ARTICLE 1

FIRST ARTICLE

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

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

SELECTMEN'S RECOMMENDATION

State statutes provide that unpaid bills from previous fiscal years may not be paid from the current year's appropriations without the specific approval of Town Meeting. There is one unpaid bill from the Recreation Department related to the clean up of a minor hazardous materials release. The Town was originally billed on March, 2005 by the State's Department of Fire Services (DFS) for this December 28, 2004 response. At that point, the Recreation Director filed an appeal because MGL, Ch. 21K, Sec 5 could be interpreted as the Town not being liable for the bill. Unfortunately, the Town's challenge was denied in September and the $1,179 is owed to the Commonwealth.

The Board has reviewed this bill with the department and deemed it to be a legal obligation of the Town. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 10, 2006, on the vote offered by the Advisory Committee.

ROLL CALL VOTE:

Favorable Action

Allen
Hoy
Daly
DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Unpaid bills from a prior fiscal year require Town Meeting authorization for payment. A bill for $1,179 was received by the Town for services received by the State's Hazardous Materials (HazMat) response team in December 2004 (Fiscal Year 2005). The HazMat team responded to a call from the staff at the Larz Anderson Skating Rink of a possible ammonia brine and calcium chloride gas leak. According to State law, the HazMat team must bill entities that receive its services. However, there is a provision exempting certain state political subdivisions. On the basis of that provision, the Recreation Department asked for an exemption from the charges. The Recreation Department recently learned that only State agencies are eligible for the exemption and therefore the original bill remains outstanding.

DISCUSSION

There was no unnecessary delay by the State in submitting this bill, nor was there a delay by the Recreation Department in processing the bill for payment. Rather, the Recreation Department attempted to appeal the charges. However, the appeal was denied and the Town is now liable for this bill from a prior fiscal year.

RECOMMENDATION

The Advisory Committee by a unanimous vote of 21-0 recommends FAVORABLE ACTION on the following vote:

VOTED: To authorize the payment of the following unpaid bill of a previous fiscal year from the FY2007 Recreation Department budget:

Commonwealth of Massachusetts	$1,179.00

XXX

ARTICLE 2

SECOND ARTICLE

To see if the Town will raise and appropriate, or appropriate from available funds, a sum or sums of money to fund the 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 October 24, 2006, on Article 2.

ROLL CALL VOTE:

No Action
Allen
Hoy
Daly
DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

As there are no collective bargaining agreements to consider at this time, the Advisory Committee by a vote of 21 in favor, 0 opposed and 1 abstention recommends NO ACTION on Article 2.

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ARTICLE 3

THIRD ARTICLE

To see if the Town will:

A) Appropriate additional funds to the various accounts in the fiscal year 2007 budget or transfer funds between said accounts;

B) Appropriate $950,000, or any other sum, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen, for remodeling, reconstructing, or making extraordinary repairs to Town Hall, including, but not limited to, those costs associated with relocating Town Hall operations;

C) Appropriate $209,079, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for work at the Pierce School, including the design for said work;

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

or act on anything relative thereto.

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required. For the current fiscal year (FY2007), the warrant article is necessary to appropriate additional revenue (from state aid and local receipts), amend the Water and Sewer Enterprise Fund, appropriate funds for the Town Hall Renovation, and re-allocated existing Pierce School capital accounts.

SELECTMEN'S RECOMMENDATION

Article 3 proposes amendments to the FY07 budget and is recommended for five reasons:

1. to appropriate the additional State Aid the Town received as part of the final state budget;
2. to appropriate additional estimated Local Receipts for an Energy Reserve;
3. to amend the Water and Sewer Enterprise Fund to reflect the budget used to set the rates;

4. to appropriate funding for the Town Hall Renovation; and
5. to reallocate remaining funds from previous Pierce School projects.

ADDITIONAL STATE AID

The final state budget approved by the Legislature included $261,327 more in Net Local Aid than was included in the budget approved by Town Meeting. Of that amount, $1,622 is "Offset Aid"[1], meaning that $259,705 is actually available for appropriation. The breakout of the additional funding is shown on the table below:

	FY07 FINAL CHERRY SHEET	FROM ADOPTED BUD.
RECEIPTS	***17,903,366***	***267,949***
Ch. 70	5,789,916	267,367
School Constr.	3,442,794	0
Lottery	4,345,694	0
Add. Assistance	3,497,741	0
Quinn	754,654	0
Vets Benefits	45,376	582
Exemptions	27,191	0
OFFSETS	***117,738***	***1,622***
School Lunch	19,993	0
Libraries	97,745	1,622
TOTAL ADD'L REVENUE	**18,021,104**	**269,571**
CHARGES	***5,229,723***	***8,244***
County	586,509	0
Air Pollution Dist.	21,273	0
MAPC	15,790	0
RMV Surcharge	192,720	0
MBTA	4,359,334	0
SPED	54,097	8,244
TOTAL AVAILABLE	**12,791,381**	**261,327**
- "Offset Aid"	117,738	1,622
TOTAL AVAIL. FOR APPROP.	**12,673,643**	**259,705**

It is recommended that the entirety of the additional State Aid be made available to the School Department to assist them with the spike in Kindergarten enrollment and other needs. While this approach leaves the budget with a deficit in its utility accounts, that shortfall is addressed below.

ENERGY RESERVE / LOCAL RECEIPTS

As a result of the poor energy market, a deficit of $370,000 is estimated for FY07. This $370,000 is above and beyond the $838K increase included in the FY07 budget as approved by Town Meeting, resulting in a year-over-year increase of more than $1.2 million. The table on the following page shows where the deficit is coming from:

[1] "Offset Aid" is offset 100% by expenditures (so-called "Non-Appropriated" expenses) since those monies go directly to the department without appropriation. The will result in additional capacity for the Library budget, beyond what was expected at the time of Town Meeting.

	FY07 GEN FUND BUDGET					
	ELEC	NAT GAS	OIL	GAS	DIESEL	TOTAL
	cents / kwh	dollar / therm	dollar / gallon	dollar / gallon	dollar / gallon	
FY04 Price	5.565	0.7776	0.88	1.09	1.07	
FY05 Price	5.565	0.99	1.14	1.47	2.01	
FY06 Price	5.565	1.30 / 1.90	1.92	1.96	2.05	
Used for FY07 Bud	10	1.30	2.02	2.05	2.15	
Usage Estimate	17,350,000	375,000	606,500	149,249	81,163	
Price as Awarded *	10.114	1.33	2.3458	2.7252	2.6452	
FY07 BUDGET DEF.	**20,000**	**11,000**	**198,000**	**101,000**	**40,000**	**370,000**
TOWN	**10,000**	**9,000**	**28,000**	**98,000**	**40,000**	**185,000**
SCHOOL	**10,000**	**2,000**	**169,000**	**3,000**	**0**	**185,000**

* For electricity, price does not include capacity charge that could be between 1/2 cent and 1 cent / kwh.

In order to cover this estimated deficit, an energy reserve is recommended, as was done effectively in FY06. The reserve would follow the same practices as the Budget Reserve does: Selectmen approval followed by Advisory Committee approval. Funding for the $370,000 reserve is to come from a projected increase in estimated Local Receipts. After a review of the FY06 revenue actuals, Town finance staff is reasonably comfortable in recommending an increase in two Local Receipts: Interest Income and Recycling revenue.

- the FY07 estimate for Interest Income was originally set at $2.2 million; however, the FY06 actual was $2.6 million. While it has not been past practice to budget to the prior year's actual, in this case, it is expected that the FY07 Interest Income figure should be closer to the FY06 actual than to the original projection, due to the current interest rate environment. As a result, the revenue budget can be increased by $456,929 to $2.62 million.

- As for Recycling revenue, this new revenue source was not in place when the FY07 Financial Plan was prepared. An outcome of the Town's new recycling contract, which was signed in September, 2005, the Town is guaranteed a minimum per ton price of $10 for the Town's recycled paper. Fortunately, the market price has averaged approximately $75 / ton, with the Town receiving approximately $45 per ton (market price less $30 / ton handling fee). For FY07, the minimum per ton amount was used to set the revenue budget, but now with one year's experience, there is a better understanding of what the Town can generate in the current market. As a result, that revenue budget can be increased by $72,000 to $108,000.

