valuation. Because the property has not been assessed a property tax in the past, there is no loss in revenue to the town in increasing this exemption. In addition, given the mission of veterans' organizations to assist and remember current and fallen veterans, the exemption is consistent with other exemptions for charitable organizations.

RECOMMENDATION

The Advisory Committee unanimously (19-0 with 2 abstentions) recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

**XXX**

ARTICLE 26

TWENTY-SIXTH ARTICLE

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

**An Act Amending Ch. 317 of the Acts of 1974 Relative To The Powers Of The  
Transportation Board Of The Town Of Brookline.**

Be It Enacted, By The Senate And House Of Representatives In General Court Assembled And By The Authority Of The Same As Follows:

Section 4 of Ch. 317 of the Acts of 1974 is hereby amended by amending its third paragraph to read as follows (new-amended language shown EITHER underlined or in UPPER CASE):

“No such adoption, alteration or repeal of a rule or regulation shall take effect, except with respect to such special rules or regulations as declared by the board to be urgently required for public safety or welfare or such as are of a temporary nature and are to be effective for a period of not more than 60 days, until 30 days have expired following BOTH publication in a newspaper published or distributed in the town and action on any appeal petition as herein provided.

and by amending its fourth paragraph to read as follows:

“Upon the filing of a petition with the Board by not less than 20 registered voters of the town seeking the adoption, alteration or repeal of any rule or regulation under this section, the Board shall hold an evening public hearing thereon within 30 days after the filing thereof. Petition forms for this purpose shall be available in the office of the Board.

“Upon the filing of an Appeal petition with the Board of Selectmen by not less than 20 registered voters of the town within 21 days of either the adoption, alteration or repeal of any rule or regulation under this section or the action (which herein includes “inaction”) of the Board pursuant to such a citizen petition, the Board of Selectmen shall hold an evening public hearing thereon within THIRTY<sup>1</sup> days after the filing thereof. Petition forms for this purpose shall be available in the office of the Board of Selectmen. A majority vote of the Board of Selectmen shall be required to overturn an action of the Transportation Board.

“If said Board action is not overturned by the Selectmen, within 21 days of the conclusion of the Selectmen’s hearing, not less than 30<sup>2</sup> registered voters of the town may file with the Town Clerk an appeal of said action of the Board. Said appeal shall contain a warrant article which shall be included in the warrant for the next town meeting, which by a two-thirds vote may determine that there is either a general policy issue or a serious safety issue, and may overturn the Board action.

For a general policy issue, town meeting may also, and also by a two-thirds vote, pass a by-law<sup>3</sup> modifying the Board action.”

Section 3. This Act shall take effect upon its passage.

<sup>1</sup> Current statute gives the Selectmen 21 days, which seemed tight this past year.

<sup>2</sup> ‘00 was 21 signatures for a TM appeal; but I’ve raised the bar a little.

<sup>3</sup> Town Counsel agrees that TM should, in passing an actual rule, do a BY-LAW, not a REGULATION.

or act on anything relative thereto.

---

Ironically, while as of two days ago 1,870 American soldiers, and many more Iraqis, have recently died ostensibly to spread “democracy” to the Mid-East, and while Brookline celebrates the 300<sup>th</sup> anniversary of its cherished independence and “town” status, including its Town Meeting government, transportation matters here are immune from our legislative control. The Home Rule Bill of 1974, when adopted by Town Meeting in 1973, offered no explanation why this department is the apparently sole exception to policy-making by the people’s elected legislature. The 1973 Combined Report explanations by the Selectmen and Advisory Committee described merely a major reorganization of the former Department and “Traffic Advisory Board,” occasioned by the departure of a department head; and they made no mention of excluding Town Meeting from any authority. Indeed the Selectmen stated:

“The Town as a body politic is severely limited in its ability to formulate and implement [transportation] policy at a time of rapidly increasing citizen interest and concern with the impact of the automobile on the quality of life in Brookline. ... While many traffic issues are technical ones to be dealt with by a professional, many others involve priority ordering and convenience balancing which the citizens themselves should influence. ...[T]he establishment of a citizen Transportation Board with continuing responsibility and authority should markedly improve communication between the department and residents of the community.”

Events in the last decade have been inconsistent with the foregoing axiomatic statement; and have shown that the less-than-intentional grant of unique autonomy -- actually “autocracy” -- on transportation matters was not only ill-considered but also ill-advised. In 2000 a similar warrant article was passed by Town Meeting, but defeated at the statehouse because of opposition by the selectmen, who stated, in the 2000 Combined Report, in support of the status quo, that, inter alia:

*1. Town Meeting... does not have the capacity nor the time to adequately hear the debate on issues that tend to be executive or administrative in nature ..., [c]omplex issues ... . 2. ... Since the Selectmen are elected at large, we are responsible for reviewing the effect of decisions on the Town as a whole and are accountable to the electorate every three years. The system works and should not be changed. 3. The resolution of decisions by the Transportation Board would be severely delayed,*

*creating continued animosity within neighborhoods. Furthermore, the delay could impact budgeting cycles dependent on the nature of the decision. 4. ... Significant issues that impact our residential and commercial areas and affect our citizens' daily lives are guided jointly by the Board of Selectmen and the Transportation Board... 5. Lastly, this type of petition establishes a precedent to question and undermine the hard work of all of our Boards and Commissions. ...*

In response, petitioners offer one word: DEMOCRACY; or three words, SEPARATION OF POWERS. While both may sometimes be messy, at least the result is always the People's decision. Brookline's cherished Town Meeting decides many very "complex" policy issues, from zoning to noise control to biosafety level 2 use to living wage by-laws to dogs-in-parks, ad infinitum, seemingly for every other aspect of local "policy." Yet, for some still-mysterious reason, transportation policy is deemed uniquely beyond the capacity of our TMM's -- sort of like the *Best and Brightest* "experts" who engineered the Vietnam War.

This warrant article is a "moderate" attempt -- on a very limited basis and with procedural hurdles (30 signatures, and only after going through the full and tortuous earlier process, 2/3 vote) -- to give Town Meeting a say on issues deemed "either a general policy issue or a serious safety issue." The Advisory Committee said in 2000,

"the Transportation Board reported that over the last six years only two decisions had been appealed to the Board of Selectmen ... . The Board argued that this lack of appeals demonstrated that the existing system was working well and that another layer of appeal to Town Meeting was unnecessary and potentially cumbersome. Several persons, on and off the Board, argued that the system would quickly break down if Transportation Board decisions were routinely appealed to Town Meeting."

If anything, the record of two appeals from 1994-2000, and now apparently three in 11 years, seems to conclusively disprove any likelihood of decisions "routinely appealed to Town Meeting."

The petitioners emphasize our sense of an overwhelming consensus -- which we share -- to retain the OVERNIGHT BAN, widely-viewed as important to our quality of life; and this article should not be viewed as any threat to that. The prospect of a 2/3 vote to overturn that -- or even of enough people to go through the monumentally tortuous earlier process and then gather 30 signatures for a warrant article -- seems less than negligible. Ironically, however, if we had a future Transportation Board that wanted to repeal the overnight ban, it could simply do so -- with no say from or by Town Meeting.

Petitioners share zealous confidence in town meeting government, republican (small "r") democracy at its best; and that it will not run amuck with a stream of ill-advised 2/3 votes. The occasion of our 300<sup>th</sup> anniversary is a good time to end our 31-year experiment with "regulation without representation," an idea whose time never thoughtfully came, and now should go.

---

---

### SELECTMEN'S RECOMMENDATION

It is a widespread practice in municipal government for boards and commissions to carry out the regulatory affairs of the community outside the purview of the local legislative body – either the town meeting or city council. The organizational structure in the Town of Brookline is no different in this regard than the pattern common to cities and towns across the Commonwealth.

Either by State statute and/or local by-law, several of our Boards and Commissions make decisions to apply rules and regulations, which are not appealable to Town Meeting. The Board of Appeals, the Preservation Commission, the Park and Recreation Commission, the Conservation Commission, the Planning Board, and of course the Transportation Board all function without recourse of appeal to Town Meeting. Through by-laws or other means, Town Meeting provides a framework for the entities to carry out their responsibilities.

One feature of the Transportation Board that differentiates it from other Boards and Commissions is that its decisions can be appealed to the Board of Selectmen. This arrangement is a vestige of the particular history of the Transportation Board. Prior to the establishment of the Transportation Board by Chapter 317 of the Acts of 1974, the Board of Selectmen under G.L.c. 40 s. 22 was the traffic regulation authority of the Town. Chapter 317 was the means by which the statutory authority to regulate traffic/parking was delegated from the Selectmen to the Transportation Board. Contrary to the observation of the petitioner, there is nothing at all “mysterious” about this statutory scheme. G.L.c. 40 s. 22 specifies that the Board of Selectmen “make rules and order for the regulation of .... vehicles”.

Over the past three decades, the trend in local government has been to delegate regulatory responsibilities to appointed citizen bodies specializing in the particular subject matter, as the realities for regulating local requirements have become more complex and fast-moving. It has not been the trend to revert these functions back to the local legislative body. Specialists in home rule have seen the wisdom in discouraging town meetings and city councils from getting into the business of deciding on stop signs, one-way streets, and taxi inspections.

Further, there has been virtually no discussion about the mechanics of the appeal process proposed under Article 26. Discussion to date has revolved almost exclusively around concepts like “checks and balances”, democracy” and also around the single-issue underlying Article 26 – two hour parking. However, Article 26 presents a number of procedural questions that have yet to be addressed.

