ARTICLE 1

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

Article 20 of the November, 2000 Special Town Meeting requires that this be the first article at each Annual Town Meeting. It calls for the Selectmen to appoint two Measurers of Wood and Bark.

SELECTMEN’S RECOMMENDATION

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on March 21, 2006, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE’S RECOMMENDATION

This is the traditional Article 1, a reminder of Brookline's colonial beginnings, and is at no cost to the town. Opponents have countered that this article is an anachronism that has no place on a modern-day warrant, although the Advisory Committee has been told of at least one fairly recent instance where one of the Measurers of Wood and Bark was called upon regarding a dispute over the size of a delivered chord of wood. In any event, the Advisory Committee, by a vote of 12 in favor to 1 opposed, recommends FAVORABLE ACTION on the following vote:

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

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 FY2007 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.

SELECTMEN’S RECOMMENDATION
There are no Collective Bargaining agreements for Town Meeting to act upon. Therefore, the Board of Selectmen recommends NO ACTION, by a vote of 4-0 taken on April 25, 2006, on Article 2.

ROLL CALL VOTE:
No Action
Allen
Hoy
Sher
Daly

ADVISORY COMMITTEE’S RECOMMENDATION
As there are no collective bargaining agreements to consider at this time, the Advisory Committee unanimously (17-0) recommends NO ACTION on this article.
ARTICLE 3

THIRD ARTICLE
To see if the Town will authorize the Town Treasurer, with the approval of the Selectmen, to enter into Compensating Balance Agreement(s) for FY2007 in accordance with General Laws Chapter 44, Section 53F, or act on anything relative thereto.

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

SELECTMEN’S RECOMMENDATION

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

Funds have been included in the Treasurer’s FY2007 budget to pay for these services directly and the Treasurer does not anticipate using this procedure at this time. This authorization, however, will give the Treasurer the flexibility to enter into such agreements if it should be in the best interest of the Town.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on March 21, 2006, on the following vote:

VOTED: That the Town authorize the Town Treasurer, with the approval of the Selectmen, to enter into Compensating Balance Agreement(s) for FY2007 in accordance with General Laws Chapter 44, Section 53F.
ADVISORY COMMITTEE’S RECOMMENDATION

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

DISCUSSION
To date, the Treasurer has not used this authority, finding it more advantageous to place Town funds in interest bearing accounts and negotiate service fees with the banks. The Town spends between $40,000 and $70,000 annually in bank service charges. The Treasurer has no specific plans to enter into any compensating balance agreements, but would like the flexibility to do so if conditions warrant.

RECOMMENDATION
The Advisory Committee unanimously (16-0) recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

XXX
ARTICLE 4

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

1) Special Appropriation Closeouts

2) Rescind the bond authorization for water pollution abatement projects, through the Massachusetts Water Pollution Abatement Trust, authorized under Article 13 of the 1997 Special Town Meeting, in the amount of $200,000.

Section 2.1.4 of the Town's By-Laws requires that each Annual Town Meeting include a warrant article showing the status of all special appropriations. This article is also used for debt rescissions.

SELECTMEN’S RECOMMENDATION

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

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

Part two of the article is related to a bond authorization approved at the 1997 Annual Town Meeting for a low-interest loan program, offered through the Massachusetts Water Pollution Abatement Trust, to upgrade septic systems (the Title V program). The Health Department sent letters to the 27 homes in town with septic systems and there was no interest by any of them. Therefore, the bond authorization is no longer needed and should be rescinded to clean up the Town’s books.
The Selectmen recommend FAVORABLE ACTION on the vote below related to part 2 of the article, by a vote of 5-0 taken on March 21, 2006:

VOTED: That the total ($200,000) Bond Authorization for water pollution abatement projects, through the Massachusetts Water Pollution Abatement Trust, authorized under Article 13 of the 1997 Special Town Meeting, be reduced and be rescinded.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
Article 4 authorizes the Comptroller to close out unexpended balances in certain Special Appropriations, returning those funds to the Surplus Revenue account.

DISCUSSION
Usually this article is simply informational. This time, however, in addition to the routine close outs, there is a request to rescind a bond authorization that needs a vote of Town Meeting. Almost ten years ago the Health Department wanted to make funds available to anyone in the town who needed help to upgrade their septic system to comply with Title V requirements. There were about 25 potential systems and each household was contacted. No one ever requested any funds. The bond authorization remains on the books and the Town Treasurer would like Town Meeting to rescind the authorization in a "housekeeping" manner. The Advisory Committee supports this idea.

RECOMMENDATION
The Advisory Committee unanimously (13-0) recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX
<table>
<thead>
<tr>
<th>PROJECT</th>
<th>REVISED BUDGET</th>
<th>YTD EXPENDED</th>
<th>YTD ENCUMBERED</th>
<th>AVAILABLE</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>C065</td>
<td>352</td>
<td>352</td>
<td>0</td>
<td>0</td>
<td>Complete.</td>
</tr>
<tr>
<td>15C FINANCE CAPITAL</td>
<td>352</td>
<td>352</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>C097</td>
<td>136,126</td>
<td>130,752</td>
<td>4,742</td>
<td>632</td>
<td>Projects being completed.</td>
</tr>
<tr>
<td>C119</td>
<td>168,534</td>
<td>21,913</td>
<td>69,552</td>
<td>77,070</td>
<td>Encumbered funds for windows. Balance to be used as part of relocation of Fire Dept Fleet Maint Shop, if approved by Town Meeting.</td>
</tr>
<tr>
<td>C120</td>
<td>217,127</td>
<td>12,506</td>
<td>203,076</td>
<td>1,545</td>
<td>In litigation.</td>
</tr>
<tr>
<td>C121</td>
<td>140</td>
<td>140</td>
<td>0</td>
<td>0</td>
<td>Complete.</td>
</tr>
<tr>
<td>C132</td>
<td>428,474</td>
<td>371,926</td>
<td>56,548</td>
<td>0</td>
<td>Encumbrances complete projects.</td>
</tr>
<tr>
<td>C134</td>
<td>17,379</td>
<td>0</td>
<td>10,100</td>
<td>7,279</td>
<td>Nearing completion of project. Any unexpended balance as of 9/1/06 will be closed out or re-appropriated.</td>
</tr>
<tr>
<td>C135</td>
<td>12,632</td>
<td>0</td>
<td>12,632</td>
<td>0</td>
<td>Encumbrances complete projects.</td>
</tr>
<tr>
<td>C139</td>
<td>57,249</td>
<td>9,172</td>
<td>24,837</td>
<td>23,240</td>
<td>Funds to be expended by 9/1/06. Any unexpended balance will be closed out or re-appropriated.</td>
</tr>
<tr>
<td>C141</td>
<td>888,103</td>
<td>386,585</td>
<td>25,112</td>
<td>476,406</td>
<td>Remaining work to be done during the Summer in the auditorium.</td>
</tr>
<tr>
<td>C142</td>
<td>1,740,000</td>
<td>0</td>
<td>0</td>
<td>1,740,000</td>
<td>Funds have not been borrowed, as work on hold.</td>
</tr>
<tr>
<td>C143</td>
<td>1,111,555</td>
<td>427,153</td>
<td>248,525</td>
<td>435,877</td>
<td>Final projects being completed (roof, a/c, etc.)</td>
</tr>
<tr>
<td>C146</td>
<td>22,643</td>
<td>17,245</td>
<td>5,398</td>
<td>0</td>
<td>Encumbrances complete projects.</td>
</tr>
<tr>
<td>C147</td>
<td>300,000</td>
<td>0</td>
<td>0</td>
<td>300,000</td>
<td>To be used on Transfer Sta Rehab with FY07 funds.</td>
</tr>
<tr>
<td>C149</td>
<td>714,716</td>
<td>626,762</td>
<td>87,954</td>
<td>0</td>
<td>Encumbrances complete projects.</td>
</tr>
<tr>
<td>C154</td>
<td>1,260,000</td>
<td>19,200</td>
<td>952,000</td>
<td>288,800</td>
<td>Design underway.</td>
</tr>
<tr>
<td>C155</td>
<td>4,100,000</td>
<td>2,208,921</td>
<td>1,823,597</td>
<td>67,482</td>
<td>Construction underway.</td>
</tr>
<tr>
<td>C057</td>
<td>3,058</td>
<td>0</td>
<td>0</td>
<td>3,058</td>
<td>Complete. Balance to be closed out 6/30/06.</td>
</tr>
<tr>
<td>C110</td>
<td>5,182</td>
<td>0</td>
<td>5,175</td>
<td>7</td>
<td>Bids opening 5/06.</td>
</tr>
<tr>
<td>C128</td>
<td>17,602</td>
<td>0</td>
<td>0</td>
<td>17,602</td>
<td>Project underway. To be completed by 12/06.</td>
</tr>
<tr>
<td>C137</td>
<td>896,423</td>
<td>823,995</td>
<td>67,023</td>
<td>5,405</td>
<td>Bids opening 5/06.</td>
</tr>
<tr>
<td>C144</td>
<td>2,183,957</td>
<td>877,699</td>
<td>338,999</td>
<td>968,303</td>
<td>Part of Beacon St. project funding plan.</td>
</tr>
<tr>
<td>C145</td>
<td>871,486</td>
<td>125,093</td>
<td>65,003</td>
<td>681,390</td>
<td></td>
</tr>
<tr>
<td>C147</td>
<td>7,590,000</td>
<td>56,400</td>
<td>374,169</td>
<td>7,159,431</td>
<td>Project underway.</td>
</tr>
<tr>
<td>C148</td>
<td>2,600,000</td>
<td>0</td>
<td>0</td>
<td>2,600,000</td>
<td>Project underway.</td>
</tr>
</tbody>
</table>
## AVAILABLE BUDGET REPORT - CAPITAL FUNDS
### FOR FISCAL YEAR 2006
#### (as of 4/3/06)

<table>
<thead>
<tr>
<th>Project Details</th>
<th>Revised Budget</th>
<th>YTD Expended</th>
<th>YTD Encumbered</th>
<th>Available</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>MUDDY RIVER RESTORATION</td>
<td>745,000</td>
<td>0</td>
<td>0</td>
<td>745,000</td>
<td>Project in Design phase.</td>
</tr>
<tr>
<td>LARZ ANDERSON MUN RINK</td>
<td>260,000</td>
<td>242,150</td>
<td>17,850</td>
<td>0</td>
<td>Encumbrance completes project.</td>
</tr>
<tr>
<td>STORM DRAIN IMPROVEMENTS</td>
<td>500,000</td>
<td>0</td>
<td>0</td>
<td>500,000</td>
<td>Part of Landfill project funding plan.</td>
</tr>
<tr>
<td>WATER METER REPLACEMENT</td>
<td>2,000,000</td>
<td>147,712</td>
<td>1,401,557</td>
<td>450,731</td>
<td>Project underway. To be completed by 12/06.</td>
</tr>
<tr>
<td>DPW CAPITAL</td>
<td>17,672,708</td>
<td>2,273,049</td>
<td>2,269,777</td>
<td>13,129,882</td>
<td></td>
</tr>
</tbody>
</table>

| Total                                   | 28,847,736     | 6,505,675    | 5,793,848      | 16,548,213|                                                                       |
### AVAILABLE BUDGET REPORT - SPECIAL WARRANT ARTICLES

**FOR FISCAL YEAR 2006**

(as of 4/3/06)

<table>
<thead>
<tr>
<th>DEPT</th>
<th>ACCT NO</th>
<th>APPROPRIATION NAME</th>
<th>REVISED BUDGET</th>
<th>YTD EXPENDED</th>
<th>YTD ENCUMBERED</th>
<th>AVAILABLE BUDGET</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>HR</td>
<td>6E0029</td>
<td>PHYSICAL FITNESS EQUIPMENT</td>
<td>30,000</td>
<td>0</td>
<td>0</td>
<td>30,000</td>
<td>Pending further bargaining.</td>
</tr>
<tr>
<td>FINANCE</td>
<td>6A0005</td>
<td>DATA PROCESSING EQUIPMENT</td>
<td>153,644</td>
<td>1,911</td>
<td>22,013</td>
<td>129,720</td>
<td>On-going implementation of MUNIS (financial system).</td>
</tr>
<tr>
<td>FINANCE</td>
<td>6A0013</td>
<td>FURN, FIXTURES, EQUIPMENT</td>
<td>42,308</td>
<td>27,961</td>
<td>6,315</td>
<td>8,032</td>
<td>Will be spent by 6/30/06.</td>
</tr>
<tr>
<td>FINANCE</td>
<td>6A0019</td>
<td>SCHOOL FURNITURE UPGRADES</td>
<td>50,000</td>
<td>50,000</td>
<td>0</td>
<td>0 Complete.</td>
<td></td>
</tr>
<tr>
<td>TOWN CCLR</td>
<td>6E0018</td>
<td>DRE VOTING MACHINES</td>
<td>110,000</td>
<td>0</td>
<td>0</td>
<td>110,000</td>
<td>Awaiting Sec of State certification of machine.</td>
</tr>
<tr>
<td>PLANNING</td>
<td>6C0029</td>
<td>COMPREHENSIVE PLAN/RECODI</td>
<td>59,371</td>
<td>42,874</td>
<td>16,498</td>
<td>0 Encumbrances complete project.</td>
<td></td>
</tr>
<tr>
<td>ECON DEVEL</td>
<td>6E0022</td>
<td>STREETSCAPE/CIVIC SPACE</td>
<td>200,264</td>
<td>21,477</td>
<td>8,786</td>
<td>170,000</td>
<td>In design phase. To be bid in Summer.</td>
</tr>
<tr>
<td>ECON DEVEL</td>
<td>6E0024</td>
<td>PUBLIC EVENT KIOSK</td>
<td>10,069</td>
<td>9,800</td>
<td>0</td>
<td>270 Remaining balance to be closed out by 6/30/06.</td>
<td></td>
</tr>
<tr>
<td>INFO TECH</td>
<td>6A0005</td>
<td>DATA PROCESSING EQUIPMENT</td>
<td>296,027</td>
<td>138,843</td>
<td>1,596</td>
<td>155,862</td>
<td>To be encumbered by 6/30/06.</td>
</tr>
<tr>
<td>INFO TECH</td>
<td>6A0021</td>
<td>HAND HELD INSPECTION EQUIPMENT</td>
<td>35,160</td>
<td>32,958</td>
<td>1,596</td>
<td>607 To be encumbered and spent by 6/30/06.</td>
<td></td>
</tr>
<tr>
<td>INFO TECH</td>
<td>6A0022</td>
<td>TECHNOLOGY APPLICATIONS</td>
<td>125,295</td>
<td>125,295</td>
<td>0</td>
<td>0 Projects complete.</td>
<td></td>
</tr>
<tr>
<td>INFO TECH</td>
<td>6B0100</td>
<td>INSTRUCTIONAL TECHNOLOGY STUDY</td>
<td>120,920</td>
<td>105,250</td>
<td>8,500</td>
<td>7,170 To be encumbered and spent by 6/30/06.</td>
<td></td>
</tr>
<tr>
<td>POLICE</td>
<td>6A0011</td>
<td>COMMUNICATIONS/RADIO EQ &amp; IMP</td>
<td>7,532</td>
<td>50</td>
<td>7,482</td>
<td>0 Encumbrances complete project.</td>
<td></td>
</tr>
<tr>
<td>FIRE</td>
<td>6E0023</td>
<td>FIRE TRAINING MODULE &amp; EQUIPME</td>
<td>46,000</td>
<td>0</td>
<td></td>
<td>46,000 Planning underway for Fire Training area.</td>
<td></td>
</tr>
<tr>
<td>FIRE</td>
<td>6E0030</td>
<td>FIRE ENGINE</td>
<td>375,061</td>
<td>357,329</td>
<td>8,994</td>
<td>8,738 To be closed out 6/30/06.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6A0023</td>
<td>FIRE STA DIESEL EXHAUST SYSTEM</td>
<td>24,741</td>
<td>15,315</td>
<td>7,950</td>
<td>1,476 On-going work.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0002</td>
<td>PUTTERHAM LIB ADA RENOVATIONS</td>
<td>50,000</td>
<td>0</td>
<td>0</td>
<td>50,000 All work at Putterham Library to be done together with the HVAC project.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0004</td>
<td>FIRE STATION #5 WINDOWS</td>
<td>30,000</td>
<td>2,079</td>
<td>500</td>
<td>27,421 Ready to hire designer.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0005</td>
<td>TOWN/SCH BLDG SEC/LIFE SAFETY</td>
<td>181,454</td>
<td>47,929</td>
<td>85,414</td>
<td>48,111 On-going projects.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0006</td>
<td>PUTTERHAM LIBRARY FLOOR REPL</td>
<td>25,000</td>
<td>0</td>
<td>0</td>
<td>25,000 All work at Putterham Library to be done together with the HVAC project.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0007</td>
<td>PUTTERHAM LIBRARY HVAC UPGRADE</td>
<td>173,500</td>
<td>0</td>
<td>0</td>
<td>173,500 All work at Putterham Library to be done together with the HVAC project.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0008</td>
<td>MUNICIPAL POOL REHAB</td>
<td>1,000,000</td>
<td>24,266</td>
<td>202,734</td>
<td>773,000 Project to commence 7/1/06.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0009</td>
<td>OLD LINCOLN SCH ELEVATOR</td>
<td>161,260</td>
<td>140,342</td>
<td>16,550</td>
<td>4,367 Nearing completion of project. Any unexpended balance as of 9/1/06 will be closed out.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0011</td>
<td>TAPPAN ST GYM</td>
<td>48,000</td>
<td>0</td>
<td>12,716</td>
<td>35,284 To be used with funding in the FY07 CIP for plans and specs for roof work and pointing of the High School/Tappan St Gym.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0012</td>
<td>COOLIDGE CORNER LIB FACADE</td>
<td>43,389</td>
<td>42,591</td>
<td>797</td>
<td>0 Encumbrances complete project.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0014</td>
<td>SWIMMING POOL ROOF REPL</td>
<td>42,000</td>
<td>42,000</td>
<td>0</td>
<td>0 Complete (used for plans and specs).</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0017</td>
<td>OLD LINCOLN SPRINKLERS-P/S</td>
<td>40,000</td>
<td>0</td>
<td>0</td>
<td>40,000 Being re-appropriated under the Budget Article.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0020</td>
<td>TRAIN MEM PUBLIC HEALTH BLDG</td>
<td>443,631</td>
<td>149,749</td>
<td>44,554</td>
<td>249,328 Under construction.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0025</td>
<td>MUNICIPAL SERVICE CENTER REPAI</td>
<td>37,137</td>
<td>37,137</td>
<td>0</td>
<td>0 Project complete.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0026</td>
<td>MUNICIPAL BUILDING SECURITY</td>
<td>15,648</td>
<td>14,908</td>
<td>0</td>
<td>740 On-going projects.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0046</td>
<td>DEVOTION SCH AUD-STUDY</td>
<td>15,000</td>
<td>5,828</td>
<td>422</td>
<td>8,750 On hold due to plans for total renovation.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0049</td>
<td>SOULE RECREATION CENTER</td>
<td>263</td>
<td>263</td>
<td>0</td>
<td>0 Project complete.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0052</td>
<td>SYSTEMWIDE SPRINKLERS AND</td>
<td>1,105</td>
<td>1,105</td>
<td>0</td>
<td>0 Project complete.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0061</td>
<td>ASBESTOS REMOVAL</td>
<td>91,206</td>
<td>44,079</td>
<td>32,609</td>
<td>14,518 On-going projects.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0065</td>
<td>MAIN LIBRARY RENOVATIONS</td>
<td>12,537</td>
<td>471</td>
<td>0</td>
<td>12,066 Work planned for front section of building.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0068</td>
<td>OLD LINCOLN SCHOOL REPAIR</td>
<td>251,302</td>
<td>1,100</td>
<td>202</td>
<td>250,000 Being re-appropriated under the Budget Article.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0082</td>
<td>PIERCE PRIMARY ELEVATOR</td>
<td>210,299</td>
<td>33,540</td>
<td>0</td>
<td>176,759 Project on hold.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0085</td>
<td>HEATH SCHOOL SPRINKLERS-P</td>
<td>2,500</td>
<td>2,500</td>
<td>0</td>
<td>0 Project complete.</td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0086</td>
<td>PIERCE SCHOOL WIND/VENTIL</td>
<td>810,284</td>
<td>99,965</td>
<td>32,831</td>
<td>677,453 Window project planned for the Summer.</td>
<td></td>
</tr>
<tr>
<td>DEPT</td>
<td>ACCT NO.</td>
<td>APPROPRIATION NAME</td>
<td>REVISED BUDGET</td>
<td>YTD EXPENDED</td>
<td>YTD ENCUMBERED</td>
<td>AVAILABLE BUDGET</td>
<td>STATUS</td>
</tr>
<tr>
<td>------</td>
<td>----------</td>
<td>-------------------</td>
<td>----------------</td>
<td>--------------</td>
<td>----------------</td>
<td>------------------</td>
<td>--------</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0088</td>
<td>PUTTERHAM LIB FIRE ALARM</td>
<td>42,800</td>
<td>0</td>
<td>0</td>
<td>42,800</td>
<td>All work at Putterham Library to be done together with the HVAC project.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0091</td>
<td>PIERCE SCHOOL IMPROVEMENT</td>
<td>561</td>
<td>0</td>
<td>561</td>
<td>422,986</td>
<td>Encumbrances complete project.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0092</td>
<td>SCHOOL BLDGS LIFE SAFETY</td>
<td>733,957</td>
<td>269,156</td>
<td>41,815</td>
<td>74,948</td>
<td>On-going projects.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0094</td>
<td>PARK COMFORT STATIONS IMPROVEM</td>
<td>10,441</td>
<td>0</td>
<td>10,441</td>
<td>422,986</td>
<td>Encumbrances complete project.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0095</td>
<td>FIRE DEPT MOTOR VEH SHOP MOVE</td>
<td>93,748</td>
<td>800</td>
<td>18,000</td>
<td>128,931</td>
<td>Contract in place for new bleachers, backboards, etc. in the gyms.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0097</td>
<td>BHS REPAIRS</td>
<td>277,240</td>
<td>145,063</td>
<td>3,246</td>
<td>277,240</td>
<td>Nearing completion of project. Any unexpended balance as of 9/1/06 will be closed out.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0098</td>
<td>LYNCH REC CTR WINDOWS/BOILERS</td>
<td>33,864</td>
<td>9,443</td>
<td>20,117</td>
<td>56,344</td>
<td>Encumbrances complete project.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0099</td>
<td>PIERCE SCH HVAC/PAINT/CARPET</td>
<td>93,149</td>
<td>92,557</td>
<td>593</td>
<td>85,793</td>
<td>On-going projects.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0101</td>
<td>EMERGENCY OPERATIONS CENTER</td>
<td>36,794</td>
<td>18,782</td>
<td>0</td>
<td>85,793</td>
<td>To be used for IT wiring.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0102</td>
<td>FIRE TRAINING BUILDING IMP</td>
<td>161,447</td>
<td>70,550</td>
<td>11,573</td>
<td>79,325</td>
<td>Phase 1 complete. Phase 2 to commence in Summer.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0103</td>
<td>COOLIDGE CORNER LIB FIRE ALARM</td>
<td>45,000</td>
<td>9,246</td>
<td>5,754</td>
<td>30,000</td>
<td>Project underway.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6B0104</td>
<td>COOLIDGE CORNER LIBRARY HVAC</td>
<td>534,800</td>
<td>513,987</td>
<td>18,390</td>
<td>2,423</td>
<td>Punch-list work left.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6C0026</td>
<td>DRISCOLL SCHOOL</td>
<td>220,000</td>
<td>1,449</td>
<td>132,758</td>
<td>85,793</td>
<td>Work to be completed includes bathrooms and HVAC in auditorium.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6E0014</td>
<td>ENERGY CONSERVATION</td>
<td>25,000</td>
<td>0</td>
<td>5,391</td>
<td>19,609</td>
<td>On-going projects.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6E0015</td>
<td>FIRE STATION AIR CONDITIONERS</td>
<td>96,603</td>
<td>82,951</td>
<td>13,096</td>
<td>19,609</td>
<td>Nearing completion of project. Any unexpended balance as of 9/1/06 will be closed out.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6E0016</td>
<td>TRASH COMPACTORS</td>
<td>68,395</td>
<td>57,761</td>
<td>2,000</td>
<td>8,634</td>
<td>To be used with FY07 funding to complete installations.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6E0039</td>
<td>MUNICIPAL SWIMMING POOL LOCKER</td>
<td>123,960</td>
<td>0</td>
<td>0</td>
<td>123,960</td>
<td>Re-appropriated under the Budget Article.</td>
</tr>
<tr>
<td>BUILDING</td>
<td>6E0052</td>
<td>ENERGY MANAGEMENT SYSTEM</td>
<td>80,000</td>
<td>12,037</td>
<td>0</td>
<td>67,963</td>
<td>In planning stage.</td>
</tr>
<tr>
<td>DPW</td>
<td>6A0015</td>
<td>PARKING METERS</td>
<td>42</td>
<td>42</td>
<td>0</td>
<td>0</td>
<td>Project complete.</td>
</tr>
<tr>
<td>DPW</td>
<td>6B0003</td>
<td>MAIN LIBRARY LANDSCAPING</td>
<td>100,000</td>
<td>0</td>
<td>0</td>
<td>100,000</td>
<td>Design Review complete and construction documents in progress.</td>
</tr>
<tr>
<td>DPW</td>
<td>6B0031</td>
<td>SKATING RINK RENOVATIONS/IMPRO</td>
<td>140,000</td>
<td>140,000</td>
<td>0</td>
<td>0</td>
<td>Project complete.</td>
</tr>
<tr>
<td>DPW</td>
<td>6B0069</td>
<td>LINCOLN SCHOOL WALL</td>
<td>299,923</td>
<td>235,026</td>
<td>17,288</td>
<td>47,608</td>
<td>Project underway.</td>
</tr>
<tr>
<td>DPW</td>
<td>6B0074</td>
<td>TRANSFER STATION REHABILI</td>
<td>329,644</td>
<td>138,852</td>
<td>63,460</td>
<td>127,331</td>
<td>Bids came in over budget; revising scope of work.</td>
</tr>
<tr>
<td>DPW</td>
<td>6C0011</td>
<td>TREE REMOVAL &amp; REPLACEMENT</td>
<td>201,399</td>
<td>80,179</td>
<td>24,398</td>
<td>96,822</td>
<td>On-going projects.</td>
</tr>
<tr>
<td>DPW</td>
<td>6E0022</td>
<td>STREETScape/CIVIC SPACE</td>
<td>43,620</td>
<td>43,620</td>
<td>0</td>
<td>0</td>
<td>Projects complete.</td>
</tr>
<tr>
<td>DPW</td>
<td>6E0040</td>
<td>BACKFLOW PREVENTOR VALVES</td>
<td>42,522</td>
<td>4,261</td>
<td>0</td>
<td>38,261</td>
<td>On-going project for Public Facilities.</td>
</tr>
<tr>
<td>DPW</td>
<td>6E0048</td>
<td>WATER SYSTEM HYDRAULIC ANALYSIS</td>
<td>150,000</td>
<td>0</td>
<td>0</td>
<td>150,000</td>
<td>Project complete. Awaiting invoice from MWRA.</td>
</tr>
<tr>
<td>DPW</td>
<td>6E0054</td>
<td>SINGLETREE WATER TANK PAI</td>
<td>12,201</td>
<td>12,201</td>
<td>0</td>
<td>0</td>
<td>Project complete.</td>
</tr>
<tr>
<td>DPW</td>
<td>6E0059</td>
<td>PLAYGROUND EQUIPMENT</td>
<td>3,636</td>
<td>1,200</td>
<td>2,436</td>
<td>0</td>
<td>Encumbrances complete project.</td>
</tr>
<tr>
<td>DPW</td>
<td>6H0003</td>
<td>PAVEMENT OF FIRE TRAINING AREA</td>
<td>30,000</td>
<td>0</td>
<td>0</td>
<td>30,000</td>
<td>To be coordinated with Fleet Maint Shop move.</td>
</tr>
<tr>
<td>DPW</td>
<td>6H0009</td>
<td>CH 90 HWY IMPROVEMENTS</td>
<td>1,752,282</td>
<td>573,500</td>
<td>49,946</td>
<td>1,644,805</td>
<td>On-going projects.</td>
</tr>
<tr>
<td>DPW</td>
<td>6H0017</td>
<td>STREET/SIDWALK REHABILIT</td>
<td>48,267</td>
<td>17,752</td>
<td>41,163</td>
<td>19,352</td>
<td>On-going projects.</td>
</tr>
<tr>
<td>DPW</td>
<td>6H0020</td>
<td>STREET LIGHTING REPLACEMENT</td>
<td>265,166</td>
<td>128,736</td>
<td>57,632</td>
<td>78,797</td>
<td>On-going projects.</td>
</tr>
<tr>
<td>DPW</td>
<td>6H0021</td>
<td>CARLETON STREET FOOTBRIDGE</td>
<td>90,000</td>
<td>0</td>
<td>0</td>
<td>90,000</td>
<td>Pre-application for T.E.P. funding filed.</td>
</tr>
<tr>
<td>DPW</td>
<td>6H0025</td>
<td>CHESTNUT ST DRAIN/WILLOW POND</td>
<td>56,525</td>
<td>1,045</td>
<td>8,485</td>
<td>46,635</td>
<td>Waiting for Muddy River Project to remove sediment.</td>
</tr>
<tr>
<td>DPW</td>
<td>6H0026</td>
<td>STREET REHABILITATION</td>
<td>1,927,189</td>
<td>675,839</td>
<td>1,196,885</td>
<td>54,464</td>
<td>On-going projects.</td>
</tr>
<tr>
<td>DPW</td>
<td>6H0027</td>
<td>PLANS &amp; PRELIM COSTS-CARLETON</td>
<td>5,355</td>
<td>5,355</td>
<td>0</td>
<td>0</td>
<td>Pre-application for T.E.P. funding filed.</td>
</tr>
<tr>
<td>DPW</td>
<td>6H0028</td>
<td>COOLIDGE CORNER LIB DRIVEWAY</td>
<td>40,000</td>
<td>0</td>
<td>0</td>
<td>40,000</td>
<td>Coordinating with other library projects.</td>
</tr>
<tr>
<td>DEPT</td>
<td>ACCT NO.</td>
<td>APPROPRIATION NAME</td>
<td>REVISED</td>
<td>YTD EXPENDED</td>
<td>YTD ENCUMBERED</td>
<td>AVAILABLE</td>
<td>STATUS</td>
</tr>
<tr>
<td>------</td>
<td>----------</td>
<td>--------------------</td>
<td>----------</td>
<td>--------------</td>
<td>----------------</td>
<td>-----------</td>
<td>--------</td>
</tr>
<tr>
<td>DPW</td>
<td>6L0001</td>
<td>NEWTON ST LANDFILL SITE</td>
<td>2,683,629</td>
<td>929,408</td>
<td>1,267,926</td>
<td>486,296</td>
<td>Off-site remediation project underway. Front and rear landfill project out to bid. Summer construction anticipated.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0003</td>
<td>AMORY FIELD IMPROVEMENTS</td>
<td>35,000</td>
<td>0</td>
<td>0</td>
<td>35,000</td>
<td>Project pushed back one year because too difficult for sport programs to have both Downes Field and Amory Field closed simultaneously. Design will commence Fall, 2006.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0004</td>
<td>COOLIDGE PARK IMPROVEMENTS</td>
<td>6,432</td>
<td>1,222</td>
<td>0</td>
<td>5,210</td>
<td>To be completed Summer, 2006.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0005</td>
<td>DANE PARK</td>
<td>230,000</td>
<td>21</td>
<td>0</td>
<td>229,979</td>
<td>Design Review process underway.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0007</td>
<td>LONGWOOD MALL</td>
<td>30,304</td>
<td>0</td>
<td>0</td>
<td>30,304</td>
<td>Project underway.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0008</td>
<td>DOWNES FIELD TRACK</td>
<td>60,000</td>
<td>0</td>
<td>30,306</td>
<td>29,694</td>
<td>Construction scheduled for May-Sept, 2006.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0009</td>
<td>SMALL GREEN OPEN SPACE/STREETS</td>
<td>50,000</td>
<td>26,913</td>
<td>23,087</td>
<td>0</td>
<td>Encumbrances complete project.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0015</td>
<td>RIVERWAY PARK IMPROVEMENT</td>
<td>86,369</td>
<td>0</td>
<td>0</td>
<td>86,369</td>
<td>On hold for Muddy River Project.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0018</td>
<td>PLAYGROUND EQUIPMENT,FIELDS,FE</td>
<td>487,398</td>
<td>252,096</td>
<td>113,731</td>
<td>121,573</td>
<td>On-going projects.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0021</td>
<td>PATHWAY RECONSTRUCTION</td>
<td>211,174</td>
<td>0</td>
<td>0</td>
<td>211,174</td>
<td>Rawson Path to be bid Summer, 2006.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0022</td>
<td>OLMSTED PARK IMPROVEMENTS</td>
<td>49,471</td>
<td>0</td>
<td>0</td>
<td>49,471</td>
<td>On hold for Muddy River Project.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0030</td>
<td>AMORY WOODS SANCTUARY</td>
<td>9,950</td>
<td>8,300</td>
<td>0</td>
<td>1,650</td>
<td>To be spent along with grant funds by 9/1/06.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0031</td>
<td>LARZ ANDERSON PARK</td>
<td>211,005</td>
<td>17,035</td>
<td>0</td>
<td>193,970</td>
<td>Projects underway.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0034</td>
<td>LOST POND CONSERVATION AR</td>
<td>56,416</td>
<td>7,419</td>
<td>2,581</td>
<td>46,416</td>
<td>On hold until Landfill Park complete.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0035</td>
<td>FORESTRY RESTORATION-CONS</td>
<td>45,665</td>
<td>2,565</td>
<td>43,100</td>
<td>6,606</td>
<td>Project underway.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0037</td>
<td>PHRAGMITES CONTROL-MUDDY</td>
<td>6,606</td>
<td>0</td>
<td>0</td>
<td>6,606</td>
<td>Project underway.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0040</td>
<td>WALNUT HILLS CEMETERY IMP</td>
<td>35,000</td>
<td>0</td>
<td>0</td>
<td>35,000</td>
<td>Design documents underway.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0043</td>
<td>OLD TOWN GREEN IMPROVEMENTS</td>
<td>30,000</td>
<td>30,000</td>
<td>0</td>
<td>0</td>
<td>Project complete.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0044</td>
<td>TOWN/SCHOOL GROUNDS REHAB</td>
<td>213,775</td>
<td>84,820</td>
<td>41,034</td>
<td>87,920</td>
<td>On-going projects.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0045</td>
<td>HEMLOCK TREE ASSES/REMOV</td>
<td>55,326</td>
<td>2,325</td>
<td>6,953</td>
<td>46,047</td>
<td>On-going project.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0047</td>
<td>MUDDY RIVER REMEDIATION</td>
<td>1,405,000</td>
<td>4,900</td>
<td>0</td>
<td>1,400,100</td>
<td>Project in Design phase.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0048</td>
<td>TREE &amp; SHRUB MANAGEMENT</td>
<td>25,000</td>
<td>0</td>
<td>0</td>
<td>25,000</td>
<td>In progress.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0049</td>
<td>PARK LAND/OPEN SPACE MASTER PL</td>
<td>15,771</td>
<td>0</td>
<td>0</td>
<td>15,771</td>
<td>Finalizing plan.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0050</td>
<td>AMORY PARK ENVIRONMENTAL STUDY</td>
<td>31,385</td>
<td>0</td>
<td>0</td>
<td>31,385</td>
<td>May be required during Amory Field renovation.</td>
</tr>
<tr>
<td>DPW</td>
<td>6P0052</td>
<td>AMORY PLAYGROUND IMP</td>
<td>350,000</td>
<td>0</td>
<td>0</td>
<td>350,000</td>
<td>Construction to commence Spring/Summer, 2007.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0009</td>
<td>TRAF SIG-WASHINGTON-THAYE</td>
<td>20,000</td>
<td>0</td>
<td>0</td>
<td>20,000</td>
<td>Thayer St to be reconstructed in Summer, 2006.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0014</td>
<td>TRAFFIC CALMING</td>
<td>527,482</td>
<td>12,227</td>
<td>32,025</td>
<td>483,231</td>
<td>To be used for Walnut/Kennard, South/Grove, Emerson/Thayer projects in Summer, 2006.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0016</td>
<td>TRAF SIG-INDEPENDENCE/BEVERLY</td>
<td>74,854</td>
<td>0</td>
<td>0</td>
<td>74,854</td>
<td>Design complete; bidding Spring, 2006.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0017</td>
<td>TRAF SIG STUDY/INSTALL-GROVE/A</td>
<td>102,063</td>
<td>10,464</td>
<td>351</td>
<td>91,248</td>
<td>Design complete; bidding Spring, 2006.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0018</td>
<td>TRAF SIG-SOUTH/GROVE ST INTERS</td>
<td>120,722</td>
<td>722</td>
<td>0</td>
<td>120,000</td>
<td>Design complete; bidding 2006.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0019</td>
<td>NEWTON ST/W ROXBURY PKWY TRAF</td>
<td>147,900</td>
<td>0</td>
<td>0</td>
<td>147,900</td>
<td>Conceptual design complete. 100% plans &amp; specs by Winter, 2007.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0020</td>
<td>LONGWOOD/KENT TRAFFIC SIG</td>
<td>69,020</td>
<td>0</td>
<td>0</td>
<td>69,020</td>
<td>Coordinating intersection upgrades with MASCO improvements Fall, 2006.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0024</td>
<td>PEDESTRIAN SIGNAL @ 61 PARK ST</td>
<td>14,980</td>
<td>7,480</td>
<td>7,500</td>
<td>0</td>
<td>To be used for construction along with CDBG funding.</td>
</tr>
</tbody>
</table>
### AVAILABLE BUDGET REPORT - SPECIAL WARRANT ARTICLES
#### FOR FISCAL YEAR 2006
(as of 4/3/06)

<table>
<thead>
<tr>
<th>DEPT</th>
<th>ACCT NO</th>
<th>APPROPRIATION NAME</th>
<th>REVISED</th>
<th>YTD</th>
<th>YTD</th>
<th>AVAILABLE</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>DPW</td>
<td>6T0026</td>
<td>MOUNTFORT ST TRAFFIC SIGNAL</td>
<td>139,980</td>
<td>5,313</td>
<td>14,668</td>
<td>120,000</td>
<td>Design underway. Spring, 2007 construction.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0027</td>
<td>BKLN VILL PEDESTRIAN WALKWAY</td>
<td>861</td>
<td>0</td>
<td>861</td>
<td>0</td>
<td>Encumbrances complete project.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0029</td>
<td>STUDY/DES TRAF IMP-HJ/PUT CIRC</td>
<td>310</td>
<td>0</td>
<td>310</td>
<td>0</td>
<td>Encumbrances complete project.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0030</td>
<td>MOD TRAF SIG-FIRE STATION 6</td>
<td>60,000</td>
<td>6,270</td>
<td>0</td>
<td>53,730</td>
<td>Design underway. Spring, 2007 construction.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0031</td>
<td>MOD TRAF SIG-FIRE STATION 7</td>
<td>60,000</td>
<td>0</td>
<td>0</td>
<td>60,000</td>
<td>To be done as part of Beacon St. project.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0032</td>
<td>HORACE JAMES CIR TRAFFIC IMP</td>
<td>149,959</td>
<td>0</td>
<td>0</td>
<td>149,959</td>
<td>Conceptual design complete. 100% plans &amp; specs by Winter, 2007.</td>
</tr>
<tr>
<td>DPW</td>
<td>6T0033</td>
<td>PEDESTRIAN ACCESS IMPROVEMENTS</td>
<td>45,000</td>
<td>0</td>
<td>0</td>
<td>45,000</td>
<td>Coordinating with Gateway East design.</td>
</tr>
<tr>
<td>DPW</td>
<td>6W0003</td>
<td>WATER METER REPLACEMENT</td>
<td>150,000</td>
<td>0</td>
<td>0</td>
<td>150,000</td>
<td>Public facility retrofit projects underway. To be completed Spring, 2007.</td>
</tr>
<tr>
<td>LIBRARY</td>
<td>6E0012</td>
<td>LIBRARY SELF CHECK OUT UNITS</td>
<td>50,000</td>
<td>0</td>
<td>0</td>
<td>50,000</td>
<td>Waiting for more info on RFID technology. Hope to purchase in the next 6 months.</td>
</tr>
<tr>
<td>LIBRARY</td>
<td>6E0013</td>
<td>COOLIDGE CORNER LIB FURNISHING</td>
<td>146,418</td>
<td>105,494</td>
<td>66</td>
<td>40,857</td>
<td>Order pending. To be spent by 9/1/06.</td>
</tr>
<tr>
<td>LIBRARY</td>
<td>6E0033</td>
<td>PUTTERHAM LIB FURNISHINGS</td>
<td>65,000</td>
<td>0</td>
<td>0</td>
<td>65,000</td>
<td>Will not be completed until building closed for HVAC repairs.</td>
</tr>
</tbody>
</table>

| REPORT TOTAL: | 23,150,406 | 6,297,647 | 4,095,491 | 12,757,268 |
ARTICLE 5

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

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 two unpaid bills before Town Meeting: one for temporary employment services and one for the Town’s share of the monthly Medicare refund for Medicare-eligible retirees.

The bill for temporary employments services is from Randstad in the amount of $820.13. The invoice is dated June 26, 2005 but was not received in a timely manner. Since the funds for these services were not encumbered and the bill was received late, it was not possible to pay the bill. The bill for the Medicare refund for Medicare-eligible retirees is $26,736.58 and is owed the Brookline Retirement System. After the close of FY05, the Retirement System notified the Human Resources Department that the June invoice had not been paid. The Board has reviewed the bills and verified that they are valid obligations of the Town. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on April 4, 2006, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
Unpaid bills of a prior year cannot be paid without the specific approval of Town Meeting. This article is placed in the warrant for every Town Meeting in case any such bills arise and are deemed legal obligations of the town.
DISCUSSION
For the fiscal year ending 6/30/2005 there were three unpaid bills that need approval of Town Meeting for payment. The first bill was incurred while a reorganization was done in the Selectmen’s office. A retirement opened up an opportunity for the Selectmen to realign their staff, and while interviewing applicants, Randstad supplied a temporary administrative assistant. This bill remains unpaid, and is a legitimate expense the Selectmen’s Office does not deny.

The second and third unpaid bills are transfers from the Human Resources Department to the Retirement Fund. Shortly after the books were closed and a reconciliation was completed, it became apparent a transfer of reimbursement for May 2005 had not been done. This transfer is in payment of retiree health insurance reimbursement for 50% of Medicare Part B premiums. $875.84 is the amount to reimburse the non-contributory participants in the retirement plan; and $25,860.74 is the amount to reimburse the retirement plan for the contributory participants. The retirees have received their benefit without interruption. This transfer reimburses the retirement plan for the payment.

RECOMMENDATION
There is no question that these bills should be paid and the Advisory Committee unanimously (17-0) 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 Selectmen budget:

Randstad $820.13

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

Brookline Retirement System $26,736.58

XXX
ARTICLE 5

BOARD OF SELECTMEN'S SUPPLEMENTAL REPORT

Additional unpaid bills from a prior fiscal year totaling $6,819.54 have been brought forward from departments. The breakdown is as follows:

<table>
<thead>
<tr>
<th>Department</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police Department</td>
<td>$5,639.16</td>
</tr>
<tr>
<td>Fire Department</td>
<td>$ 696.94</td>
</tr>
<tr>
<td>Town Counsel's Office</td>
<td>$ 483.44</td>
</tr>
</tbody>
</table>

The Board has reviewed these bills with the departments and deemed them to be legal obligations of the Town. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on May 9, 2006, on the vote offered by the Advisory Committee.

--------------------

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

BACKGROUND
At a very late date the following unpaid bills were presented to the Advisory Committee for consideration. These bills are sorted into three categories that generally explain why they have not been paid on time.

1.) Because the bill was received too late for prompt payment it is now for Town Meeting's consideration:
   - Boston Police Dept $3399.04
   - TEN Corp           840.00
   - Toshiba Bus Solution 751.80
   - Locate Plus        101.66

2.) Because there was discussion and disagreement on the correct amount of the bill and resolution did not occur until too late for prompt payment the following bills are submitted for Town Meeting’s approval:
   - W B Mason          $131.04
   - FSP Books and Video 100.00
   - Select Energy      347.24
   - Westlaw            483.44
   - Westlaw            546.66

3.) Because there has been some confusion with matching up packing slip, approval and invoice the following bill did not get paid on time, and now needs Town Meeting's approval:
   - Commercial Truck Tire Ctr $118.66
DISCUSSION
The Advisory Committee has high hopes that the new business officer for Public Safety now has a tight control on processing all invoices in a timely manner and by an overwhelming margin voted favorable action on paying these additional unpaid bills.

RECOMMENDATION
The Advisory Committee, by a vote of 12 in favor and 1 opposed, recommends favorable action on the following vote, which includes the new bills and the bills referred to the Advisory Committee’s original report under this article:

VOTED: To authorize the payment of the following unpaid bills of a previous fiscal year from the FY2006 Police Department budget:

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston PD</td>
<td>$3,399.04</td>
</tr>
<tr>
<td>TEN Corp</td>
<td>$840.00</td>
</tr>
<tr>
<td>Toshiba Business Solutions</td>
<td>$751.80</td>
</tr>
<tr>
<td>Locate Plus</td>
<td>$101.66</td>
</tr>
<tr>
<td>Westlaw</td>
<td>$546.66</td>
</tr>
</tbody>
</table>

VOTED: To authorize the payment of the following unpaid bills of a previous fiscal year from the FY2006 Fire Department budget:

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Truck Tire Ctr</td>
<td>$118.66</td>
</tr>
<tr>
<td>WB Mason</td>
<td>$131.04</td>
</tr>
<tr>
<td>FSP Books and Videos</td>
<td>$100.00</td>
</tr>
<tr>
<td>Select Energy</td>
<td>$347.24</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Westlaw</td>
<td>$483.44</td>
</tr>
</tbody>
</table>
ARTICLE 6

SIXTH ARTICLE
To see if the Town will elect to establish an additional property tax exemption for fiscal year 2007 which shall be uniform for all exemptions, in accordance with Section 4 of Chapter 73 of the Acts of 1986, as amended by Chapter 126 of the Acts of 1988, and accept said Section 4, as amended, or act on anything relative thereto.

This article provides for an increase in the property tax exemptions for certain classes of individuals, including surviving spouses, the elderly, the blind, and disabled veterans. The proposed increases, which require annual reauthorizations, have been approved annually since FY89.

SELECTMEN’S RECOMMENDATION
This article provides for an increase in the property tax exemptions for certain classes of individuals, including surviving spouses, the elderly, the blind, and disabled veterans. The proposed increases, which require annual reauthorizations, have been approved annually since FY89. The estimated cost is approximately $53,000 and is funded from the tax abatement overlay account. The law allows the Town to increase the exemption by up to 100% as indicated on the following schedule:

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

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on March 21, 2006, on the following vote:

VOTED: That the Town elect to establish an additional property tax exemption for fiscal year 2007 which shall be uniform for all exemptions, in accordance with Section 4 of Chapter 73 of the Acts of 1986, as amended by Chapter 126 of the Acts of 1988, and accept said Section 4, as amended.
BACKGROUND
This article would allow the town to continue its current practice of increasing state-mandated property tax exemptions for several classes of taxpayers, including veterans with a 10% or greater disability, surviving spouses, blind taxpayers, and low-income elderly taxpayers. The town is required to give these taxpayers a basic exemption whose amount is specified in state law and which is partially reimbursed by the state. The town also has the option to increase these exemptions by any amount up to 100%. The increase must be uniform across all the exemptions, and the increased exemption may not decrease an individual taxpayer’s liability below the previous year’s amount.

DISCUSSION
The proposed increases, tabulated below, require annual authorization and have been approved by Town Meeting each year since FY1989. The exemptions under Clauses 17 and 41 are means tested, and the town recently voted to have the maximum eligibility levels for these exemptions indexed to inflation. The Assessor estimates that the cost for FY2007 will be $52,686.21 and has already built a reserve for this purpose in the FY2007 tax abatement overlay account.

<table>
<thead>
<tr>
<th>Description</th>
<th>Clause</th>
<th>Base Amount($)</th>
<th>Proposed Amount($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surviving Spouse</td>
<td>17D</td>
<td>175</td>
<td>350</td>
</tr>
<tr>
<td>Surviving Spouse</td>
<td>17D</td>
<td>175</td>
<td>350</td>
</tr>
<tr>
<td>Veteran (10% disability)</td>
<td>22</td>
<td>250</td>
<td>500</td>
</tr>
<tr>
<td>Veteran (loss of one hand, foot or eye)</td>
<td>22A</td>
<td>425</td>
<td>850</td>
</tr>
<tr>
<td>Veteran (loss of two hands, feet or eyes)</td>
<td>22B</td>
<td>775</td>
<td>1,550</td>
</tr>
<tr>
<td>Veteran (special housing)</td>
<td>22C</td>
<td>950</td>
<td>1,900</td>
</tr>
<tr>
<td>Veteran (certain widows of soldiers)</td>
<td>22C</td>
<td>250</td>
<td>500</td>
</tr>
<tr>
<td>Veteran (100% disability, cannot work)</td>
<td>22E</td>
<td>600</td>
<td>1,200</td>
</tr>
<tr>
<td>Blind</td>
<td>37E</td>
<td>500</td>
<td>1,000</td>
</tr>
<tr>
<td>Elderly</td>
<td>41C</td>
<td>500</td>
<td>1,000</td>
</tr>
<tr>
<td>Elderly</td>
<td>41D</td>
<td>500</td>
<td>1,000</td>
</tr>
</tbody>
</table>

RECOMMENDATION
The Advisory Committee, unanimously (13 in favor and 0 opposed) recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.
SEVENTH ARTICLE

To see if the Town will:

A.) Fiscal Year 2007 Budget

Appropriate the sums, or any other sum or sums, requested or proposed by the Selectmen or by any other officer, board or committee, for the fiscal year 2007 budget, including without limiting the foregoing, all town expenses and purposes, debt and interest, out of state travel, operating expenses, and fix the salaries of all elected officers as provided for in General Laws, Chapter 41, Section 108; authorize the leasing, leasing with the option to purchase, or installment purchase of equipment; stabilization fund as provided for in General Laws Chapter 40, Section 5B; authorize the continuation of all revolving funds in accordance with G.L. Chapter 44, Section 53E ½, and all Enterprise Funds in accordance with G.L. Chapter 44, Section 53F ½, and as otherwise authorized; and provide for a reserve fund.

B.) Fiscal Year 2007 Special Appropriations

Appropriate sums of money for the following special purposes:

1.) Appropriate $27,823, or any other sum, to be expended under the direction of the Chief Procurement Officer, with the approval of the Board of Selectmen, for furnishings and equipment for Town Buildings.

2.) Appropriate $250,000, or any other sum, to be expended under the direction of the Chief Information Officer, with the approval of the Board of Selectmen, for the enhancement of town-wide hardware and software.

3.) Appropriate $100,000, or any other sum, to be expended under the direction of the Director of Planning and Community Development and the Commissioner of Public Works, with the approval of the Board of Selectmen, for the design of pedestrian and vehicular circulation improvements in Brookline Village, for the so-called Gateway East project.

4.) Appropriate $60,000, or any other sum, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the replacement of a Self-Contained Breathing Apparatus (SCBA) air compressor system.

5.) Appropriate $135,000, or any other sum, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the replacement of firefighter turnout gear.

6.) Appropriate $890,000, or any other sum, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the purchase of a combined pumper and ladder truck for the Fire Department.
7.) Appropriate $250,000, or any other sum, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the rehabilitation of Fire Department apparatus.

8.) Appropriate $360,000, or any other sum, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen, for renovations to Fire Station #5 on Babcock Street.

9.) Appropriate $25,000, or any other sum, to be expended under the direction of the Police Chief, with the approval of the Board of Selectmen, for bullet proof vests.

10.) Appropriate $150,000, or any other sum, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the Board of Library Trustees, for the upgrade of the HVAC system at the Putterham Library.

11.) Appropriate $103,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the modernization of the Washington Street / School Street / Cypress Street traffic signals.

12.) Appropriate $25,700, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the modernization of the Harvard Street / Babcock Street traffic signals.

13.) Appropriate $1,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of streets.

14.) Appropriate $100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for traffic calming studies and improvements.

15.) Appropriate $200,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of sidewalks.

16.) Appropriate $100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for streetlight replacement and repairs.

17.) Appropriate $350,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Park and Recreation Commission, for improvements to Soule Playground.

18.) Appropriate $250,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the renovation of playground equipment, fields, and fencing.
19.) Appropriate $120,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of Town and School grounds.

20.) Appropriate $100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of tennis courts and basketball courts.

21.) Appropriate $150,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the upgrade of lighting in parks.

22.) Appropriate $100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Tree Planting Committee, for the removal and replacement of trees.

23.) Appropriate $60,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Trustees of the Walnut Hills Cemetery, for upgrades to the Walnut Hills Cemetery.

24.) Appropriate $130,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for repairs to the Larz Anderson Skating Rink.

25.) Appropriate $30,000, or any other sum, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the Park and Recreation Commission, for the preparation of plans and specifications for renovations to the Waldstein Building.

26.) Appropriate $25,000, or any other sum, to be expended under the direction of the Chief Procurement Officer, with the approval of the Board of Selectmen and the School Committee, for school furniture upgrades.

27.) Appropriate $80,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for upgrades to energy management systems.

28.) Appropriate $185,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for energy conservation projects in Town and School facilities.

29.) Appropriate $50,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for removal of asbestos from Town and School buildings.

30.) Appropriate $50,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for ADA renovations to Town and School buildings.
31.) Appropriate $100,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for improvements to life safety systems and building security in Town and School facilities.

32.) Appropriate $275,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for a Town and School facility roof repair and replacement program.

33.) Appropriate $240,000, or any other sum, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the School Committee, for the preparation of plans and specifications for renovations to the High School and the Tappan Street Gym.

34.) Appropriate $200,000, or any other sum, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the School Committee, for a feasibility study for the renovation of the Runkle School and for the preparation of a Needs Assessment Study for the Devotion School.

35.) Appropriate $290,000, or any other sum, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the School Committee, for work at the Old Lincoln School.

36.) Appropriate $30,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the School Committee, for trash compactors at various schools.

37.) Appropriate $1,723,960, or any other sum, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the Park and Recreation Commission, for remodeling, reconstruction or making extraordinary repairs to the Evelyn Kirrane Aquatics Center.

38.) Appropriate $2,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the Newton Street Landfill including, but not limited to, assessment and corrective action and remodeling, reconstruction or making extraordinary repairs to the Transfer Station.

39.) Appropriate $6,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the construction of sewers and sewerage systems and for the lining of sewers constructed for sanitary drainage purposes and for sewage disposal.

C.) Funding

And determine whether such appropriations shall be raised by taxation, transferred from available funds, borrowed or provided by any combination of the foregoing, and authorize the leasing, leasing with an option to purchase, or the installment purchase of any equipment or any capital items; and authorize the Board of Selectmen, except in the case of the School
Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants, gifts, reimbursements, and aid from both federal, state, and other sources and agencies for any of the purposes noted in this Article 7, or act on anything relative thereto.

This is the annual appropriations article for FY2007. Included in this omnibus budget article are operating budgets, special appropriations, enterprise funds, revolving funds, and conditions of appropriation. This is the culmination of work that officially began with the presentation of the Town Administrator’s Financial Plan, which occurred on February 14th. The proposed budget is then reviewed by numerous sub-committees of the Advisory Committee, the full Advisory Committee, and the Board of Selectmen. The vote ultimately recommended to Town Meeting is offered by the Advisory Committee.

SELECTMEN’S RECOMMENDATION

The Board of Selectmen is in agreement with the Advisory Committee on the FY2007 Town Budget. Reflective of the Financial Plan submitted by the Town Administrator, the budget proposed by the Advisory Committee totals $202,051,658, an increase of $9,104,876 (4.7%). The table below details the entire FY2007 budget, including enterprise / revolving funds:

<table>
<thead>
<tr>
<th></th>
<th>FY2006</th>
<th>FY2007</th>
<th>$</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REVENUE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Fund Revenue</td>
<td>174,241,038</td>
<td>182,025,329</td>
<td>7,784,291</td>
<td>4.47%</td>
</tr>
<tr>
<td>Water and Sewer</td>
<td>21,486,296</td>
<td>22,981,333</td>
<td>1,495,037</td>
<td>6.96%</td>
</tr>
<tr>
<td>Enterprise Fund</td>
<td></td>
<td></td>
<td>(4,554,526)(4,995,385)</td>
<td>9.68%</td>
</tr>
<tr>
<td>Golf Enterprise Fund</td>
<td>1,197,523</td>
<td>1,222,128</td>
<td>24,605</td>
<td>2.05%</td>
</tr>
<tr>
<td>Recreation Revolving</td>
<td>1,075,741</td>
<td>1,335,256</td>
<td>259,515</td>
<td>24.1%</td>
</tr>
<tr>
<td>Fund</td>
<td></td>
<td></td>
<td>(25,865)(145,602)</td>
<td>21.6%</td>
</tr>
<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>192,946,782</td>
<td>202,051,658</td>
<td>9,104,876</td>
<td>4.7%</td>
</tr>
</tbody>
</table>

| **APPROPRIATIONS**     |               |               |            |    |
| General Fund Operating | 160,140,767   | 167,582,364   | 7,441,598  | 4.6% |
| Non-Appropriated Budget| 8,039,468     | 7,727,481     | (311,987)  | -3.9% |
| Free Cash-Supported /  | 6,060,803     | 6,715,483     | 654,680    | 10.8% |
| Revenue-Financed CIP   |               |               |            |    |
| General Fund Total     | 174,241,038   | 182,205,329   | 7,784,291  | 4.5% |
| Water and Sewer        | 21,486,296    | 22,981,333    | 1,495,037  | 6.96% |
| Enterprise Fund        |               |               | (4,554,526)(4,995,385) | 9.68% |
| Golf Enterprise Fund   | 1,197,523     | 1,222,128     | 24,605     | 2.05% |
| Recreation Revolving   | 1,075,741     | 1,335,256     | 259,515    | 24.1% |
| Fund                   |               |               | (25,865)(145,602) | 21.6% |
| **TOTAL APPROPRIATIONS** | 192,946,782   | 202,051,658   | 9,104,876  | 4.7% |

| **BALANCE**            | 0             | 0             | 0          |    |
It includes a General Fund Operating Budget of $167,582,363, which represents an increase of $7,441,597 (4.6%); revenue-financed capital of $6,715,483; enterprise/revolving funds totaling $25,538,718 (gross); and unappropriated expenses of $7,727,481. The table on the following page details the FY2007 General Fund revenues and expenses.

<table>
<thead>
<tr>
<th>FY2006 BGT</th>
<th>FY2007 BGT</th>
<th>INCREASE/DECREASE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REVENUE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Tax</td>
<td>125,014,839</td>
<td>129,825,273</td>
</tr>
<tr>
<td>Local Receipts</td>
<td>18,900,300</td>
<td>19,948,300</td>
</tr>
<tr>
<td>State Aid</td>
<td>18,027,706</td>
<td>18,916,419</td>
</tr>
<tr>
<td>Free Cash</td>
<td>4,606,534</td>
<td>5,387,435</td>
</tr>
<tr>
<td>Other Available Funds</td>
<td>7,691,659</td>
<td>7,947,902</td>
</tr>
<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>174,241,038</td>
<td>182,025,329</td>
</tr>
<tr>
<td><strong>(LESS) NON-APPROPRIATED EXPENSES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State &amp; County Charges</td>
<td>5,243,739</td>
<td>5,221,479</td>
</tr>
<tr>
<td>Tax Abatement Overlay</td>
<td>1,490,442</td>
<td>1,200,000</td>
</tr>
<tr>
<td>Deficits &amp; Judgments</td>
<td>25,000</td>
<td>25,000</td>
</tr>
<tr>
<td>Cherry Sheet Offsets</td>
<td>1,280,287</td>
<td>1,281,002</td>
</tr>
<tr>
<td><strong>TOTAL NON-APPROPRIATED EXPENSES</strong></td>
<td>8,039,468</td>
<td>7,727,481</td>
</tr>
<tr>
<td><strong>AMOUNT AVAILABLE FOR APPROPRIATION</strong></td>
<td>166,201,570</td>
<td>174,297,847</td>
</tr>
<tr>
<td><strong>APPROPRIATIONS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Town Departments</td>
<td>56,965,260</td>
<td>59,040,308</td>
</tr>
<tr>
<td>School Department</td>
<td>58,007,124</td>
<td>59,836,680</td>
</tr>
<tr>
<td>Non-Departmental Total</td>
<td>45,168,383</td>
<td>48,705,375</td>
</tr>
<tr>
<td>General Fund Non-Departmental</td>
<td>40,114,567</td>
<td>43,192,987</td>
</tr>
<tr>
<td>Water and Sewer Enterprise Fund Overhead *</td>
<td>4,554,526</td>
<td>4,995,385</td>
</tr>
<tr>
<td>Golf Enterprise Fund Overhead *</td>
<td>379,553</td>
<td>371,402</td>
</tr>
<tr>
<td>Recreation Revolving Fund Overhead *</td>
<td>119,737</td>
<td>145,602</td>
</tr>
<tr>
<td><strong>OPERATING BUDGET SUBTOTAL</strong></td>
<td>160,140,767</td>
<td>167,582,363</td>
</tr>
<tr>
<td>Revenue-Financed Special Appropriations</td>
<td>6,060,803</td>
<td>6,715,483</td>
</tr>
<tr>
<td><strong>TOTAL APPROPRIATIONS</strong></td>
<td>166,201,570</td>
<td>174,297,847</td>
</tr>
<tr>
<td><strong>BALANCE</strong></td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

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

The fully-allocated $167,582,363 General Fund Operating Budget is shown below.
LOCAL GOVERNMENT CONTEXT

Over the past year, several extremely informative reports were released addressing various aspects of the financial condition of Massachusetts local government. The Federal Reserve Bank, Kennedy School of Government, Northeastern Center for Urban and Regional Policy, the Massachusetts Taxpayers Foundation, and a Special Municipal Finance Task Force led by Sovereign Bank Chairman John Hamill analyzed topics ranging from municipal health costs to long-term revenue growth.

A number of these reports were spurred by observations made by some state officials that the financial difficulties in local government are largely of our own making. The previous Secretary of Administration and Finance last fall blamed what he characterized “the crisis of attrition” in Massachusetts local government on municipal inability to curb spending on items like overly generous labor contracts.

Much of the data generated by the independent reports present quite a different picture. For example, the Hamill Report found that between 1981-2005, per capita annual growth for municipal budgets averaged only 1.1% after adjusting for inflation. Since 1987, per capita expenditures for core municipal services (excluding schools, health insurance and some fixed costs) have averaged -0.3% growth in real terms. State budget growth has averaged 2.0% in real terms since 1981.

In the summer of 2005, the Federal Reserve Bank of Boston reported that total Massachusetts local government employment rates were more than 10% below national averages and in line with those throughout New England. The Federal Reserve Bank had similar findings in comparing Massachusetts local government compensation levels to national and New England averages.

Just as informative, a Massachusetts Taxpayers Foundation study reported that group health costs for local governments increased by a mind-boggling 60% between 2001 and 2005. This was twice the rate of group health cost increase for our state government. This report stressed that group health is not a mandatory subject of bargaining for state employees as it is in local government. Several initiatives have emerged to put municipal group health on the same footing as the State, including the proposal in the Governor’s FY07 budget to allow municipalities to establish local Group Insurance Commissions.

Benchmarking Brookline against these findings is particularly informative:

- Brookline budgets grew by 1.0% annually between 1981 and 2005 on a per capita basis when adjusted for inflation, as compared to the 1.1% local average across the Commonwealth and 2.0% for state government itself. Here, too, school spending has grown at a rate higher (1.4%) than basic municipal services (0.6%) since 1987.
- Employment levels proposed for FY07 for Police, Fire, DPW and other non-School departments in Brookline mirror the Massachusetts statewide findings reported by the Federal Reserve Bank. The Town funds 744 full-time equivalent positions (all funds), or about 131 per 10,000 population. The Federal Reserve Bank reports that non-education local government employment in Massachusetts averages about 128 per 10,000 population.
- For Brookline, while employee health coverage as a share of our total General Fund budget mirrors that of local government (10.4% for us in FY07 vs. 10.6% statewide in FY05), our rate of increase from FY01 to FY05 was less than the statewide experience -- 55% vs 60% -- because of our change to a single insurer in 2004. Nevertheless, our double-digit rate increases on average have seriously curtailed our ability to consider either meaningful program expansion or taxpayer relief.

Both the Massachusetts Taxpayers Foundation and the Center for Urban and Regional Planning at Northeastern University argue that the State has woefully under-invested in its cities and towns. Both organizations call for a permanent Revenue Sharing Program. The Taxpayers Foundation even goes so far as to estimate that there is a $1 billion shortfall in aid to municipalities that the State needs to make up. The Brookline proportionate share of this local aid shortfall is in the order of magnitude approaching $5 million, depending on the type of distribution formula. The $910,000 local aid increase proposed by the Governor in his proposed FY07 budget was a good start in making up this shortfall and the budget recently passed by the House of Representatives adds slightly more. However, this still is not enough to avoid line-item reductions in FY07 and certainly does not offer the possibility of service expansion or tax relief.

**FY2007 BUDGET OVERVIEW**

One would assume that if the revenue assumptions underlying the General Fund operating budget for FY07 are ultimately realized, then the outlook for the coming fiscal year should be encouraging. But why isn’t it? After all, General Fund Operating Budget revenues are projected to increase over 50% more than average revenue increases projected for the past four years. The answer lays in the growth in expenditures in the Town’s larger cost centers, which in some instances are based on estimates that are by no means guaranteed to hold fast in the coming year. The following graphically illustrates why we continue to experience budget stress, even when anticipated revenue growth substantially exceeds expectations of prior years:

<table>
<thead>
<tr>
<th>Additional Operating Revenue</th>
<th>$7.2 million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town/School Collective Bargaining, Steps, etc.</td>
<td>-$3.4</td>
</tr>
<tr>
<td>Group Health Insurance and other benefits</td>
<td>-$2.8</td>
</tr>
<tr>
<td>Utility Increases</td>
<td>-$0.8</td>
</tr>
<tr>
<td>SPED</td>
<td>-$0.7</td>
</tr>
<tr>
<td>Other Town/School</td>
<td>-$0.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>-$1.2</strong></td>
</tr>
</tbody>
</table>

The collective bargaining estimate is predicated on compensation increases limited to 2.5%. Crushing group health rate increases (14%) and skyrocketing energy costs (21%) --which is beyond the 24% experienced this fiscal year-- are squeezing the Town’s ability to continue just a maintenance-of-effort level budget.

As a result of all this, even though recommended appropriations for Town and School related operations are increasing by 4.1% and 5.2%, respectively (when school costs are fully allocated), there is no room within the limitations of the resources identified in the budget to consider program and/or service expansion. The experience with town departmental (non-school) budgets is illustrative. As part of the budget preparation process, Town departments submitted more than $1.5 million in expansion requests. Only a small fraction of these
requests could be accommodated. Further, another $263,000 in reductions from the maintenance of effort budget had to be exercised, including: 1.2 full time positions (Assessors and Selectmen’s Offices); 1.3 part-time house worker positions in the Building Department and part-time funding for Police Department Park Security Interns; contracted services (DPW); and capital outlay (Fire).

As already noted, several aspects of the FY07 budget are anything but certain and developments in the coming months will dictate whether further adjustments might be necessary. Electricity prices are estimated at 10¢/kwh, nearly doubling the current contract price of 5.6¢/kwh that expires in May. Collective bargaining is predicated on 2%-1% settlements, but contracts with the Teachers, Firefighters, and Police have yet to be negotiated.

And finally, town revenue, particularly local receipts, must approximate the projection included in the budget. Local receipts are projected to increase by $1.4 million, or 7% (prior to the reallocation of all Recreation Department revenue to the Recreation Revolving Fund). However, experience through the first nine months of the current fiscal year shows flattening in the some key revenue accounts, including building permits, parking fines, and motor vehicle excise (MVE).

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**FISCAL POLICIES**

As has been the case since the 1994 Override, town budgeting is framed by Fiscal Policies and Practices that were formally updated in 2004 by a citizen Fiscal Policy Review Committee. The formal policies are printed in full at the end of this Selectmen’s Recommendation.

- Retention of Adequate Reserves
- CIP Financing Policies
- Town/School Partnership Agreement
- Collective Bargaining Guidelines
- Position Freeze on Total Employees
- Directives Re: Free Cash
- Override Requirements of 1994
These Policies and Practices emerged from the Financial Improvement Program adopted by the Board of Selectmen in 1994. The Town/School Partnership Agreement was executed by the Superintendent of Schools and Town Administrator in 1995. In 1997, a special Capital Financing Committee formalized the overall approach to the CIP, Free Cash, and Stabilization Fund. The Town has received a Aaa Credit Rating from Moody’s Investor’s Service each year since the Policies have been in effect. Only 12 other of the 351 cities and towns in this state are similarly rated.

Retention of Adequate Reserves - An important factor in the reaffirmation of the Town’s Aaa bond rating has been the retention of adequate reserves. The Town’s Financial Policies include guidelines for the establishment of reserves along with recommended funding levels. Maintaining reserves at a level approximately 5% of budget is widely recommended by municipal finance authorities. The preponderance of funding FY07 reserves over FY06 levels is from Free Cash. Only $51,997 in additional FY07 operating revenue is set aside for reserve purposes.

The Operating Budget Reserve is a critical line-item of the budget, as it protects the Town against unanticipated events such as weather emergencies, unanticipated public safety requirements, extraordinary SPED growth, and medical payments for public safety employees injured in the line of duty. Set at a level equivalent to 1% of the prior year’s net revenue, the Reserve Fund has been spent down entirely in three of past five fiscal years. The $1.59 million recommended for FY07 complies with the Town’s policy.

The Catastrophe and Liability Reserve was established to protect the community against major facility disaster and/or a substantial negative financial impact of litigation. The Town is self-insured for liability purposes and carries a $100,000 deductible in its property policy. The Reserve's recommended funding level is an amount equivalent to 1% of the prior year’s net revenue. The $1.59 million recommended for FY07 complies with the Town’s policy. The Stabilization Fund is available to support both operating and capital needs when revenue drops below specified levels. The Stabilization Fund is set at 3% of the prior year’s net revenue and the level proposed for FY07 also complies with the Town’s policy.

Capital Improvement Program (CIP) - Over the past decade, the Town has made a significant commitment to its CIP to address the backlog of capital needs created by the under-investment in infrastructure during the late-1970’s and the 1980’s. Over the past 10 years, the Town has invested $177 million in the CIP. Although there is more to do in the areas of street repairs, parks/open space improvements, and school and town facilities upgrades, the commitment to capital improvements is clearly showing positive results.

The FY07 – FY12 CIP continues the Town’s aggressive approach toward improving the Town’s physical assets. Developed within the parameters of the Board of Selectmen’s CIP Policies, the proposed CIP incorporates a number of major projects along with a financing plan that includes outside funding sources and grant opportunities. The fundamental policy that 5.5% of the prior year’s net revenue be allocated to the CIP is observed, avoiding additional burdens on the operating budget.

The recommended CIP calls for an investment of $107.2 million over the next six years, for an average of $17.9 million per year. Section VI of the FY07 Financial Plan provides an in-depth discussion of the CIP and how it relates to and impacts the Operating Budget. In
addition, the CIP Book, which reflects the CIP as recommended and approved by the Planning Board, was included in the same mailing as these Combined Reports.

The most significant challenge in preparing this CIP was complying with the Town’s CIP Financing Policies while funding major facility rehab projects in a difficult bid environment, coupled with the significant change in the assumptions surrounding School Building Assistance from the State. Further complicating matters is the need for additional funding for projects previously approved (e.g., the Swimming Pool and Landfill Closure) and the emergence of projects at levels that last year were not anticipated (e.g., High School work).

These cost factors have placed such a burden on the CIP that some projects included in last year’s CIP had to be delayed (e.g., work at the Old Lincoln School) or cancelled (e.g., work on the High School Quad). In addition, a number of new projects requested by departments for the out-years could not be included in this CIP. Overall, although the proposed CIP is fundamentally and financially sound, it is “tight”.

Major projects in the proposed CIP include:

- Devotion School - $24 million of Town funds, with the potential of an additional $24 million from SBA funds.
- Town Hall - $16.1 million.
- Runkle School - $12 million of Town funds, with the potential of an additional $12 million from SBA funds.
- Newton St. Landfill - $5.7 million to complete the closure of the front and rear landfills.
- Fisher Hill Reservoir Re-Use - $4.6 million, of which $3.25 million comes from outside funding.
- Gateway East - $2 million, funded primarily with outside funding (i.e., CDBG and state/federal grants).

**Town/School Partnership Agreement** - Although this Agreement is based on a formula that equally shares net revenue between town and school departments after agreed schedules of fixed costs are funded, the hallmark of the Agreement has been flexibility in its application. For example, three years ago the schools were allocated additional funds beyond initial distributions to meet technology needs. On previous occasions the schools have had access to town reserves to meet unanticipated special education and enrollment pressures. In FY05 the Town did not pursue the statutory option to reduce the school budget commensurate with an unexpected circuit-breaker (SPED funding) distribution from the state of more than $1 million. Last year, alternatively the town budget was credited with $380,000 in anticipated growth in circuit breaker funding.

As the Superintendent’s FY07 Budget Message indicates, accrued circuit breaker funding is playing a significant role in mitigating the impact of fixed costs on the operating budget for the Brookline Public Schools. Continuation of this collaborative approach has again served as the foundation for the FY07 budget. For example, even though the Town is eligible to receive an additional $45,000 of circuit funding in FY07 (based upon actual growth in funding in FY06), the Town is opting to have the Schools keep the entirety of that additional funding. While the Superintendent’s Budget calls for an increase in direct education spending of 3.2%, total recommended appropriations to support school operations (maintenance,
benefits, energy; etc.) are up 5.2%. The comparable increase for the Town (non-School) is 4.1%. The tables below provide this information:

<table>
<thead>
<tr>
<th>SCHOOL</th>
<th>FY06</th>
<th>FY07</th>
<th>$ Change</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appropriation</td>
<td>58,007,124</td>
<td>59,836,680</td>
<td>1,829,556</td>
<td>3.2%</td>
</tr>
<tr>
<td>Pers Benefits</td>
<td>11,455,928</td>
<td>12,867,218</td>
<td>1,411,290</td>
<td>12.3%</td>
</tr>
<tr>
<td>Bldg Dept Exp's</td>
<td>2,155,993</td>
<td>2,611,038</td>
<td>455,045</td>
<td>21.1%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>71,619,045</td>
<td>75,314,936</td>
<td>3,695,891</td>
<td>5.2%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOWN</th>
<th>FY06</th>
<th>FY07</th>
<th>$ Change</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town Dept's</td>
<td>56,965,259</td>
<td>59,040,308</td>
<td>2,075,048</td>
<td>3.6%</td>
</tr>
<tr>
<td>Less Sch Dept Exp in Bldg Bgt</td>
<td>(2,155,993)</td>
<td>(2,611,038)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Town Dept's</td>
<td>54,809,266</td>
<td>56,429,270</td>
<td>1,620,003</td>
<td>3.0%</td>
</tr>
<tr>
<td>Pers Benefits</td>
<td>17,517,759</td>
<td>18,885,900</td>
<td>1,368,141</td>
<td>7.8%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>72,327,025</td>
<td>75,315,170</td>
<td>2,988,144</td>
<td>4.1%</td>
</tr>
</tbody>
</table>

Collective Bargaining Guidelines - Over the past three years (FY04-FY06), cumulative cost of living adjustments have been 8.5% for administrative and labor personnel; 9% for public safety; and 9.5% for teachers. Among the various bargaining units, there were also other negotiated compensation adjustments that have generally not exceeded the 0.5% range in the year of implementation. With the cooperation of the unions, these settlements were structured to step-up over the three-year period (e.g., 2% (yr. 1), 2.5% (yr. 2), 3%-1% (yr. 3)) and were partially offset by savings from restructuring the group health program.

Police, Fire, and School Department contracts expire this summer. A contract for 380 town employees represented by AFSCME is in effect through June 30, 2007. The AFSCME Agreement includes a wage adjustment of 2% on 7/1/06 and 1% on 1/1/07. The total effective cost of this 2%-1% “split” is equivalent to a 2.5% adjustment.

The total amount budgeted for compensation increases in FY07 is $3.4 million. About $0.5 million is the result of carrying forward a ½% cost from a 1% wage increase granted on 1/1/06. Another $0.5 million is for annual steps and other negotiated adjustments. The balance of $2.4 million is the estimated cost of a general wage adjustment of 2%-1% for all town and school employees. Obviously, any settlements exceeding this range in FY07 would require reallocation of funds from other areas of the budget.

Generally, the approach taken over the last three-year contract cycle could well serve as a guide for future multi-year agreements. Stepped-up wage increases over time offset by savings in other areas (likely group health) could provide a formula for successful negotiations in the future. As we have learned from experience, group health change is extremely time consuming and would be quite difficult to achieve by the time contracts expire on June 30, 2006. However, experience in the last round of negotiations demonstrates that an approach based upon consideration of mutual interests can be successful.

Finally, it is expected that adjustments for non-union personnel will generally mirror the pattern set for unionized employees. In addition, it is anticipated that a pay plan study for Department Heads will be conducted. In recent years pay and classification studies have been carried out for clerical, labor force and mid-management personnel. Several Department Heads will be at a maximum step in FY07, which has prompted an unusually
high number of upgrade requests. Rather than evaluate these positions on a piecemeal basis, an across the board assessment is a more appropriate approach.

Position Freeze – In virtually every fiscal year since FY95, Town staffing has been allowed to increase only in very specific circumstances. For example, when the Public Safety Dispatch operation was civilianized in 2000, the police officers formerly assigned those duties were reassigned to other functions. Otherwise, town (non-school) personnel levels have been either held constant or reduced.

The budget proposed for FY07 is no different in this regard. NO NEW PERMANENT FULL TIME POSITIONS ARE RECOMMENDED FOR ANY TOWN DEPARTMENT. In fact, General Fund positions are down slightly due to the elimination of 1.2 full time positions and 1.3 part-time house worker positions. This type of position control is critically important especially given the growth in fringe benefit obligations. The only upward adjustments are for full-year funding for positions that had already been partially funded in the FY06 budget, such as the Coolidge Corner Assistant Librarian and the Zoning Administrator. The pay-as-you-go costs for group health and other benefits are consuming an ever increasing share of Town resources, and unfunded retiree benefit obligations have been estimated in the hundreds of millions of dollars.

A cautionary observation is noted concerning the growth in staffing levels in the Brookline Public Schools. Between FY00 and FY05, school personnel numbers have grown from 907 to 1,030, an increase of 13.5%. Perceptible cost shifts onto the education budget are emerging as a result. For the first time this year, the School budget allocation accounts for more than 50% of the growth in group health costs. The amounts allocated to Schools for retirement (non-teaching) is also up. The growth in the Town’s unfunded pension obligation is also driven up by these staff increases. Even the addition of part-time aides – as long as they work more than 20 hours a week – will exacerbate these pressures. Attention to this trend will be critically important over the long-term as the Brookline Schools look to sustain educational excellence within the resource levels likely to be available to the Town.

Free Cash - Another key policy of the Town involves the use of Free Cash. Free Cash is defined as “remaining, unrestricted funds from operations of the previous fiscal year including unexpended free cash from the previous year, actual receipts in excess of revenue estimates shown on the tax recapitulation sheet, and unspent amounts in budget line-items.” While it may be an over-simplification, Free Cash is basically the year-end surplus or deficit
of the Town as certified by the State Department of Revenue (DOR). Free Cash is quite volatile, as shown in the graph below.

Due to its unpredictable nature, using Free Cash to support the Operating Budget can cause unnecessary budgetary fluctuations: if used in one year to support on-going programs, but then falls below that level the next year, budgetary cutbacks would be necessary. Therefore, the Town’s Free Cash policy dictates that it be used for one-time expenses.