The total increase in Local Receipts is $528,929. Of that amount, $370,000 is proposed to fund the Energy Reserve and the balance to offset the reduction in the Water and Sewer General Fund Reimbursement, as detailed below.

WATER AND SEWER ENTERPRISE FUND

When the Selectmen set the FY07 water and sewer rates in July, a number of adjustments were made in order to mitigate a potential double-digit rate increase. The $825,792

reduction came from: (a) reduced MWRA Assessments ($309,561), courtesy of debt assistance funding from the State, (b) elimination of a vacant position ($39,765), (c) reduction in Capital Outlay ($90,000), (d) reduction in the Overhead Reimbursement ($158,929), and (e) elimination of the reserve ($227,538).

Since the Overhead Reimbursement was reduced, there is a reduction in revenue to the General Fund (from the "Other Available Funds" category). As a result, the budget needs to be brought back into balance. Of the $528,929 increase in Local Receipts detailed above, $158,929 is required to offset the reduction in the Overhead Reimbursement.

SUMMARY OF OPERATING BUDGET AMENDMENTS

The combination of the additional State Aid ($269,571) and the increase in Local Receipts / decrease in Other Available Funds ($370,000) results in a total of $639,571 being available for appropriation. As detailed above, those funds are recommended to be allocated for Schools ($259,705), an Energy Reserve ($370,000), and Non-Appropriated (School Lunch Cherry Sheet Offset and State Assessments) ($9,866). The table below summarizes the changes:

Revenue	
Chapter 70	269,571
Local Receipts / Other Avail. Funds	370,000
TOTAL	639,571
Expenditures	
School Dept.	259,705
Energy Reserve	370,000
Non-Appropriated	9,866
TOTAL	639,571

TOWN HALL RENOVATION

The Town Hall Renovation Project has been on the CIP since 1995. After being delayed for several years because of other capital priorities including the Lawrence School, Main Library and Public Safety Building, the 2003 Town Hall Feasibility Study documented many serious deficiencies in Town Hall's building systems. The Study identified multiple deficiencies involving life safety and code requirements in critical need of being addressed.

In 2005 Town Meeting appropriated $1.26 million for plans and specifications. The Building Commission retained HMFH Architects of Cambridge and a team of experienced mechanical, electrical and plumbing consultants. Schematic plans developed by the design team were accepted by the Building Commission this past September.

The primary goal of this project is to replace all internal systems in order to create a high performance building. Repeated pipe bursts, various electrical malfunctions, and elevator failures have increasingly occurred in recent years. Particularly important is energy efficiency. The architect's schematic plans call for transforming Town Hall into a Green Building eligible for a LEED Silver Rating, the same rating of the recently renovated

Health Department. In addition, the interior spaces are being redefined to improve customer convenience, upgrade workflow and make all areas of the building accessible at contemporary standards, and create additional public meeting spaces.

The Building Commission anticipates putting the project out to bid by March, 2007. The expectation is to bring bids "in hand" to the 2007 Annual Town Meeting for approval of the construction appropriation. Assuming bids are received by early May, the Town by statute has 30 days to award a contract. Current plans involve moving Town Hall staff to various facilities in conjunction with the award of the contract and Town Meeting Action.

In order to undertake such a complex relocation according to this timetable, mover contracts will need to be awarded; receiving location(s) need to be built out; and other preparations must get underway over the course of winter and spring. The $950,000 appropriation request is for these purposes. While most Town Hall departments will move to the Old Lincoln School, DPW will temporarily relocate to the Municipal Service Center on Hammond Street, some school staff could go to the Sperber Center, and the Town's Clerk's Office will be housed in the Denny Room of the Health Building.

Relocation to the Old Lincoln and satellite locations will require improvements to each of the facilities including voice/data wiring, electrical, carpentry, and flooring. Further, some aspects of the relocations will require specialty services because vital records, polling machines, and other exceptional factors are involved. In addition, parking and transportation plans will also be implemented. Staff parking is expected to continue at Town Hall, but with some form of transportation between the two locations.

In anticipation of these and other requirements, the Town Administrator's March 13, 2006 memo to the Board of Selectmen noted the potential need for an initial appropriation at the 2006 Fall Town Meeting for (a) soft costs associated with preparing the Old Lincoln School for Town Hall's relocation and (b) relocating departments to Old Lincoln and other facilities. Building Commission staff has estimated the following $950,000 appropriation requirements:

Other Design	75,000
Peer Review	25,000
Project Management	60,000
Printing and Advertising	15,000
Relocation Costs	600,000
Survey	12,000
Old Lincoln Improvements	163,000
Soft Cost Subtotal	950,000

Funding for this appropriation will come from the Overlay Reserve Surplus. The Board of Assessors has declared a $1.8 million surplus, meaning those funds will be made available for the project, as initially discussed last Spring. The balance of the $1.8 million ($850,000) will be used, along with a bond authorization, to fund the project at the 2007 Annual Town Meeting. This $1.8 million plus the $1.3 million preserved by delaying permanent financing by one year allowed the Town to fund the project at the

$16.095 million figure the architect provided the Town last February, an increase of $3.1 million.

PIERCE SCHOOL – RE-ALLOCATION OF EXISTING FUNDS

School Department and Building Department officials requested the re-allocation of $209,079 of existing CIP funds for various Pierce School projects. In order to do so, Town Meeting approval is required. The $209,079 comes from the remaining balances in the following accounts:

- $160,299 (from a $175,000 FY00 appropriation for an elevator)
- $32,320 (from a $900,000 FY03 appropriation for a new HVAC system)
- $16,460 (from a $50,000 FY06 appropriation for a new elevator jack)

Since FY96, $3.9 million has been appropriated by Town Meeting for various projects at Pierce, including a new HVAC system, painting, new carpeting, bathroom remodeling, new windows, and repairs to the elevator. If re-allocated, these funds would go toward the window replacement project in the primary building and / or replacing some windows in the secondary building. Bids are expected to be received for the window project in November and Building Commission staff is concerned that they might come in above budget. If they do, then these funds would go toward completing the project. If they come in on budget, then the re-allocated funds would go toward replacing some windows in the secondary building and / or to other needed improvements under the direction of the Building Department and School Department.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 3, 2006, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The purpose of this article is to enable Town Meeting to make adjustments to the current year's budget. Proposed changes to the budget include the appropriation of additional State Aid, the creation of an Energy Reserve Fund, changes to the Water and Sewer Enterprise Fund, appropriation of funds for the Town Hall renovation, and a reallocation of funds from previous Pierce School projects.

DISCUSSION

Energy Reserve Fund, Water and Sewer, Schools

An opportunity to make some mid-year adjustments to the budget presented itself because the final State budget approved by the Legislature included $261,327 more in Net Local Aid than was included in the budget approved by Town Meeting. Concurrent

with this windfall it has become apparent that there will be a shortfall in utility funding, and it is proposed to establish an "Energy Reserve Fund" of $370,000.

To balance the amount needed to establish the Energy Reserve Fund it is further proposed to add to receipts an additional sum of interest earned in excess of what was anticipated of $456,929, and $72,000 more than expected received from recycling wastepaper. However, there needs to be an offset taken to adjust for an Overhead Reimbursement from the Water and Sewer Enterprise Fund of approximately $159,000.

The net effect of these adjustments is $639,571 in revenue (+$269,571 local aid, +$456,929 interest received, and +$72,000 from waste paper, less -$158,929 Water and Sewer Overhead). Against this revenue the Town proposes to charge $370,000 for an Energy Reserve Fund, and $259,705 to go to the school budget. A further charge of $9,866 results from reimbursements to statutory account charges (no discretion by the Town) to the Library ($1,622) and Special Education ($8,244). This may be summarized as follows:

Revenue:	Local Aid	$269,571
	Local Receipt	370,000
Expenditures:	School Department	$259,705
	Energy Reserve	370,000
	Non-Appropriated	9,866

The Advisory Committee unanimously (18-0) recommends FAVORABLE ACTION on the vote to change the Town Budget by adding a $370,000 Energy Reserve Fund and increasing the School budget $259,705.