- Protracted Appeal Timeline – Presumably Article 26 does not seek to displace the existing timing requirements for filing Articles by the closing of a Town Meeting Warrant. If the timing requirement under existing By-Laws remains in effect, then up to a year could elapse in some instances before Town Meeting could act on an appeal. For example, a Transportation Board decision after June could not likely be taken up by Town Meeting until the Annual Town Meeting of the

following year. This is hardly consistent with the time frames provided in Chapter 317 and intimated in Article 26 itself.

- Unwarranted Procedural Complexity – Having an appeal take the form of a warrant article involves not only an ultimate decision by Town Meeting, but also re-review of the Article by the Board of Selectmen and review by the Advisory Committee. Because Article 26 does not place any limitations on the types of Transportation Board decisions that can be taken to Town Meeting, stop signs, for example, which can generate intense and extensive local interest, if appealed as warrant articles, could consume considerable time and energy by Town leadership, far beyond what is devoted to such matters in other communities.
- Unintended Consequences – Special Town meetings must be scheduled upon the petition of 200 registered voters. A localized traffic/parking issue, a taxi regulation, or any number of other Transportation Board items can easily involve the interest of 200 citizens. Is it really in the best interest of the Town that a matter like the installation of stop signs could invoke the holding of a Special Town Meeting? Much more study of the implications of introducing Town Meeting into the chain of appeal of Transportation Board discussions should be conducted if there is to be serious consideration given to moving in this direction.

There are ample opportunities for Town Meeting to express its will on transportation matters without necessarily having to introduce itself into the appeal process. Article 27 alone is evidence of the other possible approaches. Amendments to Chapter 317 should only be adopted after a thorough assessment of the need and possible results of making change. A change involving such complex detail and change in the structure of government should not be made because of displeasure with a single issue such as daytime parking for residents. But even more fundamentally, a majority of the Board of Selectmen contends that the historic statutory scheme for regulating town affairs should not be reversed and therefore recommend NO ACTION by a vote of 4-1 taken on October 21, 2005, on the article.

**ROLL CALL VOTE:**

Favorable Action

Allen  
 Sher  
 Merrill  
 Daly

No Action

Hoy

-----

---

**ADVISORY COMMITTEE'S RECOMMENDATION**

**BACKGROUND**

Article 26 asks Town Meeting to authorize and approve the filing of a petition with the General Court to modify Ch. 317 of the Acts of 1974 relative to the powers of the Transportation Board of the Town of Brookline in order to give Town Meeting the ability to overturn acts of the Transportation Board by a 2/3rds vote.

Presently actions taken by the Transportation Board of the Town of Brookline may be appealed to the Board of Selectmen. This article would allow Town Meeting to consider an appeal if the Board of Selectmen either affirmed an act of the Transportation Board or failed to act within the specified time. It would require a petition bearing 30 signatures to bring the appeal to Town Meeting.

#### DISCUSSION

The petitioner feels that as presently written the law authorizing the Transportation Board gives the Transportation Board too much power. He argued that an appeal to Town Meeting would add democratic participation to the policy making process. There is some concern that the introduction of politics into the policy making process of the Transportation Board would be counterproductive and there was some feeling that the Transportation Board was created to remove Transportation Policy from the Town Meeting process. On the other hand, there have only been three appeals of Transportation Board decisions to the Board of Selectmen in the last eleven years. Therefore, it seems unlikely that including an appeal to Town Meeting would unduly burden either the Transportation Board or Town Meeting.

A prior attempt to add an appeal to Town Meeting from Transportation Board policy decisions failed at the General Court, at least partially, because the Board of Selectmen lobbied against it.

#### RECOMMENDATION

The Advisory Committee, by a vote of 7 in favor and 6 opposed (1 abstention) recommends NO ACTION on Article 26.

**XXX**

ARTICLE 26

BOARD OF SELECTMEN'S SUPPLEMENTAL REPORT

The vote reported on page 26-5 of the Combined Reports was accurately reflected as NO ACTION, by a vote of 4-1. However, there was an error with the Roll Call vote. It should read as follows:

**ROLL CALL VOTE:**

No Action

Allen

Sher

Merrill

Daly

Favorable Action

Hoy

---

ARTICLE 27

---

TWENTY-SEVENTH ARTICLE

To see if the Town will adopt the following resolution:

**Townwide Simplification Of Our Unique 2-Hour Parking Ban For Residents,**

**WHEREAS:** The Transportation Department, until 2004, said -- and Town Meeting agrees -- “the primary purpose of *both* the 2-hour parking rule and residential permit program is ‘to prohibit non-residents and commuters from parking for extended lengths of time on designated residential streets ... .’”<sup>1</sup>; but recently the Department emphasizes a different goal, to “encourage frequent turnover of curbside parking spaces”; *and*

**WHEREAS:** The Town Meeting also agrees with (a) Selectman Sher’s remarks for the Board of Selectmen at the Nov. 2004 Town Meeting, “... Joe Geller, our former Chair, said ‘Listen, we hear you loud & clear.’ ... Nobody wants to get a ticket for parking in front of their own home. ... We hope in 6 months we’ll have a resident permit program that will make us all happy”; and (b) Sean Lynn-Jones for the Advisory Committee, “tickets for residents [is] not really the purpose of the rule ... and don’t serve any useful purpose”; *and*

**WHEREAS:** Some especially congested blocks may need to ban *all* parking in excess of 2-hours, including residents. But in much or most of the Town the ban (a) is needed only for only non-residents, and (b) is now very rarely enforced; and (c) conversely, in some specific locations residents have sought, without success, more ticketing of non-residents, which would be better achieved if the rule were clearly prioritized; *and*

**WHEREAS:** Brookline takes great pride in the superb professionalism of our Police Department; but a flawed law cannot be salvaged by “selective” or “discretionary” or (ad hoc) “complaint-driven” enforcement; and when residents consider enforcement of a flawed law to be purposeless and/or very sporadic, e.g. tickets after leaving to do errands and returning 2 hours later to park (anywhere) on the same street (even for a moment, even if the street is empty). As a result, they have voiced great frustration and anger; and further, instead of devoting precious police resources to the time-consuming job of tracking and ticketing resident cars, police resources are better used for ticketing non-residents and to protecting the public safety; *and*

**WHEREAS:** Especially when viewed townwide, the current indiscriminate regulation diminishes the integrity of, and respect for, law. (“If we make criminal that which people regard as acceptable, people’s attitude toward the meaning of criminality changes.” Prof. Herbert Packer, Stanford Law School, 1968); *and*

**WHEREAS:** In 2002, ostensibly to reevaluate the longstanding “Resident Permit Parking” program, the Transportation Board put a “moratorium” on it; and despite discussing the 2-hour resident ban innumerable times in four years at the urging of many citizens and officials, the Transportation Board and Selectmen recently reaffirmed the overall policy -- unique in the Commonwealth -- and enacted only a limited “pilot” program in part of one precinct, retaining the requirement of “petitions” to obtain

permits, and ignoring the overall, townwide issue; DPW has estimated a minimum of 2,866 staff hours for the pilot program, plus additional tasks (including for the Police) impossible to estimate *and*

**WHEREAS:** Neither the 2-hour ban nor this Resolution affects the OVERNIGHT ban, which we reaffirm,

**NOW, THEREFORE, BE IT RESOLVED,** that Brookline's elected Town Meeting urges:

- (1) that the Board of Selectmen and Transportation Board each promptly declare and implement a policy to overhaul the 2-hour parking ban -- townwide -- so that, except in locations where particular problems are found, it should generally be legal for Brookline residents (and generally some guests) to park in the daytime for over 2 hours near their own homes, by means of a simple and easily obtainable permit program -- without requiring petitions; *and*
- (2) retention of the current temporary exemptions to the 2-hour rule, e.g. for movers, construction activities, guests or visitors, healthcare providers, childcare providers; *and*
- (3) that whatever regulations ensue, signage should be specific and clear in all areas.

<sup>1</sup> Transp. Bd. summary of 12-17-03 meeting; see also 09-12-02 memorandum to Transp. Bd. from Asst. Transp. Dir.

or act on anything relative thereto.

---

There has been much media coverage of the mammoth investment of time and energy by both officials and citizens on this issue over the last four years. The petitioners now regretfully return to Town Meeting because of the recent retreat of the selectmen in deciding the recent citizens' Appeal, when a majority of them endorsed (1) a very limited (especially geographically) "pilot program" and (2) a retention of the "petition" process to obtain resident permits. The pilot program is now widely viewed as ill-advised and staff-intensive, and is based on a fundamentally flawed -- and unique in the state -- "default rule" of universal 2-hour-plus illegality for residents, only overridden by a cumbersome petition process. One recent member of the Transportation Board, a vehement proponent of the current default rule, has admitted that it's "probably true [that] Brookline is the only place in the country with such a rule."

Now, that member of the Transportation Board has resigned, believing, ironically as do Petitioners, that "[t]he trial will not answer ... the relevant ... questions"; and no doubt also because of the DPW staff estimates of well over 2,900 staff hours (plus many but indeterminate Police Dept. hours) to conduct the pilot program.

As stated, too optimistically, in a Brookline TAB editorial, "Keep it simple," June 16, 2005:

“It looks as though some relief is in store for residents who want to park in town during the day without the constant threat of being slapped with a parking ticket. It's about time, and ... [a] simple and efficient permit system makes the most sense. We agree with Selectman Gil Hoy and Rosenthal, who balked at a plan to require residents seeking daytime parking permits to gather signatures from a majority of neighbors on their streets. A petition process is tedious, they said. Instead, Hoy suggested that residents who don't want permit parking be the ones who generate petitions to be excluded from the program. Meanwhile, he advocated for townwide permit parking, except in commercial areas and near T stops. We hope the board backs Hoy's suggestions and votes in this necessary relief. Because it's likely any change will be instituted in the form of a pilot program, there's room for tweaking down the line.”