While using Free Cash to support on-going expenses may appear palatable in times of budget stress, doing so can lead to serious long-term budget difficulties. This FY07 budget adheres to the Town’s Free Cash Policy. The table below shows how Free Cash is allocated for FY07:

<table>
<thead>
<tr>
<th>Free Cash</th>
<th>5,387,435</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Budget Reserve - 0.25% of Prior Year Net Rev</td>
<td>398,444</td>
</tr>
<tr>
<td>Worker's Comp</td>
<td>250,000</td>
</tr>
<tr>
<td>Stabilization Fund</td>
<td>22,248</td>
</tr>
<tr>
<td>Liability / Catastrophe</td>
<td>225,039</td>
</tr>
<tr>
<td>CIP</td>
<td>4,491,704</td>
</tr>
</tbody>
</table>

Override Requirements of 1994 – The Override of 1994 directed $2.5 million of additional tax levy for specific expenditures. For Schools, $1.1 million was allocated for class size stabilization, technology, and education supplies while another $400,000 was earmarked for school and town building maintenance. For DPW capital outlay, $700,000 was set aside in addition to $300,000 for Police ($200,000) and Fire ($100,000) equipment. Each Financial Plan since the Override has attempted to be faithful to the allocations of the Override, even though they were legally binding only in the year immediately following the vote.

A few years ago, the Selectmen appointed a committee to review the provisions of the Override as they relate to the Town’s budgeting practices. The Committee’s Report was published in the Combined Reports presented to Town Meeting in May, 2003. The Report reflects the difficulty that has arisen, due to cutbacks in local aid, in preserving the Override allocations as originally adopted.

The FY07 budget meets the baseline override allocations as modified in the Committee’s recommendations. However, given persistent budget pressures, the recommendation to add
another $100,000 to facility maintenance could again not be met. This proposed budget provides a full $700,000 for DPW equipment and it does not exercise the proposed option of using a portion of these funds for sidewalks. The CIP sidewalk allocation remains at $200,000 for FY07 and is adequate for this purpose. The combined capital outlay of Police and Fire equipment exceeds the $412,000 set in the Report. In addition, fire and police equipment needs are again augmented in the CIP. All other Override targets have been met.

**LONG-RANGE FINANCIAL PROJECTION**

The cornerstone of our budgeting process is the Long-Range Financial Projection, often referred to as “the Forecast”. It is essential that a government have a financial planning process that assesses long-term financial implications of current and proposed policies, programs, and assumptions that develop appropriate strategies to achieve its goals. The Forecast also acts as a bridge between a municipality’s annual operating budget and its capital improvement program, bringing all of the fiscal policy and economic variables together to establish coordinated managerial direction. Revenue and expenditure forecasting, along with capital planning and debt management, are the key elements in developing a strong municipal fiscal position.

Financial forecasting enables the Town to provide an analysis to key decision makers that shows potential impacts on the community of any financial decision, such as collective bargaining packages, revenue expansion / reduction plans, new debt, and unfunded pension obligations. Without a forecasting model, financial decisions are made without the full understanding of their long-term effects, much to the detriment of the community. The Forecast has been a key component of the Town’s ability to weather the tough budgetary climate cities and towns have been living in for the past few years. It has allowed the Town to take a long-term view of decisions, thereby avoiding further pressures on its budget.

Prepared annually, the five-year Forecast serves as the starting point for the ensuing budget year - - and also enables decision makers, taxpayers, and employees to garner an understanding of the long-term financial challenges the Town faces. In late-November / early-December, the Deputy Town Administrator and the Director of Finance present the Forecast to the Board of Selectmen. This presentation is the culmination of months of work for those two individuals, work that involves analyzing hundreds of revenue and expenditure line-items, making assumptions about economic conditions, and understanding state budget conditions.

The FY07 – FY11 Long Range Financial Projection for the General Fund makes the following key assumptions:

- $1.75 million of New Growth in the Property Tax levy each year
- Small annual growth in the Lottery and no additional Chapter 70 funding for “above foundation” communities
- A 2.5% wage increase for FY07 and 2% wage increases for FY08 – FY11
- Inflation in most Services, Supplies, and Capital Outlay accounts of 1.5% - 2.5%
- Annual utility increases of $200,000
- Annual SPED growth of $600,000 - $700,000
- Inflation in the School Department of $195,000 per year
- Step increases in the School Department of $400,000 - $500,000 per year and $100,000 per year for Town Departments
• Health insurance rate increases of 10% (FY08), 9% (FY09), and 8% (FY10 – FY11)
• Additional enrollment in the health insurance program of 30 (FY08), 40 (FY09 – FY10), and 60 (FY11)
• A Pension funding schedule based on the 1/1/05 valuation with an 8% earnings estimate
• A debt service schedule predicated upon the Proposed Capital Improvement Program (CIP)

These assumptions create an escalating deficit position for FY08 and beyond, starting at $3.4 million in FY08 and reaching $8.9 million by FY11. The Long Range Financial Projection is detailed below and continued on the following pages.

<table>
<thead>
<tr>
<th>REVENUE</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Taxes</td>
<td>129,825,273</td>
<td>134,734,626</td>
<td>139,786,961</td>
<td>144,967,458</td>
<td>150,273,945</td>
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<td>Local Receipts</td>
<td>19,948,300</td>
<td>20,198,560</td>
<td>20,321,190</td>
<td>20,613,957</td>
<td>20,722,913</td>
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<tr>
<td>Motor Vehicle Excise (MVE)</td>
<td>5,250,000</td>
<td>5,407,500</td>
<td>5,407,500</td>
<td>5,569,725</td>
<td>5,569,725</td>
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<tr>
<td>Licenses &amp; Permits</td>
<td>809,500</td>
<td>809,500</td>
<td>809,500</td>
<td>809,500</td>
<td>809,500</td>
</tr>
<tr>
<td>Parking / Court Fines</td>
<td>4,000,000</td>
<td>4,000,000</td>
<td>4,000,000</td>
<td>4,000,000</td>
<td>4,000,000</td>
</tr>
<tr>
<td>General Government</td>
<td>2,779,500</td>
<td>2,807,875</td>
<td>2,836,674</td>
<td>2,870,906</td>
<td>2,881,002</td>
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<tr>
<td>Interest Income</td>
<td>2,160,000</td>
<td>2,204,750</td>
<td>2,250,434</td>
<td>2,297,071</td>
<td>2,344,681</td>
</tr>
<tr>
<td>PILOT's</td>
<td>679,300</td>
<td>649,810</td>
<td>652,406</td>
<td>655,054</td>
<td>657,755</td>
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<tr>
<td>Refuse Fee</td>
<td>2,100,000</td>
<td>2,100,000</td>
<td>2,100,000</td>
<td>2,100,000</td>
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<tr>
<td>State Aid</td>
<td>17,751,533</td>
<td>17,835,585</td>
<td>17,921,086</td>
<td>18,008,063</td>
<td>18,096,543</td>
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<tr>
<td>General Government Aid</td>
<td>8,642,883</td>
<td>8,726,935</td>
<td>8,812,436</td>
<td>8,899,413</td>
<td>8,987,893</td>
</tr>
<tr>
<td>School Aid</td>
<td>8,965,343</td>
<td>8,965,343</td>
<td>8,965,343</td>
<td>8,965,343</td>
<td>8,965,343</td>
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<tr>
<td>Other Available Funds</td>
<td>7,947,902</td>
<td>9,529,388</td>
<td>7,608,774</td>
<td>7,666,691</td>
<td>7,893,881</td>
</tr>
<tr>
<td>Parking Meter Receipts</td>
<td>1,930,000</td>
<td>1,870,000</td>
<td>1,870,000</td>
<td>1,870,000</td>
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<tr>
<td>Walnut Hill Cemetery Fund</td>
<td>50,000</td>
<td>50,000</td>
<td>50,000</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>State Aid for Libraries</td>
<td>41,555</td>
<td>41,555</td>
<td>41,555</td>
<td>41,555</td>
<td>41,555</td>
</tr>
<tr>
<td>Reimb./Pymts from Enterprise Funds</td>
<td>5,366,786</td>
<td>5,611,188</td>
<td>5,474,576</td>
<td>5,526,571</td>
<td>5,644,775</td>
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<td>Reimb. from Revolving Fund</td>
<td>145,601</td>
<td>156,645</td>
<td>167,695</td>
<td>178,565</td>
<td>189,051</td>
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<tr>
<td>Tax Abatement Reserve Surplus</td>
<td>0</td>
<td>1,800,000</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Capital Project Surplus</td>
<td>413,960</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Free Cash</td>
<td>5,387,435</td>
<td>4,000,000</td>
<td>4,000,000</td>
<td>4,000,000</td>
<td>4,000,000</td>
</tr>
<tr>
<td>Capital Improvements</td>
<td>4,491,704</td>
<td>3,355,781</td>
<td>3,513,357</td>
<td>3,344,448</td>
<td>3,492,499</td>
</tr>
<tr>
<td>Operating Budget Reserve</td>
<td>398,444</td>
<td>417,204</td>
<td>430,527</td>
<td>443,033</td>
<td>456,746</td>
</tr>
<tr>
<td>Strategic Reserves</td>
<td>497,287</td>
<td>227,015</td>
<td>56,116</td>
<td>212,519</td>
<td>50,756</td>
</tr>
<tr>
<td>TOTAL REVENUE</td>
<td>180,860,443</td>
<td>186,298,159</td>
<td>189,638,011</td>
<td>195,256,170</td>
<td>200,987,282</td>
</tr>
<tr>
<td>$ Increase</td>
<td>6,619,406</td>
<td>5,437,716</td>
<td>3,339,852</td>
<td>5,618,158</td>
<td>5,731,112</td>
</tr>
<tr>
<td>% Increase</td>
<td>3.8%</td>
<td>3.0%</td>
<td>1.8%</td>
<td>3.0%</td>
<td>2.9%</td>
</tr>
</tbody>
</table>
As the tables show, annual revenue growth of approximately 2.9% is outpaced by annual expenditure growth of approximately 3.8%. The growth in expenditures is driven primarily by wages (assumed 2% growth per year), health insurance (annual budget growth of between 10% - 11%), pensions (a whopping 15.5% increase in FY08, followed by growth of approximately 3.5% per year), and School Department non-collective bargaining.
(approximately 2% per year), driven mainly by SPED. These are significant issues the Town must cope with over the next few years - - unless, of course, more positive actions occur, such as state aid being more plentiful than currently assumed; health care costs falling back to more “normal” inflationary levels; employees settling for smaller wage increases; a slowdown in the growth of SPED; or the Town’s pension system realizing larger than expected gains and a reduction in the number of disability retirements.

CONCLUSION

As noted repeatedly throughout this Recommendation, there are several assumptions built into the budget that hold some degree of potential risk for planned service levels over the long-term. Four key assumptions include collective bargaining, group health, retirement obligations, and energy costs.

Collective Bargaining – The current status of negotiations suggest that it will not likely be possible to confirm the actual FY07 costs of bargaining until after the July 1, 2006 start of the fiscal year. To the extent that the last round of negotiations is indicative of the future, none of the larger unions who have expiring contracts reached settlements before the end-date of the prior agreements. Any settlements that exceed budgeted collective bargaining reserves would have to be supported either by offsetting savings in other compensation areas and/or from outright reductions in budget accounts. It is critically important that Town and School negotiating teams adhere to bargaining guidelines so as not to destabilize other areas of the FY07 Budget.

Group Health – The Financial Forecast is assuming a 10% or $2 million increase in group health rates; a 15.5% or $1.6 million increase in pension costs; and a 4% or $200,000 increase in utility costs. These three items alone consume virtually all of operating revenue growth projected for that year.

Group health is obviously a chronic budget buster challenging Brookline and all other municipalities. The Mass Taxpayers Foundation reported that:

- Municipal health coverage costs increased by 63% from 2001-2005, more than four times the growth in local budgets.
- Health care as a share of local budgets jumped from 7.4% in 2001 to 10.6% in 2005, a 42% increase, which if continued at this rate will absorb 15% of local budgets by 2009.
• Between 2001 and 2005, increased health costs consumed over half the property tax growth allowed statewide under Proposition 2 1/2.
• Group health costs for municipal employees have grown at twice the rate than that of state employees.

Not only are rates out of control, but growing plan enrollments are also contributing to upward cost pressures. Since 2000, the number of subscribers taking Town health coverage has grown by 171. As employees retire and replacements are hired, the numbers covered actually increase because coverage is provided to both active employees and retirees. As payroll expands, this too exacerbates group health budget pressure.

Earlier it was noted that school staff levels have increased by 123 FTE's between 2000 and 2005. On average, the cost to the Town for each group health plan participant is over $6,000. This situation cries out for structural reform.

Retirement Costs – The recent growth in unfunded pension obligations – from less than $60 million in 2000 to over $90 million in 2005 – fueled the current initiative to consider Pension Obligation Bonds (POBs). The Retirement Board’s actuary has completed the valuation as of 1/1/06. The Retirement Board has discussed various funding options based on that valuation and will be making a decision on a funding schedule that must be submitted to PERAC, effective FY08. Depending upon the variables the Retirement Board chooses to adopt (funding date, annual budget increase, investment return, disability retirement assumptions), the growth in the FY08 appropriation could be close to $2 million. In contrast, past increases in Town pension appropriations since FY94 have ranged from a high of $600,000 in FY04 to a slight decline in FY03.
Coupled with the impact of double-digit group health increases, this will have a potentially crippling effect on the Town’s FY08 Budget. Steps need to be taken now to prepare for this possibility.

**Energy Costs** - The cost of energy has become the newest “budget buster” for the Town, increasing close to $1.9 million over a two-year period (more than $850,000 in FY07 after increasing close to $1 million in FY06). This enormous growth is due to the increase in the prices of the commodities. The run-up in oil and natural gas prices has been the result of increasing global demand and tight supplies. The increase in the price of oil and natural gas, in turn, directly impacts the cost of electricity, since most of the region’s power plants use natural gas or oil to produce electricity.

In FY05, heating oil, natural gas, and vehicle fuels increased between 20% - 30%. In FY06, the cost of these same energy sources increased 69%, 58%, and 33%, respectively. Fortunately, the Town has been locked in to a fixed rate contract for electricity during this same period, so per kwh costs have remained at 5.65 cents. That contract expires in May, 2006, however, and we are expecting prices in the 10 cent / kwh range. If this is the price at which the Town procures electricity, then the budget will increase more than $800,000. The Town chose not to lock in to a long-term natural gas contract since the prices we could obtain on the open market were so high. Instead, we went back onto basic service with KeySpan, who had winter rates of approximately $1.30 / therm - - rates that were well below the $1.90 / therm we were quoted in the open market. This Spring, the Town will go back out to bid, with the hope that the long-term price will be closer to the $1.30/therm than the $1.90/therm.

In an effort to offset the price increases, the Town has made efforts to reduce its demand (i.e., usage). The Board of Selectmen appointed a Utility Committee which, among other issues, is focusing on a new electricity contract. In addition, the Town Administrator has established an Inter-Departmental Energy Task Force whose task is reducing consumption, with the focus being energy efficiency measures.

The Director of Public Buildings is working on a three-pronged approach to energy conservation: (1) utilizing NStar’s rebate programs, which were recently increased at the request of the Governor, (2) investigating the use of “shared savings” programs with companies specializing in energy efficiency projects, and (3) procuring the services of a consultant who will undertake energy audits of the Town’s facilities, with the desired outcome being a menu of energy efficiency projects the Town could choose to fund. An additional $160,000 is included in the CIP for this purpose.
In summary, the FY07 budget presents what is truly a maintenance-of-effort budget. Despite an increase in the operating budget of 4.0%, energy costs, group health costs and other personnel costs consume most of the anticipated budget capacity. While initiatives started last year such as the Zoning Administrator and Coolidge Corner library staff can be completed and while on-going commitments to capital and technology do not have to be curtailed, the FY07 budget does not allow for any significant program expansion.

FY07 is not only constrained in the short-term by the sizable growth in certain costs centers, but it also had to be prepared in the context of longer-term factors anticipated for FY08. Not only is continued price escalation projected for group health and energy, but an unprecedented impact from the Retirement system could well occur because of the need to meet unfunded pension obligations. A significant upsurge in this fixed cost, coupled with on-going double digit increases in group health and energy, will be beyond any budgetary capacity we could reasonably expect to materialize in FY08.

It increasingly appears that sea change is ahead for municipal government in the not too distant future. There is no reason to expect future growth in municipal budgets to be any greater than the historical trend described at the outset of this Message. There is little margin to absorb the impacts of unrelenting double-digit group health increases plus colossal unfunded post-retirement benefit obligations. The FY07 budget has been prepared with this longer-term outlook very much in mind. Our sincerest hope is that the Financial Plan not only constitutes a balanced approach for the coming fiscal year, but also provides a solid footing to address adverse longer-term conditions that, regrettably, are likely to arise.

**RECOMMENDATION**

As stated at the beginning of this Recommendation, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on April 25, 2006, offered by the Advisory Committee. The Board would like to thank the Advisory Committee again for another first-rate job on the Town’s budget, paying particular attention to applying the Financial Polices that have guided Town budgeting over the past decade. The willingness of the Advisory Committee, School Committee, this Board, and, ultimately Town Meeting, to work collaboratively throughout the budget process is a major reason why this community has been able to maintain a stable financial position during the recent period budgetary stress.

**ROLL CALL VOTE:**

Favorable Action
Allen
Hoy
Sher
Daly
TOWN OF BROOKLINE’S FISCAL POLICIES
Adopted by the Board of Selectmen on April 27, 2004

FREE CASH POLICIES

After funding the Town’s reserves, as detailed in the Town’s Reserve Policies and summarized below, available Free Cash shall be used exclusively to supplement the Capital Improvements Program (CIP).

FREE CASH FOR RESERVES

- **Appropriated Budget Reserve** – an amount equivalent to 0.25% of the prior year’s net revenue shall be appropriated as part of the Town’s 1% Appropriated Budget Reserve Fund, as allowed for under MGL Chapter 40, Section 6.

- **Stabilization Fund** – Free Cash shall be used to fund the Stabilization Fund at a level equivalent to 3% of the prior year’s net revenue, as prescribed in the Town’s Reserve Policies. If the Fund were drawn down in the immediate prior fiscal year, then an allocation shall be made to the Fund in an amount at least equivalent to the draw down of the immediate prior fiscal year.

- **Liability / Catastrophe Fund** – to the extent necessary, Free Cash shall be used to reach the funding target of the Town’s Liability / Catastrophe Fund, as outlined in the Town’s Reserve Policies.

- **Affordable Housing Trust Fund** – in order to support the Town’s efforts toward creating and maintaining affordable housing, Free Cash shall be appropriated into the Affordable Housing Trust Fund according to the following schedule:
  - when Free Cash exceeds $6 million, 5% shall be allocated to the Affordable Housing Trust Fund.
  - when Free Cash exceeds $7.5 million, 7.5% shall be allocated to the Affordable Housing Trust Fund.
  - when Free Cash exceeds $10 million, 10% shall be allocated to the Affordable Housing Trust Fund.

- **Special Use** – Free Cash may be used to augment the trust funds related to fringe benefits and unfunded liabilities related to employee benefits.

FREE CASH FOR CAPITAL

After providing for the reserves and the Affordable Housing Trust Fund as stated above, 100% of any remaining Free Cash balance shall be dedicated to the Capital Improvement Program (CIP).
The Town shall maintain the following general, special, and strategic reserve funds:

- **Budget Reserve** – to respond to extraordinary and unforeseen financial obligations, an annual budget reserve shall be established under the provisions of MGL Chapter 40, Section 6. The funding level shall be an amount equivalent to 1% of the prior year’s net revenue, maintained in the manner set out below. Any unexpended balance at the end of the fiscal year must go toward the calculation of free cash; no fund balance is maintained.
  - Funding from Property Tax Levy – an amount equivalent to .75% of the prior year’s net revenue shall be allocated from the Property Tax levy to the Appropriated Budget Reserve.
  - Funding from Free Cash – an amount equivalent to 0.25% of the prior year’s net revenue shall be allocated from Free Cash, per the Town’s Free Cash Policies, to the Appropriated Budget Reserve.

- **Stabilization Fund** – a Stabilization Fund shall be maintained, under the provisions of MGL Chapter 40, Section 5B.
  1. The target funding level for the Fund shall be an amount equivalent to 3% of the Town’s prior year’s net revenue, as defined in the CIP policies. The Fund shall be funded only with Free Cash or one-time revenues.
  2. The Stabilization Fund may only be used under the following circumstances:
     a. to fund capital projects, on a pay-as-you-go basis, when available Free Cash drops below $2 million in any year; and/or
     b. to support the operating budget when Net Revenue, as defined in the CIP policies, increases less than 3% from the prior fiscal year.
  3. The level of use of the Stabilization Fund shall be limited to the following:
     a. when funding capital projects, on a pay-as-you-go basis under #2a. above, no more than $1 million may be drawn down from the fund in any fiscal year. The maximum draw down over any three year period shall not exceed $2.5 million.
     b. when supporting the operating budget under #2b. above, the amount drawn down from the fund shall be equal to the amount necessary to bring the year-over-year increase in the Town’s prior year net revenue to 3%, or $1 million, whichever is less. The maximum draw down over any three year period shall not exceed $2.5 million.
     c. In order to replenish the Stabilization Fund if used, in the year immediately following any draw down, an amount at least equivalent to the draw down shall be deposited into the fund. Said funding shall come from Free Cash.

- **Liability / Catastrophe Fund** – established by Chapter 66 of the Acts of 1998, and amended by Chapter 137 of the Acts of 2001, this fund shall be maintained in order to protect the community against major facility disaster and/or a substantial negative financial impact of litigation. The uses of and procedures for accessing the fund are...
prescribed in the above referenced special act. The target fund balance is 1% of the prior year’s net revenue and funding shall come from available Free Cash and other one-time revenues.

- **Post-Retirement Benefits Trust Fund** – established by Chapter 472 of the Acts of 1998, this fund shall be maintained to offset the anticipated costs of post-retirement benefits of retired employees. The uses of and procedures for accessing the fund are prescribed in the above referenced special act.

The balance in the Fund shall be maintained, but future funding shall be suspended until a comprehensive statewide municipal approach is adopted. When funding is re-activated, funding may come from continued decreases in other fringe benefit line-items; from continued year-end surpluses in appropriations for employee health insurance; from continued assessments on the non-General Funds that support benefit-eligible employees; and Free Cash and other one-time revenues.

- **Overlay Reserve** – established per the requirements of MGL Chapter 59, Section 25, the Overlay is used as a reserve, under the direction of the Board of Assessors, to fund property tax exemptions and abatements resulting from adjustments in valuation. The Board of Selectmen shall, at the conclusion of each fiscal year, require the Board of Assessors to submit an update of the Overlay reserve for each fiscal year, including, but not limited to, the current balances, amounts of potential abatements, and any transfers between accounts. If the balance of any fiscal year overlay exceeds the amount of potential abatements, the Board of Selectmen may request the Board of Assessors to declare those balances surplus, for use in the Town’s Capital Improvement Plan (CIP) or for any other one-time expense.

**CAPITAL IMPROVEMENT PROGRAM (CIP) POLICIES**

**Definition of a CIP Project**
A capital improvement project is any project that improves or adds to the Town's infrastructure, has a substantial useful life, and costs $25,000 or more, regardless of funding source. Examples of capital projects include the following:

- Construction of new buildings
- Major renovation of or additions to existing buildings
- Land acquisition or major land improvements
- Street reconstruction and resurfacing
- Sanitary sewer and storm drain construction and rehabilitation
- Water system construction and rehabilitation
- Major equipment acquisition and refurbishment
- Planning, feasibility studies, and design for potential capital projects

**Evaluation of CIP Projects**
The capital improvement program shall include those projects that will preserve and provide, in the most efficient manner, the infrastructure necessary to achieve the highest level of public services and quality of life possible within the available financial resources.
Only those projects that have gone through the CIP review process shall be included in the CIP. The CIP shall be developed in concert with the operating budget and shall be in conformance with the Board's CIP financing policy. No project, regardless of the funding source, shall be included in the CIP unless it meets an identified capital need of the Town and is in conformance with this policy.

Capital improvement projects shall be thoroughly evaluated and prioritized using the criteria set forth below. Priority will be given to projects that preserve essential infrastructure. Expansion of the capital plan (buildings, facilities, and equipment) must be necessary to meet a critical service. Consideration shall be given to the distributional effects of a project and the qualitative impact on services, as well as the level of disruption and inconvenience.

The evaluation criteria shall include the following:
- Eliminates a proven or obvious hazard to public health and safety
- Required by legislation or action of other governmental jurisdictions
- Supports adopted plans, goals, objectives, and policies
- Reduces or stabilizes operating costs
- Prolongs the functional life of a capital asset of the Town by five years or more
- Replaces a clearly obsolete facility or maintains and makes better use of an existing facility
- Prevents a substantial reduction in an existing standard of service
- Directly benefits the Town's economic base by increasing property values
- Provides new programs having social, cultural, historic, environmental, economic, or aesthetic value
- Utilizes outside financing sources such as grants

**CIP Financing Policies**

An important commitment is to providing the funds necessary to fully address the Town's capital improvement needs in a fiscally prudent manner. It is recognized that a balance must be maintained between operating and capital budgets so as to meet the needs of both to the maximum extent possible.

For the purposes of these policies, the following definitions apply:

- **Net Operating Revenue** - Gross revenues, less net debt exclusion funds, enterprise (self-supporting) operations funds, free cash, grants, transfers from other non-recurring non-general funds, and non-appropriated costs.
- **Net Direct Debt (and Debt Service)** - Gross costs from local debt, less Prop 2 1/2 debt exclusion amounts and amounts from enterprise operations.
- **Net Tax-Financed CIP** - Gross amount of appropriations for capital improvements from current revenues, less amounts for enterprise operations, grants, free cash, transfers, and non-recurring special revenue funds.

The capital improvements program shall be prepared and financed in accordance with the following policies:

**OUTSIDE FUNDING**

State and/or federal grant funding shall be pursued and used to finance the capital budget wherever possible.
ENTERPRISE OPERATIONS - SELF SUPPORTING
Capital projects for enterprise operations shall be financed from enterprise revenues solely.

CIP BUDGET ALLOCATIONS - 5.5% OF NET REVENUES
Total net direct debt service and net tax-financed CIP shall be maintained at a level equivalent to 5.5% of prior year net operating revenues.

- **TAX FINANCED ALLOCATION - 1.25% OF NET REVENUES**
  Net tax-financed capital expenditures shall be maintained at a target level equivalent to 1.25% of prior year net operating revenues.

- **DEBT-FINANCED ALLOCATION - 4.25% OF NET REVENUES**
  Net direct debt service shall be maintained at a target equivalent to 4.25% of prior year net operating revenues.

DEBT MANAGEMENT POLICIES
Debt financing of capital projects shall be utilized in accordance with the following policies:

- Debt financing shall be reserved for capital projects and expenditures which either cost in excess of $100,000 or have an anticipated life span of five years or more, or are expected to prolong the useful life of a capital asset by five years or more.

- Bond maturities shall not exceed the anticipated useful life of the capital project being financed. Except for major buildings and water and sewer projects, bond maturities shall be limited to no more than ten years.

- Bond maturities shall be maintained so that at least 60% of the outstanding net direct debt (principal) shall mature within 10 years.

- Total outstanding general obligation debt shall not exceed 2.5% of the total assessed value of property.

- Total outstanding general obligation debt per capita shall not exceed $2,000. Beginning on July 1, 2004, the $2,000 per capita shall be adjusted annually by the consumer price index (CPI) for all urban consumers (northeast region all items).

- Total outstanding general obligation debt per capita shall not exceed 6% of per capita income, as defined by the Census Bureau of the U.S. Department of Commerce.

FREE CASH
After using free cash in accordance with the Town's free cash policy, available free cash shall be used exclusively to supplement the capital improvements program.
OVERVIEW
Balancing limited revenues with seemingly unlimited needs is an ongoing challenge. Each year in our budgeting process, we contend with the structural constraints of Prop 2 ½. It is only through a combination of creativity, discipline and the thoughtful commitment to collaboration that we accomplish what many communities have not, thereby avoiding some uncomfortable decisions. However, the coming years and budgets may not be so kind.

As consumers, we have become accustomed to the effects of the “Walmarting” or “Targeting” of America. That is, the effect of consumer goods prices being held, or pushed, down. We have all enjoyed the experience of upgrading our PC or consumer electronics, noticing we get twice as much for half of what we once paid. Under these circumstances, we can be lulled into a certain comfort with the concept of “getting more for less”.

But in contemplating a municipal budget, the reality is that we get more for more, and less for less. And, unfortunately, with such major items as energy and health-care premiums, we get less for more.

Given these financial realities, this year’s challenge has been to provide a maintenance-of-effort budget. Our revenue and expenditure balance sheet illustrates how we contend with this.

REVENUES AND EXPENSES
A variety of sources contribute to this year’s General Fund revenue total of nearly $181M. State Aid accounts for $17.8M. This figure, of course, may be modified as the State Budget works its way through the legislative process. Because of State budget pressures, a portion of Lottery funds have been “diverted” away from towns and cities. Thanks to strong lobbying efforts by the municipalities, the Legislature agreed to a plan that phased out that diversion over four years. However, this year we see that both the Governor’s and the House’s proposed budgets completely returns those remaining funds to the towns and cities - where they properly belong. Local receipts increase 5.5% to nearly $20M. This includes revenues from such things as building permits and various fees and fines, but an increase in interest income is the major contributing factor. State-certified free cash available this year is $5.4M. After allocation to a variety of strategic reserves (e.g. Stabilization Fund, Operating Budget Reserve), $4.5M is available to our CIP. The greatest contribution to our revenue of course, is property tax. Property tax increases prescribed within the bounds of Prop 2 ½, coupled with taxes generated from new development, increase the total property tax levy by 3.8% to $129.8M (representing just over 72% of our General Fund total revenue).

These numbers underscore our heavy reliance on property tax revenues (primarily residential) and the importance of fair and adequate State Aid.

Our revenues are balanced (some might argue tipped out of balance) by expenditures. The law, and common sense, dictates that at the end of the day we bring revenues and expenditures in to balance – and we do.

Departmental expenditures (~66% of our total expenditures) increase by 3.3%. $58.9M is allocated to Town Departments and $59.8M to the School Department (not including
benefits, utilities, and building repair and maintenance, which are accounted for in the Town budget). Non-Departmental expenditures total $48.9M and include such things as employee benefits (~2/3s of this category), reserves, insurance, and debt service (~29%). Additionally, there are special appropriations (CIP) of $6.7M as well as non-appropriated expenses of ~$6.6M (including such things as State assessments and Cherry Sheet offsets).

$180.86M in revenue is met by $180.86M in expenditures. After allowing for the $6.6M in non-appropriated expenses, we are left with a total of $174.3M for appropriation.

While a budget-to-budget increase in revenue of 3.8% may seem reasonable, keep in mind that this is in the face of escalating construction costs, energy costs that have spiked nearly $2M in the past two years, an expanding unfunded liability in our pension fund, and continued double-digit increases in healthcare costs.

An outline of revenues and expenditures follows:

### Revenues

<table>
<thead>
<tr>
<th></th>
<th>$</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Tax</td>
<td>129,825,273</td>
<td>3.8</td>
</tr>
<tr>
<td>Local Receipts</td>
<td>19,948,300</td>
<td>5.5</td>
</tr>
<tr>
<td>State Aid</td>
<td>17,751,533</td>
<td>(1.5)</td>
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<tr>
<td>Free Cash</td>
<td>5,387,435</td>
<td>17.0</td>
</tr>
<tr>
<td>Other Funds</td>
<td>7,947,902</td>
<td>3.3</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td><strong>180,860,433</strong></td>
<td><strong>3.8</strong></td>
</tr>
</tbody>
</table>

### Expenditures

<table>
<thead>
<tr>
<th></th>
<th>$</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Departmental</td>
<td>118,721,989</td>
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</tr>
<tr>
<td>Non-Departmental</td>
<td>48,860,375</td>
<td>8.2</td>
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<tr>
<td>Special Appropriations (CIP)</td>
<td>6,715,483</td>
<td>10.8</td>
</tr>
<tr>
<td>Non-Appropriated Exp.</td>
<td>6,562,595</td>
<td>(18.4)</td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td><strong>180,860,433</strong></td>
<td><strong>3.8</strong></td>
</tr>
</tbody>
</table>

**PERSONNEL**

The Town is by its very nature a service provider. While it is customary to value a Town’s assets by appraising its property, we understand a Town’s value lies largely in its live assets. That is, its employees. It’s no surprise, therefore, that more than two thirds of our Operating Budget goes to wages and benefits. Through consolidation and attrition, the Town portion of the budget will see a slight decrease in General Fund positions (1.2 full-time, 1.3 part-time house workers). Additionally, a CDBG-funded part-time position within the Preservation section of the Planning Department has not been extended, even as Town Meeting has recently voted to extend Historic District coverage to additional neighborhoods in town. Continued full-year funding for an Assistant Librarian at the Coolidge Corner branch and a Zoning Administrator is provided for in this budget. Personnel numbers, structure and job descriptions will change over time as service needs change. The goal is to find levels of efficiency.

The Personnel level on the School Department side becomes a somewhat trickier matter. The schools must contend with such things as the level of student enrollment and the
demands of mandated programming. The pressures exerted by SPED programming, in part, necessitated increases in Aide positions in the School budget. This puts pressure both on that budget and the Town’s budget, as the Town must pick up associated pension costs for those non-teacher positions. At the end of the day, good service is the result of good people, and good employees are a result of good employers (us). For the employer/employee bond to work there must be a fair and honest commitment with respect on both sides to constructively address the real issues we all face. In Brookline we maintain a constant dialogue to seek the proper point of balance.

GROUP HEALTH & BENEFITS
Brookline, being primarily a service organization, expends most of its budget on personnel expenses. In conjunction with broader market factors, those costs are largely driven by our personnel levels and the outcomes of collective bargaining agreements. If we are to maintain our services and personnel, we must carefully manage the associated costs. Employee benefits of $32.2M will consume nearly 18% of this year’s revenues and include such things as pensions, workers’ compensation, unemployment, life insurance and health insurance.

- Group Health
  Group Health benefits account for more than 11% of the General Fund Budget, and are provided to both active and retired employees. Last year, the Town and its employees collaborated - to everyone’s benefit - to stem the pace of healthcare premium escalations by consolidating all Town employees under a single group provider, Blue Cross/Blue Shield. This resulted in holding down the rate of increase to 10.3%. This year, (FY’07) after negotiations, the rate of increase is ~14% (down from an initial projection of 20%). While the rate of increase has not been as great as in some communities, we are still experiencing double-digit annual increases in healthcare premiums. This line item is a potent “budget buster”. If the rate of increase is not brought down, this item will slowly erode the other items in our municipal budget – forcing reductions in services, capital and personnel.

  Surging healthcare premiums are a heavy burden at the national, state and local levels. While it may be true that this country needs a fundamental overhaul of healthcare, Brookline must grapple with the immediate effects now – along with every other municipality, business and family.

  Brookline must continue to aggressively negotiate with providers, revisit such things as the cost and co-pay structure, seek ways to help our employees achieve healthier lifestyles and workplaces, and explore opportunities for collaborative buying.

- Pensions
  The other large benefit putting pressure on our budget is pensions. Pension benefits are provided for Town and School employees not covered as teachers. Many of the new positions in the schools are aides, and therefore may be eligible for the Town Pension system. Currently, there are more than 2,200 employees (active and retired) enrolled in the Town Pension System, and each year the Town must allocate funds for their pensions. That amount is determined by a State-authorized funding schedule. Full funding is legally required by no later than 2028 and Brookline has a payment schedule designed to reach full funding by 2023. Much like paying down your mortgage early, this allows the Town to reduce its total costs considerably. The amount of annual payments needed to accomplish this is currently ~ $10M in FY’07, based on the current value of assets in the
pension, the Pension Board’s assumed rate of return, and disability retirement assumptions. While the Town’s investment returns have outperformed major indices, other communities and the State system, there have been a couple of inordinately tough years. This, and the real probability that future returns will be at a somewhat lower rate (some would argue realistic), has conspired with increased pension pressures, such as increased disability retirements, to push up the pension’s calculated unfunded liability. That is, the amount we must still pay into the system. That unfunded liability is now estimated from $113 to $120M. PERAC (State Agency) will approve a new payment schedule for Brookline this next year, based on the new unfunded liability, our projected (perhaps lower) rate of return, and revised disability assumptions. The bottom line is that this will put significant pressure on our Operating Budget in the coming years. The annual payments required could increase to $13 - $14M depending on a host of items factored in to the State-authorized funding schedule. This equates to a potential $1.6M increase in our FY08 expenditures. This item, too, qualifies as a “budget buster”.

The State recently indicated it believes Pension Boards will have to become more sophisticated and look at investments in such things as private equities, hedge funds and inflation-indexed treasury bonds if they expect to keep up. The Brookline Pension Board and its advisors have already demonstrated their ability to use some of these instruments to increase relative returns and decrease relative risks. However, the Town will have to be ever mindful of new ways to be creative, as this item will exert significant pressure on the Town’s operating Budget in the years to come.

CAPITAL IMPROVEMENTS PLAN (CIP)
The Town’s FY’07-FY’12 proposed CIP anticipates an average annual investment of just under $17.9M. This year (FY’07) we are slated to authorize $10.3M from the General Fund toward our CIP.

Funding for the CIP comes from grants (including CDBG, State/Federal grants), enterprise funds’ budgets, tax revenues ($1.8M) and free cash ($4.5M). Our financial guidelines call for us to apply 5.5% of the prior year’s net revenues toward the CIP (4.25% towards debt service and 1.25% towards pay-as-you-go financing.) This year’s split is 4.36% and 1.14% respectively. After peaking in FY’08, this ratio should start trending back toward our goal, though the debt financing component will spike again as the Runkle School debt kicks in (FY’11). During these periods of greater debt service allocations, free cash becomes more critical in supporting the CIP. However, as demands on our operating budget continue to increase, lower levels of free cash may be anticipated in the coming years. This, in concert with escalating building costs and decreasing SBA reimbursements, will prove potent limiting factors as we seek to quench our thirst for capital projects. In particular, these factors may conspire to recast the scope of anticipated projects at the Runkle and Devotion schools – projects long waiting their due. It will be all the more important to focus on rigid project definitions, solid cost estimates and creative strategies to leverage funds.

These very dynamics have come into play with regard to the much needed rehabilitation of our Town Hall building. Because of greater than anticipated construction costs for even the most basic of renovations (replacing the heating and ventilation systems of this 40 year old building), this project is not a line-item on our spring CIP list. A critical look at needs, costs and priorities requires a bit more time before this project can be deliberated at Town Meeting. This sort of hard analysis will be a necessity for CIP projects of all sizes.
A detailed description of the FY’07 CIP items is provided in these Combined Reports.

DEBT AND DEBT FINANCING
As has been noted, the CIP is largely financed through debt (bonding). Projected outstanding debt for FY’07 is just under $102M with debt service (annual payments on that debt) at a bit over $14M. These are sobering, yet manageable numbers. Of that $14M in debt service, nearly $3M is financed through the Enterprise Funds, $3.4M through State SBA and $4.4M through debt exclusion funding.

State law limits a town’s level of debt to 5% of its Equalized Valuation (EQV); at 0.8% Brookline’s level is nowhere near that limit, and our CIP policy would not allow for such outstanding debt levels. Brookline’s practice of long-term financial planning and use of a relatively short maturation period of debt help to prudently manage our debt levels. This is important, as debt service immediately impacts our Operating Budget.

Below are two tables, one details the anticipated funding source (as percentages) for the proposed FY’07-FY’12 CIP, and the other table breaks out the CIP allocation by category for the same period.

<table>
<thead>
<tr>
<th>CIP (6 Yr) Funding by Source (%)</th>
<th>CIP (6 Yr) Allocation by Category (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund Bond</td>
<td>Facility Renovation/Repair</td>
</tr>
<tr>
<td>44.2</td>
<td>56.5</td>
</tr>
<tr>
<td>Free Cash</td>
<td>Infrastructure</td>
</tr>
<tr>
<td>19.5</td>
<td>22.4</td>
</tr>
<tr>
<td>State/Federal Grants</td>
<td>Park/Open Space / Playgrounds</td>
</tr>
<tr>
<td>15.4</td>
<td>16.6</td>
</tr>
<tr>
<td>Utility Bond</td>
<td>Misc.</td>
</tr>
<tr>
<td>5.8</td>
<td>3</td>
</tr>
<tr>
<td>Property Tax</td>
<td>Vehicles</td>
</tr>
<tr>
<td>6.8</td>
<td>1.5</td>
</tr>
<tr>
<td>Other</td>
<td>Total</td>
</tr>
<tr>
<td>3.3</td>
<td>100.0</td>
</tr>
<tr>
<td>CDBG</td>
<td></td>
</tr>
<tr>
<td>2.9</td>
<td></td>
</tr>
<tr>
<td>Overlay Reserve Surplus</td>
<td></td>
</tr>
<tr>
<td>1.7</td>
<td></td>
</tr>
<tr>
<td>Re-Appropriation of Funds</td>
<td></td>
</tr>
<tr>
<td>0.4</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

SCHOOLS
Our public schools have long been prized and revered, both inside and outside of Brookline. Support by parents, teachers, students and residents has maintained the exceptional quality of this renowned community institution. But, it is not without budgetary difficulty that the schools have maintained the level of quality that we have come to expect. This year the schools feel the enormous budgetary pressure imposed by expanding kindergarten enrollment and increasing needs and demands within the SPED program. Providing a maintenance-of-effort budget has been difficult. Given this situation, the luxuries of program expansions (such as an elementary foreign language program) and enhancements are simply not do-able, though there is a modest increase in the Gifted and Talented program. How levels of State Aid may impact this situation in the future remains to be seen. At the heart of the effort will be continued community support and commitment.

A detailed summary of the School Budget follows this report.

FUTURE PRESENT
The FY’07 budget as presented is tight, but balanced. However, given the financial dynamics now in play, coming budgets will be tough and we must begin contemplating this
now. We can cheat the future for the sake of the present only to a certain point - then we must grapple with the real issues. That is, how much is enough and how much is too little? And, what are we willing to pay to maintain the quality of our community – payment in dollars (taxes/fees) or payment in kind (increased development / decreased services)? Without fundamental restructuring, or a responsible increase in aid from the State, this is the stark reality that all municipalities face. And Brookline is faring better than most. This is in part because we have been somewhat conservative and quite disciplined in budgeting. But again, we must contend with the extreme pressures of healthcare costs, pension obligations and energy costs – just to name three.

We are fortunate to have such an active and talented community. However, the future may require a greater level of commitment and sacrifice if we want to preserve Brookline’s high standards. It may not be without discomfort, but we have proven our ability to contend with obstacles in the past, and as a community we will find ways to do it again. As stewards of this community, we must consider the future in the present.

ADVISORY COMMITTEE’S REPORT ON THE SCHOOL BUDGET

Introduction
The Advisory Committee and Town Meeting have only the authority to approve or disapprove the entire appropriation of Town funds for the Public Schools of Brookline. The authority to allocate those funds and other funds, such as grants, within the school budget is vested in the School Committee. The school budget offers substantial, detailed information on the allocation of funds. This report provides information on some significant elements of the school budget to focus attention on major fiscal issues facing the Public Schools of Brookline and to help you determine whether the final total is appropriate.

Overview
A year ago, in its report on the FY2006 school budget, the Advisory Committee observed that, “The Public Schools of Brookline are likely to face greater budget challenges in FY2007 and beyond. FY2006 may turn out to be a pleasant interlude between fiscally challenging periods—a calm between two storms. The relative good health of the FY2006 should not lull anyone into complacency about the fiscal challenges of maintaining excellence in public education.” The FY2006 report went on to identify slower revenue growth, reduced federal grant funds, increasing personnel costs, higher spending on Special Education, increasing energy costs, and the need to address a backlog in repairs and maintenance of school buildings as some of the key challenges facing Brookline’s school budget. The report concluded: “Fiscal constraints provide very little room for program enhancements. In FY2007 and beyond the schools may find it increasingly challenging to balance their budget.”

Unfortunately, the Advisory Committee’s general and specific predictions have turned out to be accurate. The fiscal challenges identified last year have made it difficult for the Public Schools of Brookline to fund a maintenance-of-effort budget. The use of one-time funds and increases in athletic fees and tuition have made it possible for the schools to limit budget reductions to a few areas, such as performing arts and music. The budget includes additional funds for repairs and maintenance and to increase the number of full-time-equivalents (FTEs) devoted to gifted and talented education. Other program enhancements, such as the reimplementation of a K-6 world languages program or the hiring of additional math
specialists, have been deferred and face an uncertain future. “Bleak” is the word that the superintendent and other observers have used to describe the FY2007 budget.

**Budget Summary**

The FY2007 school budget of $73 million (+3.16% over FY2006, compared to a budgeted +4.66% in FY2006) is divided into expenditures from the General Fund of $62.2 million (+3.73% compared to a budgeted +5.56% in FY2006) and from Special Funds of $10.8 million (+0.03% compared to -0.65% in FY2006).

<table>
<thead>
<tr>
<th>General Fund</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town Appropriation:</td>
<td>$58,736,680</td>
</tr>
<tr>
<td>Override Funds</td>
<td>$1,100,000</td>
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<tr>
<td>Tuition/Building Revenue</td>
<td>$365,251</td>
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<tr>
<td>Circuit Breaker</td>
<td>$1,900,000</td>
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<tr>
<td>Other Revenue</td>
<td>$120,000</td>
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<tr>
<td><strong>Total:</strong></td>
<td><strong>$62,221,931</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Special Funds</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant Funds</td>
<td>$5,541,777</td>
</tr>
<tr>
<td>Revolving Funds</td>
<td>$5,238,480</td>
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<tr>
<td><strong>Total:</strong></td>
<td><strong>$10,780,256</strong></td>
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**TOTAL ALL FUNDS:** $73,002,187 3.16%

**Expenses by Type**

<table>
<thead>
<tr>
<th></th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel</td>
<td>$52,272,930</td>
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<tr>
<td>Services</td>
<td>$7,711,914</td>
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<tr>
<td>Supplies</td>
<td>$1,383,830</td>
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<tr>
<td>Other</td>
<td>$488,265</td>
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<tr>
<td>Equipment</td>
<td>$364,992</td>
</tr>
<tr>
<td>Surplus</td>
<td>$0</td>
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</table>

**TOTAL EXPENSES:** $62,221,931 100.00%

Note that these figures and others in this report assume that Brookline will receive local aid as proposed in Governor Romney’s budget. The report also does not take into account the projected FY2006 school budget deficit of $315,510—largely due to increasing Special Education costs—identified in the FY2006 3rd Quarter Expenditure Report of the Public Schools of Brookline (April 27, 2006). These increased costs would change the total spending for FY2006, the percentages calculated in this report, and the level of a maintenance-of-effort budget for FY2007.

**Maintenance of Effort**

The cost increase necessary to maintain the current effort of the schools is estimated to be $2,814,600. This includes: growth of $708,875 in Special Education costs; an increase of $1,767,462 to cover step increases/net retirement, and collective bargaining; an inflation
adjustment of $131,000, primarily reflecting an increase in the transportation and cleaning contracts; a grant contingency of $140,763 to cover anticipated losses in Title I, Title II A, Title IV, Kindergarten, and Nursing Services grants; and an enrollment/program review increase of $66,500.

Total revenue growth was initially projected to be $2,234,806: $1,829,556 from the allocations of the Town/School Partnership (including local revenue and state aid) plus $402,250 in tuition and Circuit Breaker increases. By increasing athletic fees (see below), the schools hope to realize an additional $86,550 in revenue, thereby making the recurring revenue growth $2,321,356. This amount will be supplemented by $520,000 in one-time funds made available from the General Fund by using Circuit-Breaker funds to cover additional and appropriate Special Education costs. Instead of using $120,000 from the Adult and Community Education Revolving Fund, as in previous years, the school budget will draw $120,000 from the Tuition Revolving Fund, because Adult and Community Education is no longer running an annual surplus. The total increase in available revenue for FY2007 is therefore $2,841,356.

Program Reductions for FY2007
In addition to savings made possible by declining enrollments, particularly at Brookline High School, several programs have been reduced to balance the FY2007 budget.

Performing Arts/Instrumental Music: Initial budget projections called for a reduction of 2.0 FTEs in this area in the elementary schools. Due to declining enrollment at Brookline High School, reductions were possible there and the elementary music program will only lose 0.8 FTEs, of which 0.1 is actually a reduction in funding for supplies and equipment. This apparently will not lead to any reduction in services, because some teachers have the capacity in their schedules to take on additional classes.

Literacy and Mathematics Specialists: The budget reduces “townwide” elementary literacy and mathematics, which means that there will be less support and coordination of this program and a savings of $42,750. The loss of Title I funds will also reduce FTEs in these areas at Devotion (0.20 math), Lincoln (0.60 literacy); and Runkle (0.20) literacy.

Other: Consolidation of the coordinator of libraries and director of instructional technologies positions will save $69,390. The coordinator of English Language Learners (ELL) position will be reduced by 0.40 to 0.60 FTE, reflecting a decline in ELL enrollment. Savings will be $17,681.

Program Enhancements for FY2007
The FY2007 school budget contains several program enhancements, including:

Gifted and Talented: The budget includes $66,500 to fund an increase of 1.4 FTEs for gifted and talented instruction, consistent with the recommendations of the Program Review in that area.

Repairs and Maintenance: One-time funding of $200,000 is devoted to repairs and maintenance of school buildings. This amount supplements the $836,000 for school repair and maintenance in the Building Department budget.
**Elementary World Languages:** Although restoration of a K-6 world language program was among the School Committee’s budget priorities for FY2007, funds are not available for this purpose. (The program might cost from $500,000 in its first year to $1,100,000 when fully implemented.) Instead, the budget creates a 0.40 FTE K-8 world language coordinator position to seek grant funds and plan for implementation of a new program.

**Other:** An Early Childhood Program will be started at Pierce School (supported by tuition income) and an instructional technology specialist position will be added at Brookline High School.

Superintendent Lupini has indicated that additional literacy and mathematics specialists are among the highest priorities to be funded if additional funds become available.

**The Athletics Department, Athletic Fees, and the Athletics Revolving Fund**
The FY2007 school budget proposes a decrease in funding of the amount appropriated in FY2006 for the Athletics Department of $86,520 and an increase in athletic fees of $86,550, which will be shifted to the Athletics Revolving Fund. The Athletics Revolving Fund supplements the general fund in order to maintain the quality of existing athletic programs and to fund new programs such as Girls Ice Hockey. The Athletics Revolving Fund itself is seeking an increase in program costs in the FY2007 Budget of $90,053.

The increase in athletic fees will affect both the high school and the middle schools. The high school varsity/junior varsity athletic fees will increase from $125 per athlete per sport to $175. This increase is expected to generate an additional $66,500 in revenue to support programs. The middle school proposed athletic fee for extramural sports will increase from $85 to $150 and the fee for intramurals will go from $55 to $100 (basketball) and $55 to $85 (all other sports). These increases are expected to generate an additional $20,050 in revenue.

The School Committee is very aware that some waivers must be made for students that are unable to pay. The projected revenue for FY2007 assumes an increase in waivers with a goal of avoiding the loss of any student due to financial need. In the past, the athletic director has utilized his best judgment in the review and approval process for the granting of waivers. The athletic director advises all coaches to inform students of the standing policy of offering waivers for those students whose families cannot afford the athletic fee.

Some of the athletic teams, such as Boys Ice Hockey, engage in independent fund-raising activities outside the school system to assist in the funding for their programs. There is no connection between the athletic fee and whether the particular sport raises outside funds or not.

The Public Schools of Brookline are part of the Massachusetts Interscholastic Athletic Association (MIAA). A survey of District C athletic directors by the school department a year and a half ago showed that fees ranged from a low of $50 per athlete per sport (Weymouth, North Quincy) to a high of $250 (Bridgewater-Raynham, Dover-Sherborn). Most communities have been to increasing athletic fees. The proposed fees would place Brookline in the average range compared to other District C communities. Some sampling of other communities which may be considered as Brookline’s peers reveals the following athletic fees:
Dedham: $100 per sport, $400 family cap/year
Needham: $124 per sport, no family cap
Newton North: $150 per sport, $200 for hockey, $450 family cap/year
Norwood: $100 1st sport, $75 2nd sport, $50 3rd sport, $500 family cap/year
Wellesley: $125 per sport, no family cap
Westwood: $300 per sport, $900 family cap/year

**Special Education**

Following federal and state mandates, the Public Schools of Brookline continue to provide a full range of free educational services to students with disabilities aged 3 to 22 years within the least restrictive environment. There are currently 1,253 students enrolled in Special Education (SPED) programs in the following categories:

<table>
<thead>
<tr>
<th></th>
<th>FY2005 (End of Year)</th>
<th>FY2006 (March)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Population</td>
<td>1,274</td>
<td>1,253</td>
</tr>
<tr>
<td>Pre-School</td>
<td>120</td>
<td>96</td>
</tr>
<tr>
<td>Prototype 1</td>
<td>368</td>
<td>429</td>
</tr>
<tr>
<td>Prototype 2</td>
<td>656</td>
<td>509</td>
</tr>
<tr>
<td>Prototype 3</td>
<td>102</td>
<td>111</td>
</tr>
<tr>
<td>Prototype 4</td>
<td>65</td>
<td>59</td>
</tr>
</tbody>
</table>

The proposed SPED budget for FY2007 is $14,395,458, an increase of $848,000 (+6.26%) over FY2006, although these figures are likely to change in light of the projections that indicate that FY2006 SPED costs will be $592,000 over budget.

FTEs have risen by 18.53 to a total of 239.85. Personnel include SPED classroom teachers, speech and language teachers, vision/hearing specialists, occupational and physical therapists, curriculum coordinators, ancillary therapy personnel, classroom aides, interns, substitutes, and support staff.

Additional funding of $708,875 in the FY2007 SPED budget includes $300,000 for private placements and home-based services, $179,625 as a contingency reserve, $229,250 for 1.0 FTE in speech and language, 1.0 FTE occupational therapist, 0.5 FTE autism specialist (several parents have criticized this as insufficient for autism analysis needs), 0.5 FTE board certified behavioral analyst, 0.4 substantially separate teacher, and 3.5 FTE instructional aides.

There is considerable, albeit fluctuating, growth in SPED costs. Students with highly complex needs are arriving in the Brookline. Those in the autism spectrum are increasing in numbers, especially at the early childhood ages.

The “Circuit Breaker” funds provide by the state continue to have a positive impact on the school budget. Prior to 2004, the state paid one-half of an out-of-district placement facility tuition directly to the private school and the local school district paid the remaining half. (Private school tuitions can run as high as $146,000.) Under the Circuit Breaker system, school districts are now allowed to claim state reimbursement for outside private placement tuitions plus high-cost SPED service delivery within the district beyond a threshold of approximately $30,000 per student. The Circuit Breaker formula states that costs incurred in excess of four times the Foundation Budget will be reimbursed at 75%. (In FY2006 the
relevant figure is $31,616; in FY2007 it will be $33,380.)  This funding is subject to annual appropriation by the state legislature. Based on the previous year's actual data, Circuit-Breaker funding for the FY2006 budget cycle was set at $1,760,000 and level-funding was projected for FY2007. Preliminary data indicate a rise in reimbursement to $1,860,000 but the actual figures will not be available until August. The Public Schools of Brookline now expect that $1,900,000 will be available as permanent Circuit Breaker growth. The difference will not be split by the Town/School Partnership so the total increase will be credited to the school budget. These increases will help to offset rising SPED costs, which are now projected to grow by $13.86 in FY2006, compared to 6.42% in FY2005 and an average of 8.45% over the past ten years.

It is hoped, but not certain as of now, that the state legislature will add SPED transportation costs to the Circuit Breaker formula. Such legislation would yield $880,090 for Brookline plus a 5% contracted increase.

**Budget Outlook: Enrollment Trends, Projected Deficits, Planned Program Expansions for FY2008 and Beyond**

The Public Schools of Brookline will be faced with growing budget challenges in FY2008 and beyond. Future need for expanded financing will depend on a variety of factors including enrollment trends, efforts to strengthen educational programs, collective bargaining agreements, and external support.

**Enrollment Trends.** In the current academic year, Brookline’s public schools experienced a net growth of 6 students. This is the first year since 2000 that school enrollment has grown. The growth in enrollment is accounted for in part by a surge in enrollment at the kindergarten level. This year kindergarten enrollment has increased by 62 (14.6%) over 2005. Current kindergarten enrollment is 89 (22.5%) greater than the low experienced two years ago. The elementary school Special Education enrollment has also grown substantially over the past two years from 87 in 2004 to 134 in 2006. This is a 54% increase. In the past year, the Special Education enrollment increased by 31 students, a 30% increase.

Trend data on total enrollment from 1990 to the to 2005 show a peak in 1997 with 6,096 students enrolled. In 2006 enrollment is 5,785 which is five percent below the 1997 peak. The shifts in enrollment since 1997 have been uneven across the school system. Elementary school enrollment has declined 10.9% while the high school enrollment increased by 9.8%. The decline in elementary school enrollment has enabled the schools to reduce average class size for kindergarten through eighth grade by 10% (21.4 to 19.2) since 1996.

Over the next five years, the School department projects a 10.4% decline in high school enrollment and a 6.5% increase at the elementary school level. Overall a 1% enrollment increase is expected over the five year period. The major long-term question is whether this year’s increase in kindergarten enrollment is an anomaly or whether it will be followed by further growth in future cohorts. The early indications are that kindergarten enrollment next year will be greater than those projected when the budget for 2007 was prepared. The School department budget document projects kindergarten enrollments only slightly lower than 2006 for each of the next five years. If this increase in elementary school enrollment materializes, the implications for the overall school budget will be significant. Spending pressures at the elementary school level will increase. The expected enrollment declines in enrollment at the high school will, however, yield some opportunities for increased efficiency in use of resources at that level.
**Program Enhancement.** Although challenged to sustain the quality of current offerings, the schools continue to seek stronger programs. The fiscal constraints which are forcing the schools this year to cut back on some offerings and increase user fees for high school sports are an important barrier to future quality improvements. Most conspicuous among these desired quality enhancements is the early world languages program at the elementary school level. The proposal for reimplementation of a K-6 world languages program which had been projected for the FY2007 budget has been postponed, although the Driscoll School Chinese-language program will be retained with the support of a renewed grant. The Public Schools of Brookline plan to seek grant funds to restore this program district-wide in FY2008. This approach to financing a K-6 world language program raises a number of problems and questions. There is no guarantee that grant funds will be available. Any available grant funds may only support the teaching of certain languages, particularly Asian languages. Relying on grant funds to support an ongoing program is not optimal, because grants can expire. Brookline’s previous early world language program was terminated when grant funds were no longer available.

**Budget Projections.** The Public Schools of Brookline expect annual shortfalls in FY2008 and beyond. Various factors contribute to the projected shortfalls. Personnel costs are expected to be the largest sources of expenditure growth. Of the expenditure growth anticipated in FY2008, for example, 61% percent is accounted for by various personnel categories (collective bargaining and step increases). This is a contract year, so the actual impact of the collective bargaining process on personnel costs will not be clear until negotiations are completed in the late spring or summer. Rapid increases in health insurance costs are not reflected in personnel costs, but reduce the revenues available to the schools as a result of the allocation of revenues and costs by the Town/School Partnership. Special Education is also expected be a continuing source of expenditure growth. Increases of at least $600,000 per year are projected through FY2010, and these increases may be greater if the pattern of higher SPED spending in FY2006 continues.

Brookline schools benefit substantially from external funds. In FY2006, an increase of nearly $1 million in Circuit Breaker funds from the State of Massachusetts to cover increasing Special Education costs enabled the Schools to maintain stable services. Another substantial increase in circuit breaker funds is unlikely. Next year, a growth of only $300,000 is expected.

Brookline will be challenged to maintain its current level of support from grant funds. In FY2006, grants represent 8.3% of school spending. The federal government’s efforts to contain its deficits are expected to reduce substantially federal grant funds available for schools. For FY2007, grants are expected to represent 7.6% of the budget. (The expected reduction in grant funds is 6.2%.) Brookline school personnel can be expected to continue to take full advantage of opportunities for grant support, but those opportunities may become more limited.

**Overall Outlook.** In spite of the strong financial base provided to the Brookline Public Schools by property tax revenues, the schools will be challenged to maintain the quality of current offerings. Costs will increase more rapidly than property tax revenue. Personnel costs and Special Education mandates will continue to be major factors in driving up costs, particularly in Special Education costs continue to increase at the rate seen in FY2006. In FY2008 and beyond the school department is likely find it increasingly challenging to
balance its budget. For the period FY 2008 through FY 2011, the projected annual shortfalls as a percentage of total appropriations are 1.1%, 2.6%, 2.6%, and 2.7%. Cumulatively, these shortfalls will be very significant in their implications for the quality of educational programs. Substantially greater revenue will be needed to maintain the current quality of educational offerings.

**Recommendation**
The Advisory Committee unanimously (with one abstention) recommends **Favorable Action** on the budget appropriation of $59,836,680 for the Public Schools of Brookline.

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**ADVISORY COMMITTEE SUBCOMMITTEE ON CAPITAL**

**FY-2007 CAPITAL IMPROVEMENT PROGRAM RECOMMENDATIONS**

**PROJECT DESCRIPTIONS**

**FUNDING CODES:**

- (B) = General Fund Bond
- (CD) = Community Development Block Grant
- (EB) = Enterprise Bond
- (G) = State / Federal Grant
- (O) = Outside Funding
- (R) = Re-appropriation of Existing Funds
- (T) = Tax-Financed

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**35. PUBLIC BUILDINGS FURNISHINGS & EQUIPMENT** $27,823 (T)

The Public Building Furnishings and Equipment capital purchase is an on-going program that began in FY99 to update and improve office furniture in Town offices. Since the majority of furniture at that time was 30+ years old, there were ergonomic, wear, and fire code issues that needed to be addressed. Brands were standardized and materials, office furniture, cabinets, chairs, and related furniture were purchased with a lifetime guarantee. A phased-in approach (two to three departments per fiscal year) allowed the Town to refit all offices in Town Hall, including the School Department on the 5th floor.

Going forward, individual offices and workstations in buildings outside of Town Hall, such as Recreation, Public Works, and Fire Stations, will require replacement due to reconfiguration and personnel changes. The replacement program in Town Hall is continuing on a smaller scale, with various conference room tables, furniture replacements for specific offices, as well as special items such as large file cabinets and lateral files, ordered as required.

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**36. TECHNOLOGY APPLICATIONS** $250,000. (T)

In support of the Information Technology Strategic Plan and needs of the user community, the CIO has consolidated proposed CIP funding requests. In the Network Infrastructure category, projects related to Network Storage, Network Upgrades and improved security enhancements are included. Enterprise Applications and Better Government initiatives include the continued development of the Maintenance Management System, enhanced rollout of a Document Management application; GIS 3-D Modeling and a Town website redesign initiative. Also included in the 2007 IT CIP request include requests for establishing a Data Management application for the School system and support for application integration in the Fire Department Operations.
37. **GATEWAY EAST CIRCULATION IMPROV – Plans & Specs**  $100,000. (T) $125,000 (CD)

This project involves reconfiguration of the existing circulation system at Washington Street, Route Nine, Walnut Street, High Street and Pearl Street. The existing jug handle used to provide access to Washington Street from Route Nine eastbound would be removed and replaced with a new four-way intersection at Pearl Street. Signals would be relocated and upgraded and a new surface-level pedestrian crosswalk with walk signal would cross Route Nine just west of Pearl Street as part of a new four-way intersection. This would be an ADA-compliant crossing. This solution was developed in response to Town Meeting opposition to repairing the existing pedestrian bridge, which would be removed as part of this project.

38. **REPAIR/REPLACEMENT OF SCBA AIR COMPRESSOR SYSTEM**  $60,000. (T)

The present compressor system, which is 13 years old, does not meet today's standards for pressure and filtering systems. New SCBA bottles are being manufactured as 5,500 lb bottles; however, the existing compressor fills to only 4,500 lbs, so a new system is required.

39. **TURN-OUT GEAR REPLACEMENT**  $135,000. (T)

Two new sets of turn-out gear were purchased for all firefighters in 1997-1998 with a $240,000 appropriation in FY96. When new firefighters begin, they are outfitted with new turnout gear; therefore, there has been some replacement of gear. However, there are approximately 90 firefighters who have their original gear. The plan is to replace these 180 sets (2 per firefighter) over a two-year period, with 90 sets in FY07 and 90 sets in FY08. At $1,500 per set, $135,000 is required in each of those years.

40. **BRONTO (LADDER/PUMPER COMBO + SKYLIFT)**  $890,000. (T)

The Town's rehab and replacement schedule for Fire Department engines and ladder trucks has resulted in a somewhat awkward situation. Ladder #1 is scheduled to be refurbished in FY07, which means it would be out of service for approximately 6-8 months, thereby resulting in the need for a leased ladder truck, estimated at $30,000. At the same time, Reserve Engine #5, a 1984 vehicle, needs to be refurbished, estimated at $150,000. Lastly, Engine #1 will become a reserve, also necessitating refurbishment, estimated at $100,000. This totals $430,000 and results in the Town having a 22 year-old reserve engine (Reserve Engine #5), an inadequate situation. To make matters worse, the next engine scheduled for replacement is Engine #4, and that will not occur until FY15, at which point Reserve Engine #5 will be more than 30 years old. The Town certainly does not want to have a 30 year-old vehicle serve as a reserve.

In an effort to a.) reduce the costs described above, b.) avoid having a 30+ year-old reserve engine, and c.) provide the Town with a reserve ladder truck (something it currently does not have), a plan was developed to purchase a new Bronto - - a combined ladder and pumper that also includes a skylift, an important feature that the Town currently does not have at its disposal. Purchasing the Bronto eliminates the need to spend $30,000 on a leased ladder, as it can serve as the front-line ladder while Ladder #1 is being refurbished. It also eliminates the need to spend $150,000 on refurbishing the 20+ year-old Reserve Engine #5, as that vehicle can be surplused once Ladder #1 comes back. (Ladder #1 would become the reserve ladder, with the Bronto becoming a front-line ladder to accompany Ladder #2.) Lastly, Ladder #1 would not have to be replaced until FY16, three years later than it would if it continued to serve as a front line ladder.
41. FIRE APPARATUS REHAB $250,000. (T)

All front line engines are to be replaced every 15 years and all front line ladder trucks are to be replaced every 18 years. While this replacement schedule serves the Town very well, funding needs to be appropriated every 10 years to rehab engines and every 12 years to rehab ladder trucks. The breakout of the proposed funding is as follows:

FY07: Ladder #1 = $150,000 and Reserve Engine #1 = $100,000  
FY10: Engine #4 = $115,000 and Ladder #2 = $200,000  
FY12: Engine #6 = $128,000  
Future Years: Engine #5 (FY13) = $141,000 and Engine #3 (FY14) = $141,000

42. FIRE STATION #5 WINDOWS/DOORS/CURTAIN WALLS $190,000 (T)

The planned project for Fire Station No. 5 is to replace three doors and frames, remove old unused in-wall air conditioners and infill with concrete blocks and bricks, repair front and rear storefront windows, repair any damaged hopper style windows, and install three new energy efficient 12’ x 12’ automatic garage doors.

Fire Station No. 5 was built in 1965 and located at 49 Babcock Street. The station serves the Coolidge Corner area, handling most of the high rise buildings in town. The station is constructed on a 8,500 sq. ft. single level footprint with a small basement for mechanical systems. There are three door/frame/sections that are made of wood and are rotted, one leads to the apparatus bay, one is for the boiler room, and one leads to the outside. The doorframes are in poor condition and should be replaced with metal frames and doors. The doors leading to the apparatus bay have side lights. The plan would be to make this doorway larger to allow for passage of larger equipment.

There are 19 hopper style windows, four in the dormitory area, fourteen in the garage area, and one in the command area. Some of the windows are no longer operable. This could be repaired by changing hinges or lock replacement. There are six roof mounted skylight clerestory windows that require cleaning.

The front and rear storefront windows will be repaired by replacing the rotten wood frames with pressered treated (PT) wood and cover the wood with aluminum or vinyl clad to protect the frames from long term deterioration. The front storefront window is part of the command room and the rear storefront window is located in the kitchen area. Connected to them is electrical, plumbing, or HVAC equipment. These items would have to be temporarily disconnected and then reinstalled after the new work is done. The location of the communication equipment and the fire fighters would also have to be relocated during the construction.

Three are two non-automatic front garage doors. The two doors require reverse action motors to eliminate the change of hitting the doors as the apparatus leaves the fire station. These doors are forty one-years old. Additional safety devises will be added to the three garage doors that will prevent accidental closing. The doors will automatically close after apparatus leaves thereby improving energy savings and security in the building.
43. BULLET PROOF VEST REPLACEMENT $25,000. (T)

Bullet proof vests are a vital piece of equipment for police officers. There are approximately 24 vests that need to be purchased during FY07: 14 replacements and 10 for new recruits. The FY11 funding is required to replace the approximately 80 vests purchased in FY06, as they have a five-year guarantee.

44. PUTTERHAM LIBRARY - FURNISHINGS/HVAC/WINDOWS $150,000. (T)

The $65,000 in FY06 was for furnishings. The FY07 monies would be used to supplement the existing monies that have been appropriated for the HVAC system ($173,500). The original windows of the building are now 42 years old and are not energy efficient. A large portion of the rear wall is glass and runs the length of the children's room, making that space difficult to keep warm on cold days. By replacing the windows with thermopane glass, the entire building will be more comfortable. In addition, several of the panes in the rear have holes in them from BBs. $13,000 is included in FY08 for plans and specs, with the new windows funded at $110,000 in FY09.

45. WASHINGTON/SCHOOL/CYPRESS SIGNAL $103,000. (T)

The signal at this location will be 25 years old when scheduled for modernization. This intersection is located at the convergence of two heavily traveled commuter routes that is complicated by high pedestrian school traffic.

46. HARVARD/BABCOCK SIGNAL $25,700. (T)

The controller in the signals at the intersection of Harvard and Babcock Streets is outdated and is not consistent with the new controllers installed at the other intersections on Harvard Street as part of the Harvard Street Reconstruction project. With this work completed, all of the controllers on Harvard Street will be the same.

47. STREET REHABILITATION – TOWN $1,000,000. (T)

The Public Works Department is working to bring the condition of the streets in the Town to a point where only periodic maintenance is required to keep the streets in good condition. With the pavement management program, the Department of Public Works is able to establish a program to reach this goal. The Town's $1,000,000 appropriation is used for 1.) reconstruction of streets, 2.) crack sealing of streets, and 3.) annual patching of streets. Approximately 4 - 6 miles of road are maintained annually, with 2.5 miles being reconstructed.

STREET REHABILITATION – STATE $568,786. (G)

Historically, the State provides monies under its Chapter 90 program for the maintenance of certain streets. About 1/3 of Brookline's streets are eligible for 100% State reimbursement. FY2005 was the first year of a three-year $450 million Chapter 90 program that was included in the State's 2004 Transportation Bond Bill. These funds will come to the Town in FY05 - FY07. For FY08 - FY12, the same level of state funding is assumed.

48. TRAFFIC CALMING STUDIES & IMPLEMENTATION $100,000. (T)
This funding will be used to implement approved traffic calming measures. Approved measures are those that have been reviewed, analyzed, and designed by the Transportation Division using the Traffic Calming Policy as a guide.

49. SIDEWALK REPAIR $200,000. (T)

The DPW receives many complaints about the condition of the sidewalks. Some sidewalks are reconstructed as part of the street reconstruction program; however, this program cannot keep up with the demand to replace deteriorated sidewalks. The DPW has prepared a sidewalk management program that will help prioritize repairs. The annual appropriation of $200,000 will allow for approximately 2 miles of sidewalk work per year to be performed by DPW.

50. STREET LIGHT REPAIR /REPLACEMENT PROGRAM $100,000. (T)

The Town is responsible for the repair and maintenance of the nearly 3,900 street lights within the public ways, public parking lots, playgrounds, and parks. On average, DPW performs 780 repairs to the streetlights. This annual appropriation of $100,000 will be used for this work.

72. NEWTON STREET LANDFILL / TRANSFER STATION $2,000,000. (B)

This past year bids were received for 1) offsite waste corrective actions, front/rear landfill closure and 2) transfer station rehabilitation. Both bids came in over budget. Also, ash (from the Town's incinerator) was discovered on the properties in Martha's Lane. In an effort to move forward with the process, the DPW rebid the offsite waste corrective action project separately and revised the bid format. The Town realized a savings of approximately $700,000 with the rebid. However, even with this savings, there is a significant shortfall in the budget.

Based on 1) a revised scope of work for the Transfer Station (i.e. addressing the neighborhood commitments and basic building maintenance, 2) a revised estimate to cap and construct the park at the Front Landfill and construct the DPW operations area on the Rear Landfill, and 3) an estimate to move forward with the assessment and corrective action design for the properties on Martha's Lane, there is a $678,000+/- shortfall. The $2,000,000 being requested in FY07 will be used to cover this short fall in FY07 with the balance being used to implement the corrective action work for the Martha's Lane properties. Since the Rear Landfill will only be partially capped (for the DPW operations), $3,700,000 is being carried in FY10 to complete the capping.

73. WASTEWATER SYSTEM IMPROVEMENTS $5,500,000. (EB)

This on-going project provides funding for the rehabilitation of the wastewater collection system (sanitary sewer) based on the recommendations of the Wastewater Master Plan completed in 1999. Construction projects to correct sewer system deficiencies have been identified and categorized as: 1) structural improvements, 2) sewer and storm drain separation, 3) infiltration reduction, 4) hydraulic capacity restoration, and 5) cleaning and television inspection to identify areas for further investigation and/or maintenance. Projects are designed, grouped, and constructed with the overall goals of eliminating sewerage backups into homes and businesses, preventing costly system failures, lowering MWRA
wholesale costs by reducing extraneous flows, and making more efficient use of annual operating funds.

JUNIPER STREET PLAYGROUND – Plans & Specs $30,000 (CD)

CDBG has allocated $30,000 for Landscape Design Services to renovate Juniper Street Playground. The neighborhood playground located on Juniper Street is in need of reconstruction that would remove and replace outdated play equipment, a water spray feature, pavement and site furniture that do not meet current safety and accessibility codes and standards. The Design Services for Juniper Playground would include a full design review process to include input from the neighborhood.

51. SOULE PLAYGROUND $350,000. (T)

The grounds at the Soule Recreation Center are in need of site redesign including removal of the old wooden play structures, installation of new play equipment, safety surfacing, pathways, turf renovation, incorporation of a water play feature, and landscaping improvements. The site improvements are also intended to improve connections between the Baldwin School and the Soule Recreation Center grounds.

52. PARKS AND PLAYGROUNDS REHABILITATION & UPGRADE $250,000. (T)

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

53. TOWN/SCHOOL GROUNDS REHAB $120,000. (T)

Town and School grounds require the on-going extensive landscaping, structural improvements, and repair. These funds will be applied to create attractive and functional landscapes and hardscape improvements including plant installation, regrading, reseeding, tree work, new concrete or asphalt walkways, trash receptacles, bike racks, drainage improvements, retaining walls, and repairs to stairs, treads, railings, benches, or other exterior structures. This program prevents more expensive rehabilitation that would be necessary if these items were left to deteriorate.

54. TENNIS COURTS/BASKETBALL COURTS $100,000. (T)

The Town has over 19 basketball courts and 36 hard-surface tennis courts. Over time, the court surfaces begin to deteriorate, crack, and weather. In order to maintain the integrity, safety, and playability of the courts, the Town needs to plan for the phased reconstruction/renovation/resurfacing of the courts.

55. LIGHTING & AMENITIES $150,000. (T)

New fixtures, poles, conduit and/or controls are needed to upgrade park lighting in several parks throughout the Town. Improved lighting will be on a pedestrian scale, provide adequate park lighting, and be appropriate to park design.
56. **TREE REMOVAL AND REPLACEMENT**  
$100,000. (T)  $30,000. (CD)

The tree removal and replacement project represents the Park and Open Space Division's and Tree Planting Committee's effort to balance the Town's street tree removals with plantings. As trees mature or are impacted by storm damage or disease, it is critical to remove these before they become public safety hazards. New tree plantings are also critical as they directly impact the tree-lined character of the community. CDBG funds are used in CD eligible areas only.

57. **WALNUT HILLS CEMETERY UPGRADE**  
$60,000. (T)

The Trustees, in conjunction with the Parks and Open Spaces Division, completed a Walnut Hills Cemetery Master Plan to develop cemetery-wide recommendations with an implementation plan for the entire property that can be used as a guide for both long- and short-term planning for protection and reinforcement of the sense of place, user needs, cemetery development, and horticultural and maintenance improvements. A primary catalyst for this master plan is recognition of the need for future availability of internment space and understanding that these decisions can impact the overall landscape character of this historic cemetery. The balance between the natural landscape and built elements must be maintained to ensure that the overall landscape character, including the layout and treatment of gravesites, is reinforced and maintained.

The primary focus of recommendations for improvement is expansion of internment opportunities, as well as the protection, stabilization, and preservation of historic artifacts and walls. These efforts will prevent significant deterioration of these valuable resources and reduce risk to visitors. Additional improvements need to be made related to landscape issues and making improvements for visitors.

58. **LARZ ANDERSON SKATING RINK**  
$130,000. (T)

In FY06, a $400,000 was approved to purchase and install a complete refrigeration package that meets the capacity of the Larz Anderson Outdoor Skating Rink. The $400,000 consisted of a $260,000 bond and $140,000 in tax-financed CIP funds. The antiquated system had to be replaced in order to keep the outdoor rink operational. Maintenance repairs had become costly due to the age and condition of the equipment. A full system assessment found that the chiller and all three compressors were in need of replacement and that additional repairs were not a cost effective solution for the Town.

As was discussed during review of this item leading up to the 2005 Annual Town Meeting, the $260,000 bond authorization was required so that the entire project could be done at once (the alternative was a phased approach that cost the Town more), but long-term borrowing was never planned for. Instead, the Town would short-term borrow and appropriate $130,000 in both FY07 and FY08 to pay off the short-term note. This proposal reflects the $130,000 in both fiscal years as originally planned.

59. **WALDSTEIN BUILDING – Plans & Specs**  
$12,000. (T)

This small building, which is used seasonally (spring, summer and fall) by the tennis players and our spring, summer and fall soccer camps, contains two toilet areas, a meeting room, a storage area for use by the Town's contracted tennis pro, and a small utility room. The
building is in need of repairs, such as new windows, doors, electrical light fixtures, roof, and plumbing fixtures.

**71. SWIMMING POOL RENOVATIONS**  
$188,000 (T) $1,600,000. (B) $123,960 (R)

At the 2005 Annual Town Meeting, $1 million was allocated for renovations to the Kirrane Aquatics Center. Additional deficiencies were observed during testing on various structural issues, so a new scope of work was defined and expanded. The total estimated cost of the project is now $2.6 million, including plans and specs and project contingency. The issue of steel beam replacement, which was not visible until testing was completed, is the main reason for the significant change in scope and price. The present bidding climate, increases in steel prices, and increases in transportation costs are also contributing to this increase.

In order to complete all the work as recommended by BH&A Engineering Consultants, the Town needs to complete the following work:

1. Complete roof replacement, including replacement of structural steel beams and repairs and treatment of the entire roof structure with new drainage system.
2. Remove the existing ceiling.
3. Replace the existing light fixtures and include a new design for the lighting that addressed complaints from citizens of "shadow areas".
4. Replace the existing "Dectron Unit" which dehumidifies the entire pool building.
5. Modify the existing HVAC systems.
6. Replace the curtainwall, windows, and storefront (lobby windows facing Cypress Playground).
7. Remove the catwalk.
8. Test for, any remove if required, hazardous materials.
9. Undertake miscellaneous structural and envelope repairs required to support the scope of work and address other deficiencies.
10. Paint the roof structure, roof deck, and the walls above the former ceiling.
11. Perform interior and exterior masonry work.

The amount of funding presently available from the original appropriation is approximately $900,000, leaving the project $1.7 million short. There is $124,000 left in a prior swimming pool locker account that will be re-appropriated for this project, leaving the need for $1.6 million.

**60. SCHOOL FURNITURE**  
$25,000. (T)

This is a continuous program to upgrade furniture in all schools. The furniture in classrooms absorbs significant wear and tear annually. This replacement program, which will be ongoing for several years, will replace the most outdated and worn items.