Town Hall Renovation

The amount of $950,000 is to be appropriated for the renovation of Town Hall, transferred from the Overlay Reserve Surplus account. The surplus overlay account is an amount determined by the Board of Assessors created to cover conditional abatements and disputes with utilities on assessments. The $950,000 is primarily to be used to cover relocation expenses for Town Hall operations to the Lincoln School and other locations in the Town. Of this amount, $600,000 is allocated to relocation costs and $163,000 covers Old Lincoln School improvements.

This appropriation presupposes, to an extent, there will be a Town Hall renovation project. Given the condition of Town Hall, the Committee believes this is likely. However, design review and a Town Meeting vote will determine if, or to what extent, there is a renovation. This appropriation does not make those decisions, but will allow for the necessary planning and preparations for a relocation of Town Hall and School Department services.

The original budget for the Town Hall renovation of $13 million has increased to $16.1 million. The increase is being funded by a total of $1.8 million from the overlay account, $13 million from a bond to be voted in the Spring 2007, and $1.3 million from money in the CIP saved by delaying funding of the Town Hall project last spring until Spring 2007.

After a presentation about the Town Hall project by the design team, the Advisory Committee voted FAVORABLE ACTION (15 in favor and 2 opposed) on the appropriation for the Town Hall project

Pierce School

The amount of $207,079 is requested for design and improvements in the Pierce School, primarily for basic repairs to windows. The sources of the $207,079 appropriation are an unexpended amount of $169,299 that was allocated in 1999 for an elevator, $32,320 remaining from funds allocated in 2002 for HVAC work, and $16,460 remaining from an allocation for Pierce School improvements in 2005. The Advisory Committee unanimously voted FAVORABLE ACTION (18 in favor) on the reallocation of funds.

RECOMMENDATION

The Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town:

A. Amend the FY2007 budget in the following manner:

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

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
20. Energy Reserve	$ 0	+ $370,000	$ 370,000
23. Schools	$59,836,680	+ $259,705	$60,096,385

2. by adding a new Section 15 to Article 7 of the 2006 Annual Town Meeting. Said Section 15 to read as follows:

   15. ALLOCATION OF ENERGY RESERVE: Transfers from the central energy fund (line item #20) shall be made to Town departmental budgets, subject to the approval of the Board of Selectmen and Advisory Committee. Expenditure of said funds shall be for energy-related expenses only.

3. by amending Section 7 (Water and Sewer Enterprise Fund) of Article 7 of the 2006 Annual Town Meeting so it reads as follows:

7.) WATER AND SEWER ENTERPRISE FUND: The following sums, totaling $22,155,541, 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:

	Water	Sewer	Total
Salaries	1,885,701	258,614	2,144,315
Purchase of Services	162,793	157,226	320,019
Supplies	162,612	16,000	178,612
Other	3,600	0	3,600
Capital	141,100	161,000	302,100
Intergovernmental	4,763,606	9,606,833	14,370,439
Reserve	0	0	0
Total Appropriations	7,119,412	10,199,673	17,319,085
Indirect Costs	3,094,898	1,741,557	4,836,456
Total Costs	10,214,310	11,941,231	22,155,541

Total costs of $22,155,541 to be funded from water and sewer receipts with $4,836,456 to be reimbursed to the General Fund for indirect costs.

B. Raise and appropriate $950,000 to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen, for the cost of remodeling, reconstructing, or making extraordinary repairs to Town Hall, including, but not limited to, those costs associated with relocating Town Hall operations; and to meet the appropriation, transfer $950,000 from the overlay surplus account.

C. Appropriate $209,079, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for work at the Pierce School, including design of said work; to meet the appropriation transfer $160,299 from the balance remaining in the appropriation voted under Article 6, Section 11, Item 86 of the 1999 Annual Town Meeting; transfer $32,320 from the balance remaining in the appropriation voted under Article 9, Section 13, Item 80 of the 2002 Annual Town Meeting; and transfer $16,460 from the balance remaining in the appropriation voted under Article 7, Section 12, Item 68 of the 2005 Annual Town Meeting.

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FY07 AMENDED BUDGET - TABLE 1

		FY06 BUDGET	FY07 BUDGET	PROPOSED AMENDMENTS	FY07 REVISED BUDGET	CHANGE FROM FY06
	REVENUES					
	Property Taxes	125,014,839	129,825,273	0	129,825,273	4,810,434
	Local Receipts	18,900,300	19,948,300	528,929	20,477,229	1,576,929
	State Aid	18,027,706	17,751,533	269,571	18,021,104	(6,602)
	Free Cash	4,606,534	5,387,435		5,387,435	780,901
	Other Available Funds	7,691,658	7,947,902	1,000,150	8,948,052	1,256,394
	TOTAL REVENUE	**174,241,037**	**180,860,443**	**1,798,650**	**182,659,093**	**8,418,055**
	EXPENDITURES					
	DEPARTMENTAL EXPENDITURES					
	1 . Selectmen	579,870	574,045		574,045	(5,825)
	2 . Human Resources	456,747	461,053		461,053	4,305
	3 . Information Technology	1,380,699	1,371,174		1,371,174	(9,525)
(1)	4 . Finance Department	2,926,170	2,845,992		2,845,992	(80,178)
	a. Comptroller	*441,547*	*457,623*		*457,623*	*16,076*
	b. Purchasing	*1,033,613*	*1,000,527*		*1,000,527*	*(33,086)*
	c. Assessing	*673,763*	*608,323*		*608,323*	*(65,440)*
	d. Treasurer	*777,247*	*779,519*		*779,519*	*2,272*
	5 . Legal Services	578,637	606,811		606,811	28,174
	6 . Advisory Committee	22,126	22,187		22,187	61
	7 . Town Clerk	454,470	539,895		539,895	85,425
(1)	8 . Planning and Community Development	381,262	454,831		454,831	73,569
	a. Planning	*242,733*	*320,985*		*320,985*	*78,252*
	b. Housing	*96,184*	*92,728*		*92,728*	*(3,456)*
	c. Preservation	*42,345*	*41,117*		*41,117*	*(1,228)*
	9 Economic Development	182,994	187,001		187,001	4,007
	10 . Police	13,474,012	13,711,717		13,711,717	237,705
	11 . Fire	11,346,549	11,590,538		11,590,538	243,989
	12 . Building	5,384,030	6,116,025		6,116,025	731,995
(1)	13 . Public Works	11,762,443	12,197,668		12,197,668	435,225
	a. Administration	*788,214*	*812,572*		*812,572*	*24,358*
	b. Engineering/Transportation	*831,225*	*861,575*		*861,575*	*30,350*
	c. Highway	*4,538,075*	*5,002,422*		*5,002,422*	*464,347*
	d. Sanitation	*2,944,552*	*2,858,811*		*2,858,811*	*(85,741)*
	e. Parks and Open Space	*2,660,378*	*2,662,288*		*2,662,288*	*1,911*
	14 . Library	3,134,824	3,276,369		3,276,369	141,545
	15 . Health	984,509	1,013,053		1,013,053	28,543
	16 . Veterans' Services	196,450	200,998		200,998	4,548
	17 . Council on Aging	688,769	719,059		719,059	30,290
	18 . Human Relations	136,755	137,194		137,194	439
	19 . Recreation	1,331,713	1,009,700		1,009,700	(322,013)
	20 . Energy Reserve	484,182	0	370,000	370,000	(114,182)
	21 . Personnel Services Reserve	1,078,047	750,000		750,000	(328,047)
	22 . Collective Bargaining - Town	2,150,000	1,100,000		1,100,000	(1,050,000)
	Subtotal Town	*56,965,259*	*58,885,308*	*370,000*	*59,255,308*	*2,290,049*
	23 . *Schools*	*58,007,124*	*59,836,680*	*259,705*	*60,096,385*	*2,089,261*