The Whereas (#1) language as to “the primary purpose of the 2-hour parking rule and residential permit program” is from a Transportation Board summary of a Dec. 17, 2003 meeting; see also a similar statement in a Sept. 12, 2002 memorandum to the Board from the Assistant Director.

Last fall, based upon that language and then the supportive comments from all five selectmen, the petitioners acceded to our TM Resolution being watered down for consensus, and then passed on a voice vote. Apparently Town Meeting needs to speak with greater clarity and forcefulness. The selectmen have flouted a four-year outpouring of uniform and public opposition to resident ticketing; and all those outspoken people and leaders have now been outvoted by an alleged secret list - a secret number of secret individuals who in a secret manner communicated a secret message. Since the Town's legislature currently has no authority to make parking policy -- which is the subject of another, companion warrant article -- this Resolution is limited to being only hortatory.

---

#### SELECTMEN'S RECOMMENDATION

Article 27 is a non-binding resolution urging the Selectmen to adopt policies that would permit residents to park on streets near their homes during day time hours in excess of the current two-hour limitation (the Two Hour Rule). Among other things, Article 27 requests that the Board “implement a policy to overhaul the 2-hour parking ban -- town wide -- so that, except in locations where particular problems are found, it should generally be legal for Brookline residents (and generally some guests) to park in the daytime for over 2 hours near their own homes, by means of a simple and easily obtainable permit program -- without requiring petitions.”

On June 21, 2005, the Board did implement a general resident parking policy for day-time hours by adopting an Order under Section 4 of Chapter 317 of the Acts of 1974 (the Enabling Statute). In that Order, the Board stayed the petition of not less than 20 residents of the Town, which sought to overturn the Transportation Board's then-existing Resident Permit Parking Policy. In that same Order, the Board stayed the Transportation Board's Resident Permit Parking Policy and adopted the following transportation policy

pursuant to its authority under the Enabling Statute: that “the question of whether residents should be permitted to park on their own streets for an unlimited period time during daytime hours involves numerous questions of fact and policy that warrant the implementation of a trial permit program and evaluation by the Transportation Board and the Transportation Department with the results to be presented to the Board within 18 months.”

By its Order, the Board has begun to implement a policy to “overhaul the 2-hour parking ban” as Article 27 refers to the Town’s longstanding Two Hour Rule. The Petitioners in Article 27 acknowledge that there may be areas within the Town where it may not be advisable even to permit residents to park on their own streets for in excess of two hours (Article 27 refers to “locations where particular problems are found”). The Board agrees with this view, especially with respect to on-street parking near commercial areas, MBTA stops, schools, or key venues such as Fenway Park or Boston University athletic sites.

Recognizing that a reversal of the Two Hour Rule may be advisable in some parts of the Town and not in others, the Board directed the Transportation Board to implement a trial parking permit program (the Trial Program) in a section of North Brookline where on-street ticketing of residents seemed most acute, and to report back to the Board within 18 months. The Transportation Board, with valuable assistance from the Town’s Director of Transportation, responded by implementing a well designed and innovative trial parking permit program. The Board commends the Transportation Board and the Transportation Director for the Trial Program and especially for their efforts to reach out to residents in the Trial Program area to enlist their participation in the trial. Thus far, only 98 residents from 73 households in the Trial Program area have indicated their support for unlimited day-time on-street resident parking, despite the very best efforts of the Transportation Board to solicit responses, including mailings to residents, setting up a location on the Town’s internet site to send emails expressing interest in participation in the program, and articles in the local press.

Under the Order, the Transportation Board is due to report to the Board of Selectmen by November 21 on the status of the trial program. The Board will be interested to hear from the Transportation Board and from the public concerning the total number of petitions and other expressions of interest in the trial program. In particular, the Board is interested in hearing evidence as to whether the low response rate to Transportation Board mailings and other outreach efforts is due to a lack of interest in a resident parking program, the difficulty of collecting petitions, or other factors.

In the meantime, the Board voted 3-2, on October 25, 2005, to recommend FAVORABLE ACTION on Article 27 as amended by the Board. The majority of the Board voted for the resolution, despite its differences with the Board’s earlier Order (e.g. the Order required a majority of residents of a street to signify their support for on-street day-time parking and Article 27 calls for implementation of a residential parking permit program without a petition requirement) consistent with the view that the current day-time residential parking program may be too restrictive in certain areas of the Town. The Board’s vote does not constitute the establishment of a policy under the Enabling Statute, nor is it meant to signal a lack of support or appreciation for the excellent work being done by the Transportation Board in implementing the Trial Program called for in the

Order. Rather, the majority recommends favorable action on Article 27 in recognition of the hard work over many years by the petitioner in bringing this issue toward resolution. The Board is hopeful that the Transportation Board’s trial program will yield helpful, empirical evidence, which will help the Transportation Board and the Board of Selectmen bring this contentious issue to closure.

VOTED: That the Town adopt the following Resolution:

**WHEREAS:** Neither the 2-hour ban nor this Resolution affects the OVERNIGHT parking ban, which we reaffirm,

**NOW, THEREFORE, BE IT RESOLVED,** that Brookline’s elected Town Meeting urges:

- (1) that the Board of Selectmen and Transportation Board each promptly declare and implement a policy to overhaul the 2-hour parking ban -- townwide -- so that, except in locations where particular problems are found, it should generally be legal for Brookline residents (and generally some guests) to park in the daytime for over 2 hours near their own homes, by means of a simple and easily obtainable permit program -- without requiring petitions; *and*
- (2) retention of the current temporary exemptions to the 2-hour rule, e.g. for movers, construction activities, guests or visitors, healthcare providers, childcare providers; *and*
- (3) that whatever regulations ensue, signage should be specific and clear in all areas.

**ROLL CALL VOTE:**

Favorable Action

Hoy

Sher

Merrill

No Action

Allen

Daly

-----

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

Article 27 is a resolution that seeks to encourage the town to allow more than two-hour parking for residents throughout the town, with the ability to restrict resident parking to two hours through a petition process. Current parking restrictions, in the absence of any other limitation, prohibit parking by anyone for more than two hours between the hours of 6:00am and 2:00am (the “ban”). The 70-year-old original intent of this provision is not documented and long-forgotten, and it is unlikely that such intent would represent current circumstances. Today, there is widespread agreement that the ban is directed primarily at non-residents and commuters, and that there is no intention to penalize and

inconvenience residents. As well, the restriction does have some positive ancillary effects for residents. For one, available parking and aesthetics are enhanced in densely populated areas because the relatively large numbers of cars at certain residences must be parked off-street; without the restriction, they could be loosed upon the streets, with the unintended consequences of reducing availability, and precluding citizens from parking near their homes. The ban also serves to increase availability since it serves to promote frequent turnover of parking.

### DISCUSSION

From a theoretical point of view, there should be no ultimate difference from applying the mechanics of a town-wide allowance or prohibition of greater than two-hour parking for residents, combined with a petition process and retention of the Transportation Board's judgmental license to retain the ban where circumstances dictate, notwithstanding citizen preference. Regardless, the issue is controversial, but the degree of citizen interest in this subject was not evident to the Advisory Committee.

The town has previously dealt with long-term exceptions to the ban through a petition/permit process from/to an "affected" group of residents, based on the address footprint of the petitioners. The exception applies only to the two-hour issue. Over some 25 years, 27 streets have been granted exceptions (see attached Table 1) through the creation of resident permit parking zones. Residents (regardless of their involvement in the petition process) must apply for a permit to take advantage of the relief. On these streets for 2005, there are an aggregate 260 households and 655 eligible parking spaces for which 319 permits have been issued. This process is in a moratorium, in part, because some of the petitions sought relief for issues unrelated to the two-hour ban, and other remedies may have been more appropriate. Earlier this year, the Transportation Department issued revised rules and regulations for all parking permits, including resident permit parking.

The portion of those rules and regulations that applied to the ban evolved in June to a Selectmen-approved pilot program, whereby 2 "study areas" containing 18 "petition areas" in Precinct 9 have been pre-identified (a change from the footprint flexibility of past practice) for potential relief. Recently commenced, the program provides that if more than 50% of an area's residents petition, parking permits for the remaining portion of the pilot period (approximately one-year) would be issued only to those residents who request them, regardless of their involvement with petitions. Similar to past practice, the Transportation Board believes it has the license to create additional areas not in the designated 18 "petition" areas based on the address footprint of petitions received.

During the pilot period, the Transportation and Police Departments would collect data and make observations to evaluate the program; by one town-management estimate, this could require up to 2,900 person-hours of labor over an 18-month period. Although the Board of Selectmen's order did not specify the criteria (or performance measures) by which the trial program would be evaluated, town management will accumulate "before" and "after" parking conditions in the trial parking areas, and, in combination with information gathered by Police Department enforcement, will consider the following issues:

- Number and percentage of residents by study and petition area who are interested in participating in a resident permit parking program (Is there truly wide-spread interest and/or need to rescind the 2-hour time limit on daytime parking?);
- Number of resident permit stickers issued by household, study and petition area;
- Number of resident cars parking on-street and off-street on their own property (driveways, lots) before and after the initiation of resident permit parking (To what extent are residents moving cars from their driveways to the street?);
- Number of total/resident/non-resident cars parked on each street before and after the initiation of the resident permit parking program (To what extent are residents now parking on other streets or sections of the permit parking zone?);
- Location of resident-owned cars parked on each street before and after the initiation of the resident permit parking program (Are residents living at the Gibbs Street end of Fuller Street, for example, now parking at the Harvard Street end to avoid parking at a meter?);
- What impact (if any) is the resident permit parking program having on the use of metered parking spaces during the day?
- How long are cars parked on the street before and after the initiation of the resident permit parking program (Are the cars residents move from their driveways parked on the street for more than (or less than) 2 hours now that they have resident permits?)
- Is the need for on-street parking greatest during different times of the day (e.g., in the morning when cars stacked overnight in driveways get moved to the street, or in the evening when residents return home from work and park on street in order to avoid having to move their car from their driveway for others)?
- What is the frequency of ticketing for violations of the 2-hour time limit before and after the initiation of the resident permit parking program?
- What is the incidence of resident ticketing for violations of the 2-hour time limit before and after the initiation of the resident permit parking program?
- What impact has the resident permit program had on commercial establishments along Harvard Street (Note: this is to be determined by written questionnaire at the end of the program).