**61. ENERGY MANAGEMENT SYSTEM**  
$80,000. (T)

This project is to upgrade the energy management systems in all school buildings. Most of the larger buildings have older (25 years) energy management systems that have gone beyond their life expectancy and replacement parts are no longer available. These systems would be replaced and upgraded with new web-based systems integrated into the Town's existing computer network system. The Building Department will work in conjunction with the Information Technology Department on this project.
62. ENERGY CONSERVATION $185,000. (T)

With large increases in utility costs over the past couple of years, it is imperative that monies be invested to decrease energy consumption in buildings. Programs would include, but are not limited to, lighting retrofit and controls, energy efficient motors, insulation, and temperature equipment. This program would augment existing gas and electric utility conservation programs. Monies would also go toward more efficient heating and cooling equipment to save money.

63. ASBESTOS REMOVAL - TOWN/SCHOOL $50,000. (T)

This appropriation, which is requested every year, will allow for the removal of asbestos whenever it is discovered in a Town/School facility. Many times when mechanical system repairs are in progress, expensive asbestos abatement has been required. These funds will allow for the proper abatement of asbestos.

64. ADA RENOVATIONS - TOWN/SCHOOL $50,000. (T)

This annual program of ADA improvements is requested in order to bring Town/School buildings into compliance with the Americans with Disabilities Act (ADA), which requires that the Town make public buildings accessible to all. These funds will be used on buildings that are not part of currently planned major renovations.

65. TOWN/SCHOOL BUILDING SECURITY/LIFE SAFETY $100,000. (T)

Over the last few years, there have been several large capital projects that have improved the security situation of Town/School buildings. This program will extend this effort and improve areas where security may be lacking. In general, the plan calls for making all the doors around the perimeter of a building more secure by replacing the doors, frames, door handles, and locks with electronic locks that may only be opened with a keypad and/or on a specific schedule. Only the front main entrance of the building would allow for general access. At the front door a speaker and doorbell will be added to interconnect to the buildings' existing intercom or phone system for use by visitors. The lighting around each building will also be improved, and be on a timer. A small camera system connected to a computer will be added at the main entrance to monitor access to the building. It is not the intent to install a large scale monitoring system due to complexity, monitoring issues, and costs.

The School buildings would be a priority. Most schools are in good condition, but based on an assessment by the Police Department, things can, and should, be improved. These funds will be used at various locations, including Baldwin School, Baker School, Devotion School, High School, Runkle School, Fire Stations, Soule Recreation Center, and Eliot Recreation Center. These funds would also be used to continue the on-going process of replacement and installation of new fire alarm systems, sprinkler systems, emergency lighting, and egress signs.

66. TOWN/SCHOOL ROOF REPAIR/REPLACEMENT PROGRAM $275,000. (T)

Under this program, a priority list and schedule will be made to repair and/or replace roofs on the 74 buildings in the Town. Working together with staff, a consultant would review
existing conditions with expectations of the continued life expectancy of the roofs. Through a repair programs and possibly an extensions on the warranties, the roofs would be earmarked for replacement based on their needs. The types of roofs are slate, rubber membrane, shingle, and asphalt. Most of the roofs that were replaced a number of years ago have gone out of warranty. The average number of years left on warranties is six. Therefore, this program is needed to begin the process of roof replacement. The plan would be to replace two small roofs (about 15,000) per year or one large roof (30,000 sq ft or greater) per year.

67. HIGH SCHOOL- ROOF /POINTING/TAPPAN ST. GYM WINDOWS/WIRING/FLOORS  
   – Plans & Specs $240,000. (T)

   These funds are requested to undertake a number of projects at the High School. Included is the replacement of the roof, pointing of the brick exterior, installation of new upper windows at the Tappan St. Gym, improvement to the computer network wiring, and floor work. The $240,000 in FY07 is for plans and specs while the $2.875M for FY08 is for the actual work, the breakdown for which is as follows:

   Roof Repair = $1.9 million
   Pointing = $420,000
   Wiring = $300,000
   Tappan St. Gym Windows = $55,000
   Floors = $200,000

68. RUNKLE SCHOOL FEASIBILITY / DEVOTION SCHOOL NEEDS ASSESSMENT  
   $200,000. (T)

   The purpose of this combined appropriation is to develop the Feasibility Study for the proposed Runkle School Project as well as to begin to develop an analysis of the program needs of the Devotion School Project. While the Devotion School Project is not scheduled for design until FY12 the central location and size of the building are significant factors in the Town's long range planning, and the School Department wants to have options under review as capacity considerations for the Runkle School are developed.

69. OLD LINCOLN SCHOOL – SPRINKLERS/POINTING/GUTTERS & DOWNSPOUTS  
   $290,000. (R)

   These funds, recently appropriated for gutter and downspout work, is now required for a more general use including, but not limited to, gutter and downspouts, sprinklers, and pointing. This re-appropriation of funds is recommended since the major work originally planned for the building is being delayed until after the Devotion School uses the building (FY2014).

70. TRASH COMPACTORS  
   $30,000. (T)

   The Town and Schools have successfully installed 11 new trash compactors at various sites. These new compactors allow for a cleaner environment, prevent illegal dumping and allow for less frequent pick ups of the trash by the DPW. These monies are requested to install containers at the Unified Arts Building and the Baldwin and Old Lincoln Schools.
**RECOMMENDATION**
The Advisory Committee unanimously (23-0) recommends **FAVORABLE ACTION** on the following vote for the Fiscal Year 2007 budget:

**VOTED:** To approve the budget for fiscal year 2007 set forth in the attached Tables I and II; to appropriate the amounts set forth for such fiscal year in the departments and expenditure object classifications within departments, as set forth in Tables I and II, subject to the following conditions; to raise all sums so appropriated, unless other funding is provided herein; and to establish the following authorizations:

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

A) Expenditures within the appropriation for the School Department shall not be restricted.

B) The following transfers within the appropriations for each department (other than the School Department and the Library Department), shall be permitted only with the prior written approval of the Board of Selectmen and Advisory Committee:

   i) Transfers from the appropriation for the capital outlay object classification to any other object classification.

   ii) Transfers to the appropriation for the personal services object classification from any other object classification.

   iii) Any transfer which has the effect of increasing the number of positions or the Compensation for any position, exclusive of adjustments in wages and benefits voted separately by Town Meeting.

   iv) Within the Building Department appropriation, any transfer of more than $10,000 to or from the repairs to public building appropriations.

   v) Transfers within the Department of Public Works from the Parks Division to any other purpose.

   vi) Transfers within the Department of Public Works from the Snow and Ice budget to any other purpose.
C) Transfers within the Library Department appropriation shall be permitted with the approval of the Board of Library Trustees, and written notice of such approval shall be submitted promptly to the Advisory Committee, Town Administrator and Town Comptroller.

D) All other transfers within the total appropriation for a particular department shall be permitted with the written approval of the Town Administrator, subject to review and approval of the Board of Selectmen, and upon the condition that written notice of each such approval shall be submitted promptly to the Advisory Committee and Town Comptroller.

2.) PROCUREMENT CONTRACTS AND LEASES: The Chief Procurement Officer is authorized to lease, or lease with an option to purchase, any equipment or capital item funded within the FY2007 budget, and to solicit and award contracts for terms of more than three years, provided that in each instance the longer term is determined to be in the best interest of the Town by a vote of the Board of Selectmen.

3.) ALLOCATION OF SALARY ADJUSTMENTS: Appropriations for salary and wage adjustments (Item #22) shall be transferred by the Town Comptroller to the various affected departments within (60) days from the beginning of the fiscal year, or in the absence of duly approved collective bargaining agreements, within (60) days of the approval of the collective bargaining agreements by Town Meeting. The Board of Selectmen shall determine the salaries, which may include merit adjustments, for employees not included in any collective bargaining agreement.

Should a balance remain after the Town Comptroller has made the transfers specified herein, said balance shall be transferred by the Town Comptroller to a budget line entitled Personnel Services Reserve (Item #21), which shall be used to fund costs incurred over the course of the fiscal year pursuant to employee contracts and/or established personnel policies. The Town Comptroller shall include an accounting of all transfers made from this reserve in the Annual Financial Report.

4.) SALARIES OF ELECTED OFFICIALS: The salaries of members of the Board of Selectmen shall be at the rate of $3,500 per year for the Chairman and at the rate of $2,500 per year for each of the other four members. The annual salary of the Town Clerk shall be at the rate of $87,680 effective July 1, 2006, plus any adjustment approved by vote of the Board of Selectmen. The Town Clerk shall pay all fees received by the Town Clerk by virtue of his office into the Town treasury for Town use.

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

6.) GOLF ENTERPRISE FUND: The following sums, totaling $1,222,128 shall be appropriated into the Golf Enterprise Fund, and may be expended under the direction of the Park and Recreation Commission, for the operation of the Golf Course:
Salaries $403,320  
Purchase of Services $176,949  
Supplies $140,777  
Other $4,100  
Capital $85,580  
Reserve $40,000  
Total Appropriations $850,726  
Indirect Costs $371,402  
Total Costs $1,222,128  

Total costs of $1,222,128 to be funded from golf receipts with $371,402 to be reimbursed to the General Fund for indirect costs.

7.) WATER AND SEWER ENTERPRISE FUND: The following sums, totaling $22,981,333, shall be appropriated into the Water and Sewer Enterprise Fund, and may be expended under the direction of the Commissioner of Public Works for the Water and Sewer purposes as voted below:

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<th></th>
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<td>Intergovernmental</td>
<td>5,205,000</td>
<td>9,475,000</td>
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<td>Reserve</td>
<td>108,158</td>
<td>119,380</td>
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<td>Total Appropriations</td>
<td>7,758,729</td>
<td>10,227,220</td>
<td>17,985,949</td>
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<td>Indirect Costs</td>
<td>3,165,238</td>
<td>1,830,147</td>
<td>4,995,385</td>
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<tr>
<td>Total Costs</td>
<td>10,923,966</td>
<td>12,057,367</td>
<td>22,981,333</td>
</tr>
</tbody>
</table>

Total costs of $22,981,333 to be funded from water and sewer receipts with $4,995,385 to be reimbursed to the General Fund for indirect costs.

8.) REVOLVING FUNDS:

a.) The Park and Recreation Commission is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2, a revolving fund for special recreation programs and events. All receipts from said programs and events shall be credited to the fund. Annual expenditures from the fund shall not exceed $1,500,000.

b.) The Building Commissioner is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2, a revolving fund for the repair and maintenance of the Town's rental properties, including all those listed in the vote under Article 13 of the Warrant for the 1999 Annual Town Meeting. All
receipts from said rental properties shall be credited to the fund. Annual expenditures from the fund shall not exceed $100,000.

c.) The Commissioner of Public Works is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2, a revolving fund for the construction and reconstruction, upkeep, maintenance, repair and improvement of sidewalks and walkways along public streets and ways over, across and through town owned property. Annual expenditures from the fund shall not exceed $400,000.

d.) The Director of Planning and Community Development is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2, a revolving fund for the Façade Improvement Loan Program. Annual expenditures from the fund shall not exceed $30,000.

9.) SCHOOLHOUSE MAINTENANCE AND REPAIR: The sum of $4,182,959, included within the Building Department appropriation for school building maintenance, shall be expended for School Plant repair and maintenance and not for any other purpose. The listing of work to be accomplished shall be established by the School Department. The feasibility and prioritization of the work to be accomplished under the school plant repair and maintenance budget shall be determined by the Superintendent of Schools and the Building Commissioner, or their designees.

10.) SNOW AND ICE BUDGET: The sum of $426,371, included within the Department of Public Works appropriation for snow and ice operations, shall be expended for snow and ice operations and not for any other purpose, unless transferred per the provisions of Section 1.B.vi of this Article.

11.) INTERFUND TRANSFERS: In order to fund the appropriations voted for the various departments itemized on Table 1, the Town Comptroller is authorized to make the following interfund transfers:

Parking Meter Special Revenue Fund
(to the Department of Public Works - $965,000)
(to the Police Department - $965,000)

State Library Aid Special Revenue Fund
(to the Library)

Cemetery Perpetual Care Expendable Trust Fund
(to the Department of Public Works)

Cemetery Sales Special Revenue Fund
(to the Department of Public Works)

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

13.) **SPECIAL APPROPRIATIONS:** The appropriations set forth as items 35 through 73, inclusive, in Table I shall be specially appropriated for the following purposes:

35.) Raise and appropriate $27,823, to be expended under the direction of the Chief Procurement Officer, with the approval of the Board of Selectmen, for furnishings and equipment for Town Buildings.

36.) Raise and appropriate $250,000, to be expended under the direction of the Chief Information Officer, with the approval of the Board of Selectmen, for the enhancement of town-wide hardware and software.

37.) Raise and appropriate $100,000, to be expended under the direction of the Director of Planning and Community Development and the Commissioner of Public Works, with the approval of the Board of Selectmen, for the design of pedestrian and vehicular circulation improvements in Brookline Village, for the so-called Gateway East project.

38.) Raise and appropriate $60,000, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the replacement of a Self-Contained Breathing Apparatus (SCBA) air compressor system.

39.) Raise and appropriate $135,000, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the replacement of firefighter turnout gear.

40.) Raise and appropriate $890,000, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the purchase of a combined pumper and ladder truck for the Fire Department.

41.) Raise and appropriate $250,000, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the rehabilitation of Fire Department apparatus.

42.) Raise and appropriate $190,000, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen, for renovations to Fire Station #5 on Babcock Street.

43.) Raise and appropriate $25,000, to be expended under the direction of the Police Chief, with the approval of the Board of Selectmen, for bullet proof vests.
44.) Raise and appropriate $150,000, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the Board of Library Trustees, for the upgrade of the HVAC system at the Putterham Library.

45.) Raise and appropriate $103,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the modernization of the Washington Street / School Street / Cypress Street traffic signal.

46.) Raise and appropriate $25,700, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the modernization of the Harvard Street / Babcock Street traffic signal.

47.) Raise and appropriate $1,000,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of streets.

48.) Raise and appropriate $100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for traffic calming studies and improvements.

49.) Raise and appropriate $200,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of sidewalks.

50.) Raise and appropriate $100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for streetlight replacement and repairs.

51.) Raise and appropriate $350,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Park and Recreation Commission, for improvements to Soule Playground.

52.) Raise and appropriate $250,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the renovation of playground equipment, fields, and fencing.

53.) Raise and appropriate $120,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of Town / School grounds.

54.) Raise and appropriate $100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of tennis courts and basketball courts.

55.) Raise and appropriate $150,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the upgrade of lighting in parks.
56.) Raise and appropriate $100,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Tree Planting Committee, for the removal and replacement of trees.

57.) Raise and appropriate $60,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Trustees of the Walnut Hills Cemetery, for upgrades to the Walnut Hills Cemetery.

58.) Raise and appropriate $130,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for repairs to the Larz Anderson Skating Rink.

59.) Raise and appropriate $12,000, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the Park and Recreation Commission, for the preparation of plans and specifications for renovations to the Waldstein Building.

60.) Raise and appropriate $25,000, to be expended under the direction of the Chief Procurement Officer, with the approval of the Board of Selectmen and the School Committee, for school furniture upgrades.

61.) Raise and appropriate $80,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for upgrades to energy management systems.

62.) Raise and appropriate $185,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for energy conservation projects in Town and School facilities.

63.) Raise and appropriate $50,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for removal of asbestos from Town and School buildings.

64.) Raise and appropriate $50,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for ADA renovations to Town and School buildings.

65.) Raise and appropriate $100,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for improvements to life safety systems in Town and School facilities and for the purpose of improving building security in Town and School facilities.

66.) Raise and appropriate $275,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for a Town and School facility roof repair and replacement program.

67.) Raise and appropriate $240,000, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the School Committee, for the preparation of plans and specifications for renovations to the High School and the Tappan Street Gym.
68.) Raise and appropriate $200,000, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the School Committee, for a feasibility study for the renovation of the Runkle School and for the preparation of a Needs Assessment Study for the Devotion School.

69.) Appropriate $290,000, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the School Committee, for work at the Old Lincoln School; to meet the appropriation transfer $290,000 from the balances remaining in the appropriations voted under Article 7, Section 12, Items 66 and 67 of the 2005 Annual Town Meeting.

70.) Raise and appropriate $30,000, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the School Committee, for trash compactors at various schools.

71.) Appropriate $1,911,960, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the Park and Recreation Commission, for remodeling, reconstruction or making extraordinary repairs to the Evelyn Kirrane Aquatics Center; to meet the appropriation raise and appropriate $188,000; transfer $25,162 from the balance remaining in the appropriation voted under Article 9, Section 12, Item 77 of the 2002 Annual Town Meeting; transfer $98,798 from the balance remaining in the appropriation voted under Article 11, Section 12, Item 80 of the 2003 Annual Town Meeting; and authorize the Treasurer with approval of Board of Selectmen, to borrow $1,600,000 under G.L. c. 44, Section 7, Clauses (3A) and (22) as amended, or pursuant to any other enabling authority; and authorize the Selectmen to apply for, accept, receive and expend grants, aid, reimbursements, loans and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

72.) Appropriate $2,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the Newton Street Landfill including, but not limited to, assessment and corrective action and remodeling, reconstruction or making extraordinary repairs to the Transfer Station; to meet the appropriation authorize the Treasurer, with the approval of the Board of Selectmen, to borrow $2,000,000 under General Laws, Chapter 44, Section 8, Clauses (21-24) as amended, or pursuant to any other enabling authority; and authorize the Selectmen to apply for, accept, receive and expend grants, aid, reimbursements, loans and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

73.) Appropriate $5,500,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the construction of sewers and sewerage systems and for the lining of sewers constructed for sanitary drainage purposes and for sewage disposal; to meet the appropriation authorize the Treasurer, with the approval of the Board of Selectmen, to borrow $5,500,000 under General Laws, Chapter 44, Section 7, Clauses (1) and (1A) as amended, or pursuant to any other enabling authority; and authorize the Selectmen to apply for, accept, receive and expend grants, aid, reimbursements, loans and all other forms of funding.
and financial assistance from both state and federal sources and agencies for such purpose.

14.) **FREE CASH:** Raise and appropriate and transfer $5,387,435 from free cash for the following purposes:

a.) Reduce the tax rate (Capital Improvements) – $4,491,704;
b.) Stabilization Fund (MGL Chapter 40, Section 5B) – $22,248;
c.) Operating Budget Reserve Fund (MGL Chapter 40, Section 6) – $398,444;
d.) Workmen’s Compensation Trust Fund (MGL Chapter 40, Section 13A) – $250,000;

XXX
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<th>PROJECT</th>
<th>ITEM # IN WARRANT</th>
<th>PAGE WARRANT LANGUAGE IS FOUND ON IN COMBINED REPORTS</th>
<th>ITEM # IN BUDGET VOTE</th>
<th>PAGE VOTE IS FOUND ON IN COMBINED REPORTS</th>
<th>PAGE ADV CMTE'S PROJECT DESCR. IS FOUND ON IN COMBINED REPORTS</th>
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<td>7-40</td>
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<td>Wastewater System Improvements (enterprise bond)</td>
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## FY07 BUDGET - TABLE 1

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<th>CHANGE FROM FY06</th>
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<th>FY06 BUDGET</th>
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<td>13,251,400</td>
<td>13,247,416</td>
<td>13,781,495</td>
<td>14,396,621</td>
<td>615,127</td>
</tr>
<tr>
<td>a. Funded Debt - Principal</td>
<td>7,944,798</td>
<td>8,307,613</td>
<td>8,616,569</td>
<td>9,220,587</td>
<td>9,613,087</td>
<td>392,500</td>
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<tr>
<td>b. Funded Debt - Interest</td>
<td>4,598,159</td>
<td>4,562,078</td>
<td>4,264,255</td>
<td>4,300,908</td>
<td>4,613,134</td>
<td>312,227</td>
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<tr>
<td>c. Bond Anticipation Notes</td>
<td>647,912</td>
<td>362,167</td>
<td>330,000</td>
<td>200,000</td>
<td>110,400</td>
<td>(89,600)</td>
</tr>
<tr>
<td>d. Abatement Interest and Refunds</td>
<td>2,498</td>
<td>19,542</td>
<td>36,502</td>
<td>60,000</td>
<td>60,000</td>
<td>0</td>
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<tr>
<td>TOTAL NON-DEPARTMENTAL EXPENDITURES</td>
<td>37,743,956</td>
<td>40,461,741</td>
<td>41,754,453</td>
<td>45,168,383</td>
<td>48,860,375</td>
<td>3,691,992</td>
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<tr>
<td>TOTAL GENERAL APPROPRIATIONS</td>
<td>142,583,443</td>
<td>146,573,115</td>
<td>152,059,699</td>
<td>160,140,766</td>
<td>167,582,364</td>
<td>7,441,597</td>
</tr>
</tbody>
</table>

**SPECIAL APPROPRIATIONS**

- Public Buildings Furnishings and Equipment (revenue financed) 27,823
- Technology Applications (revenue financed) 250,000
- Gateway East - Design (revenue financed) 100,000
- SCBA Air Compressor System (revenue financed) 60,000
- Firefighter Turnout Gear (revenue financed) 135,000
- Fire Dept. Pumper/Ladder Combo Truck (revenue financed) 890,000
- Fire Apparatus Rehab (revenue financed) 190,000
- Fire Station #5 Repairs (revenue financed) 250,000
- Bullet Proof Vests (revenue financed) 25,000
- Putterham Library HVAC Upgrade (revenue financed) 150,000
- Washington/School/Cypress Signal (revenue financed) 103,000
- Harvard / Babcock Signal (revenue financed) 25,700
- Street Rehabilitation (revenue financed) 1,000,000
- Traffic Calming Studies and Improvements (revenue financed) 100,000
- Sidewalk Repair/Reconstruction (revenue financed) 200,000
- Streetlight Replacement/Repairs (revenue financed) 100,000
- Soule Field (revenue financed) 350,000
- Playground Equipment, Fields, Fencing (revenue financed) 230,000
- Town/School Grounds Rehab (revenue financed) 120,000
- Tennis Court / Basketball Court Rehab (revenue financed) 100,000
- Lighting and Amenities (revenue financed) 150,000
- Tree Removal and Replacement (revenue financed) 100,000
- Walnut Hills Cemetery Upgrades (revenue financed) 60,000
- Larz Anderson Skating Rink (revenue financed) 130,000
<table>
<thead>
<tr>
<th></th>
<th>FY03 ACTUAL</th>
<th>FY04 ACTUAL</th>
<th>FY05 ACTUAL</th>
<th>FY06 BUDGET</th>
<th>FY07 BUDGET</th>
<th>CHANGE FROM FY06</th>
</tr>
</thead>
<tbody>
<tr>
<td>59</td>
<td>Waldstein Building Rehab - Plans and Specs (revenue financed)</td>
<td>12,000</td>
<td></td>
<td></td>
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<tr>
<td>60</td>
<td>School Furniture Upgrades (revenue financed)</td>
<td>25,000</td>
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<tr>
<td>61</td>
<td>Energy Management Systems (revenue financed)</td>
<td>80,000</td>
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<tr>
<td>62</td>
<td>Energy Conservation (revenue financed)</td>
<td>185,000</td>
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<td></td>
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<tr>
<td>63</td>
<td>Town/School Asbestos Removal (revenue financed)</td>
<td>50,000</td>
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<tr>
<td>64</td>
<td>Town/School ADA Renovations (revenue financed)</td>
<td>50,000</td>
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<tr>
<td>65</td>
<td>Town/School Building Security/Life Safety (revenue financed)</td>
<td>100,000</td>
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<td>66</td>
<td>Town/School Roof Repair/Replacement (revenue financed)</td>
<td>275,000</td>
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<td>67</td>
<td>High School/Tappan St. Gym - Plans and Specs (revenue financed)</td>
<td>240,000</td>
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<tr>
<td>68</td>
<td>Runkle School Feasibility/Devotion School Needs Assessment (revenue financed)</td>
<td>200,000</td>
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<td>69</td>
<td>Old Lincoln School Repairs (capital project surplus)</td>
<td>290,000</td>
<td></td>
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<td>70</td>
<td>School Trash Compactors (revenue financed)</td>
<td>30,000</td>
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<tr>
<td>71</td>
<td>Swimming Pool Renovations (bond = $1.6 million; revenue-financed=$188,000; capital project surplus = $123,960)</td>
<td>1,911,960</td>
<td></td>
<td></td>
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<td>72</td>
<td>Newton St. Landfill Corrective Action/Transfer Station (bond)</td>
<td>2,000,000</td>
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<td>73</td>
<td>Wastewater System Improvements (enterprise bond)</td>
<td>5,500,000</td>
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<td>TOTAL SPECIAL APPROPRIATIONS</td>
<td>6,767,794</td>
<td>7,066,117</td>
<td>11,438,708</td>
<td>6,060,803</td>
<td>6,715,483</td>
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<td>TOTAL APPROPRIATED EXPENDITURES</td>
<td>149,351,237</td>
<td>153,639,232</td>
<td>163,498,407</td>
<td>166,201,569</td>
<td>174,297,847</td>
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<tr>
<td></td>
<td>NON-APPROPRIATED EXPENDITURES</td>
<td>9,418,534</td>
<td>7,980,179</td>
<td>8,311,216</td>
<td>8,039,468</td>
<td>6,562,595</td>
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<tr>
<td></td>
<td>Cherry Sheet Offsets</td>
<td>1,148,519</td>
<td>1,013,561</td>
<td>1,157,237</td>
<td>1,280,287</td>
<td>116,116</td>
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<td></td>
<td>State &amp; County Charges</td>
<td>5,638,706</td>
<td>5,460,231</td>
<td>5,352,984</td>
<td>5,243,739</td>
<td>5,221,479</td>
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<td>Overlay</td>
<td>2,560,059</td>
<td>1,500,000</td>
<td>1,800,995</td>
<td>1,490,442</td>
<td>1,200,000</td>
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<td></td>
<td>Deficits-Judgments-Tax Titles</td>
<td>71,250</td>
<td>6,387</td>
<td>0</td>
<td>25,000</td>
<td>25,000</td>
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<tr>
<td></td>
<td>TOTAL NON-APPROPRIATED EXPEND.</td>
<td>9,418,534</td>
<td>7,980,179</td>
<td>8,311,216</td>
<td>8,039,468</td>
<td>6,562,595</td>
</tr>
<tr>
<td></td>
<td>SURPLUS/(DEFICIT)</td>
<td>5,094,944</td>
<td>2,447,113</td>
<td>4,472,643</td>
<td>0</td>
<td>0</td>
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</table>

(1) Breakdown provided for informational purposes.
(2) FY03-05 figures provided for informational purposes. Funds were transferred to departmental budgets for expenditure.
(3) Funds are transferred to trust funds for expenditure.
(4) Amounts appropriated. Bonded appropriations are not included in the total amount, as the debt and interest costs associated with them are funded in the Borrowing category (item #34).
<table>
<thead>
<tr>
<th>Department/Board/Commission</th>
<th>Personnel Services</th>
<th>Purchase of Services</th>
<th>Supplies</th>
<th>Other Charges/Expenses</th>
<th>Capital Outlay</th>
<th>Debt Service</th>
<th>Personnel Benefits</th>
<th>Agency Total</th>
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</thead>
<tbody>
<tr>
<td>Board of Selectmen (Town Administrator)</td>
<td>549,922</td>
<td>9,553</td>
<td>6,750</td>
<td>2,600</td>
<td>5,220</td>
<td>574,045</td>
<td></td>
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<tr>
<td>Human Resources Department (Human Resources Director)</td>
<td>220,354</td>
<td>228,856</td>
<td>8,500</td>
<td>500</td>
<td>2,843</td>
<td>461,053</td>
<td></td>
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<tr>
<td>Information Technology Department (Chief Information Officer)</td>
<td>784,776</td>
<td>509,433</td>
<td>34,127</td>
<td>2,450</td>
<td>40,388</td>
<td>1,371,174</td>
<td></td>
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<td>Finance Department (Director of Finance)</td>
<td>1,743,391</td>
<td>1,025,464</td>
<td>44,888</td>
<td>13,184</td>
<td>19,066</td>
<td>2,845,992</td>
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<td>Legal Services (Town Counsel)</td>
<td>447,079</td>
<td>79,240</td>
<td>1,950</td>
<td>74,400</td>
<td>4,142</td>
<td>606,811</td>
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<tr>
<td>Advisory Committee (Chair, Advisory Committee)</td>
<td>20,320</td>
<td>266</td>
<td>775</td>
<td>340</td>
<td>487</td>
<td>22,187</td>
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<tr>
<td>Town Clerk (Town Clerk)</td>
<td>464,364</td>
<td>56,850</td>
<td>13,401</td>
<td>1,800</td>
<td>3,480</td>
<td>539,895</td>
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<tr>
<td>Planning and Community Department (Plan. &amp; Com. Dev. Dir.)</td>
<td>426,097</td>
<td>12,143</td>
<td>5,922</td>
<td>3,700</td>
<td>6,969</td>
<td>454,831</td>
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<tr>
<td>Economic Department (Econ. Devel. Officer)</td>
<td>159,433</td>
<td>18,308</td>
<td>7,785</td>
<td>250</td>
<td>1,225</td>
<td>187,001</td>
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<tr>
<td>Police Department (Police Chief)</td>
<td>12,403,528</td>
<td>550,153</td>
<td>292,511</td>
<td>4,500</td>
<td>461,025</td>
<td>13,711,717</td>
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<tr>
<td>Fire Department (Fire Chief)</td>
<td>11,080,932</td>
<td>261,492</td>
<td>139,379</td>
<td>5,850</td>
<td>82,885</td>
<td>11,590,538</td>
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<td>Public Buildings Department (Building Commissioner)</td>
<td>1,729,939</td>
<td>4,138,397</td>
<td>141,194</td>
<td>1,900</td>
<td>104,594</td>
<td>6,116,025</td>
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<tr>
<td>Public Works Department (Commissioner of Public Works)</td>
<td>7,112,832</td>
<td>3,345,346</td>
<td>1,029,851</td>
<td>9,639</td>
<td>700,000</td>
<td>12,197,668</td>
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<tr>
<td>Public Library Department (Library Board of Trustees)</td>
<td>2,303,904</td>
<td>436,687</td>
<td>477,015</td>
<td>1,502</td>
<td>57,261</td>
<td>3,276,369</td>
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<tr>
<td>Health Department (Health Director)</td>
<td>679,583</td>
<td>283,321</td>
<td>16,541</td>
<td>3,620</td>
<td>29,988</td>
<td>1,013,053</td>
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<tr>
<td>Veterans' Services (Veterans' Services Director)</td>
<td>109,301</td>
<td>3,700</td>
<td>650</td>
<td>88,200</td>
<td>940</td>
<td>200,998</td>
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<tr>
<td>Council on Aging (Council on Aging Director)</td>
<td>546,090</td>
<td>139,338</td>
<td>18,850</td>
<td>2,900</td>
<td>11,281</td>
<td>719,059</td>
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<tr>
<td>Human Relations/Youth Resources (Human Relations Dir.)</td>
<td>127,233</td>
<td>4,307</td>
<td>4,100</td>
<td>600</td>
<td>137,194</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recreation Department (Recreation Director)</td>
<td>734,909</td>
<td>217,167</td>
<td>48,844</td>
<td>2,400</td>
<td>6,380</td>
<td>1,009,700</td>
<td></td>
<td></td>
</tr>
<tr>
<td>School Department (School Committee)</td>
<td>20,320</td>
<td>266</td>
<td>775</td>
<td>340</td>
<td>487</td>
<td>22,187</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Departmental Budgets</td>
<td>41,643,984</td>
<td>11,338,927</td>
<td>2,293,033</td>
<td>220,335</td>
<td>1,539,029</td>
<td>116,871,989</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DEBT SERVICE**

Debt Service (Director of Finance) | 14,396,621 |

Total Debt Service: 14,396,621

**EMPLOYEE BENEFITS**

Contributory Pensions Contribution (Director of Finance) | 9,855,009 |

Non-Contributory Pensions Contribution (Director of Finance) | 310,000 |

Group Health Insurance (Human Resources Director) | 18,936,109 |

Employee Assistance Program (Human Resources Director) | 25,000 |

Group Life Insurance (Human Resources Director) | 157,000 |

Workers’ Compensation (Human Resources Director) | 1,450,000 |

Public Safety IOD Medical Expenses (Human Resources Director) | 155,000 |

Unemployment Insurance (Human Resources Director) | 125,000 |

Ch. 41 100B Medical Benefits (Town Counsel) | 30,000 |

Medicare Payroll Tax (Director of Finance) | 1,115,000 |

Total Employee Benefits: 32,158,118

**GENERAL / UNCLASSIFIED**

Reserve Fund (*) (Chair, Advisory Committee) | 1,593,755 |

Stabilization Fund (Director of Finance) | 22,248 |

Liability/Catastrophe Fund (Director of Finance) | 225,039 |

General Insurance (Town Administrator) | 276,175 |

Audit/Professional Services (Director of Finance) | 138,987 |

Contingency (Town Administrator) | 15,000 |

Out of State Travel (*) (Town Administrator) | 3,000 |

Printing of Warrants (Town Administrator) | 10,000 |

MMA Dues (Town Administrator) | 20,000 |

Total General / Unclassified: 1,850,000 |

**TOTAL APPROPRIATIONS**

43,493,984 | 11,767,089 | 2,303,033 | 231,768 | 1,539,029 | 14,396,621 | 32,158,118 | 167,582,364

(*) NO EXPENDITURES AUTHORIZED DIRECTLY AGAINST THESE APPROPRIATIONS. FUNDS TO BE TRANSFERRED AND EXPENDED IN APPROPRIATE DEPT.
ARTICLE 7

BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

After the Board’s April 25th vote on the FY07 budget, Chapter 77 of the Acts of 2006 was signed into law by the Governor. Chapter 77 amends Massachusetts General Laws Chapter 44, Section 33B, which governs how transfers between departments can be made by cities and towns. Prior to this change in law, transfers between departments could only be made by a vote of Town Meeting. This amendment allows municipalities to make these transfers within the last two months of the fiscal year (May and June) by a vote of the Board of Selectmen and finance / advisory committee, thereby providing cities and towns flexibility at the end of the fiscal year. The amount that can be transferred is limited to no more than 3% of a department’s annual budget, or $5,000, whichever is greater.

In order to use the flexibility offered by this change in Massachusetts finance law, the budget vote must be amended as laid out under the Advisory Committees’ Supplemental Report below. The Board of Selectmen agrees with the Advisory Committee that the Town’s budget language should be amended and recommends FAVORABLE ACTION, by a vote of 5-0 taken on May 16, 2006, on the revised language under Section 1 of Article 7.

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ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

Massachusetts General Laws Chapter 77 governs the way in which funds may be transferred between departments in towns and cities. Chapter 77 of the Acts of 2006 provides that in the final two months or first fifteen days of the fiscal year, transfers between departments may be done by a vote of both the Board of Selectmen and Advisory Committee within certain guidelines. These are, the transfer is limited to 3% of the budget from which the transfer is made or $5,000, whichever is greater. Prior to the change in State statute, such transfers required a convening and vote of Town Meeting.

The flexibility of Chapter 77 means that at the end of the fiscal year, rather than tapping the Reserve Fund and later flipping any departmental turn-backs into Free Cash, a direct transfer may be made. This would be done by the same mechanism that Reserve Fund transfers are currently made.

In order to properly align our language in “Transfer Among Appropriations” under Article 7 with current State law, the Advisory Committee recommends FAVORABLE ACTION on the revised language under Section 1 of Article 7. As a result of this amendment, Section 1 of the budget vote as shown on pages 7-49 and 7-50 of the Combined Reports shall read as follows:
1.) **TRANSFERS AMONG APPROPRIATIONS:** Transfers between the total departmental appropriations separately set forth in Tables 1 and II shall be permitted by vote of Town Meeting or as otherwise provided by Massachusetts General Laws Chapter 44, Section 33B(b). Within each separate departmental appropriation, expenditures shall be restricted to the expenditure object classifications set forth in the recommendation of the Advisory Committee, and voted by the Town Meeting, for each department, subject to the following exceptions:

A) Expenditures within the appropriation for the School Department shall not be restricted.

B) The following transfers within the appropriations for each department (other than the School Department and the Library Department), shall be permitted only with the prior written approval of the Board of Selectmen and Advisory Committee:

   i) Transfers from the appropriation for the capital outlay object classification to any other object classification.

   ii) Transfers to the appropriation for the personal services object classification from any other object classification.

   iii) Any transfer which has the effect of increasing the number of positions or the Compensation for any position, exclusive of adjustments in wages and benefits voted separately by Town Meeting.

   iv) Within the Building Department appropriation, any transfer of more than $10,000 to or from the repairs to public building appropriations.

   v) Transfers within the Department of Public Works from the Parks Division to any other purpose.

   vi) Transfers within the Department of Public Works from the Snow and Ice budget to any other purpose.

C) Transfers within the Library Department appropriation shall be permitted with the approval of the Board of Library Trustees, and written notice of such approval shall be submitted promptly to the Advisory Committee, Town Administrator and Town Comptroller.

D) All other transfers within the total appropriation for a particular department shall be permitted with the written approval of the Town Administrator, subject to review and approval of the Board of Selectmen, and upon the condition that written notice of each such approval shall be submitted promptly to the Advisory Committee and Town Comptroller.
ARTICLE 7

Motion to Amend Offered by Bruce Wolff, TMM-2
Department of Public Works Budget - #13 in Table 1

Moved: To amend Tables 1 and 2 by adding $22,000 to the Department of Public Works budget in the following manner, with said funding to be used for the removal and treatment of invasive species:

TABLE 1

<table>
<thead>
<tr>
<th>ITEM #</th>
<th>ARTICLE 7 MOTION</th>
<th>PROPOSED CHANGE</th>
<th>AMENDED TOTAL</th>
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</thead>
<tbody>
<tr>
<td>13. Department of Public Works</td>
<td>$12,197,668</td>
<td>+ $22,000</td>
<td>$12,219,668</td>
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</table>

TABLE 2

<table>
<thead>
<tr>
<th>Department/Board/Commission</th>
<th>ARTICLE 7 MOTION Purchase of Services</th>
<th>PROPOSED CHANGE Purchase of Services</th>
<th>AMENDED TOTAL Purchase of Services</th>
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<tbody>
<tr>
<td>Department of Public Works</td>
<td>$3,345,346</td>
<td>+ $22,000</td>
<td>$3,367,346</td>
</tr>
</tbody>
</table>
ARTICLE 7

Motion to Amend Offered by Marty Rosenthal, TMM-9 & Brookline PAX Co-Chair

Special Appropriation # 48
(Combined Report p. 7-54) to instead read:

“Raise and appropriate $100,000 to be expended under the direction of the Board of Selectmen, with input from the Commissioner of Public Works, for traffic calming studies and improvements.”

EXPLANATION

This proposal puts more responsibility on the selectmen to give more direction to DPW, and presumably the Transportation Board” (“T-Bd.”), to more explicitly implement the enabling statute, Ch. 317 of the Acts Of 1974, “The [Transportation] board shall have exclusive authority generally consistent with the transportation policies of the board of selectmen ... to take any and all of the following actions ... .”

Traffic calming is happening all over the country, but here it’s been only baby-steps. It’s painfully obvious that some of our officials are, to say the least, not enthusiastic about it. Maybe there was some over-reaction to the perfectly human learning curve errors of Winchester St., in both concept and implementation, all now avoidable (e.g. better signage), especially in different areas (especially smaller streets). However, “official” ambivalence should defer to neighbors’ strongly-held requests for heightened safety -- unless there’s a prohibitive, overriding, and clear-cut countervailing consideration of either public safety or cost. In most cases, there’s none.

Yet, several recent neighborhood petitions have languished for years. COOLIDGE PARK neighbors submitted a July 2001 petition; “studies” were not done until the summer of 2004. In the February, 2003 four members of the Park & Rec. Commission, after studying Coolidge Park for renovations, wrote the T-Bd. “strongly endors[ing]” the neighbors’ petition because of “a very significant hazard especially for children.” The 2004 “study” results, albeit questioned as to its methodology and validity by neighbors, confirmed that KENWOOD St. averages 13 cars a day over 41 mph, a few even over 50 mph; 32 more over 36 mph; 150 a day over 31 mph; and that 195 daily speeding cars being about 33% of the overall traffic, right alongside a playground! Nonetheless at a June, 2005 meeting widely perceived as “heated,” Town officials argued about the speeding problem, calling it “a perception”; a T-Bd. member wisecracked, "What do you want us to do, machine-gun the drivers?"; and a resident who said his car was almost hit as he backed out of his driveway was told to “back out more carefully.” In September 2005, after another well-attended meeting, the T-Bd. finally voted to address about 33% of the problems the neighbors have been pressing, including “temporary’ speed bumps on Kenwood. As of now, they are still “in progress,” supposedly “soon.”
Published reports indicate that the DRISCO LL School Traffic Calming Project Steering Committee has been asking for safety initiatives since the late 1990’s. Some were done in 2000 and 2001; but the neighbors and school officials have expressed frustration, in the words of the Driscoll Principal, that “the ball dropped. The rest of the project needs to get attended to.” At least one other neighborhood has voiced a similar concern about long delays. In 2003, due to citizen frustration, the Town Meeting, with the selectmen’s support, passed a Resolution urging that an update on all traffic calming projects be published in the Annual Report and on the Town website. This has been done, but it has not “sped up” the calming program. Maybe, hopefully, the selectmen can now take charge -- and do so.
AMENDED VOTE UNDER ARTICLE 29  
PROPOSED BY THE MODERATOR'S COMMITTEE ON ZONING

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


a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be subsequently divided into multiple units.

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

c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction was granted at least ten years prior to the date of the application for additional gross floor area under this Section or if there is other evidence of lawful occupancy at least ten years prior to the date of such application. If the limitation set forth in this paragraph 1, subparagraph c should be found invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

d. Exterior modifications to accommodate an exterior addition or interior conversion shall include without limitation the addition of a dormer, penthouse, cupola, windows, doors or the like. Such modifications shall also not conflict with any other provisions of the Zoning By-law. Interior conversion and exterior addition are terms defined in § 2.09. An exterior modification such as a dormer or penthouse which is usable for human occupancy shall be deemed an exterior addition.

e. The interior conversion shall not result in the displacement of interior storage of equipment, vehicles, or materials to a location which is now exterior to the house.

f. In determining the appropriate amount of space to be converted into habitable space, the Board of Appeals shall consider the extent of exterior modifications required to effectuate the proposed conversion and/or exterior addition and the impact thereof on abutting properties.

g. Space that has previously been decommissioned shall not be converted under this Section.

h. Under paragraph 3 below, the Board of Appeals may allow for the conversion of attic or basement space not meeting the requirements of paragraph 2, for conversions of interior space other than attic or basement space, and for exterior additions.

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings
Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing gross floor area of the dwelling, shall be allowed as-of-right provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw. No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than 150% of the total permitted in Table 5.01 (the “permitted gross floor area”).

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

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

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

2) The existing building contains at least one residential unit but no more than four total units. For the purpose of this paragraph 3, subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

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

b. The maximum increase in floor area allowed by special permit may be allowed only in accordance with the following conditions, which shall be in addition to the other conditions set forth in this Section, including paragraph 1, and any other conditions that the Board of Appeals may prescribe. In no case shall the total resulting gross floor area of the building(s) after all conversions and additions be more than 130% of the permitted gross floor area:

1) In all S and SC Districts, a special permit may be granted for an increase in floor area above the permitted gross floor area for only one of the following subparagraphs (such that the grant of a special permit under one subparagraph shall preclude the subsequent grant of a special permit under a different subparagraph, but shall not, to the extent the increase in floor area allowable under one subparagraph has not been fully utilized, preclude a subsequent grant of an additional special permit under that same subparagraph so as to fully utilize the increase in floor area
allowable under that subparagraph. Notwithstanding the foregoing, an applicant who has received a special permit under subparagraph (a) or (b) and has not fully utilized the allowable increase in floor area under that subparagraph may apply for a special permit under subparagraph (c), with the increased floor area previously allowed under subparagraph (a) or (b) counted against the floor area allowable under subparagraph (c):

a) an interior conversion that is less than or equal to 30% of the permitted gross floor area;

b) an exterior addition that is less than or equal to 20% of the permitted gross floor area; or

c) a combination of an interior conversion and exterior addition that is less than or equal to 30% of the permitted gross floor area, provided that the additional floor area attributable to exterior construction (which shall include the floor area included within dormers, penthouses, cupolas, and the like) does not exceed 35% of the additional floor area allowed by special permit.

The grant of a special permit under any prior version of Section 5.22 shall be deemed the grant of a special permit under this Section.

2) In all T Districts, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for a increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 3, subparagraph (b)(2), or under any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.

c. If the application of the percentages in paragraph 3, subparagraph b results in a floor area increase of less than 350 square feet, a special permit may be granted for an increase in floor area of up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. The prior grant of additional gross floor area as of right or by special permit under Section 5.22 or any prior version of Section 5.22 shall preclude a subsequent grant of a special permit under this paragraph 3, subparagraph c.

EXPLANATION

Upon review of its own proposal, the Moderator’s Committee suggests a slight clarifying change in subsection 1(c). This change is designed to eliminate any potential ambiguity in the “10-year rule” language originally proposed by the Moderator’s Committee and approved by the Planning Board, the Selectmen and the Advisory Committee. First, for older homes which may have been lawfully occupied before Certificates of Occupancy were required, other evidence of lawful occupancy of the building more than ten years previously will permit an application to be filed under Section 5.22. Conversely, the fact that a Certificate of Occupancy has not yet been
applied for or issued does not permit Section 5.22 to be utilized with respect to a building which has not yet been lawfully occupied for ten years.

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BOARD OF SELECTMEN'S SUPPLEMENTAL REPORT

The Board of Selectmen will be taking up the amendment Tuesday night prior to Town Meeting and will have its recommendation at that time.

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ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

Discussion
Since the Advisory Committee's meeting and vote on Article 29, the Moderator's Committee on Zoning did a final review of their work. They found a source of potential confusion in the wording of the first paragraph, subsection 1(c) about the "10-year rule". Two situations would be better covered by their recommended changes. First, it would make sure that the many older houses in town that predate the issuing of Certificates of Occupancy and have been lawfully occupied for the required minimum of ten years, can use Section 5.22. And that secondly, on the other hand, just because a certificate has not been applied for or obtained, this zoning exception can not be made use for a new house that has not yet been lawfully occupied for ten years.

Recommendation
The Advisory Committee voted 19-0 to recommend acceptance of this amendment to Article 29, offered by the Moderator's Committee on Zoning.
EIGHTH ARTICLE
To see if the Town will discontinue the $41.25 emergency quarterly fee initiated by the 1988 Brookline Town Meeting,
or act on anything relative thereto.

Town Meeting did not deliberate about a trash emergency in 1988.

Town Meeting deliberated about a cash emergency that preoccupied the Town in 1988. The 1988 cash emergency arose from a perfect storm of economic factors:

The national inflation rate was about 5%.

The limit on new taxes stipulated by the Massachusetts Proposition 2 ½ prevented raising the Town’s tax level more than 2 1/2 %.

Rent Control restrictions made an increase on taxes on rent controlled properties unacceptable.

Cash on hand was at its lowest level in decades and the Town’s ability to pay teachers’ salaries was endangered.

A quarterly voluntary fee was proposed as a temporary measure. It would be collected from 19,000 taxpayers and the Town expected to collect $2,500,000. That plan was accepted along with the promise that this fee would be temporary. Later the fee was set at $41.25 quarterly and that was collected from 13,000 taxpayers. The Town collected $2,100,000 a year from this fee.

There is no cash emergency now. The FY 2005 Independent Auditor’s Report that was submitted to the Commonwealth of Massachusetts Department of Revenue show’s that Brookline’s General Fund Cash balance is $86,970,111.

The fee created by the 1988 Town Meeting is no longer necessary. It was promised to be temporary. The Town Meeting legislative intent was clear: this would be a temporary fee. It is not too soon to discontinue collecting this emergency fee as the emergency ended years ago.

SELECTMEN’S RECOMMENDATION
This petitioned article calls for the elimination of the $165 annual Refuse Fee. This issue has previously been debated on three separate occasions: as part of the 2003 Annual
Town Meeting (Article 26), as part of the 2003 Special Town Meeting in November (Article 19), and as part of the 2005 Annual Town Meeting (Article 8). The facts are unchanged: if the fee were to be eliminated, the Town would lose $2.1 million in revenue.

Brookline is one of more than 120 communities that charge an additional fee for sanitation services. These charges come in three types:

1. Flat annual fee for curbside pick-up;
2. Flat annual fee for transporting waste to the transfer station for dumping;
3. “Pay-As-You-Throw” (PAYT) programs, which charge residents for each bag used.

Brookline’s refuse fee covers not only regular curbside trash pick-up, but also recycling, the pick-up and disposal of “white goods”, and the collection of yard waste. Many private haulers do not offer these additional services. If eliminated, in order to balance the Town budget, the Town would need to do one or some combination of the following:

1. Cut $2.1 million of essential services
2. Eliminate the entire sanitation operation
3. Raise $2.1 million through a General Override of Proposition 2 ½

As even the most casual observer of municipal government understands, the past couple of years have been very difficult ones. Between FY02 and FY04, the Town lost close to $3 million in Local Aid from the state, realized significant increases in Health Insurance costs, and been faced with sizable increases in other fixed costs such as pension and utilities. Adding another $2.1 million of cuts would be extremely difficult to absorb. If the entire sanitation operation was eliminated, every household in town would have to procure refuse removal services on their own. This would result in a burden on residents, many more trucks driving through neighborhoods, and an overall chaotic set of independent arrangements for trash removal. It should be clearly noted that currently, residents do have the option of opting-out of Town service and hiring a private hauler. History has shown that few homeowners have opted-out of the fee, as the Town's fee is very competitive for the services it covers.

For those reasons, the Board recommends NO ACTION, by a vote of 4-0 taken on March 28, 2006, on the article.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Merrill
Daly
ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
The cost of rubbish removal in the Town of Brookline is approximately $3.4 million annually. This sanitation service is funded by two sources: (1) a refuse fee set by Town Meeting in 1994 at $165 annually per household for those who use this town service, and (2) by property tax generated revenue. Each year this trash collection fee contributes approximately $2.1 million in revenue to the town that is applied towards the $3.4 million cost of trash removal.

DISCUSSION
The petitioner’s explanation of this warrant article, unfortunately and inaccurately, co-joins the issue of a trash collection fee with the amount of cash and investments on hand that the town has to meet its overall financial and legal commitments.

The ~$87 million of cash and investments on hand that is referenced by the petitioner represents funds for which there are already pending claims. It is earmarked to pay the bills we know are coming. Some of these funds are derived through bond issuance for capital projects such as schools and libraries; other funds come from such things as targeted grants and endowments. Any interest earned on these funds prior to being dispersed is added to the town’s revenue. Any remaining funds at the end of the year that are certified by the state as “Free Cash” are rolled over and appropriated by Town Meeting. The cash and investments at hand are to meet the town’s known commitments and obligations.

This has nothing to do with the issue of a refuse fee.

The real discussion is that of the “Refuse Fee” itself.

As we are all aware, our community’s ability to increase revenue is largely constrained by the limits of Proposition 2 ½. With many costs, such as construction and healthcare, rising much faster than the rate at which property taxes can increase, we look to other revenue sources. When Town Meeting initiated the Refuse Fee as a way to partially offset the cost of sanitation, the fee covered approximately 80% of the total cost. Today, the fee covers only about 65% of the total cost. Some have argued the fee should be increased to keep pace with costs, or perhaps indexed at a certain percentage of the total cost of refuse removal. This article, however, seeks to completely abolish the Refuse Fee.

Arguably, one of the roles of government and a community is to provide for reasonable sanitation for the common good. Refuse removal falls into this category, and through our taxes we all contribute some to that common good. However, those who opt to use the rubbish removal service more actively are obliged to pay the $165 annual fee.

Brookline can abolish the Refuse Fee. However, that comes with choices and consequences. At one extreme we could discontinue the refuse removal service and require all residents to contract with private vendors. At the other extreme we could underwrite the entire cost of refuse removal with tax dollars.
If we choose to fund the entire service through tax revenue, we must understand that short of an over-ride, we cannot increase taxes to cover the loss of $2.1 million in annual revenue currently generated by the Refuse Fee.

The reality is that if we choose to reduce our revenue by $2.1million we will also have to choose where to reduce our services and programs by $2.1million annually.

The stark fiscal reality of tight municipal budgets argues for maintaining the Refuse Fee.

**RECOMMENDATION**

Brookline is one of approximately 150 towns and cities in the Commonwealth that incorporates a refuse fee into its revenue mix, and it is financially prudent to continue doing so.

The Advisory Committee, by a vote of 15 in favor of the motion for no action, 0 opposed, and 3 abstentions, recommends NO ACTION on Article 8.

XXX
MOTION TO BE OFFERED BY THE PETITIONER

Moved that the Town discontinue the $41.25 quarterly trash fee initiated by the 1988 Brookline Town Meeting.
ARTICLE 9

NINTH ARTICLE
To see if the Town will accept Sections 3 to 7, inclusive, of Chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, by approving a surcharge on real property for the purposes permitted by said Act, including the creation, preservation and support of community housing, the acquisition, creation and preservation of open space, the acquisition, creation and preservation of land for recreational use, the acquisition, preservation, rehabilitation and restoration of historic resources, and the rehabilitation and restoration of such community housing, open space and land for recreational use that is acquired or created as provided under said Act; to determine the amount of such surcharge on real property as a percentage of the annual real estate tax levy against real property; to determine whether the Town will accept any of the exemptions from such surcharge permitted under Section 3(e) of said Act; or to take any other action relative thereto

This article is submitted by the Community Preservation Study Committee. The Study Committee was established by the Board of Selectmen for the purpose of evaluating the Community Preservation Act and making a recommendation to Town Meeting as to whether or not the Town should adopt the Act. The Study Committee has not yet determined whether or not it will recommend adoption of the Act, but it intends to make a recommendation before the 2006 Annual Town Meeting. The attached article preserves the ability of the 2006 Annual Town Meeting to vote on whether or not to adopt the Act in the event that the Study Committee makes a recommendation for affirmative action.

RECOMMENDED MOTION OF THE CPA STUDY COMMITTEE

Moved: that the Town hereby accepts Sections 3 to 7, inclusive, of Chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, by approving a surcharge on real property for the purposes permitted by said Act, including the creation, preservation and support of community housing, the acquisition, creation and preservation of open space, the acquisition, creation and preservation of land for recreational use, the acquisition, preservation, rehabilitation and restoration of historic resources, and the rehabilitation and restoration of such community housing, open space and land for recreational use that is acquired or created as provided under said Act; that the amount of such surcharge on real property shall be 3% of the annual real estate tax levy against real property; that such surcharge on real property shall commence in fiscal year 2007 of the Town; and that the Town hereby accepts the following exemptions from such surcharge permitted under Section 3(e) of said Act: (a) property owned and
occupied as a domicile by any person who qualifies for low income housing or low or moderate income senior housing in the Town, as defined in Section 2 of said Act, and (b) $100,000 of the value of each taxable parcel of residential real property.

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SELECTMEN’S RECOMMENDATION

The CPA Study Committee will be presenting its findings to the Board of Selectmen on May 9th, a date that comes after the required mailing date of these Combined Reports. Therefore, a Supplemental Report will be provided to Town Meeting prior to the commencement of Town Meeting detailing the Board’s recommendation on this article.

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ADVISORY COMMITTEE’S RECOMMENDATION

The CPA Study Committee will be presenting its findings to the Advisory Committee on May 9th, a date that comes after the required mailing date of these Combined Reports. Therefore, a Supplemental Report will be provided to Town Meeting prior to the commencement of Town Meeting detailing the Committee’s recommendation on this article.

XXX
The Board would like to thank the members of the Selectmen’s CPA Study Committee for their hard work and the excellent report they produced. This is yet another example of residents committed to their community stepping forward and studying an important issue. Their full report was sent to all Town Meeting Members, is posted on-line at www.townofbrooklinemass.com, and this Supplemental Mailing includes a letter from the Study Committee explaining a misinterpretation of the potential state match, along with a revised Executive Summary and revised estimates of potential revenues. As a result, the many details surrounding the CPA -- how it works, potential revenue streams, impact on tax bills, etc. -- have been reported. Therefore, this Recommendation will not focus on the mechanics or the particular dollar amounts; rather it will explain the actions of the Board and the reasons for those actions.

SUMMARY OF ACTIONS
At its May 9, 2006 meeting, the Board heard from the CPA Study Committee and their recommendation for a 3% surcharge with the income-based exemption and the $100,000 residential exemption. Subsequent to that, at its May 16th meeting, the Board heard from Selectman Daly, who served as Co-Chair of the Study Committee, that there had been a misinterpretation in the analysis estimating how much of a state match the Town could expect. Selectman Daly explained that the extra boost in the match that the Study Committee thought the Town would get from going to 3% turned out to be about $50,000/year instead of $250,000. This means that over the course of six years, at a 3% surcharge, the Town would get matched at roughly 55% rather than the 61% the Study Committee had previously predicted. If the Town adopted a percentage lower than 3%, it would get matched at roughly 54%.

For Selectman Daly, the change in these figures was significant. She noted that she frequently hears from many voters who feel that they cannot support any increase in taxes and a number of them expressed a fairly high level of indignation that the Study Committee was recommending the full 3% increase. Therefore, when the motion was made by Selectman Hoy to support the Study Committee’s recommendation, she abstained. With Selectmen Allen and Merrill voting against it, the vote was 2-2-1, meaning it failed. She then moved to adopt a 2% surcharge with the income-based exemption only. That motion passed by a vote of 3-2, with Selectmen Allen and Merrill still opposed.

It should be noted that on the next day, the rest of the CPA Study Committee reaffirmed their vote for 3% with the two exemptions.
MAJORITY AND MINORITY OPINIONS

A majority of the Board believes that the CPA represents an opportunity the Town should take advantage of. The state match -- whether it averages 100%, 75%, or 50% -- is too good an offer to turn away again. The millions of dollars it would generate would enable the Town to significantly increase its support for affordable housing, allow the BHA to undertake a number of much-needed capital improvements, and finance the needs that were highlighted by the Parks and Recreation Master Plan and the Comprehensive Plan. Without a new, dedicated revenue stream, these projects are unaffordable -- unless the Town chooses to realign its priorities as laid out in the Capital Improvement Program (CIP).

All of this could be accomplished with a tax increase that a majority of the Board believes is affordable: at 2%, the tax increase for a median-valued single-family home would be approximately $163, or about $41 per quarter, or less than 50 cents a day. For residents earning below 80% of the area’s median income -- for a family of four this is currently $66,150 -- they would not pay any additional taxes. Similarly, senior citizens earning less than 100% of the area median are exempt (for a senior household of 2, this is currently $67,280).

A majority of this Board believes that Town Meeting should not make the same mistake it did a few years ago when it rejected the CPA. More than $8 million of money from the State should not be rejected at a time when the Town finds itself unable to fund many worthy projects. At a minimum, the rest of the Town’s residents should be able to weigh in at the polls.

In the alternative, while Selectmen Allen and Merrill see the goals of the CPA as admirable, they do not believe that this is the right time or the right way to increase taxes. Taxes on the average single family home have increased by more than $2,000 since FY01. On top of that, many families are struggling to pay their utility bills that have exploded over the past two years; many families are faced with annual double-digit growth in their health insurance premiums. The bottom line is that household budgets are very, very tight. Adding an additional tax on top of those burdens is simply not fair. And doing it for projects that are not the Town’s most immediate priorities makes it even worse. It should also be stated that our local businesses would again be asked to bear an additional burden, a burden they are finding harder and harder to shoulder. For a commercial property valued the same as the median-valued single family home ($1.02 million), that business would pay close to twice the amount the single family home would pay.

To make matters worse, the Town is facing a very serious budget crisis in FY08. The same cost pressures burdening homeowners -- health insurance costs and utility expenses -- are seriously undermining the Town’s ability to maintain its level of service delivery. In addition to the escalation in health insurance and utility costs, the Town’s service budget could very well be seriously eroded by the required contribution to the Retirement System. The Long Range Financial Plan presented to the Board showed a projected FY08 deficit of more than $3 million.
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Page 3

These are circumstances the Selectmen cannot, and must not, ignore. If the Town’s ability to provide services -- teachers for our children, public safety for our residents, day-to-day public works activities -- is being hampered, the Town will have to face the issue of cutting those services or increasing revenue to pay for them. If the Town’s values are such that cutting services is not the choice and an override and / or other revenue increases are preferred in upcoming fiscal years, then asking residents now to pay additional taxes that can only support certain activities (i.e., CPA eligible projects) when additional taxes may be required to support core services is something a minority of this Board cannot endorse.

RECOMMENDATION
The Board recommends FAVORABLE ACTION, by a vote of 3-2 taken on May 16, 2006, on the following vote for Article 9:

Moved: that the Town hereby accepts Sections 3 to 7, inclusive, of Chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, by approving a surcharge on real property for the purposes permitted by said Act, including the creation, preservation and support of community housing, the acquisition, creation and preservation of open space, the acquisition, creation and preservation of land for recreational use, the acquisition, preservation, rehabilitation and restoration of historic resources, and the rehabilitation and restoration of such community housing, open space and land for recreational use that is acquired or created as provided under said Act; that the amount of such surcharge on real property shall be 2% of the annual real estate tax levy against real property; that such surcharge on real property shall commence in fiscal year 2007 of the Town; and that the Town hereby accepts the following exemption from such surcharge permitted under Section 3(e) of said Act: property owned and occupied as a domicile by any person who qualifies for low income housing or low or moderate income senior housing in the Town, as defined in Section 2 of said Act.

ROLL CALL VOTE:
Favorable Action  No Action
Hoy  Allen
Daly  Merrill
DeWitt

The Board recommends FAVORABLE ACTION, by a vote of 4-1 taken on May 16, 2006, on the motion offered by the CPA Study Committee under Article 10:

ROLL CALL VOTE:
Favorable Action  No Action
Merrill  Allen
Hoy
Daly
DeWitt

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ARTICLE 9 BACKGROUND
The Massachusetts Community Preservation Act (CPA) was approved on September 14, 2000. The CPA allows communities to spend money for:

- Acquisition, creation and preservation of open space;
- Acquisition, preservation, rehabilitation and restoration of historic resources;
- Acquisition, creation and preservation of land for recreational use;
- Creation, preservation and support of community housing;
- Rehabilitation or restoration of open space, land for recreational use and community housing that is acquired or created with CPA funds.

The acceptance of the CPA by Town Meeting and the subsequent acceptance by the Town’s registered voters of a ballot question are the prerequisites to the CPA taking effect. The CPA allows a community the discretion to enact a surcharge of not more than 3% of the annual real estate tax levy and to allow an exemption of $100,000 for each residential property and exemptions for owner-occupants who would qualify for low income housing or moderate income senior housing in Brookline. If it chooses to do so, a community may exempt class three, commercial, and class four, industrial taxpayers in those cities or towns with classified tax rates.

The CPA requires that the Town Meeting, upon recommendation of a Community Preservation Committee (CPC) to be established under the terms of the Act, must spend, or set aside for later spending, not less than 10% of the annual revenues in the Community Preservation Funds (CPF) for each of the three categories of open space, historic resources and community housing. The remaining 70% may be distributed in accordance with the recommendations of the CPC and the approval of Town Meeting. Up to 5% of the annual revenues can be used for administrative expenses related to carrying out the community preservation program.

The CPA exempts from the surcharge those taxpayers receiving an exemption authorized by M.G.L. c. 59 or any other law, such as, charitable institutions, the Commonwealth, cities and towns, certain classes of qualified elderly, widows and veterans, etc. Also, the amount of the surcharge on the real estate tax levy is not included in the calculation of total taxes assessed for purposes of determining the Proposition 2½ limit.

Upon the acceptance of the CPA, the Town must establish a CPC composed of not less than five members from designated Town boards and up to four additional members selected through procedures to be established by the Town. The CPC recommends annually to Town Meeting for approval the various eligible projects or properties for which the CPF funds are to be expended. The CPA requires the CPC to consult with the various boards and commissions in order to determine what recommendations to make during the year. The CPC may make recommendations to Town Meeting for expenditure of funds for
the purposes designated in the CPA. The Legislature amended the CPA, effective April 7, 2005, to allow a city or town to appropriate money in any year from the CPF to an affordable housing trust fund. There is some question, however, whether this amendment would apply to Brookline since the Town’s Housing Trust Fund was established previously under a Home Rule Bylaw. If Town Meeting rejects the CPC recommendation for distribution of funds for a particular project, the unspent funds go back into the CPF. One of the principal guidelines set out in the CPA for the spending of funds is that the funds cannot be used to replace existing operating funds but only to augment them. The Department of Revenue has interpreted this guideline as prohibiting the use of CPA funds to supplant funds that already have been appropriated.

In addition to the funds raised through the application of the surcharge, the Town will receive funds from the Massachusetts Community Preservation Trust Fund distributed in three stages: matching, equity, and surplus. The principal stage is the first round matching distribution in which the Town will receive an amount not less than 5% and not more than 100% to match the funds raised by the Town through the surcharge. The funds received from the State are derived from the $10 or $20 surcharge fee added onto all document recording fees (except for the filing of declarations of homestead) at the county registry of deeds in which the community accepting the CPA is located. The amount of the funds distributed annually by the State to the Town is based upon the amount which the Town has raised annually through June 30 of each fiscal year as a result of the Town’s surcharge and certified to the State.

A community that accepts the CPA may revoke its acceptance any time after five years of its acceptance by the same manner in which the CPA was accepted. During the five years, if the community wishes to amend the amount of the surcharge or change the exemptions, they must do so by the same process by which the CPA was accepted. The surcharge, in the five year period, however, may be reduced by the community to an amount that is greater than zero, e.g., 0.01%.

Brookline’s Consideration of the CPA

The CPA came before the May 28, 2002 Annual Town Meeting for adoption and was defeated on a roll call vote, 142–73–2.

Article 24 of the Warrant for the Special Town Meeting of November 15, 2005, requested that Town Meeting appoint a CPA Study Committee to review and evaluate the experiences of the 100 municipalities that had adopted the CPA since it took effect in December, 2000. In the intervening years, the petitioners pointed out that the State’s matching funds had been constant and that the Legislature had amended the CPA to expand the types of projects that would be eligible for CPA funding. The petitioners believed that the time was appropriate for Brookline to study the effects of the CPA on those communities which had adopted the CPA. The petitioners were of the opinion that the experiences of these 100-plus communities which had adopted the CPA, both good and bad, would provide invaluable information to the CPA Study Committee. Such information was not available to the Town Meeting in May, 2002.
The proponents of a CPA Study Committee pointed out that 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 Department of Revenue (DOR) itself, which had the responsibility of promulgating regulations to implement the CPA, was uncertain as to the interpretation of several of the Act’s 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 the CPA funds could be used for CIP projects that were probably maintenance rather than preservation.

The proponents argued that these and other questions made the opponents of the CPA in 2002 leery of its uncertain effects on the Town and contributed to the May, 2002 Town Meeting’s hesitancy to jump into the water. The proponents of a CPA Study Committee wanted to know whether these and other issues had been clarified in the interim. They pointed out that the revenue from the Registry of Deeds surcharge fees transferred to the State CPA Trust Fund from sales of Brookline properties alone was approximately $2 million and that none of those funds benefited Brookline but went instead to those communities that had adopted the CPA.

The proponents asserted that a number of CIP projects that would be funded under the Town’s operating budget, would also be eligible for CPA funding.

The November 2005 Special Town Meeting voted 195-10 to refer the subject matter of Article 24 to a Selectmen’s Committee. The Selectmen had voted in October 2005 to establish such committee that would be 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 eleven other members including five representatives appointed by the Selectmen from Conservation, Housing Advisory Board, Parks and Recreation, Planning Board, Preservation and 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.

The CPA Study Committee is chaired by Nancy Daly, Board of Selectmen, and Kevin Lang, until recently the Chair of the School Committee. The following members are also serving on the Committee: Neil Wishinsky, Advisory Committee; Michael Jacobs, Brookline Housing Authority; Paul Saner, Economic Development Advisory Board; Steven Heikin, Housing Advisory Board; James Carroll, Parks & Recreation Commission; Linda Hamlin, Planning Board; Peg Senturia, Preservation Commission; Stephen Crosby, Moderator’s Appointee; Ruth Ellen Fitch, Moderator’s Appointee; Jay Gonzalez, Moderator’s Appointee; and Mark Manin, Moderator’s Appointee.

The CPA Study Committee met frequently during January–May 2006 and issued its report on May 5, 2006.
ARTICLE 9 DISCUSSION

I. The Proposal of the CPA Study Committee

The CPA Study Committee is recommending two Articles. The motion to be made under Article 9 recommends that Town Meeting vote to place the question of CPA adoption on the November 2006 ballot. Brookline voters would have the opportunity to approve a CPA surcharge of 3% with exemptions for low-income residents and low- and moderate-income seniors, as well as a residential exemption of $100,000 of a property’s assessed valuation. The 3% surcharge is not a tax equal to 3% of the assessed value of a property, but a 3% increase in property taxes paid. Although the exact amount of the surcharge would depend on various exemptions (discussed below), in rough terms this means that, for example, a $1,000 tax bill would increase by $30 as a result of the surcharge. If the surcharge were applied in FY2006, Brookline’s property tax rate would increase from $9.55 to $9.84 per $1,000 of assessed valuation. (Note that the Advisory Committee recommends a 2% surcharge with exemptions for low-income residents and low- and moderate-income seniors, as well as a residential exemption of $100,000 of a property’s assessed valuation. The Board of Selectmen has recommended a 2% surcharge without the residential exemption. A 2% surcharge would increase the tax rate to $9.74 if it were adopted in FY2006 and add approximately $20 to a $1,000 tax bill. The implications of the various proposed surcharges and exemptions are analyzed below.)

This report discusses the overall costs and benefits of CPA adoption. The report on Article 10 focuses on the composition and operation of the Community Preservation Committee that would make recommendations for the expenditure of CPA funds. The two Articles are closely interrelated. Although Article 10 would not come into effect unless Town Meeting and Brookline’s voters accept the CPA, the arrangements specified in Article 10 may influence some voters’ position on the CPA.

II. Potential Benefits of CPA Adoption

A. The CPA Would Provide Operating and Capital Budget Relief

The Town’s Long Range Financial Projection—which is necessarily and invariably conservative in its projections—forecasts deficits of $3.4 million in FY2008 and $8.9 million in FY2011. (See p. 7-17 of the Combined Reports for this Town Meeting.) Brookline faces multiple fiscal pressures, including increasing costs for health insurance, energy, pension funding, and special education. The CPA will help to meet some of the fiscal challenges Brookline will face during the next 5–6 years. Although the Act is not intended to provide operating budget relief, Brookline has a number of planned potential capital and operating budget expenses that could be provided for, directly and indirectly, through CPA funding and that might be difficult to fund otherwise. Note that CPA funding is not “soft” money that is likely to become unavailable. The surcharge will be as
predictable as other property tax revenue and the state matching funds can be projected with more certainty than, for example, the many forms of state aid, state grants, and federal grants that Brookline now uses to finance operating expenses.

The illustrative scenario developed by the CPA Study Committee (p. 9 of the committee’s report) projects that almost $15 million in CPA funds could be devoted to planned expenditures between FY2007 and FY2012. (The projection does not include FY2013 because the CIP does not extend that far forward.) These expenditures include changes in support for the Brookline Housing Authority (BHA) that would make possible annual Payment in Lieu of Taxes (PILOT) payments from the BHA to the Town of $100,000, annual payments averaging just under $300,000 to cover administrative costs associated with the CPA, $150,000 annually for after-school programs at the Brookline Housing Authority, and a $1,000,000 annual set-aside for the Devotion School. Support for the operating budget would be approximately $2.2 million over six years. CPA funds would also cover approximately $1.7 million of planned CIP projects during the same period.

The amount of CPA funding that can be used annually to replace existing funds depends on several factors. According to the CPA Study Committee’s report (p. 28), starting in FY2008, CPA funds could cover about $500,000 per year of CIP Projects, plus an additional $200,000-$425,000 in BHA PILOT payments and administrative costs. (The total varies because administrative costs are capped at 5% of total CPA revenues and those revenues vary greatly according to fluctuations in state matching funds.) If CPA funds are used instead of revenues from the Fisher Hill town reservoir sale, the total increases to between $1.2 million and $1.45 million per year. The total would be over $2 million annually when the Devotion School renovation is taken into account. In short, CPA funds provide part of the solution to projected operating and capital budget shortfalls. The CPA does not, however, eliminate the likely need for some hard choices over the next few years (e.g., whether to issue pension obligation bonds or to stretch out the pension funding schedule, whether to scale back or stretch out the CIP).

B. The CPA Would Help Brookline Fund Identified But Unmet Needs

CPA funds could be used to address many Brookline needs in the categories enumerated by the Act. As an older community with many historic structures and historic open spaces, Brookline has many opportunities to engage in historic preservation and restoration. As a densely populated community, Brookline could benefit from resources to acquire and protect open space and expand recreational opportunities. As an increasingly expensive community in which to live, Brookline has a shortage of affordable housing that could be ameliorated with additional funding. These characteristics and needs are actually synergistic. Historic landscapes may qualify as preservation projects. Adaptive re-use of older structures may combine historic preservation and the creation of affordable housing.

Brookline has many identified needs that lack adequate funding. The Comprehensive Plan, for example, calls for the creation of 25 affordable housing units per year. The Brookline Housing Authority has a $20 million capital shortfall. The Draft Parks, Recreation and Open Space Plan and the Draft Open Space Plan 2005 identify a need for 35-60 acres of
open space in Brookline. These plans note the absence of funding mechanisms to address these needs.

The CPA Study Committee enumerates many CPA-eligible projects in its potential scenario for allocating CPA funds in Brookline. (See pp. 7–8 and 29–32 of the committee’s report.) For example, it calls for giving the Brookline Housing Authority $250,000 per year for repairs and maintenance, devoting $7 million over six years to the creation of affordable housing units, and $7 millions over the same period for open space, recreation, and historic resources. Potential projects include acquisition of open space or recreation land, restoration of the Devotion House, and landscape improvements at Larz Anderson Park. The list is long and the number of potential projects is likely to exceed available CPA funds, but it is clear that CPA funding could be used in many ways to enhance the quality of life in Brookline.

C. The CPA Would Provide Matching Funds to Brookline

One of the most appealing features of the CPA is that it provides what some have called “free money.” Communities that adopt the CPA receive matching funds from the Community Preservation Trust Fund, which gives them a strong incentive impose a surcharge on their taxpayers and thereby leverage additional revenues from the state. The level of the match depends on the amount in the Trust Fund, the number of communities that have adopted the CPA, and a complicated formula that allocates funds to those communities. For details on the formula, visit: http://www.communitypreservation.org/CPAMatchingFunds.cfm

The CPA Study Committee has calculated the likely match that Brookline would receive over FY2007-2013. The percentage match would begin at 100% in FY2007 and then decline to 40% in later years as more Massachusetts communities draw on CPA funds. As the following table indicates, Brookline would receive approximately $7.7 million in matching funds if it adopted a 2% surcharge with residential, low income, and low/moderate income senior exemptions (The Advisory Committee proposal), $8.7 million if it adopted a 2% surcharge with low income, and low/moderate income senior exemptions (the Board of Selectmen proposal), and $11.9 million if it adopted a 3% surcharge with residential, low income, and low/moderate income senior exemptions (the CPA Study Committee proposal). Note that the matching funds are received in the year after the surcharge revenues have been collected.
## ESTIMATED REVENUES RAISED UNDER CPA

Assumes Low Income & Low/Moderate Senior Exemptions

<table>
<thead>
<tr>
<th></th>
<th>1%</th>
<th>2%</th>
<th>2% with residential exemption</th>
<th>3% with residential exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surcharge</td>
<td>1,216,537</td>
<td>2,433,075</td>
<td>2,135,382</td>
<td>3,203,073</td>
</tr>
<tr>
<td>2008</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surcharge</td>
<td>1,264,450</td>
<td>2,528,900</td>
<td>2,231,207</td>
<td>3,346,810</td>
</tr>
<tr>
<td>FY'07 Match</td>
<td>1,216,537</td>
<td>2,433,075</td>
<td>2,135,382</td>
<td>3,203,073</td>
</tr>
<tr>
<td>2009</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surcharge</td>
<td>1,313,561</td>
<td>2,627,122</td>
<td>2,329,429</td>
<td>3,494,145</td>
</tr>
<tr>
<td>FY08 Match</td>
<td>910,404</td>
<td>1,820,808</td>
<td>1,598,027</td>
<td>2,529,128</td>
</tr>
<tr>
<td>2010</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surcharge</td>
<td>1,363,900</td>
<td>2,727,801</td>
<td>2,430,108</td>
<td>3,645,162</td>
</tr>
<tr>
<td>FY09 Match</td>
<td>525,424</td>
<td>1,050,849</td>
<td>922,275</td>
<td>1,448,411</td>
</tr>
<tr>
<td>2011</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surcharge</td>
<td>1,415,498</td>
<td>2,830,996</td>
<td>2,533,303</td>
<td>3,799,955</td>
</tr>
<tr>
<td>FY10 Match</td>
<td>545,560</td>
<td>1,091,120</td>
<td>957,619</td>
<td>1,508,818</td>
</tr>
<tr>
<td>2012</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surcharge</td>
<td>1,468,386</td>
<td>2,936,772</td>
<td>2,639,079</td>
<td>3,958,618</td>
</tr>
<tr>
<td>FY11 Match</td>
<td>566,199</td>
<td>1,132,398</td>
<td>993,846</td>
<td>1,570,735</td>
</tr>
<tr>
<td>2013</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY12 Match</td>
<td>587,354</td>
<td>1,174,709</td>
<td>1,055,631</td>
<td>1,634,200</td>
</tr>
<tr>
<td>Total Levy</td>
<td>8,042,332</td>
<td>16,084,665</td>
<td>14,298,507</td>
<td>21,447,763</td>
</tr>
<tr>
<td>Total Match</td>
<td>4,351,479</td>
<td>8,702,958</td>
<td>7,662,780</td>
<td>11,894,365</td>
</tr>
<tr>
<td>6 Year Total</td>
<td>12,393,812</td>
<td>24,787,623</td>
<td>21,961,287</td>
<td>33,342,128</td>
</tr>
<tr>
<td>% Match</td>
<td>54%</td>
<td>54%</td>
<td>54%</td>
<td>55%</td>
</tr>
</tbody>
</table>

Tax rate assumed constant when calculating effect of residential exemption
Over six years, the match has the effect of enabling Brookline to generate $1 in revenue for every 65 cents it pays in added taxes. No other form of tax increase (e.g., a general override) offers the same potential to leverage additional funds.

D. **The CPA Would Enable Brookline to “Recapture” Fees Paid to the CPA Fund**

Adoption of the CPA would enable Brookline to tap the funds that it has been contributing to the Community Preservation Trust Fund. Those funds presently come from Brookline residents, but are used by other communities that have accepted the CPA. Residents of Massachusetts pay these fees whether their community has adopted the CPA or not.

Under the CPA, matching funds are generated by depositing fees paid at the Registry of Deeds and Land Court into the Community Preservation Trust Fund. A $10 fee is paid for each Municipal Lien Certificate. The fee for each deed and documents relating to mortgages (including refinancings) is $20. No fee is deposited for a Declaration of Homestead. Note that the fees do not increase with the value of a property or the size of a real estate transaction, but one transaction may produce multiple documents and fees.

It is difficult to estimate the precise amount that Brookline residents have paid in fees that have been deposited into the Community Preservation Trust Fund. Brookline’s population is 8% of the population of Norfolk County, so it is reasonable to assume that Brookline transactions generate about 8% of the fees received. Estimates by Dan Matthews of the Norfolk Registry of Deeds suggest that Brookline residents paid approximately $1.8 million into the Fund from the CPA’s inception through the end of FY005 and are likely to contribute $260,000 a year in the future.

Note that some of these fees may have been paid by people moving out of Brookline, and thus would not be payments from current Brookline residents. Nevertheless, many of the fees have been paid by Brookline residents as they have arrived in Brookline or when they have refinanced their properties while living in Brookline. And, in most cases, a departing Brookline resident would have been replaced by a new arrival that may have been living in another Massachusetts community when he or she paid one or more fees connected with real-estate transactions related to his or her move to Brookline.

E. **The CPA Surcharge Includes Important Exemptions**

Property taxes often can be among the most regressive of taxes, because they impose a levy on the basis of asset values, not earned income. This burden can be particularly heavy on low-income or fixed-income owners of properties that have appreciated in value.