		FY06 BUDGET	FY07 BUDGET	PROPOSED AMENDMENTS	FY07 REVISED BUDGET	CHANGE FROM FY06
	TOTAL DEPARTMENTAL EXPENDITURES	**114,972,384**	**118,721,989**	**629,705**	**119,351,694**	**4,379,310**
	NON-DEPARTMENTAL EXPENDITURES					
(1)	23 . Employee Benefits	28,973,687	32,158,118	0	32,158,118	3,184,431
	a.) Pensions	*9,921,963*	*10,165,009*		*10,165,009*	*243,046*
	b.) Group Health	*16,781,724*	*18,936,109*		*18,936,109*	*2,154,385*
(2)	*c.) Retiree Group Health Trust Fund*	*0*	*0*		*0*	*0*
	d.) Employee Assistance Program (EAP)	*25,000*	*25,000*		*25,000*	*0*
	e.) Group Life	*145,000*	*157,000*		*157,000*	*12,000*
(2)	*f.) Worker's Compensation*	*895,000*	*1,450,000*		*1,450,000*	*555,000*
(2)	*g) Public Safety IOD Medical Expenses*		*155,000*		*155,000*	*155,000*
(2)	*h.) Unemployment Compensation*	*125,000*	*125,000*		*125,000*	*0*
	i.) Medical Disabilities	*30,000*	*30,000*		*30,000*	*0*
	j.) Medicare Coverage	*1,050,000*	*1,115,000*		*1,115,000*	*65,000*
	24 . Reserve Fund	1,524,420	1,593,755		1,593,755	69,335
	25 Stabilization Fund	39,004	22,248		22,248	(16,756)
	26 . Liability/Catastrophe Fund	406,616	225,039		225,039	(181,577)
	27 Housing Trust Fund	0	0		0	0
	28 . General Insurance	251,068	276,175		276,175	25,107
	29 . Audit/Professional Services	138,987	138,987		138,987	0
	30 . Contingency Fund	18,000	15,000		15,000	(3,000)
	31 . Out-of-State Travel	3,000	3,000		3,000	0
	32 . Printing of Warrants & Reports	20,000	20,000		20,000	0
	33 . MMA Dues	12,106	11,433		11,433	(674)
	Subtotal General	*2,413,201*	*2,305,636*	*0*	*2,305,636*	*(107,565)*
(1)	34 . Borrowing	13,781,495	14,396,621	0	14,396,621	615,127
	a. Funded Debt - Principal	*9,220,587*	*9,613,087*		*9,613,087*	*392,500*
	b. Funded Debt - Interest	*4,300,908*	*4,613,134*		*4,613,134*	*312,227*
	c. Bond Anticipation Notes	*200,000*	*110,400*		*110,400*	*(89,600)*
	d. Abatement Interest and Refunds	*60,000*	*60,000*		*60,000*	*0*
	TOTAL NON-DEPARTMENTAL EXPENDITURES	**45,168,383**	**48,860,375**	**0**	**48,860,375**	**3,691,992**
	TOTAL GENERAL APPROPRIATIONS	**160,140,766**	**167,582,364**	**629,705**	**168,212,069**	**8,071,302**
	SPECIAL APPROPRIATIONS					
	35 . Public Buildings Furnishings and Equipment (revenue financed)		27,823		27,823	
	36 . Technology Applications (revenue financed)		250,000		250,000	
	37 . Gateway East - Design (revenue financed)		100,000		100,000	
	38 . SCBA Air Compressor System (revenue financed)		60,000		60,000	
	39 . Firefighter Turnout Gear (revenue financed)		135,000		135,000	
	40 . Fire Dept. Pumper/Ladder Combo Truck (revenue financed)		890,000		890,000	
	41 . Fire Apparatus Rehab (revenue financed)		250,000		250,000	
	42 . Fire Station #5 Repairs (revenue financed)		190,000		190,000	
	43 . Bullet Proof Vests (revenue financed)		25,000		25,000	
	44 . Putterham Library HVAC Upgrade (revenue financed)		150,000		150,000	
	45 . Washington/School/Cypress Signal (revenue financed)		103,000		103,000	
	46 . Harvard / Babcock Signal (revenue financed)		25,700		25,700	
	47 . Street Rehabilitation (revenue financed)		1,000,000		1,000,000	

		FY06 BUDGET	FY07 BUDGET	PROPOSED AMENDMENTS	FY07 REVISED BUDGET	CHANGE FROM FY06
	48 . Traffic Calming Studies and Improvements (revenue financed)		100,000		100,000	
	49 . Sidewalk Repair/Reconstruction (revenue financed)		200,000		200,000	
	50 . Streetlight Replacement/Repairs (revenue financed)		100,000		100,000	
	51 . Soule Field (revenue financed)		350,000		350,000	
	52 . Playground Equipment, Fields, Fencing (revenue financed)		250,000		250,000	
	53 . Town/School Grounds Rehab (revenue financed)		120,000		120,000	
	54 . Tennis Court / Basketball Court Rehab (revenue financed)		100,000		100,000	
	55 . Lighting and Amenities (revenue financed)		150,000		150,000	
	56 . Tree Removal and Replacement (revenue financed)		100,000		100,000	
	57 . Walnut Hills Cemetery Upgrades (revenue financed)		60,000		60,000	
	58 . Larz Anderson Skating Rink (revenue financed)		130,000		130,000	
	59 . Waldstein Building Rehab - Plans and Specs (revenue financed)		12,000		12,000	
	60 . School Furniture Upgrades (revenue financed)		25,000		25,000	
	61 . Energy Management Systems (revenue financed)		80,000		80,000	
	62 . Energy Conservation (revenue financed)		185,000		185,000	
	63 . Town/School Asbestos Removal (revenue financed)		50,000		50,000	
	64 . Town/School ADA Renovations (revenue financed)		50,000		50,000	
	65 . Town/School Building Security/Life Safety (revenue financed)		100,000		100,000	
	66 . Town/School Roof Repair/Replacement (revenue financed)		275,000		275,000	
	67 . High School/Tappan St. Gym - Plans and Specs (revenue financed)		240,000		240,000	
	68 . Runkle School Feasibility/Devotion School Needs Assessment (revenue financed)		200,000		200,000	
	69 . Old Lincoln School Repairs (capital project surplus)		290,000		290,000	
	70 . School Trash Compactors (revenue financed)		30,000		30,000	
	71 . Swimming Pool Renovations (bond = $1.6 million; revenue-financed=$188,000; capital project surplus = $1		1,911,960		1,911,960	
	72 . Newton St. Landfill Corrective Action/Transfer Station (bond)		2,000,000		2,000,000	
	73 . Wastewater System Improvements (enterprise bond)		5,500,000		5,500,000	
	74 . Pierce School Repairs / Renovations (capital project surplus)			209,079	209,079	
	75 . Town Hall Renovations (overlay reserve surplus)			950,000	950,000	
(3)	**TOTAL SPECIAL APPROPRIATIONS**	**6,060,803**	**6,715,483**	**1,159,079**	**7,874,562**	**1,813,759**
	TOTAL APPROPRIATED EXPENDITURES	**166,201,569**	**174,297,847**	**1,788,784**	**176,086,631**	**9,885,061**
	NON-APPROPRIATED EXPENDITURES					
	Cherry Sheet Offsets	1,280,287	116,116	1,622	117,738	(1,162,549)
	State & County Charges	5,243,739	5,221,479	8,244	5,229,723	(14,016)
	Overlay	1,490,442	1,200,000		1,200,000	(290,442)
	Deficits-Judgments-Tax Titles	25,000	25,000		25,000	0
	TOTAL NON-APPROPRIATED EXPEND.	**8,039,468**	**6,562,595**	**9,866**	**6,572,461**	**(1,467,007)**
	TOTAL EXPENDITURES	**174,241,037**	**180,860,443**	**1,798,650**	**182,659,093**	**8,418,056**
	SURPLUS/(DEFICIT)	**0**	**0**	**0**	**0**	

(1) Breakdown provided for informational purposes.
(2) Funds are transferred to trust funds for expenditure.
(3) 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).