The Transportation Department does not have data to prepare a similar “before/after” analysis of its experience with the existing 27 street exceptions. However, the Advisory Committee highly recommends an effort be made to extract knowledge from the town’s experience on these streets.

In the petitioner’s opinion, 2001 marked a period of change in enforcement, evidenced by an increase in the number of tickets issued to Brookline residents. He also believes the discretionary/selectiveness of its enforcement compromises, as a matter of principle, the importance of law. This article is a departure from his previous efforts in that it seeks to allow more than two-hour parking for residents throughout the town without petition, with the ability to restrict resident parking to two hours through a petition process, reflecting a democratic belief that all individuals have the right to park near their own homes beyond the two-hour limitation, but respecting and preserving the town’s overnight restriction.

In the end, this issue, in large measure, comes down to reciprocal views of the same issue. The Transportation Board's view is that a town-wide 2-hour restriction should remain in place with the opportunity for specific areas to petition for an exemption, and the article's petitioner's view is that the town-wide 2-hour restriction should be lifted with the opportunity for specific areas to petition for localized restrictions.

This article is a resolution and not legislative.

RECOMMENDATION

By a vote of 14 in favor, 8 opposed, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

**XXX**

**TABLE 1. FY 2005 Resident Permit Parking Program**

Street	Type of Resident Permit	Enforcement Period	(A) RPP Spaces	(B) RPP Permits	(B/A) %	(C) RPP Households	(B/C) Permits per HH	Notes
<b>Red Permits:</b>								
Amory St. (120-122)	2-hr exclusion	Wkdays 10am - 4pm	6	7	117	6	1.17	No parking 8-10 am
Atherton Road	2-hr exclusion	Wkdays 9am - 4pm	39	17	44	14	1.21	No parking 8-10 am
Browne Street	2-hr exclusion	Wkdays 9am - 4pm	67	49	73	41	1.19	
Lancaster Terr. (48-78)	2-hr exclusion	Wkdays 9am - 4pm	16	4	25	4	1.00	
Verndale Street	2-hr exclusion	Wkdays 9am - 4pm	38	33	87	26	1.27	
Wellman Street	2-hr exclusion	Wkdays 9am - 4pm	12	11	92	9	1.22	Only 1-hr parking w/o permit
<b>Blue Permits:</b>								
Chestnut Hill Ave.	Permit parking only	All hrs except 2 - 6am	20	1	5	1	1.00	Game day parking ban also
Clafin Road	2-hr exclusion	Wkdays 9am - 4pm	22	21	95	18	1.17	
Clinton Road	Permit parking only	All hrs except 2 - 6am	43	16	37	8	2.00	Game day parking ban also
Dean Road	No RPP signs	???	0	2	200	1	2.00	Game day ban; no parking 7-9 am
Marshal Street	2-hr exclusion	Wkdays 10am - 4pm	43	23	54	16	1.44	No parking 8-10 am
Penniman Road	Permit parking only	All hrs except 2 - 6am	24	0	0	0	0.00	
Tappan St. (264-289)	2-hr exclusion	Wkdays 9am - 4pm	20	21	105	15	1.40	
Taylor Crossway	Permit parking only	All hrs except 2 - 6am	18	6	33	3	2.00	
Willard Road	Permit parking only	All hrs except 2 - 6am	42	0	0	0	0.00	
Willow Crescent	No RPP signs	???	28	0	0	0	0.00	
<b>Green Permits:</b>								
Brington Road	2-hr exclusion	Wkdays 9am - 4pm	41	3	7	3	1.00	Temporary road work
Brook Street (98-147)	2-hr exclusion	Wkdays 9am - 4pm	17	6	35	6	1.00	
Homer Street	2-hr exclusion	Wkdays 9am - 4pm	11	6	55	5	1.20	
Hurd Road	2-hr exclusion	Wkdays 9am - 4pm	16	10	63	9	1.11	
Lincoln Road	2-hr exclusion	Wkdays 9am - 4pm	10	2	20	1	2.00	No parking 7-9 am
Linden Street	2-hr exclusion	Wkdays 9am - 4pm	37	43	116	38	1.13	
Netherlands Road	2-hr exclusion	Wkdays 9am - 4pm	15	9	60	9	1.00	
Parkway Road	2-hr exclusion	Wkdays 9am - 4pm	16	5	32	5	1.00	No parking 8-10 am
Walnut Street (77-129)	2-hr exclusion	Wkdays 9am - 4pm	11	14	127	12	1.17	
Waverly Street	2-hr exclusion	Wkdays 9am - 4pm	20	2	10	2	1.00	
White Place	2-hr exclusion	Wkdays 9am - 4pm	23	8	35	8	1.00	No parking 10 am - 12 noon
Totals			655	319	49	260	1.12	

Note: In FY 2003, the DPW Transportation Division issued 287 resident permits to 224 households, or an average of 1.28 permits per household.  
 In FY 2004, the DPW Transportation Division issued 344 resident permits to 273 households, or an average of 1.26 permits per household.  
 In FY 2005, the DPW Transportation Division issued 319 resident permits to 260 households, or an average of 1.23 permits per household.

---

ARTICLE 28

---

TWENTY-EIGHTH ARTICLE

To see if the Town will adopt the following resolution:

**A RESOLUTION REQUESTING THAT BROOKLINE'S FOUR STATE REPRESENTATIVES AND STATE SENATOR SUPPORT LEGISLATION THAT WILL RESTRICT THE TAKING OF PRIVATE PROPERTY BY EMINENT DOMAIN FOR THE PURPOSE OF ECONOMIC DEVELOPMENT**

*WHEREAS*, the Supreme Court of the United States in the case of Kelo et al. v. City of New London CT et al. issued an opinion on June 23, 2005 holding that the taking of private property by right of eminent domain for the purpose of economic development satisfies the “public use” requirement of the fifth amendment to the Constitution of the United States; and

*WHEREAS*, “economic development” and “public use”, as discussed in said case and as construed herein, refer primarily to increased tax revenues and job creation; and

*WHEREAS*, the majority opinion in said case effectively expands the established definition of “public use” for the authorized exercise of the takings power to include increased tax revenues and job creation, without a finding of blight or other conditions injurious to the public health, safety and welfare, or of the necessity to remedy some other public harm; and

*WHEREAS*, the majority opinion in said case effectively sanctions the use of eminent domain powers to give one private party benefits over another; and

*WHEREAS*, in the words of Justice O'Connor, dissenting, “Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public . . . [This decision will] wash out any distinction between private and public use of property”; and

*WHEREAS*, in the words of Justice O'Connor, “[T]he fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more”; and

*WHEREAS*, at the conclusion of said opinion, the Supreme Court reaffirmed the ability of the several states to place further restrictions on the exercise of the takings power, stricter than those established under federal law; and

**WHEREAS**, the Massachusetts Supreme Judicial Court has not yet considered the question of whether, under Massachusetts law, takings by right of eminent domain for the purpose of economic development satisfy the public use requirement of Article X of Part the First of the Massachusetts Constitution; therefore be it

**RESOLVED**, that this Town Meeting endorses and supports a public policy, and corresponding legislation, that will prohibit eminent domain takings for the primary purpose of economic development; and be it further

**RESOLVED**, that this Town Meeting request that Brookline’s State Senator, Cynthia Creem, and State Representatives, Frank Smizik, Michael Moran, Michael Rush and Jeffrey Sanchez co-sponsor and support An Act Relative to Prohibiting Eminent Domain Takings for the Purpose of Economic Development (House Docket No. 4662) or other legislation consistent with this resolution; and be it further

**RESOLVED**, that a copy of these resolutions be forwarded by the Town Clerk of Brookline to Senator Creem and Representatives Smizik, Moran, Rush and Sanchez and to the Governor of the Commonwealth.

or act on anything relative thereto.

---

Until the recent Supreme Court decision, *Kelo v. New London CT*, cities and towns could seize private property through the power of eminent domain only for a public use such as new highways or public buildings, or to remedy some public threat or harm from the existing uses.

The New London decision now empowers municipal officials to take private homes and businesses from one group of owners and turn the properties over to other private owners using “economic development” as an expanded concept of “public use” for justifying such takings under the U.S. Constitution. The Court defines “economic development” in terms of increased local taxes and more jobs being created from the seized properties after they have been transferred to the new owners chose by local public officials.

This warrant article is in the form of a Town Meeting resolution. After citing the essence of the New London decision and its prospective adverse impact on Massachusetts home and small business owners, the resolution then states that Town meeting supports a policy to prohibit eminent domain takings for the primary purpose of economic development. The resolution then asks Brookline’s four state representatives and our state senator to support legislation that would prohibit such takings throughout the Commonwealth.