The CPA provides for specific exemptions that reduce the burden of the surcharge on various categories of taxpayers. The CPA Study Committee and the Advisory Committee have recommended that Brookline provide a $100,000 residential exemption, which would be combined with the existing $165,000 exemption to exempt the first $265,000 of the
value of owner-occupied properties from the CPA surcharge. Landlords, who do not benefit from the existing $165,000 exemption, would not pay the CPA surcharge on the first $100,000 of their property values.

Note that the $100,000 residential exemption does not shift the tax burden to owners of properties with higher assessed values. Instead, it grants relief to owners of properties with lower assessed values (whether those properties are condominiums or single-family houses) and thereby reduces the amount of revenue received by the Town.

In addition, residents with low incomes (80% of the area median) and seniors (head of household is 60+) with low or moderate incomes (100% of the area median) would be completely exempt from the CPA surcharge. The current income limits for such exemptions are:

<table>
<thead>
<tr>
<th>Persons per Household</th>
<th>Limits for Low Income Housing Exemption</th>
<th>Limits for Low or Moderate Income Senior Housing Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$46,300</td>
<td>$58,870</td>
</tr>
<tr>
<td>2</td>
<td>$52,950</td>
<td>$67,280</td>
</tr>
<tr>
<td>3</td>
<td>$59,550</td>
<td>$75,690</td>
</tr>
<tr>
<td>4</td>
<td>$66,150</td>
<td>$84,100</td>
</tr>
<tr>
<td>5</td>
<td>$71,450</td>
<td>$90,828</td>
</tr>
<tr>
<td>6</td>
<td>$76,750</td>
<td>$97,556</td>
</tr>
<tr>
<td>7</td>
<td>$82,050</td>
<td>$104,284</td>
</tr>
<tr>
<td>8</td>
<td>$87,350</td>
<td>$111,012</td>
</tr>
</tbody>
</table>

Source: CPA Study Committee Report, p. 22.

To qualify for the income-based exemptions, residents would need to apply to the Assessor’s Office and provide tax returns or proof of their income. Processing such applications might impose a financial and administrative burden on the Assessor’s Office. Any additional staff time might be paid for out of the 5% in CPA revenues that can be devoted to administrative costs.

Granting exemptions may relieve the burden on some taxpayers, but it will reduce the revenues generated by the CPA surcharge. The CPA Study Committee estimates that the $100,000 exemption will reduce annual revenues (assuming a 3% surcharge) by $446,539 in the first year after CPA adoption (based on FY2006 data) and approximately $4.2 million over a six-year period. With a 2% surcharge (as proposed by the Advisory Committee), the $100,000 residential exemption would reduce first-year revenue by $297,693 and by approximately $2.8 million over six years. The income-based exemptions would cost Brookline $47,006 annually in lost revenue, although such estimates are less certain because they depend not only on estimates on income but on how many eligible residents will actually apply for the exemptions.
III. Potential Disadvantages, Questions, and Concerns

The CPA’s benefits are significant, but not unqualified. They must be weighed against several potential disadvantages, questions, and concerns.

A. The CPA Surcharge Would Increase the Burden on Brookline Taxpayers

The most important drawback of CPA adoption is that it would increase taxes for most property owners in Brookline.

Different taxpayers may have different opinions on whether taxes are too low or too high, but it is possible to put Brookline’s property taxes in perspective. If one looks at the average annual taxes paid by owners of single-family houses, Brookline ranks second in Massachusetts:

**Average Taxes on Single-Family Residence (FY2006)**

<table>
<thead>
<tr>
<th>Community</th>
<th>Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weston</td>
<td>$12,865</td>
</tr>
<tr>
<td>Brookline</td>
<td>$10,963</td>
</tr>
<tr>
<td>Sherborn</td>
<td>$10,885</td>
</tr>
<tr>
<td>Lincoln</td>
<td>$10,498</td>
</tr>
<tr>
<td>Dover</td>
<td>$10,004</td>
</tr>
</tbody>
</table>

Note that the $10,963 calculation for Brookline includes all properties in the single-family (101) category plus 76 properties in the 109 category, which consists of larger properties with multiple structures such as carriage houses and guest houses. If the properties in the 109 category are excluded, the average single-family tax burden falls to $10,598 and Brookline would rank third. (Assessor George Moody calculated the $10,598 figure, taking into account full and partial residential exemptions.)

Brookline, however, has relatively few single-family houses compared to its entire housing stock, unlike many of the other communities with the high single-family taxes. The average residential tax burden is $6,520, which ranks 27th in Massachusetts. (The average assessed value of residential properties is $847,696.)

The precise amount that any Brookline taxpayer would pay can be calculated by following the procedures on p. 28 of the report of the CPA Study Committee. Here are some sample estimates for FY2006, using the surcharge rates and exemptions as proposed by the Selectmen (2% without the $100,000 residential exemption), Advisory Committee (2% with the $100,000 residential exemption), and CPA Study Committee (3% with the $100,000 residential exemption).
Estimated Brookline CPA Annual Surcharge Payments by Assessed Housing Value

<table>
<thead>
<tr>
<th>Assessed Value</th>
<th>2% w/o Exemption</th>
<th>2% w/exemption</th>
<th>3% w/exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>$411,200 (median condo)</td>
<td>$47</td>
<td>$28</td>
<td>$42</td>
</tr>
<tr>
<td>$627,400 (median owner-occupied)</td>
<td>$88</td>
<td>$69</td>
<td>$104</td>
</tr>
<tr>
<td>$950,000 (median two family)</td>
<td>$150</td>
<td>$131</td>
<td>$196</td>
</tr>
<tr>
<td>$1,017,000 (median one family)</td>
<td>$163</td>
<td>$144</td>
<td>$215</td>
</tr>
<tr>
<td>$1,088,000 (median three family)</td>
<td>$176</td>
<td>$157</td>
<td>$236</td>
</tr>
</tbody>
</table>

Note that all of these estimates are for properties with assessed values at the median for their respective category. This means that half of property owners in each category would pay less than these estimates; the other half would pay more.

How much would renters pay? The CPA Study Committee estimates that a renter living in an apartment that represents $300,000 of a building’s total value would a monthly rent increase of $5-7 if the landlord chose to pass the entire burden of the tax on to tenants.

Whether these amounts are an excessive burden is a more difficult judgment. By most measures, Brookline has a high average income per resident, which means the town’s tax burden as a proportion of income is relatively low. The CPA Study Committee calculates that Brookline ranks 226th in Massachusetts in the share of per capita income that is paid in property taxes.

Of course, not all Brookline residents have incomes at or near the town average. Low-income residents and low- and moderate-income seniors would be exempt from the CPA surcharge and would pay no surcharge at all. (See above and p. 22 of the CPA Study Committee Report for the income cut-offs for eligibility.)

Finally, judgments about Brookline’s tax burden need to take into account the fact that some residents are able to deduct property tax payments on their federal income tax returns and, in many cases, would be able to deduct the CPA surcharge payments.

B. Matching Funds Would Decline or Disappear

A second concern about CPA adoption is that the matching funds would decline or disappear. When Brookline initially debated the CPA, there was concern that the state legislature would “raid” the CPA fund, much as it has raided the lottery proceeds and the “rainy day fund.” Based on experience since 2002, those concerns appear to have been unfounded. The current concern is that the level of matching funds will decline from 100% to much lower levels very quickly.
The CPA Study Committee revised its estimates of the matching percentage after its initial estimates were examined by Dan Matthews, a Norfolk County employee who is considered to be an expert on the CPA. The initial estimates—of the match at 3% in particular—were too high, not because of a mathematical error, but because of a misunderstanding of the complex CPA funding formula. The Committee’s estimates are now similar to those developed by Mr. Matthews. The estimates are not identical, but the CPA Study Committee estimates for the percentage match over six years is within the broad range projected by Mr. Matthews.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Matthews Estimate</th>
<th>Committee Est. (1 or 2%)</th>
<th>Committee Est. (3%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY2007</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>FY2008</td>
<td>50-100%</td>
<td>72%</td>
<td>75%</td>
</tr>
<tr>
<td>FY2009</td>
<td>28-46%</td>
<td>40%</td>
<td>41%</td>
</tr>
<tr>
<td>FY2010</td>
<td>26-42%</td>
<td>40%</td>
<td>41%</td>
</tr>
<tr>
<td>FY2011</td>
<td>24-41%</td>
<td>40%</td>
<td>41%</td>
</tr>
<tr>
<td>FY2012</td>
<td>22-39%</td>
<td>40%</td>
<td>41%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>40-60%</td>
<td>54%</td>
<td>55%</td>
</tr>
</tbody>
</table>

Several uncertainties make it difficult to project future levels of matching funds. A collapse in the real-estate market would reduce some of the fee income received by the Registry of Deeds. Higher interest rates also would reduce fees from refinancings, although they might increase fees from foreclosures. If Boston were to adopt the CPA, it would receive matching funds at such a high level that it would probably reduce the matching percentage statewide to approximately 30%. The CPA Study Committee reports that there are no signs that Boston plans to adopt the CPA.

Although it seems clear that Brookline will not receive a 100% CPA match for very long, three observations are in order. First, any match is revenue that does not have to be raised through Brookline’s property taxes. Second, it is possible that the revenue stream for CPA matching funds will increase. The legislature, cognizant of the declining fund balance, might vote to increase the fees that generate CPA funds. Political pressures for such a step will mount as more communities join the 109 communities that have accepted the CPA. Third, Brookline could repeal the CPA if it became dissatisfied with the level of matching funds. Although a community needs to wait five years to rescind its adoption of the CPA, it can at any time vote to reduce the surcharge to a negligible level at a state, general, or local election, following the same procedures used to adopt the CPA.
C. CPA Adoption Would Preclude a Necessary Override or Debt Exclusion

One objection to CPA adoption holds that Brookline would be unlikely to vote for a general override or debt exclusion if voters imposed a surcharge on their taxes. This argument is not necessarily an objection to higher local taxes, but it claims that the cumulative burden of the CPA surcharge and a subsequent override or debt exclusion would be seen as excessive by a majority of Brookline voters.

The argument that CPA adoption should be opposed so that Brookline could retain the ability to vote for a general override or debt exclusion rests on two assumptions, one fiscal and one political.

First, the argument assumes that Brookline will face fiscal pressures that can only be addressed by a general override or debt exclusion. As noted above, current projections do indeed suggest that Brookline’s expenditures will exceed revenues, because Brookline faces multiple fiscal pressures, including increasing costs for health insurance, energy, pension funding, and special education. On the other hand, it is not certain that an override will be necessary to address these problems. Projected revenues may increase faster than expected. An improving economy may increase local aid payments. Health insurance costs may grow at a slower rate. Issuing pension obligation bonds may reduce the need to use the operating budget to meet pension fund obligations. The Town may be able scale back or stretch out planned capital expenditures. And adoption of the CPA itself will generate funds that can be used to relieve the operating budget and fund projects that would otherwise be financed through the CIP. Adoption of the CPA could delay an override vote or reduce the size of any override ultimately placed on the ballot.

Second, the argument assumes that CPA adoption will make it politically impossible for Brookline to pass a general override or debt exclusion. Without actually putting the issues to the ballot, it is impossible to reach definitive conclusions about this assumption. The experience of fourteen other communities contacted by the CPA Study Committee is mixed. Weston, for example, has passed frequent debt exclusions after adopting the CPA. North Andover, on the other hand, saw anti-tax sentiment rise after it adopted the CPA. Newton was able to pass one override after CPA adoption, but only very narrowly. Overall, six of the fourteen were able to pass an override after adopting the CPA. Only in one surveyed community did an override fail. Given the small number of communities surveyed, the variations in local political circumstances, and the possibility that Brookline is unique in many ways, the experiences of other communities do not offer conclusive evidence on this question.

Brookline’s own experience suggests that its voters may be willing to vote to increase their taxes several times in succession. Brookline has had three successful debt exclusion/override votes in 1990 (Lincoln School, 5,919 for, 2,963 against), 1994 (general expenditures, 5,958–5,072), and 1995 (High School, 4,648–3,038). The fact that each passed suggests that it might not be impossible for Brookline to adopt the CPA and then
pass an override or debt exclusion several years later, particularly if the debt exclusion is to support school construction.

It is possible, however, that defeat of the CPA or a decision not to place it on the ballot could actually make it harder for Brookline to pass a subsequent override. CPA proponents who support investments in open space, affordable housing, or historic preservation might be less willing to vote to increase funding for Brookline’s schools or operating budget in general if the Town did not support using CPA funds for these categories.

Regardless of the validity of these assumptions, if Brookline adopted the CPA it would be able to reverse its decision or reduce the surcharge to negligible levels if it became fiscally imperative to approve an override or debt exclusion.

D. The Process of Considering the CPA is Moving Too Quickly

It has been argued that the process of considering CPA adoption has moved too quickly. The CPA Study Committee submitted its report and recommendations only a few weeks before Town Meeting. This argument recommends tabling Articles 9 and 10 in order to allow the Advisory Committee, the Selectmen, and Town Meeting more time to study the proposal and analyze the fiscal projections. The CPA question might be taken up again at fall Town Meeting.

It is always wise to allow ample time for deliberation, but there are several reasons why Brookline’s Annual Town Meeting should consider Article 9 at the earliest possible opportunity.

First, considering Article 9 at the May Town Meeting will make it possible to place the question of CPA adoption on the ballot for the November state election, at which a fairly significant percentage of Brookline residents will probably vote. Because CPA adoption is an important question, it should be decided by the largest number of Brookline voters possible. Voter turnout is usually higher at state elections. Putting the CPA question on the November ballot would make it more likely that more Brookline voters would vote on the issue. It also would probably stimulate more discussion within the community prior to the election, because more people would know that they would be voting on the CPA adoption and would therefore pay more attention to the issue.

If Town Meeting votes favorable action on Article 9, by statute the CPA question would automatically be placed on the ballot for the next state or municipal election. The law requires that communities provide the Massachusetts secretary of state 60 days notice to add the question to the ballot for a state election. (Only 35 days notice is required for the town clerk to add the question to municipal election ballot.) Fall Town Meeting would consider the CPA question too late for it to be placed on the November ballot. It would instead have to be deferred until the May town election.
Second, early action on Article 9 would maximize the amount of CPA matching funds that Brookline would receive. The analysis of the CPA Study Committee suggests that Brookline would receive a 100% match for FY2007, but lower matches in subsequent years. If the question were not on the November 2006 ballot, FY2008 would be the first year in which Brookline would be eligible for matching funds. Delaying adoption of the CPA would cost Brookline an estimated $674,000 in matching funds for the first year in which the CPA is adopted and a total of approximately $1.6 million over a five-year period. (These estimates are based on a 3% surcharge. Note that costs of delay increase if the lower estimates of Mr. Matthews turn out to be correct, because matching funds would fall off more sharply after FY2007.)

In addition to these two reasons for considering CPA adoption sooner rather than later, it is also important to note that extended discussion and analysis of the CPA in the period leading up to a vote on adoption may be even more important than detailed analysis prior to Town Meeting. Given Brookline’s election and Town Meeting schedule, approximately six months will elapse between a Town Meeting vote on CPA adoption and an election in which CPA adoption is on the ballot. Any CPA-related analyses and fiscal projections are more likely to be up-to-date if they are conducted shortly before the election instead of immediately before Town Meeting.

E. Brookline Would Not Be Able to Reduce Its Tax Rate to Offset the Surcharge

The final potential disadvantage is more of a disappointment than a disadvantage. When the CPA Study Committee began its work, there was some hope that Brookline would be able to emulate Cambridge’s decision to adopt the CPA, reduce its tax levy by an amount equivalent to the surcharge, and then receive CPA matching funds, which would truly be “free money.” Careful analysis, however, revealed that this scenario was indeed too good to be true for Brookline.

Cambridge was able to reduce its tax levy to offset the CPA surcharge because it already dedicated a portion of its operating budget to affordable housing. The CPA revenues could essentially be substituted for this part of its budget, which no longer had to be supported from regular property tax revenues. Brookline cannot follow Cambridge’s lead, because it does not dedicate funds to affordable housing. If Brookline reduced its tax levy to offset a CPA surcharge, it would need to make reductions in its operating budget. Given the pressures on Brookline’s operating budget, this is not an attractive scenario for the Town.

ARTICLE 9 RECOMMENDATION

The Advisory Committee was nearly equally divided on the merits of the CPA for Brookline. A majority felt that CPA would be an efficient way to raise revenues to address important community needs and to relieve mounting budget pressures. Many felt that the existence of state matching funds gave the CPA advantages over a general override or debt exclusion. Some felt the CPA too narrowly prescribed spending priorities. Others felt that the CPA would give Brookline incentives to support areas neglected in the Town’s annual budget, including affordable housing, open space, and historic preservation. Most of the
majority strongly favored using the $100,000 residential exemption, as well as the income-based exemptions, to relieve the burden the CPA would impose on taxpayers. The minority opposed CPA adoption for different reasons. Some opposed any tax increase, while others felt that Brookline’s most pressing fiscal needs would not be addressed by CPA funding. Some of the majority remained divided on the merits of the CPA, but felt that the issue should be placed on the ballot so that Brookline’s voters could decide. Even some of the minority recognized that it might be a good idea to let the voters decide. All members understood that the effect of the statutory language in the proposed motion would be to place the question on the ballot.

By a vote of 11-10 the Advisory Committee recommends FAVORABLE ACTION on the following motion to be offered under Article 9:

Moved: that the Town hereby accepts Sections 3 to 7, inclusive, of Chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, by approving a surcharge on real property for the purposes permitted by said Act, including the creation, preservation and support of community housing, the acquisition, creation and preservation of open space, the acquisition, creation and preservation of land for recreational use, the acquisition, preservation, rehabilitation and restoration of historic resources, and the rehabilitation and restoration of such community housing, open space and land for recreational use that is acquired or created as provided under said Act; that the amount of such surcharge on real property shall be 2% of the annual real estate tax levy against real property; that such surcharge on real property shall commence in fiscal year 2007 of the Town; and that the Town hereby accepts the following exemptions from such surcharge permitted under Section 3(e) of said Act: (a) property owned and occupied as a domicile by any person who qualifies for low income housing or low or moderate income senior housing in the Town, as defined in Section 2 of said Act, and (b) $100,000 of the value of each taxable parcel of residential real property.

ARTICLE 10 BACKGROUND
The motion to be offered under Article 10 would amend the Town’s Bylaws to create a Community Preservation Committee, specify its members and the procedures by which they would be selected, and its responsibilities and procedures for proposing projects that would be funded with CPA revenues. The motion is recommended unanimously by the CPA Study Committee.

The Bylaw amendments in Article 10 would only come into effect if Brookline accepts the Community Preservation Act. Issues relevant to whether or not Brookline should accept (i.e., adopt) the CPA are discussed in the report on Article 9. Complete background information on the CPA is provided in that report. This report focuses on the narrower issues raised by Article 10. In theory, Article 10 would only become significant if the Brookline were to accept the CPA through a vote at Town Meeting and at a subsequent general, state, or Town election. The composition and procedures of the Community
Preservation Committee (CPC) might, however, be relevant to deciding whether or not to accept the CPA, so the two Articles are closely related and it is difficult to say which is “prior to” the other.

The key provisions of Article 10 are:

**Membership, Selection, and Terms:** The committee will have nine members, one each from the Board of Selectmen, the Advisory Committee, the School Committee, the Housing Advisory Board, the Conservation Commission, the Planning Board, the Parks and Recreation Commission, the Preservation Commission, and the Brookline Housing Authority. The last five are required by statute. Each of these bodies will select one of its members to serve on the CPC for three-year terms. The terms will be staggered (in an order determined by lots) so that three members’ terms expire each year.

**Responsibilities:** The committee’s responsibilities include:

- Studying the needs of the Town regarding community preservation and submitting recommendations, proposed budgets, and five-year plans to the town administrator and Town Meeting;

- Consulting the bodies that appoint members, the Town’s Comprehensive Plan, other plans, and receiving input and proposals from citizens;

- Coordinating its work with the Town Administrator and the Capital Improvement Program as it is developed,

**Meetings and Procedures:** The committee requires quorum of a majority of its members to conduct business and will take actions by majority vote. It will hold at least one public informational meeting annually on the Town’s community preservation needs, possibilities, and resources.

**ARTICLE 10 DISCUSSION**

The composition of the Community Preservation Committee (CPC) is an important factor in determining how the CPA actually would work in Brookline. The CPA Study Committee devoted considerable time to discussions of the CPC’s membership.

By statute (Chapter 44 B of the General Laws), the CPC must include representatives of the Conservation Commission, the Planning Board, the Parks and Recreation Commission, the Preservation Commission, and the Brookline Housing Authority. The other four members can be designated by a community that adopts the CPA.

The CPA Study Committee recommends that the four additional CPC members come from the Board of Selectmen, Advisory Committee, School Committee, and Housing Advisory Board. The first three of these members would have a perspective that is broader than the three CPA categories (affordable housing, open space, historic resources). They would be expected to ensure that the CPC looked at town-wide needs and integrated its work as
much as possible with the Town’s overall budget. One could also argue that the Planning Board representative would bring a town-wide, multi-issue perspective to the CPC, but, unlike the Selectmen, Advisory Committee, and School Committee, the Planning Board is not directly involved in setting fiscal priorities and developing the annual Financial Plan. Nevertheless, the Planning Board representative would not have any direct responsibility for one of the three categories and therefore would be expected to bring not only zoning and land-use expertise to the CPC, but also a broad perspective on the Town’s needs.

The recommendation that the CPC include a Housing Advisory Board representative is a reflection of the fact that the Brookline Housing Authority is not the only local agency charged with increasing the Town’s affordable housing stock. The enabling legislation only designates a community’s housing authority as a statutory member of the CPC, but Brookline gives the Housing Advisory Board substantial responsibility for promoting privately-owned affordable housing. It is possible that CPA funds could be deposited into Brookline’s Affordable Housing Trust Fund, which would make Housing Advisory Board representation on the CPC even more important. (State law was recently amended to allow CPA funds to be deposited into such trust funds, but Brookline’s trust fund was created by previous a previous Home Rule Bylaw and operates somewhat differently than the trust funds subsequently authorized by state law. It is likely, but not certain, that CPA funds could be deposited into the Town’s existing Affordable Housing Trust Fund.) Even if CPA funds could not be deposited into Brookline’s Affordable Housing Trust Fund, the Housing Advisory Board might play an active or consultative role in CPA-funded affordable housing initiatives.

The proposed composition of the CPC thus reflects a balance between members with a town-wide perspective and those who focus on one of the three CPA categories. No single group or category would have a majority, which would require the CPC to recognize the Town’s diverse needs and adopt a balanced approach as it prepares its recommendations for Town Meeting. The very fact that each of the CPC’s recommendations must be approved by Town Meeting also is likely to encourage members of the committee to take into account town-wide needs in preparing funding recommendations. CPC recommendations will be analyzed by the Board of Selectmen and the Advisory Committee prior to Town Meeting. These reviews of CPC recommendations will further encourage the CPC to adopt a balanced approach in preparing recommendations.

The CPA Study Committee considered other possible compositions of the Community Preservation Committee. For example, including two members of the Advisory Committee (or of the Board of Selectmen) on the committee would increase the number of members who would be more likely to focus on Brookline’s overall fiscal situation and funding priorities. Adding another member of the Preservation Commission would have the effect of giving each of the three CPA categories two “representatives” on the CPC. These and other options did not seem to strike the optimal balance that is reflected in the recommended composition.

The proposed Article 10 also encourages the CPC to take additional steps to integrate its work with the preparation of Town’s planned operating and capital budgets. The
committee will consult with its appointing bodies and consult Brookline’s Comprehensive Plan and other plans (e.g., Open Space), as well as soliciting public input. It also will coordinate its work with that of the Town Administrator as the Capital Improvement Program is developed. Every year, the CPC will provide its recommendations for the following fiscal and proposed plan for the next five years to the Town Administrator so that they can be included in the Town’s annual Financial Plan. The CPC would not, however, be obligated to make recommendations that are the same as those in its five-year plan.

A majority of the Advisory Committee felt that the proposed CPC would function well as part of a process that integrated planning for the use of CPA funds into the Town’s broader financial planning processes. The Advisory Committee recognized that Town Meeting’s ability to vote separately on each proposed CPA project (in effect, a “line item veto”), combined with the proposed composition and procedures of the CPC, would help to ensure that CPA funds were spent in a way that is consistent with broader community purpose and needs. Some opponents of CPA adoption also opposed Article 10, but others favored Article 10 even though they have reservations about CPA adoption.

**ARTICLE 10 RECOMMENDATION**

By a vote of 14-6-1 the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the CPA Study Committee.

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**PLANNING BOARD RECOMMENDATION**

Warrant Article 9 would allow the Town to adopt the Community Preservation Act (CPA), if subsequently approved by a public referendum vote.

The Planning Board, at its May 17, 2006 meeting, voted unanimously (5-0) to support the opportunity for the citizens of Brookline to decide whether or not to adopt the CPA at its next town-wide election. Board members pointed out that acting sooner, rather than later, would mean receiving a greater financial benefit from the state. Increasing affordable housing and open and recreational space, and preserving the historic character of the Town, are all important goals emphasized in the recently approved Comprehensive Plan and Capital Improvement Program approved by the Planning Board.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Warrant Article 9.

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**HOUSING ADVISORY BOARD RECOMMENDATION**

Warrant Article 9 would allow the Town to adopt the Community Preservation Act if approved by a majority of Town voters.
The Housing Advisory Board, at its Meeting of May 10 at which time five members were present, voted 4-0 with one abstention to recommend approval of Article 9 and adoption of the Community Preservation Act. The Housing Advisory Board found most of the potential affordable housing actions and investments described in the Report of the Community Preservation Act Study Committee to be consistent with the Town's and the HAB's existing policies and goals.
May 18, 2006

Town Meeting Members
Town of Brookline

Dear Town Meeting Members:

Enclosed you will find a corrected Executive Summary, Scenario, and Table 4 (see Page 19 of the original report) to the May 5 Community Preservation Act Study Committee Report. Please insert the corrected pages into your report.

The corrections concern our projections as to the amount of money Brookline would receive from the state fund established through fees collected at the Registry of Deeds if the Town adopted a CPA surcharge of 3%. As long as the fund has sufficient revenue to match the money collected by each community that has adopted the CPA, local surcharges will be matched 100%. However, we are estimating that if Brookline adopted the CPA this year (at the November election), we would receive a 100% match for only one year. After that it would decline somewhat. At that point 80% of the revenue in the fund would be distributed to all the communities based on the amount of revenue each had collected from its own surcharge. The remaining 20% would be distributed only to those communities that had a full 3% surcharge. The formula for the distribution of that remaining 20% is a complex one and our initial figures over-estimated how much of that additional revenue Brookline would receive if it adopted the full 3%.

Dan Matthews of the Norfolk County Registry of Deeds reviewed the projections developed by the CPA Study Committee and found the error in our calculations of the match at 3%. The result of correcting this error is that we are now projecting that the total funds raised over a 6 year period at 3% with the low income and low/moderate income senior exemption and the $100,000 residential exemption would be about $33.3 million rather than $34.5 million shown on the original Table 4. This includes both the local surcharge and the match. That means that if we were to adopt some percentage that is below 3%, the match over the 6 year period would be about 54%, and if we were to adopt the full 3%, the match would be about 55% over that 6 year period.
Please bear in mind that these are only estimates, based on projections as to how much money the Town would collect on the surcharge and how much is likely to be in the fund from the Registry fees to match those monies.

The CPA Study Committee reaffirmed its vote for a 3% surcharge, with the two exemptions mentioned above, after learning of the correction. The vote was 8-1. The Committee considered that a surcharge of 1.5% might only address pressing needs in the operating and capital budgets and at the Housing Authority. Because an override does not come with matching funds, a general override would need to be at roughly 2.3% to raise the same funds. In general the Committee felt that a larger surcharge was necessary to address our existing needs and to begin to work on additional needs in open space, preservation, and affordable housing.

The 3% surcharge with the $100,000 exemption as recommended by the Committee would effectively make the average surcharge 2.6%.

Please also correct the estimates for the 3% match to 55% over 6 years, where it is mentioned on pages 10, 18, 36, Scenario 3 in Appendix B.

We apologize for the error and hope this letter, along with the corrected pages will address any confusion.

The CPA Study Committee

Chairs: Nancy Daly
       Kevin Lang
REPORT OF THE COMMUNITY PRESERVATION
ACT STUDY COMMITTEE
MAY 5, 2006

Executive Summary

After careful review and study, The Community Preservation Act Study Committee is recommending by an 8-1 vote that Town Meeting vote to place on the November ballot a 3% Community Preservation Act ("CPA") surcharge on the real property tax bill with exemptions for low income residents and middle income seniors plus an additional $100,000 residential exemption. (Five members of the Study Committee favored 3% with the low income and low/moderate senior income exemption but without the $100,000 exemption, but in a compromise they voted for the proposal, including the $100,000 exemption. See Section VII for their rationale). The median value of an owner-occupied housing unit in Brookline is just over $600,000. The cost to the owner-occupier for the CPA would be $96/year. See page 20 for more details of how much this would cost typical taxpayers.

In October 2005, the Selectmen established a Committee to study the Community Preservation Act to determine the potential financial and other implications if the Town were to adopt the CPA. The State Legislature passed the Community Preservation Act, Chapter 44B of the Massachusetts General Laws in 2000. It allows cities and towns the option, through a vote of the electorate, of establishing a Community Preservation Fund which would be funded through a surcharge on the property tax of any percentage up to a maximum of 3%. The money collected by the City or Town would then be eligible for some matching funds from a dedicated state fund. The Community Preservation Fund that results from the combination of the local money and the state match must be used for open space, historic resources and affordable housing purposes.

To adopt the CPA, Town Meeting, by a majority vote, would have to vote in favor of placing the proposal on the ballot for the next town-wide election. Town Meeting would need to specify the amount of the surcharge (up to 3%) and any exemptions from the surcharge (there are 3 possible exemptions allowed under the CPA). The general electorate would then also have to vote in favor of the surcharge by a majority vote. After 5 years, the CPA could be revoked by a vote of Town Meeting, and then a vote of the general electorate. However, if the state were to divert the CPA matching funds, which are derived from the accumulation of filing fees collected at the Registry of Deeds and the Land Court, Town Meeting and the general electorate could effectively eliminate the CPA by voting to reduce the surcharge to .01%. If any CPA projects had been bonded, however, the surcharge would have to continue to the level necessary to pay the debt on the bond.

Brookline recently completed a lengthy and extensive Comprehensive Plan and drafts of the Open Space Master Plan and its companion Open Space Plan. Together they call for bold moves

* One member of the Study Committee who was not able to be present for the vote has indicated that he would not have voted for any surcharge larger than 1.5%.
to preserve our neighborhoods and historic resources, increase passive and active public recreational space and provide affordable housing. Essential as these steps are, the funds available do not approach what would be needed to enact them.

Additionally, to take back zoning control of our neighborhoods by meeting the requirements of Chapter 40B will require close to $80 million even if the Town is able to match its own funds one-for-one with federal and other revenues. Just maintaining our current stock of affordable housing will be costly. The Brookline Housing Authority faces a $20 million capital shortfall and other funds will be needed to avoid the conversion of privately-owned affordable units to market rate. To meet national standards for Open Space, Brookline must acquire 35 acres of park or conservation land and add playing fields and other recreational facilities at an estimated cost of $65 million. This sum does not include major renovations to parks and historic sites and protecting privately held structures and land from demolition and development.

At the same time, there are significant pressures on the Town’s operating and capital budgets. At times over the next few years, debt service is likely to exceed prudent levels. Necessary renovations to Town Hall have already been delayed and increased costs may force the delay of other projects. The availability of School Building Assistance (SBA), which has supported 61% of the cost of recent major school renovations, may disappear and will almost certainly be less generous. The current CIP is only balanced because it assumes that half the cost of the Runkle and Devotion renovations will be paid for by SBA. If this proportion is reduced, large sections of the CIP will be in jeopardy.

Nor can we afford to reduce operating budgets to address capital needs. Skyrocketing energy and health insurance costs have cut deeply into both Town and School budgets. The Town will have to increase its pension contributions in order to meet its obligation to fully fund pensions. The schools have lost funding for social workers, elementary world language education and after-school programs for at-risk youth while facing increasing demands from the state and from our citizens to raise performance. Medical advances save the lives of newborns and increase our knowledge of how to educate disabled children but generate escalating special education costs.

Put simply, current revenues are inadequate to maintain our current level of services and address our core capital needs, let alone to address our additional needs for open space, affordable housing, preservation of historic resources, and other services.

The Community Preservation Act presents the Town with an opportunity to leverage an up to 3% property tax surcharge with state matching dollars. While the Committee estimates that it will receive a 100% match for only the first year if adopted this November. The Committee estimates that the aggregate amount of the match would be about 55% over 6 years.

The benefits of adopting the CPA must, of course, be weighed against its costs. While Brookline has high levels of per capita income and property wealth, it is also a very diverse community with significant numbers of residents with modest incomes and elderly residents with considerable property wealth but moderate incomes.
Because it is a surcharge on the current property tax, the CPA would maintain the relatively progressive nature of Brookline’s property tax. Owner-occupiers would continue to pay no tax on roughly the first $165,000 of their home’s value. Our proposal provides further protection by completely exempting all residents earning below 80% of the area’s median income. For a family of four this is currently $66,150. Additionally, senior citizens earning less than 100% of the area median are exempt. For a senior household of 2, this is currently $67,280. Lastly, we are proposing to implement the $100,000 residential exemption. All told, owner-occupiers would not pay any CPA surcharge on roughly the first $265,000 of their home’s value under the Committee’s proposal.

The CPA enabling legislation requires an implementation process whereby an appointed Community Preservation Committee (“CPC”) proposes CPA spending to Town Meeting who approves the project. Projects can be voted individually thus effectively giving Town Meeting a line item veto over CPA funded projects. The bylaw we are proposing to establish the CPC requires that the committee coordinate its efforts with the formulation of the Town’s Capital Improvement Program (CIP).

The Study Committee also recommends that the Community Preservation Committee be composed of the five members required by law (representatives of the Preservation Commission, Conservation Commission, Housing Authority, Parks and Recreation Commission and Planning Board) and four additional members. Three of the additional members should be representatives of the Board of Selectmen, the School Committee and the Advisory Committee. Along with the representative of the Planning Board, these members will provide a town-wide budgetary perspective and will ensure that the expenditure of the CPA funds is integrated with the rest of the budget and reflects the full range of the Town’s priorities. The fourth additional member would represent the Housing Advisory Board. Brookline is unusual in having both a Housing Authority whose role is to manage public housing and a separate HAB whose role is to promote privately-owned affordable housing. The Study Committee believes that both perspectives should be represented on the CPC.

The Study Committee reviewed four detailed scenarios based on the assumption of a 1%, 1.5% and 3% surcharge as well as the 3% surcharge with $100,000 residential exemption. In the end, it was convinced that the the lower surcharges would not permit the appropriate balance between supporting the operating and capital budgets and addressing our needs in the areas targeted by the CPA. The Committee was convinced that the last scenario strikes a good balance among the competing uses and the cost to residents.

Others scenarios are obviously feasible. We discussed devoting an even higher proportion of CPA funds to relieving pressures on the operating and capital budgets. The majority of the Committee believes that we have achieved a good balance. At least one member of the Committee believes that the future CPC should set aside more money for previously identified projects that are currently listed in the CIP for “future years” (after 2012).
The scenario developed by the Committee makes little use of bonding except for projects that are already listed on the CIP. CPA projects can be bonded based on revenues from only the Town's surcharge (not any anticipated matching money). The view of the Committee is that bonding should be avoided when possible and should generally be short-term, or be limited to projects which we had already contemplated bonding under the CIP. It is, however, important to remember that any bonding would have to be recommended by the CPC and supported by a two-thirds majority of Town Meeting. In addition, if the Town chose to revoke acceptance of the CPA, the surcharge would remain in effect at a rate just sufficient to cover any outstanding debt obligations.

The Committee believes that adopting the CPA would be beneficial to Brookline. At the very least, the residents of Brookline should be given the opportunity to decide whether they wish to accept a lower level of services or embrace a richer vision. Each voter will have to decide whether the benefits from adopting the Community Preservation Act outweigh the cost of the increased property tax. We have worked to fashion a proposal that we believe minimizes the concerns that have been expressed about the CPA while focusing on key needs. Voters should be allowed to judge for themselves whether our efforts have been successful.
### TABLE A - REVISED

**Illustrative 3% Scenario with $100,000 Residential Exemption**

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**PLANNED EXPENDITURES**

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**PROJECTS NOT ADDRESSED IN CURRENT CIP OR OPERATING BUDGET**

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**OPEN SPACE/RECREATION/HISTORIC RESOURCES**

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**Notes:**

- Assumes that only projects in existing CIP and BHA are bonded
- Funds to replace sale of Fisher Hill land may be in anticipation of such a sale
- Allocation between new open space and new preservation is arbitrary since many projects may be eligible under both criteria.
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Tax rate assumed constant when calculating effect of residential exemption
## 2006 ANNUAL TOWN MEETING

**Date:** May 24, 2006  
**Article:** 9

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ARTICLE 9

Motion Offered Under Article 9 by Roger Lipson, Town Meeting Member Precinct 14

Moved: To amend Article 9 to include an additional exemption as follows (additional language in BOLD and omitted language in brackets):

Moved: that the Town hereby accepts Sections 3 to 7, inclusive, of Chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, by approving a surcharge on real property for the purposes permitted by said Act, including the creation, preservation and support of community housing, the acquisition, creation and preservation of open space, the acquisition, creation and preservation of land for recreational use, the acquisition, preservation, rehabilitation and restoration of historic resources, and the rehabilitation and restoration of such community housing, open space and land for recreational use that is acquired or created as provided under said Act; that the amount of such surcharge on real property shall be 3% of the annual real estate tax levy against real property; that such surcharge on real property shall commence in fiscal year 2007 of the Town; and that the Town hereby accepts the following exemptions from such surcharge permitted under Section 3(e) of said Act: (a) property owned and occupied as a domicile by any person who qualifies for low income housing or low or moderate income senior housing in the Town, as defined in Section 2 of said Act, [and] (b) $100,000 of the value of each taxable parcel of residential real property[.]; and (c) class three, commercial, and class four, industrial, properties as defined in section 2A of Massachusetts General Laws Chapter 59.
ARTICLE 9

Advisory Committee Minority Report

Ten of 21 members voted NO ACTION on the Advisory Committee’s motion of a 2% surcharge with an accompanying $100K residential exemption. Among their questions and concerns:

- With one error discovered in the CPA Study Committee’s Report that significantly alters the projected added benefit of adopting the maximum 3% surtax, there is some concern regarding the reliability of other assumptions regarding state matching funds.

- The Community Preservation Act is designed to alter capital spending priorities in favor of certain earmarked areas, all done outside the Town’s established and proven process for reviewing and balancing competing needs. Unless the state matching funds constitute “an offer too good to refuse”—such as the bonanza of state funds that many smaller communities with a 3% surcharge reap from CPA, and which Brookline may not—the distortion of “good government” procedures and funding priorities may not be worth the CPA’s considerable added costs.

- If, in order to get the state funds, we have to agree to spend new money on non-critical items, why should such money be considered “cheaper”? (If you need food, buying roof rafters to benefit from free shingles is not the way to go. Certainly it leaves less food money.)

- The most worrisome fiscal challenge facing the Town is a looming operating budget deficit. With the CPA’s focus on capital projects, the Study Committee creatively seeks to shift CPA capital funds such that limited operating budget relief is projected. But this modest benefit entails creating a new taxing and administrative mechanism whose costs remain unknown.

- While the Study Committee reported overwhelmingly favorable comment on CPA experience in other communities and no evidence of conflict, one Advisory Committee member reported that CPA implementation in Newton has proven contentious, both within the CPA committee and in the community at large. Did the Study Committee fail to identify such contentiousness elsewhere?

- Most of those voting NO ACTION disagreed with the CPA Study Committee’s finding that adoption of a CPA surtax in Brookline in 2006 would not seriously undermine the voter’s appetite for a subsequent Prop.2 ½ override—either general or debt exclusion—for schools or other essential budget-related items. That other communities have passed both a CPA surtax and one or more overrides does not mean that Brookline will do the same.
• The individual homeowner’s tax burden—in actual dollars—is already so much higher than in affluent neighboring communities (and rising significantly every year), that adding even a couple of hundred additional dollars a year for non-essentials seems unjustified and unfair.

• Despite the detailed scenarios provided by the Study Committee Report, and the recommended coordinating procedures set forth in the companion CPA Article 10, there is no guaranty that the CPA Committee—with a majority of members appointed to seek funding for their own favored area of interest—will align their efforts with the Town’s most pressing needs. On the contrary, there is a likelihood that CPA Committee members will advocate vigorously for their particular interest’s ‘fair share’ of the earmarked pool of CPA funds.

• Given the reported experience of other communities, including Newton, regarding the need for additional hiring to administer the multi-million dollar annual CPA program, including staff support for the nine-member CPA committee, some members questioned the Study Committee’s determination that no additional hiring (except some added part-time help for the Assessor) will be needed.

• Concern also was expressed about whether the proposed exemptions for low and moderate-income homeowners would work as intended to help those in need. Some objected to the idea that elderly long-time Brookline homeowners would be required to come to Town Hall with their tax returns.
ARTICLE 10

TENTH ARTICLE
To see if the Town will vote to adopt a bylaw providing for the establishment of a
Community Preservation Committee pursuant to G.L. c.44B, §5 and for the composition
and duties thereof; and to take any other action relative thereto.

This article is submitted by the Community Preservation Study Committee. The Study
Committee was established by the Board of Selectmen for the purpose of evaluating the
Community Preservation Act and making a recommendation to Town Meeting as to
whether or not the Town should adopt the Act. The Study Committee has not yet
determined whether or not it will recommend adoption of the Act, but it intends to make
a recommendation before the 2006 Annual Town Meeting. The attached article preserves
the ability of the 2006 Annual Town Meeting to adopt a bylaw establishing a Community
Preservation Committee as required by the Act in the event that the Study Committee
makes a recommendation for affirmative action and Town Meeting votes to adopt the
Act.

RECOMMENDED MOTION OF THE CPA STUDY COMMITTEE

Moved: that the Town hereby amends Part III of the General Bylaws of the Town of
Brookline by adding the following Article at the end of such Part III for the purpose of
establishing a Community Preservation Committee; provided, however, that this bylaw
shall not take effect unless and until such time as Sections 3 to 7, inclusive, of Chapter
44B of the General Laws (the Massachusetts Community Preservation Act) are accepted
by the Town in the manner required by such Act:

“ARTICLE 3.19
COMMUNITY PRESERVATION COMMITTEE

Section 3.19.1. Establishment; membership; terms; vacancies.

There is hereby established a Community Preservation Committee pursuant to Section 5
of Chapter 44B of the General Laws (the "Act") consisting of nine (9) members. The
following bodies shall each select one of its members for membership on the Community
Preservation Committee: the Board of Selectmen, the Advisory Committee, the School
Committee, the Housing Advisory Board, the Conservation Commission, the Planning
Board, the Parks and Recreation Commission, the Preservation Commission, and the
Brookline Housing Authority. Each appointing body shall make the required
appointments of members to serve the initial term on the Community Preservation
Committee not later than thirty (30) days after the effective date of this bylaw and shall make the required appointments to serve each subsequent term not later than the date on which the term of the previously appointed member expires.

The term of each of the initial members of the Community Preservation Committee shall commence upon appointment and expire on June 30, 2008 for three (3) of the initial members, expire on June 30, 2009 for three (3) of the initial members and expire on June 30, 2010 for three (3) of the initial members. The term of each of the initial members of the Community Preservation Committee shall be determined by lot at the first meeting of the Committee consistent with the term requirements set forth in the preceding sentence. The term of each member of the Community Preservation Committee appointed to serve after the expiration of the term of the applicable initial member shall be for three (3) years commencing on June 30 in the year in which he or she is appointed and expiring on the third anniversary thereof. In the event that a member of the Community Preservation Committee is removed from, resigns from, is not re-elected to or is not reappointed to the body which appointed him or her to the Community Preservation Committee during the term for which he or she was so appointed, his or her membership on the Community Preservation Committee shall cease upon the effective date of such removal, resignation or failure to be re-elected or reappointed and shall create a vacancy on the Community Preservation Committee. Mid-term vacancies shall be filled by the body that appointed the member who created the vacancy by appointing another member in accordance with this section to serve on the Community Preservation Committee for the remainder of the unexpired term. Each appointment of a member to the Community Preservation Committee shall be by majority vote of the appointing body, a certified copy of which vote shall be sent by the clerk of the appointing body to the Town Clerk.

Section 3.19.2. Organization; meetings.

The Community Preservation Committee shall not meet or conduct business without the presence of a quorum, which shall consist of a majority of its members. The Community Preservation Committee shall approve its actions by majority vote.

Section 3.19.3. Responsibilities; study; hearing; recommendations.

The Community Preservation Committee shall study the needs, possibilities and resources of the Town regarding community preservation. In conducting such study, the Community Preservation Committee shall consult with the appointing bodies identified in Section 3.19.1 of this bylaw, shall consult the Town’s Comprehensive Plan and other relevant plans adopted by the Town, shall accept applications or requests for funding from Town officials and citizens, and shall hold at least one annual public informational hearing on the needs, possibilities and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding the hearing in a newspaper of general circulation in the Town. In addition, the Community Preservation Committee shall coordinate with the Town Administrator the timing and conduct of this study process in conjunction with the development of the Town’s Capital Improvement Program, as

The Community Preservation Committee shall make recommendations to the Town Meeting for the acquisition, creation, preservation, support, rehabilitation and restoration of properties and real property interests, as provided in the Act, which recommendations may include setting aside funds for later spending for purposes that are consistent with the Act. The recommendations made by the Community Preservation Committee shall include the anticipated costs of such recommendations. Prior to each Annual Town Meeting, the recommendations of the Community Preservation Committee for the following fiscal year, together with a plan for the use of annual revenues under the Act for each of the subsequent five (5) fiscal years, shall be delivered to the Town Administrator in time for inclusion of such recommendations and plan in the Annual Financial Plan the Town Administrator is required to prepare according to Chapter 270 of the Acts of 1985, as amended, and deliver pursuant to Section 2.2.5 of the General Bylaws of the Town. No provision of this section shall preclude the Community Preservation Committee from making recommendations which are different from or in addition to the recommendations made at an Annual Town Meeting for the following fiscal year at any subsequent Special Town Meeting or from making recommendations at future Annual Town Meetings for future fiscal years which are different from or in addition to the proposed use of annual revenues under the Act shown in any 5-year plan delivered to the Town Administrator pursuant to this section or from otherwise exercising the powers granted to it under the Act.

Section 3.19.4. Warrant articles.

The Board of Selectmen shall insert any article requested by the Community Preservation Committee in the warrant for the specified Town Meeting to enable Town Meeting to make appropriations for community preservation purposes recommended by the Community Preservation Committee for the current or next fiscal year.

Section 3.19.5. Construction.

At all times this bylaw shall be interpreted in a manner consistent with the Act. In the event that any section, paragraph or part of this bylaw is for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.”

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SELECTMEN’S RECOMMENDATION

The CPA Study Committee will be presenting its findings to the Board of Selectmen on May 9th, a date that comes after the required mailing date of these Combined Reports.
Therefore, a Supplemental Report will be provided to Town Meeting prior to the commencement of Town Meeting detailing the Board’s recommendation on this article.

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ADVISORY COMMITTEE’S RECOMMENDATION

The CPA Study Committee will be presenting its findings to the Advisory Committee on May 9th, a date that comes after the required mailing date of these Combined Reports. Therefore, a Supplemental Report will be provided to Town Meeting prior to the commencement of Town Meeting detailing the Committee’s recommendation on this article.

XXX
ARTICLE 11

ELEVENTH ARTICLE
To see if the Town will accept the provisions of General Laws, Chapter 32, Section 7, Subdivision (2), paragraph (e), as amended, to pay an additional yearly retirement allowance of $15.00 for each year of creditable service or fraction thereof to any member of Group 1 or Group 2 or Group 4, who is receiving accidental disability retirement benefits and is a veteran as defined in section 1 of said Chapter 32, with the total amount of this additional allowance not to exceed $300 per year.

or act on anything relative thereto.

This article provides a veterans benefit for accidental disability retirees who are veterans. The amount of the allowance is $15.00 per year for each year of creditable service the member had when they retired with a maximum benefit of $300.00 per calendar year. The estimated cost for this benefit is approximately $25,500.00 per year. The Retirement Board voted unanimously for the article on March 9, 2006.

SELECTMEN’S RECOMMENDATION

Articles 11 and 12 were filed by the Brookline Retirement Board. Both articles deal with the issue of retirement benefits for veterans, specifically for those employees who retire due to a disability. For those veterans who have retired from state or local government service, the law has, for approximately 65 years, allowed an additional benefit of $15 per year of employment service, with a maximum cap of $300. That law, however, did not provide the benefit for employees who retired due to a disability, and were veterans. If adopted, Article 11 would grant this retirement benefit for eligible veterans going forward, while Article 12 would provide a retroactive payment.

On November 22, 2005, Chapter 157 of the Acts of 2005 was enacted, providing Section 7 accidental disability retirees who were veterans with this additional benefit. This “local acceptance” legislation requires a vote of the Retirement Board and the local legislative body. The law has two sections which must be addressed: the first section grants the veteran benefit to accidental disability retirees on a prospective basis, which is dealt with in this Article, and the second section grants the benefit to the employees retroactively, which is dealt with under Article 12. The cost of Article 11 is approximately $25,500 per year while the cost of Article 12 is approximately $475,000 on a one time basis. Approximately 100 Town retirees would be eligible for this benefit.
The mechanics of the distribution of benefits and payment of the liability by the Town are also relevant to the issue. Accidentally disabled retirees would receive Article 11 benefits, up to $300 per year, distributed equally among the twelve monthly retirement benefits received. Those retirees would receive Article 12 benefits in a lump sum amount. Both benefits would be paid out of the Retirement Board’s liquid assets.

The total cash distributed to these retirees for both sections, assuming that they remain alive for the next 15 years, would be approximately $850,000. The present value of the benefit is estimated to be approximately $700,000. The annual increase to the operating budget for contributory retirement benefits is estimated to be $75,000, currently allocated between Town and School departments (approximately 75%-25%). This is in addition to any other increases that the community will experience due to the existing liability. That increase has not been determined by the Retirement Board, but is estimated to be between $1.5 million to $2.8 million, depending on the final variables used.

As of April 23, 2006, approximately 75 local Retirement Boards have taken a position on these issues. All have supported the prospective benefit while all but three Boards have supported the retroactive benefits. Of these 75 communities, 22 legislative bodies have acted: two communities have rejected the retroactive benefit while 20 communities supported it.

On March 9, 2006, the Retirement Board voted, 5-0, to support and submit Article 11 to Town Meeting, providing prospective veteran benefits to accidentally disabled retirees.

The Board of Selectmen recognizes that the unfunded pension liability is a very serious issue for the Town, but this increase in unfunded liability is just one component of the overall substantial increase in projected funding requirements for FY08. The Board considers this a matter of equity. Right now, retirees who served in the same battles, the same wars get treated differently because of disability -- if one retiree retired under regular super-annuation retirement, s/he is eligible for the benefit, but the retiree that retired under disability retirement is not. This is an inequity that must be remedied.

Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on April 25, 2006, on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

In 2005, the Legislature amended the retirement system eligibility requirements for veterans who become accidentally disabled while in town service. For the last 60 years, while veteran retirees were eligible for an extra $15 benefit for each year of creditable
service, those veterans who qualified for disability while in town service were not eligible for the same benefit. Under the amended law, municipalities can now extend the benefit to veteran retirees who qualify for disability. The Retirement Board voted 5-0 to extend such benefits to all current and future qualified retirees going forward.

DISCUSSION
In the years since the extra benefit for veterans who retire was first passed in 1947, the benefit exclusion for veterans who become disabled was perceived as unfair. This inequity was addressed by the Legislature in 2005. As noted above, the Retirement Board unanimously agreed that this new benefit should be extended on a prospective basis. A majority of the Advisory Committee agrees with this argument. However, it is important to stress that the Pension system is creating a considerable strain to the operating budget of the town. Currently, an unfunded pension liability exists of approximately $113 million. Creating additional benefits for retirees will only increase this unfunded pension liability by adding an additional $25,500 per year in payments. A minority of the Advisory Committee felt that it was irresponsible to add additional pension benefits at a time when the town faces a possible increase in payments to the Retirement Board in Fiscal Year 2008 of $2.8 million.

RECOMMENDATION
The Advisory Committee, by a vote of 17 in favor, 3 opposed, and 1 abstention, recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town accept the provisions of General Laws, Chapter 32, Section 7, Subdivision (2), paragraph (e), as amended, to pay an additional yearly retirement allowance of $15.00 for each year of creditable service or fraction thereof to any member of Group 1 or Group 2 or Group 4, who is receiving accidental disability retirement benefits and is a veteran as defined in section 1 of said Chapter 32, with the total amount of this additional allowance not to exceed $300 per year.
ARTICLE 12

TWELTH ARTICLE
To see if the Town will accept the provisions of Section 2 of Chapter 157 of the Acts of 2005, to pay the additional yearly retirement allowance of $15.00 for each year of creditable service as provided by Chapter 32, Section 7, Subdivision (2), paragraph (e), as amended retroactive to the date of the member’s retirement, in accordance with said Section 2 of Chapter 157 of the Acts of 2005, as amended.

or act on anything relative thereto.

This Article would allow for the veterans benefit described in Article 11 retroactive to the member’s date of retirement. The estimated cost for this benefit would be a one time payment of approximately $470,000.00. The Retirement Board voted 3-2 for the article on March 9, 2006.

SELECTMEN’S RECOMMENDATION

Articles 11 and 12 were filed by the Brookline Retirement Board. Both articles deal with the issue of retirement benefits for veterans, specifically for those employees who retire due to a disability. For those veterans who have retired from state or local government service, the law has, for approximately 65 years, allowed an additional benefit of $15 per year of employment service, with a maximum cap of $300. That law, however, did not provide the benefit for employees who retired due to a disability, and were veterans. If adopted, Article 11 would grant this retirement benefit for eligible veterans going forward, while Article 12 would provide a retroactive payment.

On November 22, 2005, Chapter 157 of the Acts of 2005 was enacted, providing Section 7 accidental disability retirees who were veterans with this additional benefit. This “local acceptance” legislation requires a vote of the Retirement Board and the local legislative body. The law has two sections which must be addressed: the first section grants the veteran benefit to accidental disability retirees on a prospective basis, which is dealt with in this Article, and the second section grants the benefit to the employees retroactively, which is dealt with under Article 12. The cost of Article 11 is approximately $25,500 per year while the cost of Article 12 is approximately $475,000 on a one time basis. Approximately 100 Town retirees would be eligible for this benefit.
The mechanics of the distribution of benefits and payment of the liability by the Town are also relevant to the issue. Accidentally disabled retirees would receive Article 11 benefits, up to $300 per year, distributed equally among the twelve monthly retirement benefits received. Those retirees would receive Article 12 benefits in a lump sum amount. Both benefits would be paid out of the Retirement Board’s liquid assets.

The total cash distributed to these retirees for both sections, assuming that they remain alive for the next 15 years, would be approximately $850,000. The present value of the benefit is estimated to be approximately $700,000. The annual increase to the operating budget for contributory retirement benefits is estimated to be $75,000, currently allocated between Town and School departments (approximately 75%-25%). This is in addition to any other increases that the community will experience due to the existing liability. That increase has not been determined by the Retirement Board, but is estimated to be between $1.5 million to $2.8 million, depending on the final variables used.

As of April 23, 2006, approximately 75 local Retirement Boards have taken a position on these issues. All have supported the prospective benefit while all but three Boards have supported the retroactive benefits. Of these 75 communities, 22 legislative bodies have acted: two communities have rejected the retroactive benefit while 20 communities supported it.

On March 9, 2006, the Retirement Board voted, 3-2, to support and submit Article 12 to Town Meeting, providing retroactive benefits to the Section 7 employees. The majority opinion was that the employees were entitled to the benefit and should receive it. The minority opinion was that the cost of the benefit, in the face of the public discussion on the growing cost of unfunded pension obligations, was too high for an additional retroactive benefit.

A majority of the Retirement Board also recognized that there could be a situation that arises if the State grants retroactive benefits to accidentally disabled retirees: since the State provides retirement benefits to teachers, there could be a scenario where teachers at the local government level receive the retroactive benefit while Town employees at the same level do not receive the benefit. As of this date, the Commonwealth has not made a decision on the retroactive benefit.

The Board of Selectmen recognizes that the unfunded pension liability is a very serious issue for the Town, but this increase in unfunded liability is just one component of the overall substantial increase in projected funding requirements for FY08. A majority of the Board considers this primarily as a matter of equity. Right now, retirees who served in the same battles, the same wars get treated differently because of disability -- if one retiree retired under regular super-annuation retirement, s/he is eligible for the benefit, but the retiree that retired under disability retirement is not. This is an inequity that must be remedied.

Therefore, the Board recommends FAVORABLE ACTION, by a vote of 4-1 taken on April 25, 2006, on the following vote:
VOTED: that the Town accept the provisions of Section 2 of Chapter 157 of the Acts of 2005, to pay the additional yearly retirement allowance of $15.00 for each year of creditable service as provided by Chapter 32, Section 7, Subdivision (2), paragraph (e), as amended retroactive to the date of the member’s retirement, in accordance with said Section 2 of Chapter 157 of the Acts of 2005, as amended.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Merrill

No Action
Daly

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
In 2005, the Legislature amended the retirement system eligibility requirements for veterans who become accidentally disabled while in town service. For the last 60 years, while veteran retirees were eligible for an extra $15 benefit for each year of creditable service, those veterans who qualified for disability while in town service were not eligible for the same benefit. Under the amended law, municipalities can now extend the benefit to veteran retirees who qualify for disability. The Retirement Board voted 3-2 to extend such benefits on a retroactive basis to all eligible retirees from the date they retired to the present.

DISCUSSION
(Please see Article 11 for a description of the arguments for and against extending additional pension benefits to veterans who become disabled while in the service to the town.)

Whereas Article 11 would apply additional pension benefits on a prospective basis, Article 12 would pay such benefits to all qualified veterans retroactively to the date that they retired. The vote of the Retirement Board was 3 to 2 with the majority arguing that the same fairness issue applied. In effect, it was argued, these retirees should have been given the benefit since they were unfairly denied such benefits due to an anomaly in the law. A minority of the Retirement Board voted against the proposal believing that the town has followed the applicable rules all along and should not have to pay what could be considered a windfall due to a change in the law. If passed, Article 12 would result in a one-time payment of between $470,000 and $480,000. Payments would begin in Fiscal Year 2008.
A minority of the Advisory Committee agreed with the Retirement Board’s (majority) argument that those veterans who became disabled were unfairly denied a benefit and deserve to receive this payment on a retroactive basis. However, the majority of the Advisory Committee disagreed. A comparison can be made to the tax code. For example, if you sold your home before the change in the law allowing an exemption for certain capital gains on your primary residence, you were not entitled to a retroactive rebate when the law changed, notwithstanding the fact that it may appear unfair. You must abide by the rules at the time they are in effect. Article 11 addresses the perceived fairness issue going forward. The majority of the Advisory Committee does not believe that the town should bear responsibility for past unfair rules set by the Legislature.

In addition, as noted in the discussion of Article 11, the town faces a significant increase in its obligation to the Retirement Board in Fiscal Year 2008 (approximately $2.8 million, or more increase). While many members of the Advisory Committee would like to like to extend the proposed retroactive benefit, most felt that now is not the right time to increase benefits retroactively when the town faces such a large financial burden. It was also noted that if the town does not act on Article 12 now, nothing precludes the town from extending such benefits retroactively at a future Town Meeting if financial conditions change.

**RECOMMENDATION**
The Advisory Committee, by a vote of 15 in favor, 5 opposed, and 1 abstention, recommends NO ACTION on Article 12.
ARTICLE 12

ADDENDUM TO ADVISORY COMMITTEE REPORT ON ARTICLE 12

If Town Meeting were to vote in favor of Article 12's one-time $475,000 retroactive benefit to retired Town employees who were veterans that became disabled while working for the Town, the cost of this benefit would be amortized over the next 17 years until 2023, which is the current Retirement Board's full funding schedule. This would be an additional cost of about $50,000 annually to the pension benefits during this period. If the Retirement Board were to change the funding schedule, the annual additional cost would change accordingly.
ARTICLE 13

THIRTEENTH ARTICLE

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

An act permitting the Town of Brookline to participate in the health insurance programs administered by the Group Insurance Commission established by General Laws, Chapter 32A.

Section 1. Notwithstanding the provisions of any special or general law to the contrary, the Town of Brookline is hereby authorized to transfer individuals to which it provides health insurance pursuant to General Laws, Chapter 32B, including its employees, retirees, surviving spouses or dependents, who shall be referred to herein as subscribers, to the Group Insurance Commission (“GIC”) established in General Laws, Chapter 32A for the purpose of participating in the health insurance programs administered by the GIC.

Section 2. The Town of Brookline’s subscribers shall not transfer to the GIC until the Town has fulfilled its bargaining obligations, where applicable, with collective bargaining units that represent Town employees in accordance with General Laws, Chapter 150E, and such units have agreed with the Town to the transfer.

Section 3. Except as herein provided, once transferred to the GIC the Town’s subscribers shall participate in the health insurance programs under the same conditions as those individuals eligible to participate in the GIC’s health insurance programs pursuant to General Laws, Chapter 32A.

Section 4. The Town of Brookline shall determine its premium contribution rates for all subscribers, including town and school retirees, subject to fulfilling its bargaining obligations, if any, pursuant to M.G.L. c. 150E with each collective bargaining unit that represents town employees regarding premium contribution rates. Each subscriber shall pay his/her share of the total premium to the town. The Town of Brookline shall forward the full premium cost of coverage, including subscriber contributions, to the GIC in accordance with reasonable regulations promulgated by the GIC.

Section 5. This act shall take effect upon its passage.

or act on anything relative thereto.
A recent report by the Massachusetts Taxpayers Foundation found that municipal employee group health costs statewide grew at nearly twice the rate that the Commonwealth of Massachusetts spent for state employee health care between FY01 and FY05. While Brookline’s rate of increase was not quite as high as the average for local government, it was still substantially greater than the amount spent on State employees:

**Growth in Employee Health Costs Between FY01 – FY05**

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<td>29.2%</td>
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<tr>
<td>Town of Brookline</td>
<td>55%</td>
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Health benefits at the state level are administered by the Group Insurance Commission (GIC), which currently provides coverage to 267,000 state employees and retirees. Historically, municipalities have not been allowed to join the GIC to participate in the same pool as state employees in order to take advantage of the comparatively favorable rates. Since 1993, cities and towns have had the legal option to join the GIC in a separate pool, but without access to the more advantageous pricing for the state employee group. Consequently, no municipality has joined the GIC.

A comparison of the Town’s FY06 group health rates with the GIC rates suggests a potential savings of about $2 million of which nearly $500,000 would accrue directly to employees through reduced withholdings. Further, a review of GIC plan offerings reveals a much wider array of options than the Town has been able to provide, including dental coverage. And, recent reports indicate that the GIC has been on the leading edge within the public sector for innovative plan design and cost savings to an extent no individual municipality has been able to match.

The Group Insurance Commission has recently expressed an openness to accepting municipal enrollments in its state employee group. This special legislation is proposed to provide the Town the option of joining GIC as soon as participation becomes possible. Assuming the existing contribution rates will be maintained (75% town-25% employees), the savings for town taxpayers and workforce could be considerable. As noted in the text of the special legislation, participation in the GIC is subject to the Town fulfilling its collective bargaining obligations, where applicable, with its unions.

**SELECTMEN’S RECOMMENDATION**

At the time Article 13 was filed, statewide discussions involving municipal and union leadership had begun to explore whether consensus could be reached on general legislation that would allow municipalities to participate in Group 1 of the Group
Insurance Commission. By late April these discussions had evolved to the point where the involved leadership shared the perception that they were “85% there” toward agreement on language in a bill that had actually been drafted.

While acknowledging that the remaining “15%” of reaching consensus could be the most difficult portion of these statewide negotiations, the Town Administrator (who urged the filing of this Article) recommended no action on this article in light of the expectations surrounding possible general legislation. He advised that “the Legislature would be reluctant to act on special legislation with the prospect of a consensus emerging on general legislation.”

The potential benefits of municipal participation in the GIC are obvious. Whether this would ultimately prove to be an appropriate step for the Town of Brookline and its employees remains to be seen. However, the Town should continue to support efforts to create the possibility of opting into the GIC whether through general or special legislation. The consequences of not seriously considering all possible options to control group health costs are simply too great otherwise.

Therefore, the Board recommends NO ACTION, by a vote of 4-0 taken on April 25, 2006, on Article 13.

**ROLL CALL VOTE:**
No Action
Allen
Hoy
Sher
Daly

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**ADVISORY COMMITTEE’S RECOMMENDATION**

**BACKGROUND**
The Town Administrator submitted Article 13 requesting permission from Town Meeting to file a Home Rule Petition allowing employees from the Town of Brookline to become a part of the health insurance programs administered by the Commonwealth’s Group Insurance Commission. This would allow Brookline employees, retirees, dependents and surviving spouses to become a part of the larger pool of all state employees. The benefit of being a part of a larger pool would result in lower costs to both the town and the employees. This legislation is proposed to allow the town to join the GIC when and if it becomes available.

**DISCUSSION**
The cost of health care is increasing rapidly and is a serious drain on the town’s resources. Even with all town employees subscribing to the same insurance plan, BCBS,
the costs are still rising at a much greater rate than the cost of the plan administered by the Commonwealth. There is reason to believe that the Commonwealth might be amenable to opening up this plan to municipal employees. A Home Rule Petition would allow the town to explore that possibility. The town would still have to fulfill its bargaining obligations with each unit with regard to the plan and the contribution rate.

The Unions were united in their opposition to this proposal for several reasons. The primary reason is that the employees do not want to lose control of their health care and there is a pervasive fear that any cost savings will be passed on to the employees. In addition, all town employees now belong to BCBS and this plan is not provided by the GIC, which means that every town employee would have to change their health plan.

There has been a Massachusetts State Task Force that has been meeting for the past nine months looking at this very issue. It is called the Municipal Health Insurance Working Group. MAPC has provided support and research to the Task Force. This group is composed of members of various unions as well as municipal officials from all over the state. There is reason to believe that this group will soon reach a resolution for all municipal employees in the state. The Task Force is addressing the concerns of the unions as well as management. For this reason, the petitioner is asking that the town wait for the results of this Task Force.

**RECOMMENDATION**
The Advisory Committee, by a vote of 18 in favor of the motion for no action, 0 opposed, and 2 abstentions, recommends NO ACTION on Article 13 at this time.

XXX
FOURTEENTH ARTICLE

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

An act permitting the Town of Brookline to reimburse a prevailing party-plaintiff its attorney’s fees in an appeal of a Zoning Board of Appeals decision pursuant to General Laws Chapter 40A, Section 17.

Section 1. Notwithstanding the provisions of any special or general law to the contrary, the Town of Brookline is hereby authorized to appropriate an amount not exceeding, in any one year one twentieth of one percent of its equalized valuation, as defined in section one of Chapter forty-four, to establish and maintain a legal fund from which the Town may reimburse a party plaintiff for his/her attorney’s fees in an appeal brought pursuant to Massachusetts General Laws Chapter 40A, Section 17 from a decision of the Town of Brookline Zoning Board of Appeals, but only if the appealing party is successful after all rights of appeal have been exhausted.

Section 2. Any appropriation into said fund shall require a majority vote at any town meeting. Any appropriation out of said fund for the purpose of paying attorney’s fees requires approval by the Board of Selectman and a two-thirds vote at any town meeting.

Section 3. This act shall take effect upon its passage.

or act on anything relative thereto.

As a matter of public policy and prudent governance, it is the responsibility of the Town to provide for the safety and well being of its residents. It does so in a number of ways, including its police and fire departments, its public works department, and its department of public health. The Town attends to the needs of its citizens through a number of additional agents and public agencies. Over the past few years, there has been an increased sense of growth and development activities throughout the Town. There are projected to be many more growth and development opportunities and activities in the future. On occasion, there may have been activities that encroached upon the properties of Brookline’s citizens in ways that may have been unforeseen. The purchase of a home is the largest single investment that most individuals make in a lifetime. When a new development adversely impacts an individual’s home, he/she may be compelled to seek recourse and redress through litigation to protect that investment and the quality of everyday life. In doing so, it is possible that the homeowner may have to draw down or deplete savings, tap into retirement funds, or even take out a second mortgage on their
No citizen of Brookline should be placed in the position of having to expend personal resources to compel the Town to adhere to zoning by-laws and regulations, nor to enforce building codes and site approvals. In the spirit of fairness to all citizens of Brookline, this warrant article proposes that if a citizen moves forward with litigation against the Town and prevails, that the Town will reimburse the citizen (plaintiff) for legal expenses, including attorney’s fees, court costs, and expert witnesses. The warrant article does not encourage frivolous lawsuits, because the litigant (plaintiff) would be required to continue to fund the legal action, as is presently the case, but would be entitled to recoup the legal expenses if he/she prevails. Any aggrieved party would need to carefully consider the financial implications of embarking on a legal action, as is now the case, but would have the assurance of knowing that the significant cost impact on any individual (unlike a developer where legal action is the “cost of doing business” and is recouped in the sale of the development or project) will be offset by the reimbursement from the Town if she/he prevails.

SELECTMEN’S RECOMMENDATION

Article 14 is a petitioned article that proposes Home Rule Legislation that would authorize the Town to reimburse a prevailing party-plaintiff its attorney’s fees in an appeal of a Zoning Board of Appeals (ZBA) decision. Both residents and developers could be eligible for reimbursement since there is no distinction made about possible plaintiffs. If approved, the Town would be able to establish a legal fund from which the Town could reimburse a party plaintiff for attorney’s fees in an appeal brought pursuant to Massachusetts General Laws Chapter 40A, Section 17 from a decision of the ZBA, but only if the appealing party is successful after all rights of appeal have been exhausted. Appropriations into the fund would require a majority vote at any town meeting and appropriations out of the fund would require approval by the Board of Selectman and a two-thirds vote of Town Meeting.

The State Legislature has addressed the issue when a plaintiff may be entitled to costs against a special permit granting authority: G.L.c.40A, Section 17 provides in relevant part that costs are not allowed unless a court determines that the ZBA acted "...with gross negligence, in bad faith or with malice". The Board agrees with the State Legislature and believes that to penalize a ZBA for simply incorrectly interpreting what can sometimes be complex zoning by-laws will have several detrimental results:

1. the proposed by-law does not limit the amount of attorney's fees that may be recovered, which could lead to over-inflated bills and extensive additional costs for expert witness fees;
2. it may encourage frivolous appeals leading to an increase in litigation for the Town; and
3. it may discourage the possibility of mediation and settlement between parties.
For these reasons, the Selectmen recommend NO ACTION, by a vote of 3-1 taken on April 25, 2006, on Article 14.

**ROLL CALL VOTE:**

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**ADVISORY COMMITTEE’S RECOMMENDATION**

**BACKGROUND**

There has been increased pressure on development in Brookline in the past few years. More and more Brookline residents are being impacted by their neighbors trying to push the envelope of their existing homes and with the potential of tear downs. In some recent situations, citizens have felt let down by the town’s zoning processes.

The petitioner attempts to find a way to support citizens who have to get legal representation to try to get the town to do the “right thing”. Ordinary citizens have access to only their own resources; the town and the developers appear to the petitioner to have much more resources at their disposal.

The petitioner reports that there was no particular incident or project that caused her to file this warrant article, but is worried that some residents might want to challenge the town’s zoning decisions. In this warrant article the petitioner proposes that if a citizen moves forward with litigation against the town and prevails, that the town will reimburse the citizen (plaintiff) for legal expenses, including attorney’s fees, court costs, and expert witnesses. (The actual article proposed by the petitioner only discussed attorney’s fees and the Advisory Committee believes that the wording cannot be changed to include the other points she attempts to address.) The petitioner is attempting to ensure that the Building Department and the Zoning Board of Appeals perform to a certain level. She feels that if this article were to pass, it might encourage them to be more vigilant.

**DISCUSSION**

The Advisory Committee agreed that the petitioner brought up many good points including the need to find a way to deal with unscrupulous developers. But the Advisory Committee was persuaded by the argument made by Town Counsel that if this article were to be passed it would discourage settlements. Some thought this article could encourage litigation. It would also tie up money needed in other areas of the town budget. Many considered tying up money in such a way to be a wasteful use of available
funds. The Advisory Committee was concerned, as was Town Counsel, that the content of the article may be in conflict with state law and would require special legislation at the state level. Town Counsel reported that she touched base with the Attorney General’s Office and was told it could be done by special legislation and a fund could also be set up by special legislation but there is no guarantee that it would be approved by the Attorney General because of the differentiation between citizens and developers. Both groups must be treated the same.

In addition, the Advisory Committee is not aware of any other Massachusetts town that has adopted legislation that the petitioner is asking Town Meeting to approve. The Advisory Committee concluded that what the town really needs to contend with the significant development pressure is good zoning enforcement. Our hope is that the newly hired Zoning Administrator will help ensure confidence in the zoning enforcement process.

RECOMMENDATION
The Advisory Committee, noting the many uncertainties in the article, recommends NO ACTION on Article 14 (by a vote 14 in favor of the motion for no action, 0 opposed, and 2 abstentions).
FIFTEENTH ARTICLE

To see if the Town will approve the name of the new athletic facility within Harry Downes Field, a town park designated as Lot 300, Block 01-00 in the Town Assessor’s Atlas, as the “Kraft Family Athletic Facility at Harry Downes Field”, or act on anything relative thereto.

In December 2005, the Park and Recreation Commission approved a recommendation to honor the Kraft Family of Brookline by naming the soon-to-be renovated field at Harry Downes Field “The Kraft Family Athletic Facility at Harry Downes Field”. The proposal was forwarded to the Brookline Naming Committee, established in 2005 by Town Meeting, and duly appointed by the Board of Selectmen.

In accordance with the Town By-law, the Naming Committee has evaluated the proposal, applying its established criteria, and finds that the Krafts meet criterion “A” and are people of excellent reputation and character who have made exemplary contributions of time and resources to the community. The Committee unanimously supports the Park and Recreation Commission’s proposal.

Harry Downes

Henry (Harry) Downes began his Brookline High School career as a football coach in 1938 and became Director of Athletics in 1961. Remembered both as a man of integrity and as a role model for his players and fellow coaches, Coach Downes was inducted into the Brookline High School Hall of Fame in 1994. Downes’s teams reflected their coach: hardworking, disciplined, talented, well prepared and successful. His football teams won the Class B State Championship in 1939, 1946 and 1947 and won the Class A State Championship in 1954.

Upon his death in 1970, “Brookline Field” was renamed Harry Downes Field and dedicated that same year. A metal and stone memorial at the corner of Highland Street and Jamaica Road reads:

Dedicated to the Memory of Henry J. “Harry” Downes
(1910-1970)

An outstanding football coach and faculty manager at Brookline High School from 1938-1970.
A respected teacher, a loyal friend and an inspiration to the youth of Brookline.
-October 31, 1970

Harry Downes Field

Downes Field, an 8.69 acre park located in a densely settled neighborhood, is a regional recreational facility. It was acquired for $85,000 in 1914 from the Massachusetts
Institute of Technology and includes a multipurpose field surrounded by a running track, a softball field which is also used for rugby, field facilities (benches, bleachers, and drinking fountains), a play area, and a storage building and restroom.

Through the financial and technical resources of Robert Kraft, the multipurpose field within the track is being completely renovated with premium synthetic turf. This renovation, undertaken by a partnership of leaders from the public, private, and non-profit sectors, will benefit community football programs and other recreational activities. The field will be used for the most rigorous turf sports including high school and youth football, lacrosse, soccer, rugby and track competitions in addition to informal recreational activities.

**Robert Kraft**


Mr. Kraft acquired the New England Patriots in 1994 at a time when the team was last in the National Football League in both revenue and attendance. A respected and influential owner, he presided over a remarkable transformation of the team, with the Patriots winning more conference and Super Bowl championships in the past 12 years than any other team in the NFL.

Bob Kraft’s passion is not limited to football; his philanthropic endeavors have also made a significant impact. Over the past three decades, the Kraft family has been one of New England’s most philanthropic, donating millions of dollars in support of local charities and civic causes, including the establishment of a Blood Donor Center at the Dana-Farber Cancer Institute. In addition, endowment gifts to the College of the Holy Cross and Brandeis University have been used to promote interfaith relations, while a $2 million contribution to Boston College has funded an endowed professorship for a Christian scholar at the College’s Center for Christian-Jewish Learning.

In Brookline, the Kraft family’s generosity has extended to personal, technical and financial support of religious institutions, the Brookline Public Schools, and the Brookline Public Library. The renovation of the multipurpose athletic field, the most recent contribution to the Town, has been made in the name of the Kraft family, reflecting Bob Kraft's commitment to family, community, and stewardship.

Connecting the names of Kraft and Downes by naming the new athletic facility within Harry Downes Field “The Kraft Family Athletic Facility at Harry Downes Field” is fitting since the contributions of both have had a lasting impact on the lives of many in the Brookline community.
SELECTMEN’S RECOMMENDATION

Article 15 would name the new athletic facility within Harry Downes Field in honor of the Kraft Family of Brookline.

The Kraft Family has been active and generous participants in the Town for many years, providing financial and other types of support for the Brookline Public Schools, the Brookline Public Library, and religious institutions. The gift that will provide for renovation of the athletic field at Harry Downes exemplifies the Family’s ongoing commitment and dedication to the Town.

The Kraft Family roots in Brookline run deep. Robert Kraft, who was born in Brookline in 1942 and graduated from Brookline High School, still lives in Brookline with his wife Myra (Hiatt) Kraft. Mr. Kraft, an avid fan of football, played football at Columbia University, however, further research indicates that he did not play in Brookline under Harry Downes, as stated in the article explanation.

This proposal received the unanimous support of the Park and Recreation Commission. It was evaluated by the Brookline Naming Committee and deemed in accordance with the Naming Guidelines developed by the Committee and approved by this Board.

The Board of Selectmen is pleased to honor the Kraft Family in this way. We believe that the naming of the soon-to-be renovated field is a fitting and appropriate tribute to the generosity and involvement of the Kraft family in the Town.

We recommend FAVORABLE ACTION, by a vote of 5-0 taken on April 4, 2006, on the following vote:

VOTED: To name the new athletic facility within Harry Downes Field, a town park designated as Lot 300, Block 01-00 in the Town Assessor’s Atlas, as the “Kraft Family Athletic Facility at Harry Downes Field”.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
This article proposes to name the soon-to-be renovated athletic facility at Harry Downes Field, the Kraft Family Athletic Facility at Harry Downes Field. This action would honor the multiple contributions of the various members of the Kraft family of Brookline, while retaining the integrity of the original designation, Harry Downes Field, named in honor of a well-loved and respected coach at Brookline High School.

DISCUSSION
Bob Kraft the patriarch of the Kraft family, who is well-known as the owner of the New England Patriots, was born and raised in Brookline, attended Brookline High School, and
continues to live in Brookline with his family. They have contributed millions of dollars, many hours of time in volunteering, and technical assistance in support of local charities and civic causes, religious institutions of various denominations, the Brookline Public Schools and the Library, and one which is particularly relevant to the naming, the Krafts’ most recent contribution enabling the renovation of the athletic facility at Harry Downes Field. This naming of the facility is unanimously supported by the Park and Recreation Department which favors the naming of parks for citizens who have made significant contributions to the parks, in particular. This latest contribution by the Krafts will benefit the entire Brookline community, providing space for expanded use not only for rigorous sports activities but for many other types of public functions.

The Advisory Committee particularly wants to stress that naming honors should not be based on monetary considerations alone but on other worthwhile contributions as well. The Kraft family qualifies for this honor on many levels.