FY07 AMENDED BUDGET - TABLE 2

Department/Board/Commission	Personnel Services	Purchase of Services	Supplies	Other Charges/ Expenses	Capital Outlay	Debt Service	Personnel Benefits	Agency Total
Board of Selectmen (Town Administrator)	549,922	9,553	6,750	2,600	5,220			574,045
Human Resources Department (Human Resources Director)	220,354	228,856	8,500	500	2,843			461,053
Information Technology Department (Chief Information Officer)	784,776	509,433	34,127	2,450	40,388			1,371,174
Finance Department (Director of Finance)	1,743,391	1,025,464	44,888	13,184	19,066			2,845,992
Legal Services (Town Counsel)	447,079	79,240	1,950	74,400	4,142			606,811
Advisory Committee (Chair, Advisory Committee)	20,320	266	775	340	487			22,187
Town Clerk (Town Clerk)	464,364	56,850	13,401	1,800	3,480			539,895
Planning and Community Department (Plan. & Com. Dev. Dir.)	426,097	12,143	5,922	3,700	6,969			454,831
Economic Department (Econ. Devel. Officer)	159,433	18,308	7,785	250	1,225			187,001
Police Department (Police Chief)	12,403,528	550,153	292,511	4,500	461,025			13,711,717
Fire Department (Fire Chief)	11,080,932	281,492	139,379	5,850	82,885			11,590,538
Public Buildings Department (Building Commissioner)	1,729,939	4,138,397	141,194	1,900	104,594			6,116,025
Public Works Department (Commissioner of Public Works)	7,112,832	3,345,346	1,029,851	9,639	700,000			12,197,668
Public Library Department (Library Board of Trustees)	2,303,904	436,687	477,015	1,502	57,261			3,276,369
Health Department (Health Director)	679,583	283,321	16,541	3,620	29,988			1,013,053
Veterans' Services (Veterans' Services Director)	109,301	2,007	650	88,200	840			200,998
Council on Aging (Council on Aging Director)	546,090	139,938	18,850	2,900	11,281			719,059
Human Relations/Youth Resources (Human Relations Dir.)	127,233	4,307	4,100	600	954			137,194
Recreation Department (Recreation Director)	734,909	217,167	48,844	2,400	6,380			1,009,700
Energy Reserve (*) (Chair, Advisory Committee)								370,000
School Department (School Committee)								60,096,385
Total Departmental Budgets	**41,643,984**	**11,338,927**	**2,293,033**	**220,335**	**1,539,029**			**117,501,694**
DEBT SERVICE								
Debt Service (Director of Finance)						14,396,621		14,396,621
Total Debt Service:						**14,396,621**		**14,396,621**
EMPLOYEE BENEFITS								
Contributory Pensions Contribution (Director of Finance)							9,855,009	9,855,009
Non-Contributory Pensions Contribution (Director of Finance)							310,000	310,000
Group Health Insurance (Human Resources Director)							18,936,109	18,936,109
Employee Assistance Program (Human Resources Director)							25,000	25,000
Group Life Insurance (Human Resources Director)							157,000	157,000
Workers' Compensation (Human Resources Director)							1,450,000	1,450,000
Public Safety IOD Medical Expenses (Human Resources Director)							155,000	155,000
Unemployment Insurance (Human Resources Director)							125,000	125,000
Ch. 41 100B Medical Benefits (Town Counsel)							30,000	30,000
Medicare Payroll Tax (Director of Finance)							1,115,000	1,115,000
Total Employee Benefits:							**32,158,118**	**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						276,175
Audit/Professional Services (Director of Finance)		138,987						138,987
Contingency (Town Administrator)								15,000
Out of State Travel (*) (Town Administrator)		3,000						3,000
Printing of Warrants (Town Administrator)		10,000	10,000					20,000
MMA Dues (Town Administrator)				11,433				11,433
Town Salary Reserve (*) (Director of Finance)	1,100,000							1,100,000
Personnel Services Reserve (*) (Director of Finance)	750,000							750,000
Total General / Unclassified:	**1,850,000**	**428,162**	**10,000**	**11,433**				**4,155,637**
TOTAL APPROPRIATIONS	**43,493,984**	**11,767,089**	**2,303,033**	**231,768**	**1,539,029**	**14,396,621**	**32,158,118**	**168,212,069**

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

ARTICLE 3

Motion to be Offered by Stanley Spiegel, TMM-2

To delete the appropriation of $950,000 for costs associated with relocating Town Hall operations as proposed in Part B of Article 3.

Explanation: This proposed appropriation to prepare for a forthcoming Town Hall renovation anticipates a successful Town Meeting vote next May to authorize and fund the $16.1 million renovation, and essentially commits Town Meeting to this course of action. However while renovation of Town Hall will be needed, it seems a reversal of the Town's priorities and values to fund this renovation, with its annual debt service costs of about $1.5 million, out of current Town revenues while it's clear that an override to fund critical school needs is waiting in the wings. A better plan would be to pay for the renovation of Town Hall, possibly bundled with the Devotion and Runkle School renovations, with a debt exclusion override, preserving existing revenues for core services such as the schools, rather than having vital school programs be dependent upon a successful override. Until this alternative is considered and evaluated, appropriating the $950,000 for relocation expenses is premature and should not be approved.

ARTICLE 4

FOURTH ARTICLE

To see if the Town will amend the Zoning By-Law as follows:
(Please note that all proposed additions are underlined.)

1. By adding a new zoning district F-0.75 ("Three Family Zones"), replacing the existing zoning in the areas shown in the attached map.

2. By adding a new "F" heading under Section 4.07 ("Table of Use Regulations") with the same use designations as the existing "T" column, with the exception of the uses listed in Principal Use 4A below.

3. By amending Section 4.07 ("Table of Use Regulations") by adding a new Principal Use 4A immediately after Principal Use 4:

Principal Uses	S	SC	T	F	M	L	G	O	I
4A. Detached dwelling on a separate lot for three families	No	No	No	Yes	Yes	Yes	Yes	No	Yes

4. By amending Principal Use to read as follows:

> 6. Multiple or attached dwelling of four or more units other than the preceding item divided into dwelling units each occupied by not more than one family but not including lodging house, hotel, dormitory, fraternity or sorority.
>
> *Compliance with **§4.08** required if containing 6 or more dwelling units
>
> Permitted by special permit in S-0.5P and S-0.75P Districts subject to **§5.06.**
>
> In L and G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use

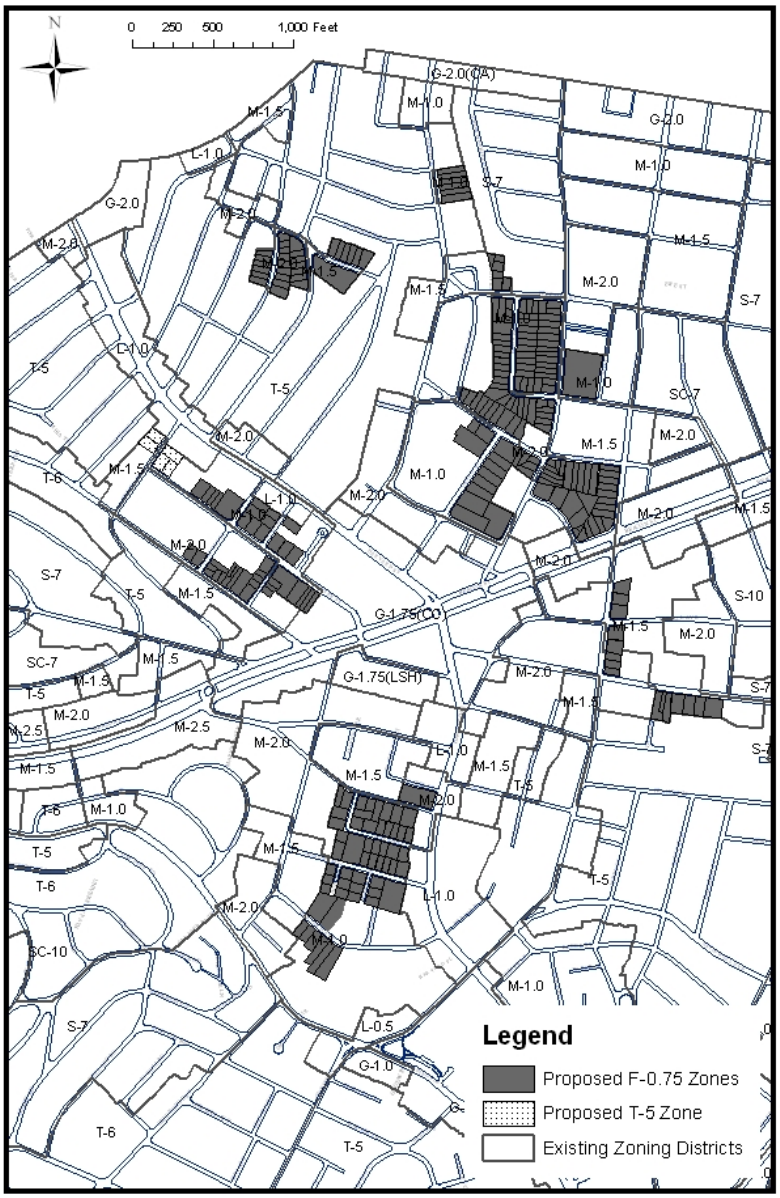
5. By amending Section 5.01 ("Table of Dimensional Requirements") by adding a new district F-0.75 immediately following T-5 as follows:

DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM (feet)	LOT WIDTH MAXIMUM (feet)	HEIGHT[9] MAXIMUM	Front Yard	Side Yard	Rear Yard	Open Space Landsc.	Open Space Usable
F-0.75	1-family detached dwelling	4,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	2-family detached dwelling	5,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	3-family detached dwelling	6,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	Any other structure or prinicipal use	5,000	0.75	60	40	15	10+ L'/10	30	10%	30%

,and

6. By changing the zoning of five properties shown on attached map from the M-1.0 and M-1.5 districts to the T-5 zoning district.

Proposed F-0.75 Zones and T-5 Zone
(see list of parcels for information on specific sites)



Proposed to Change to F-0.75 Zoning District

MAP	BLOCK	BLK_LOT_SU	Street Number		Street
35	170	170-14-00	1	10	AUBURN CT
35	170	170-05-00	9		AUBURN PL
35	170	170-08-00	10		AUBURN PL
35	170	170-07-00	14		AUBURN PL
35	170	170-06-00	15		AUBURN PL
34	169	169-25-00	15		AUBURN ST
34	169	169-26-00	17		AUBURN ST
34	169	169-27-00	21		AUBURN ST
34	169	169-28-00	23		AUBURN ST
35	170	170-13-00	24		AUBURN ST
34	169	169-29-00	27	29	AUBURN ST
34	169	169-30-00	31	33	AUBURN ST
35	170	170-10-00	32		AUBURN ST
34	169	169-17-00	37		AUBURN ST
35	170	170-09-00	40		AUBURN ST
34	169	169-31-00	45		AUBURN ST
35	170	170-04-00	48		AUBURN ST
6	027	027-21-00	177		BABCOCK ST
6	027	027-22-00	179		BABCOCK ST
6	027	027-23-00	183		BABCOCK ST
6	027	027-24-00	187		BABCOCK ST
6	027	027-25-00	189		BABCOCK ST
6	027	027-26-00	191		BABCOCK ST
8	043	043-09-00	1232		BEACON ST
8	043	043-10-00	1236		BEACON ST
8	043	043-11-00	1240		BEACON ST
8	043	043-12-00	1244		BEACON ST
8	043	043-12-00	1244		BEACON ST
8	043	043-13-00	1248		BEACON ST
7	035	035-35-00	74		BROWNE ST
7	036	036-18-00	77		BROWNE ST
7	035	035-34-00	78		BROWNE ST
7	035	035-33-00	80		BROWNE ST
7	035	035-32-00	82		BROWNE ST
7	036	036-19-00	83		BROWNE ST
7	035	035-31-00	84		BROWNE ST
7	036	036-20-00	85		BROWNE ST
7	035	035-30-00	86		BROWNE ST
7	036	036-21-00	87		BROWNE ST
7	035	035-29-00	88		BROWNE ST
7	035	035-28-00	90		BROWNE ST
7	035	035-27-00	92		BROWNE ST
7	035	035-26-00	94		BROWNE ST
7	035	035-25-00	96		BROWNE ST
7	035	035-24-00	100		BROWNE ST
7	036	036-22-00	101		BROWNE ST
7	035	035-23-00	102		BROWNE ST
7	036	036-23-00	103		BROWNE ST
7	036	036-24-00	105		BROWNE ST

MAP	BLOCK	BLK_LOT_SU	Street Number		Street
7	035	035-22-00	106		BROWNE ST
7	036	036-25-00	107		BROWNE ST
7	035	035-21-00	110		BROWNE ST
7	036	036-26-00	111		BROWNE ST
7	035	035-20-00	112		BROWNE ST
7	036	036-27-00	115		BROWNE ST
7	035	035-19-00	116		BROWNE ST
7	036	036-28-00	119		BROWNE ST
7	035	035-18-00	120		BROWNE ST
7	036	036-29-00	121		BROWNE ST
7	035	035-17-00	124		BROWNE ST
7	036	036-30-00	125		BROWNE ST
7	035	035-16-00	126		BROWNE ST
7	036	036-31-00	127		BROWNE ST
16	083	083-06-00	30		CENTRE ST
16	083	083-05-00	32		CENTRE ST
16	083	083-04-00	34		CENTRE ST
16	083	083-03-00	40		CENTRE ST
16	082	082-21-00	51		CENTRE ST
16	082	082-22-00	53		CENTRE ST
16	082	082-23-00	61		CENTRE ST
16	080	080-04-00	62		CENTRE ST
16	081	081-06-00	69		CENTRE ST
16	081	081-07-00	75		CENTRE ST
15	078	078-09-00	85	89	CENTRE ST
15	078	078-12-00	93		CENTRE ST
15	078	078-13-00	95		CENTRE ST
15	078	078-14-00	97		CENTRE ST
15	078	078-15-00	103	105	CENTRE ST
6	027	027-07-00	7	9	CRAIG PL
6	027	027-08-00	11	13	CRAIG PL
6	027	027-08-02	15		CRAIG PL
6	027	027-08-01	17	19	CRAIG PL
9	046	046-14-00	4		DWIGHT ST
9	046	046-13-00	8		DWIGHT ST
9	046	046-12-00	10		DWIGHT ST
7	035	035-44-00	15		DWIGHT ST
7	035	035-45-00	21		DWIGHT ST
7	035	035-46-00	25		DWIGHT ST
7	035	035-47-00	31		DWIGHT ST
7	035	035-48-00	33		DWIGHT ST
9	047	047-12-00	36		DWIGHT ST
7	035	035-49-00	37		DWIGHT ST
7	035	035-50-00	39		DWIGHT ST
7	035	035-51-00	41		DWIGHT ST
7	035	035-52-00	43		DWIGHT ST
7	035	035-53-00	45		DWIGHT ST
7	036	036-02-00	200		FREEMAN ST
7	036	036-01-02	202		FREEMAN ST
7	036	036-01-01	206		FREEMAN ST
7	036	036-01-00	208		FREEMAN ST