---

**SELECTMEN’S RECOMMENDATION**

Article 28 is a petitioned resolution regarding the recent ruling of the Supreme Court of the United States in the case of *Kelo et.al. v. City of New London, Connecticut*. The

Supreme Court ruled that the taking of private property by eminent domain for the purpose of economic development satisfies the “public use” requirement of the fifth amendment to the Constitution of the United States. This ruling could have far-reaching consequences, as tax revenues and job creation are now grounds for the use of eminent domain.

The line between the public and private use of property has clearly been blurred, and the impact of the ruling is significant. Take, for example, an area or neighborhood that some deem blighted or under-utilized, even if the residents do not share that opinion. Under this ruling, the government could take the land by eminent domain for redevelopment by a private developer for private development - - it does not have to be for public use. Prior to the decision, this powerful tool of the government was basically reserved for new highways or public buildings, or to remedy some public threat or harm from the existing uses. Clearly, this is a major expansion of the use of eminent domain.

The Massachusetts Supreme Judicial Court has not considered whether, under Massachusetts Law, takings of eminent domain for economic development purposes satisfy the “public use” requirement of Article X of Part the First of the State Constitution. Therefore, it is incumbent upon us to let our State Senators and Representatives know how we feel about this issue by asking them to support An Act Relative to Prohibiting Eminent Domain Takings for the Purpose of Economic Development, and/or similar legislation.

The Board recommends FAVORABLE ACTION, by a vote of 5 – 0 taken on October 11, 2005, on the resolution offered by the Advisory Committee.

-----

#### ADVISORY COMMITTEE’S RECOMMENDATION

##### BACKGROUND

On June 23, 2005, the Supreme Court of the United States, in a 5-4 decision, in the case of *Susette Kelo, et al. v. City of New London, Connecticut, et al.*, 04-108 (2005), held that the taking of private property by eminent domain for the purpose of economic development satisfied the “public use” requirement of the 5<sup>th</sup> Amendment of the U.S. Constitution which provides, in part, that private property shall not “be taken for public use, without just compensation.” This protection is applicable to the States through the 14<sup>th</sup> Amendment. The Massachusetts Declaration of Rights, in Part the First, Article X, also provides the same protection to its citizens.

The effect of the decision was to expand the definition of “public use” which, until the *Kelo* decision, had been applied to the taking of private property by eminent domain for public projects, such as the building of a new highway, or for the improvement by a municipality of a blighted or depressed area. The Supreme Court majority made no finding that the area was blighted or depressed but found that the proposed economic development project would bring increased tax revenue and job opportunities to the community. The decision drew a scathing dissent from Justice Sandra Day O’Connor as favoring rich corporations over those with fewer resources.

### DISCUSSION

Article 28 seeks to obtain approval from Town Meeting for the adoption of a Resolution directing our state legislative officials to support legislation that would blunt the effects of the *Kelo* decision and limit the taking of private property for the primary purpose of economic development. The Supreme Court itself suggested in its decision that both Congress and the state legislatures had the power to adopt such restrictions. The Massachusetts House passed a similar Resolution on July 14, 2005 and there is also a House bill pending that would limit the taking of real estate by eminent domain “for the sole purpose of economic development, except to the extent such takings are authorized for the elimination or prevention of the development or spread of a substandard, decadent or blighted open area under chapters 121A, 121B or 121C.” The U.S. Senate Judiciary Committee held a hearing on September 20, 2005 to hear testimony on proposed legislation to end the federal government’s involvement in such seizures. S. 1313 seeks to limit takings by eminent domain by the federal government to “public use” only and “public use” is defined as not including “economic development”. Brookline’s only eminent domain takings occurred in the late 1950s and 1960s under the authority of the Brookline Redevelopment Authority which took blighted property by eminent domain for the development of residential housing known as the Farm Project and the development of commercial property known as the Marsh Project. The statutory authority under which these takings occurred, M.G.L. c. 121A, required a finding that the area was blighted as a prerequisite to the taking.

The Planning Board has not taken a formal position on Article 28. The Economic Development Advisory Board (EDAB) has expressed their view that economic development alone would not justify eminent domain takings of private residences and small businesses. EDAB would support legislation prohibiting eminent domain takings that would negatively impact such types of properties. The Advisory Committee has been informed that both the Massachusetts Municipal Association and the American Planning Association have expressed their support of the *Kelo* decision.

The Advisory Committee supports the proposed Resolution because of its concern that the Supreme Court majority’s expansion of “public use” now includes for the first time the taking by eminent domain of private homes and businesses from one group of owners and allows the transfer of such properties to a private developer based primarily on the economic benefits which such developer’s project would bring to the municipality. While the Advisory Committee has no doubt that such a taking would be unlikely to occur in Brookline, given Brookline’s limited history of redevelopment, the Committee believes that it is important to support the adoption of restrictive legislation which would curtail the possibility of such a taking occurring in the future.

### RECOMMENDATION

The Advisory Committee unanimously (19-0) recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town adopt the following resolution:

**A RESOLUTION REQUESTING THAT BROOKLINE’S FOUR STATE REPRESENTATIVES AND STATE SENATOR SUPPORT LEGISLATION THAT WILL RESTRICT THE TAKING OF PRIVATE PROPERTY BY EMINENT DOMAIN FOR THE PURPOSE OF ECONOMIC DEVELOPMENT**

**WHEREAS**, the Supreme Court of the United States in the case of Kelo et al. v. City of New London CT et al. issued an opinion on June 23, 2005 holding that the taking of private property by right of eminent domain for the purpose of economic development satisfies the “public use” requirement of the fifth amendment to the Constitution of the United States; and

**WHEREAS**, “economic development” and “public use”, as discussed in said case and as construed herein, refer primarily to increased tax revenues and job creation; and

**WHEREAS**, the majority opinion in said case effectively expands the established definition of “public use” for the authorized exercise of the takings power to include increased tax revenues and job creation, without a finding of blight or other conditions injurious to the public health, safety and welfare, or of the necessity to remedy some other public harm; and

**WHEREAS**, the majority opinion in said case effectively sanctions the use of eminent domain powers to give one private party benefits over another; and

**WHEREAS**, in the words of Justice O’Connor, dissenting, “Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public . . . [This decision will] wash out any distinction between private and public use of property”; and

**WHEREAS**, in the words of Justice O’Connor, “[T]he fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more”; and

**WHEREAS**, at the conclusion of said opinion, the Supreme Court reaffirmed the ability of the several states to place further restrictions on the exercise of the takings power, stricter than those established under federal law; and

**WHEREAS**, the Massachusetts Supreme Judicial Court has not yet considered the question of whether, under Massachusetts law, takings by right of eminent domain for the purpose of economic development satisfy the public use requirement of Article X of Part the First of the Massachusetts Constitution; therefore be it

**RESOLVED**, that this Town Meeting endorses and supports a public policy, and corresponding legislation, that will prohibit eminent domain takings for the primary purpose of economic development; and be it further

**RESOLVED**, that this Town Meeting request that Brookline's State Senator, Cynthia Creem, and State Representatives, Frank Smizik, Michael Moran, Michael Rush and Jeffrey Sanchez co-sponsor and support An Act Relative to Prohibiting Eminent Domain Takings for the Purpose of Economic Development (House Docket No. 4662) or other legislation consistent with this resolution; and be it further

**RESOLVED**, that a copy of these resolutions be forwarded by the Town Clerk of Brookline to Senator Creem and Representatives Smizik, Moran, Rush and Sanchez and to the Governor of the Commonwealth.

**XXX**

---

ARTICLE 29

---

TWENTY-NINTH ARTICLE

To see if the Town will adopt the following resolution:

**A Resolution of the Brookline Town Meeting on the Iraq War**

WHEREAS, in public opinion polls a majority of Americans view the invasion and occupation of Iraq as unwarranted, a mistake, or "not worth it";

WHEREAS, in recent polls ~70 percent of Iraq's Shiites and ~80 percent of Iraq's Sunnis favor "near-term U.S. Withdrawal;

WHEREAS, members of the Massachusetts Congressional Delegation favor U.S withdrawal from Iraq;

WHEREAS, the war in Iraq was launched amidst false claims that Iraq had weapons of mass destruction, which posed an imminent threat to U.S. security, was falsely tied to the 9/11 attacks, is costing well over one billion dollars per week, has undermined America's moral and diplomatic standing in the world, and has led to widespread suffering;

WHEREAS, in going to war, the President did not meet the conditions imposed by Congress, failing to show why diplomatic and/or peaceful means could not protect the national security of the United States;

WHEREAS, the invasion of Iraq has resulted in serious and potentially long-lasting adverse consequences for the United States, such as increasing the climate for terrorism, has removed critical funds from needed domestic programs, and has contributed adversely to long term US debt;

WHEREAS, the invasion and occupation of Iraq has undermined the chances for a just and durable peace in Iraq and the Middle East;

WHEREAS, the United States Constitution provides that Congress shall have the power to "provide for calling forth the Militia to execute the Laws of the Union, to suppress insurrections and repel Invasions," which are criteria that have not been met by the war in Iraq, and the Massachusetts Constitution provides that no armies shall be maintained without the consent of the State Legislature; and

WHEREAS, the costs of the war in Iraq, which would be suffered willingly had there been an imminent threat to our nation, are not tolerable given the true situation;

**THEREFORE AS MEMBERS OF TOWN MEETING OF THE TOWN OF BROOKLINE WE RESOLVE THAT**

The town of Brookline endorses HR 35 by Lynn Woolsey of the Sixth Congressional District California calling for the immediate construction and implementation of a plan to withdraw from Iraq.

Secondly, the town also endorses the related resolution H.J. 55, submitted by Dennis Kucinich, Ron Paul and Walter Jones calling for the construction of a plan for withdrawal to be submitted to Congress no later than December 31, 2005.