RECOMMENDATION
The Advisory Committee, by a vote of 17 in favor, 1 opposed, and 2 abstentions, recommends FAVORABLE ACTION on the vote offered by the Selectmen.
SIXTEENTH ARTICLE
To see if the Town Meeting will amend Brookline Town By-law Section 2.1.12
CHALLENGE TO THE VALIDITY OF AN ACTION TAKEN BY TOWN MEETING

as follows:

(Language in bold and underlined is additional language to be inserted in the by-law and language in brackets [ ] to be deleted)

SECTION 2.1.12 CHALLENGE TO THE VALIDITY OF AN ACTION TAKEN BY TOWN MEETING

Neither the Board of Selectmen, nor any department or agency which reports to the Board of Selectmen, shall file any petition or other document with the Attorney General or commence any legal proceeding contending that any action taken by Town Meeting is invalid,

or shall insert an article in the Warrant for any Annual or Special Town Meeting that in effect, challenges or causes the reconsideration of a zoning action taken by Town Meeting within two years of the prior action,

unless the following conditions have been complied with:

(a) Such petition, zoning petition, [or] other document or the commencement of such legal proceeding or of causing the reconsideration of a prior zoning action by Town Meeting within two years of the original action shall have been authorized by the Board of Selectmen; and

(b) Subsequent to such authorization, the Town Moderator and Town Counsel shall have been notified in writing of such action, and provided with copies of such petition or document or the documents prepared for the purpose of such court action at least seven days before any such document is filed with the Attorney General or any court.

No other elected Town board, nor any department or agency which reports to any such other elected Town board, shall file any petition or other document with the Attorney General or commence any legal proceeding contending that any action taken by Town Meeting is invalid, unless such Town board first authorizes such action and complies with the conditions described in sub-paragraphs (a) and (b), above.

Neither the Board of Selectmen nor any other elected board shall utilize the services of Town Counsel for the purposes of challenging an action taken by Town Meeting or of causing the reconsideration of a prior zoning action taken by Town Meeting within a two years of the original action. Town Counsel shall use his or her best efforts to defend the action taken by the Town Meeting upon receipt of notice under this by-law.

[In the event that Town Counsel is unable for any reason to defend such action, including without limitation that Town Counsel has expressed the opinion that such action is
illegal, the Moderator shall take such action as he or she deems necessary in order to present such defense, and Town Counsel may then represent the challenger on the Town Meeting action in controversy.]

Nothing in this Article shall be construed to prohibit any employee or elected official of the Town, acting in his or her individual capacity, from communicating with the Attorney General, filing a petition or other document with the Attorney General, or commencing legal proceedings, contending that any action taken by Town Meeting is invalid.

or act on anything relative thereto.

To insure that Town officials do not expend valuable resources on challenging or reversing an action taken by Town Meeting.

SELECTMEN’S RECOMMENDATION

Article 16 is a petitioned article that would amend the Town’s By-Laws to prohibit the Board of Selectmen, or any board appointed by them and any department that reports to them, from filing a warrant article that challenges or causes the reconsideration of a zoning action taken by Town Meeting within two years of the prior action. In effect, the segment of town government most involved in day to day zoning affairs would be restricted from taking an action (filing a warrant article) that the legislative branch - - or any registered voters, for that matter - - could take.

This Board does not believe the article is in the best interest of the Town. Neither the current Board nor future Boards should be summarily restricted in this fashion. If it were proposed to make it illegal for any Town Meeting Member to file a warrant article, for example, on abolition of the refuse fee, corporal punishment, or matters involving transportation policy for a two-year period, there would be understandable opposition to such a proposal. We are hopeful that Town Meeting will see the counterproductive nature of this article and consider the implications of beginning to impose restrictions on existing rights to file warrant articles.

The Board recommends NO ACTION, by a vote of 5-0 taken on April 4, 2006, on the article.

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

Article 16 proposes to amend the Town By-Laws so that any zoning amendment passed by Town Meeting could not be re-voted at a subsequent Town Meeting within two years. In addition, the petitioner intends that the article would not allow Town Counsel or
members of town boards or commissions to assist in writing articles that would be used to challenge a zoning amendment passed by Town Meeting.

**DISCUSSION**

As the town has been involved in assessing the ability of our zoning by-laws to protect the quality and character of Brookline neighborhoods, a number of zoning by-laws have come before Town Meeting with various revisions prior to a two-year waiting period. Most significantly, the zoning amendments to increase height, massing and FAR allowances for the Village Square Zoning District (5, 1 and 2 Brookline Place), which were originally voted down, were re-voted at a Special Town Meeting, less than three months after the original vote. The petitioner has questioned the validity of the Village Square District re-vote, in particular and the work of Town Counsel to assist the citizen petitioners who brought the re-vote forward.

Because the Planning Board did not support Town Meeting’s original vote in their final report, the procedure for bringing the zoning amendment back to a Special Town Meeting vote, while unusual, was consistent with the State General Laws, Chapter 40 A, Section 5.

In the matter of other zoning changes, it was felt that there certainly should be a continued discussion of how zoning amendments are brought to Town Meeting since the changes often meant to thwart unscrupulous developers, often impact homeowners looking to make simple changes to their properties.

The question of trust in the process of zoning enforcement seemed to be at the heart of this and other amendments addressing zoning. Rather than constant incremental changes to the zoning code, a more comprehensive look at neighborhood character and development concerns should be considered. The work underway through the Coolidge Corner IPOD study process could be a model for such work in other neighborhoods.

While zoning changes should be well thought out and receive careful and thorough review by town boards, committees and finally Town Meeting, the Advisory Committee felt that this proposed amendment would not be consistent with Massachusetts state law and would not necessarily improve the town’s work in updating and strengthening the Zoning By-Law.

**RECOMMENDATION**

The Advisory Committee unanimously (20-0) recommends NO ACTION on Article 16.

XXX
SEVENTEENTH ARTICLE

To see if the Town will amend Article 3.7 of the General By-Laws by adding the following language after the second sentence of Article 3.7.2 (b):

Recognizing that reduction in operating costs and increased environmental efficiency of Town buildings are in the Town’s best interest, the cost estimate for the project (including life-cycle costs) shall include a comparative analysis of the cost of using conventional materials, applications and technology to the use of sustainable materials, applications and technology (commonly referred to as “green technology”) as defined in the most current criteria of the LEED (Leadership in Energy and Environmental Design) Green Building Rating System® published by the United States Green Building Council, or comparable scoring system. This analysis shall give equal consideration to debt service and operating costs, including future utility costs adjusted for likely increases in the cost of energy. The format of this calculation shall be determined by the Building Commission, and the calculation of the initial investment and lifecycle costs for conventional and sustainable alternatives shall be documented and certified by the Chairman of the Building Commission or its representative, and made available to the public at least thirty days before appropriations are made for any subsequent phases.

or act on anything relative thereto.

Over the last few years, the cost of energy has risen dramatically. According to the Brookline Capital Improvement Program (CIP), over $52 million is projected for building renovations in the next few years. These renovations provide an opportunity to minimize the future impact of energy costs while also minimizing the negative impact on the environment. This article attempts to ensure that environmentally- and long-range fiscally-responsible alternatives are considered for new construction or major renovations, and the results of a comparative analysis between conventional and “green” alternatives be made public.

Higher costs can often be recovered over the life of the building through reduced energy usage, although initial costs of construction may be higher. For example, available statistics indicate that the cost of heating for domestic hot water can be reduced by up to 50%. In fact, the White house uses solar energy for heating both pool and domestic hot water.

Efficient use of energy and resources takes many forms: collection and re-use of water, use of natural light, and installation of energy-efficient appliances, high-performance insulation and glazing are but a few.
In summary, this article does not require that the most environmental or cost-effective method be used – only that analysis be performed and made public. In this manner, public accountability and visibility will be increased.

SELECTMEN’S RECOMMENDATION

Article 17 is a petitioned article that would require the Town to undertake a comparative analysis of the cost of using conventional building materials, applications and technology to the use of sustainable materials, applications and technology, or “green technology”. The Board agrees with the petitioner that environmentally responsible and long-range fiscally responsible alternatives to conventional construction should be considered in an effort to minimize the negative impact on the environment and minimize the impact of energy costs. However, the Board disagrees with the manner in which this should be accomplished.

The article would mandate the Building Commission to provide this analysis and certify it for “projects”, with no definition of what type of projects this analysis would be required for. If it is required for all building projects on the CIP - - regardless of whether it is a $100,000 project or a $50 million project - - the benefit of undertaking the analysis may not be worth the expense. This Board prefers to have the Building Commission adopt a policy on when and how to use green technology. In order to assist the Commission develop that policy, on April 25 the Board has created a Green Technology Committee that will make recommendations on what the policy should be. The vote the Board took to establish the Committee is as follows:

WHEREAS, climate change is an ever-increasing danger to society, and the use of “green” technology has many potential benefits in reducing Greenhouse gases and minimizing negative environmental impact; and WHEREAS, green technology becomes more financially attractive as energy costs escalate; and WHEREAS analysis and use of green techniques and applications could benefit the citizens of Brookline,

BE IT THEREFORE RESOLVED: The Selectmen hereby establish a committee on Green Technology. Said committee shall make recommendations on policies for the use of green technologies in Town building projects and other town activities. The Committee on Green Technology shall provide a report by the next annual Town Meeting discussing its recommendations to date.

The committee shall consist of the following members and be staffed by the staff of the Building Commission:
i. Member of the Board of Selectmen, appointed by the Chair of the Board
ii. Member of the School Committee, appointed by the Chair of the Committee
iii. Member of the Building Commission, appointed by the Chair of the Commission, with an alternate to be designated
iv. Member of the Planning Board, appointed by the Chair of the Board
v. Member of the Capital Sub-Committee of the Advisory Committee, appointed by the Chair of the Committee
vi. 4 residents with experience or interest in the use of green technologies in construction, to be appointed by the Board of Selectmen

In this era of $3 per gallon gasoline, electricity prices that have increased six-fold since the Town’s first post-deregulation contract in 1998, and heating expenses that have doubled or tripled, the Town needs to explore alternative sources of energy. This Board is confident that the Green Technology Committee will assist the Town in determining how and when such technologies should be used.

The Board recommends FAVORABLE ACTION, by a vote of 4 – 0 taken on April 25, 2006, on the following vote:

VOTED: To refer Article 17 to the Selectmen’s Committee on Green Technology.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Daly

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
Article 17 would require a comparative cost analysis by the town’s Building Commission whenever the town undertakes a building renovation or new construction. This analysis would evaluate the costs and potential savings that “Green Technology” could offer when compared to using conventional materials and technology. The petitioners point out that given the rapid increase in energy costs, there may be significant potential savings in energy costs in the future by considering new technologies now. The amendment to General By-Law 3.7 is intended to perform this analysis early in the planning process, that the process be available for public review, and leaves the decision as to what building technology is eventually used with the Building Commission. There is no
requirement to use Green Technology, only that the town evaluate energy efficiency and environmental concerns when undertaking significant projects.

**DISCUSSION**

The Advisory Committee questioned the cost of such an analysis, and estimates varied from “very minor” to 5% of the cost of the project. There was also the question of what items should be included in the analysis. What projects does this by-law apply to? What was the dollar value threshold for the required analysis? In addition, LEED certification is an evolving standard and expensive undertaking. Could the town afford it? Would the project scope have to change because of the introduction of green technology expenses? Who would balance the trade-offs and make the final determination? While the Advisory Committee feels that the intent of Article 17 has many merits, there are unanswered questions about the cost of the analysis, what would be analyzed, who would do the analysis, and who would make the final decisions. The process was unclear.

The Building Commission raised two major points:

1. In its present form they felt that the language of Article 17 is too broad, and the requirements proposed may be unduly burdensome and costly to the town. In addition while there are projects that would benefit from the analysis proposed there would be those for which it would be of minimal value.

2. The appropriate phase of project development to introduce the type of analysis suggested in Article 17 is before the Building Commission is fully involved. The environmental impacts and planning should begin at the stage when the “using agency” commissions a “feasibility study” on which a project’s scope and cost is based.

The petitioner modified the article to remove specific references to LEED, which some Capital Subcommittee members felt was an organization with some negative connotations (costs) and that it should not be included in the By-Law. The petitioner addressed the issue of the appropriate phase for undertaking the analysis by recommending the amendment to the By-Law be inserted in a different section, namely Section 3.7.2 PROJECT PROCEDURES (a).

The Advisory Committee feels that the subject of proper analysis for energy conservation is a paramount concern for the town, and that the type of analysis recommended by the petitioner must be done in a better way by the town. However, there are still many unanswered questions on just how this could optimally be implemented. In order for such a substantive change in process to really be effective, there must be a clear policy developed by the Selectmen and implemented by the administration of the town on the matter of the article. A majority of the Advisory Committee felt that the matter of the article should be referred to a committee to resolve the outstanding issues. There was some debate on whether the referral should be to a Selectmen’s Committee or a Moderator’s Committee. A majority thought that a Selectmen’s Committee would be most expedient and efficient.
RECOMMENDATION
On March 30, a majority of the Advisory Committee voted “to refer the subject matter of this article to the Selectmen to develop a policy and process that incorporates energy and environmental considerations, as described in the Article, whenever the Town undertakes the construction or renovation of Town buildings”. The Selectmen subsequently voted to establish a Green Technology Committee to “make recommendations on policies for the use of green technologies in Town building projects and other town activities”.

The Advisory Committee strongly supports the formation of this committee, but would like to recommend one change to its membership. The Advisory Committee would prefer that its Chair be able to appoint any qualified Advisory Committee member to serve on the Committee on Green Technology and not be limited to choosing a member of the Capital Subcommittee. While it would often make sense to appoint a member of the Capital Subcommittee, other Committee members might be equally capable.

With that minor change, the Advisory Committee unanimously (19-0) supports the Selectmen’s recommendation to refer Article 17 to the Selectmen’s Committee on Green Technology.

XXX
BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

The Advisory Committee recommended that the composition of the Selectmen’s Committee on Green Technology be amended by the Board so as to not restrict the Advisory Committee’s representative to just the Capital Sub-Committee. The Selectmen voted 5-0 at their May 9, 2006 meeting to make this change to the Green Technology Committee. The final composition is listed below.

 - 1 Member of the Board of Selectmen, appointed by the Chair of the Board
 - 1 Member of the School Committee, appointed by the Chair of the Committee
 - 1 Member of the Building Commission, appointed by the Chair of the Commission, with an alternate to be designated
 - 1 Member of the Planning Board, appointed by the Chair of the Board
 - 1 Member of the Advisory Committee, appointed by the Chair of the Committee
 - 4 residents with experience or interest in the use of green technologies in construction, to be appointed by the Board of Selectmen
ARTICLE 18

EIGHTEENTH ARTICLE
To see if the Town will amend the General By-Laws by adding an Article 3.19 as follows:

Article 3.19  MANDATORY EDUCATIONAL TRAINING FOR ALL ELECTED AND APPOINTED OFFICIALS

3.19.1  APPLICABILITY

This by-law is intended to apply to all elected officials (though not Town Meeting Members unless serving on a Board, Committee or Commission) including but not limited to members of the Board of Selectmen and School Committee and appointed members of all boards, commissions, committees or sub-committees however constituted (hereinafter referred to collectively as “Elected and Appointed Officials”).

3.19.2  MANDATORY EDUCATIONAL TRAINING

All Elected and Appointed Officials shall within ninety (90) days of (prior to or post) their election or re-election to office or appointment or re-appointment to a board, commission, committee or sub-committee, attend an educational training seminar hosted by the Office of Town Counsel which shall include the requirements of the Open Meeting Law, Public Records Law, and Conflict of Interest Law, or in the alternative shall meet with Town Counsel or a member of his/her staff to receive such information and training.

3.19.3  NOTICE OF COMPLIANCE

Upon completing the required training, aforesaid, Town Counsel shall notify the Town Clerk and Town Administrator in writing of the names of those Elected and Appointed Officials who have completed the training.

3.19.4  NON-COMPLIANCE AND ENFORCEMENT

Should an Elected or Appointed Official fail to participate in the required training within the mandatory ninety (90) days (prior to or post-election or re-election or appointment or re-appointment) then the Town Clerk shall forthwith send written notice thereof to the Chair of each Board or Committee whose members are elected and, in the case of appointed officials, to the appointing authority responsible for appointing each board, commission, committee or subcommittee whose members are appointed, whether the Board of Selectmen or the Town Moderator, as well as the relevant Chairperson of the Board, Committee or Commission. It will be within the discretion of the appointing authority to extend the time of compliance an additional 30 days, or to exercise any rights or privileges of its discretionary authority. The Town Clerk shall maintain a Public Record of Compliance by Elected and Appointed Officials, available for viewing by the Public upon request.

or act on anything relative thereto.
Brookline professionals largely constitute the Town’s Boards, Commissions and Committees and Subcommittees and are often employed in the industry which their respective public body addresses. Yet, few have any training as public servants in the “Three Legs” of New England’s democratic Town governance, namely: laws concerning Public Meetings, Public Records (their creation and maintenance), and Conflict of Interest.

Nationwide, few schools teach “Civics”, the traditional forum for “Good Government” training. Many Brookline residents are unaware of the nature or structure of Brookline’s local government (Representative Town Meeting, and a Board of Selectmen) yet desire to contribute expertise to the Town.

As fortunate as we might be to have this expertise, nevertheless, democratic process must be well-served and protected. “Public Servants”, whether volunteers or elected officials are trustees of the public good, and, as such, have a fiduciary duty to adhere to all pertinent laws. In turn, the law recognized the important role of the public in the “checks and balances” of its public servants. Under no circumstances may the obligations to the public and its good be obviated, circumvented, or neglected, intentionally or unintentionally.

In the past four (4) years, both Town Counsel and the Town Meeting Members Association sponsored several tutorials concerning Public Meetings, Public Records, and Conflict of Interest. Unfortunately, few appointed and elected Officials have attended these highly expert tutorials, a phenomenon repeated throughout the State, according to officials.

Inadvertent violations reportedly abound, and are arguably more rife than six years ago. Most recent examples: Several newly-appointed, well-meaning ad hoc committees this year questioned whether they even “had to” take minutes, and were incredulous when informed it was their duty to take minutes according to legal guidelines, including retention in a Town depository for a specified period of time.

Another Board routinely conducted and deliberated public business on e-mail and/or phone, away from public scrutiny. When apprised that these forms of deliberation were illegal, they were quite sure “no such prohibition could exist (since) it makes no sense” and refused to cease its practice unless Town Counsel advised that such practice was illegal. While Town Counsel did so as soon as she was apprised of the situation, six weeks and two additional board meetings elapsed before the Board in question was so apprised, and then only upon the action of a citizen. Despite verbal assurances, neither staff nor Board members had followed through with promised to ask Town Counsel for an opinion.

Finally, the recent substantive delay of the Coolidge Corner IPOD, potentially incurring economic consequences, might well have been avoided had all participants understood their civic requirements to report any conflict of interest, or even the appearance of any conflict of interest.
MOTION TO BE OFFERED BY THE PETITIONER

To see if the Town will amend the General By-Laws by adding an Article 3.19 as follows:

Article 3.19  MANDATORY EDUCATIONAL TRAINING FOR ALL ELECTED AND APPOINTED OFFICIALS

3.19.1  APPLICABILITY

This by-law is intended to apply to all elected and appointed officials (hereinafter collectively referred to as “Elected and Appointed Officials”) who are elected or appointed after the effective date of this by-law. This by-law shall not apply to Town Meeting Members unless serving on a Board, Committee or Commission, or to Design Advisory Teams (DAT’s), or to committees formed in individual schools, however constituted.

3.19.2  MANDATORY EDUCATIONAL TRAINING

All elected and appointed officials shall within one hundred and twenty (120) days before or after their election or appointment to a board, commission, committee or sub-committee, attend an educational training seminar hosted by the Office of Town Counsel which shall include the requirements of the Open Meeting Law and Conflict of Interest Law. In the alternative, members may meet with Town Counsel, or a member of his/her staff, to receive such information and training.

3.19.3  NOTICE OF COMPLIANCE

Upon completing the required training, Town Counsel shall notify the Town Clerk and Town Administrator, in writing, of the names of those Elected and Appointed Officials who have completed the training.

3.19.4  NON-COMPLIANCE AND ENFORCEMENT

Should an Elected or an Appointed Official fail to participate in the required training within the mandatory one hundred and twenty (120) days, the Town Administrator shall notify in writing the appointing authority, the appropriate Chairman, and the Town Clerk of the names of the individuals in non-compliance. It will be within the discretion of the appointing authority to extend the time of compliance an additional 30 days. The Town Clerk shall maintain a Public Record of Compliance and Non-Compliance by Elected and Appointed Officials, available for viewing by the Public upon request.

or act on anything relative thereto.
SELECTMEN’S RECOMMENDATION

Article 18 is a petitioned article that would, as revised by the petitioner, mandate that all newly elected officials and officials appointed to boards, commissions, committees, or sub-committees attend educational training seminars on the Open Meeting Law and Conflict of Interest Law. Newly elected and appointed officials, who are elected or appointed after the effective date of this by-law, would have a window of 120 days before...
or after their election or appointment to attend a seminar hosted by the Office of Town Counsel.

Brookline’s government benefits greatly from the many citizens fulfilling their civic duties by serving as an elected or appointed official. The Board agrees with the petitioner that it is important for these elected and appointed officials to be informed about, and comply with, the Open Meeting Law and Conflict of Interest Law. The Town’s current practice is for the Town Clerk’s office to provide citizens who are sworn in as a Board or Committee member with copies of the Open Meeting Law and Conflict of Interest Law. This proposal would be more extensive than the current system.

The vote of the Advisory Committee is slightly different from the Selectmen’s. The Board will take up Article 18 again prior to the commencement of Town Meeting to discuss the language difference.

The Board recommends FAVORABLE ACTION, by a vote of 4-0 taken on April 25, 2006, on the following vote:

VOTED: That the Town amend the General By-Laws by adding an Article 3.19 as follows:

Article 3.19  MANDATORY EDUCATIONAL TRAINING FOR ALL ELECTED AND APPOINTED OFFICIALS

3.19.1  APPLICABILITY

This by-law is intended to apply to all elected and appointed officials (hereinafter collectively referred to as “Elected and Appointed Officials”) who are elected or appointed after the effective date of this by-law. This by-law shall not apply to Town Meeting Members unless serving on a Board, Committee or Commission, or to Design Advisory Teams (DAT’s), or to committees formed in individual schools, however constituted.

3.19.2  MANDATORY EDUCATIONAL TRAINING

All elected and appointed officials shall within one hundred and twenty (120) days before or after their election or appointment to a board, commission, committee or subcommittee, attend an educational training seminar hosted by the Office of Town Counsel which shall include the requirements of the Open Meeting Law and Conflict of Interest Law. In the alternative, members may meet with Town Counsel, or a member of his/her staff, to receive such information and training.

3.19.3  NOTICE OF COMPLIANCE

Upon completing the required training, Town Counsel shall notify the Town Clerk and Town Administrator, in writing, of the names of those Elected and Appointed Officials who have completed the training.
3.19.4 NON-COMPLIANCE AND ENFORCEMENT

Should an Elected or an Appointed Official fail to participate in the required training within the mandatory one hundred and twenty (120) days, the Town Administrator shall notify in writing the appointing authority, the appropriate Chairman, and the Town Clerk of the names of the individuals in non-compliance. It will be within the discretion of the appointing authority to extend the time of compliance an additional 30 days, or to exercise any rights or privileges of its discretionary authority. The Town Clerk shall maintain a Public Record of Compliance and Non-Compliance by Elected and Appointed Officials, available for viewing by the Public upon request.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Daly

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
Article 18 sets a by-law in place to train all elected officials about the requirements of the Open Meeting Law, Public Records Law, and Conflict of Interest Law to comply with Massachusetts State Law. This training would be conducted by the Office of the Town Counsel. It is expected that the training sessions would last one-two hours. Town Counsel has offered to hold these training sessions at pre-scheduled times during the year.

The training seminar(s) would provide guidance on: how to properly provide “notice” of a meeting or a hearing; define appropriate use of “Executive Sessions”; provide clarification on the implications of using real-time electronic communications (e-mail, instant-messaging, telephone, etc.); and encourage public participation.

This article is intended to have all elected officials, members of official committees, boards, and subcommittees go through this training once every three years. All elected and appointed officials would have 120 days before or after their election or appointment to a board, commission, committee or subcommittee to participate in this training. It also allows individuals to receive this training and information from the Town Counsel, or a member of her staff.

The Town Administrator would send a complete list of all elected and appointed individuals covered by this by-law to Town Counsel. Town Counsel would send a list of those individuals who had attended the training seminar(s) to the Town Clerk. These lists would be available to the public at the Office of the Town Clerk.
Non-compliance would lead the Town Clerk’s office to send written notification to the appropriate board or committee chair (or the appropriate appointing authority). The appointing authority does have the privilege of extending the time of compliance by an additional 30 days.

**DISCUSSION**

The petitioner has been an active participant at a number of board and committee meetings and noted that there has been a decline in the level of professionalism in town committees, boards, and commissions over the past years. The petitioner felt that this wasn’t being seriously addressed by the town leadership after having made repeated attempts to have the town address it. The petitioner spoke with Town Counsel after at least two incidents citing violations of Massachusetts State Law where:

Committee and board members would “discuss” issues over the internet via e-mail or over the telephone instead of at their meetings which was in violation of the State Ethics Commission rules. The Selectmen would hold their (now) regularly scheduled televised meeting, but when there were “sensitive” issues, they would change the time of the meeting but “fail” to notify the television staff to come at the earlier time of the meeting so that the public wouldn’t see televised or recordings of what actually occurred at the meeting.

Town Counsel had responded and notified the appropriate elected and appointed officials to comply with the State Laws. The lack of consistency of this compliance is one of the compelling issues behind this by-law.

The Advisory Committee discussed the impact of this training on the Office of the Town Counsel, who would provide training for as many as 200+ individuals, and the amount of time these people would need to spend in order to be properly trained. It was suggested that pamphlets, booklets, and leaflets could be given to individuals, or that an on-line tool could be designed to teach and educate these individuals and made available to all.

It isn’t a proven fact one way or the other, that mandatory training increases or decreases public participation in town boards and committees. There isn’t a practical way to address this issue in this by-law.

The petitioner is concerned that the training needs to be implemented sooner, as opposed to later. There is a growing trend of litigation nationwide. Violations of these laws are increasing across the state. Fines are being imposed on municipalities, and potentially, individuals for non-compliance with open-meeting and conflict of interest laws. Better decision-making could be achieved with properly held public meetings and improved public participation.

There is no provision for any penalty for not being trained. Negative publicity based on the Public Record may be a factor in one’s decision to submit to this training. The Personnel Subcommittee of the Advisory Committee felt that individual board and committee members could make their own decision whether or not to comply if this by-law is approved.
After two public hearings, the Personnel Subcommittee unanimously (3-0) supported the adoption of this by-law. The Advisory Committee, in a vote on April 25, 2006, supported the adoption of the by-law (13-8).

The Board of Selectmen made a recommendation to extend the time period for training to 120 days before or after election or appointment. The Advisory Committee voted (on April 27, 2006) and agreed with the Board of Selectmen’s recommendation to define the period for training to 120 days before or after election or appointment.

RECOMMENDATION
The Advisory Committee discussed the issues around the practicality of training 200+ people. By a new vote (13-6), held on April 27, 2006, the Advisory Committee decided to change the wording in the proposed by-law from “attend training” to “participate in training” and to change “training seminar hosted by the Office of the Town Counsel” to “training hosted or designed by the Office of the Town Counsel”. This change was made to accommodate the potential for a wider variety of training methodologies to be used to train our elected and appointed officials. These methodologies could include seminars, meetings, fact sheets, check sheets, on-line training, and/or other on-line resources.

It should be noted that the petitioner is really concerned that our elected and appointed officials actually attend a training session. A minority of the Advisory Committee concurred. It was noted that you sometimes learn more from someone else asking a question that you hadn’t thought of, and that you wouldn’t learn this from an on-line experience.

The Advisory Committee, after extensive discussion, recommends, by a vote of 13 in favor and 6 opposed, FAVORABLE ACTION the following vote:

VOTED: That the Town will amend the General By-Laws by adding an Article 3.19 as follows:

Article 3.19 MANDATORY EDUCATIONAL TRAINING FOR ALL ELECTED AND APPOINTED OFFICIALS

3.19.1 APPLICABILITY

This by-law is intended to apply to all elected and appointed officials (hereinafter collectively referred to as “Elected and Appointed Officials”) who are elected or appointed after the effective date of this by-law. This by-law shall not apply to Town Meeting Members unless serving on a Board, Committee or Commission, or to Design Advisory Teams (DAT’s), or to committees formed in individual schools, however constituted.

3.19.2 MANDATORY EDUCATIONAL TRAINING

All elected and appointed officials shall within one hundred and twenty (120) days before or after their election or appointment to a board, commission, committee or sub-committee, participate in an educational training hosted or designed by the Office of Town Counsel which shall include the requirements of the Open Meeting Law, and
Conflict of Interest Law. In the alternative, members may meet with Town Counsel, or a member of his/her staff, to receive such information and training.

3.19.3 NOTICE OF COMPLIANCE

Upon completing the required training, Town Counsel shall notify the Town Clerk and Town Administrator, in writing, of the names of those Elected and Appointed Officials who have completed the training.

3.19.4 NON-COMPLIANCE AND ENFORCEMENT

Should an Elected or an Appointed Official fail to participate in the required training within the mandatory one hundred and twenty (120) days, the Town Administrator shall notify in writing the appointing authority, the appropriate Chairman, and the Town Clerk of the names of the individuals in non-compliance. It will be within the discretion of the appointing authority to extend the time of compliance an additional 30 days. The Town Clerk shall maintain a Public Record of Compliance and Non-Compliance by Elected and Appointed Officials, available for viewing by the Public upon request.

XXX
ARTICLE 18

REVISED MOTION TO BE OFFERED BY THE PETITIONER

Moved: That the Town amend the General By-Laws by adding an Article 3.19 as follows:

Article 3.19  MANDATORY EDUCATIONAL TRAINING FOR ALL ELECTED AND APPOINTED OFFICIALS

3.19.1  APPLICABILITY

This by-law is intended to apply to all elected and appointed officials (hereinafter collectively referred to as “Elected and Appointed Officials”) who are elected or appointed after the effective date of this by-law. This by-law shall not apply to School Committee members under any circumstances or Town Meeting Members unless serving on a Committee as defined in Section 1.1.4 (c) of these By-Laws, or to Design Advisory Teams (DAT’s), or to committees formed in individual schools, however constituted.

3.19.2  MANDATORY EDUCATIONAL TRAINING

All Elected and Appointed Officials shall within one hundred and twenty (120) days before or after their election or appointment to a Committee or Sub-committee, attend an educational training seminar hosted by the Office of Town Counsel which shall include the requirements of the Open Meeting Law and Conflict of Interest Law. In the alternative, members may meet with Town Counsel, or a member of his/her staff, to receive such information and training.

3.19.3  NOTICE OF COMPLIANCE

Upon completing the required training, Town Counsel shall notify the Town Clerk and Town Administrator, in writing, of the names of those Elected and Appointed Officials who have completed the training.

3.19.4  NON-COMPLIANCE AND ENFORCEMENT

Should an Elected or an Appointed Official fail to participate in the required training within the mandatory one hundred and twenty (120) days, the Town Administrator shall notify in writing the appointing authority, the appropriate Chairman, and the Town Clerk of the names of the individuals in non-compliance. It will be within the discretion of the appointing authority to extend the time of compliance an additional 30 days. The Town Clerk shall maintain a Public Record of Compliance and Non-Compliance by Elected and Appointed Officials, available for viewing by the Public upon request.
BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

Since the Board’s April 25th vote on Article 18, as contained in the Combined Reports, the Board has had further discussions on the article due to (a) changes the Advisory Committee made and (b) concerns raised by the School Committee. Members of the School Committee notified the Selectmen that MGL Chapter 71, Section 36A requires school committee members to undertake eight hours of orientation concerning the responsibilities of their office, including the Open Meeting Law and the Conflict of Interest Law. The Massachusetts Association of School Committees (MASC) provides this mandated training to school committee members.

Since this is already mandated by state law, the School Committee should be exempted from the training proposed under Article 18. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on May 16, 2006, on the following vote. (Note: the Selectmen’s recommended vote is the same as the Petitioner’s Revised Motion with one exception: in Section 3.19.2, the petitioner uses the word “attend” whereas the Board uses the words “participate in”.)

VOTED: That the Town amend the General By-Laws by adding an Article 3.19 as follows:

Article 3.19  MANDATORY EDUCATIONAL TRAINING FOR ALL ELECTED AND APPOINTED OFFICIALS

3.19.1  APPLICABILITY

This by-law is intended to apply to all elected and appointed officials (hereinafter collectively referred to as “Elected and Appointed Officials”) who are elected or appointed after the effective date of this by-law. This by-law shall not apply to School Committee members under any circumstances or Town Meeting Members unless serving on a Committee as defined in Section 1.1.4 (c) of these By-Laws, or to Design Advisory Teams (DAT’s), or to committees formed in individual schools, however constituted.

3.19.2  MANDATORY EDUCATIONAL TRAINING

All Elected and Appointed Officials shall within one hundred and twenty (120) days before or after their election or appointment to a Committee or Sub-committee, participate in an educational training seminar hosted by the Office of Town Counsel which shall include the requirements of the Open Meeting Law and Conflict of Interest Law. In the alternative, members may meet with Town Counsel, or a member of his/her staff, to receive such information and training.
3.19.3 NOTICE OF COMPLIANCE

Upon completing the required training, Town Counsel shall notify the Town Clerk and Town Administrator, in writing, of the names of those Elected and Appointed Officials who have completed the training.

3.19.4 NON-COMPLIANCE AND ENFORCEMENT

Should an Elected or an Appointed Official fail to participate in the required training within the mandatory one hundred and twenty (120) days, the Town Administrator shall notify in writing the appointing authority, the appropriate Chairman, and the Town Clerk of the names of the individuals in non-compliance. It will be within the discretion of the appointing authority to extend the time of compliance an additional 30 days. The Town Clerk shall maintain a Public Record of Compliance and Non-Compliance by Elected and Appointed Officials, available for viewing by the Public upon request.

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ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

Requirements of the State’s Education Reform (G.L. c. 71, 36A) provide mandatory training for School Committee members in Open Meeting and Conflict of Interest laws. Under the State provisions, School Committee members, within 1 year of election, shall complete at least 8 hours of training, which includes the above mention topics.

The School Committee raised concerns that if Town Meeting were to adopt the proposed by-law offered under Article 18, that they would be required to attend an additional, and redundant, training session. The petitioner indicated that was not the intent of the proposed by-law.

The amended language to the vote offered under Article 18 explicitly makes accommodations for School Committee members by exempting them from additional Town training, should Town Meeting adopt this by-law.

Therefore, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.
ARTICLE 19

NINTEENTH ARTICLE
To see if the Town will amend the General By-Laws by adding an Article 3.20 as follows:

ARTICLE 3.20  MANDATORY EVENING MEETINGS FOR TOWN MEETING-CREATED STUDY OR AD HOC COMMITTEES

APPLICABILITY

This by-law is intended to apply to any committee which was created by vote of Town Meeting, and whether appointed by the Board of Selectmen or the Town Moderator.

All Committees or Studies, by whatever classification, created by vote of Town Meeting shall conduct at least half of its meetings during evening hours and shall be subject to all Public Meeting, Public Record, and Conflict of Interest laws. All meetings at which an Expert or Consultant to advise the committee is expected to attend shall be held during evening hours.

or act on anything relative thereto.

Often, when highly controversial articles appear on the Warrant, Town Meeting votes to create a Study Committee (or some iteration of an Ad Hoc Committee) to report its findings back to Town Meeting. Yet, increasingly, nearly all these Town Meeting-created committees or study groups hold their meetings on weekday mornings, at times, they say, are convenient for the committee members. However, they usually are inconvenient for the very Town Meeting Members whose vote created the committee.

It is important that Town Meeting Members be able to attend at least half these committee meetings, and that, when an expert or consultant will attend to offer professional opinions, advice, or information, that all such meetings be held exclusively during evening hours, and in full compliance with all Public meeting, Public Records, and Conflict of Interest laws.

MOTION TO BE OFFERED BY THE PETITIONER

To see if the Town will amend the General By-Laws by adding an Article3.20 as follows:
ARTICLE: 3.20    APPLICABILITY

This by-law is intended to apply to any committee which was created by vote of Town Meeting, or which must report its findings and/or recommendations to Town Meeting, and whether appointed by the Board of Selectmen or the Town Moderator.

3.20.1 All Committees or Studies, by whatever classification, either created by a vote of Town Meeting or which must report its findings and/or recommendations to Town Meeting, shall conduct at least half of its meetings no earlier than five (5) p.m. and shall be subject to all Public Meeting, Public Record, and Conflict of Interest laws.

3.20.2 At meetings in which an Expert or Consultant to the committee is expected to attend, a good faith effort shall be made to schedule those meetings no earlier than five (5) p.m.

or act on anything relative thereto.

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Often, when highly controversial articles appear or are likely to appear on the Warrant, Town Meeting votes to create a Study Committee (or some iteration of an Ad Hoc Committee) to report its findings back to Town Meeting. Yet, increasingly, these study groups created by or for Town Meeting hold their meetings on weekday mornings, at times, they say, are convenient for the committee members. However, they usually are inconvenient for the very Town Meeting Members whose vote might have created the committee or whose report will ultimately lead to a Town Meeting Warrant Article, and on which Town Meeting will likely be asked to take a position.

It is important that Town Meeting Members be able to attend at least half these committee meetings, and that, when an expert or consultant will attend to offer professional opinions, advice, or information, that such meetings be held no earlier than five (5) p.m. whenever possible, ad in full compliance with all Public Meeting, Public Records, and Conflict of Interest laws.

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SELECTMEN’S RECOMMENDATION

Article 19 is a petitioned article that would amend Town By-Laws to mandate that a percentage of the meetings held by a committee created by vote of Town Meeting be held in the evening hours.

This Board places a high value on public process and input. We recognize that it is not possible for some citizens to attend meetings during the workday. At the same time, it has been our experience that many committees prefer to meet in the morning instead of the
evening. This is often the case with special purpose committees that frequently have members who are designated from standing town committees that usually schedule their meetings in the evening anyway. In general, all committees make their best efforts to schedule meetings at times that are convenient for as many people as possible.

The Selectmen were unable to reach a consensus that the meeting times for a committee be mandated by a by-law. Factors such as committee member schedules and meeting room availability place limitations on when and where a meeting may be held. A motion for No Action was made and the vote was 2-2 (Allen and Daly for No Action and Hoy and Sher against No Action), so there is no recommendation by the Board at this time. The Board may take up the article prior to the commencement of Town Meeting. If it does, a supplemental report will be provided to Town Meeting.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
The petitioner was moved to propose this article out of concern that increasingly town-created ad hoc committees or study groups are scheduling their meetings on weekday mornings, which is often inconvenient for the public, especially those who work and in particular, for the very Town Meeting members who sought to create those committees.

The article seeks to require that at least half of the meetings be held in the evening.

DISCUSSION
Concern was expressed that committees might not be able to secure the services of needed specialists who might not be available or willing to meet in the evening. The petitioner agreed to compromise on this aspect of the by-law (the second paragraph), which includes meetings where an expert consultant would be required), substituting the mandate and amending the by-law to read that at such meetings, a good-faith effort be made to hold such meetings in the evening in full compliance with all Public Meeting Records and Conflict of Interest laws.

There was discussion as to whether there was a difference between “meeting” and “hearing” and whether it was legitimate to view the two differently. Often meetings are held to gather, or request, basic information rather than to fully discuss or debate the relevant issue.

Discussion was also had around the issues of providing comp’ time to employees for spending more of their evenings in meetings, as well as any other associated costs (energy, etc.) in requiring more evening meetings. The prospect of providing a provision
for a waiver by the appointing authority, should it deem it necessary to avoid jeopardizing the charge of a given committee, was also mentioned.

The Advisory Committee recognizes the importance of public input and participation, but felt that circumstances vary and that this does not belong in a by-law. Most committee meetings are already scheduled during evening hours, but sometimes this can be difficult for the participants (both committee members and staff). Committee members tend to be active in the community and often must attend a number of meetings throughout the week or several in a given day. Not everyone works the traditional 9-5 schedule. It can be very difficult to find and schedule meeting space in the evenings.

The Advisory Committee felt this article raised good issues with respect to accommodating input from the public. But, felt the proposed amendment built in a subjective judgment and that the 50% minimum requirement with little flexibility was overly prescriptive.

RECOMMENDATION
The Advisory Committee, by a vote of 11 in favor of the motion for no action and 8 opposed, recommends NO ACTION on Article 19.
ARTICLE 19

Petitioner’s Motion As It Will Be Allowed by The Moderator

To see if the Town will amend the General By-Laws by adding an Article 3.20 as follows:

ARTICLE: 3.20 APPLICABILITY

This by-law is intended to apply to any committee which was created by vote of Town Meeting, and whether appointed by the Board of Selectmen or the Town Moderator.

3.20.1 All Committees or Studies, by whatever classification, created by a vote of Town Meeting shall conduct at least half of its meetings no earlier than five (5) p.m. and shall be subject to all Public Meeting, Public Record, and Conflict of Interest laws.

3.20.2 At meetings in which an Expert or Consultant to the committee is expected to attend, a good faith effort shall be made to schedule those meetings no earlier than five (5) p.m. or act on anything relative thereto.

BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

Article 19 would require any committee created by a vote of Town Meeting to hold at least half of its public meetings after 5:00 p.m. This Board places a high value on public process and input. We recognize that it is not possible for some citizens to attend meetings during the workday. At the same time, it has been our experience that many committees prefer to meet in the morning instead of the evening. This is often the case with special purpose committees that frequently have members who are designated from standing town committees that usually schedule their meetings in the evening anyway. In general, all committees make their best efforts to schedule meetings at times that are convenient for as many people as possible.

Selectman Hoy recommended that the article be approved with a requirement of 25% morning meetings and 25% evening meetings. However, that motion failed by a 4-1 vote. The Board then voted No Action 5-0 against Article 19. The Board later reconsidered the article and voted favorably 5-0 on a resolution that stated: “With regard to any committee which is created by vote of Town Meeting, and whether appointed by the Board of Selectmen or the Town Moderator, it is the position of this Town Meeting that reasonable efforts should be made to ensure that all such committees or studies, by whatever classification, created by a vote of Town Meeting, shall conduct at least 25% of their meetings no earlier than five (5) p.m. and 25% of their meetings no later than 9:30 a.m.” However, the Moderator has since
determined that this resolution is not allowable and therefore can not be presented to Town Meeting for consideration.
ARTICLE 20

TWENTIETH ARTICLE
Warrant Article for a Town By-Law to be added to “Section 4.1.3 AUDIT REPORTS”

All reports by the Independent Auditor shall be posted on the Town Website and shall be posted in a timely manner.

All reports by the Independent Auditor shall be placed in the BROOKLINE ROOM at the Main Library and shall be bound together with the Annual Report of the Town of Brookline of the same year. For example: the “2006 Brookline Annual Report” and “2006 Audit Report” are to bound together in one volume.

or act on anything relative thereto.

Computers are in general use today. Posting the Independent Auditors Report on the Town of Brookline Website would greatly increase the availability of this information to all citizens and to their Town Meeting Members.

The Brookline Room of the Public Library has the Brookline Annual Reports for every year on its appropriate shelf. All but the recent “Brookline Annual Report” are accompanied by the Independent Auditor’s Reports for the same year. Binding the two together, as had been done as an annual practice until recently, is the better practice. Both reports should be bound together for complete annual documentation.

PETITIONER’S MOTION UNDER ARTICLE 20

Moved to amend the Town By-laws by adding the following sentence to Section 4.1.3, Audit Reports:

"Each such report shall be posted on the Town website in a timely manner and shall be deposited in the Main Library and bound together with the Annual Report of the Town for such year."

SELECTMEN’S RECOMMENDATION

Article 20 is a petitioned article that would amend Town By-Laws to mandate that copies of the Town’s Audit reports be a.) bound together with the Town’s Annual Report and b.) available at the Main Library in the Brookline Room.
Section 4.1.3 of the Town’s By-laws states that “All reports by the independent auditor shall be available for inspection by citizens of the Town during regular business hours.” Copies of the Town’s audit reports are currently available during business hours at the Comptroller’s Office (Town Hall) and the Main Library. The reports are also available on the Town’s website: www.townofbrooklinemass.com/Selectmen/FinancialReports.html

Town Librarian Chuck Flaherty expressed concerns about mandating in the by-law the exact room location of the reports housed at the Library. The Board shares his concerns and, for that reason, proposes a vote to list the general locations where the reports may be viewed. It should also be noted that, as a policy, the Board promotes the posting of Town documents on the Town’s website, and encourages citizens to make use of this valuable resource which can be accessed any time of day or night.

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on April 4, 2006, on the following vote:

VOTED: That the Town amend Section 4.1.3 of the Town’s By-Laws in the following manner:

SECTION 4.1.3 AUDIT REPORTS

All reports by the independent auditor shall be available for inspection by citizens of the Town during regular business hours at the Town’s offices. The audit report shall also be made available at the Main Library.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

This article seeks an addition to Section 4.1.3 of the Town’s By-laws to require that all annual reports by the town's independent auditor be posted on the Town Website and further that these reports be placed in the Brookline Room of the Main Library and bound together with each respective year’s Annual Report of the Town of Brookline.

DISCUSSION

Section 4.1.3 of the By-laws already requires that the independent auditor reports be available for inspection at Town Hall during normal business hours. In addition, for the last half-dozen or so years, these reports have been regularly posted on the Town Website, and copies have been delivered to the Main Library where they have been placed in the Brookline Room and bound with the respective year’s Annual Reports, except that during the recent Main Library renovation, this binding operation was briefly interrupted. So the requirements of this proposed By-law addition are already being carried out as a matter of policy. Furthermore, it is far from clear that it would be wise or even appropriate for Town Meeting to provide detailed instructions to the professional
library staff as to the best ways of making the town’s independent auditor reports readily accessible to the public, especially in view of the fact that library policy is legally entrusted to the independently elected Board of Library Trustees.

RECOMMENDATION
The Advisory Committee is supportive of the petitioner’s intent to have the town’s independent auditor’s reports widely available for public inspection and agrees that it is reasonable to add a requirement (already being carried out in practice) that these reports be made accessible at the Main Library as well as at Town Hall offices without, however, specifying specifically how and where the reports are to be maintained at the library. Accordingly, the Advisory Committee, by a vote of 14 in favor and 4 opposed, recommends FAVORABLE ACTION on the vote offered by the Selectmen.
ARTICLE 21

TWENTY-FIRST ARTICLE
To see if the Town will amend the General By-Laws by amending Article 4.3 – Contracts – Prohibited Practice by adding the following:

4.3.6 Former Municipal Employees Prohibited from Acting as Attorney or Agent in Certain Matters

Notwithstanding the provisions of General Laws Chapter 268A, Section 18, no former municipal employee as that term is defined by G.L.c.268A, Section 1 (g) shall receive compensation from or represent a third party in any particular matter in which he/she participated in as a municipal employee. Furthermore, a former municipal employee is prohibited for three years after their last employment or appointment with the Town has ceased, to appear personally before any Agency, Board, Commission or Committee of the Town on behalf of a third party if, within three years prior to his/her last day of employment/appointment the matter was under his/her general, official or overall responsibility. This Article shall take effect 1 July 2006.

or act on anything relative thereto.

There has been much talk about perceived undue influence when former officials appear, after only a year, representing clients before Town Boards, Commissions or Agencies to which they participated in appointment of members, worked with in one way or another or as a member with these bodies. Passage of this Article will improve the Town’s image and the confidence of our citizenry.

PETITIONER’S MOTION UNDER ARTICLE 21
To see if the Town will amend the General By-Laws by amending Article 4.3 – Contracts – Prohibited Practice by adding the following:

4.3.6 Former Municipal Employees Prohibited from Acting as Attorney or Agent in Certain Matters

Notwithstanding the provisions of General Laws Chapter 268A, Section 18, no former municipal employee as that term is defined by G.L.c.268A, Section 1 (g) shall receive compensation from or represent a third party in any particular matter in which he/she participated in as a municipal employee. Furthermore, a former municipal employee is prohibited for three years after their last employment or appointment with the Town has
ceased, to appear personally before any Agency, Board, Commission or Committee of the Town on behalf of a third party if, within three years prior to his/her last day of employment/appointment the matter was under his/her general, official or overall responsibility. This Article shall take effect 1 July 2006. The provisions contained in the second sentence of this Article with respect to the three-year prohibition shall not apply to municipal employees appointed, elected or otherwise engaged to perform services for the Town prior to the effective date of this Article and for all such municipal employees the one-year prohibition provided in General Laws Chapter 268A, the so-called Commonwealth of Massachusetts Conflict of Interest law shall apply.

SELECTMEN’S RECOMMENDATION

Due to uncertainty as to the petitioner’s intentions on his revised motion, the Board of Selectmen was unable to take a position on the article. The Board will make a recommendation prior to the commencement of Town Meeting and submit its report to Town Meeting.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
Current Massachusetts State law prohibits former Municipal Employees from acting as attorneys or agents in certain matters for one year after service (Chapter 268A). This article seeks to increase to three years that prohibition for former Municipal Employees (paid, appointed, or elected) to appear before a board or commission as an agent representing an interest in which they may have been associated while still a Municipal Employee.

DISCUSSION
The petitioner of this article states that this is meant to “raise the bar” on conflicts, and is to anticipate and preclude problems. This by-law would not be retroactive, but only affect Municipal Employees going forward. There are no sanction provisions in this article.

A Municipal Employee as defined by the State in G.L. c. 268A, sec.1 (g) is: “g) "Municipal employee", a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full,
regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.”

The Advisory Committee appreciates the intent of this article, but doesn’t believe this is the right way to proceed, and fears in trying to “raising the bar” we may, instead, create a high-jump that many citizens may not wish to attempt. Many members are concerned that this might prove a disincentive for people well qualified in their fields to serve on various boards, commissions and committees. The Committee feels this article potentially casts too wide a net, and is not convinced that a by-law stricter than the current State law is needed at this point.

RECOMMENDATION
By a vote of 11-3-3, the Advisory Committee recommends NO ACTION on Article 21.
BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

A majority of the Board of Selectmen believes that Article 21 would impede the Town’s ability to attract volunteers with a variety of professional expertise for boards, commissions, and committees. The three-year waiting period proposed under Article 21 could unreasonably constrain a potential volunteer’s own future professional options, thereby making running for any elected board or serving on an appointed board less desirable. Lawyers, architects, and engineers would be especially impacted by the proposed three-year waiting period. The Board also believes that the state law waiting period of one year is sufficient.

This point was driven home at the Board’s May 16 meeting, when, just after this article was discussed, the formation of the Noise Control By-Law Review Committee was reviewed. The Town is seeking residents with an engineering background to serve. If one of these individuals were to be appointed after this By-law were to take effect, she/he would then be subject to the three-year prohibition contemplated by the article.

The Board recommends NO ACTION, by a vote of 4-1 taken on May 16, 2006, on Article 21.

ROLL CALL VOTE:

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ARTICLE 22

TWENTY-SECOND ARTICLE
To see if Town Meeting will amend Town by-law Article 5.2 by repealing Articles 5.2.2, 5.2.3, 5.2.4(b), the word “residential” in the first sentence of 5.2.4(c), the last sentence of 5.2.4(d), and 5.2.5 and adding a new section as follows:

Article 5.2.2 APPLICABLE LAW
(a) The conversion of residential property to the condominium or cooperative form of ownership shall be regulated by Chapter 527 of the Acts of 1983, more commonly known as the State Condominium Conversion Law.

The remaining portions of Article 5.2 shall be recodified appropriately.

or to take any other action relative thereto.

By all indications, the conversion of rental units in Brookline to condominiums will continue apace. In one short period last fall, the conversion of over 450 units in three buildings was announced. Over the past year, as Planning Department staff fielded inquiries from potential converters as well as anxious tenants, the question of tenant protections became clouded. While it is possible that some tenants in Brookline are not informed of their rights at all, some are provided notice under the requirements of the Town By-law and others are provided notice under the requirements of Chapter 527 of the Massachusetts General Laws. Adopted in 1983, Chapter 527 provides stronger protections for all tenants and in particular for elderly and low/moderate income tenants. In both cases enforcement is through the court system.

In contrast to Massachusetts statute, Brookline requires no protections specifically for low or moderate income tenants, no extension of notice periods for elderly, disabled or low/mod households in the case where comparable housing cannot be found, no protections against excessive rent increases, and no relocation benefits or assistance. Brookline provisions are stronger only in that they also apply to absentee-owned two and three family buildings whereas the state excludes all two and three family buildings.

Tenant protections regarding condominium conversions were originally included as part of the Town’s rent control by-law. These condominium conversion protections mirrored the language of the state law while extending them to non-owner-occupied two and three family buildings. In 1986, Town Meeting voted to also extend these same protections to non-rent controlled units.
Because protections for tenants of units undergoing conversion were included as part of rent control ordinances in communities which had rent control, they were considered to be repealed after the passage of 40P in 1994, which ended rent control state-wide. Therefore, during the second half of the 1990’s, former rent control communities found themselves reconsidering community standards regarding such protections. At that time, Cambridge chose to be silent on the issue in order to defer to State law. Boston adopted regulations which provided greater protections than those under State law.

In Brookline, this issue was addressed as part of the reorganization of the Town’s By-laws as approved by Town Meeting in 1998. At that time the Selectmen appointed a By-Law Committee to review new and revised By-laws drafted by Town Counsel. There were many obsolete sections of the Town’s By-laws and an overall reordering was long overdue. The committee was apparently split on the approach of whether or not to allow the Town to simply revert to the tenant protections under the State Condo Law or to include some protections under a new Town By-law entitled “Condominium Health and Safety at the Time of Conversion” in an effort to provide some specific local protections. The resulting language was an effort to expunge (the Town By-laws) of any direct or indirect references to rent control or the qualifying income of any tenants while keeping important protections for tenants. The language that was passed eliminated any protections specifically for low/mod households, extension of notice periods for elderly, disabled or low/mod households in the case where comparable housing cannot be found, as well as a right to reimbursement of moving costs and relocation assistance for all tenants.

The existence of a Town By-law which provides predominately weaker protections than the State law creates confusion on the part of both tenants and developers about which should be followed. For these reasons, we believe it is important to consider repealing the tenant protection provisions of the Town’s condominium conversion by-law, clarifying that State law’s stronger protections prevail in all cases.

This article would require a majority vote of Town Meeting in order to pass.

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SELECTMEN’S RECOMMENDATION

Article 22 is a proposed change to Town By-Laws regarding tenant protections during condominium conversion. The proposed amendment would remove language specific to Brookline and defer to the stronger protections provided under State statute. While some might argue that Brookline tenants also have the rights provided in Chapter 527 of the Acts of 1983, Brookline's by-law at best provides confusion, and at worse, denies all tenants, and particularly elderly and low and moderate income tenants, the rights that are available to tenants throughout the State (except in those communities which have adopted stronger protections). The protections provided by State statute were previously
available to Brookline tenants of both rent controlled and non-rent controlled units, but were eliminated during the reorganization of the Town's By-law in 1998.

The Board of Selectmen recognizes the need to clarify the existing by-law and, therefore, recommends FAVORABLE ACTION, by a vote of 5-0 taken on April 25, 2006, on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
Article 22 seeks to amend Article 5.2 of the Town’s By-Laws, which is entitled “Condominium Health and Safety at Time of Conversion”. Article 5.2 was inserted in an overall revision of all of the Town’s By-Laws adopted by Town Meeting in 1999. The repeal of rent control by the statewide referendum vote of November 1994 and the subsequent adoption of legislation gradually phasing out rent control at the beginning of 1995 not only repealed rent control but also eliminated existing condominium conversion by-laws as well. Chapter 527 of the Acts of 1983 exempted those cities and towns, such as Brookline, which had enacted their own condominium conversion ordinances and by-laws. As a result of the repeal of the condominium conversion by-laws and the adoption of Article 5.2, owners wishing to convert their properties were uncertain as to which law governed. Article 22 proposes to remove the uncertainties.

DISCUSSION
Although both laws provided for one-year notices to tenants of the owner’s filing of a Master Deed and two-year notices for elderly, handicapped and low-moderate income tenants, Article 5.2, unlike Chapter 527, contains no provisions for rent increases during the one and two-year periods and also does not provide certain other tenant protections. These protections were set out in Chapter 527 which deals comprehensively with the subject of condominium conversions and tenant protections. Article 5.2, however, is not being eliminated completely but will retain the current requirement that owners file copies of their Master Deeds with the Building Department within 48 hours of their being recorded in the Norfolk Registry of Deeds. Retaining this requirement will enable the town to retain a record of the buildings that are being converted. In addition, the requirement that the Building Department inspect the buildings within a reasonable time after receiving copies of the Master Deeds, in order to determine compliance with the Building Code, will remain as part of Article 5.2.

The Advisory Committee believes that Chapter 527 of the Acts of 1983 should apply to Brookline since it applies to most other cities and towns in the Commonwealth. Although Chapter 527 permits cities and towns to adopt stricter local ordinances and by-laws, such adoption must be by a two-thirds vote of the legislative body. The passage of Article 22 will eliminate any doubt by owners as to what law applies to condominium conversions. It will clarify what types of notices are required to be sent, what forms of
rent increases are permitted, and what amounts of relocation expenses are authorized. Chapter 527 will also require the owner to assist elderly, handicapped and low-moderate income tenants who do not purchase their apartments in relocating to comparable apartments.

It should be noted also that one of the differences in the two laws is the exemption in Chapter 527 of buildings containing less than four units, namely, all two and three-family houses, whether owner-occupied or not. The current Article 5.2 exempts only owner-occupied two and three-family houses. However, the proposed revision of Article 5.2 will apply to all two and three-family houses, whether owner-occupied or not.

RECOMMENDATION
The Advisory Committee unanimously (19-0) recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend Article 5.2 of the Town’s By-Laws to read as follows:

ARTICLE 5.2
CONDOMINIUM HEALTH AND SAFETY AT TIME OF CONVERSION

SECTION 5.2.1 NOTICE OF CONVERSION

Within forty-eight hours after the recording of a master deed under G.L. c. 183A, the owner or owners who create a condominium shall file a copy of the master deed with the Building Department of the Town of Brookline and the Town shall thereupon inspect the condominium premises in the following manner:

The Building Department shall make an inspection within a reasonable time of said premises to determine if the same are in compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies.

SECTION 5.2.2 DEFINITIONS

“Owner”, includes a legal or beneficial owner, lessor, sub-lessor, manager, assignee, or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodation or an agent of any of the foregoing.

SECTION 5.2.3 ENFORCEMENT

(a) The Building Department shall be responsible for enforcing the provisions of Section 5.2.1 and may issue orders and promulgate regulations to effectuate the purposes of Section 5.2.1 and to establish procedures thereunder.
(b) Any owner who converts property in violation of Section 5.2.1 or of any regulation adopted or order issued pursuant thereto shall be punished by a fine of not more than fifty dollars. Each unit converted in violation of Section 5.2.1 and each day of continued violation for such unit shall constitute a separate offense.

(c) The District Court Department, Brookline Division, and the Superior Court Department shall have jurisdiction over any action arising from any violation of Section 5.2.1 or any regulation adopted or order issued pursuant thereto and shall have jurisdiction in equity to restrain any such violation.

SECTION 5.2.4 TENANT PROTECTIONS

The protection of tenants of residential properties undergoing conversion to the condominium form of ownership shall no longer be regulated by this Article but instead shall be regulated by Chapter 527 of the 1983 Massachusetts Acts and Resolves as the same may be amended from time to time.

SECTION 5.2.5 SEVERABILITY

If any provision of this Article or the application of any provision to any person or circumstance shall be held invalid, the validity of the other provisions or the application of such provision to other persons or circumstances shall not be thereby affected.
ARTICLE 22

TWENTY-SECOND ARTICLE
To see if Town Meeting will amend Town by-law Article 5.2 by repealing Articles 5.2.2, 5.2.3, 5.2.4(b), the word “residential” in the first sentence of 5.2.4(c), the last sentence of 5.2.4(d), and 5.2.5 and adding a new section as follows:

Article 5.2.2 APPLICABLE LAW
(a) The conversion of residential property to the condominium or cooperative form of ownership shall be regulated by Chapter 527 of the Acts of 1983, more commonly known as the State Condominium Conversion Law.

The remaining portions of Article 5.2 shall be recodified appropriately.

or to take any other action relative thereto.

By all indications, the conversion of rental units in Brookline to condominiums will continue apace. In one short period last fall, the conversion of over 450 units in three buildings was announced. Over the past year, as Planning Department staff fielded inquiries from potential converters as well as anxious tenants, the question of tenant protections became clouded. While it is possible that some tenants in Brookline are not informed of their rights at all, some are provided notice under the requirements of the Town By-law and others are provided notice under the requirements of Chapter 527 of the Massachusetts General Laws. Adopted in 1983, Chapter 527 provides stronger protections for all tenants and in particular for elderly and low/moderate income tenants. In both cases enforcement is through the court system.

In contrast to Massachusetts statute, Brookline requires no protections specifically for low or moderate income tenants, no extension of notice periods for elderly, disabled or low/mod households in the case where comparable housing cannot be found, no protections against excessive rent increases, and no relocation benefits or assistance. Brookline provisions are stronger only in that they also apply to absentee-owned two and three family buildings whereas the state excludes all two and three family buildings.

Tenant protections regarding condominium conversions were originally included as part of the Town’s rent control by-law. These condominium conversion protections mirrored the language of the state law while extending them to non-owner-occupied two and three family buildings. In 1986, Town Meeting voted to also extend these same protections to non-rent controlled units.
Because protections for tenants of units undergoing conversion were included as part of rent control ordinances in communities which had rent control, they were considered to be repealed after the passage of 40P in 1994, which ended rent control state-wide. Therefore, during the second half of the 1990’s, former rent control communities found themselves reconsidering community standards regarding such protections. At that time, Cambridge chose to be silent on the issue in order to defer to State law. Boston adopted regulations which provided greater protections than those under State law.

In Brookline, this issue was addressed as part of the reorganization of the Town’s By-laws as approved by Town Meeting in 1998. At that time the Selectmen appointed a By-Law Committee to review new and revised By-laws drafted by Town Counsel. There were many obsolete sections of the Town’s By-laws and an overall reordering was long overdue. The committee was apparently split on the approach of whether or not to allow the Town to simply revert to the tenant protections under the State Condo Law or to include some protections under a new Town By-law entitled “Condominium Health and Safety at the Time of Conversion” in an effort to provide some specific local protections. The resulting language was an effort to expunge (the Town By-laws) of any direct or indirect references to rent control or the qualifying income of any tenants while keeping important protections for tenants. The language that was passed eliminated any protections specifically for low/mod households, extension of notice periods for elderly, disabled or low/mod households in the case where comparable housing cannot be found, as well as a right to reimbursement of moving costs and relocation assistance for all tenants.

The existence of a Town By-law which provides predominately weaker protections than the State law creates confusion on the part of both tenants and developers about which should be followed. For these reasons, we believe it is important to consider repealing the tenant protection provisions of the Town’s condominium conversion by-law, clarifying that State law’s stronger protections prevail in all cases.

This article would require a majority vote of Town Meeting in order to pass.

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SELECTMEN’S RECOMMENDATION

Article 22 is a proposed change to Town By-Laws regarding tenant protections during condominium conversion. The proposed amendment would remove language specific to Brookline and defer to the stronger protections provided under State statute. While some might argue that Brookline tenants also have the rights provided in Chapter 527 of the Acts of 1983, Brookline's by-law at best provides confusion, and at worse, denies all tenants, and particularly elderly and low and moderate income tenants, the rights that are available to tenants throughout the State (except in those communities which have adopted stronger protections). The protections provided by State statute were previously
available to Brookline tenants of both rent controlled and non-rent controlled units, but were eliminated during the reorganization of the Town's By-law in 1998.

The Board of Selectmen recognizes the need to clarify the existing by-law and, therefore, recommends FAVORABLE ACTION, by a vote of 5-0 taken on April 25, 2006, on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
Article 22 seeks to amend Article 5.2 of the Town’s By-Laws, which is entitled “Condominium Health and Safety at Time of Conversion”. Article 5.2 was inserted in an overall revision of all of the Town’s By-Laws adopted by Town Meeting in 1999. The repeal of rent control by the statewide referendum vote of November 1994 and the subsequent adoption of legislation gradually phasing out rent control at the beginning of 1995 not only repealed rent control but also eliminated existing condominium conversion by-laws as well. Chapter 527 of the Acts of 1983 exempted those cities and towns, such as Brookline, which had enacted their own condominium conversion ordinances and by-laws. As a result of the repeal of the condominium conversion by-laws and the adoption of Article 5.2, owners wishing to convert their properties were uncertain as to which law governed. Article 22 proposes to remove the uncertainties.

DISCUSSION
Although both laws provided for one-year notices to tenants of the owner’s filing of a Master Deed and two-year notices for elderly, handicapped and low-moderate income tenants, Article 5.2, unlike Chapter 527, contains no provisions for rent increases during the one and two-year periods and also does not provide certain other tenant protections. These protections were set out in Chapter 527 which deals comprehensively with the subject of condominium conversions and tenant protections. Article 5.2, however, is not being eliminated completely but will retain the current requirement that owners file copies of their Master Deeds with the Building Department within 48 hours of their being recorded in the Norfolk Registry of Deeds. Retaining this requirement will enable the town to retain a record of the buildings that are being converted. In addition, the requirement that the Building Department inspect the buildings within a reasonable time after receiving copies of the Master Deeds, in order to determine compliance with the Building Code, will remain as part of Article 5.2.

The Advisory Committee believes that Chapter 527 of the Acts of 1983 should apply to Brookline since it applies to most other cities and towns in the Commonwealth. Although Chapter 527 permits cities and towns to adopt stricter local ordinances and by-laws, such adoption must be by a two-thirds vote of the legislative body. The passage of Article 22 will eliminate any doubt by owners as to what law applies to condominium conversions. It will clarify what types of notices are required to be sent, what forms of
rent increases are permitted, and what amounts of relocation expenses are authorized. Chapter 527 will also require the owner to assist elderly, handicapped and low-moderate income tenants who do not purchase their apartments in relocating to comparable apartments.

It should be noted also that one of the differences in the two laws is the exemption in Chapter 527 of buildings containing less than four units, namely, all two and three-family houses, whether owner-occupied or not. The current Article 5.2 exempts only owner-occupied two and three-family houses. However, the proposed revision of Article 5.2 will apply to all two and three-family houses, whether owner-occupied or not.

RECOMMENDATION
The Advisory Committee unanimously (19-0) recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend Article 5.2 of the Town’s By-Laws to read as follows:

ARTICLE 5.2
CONDOMINIUM HEALTH AND SAFETY AT TIME OF CONVERSION

SECTION 5.2.1 NOTICE OF CONVERSION

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The Building Department shall make an inspection within a reasonable time of said premises to determine if the same are in compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies.

SECTION 5.2.2 DEFINITIONS

“Owner”, includes a legal or beneficial owner, lessor, sub-lessee, manager, assignee, or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodation or an agent of any of the foregoing.

SECTION 5.2.3 ENFORCEMENT

(a) The Building Department shall be responsible for enforcing the provisions of Section 5.2.1 and may issue orders and promulgate regulations to effectuate the purposes of Section 5.2.1 and to establish procedures thereunder.
(b) Any owner who converts property in violation of Section 5.2.1 or of any regulation adopted or order issued pursuant thereto shall be punished by a fine of not more than fifty dollars. Each unit converted in violation of Section 5.2.1 and each day of continued violation for such unit shall constitute a separate offense.

(c) The District Court Department, Brookline Division, and the Superior Court Department shall have jurisdiction over any action arising from any violation of Section 5.2.1 or any regulation adopted or order issued pursuant thereto and shall have jurisdiction in equity to restrain any such violation.

SECTION 5.2.4 TENANT PROTECTIONS

The protection of tenants of residential properties undergoing conversion to the condominium form of ownership shall no longer be regulated by this Article but instead shall be regulated by Chapter 527 of the 1983 Massachusetts Acts and Resolves as the same may be amended from time to time.

SECTION 5.2.5 SEVERABILITY

If any provision of this Article or the application of any provision to any person or circumstance shall be held invalid, the validity of the other provisions or the application of such provision to other persons or circumstances shall not be thereby affected.

XXX
ARTICLE 22

BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

According to the Moderator, the deletion of the section regarding Health Department inspections was not construed as a permitted re-codification under Article 22. Therefore, the Board, at its May 16, 2006 meeting, voted 5-0 to add that section back in. The revised recommended vote is below.

VOTED: That the Town amend Article 5.2 of the Town’s By-Laws to read as follows:

ARTICLE 5.2
CONDOMINIUM HEALTH AND SAFETY AT TIME OF CONVERSION

SECTION 5.2.1 NOTICE OF CONVERSION

Within forty-eight hours after the recording of a master deed under G.L. c. 183A, the owner or owners who create a condominium shall file a copy of the master deed with the Building Department of the Town of Brookline and the Town shall thereupon inspect the condominium premises in the following manner:

(a) The Health Department shall make an inspection within a reasonable time of said premises to determine if the same are in compliance with all applicable provisions of Article II of the State Sanitary Code as the same may be amended from time to time and all applicable rules and regulations of said Health Department; and

(b) The Building Department shall make an inspection within a reasonable time of said premises to determine if the same are in compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies.

SECTION 5.2.2 DEFINITIONS

“Owner”, includes a legal or beneficial owner, lessor, sub-lessee, manager, assignee, or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodation or an agent of any of the foregoing.

SECTION 5.2.3 ENFORCEMENT

(a) The Building Department shall be responsible for enforcing the provisions of Section 5.2.1 and may issue orders and promulgate regulations to effectuate the purposes of Section 5.2.1 and to establish procedures thereunder.
(b) Any owner who converts property in violation of Section 5.2.1 or of any regulation adopted or order issued pursuant thereto shall be punished by a fine of not more than fifty dollars. Each unit converted in violation of Section 5.2.1 and each day of continued violation for such unit shall constitute a separate offense.

(c) The District Court Department, Brookline Division, and the Superior Court Department shall have jurisdiction over any action arising from any violation of Section 5.2.1 or any regulation adopted or order issued pursuant thereto and shall have jurisdiction in equity to restrain any such violation.

SECTION 5.2.4 TENANT PROTECTIONS

The protection of tenants of residential properties undergoing conversion to the condominium form of ownership shall no longer be regulated by this Article but instead shall be regulated by Chapter 527 of the 1983 Massachusetts Acts and Resolves as the same may be amended from time to time.

SECTION 5.2.5 SEVERABILITY

If any provision of this Article or the application of any provision to any person or circumstance shall be held invalid, the validity of the other provisions or the application of such provision to other persons or circumstances shall not be thereby affected.

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ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

The Advisory Committee recommends Favorable Action on the proposed amendment.
ARTICLE 23

TWENTY-THIRD ARTICLE

To see if the Town will amend Article 8.6 of the General By-Laws of the Town of Brookline as follows:

Section 8.6.7(a) Restraint of Dogs:

a. by deleting the so-called sunset provision language which reads:

“\textgreater \text{Italicized language in Section 8.6.7(a) above will revert to language existing immediately prior to the amendment on June 30, 2006.};”\textless

and

b. by changing all italicized language to regular font; and

c. by adding the following paragraphs 5 and 6 at the end of Section 8.6.7(a):

5. No area adjacent to a school shall be used as an off leash area without the approval of the School Committee.

6. The Director of Parks and Open Space or his/her designee shall place a sign, in a conspicuous place, in all designated off leash areas which shall state the authorized hour(s) when such area may be used for such purpose and any other conditions of such use.

or act on anything relative thereto.

REPORT OF THE PARK AND RECREATION COMMISSION

The Town of Brookline By-Laws pertaining to the control of dogs are embodied in Article 8.6. Currently, Section 8.6.7(a) authorizes the Park and Recreation Commission to establish designated off-leash areas as part of a pilot program set to expire on June 30, 2006. Amendment of Article 8.6.7(a) will allow the Park and Recreation Commission to continue the implementation, evaluation and administration of what has become the Green Dog Pilot Program.

The amendment allows the Park and Recreation Commission to establish designated off leash areas in parks under its jurisdiction according to its policies, set forth below, provided that no area adjacent to a school shall be used as an off leash area without the consent of the School Committee, and further provided that appropriate signage concerning hours and conditions shall be conspicuously displayed in each area.
As currently reflected in Article 8.6 dogs owners will still be required to accompany, control, and pick up after their dogs at all times.

**History**
The Green Dog Pilot Program was first permitted by the May, 2003 Town Meeting, with a sunset provision of June 30, 2005, extended by the May, 2005 Town Meeting to June 30, 2006. The Park and Recreation Commission requested the extension so that a comprehensive evaluation with public input could be completed.

The Park and Recreation Commission introduced the Green Dog Pilot Program in response to significant public interest expressed at the Commission’s public meetings. The Commission’s Procedure for Declaring an Off-Leash Area for Dogs is set forth below, and has appeared in the write-up of the two prior warrant articles. Following its procedure, the Commission conducted numerous hearings to establish off-leash areas and hours, and has continued to monitor and make adjustments as appropriate. At this time, there are 14 off-leash areas: 7 with hours from dawn to 9 AM, 7 with hours from dawn to 1 PM. (Three of the dawn to 1 PM areas are dawn to dusk from December through March.)

Primary concerns when the pilot was established were cleanliness and safety.

**Definition of Success**
In order to evaluate the pilot program, the Park and Recreation Commission established a Green Dog Advisory Committee (GDAC) in the fall of 2005. Composed of both dog and non-dog owners, the Committee’s members include two Park and Recreation Commissioners, a School Committee liaison, a GreenSpace Alliance liaison, and four citizens. Other interested citizens have consistently attended these public meetings. In its first three months, the Committee met five times to define success, establish criteria for review, prepare a program summary and presentation, plan for a community meeting, review findings, and make a recommendation to the Commission.

The philosophy behind the program is one of civic improvement and balance with the following long term goals: providing times and places where dog owners may exercise their dogs off-leash, and times and places where other park users are entitled to enjoy those same parks free of off-leash dogs. The program seeks to encourage respect and consideration among all park users in sharing our public parks. In seeking to change the prior course of human behavior, the program will always involve an ongoing process of education, enforcement and dialogue. The Commission considers this a highly worthy goal, and one which by its nature will always be a work in progress. Therefore, after considerable discussion, it was reasoned, if overall conditions in the parks included in the program were at least the same, and at best better, than before the inception of the program, by providing a schedule for mutual enjoyment, a forum for dialogue, and mechanisms for compliance and correction, where before there were none, the program would have achieved success.
Conclusions
Based upon feedback from the Athletic Field User Groups, Police Department, Recreation Department, Parks and Open Space Division (including Park Zone Managers and Maintenance crews) and the public, (through a town wide survey and public meetings), the GDAC concluded that conditions in the parks identified in the Green Dog Pilot Program – for cleanliness, usage and mechanisms for achieving compliance- appear to be better than they were before the program began. The GDAC recommended that the Commission submit this warrant article, and the Commission unanimously voted to do so.

Basis for Conclusions
• Field Users’ Feedback
Recreation Director Robert Lynch reported that at the annual Athletic Field Users’ meeting in January, 2006, where Youth Soccer, Youth Lacrosse, Youth Baseball, the BHS Athletics Department, Men’s Softball League, Viking Sports Camps and Clinics, Girls Softball League, and Recreation Summer Camps Programs were all represented, all present stated that the Green Dog Program had not had any adverse effect on their programs and three of those present felt that there had actually been some improvement in cleanliness on the fields.

• Park Zone Managers’ Feedback
Director of Parks Erin Chute Gallentine reported in January, 2006 that her zone managers found an improvement in the cleanliness of parks in the program; the athletic zone manager found that turf conditions are about the same, (as before the pilot program began). Maintenance crews in general report that people are agreeable and cooperative in leashing dogs during maintenance of the parks.

• Police Department Feedback
Brookline’s full time Animal Control Officer states that off leash use appears to be clustering in off leash parks and at off leash hours. The Animal Control Officer will be making quarterly reports to the Commission.

• Recreation Department Data on Complaints
Dog owners signed up to be park contacts at the beginning of the program. The plan was to notify the contact when a complaint for a specific park was received. In fact, the Recreation Director has called contacts for Griggs, Waldstein and Schick Parks. No further complaints on those issues were received after the contacts were notified. Other complaints about Waldstein and Soule that could not be resolved by the contact resulted in the Commission’s shortening hours at both fields, after which there were no further complaints.

• Park and Open Space Division Data for Off-Leash/On-Leash Hours at Green Dog Parks
The Parks and Open Space Division conducted spot checks at parks in the pilot program during the fall (October, November and December of 2005). The checks tracked numbers of dogs and people, and whether dogs were on or off leash, both during on-leash
(peak evening times) and off-leash hours. During off-leash hours, the percentage of dogs off-leash was 87%; during on-leash hours, the percentage of dogs on leash was 82%.

• Town-wide Survey
A questionnaire was enclosed with the DPW mailing last fall to 24,286 households. It was also used at the street fair last fall, and could be answered on-line. A total of 351 responses were received, the majority indicating that people understand the program and are in favor of it.

Future
If Town Meeting approves this warrant article, the Commission will administer the Green Dog Program in its discretion, monitoring, modifying, eliminating and/or adding off leash areas, as appropriate. The Green Dog Advisory Committee will continue to support the Commission, making recommendations as appropriate. Future areas for consideration include: educating out-of-town users, improving signage, the fine structure and monitoring parks in the program. Areas adjacent to schools will not be used as off leash areas without the consent of the School Committee.

PROCEDURE FOR DECLARING A PARK, PLAYGROUND OR OPEN SPACE
AN OFF LEASH AREA FOR DOGS
AS OUTLINED IN BY-LAW 8.6.7
Presented by the Park and Recreation Commission

Prior to any park, playground, and/or open space being designated as an “Off-Leash Area for Dogs”, the Park and Recreation Commission will conduct a meeting to discuss the possibility of such action, during which all in attendance may voice their suggestions, objections, and support for a proposed Off-Leash Area. Items to be discussed may include duration of Off-Leash time, rules and regulations associated with Off-Leash areas, notification methods to all dog owners and citizens, special considerations in each proposed area, development of the green dog program, self policing by dog-owners, that in each designated area signs will be posted, in a conspicuous place, stating the authorized hours when that area can be used and any other conditions concerning the use of that area, etc.

The Park and Recreation Commission shall notify all abutters, Town Meeting Members (in the affected precinct), Neighborhood Associations, the School Committee, School Principals, PTO’s the Conservation Commission, the Tree Planting Commission, the Board of Selectmen, the Police Department, identified users, and all those requesting notification. The meeting shall be posted in the Town Clerk’s Office, in the newspaper, on cable television, on Brookline’s homepage (www.townofbrooklinemass.com) and bulletin board, and in all prominent locations in the area affected. This initial meeting shall be conducted as part of a regularly scheduled Park and Recreation Commission meeting.
Attendance will be taken at all meetings and if additional meetings are required, all of those listed above will be notified, as well as all of those who sign the attendance sheet. Only after such meeting as described above is held will the Park and Recreation Commission make a decision concerning designated areas. The Park and Recreation Commission may, at any time, reconsider the designation of any area as an Off-Leash Area, as they deem necessary. Monitoring and evaluation of all such designated areas shall be conducted on a regular basis.

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**SELECTMEN’S RECOMMENDATION**

Article 23 calls for the permanent establishment of the Off-Leash Area for Dogs program, which is set to expire on June 30, 2006 under the current by-law. This issue has been before Town Meeting on two previous occasions: the May, 2003 Annual Town Meeting and the May, 2005 Annual Town Meeting. In May, 2003, Town Meeting adopted the program, but with a June 30, 2005 “sunset” provision. In May, 2005, the sunset provision was extended for one more year.

Over the past few years, there has been significant public interest expressed to the Parks and Recreation Commission to allow them to expand off-leash areas for dogs. As a result, the Commission recommended the program to Town Meeting in 2003. At that time, the Town was not prepared to allow a permanent program, but felt comfortable with a pilot program. Prior to the pilot program, the Commission was authorized to establish dog runs only in areas of the Town that are fenced-in; however, very few of the Town’s parks are fully enclosed by fencing, so the ability to establish dog runs was greatly hindered. The pilot program permitted the Commission to establish off-leash areas in areas and during times deemed appropriate, without incurring the costs associated with fencing.

There are currently 14 off-leash areas, seven with hours from dawn to 9 AM and seven with hours from dawn to 1 PM. Three of the dawn to 1 PM areas are dawn to dusk from December through March. The primary concerns when the pilot was established were cleanliness and safety. By all accounts, the pilot has been very successful. The Commission’s Green Dog Advisory Committee, established in the Fall of 2005 to evaluate the pilot program, has concluded as such and has recommended that the permanent program be established.