MAP	BLOCK	BLK_LOT_SU	Street Number		Street
7	035	035-15-00	214	216	FREEMAN ST
7	035	035-14-00	218		FREEMAN ST
6	027	027-05-00	219		FREEMAN ST
6	027	027-06-00	221	223	FREEMAN ST
7	035	035-13-00	222		FREEMAN ST
12	063	063-21-00	127		FULLER ST
12	065	065-17-00	128		FULLER ST
12	065	065-16-00	130		FULLER ST
12	063	063-22-00	131		FULLER ST
12	065	065-15-00	134		FULLER ST
12	063	063-23-00	135		FULLER ST
12	063	063-24-00	137		FULLER ST
12	065	065-14-00	138		FULLER ST
12	065	065-13-00	140		FULLER ST
12	063	063-25-00	141		FULLER ST
12	065	065-12-00	142		FULLER ST
12	063	063-26-00	143		FULLER ST
12	063	063-27-00	147		FULLER ST
12	063	063-28-00	149		FULLER ST
12	063	063-29-00	153		FULLER ST
10	052	052-10-01	9		GIBBS ST
10	052	052-12-00	11		GIBBS ST
10	051	051-22-00	12	30	GIBBS ST
10	052	052-13-00	15		GIBBS ST
10	052	052-14-00	17		GIBBS ST
10	052	052-15-00	21		GIBBS ST
10	052	052-16-00	25		GIBBS ST
9	046	046-05-00	45	49	GREEN ST
9	046	046-06-00	55		GREEN ST
9	046	046-07-00	59		GREEN ST
9	046	046-08-00	63	65	GREEN ST
9	046	046-09-00	67	69	GREEN ST
9	046	046-10-00	71	73	GREEN ST
9	047	047-14-00	74		GREEN ST
9	046	046-11-00	81		GREEN ST
9	047	047-13-00	82		GREEN ST
34	168	168-02-00	11		HARRIS ST
34	169	169-22-00	12		HARRIS ST
34	169	169-21-00	16		HARRIS ST
34	168	168-03-00	17		HARRIS ST
34	168	168-04-00	19		HARRIS ST
34	168	168-05-00	21		HARRIS ST
34	169	169-20-00	22		HARRIS ST
34	168	168-06-00	23		HARRIS ST
34	169	169-19-00	24	26	HARRIS ST
34	169	169-18-00	28	30	HARRIS ST
34	168	168-07-00	31		HARRIS ST
34	169	169-16-00	42		HARRIS ST
34	169	169-15-00	44	46	HARRIS ST
34	168	168-08-00	49		HARRIS ST
34	169	169-14-00	50		HARRIS ST

MAP	BLOCK	BLK_LOT_SU	Street Number		Street
34	168	168-09-00	57		HARRIS ST
35	171	171-23-00	54		HARVARD AVE
35	171	171-22-00	56		HARVARD AVE
35	171	171-21-00	60		HARVARD AVE
35	170	170-35-00	63		HARVARD AVE
35	171	171-59-00	66	68	HARVARD AVE
35	171	171-19-00	70		HARVARD AVE
35	170	170-36-00	71		HARVARD AVE
35	171	171-18-00	74		HARVARD AVE
8	043	043-15-00	0	OFF	JAMES ST
8	043	043-14-00	0		JAMES ST
8	043	043-16-00	9	11	JAMES ST
8	043	043-17-00	15	17	JAMES ST
8	043	043-18-00	19	21	JAMES ST
8	043	043-19-00	27	31	JAMES ST
9	046	046-02-04	9	27	JOHN ST
27	126	126-52-00	101		LONGWOOD AVE
27	126	126-52-01	103		LONGWOOD AVE
27	126	126-52-02	105		LONGWOOD AVE
27	126	126-53-00	111		LONGWOOD AVE
27	126	126-54-00	115		LONGWOOD AVE
27	126	126-54-01	121		LONGWOOD AVE
27	126	126-55-00	123		LONGWOOD AVE
12	063	063-07-00	88		NAPLES RD
12	063	063-06-00	90		NAPLES RD
12	063	063-05-00	94		NAPLES RD
12	063	063-04-00	96		NAPLES RD
12	063	063-03-00	100		NAPLES RD
12	063	063-02-00	102		NAPLES RD
12	063	063-01-00	106		NAPLES RD
8	043	043-31-00	60		PARKMAN ST
8	043	043-30-00	62		PARKMAN ST
8	043	043-29-00	64		PARKMAN ST
8	043	043-28-00	66		PARKMAN ST
8	043	043-27-00	68		PARKMAN ST
8	043	043-26-00	74		PARKMAN ST
8	043	043-25-00	76		PARKMAN ST
9	046	046-20-00	0		PLEASANT ST
8	043	043-20-00	57		PLEASANT ST
9	046	046-16-00	58		PLEASANT ST
8	043	043-21-00	59		PLEASANT ST
8	043	043-22-00	61		PLEASANT ST
9	046	046-15-00	62		PLEASANT ST
8	043	043-23-00	63		PLEASANT ST
8	043	043-24-00	65		PLEASANT ST
7	035	035-40-00	84		PLEASANT ST
7	035	035-39-00	88		PLEASANT ST
7	035	035-38-00	90		PLEASANT ST
7	035	035-37-00	92		PLEASANT ST
7	035	035-36-00	94		PLEASANT ST
7	036	036-17-00	104		PLEASANT ST

MAP	BLOCK	BLK_LOT_SU	Street Number		Street
7	036	036-16-00	106		PLEASANT ST
7	036	036-15-00	112		PLEASANT ST
7	036	036-14-00	114		PLEASANT ST
7	036	036-13-00	116		PLEASANT ST
7	036	036-12-00	118		PLEASANT ST
7	036	036-11-00	120		PLEASANT ST
7	036	036-10-00	122		PLEASANT ST
7	036	036-09-00	128		PLEASANT ST
7	036	036-08-00	130		PLEASANT ST
7	036	036-07-00	132		PLEASANT ST
7	036	036-06-00	134		PLEASANT ST
7	036	036-05-00	136		PLEASANT ST
7	036	036-04-00	140		PLEASANT ST
7	036	036-03-00	142	144	PLEASANT ST
26	124	124-01-00	92		SEWALL AVE
16	081	081-04-00	9		SHAILER ST
16	082	082-25-00	10	12	SHAILER ST
16	081	081-05-00	15		SHAILER ST
26	125	125-24-00	123		ST PAUL ST
26	125	125-24-01	125		ST PAUL ST
26	125	125-24-02	129		ST PAUL ST
26	125	125-25-00	135		ST PAUL ST
26	125	125-01-00	143		ST PAUL ST
26	124	124-02-00	153		ST PAUL ST
26	124	124-03-00	159		ST PAUL ST
8	043	043-08-00	180		ST PAUL ST
8	043	043-07-00	182		ST PAUL ST
8	043	043-06-00	184		ST PAUL ST
8	043	043-05-00	194		ST PAUL ST
8	043	043-04-00	196		ST PAUL ST
8	043	043-03-00	198		ST PAUL ST
8	043	043-02-00	200		ST PAUL ST
8	043	043-01-00	202		ST PAUL ST
7	037	037-01-00	2	22	STILL ST
34	167	167-01-00	7		VERNON ST
34	168	168-15-00	12		VERNON ST
34	168	168-14-00	18		VERNON ST
34	168	168-13-00	22		VERNON ST
34	168	168-12-00	28	26	VERNON ST
34	168	168-11-00	32		VERNON ST
34	168	168-10-00	36		VERNON ST
34	169	169-13-00	42		VERNON ST
34	169	169-12-00	44	46	VERNON ST
35	170	170-12-00	1		WASHBURN PL
35	170	170-10-01	2		WASHBURN PL
35	170	170-11-00	3		WASHBURN PL
35	170	170-10-02	4		WASHBURN PL
16	083	083-01-00	6		WELLMAN ST
16	080	080-05-00	9		WELLMAN ST
16	083	083-21-00	10		WELLMAN ST
16	080	080-06-00	11		WELLMAN ST

MAP	BLOCK	BLK_LOT_SU	Street Number		Street
16	083	083-20-00	12		WELLMAN ST
16	083	083-19-00	14		WELLMAN ST
16	080	080-07-00	15		WELLMAN ST
16	081	081-10-00	12		WILLIAMS ST
16	081	081-09-00	16		WILLIAMS ST
16	081	081-08-00	24		WILLIAMS ST
16	080	080-16-00	46		WILLIAMS ST
16	080	080-15-00	48		WILLIAMS ST
16	080	080-14-00	50		WILLIAMS ST
16	080	080-08-00	35	37	WINCHESTER ST
16	080	080-09-00	43		WINCHESTER ST
16	080	080-10-00	47		WINCHESTER ST
16	080	080-11-00	49		WINCHESTER ST
16	080	080-11-00	49		WINCHESTER ST
16	080	080-12-00	51		WINCHESTER ST
16	080	080-12-00	51		WINCHESTER ST
16	080	080-13-00	53		WINCHESTER ST
15	079	079-04-00	67		WINCHESTER ST
15	079	079-05-00	71	73	WINCHESTER ST

Proposed to Change to T-5 Zoning District

MAP	BLOCK	BLK_LOT_SU	Street Number	Street
15	078	078-18-00	123	CENTRE ST
15	078	078-19-00	129	CENTRE ST
15	077	077-14-00	38	FULLER ST
15	078	078-20-00	39	FULLER ST
15	077	077-13-00	44	FULLER ST

As part of the Coolidge Corner planning process, the Department of Planning and Community Development (DPCD) has been working with the Coolidge Corner District Planning Council (DPC) to evaluate existing conditions and the opportunities and threats facing Coolidge Corner. Threats identified included the danger of development that is inconsistent with the built environment in the district; development of an excessive density; development providing too little publicly visible green space; and the dangers to the commercial core from encroaching residential development and difficult access. Opportunities identified included the possibility of upper story development over retail spaces in the commercial core; possible scenarios for redevelopment of sites in the commercial core; and the generally high quality of life.