Third, the town endorses the binding referendum question to be placed on the ballot by [www.HomeFromIraqNow.org](http://www.HomeFromIraqNow.org) to withdraw the Massachusetts National Guard from Iraq. Finally the town endorses House Resolution H. R 375 to cause the Executive to release documents revealing Iraqi war planning in the Summer of 2002.

---

The petitioner wishes the town as a political entity to support the position supported by the majority of citizens of Brookline, that the United States should exit from Iraq as soon as possible. These resolutions all facilitate exiting from Iraq by forcing the Federal Executive to formulate an explicit exit plan, to support Massachusetts withholding National Guard troupes from Iraq, and to make public documents about the Iraq War

---

#### SELECTMEN'S RECOMMENDATION

Article 29 is a petitioned resolution concerning the Iraq War. Some may view the Iraq War solely as a federal issue, and therefore outside the jurisdiction of Town Meeting. However, the Board of Selectmen recognizes that this weighty national issue has far-reaching impacts that permeate all levels of government and affect all citizens.

The Selectmen respect and honor the contributions and sacrifices of the men and women who have served, and continue to serve in the Iraq War. In addition, the Selectmen congratulate the people of Iraq upon the adoption of a Constitution.

However, a majority of the Board, along with many residents, questions the validity of the on-going war effort and believes that such effort is having detrimental effects on domestic and international affairs. For these reasons, the Board endorses Congressional proposals calling for a plan to withdraw from Iraq and supports the placement of a referendum question on the state election ballot that would call for the withdrawal of the Massachusetts National Guard from Iraq.

The Board acknowledges that any discussion about the Iraq War involves deeply held philosophical and personal beliefs. While a majority of the Board supports the sentiment of the proposed resolution as submitted, they found it necessary to adopt a slightly modified version. The amended version indicates clear support for the U.S. servicemen and women involved in this war. The amended version removes the references to specific

legislation in favor of more general language in support of "Congressional proposals". It also includes several minor editorial edits.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 3-1 taken on October 20, 2005, on the following vote:

VOTED: That the Town adopt the following resolution:

**A Resolution of the Brookline Town Meeting on the Iraq War**

WHEREAS, we honor our service men and women who have fallen or been injured in service to our country in the Iraq war;

WHEREAS, we respect and support the service men and women in the U.S. armed forces who are presently serving our country in Iraq or in support of the Iraq war:

WHEREAS, the citizens of Brookline congratulate the people of Iraq upon the adoption of a Constitution;

WHEREAS, the citizens of Brookline wish to US troops return safely and in a timely manner according to a well conceived and executed plan;

WHEREAS, in public opinion polls a majority of Americans view the invasion and occupation of Iraq as unwarranted, a mistake, or "not worth it";

WHEREAS, in recent polls about 70 percent of Iraq's Shiites and about 80 percent of Iraq's Sunnis favor "near-term U.S. Withdrawal;

WHEREAS, members of the Massachusetts Congressional Delegation favor U.S withdrawal from Iraq;

WHEREAS, the war in Iraq was launched amidst false claims that Iraq had weapons of mass destruction, which posed an imminent threat to U.S. security, was falsely tied to the 9/11 attacks, is costing well over one billion dollars per week, has undermined America's moral and diplomatic standing in the world, and has led to widespread suffering;

WHEREAS, in going to war, the President did not meet the conditions imposed by Congress, failing to show why diplomatic and/or peaceful means could not protect the national security of the United States;

WHEREAS, the invasion of Iraq has resulted in serious and potentially long-lasting adverse consequences for the United States, such as increasing the climate for terrorism, has removed critical funds from needed domestic programs, and has contributed adversely to long term US debt;

WHEREAS, the invasion and occupation of Iraq has undermined the chances for a lasting peace in Iraq and the surrounding area;

WHEREAS, the United States Constitution provides that Congress shall have the power to "provide for calling forth the Militia to execute the Laws of the Union, to suppress insurrections and repel Invasions," which are criteria that have not been met by the war in Iraq, and the Massachusetts Constitution provides that no armies shall be maintained without the consent of the State Legislature; and

WHEREAS, the costs of the war in Iraq, which would be suffered willingly had there been an imminent threat to our nation, are not tolerable given the true situation;

**THEREFORE AS MEMBERS OF TOWN MEETING OF THE TOWN OF BROOKLINE WE RESOLVE THAT**

The Town of Brookline will continue to respect and honor the contributions of the men and women of the U.S. armed forces who have served and those who continue to serve in the Iraq war.

The Town of Brookline endorses the call for the immediate construction and implementation of a plan to withdraw from Iraq.

Second, the town endorses placement on the state election ballot of a referendum question to withdraw the Massachusetts National Guard from Iraq.

**ROLL CALL VOTE:**

Favorable Action

No Action

Hoy  
Sher  
Daly

Merrill

-----

**ADVISORY COMMITTEE'S RECOMMENDATION**

The Advisory Committee's report on Article 29 will be included in the Supplemental Mailing, which will be received by Town Meeting Members prior to the commencement of Town Meeting.

**XXX**

ARTICLE 29

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

BACKGROUND

Article 29 is a petitioned resolution that addresses the Iraq War.

DISCUSSION

The current war in Iraq is a concern for most people, regardless of their views. And, resolutions of the sort proposed by this article tend to evoke a variety of feelings and responses.

Advisory Committee members, like anyone else, have their own personal views. For the majority of Committee members, these feelings were strong enough to vote in support of a resolution. The Committee felt communities are entitled, at times obliged, to take a principled stand on issues. However, the Committee had a number of concerns about the wording of the petitioner's resolution and its specific support of certain legislation and petitions. It felt the resolution should focus on principles rather than legislative specifics.

RECOMMENDATION

Therefore, the Advisory Committee, by a vote of 11-3-3, recommends FAVORABLE ACTION on the following amended resolution:

VOTED: That the Town adopts the following resolution:

**A Resolution of the Brookline Town Meeting on the Iraq War**

WHEREAS, in public opinion polls a majority of Americans view the invasion and occupation of Iraq as unwarranted, a mistake, or "not worth it";

WHEREAS, in recent polls ~70 percent of Iraq's Shiites and ~80 percent of Iraq's Sunnis favor "near-term U.S. Withdrawal;

WHEREAS, members of the Massachusetts Congressional Delegation favor U.S withdrawal from Iraq;

WHEREAS, the war in Iraq was launched amidst false claims that Iraq had weapons of mass destruction, which posed an imminent threat to U.S. security, was falsely tied to the 9/11 attacks, is costing well over one billion dollars per week, has undermined America's moral and diplomatic standing in the world, and has led to widespread suffering;

ARTICLE 29

**Brookline PAX Amendment to Article 29**

Frank Farlow (TMM-4) and Marty Rosenthal (TMM-9), Co-chairs

VOTED: To append to the vote offered by the Advisory Committee the language shown in bold below:

THEREFORE AS MEMBERS OF TOWN MEETING OF THE TOWN OF BROOKLINE WE RESOLVE THAT

Resolved, that the Town of Brookline endorses and supports a public policy and corresponding legislation that requires the immediate construction and implementation of a plan to withdraw from Iraq, and be it further

Resolved, that the Town of Brookline endorses and supports a public policy and corresponding legislation or binding resolution to prevent the governor from sending any more National Guard troops to Iraq and to use all legal means available under federal and state law to bring about a recall of all Massachusetts National Guard troops in Iraq, and be it further

Resolved, that the Town of Brookline endorses and supports a public policy and corresponding legislation to cause the Executive to release documents revealing Iraq War planning in the summer of 2002, **and be it further**

**Resolved, that a copy of these resolutions be forwarded by the Town Clerk to the members of Brookline's Congressional and state legislative delegations, the Governor of the Commonwealth, and the President of the United States.**

WHEREAS, in going to war, the President did not meet the conditions imposed by Congress, failing to show why diplomatic and/or peaceful means could not protect the national security of the United States;

WHEREAS, the invasion of Iraq has resulted in serious and potentially long-lasting adverse consequences for the United States, such as increasing the climate for terrorism, has removed critical funds from needed domestic programs, and has contributed adversely to long term US debt;

WHEREAS, the invasion and occupation of Iraq has undermined the chances for a just and durable peace in Iraq and the Middle East;

WHEREAS, the United States Constitution provides that Congress shall have the power to "provide for calling forth the Militia to execute the Laws of the Union, to suppress insurrections and repel Invasions," which are criteria that have not been met by the war in Iraq, and the Massachusetts Constitution provides that no armies shall be maintained without the consent of the State Legislature; and

WHEREAS, the costs of the war in Iraq, which would be suffered willingly had there been an imminent threat to our nation, are not tolerable given the true situation;

**THEREFORE AS MEMBERS OF TOWN MEETING OF THE TOWN OF BROOKLINE WE RESOLVE THAT**

Resolved, that the Town of Brookline endorses and supports a public policy and corresponding legislation that requires the immediate construction and implementation of a plan to withdraw from Iraq, and be it further

Resolved, that the Town of Brookline endorses and supports a public policy and corresponding legislation or binding resolution to prevent the governor from sending any more National Guard troops to Iraq and to use all legal means available under federal and state law to bring about a recall of all Massachusetts National Guard troops in Iraq, and be it further

Resolved, that the Town of Brookline endorses and supports a public policy and corresponding legislation to cause the Executive to release documents revealing Iraq War planning in the summer of 2002.

ARTICLE 29

**AMENDMENT TO THE ADVISORY COMMITTEE'S RESOLUTION  
OFFERED BY SELECTMAN MICHAEL SHER**

[Changes are in *italicized and underlined* type.]