In the past when this issue was discussed, there were concerns regarding school grounds and signage. The Park and Recreation Commission has also addressed those issues: according to its policies, areas adjacent to a school cannot be used as an off-leash area without the consent of the School Committee and appropriate signage showing hours and conditions is required to be conspicuously displayed in each area.
The Commission has taken its time in evaluating the program and the end result is a program that has allowed park users with dogs and park users without dogs to peacefully share the parks. The Commission should be commended for their study, and the process that led to the conclusions. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 4-0 taken on April 25, 2006, on the following vote:

VOTED: That the Town amend Article 8.6 of the General By-Laws of the Town of Brookline as follows:

Section 8.6.7(a) Restraint of Dogs:

a. by deleting the so-called sunset provision language which reads:

“> Italicized language in Section 8.6.7(a) above will revert to language existing immediately prior to the amendment on June 30, 2006.”; and

b. by changing all italicized language to regular font; and

c. by adding the following paragraphs 5 and 6 at the end of Section 8.6.7(a):

5. No area adjacent to a school shall be used as an off leash area without the approval of the School Committee.

6. The Director of Parks and Open Space or his/her designee shall place a sign, in a conspicuous place, in all designated off leash areas which shall state the authorized hour(s) when such area may be used for such purpose and any other conditions of such use.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Daly

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
For the past 2½ years, the Park and Recreation Commission has overseen the Green Dog Pilot Program which permits the Commission to designate specific parks and playgrounds, during specific hours, to be off-leash areas for dogs. Such designations
have been subject to dog owner education and etiquette requirements, public review, and annual evaluation.

Last June, Town Meeting voted language that would “sunset” this program on June 30, 2006. Believing, however, that the program has been successful and that established procedures and evaluation mechanisms will ensure the program’s ongoing acceptance, the Commission has submitted Article 23. If approved by Town Meeting, the article would 1) eliminate the sunset provision language for the Green Dog Program; 2) allow the Commission to establish designated off-leash areas in parks under its jurisdiction; 3) require School Committee approval before an area adjacent to a school could be designated as an off-leash area; and 4) require that the Director of Parks and Open Space (or her/his designee) place signs specifying hours and conditions in each off-leash area.

DISCUSSION
There are currently 14 parks or playgrounds that have been designated off-leash areas from either dawn until 9 a.m., from dawn until 1 p.m., or from dawn to dusk (from December through March). Commission policy makes clear that even during off-leash hours, dog owners are required to yield to organized sports events, field maintenance, or closure of parks to protect turf. The Commission has also made clear that it retains the right to adjust the hours or to withdraw the off-leash designation if compliance with the published rules and regulations is lacking.

When initiated, the Green Dog Pilot Program raised questions regarding safety, compliance, and park cleanliness. Members of the Park and Recreation Commission, staff from the Recreation Department and Park and Open Space Division of DPW, and numerous residents spent many hours discussing, negotiating, and modifying the program. Before making a final recommendation, the Commission created the Green Dog Advisory Group (GDAG) and asked it to evaluate the program.

Consisting of Commission members, dog owners and non-owners, representatives from the School Committee and Greenspace Alliance, and four citizens, GDAG focused on such matters as effective sharing of the parks, dog owner compliance, dog behavior, and wear and tear on athletic fields and other open spaces. Beginning late last fall, GDAG assessed information gathered from various sources including a town-wide survey, park users, park zone managers, and the town’s Animal Control Officer as well as entries from the “complaint log” maintained by the Recreation Department and spot checks conducted by the Park and Open Space Division. GDAG concluded that after initiation of the Pilot Program, the participating parks appeared to be cleaner, enjoyed a higher usage by dogs and their owners, and saw a greater percentage of compliance with on- and off-leash regulations. GDAG also concluded that the Green Dog Program’s continued success required sustained outreach and education, ongoing evaluation and adjustment, and review of fines as an enforcement strategy.

Given the Park and Recreation Commission’s report and GDAG’s evaluation, the Advisory Committee believes that the success to date of the off-leash program and the Commission’s commitment to ongoing evaluation and adjustments to the program, if
warranted, justify approval of the proposed by-law amendments. The network through which the Commission can receive and address citizen complaints, the email list through which the Commission can communicate with dog owners, and the continuing support and assistance of GDAG provide assurance that problems which arise can be dealt with in a timely fashion. The Advisory Committee encourages the Commission to consider whether the program should be extended in South Brookline, specifically to the Baker School playground and to the athletic field currently under construction off Newton Street, and it applauds the time and effort of all participants in this undertaking.

RECOMMENDATION
By a vote of 21 in favor and 1 opposed, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.
ARTICLE 24

TWENTY-FOURTH ARTICLE
To see if the Town will amend Article 8.17 of the General By-Laws as follows:

By deleting the year “2006” in the last sentence of Article 8.17 Focused Residence Picketing and inserting in its place the year “2007”.

or act on anything relative thereto.

The Article would extend for one-year the Town's Focused Residence Picketing By-law 8.17, which was first enacted in 1994, and which was scheduled to sunset on June 30, 2006. The By-law makes it illegal to engage in so-called focused residence picketing, as defined by the U.S. Supreme Court. The By-law permits, as the Supreme Court has required, picketing and demonstrations on public streets in the neighborhood in which a resident lives, but prohibits demonstrations that invade the right of a resident to privacy and peace and quiet in his or her home. The one-year extension of the By-law was recommended by a unanimous vote of the Selectmen's Committee on Focused Residence Picketing. The one-year extension will permit the Town to further study the effects of the by-law, as well as any developments in the law that may help better define or narrow the definition of focused residence picketing.

SELECTMEN’S RECOMMENDATION

The Board of Selectmen will provide its recommendations on Article 24 in a Supplemental Report that will be provided to Town Meeting prior to the commencement of Town Meeting.

ADVISORY COMMITTEE’S RECOMMENDATION

The Advisory Committee will provide its recommendations on Article 24 in a Supplemental Report that will be provided to Town Meeting prior to the commencement of Town Meeting.

XXX
MAJORITY REPORT OF THE BROOKLINE SELECTMEN'S COMMITTEE
ON FOCUSED RESIDENCE PICKETING IN SUPPORT OF DELETING THE
EXPIRATION DATE FROM ARTICLE 8.17
(May 2006)

I. INTRODUCTION

The majority of the Brookline Selectmen's Committee on Focused Residence Picketing recommends that Brookline's Article 8.17, the Focused Residence Picketing ordinance, should be amended by deleting the existing expiration date, which provides that the Article will expire on June 30, 2006. (The Committee also recommends, unanimously, that the Committee cease to exist as of the 2006 May Town Meeting.)

II. RECENT POLICE EXPERIENCE USING ARTICLE 8.17

Since the expiration date of Article 8.17 was extended at the 2004 November Town Meeting, the Brookline Police Department adopted Special Order #2005-17, dated October 24, 2005,\(^1\) in order to establish procedures for implementation of the Article. Thereafter, in early February, 2006, the Department had occasion to apply Article 8.17 to two instances of focused residential picketing on Ivy Street.\(^2\) As discussed in the report of the incidents (see footnote 2 below), the officer in charge stated that for these incidents, "the Town by-law on focused picketing and the corresponding BPD Special Order [#2005-17] were essential tools which assisted our department in keeping these members of our community safe." The officer also noted that residential picketing had occurred in the past by animal-rights groups. In at least one recent Superior Court case -- Commonwealth v. Gazzola, 17 Mass. L. Rep. 308, 2004 Mass. Super LEXIS 28 (2004), which involved focused residential picketing at the home of an

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\(^1\) See copy attached as Exhibit 1.

\(^2\) See copy of Detective Jennifer Canney's report dated March 8, 2006 attached as Exhibit 2.
employer of a company which merely insured a separate life sciences company, the Court noted (citing Frisby v. Schultz, discussed in Part IV below) that the municipality's ability to respond was limited by the absence of a single-residence picketing ban.

III. PURPOSE OF ARTICLE 8.17

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

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

Focused residential picketing of physicians is especially problematic because the right to choose whether to terminate a pregnancy, unlike most or all other constitutional rights, completely depends on the willingness of doctors to provide the supporting medical services needed for its exercise. One of the shrewdest means of opposing a woman's constitutional right to reproductive choice has been to focus on perhaps the most vulnerable link in the exercise of that choice: physicians. That constitutional right can cease to exist not just by an overturning of Roe v. Wade, but by the success in "attempt[s] to force the doctor[s] to cease performing abortions." Frisby v. Schultz, 487 U.S. 474, 487 (1988).

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

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3 See Security Incident Reports from Planned Parenthood Federation of America, Inc. (redacted for privacy and safety concerns) (attached as Exhibit 3).
medical practice to other areas. Naturally, there is a limit to the risks such a doctor can be expected to take to protect someone else’s constitutional right.

The tactics used by anti-abortion protesters appear to have been effective in diminishing the number of abortion providers. From 1982 to early 2003, the number of abortion providers decreased by 37% nationally.\(^4\) Massachusetts has experienced a similar decline. There were more than eighty abortion providers in Massachusetts in 1980, but by 2000 there were fewer than fifty such providers.\(^5\)

Both Brookline and the Commonwealth of Massachusetts already have laws that prohibit a range of harassing and intimidating behavior, but none has been successful at providing the appropriate protection against residential focused picketing. Certain Brookline laws regulate noise, see Article 8.15 (Noise Control), prohibit offensive and disorderly language, see Section 8.5.3 (Language), and control public disturbances, see Section 8.5.4 (Present to Disturb). Likewise, the Commonwealth criminalizes stalking, see M.G.L. c. 265 § 43(a) and assault, see id. at § 13A. Yet none of these laws has been effective in preventing picketers from forcing unwanted, harassing and intimidating speech into the private homes of individuals and their families by picketing directly in front of the home, although Captain O’Leary advised the Committee, in connection with the February 2006 incidents on Ivy Street, that the Department successfully used Article 8.17 in conjunction with Article 8.15 (Noise), and that these two Articles appeared to work well in combination on those occasions.


Article 8.17, although it cannot entirely prevent the intrusion of all unwanted and harassing speech in one's home, as nearby picketing is not prohibited, nonetheless provides a very helpful tool in combating the problem, and one that the Brookline police also find useful to them. Protests taking place down the street will not be as intrusive or harassing as those in front of a home where picketers and their signs can, with ease, be seen from inside the house and address their targets by name. In addition, the children of a Brookline citizen can more easily move into or out of their house while avoiding signs directed against them when picketers are marching around the block and not continuously present in front of their house.

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

**IV. THE BYLAW IS CLEARLY CONSTITUTIONAL**

The majority of the Brookline Selectmen's Committee on Focused Residence Picketing also favor extending the current bylaw because it is clearly constitutional under both the United States and Massachusetts constitutions, and therefore is unlikely to involve the town in any litigation.
The United States Supreme Court's decisions in Frisby v. Schultz and Hill v. Colorado confirm as obvious that the Brookline's Article 8.17 does not violate the United States Constitution. In Frisby, the Supreme Court upheld a municipality's ordinance banning focused residential picketing whose wording and purpose was virtually identical to Article 8.17. Frisby, 487 U.S. 474, 488 (1988). In Hill, the Supreme Court again held that other interests, particularly the strong privacy interest in avoiding unwanted communications in certain settings, such as the entrance to a medical facility, were sufficient to constitutionally impose certain speech restrictions. Hill v. Colorado, 530 U.S. 703, 716-17. Numerous states and municipalities have faced similar residential picketing problems, and, as a result, have adopted laws like Article 8.17 that prohibit picketing in front of homes (often with similar language as Article 8.17). 6


The ordinance similarly does not run afoul of the Massachusetts constitution. Free Speech rights under the Massachusetts Constitution are coextensive with those under the U.S. Constitution. In re Opinion of the Justices to the Senate, 723 N.E.2d 1, 430 Mass. 1205, 1207.

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6 See Exhibit 6 attached hereto (listing 79 other such laws).
n.3 (2000) (holding that a proposed buffer zone around entrances, exits and driveways of reproductive health care facilities did not unconstitutionally restrict free speech under either the Massachusetts or U.S. Constitutions, and noting that the analysis under both constitutions was the same). Furthermore, the Massachusetts Constitution is even more protective than the United States Constitution of a woman’s right of reproductive choice. Planned Parenthood League of Mass. v. Attorney General, 677 N.E.2d. 101, 104, 424 Mass. 586, 590 (1997) (citing Moe v. Secretary of Admin. and Fin.; 417 N.E.2d 387, 382 Mass. 629 (1981)). This clear trend in Massachusetts jurisprudence as regards the importance of the right to reproductive choice lends even more support to the interests underlying Article 8.17 and to its constitutionality.

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

IV. CONCLUSION

The majority of the Brookline Selectmen’s Committee on Focused Residence Picketing believes that Article 8.17 represents a fair and constitutional balance between the interests of free speech, the interests in avoiding intrusive and intimidating speech in one’s home, and the interests of protecting access to abortion services. For that reason, we urge the deletion of the expiration date from Article 8.17 and the Committee recommends unanimously that the Committee cease to exist as of the 2006 May Town Meeting.
Exhibit 1
1. Over the past several years the Town Of Brookline has experienced focused residential picketing for various and widespread reasons. These reasons may be as diverse as anti-Abortion, pro-Abortion, political and anti-political factions, legislative leaders, landlord versus tenants, and labor related causes and beliefs. A new Town-by-law will now legislate control and effect on those engaged in picketing in residential neighborhoods with the direction of the picketing aimed at a specific home or residence of a Brookline citizen. There are approximately thirty communities nationwide that have such a similar legislation aimed at residential picketing.

ARTICLE 8.17

It is unlawful for any person to engage in picketing focused on, and taking place in front of or about, a particular residence in the town of Brookline. Focused picketing taking place solely in front of or about a particular residence is prohibited. This by-law shall expire on June 30, 2006.

2. There are no set groups that picket in this community on a regular basis. The reasons for a residential picketing will therefore vary from various groups and their causes.

3. Police officers should arrive on scene and appraise the demonstration and then report this information as well as the group’s location and size to a supervisor. The reason for the picket should also be obtained usually by observing any signs and banners. A Patrol Supervisor should be sent to the picket area and make further evaluation and determine if any Public Safety violations are taking place, i.e. blocking motor vehicle or pedestrian traffic.
4. The Commanding Office – Platoon on Duty shall be notified of the location, purpose of the event and the size of the demonstration. Determination will then be made with the Patrol Supervisor for necessary police personnel and if required, street closings (temporary) will take place. The Patrol Supervisor should then attempt to identify leadership in the group. Some groups will deny any “leadership” but they will make a spokesperson available for the media. This person usually is the leader. The Town By-law has to be explained to all of the participants. The Attorney Generals Office and the Norfolk County District Attorneys Office both recommend that this advising of the by-law violation should be video and audio taped, and that this tape be considered evidence for any court action that may take place.

5. The Patrol Supervisor or his/her designee should talk with the residents that are being targeted by this event. The by-law shall be explained to them and that they may be needed as victims in eventual court action. The families schedule should be obtained particularly as it pertains to arrivals and departures of family members or guests. The Patrol Supervisor or his/her designee should also approach the neighbors and explain what is going on and the possible police activity.

6. A “soft” Police approach is necessary at the beginning of an event. Some groups may wish to create an event where the police are forced into actions that are designed by the group to stir any media intending to film and report the police actions in a negative manner. All Officers arriving at a scene have to be aware that their professional actions and appearance will help to deter any negativity towards a professional department as represented by all officers present. Officers cannot comment on the goals or beliefs of those picketing and their cause. It could lead to a misrepresentation by the media (one way to prevent groups from repeating their appearances in Town is by presenting a professional well maintained uniformed police department). A firm but fair police response will help create a favorable community response from both residents and even protesters.

7. SUPERVISORS/COMMANDERS: Observe and determine the objective of the picketing group. Determine leadership of group and their intentions, targets and duration of the event. Determine public safety concerns as it relates to vehicular and pedestrian traffic. Determine other public safety concerns such as irate neighbors or groups with opposing views that may conflict with the original group. Establish dialogue with the target of the demonstration and with neighbors. Have all responding officers act in a highly professional manner that will generate positive reactions from all people involved at the picket site. Notify the proper departmental officers in regards to media. Determine which officer(s) would be the complainants if the event would lead to prosecutions, and determine what evidence is needed for prosecution.
8. **PATROL OFFICERS:** At all times maintain a professional appearance and act in a manner that indicates a cool professional demeanor. Full Class A uniform at all times. Limited or no conversation with picketers irregardless of their cause. No conversation with media outside of their duties. All officers assigned to a specific location are to remain at that location until relieved by a supervisor.

9. **DETECTIVES/PLAIN CLOTHES OFFICERS:** These officers are to gather as much intelligence as possible as to the demonstrator’s motives and tactics. Plainclothes officers are to photograph and/or videotape the event in a manner that doesn’t arouse picketers (may be useful in court). Record any plate numbers of vehicles that would assist in later identifications if necessary.

   

   [Signature]

   Daniel C. O’Leary
   Chief of Police
Exhibit 2
Sir,

Article 8.17 Section 2 of our town-by-laws acknowledges that reasons for residential picketing will vary with time, and with various groups and their causes. The controversy surrounding the construction of a BSL-4 Biolab in Boston’s South End brought residential picketing to Brookline once again, when activists chose to picket at the home of Robert Brown (Ivy Street), President of Boston University.

The first of two residential picketing campaigns took place on the evening of Wednesday February 9th. Activists working with the direct action campaign “Operation: Over” spent the evening leaving anti-biolab fliers on porches in the Ivy Street neighborhood, finally arriving at Brown’s home at 10:00 PM shouting slogans such as “Robert Brown, It’s Our Town! Biolab, Shut it down!” They shined flashlights into his windows and banged on pots and pans on the sidewalk in front of his home. After about [½ hour] and with the assistance of BUPD, the demonstration was disbanded, though the activists warned, “We’ll be back.”

On Monday, February 13th approximately 30 activists did, indeed, return to the home of BU President Robert Brown at 10:00 PM. They held signs and chanted in front of Brown’s home, until Patrol Captain Keaveny arrived on-scene to advise them of Brookline’s by-law on focused picketing, as directed by Special Order #2005-17. Group members acknowledged this advisement on their website, yet ended their article by stating that this (the second) demonstration was one in a series of direct actions that Operation: Over plans to carry out this spring. They have not returned as of yet.

Intelligence gathered on this group suggests that they are broadening their scope of tactics, to include banner drops (a successful one was carried out on BU’s campus on 03/03), calls for student boycotts and sit-ins (activists tied themselves to an on-campus statue of MLK on 2/15). They are hosting a free camp the weekend of March 11-12 on “Climbing and Blockades Training” in Northeastern University’s Campus Center. The BU Biolab cause unites students, animal-rights, women’s health, anti-war and race/class discrimination activists and the movement is likely to gain momentum as the cause receives increased media attention and construction officially begins next week.

While there are no further specific threats to President Brown’s home posted at this time, it is likely that he and other Brookline residents involved in Boston University or the Biolab Project will be targeted for home visits, particularly since the websites point out...
the disparity between Brown’s “4.5 million dollar home” and the living conditions of those living in the area of the Biolab site. The blog following the home-visit article posted on Boston Indymedia’s website provides Brown’s home address, at the request of an activist who was not present at the first demonstration.

Residential picketing is a tactic we have seen used by animal-rights and well as women’s rights activists in Brookline in the past, and whereas Operation: Over identifies themselves as a “direct-action campaign” and whereas a Brookline resident has spearheaded a fund-raising campaign “to provide legal support for direct actions”, we can expect that we will see Brown’s home as well as other local addresses targeted for residential picketing. I believe that in the instances of the Ivy Street demonstrations, the Town by-law on focused picketing and the corresponding BPD Special Order were essential tools which assisted our department in keeping these members of our community safe.

Respectfully submitted,

Detective Jennifer Canney
Exhibit 3
SECURITY INCIDENT REPORT

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

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

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

Affiliate Name/National Office: PPLM (Private Practice)

Incident Location: Milton, MA

Submitted by: Melanie Lown   Email Address: Melanie_Lown@ppim.org

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

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

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

REDACTED

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

Damage Estimate: $

Law Enforcement Involved:
SECURITY INCIDENT REPORT
Please Submit A Separate Form For Each Incident

Submit completed form to: Affiliate Incidents: AffiliSecurityIncidents@ppfa.org
National Offices: NationalSecurityIncidents@ppfa.org

Instructions:
* To maintain a copy of the Incident Report Form, use the "Save As" function to rename the document.
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Incident Date/# (PPFA assigns #) 4/18/04

Affiliate Name/National Office: PPLM

Incident Location: Braintree, MA

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

Phone Number: 617-616-1638 Fax Number: 617-616-1652

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

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

Detailed Incident Description: Two of our regular protestors, Gay Gupil and Susan Gallagher picked the home of ; a PPLM clinician in Boston on Sunday, April 18, 2004. lives with her parents in Braintree and this is the first time she has been picketed in the 5 years she's worked for PPLM. and her parents were home at the time. A neighbor called to say that protestors had a video camera and a sign in front of the house that said, " Abortion Worker." They were also screaming about being a "baby killer" to anyone who drove by. They spent considerable time filming outside of her house and then went to a spot to picket down the street next to a park. An officer was dispatched to the scene, , the protestors and strongly encouraged them to leave. and her parents went down separately to see what the protestors were doing. A verbal altercation ensued between her parents and the protestors. and her parents went to make statements at the police station immediately after the incident. The officer at the scene wrote a compelling case in her incident report after interviewing and her parents that included Kate's fears, the history of harassment and violence against Planned Parenthood employees at work and at home, and the unpredictability of the protestors. The charges are criminal harassment and illegal wire-tapping. It is a felony in Massachusetts for individuals other than law enforcement to film anyone using a camera that has an audio component without first obtaining consent. (The protestors were filming conversations with neighbors, her parents and passerby.) The officer requested an expedited trial date, sitting that the protestors could easily come back. In fact the protestors told the officer that they planned to come back with a bullhorn and inquired about acceptable noise levels. We are now just waiting for to get a notice in the mail about her hearing date and the police will be notified again if the protestors return.
Damage Estimate: $ 
Law Enforcement Involved: 2 Braintree Police Officers 

(For PPFA Use Only) Follow-Up:
SECURITY INCIDENT REPORT
Please Submit A Separate Form For Each Incident

Submit completed form to: Affiliate incidents: Affiliatesecurityincidents@ppfa.org
National Offices: NationalSecurityIncidents@ppfa.org

Instructions:
- To maintain a copy of the Incident Report Form, use the "Save As" function to rename the document.
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- For detailed help in filling out any section of the form, place your cursor in the shaded box and press F1

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

Affiliate Name/National Office: PPLM

Incident Location: Braintree, MA

Submitted by: Melanie Lown Email Address: Melanie_Lown@pplm.org
Phone Number: 617-616-1666 Fax Number: 617-616-1652

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

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

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

Damage Estimate: $

Law Enforcement Involved: Braintree Police

Name of Arrested/Charges:

(For PPFA Use Only) Follow-Up:
SECURITY INCIDENT REPORT
Please Submit A Separate Form For Each Incident

Submit completed form to: Affiliate incidents: AffiliationSecurityIncidents@ppfa.org
National Offices: MailSecurityIncidents@ppfa.org

Instructions:
- To maintain a copy of the Incident Report Form, use the "Save As" function to rename the document.
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- For detailed help in filling out any section of the form, place your cursor in the shaded box and press F1.

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<th>Affiliate Name/National Office</th>
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</tr>
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<tbody>
<tr>
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<table>
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<tr>
<th>Submitted by:</th>
<th>Melanie Lown</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email Address:</td>
<td><a href="mailto:Melanie_Lown@pplm.org">Melanie_Lown@pplm.org</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phone Number</th>
<th>617-616-1686</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fax Number</td>
<td>617-616-1652</td>
</tr>
</tbody>
</table>

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

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

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

Damage Estimate: $

Law Enforcement Involved: Hingham Police

Name of Arrested/Charges:

(For PPFA Use Only) Follow-Up:
SECURITY INCIDENT REPORT
Please Submit A Separate Form For Each Incident

Submit completed form to:
Affiliate Incidents: AffiliateSecurityIncidents@ppfa.org
National Offices: NationalSecurityIncidents@ppfa.org

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

Affiliate Name/National Office: PPLM

Incident Location: : Brookline, MA

Submitted by: Melanie Lown  Email Address: Melanie_Lown@ppm.org

Phone Number: 617-816-1686  Fax Number: 617-816-1652

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

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

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

Damage Estimate: $

Law Enforcement Involved: Brookline Police

Name of Arrested/Charges:

(For PPFA Use Only) Follow-Up:

REDACTED
SECURITY INCIDENT REPORT
Please Submit A Separate Form For Each Incident

Submit completed form to: Affiliate Incidents: Affiliatesecurityincidents@ppfa.org
National Offices: NatiSecurityIncidents@ppfa.org

Instructions:
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* Place your cursor inside the shaded box before inserting information into the form.
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* For detailed help in filling out any section of the form, place your cursor in the shaded box and press F1

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

Affiliate Name/National Office: PPLM

Incident Location: 1 West Springfield

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

Phone Number: 617-616-1886 Fax Number: 617-616-1652

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

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

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

Damage Estimate: $

Law Enforcement Involved:

Name of Arrested/Charges:
Exhibit 4
Fact Sheet: The Shortage of Abortion Providers

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

Sources:


http://www.abortionaccess.org/AAP/publica_resources/fact_sheets/shortage_provider.htm

5/12/200
Fact Sheet: The Shortage of Abortion Providers


Statistics compiled June 2003

http://www.abortionaccess.org/AAP/publica_resources/fact_sheets/shortage_provider.htm

5/12/2004
Trends in Abortion in Massachusetts, 1973–2000

The Alan Guttmacher Institute (AGI)
© January 2003
Number of abortion providers in Massachusetts, 1973–2000

The Alan Guttmacher Institute

Slide #4

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

Exhibit 6
<table>
<thead>
<tr>
<th>Locality/Ordinance</th>
<th>Relevant Provisions</th>
<th>Relevant Cases/Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Huntsville, Alabama</td>
<td>Provides a ground for denial of a picketing permit if proposed location is before the residence or dwelling of any individual who is the target of the picket.</td>
<td>N/A</td>
</tr>
<tr>
<td>Arizona</td>
<td>Prohibits picketing or demonstrating before or about the residence or dwelling of an individual with intent to harass, annoy or alarm another person. Violation is a misdemeanor. Exception for residence used for principal place of business.</td>
<td>N/A</td>
</tr>
<tr>
<td>Little Rock, Arkansas</td>
<td>Makes it unlawful for any person to engage in picketing which is directed, focused or targeted solely at a particular private residence located in a residential zoned district and which takes place directly in front of the particular private residence or the private residence on either side of the targeted residence.</td>
<td>N/A</td>
</tr>
<tr>
<td>Burbank, California</td>
<td>Prohibits picketing before or about the residence or dwelling of any individual.</td>
<td>N/A</td>
</tr>
<tr>
<td>Carlsbad, California</td>
<td>Makes it unlawful for any person to engage in picketing activity that is targeted at and is within three hundred feet of a residential dwelling.</td>
<td>N/A</td>
</tr>
<tr>
<td>Davis, California</td>
<td>Makes it unlawful for any person to picket before or about a residence if the picketing is focused on that particular residence. Violation is a misdemeanor.</td>
<td>N/A</td>
</tr>
<tr>
<td>DAVIS, CAL., CODE § 35.06.020</td>
<td></td>
<td>State v. Baldwin, 908 P.2d 483 (Ariz. Ct. App. 1995) (upholding constitutionality of §13-2909: it is neither impermissibly vague nor overbroad and therefore does not violate state or federal guarantees of free speech and freedom of religion)</td>
</tr>
<tr>
<td>Glendale, California</td>
<td>Makes it unlawful for any person or group of persons to picket solely in front of, or at, the residence of any individual.</td>
<td>N/A</td>
</tr>
<tr>
<td>Locality/Ordinance</td>
<td>Relevant Provisions</td>
<td>Relevant Cases/Result</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Huntington Beach, California</td>
<td>Makes it unlawful to engage in picketing within 300 feet of any residence or dwelling of any individual where such picketing is focused or targeted against that residence, dwelling or individual.</td>
<td>N/A</td>
</tr>
<tr>
<td>Los Angeles, California</td>
<td>Prohibits picketing that is focused upon and at or about a private residence and that takes place within 100 feet of the private residence. Explicitly excludes peaceful picketing, distribution of pamphlets, or going door to door. Violation is a misdemeanor.</td>
<td>N/A</td>
</tr>
<tr>
<td>LOS ANGELES, CAL., CODE Chapter V, Article 6.1, § 56.45(e) (1995)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Gatos, California</td>
<td>Makes it unlawful for any person to engage in picketing before a specific residence or dwelling, except that individuals may picket before a specific residence regarding a labor dispute involving work actually performed on the site of the residence or dwelling. Violation is a misdemeanor.</td>
<td>N/A</td>
</tr>
<tr>
<td>LOS GATOS, CAL., CODE Chapter 18, Article V, § 18.50.100 (1993)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monte Sereno, California</td>
<td>Prohibits picketing activity that is targeted at, and is within three hundred (300) feet of, a residential dwelling.</td>
<td>N/A</td>
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<tr>
<td>MONTE SERENO, CAL., CODE tit. IV, ch. 4.15, §4.15.020</td>
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<tr>
<td>Palos Verdes Estates, California</td>
<td>Prohibits picketing before or about the residence or dwelling of any individual.</td>
<td>N/A</td>
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<td>PALOS VERDES ESTATES, CAL., CODE § 9.05.010 (1990)</td>
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<tr>
<td>Sacramento County, California</td>
<td>Makes it unlawful for any person to picket within 100 feet of a residence or dwelling in the county when the picketing is focused on the residence or dwelling. Makes an exception for residences used as places of business, residences used for public meetings, and when the picketers are present at the invitation of the resident. Ordinance also specifically states that residential picketing not focused on a specific home is not prohibited by the ordinance.</td>
<td>N/A</td>
</tr>
<tr>
<td>San Diego, California</td>
<td>Makes it unlawful to picket before or about the residence of an individual. Ordinance specifies that it does not preclude residential picketing not targeted at a particular residence.</td>
<td>Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., 129 Cal. App. 4th 1228 (Cal. App. 4th Dist. 2005) (affirming the likelihood that plaintiff would succeed on her claim that one of the defendants violated San Diego’s residential picketing ordinance).</td>
</tr>
<tr>
<td>San Jose, California</td>
<td>Prohibits any person from engaging in picketing activity that is targeted at and is within 300 feet of a residential dwelling.</td>
<td>City of San Jose v. Superior Court, 38 Cal. Rptr.2d 205 (Cal. App. 6th Dist. 1995) (upholding constitutionality of ordinance because protesters failed to show it was overbroad), cert denied, 1995 Cal. LEXIS 3564 (Cal. May 25, 1995), cert. denied sub nom, Thompson v. City of San Jose, 516 U.S. 932 (1995).</td>
</tr>
<tr>
<td>Santa Ana, California</td>
<td>Makes it unlawful to picket before or about the residence of any individual where the picketing is focused on that particular residence.</td>
<td>N/A</td>
</tr>
<tr>
<td>Saratoga, California</td>
<td>Prohibits picketing activity that is targeted at, and is within three hundred feet of, a residential dwelling.</td>
<td>N/A</td>
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<tr>
<td>Tustin, California</td>
<td>Makes it unlawful to engage in picketing before or about the residence or dwelling of any individual where the picketing is focused or targeted against that residence. Violation is a misdemeanor.</td>
<td>N/A</td>
</tr>
<tr>
<td>Tustin, Cal., Code § 6510-6530 (1993)</td>
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<tr>
<td>Arapahoe County, Colorado</td>
<td>Makes it unlawful for any person to engage in targeted picketing in a residential area, except when such person is engaging in targeted picketing while marching, without stopping in front of a residence, over a route that proceeds along the entire one-way length of at least one block of a street.</td>
<td>N/A</td>
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<tr>
<td>Arapahoe County Ord. No. 2000-1</td>
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<tr>
<td>Aurora, Colorado</td>
<td>Makes it unlawful for any person to engage in picketing which is directed, focused, or targeted solely at a particular private residence located in a residential zone district and which either takes place directly in front of the targeted private residence, or directly in front of an adjacent private residence, or on either side of the targeted residence. Provides exemptions at defined times for residences used as occupant's sole place of business or as a place for public meeting. Also allows door to door proselytizing and marching on a defined route without stopping at particular residences. Requires a person be given warning before being charged.</td>
<td>N/A</td>
</tr>
<tr>
<td>Aurora, Col., Code §94-121 (2000)</td>
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<tr>
<td>Connecticut</td>
<td>Prohibits picketing before or about the home or residence of any individual unless such home is adjacent to, or in the same building, or on the same premises in which such person was employed and which employment is involved in a labor dispute.</td>
<td>French v. Amalgamated Local Union 376, 526 A.2d 861 (Conn. 1987) (striking down residential picketing statute as violation of First and Fourteenth Amendments because statute contained exception for labor picketing) (emphasis added).</td>
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<tr>
<td>District of Columbia, D.C. Code Ann., §§ 22-1314.02 (b) (2004)</td>
<td>Makes it unlawful to &quot;act alone or in concert with others with the intent to prevent a medical provider or a member of the medical provider's family from entering or leaving the medical provider's home.&quot; Violators can be fined up to $1000 and imprisoned for not more than 6 months.</td>
<td>N/A</td>
</tr>
<tr>
<td>Orlando, Florida, Orlando, Fla. Code ch. 43, §43.42(1)(c)</td>
<td>Makes it unlawful for any person or persons to picket before or about any residential or dwelling unit of any person.</td>
<td>N/A</td>
</tr>
<tr>
<td>Atlanta, Georgia, Atlanta, Ga. Code ch. 106, art. III, §106-89</td>
<td>Makes it unlawful for any person to picket or engage in picketing upon, before or about the private residence or home of any individual.</td>
<td>N/A</td>
</tr>
<tr>
<td>Gainesville, Georgia, Gainesville, Ga. Code tit. VI, ch. 6-7, art. 2, §6-7-26(3) (1992)</td>
<td>Prohibits picketing or demonstrating in front of any residence for longer than forty-five minutes.</td>
<td>N/A</td>
</tr>
<tr>
<td>Vidalia, Georgia, Vidalia, Ga. Code ch. 17, art. II, §17-33(b)(3) (2004)</td>
<td>Prohibits picketing at a location directed, focused, or targeted at a particular private residence.</td>
<td>N/A</td>
</tr>
<tr>
<td>Hawaii, Haw. Rev. Stat. § 379A-1 (1995)</td>
<td>Prohibits any person from picketing before or about the dwelling place of an individual. Exceptions for when the dwelling place is also the place of employment involved in a labor dispute and for peacefully picketing the place of a meeting or premises commonly used to discuss subjects of general public interest.</td>
<td>N/A</td>
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<tr>
<td>Illinois 720 ILL. COMP. STAT. 5/21.1-2 (2004)</td>
<td>Prohibits picketing before or about a residence. Exceptions for when the residence is used as a place of business, when peacefully picketing one's own residence, and when picketing the place of a meeting or premises commonly used to discuss subjects of general public interest.</td>
<td>N/A</td>
</tr>
<tr>
<td>Aurora, Illinois AURORA, ILL. CODE ch. 29, art. II, §29-24</td>
<td>Makes it unlawful to picket upon or across the public way from, adjacent to or in front of the personal residence or dwelling of any person; provided, however, that nothing herein shall be construed to prevent lawful picketing of a residence or dwelling under construction or during a time when it is a construction site.</td>
<td>N/A</td>
</tr>
<tr>
<td>Danville, Illinois DANVILLE, ILL. CODE tit. VIII, ch. 133, §133.02</td>
<td>Makes it unlawful to picket before or about the residence or dwelling of any person, except when the residence or dwelling is used as a place of business, is commonly the site of meetings to discuss subjects of general public interest, or is the picketer's own residence or dwelling.</td>
<td>N/A</td>
</tr>
<tr>
<td>Burbank, Illinois BURBANK, ILL. CODE ch. 9, art. I, §9-77(b)</td>
<td>Makes it unlawful to picket before or about the residence or dwelling of any person.</td>
<td>N/A</td>
</tr>
<tr>
<td>Park Ridge, Illinois PARK RIDGE, ILL. Code art. 14, ch. 8, §14-8-14</td>
<td>Makes it unlawful for any person or group of persons to engage in picketing directed at the residence or dwelling of any person.</td>
<td>N/A</td>
</tr>
<tr>
<td>Wheeling, Illinois WHEELING, ILL. CODE tit. VIII, ch. 8.12, §8.12.030</td>
<td>Makes it unlawful for any person to picket before or about the residence of another except when the residence or dwelling is used as a place of business.</td>
<td>N/A</td>
</tr>
<tr>
<td>Clive, Iowa CLIVE, IOWA CODE ch. 40, §40.07</td>
<td>Makes it unlawful for any person to engage in picketing before, about or immediately adjacent to, the residence or dwelling of any individual.</td>
<td>Douglas v. Brownell, 88 F.3d 1511 (8th Cir. 1996) (upholding the constitutionality of Clive's ordinance).</td>
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<tr>
<td>Mission, Kansas</td>
<td>Makes it unlawful for any person to engage in picketing before or about the presence or dwelling of any individual.</td>
<td>N/A</td>
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<tr>
<td>Mission, KAN. ORD. NO. 755 §1; art. VI, §215.110</td>
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<tr>
<td>Overland Park, Kansas</td>
<td>Prohibits residential picketing proceeding on a definite course or route in front of a home and directed at picketing a single residence.</td>
<td>N/A</td>
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<tr>
<td>Overland Park, KAN. ORD. No. 11.28.065</td>
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<tr>
<td>Prairie Village, Kansas</td>
<td>Prohibits picketing before or about the residence or dwelling of any individual in the city, or before or about any church in the city.</td>
<td>N/A</td>
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<tr>
<td>Prairie Village, KAN. ORD. No. 1785, Art. 9.13</td>
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<tr>
<td>Topeka, Kansas</td>
<td>Prohibits picketing that is directed, focused, or targeted at a residence and that takes place before or about the residence.</td>
<td>N/A</td>
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<td>TOPEKA, KAN., CODE § 54-126 (1993)</td>
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<tr>
<td>Bangor, Maine</td>
<td>Prohibits a targeted residential picket within 300 feet of a residence or dwelling of any individual except with the prior consent of all occupants of the residence or dwelling concerned.</td>
<td>N/A</td>
</tr>
<tr>
<td>BANGOR, ME., CODE ch. VI, art. 11-A, §202-22</td>
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<tr>
<td>Maryland</td>
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<td>N/A</td>
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<tr>
<td>MD. CODE ANN., CRIM. LAW., § 3-904 (2003)</td>
<td>Prohibits picketing before or about the residence or dwelling place of any individual. Exceptions for picketing in connection with a labor dispute, picketing when the home is also the sole place of business, and picketing in areas commonly used to discuss subjects of general public interest.</td>
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<tr>
<td>Montgomery County, Maryland</td>
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<td>N/A</td>
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<tr>
<td>MONTGOMERY COUNTY, MD. CODE ch. 32, §32-23 (1993)</td>
<td>Prohibits a person or group of persons from picketing in front of or adjacent to any private residence unless the residence is also used as the occupant’s sole place of business or for a public meeting.</td>
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<td>Michigan</td>
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<td>N/A</td>
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<tr>
<td>MICH. COMP. LAWS § 423.9f(4) (2004)</td>
<td>Prohibits picketing a private residence by any means or methods. Creates an exception for picketing that is otherwise authorized by the Constitution.</td>
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</table>
| Shoreview, Minnesota  
SHOREVIEW, MINN.,
CODE § 1006.010-.060  
(1995). | Prohibits marching, standing, or patrolling within 100 feet of a residence if carrying written material directed at the dwelling’s occupant or if verbalizing protests that identify the occupant of the dwelling. Prohibits any marching, standing, or patrolling that interferes with the ability to enter or exit the residence. Ordinance also prohibits standing or patrolling within 100 feet for a continuous period of five minutes or more. Also provides that city council may pass resolutions establishing certain neighborhoods as no picketing zones upon request from any town resident and if the city council makes certain findings about the harassing and intrusive nature of the picketing. | N/A |
| Jordan, Minnesota  
JORDAN, MINN. CODE  
ch. 7, §7.18 (1997) | Makes it unlawful for any person to conduct targeted residential picketing within the city, but provides that is not unlawful for otherwise permissible picketing to occur on public streets and sidewalks that run through a residential area. | N/A |
| White Bear Township, Minnesota  
WHITE BEAR, MINN.,
ORDINANCE No. 63  
(May 21, 1990) | Prohibits targeted residential picketing which is defined as activity focused on a single residential dwelling without the consent of the dwellings occupant. | State v. Castellano, 506 N.W.2d 641 (Minn. Ct. App. 1993) (upholding constitutionality of ordinance under Frisby v. Schultz when ordinance is interpreted narrowly “to proscribe only ‘picketing activity’ focused on or taking place in front of a particular single residential dwelling”). |
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<td>Minnesota</td>
<td>Includes “targeted residential picketing” as part of anti-harassment statute. Defines “targeted residential picketing” as marching, standing, or patrolling a particular residential building that adversely affects safety, security, and privacy of occupants or prevents occupants from entering or exiting. Makes restraining order available against persons engaging in targeted residential picketing.</td>
<td><em>Welsh v. Johnson</em>, 508 N.W.2d 212 (Minn. Ct. App. 1993) (relying on Frisby to uphold constitutionality of statute as applied to defendant who was enjoined from coming within two block’s of plaintiff’s residence).</td>
</tr>
<tr>
<td>University City, Missouri</td>
<td>Makes it unlawful for any person to engage in picketing before or about the residence or dwelling of any individual, where such residence or dwelling is located in any area designated residually zoned in the zoning code of the city.</td>
<td>N/A</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Prohibits picketing that interferes with any person in the exercise of his or her lawful right to work, or right to enter upon or pursue any lawful employment by, among other things, picketing the place of residence of any person, or any street, alley, road, highway or any other place where such person may be, or in the vicinity thereof. Violation is a misdemeanor.</td>
<td>N/A</td>
</tr>
<tr>
<td>Lincoln, Nebraska</td>
<td>Prohibits picketing directed towards a specific person or persons in the portion of any street that abuts the property upon which the specific person’s dwelling is located or abuts property within 50 feet of the property upon which the specific person’s dwelling is located. This excludes sidewalk space on the opposite side of the street from the specific person’s dwelling.</td>
<td><em>Thornbarn v. Austin</em>, 231 F.3d 1114 (8th Cir. 2000) (upholding constitutionality of ordinance).</td>
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<td>Concord, New Hampshire</td>
<td>Makes it unlawful for any person to engage in any demonstration activity which is directed, focused, or targeted at a residence located in a residential zoning district and which takes place before or about that residence. Creates an exception for residences which are used as a place of business or a place of public assembly.</td>
<td>N/A</td>
</tr>
<tr>
<td>Albuquerque, New Mexico</td>
<td>Makes it unlawful for any person, group of persons and/or association to engage in picketing focused on and taking place in front of or next to a particular residence, without the express prior consent of the occupants.</td>
<td>N/A</td>
</tr>
<tr>
<td>Artesia, New Mexico</td>
<td>Prohibits picketing before or about the residence or dwelling of any individual.</td>
<td>Garcia v. Gray, 507 F.2d 539 (10th Cir. 1974) (upholding constitutionality of ordinance as permissible exercise of the city’s power to protect residential privacy), cert denied 421 U.S. 971 (1975).</td>
</tr>
<tr>
<td>Fargo, North Dakota</td>
<td>Prohibits all targeted residential picketing that names the occupants of the dwelling within 200 feet of that dwelling. Also includes a provision for neighborhoods to apply for status as a restricted picketing zone.</td>
<td>Veneklase v. Fargo, 248 F.3d 738 (8th Cir. 2001) (en banc) (upholding constitutionality of 1985 ordinance).</td>
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<tr>
<td>Fayetteville, North Carolina</td>
<td>Makes it unlawful for any person to engage in picketing before or about the residence or dwelling of any individual.</td>
<td>N/A</td>
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<tr>
<td>FAYETTEVILLE, N.C., CODE, ch. 24, art. VIII, §24-283(3)</td>
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<tr>
<td>Greensboro, North Carolina</td>
<td>Makes it unlawful for any person to picket solely in front of, before or about the residence or dwelling of any individual.</td>
<td>N/A</td>
</tr>
<tr>
<td>GREENSBORO, N.C., CODE, ch. 26, art. VI, §26-157(b) (1990)</td>
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<tr>
<td>New Bern, North Carolina</td>
<td>Makes it unlawful for any person to engage in picketing, or a group demonstration, in front of, and focused upon, the residence or dwelling of a particular person.</td>
<td>N/A</td>
</tr>
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<td>NEW BERN, N.C., CODE, ch. 66, art. III, div. 2, §66-89</td>
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<tr>
<td>Raleigh, North Carolina</td>
<td>Makes it unlawful for any person to engage in picketing before or about the residence or dwelling of any individual.</td>
<td>N/A</td>
</tr>
<tr>
<td>RALEIGH, N.C., CODE, Part 12, ch. 1, art. C, §12-1056(c)</td>
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<tr>
<td>Smithfield, North Carolina</td>
<td>Makes it unlawful for any person to picket solely in front of, before or about the residence or dwelling of any individual.</td>
<td>N/A</td>
</tr>
<tr>
<td>SMITHFIELD, N.C., CODE, ch. 17, art. III, div. 2, §17-72(b) (1992)</td>
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<tr>
<td>Ohio</td>
<td>Grants authority to any municipal corporation to prevent noise and disturbance and disorderly assemblages to preserve the peace and order and to protect property of the municipal corporation and its residents.</td>
<td>N/A</td>
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<tr>
<td>Cleveland Heights, Ohio CLEVELAND Heights, Ohio, GENERAL OFFENSES CODE § 509.08</td>
<td>Makes it unlawful for any person to engage in illegal picketing before or about the residence or dwelling owned or occupied by any individual in the City. Prohibits picketing that is directed at or conducted primarily before, or about or in the immediate vicinity of the land upon which a dwelling is situated and any activity that blocks entrance to and exit from the property.</td>
<td>N/A</td>
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<tr>
<td>SEVEN HILLS, OHIO, CODIFIED ORDINANCES OF THE CITY OF SEVEN HILLS, OHIO § 511.01-</td>
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<td>.02 (1993)</td>
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<tr>
<td>University Heights, Ohio UNIVERSITY Heights, Ohio, CODIFIED ORDINANCES § 509.12</td>
<td>Prohibits picketing that is directed at or conducted primarily before, or about or in the immediate vicinity of the land upon which a dwelling is situated and any activity that blocks entrance to and exit from the property.</td>
<td>N/A</td>
</tr>
<tr>
<td>§ 509.12 (1993)</td>
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<tr>
<td>Broken Arrow, Oklahoma, BROKEN ARROW, OK. CODE, Ch. 16, art. I, §16-9 (1992)</td>
<td>Prohibits picketing before or about the dwelling of any individual except that which occurs on the sidewalk adjacent to arterial streets.</td>
<td>N/A</td>
</tr>
<tr>
<td>Barrington, Rhode Island BARRINGTON, R.I., ORDINANCE NO. 86-6 (1986)</td>
<td>Prohibits picketing in front of, adjacent to or with respect to any property used for residential purpose. Exception for when such picketing relates to a use or activity being carried on within such property.</td>
<td>Town of Barrington v. Blake, 568 A.2d 1015 (1990) (upholding constitutionality of ordinance under Frisby v. Shultz).</td>
</tr>
<tr>
<td>North Kingston, Rhode Island NORTH KINGSTON, R.I., ORDINANCE NO. 87-7, ch. 12, §12-14</td>
<td>Prohibits picketing in front of, adjacent to or on any property used for residential purposes, except where such picketing relates to a use or activity being carried on within such property or the owner or occupant of such property has consented to the picketing.</td>
<td>N/A</td>
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UPDATE TO THE MINORITY REPORT OF THE SELECTMEN’S COMMITTEE ON
FOCUSED RESIDENCE PICKETING
May 3, 2006

The three members of the committee who signed the Minority Report (Mary Sullivan, Mark Michelson, and Sarah Wunsch), dated October 19, 2004, again recommend that the by-law be allowed to expire for the reasons stated in our earlier report. We would like to supplement that report with the following points:

1. Contrary to the majority report, the by-law is ineffective at preventing the harms described.

It bears repeating that in order to not violate the First Amendment, the by-law can only prohibit picketing directly in front of or adjacent to the targeted house. It cannot prohibit picketing up and down the street or sidewalk, next door, or across the street. Thus, the existence of the by-law cannot prevent the yelling of offensive comments within earshot of the residents of the house, or the holding of offensive signs within sight of the residents of the house, concerns listed at pages 2-3 of the May, 2006 majority report. Nor can this pitifully weak law address the problem of attacks on abortion providers - a matter that needs to be taken very seriously by Brookline officials and addressed in concrete ways that are genuine and meaningful, unlike the current by-law.

2. The by-law is unnecessary.

When our committee was first appointed, the Selectmen charged us with determining the need for a residential picketing restriction. The police reported to our committee only one incident of abortion protesters at a residence in Brookline since January 1, 2000 and that incident was peaceful and uneventful.

The recent report of Detective Jennifer Canney to Chief O’Leary, dated March 8, 2006 (Exhibit 2 to Majority Report of May 2006) cites two incidents of picketing outside the home of the president of Boston University over the issue of constructing a BSL-4 Biolab. The Canney memo describes activists leaving anti-biolab fliers on porches in the neighborhood and holding signs. Plainly there is nothing illegal about that. It describes the demonstrators as arriving outside of Brown’s home at 10:00 pm shouting slogans, shining flashlights in his windows, and banging pots and pans on the sidewalk outside his home. This kind of activity is prohibited under other laws, not the residential picketing by-law. Similarly, blocking sidewalks and driveways is already prohibited and if police officers want to prevent that conduct from taking place, they have all the tools they need to do that. Although Det. Canney describes the residential picketing by-law as a useful tool in keeping members of the community safe, it appears that in fact others laws against disturbing the peace, making threats, and blocking of ingress and egress are more pertinent and stronger than the by-law.

Given the very few incidents of picketing targeted at a home in Brookline, we adhere to our view
that this law is not necessary.

3. The by-law may easily create liability for the town.

A) police enforcement
Given the constitutional limits imposed on residential picketing restrictions, it is easy to imagine a situation in which police officers fail to keep those limits in mind and prevent picketers from picketing in areas near a targeted house. The Police Chief’s Special Order # 2005-17 explaining the bylaw to members of the department repeats the language of the by-law but does nothing to reiterate the constitutional limits. There is a real danger that Brookline police officers will restrict peaceful picketing that is constitutionally protected and this will create liability for violation of First Amendment rights. Indeed, the Canney memo to Chief O’Leary suggests that on February 13, a group demonstrating in front of BU President Brown’s home, holding signs and chanting, dispersed after being advised by the police about the by-law. It is unclear exactly what they were told about the by-law - it is doubtful they were told they could be picketing next door, up and down the sidewalk, or across the street.

Furthermore, the Special Order in ¶ 9 on page three directs officers to collect “as much intelligence as possible as to the demonstrator’s motives and tactics,” they are to “photograph and/or videotape the event in a manner that doesn’t arouse picketer” and to record license plates. While this information may be useful to any criminal prosecutions that result from the activity, there is a genuine concern that intelligence data gathering on entirely peaceful and constitutionally protected activities will be maintained in files even when it is clear that no crimes have been committed. The memo does not contain any guidelines on destroying this information once it is plain that no charges will be brought. Maintaining intelligence files on peaceful protesters can create liability for the town as well.

B) state constitution
Although the majority report states at page six that the Massachusetts constitutional protections for freedom of speech are co-extensive with the First Amendment, in fact Article 16 of the Declaration of Rights has frequently been interpreted as providing even greater protection for expressive activity than the First Amendment. See, e.g., Mendoza v Licensing Board of Fall River, 444 Mass. 188 (2005). Thus, even though the Supreme Court in Frisby v. Schultz upheld a very limited residential picketing bylaw like the one Brookline has adopted, we simply do not know if the Supreme Judicial Court of Massachusetts would apply the state constitution in the same way as the Supreme Court applied the First Amendment in Frisby. Brookline is taking a chance on the constitutionality of a by-law that is of such little value that the chance is not worth taking.

4. Concerns about the safety of abortion providers who live in Brookline should be addressed by the police department in ways that actually will do more than a fairly meaningless limit on residential picketing.

In our original minority report, we called on the town to take real steps to protect the safety of abortion providers who live in Brookline. Chief O’Leary’s Special Order appears to follow up
on some of the suggestions we made, e.g. sending a squad car to ensure that sidewalks and driveways were not being blocked, observing to see if threats were being made, and being in touch with residents to see what concerns they have. This is an improvement over past reports that police officers would tell residents there was nothing they could do when residents expressed fears over being targeted by picketers. More should be done to follow up with abortion providers who live in town to protect their safety.

5. Brookline should not be known as a community which restricts peaceful expression.

Given the lack of a need for and ineffectiveness of this bylaw, we believe the Town of Brookline should not be on record as having a law which, at least to some extent, does limit peaceful expression and which is apparently leading to data collection on demonstrations. This is contrary to the spirit of the Town of Brookline and at odds with our notions of respecting dissent. It is not the kind of law that we can be proud of and the bylaw should be allowed to expire in June.

Mary Sullivan
Mark Michelson
Sarah Wunsch
Minority Report of the Selectmen’s Committee on Focused Residential Picketing

October 19, 2004

Introduction and Summary of Conclusions

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 8.17    FOCUSED RESIDENCE PICKETING

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

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

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

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

Information provided on the nature of the problem

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

A) Police Department Data

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

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

B) Planned Parenthood Data

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

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

C) Town Counsel data

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

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

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

We note that in the City of Newton in 1994, a residential picketing ordinance was proposed but was not adopted. The Chief of Police there submitted a letter noting that such an ordinance was unnecessary. The National Organization for Women also submitted testimony opposing the proposed ordinance. Surely Brookline has the same concerns as Newton for both freedom of speech and protection of the constitutional right of women to obtain abortions and should not renew a by-law that infringes on peaceful expression while doing nothing to protect abortion providers from threats of harm, particularly when other steps can be taken that directly address the legitimate concerns of the providers.
For these reasons, the undersigned members of this Committee recommend that the by-law be allowed to expire and should not be renewed and also recommends that the Selectmen take steps to carry out the actions listed above in order to provide protection for the safety and well-being of abortion providers and their families who live in Brookline.

Respectfully submitted,

Sarah Wunsch
Mark Michelson
Mary Sullivan
ARTICLE 24

BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

The Board of Selectmen is deeply appreciate of the efforts of all members of the Focused Residence Picketing Committee who have worked on this issue since the Committee was initially convened after the November 2003 vote authorizing the Committee’s creation. The earnestness and quality of the Committee’s work have been most impressive.

To recap the experience to date: The Focused Residence Picketing By-law, Article 8.17 took effect on January 28, 2004 with an expiration date of January 1, 2005. Town Meeting took up this item again in November, 2004 and amended the By-law to extend its effective date until June 30, 2006. As is the case with any By-law vote by Town Meeting, the Attorney General approved both the original By-law and subsequent amendment.

The Selectmen unanimously accepts the majority recommendation of the Committee to eliminate altogether the By-law sunset provision so that this item is no longer subject to an expiration date. While a minority of the Committee continues to argue that the By-law is ineffective, unnecessary and potentially creates liability for the Town, our experience with its provisions for over two years clearly suggests otherwise.

The Police Department adopted Special Order #2005-17 in October, 2005 to guide police actions when picketing occurs at residential locations. This Special Order and the corresponding framework of the By-law have brought much greater clarity to police operations in these situations. The committee reported that the Police Department enforced the By-Law on two occasions. The Department has reported there has been at least one additional instance. In each case constitutional rights to demonstrate have been upheld and the provisions of the By-law have been enforced.

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on May 9, 2006, on the following vote:

VOTED: That the Town amend Article 8.17 of the General By-Laws so it reads as follows:

ARTICLE 8.17
FOCUSED RESIDENCE PICKETING

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

**********

Deleted: This by-law shall expire on January 1, 2005.
BACKGROUND
At the Special Town Meeting of November, 2003, it was voted to amend the Town’s By-Laws by adding a new Article 8.17 on Focused Residence Picketing. Article 8.17 states that, “It is unlawful for any person to engage in picketing focused on, and taking place in front of or about, a particular residence in the town of Brookline. Focused picketing taking place solely in front of or about a particular residence is prohibited.” The Article was passed with a “sunset” provision so that it would expire on December 31, 2004.

Originally filed by Town Counsel at the request of several doctors who live in Brookline, the Focused Residence Picketing By-Law was designed to protect Brookline citizens from unwanted and offensive speech within the privacy of their homes. It is closely patterned after the guidelines in Frisby v. Schultz, 487 U.S.474, 486(1988) in which the U.S. Supreme Court stated that, “The devastating effect of targeted picketing on the quiet enjoyment of the home is beyond doubt.” The Supreme Court decision further stated that only picketing that is directed solely at a single residence can be restricted. In the exercise of their First Amendment rights, picketers can march up and down the streets through neighborhoods as the street is considered a “public forum.” As examples of further avenues of communication legally available to them, protesters are not banned from distributing information and literature door to door, or via mail, phone, or internet. The Supreme Court held that individuals are not required to welcome objectionable speech into the sanctity of their homes. In Hill v. Colorado, 530 U.S.703, 716-17, the Supreme Court held that other interests, particularly the strong privacy interest in avoiding unwanted communications in certain settings, such as the entrance to a medical facility, were sufficient to constitutionally impose certain speech restrictions.

Picketing focused on particular residences is common throughout the country and has generated many state and municipal ordinances. There are 78 laws on the books—68 municipal ordinances, 10 state statutes; two have been ruled unconstitutional due to the labor law exclusion. (The Supreme Court has specifically stated that an appropriate by-law must be content-neutral—that is, it cannot discriminate against one type of speech/picketing and allow another type on a different subject. A 1987 Connecticut law was therefore struck down because it contained an exception for labor picketing.)

At the November, 2004 Special Town Meeting, the expiration date of the by-law was extended until June 30, 2006, so that the Selectmen’s Committee on Focused Residence Picketing could continue its deliberations as to the usefulness, possible alternatives, implementations, etc., of the by-law. Pending its final decision, the Selectmen’s Committee voted unanimously to place Article 24 as a temporary “placeholder” in the upcoming Town Meeting Warrant extending the by-law for another year, to expire June 30, 2007. On April 26, 2006, a 4 to 2 vote majority of the Selectmen’s Committee on Focused Residence Picketing voted to amend Article 8.17, the Focused Residence Picketing By-Law by deleting the existing expiration date, which provides that the Article will expire on June 30, 2006. For the sake of consistency, the Committee voted unanimously to add the word “solely” to the first sentence of the by-law after the word “place.”
DISCUSSION

Some have expressed concern about even the slight abridgement of free speech rights that this by-law imposes, especially within the current atmosphere of federal interference with those rights but they were reminded of the many other opportunities (listed above) still constitutionally available to picketers. In its Majority Report, the Selectmen’s Committee on Focused Residence Picketing states that, “Focused residential picketing is dissimilar from virtually all other forms of picketing. Its purpose is neither to disseminate information widely nor to persuade the public at large...They target individuals in the privacy of their homes and do so with a message designed to be harassing and intimidating to the homes’ occupants.” The intent of anti-abortion advocates is to deter providers from performing abortions by aggressively targeting them and their families in their private residences. It has been particularly difficult for children of providers who have been yelled at by name and told that their “Mommy is a murderer.” Physician parents are called “baby killers” and graphic photos of aborted fetuses displayed and used to cause emotional trauma to the families within their residences. These tactics are working. This targeted picketing, plus the perceived risk to their own personal safety as evidenced by previous murders of abortion providers in Brookline and elsewhere, have already caused many physicians to cease providing abortion services and it has now become increasingly difficult to persuade physicians to train to become OB/GYNs.

There have been no anti-abortion protests in Brookline since the by-law went into effect though there have been in other communities. A physician with a private practice in Chestnut Hill has been targeted at her home in Milton once a month by approximately 15 picketers for the past 8 years. Proponents say this lack of Brookline anti-abortion protests is because the by-law is a known deterrent while opponents say there is no way of proving this and indicates that the law is therefore unnecessary. Providers have told Planned Parenthood officials that they do feel safer with this by-law in place.

Those in opposition to Article 24 believe that our existing laws in Brookline dealing with noise control, offensive and disorderly language, public disturbances and State laws criminalizing stalking and assault are sufficient and would prefer that the Town and Police find other ways to make citizens feel safe. However, Brookline Police Chief O'Leary has indicated that Article 8.17 has already been a useful and helpful tool. One reason why it is more effective is because witnesses are not necessary as in other by-law enforcements. The Brookline Police Department has adopted formal procedures for implementation of Article 8.17 (Special Order #2005-17). Chief O’Leary said that they applied it successfully in conjunction with Brookline’s Noise Control law (Article 8.15) in two cases of picketing at the Ivy St. home of B.U. President Brown this past February. Picketers were protesting B.U.’s proposed building of the Level 4 Bio-Lab in the South End. Previous nonabortion provider cases in Brookline included picketing of the Chestnut Hill home of a pharmaceutical company executive as well as a threatened labor action. In the latter case, a Verizon executive recently called Brookline police to report that labor protestors were picketing in front of her home on Beverly Road. When police arrived, the picketers had left. Assuming they planned to return to her home, police were attempting to locate and advise them of Brookline's Focused Residence Picketing law.

Several opponents of Article 24 raised concerns about whether the by-law would expose
the Town to legal liability. In response to a concern regarding the maintenance of police files on picketers whose actions have been photographed and/or videotaped, Chief O'Leary said that Police Departments are mandated to destroy such data after a certain period of time. In response to concern that implementation of the by-law might trigger lawsuits against the Town, Town Counsel Jennifer Dopa zo has indicated that she sees no legal impediment to either extending the by-law or making it permanent.

Following the guidelines of Frisby v. Schultz, Article #8.17 is content-neutral and can thus apply to many issues. There are a number of animal rights protest cases documented nationwide, many with “puppy killer” messages, such as the Massachusetts Superior Court’s Gazzola Case, in which the home of an employee of an insurance company which insures Huntington Life Sciences was picketed. Citing Frisby v. Schultz, the Suffolk County Superior Court said the municipality’s ability to respond was limited by the absence of a single residence picketing ban. (Commonwealth v. Gazzola, 17 Mass.L.Rep.308, 2004 Mass.Super.LEXIS 28 (Mass.Super.Ct.2004). Animal rights actions such as in the Huntington Life Sciences case could occur at the homes of many Brookline professionals involved with bio-labs.

While agreeing that Article 8.17 is constitutional under U.S. law, some believe that Article 16 of the Massachusetts Declaration of Rights has been interpreted as being more protective of an individual’s freedom of expression than the First Amendment. Proponents of Article 24 have cited the Opinion of the Justices to the Senate, 723 N.E 2d 1, 430Mass1205,1207 n.3(2000) allowing reproductive health care facilities’ buffer zone as not restricting free speech under the MA or U.S. Constitutions and Planned Parenthood League v. Attorney General, 677 N.E.2d.101,104,424 Mass.586,590 (1997) as examples of the Massachusetts judicial trend toward recognizing the importance of the right to reproductive choice and support to the constitutionality of Article 8.17.

It has been maintained that the by-law would not be effective in protecting families from emotional distress as it moves the picketers only a slight distance away because, as stated above, protesters are constitutionally allowed to march up and down the street in front of neighboring homes with their signs and offensive speech which individuals within the home might see and hear. The Advisory Committee agrees that this by-law cannot give full protection but believes that the targeted person and his family have a right to feel safe from actions directed at them within the sanctity of their own home.

An important issue here is the delicate balance of the First Amendment right of free speech with that of avoiding unwelcome speech into the privacy of one’s home. A majority of the Advisory Committee believes that the by-law is constructed narrowly enough to protect the First Amendment rights of picketers who have many other legal opportunities to express themselves and that we should not take away a limited protection of the right to privacy from our residents.

RECOMMENDATION
By a vote of 11 in favor, 5 against and 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.
ARTICLE 25

TWENTY-FIFTH ARTICLE

To see if the Town will amend the By-Laws by adding Article 8.27 as follows:

Article 8.27  Town of Brookline Wetlands Protection Bylaw

I. Purpose

The purpose of this bylaw is to protect the wetlands, water resources, and adjoining land areas in the Town of Brookline by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, wildlife habitat, rare species habitat including rare plant species, and recreation values. This bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth.

II. Definitions

The term “Alter” shall mean to change the condition of any resource area subject to protection under this bylaw. Examples of alteration include but are not limited to, the following:

(a) the changing of pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns and flood retention areas;
(b) the raising or lowering of the water level or water table;
(c) the destruction of vegetation;
(d) the changing of water temperature, salinity, biochemical oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water.

The term “Bank” shall mean the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

The term “Buffer Zone” shall mean that area of land extending 150 feet horizontally outward from the boundary of a resource area, except that riverfront areas and vernal pools shall have no buffer zones.
The term “Isolated Vegetated Wetland” shall mean an isolated wetland that is not hydraulically connected to another resource area and is at least 2,500 square feet in size.

The term “Isolated Land Subject to Flooding” shall be consistent with the definition for ILSF as defined in the MWPA.

The term “Person” shall mean any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term “Pond” shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

The term “Rare Species” shall mean, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

The term “Resource Areas” shall mean land under lakes, ponds, rivers or streams; any bank, marsh, wet meadow, bog or swamp bordering on any lake, pond, river or stream; land subject to flooding bordering on any lake, pond, river or stream; isolated vegetated wetlands; riverfront areas; and vernal pools.

The term “Resource Area Values” shall mean, without limitation, public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, wildlife habitat, rare species habitat including rare plant species, and recreation values.

The term “Riverfront Area” shall mean shall be consistent with the definition for Riverfront Area as defined in the Wetlands Protection Act, 310 CMR 10.58(2), as they may be amended.

The term “Stream” shall mean an open body of running water, including brooks and creeks, which moves in a definite channel, in the ground, due to a hydraulic gradient and flows within, into, or out of an Area Subject to Protection under this bylaw. Such bodies of running water that are intermittent are streams, except for those that serve only to carry the immediate surface runoff from stormwater or snowmelt. A portion of a stream may flow through a culvert or beneath a bridge. Where a stream or river runs thorough a culvert more than 200 feet in length, the buffer zone or riverfront area stops at a perpendicular line at the upstream end of the culvert and resumes at the downstream end.

The term “Vernal Pool” shall mean a confined basin depression that, at least in most years, holds water for a minimum of two continuous months during the spring and/or
summer, and that is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, and that is breeding habitat for amphibian species such as wood frog, spotted salamander, and fairy shrimp, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. A vernal pool does not have a buffer zone.

Except as otherwise provided in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00).

III. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall alter a resource area or a buffer zone. Resource areas shall be protected whether or not they border surface waters. Facilities constructed for the purpose of and designated as reservoirs shall be exempt from the jurisdiction of this bylaw.

IV. Exemptions and Exceptions

The application and permit required by this bylaw shall not be required for the following activities:

1. maintaining, repairing, or replacing, but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission;

2. work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission;

3. for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.
4. the application of herbicides as specifically set forth in 310 CMR 10.03(6) as may be amended.
5. facilities constructed for the purpose of and designated as reservoirs shall be exempt from the jurisdiction of this bylaw.
6. any bordering vegetated wetland, bank, land under water, land subject to flooding, or riverfront area created for the purpose of stormwater management shall not require the filing of a Notice of Intent or a Request for Determination of Applicability to maintain the stormwater management system, provided that the work is limited to the maintenance of the stormwater management system and that the area is not altered for other purposes.

Other than as stated in this section, the exceptions provided in the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00) shall not apply under this bylaw.

V. Applications for Permits, Requests for Determination and Consultant Fee

Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the permit application and plans under this bylaw the Notice of Intent or the Request for Determination of Applicability filed under the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00).

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination (RFD) shall include information and plans as are deemed necessary by the Commission. Such requirements shall be consistent with those required under the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00).

Upon receipt of a permit application or RFD, or at any point during the hearing process, the Commission may require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee will be called the “Consultant Fee.” The Commission may impose a Consultant Fee only after a separate vote at an Annual Town Meeting to establish a Revolving Fund for the administration of such Fee as provided by G.L. c.44, §53E 1/2. The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law.
The Commission may require the payment of the Consultant Fee at any point in its deliberations prior to a final decision. If a revolving fund for consultant expenses and fees is authorized by the town meeting, or by any general or special law, the applicant’s fee shall be put into such revolving fund, and the Commission may draw upon that fund for specific consultant services approved by the Commission at one of its public meetings. Any unused portion of the Consultant Fee shall be returned to the applicant unless the Commission decides at a public meeting that additional services will be required.

The exercise of discretion by the Commission in making its determination to require the payment of a Consultant Fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision. Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

The Commission may waive the Consultant Fee, costs, and expenses for a permit application or RFD filed by a government agency.

The maximum Consultant Fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

<table>
<thead>
<tr>
<th>Project Cost</th>
<th>Maximum Fee</th>
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<tbody>
<tr>
<td>Up To $100,000</td>
<td>$500</td>
</tr>
<tr>
<td>$100,001 - $500,000</td>
<td>$2,500</td>
</tr>
<tr>
<td>$500,001 - $1,000,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>$1,000,001 - $1,500,000</td>
<td>$7,500</td>
</tr>
<tr>
<td>$1,500,001 - $2,000,000</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

Each additional $500,000 project cost increment (over $2,000,000) shall be charged an additional $2,500 maximum fee per increment.

The project cost means the estimated, entire cost of the project including, but not limited to, design, building construction, site preparation, landscaping, and all site improvements. The Consultant Fee shall be paid pro rata for that portion of the project cost applicable to those activities within resource areas protected by this bylaw. The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commission’s request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee.

Until such time that a Revolving Fund pursuant to G.L.c.44, §53E 1/2 is established to administer the Consultant Fee as described above by way of a vote at an Annual Town Meeting the Commission may request an Applicant proposing a project, the cost of which is estimated at $2,000,000 or more to retain and pay the fees for a Consultant to prepare a report for the Commission’s review.
VI. Notice and Hearings

Any person filing a permit application or a RFD with the Commission shall at the same time give written notice thereof, by certified mail with return receipt requested, or hand delivered with signatures, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 100 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.

When a person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or RFD unless an extension is authorized in writing by the applicant.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (G.L. c.131, § 40) and Regulations (310 CMR 10.00).

The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in §VII.

VII. Coordination with Other Boards and Commissions

Any person filing a permit application or RFD with the Commission shall provide written notification thereof at the same time to the town engineer, and building commissioner. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the Town engineer and Building Commissioner have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the
The Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

VIII. Permits and Conditions

If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions that the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Riverfront areas and buffer zones are presumed important to the protection of resource area values because activities undertaken in them have a high likelihood of adverse impact upon the wetlands or other resources, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. Such adverse impact from construction and use can include, without limitation, flooding, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip up to 50 feet wide of continuous, undisturbed vegetative cover within a riverfront area or buffer zone.

In the review of riverfront areas and buffer zones of streams, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall
project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

For good cause the Commission may revoke or modify a permit or determination issued under this bylaw after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to §VI and §VII, and a public hearing.

The Commission in an appropriate case may combine the permit or determination issued under this bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00).

No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

IX. Regulations

After public notice and public hearing, the Commission shall promulgate regulations to effectuate the purposes of this bylaw and shall be effective when voted and filed with the town clerk. Failure by the Commission to promulgate such regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

X. Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the
performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.

B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

XI. Enforcement

No person shall alter a resource area or a buffer zone, or cause, suffer, or allow alteration, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

Only upon the filing of either an Request for Determination or a Permit under this bylaw the Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth. In the absence of the filing of a Request for Determination or a Permit the Commission, its agents, officers and employees shall consult with Town Counsel prior to entering upon privately owned land for the purpose of determining compliance with this by-law or for any other purpose in furtherance of the objectives of this by-law.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

In the case of civil action, the Commission with the approval of the board of selectmen may request the town counsel to take legal action as necessary to enforce the terms of this by-law under civil law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this bylaw, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than
$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in G.L. c. 40, § 21D, which has been adopted by the Town in Article 10.3 of the general bylaws.

XII. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the permit application will not have unacceptable, significant, or cumulative effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

XIII. Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with G.L. c. 249, § 4. This in no way alters or amends and applicants rights to appeal as set forth in the Massachusetts Wetlands Protection Act M. G.L. c.131 § 40.

XIV. Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00) thereunder.

XV. Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination that has been issued previously.

or act on anything relative thereto.

The proposed wetlands protection by-law will provide protection for water and wetland resources in Brookline that are currently unprotected, or not adequately protected, by existing state law. Enactment of a local wetlands by-law has been recommended in both the Comprehensive Plan and the Open Space Plan. The proposed wetlands protection by-law will provide protection for isolated wetlands larger than 2500 square feet, for vernal pools, and for intermittent streams, none of which are protected under the state Wetlands
Protection Act. It will also increase the buffer zone around wetlands to 150 feet. Alterations that are proposed in the buffer zone will require review from the Conservation Commission to ensure that they will not adversely impact the wetland area. The proposed bylaw will provide significant benefit to the town’s storm water management program, and will protect wildlife habitat as well as open space.

SELECTMEN’S RECOMMENDATION

Article 25 proposes a new Wetlands By-Law for the Town, a policy matter the Conservation Commission has been arduously working on for some time. As recommended by the Advisory Committee, the by-law provides appropriate levels of protection for wetland resources within the Town without creating a burdensome process.

The general purpose of the by-law is to protect the wetlands, water resources, and adjoining land areas in the Town by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following:

- public or private water supply
- groundwater
- flood control
- erosion and sedimentation control
- storm damage prevention
- water quality
- water pollution control
- wildlife habitat
- rare species habitat, including rare plant species
- recreation values

The by-law is intended to utilize the Home Rule Authority of the municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (MGL Ch. 131, Sec. 40) and regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth.

The Wetlands By-Law Sub-Committee of the Conservation Commission worked with Town staff and conducted extensive public outreach, including five public hearings. The end result is a proposed by-law that extends coverage of the state law as follows.

1. creates a 150 buffer zone around resource areas (the state buffer zone is 100 feet).
2. adds to the definition of resource areas the following:
   a.) isolated wetlands greater than 2,500 SF in size
   b.) ponds greater than 5,000 SF in size (the state minimum is 10,000)
   c.) intermittent streams

3. covers a vernal pool and a 100 foot area around it
4. border of lands subject to flooding

The Board recognizes and appreciates the efforts of the Conservation Commission and its staff. A majority of the Board recommends FAVORABLE ACTION, by a vote of 4-1 taken on April 4, 2006, on the vote offered by the Advisory Committee.

**ROLL CALL VOTE:**

<table>
<thead>
<tr>
<th>Favorable Action</th>
<th>No Action</th>
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</thead>
<tbody>
<tr>
<td>Allen</td>
<td>Merrill</td>
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<td>Hoy</td>
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<td>Daly</td>
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</tbody>
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**ADVISORY COMMITTEE’S RECOMMENDATION**

**BACKGROUND**

Most of Brookline’s wetlands, streams and ponds have disappeared over the past 300 years of development and land use. The resources that remain tend to be small but still have value for wildlife habitat, storm water storage, regional water quality protection, open space and neighborhood character. Many tend to be too small, isolated or seasonal to be covered by the Massachusetts Wetlands Protection Act. The Conservation Commission, as petitioner, is proposing that Brookline join the 168 cities and town in the Massachusetts in passing a local Wetlands Protection Act to protect wetlands resources not covered by the state act. The proposed Brookline version establishes a review of the impact on resource areas. It does not establish any “no disturb” or “no build” zones, which are features in other bylaws.

**DISCUSSION**

The Conservation Commission has spent a few years formulating the proposed bylaw to make sure that it will work for Brookline. They looked at a variety of neighboring communities and saw how they implemented wetland protection bylaws. They saw different approaches driven by the characteristics of different communities. The Cape had different requirements than Berkshire communities, which also had different requirements than more urban/suburban communities such as Brookline. They saw “no build” and “no disturb” zones in other communities and decided that that approach was
not suitable for Brookline given the locations of the remaining affected areas. The Commission worked with other departments in town and the Selectmen, Town Counsel, Attorney General’s Office, and neighborhood associations. Additionally they held two public hearings; one in South Brookline and the other at the police station.

The proposal extends coverage of the state law as follows:

1. Creates a 150 foot buffer zone around “resource areas” (the state buffer zone is 100 feet)
2. Adds to the definition of resource area:
   a. Isolated wetlands greater than 2500 SF in size
   b. Ponds greater in size than 5000 SF (as amended. The state minimum is 10,000 SF)
   c. Intermittent Streams
   d. Ponds larger than 5000 square feet (as amended)
3. Covers a “Vernal Pool” and a 100 foot area around a “Vernal Pool.”
4. Border of lands subject to flooding

The bylaw prohibits altering any resource area subject to the act without a permit and contains a definition of “alter.”

One complication is the fact that wetlands by their very nature can change. There are only approximate mappings of where wetlands exist. They are identified by aerial photos and filings that are required as part of permitting process. The Conservation Commission might also be notified by citizens.

Note that the WPA and current local bylaws do not give the Conservation Commission the right to enter private property until a permit request has been filed.

The philosophy of the bylaw is to minimize the impact on wetland resource areas, not to stop development. Typically, when a permit is applied for, the Conservation Administrator and the Conservation Commission will work with the applicant through informal and formal processes to make sure that appropriate measures are taken to protect wetland resource areas. Minor projects (i.e., building a deck) is typically handled through a staff review. Larger projects or where the impact is uncertain and cannot be handled at the staff level are referred to the Commission for a formal process, which includes a notice to abutters among others and a public hearing.

According to the Conservation Commission staff the approximate number of parcels impacted by the wetland bylaw are:

**Proposed Brookline standard with a 150 Foot Buffer Zone**
283 Parcels have a portion of their property affected
1 is owned by BCLT
3 are owned by Mass. DCR
30 are owned by the Town of Brookline
Total number of privately owned parcels in jurisdiction 249

Total parcels:
There are 8,613 parcels within the Town of Brookline.

Changes to the Original Warrant Article

1) The Act has been internally renumbered to conform to the style of the bylaw.

2) The original didn’t have a size minimum in the definition of a covered pond that would be covered under the local regulation. The minimum under the WPA is 10,000 sf. The Advisory Committee wanted to have a reasonable size minimum to make sure that what was covered was really a pond and not an insignificant body of water. The Conservation Commission accepted a 5,000 sf minimum. (See Section 2g.)

3) The original had a long section detailing a graduated fee structure for projects depending on their size so that the Commission could retain consultants. The structure was dependent on the establishment of a revolving fund which we were not being asked to establish. Therefore, this entire section was superfluous. At the Advisory Committee’s request, the Conservation Commission removed the entire section. Note that in 5d there is an authorization for the Commission to require an applicant to retain a consultant for projects costing more than $2,000,000. No money would be paid to the town. A phrase was added to section 5.d. clarifying that a consultant could only be required when a permit was applied for.

4) The Zoning Administrator has been added to section seven. The Advisory Committee felt this was appropriate since one of the roles of the Zoning Administrator is to be a coordinator of all elements of the approval process for projects.

5) Further refinement of the term “hardship” was added in Section 8d.

At least one Advisory Committee member wanted the proposed bylaw to include a number of months an intermittent stream would have running water in Section 2.1. The Conservation Commission staff researched other bylaws to determine whether there was an alternate definition that could be proposed. 15 different bylaws were presented; all of which used facts and circumstances examinations of hydrology to determine whether an intermittent stream would be protected. (There would have to be a definite channel, in the ground, due to a hydraulic gradient and flows within, into, or out of an Area Subject to Protection in the words of the proposed bylaw.) The proposed definition of intermittent stream relies on hydrology which is consistent with the Massachusetts Wetlands Protection Act and the other local bylaws. There was a concern expressed by the Conservation Commission staff that to tie a number of months a stream would need to flow to be considered intermittent would create a standard that would be less protective than the state law. Town Counsel expressed the opinion that such a standard would be rejected by the Attorney General’s Office during their review of the new bylaw.
RECOMMENDATION

The Advisory Committee, by a 21-0-1 vote, recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the By-Laws by adding Article 8.27 as follows:

SECTION 8.27.1 Wetlands Protection Bylaw

1. Purpose

The purpose of this bylaw is to protect the wetlands, water resources, and adjoining land areas in the Town of Brookline by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, wildlife habitat, rare species habitat including rare plant species, and recreation values. This bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth.