VOTED: That the Town adopts the following resolution:

**A Resolution of the Brookline Town Meeting on the Iraq War**

*WHEREAS, we honor our service men and women who have fallen or been injured in service to our country in the Iraq war;*

*WHEREAS, we respect and support the service men and women in the U.S. armed forces who are presently serving our country in Iraq or in support of the Iraq war;*

*WHEREAS, the citizens of Brookline wish US troops to return safely and in a timely manner according to a well conceived and executed plan;*

WHEREAS, in public opinion polls a majority of Americans view the invasion and occupation of Iraq as unwarranted, a mistake, or "not worth it";

WHEREAS, in recent polls ~70 percent of Iraq's Shiites and ~80 percent of Iraq's Sunnis favor "near-term U.S. Withdrawal";

WHEREAS, members of the Massachusetts Congressional Delegation favor U.S withdrawal from Iraq;

WHEREAS, the war in Iraq was launched amidst false claims that Iraq had weapons of mass destruction, which posed an imminent threat to U.S. security, was falsely tied to the 9/11 attacks, is costing well over one billion dollars per week, has undermined America's moral and diplomatic standing in the world, and has led to widespread suffering;

WHEREAS, in going to war, the President did not meet the conditions imposed by Congress, failing to show why diplomatic and/or peaceful means could not protect the national security of the United States;

November 15, 2005  
Special Town Meeting  
Article 29 – Supplement No. 3  
Page 2

WHEREAS, the invasion of Iraq has resulted in serious and potentially long-lasting adverse consequences for the United States, such as increasing the climate for terrorism, has removed critical funds from needed domestic programs, and has contributed adversely to long term US debt;

WHEREAS, the invasion and occupation of Iraq has undermined the chances for a just and durable peace in Iraq and the Middle East;

WHEREAS, the United States Constitution provides that Congress shall have the power to "provide for calling forth the Militia to execute the Laws of the Union, to suppress insurrections and repel Invasions," which are criteria that have not been met by the war in Iraq, and the Massachusetts Constitution provides that no armies shall be maintained without the consent of the State Legislature; and

WHEREAS, the costs of the war in Iraq, which would be suffered willingly had there been an imminent threat to our nation, are not tolerable given the true situation;

**THEREFORE AS MEMBERS OF TOWN MEETING OF THE TOWN OF BROOKLINE WE RESOLVE THAT**

*Resolved that the Town of Brookline continues to respect and honor the contributions of the men and women of the U.S. armed forces who have served and those who continue to serve in the Iraq war, and be it further*

Resolved, that the Town of Brookline endorses and supports a public policy and corresponding legislation that requires the immediate construction and implementation of a plan to withdraw from Iraq, and be it further

Resolved, that the Town of Brookline endorses and supports a public policy and corresponding legislation or binding resolution to prevent the governor from sending any more National Guard troops to Iraq and to use all legal means available under federal and state law to bring about a recall of all Massachusetts National Guard troops in Iraq, and be it further

Resolved, that the Town of Brookline endorses and supports a public policy and corresponding legislation to cause the Executive to release documents revealing Iraq War planning in the summer of 2002.

---

ARTICLE 30

---

THIRTIETH ARTICLE

To see if the Town will adopt the following resolution:

**A Resolution Opposing the Construction of an Unregulated BSL4 Lab in the City of Boston**

WHEREAS, the neither the City of Boston, nor the State of Massachusetts nor the United States government have fulfilled their responsibility to protect the Public Safety by failing to pass regulations governing the operations of a BSL4 lab in City of Boston, the State of Massachusetts and the United States;

WHEREAS, the most lethal incurable agents will be authorized for investigation in BSL4 biocontainment laboratories;

WHEREAS, with reluctance and difficulty the town of Brookline waived zoning restrictions, in part because of safety concerns for a BSL2 lab authorized to study much less dangerous infectious agents;

WHEREAS, locating a laboratory studying these agents in a area with the highest population density along a central Boston Artery appears to be the worst environmental siting of such a lab possible;

WHEREAS, the NIH lab was not allowed to operated a BSL4 facility at the NIH in Bethesda Maryland due to concerns about the Public Safety and the City Council of Davis California unanimously asked that National Institutes of Health to move their lab elsewhere;

WHEREAS, the NIH itself in its internal memoranda sites “the risk of a public health disaster” as a reason not to put such laboratories in a densely populated urban area, with a high proportion of low income residents with the highest death rate in the State of Massachusetts;

WHEREAS, liability for causing a major public health disaster in such a lab is not clearly delimited and the City, State, will likely have to bear considerable cost in the event of a BSL4 lab breach;

WHEREAS, the recent Tularemia infections of three Boston University lab workers and the exposure of many others without proper notification of the public suggests that BU is unwilling or unable to observe proper laboratory standards;

WHEREAS, the 70 plus Public Health Violations recorded by the Massachusetts Water Resource Administration and the \$20,000 fine recently imposed for lack of compliance with state law suggests that BU lacks the capability to obey stringent environmental standards.

WHEREAS, the public of the Boston Metropolitan Area will be subject to unknown but possibly substantial risk due to

1. The release of infected insects from the BSL4 facility
2. Damage to the building from either natural causes, negligence or deliberate actions leading to the release of infectious agents in the City
3. Accidental or deliberate exposure to lethal infectious agents by experimenters or the proposed human subjects at this facility
4. Malfunction of the waste disposal system of this facility leading to pollution of Boston Harbor or damage to the fishing industry upon which the regional economy depends.
5. Release of Dangerous Biological Agents During Transportation from Harvard Medical School

**THEREFORE AS MEMBERS OF BROOKLINE TOWN MEETING WE RESOLVE**

1. THE TOWN OF BROOKLINE ENDORSES STATE REPRESENTATIVE GLORIA L. FOXE'S LEGISLATION HOUSE BILL 1397 "A LEGISLATIVE ACT TO PROTECT THE PUBLIC HEALTH AND ENVIRONMENT FROM TOXIC BIOLOGICAL AGENTS". This bill will if passed will provide an adequate regulatory environment and requirements including siting for the BSL4 Laboratory located on the Southeast Expressway.
2. THE TOWN OF BROOKLINE IN ADDITION ENDORSES THE CITY OF BOSTON ORDINANCE "AN ORDINANCE REGARDING THE PROHIBITION OF RESEARCH DESIGNATED AS BIOSAFETY LEVEL 4 (BSL 4), Offered by Chuck Turner, Maura Hennigan, and Felix Arroyo, which will Ban the use of Bio Safety Level Four Agents in the City of Boston.

or act on anything relative thereto.

---

The construction of a BSL4 Biocontainment Facility in the most densely populated section of Boston 2 miles from the Brookline border is an evident public safety risk to this community. The petitioner therefore asks the Town to support State Legislation to regulate such facilities and the Boston City Ordinance to ban BSL4 work in the City so as to minimize the risk to Brookline.

---

SELECTMEN'S RECOMMENDATION

Article 30 is a petitioned resolution regarding the proposed Level 4 Bio-Safety Lab in the South End section of Boston. This is a difficult issue with important concerns that are people on either side of the issue understand and appreciate. The underlying concern is

having the Boston University Medical Center locate such a facility in a densely populated area like the South End.

BU received federal funding from the National Institutes of Health (NIH) for the proposed bio-lab on Albany St. This level 4 lab, the highest level of lab, would be home to research teams investigating cures for / ways to prevent infectious diseases. In addition, BU claims that approximately 660 permanent jobs would be created, along with 1,300 during construction of the facility. They estimate that the lab will generate \$2.9 billion for the local economy over the next 20 years.

Most people understand the critical nature of this research and support the work that would be done in the lab. It is the location, however, that opponents to the lab cite as the primary concern. The population density of the county in which the lab is proposed is 11,788 people per square mile. Compare that to the other level 4 labs in the country:

- 2,484 people per square mile for the county surrounding the CDC lab in Atlanta;
- 1,117 people per square mile for the county in which the San Antonio lab is located;
- 294 people per square mile for the county in which Fort Detrick (Maryland) is located; and
- 627 people per square mile for the county in which the Galveston, Texas lab is located; and

Opponents seriously question the decision to locate a facility that has the potential for causing a major disaster in such a densely populated area. Why not locate it in another part of the country where there would be fewer lives lost if an accident were to occur? Proponents argue that if the lab was located in another part of the country that has those desolate qualities, the researchers and scientists that are required to make the lab successful would not re-locate, thereby making the lab under-performing, if not useless. The question is, does the lab have to be built where people are or if it is built “will people come”?

The Board of Selectmen is split on this issue. While the four members present for the vote understand the critical nature of the research, two of the members oppose the location in the South End. Therefore, by a vote of 2-2 taken on October 20, 2005, the Board recommends NO ACTION on Article 30.

**ROLL CALL VOTE:**

Favorable Action

Hoy  
Daly

No Action

Sher  
Merrill

-----

---

## ADVISORY COMMITTEE'S RECOMMENDATION

### BACKGROUND

The Boston University Medical Center (BUMC) has received federal funding from the National Institutes of Health to construct a Biosafety Laboratory on Albany Street in Boston's South End. This laboratory, part of a national network of research facilities that study infectious diseases, will work to develop diagnostic tests, drugs, vaccines, and treatments for emerging infectious diseases that occur naturally or that could be deliberately introduced through terrorism. The seven-story laboratory building will have 194,000 square feet and is expected to be completed in 2007. Other laboratory buildings will be built on the site, which will be known as BioSquare.

The BUMC facility will include BioSafety Level 4 (BSL4) containment, the highest level. BSL4 laboratories are required for research involving dangerous agents that pose a high risk of aerosol-transmitted infections and life-threatening disease. Ebola and other viral hemorrhagic fevers are examples. BUMC maintains that classified research and bioweapons will not be conducted at the laboratory.

Proponents of the Boston BSL4 facility emphasize that the research to be conducted in the facility is essential for finding ways to prevent or cure infectious diseases that could spread naturally or as a result of bioterrorism. BUMC also claims that the laboratory will create approximately 660 permanent jobs at all classification levels, as well as 1300 jobs during construction of the facility, and that the laboratory will pump \$2.9 billion into the Boston economy over the next 20 years.

### DISCUSSION

Article 30 is a resolution that would endorse a bill that has been introduced by State Representative Gloria Fox in the Massachusetts House of Representatives and a proposed Boston City Ordinance that has been offered by Boston City Councilors Chuck Turner, Felix D. Arroyo, and Maura Hennigan.

The bill proposed by Gloria Fox is "An Act Protecting the Public Health and Environment from Pathogenic Biological Agents and Toxins." Originally House Bill 1397 and subsequently known as House Docket 4249, the legislation has been revised several times.

The proposed Boston ordinance ("An Ordinance Regarding the Prohibition of Research Designated as Biosafety Level 4") would prohibit all laboratory research at the BSL4 level in the City of Boston. It would not, however, restrict BSL3 or lower-level research.

The central issue raised by Article 30 is whether the research conducted in the BUMC laboratory will pose a risk to laboratory workers, the public, and the environment.

BUMC argues that the BSL4 will be safe and secure. It reports that there have been no releases of agents into the environment or community incidents at any of the North American BSL-4 laboratories in 78 years of combined experience. (BUMC cites the

record of the facilities at the Southwest Foundation in San Antonio, the Centers for Disease Control in Atlanta, Georgia State, the U.S. Army facility at Fort Detrick in Frederick, Maryland, and a laboratory in Winnipeg, Canada.) BUMC promises to exceed existing safety standards. The building will include high-efficiency particulate air filters, sealed airtight seams, joints, air ducts, and doors, double-door airlocks on entries and exits, and decontamination of all wastes. BUMC also plans rigorous security procedures to limit access to areas in which dangerous agents are used or stored, as well as detailed emergency policies and procedures. BU opposes the Gloria Fox legislation as unnecessary and argues that the federal government might withdraw its funding for the lab if construction is delayed while state regulations are drafted.

Proponents of the Gloria Fox legislation offer a number of arguments that suggest that research at the BSL4 laboratory may pose risks.

*Accidents Have Happened:* There have been accidents involving BSL4 laboratories and the agents they use. For example, at the U.S. Army facility at Fort Detrick, Maryland, there were five confirmed infections of employees between 1989 and 2002. These infections involved glanders, Q fever, vaccinia, chikungunya, and Venezuelan equine encephalitis. There were also exposures to anthrax, plague, and other agents that did not lead to infections. There also have been anthrax releases from Fort Detrick, although nobody was infected—largely because most people near the site had been vaccinated. In the absence of mandatory reporting, it is hard to know how many accidents have taken place, but some have clearly occurred.

*Human Error Makes Accidents Possible:* People make mistakes and the recent history of work with dangerous infectious agents shows that these errors pose risks. In 2004-05 a Cincinnati company inadvertently shipped samples of the deadly 1957 “Asian flu” virus to 5,000 diagnostic laboratories around the world. Another institute mistakenly shipped live anthrax bacteria to Children’s Hospital Oakland Research Institute. Five people were exposed and were given antibiotics. The problem became evident when mice injected with the bacteria—which were supposed to be killed germs—died.

*BU’s Record Suggests that the Risks of Accidents are Real:* The 2004 incidents in which three BU researchers became infected with tularemia, a potential bioweapons agent, in a BU lab, undermine confidence in BUMC ability to observe safety and security standards. Although the incidents took place in a BSL2 laboratory, BU apparently ignored policies for handling tularemia. The key issue is whether the public can trust BU to follow standards for even more dangerous agents in a higher-level facility. BU also failed to inform the public of the infections, thereby increasing public distrust of BUMC. The tularemia incidents suggest that greater governmental oversight—including requirements that laboratory-acquired infections be reported to the state and relevant municipality—is necessary.

*A BSL4 Laboratory Poses Multiple Risks:* There are several ways in which the proposed BSL4 laboratory could threaten the public and the environment. The containment system could be breached. An infected worker could leave the facility and infect others. Research animals or insects could escape. A virus could be released during transport. It is also possible that the Boston BSL4 laboratory could be the target of a terrorist attack or

infiltration. The absence of known previous terrorist attacks on BSL4 laboratories is not necessarily reassuring. As the example of the September 11 attacks showed, it is particularly difficult to assess the risks of unprecedented types of attacks. Plans rarely exist for countering new and unexpected acts of terrorism.

*The Population Density of the Area Surrounding the Proposed BSL4 Laboratory Increases the Risks:* The South End BSL4 laboratory would be located in an area with a population density much higher than that of the areas around other existing and proposed BSL4 laboratories. The population density of the county in which the laboratory would be built is 11,788 people per square mile. The population density of the county surrounding the CDC laboratory in Atlanta is 2,484 per square mile. In San Antonio the comparable figure is 1,117. At Fort Detrick, Maryland, it is 294. And in Galveston, Texas, it is 627. The concentration of people near the Boston laboratory increases the risk that more people will be exposed to any agent that is released. This risk has been recognized by the National Institutes of Health (NIH). A December 15, 2000, NIH memorandum noted that building a BSL4 laboratory in Hamilton, Montana (where the population density is 15 people per square mile), “reduces the “possibility that an accidental release of a biosafety level-4 organism would lead to a major public health disaster” because the facility would be “well removed from major population centers.” By implication, the risks are much higher in a large city.

Federal regulations for BSL4 facilities largely rely on research institutions to police themselves by following nonbinding guidelines. Massachusetts currently has no regulatory program for BSL4 laboratories. Gloria Fox’s bill attempts to address this problem.

Highlights of the bill include:

- The Massachusetts Department of Environmental Protection, in cooperation with the Department of Public Health, will adopt BSL4 laboratory regulations that cover siting, construction, operation, emergency preparedness, maintenance, permits, insurance, reporting of the presence of select agents or their release, and packaging and transportation of dangerous biological agents and toxins.
- A requirement that each BSL4 facility have a community oversight board appointed by the municipality in which the facility is located.
- Authorization of the Department of Public Health, the Department of Environmental Protection, and the Department of Public Safety to conduct inspections of BSL4 facilities.
- Protection of “whistleblowers” who report practices that violate state regulations.
- A moratorium on construction of BSL4 labs, starting from the date the legislation goes into effect, provided that the regulations are adopted within 180 days of that date.
- A grant of authority to municipalities to enact additional laws and regulations for BSL4 facilities.

Any policy regarding the proposed Boston BSL4 laboratory—and any similar facilities that might be built in Massachusetts in the future—must balance the potential benefits of

research on infectious agents with the need to protect the public from the risk of accidents. It may be unlikely that an infectious agent will be released accidentally, but it is possible that such a release would have highly dangerous consequences. Under these circumstances—and in the absence of stronger federal regulations—it seems prudent to strike a balance that would impose comprehensive and effective state regulations on any BSL4 facility in Massachusetts. The legislation introduced by Gloria Fox mandates such regulations. It offers the potential for limiting the risks associated with a BSL4 laboratory without going so far as to prohibit such a facility entirely, as the proposed Boston ordinance would do.

#### RECOMMENDATION

By a vote of 15 in favor and 6 opposed, the Advisory Committee recommends FAVORABLE ACTION on the following resolution:

VOTED: That the Town adopt the following resolution:

#### Resolution on the Boston Biosafety Level 4 Laboratory

WHEREAS the Boston University Medical Center has proposed building and operating a Biosafety Level 4 (BSL4) laboratory on Albany Street in the South End of the City of Boston; and

WHEREAS this proposed BSL4 laboratory would conduct research using dangerous toxic biological agents that would pose a severe threat to public health and the environment if they were released from the laboratory; and

WHEREAS the residents of the Boston metropolitan area, including Brookline, could be subject to unknown but possibly significant risk from the proposed BSL4 facility due to: (1) release of infected research animals or insects from the laboratory; (2) damage to the building from natural causes, negligence, or deliberate actions leading to the release of infectious agents; (3) exposure to lethal infectious agents by researchers or human subjects at the facility; (4) malfunction of the waste-disposal system of the facility; and/or (5) release of dangerous biological agents during transport to the facility; and

WHEREAS the infection with tularemia of three Boston University laboratory workers in 2004 that was not properly reported indicates the need for expanded laboratory regulation and safety measures; and

WHEREAS legislation introduced by State Representative Gloria Fox, “An Act Protecting the Public Health and Environment from Pathogenic Biological Agents and Toxins,” would provide for comprehensive regulation of BSL4 laboratories by the Commonwealth of Massachusetts, including Department of Environmental Protection and Department of Public Health regulations for location, construction, operation, maintenance, security, emergencies, permits, reporting, insurance and transport, the creation of Community Oversight Boards, and a moratorium on the construction and operation of BSL4 facilities until state regulations are adopted; and

WHEREAS this proposed legislation has been endorsed by the Massachusetts Public Health Association and the Massachusetts Nurses Association;

NOW, THEREFORE, BE IT RESOLVED, that Brookline's representative Town Meeting endorses State Representative Gloria L. Fox's bill, "An Act Protecting the Public Health and Environment from Pathogenic Biological Agents and Toxins."

*XXX*

ARTICLE 31

THIRTY-FIRST ARTICLE

Reports of Town Officers and Committees