2. Definitions

Except as otherwise provided in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00).

a. ALTER – To change the condition of any resource area subject to protection under this bylaw. Examples of alteration include but are not limited to, the following:

1) the changing of pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns and flood retention areas;
2) the raising or lowering of the water level or water table;
3) the destruction of vegetation;
4) the changing of water temperature, salinity, biochemical oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water.

b. BANK – The land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level,
whichever is higher.

c. BUFFER ZONE – That area of land extending 150 feet horizontally outward from
the boundary of a resource area, except that riverfront areas and vernal pools shall
have no buffer zones.

d. ISOLATED VEGETATED WETLAND – An isolated wetland that is not
hydraulically connected to another resource area and is at least 2,500 square feet
in size.

e. ISOLATED LAND SUBJECT TO FLOODING – Land as so defined in the
Wetlands Protection Act and 310 CMR 10.57(2)(b), as they may be amended.

f. PERSON – Any individual, group of individuals, association, partnership,
corporation, company, business organization, trust, estate, the Commonwealth or
political subdivision thereof to the extent subject to town bylaws, administrative
agency, public or quasi-public corporation or body, this municipality, and any
other legal entity, its legal representatives, agents, or assigns.

g. POND – A water body as so defined in the Wetlands Protection Act and 310
CMR 10.04, except that a size threshold of 5,000 square feet shall apply.

h. RARE SPECIES – Without limitation, all vertebrate and invertebrate animal and
plant species listed as endangered, threatened, or of special concern by the
Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in
which they occur has been previously identified by the Division.

i. RESOURCE AREAS - Land under lakes, ponds, rivers or streams; any bank,
marsh, wet meadow, bog or swamp bordering on any lake, pond, river or stream;
land subject to flooding bordering on any lake, pond, river or stream; isolated
vegetated wetlands; riverfront areas; and vernal pools.

j. RESOURCE AREA VALUES – Without limitation, public or private water
supply, groundwater, flood control, erosion and sedimentation control, storm
damage prevention, water quality, water pollution control, wildlife habitat, rare
species habitat including rare plant species, and recreation values.

k. RIVERFRONT AREA – Land as so defined in the Wetlands Protection Act and
310 CMR 10.58(2), as they may be amended.

l. STREAM – An open body of running water, including brooks and creeks, which
moves in a definite channel, in the ground, due to a hydraulic gradient and flows
within, into, or out of an Area Subject to Protection under this bylaw. Such
bodies of running water that are intermittent are streams, except for those that
serve only to carry the immediate surface runoff from stormwater or snowmelt. A
portion of a stream may flow through a culvert or beneath a bridge. Where a
stream or river runs thorough a culvert more than 200 feet in length, the buffer zone or riverfront area stops at a perpendicular line at the upstream end of the culvert and resumes at the downstream end.

m. VERNAL POOL – A confined basin depression that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and that is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, and that is breeding habitat for amphibian species such as wood frog, spotted salamander, and fairy shrimp, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. A vernal pool does not have a buffer zone.

3. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall alter a resource area or a buffer zone. Resource areas shall be protected whether or not they border surface waters. Facilities constructed for the purpose of and designated as reservoirs shall be exempt from the jurisdiction of this bylaw.

4. Exemptions and Exceptions

The application and permit required by this bylaw shall not be required for the following activities:

a. maintaining, repairing, or replacing, but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission;

b. work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

c. for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by
this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

d. the application of herbicides as specifically set forth in 310 CMR 10.03(6) as may be amended.

e. facilities constructed for the purpose of and designated as reservoirs shall be exempt from the jurisdiction of this bylaw.

f. any bordering vegetated wetland, bank, land under water, land subject to flooding, or riverfront area created for the purpose of stormwater management shall not require the filing of a Notice of Intent or a Request for Determination of Applicability to maintain the stormwater management system, provided that the work is limited to the maintenance of the stormwater management system and that the area is not altered for other purposes.

Other than as stated in this section, the exceptions provided in the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00) shall not apply under this bylaw.

5. Applications for Permits, Requests for Determination and Consultant Fee

a. Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw. Projects shall not be segmented.

b. The Commission in an appropriate case may accept as the permit application and plans under this bylaw the Notice of Intent or the Request for Determination of Applicability filed under the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00).

c. Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination (RFD) shall include information and plans as are deemed necessary by the Commission. Such requirements shall be consistent with those required under the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00).

d. The Commission may request an Applicant, submitting an application for a permit, the project cost of which is estimated at $2,000,000 or more to retain and pay the fees for a Consultant to prepare a report for the Commission’s review. The project cost means the estimated, entire cost of the project including but not limited to design, building construction, site preparation, landscaping, and all site improvements.
6. Notice and Hearings

a. Any person filing a permit application or a RFD with the Commission shall at the same time give written notice thereof, by certified mail with return receipt requested, or hand delivered with signatures, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 100 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.

b. When a person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

c. The Commission shall conduct a public hearing on any permit application or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.

d. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or RFD unless an extension is authorized in writing by the applicant.

e. The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

f. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (G.L. c.131, § 40) and Regulations (310 CMR 10.00).

g. The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in §VII.

7. Coordination with Other Boards and Commissions

Any person filing a permit application or RFD with the Commission shall provide written notification thereof at the same time to the town engineer, and building commissioner. An affidavit of the person providing notice, with a copy of the notice mailed or delivered,
shall be filed with the Commission. The Commission shall not take final action until the Town Engineer, Zoning Administrator and Building Commissioner have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

8. Permits and Conditions

a. If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions that the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

b. The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship, financial or otherwise, on the applicant by reason of denial, as presented at the public hearing.

c. Riverfront areas and buffer zones are presumed important to the protection of resource area values because activities undertaken in them have a high likelihood of adverse impact upon the wetlands or other resources, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. Such adverse impact from construction and use can include, without limitation, flooding, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip up to 50 feet wide of continuous, undisturbed vegetative cover within a riverfront area or buffer zone.

d. In the review of riverfront areas and buffer zones of streams, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation
measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

e. To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

f. A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

g. For good cause the Commission may revoke or modify a permit or determination issued under this bylaw after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to §VI and §VII, and a public hearing.

h. The Commission in an appropriate case may combine the permit or determination issued under this bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00).

i. No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

9. Regulations

After public notice and public hearing, the Commission shall promulgate regulations to effectuate the purposes of this bylaw and shall be effective when voted and filed with the town clerk. Failure by the Commission to promulgate such regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the
effect of this bylaw.

10. **Security**

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

a. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.

b. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

11. **Enforcement**

a. No person shall alter a resource area or a buffer zone, or cause, suffer, or allow alteration, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

b. Only upon the filing of either an Request for Determination or a Permit under this bylaw the Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth. In the absence of the filing of a Request for Determination or a Permit the Commission, its agents, officers and employees shall consult with Town Counsel prior to entering upon privately owned land for the purpose of determining compliance with this by-law or for any other purpose in furtherance of the objectives of this by-law.

c. The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

d. In the case of civil action, the Commission with the approval of the board of selectmen may request the town counsel to take legal action as necessary to enforce the terms of this by-law under civil law.
e. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

f. Any person who violates any provision of this bylaw, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than $300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

g. As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in G.L. c. 40, § 21D, which has been adopted by the Town in Article 10.3 of the general bylaws.

12. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the permit application will not have unacceptable, significant, or cumulative effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

13. Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with G.L. c. 249, § 4. This in no way alters or amends applicants rights to appeal as set forth in the Massachusetts Wetlands Protection Act M. G.L. c.131 § 40.

14. Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations (310 CMR 10.00) thereunder.

15. Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination that has been issued previously.

XXX
ARTICLE 26

TWENTY-SIXTH ARTICLE

To see if the Town will amend Article 10.2 – Prosecutions and Enforcements, by amending the references to by-law articles as follows:

BUILDING COMMISSIONER
Part VI-Public Property Delete: 6.8
Add: 6.10
Part VIII-Public Health & Safety Delete: 8.17; 8.21; 8.22; 8.23 and 8.24

COMMISSIONER OF PUBLIC WORKS
Part VIII-Public Health & Safety Delete: 8.17 and 8.23
Add: 8.18 and 8.26

DIRECTOR OF HEALTH & HUMAN SERVICES
Part VIII-Public Health & Safety Delete: 8.21
Add: 8.23

or act on anything relative thereto.

This article is being submitted in order to update references to by-laws in Article 10.2. This amendment is necessary because as By-Law Articles were amended and renumbered, their corresponding references in the above articles for penalties and non-criminal disposition were not. Passage of these articles will rectify this oversight.

SELECTMEN’S RECOMMENDATION

Articles 26 and 27 are “house cleaning” articles required to update the Town’s General By-Laws. Since the re-codification of the By-Laws in 2000 -- which was when they were grouped by subjects -- Article 10.2 and Article 10.3 were not revised. While the By-Laws were renumbered, their corresponding references in Article 10.2 and Article 10.3 (penalties and non-criminal disposition) were not.
The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on March 21, 2006, on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
In 1999 Town Counsel’s Office embarked on a re-codification of Brookline’s Town By-Laws. This was done to bring about a measure of order, consistency and overall coherence. The By-laws were ordered into meaningful groups of associated provisions. This re-codification was ratified by Town Meeting.

In subsequent years, new pieces of legislation were voted by Town Meeting with assigned section numbers that would insert the new provisions into the relevant section of the By-Laws. In that process, however, some conflicts arose in the numbering scheme as it relates to cross references in Article 10.12 Prosecutions and Enforcement. This warrant article seeks to rectify those numbering conflicts.

DISCUSSION
This conflict resolution is accomplished through a series of deletions of old reference numbers and the creation of new corrected numbers. Several references to Public Health and Safety which appear under the Building Commission are deleted because those enforcements are overseen by the Health Department and these references, in addition to being erroneous, are redundant.

RECOMMENDATION
Passage of this warrant article will not change the substance of the Prosecutions and Enforcement references. It will, however, create a reference that accurately relates to our Town By-Laws numbering sequence.

Therefore, the Advisory Committee, by a vote of 16 in favor, 0 opposed, and 2 abstentions, recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend Article 10.2 – Prosecutions and Enforcements, by amending the references to by-law articles as follows:

BUILDING COMMISSIONER
Part VI-Public Property
Delete: 6.8
Add: 6.10

Part VIII-Public Health & Safety
Delete: 8.17; 8.21; 8.22; 8.23 and 8.24
COMMISSIONER OF PUBLIC WORKS
Part VIII-Public Health & Safety  Delete: 8.17 and 8.23
Add: 8.18 and 8.26

DIRECTOR OF HEALTH & HUMAN SERVICES
Part VIII-Public Health & Safety  Delete: 8.21
Add: 8.23

XXX
TWENTY-SEVENTH ARTICLE

To see if the Town will amend Article 10.3 – Non-Criminal Disposition, by amending the following references to by-law articles as follows:

1. Change Article 5.8 Sign By-Law

   Article 5.8 Sign By-Law

   Section 5.8.8 Penalty for Violation $100.00

   as follows:

   Article 5.8 Sign By-Law

   Section 5.8.9 Penalty for Violation $100.00

2. Change Article 8.22 Tobacco Control

   Article 8.23 Tobacco Control

   Section 8.23.5 Violations & Penalties

   Part (A) $ 50.00
   Part (B) $100.00
   Part (C) $200.00
   Part (D) $100.00

   as follows:

   Article 8.23 Tobacco Control

   Section 8.23.5 Violations & Penalties

   Part (A) $ 50.00
   Part (B) $100.00
   Part (C) $200.00
   Part (D) $100.00

3. Change Article 8.23 Water Supply Emergencies

   Article 8.23 Water Supply Emergencies

   Section 8.23.6 Penalties

   First Violation $ 50.00
Second & Subsequent Violations $100.00

as follows:

Article 8.24 Water Supply Emergencies

Section 8.24.6 Penalties

First Violation $ 50.00
Second & Subsequent Violations $100.00

4. Change Article 8.24 Water System Backflow and Cross Connections

Section 8.24.6 Enforcement $100.00

as follows:

Article 8.25 Water System Backflow and Cross Connections

Section 8.25.6 Enforcement $100.00

5. Change Article 8.25 Stormwater Management

First Violation $100.00
Second Violation $200.00
Third and Subsequent Violations $300.00

as follows:

Article 8.26 Stormwater Management

First Violation $100.00
Second Violation $200.00
Third and Subsequent Violations $300.00

or act on anything relative thereto.
This article is being submitted in order to update references to by-laws in Article 10.2. This amendment is necessary because as By-Law Articles were amended and renumbered, their corresponding references in the above articles for penalties and non-criminal disposition were not. Passage of these articles will rectify this oversight.

**SELECTMEN’S RECOMMENDATION**

Articles 26 and 27 are “house cleaning” articles required to update the Town’s General By-Laws. Since the re-codification of the By-Laws in 2000 -- which was when they were grouped by subjects -- Article 10.2 and Article 10.3 were not revised. While the By-Laws were renumbered, their corresponding references in Article 10.2 and Article 10.3 (penalties and non-criminal disposition) were not.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on March 21, 2006, on the vote offered by the Advisory Committee.

**ADVISORY COMMITTEE’S RECOMMENDATION**

**BACKGROUND**

By-laws enacted by Town Meeting subsequent to the regrouping and codification of our Town By-laws created several conflicts in the referenced numbers in Article 10.3 – Non-criminal Disposition.

**DISCUSSION**

As in Warrant Article 26, this warrant article rectifies the reference conflicts through a series of changes to section numbers. No changes are made to scope, definition or level of fines. Only the numbering is changed to provide accurate cross referencing.

The Town Clerk and Town Counsel believe they have discovered and resolved all the associated cross-reference disparities. Mindful of this issue, the Advisory Committee will prompt town officials and citizens during discussion and examination of future by-law proposals to ensure proper numbering schemes.

**RECOMMENDATION**

The Advisory Committee, by a vote of 16 in favor, 0 opposed, and 2 abstentions, recommends FAVORABLE ACTION on the following vote:
VOTED: That the Town amend Article 10.3 – Non-Criminal Disposition, by amending the following references to by-law articles as follows:

1. Change Article 5.8 Sign By-Law

   Article 5.8 Sign By-Law

   Section 5.8.8 Penalty for Violation $100.00

   as follows:

   Article 5.8 Sign By-Law

   Section 5.8.9 Penalty for Violation $100.00

2. Change Article 8.22 Tobacco Control

   Article 8.22 Tobacco Control

   Section 8.22.5 Violations & Penalties

   Part (A) $ 50.00
   Part (B) $100.00
   Part (C) $200.00
   Part (D) $100.00

   as follows:

   Article 8.23 Tobacco Control

   Section 8.23.5 Violations & Penalties

   Part (A) $ 50.00
   Part (B) $100.00
   Part (C) $200.00
   Part (D) $100.00

3. Change Article 8.23 Water Supply Emergencies

   Article 8.23 Water Supply Emergencies

   Section 8.23.6 Penalties

   First Violation $ 50.00
   Second & Subsequent Violations $100.00

   as follows:
Article 8.24 Water Supply Emergencies

Section 8.24.6
Penalties

First Violation $50.00

Second & Subsequent Violations $100.00

4. Change Article 8.24 Water System Backflow and Cross Connections

Section 8.24.6 Enforcement $100.00

as follows:

Article 8.25 Water System Backflow and Cross Connections

Section 8.25.6 Enforcement $100.00

5. Change Article 8.25 Stormwater Management

First Violation $100.00
Second Violation $200.00
Third and Subsequent Violations $300.00

as follows:

Article 8.26 Stormwater Management

First Violation $100.00
Second Violation $200.00
Third and Subsequent Violations $300.00

XXX
ARTICLE 28

TWENTY-EIGHTH ARTICLE

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

(1) By deleting § 2.01(3), the definition of “Attic,” and replacing it with the following:

§ 2.01(3). ATTIC - The space between the ceiling beams, or similar structural elements, of the top story of a building and the roof rafters. The top story shall be the story at the highest level of the building.

(2) By adding a new § 2.04(1/2), a definition of “Decommission,” as follows:

§ 2.04(1/2). DECOMMISSION - To make previously habitable space in an existing building uninhabitable by, including but not limited to, removing or blocking required access, light or ventilation or removing ceilings and floors. Space that has been decommissioned shall be included in the gross floor area of a building. The complete and permanent physical demolition of a portion of a building shall not be considered decommissioning and shall reduce the gross floor area by the floor area of the demolished portion of a building.

(3) By deleting § 2.07(1), the definition of “Gross Floor Area,” and replacing it with the following:

§ 2.07(1). GROSS FLOOR AREA - The sum of the areas of all floors of all principal and accessory buildings whether or not habitable except as excluded. Gross floor area shall include enclosed porches and the horizontal area at each floor level devoted to stairwells and elevator shafts. Gross floor area shall exclude (a) portions of cellars, basements, attics, and penthouses that are not habitable, provided however that space that has been decommissioned shall not be excluded from gross floor area; (b) except as required in §5.06, paragraph 4, subparagraph b(3) relating to parking in Coolidge Corner, any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of this By-law, provided, however, that for single- and two-family dwellings the floor space thereby exempted from the calculation of gross floor area shall not exceed 360 square feet per required parking space; (c) elevator penthouses and mechanical equipment enclosures located above the roof, if not habitable; (d) necessary mechanical equipment space in a basement; and (e) up to 100 square feet of area in an accessory structure such as a garden or equipment shed. Measurements shall be from the exterior faces of the walls or from the centerlines of the walls for adjoining buildings. Where the ceiling height measured from the finished floor to the ceiling exceeds 12 feet (including without limitation atriums, vaulted ceilings and cathedral ceilings), gross floor area shall be calculated by dividing by 12 the maximum ceiling height in such areas where the ceiling height exceeds 12 feet, and multiplying the result by the horizontal square footage in such areas where the ceiling height exceeds 12 feet. Space that has been decommissioned shall be included in the gross floor area of a building.
(4) By deleting § 2.08(1), the definition of “Habitable Space,” and replacing it with the following:

§ 2.08(1). HABITABLE SPACE - Space in a structure for living, sleeping, eating, or cooking; otherwise used for human occupancy; or finished or built out and meeting the State Building Code requirements for light, ventilation and egress for human habitation or occupancy.

(5) By adding, immediately following existing § 2.16(2), a new § 2.16(2 1/2), a definition of “Porch, Enclosed and Unenclosed,” as follows:

§ 2.16(2 1/2). PORCH, ENCLOSED AND UNENCLOSED - A porch, balcony or deck shall be deemed to be unenclosed, whether roofed or unroofed, if open to the elements or if enclosed only by seasonally removable glass panels such as storm sashes or by screens. A roofed porch, balcony or deck, even if unheated, shall be deemed to be enclosed if enclosed by walls and/or permanently by glass, including without limitation fixed windows or movable casement, jalousie, double-hung, awning, hopper, slider or tilt-turn windows.

(6) By adding, immediately following existing § 6.04(13), a new § 6.04(14):

§ 6.04(14). No more than 40% of the width, or twenty-four feet, whichever is less, of the façade of a building facing a way or within 45 degrees of parallel to a way may be devoted to parking or other vehicular use, including garage or drive-through space. The foregoing limitation shall not apply to a detached garage that is entirely set back behind the entire façade facing the way of the principal building. The Planning Board upon the recommendation of the Planning Director may allow the foregoing limitation to be exceeded with respect to side facades on corner lots provided that the overall visual and other impact of the vehicular use would be less than locating the vehicular use on the front façade as of right, and may also allow the foregoing limitation to be exceeded upon reports from the Commissioner of Public Works and the Director of Transportation that modification of the limitation is necessary for safe vehicular use and the determination of the Planning Board that no other feasible design would permit safe vehicular use while reducing the visual or other impact of such use. In addition to complying with the other provisions of this by-law, including § 6.04, paragraph 4, the surfaced area of parking and entrance and exit drives shall not exceed the width allowable pursuant to this section, and all remaining space between the building and street shall be landscaped open space as defined in § 2.15, paragraph 2.

or to act on anything relative thereto.

This warrant article is submitted pursuant to the recommendation of the Moderator’s Committee on Zoning, appointed pursuant to Town Meeting’s vote at the Spring 2005 Town Meeting. The Committee’s Report will explain its deliberations in detail. This is one of two warrant articles recommended by the Committee. The other proposed article would revise Section 5.22, the provision of the Zoning By-law allowing “conversions” of or additions to
existing residential buildings that exceed the floor area ratio (FAR) otherwise allowable under the Zoning By-law.

The Moderator’s Committee has sought to address various actions used to create buildings larger than those otherwise allowable under the Zoning By-law. Although the Committee considered recommending changes to the By-law that would have been more far-reaching (some of which were, in fact, supported by a majority of the Committee), the Committee ultimately agreed on a limited number of steps to ensure that the worst abuses would be addressed while the creation of non-conformities for existing properties would be minimized. For ease of reference, the corresponding provisions of the existing Zoning By-law are set forth at the end of this explanation.

One of the problems addressed by the Committee has been the construction of houses containing significant so-called “attic” and “basement” space designated as “unfinished” and not counted in the calculation of gross floor area (GFA). After the completion of construction, Section 5.22 of the Zoning By-law could be used to “convert” that space into finished habitable space, ultimately resulting in buildings considerably larger than otherwise permitted under the Zoning By-law. In addition, excessively large garages have been excluded from the calculation of GFA. Space has also been claimed as “mechanical” space in an attempt to exclude it from GFA, even though it adds to the bulk of a building. The fashion of using atriums, cathedral ceilings and similar designs has also inflated the size of buildings, since, for example, the floor area of a two-story atrium is counted only once in determining the size of a building, even though the bulk it creates is twice that of a normal-height ceiling.

In addition, “decommissioning” has been allowed under the Zoning By-law. This tactic has been used in cases where a developer seeks to subdivide a lot into two or more separate building lots, but faces the fact that the preexisting building would be too large for the reduced size of the lot remaining after the creation of the new lot(s). “Decommissioning” supposedly makes portions of a preexisting building no longer habitable without actually removing them. This has been deemed an allowable way of reducing the calculated GFA, even though the bulk of the preexisting building, and thus its impact on abutters, has not been reduced. Theoretically, “decommissioned” space could even be made habitable again through the use of Section 5.22 after required building permits had been issued for any new building, although the Zoning Board of Appeals (ZBA) has recently said this would not be permitted.

Because decommissioning does not actually reduce the bulk or impact of a building, the Moderator’s Committee recommends that decommissioning not reduce the calculated GFA. Under the proposal, decommissioned space is thus counted in GFA. The proposal preserves the right of a building owner to demolish a portion of a building, as by totally removing a wing or an “el,” since such action would actually reduce the exterior bulk of a building.

In the past, building permits have been issued that exclude from the calculation of GFA so-called unfinished “attics” on the second floor of a building, even though the developer’s own architectural plans showed the space as second-floor space rather than attic space. The ZBA recently and correctly found that such space is not attic space. The Moderator’s Committee proposal likewise confirms that attic area is space above the top story of a building, as also explicitly stated in the State Building Code.
In addition to being revised explicitly to include space that has been decommissioned, the definition of GFA is revised to ensure that areas with ceilings over twelve feet high will be counted as proportionally larger in GFA. The Committee considered lower thresholds, but sought to minimize impacts on existing buildings while still limiting the “bulking up” of buildings with substantial atria and cathedral ceilings.

The Committee also proposes to limit space that can be excluded from GFA to 360 square feet per required parking space for single- and two-family buildings. In a typical 24-foot wide two-car garage, this would still allow 30 feet of depth, or approximately 13 feet more than the length of a Mercedes Benz S-Class luxury sedan without any space being counted against the allowable FAR (permits have been granted for garages that are 40 feet deep with none of the area counted against the FAR). The Committee has not recommended changes with respect to garage areas in commercial and multi-family buildings at this time, since any such change would raise competing policy questions regarding the need to encourage more parking space for such buildings.

On a related point, the Committee’s proposal would initiate Planning Board review where vehicular use would involve more than 40% of the width of the front façade of a building, to address a recent problem of “snout nose” buildings where virtually the entire first floor façade is garage and where front yards are reduced to paved driveways. The limitation may be relaxed by the Planning Board to preserve the front façade in the case of a corner lot, or if no other design would ensure vehicular safety.

The Committee would also continue to exclude elevator penthouse and mechanical space from GFA if located above the roofline and not habitable.

In order to avoid disputes, the Committee proposal clarifies the definition of habitable space to include not only space “used” for human occupancy as stated in the current Zoning By-law, but also space that is finished and “usable” for human occupancy. Finally, the proposal adds a definition for enclosed porches and unenclosed porches, concepts that have existed in the By-law but have not been defined.

EXISTING ZONING BY-LAW PROVISIONS

§ 2.01(3). ATTIC - The Space in a building between the roof framing and the ceiling beams of the rooms below and not considered habitable space.

§ 2.04(1/2). DECOMMISSION - NEW DEFINITION

§ 2.07(1). GROSS FLOOR AREA - The sum of the areas of the several floors of a building, including areas used for human occupancy in basements, attics, and penthouses, as measured from the exterior faces of the walls. It does not include cellars, unenclosed porches, or attics not used for human occupancy, or any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of this By-law, except as required in §5.06, paragraph 2., subparagraph c., or any such floor space intended and designed for accessory heating and ventilating equipment. It shall include the horizontal area at each floor level devoted to stairwells and elevator shafts.
§ 2.08(1). HABITABLE SPACE - Space in a structure for living, sleeping, eating, or cooking or otherwise used for human habitation.

§ 2.16(2 1/2). PORCH, ENCLOSED AND UNENCLOSED - NEW DEFINITION

§ 6.04(14) - [Limitation of façade devoted to vehicular use] - NEW PROVISION

PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article 28 was submitted by the Moderator’s Committee on Floor Area Ratio. This Committee was appointed after Spring 2005 Town Meeting to report back to Town Meeting on appropriate ways to regulate the size and bulk of buildings and how to measure habitable space, which is used to calculate the allowed maximum Floor Area Ratio (FAR) for buildings.

This warrant article has two parts to it: proposed changes to **Zoning Bylaw Article II, Definitions, and Section 6.04, Design of All Off-Street Parking Facilities**.

The definitional changes includes modifications or clarifications to the existing definitions for “attic, gross floor area, habitable space” and the addition of definitions for “decommission” and “porch, enclosed and unenclosed”. Significant changes to what is currently included in **Habitable Gross Floor Area (GFA)** include the following:

- **Decommission** – space previously habitable but made uninhabitable must be counted toward the Habitable GFA, unless demolition reduces the exterior dimensions
- **Gross Floor Area** – parking garages in excess of 360 s.f. per required parking space; mechanical space, other than in a basement or above the roof; accessory structures, such as a garden or equipment shed over 150 s.f.; space in a room above 12’, by dividing the area above 12’ by 12, are now counted toward Habitable GFA.

The second part of this warrant article adds a new subsection to **Design of All Off-Street Parking Facilities** by prohibiting a garage from being greater than 40% or 24’, whichever is less, of the width of a building façade facing a street. Certain waivers are allowed for corner lots for visual and/or safety issues. The goal of this amendment is to prevent what is commonly known as “snout nose” houses where the garage is the predominant feature facing the street.

The Planning Board suggested one minor deletion to the language of this section “upon the recommendation of the Planning Director” because it found the language unnecessary as Planning Staff typically makes a recommendation to it on cases.

The Planning Board supports both the definitional changes and the restrictions on garages over a certain width facing the street. The Board commends the hard work and many hours that the Moderator’s Committee spent trying not only to make the definitions clearer and thus more easily enforceable, but also proposing ways to prevent the building of either overly large and out of scale houses or ones that are designed without sensitivity to the streetscape.
Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Warrant Article 28 with the revisions, as follows.

ARTICLE 28
To see if the Town will amend the Zoning By-law as follows:
(1) By deleting § 2.01(3), the definition of “Attic,” and replacing it with the following:

§ 2.01(3). ATTIC - The space between the ceiling beams, or similar structural elements, of the top story of a building and the roof rafters. The top story shall be the story at the highest level of the building.

(2) By adding a new § 2.04(1/2), a definition of “Decommission,” as follows:

§ 2.04(1/2). DECOMMISSION - To make previously habitable space in an existing building uninhabitable by, including but not limited to, removing or blocking required access, light or ventilation or removing ceilings and floors. Space that has been decommissioned shall be included in the gross floor area of a building. The complete and permanent physical demolition of a portion of a building shall not be considered decommissioning and shall reduce the gross floor area by the floor area of the demolished portion of a building previously included in gross floor area only to the extent that exterior dimensions are reduced.

(3) By deleting § 2.07(1), the definition of “Gross Floor Area,” and replacing it with the following:

§ 2.07(1). GROSS FLOOR AREA - The sum of the areas of all floors of all principal and accessory buildings whether or not habitable except as excluded. Gross floor area shall include enclosed porches and the horizontal area at each floor level devoted to stairwells and elevator shafts. Gross floor area shall exclude (a) portions of cellars, basements, attics, and penthouses and historically and architecturally significant accessory buildings that are not habitable, provided however that space that has been decommissioned shall not be excluded from gross floor area; (b) except as required in §§ 5.06, paragraph 4, subparagraph b(3) relating to parking in Coolidge Corner, any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of this By-law, provided, however, that for single- and two-family dwellings the floor space thereby exempted from the calculation of gross floor area shall not exceed 360 square feet per required parking space; (c) elevator penthouses and mechanical equipment enclosures located above the roof, if not habitable; (d) necessary mechanical equipment space in a basement; and (e) up to 150 square feet of area in an accessory structure such as a garden or equipment shed. Measurements shall be from the exterior faces of the walls or from the centerlines of the walls for adjoining buildings. Where the ceiling height measured from the finished floor to the ceiling exceeds 12 feet (including without limitation atriums, vaulted ceilings and cathedral ceilings), gross floor area shall be calculated by dividing by 12 the maximum ceiling height in such areas where the ceiling height exceeds 12 feet, and multiplying the result by the horizontal square footage in such
areas where the ceiling height exceeds 12 feet. Space that has been decommissioned shall be included in the gross floor area of a building.

(4) By deleting § 2.08(1), the definition of “Habitable Space,” and replacing it with the following:

§ 2.08(1). HABITABLE SPACE - Space in a structure for living, sleeping, eating, or cooking; otherwise used for human occupancy; or finished or built out and meeting the State Building Code requirements for height, light, ventilation and egress for human habitation or occupancy. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas shall be included even though excluded from the definition of habitable space under the State Building Code.

(5) By adding, immediately following existing § 2.16(2), a new § 2.16(2 1/2), a definition of “Porch, Enclosed and Unenclosed,” as follows:

§ 2.16(2 1/2). PORCH, ENCLOSED AND UNENCLOSED - A porch, balcony or deck shall be deemed to be unenclosed, whether roofed or unroofed, if open to the elements or if enclosed only by glass panels designed to be removed seasonally or by screens. A roofed porch, balcony or deck, even if unheated, shall be deemed to be enclosed if enclosed by walls and/or permanently by glass, including without limitation fixed windows or movable casement, jalousie, double-hung, awning, hopper, slider or tilt-turn windows.

(6) By adding, immediately following existing § 6.04(13), a new § 6.04(14):

§ 6.04(14). No more than 40% of the width, or twenty-four feet, whichever is less, of the façade of a building facing a way or within 45 degrees of parallel to a way may be devoted to parking or other vehicular use, including garage or drive-through space. The foregoing limitation shall not apply to a detached garage that is entirely set back behind the entire façade facing the way of the principal building. The Planning Board upon the recommendation of the Planning Director may allow the foregoing limitation to be exceeded with respect to side facades on corner lots provided that the overall visual and other impact of the vehicular use would be less than locating the vehicular use on the front façade as of right, and may also allow the foregoing limitation to be exceeded upon reports from the Commissioner of Public Works and the Director of Transportation that modification of the limitation is necessary for safe vehicular use and the determination of the Planning Board that no other feasible design would permit safe vehicular use while reducing the visual or other impact of such use. In addition to complying with the other provisions of this by-law, including § 6.04, paragraph 4, the surfaced area of parking and entrance and exit drives shall not exceed the width allowable pursuant to this section, and all remaining space between the building and street shall be landscaped open space as defined in § 2.15, paragraph 2.
SELECTMEN’S RECOMMENDATION

Article 28 was filed by the Moderator’s Committee on Floor Area Ratio (FAR) and the Selectmen commend their hard work. The Committee met numerous times since the 2005 Annual Town Meeting to evaluate the best way to regulate the size and bulk of new single and two-family residences; to prevent homes that are out-of-scale with those in the surrounding area; to clarify definitions including a new one for “decommissioning”; and to propose regulating the design of garages fronting on the street that would negatively impact the streetscape.

The Committee’s proposed clarifications to the Zoning By-Law’s definition section make the definitions less open to various interpretations and, therefore, more easily enforceable. At the same time, by not dramatically changing the way the size of a home is currently regulated (FAR, height, yard setbacks), existing homes are less likely to be made non-conforming by the adoption of these amendments. The Committee also addressed the growing trend toward having garages dominate the streetscape by providing maximum sizes for garages directly facing the street and thus negatively impacting the streetscape.

Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 3-1 taken on April 25, 2006, on the following vote, which mirrors the revisions of the Planning Board:

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

1. By deleting § 2.01(3), the definition of “Attic,” and replacing it with the following:

§ 2.01(3). ATTIC - The space between the ceiling beams, or similar structural elements, of the top story of a building and the roof rafters. The top story shall be the story at the highest level of the building.

2. By adding a new § 2.04(1/2), a definition of “Decommission,” as follows:

§ 2.04(1/2). DECOMMISSION - To make previously habitable space in an existing building uninhabitable by, including but not limited to, removing or blocking required access, light or ventilation or removing ceilings and floors. Space that has been decommissioned shall be included in the gross floor area of a building. The complete and permanent physical demolition of a portion of a building shall not be considered decommissioning and shall reduce the gross floor area by the floor area of the demolished portion of a building previously included in gross floor area only to the extent that exterior dimensions are reduced.

3. By deleting § 2.07(1), the definition of “Gross Floor Area,” and replacing it with the following:

§ 2.07(1). GROSS FLOOR AREA - The sum of the areas of all floors of all principal and accessory buildings whether or not habitable except as excluded. Gross floor area shall include enclosed porches and the horizontal area at each floor level devoted to stairwells and elevator shafts. Gross floor area shall exclude (a) portions of cellars, basements, attics, and historically and architecturally significant accessory buildings that are not habitable, provided however that space that has been decommissioned shall not be excluded from gross
floor area; (b) except as required in §5.06, paragraph 4, subparagraph b(3) relating to parking in Coolidge Corner, any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of this By-law, provided, however, that for single- and two-family dwellings the floor space thereby exempted from the calculation of gross floor area shall not exceed 360 square feet per required parking space; (c) elevator penthouses and mechanical equipment enclosures located above the roof, if not habitable; (d) necessary mechanical equipment space in a basement; and (e) up to 150 square feet of area in an accessory structure such as a garden or equipment shed. Measurements shall be from the exterior faces of the walls or from the centerlines of the walls for adjoining buildings. Where the ceiling height measured from the finished floor to the ceiling exceeds 12 feet (including without limitation atriums, vaulted ceilings and cathedral ceilings), gross floor area shall be calculated by dividing by 12 the maximum ceiling height in such areas where the ceiling height exceeds 12 feet, and multiplying the result by the horizontal square footage in such areas where the ceiling height exceeds 12 feet. Space that has been decommissioned shall be included in the gross floor area of a building.

(4) By deleting § 2.08(1), the definition of “Habitable Space,” and replacing it with the following:

§ 2.08(1). HABITABLE SPACE - Space in a structure for living, sleeping, eating, or cooking; otherwise used for human occupancy; or finished or built out and meeting the State Building Code requirements for height, light, ventilation and egress for human habitation or occupancy. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas shall be included even though excluded from the definition of habitable space under the State Building Code.

(5) By adding, immediately following existing § 2.16(2), a new § 2.16(2 1/2), a definition of “Porch, Enclosed and Unenclosed,” as follows:

§ 2.16(2 1/2). PORCH, ENCLOSED AND UNENCLOSED - A porch, balcony or deck shall be deemed to be unenclosed, whether roofed or unroofed, if open to the elements or if enclosed only by glass panels designed to be removed seasonally or by screens. A roofed porch, balcony or deck, even if unheated, shall be deemed to be enclosed if enclosed by walls and/or permanently by glass, including without limitation fixed windows or movable casement, jalousie, double-hung, awning, hopper, slider or tilt-turn windows.

(6) By adding, immediately following existing § 6.04(13), a new § 6.04(14):

§ 6.04(14). No more than 40% of the width, or twenty-four feet, whichever is less, of the façade of a building facing a way or within 45 degrees of parallel to a way may be devoted to parking or other vehicular use, including garage or drive-through space. The foregoing limitation shall not apply to a detached garage that is entirely set back behind the entire façade facing the way of the principal building. The Planning Board upon the recommendation of the Planning Director may allow the foregoing limitation to be exceeded with respect to side facades on corner lots provided that the overall visual and other impact of the vehicular use would be less than locating the vehicular use on the front façade as of right, and may also allow the foregoing limitation to be exceeded upon reports from the Commissioner of Public Works and the Director of
Transportation that modification of the limitation is necessary for safe vehicular use and the determination of the Planning Board that no other feasible design would permit safe vehicular use while reducing the visual or other impact of such use. In addition to complying with the other provisions of this by-law, including § 6.04, paragraph 4, the surfaced area of parking and entrance and exit drives shall not exceed the width allowable pursuant to this section, and all remaining space between the building and street shall be landscaped open space as defined in § 2.15, paragraph 2.

**ROLL CALL VOTE:**

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**ADVISORY COMMITTEE’S RECOMMENDATION**

**BACKGROUND**

Article 28 is one of two articles proposed by the Moderator’s Committee on Zoning. They have met at length about issues concerning the allowed size of buildings based on the use of Floor Area Ratio (FAR) calculations and existing definitions that have an important impact on the interpretation of regulations. They were charged with reporting back to Town Meeting this spring and these are their recommended changes to our zoning, which are hoped to be remedies to some of the problems and concerns raised in a few projects townwide. Although a small number of abuses do not yet constitute large change in the character of our neighborhoods, they feel that it is an indicator of an undesirable trend: the “bulking up” of the size of houses in comparison to surrounding ones.

The Moderator’s Committee held more than a dozen public meetings and welcomed public comment and input. The Advisory Committee commends them all for their hard work. The article was also very helpfully reviewed and edited by the Selectmen’s Zoning Review Committee before our hearing.

This proposed article is really divided into two areas of change; the clarification and addition of definitions (as set forth in By-Law Section 2) and the design of off-street parking facilities in Section 6.04.

I. Attics, Decommissioning, GFA, Habitable Space and Porches:

Attics have been an area of contention in some recent new houses, in particular because of several situations where the roof over an attached garage is large enough and has dormers so that the new owner can convert it easily after the Certificate of Occupancy is issued. While handy for the buyer, it has meant that the entire house is enlarged beyond its maximum GFA amount by 30 to 50%. Along with last year’s change that required a 10-year waiting period before allowing as
of right interior conversions of space, this may help curb the building of houses that over-scale
their neighbors.

The “Decommissioning” of space has become a loophole for some developers to more than
maximize a site. It was not a term in our by-law before, so now it is, but any existing rooms that
are closed off and made no longer “habitable” will have be counted in the FAR figure (and not
traded for extra new construction) - unless the space truly disappears, by being torn down.

The definition of Gross Floor Area has been expanded to make more clear what areas are to be
counted as part of the total amount of space allowed by the applicable FAR calculation. Abuses
where excessive space in garages, cathedral ceiling spaces and atrium foyers have not been
included have added to the bulking up of new houses beyond what the FAR regulations intended.

The Habitable Space definition has been expanded to reflect what should be included in the
tablulation of total floor area for the FAR calculation, instead of only what the state building code
calls for. These included several kinds of spaces that in some new buildings created bonus living
area, in excess of what was called for in the FAR.

And finally, Enclosed vs. Unenclosed or Open Porches, Balconies and Decks have been an area
of much contention and interpretation, so it’s hoped they will no longer be with this clearer
definition.

II. Sect. 6.04, Design of All Off-Street Parking Facilities:

Article 28 would add a new subsection to Sect. 6.04, Design of All Off-Street Parking Facilities
to our By-Law. It would say that “no more than 40% of the width, or twenty-four feet,
whichever is less”, of the width of a building façade facing a street can be used for garage or
other vehicular uses. Additional controls and exceptions are allowed for buildings on corner lots.
The Committee has proposed this as a way to control the exterior design of future houses only to
help prevent the “snout nosed” houses. That euphemism has been used to describe a house
where the majority of the front façade has been given over to garage doors.

DISCUSSION
The Moderator’s Committee considered several alternatives to FAR used nationally and a
different way of defining basements, as ways of addressing the overall size, or “bulk” of
buildings. In the end both changes were abandoned because the former would cause significant
conflicts with the rest of the regulations and they would both make more existing structures non-
conforming in town.

Concerns were raised by two citizens at the hearing and in e-mails since on several levels. First
there was a concern about possibly over controlling the marketplace for developer built houses
and what any property owner might be able to construct. Secondly, that the article doesn’t do
enough to address the loss of openspace; although it is largely on private property, it is enjoyed
by all in a neighborhood. The discussion of openspace and setbacks, is outside the scope of this article but it could be addressed in a separate further review of the by-laws overall.

Pertaining to garages, there was concern that homeowners will be prevented from maximizing the amount of living area in houses. That is because extra area in garages, in excess of 360-square feet per space, will be considered as part of the total GFA maximum allowed for that individual lot size. However, the current GFA definition has always excluded only the required spaces needed to garage the cars (two in most of the single-family districts), additional spaces are counted toward the total allowed GFA. Some recent garages have been built very large, using any amount of space desired. With the new regulations the 360 square foot space could be, for example, 12 feet wide by 30 feet long and provide a good amount of room for a large vehicle plus stored yard equipment.

The new proportional rule under Section 6.04, that no more than 40% or 24 feet of the front of a house be given over to the garage, applies a different control. For example, if an owner requires more garage spaces they need to angle it away from the street, at least forty-five degrees or build a detached garage that is set back from the front of the house. These stipulations are designed to maintain our neighborhood streetscapes by not letting garage doors become the dominant feature of the front of houses. In addition, the new text makes reference to the Open Space requirements of the By-Law, to make sure front yards don’t become mostly paved.

The Advisory Committee agrees with the Planning Board’s deletion of the words “upon the recommendation of the Planning Director” because the Planning Department (and therefore the Director) gives a written recommendation to the Planning Board on cases reviewed.

**RECOMMENDATION**
Although these changes do not directly further regulate the height of buildings or setbacks from property lines, we believe they will have a positive effect over time. They will be a disincentive for overbuilding, thereby limiting the “bulk” of new houses and additions. That will help maintain the character of our neighborhoods.

A substantial majority of the Advisory Committee supports this article with the changes recommended by the Selectmen’s Zoning Review Committee and the Planning Board. By a vote of 18 in favor, 2 opposed, and 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX
ARTICLE 29

TWENTY-NINTH ARTICLE

To see if the Town will amend Section 5.22, Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, of the Zoning By-law, by deleting the existing Section 5.22 and replacing it with the following:

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


   a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be subsequently divided into multiple units.

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

   c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction, if any, was granted at least ten years prior to the date of the application for a special permit under this Section. If the limitation set forth in this paragraph 1, subparagraph c should be found invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

   d. Exterior modifications to accommodate an exterior addition or interior conversion shall include without limitation the addition of a dormer, penthouse, cupola, windows, doors or the like. Such modifications shall also not conflict with any other provisions of the Zoning By-law.

   e. The interior conversion shall not result in the displacement of interior storage of equipment, vehicles, or materials to a location which is now exterior to the house.

   f. Interior conversion and exterior addition are terms defined in § 2.09. In determining the appropriate amount of space to be converted into habitable space, the Board of Appeals shall consider the extent of exterior modifications required to effectuate the proposed conversion and/or exterior addition and the impact thereof on abutting properties.

   g. Space that has previously been decommissioned shall not be converted under this Section.

2. Special Permit for Exceeding Maximum Gross Floor Area for Residential Dwellings
a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than is permitted in Table 5.01 (the “permitted gross floor area”) for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, §9.05, and this Section for an existing residential building which meets the following basic requirements:

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

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

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

b. The maximum increase in floor area allowed by special permit may be allowed only in accordance with the following conditions, which shall be in addition to the other conditions set forth in this Section and any other conditions that the Board of Appeals may prescribe. In no case shall the total resulting gross floor area of the building(s) after all conversions and additions be more than 150% of the permitted gross floor area:

1) In all S and SC Districts, a special permit may be granted for an increase in floor area above the permitted gross floor area for only one of the following subparagraphs (such that the grant of a special permit under one subparagraph shall preclude the subsequent grant of a special permit under a different subparagraph, but shall not, to the extent the increase in floor area allowable under one subparagraph has not been fully utilized, preclude a subsequent grant of an additional special permit under that same subparagraph so as to fully utilize the increase in floor area allowable under that subparagraph. Notwithstanding the foregoing, an applicant who has received a special permit under subparagraph (a) or (b) and has not fully utilized the allowable increase in floor area under that subparagraph may apply for a special permit under subparagraph (c), with the increased floor area previously allowed under subparagraph (a) or (b) counted against the floor area allowable under subparagraph (c)):

a) an interior conversion that is less than or equal to 30% of the permitted gross floor area;

b) an exterior addition that is less than or equal to 20% of the permitted gross floor area; or

c) a combination of an interior conversion and exterior addition that is less than or equal to 30% of the permitted gross floor area, provided that the additional floor area attributable to exterior construction (which shall
include the floor area included within dormers, penthouses, cupolas, and the like) does not exceed 35% of the additional floor area allowed by special permit.

The grant of a special permit under any prior version of Section 5.22 shall be deemed the grant of a special permit under this Section.

2) In all T Districts, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 2, subparagraph (b)(2), or under any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.

c. If the application of the percentages in paragraph 2, subparagraph b results in a floor area increase of less than 350 square feet, a special permit may be granted for an increase in floor area of up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. A grant of a special permit under paragraph 2, subparagraph b, or under this paragraph 2, subparagraph c, or a previous expansion permitted as of right or by special permit under any prior version of Section 5.22, shall preclude a subsequent grant of a special permit under this paragraph 2, subparagraph c.

or act on anything relative thereto.

This warrant article is submitted on the recommendation of the Moderator’s Committee on Zoning appointed pursuant to Town Meeting’s vote at the Spring 2005 Town Meeting. The Committee’s Report will more fully explain its deliberations. This is one of two warrant articles recommended by the Committee. For ease of reference, the existing version of Section 5.22 follows this explanation.

Section 5.22 was adopted to allow residents with need for additional space to exceed the floor area ratio (FAR) limitations of the Zoning By-law by making limited additions to their homes or by converting interior space such as basements or attics that was previously not habitable and therefore not counted against gross floor area (GFA). In 2002, Town Meeting revised Section 5.22, permitting as-of-right interior conversions of basement and attic space, allowing by special permit other conversions (for example, the enclosure of a previously unenclosed porch) and additions, while also including an explicit provision that stated: “The provisions of this section [allowing conversions and additions to exceed FAR] shall be limited to existing single- and two-family dwellings erected and as configured prior to the adoption of this section.”
The Attorney General, on May 29, 2003, struck down the underlined limitation to pre-existing buildings on grounds that it violated the “uniformity” provisions of state law, which provides that a zoning by-law “shall be uniform within the district for each class or kind of structures or uses permitted.” (http://www.ago.state.ma.us/sp.cfm?pageid=1313). As a result, the door was opened to the tactic of constructing new buildings containing substantial “attic,” “basement” or other space identified as “unfinished,” followed by the “conversion” of that space to add more habitable floor area after receipt of a certificate of occupancy. The original intent of allowing the modification of long-occupied buildings in response to changing family needs thus became a tool for the creation of new buildings that were substantially larger than intended under the FAR limitations of the Zoning By-law.

Town Meeting responded in the Spring 2005 Town Meeting by stating that the as-of-right conversion of attic space would be permissible only if the “Certificate of Occupancy for the original construction and previous conversions or alterations under this section, if any, was granted at least ten years prior to the date of” an application for the conversion. The Attorney General approved that C of O limitation, which applied uniformly to all properties regardless of when they were built.

Although the petitioner’s original warrant article in 2005 would have applied the 10-year C of O limitation to both as-of-right basement and attic conversions, the pre-Town Meeting review process ultimately resulted in an article applying the limitation only to attics, on the reasoning that it was unlikely that the option of converting basements would be abused. Unfortunately, however, because the definition of “basement” includes any space that is even partially below grade, it is possible to build a “basement” that is substantially above grade and has numerous windows and doors providing access from the outside. Such a “basement,” if not “finished,” would not be counted against the building’s GFA.

The revision proposed by the Moderator’s Committee would preserve most of the existing substantive provisions of Section 5.22 (such as the total by which allowable FAR could be exceeded), while increasing protections for abutters and reducing incentives for “gaming” the system:

First, conversions would be by special permit rather than as-of-right to ensure review protecting abutters, the neighborhood, and the public. While it theoretically might have been possible to allow as-of-right attic or basement conversions that involved only “minor” or no exterior modifications, experience with other zoning articles has shown the potential for dispute over what is “minor” and, perhaps more significantly, over who should properly make the determination (the Building Commissioner, the Planning Department, the Planning Board, the new Zoning Administrator, and so on). Similarly, it makes little sense to invite to a different form of abuse: the division of the process of conversion into two steps to avoid review, with exterior changes made before a permit is sought under Section 5.22. The elimination of as-of-right conversions should not add significant burden. The as-of-right option was originally added to reduce the load on the Planning Board and Zoning Board of Appeals (ZBA), but the Building Department reports that there are only four or five as-of-right conversions in a typical year.
Second, the ten-year C of O provision would be made applicable to all conversions and additions. Experience has, unfortunately, shown that the “carve-out” for basement conversions was likely ill-advised, particularly since basements are defined under the By-Law and the State Building Code as any space even partially (with no minimum) below grade. Thus, a portion of the building where only one corner is only one foot below grade could be considered a “basement.” Similarly, the extension of the C of O provision to special permits would reduce the incentive to build “unfinished” space and then to argue to the Planning Board and ZBA that “the exterior has already been built, so the harm has already been done.”

Third, although the ten-year C of O provision was approved by the Attorney General in 2005, it is now being challenged in court by a developer. Although the Moderator’s Committee believes that the provision will be upheld, its proposal effectively provides that, if such a limitation is found invalid, conversions would be put on hold until the Town could address the problem. This is designed to ensure that the Town not end up in a situation similar to the one created in 2002, where the By-law was turned on its head and a loophole created by the elimination of an intended limitation without opportunity for further consideration by the Planning Board, the ZBA, the Selectmen or Town Meeting. In the unlikely event that the limitation is declared invalid, the Town should be given the opportunity to determine exactly what form of By-law it wants.

**EXISTING ZONING BY-LAW PROVISIONS**

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


   a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be subsequently divided into multiple units.

   b. Any expanded unit shall not be occupied by more than two unrelated individuals.

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

   d. The provisions of this section shall be limited to existing single- or two-family dwellings erected and as configured prior to the adoption of this section.

   e. The Board of Appeals may allow for the conversion of attic or basement space not meeting the requirements of paragraph 2 below under the provisions of paragraph 3 below.
2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings

Conversions of attics, cellars, or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing gross floor area of the dwelling, shall be allowed as-of-right if a Certificate of Occupancy for the original construction and previous conversions or alterations under this section, if any, was granted at least ten years* prior to the date of this application under the following conditions:

* The ten year waiting period shall not apply to conversions to habitable space for basements and/or cellars which meet the other conditions stipulated in Sections 5.22.1 & 2.

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw. No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eves [sic]. Such modifications shall also not conflict with any other provisions of the Zoning Bylaw, including but not limited to the requirements of Article VI, Vehicular Services Use Requirements.

b. The conversion does not result in the existing use of the space being displaced to a location which is now exterior to the house, such as storage of equipment or materials.

c. Any increase in gross floor area through such a conversion shall be limited to 150 percent of the permitted gross floor area.

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

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

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

2) The existing building contains at least one residential unit but no more than four units. For the purpose of this paragraph, units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.
The additional floor area allowed by special permit pursuant to this paragraph shall not include the floor area permitted by right under Table 5.01.

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

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

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

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

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

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

3) If the application of the percentages in subparagraphs a. or b. of this paragraph results in a floor area increase less than 350 square feet, a special permit may be granted for an increase in floor area up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. A grant of a special permit under either paragraph 3, subparagraph a. or b. shall preclude a subsequent grant of a special permit under this subparagraph.

4) Interior Conversion is defined as the conversion of existing interior space not previously used for human occupancy in areas such as basements, attics, unenclosed porches, or penthouses. [The addition of any other areas] [sic] In determining the appropriate amount of existing interior space to be converted for human occupancy, the Board of Appeals shall consider the extent of exterior modifications required to effectuate the proposed conversion and the impact therefrom on abutting properties.
5) The additional floor area granted pursuant to this Section shall be incorporated into existing residential units and those units shall not subsequently be divided into multiple units.

6) Any expanded unit shall not be occupied by more than two unrelated individuals.

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

_____________________

PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article 29 was submitted by the Moderator’s Committee on Floor Area Ratio. This Committee was appointed after Spring 2005 Town Meeting to report back to Town Meeting on appropriate ways to regulate the size and bulk of buildings and how to measure habitable space, which is used to calculate the allowed maximum Floor Area Ratio (FAR) of buildings.

The Committee’s warrant article proposes changes to Zoning Bylaw Section 5.22, Exceptions to Floor Area Ratio Regulation for Residential Units, which allows the Floor Area in a residence to be increased by a certain amount if specific criteria are met. This section of the Zoning By-Law had been previously amended at Fall 2002 Town Meeting to allow by-right conversions of basements and attics up to 150% of the allowed FAR in homes existing at the time of passage of the amendment. Subsequently, the Attorney General ruled that this new provision must apply equally to all homes, both existing and future ones. The purpose of the amendment had been to allow some flexibility to current residents who had expanding family needs and wanted to remain in Brookline, and to serve as an incentive for retaining existing structures, rather than replacing them with larger homes, out-of-scale with the surrounding neighborhood. To remedy the elimination of the reference to existing homes, Town Meeting in spring 2005 approved an amendment that limited by-right conversion of attics to houses that were at least ten years old. The Attorney General upheld the ten year waiting period. Conversion of basements, however, were allowed by-right without any waiting period, because it was felt that a basement conversion would not increase the bulk of a house.

Since the passage of by-right conversions for basements without a ten year waiting period, it has become clear that a loophole to the FAR regulations has been created: new homes are being built with partially above ground basements that are unfinished and not counted toward the FAR. As soon as the house is constructed, the basements are converted by-right to habitable space, and this results in homes 50% larger than the allowed maximum FAR for new homes.
The Moderator’s Committee initially proposed that all conversions of basements and attics require a special permit, as do other interior and exterior additions above the allowed FAR, but with a ten year waiting period from the time of a new houses’ construction. However, in response to comments by citizens and other boards on the proposed warrant article, the Committee has recommended several modifications to the initial language. The special permit requirement for basement and attic conversions has been dropped, but a ten year waiting period for new construction remains for both attic and basement conversions. Planning Board design review and approval would still be required for any exterior changes that are part of the conversion of an attic or basement. Interior and exterior conversions of spaces other than basements or attic, such as additions or porch enclosures, continue to require a special permit, although the language of these sections have been modified to clarify the allowed total increase in FAR.

The Planning Board supports the thoughtful work of the Moderator’s Committee. The revised warrant article achieves a balance between providing flexibility to homeowners who wish to use their existing basements and attics and providing a disincentive to builders of new homes to skirt the FAR maximums by converting basements and attics as soon as construction is completed by requiring a ten year waiting period. Additionally, the warrant article makes the amount of additional floor area for a special permit clearer for interior and exterior conversions by capping the increase to 130%.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Warrant Article 29 with the revisions suggested by the Moderator’s Committee, as follows.

ARTICLE 29

To see if the Town will amend Section 5.22, Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, of the Zoning By-law, by deleting the existing Section 5.22 and replacing it with the following:

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


   a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be subsequently divided into multiple units.

   b. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions.
c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction, if any, was granted at least ten years prior to the date of the application for a special permit. Additional gross floor area under this Section. If the limitation set forth in this paragraph 1, subparagraph c should be found invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

d. Exterior modifications to accommodate an exterior addition or interior conversion shall include without limitation the addition of a dormer, penthouse, cupola, windows, doors or the like. Such modifications shall also not conflict with any other provisions of the Zoning By-law. Interior conversion and exterior addition are terms defined in § 2.09. An exterior modification such as a dormer or penthouse which is usable for human occupancy shall be deemed an exterior addition.

e. The interior conversion shall not result in the displacement of interior storage of equipment, vehicles, or materials to a location which is now exterior to the house.

f. Interior conversion and exterior addition are terms defined in § 2.09. In determining the appropriate amount of space to be converted into habitable space, the Board of Appeals shall consider the extent of exterior modifications required to effectuate the proposed conversion and/or exterior addition and the impact thereof on abutting properties.

g. Space that has previously been decommissioned shall not be converted under this Section.

h. Under paragraph 3 below, the Board of Appeals may allow for the conversion of attic or basement space not meeting the requirements of paragraph 2, for conversions of interior space other than attic or basement space, and for exterior additions.

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

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing gross floor area of the dwelling, shall be allowed as-of-right provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to the façade and sign design review process as
b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than 150% of the total permitted in Table 5.01 (the “permitted gross floor area”).

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

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

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

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

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

b. The maximum increase in floor area allowed by special permit may be allowed only in accordance with the following conditions, which shall be in addition to the other conditions set forth in this Section, including paragraph 1, and any other conditions that the Board of Appeals may prescribe. In no case shall the total resulting gross floor area of the building(s) after all conversions and additions be more than 150% of the permitted gross floor area:

1) In all S and SC Districts, a special permit may be granted for an increase in floor area above the permitted gross floor area for only one of the following subparagraphs (such that the grant of a special permit under one subparagraph shall preclude the subsequent grant of a special permit under a different subparagraph, but shall not, to the extent the increase in floor area allowable under one subparagraph has not been fully utilized, preclude a subsequent grant of an additional special permit under that same subparagraph so as to fully utilize the increase in floor area allowable under that subparagraph. Notwithstanding the foregoing, an
applicant who has received a special permit under subparagraph (a) or (b) and has not fully utilized the allowable increase in floor area under that subparagraph may apply for a special permit under subparagraph (c), with the increased floor area previously allowed under subparagraph (a) or (b) counted against the floor area allowable under subparagraph (c):

a) an interior conversion that is less than or equal to 30% of the permitted gross floor area;

b) an exterior addition that is less than or equal to 20% of the permitted gross floor area; or

c) a combination of an interior conversion and exterior addition that is less than or equal to 30% of the permitted gross floor area, provided that the additional floor area attributable to exterior construction (which shall include the floor area included within dormers, penthouses, cupolas, and the like) does not exceed 35% of the additional floor area allowed by special permit.

The grant of a special permit under any prior version of Section 5.22 shall be deemed the grant of a special permit under this Section.

2) In all T Districts, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for a increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 2, subparagraph b, or under this paragraph 2, subparagraph c, or under any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.

c. If the application of the percentages in paragraph 2, subparagraph b results in a floor area increase of less than 350 square feet, a special permit may be granted for an increase in floor area of up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. A grant of a special permit under paragraph 2, subparagraph b, or under this paragraph 2, subparagraph c, or a previous expansion permitted shall preclude a subsequent grant of a special permit under this paragraph 2, subparagraph c.

or act on anything relative thereto.
SELECTMEN’S RECOMMENDATION

Article 28 was filed by the Moderator’s Committee on Floor Area Ratio (FAR) and the Selectmen commend their hard work. The Committee met numerous times since the 2005 Annual Town Meeting to evaluate how the existing zoning by-law could be modified to allow flexibility to owners of existing homes to convert their basements and/or attics into habitable space to accommodate growing families. At the same time, the Committee wanted a regulation that would discourage builders of new homes from constructing overly large homes in anticipation of receiving by-right permission to convert the basement to habitable space once the house was built. Such a conversion could result in a house that was 150% larger than the allowed Floor Area Ratio (FAR) for that zoning district.

Initially, the Moderator’s Committee’s warrant article required a special permit and a 10-year period from the time of the new construction for any basement or attic conversions. In response to Selectmen’s comments, a revision was made to eliminate the special permit requirement but retain the 10-year time period. Ten years was felt to be long enough to serve as a disincentive to builders of new homes trying to circumvent the maximum FAR limits for new homes.

Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 3-1 taken on April 25, 2006, on the vote offered by the Advisory Committee, which mirrors the revisions of the Planning Board.

ROLL CALL VOTE:

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

Article 29 is the second article submitted by the Moderator’s Committee on Zoning. It proposes changes to Section 5.22 of the Zoning By-Law, which allows limited increases in floor area for residential units beyond the usual permitted maximums, if its criteria are met. This section has always been intended to encourage owners to expand their homes when needed by converting existing attics and basement areas into living space, or building a moderate addition, instead of having no choice but to move to a larger house. Unfortunately for the neighborhood involved, that need can also lead to the demolition of a house and construction of a “McMansion”.

Previously the section was revised and voted by Town Meeting in 2002, but not allowed by the Attorney General. It was deemed as violating the “uniformity” provisions of state law because it tried to apply it only to existing one and two-family houses, and not new ones. Abuses were happening when new houses were proposed with “uninhabitable” space in attics over garages that was easily converted once the house was occupied. Subsequently in 2005, Town Meeting approved an updated version that applied a ten-year waiting period after the original Certificate of Occupancy, for attic conversions. At that time it was thought that basement conversions could be more readily allowed.

Since then the Attorney General has approved our use of the ten-year waiting period, and this article seeks to extend that to basements as well. The Moderator’s Committee also found a number of points within the text that would benefit from rewriting, mostly for clarity, and to make enforcement work better, while maintaining most of its substantive provisions.

**DISCUSSION**
The need for applying the ten-year waiting period to basements is largely because developers have already found loopholes to make use of. The excepted state and town definition for “basement” includes any unfinished space that is even slightly below ground level at any point around it. So currently, it’s possible to build an entire bottom floor of living space that meets that one guideline and not need to count it in the total Gross Square Foot area calculation for the FAR. It can have doors and many windows and not require exterior design review.

The original version of the article had allowed for as of right conversions as long as “no exterior modifications to the structure are made to accommodate the conversion”. It was felt that it is almost impossible to convert without changes and minor ones would be debatable, so the exception was dropped. The Selectmen, however, asked that it be retained, but now the wording calls for standard façade review by the Planning Board, so that hopefully abutters will be saved from surprises when the project is built.

It should be noted that currently there is a lawsuit challenging the ten-year provision, but if it is found invalid, the entire section will be put on hold until the town straightens the issue out. During that time no residential projects asking for increases under this section will be allowed.

Citizens raised similar concerns to those for Article 28, but the Moderator’s Committee feels that the best, balanced solution has been reached.

**RECOMMENDATION**
The Advisory Committee concludes that these proposed new and clarified regulations will work well with those of Article 28 to address issues of overbuilding within our Zoning By-Laws. Therefore, the Advisory Committee supports the article with the changes recommended by the Selectmen.
By a vote of 16 in favor, 1 opposed, and 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend Section 5.22, Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, of the Zoning By-law, by deleting the existing Section 5.22 and replacing it with the following:

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


   a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be subsequently divided into multiple units.

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

   c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction, if any, was granted at least ten years prior to the date of the application for a special permit additional gross floor area under this Section. If the limitation set forth in this paragraph 1, subparagraph c should be found invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

   d. Exterior modifications to accommodate an exterior addition or interior conversion shall include without limitation the addition of a dormer, penthouse, cupola, windows, doors or the like. Such modifications shall also not conflict with any other provisions of the Zoning By-law. Interior conversion and exterior addition are terms defined in § 2.09. An exterior modification such as a dormer or penthouse which is usable for human occupancy shall be deemed an exterior addition.

   e. The interior conversion shall not result in the displacement of interior storage of equipment, vehicles, or materials to a location which is now exterior to the house.

   f. Interior conversion and exterior addition are terms defined in § 2.09. In determining the appropriate amount of space to be converted into habitable space, the Board of Appeals shall consider the extent of exterior modifications.
required to effectuate the proposed conversion and/or exterior addition and the impact thereof on abutting properties.

g. Space that has previously been decommissioned shall not be converted under this Section.

h. Under paragraph 3 below the Board of Appeals may allow for the conversion of attic or basement space not meeting the requirements of paragraph 2, for conversions of interior space other than attic or basement space, and for exterior additions.

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

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing gross floor area of the dwelling, shall be allowed as-of-right provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw. No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than 150% of the total permitted in Table 5.01 (the “permitted gross floor area”).

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

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

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

2) The existing building contains at least one residential unit but no more than four total units. For the purpose of this paragraph 2, subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.
3) The additional floor area allowed by special permit pursuant to this Section shall not include the floor area permitted by right under Table 5.01.

b. The maximum increase in floor area allowed by special permit may be allowed only in accordance with the following conditions, which shall be in addition to the other conditions set forth in this Section, including paragraph 1, and any other conditions that the Board of Appeals may prescribe. In no case shall the total resulting gross floor area of the building(s) after all conversions and additions be more than 130% of the permitted gross floor area:

1) In all S and SC Districts, a special permit may be granted for an increase in floor area above the permitted gross floor area for only one of the following subparagraphs (such that the grant of a special permit under one subparagraph shall preclude the subsequent grant of a special permit under a different subparagraph, but shall not, to the extent the increase in floor area allowable under one subparagraph has not been fully utilized, preclude a subsequent grant of an additional special permit under that same subparagraph so as to fully utilize the increase in floor area allowable under that subparagraph. Notwithstanding the foregoing, an applicant who has received a special permit under subparagraph (a) or (b) and has not fully utilized the allowable increase in floor area under that subparagraph may apply for a special permit under subparagraph (c), with the increased floor area previously allowed under subparagraph (a) or (b) counted against the floor area allowable under subparagraph (c)):

   a) an interior conversion that is less than or equal to 30% of the permitted gross floor area;

   b) an exterior addition that is less than or equal to 20% of the permitted gross floor area; or

   c) a combination of an interior conversion and exterior addition that is less than or equal to 30% of the permitted gross floor area, provided that the additional floor area attributable to exterior construction (which shall include the floor area included within dormers, penthouses, cupolas, and the like) does not exceed 35% of the additional floor area allowed by special permit.

The grant of a special permit under any prior version of Section 5.22 shall be deemed the grant of a special permit under this Section.

2) In all T Districts, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for a increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior
addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 2.3, subparagraph (b)(2), or under any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.

c. If the application of the percentages in paragraph 2.3, subparagraph b results in a floor area increase of less than 350 square feet, a special permit may be granted for an increase in floor area of up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. A grant of a special permit under paragraph 2, subparagraph b, or under this paragraph 2, subparagraph c, or a previous expansion permitted. The prior grant of additional gross floor area as of right or by special permit under Section 5.22 or any prior version of Section 5.22 shall preclude a subsequent grant of a special permit under this paragraph 2.3, subparagraph c.

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


a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be subsequently divided into multiple units.

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

c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction was granted at least ten years prior to the date of the application for additional gross floor area under this Section or if there is other evidence of lawful occupancy at least ten years prior to the date of such application. If the limitation set forth in this paragraph 1, subparagraph c should be found invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

d. Exterior modifications to accommodate an exterior addition or interior conversion shall include without limitation the addition of a dormer, penthouse, cupola, windows, doors or the like. Such modifications shall also not conflict with any other provisions of the Zoning By-law. Interior conversion and exterior addition are terms defined in § 2.09. An exterior modification such as a dormer or penthouse which is usable for human occupancy shall be deemed an exterior addition.

e. The interior conversion shall not result in the displacement of interior storage of equipment, vehicles, or materials to a location which is now exterior to the house.

f. In determining the appropriate amount of space to be converted into habitable space, the Board of Appeals shall consider the extent of exterior modifications required to effectuate the proposed conversion and/or exterior addition and the impact thereof on abutting properties.

g. Space that has previously been decommissioned shall not be converted under this Section.

h. Under paragraph 3 below, the Board of Appeals may allow for the conversion of attic or basement space not meeting the requirements of paragraph 2, for conversions of interior space other than attic or basement space, and for exterior additions.

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings
Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing gross floor area of the dwelling, shall be allowed as-of-right provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw. No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than 150% of the total permitted in Table 5.01 (the “permitted gross floor area”).

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

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

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

2) The existing building contains at least one residential unit but no more than four total units. For the purpose of this paragraph 3, subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

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

b. The maximum increase in floor area allowed by special permit may be allowed only in accordance with the following conditions, which shall be in addition to the other conditions set forth in this Section, including paragraph 1, and any other conditions that the Board of Appeals may prescribe. In no case shall the total resulting gross floor area of the building(s) after all conversions and additions be more than 130% of the permitted gross floor area:

1) In all S and SC Districts, a special permit may be granted for an increase in floor area above the permitted gross floor area for only one of the following subparagraphs (such that the grant of a special permit under one subparagraph shall preclude the subsequent grant of a special permit under a different subparagraph, but shall not, to the extent the increase in floor area allowable under one subparagraph has not been fully utilized, preclude a subsequent grant of an additional special permit under that same subparagraph so as to fully utilize the increase in floor area
allowable under that subparagraph. Notwithstanding the foregoing, an applicant who has received a special permit under subparagraph (a) or (b) and has not fully utilized the allowable increase in floor area under that subparagraph may apply for a special permit under subparagraph (c), with the increased floor area previously allowed under subparagraph (a) or (b) counted against the floor area allowable under subparagraph (c):

a) an interior conversion that is less than or equal to 30% of the permitted gross floor area;

b) an exterior addition that is less than or equal to 20% of the permitted gross floor area; or

c) a combination of an interior conversion and exterior addition that is less than or equal to 30% of the permitted gross floor area, provided that the additional floor area attributable to exterior construction (which shall include the floor area included within dormers, penthouses, cupolas, and the like) does not exceed 35% of the additional floor area allowed by special permit.

The grant of a special permit under any prior version of Section 5.22 shall be deemed the grant of a special permit under this Section.

2) In all T Districts, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 3, subparagraph (b)(2), or under any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.

c. If the application of the percentages in paragraph 3, subparagraph b results in a floor area increase of less than 350 square feet, a special permit may be granted for an increase in floor area of up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. The prior grant of additional gross floor area as of right or by special permit under Section 5.22 or any prior version of Section 5.22 shall preclude a subsequent grant of a special permit under this paragraph 3, subparagraph c.

EXPLANATION

Upon review of its own proposal, the Moderator’s Committee suggests a slight clarifying change in subsection 1(c). This change is designed to eliminate any potential ambiguity in the “10-year rule” language originally proposed by the Moderator’s Committee and approved by the Planning Board, the Selectmen and the Advisory Committee. First, for older homes which may have been lawfully occupied before Certificates of Occupancy were required, other evidence of lawful occupancy of the building more than ten years previously will permit an application to be filed under Section 5.22. Conversely, the fact that a Certificate of Occupancy has not yet been
applied for or issued does not permit Section 5.22 to be utilized with respect to a building which has not yet been lawfully occupied for ten years.

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BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

The Board of Selectmen will be taking up the amendment Tuesday night prior to Town Meeting and will have its recommendation at that time.

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ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

Discussion
Since the Advisory Committee's meeting and vote on Article 29, the Moderator's Committee on Zoning did a final review of their work. They found a source of potential confusion in the wording of the first paragraph, subsection 1(c) about the "10-year rule". Two situations would be better covered by their recommended changes. First, it would make sure that the many older houses in town that predate the issuing of Certificates of Occupancy and have been lawfully occupied for the required minimum of ten years, can use Section 5.22. And that secondly, on the other hand, just because a certificate has not been applied for or obtained, this zoning exception can not be made use for a new house that has not yet been lawfully occupied for ten years.

Recommendation
The Advisory Committee voted 19-0 to recommend acceptance of this amendment to Article 29, offered by the Moderator's Committee on Zoning.
THIRTIETH ARTICLE

A Resolution Supporting the Improvement of the Gateway East Area

WHEREAS, pedestrians and cyclists are now unable to safely and swiftly cross Route 9 (Boylston Street) in the area known as “Gateway East;”

WHEREAS, vehicular traffic is a problem in Gateway East;

WHEREAS, in large part because of these pedestrian difficulties and traffic problems, Gateway East is less attractive and can be a difficult place to live in or near;

WHEREAS, improving the connection between the Emerald Necklace, the Brookline Village Train Station, Juniper Street and Pearl Street is desirable;

RESOLVE, that this Town Meeting supports the improvement of Gateway East by, among other things, improving the ability of pedestrians and cyclists to cross Route 9, taking necessary steps to reconfigure roadway and signage to improve traffic conditions, and beautifying the area, all of which will contribute to making Gateway East a safer, more attractive and livable place;

RESOLVE, that this Town Meeting supports the improvement of the connection between the Emerald Necklace, the Brookline Village Train Station, Juniper Street and Pearl Street.

or act on anything relative thereto.

This resolution is proposed because the residents, students (old and new), and pedestrians who live in and travel through the Gateway East public area needs the support of Town Meeting Members to “get the ball rolling.” Your support would be part of the formula to reach our goals. Implementing the improvements suggested by this warrant article would be the most effective way to beautify the Town, improve safety in Gateway East, and reinforce the importance of healthy family living in this area.

SELECTMEN’S RECOMMENDATION

The Selectmen are pleased that a member of the Citizen’s Advisory Committee for the Gateway East Public Realm Plan has decided to put forward this article. The Gateway East Public Realm Plan, an outgrowth of the Brookline Comprehensive Plan, involves the creation of an overall set of standards and conceptual redesign of the portion of Route Nine near Brookline Village, in order to make that area more attractive to pedestrians,
bicyclists, and other users of the area. The recommendations to date were developed with an active Citizens’ Advisory Committee, staff from the Planning and Community Development Department, and the Economic Development Director. These recommendations involve changes to the circulation patterns, open space, and materials in the area. These changes would permit the Town to fulfill the wishes of Town Meeting by removing the pedestrian bridge and replacing it with a new, signalized, four-way intersection with crosswalks at Pearl Street and Route Nine. They would also improve the MBTA station, the crossing along the Riverway, and the overall feel of Route Nine.

Article 30 would represent a vote of support from Town Meeting for the overall vision set forth in the Gateway East project to date. It would not, it is important to note, indicate support for any specific final design. Each piece of the overall vision would require further study and design, including an analysis of their impacts on traffic and on the Emerald Necklace. However, the overall recommendations could do much to improve the character of the area. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on April 25, 2006, on the following vote:

VOTED: That the Town adopt the following resolution:

A Resolution Supporting the Improvement of the Gateway East Area

WHEREAS, pedestrians and cyclists are now unable to safely and swiftly cross Route 9 (Boylston Street) in the area known as “Gateway East;”

WHEREAS, vehicular traffic is a problem in Gateway East;

WHEREAS, in large part because of these pedestrian difficulties and traffic problems, Gateway East is less attractive and can be a difficult place to live in or near;

WHEREAS, improving the connection between the Emerald Necklace, the Brookline Village Train Station, Juniper Street and Pearl Street is desirable;

RESOLVE, that this Town Meeting supports the improvement of Gateway East by, among other things, improving the ability of pedestrians and cyclists to cross Route 9, taking necessary steps to reconfigure roadway and signage to improve traffic conditions, and beautifying the area, all of which will contribute to making Gateway East a safer, more attractive and livable place;

RESOLVE, that this Town Meeting supports the improvement of the connection between the Emerald Necklace, the Brookline Village Train Station, Juniper Street and Pearl Street.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Sher
Daly
ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND
This article seeks Town Meeting support for and recognition of proposed public improvements to the circulation system at Route 9 and Washington, Walnut, High, and Pearl Streets.

DISCUSSION
The area, recently coined “Gateway East” but also known by its perhaps more appropriate and historical name, “Village Square”, is currently the focus of a proposal both to take down the existing pedestrian bridge spanning Route 9 and to remove the “jug handle” which provides vehicular access to Washington Street from Route 9 (east). Their functions would be replaced by a four-way intersection at Pearl Street. Plans also call for relocating and upgrading traffic signals and installing a new surface-level, ADA-compliant pedestrian crosswalk just west of Pearl Street. Developed in response to town Meeting’s opposition several years ago to the repair of the pedestrian overpass, the proposal has been produced with input from the broad-based Gateway East Citizens Advisory Committee whose membership includes Town Meeting member representation from abutting precincts. Outreach and input have generated a plan, which has received significant support from the CAC.

Although funding for the development of the plans and specifications for this undertaking is included in the FY2007 Capital Improvements Program and approval of these funds would clearly reflect Town Meeting’s support, the Advisory Committee believes that a vote in favor of this Resolution underscores the importance of the project which, in the words of the petitioners, will “beautify the Town, improve safety in Gateway East, and reinforce the importance of healthy family living in this area.”

RECOMMENDATION
By a unanimous vote (22-0), the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX
ARTICLE 30

A Resolution Supporting the Improvement of the Gateway East Area

WHEREAS, pedestrians and cyclists and persons with disabilities are now unable to safely and swiftly cross Route 9 (Boylston Street) in the area known as “Gateway East;”

WHEREAS, vehicular traffic is a problem in Gateway East;

WHEREAS, in large part because of these pedestrian difficulties and traffic problems, Gateway East is less attractive and can be a difficult place to live in or near;

WHEREAS, improving the connection between the Emerald Necklace, the Brookline Village Train Station, Juniper Street and Pearl Street is desirable;

RESOLVE, that this Town Meeting supports the improvement of Gateway East by, among other things, improving the ability of pedestrians and cyclists to cross Route 9, taking necessary steps to reconfigure roadway and signage to improve traffic conditions, and beautifying the area, all of which will contribute to making Gateway East a safer, more attractive and livable place;

RESOLVE, that this Town Meeting supports the improvement of the connection between the Emerald Necklace, the Brookline Village Train Station, Juniper Street and Pearl Street, or act on anything relative thereto.

BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

At its May 16, 2006 meeting, The Board of Selectmen discussed Mr. Sneirson’s proposed amendment and recommends FAVORABLE ACTION by a vote of 5-0 offered by the Advisory Committee.

ADVISORY COMMITTEE’S SUPPLEMENTAL REPORT

In considering all the associated issues around the “Gateway East” area, it was clear that safely crossing Route 9 is a major concern. This is a concern not just for pedestrians and
bicyclists, but particularly for those persons with disabilities. In recognizing this, the Advisory Committee is recommending revised language, as recommended by Robert Sneirson, that specifically acknowledges the needs of those with disabilities by specifying in both the first WHEREAS clause and first RESOLVE clause “persons with disabilities”

The Advisory Committee unanimously recommends FAVORABLE ACTION on the following resolution.

VOTED: That the Town adopt the following resolution:

A Resolution Supporting the Improvement of the Gateway East Area

WHEREAS, pedestrians, cyclists and persons with disabilities are now unable to safely and swiftly cross Route 9 (Boylston Street) in the area known as “Gateway East;”

WHEREAS, vehicular traffic is a problem in Gateway East;

WHEREAS, in large part because of these pedestrian difficulties and traffic problems, Gateway East is less attractive and can be a difficult place to live in or near;

WHEREAS, improving the connection between the Emerald Necklace, the Brookline Village Train Station, Juniper Street and Pearl Street is desirable;

RESOLVE, that this Town Meeting supports the improvement of Gateway East by, among other things, improving the ability of pedestrians, cyclists and persons with disabilities to cross Route 9, taking necessary steps to reconfigure roadway and signage to improve traffic conditions, and beautifying the area, all of which will contribute to making Gateway East a safer, more attractive and livable place;

RESOLVE, that this Town Meeting supports the improvement of the connection between the Emerald Necklace, the Brookline Village Train Station, Juniper Street and Pearl Street, or act on anything relative thereto.
ARTICLE 31

THIRTY-FIRST ARTICLE

To see if the Town will adopt the following resolution:

A Resolution in Support of the Impeachment of President George W. Bush

Whereas, President George W. Bush has repeatedly violated his oath of office by failing to uphold, protect and defend the Constitution of the United States, in particular by directing and countenancing numerous violations of the Constitution and Laws of the United States, and by purposely misleading the citizens of the nation so as to cause the United States to commence war in Iraq; therefore be it

Resolved, that this Town Meeting urges our Representative in Congress to introduce and/or support a resolution impeaching President George W. Bush; and be it further

Resolved, that the Town Clerk send notice of the adoption of this resolution to all members of the Massachusetts Congressional Delegation within two weeks of its adoption.

or act on anything relative thereto.

President George W. Bush has repeatedly violated his oath of office by failing to uphold, protect and defend the Constitution of the United States, in particular by directing and permitting numerous violations of the Constitution and Laws of the United States, and by purposely misleading the citizens of the nation so as to cause the United States to start the war in Iraq. Impeachment is the only remedy for these acts being carried out in the name of all Americans, some of which violate not only American law but also international laws and treaties. This resolution calls upon our representative in Congress to support the impeachment of the President. It also directs the Town Clerk to inform the entire Massachusetts delegation of the resolution.

SELECTMEN’S RECOMMENDATION

Article 31 is a petitioned resolution that calls upon the Town’s Congressional Delegation to introduce and/or support a resolution to impeach President George W. Bush.
According to the petitioner, it is his view that the President has violated his oath of office and failed to uphold, protect, and defend the Constitution of the United States.

This Board feels strongly that it is an individual’s right to disagree with the President’s policies and/or politics. However, this Board also believes that these are not impeachable offenses and we would be unwise to promote impeachment of the President for these reasons.

The Board recommends NO ACTION, by a vote of 2-2 taken on April 25, 2006, on article 31.

**ROLL CALL VOTE:**

<table>
<thead>
<tr>
<th>No Action</th>
<th>Favorable Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allen</td>
<td>Hoy</td>
</tr>
<tr>
<td>Sher</td>
<td>Daly</td>
</tr>
</tbody>
</table>

**ADVISORY COMMITTEE’S RECOMMENDATION**

**BACKGROUND**

Article 31 is a resolution to be considered by Town Meeting, to decide if “President George Bush has violated his oath of office, and has purposefully misled citizens of the nation”. The resolution urges our Representative in Congress to introduce and/or support a resolution to impeach President George Bush.

**DISCUSSION**

The initial discussion queried whether Town Meeting should focus on issues beyond local matters and some committee members noted the tradition of the Advisory Committee to take no position on national issues of this scope. In response, it was also noted that Town Meeting has in fact repeatedly voted on national issues, citing several examples.

It was also noted that the replacement for the President, in the event of an impeachment, would be problematic.

The Advisory Committee did not accept an amended version of this article, where the word censure was substituted for impeachment.

A majority of the Advisory Committee does support the proposed resolution because many members feel that it is important for concerned citizens to have a voice.

**RECOMMENDATION**

The Advisory Committee, by a vote of 12 in favor, 6 opposed, and 1 abstention, recommends FAVORABLE ACTION on the following vote:
A Resolution in Support of the Impeachment of President George W. Bush

Whereas, President George W. Bush has repeatedly violated his oath of office by failing to uphold, protect and defend the Constitution of the United States, in particular by directing and countenancing numerous violations of the Constitution and Laws of the United States, and by purposely misleading the citizens of the nation so as to cause the United States to commence war in Iraq; therefore be it

Resolved, that this Town Meeting urges our Representative in Congress to introduce and/or support a resolution impeaching President George W. Bush; and be it further

Resolved, that the Town Clerk send notice of the adoption of this resolution to all members of the Massachusetts Congressional Delegation within two weeks of its adoption.

XXX
ARTICLE 31

AMENDMENT OFFERED BY MICHAEL A. BURSTEIN, TMM PREC. 9

VOTED: That the Town adopt the following resolution:

A Resolution in Support of the Impeachment-Censure of President George W. Bush

Whereas, President George W. Bush has repeatedly violated his oath of office by failing to uphold, protect and defend the Constitution of the United States, in particular by directing and countenancing numerous violations of the Constitution and Laws of the United States, and by purposely misleading the citizens of the nation so as to cause the United States to commence war in Iraq; therefore be it

Resolved, that this Town Meeting urges our Representative in Congress to introduce and/or support a resolution impeaching censuring President George W. Bush; and be it further

Resolved, that the Town Clerk send notice of the adoption of this resolution to all members of the Massachusetts Congressional Delegation within two weeks of its adoption.
ARTICLE 32

THIRTY SECOND ARTICLE

Reports of Town Officers and Committees
REPORT OF THE MODERATOR'S COMMITTEE ON NORFOLK COUNTY

The Moderator appointed six members of Town Meeting and one Commissioner of Norfolk County to serve as members of the Moderator's Committee on Norfolk County. The Moderator's Committee has been meeting over the last 9 months.

Members have interviewed various County and Town personnel and have discussed the potential benefits and drawbacks of seeking to succeed from Norfolk County. The Committee has explored the benefits offered through the County's purchasing infrastructure and compared those rarely-used services to those provided by the Town's staffs. The Committee has also interviewed members of the Town's engineering department about its availing itself of road and other engineering services offered by Norfolk County.

The Committee continues to explore the relationship between the Town and the County. The Committee anticipates that it will not be in a position to make any recommendations or reach any conclusions until the Fall of 2006, at the earliest. We will now turn our attention to moderately complex issues about the county court infrastructure, legislative options and the additional need to converse with our counterparts in several of the other larger communities in Norfolk County.

The Committee expresses its appreciation to staffers of both the Town and the County for making themselves available to members of the Committee and making information and data available to the Committee.
Pursuant to a warrant article adopted by Town Meeting, the Housing Advisory Board has, since 1997, provided Town Meeting with an annual progress report on Brookline's work in support of affordable housing.

The Town seeks

- to preserve existing affordable housing;
- to increase the supply of housing affordable to low and moderate income households town-wide by encouraging:
  - the creation of affordable units in existing rental buildings and
  - appropriately sited and scaled mixed-income new development;
- to apply Town-controlled resources to leverage other public and private resources; and
- to assure that housing so created is kept affordable for as long as possible.

Progress towards increasing the supply of affordable housing was slower this year compared to recent past years. Since the 2005 Town Meeting, the Housing Advisory Board and Housing Division Staff achieved the following:

1. **Continued to assist the Brookline Improvement Coalition (BIC) to complete the rehabilitation and refinancing, as permanently affordable housing, of a six-family building at 154-156 Boylston Street.** The Town originally committed up to $525,000 in Housing Trust funds which, along with favorable financing from Brookline Bank, enabled the BIC to acquire the property in January, 2004. Rehabilitation and re-occupancy was completed during the summer of 2005, and the property was refinanced with the Massachusetts Housing Partnership, including $495,000 in “soft” loans. At the same time, the Town substituted Community Development Block Grant (CDBG) funds for the Housing Trust advances, making the latter available for future affordable housing investments.

2. **Continued to speak with residential brokers and property owners in an effort to identify additional rental housing that might be transferred in ways which would achieve long term affordability.** Staff visited various properties available for sale, mostly at prices far exceeding any possible affordable housing write-down. At the same time, staff introduced nonprofit buyers to potential sellers of four properties for which affordable housing outcomes might be possible in the near future.

3. **Continued to work with the Planning Office for Urban Affairs (POUA) to advance the St. Aidan’s Project.** The Town increased its commitment from $3.5 to $4.5 million to develop 20 affordable rental units and a minimum of 16 affordable condominiums, preserve the historic church through adaptive reuse for nine market rate condominiums, and conserve the historic courtyard. This represented an increase in Town funding and decrease in affordability due to increases in carrying and construction costs during the project’s extensive
4. **Continued to work with the Brookline Cooperative towards an agreement on condominium conversion that will preserve at least 25 percent of the housing units as permanently affordable.** The affordability requirements of this 116-unit affordable housing project, built in the 1960s under urban renewal, expired in April, 2006. Town representatives have met with representatives of the Cooperative over three years, seeking an agreement that would preserve affordability of at least 29 of the 116 units.

5. **Provided a CDBG loan to the Paul Sullivan Trust for a package of physical improvements to its 28 room property at 1043-1045 Beacon Street to assure long term preservation of this important resource.**

6. **Continued to work with a subcommittee of the Fisher Hill Town Site Committee to seek an acceptable affordable housing component as part of a redevelopment of this five acre former Town reservoir.** The subcommittee sponsored a design charrette in January, which explored site planning and potential massing as a prelude to establishing development guidelines.

7. **Continued to work with developers of new market-rate projects subject to the inclusionary zoning provisions of the Zoning By-law, including**
   - completing the occupancy of two affordable units at the nine-unit Park Place condominium development at 55 Park Street;
   - marketing and reviewing applications for four affordable units at the 29-unit Cypress Lofts II condominium development at 323 Boylston Street;
   - working with the developers on affordable housing plans for three affordable condominiums at 156-160 St. Paul Street/76-78 Sewall Avenue, nine affordable condominiums at 635 Hammond Street (under new ownership), and four affordable condominiums at 311-327 Hammond Pond Parkway; and
   - negotiating with the purchaser of Longwood Towers to assure that the two existing affordable rental units will continue to be affordable following condominium conversion, with preference for sale to income eligible purchasers/owners.

8. **Continued to work with developers of small projects at 1140 Beacon Street, 64 Sewall Street, 1601 Beacon Street, 121 Centre Street, 75 Winchester St. and 164 Harvard Street, resulting in contributions totaling about $424,000 to the Housing Trust under inclusionary zoning.**

9. **Continued to provide financial and/or technical assistance to low and moderate income households and Town employees seeking to purchase a home in Brookline.** The Housing Division counseled dozens of prospective purchasers. After increasing its HOME- and CDBG funded homebuyer assistance loan limit to $125,000 per household, the Housing Division staff assisted three eligible households to purchase condominiums. The Division also worked with these and the two homebuyers at Park Place to access the Commonwealth’s Soft Second Program financing. The Town participates in this program, critical to making the housing affordable to a wide range of incomes, in collaboration with Boston Private Bank and Trust Company.

10. Contributed to the deliberations of the Moderators Committee on the **Community Preservation Act** to determine the value of this potential fundraising measure for the Town of Brookline.

11. Contributed to the planning efforts of the **Coolidge Corner District Council.**

12. **Advanced a proposal to Town Meeting to increase protections available to tenants of rental buildings undergoing conversion.**
BOARD OF SELECTMEN
Robert L. Allen, Jr., Chair
   Nancy A. Daly
   Gilbert R. Hoy, Jr.
   Michael W. Merrill
   Michael S. Sher

Richard J. Kelliher, Town Administrator

HOUSING ADVISORY BOARD
Roger F. Blood, Chair
   Steven A. Heikin
   Michael H. Jacobs
   Rita K. McNally
   David P. Rockwell
   Daniel M. Rosen
   Kathy A. Spiegelman

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
Jeffrey Levine, AICP, Director of Planning and Community Development
   Francine Price, Housing Development Manager, Housing Division
   Virginia Bullock, Housing Project Planner, Housing Division
   Bruce Genest, Housing Project Planner, Housing Division
The Town's Housing Stock

The Town becomes less affordable to many working families and senior citizens. Housing becomes less affordable to many working families and senior citizens. In this community, the increase in housing costs has made children's education more than just a subject, but a community-wide issue. The Town's ability to draw from its own population to teach its children to operate in a commercial context for other cultures and classes.

B
Existing Affordable Housing

Approximately 1900 of Brookline's housing units are specifically targeted to and priced for low- and moderate-income residents. Of these, 86 percent were developed prior to 1980. Waiting lists for Brookline's affordable housing tend to be very long, and several have been closed.

The largest single owner of affordable housing is the Brookline Housing Authority (BHA). An independent authority established in 1948, the BHA is governed by a Board of Commissioners elected directly by the public. The BHA owns 921 units which it developed using resources from the federal or State government. Roughly half of the units - 458 - are in seven mid- and high-rise buildings which serve the elderly, as well as some disabled residents. Another 432 are in family-oriented developments. Thirty-one units are in three small residences which are operated by private non-profits for special needs populations.

The BHA also administers a federally subsidized Section 8 voucher program, which provides financial assistance to lower income households to rent in the private market. However, the failure of the federal regulations to recognize the high market prices in communities like Brookline reduces the effectiveness of this resource for the Town. Most voucher holders either use their vouchers to lease units in the subsidized developments discussed below, or to live outside of Brookline.

While housing owned by the BHA has the greatest expectation of permanent affordability, its federal or State allocations of operating subsidies and modernization funding are not always adequate. The Town has a history of supporting the BHA by contributing federal Community Development Block Grant (CDBG) funds to capital improvements, principally for landscaping, but also for energy efficiency and wheelchair accessibility.

An additional 905 units of affordable housing
Units will then be affordable.

Chapter 40B: Subsidized Housing

Private housing is an offset of appeal to a precedent accorded under the State's court, affordable restrictions, the units are geared to 10 affordable housing. Prepayment of affordable housing or approval of approval. Affordable housing
denoted as "subsidy zones."

The Commonwealth of Massachusetts zones are subject to a small but growing number of units
cooperatives, dedicated to affordable housing.
The Affordability Gap

In contrast to the relatively few who are lucky to be served by existing affordable housing, the current price of entry into Brookline's housing market precludes all but the most economically secure. Between 1991 and 2005, the median sales price of a single-family home in Brookline increased 229 percent to $1,090,000. The median price of a condominium, the entry point for homeownership in town, increased 250 percent to $459,000.

As a point of reference, the median income of a family of three in metropolitan Boston increased from $45,180 in 1991 to $74,340 in 2005. To purchase a median-priced condominium in Brookline in 1991 required an income of about $54,000 or 119 percent of the median income of a three person family; by 2005, the purchase required an income of $128,000, or 172 percent of the metropolitan area median. Viewed from a different angle, in 1991, a family of three with the median income could afford to pay 79 percent of the median condominium sales price; by 2005, such a family could afford only 48 percent of the median sales price. Thus, the affordability gap for homeownership in Brookline has grown significantly over the past decade. In addition, with two bedroom units typically renting between $1,600 and $3,000, a family seeking to rent in Brookline would require an income between $68,000 and $124,000, and cash of $3,200 to $12,000 to cover security and other deposits.
## Affordable Housing: A Definition

Affordable housing is housing for which the total cost of the mortgage payment, property taxes, and utilities do not exceed 30 percent of the household’s income. The income threshold is based on the median income of the area, as determined by the U.S. Department of Housing and Urban Development (HUD). These guidelines are updated annually to reflect the changing economy.

### 2004 Income Limits for Typical Affordable Housing Programs

The following chart shows the income limits for typical federal programs as of 2004, which are used to determine eligibility for assistance. This table includes the maximum income thresholds for households across different regions, including urban and rural areas.

<table>
<thead>
<tr>
<th>Region</th>
<th>Income Limit</th>
<th>Median Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>$50,000</td>
<td>$60,000</td>
</tr>
<tr>
<td>Rural</td>
<td>$40,000</td>
<td>$50,000</td>
</tr>
<tr>
<td>Low-income</td>
<td>$30,000</td>
<td>$40,000</td>
</tr>
<tr>
<td>Very low-income</td>
<td>$20,000</td>
<td>$30,000</td>
</tr>
</tbody>
</table>

### Notes

- **Affordable Housing** is defined as housing that is rented or owned at a price that is affordable and decent to people without sacrificing their living standards.
- The cost of housing includes the mortgage payment, property taxes, and utilities.
- The income limit is calculated based on the area’s median income, adjusted for household size and number of members.
- Programs such as Section 8 and Public Housing provide affordable housing options to low-income households.
Brookline’s Affordable Housing Policies

The Town seeks to use affordable housing initiatives and programs to help re-establish and maintain the historic status of Brookline as a mixed-income community, and to make use of all opportunities – funding, property expertise, regulatory tools – to accomplish this. More specifically, the Town seeks to:

- work with owners of “expiring use” projects to preserve existing affordable housing;
- consider and pursue all opportunities, including those in the private domain (existing rental properties, scattered site condominiums and sites in transition such as surplus institutional properties and those in the public domain (surplus property or air rights controlled by the Town, the State, or by some other public agency);
- welcome and work with non-profit and for-profit developers who can bring expertise and leverage additional sources of funding;
- maximize funding available to affordable housing, using Town-controlled funding to leverage additional private and public resources to serve populations who cannot be served under existing federal, state, and private programs;
- use regulatory tools, such as the inclusionary zoning provisions of the Town’s by-law and “friendly” 40B process, to encourage mixed-income housing through internal subsidy, appropriate density, and good design;
- assure that resources expended serve future as well as present generations, by guaranteeing affordability for the longest period possible;
- serve, to the extent possible and appropriate, a range of incomes which are currently excluded from Brookline’s housing market;
- give preference for affordable housing, to the extent permitted by law, to Brookline residents and those with ties to Brookline, such as employees of the Town and BHA and families with children in the METCO program.

Comprehensive Planning Process

In 2005, the Town of Brookline completed a multi-year process to chart a course for the subsequent decade. A Comprehensive Plan Committee identified affordable housing as one of the Town’s most important goals and greatest challenges, and identified the following obstacles to affordable housing in Brookline:

- lack of available sites, cost of land and existing buildings, lack of adequate and predictable subsidies, and potential conflict between new development and preservation of neighborhood character. The plan confirmed the Town’s current policy directions, establishing 25 units as an annual goal.
Senior Housing at 100-112 Crescent Street

In 2004, the Town's initial 124-unit project was completed. The project, known as the "Newtown," was a significant step towards addressing the needs of the aging population. The facility was designed to provide a comfortable and safe living environment for seniors, with access to various amenities and services.

The Town recognizes the importance of senior housing, and continues to explore additional opportunities to expand the existing senior housing options. The Department of Housing and Urban Development (HUD) provides financial assistance to support the development of senior housing projects, and the Town has submitted proposals to HUD for funding.

Affordable Housing Development

The Affordable Housing Ordinance requires the Town to set aside a portion of new developments for affordable housing units. The Affordable Housing Trust Fund provides financial assistance to developers to construct affordable housing units.

The Affordable Housing Development Program is designed to encourage developers to build affordable housing in the Town, and to provide incentives for developers to construct units that meet the needs of low-income households.

The Housing Division is responsible for administering the Affordable Housing Ordinance, and for ensuring that new developments meet the requirements for affordable housing.

In conclusion, the Town's commitment to providing affordable and senior housing is ongoing, and the Housing Division continues to work closely with developers and community organizations to identify new opportunities for housing development.

Town Initiatives on Behalf of Affordable Housing

1. Senior Housing
   - Senior Housing at 100-112 Crescent Street
   - Senior Housing at 1550 Beacon Street

2. Affordable Housing
   - Affordable Housing Development Program
   - Affordable Housing Trust Fund

The Town is committed to ensuring that all residents have access to safe and affordable housing options.
Redevelopment of Existing Housing

In 2001, the Town financed the purchase, by the non-profit Brookline Improvement Coalition (BIC), of a dilapidated lodging house at 1754 Beacon Street, and assisted the BIC to select a non-profit developer to rehabilitate, own and manage the lodging house. Pine Street Inn, the successful applicant, used the Town’s investment of over $907,000 in HOME monies to leverage an additional $1.6 million commitment from three State sources for the rehabilitation of this historic building. The 14 rooms and efficiencies, permanently affordable for income eligible persons, was occupied in fall of 2003. In 2005, this project was nationally recognized for exemplary and innovative use of HOME funds.

During the summer of 2002, the Housing Division, notified by local brokers, invited several affordable lodging house developers/operators to view another deteriorated lodging house at 1876 Beacon Street. The Town agreed to support Caritas Communities, Inc., a nonprofit lodging house operator, in acquiring the building. At the same time, the developer of Longyear Estates was seeking property to redevelop in satisfaction of its off-site affordable housing obligation under the Zoning Bylaw. By partnering Caritas with Longyear and supporting Caritas in advocating for additional funding from State agencies, the Town was able to assure that Caritas received the $1.9 million in gap funding required to achieve the acquisition, rehabilitation and long term affordability of another 15 rooms for lower income individuals.

Similarly, at the end of 2003, the Town was notified of the sale of a six family building at 154-156 Boylston Street. By 2005, BIC had completed the rehab and occupancy of this building with $600,000 in Town-controlled CDBG funds leveraging about $5 million from the Massachusetts Housing Partnership.

New Development

St. Aidan’s Church was closed by the Archdiocese of Boston in 1999. Soon thereafter, the Town started meeting with the Planning Office for Urban Affairs of the Archdiocese (POUA), an experienced non-profit developer of affordable housing, and found that it shared a common interest in seeing the site used for affordable housing. The Town asked POUA to await developing an application under Chapter 40B until the Town had completed a process to develop principles and guidelines for the redevelopment of the site. The result was a plan, permitted under Chapter 40B, which will preserve the church building, conserve the forecourt with its 150 year-old beech tree, and provide at least 36 new units of low-income rental and moderate-income homeownership.

The Town has designated the 4.8 acre surplus reservoir on Fisher Hill as a potential site for mixed income development, and is currently working towards development goals and guidelines for the site. In addition, a Coolidge Corner District planning process will consider affordable housing needs as it looks at development constraints and opportunities.
The developer of the 21-unit Brookline Ville project has received approval for 16 additional income units, bringing the total to 27 units. This phase of the project involves the development of rental units, with the developer seeking investors to support the project.

The developer is also looking to sell 16 additional rental units, including 4 in the 5-unit complex in the north extension of the project. These units are located in a 25-story building and are available for purchase under the developer's model.

The Brookline Ville project is being marketed to low to moderate income households. The developer has secured an agreement with a financial institution to assist in marketing the project to possible investors.

In the past, developers of this nature have encountered difficulty in securing funding for such projects. However, the developer is confident that the project will be successful, given the current market conditions and the strong demand for rental housing.
Homebuyer Assistance

The Housing Division offers technical and financial assistance to those seeking to purchase an affordable home in Brookline. Technical assistance is made available on a one-to-one basis to all applicants, and addresses housing needs, credit, cash requirements, and selection of a realtor and lender.

The Division provides financial assistance of up to $125,000 in federal HOME/CDBG funds to income eligible individuals and families -- those with incomes below 80 percent of median -- to purchase a home. As presently designed, upon resale, borrowers must repay the Town’s loan plus a share of the increase in sales value proportional to the Town’s original investment. However, if the affordable unit is part of a condominium property with six or more units, the Town will also reserve a right of first refusal to purchase the property for resale to an income eligible household. The price will be the original amount of the purchase without the Town’s assistance, adjusted up in accordance with increases in the median income. The Town’s down payment assistance program has resulted in 53 home purchases by income eligible buyers since 1992, when it began with a $25,000 limit on assistance.

The Housing Division also works with other public agencies to increase the affordability of purchasing a home by assisting Brookline buyers to achieve favorable borrowing terms. Collaborating with the Massachusetts Housing Partnership and Boston Private Bank and Trust Company, the Division refers buyers to the Massachusetts Soft Second Program, resulting in beneficial interest rates, terms and closing costs, and deferred payment mortgages. The Division is also educating Town employees about the new Municipal Mortgage Program, which aims at assisting municipal employees with a range of incomes to purchase in the community in which they work. Through this program, MassHousing will insure loans from participating banks which provide qualified employees with 100 percent financing. Eliminating the need for a down payment will allow families with incomes up to $109,080 for a family of four (135 percent of area median income), who do not have access to significant cash reserves to qualify for a larger mortgage.

Finally, the Division works with developers of market rate projects, which include affordable units, as required under the Town’s inclusionary zoning provisions, in order to market these units to and select eligible households.

Rehabilitation

The Housing Division is available to provide technical and financial assistance for emergency rehab and lead paint assistance for low income individuals and families who might otherwise be displaced from their homes. The Division also is an agent for MassHousing programs involving purchase/refinance with rehabilitation, or lead paint abatement.
A block grant funded by Federal Housing funds. The funds are used to provide a down payment assistance program for low-income families. The program is designed to help eligible households become homeowners by providing financial assistance to purchase a home. The funds are allocated on a competitive basis to local housing authorities, who then provide financial assistance to individual families. The program aims to increase homeownership opportunities and improve the housing conditions of low-income families.
REPORT TO THE SPRING 2006 TOWN MEETING BY
THE MODERATOR’S COMMITTEE ON ZONING (FAR)

The Moderator’s Committee on Zoning was created pursuant to Article 12 of the Spring 2005 Town Meeting. Article 12 was initiated by citizen petition in response to perceived problems with the Zoning By-law, particularly with respect to gross floor area (GFA) and height. Town Meeting, on May 26, 2005, voted to refer Article 12 to a Moderator’s Committee for study and for a report to the Spring 2006 Town Meeting about gross floor area (GFA), including a definition of habitable space and height.

Town Meeting also referred Article 12 of the Fall 2005 Town Meeting to the Moderator’s Committee. That article, also initiated by a citizen petition, was directed at “McMansions” and would have required a special permit whenever the GFA of a proposed new or enlarged building was at least 30% greater than the GFA of any preexisting demolished building, of the preexisting building prior to enlargement, or of other buildings in close proximity.

The Committee appointed by the Moderator consisted of the following five members, all citizens of Brookline:

- Richard W. Benka, attorney; partner at Foley Hoag LLP; Town Meeting Member from Precinct 13.
- Gill Fishman, design consultant; graduate of the Harvard Graduate School of Design; petitioner under Article 12 at the Spring 2005 Town Meeting; new Town Meeting Member from Precinct 14.
- Steven A. Heikin, AIA, architect and city planner; Vice-President and Senior Principal of ICON Architecture, Inc.; member of the Planning Board and numerous Design Advisory Teams.
- Nancy Loeb, real estate attorney with the Massachusetts Division of Capital Asset Management; former Senior Planner for the Town of Brookline.
- Sergio Modigliani, AIA, architect; former Town Meeting Member from Precinct 13; former member and Chair of the Advisory Committee; former member and Vice-Chair of the Preservation Commission.

Staffing assistance to the Committee was provided by the Town’s Department of Planning & Community Development, including Robert Duffy, former Director; Jeff Levine, AICP, Acting Director and Director; Polly Selkoe, AICP, Chief Planner; Tim Greenhill, Planner; and Donald Giard, AICP, Planner. The Department provided the Committee with substantial background data, possible approaches, studies, suggested drafts, ongoing advice and recommendations for consideration, and administrative support. The Committee is grateful for the assistance provided by the Department.

The Committee’s organizational meeting was held on June 22, 2005. The Committee held additional public meetings on September 7, October 19, November 7 and November 28, 2005 and on January 9, January 23, February 6, February 15, March 1, March 8, April 5 and May 17, 2006. Public comments were received. The Committee has submitted proposed amendments to the Zoning By-law for consideration at the Spring 2006 Annual Town Meeting.
The Committee respectfully submits the following report and recommendations:

1. Further Study Recommended on Height and Certain Floor Area Issues.

Article 12, as proposed at the Spring 2005 Town Meeting, raised questions regarding the scope and application of exceptions to maximum height regulations, including those set forth in § 5.31 of the Zoning By-law, and concerns that such exceptions have been used to circumvent height limitations. Because of the complexity of the issue, the Committee has not reached consensus, has determined that this question requires further study, and intends to further investigate the question and to report to a later Town Meeting.

In addition, members of the public raised questions about the application of “public benefit incentives,” including those set forth in §§ 5.21 and 5.32 of the Zoning By-law, that provide additional exceptions to the maximum floor area and maximum height limitations. Those questions included whether the incentives permitted additional floor area or height for purported benefits already required by other by-laws, and whether the incentives actually delivered benefits to the public. The Committee believes that the public benefit “bonus” provisions implicate broad questions of public policy and that any changes to these provisions should therefore involve broad public input and further study by the Committee.

Finally, the Committee became aware of certain potential problems in the definitions contained in the Zoning By-law. For example, the definition of “basement” (which is not counted against GFA if not habitable) includes any story that is even “partly ... below grade.” This can lead to the construction of “basements” that are substantially equivalent to first floors. The Committee considered the option of substantially revising current definitions, but was concerned about the potential for making existing properties non-conforming, even if they were not built to evade the Zoning By-law. At this time, and as discussed below, the Committee recommends certain limited changes to definitions as well as revisions to Section 5.22 to reduce incentives to exploit existing definitions. The Committee intends to give further consideration to the definitional issues.

2. Further Study Recommended on “McMansions.”

The Committee considered the proposal contained in Article 12 of the Fall 2005 Town Meeting to require a special permit for any building whose floor area exceeded by 30% or more the floor area of a preexisting demolished building (in a “teardown” situation), the floor area of a preexisting building that was being expanded, or the average floor area of other buildings in nearby proximity (“reference” properties).

The Committee recognizes the potential impact of “McMansions” that are out of scale with the neighborhood and the legitimate concern that trends in the real estate market could lead to further “teardowns” and construction of such “McMansions.” In addition to the options suggested by the original “McMansion” warrant article, the Committee considered a by-law that would set a definitive size threshold for design review -- e.g., 4,000 square feet. The Committee also considered options that would tie the threshold for design review to the minimum lot size in a given zoning district, so that buildings on substantially oversized lots would be subject to design review even if they complied with floor area ratio (FAR) limitations.
At the same time, however, the Committee was concerned that proposed regulation of "McMansions" could have unintended consequences. It could, for example, preclude or make unnecessarily difficult the expansion of smaller homes, even if they were substantially below the allowable FAR. This would be particularly true if an existing house or the neighboring "reference" properties were substantially "underbuilt," that is, if they did not fully utilize the allowable FAR. The Committee was also sensitive to concerns that a provision requiring comparison to nearby buildings would be difficult for the Building Department to administer. In addition, reference to the floor area of neighboring buildings could affect construction on larger lots even where that construction was visually isolated from abutters and the public. There was also a question of defining neighboring "reference" properties -- should they, for example, be defined to include only abutting properties, abutting properties on the same street, all properties within a set distance, all properties on the same block of the same street, and so on. There was the further question of defining appropriate "reference" properties at the boundaries of zoning districts, where FAR and height limitations might be different for abutting properties or properties in close proximity.

In light of the various issues raised, the Committee has not proposed any warrant article regarding "McMansions" at this time. The Committee intends to investigate the issue further, including reviewing recent building permits to determine the relationship of building size to that of buildings on adjacent properties, to determine how many homes a flat threshold such as 4,000 square feet would affect, and so on.

The Committee also believes that Zoning By-law changes it is recommending will help to reduce the proliferation of "McMansions," by, for example, limiting the size of garages and atrium spaces and by reducing the incentives under Section 5.22 for the creation of buildings larger than intended under the Zoning By-law.

3. Eliminate "Decommissioning."

Several Zoning Board of Appeals (ZBA) decisions have approved the concept of "decommissioning." Decommissioning is the concept of taking a portion of a building out of service without actually reducing the bulk of the building. This could involve steps as elaborate as removing floors and wall and ceiling finishes in a finished attic, or, some have argued, could be accomplished by an action as trivial as blocking access to an attic.

The Moderator's Committee unanimously recommends that the concept of decommissioning be eliminated from the Zoning By-law. By reducing the measured GFA of an existing building, without actually changing the size of the building, decommissioning has been a tool to accomplish the subdivision of a lot that would otherwise be too small to support the intended development. Decommissioning has also raised enforcement issues: precisely what steps are necessary to "decommission" part of a building, and how will that be enforced by the Building Department when, for example, a home is already occupied. Finally, decommissioning reduces the measured GFA without actually reducing the exterior dimensions of a building.

The Committee has added a definition of "decommissioning" that is designed to capture all arguable interpretations -- from actually removing finishes to blocking access -- and has made clear in the definitions of "decommissioning" and "gross floor area" that, even if space has been
“decommissioned,” it must be counted against the GFA. In addition, and in accordance with recent statements of the ZBA, the Committee has made clear that space that has been decommissioned may not be converted back into habitable space under Section 5.22. This addresses the potential of first “decommissioning” space to reduce GFA, then securing a permit for new construction based on the reduced GFA, and finally “recommissioning” the “decommissioned” space. The definition of “decommissioning” makes clear that the actual physical demolition or removal of a part of a building can be used to reduce GFA, insofar as exterior dimensions are actually reduced.

4. Tightening Section 5.22.

The changes to Section 5.22 of the Zoning By-law are explained in more detail in Article 29. Briefly, Section 5.22 was originally adopted to allow residents with need for additional residential space to exceed the FAR limitations of the Zoning By-law by making limited additions to their homes or by converting interior space that was previously not habitable. In 2002, Town Meeting accordingly included an explicit provision limiting the right to make conversions under Section 5.22 “to existing single- and two-family dwellings erected and as configured prior to the adoption of this section.”

Towns, unlike cities, are required to have by-law changes reviewed by the Attorney General before they become effective. Town Meeting’s limitation was struck down by the Attorney General in 2003 on the ground that it did not treat all similar structures “uniformly.” As a result, the door was opened to the tactic of constructing new residential buildings containing substantial “attic,” “basement” or other space identified as “unfinished,” followed by the “conversion” of that space to add more habitable floor area after receipt of a certificate of occupancy. The original intent of allowing the modification of long-occupied homes in response to changing family needs thus became a tool for the creation of new buildings that were substantially larger than intended under the FAR limitations of the Zoning By-law.

Town Meeting responded in the Spring 2005 Town Meeting by providing that the as-of-right conversion of attic space would be permissible only if the “Certificate of Occupancy for the original construction and previous conversions or alterations under this section, if any, was granted at least ten years prior to the date of” an application for the conversion. The Attorney General approved that C of O limitation, which applied uniformly to all properties regardless of when they were built. The Committee recommends that the ten-year C of O limitation be extended to apply, also, to all additions and conversions, including as-of-right basement conversions. The change is driven by the fact that the definition of “basement” in the Brookline Zoning By-law includes any space that is even “partly ... below grade” (arguably, for example, with one corner being one foot below grade), and experience since 2005 has shown that it is possible to build a “basement” that is substantially above grade and has numerous windows and doors providing access from the outside.

At the same time, the Committee’s recommendation makes explicit that a homeowner need not fully utilize the conversion options permitted under Section 5.22 all at once; expansion may take place in steps as family needs require and budgets permit. The Committee’s proposal does, however, reiterate that interior conversion is preferred to exterior additions.
Although a 10-year C of O limitation has been approved by the Attorney General, it is now being challenged in court by a developer. Although the Committee believes that the challenge will be unsuccessful, it wants to avoid the sort of situation that occurred in 2003 when a limitation voted by Town Meeting was gutted by the Attorney General, opening the door to the construction of new buildings containing substantial “unfinished” space that did not count against FAR. Thus, the proposal includes a provision that if the C of O limitation is declared invalid, there can be no conversions under Section 5.22 until Town Meeting has addressed the issue.

5. Definitions Related to Gross Floor Area.

The Committee has also recommended certain revisions of definitions related to “gross floor area,” as explained more fully in Article 28. The definitions are intended to confirm existing practice, but also tighten the By-law in certain respects. First, at the present time, all garage space has been excluded from the calculation of GFA. This has led to garages bloated with almost 500 square feet per automobile (e.g., 40 feet deep). For single- and two-family homes, the Committee recommends that the space be limited to 360 square feet per required space, which would still provide more than adequate space not only for automobiles but also for storage. Second, the Committee sought to address the increasing bulkiness of structures caused by the practice of including “atriums” and “cathedral” ceilings. Two- or three-story atriums, or two-story cathedral ceilings, are under current law counted only once against GFA, even though they increase the bulk of a building by two or three times. The Committee’s proposal increases the calculated GFA for any ceiling height over 12 feet. Finally, the Committee would eliminate the existing exclusion for “accessory heating and ventilating equipment,” since such uses increase the bulk of a building no less than habitable space, and designation of space as “mechanical” can be used to avoid the limitations of the Zoning By-law. Necessary mechanical spaces in basements and on roofs continue to be excluded from GFA, as they are now.


The Committee has recommended a new provision designed to restrict “snout-nosed” and other buildings where much of the front facade of a building consists of garage doors and much of the front lot of a building is paved with driveways or parking. The Committee’s proposal would limit vehicular use to 24 feet, or 40% of the width of the facade of a building facing the street, whichever is less, with exceptions when necessary for public safety or where a building is on a corner lot and the garage space is on the side. The remaining frontage would be required to be landscaped rather than paved.

Respectfully submitted,

Richard Benka
Gill Fishman
Steven Heikin
Nancy Loeb
Sergio Modigliani
Report of the Audit Committee to the Board of Selectmen
May 17, 2006

Audit Committee Background

The Audit Committee is an independent committee established by the Town’s bylaws. The Board of Selectmen, the Advisory Committee, and the School Committee each appoint one member, the Town Moderator appoints the remaining three members. The Town’s Finance Director and Treasurer, the Comptroller, and the School Department’s Deputy Superintendent for Administration and Finance serve as ex officio, non-voting members of the Committee.

Introduction

The Annual Report on the Examination of the Basic Financial Statements of the Town of Brookline for the Fiscal Year ended on June 30, 2005, which is also known as the independent annual audit for FY ‘05, has been completed by the firm Powers & Sullivan. It has been reviewed by the Town’s Audit Committee, members of which met with Jim Powers and Craig Peacock of Powers & Sullivan on November 9, 2005. After this review, the Audit Committee voted unanimously to accept and approve the Basic Financial Statements.

The Audit was completed in record time this year due to the extensive work done by our Comptroller Judy Haupin, her staff, by Steve Cirillo the Town’s Finance Director and Treasurer, and by Peter Rowe, the School Department’s Deputy Superintendent for Administration and Finance, to assemble all the reports that the auditors would need in the format required by GASB, the Government Accounting Standards Board, immediately after the close of the fiscal year. We would like to thank them for that hard work and the Committee appreciated receiving the Basic Financial Statements so early.

Powers & Sullivan did not find any Reportable Conditions or Material Weaknesses. In other words, it did not find any serious problems with the manner in which the Town maintains its financial records or in the actual records themselves. The representatives of Powers & Sullivan noted that Steve Cirillo and Judy Haupin and all their staff had been cooperative and forthcoming during the audit process.

Fiscal Year 2005 Audit

The Town continues to manage its financial affairs prudently. It has maintained its Aaa bond rating, which allows the Town to borrow money at favorable rates, even in the midst of a state-wide financial crisis. The Town continues to effectively use long-term fiscal planning tools, such as the 5-year forecast and the 6-year Capital Improvements Plan, rainy day funds, and budgeting stabilization reserves. The structural budget deficit on the state level has impacted the Town in that state aid has not grown with costs. Therefore, the Town has had to increasingly rely on local revenues to cover the
increasing cost of providing services to the public. The Town will have to continue to search for opportunities to operate as efficiently as possible and to cut costs when necessary.

In conducting the Audit, Powers & Sullivan focused on risk assessments. The “cash” category is the biggest risk element and therefore, the auditors spent a great deal of time reviewing the cash accounts and the Town’s methods of handling cash. The Town’s practice of billing quarterly for taxes, water & sewer and trash service, etc., results in a reasonably steady cash flow throughout the year. Reserve funds are promptly invested, although the historically low rate of return on the type of investments that the Town is legally authorized to enter in the past few years has made it difficult to realize a desirable yield. The Town Treasurer automatically transfers excess funds out of all depository accounts each day to a collateralized repurchase account and frequently transfers into the Massachusetts Municipal Depository Trust for a slightly higher rate of return but with continuing liquidity.

Money that it being held for a slightly longer period of time, such as funds designated for capital projects is invested in various U.S. Treasury obligations, short-term commercial paper, and corporate bonds. Longer term trust funds are currently managed by a professional investment management firm to maximize their return within the guidelines set by the Commonwealth. These vehicles have been giving the Town a rate of return from 3.1% to 6.3% at a time when money market deposits are yielding in the 1.5% range.

The Town has funded 64% of the present value of the costs that independent actuaries have projected for employee pensions. The unfunded liability is being systematically funded over 20 years as part of the amount that the actuary calculates needs to be contributed each year.

Powers & Sullivan audited the basic financial statements of the Town’s governmental activities, the business-type activities (enterprise funds), each major fund dedicated to a specific purpose, and the aggregate remaining fund information. They also audited the Brookline Contributory Retirement System (Pensions) and found no problems there. That system is also audited by PERAC, the state contributory retirement oversight board, for compliance with state laws and regulations on contributory retirement systems. The funds of the retirement system are included in the totals for the Town.

The audit was done according to Generally Accepted Auditing Standards issued by the United States Comptroller General. Those standards are designed to determine if there is a reasonable assurance that the basic financial statements are free of material misstatement. In conducting the Audit, they tested the evidence supporting the amounts and disclosures in the basic financial statements; assessed the accounting principles used and significant estimates made by management; and evaluated the overall basic financial statement presentation.

Powers & Sullivan believes their Audit provides a reasonable basis for their opinion which is “the basic financial statements...present fairly in all material respects, the
respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Brookline, as of June 30, 2005.”

The Financial Statements show Total Net Assets for the Town of $193,093,501 (p.21). Of that figure $127,123,745 represents capital assets, which includes our Town-owned land, buildings, road, sewers, and equipment. Another $22,102,820 is restricted, that is money from trust funds and grants. The remaining $43,866,936 in the general fund as of June 30, 2005 had some restrictions including the upcoming payroll, benefit withholding, bills which the town had received or anticipated shortly, money which Town Meeting had already appropriated for capital (building) projects that were underway, and some other monies which Town Meeting had appropriated for specific purposes. By Massachusetts finance law all but about $5,200,000 of this amount was required for these designated purposes. The remaining money is the amount that the State is expected to certify as Free Cash, and in keeping with the Town’s policy that money is used for the Capital Improvement Plan and other one-time uses, since it is too unpredictable to be counted on for the operating budget.

The Auditors feel that the cash accounts are handled well in Brookline. The Auditors looked for systems to detect and correct errors as they occur and they felt that Brookline has good systems in place. Questions always arise from the public as to why we can’t spend more of the Cash and short-term investments we have. The figure, as listed on page 21 of the Report for that category is $77,872,389. That figure includes grants, gifts, funds in our capital spending program, our reserves for such items as liability, health insurance, and affordable housing. In addition that figure included the categories previously discussed in connection with the Total Net Assets. As mentioned above, the only money not already designated or committed is the amount certified as Free Cash. [Please note that the amount specified by the Auditors for Cash and Short-term investments is different than the amount that the Town Treasurer specifies in his report for Cash & Market Value Investments as of June 30,2005, which is $86,970,111.70. The difference represents the total in a number special trust accounts, such as designated scholarship funds, that have been given to the Town and are under the control of the Treasurer but are not available for general spending. These funds are listed in a different place in the Audit. The Audit Committee reviewed the numbers used by the Treasurer against the numbers used by the Auditors and found that they reconciled.]

Cash in Brookline is reconciled every month, so there was no need for an Audit Adjustment on the cash accounts. The Town’s Comptroller rotates the personnel who reconcile the cash accounts so that they are not always in the hands of the same person. The Auditors also reviewed the federal grants which the Town received to make sure that money was being spent according to the rules and purpose for which it was granted. They did not find any problems.

The Auditors did mention several areas in which the Town needs to continue to make small improvements in its efforts. The School lunch account continues to lose money. This is an issue that the School Committee has taken steps to address. The Auditor’s
raised a question as to how the state funding for the Special Education Circuit breaker money is recorded by the Town. There is currently disagreement between the State Department of Revenue and Department of Education as to how to handle this money. The Town has been following the recommendations of the Department of Education but will seek further guidance from the State as to how such money should be handled. The Auditor’s also recommended that the money received from the State for Chapter 90 road repair remain in a Special Revenue Fund and not go through the General Fund. The Town has agreed with this recommendation. Finally, the Auditor’s recommended that some funds handled by the Library Trustees should be recorded in a more timely fashion, using a standard accounting software program. The Library Trustees prefer to continue to operate as they have, since most of this work is done at home by Trustee.

Special Audits

As is its custom, the Audit Committee picked two topics for special review. This year the topics included the policies and procedures in connection with the student athletic revolving fund and the procedures for handling various miscellaneous committed bills. The topics were chosen not because there are necessarily problems in these areas, but rather because staff members thought the financial controls might be improved.

Powers & Sullivan found that high school students are charged an athletic fee of $125.00 if they choose to participate in a sport. They must pay at the time of application and if they do not make the team, the fee is refundable. The Department is maintaining a good system of internal controls over the student athletic fees, except rather than relying students to pick up the uncashed checks if they don’t make the team, the Department should mail those checks to the students’ homes. In reference to ticket sales to various sporting events, Powers & Sullivan recommends that the Department require each ticket seller to maintain a standard reconciliation form that accounts for their entire ticket stock by each event they worked. Those forms should be available for inspection at any time and signed off at the end of each school year. Finally, the Athletic Department at the High School holds an annual banquet at the end of the year for about 500-600 people. The Department has good internal controls over the ticket sales and collections related to the annual banquet, however, the Department does not control the solicitation of funds or the production of program books. The report recommends that the Department should control that effort and the reconciliation of total funds solicited with the costs of producing the event program.

Miscellaneous committed bills are the receivables that can be found in certain departments. Powers & Sullivan looked at this issue in the following departments: School Department, Water & Sewer, Information Technology, Police and Fire Details, Human Resources, Transportation and the Department of Public Works.

The School Department collects money for school tuition for Town and School employees who do not reside in the Town of Brookline but who choose to send their children to Brookline schools. The fee is currently $1,200 per child per school year (not the full cost of educating the children). These bills have historically not been sent out
until approximately January of the school year, or after the students have already attended for half the year. Further, there is insufficient communication among the School Department, the Information Technology Department ("IT") and the Comptroller’s Department to track the billings, collections, abatements, and delinquent notices. There is currently no reconciliation process between the amounts billed and the actual collections. Powers & Sullivan recommends that the School Department develop procedures to assure that the bills are sent out prior to the start of the school year. The School Department should also develop policies on the timing of collection activity and the penalties for non-payment. Each month unpaid tuition accounts should be reviewed and acted upon by the School Department and the records on revenue and outstanding balances should be reconciled with the Comptroller’s records. The School Department has already begun to implement a change to a system whereby all tuition owed by Town employees is recovered through payroll deductions.

The School Department also rents out classrooms, gymnasiums, and auditoriums to groups if the intended use fits within Town and School policies. The fee varies depending on the nature and purpose of the rental. Sometimes fees are waived for groups associated with the Town or School and for non-profit organizations. Payment is not required in advance and therefore, some payments are not received in a timely fashion, or sometimes not at all. The report recommends that a nonrefundable deposit be required when the application is approved and that full payment be required at least one week before the event is to occur.

The Water & Sewer Department performs the following services for a fee: backflow tests, fire flow tests, fire pump tests, new water services, hydrant openings, drain layers licenses, and replacing damaged water meters. They currently send out bills monthly, keeping records on a database maintained by the IT Department and they notify IT when bills are ready to be printed. Water & Sewer sends out the bills and provides the Comptroller’s Office with a commitment for the current billings. Payments are made to the Treasurer’s Office which notifies both IT and the Comptroller’s Office of the payment. This system tends to have frequent errors and it does not allow Water & Sewer to monitor outstanding amounts due. Delinquent notices are not sent out in a timely fashion. The report recommends that reconciliation procedures between all Departments involved in the reporting, accounting, billing, and collections process be implemented. IT should upgrade the current system or work with Water & Sewer to implement a new system. Monthly collection procedures should be implemented to ensure timely payment of invoices.

Anyone needing a police department paid detail contacts that department to request a detail officer for the appropriate time. The officer who completes the detail gives the detail sergeant a signed form with the hours and rate. An in-house software package is used to record the receivable and print out a bill. The detail sergeant provides the Comptroller’s Office with information on the receivables on a weekly basis. He or she also produces an aging report every 30, 60, and 90 days. Those who have not paid the charges for their detail are not allowed to have another detail. The Police Department petitions the Small Claims Court if bills remain unpaid. Powers & Sullivan found that
overall collections are strong and that the current system and reconciliation process was working as designed. However, the Town’s Finance Director and Comptroller reported to our Committee that the Police Department’s efforts to collect charges for paid details has been inconsistent.

Occasionally, Fire Details are needed. That Department uses a database developed by the IT Department to log in details and print bills. Bills are printed and sent out once a week and a commitment is then provided to the Comptroller’s Office. Reconciliation is provided on a weekly basis. The Fire Department is not able to run aging and other necessary reports from the IT database. They should have constant access to the billing/receivable system. IT will need to upgrade the current system or implement a new system. Monthly collection procedures should be implemented to ensure timely payment of invoices.

Within the Human Resources Department, Powers & Sullivan looked at the Cobra account (continuing health insurance coverage for employees who have left the Town’s employ), and the Surviving Spouse Health Insurance. They found that the responsibility for making payments for Cobra benefits rests with the former employees and that the Human Resources Department maintains a spreadsheet to track those payments. Health insurance is cancelled if the payments are not made. This system is sufficient if those records are maintained as designed and insurance cancelled when payment is not received. Surviving spouses of retirees are entitled to participate in the health insurance plan but since their premium cannot be withheld since they don’t receive a paycheck, the HR department uses an IT database to record the information and print bills. The information is also sent to the Comptroller’s Office. Again the use of IT software doesn’t allow the department access to all activity and therefore, it cannot decide on a timely basis whether collection activity is necessary. The HR Department should maintain both types of health insurance payments on one system and cancel participants if they do not make payments.

The Transportation Department handles various parking permit fees. A specific database is maintained for each type of permit and payments are received by the Department and entered into both the database and the general ledger, before the fees are turned over to the Treasurer. The system could be improved with periodic internal audit procedures to reconcile the expected income from permits issued with actual deposits.

The Department of Public Works charges $41.25 per unit per quarter for trash pickup. If a bill is not paid the overdue charges and assessed interest are added onto the next bill. Once a fiscal year, all old outstanding bills are added to the real estate bill as a refuse lien. The internal controls in this area appear to be adequate. Commercial establishments can also pay the Town for refuse pickup but collections in this area could be improved by discontinuing service if bills are unpaid or be placing other penalties on the commercial establishment. This Department also collects fees for utility permits when the major utilities dig up a street. Since further permits are not issued if fees remain unpaid, collections are good. They also collect fees for news racks. This area
could be improved by developing more consistent billing processes and reconciling accounts.

Recommendation

The Audit Committee highly recommends that each department be required to develop an action plan to address the issues raised above and to report on progress in moving toward the best practice, and a listing of aged receivables. That plan, which shall designate a person within the department to be responsible for receivables, shall be presented to the Audit Committee at its next meeting, which is likely to be scheduled for late July or early August.

Conclusion

The Town continues to handle its financial affairs in a prudent and responsible manner. The Auditors found no significant problems in the Basic Financial Statements for the Fiscal year which ended on June 30, 2005. The Audit Committee accepted the Basic Financial Statements and the report on the special reviews and endorsed the conclusions of the Auditors.

Audit Committee
Nancy Daly, Selectman, Chair
Branch Harding, Advisory Committee
Alan Morse, School Committee
Marilyn Litner (resigned April 2006)
Jim Littleton
Greg Grobstein

Ex Officio
Steve Cirillo
Judy Haupin
Peter Rowe
May 17, 2006

REPORT OF THE SELECTMEN’S COMMITTEE ON PENSION OBLIGATION BONDS (POB’S)

Overview

In January, 2006 Professor Barry Bluestone, the Director of the Northeastern University Center for Urban and Regional Policy, released an economic report on the importance of local government to the future prosperity of the Commonwealth. This first-ever report of its kind brought new perspective on the structural impediments that prevent localities from carrying out “their dominant role in attracting jobs and investment” and thereby help stem the population and job losses that continue to plague the Massachusetts economy.

The report highlighted that municipal expenditures on fixed costs including retirement, debt service, and health insurance “exploded” between 2000 and 2004. In contrast, “local expenditures for key services have not been able to keep up with income, let alone private consumption”.

An explosion in the making has been building in the background in our public employee retirement systems. Statewide, the most recent actuarial valuations received by the Public Employee Retirement Advisory Committee (PERAC) estimate that municipal pension obligations are $71 billion, of which 30% is unfunded. Simply stated, the amounts estimated to be owed to future municipal retirees exceed the funds that have been contributed to the retirement trust funds by cities and towns to meet those obligations. Brookline is not immune from this reality. Our own Town’s pension obligation is approximately $300 million and approximately one third of this amount is not funded. As will be detailed further in this report, Brookline’s unfunded obligation increased by $20 million in just the past two years. Beyond pensions, the Town needs to address an even larger unfunded liability for retiree health care.

The Town will need to examine every possible option for managing these unfunded obligations while preserving the basic services that the Bluestone report confirmed are so essential for the economic viability of Massachusetts municipalities. Pension Obligation Bonds (POB’s) are just one of a number of tools that cities and towns will need to consider in addressing the fixed costs that can undermine quality of life in this community and localities throughout the state.

Why Brookline Has an Unfunded Pension Obligation

All communities are obligated to pay for employee retirement benefits as required by Massachusetts General Law Chapter 32. Prior to the mid-1980’s, communities made
annual appropriations to the obligation on a "pay-as-you-go" basis. As the annual cost of pensions grew, discussions concerning the identification and recognition of future pension costs of current employees resulted in changes to Generally Accepted Accounting Principles. This in turn led to an amendment to Chapter 32, requiring local retirement boards to increase the assets of retirement funds to fully fund this future obligation. That amendment, enacted in January 1988, required local retirement boards to bring the assets to full funding within forty years (CY 2028).

Funding the Pension Obligation

On a biennial basis, the Brookline Retirement Board is required to complete an actuarial analysis to identify the unfunded pension obligation and to propose a payment schedule which will bring the retirement fund to full funding by no later than CY2028. Unlike traditional liabilities which are finite, actuarially determined liabilities change with each valuation because actual experience differs from actuarial assumptions. This creates changes in the amount that the trust is over or under funded.

With each biennial report, the Town of Brookline must choose the method of paying its unfunded pension obligation. The Town's current method, similar to mortgage payments, spreads the unfunded obligation over a period to CY 2023 (a date chosen by the Brookline Retirement Board) by increasing the annual contributions by the Town which are paid from the Town's annual budget. Like a mortgage payment, each annual contribution has a principal and interest component. Alternatively, the Town can choose to make larger or full payment of the pension obligation at any time. Earlier funding of the pension obligation reduces the total cost of pensions (similar to a fifteen year mortgage having a lower total cost than a thirty year mortgage) because less interest is incurred, reducing the amount of future year annual contributions.

Given the availability of current revenue, even following the Town's current method for making contributions will present significant challenges in maintaining and expanding services. Accordingly, to make a significant, meaningful additional contribution to the Retirement Fund and not impact funding of other services, an alternative source of funding would be required. The Town could borrow the funds by issuing a Pension Obligation Bond (POB). The interest paid on POB’s is not tax exempt to the bond holders. This makes POB’s substantially more expensive than other municipal bonds.

In choosing to make additional earlier payments and reduce the annual cost over seventeen years, the Town of Brookline would be attempting to take advantage of the difference between the interest rate of borrowing and the rate of return earned on the additional investment in the Retirement Fund. The difference could be significant, perhaps several millions of dollars, over the next seventeen years if the bond authorization is approved and the rate of return on pension investments is greater than the cost of borrowing the POB. Under a POB plan, the Town would still need to pay back the principal and interest on the POB’s, but these payments should be less than the presently projected payments in the annual operating budget, as long as the investment return of the pension portfolio exceeded the interest cost of the POB’s.
In addition to the annual contribution made by the Town, the current public employees also pay a portion of the contribution. Depending on the employment date of each employee, a rate of 6% to 10% is deducted from employee salaries. This currently amounts to more than $4 million annually. Some employees are now contributing more than 90% of their future retirement cost.

**Background on POB’s**

The Town of Brookline began discussing POB’s in 1998, when the Town Meeting authorized the filing of Home Rule Legislation granting the Town the use of POB’s to pay for its unfunded pension obligation. That bill was not approved by the Legislature. In 2003, the Town Meeting once again authorized the filing of Home Rule Legislation granting the Town the use of POB’s. In 2005 the Legislature approved the legislation, under certain guidelines, and it became law. The Board of Selectmen convened an ad hoc committee to review this issue during the summer of 2005. This was to be followed by an article in the November Town Meeting granting authorization to borrow. The granting of the authorization did not mandate that the Town would execute a POB borrowing. It would provide the Town the ability to act quickly if and when the financial conditions would allow the Town to benefit from such a borrowing.

It became clear at the outset of the summer meetings that this was a complicated issue that required more time for review. The recommended action under Article #4 of the November 2005 Town Meeting proposed the creation of a Selectmen’s Committee on Pension Obligation Bonds. This was approved by a large majority and the Committee was formed in December 2005.

The Committee is made up of nine members, representing the Board of Selectmen, Advisory Committee, School Committee, Retirement Board and citizens of the Town. The committee members are:

Gilbert Hoy (Selectman) Co-Chairman
Michael Sher (Selectmen) Co-Chairman
Harry Bohrs (Advisory Committee Chairmen)
Len Weiss (Advisory Committee)
David Cotney (Advisory Committee)
Alan Morse (School Committee)
Chet Riley (Retirement Board Chairman)
Paul Healy (citizen)
Lloyd Dahman (citizen)

The Committee was charged with answering the questions, “Should the Town execute a POB borrowing and under what conditions should it do so”. In addition, the Committee was asked to explore ways that the growth in the unfunded pension liability could be contained using traditional approaches.
Meetings and Topics of Discussion

On January 6 the committee discussed the roles and responsibilities of the Retirement Board, PERAC, and the Town. The committee learned that generally accepted accounting principles and state law require each community to give the responsibility of managing the pension fund to an independent autonomous board in order to protect the assets from legal claims against the community. The committee reviewed the process of quantifying the unfunded liability and the requirement that PERAC review and approve each future funding schedule of the Town's Retirement System. The Director of the Brookline Retirement System made the presentation.

On January 20 the committee met with the Retirement Board's investment consultant who informed them that the retirement system has averaged over 10.4% on its investments over the last ten years. The retirement system experienced losses in calendar years 2000 through 2002 that totaled approximately negative 6%. During the same period, the Dow Jones and Standard and Poor's indexes experienced approximately negative 40% loss. This result confirms that our public fund invests in a more conservative manner than most private investors. In the following two years, the retirement system experienced a 32% increase in value while the two primary stock market indexes experienced an approximate 38% increase. The committee was informed that the Investment Consultant long term projects an 8.4% rate of return for the foreseeable future, but recognizes the volatility and subjectivity of any future estimate of performance.

On February 3 the committee met with representatives of the State Executive Office of Administration and Finance to discuss the state guidelines that must be followed in order for a community to implement a POB. It was discovered that a community must be rated by two bond rating agencies, a POB maturity could be no longer than CY 2028, no budgetary relief could be taken during the first three years, and the POB proceeds would have to be invested with the state's retirement investment group, PRIT. Due to its size, PRIT would have investment opportunities in which small retirement systems could not participate.

In addition, the committee met with the Retirement Board's actuary, who explained the pros and cons of a POB and outlined the many variables that drive the unfunded liability. The drivers were identified as the annual rate of return, growth in salaries, disability retirement rate and mortality tables. It was pointed out that the next biennial analysis was due shortly and a lot more would be known then.

On February 17 the committee met with Town management to discuss the long range revenue and expenditure forecast. It was explained that the January 2005 informal valuation identifying a FY 2008 contributory retirement increase of $1.6 million was included in the forecast. The Town has historically experienced at increase of approximately $350,000 annually. Any increase would be split between Town and schools based on actual payroll deductions for pensions, which results in a split of approximately 75% Town / 25% Schools. Teachers in all public school systems with the
commonwealth are included in the State Retirement System. Other school staff, such as secretaries, custodians, teacher’s aids, etc., participates in the Brookline Retirement System.

The committee also met with the Bond Financial Advisor of the Town who explained the mechanics of a POB. It was stated that the rating agencies look upon the issuance of a POB by a community as a neutral to positive depending on whether the community is well run. It was also stated that a POB required a longer set up time to execute than a normal municipal bond and that getting all authorizations in place would be a benefit. Finally, it was stated that it would not be a problem to borrow less than the entire unfunded liability, but the cost of issuance and administrative charges would increase the total cost of the borrowing. In the event that more than one POB borrowing was to occur, there would be issuance costs incurred for each borrowing. The cost of issuance would be approximately 95 basis points.

In addition, the committee reviewed the thirteen Fed rate increases that had occurred since the POB discussion began in Brookline. The committee also reviewed a Monte Carlo analysis (a probability risk analysis) which uses the volatility of past investment performances of the current portfolio allocation to predict the probability of various levels of return on future investments. This analysis showed an average rate of return of 8.4%, but a wide range of intermediate term investment outcomes, both up and down. The findings indicated that, given the pension plan’s past returns and return volatility, there was a 75% to 80% likelihood that the plan would generate returns over the life of a POB borrowing that would exceed its current cost (including interest and fees paid at issue). However, these calculations are sensitive to changes in economic uncertainty and to long-term market conditions which could make the past a poor guide to the future. It was uncertain whether the effects of terrorism, the energy crisis, and the retirement of “baby boomers” would change the investment environment.

On March 17 the committee met and discussed recommendations to be included in the final report regarding containment of future retirement costs. The committee was informed about the Town’s efforts to contain costs to date which included avoiding programs for retirement incentives on two occasions and controlling the level of personnel. In addition, the history of collective bargaining settlements was presented. The committee expressed an opinion that future Boards of Selectmen and Town Meetings will not be restricted in taking actions to increase benefits. However, the committee believed that the Town should take a very cautious approach in adding future benefits, because increased funding of the liability through a POB does not eliminate the unfunded obligation, it only changes the entity to whom the Town owes the funds. Were benefits to increase after the issuance of a POB, this action would create additional liability which must be paid in addition to the debt service on the borrowing. While the POB proceeds would increase funding in the Pension Fund, the debt service on the POB amount borrowed would continue to be owed and paid over the term of the borrowing.

On April 12 the committee met to discuss the results of the new biennial actuary analysis. The analysis projected the unfunded liability to be $112.9 million, assuming an 8.25%
rate of return, an annual budget increase of 3.5% and a full funding date of 2023. The liability would be $120.5 million, if the investment rate of return were 8%. The dramatic increase in the unfunded liability was primarily caused by investment losses in calendar years 2001 & 2002. The smoothing of those losses spreads the loss over five years. This accounted for approximately half of the increase. Other variables that increased the liability were a larger number of disability retirements, an increase in the death benefits of the disability retirees and a decline in the mortality rate.

Prior to CY 2002 the Retirement Board followed a policy of recognizing market gains or losses in the portfolio on an annual basis. Beginning in CY2002, due to the severe decline in the financial markets, reflecting the recession and several international crises, the Retirement Board adopted a policy of five year smoothing of gains and losses. This policy avoided a portion of the negative cash flow consequences to the Town from the dramatic budget impact in FY2004 that would have occurred due to those losses. This was also a period in which the Town experienced severe state aid losses. The policy spread the losses over five years, and consequently, by January 2006, the maximum negative effect of those losses has now been recognized.

On April 26 the Committee held a Public Hearing to allow input from the general public.

**Conclusion: The Risks and Rewards of POB's**

Contributions to the Retirement Fund are used to purchase investments that over time are expected to meet the retirement benefits owed to retired employees. The earlier contributions are made to a plan, the total cost of pension obligations decreases because the interest portion decreases. However, a larger investment balance exposes the Town to greater investment risk that could compromise the benefits of earlier funding.

- Under certain circumstances, it could be to the Town’s advantage to increase the assets in the Retirement Fund earlier than the traditional payment schedule demands.

1. This would arise if the pension assets earn a return that is greater than the cost of the POB (the borrowing rate and the cost of issuance). Depending on the size of the POB borrowing, in the event that the actual investment performance averages greater than an assumed post-POB rate of return of 8.25%, the Retirement Fund could experience a fund level greater than100%. The surplus would remain within the Retirement Fund and would be used to offset those years when the rate of return is less than the assumed rate.

2. In the event that the actual investment performance averages are less than the assumed post-POB rate of return of 8.25% but more than the cost of the POB, the unfunded liability would grow, but the POB would still benefit the Town. If this were to occur prior to CY 2028, the unfunded portion would be incorporated in the next biennial
actuarial analysis and the unfunded amount would be paid from the Town's budget, prorated through CY 2028.

- However, a number of situations could arise, making the POB disadvantageous to the Town:

1. In the event that the actual investment experience in the very early years of the POB program is significantly below 8.25%, the unfunded obligation would necessitate disproportionate appropriations from the Town's budget early in the program even though the overall investment return during the entire life of the program recovers and exceeds 8.25%.

2. If the average investment returns over the life of the bond actually fall below its costs, the unfunded liability would be worse than without the POB, due to the effect of leverage. This could require the Town to make annual payments to the Pension Fund greater than if we were to continue without POB's.

3. In the event that factors, such as an increase in disability retirements, adoption of incentive retirement programs, or a significant change in state law, create a new post POB unfunded obligation, prior to CY 2028, the liability would be incorporated into the next biennial actuarial analysis and the unfunded amount would be appropriated in a prorated manner through CY 2028. This would also occur if the Town chose not to issue POB's.

4. The POB program may leave the false impression that the Town has met its pension obligations and therefore encourage a more generous approach to pension benefits, or make it more difficult for Town management to restrain future pension obligations. It is therefore important to recognize that the POB does not solve the structural problems that give rise to a pension shortfall.

**Recommendations**

After extensive discussion, the Committee offers the following findings and recommendations:

- As there is always the possibility of a substandard investment performance in the early years of a POB program that would result in substantial budget increases, the Committee concluded that the approval for POB's should be given only when the gap between the historical ten-year average rate of return on investments and the rate of interest on the bond exceeds 3.75%, net of all cost of issuance. Over the life of the bond, the cushion provides some protection against temporary poor investment performance;
* Given the risks of POB’s, the Committee concluded that it would be wise to limit the amount of POB’s that the Town could issue. The Committee recommended that such authorization be limited to 33% of the unfunded liability (approximately $37.25 million for the Town at this time). This potentially limits the savings to the Town under POB’s, but reduces its risk as well;

- The POB borrowing process is more complicated than a normal borrowing for capital improvements. The process can be completed in approximately four to five months. Since market conditions, including interest rates, sometimes fluctuate widely, it could be beneficial to the Town to have all of the authorizations in place so as to be ready to take advantage of positive market conditions when they exist. Therefore, the Committee recommends that Town Meeting approve a bond authorization, similar to a shelf registration in the private sector public securities markets, so that the Town may act quickly when conditions are favorable;

- The Committee recommends that in the event that a bond authorization is granted, that a larger group, made up of both the Board of Selectmen and Advisory Committee give final actual approval for the borrowing of POB Funds;

- The Board of Selectmen and Town Meeting should be very cautious about further expansion of retirement benefits. This would include avoidance of incentive retirement programs and benefits such as ELBO programs (Enhanced Longevity Buy Outs), control of future collective bargaining settlements, and controlling levels of employment. As an alternative, privatization of services could be considered.

Appendix

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 which estimates the amount required to fully fund the Town’s pension obligation. Included in this analysis is 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 in which, during the year between the formally required biennial actuarial analyses, an informal study is completed. 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 $103,270,000 (assuming an 8.00% rate of return on investments). The most recent formal actuarial analysis, dated January 1, 2006, identifies an estimated unfunded liability of $113 million assuming an 8.25% rate of return on investments) and $120.5 million (assuming an 8.00% rate of return on investments).

There are four 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;
- Death benefits associated with disability retirees who die after retirement from the disability;
- The change in the mortality tables.

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 FY 2028. The Retirement Board currently uses the following assumptions:

- A schedule to fully fund the obligation by the year 2023,
- An estimated annual wage increase, including steps and other pensionable benefits, of 5%;
- An estimated rate of return on investments of 8.25%;
- An average annual budget increase for pension costs of 3.5%
- An estimated annual disability retirement of nine employees
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 three years the rate of return has averaged 13.5%. The average rate of return over the last five years has been 6.8%. This reflects the downturn in the world economy during the period between 2000 and 2002. 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 recent formal analysis, based upon January 1, 2006 data, will impact the FY2008 and FY2009 annual budgets.
ZONING BYLAW COMMITTEE REPORT

The Zoning Bylaw Committee appointed by the Board of Selectmen in June 2005 consists of Co-chairs Bob Allen and Michael Merrill; Tony Andreadis; Carla Benka; Michael Berger; Roger Blood; Paula Friedman; Ken Goldstein; Diane Gordon; Phil Hresko; Ponnie Katz; Sean Lynn-Jones; Merelice; Bill Powell; Paul Saner; Peg Senturia; Roberta Schnoor; and Myra Trachtenberg.

It is the pleasure of the Zoning Bylaw Committee to report back on the item referred to us by Town Meeting in the Fall of 2005. At that Town Meeting, amendments were proposed to Article 6 (Zoning – Public Notification) relating to expanded notification of zoning cases to non-owners in the area, and to the wording of these notifications. The intent of these amendments was to expand awareness of zoning cases in an area beyond property owners to residents of rental property; and to allow those who receive such notification to receive a clear description of what is proposed. The goals of these amendments are similar to some of the goals of the Zoning Administration and Enforcement Project regarding expanded public awareness of proposals, and some solutions to these issues had been suggested as part of that Project.

The Zoning Bylaw Committee met on April 25, 2006 to discuss these amendments. A representative of PAX, the proponent of this amendment, was present at the meeting. The Committee also reviewed the recommendations of the Implementation Progress Report submitted in July 2005 by the Zoning Administration and Enforcement Project's Interdepartmental Team.

The Zoning Bylaw Committee recommends the following ways of addressing the concerns raised in both the PAX Amendment and the Zoning Administration and Enforcement Project:

- The Zoning Administrator will work with the Town Clerk's office to develop a clearly identifiable poster-sized notice that will be placed in a conspicuous location at any site seeking zoning relief. The cost of producing the notice and the responsibility for posting the notice shall fall to the proponent for the zoning relief. Filling out the notice shall be the responsibility of the Zoning Administrator. The notice shall identify (i) relief sought (ii) a summary of the overall proposal and (iii) include contact information. The Zoning Administrator will verify that such notice has been posted and remains on site for the duration of the zoning review.
- The Zoning Administrator will work with the Town Clerk's office to develop an additional sheet that will go out with all formal notifications. This additional sheet will (i) identify the overall proposal for which zoning relief is sought in a style similar to that used for Planning Board agendas and (ii) include contact information.
- The use of both of these items will be formally incorporated into the Rules and Regulations for the Board of Appeals.
- The Zoning Bylaw Committee also recommended exploration of an additional zoning by-law amendment for Fall Town Meeting. This additional amendment would require that the owner of any rental property is responsible for a timely posting in a common area on the property any notifications he or she shall receive regarding zoning cases.
SECOND INTERIM REPORT TO THE BROOKLINE TOWN MEETING OF
THE TOWN MODERATOR’S COMMITTEE ON CAMPAIGN FINANCE

INTRODUCTION

The Town Moderator’s Committee on Campaign Finance (the “Committee”) is pleased to submit this second interim report to the Brookline Town Meeting. Like the Committee’s first interim report, this report is not designed to present specific, final findings and recommendations, as the Committee believes it would not be appropriate to issue such findings or recommendations until the Committee has completed its process of analyzing information, debating options, and incorporating public comment. The Committee plans to submit a final report containing its findings and recommendations to the Fall 2006 Town Meeting.

REVIEW OF COMMITTEE ESTABLISHMENT AND WORK PRIOR TO ISSUANCE OF FIRST INTERIM REPORT

As discussed in the Committee’s first interim report, the Committee was established pursuant to a motion passed by the Fall 2003 Town Meeting under Article 27 of the Warrant before it. The article was one of three introduced by citizen petitioner Ronald Goldman concerning conflicts of interest among Town officials and the financing of campaigns for Town office. In its original form, Article 27 offered a resolution supporting the adoption of a system involving voluntary limits on campaign spending and contributions. What was ultimately passed was a substitute motion “to refer this article to a Moderator’s Committee, including if he is willing the petitioner or his designee, charged with reviewing the financing of campaigns for election to the Board of Selectmen and, if appropriate, proposing measures that could be taken by the Town to limit campaign donations, to limit campaign spending, and to minimize the influence of
special interests.” The following Brookline residents were appointed to the Committee: Christine Desan, Gilbert Hoy, Rita McNally, Randall Ravitz, Sloan Sable, Patrick Ward, and Barbara Pastan. Mr. Ravitz was elected Chair, and Ms. McNally and Ms. Sable were named as Secretaries. The Committee has also benefited greatly from the involvement of Mr. Goldman, Frank Farlow, and several interns from Harvard Law School whose services were retained by Ms. Desan.

Prior to the issuance of the Committee’s first interim report, its participants devoted considerable time to analyzing campaign finance data furnished in candidates’ public filings, including amounts raised and spent, items on which funds have been spent, the relationship between incumbency and campaign finance, the relationship between victory and campaign finance, and amounts contributed by candidates, their relatives, members of particular professions, and those from outside Brookline. Participants also analyzed legal issues involved in the enactment of municipal campaign finance restrictions, including the extent of a municipality’s power to enact such measures, the various methods by which such measures could be enacted, the constitutionality of such measures, and the nature of measures enacted in other jurisdictions. The Committee further met with a series of experts on issues relevant to its work, including individuals from the Massachusetts Office of Campaign and Political Finance, Harvard Law School, the Massachusetts Money and Politics Project, and the National Voting Rights Institute.

In addition to these endeavors, the Committee also distributed two questionnaires to Town officials. The first sought to determine the issues perceived to be the most significant to come before Town Meeting in the last five years. The second was designed to capture the attitudes and perceptions of Town Meeting Members concerning the
following: campaign fundraising and spending; the extent to which citizens have equal access to Town officials; the extent to which Town elections and decisions are influenced by campaign finance, contributions from particular industries, and contributions from outside Brookline; and potential reforms.

**COMMITTEE WORK SINCE ISSUANCE OF FIRST INTERIM REPORT**

Since the issuance of its first interim report, the Committee has held no less than fifteen meetings and conducted a great deal of additional research and analysis outside of Committee meetings. Much of its participants' work has been devoted to continuing and building upon the initiatives discussed above. For example, participants undertook new evaluations of historical campaign finance data in order to detect additional patterns and trends. Such evaluations concerned matters such as the amount spent by candidates on various areas of campaigning, the extent to which total fundraising could be expected to be impacted by stricter limits on individual contributions, the correlation between spending and victory, and the extent of contributions made by members of various industries. Participants also obtained new and more specific information regarding campaign finance reform measures implemented in other municipalities throughout the nation. Much of this work was aided by a new team of highly competent and appreciated interns from Harvard Law School.

In addition to these efforts, the Committee tabulated and analyzed the results of its questionnaire to Town Meeting Members, which results proved very revealing. In particular, a majority of respondents reported that the amount they believe candidates should spend on their campaigns for Town office is less than the amount they believe candidates do spend. Most also believe that the cost of campaigning has prohibited
people from running. According to the questionnaires, a majority of respondents further believe campaign contributions from particular categories of contributors disproportionately affect Town elections and impact decision-making, and most do not believe that there is a sentiment among residents that Town elections are free from the influence of money. The responses further showed that a substantial majority of respondents would like to see candidates accept voluntary campaign finance limits, and that an overwhelming majority would set a maximum on the percentage of funds raised from outside Brookline in a campaign. Also included among the responses were a number of specific and creative proposals for campaign finance reform.

Aside from this work, much of the Committee’s meeting time was devoted to developing and debating the merits of specific, potential reform proposals. Among the proposals discussed were the following: requiring the disclosure of more extensive and detailed information in campaign finance reports; providing for campaign finance reports to be electronically filed and available for public searching on the Internet; modifying reporting deadlines to allow for more effective use of campaign finance reports prior to elections; establishing a Town committee on elections to monitor, analyze, and report to the public on campaign finance activity on an ongoing basis; limiting contributions from those who reside outside of Brookline; capping individual contributions at an amount lower than the cap under state law; providing for a limited window of time during which fundraising would be allowed; publicly supporting candidate forums and other methods of publicizing substantive information regarding candidates and their positions; establishing a system to facilitate the adoption by candidates of voluntary spending limits; and publicly supporting campaigns that meet designated criteria. For each reform
proposal, participants detailed possible parameters, listed different options, and outlined rationales and benefits. Additionally, to better understand the extent to which and the methods through which the Town could initiate a system allowing for electronic reporting of campaign finance data, the Committee met with Ben Vivante of the Town’s Information Technology Department.

FUTURE PLANS

Between the Spring 2006 and Fall 2006 Town Meetings, the Committee plans to hold a public hearing to obtain feedback regarding campaign finance issues and potential reform strategies, finalize its recommendations for reform, and continue developing a final report that will discuss its findings and recommendations. The Committee will likely also develop a warrant article proposing selected reforms.

CONCLUSION

The Committee remains very pleased with the amount that it has discovered and the range of reform proposals that it has generated. Its participants also continue to be enthusiastic about the prospect of contributing in new and significant ways to the field of municipal campaign finance reform. They are appreciative of the opportunity they have been given to contribute to the public interest and look forward to sharing their ultimate findings and conclusions with Town Meeting.

Respectfully submitted,

TOWN MODERATOR’S COMMITTEE ON CAMPAIGN FINANCE
TO: Town Meeting Members

FROM: CDBG Advisory Committee

DATE: May 15, 2006

SUBJECT: FY2007 Community Development Block Grant

Over the past year, the challenges relative to making recommendations on the CDBG entitlement grant have grown from the initial threat of total loss of CDBG funding, to the final proposed allocation to the Town at a 9.05% cut from the previous fiscal year (FY2006). From FY2004 through FY2006, and with the proposed FY2007 funding, the Town has had to face the reality of larger cuts in the block grant. FY2007 will be the greatest cut to date of $172,379. The added cuts place further constraints on the decision-making process for the CDBG Advisory Committee facing a plethora of requests, mandated ceilings on the use of certain eligible activity funding (ie, Program Planning/Management at 20% cap and Public Services at 15% cap), and the funding requests exceeding $1,235,254 more than the proposed entitlement.

Given all of the aforementioned challenges, the Committee faced the task of making recommendations on the proposed grant with greater focus on trying to assure that the needs identified in the Town’s Consolidated Plan and Strategy could be met; compliance with HUD regulations; activities meet performance measurement outcomes as newly mandated by HUD; satisfactory scoring on the RFP; and timely expenditure of activity funding would occur during the fiscal year proposed for funding (July 1, 2006 to June 30, 2007).

Taking all of those factors into consideration, the recommendations of the CDBG Advisory Committee were as follows:
Program Management/Planning

1. CD Grant Administration $156,250
2. CD Comprehensive Planning $94,000
3. Preservation Planning $75,016
4. Legal/Professional Service $5,000

Subtotal: $330,266

Housing

1. Housing Division $231,772
2. Affordable Housing Program $476,596

Subtotal: $708,368

Community Facilities

1. Gateway East Engineering - Route 9 Pedestrian $125,000
2. Juniper Street Playground Reconstruction $30,000
4. Facilities Improvements - BCMHC $210,000

Subtotal: $365,000

Public Services

1. Parent Child HOME Program $12,000
2. Brookline Elder Taxi System $35,000
3. Next Steps $8,000
4. Job Opportunities for Elders $12,000
5. Home and Escort Linkage Program $10,000
6. Youth Employment Program $75,000
7. Adolescent Outreach Program/BCMHC $39,200
8. Comprehensive Services for Children & Families/BCMHC $25,000
9. Brookline Visually Impaired Elders Program $3,000
10. Brookline Learning Project $11,500
11. After Hours U $13,500
12. Wellness Program $3,500

Subtotal: $247,700

TOTAL: $1,651,334

CAP:
15% on Public Services: $247,700
20% on Program Management/Planning: $330,266

Staff Recommendation

The Planning and Community Development Department recognized the efforts of the CDBG Advisory Committee and commends them on resolving the difficult decisions they faced in providing their recommendations for FY2007. With the exception of one request, staff concurred with the recommendations of the CDBG Advisory Committee.

Staff wished to honor the commitment the Town has made to the Brookline Housing Authority (BHA) and its 4,000 low- and moderate-income residents. For this reason, we recommend partial funding for the Safety First Program at the High Street development.
Town staff remained concerned about the ability of the BHA to complete their CDBG-funded projects in a timely fashion. There also remain some administrative needs of the CDBG program that the BHA needs to address to meet HUD regulations on their grant agreements with the Town. However, we understood the constraints of the BHA and were committed to working with them to build the capacity to both complete their projects and meet the program's requirements.

The recommendation on funding Safety First was $57,000 for the High Street development, including $3,000 for engineering and $4,000 for program management to oversee the timely execution of this potential activity.

**Determination of the Board of Selectmen**

Based on the careful deliberations of the CDBG Committee, the Board of Selectmen voted to support the CDBG Committee's recommendation with the proposed change suggested by Town staff. The funding request submitted to the U.S. Department of Housing and Urban Development therefore matches the recommendations of the CDBG Committee with the exception of reducing the recommendation for the Affordable Housing Program to $419,596 and the funding of the Safety First Program at $57,000.