In keeping with the charge of the DPC from the Board of Selectmen, Town staff developed three possible zoning by-law amendments that would help address these threats and opportunities in a more specific way than the relatively crude tool of the Coolidge Corner Interim Planning Overlay District. These three amendments were discussed at a DPC meeting in August. At that meeting, the DPC recommended that Town staff delay submission of one of the zoning articles, designed to encourage upper-story development in the commercial core by relaxing parking requirements, until

further work was completed on a transportation analysis. This article is one of the other two amendments, which the DPC voted to submit to Town Meeting.

This by-law amendment creates a new zoning district that generally permits residential development of three or fewer units on one parcel of land. In many ways this new zoning district, the "F" district, is the same as the existing "T" districts, with the exception of permitting three dwelling units on one parcel of land rather than only two. This proposed F district is similar to zoning districts in other municipalities, such as the "3F" zone in Allston-Brighton, the "RB" zone in Somerville and the "R3" zone in Arlington.

This article also expands a T-5 district slightly in the northwestern part of the Coolidge Corner district, based on an analysis of existing and appropriate uses on those parcels.

DPCD initially identified 117 parcels in three areas near Coolidge Corner that Town staff felt would be appropriate for this zoning district, all of which are currently in M (multi-family) zones. Some new areas were added to the proposed F zones based on the recommendations of DPC members; further planning analysis by Town staff; and a desire to maintain relatively contiguous zoning districts. In all, 153 parcels were added to the original list, although it is anticipated that some of the parcels included in the proposed F zones might be removed after further discussion regarding their overall characteristics and what zoning is appropriate for those areas.

PLANNING BOARD REPORT AND RECOMMENDATION

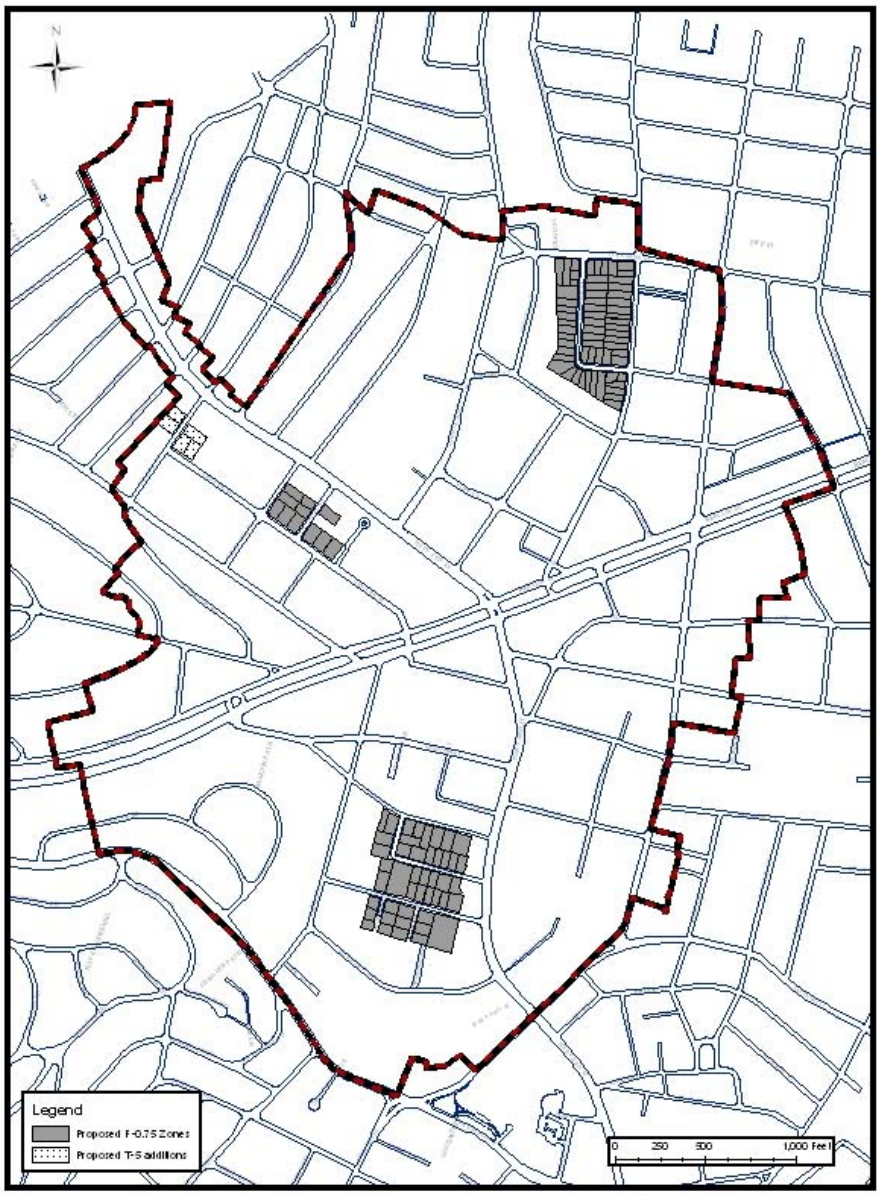
Article 4, submitted by the Department of Planning and Community Development (the Department), creates a new residential zoning district, F-0.75 (three family zone, with allowed FAR of 0.75) and changes some properties in the Coolidge Corner area from an M (multi-family) zone to F-0.75 and five additional properties to a T-5 (two family).

Currently, there are three residential zoning districts in Brookline: S for Single Family (only single family allowed), T for Two Family (single and two families allowed, and up to six attached single family townhouses by special permit), and M for Multi-family (single, two, attached townhouses, and three or more dwelling units allowed). The proposed Three Family district would have dimensional requirements in between those currently existing for the Two Family District and the Multi-Family district.

During the Interim Planning Overlay District period that was created by a zoning amendment passed by Town Meeting in Spring 2006, the Coolidge Corner District Planning Council, in conjunction with the Department, evaluated the current density, open space, and development pressures facing the Coolidge Corner area and proposed several zoning amendments to address future residential development. The Council will continue to study the core commercial area with the help of a transportation consultant, who is currently conducting a parking and traffic study, including evaluating revised parking requirements if upper story residential development were to be added to commercial buildings in the Coolidge Corner area.

At its Public Hearing on October 5, 2006, after listening to citizen comment and proposed revisions by Planning and Community Development Director Jeff Levine, the Planning Board voted to support the creation of a new three family district with several revisions, including significantly reducing the number of properties to be affected by the new zoning (see map below).

Proposed F-0.75 Zones and T-5 Zone
Planning Board Recommendation



The Planning Board felt that this zoning amendment was appropriate in order to reduce the economic incentive for demolishing some of the large Victorian and/or historic homes in these areas and to encourage preservation and reuse as three family dwellings. However, the Board was concerned about

making too many structures non-conforming and therefore supported designating far fewer parcels for the change to a three family zone (F - 0.75), as had been shown in an original map for the proposed zoning change. (See attached.) The Board believed that the properties in the expanded area should be analyzed further to determine the appropriate zoning for them that would balance protecting the area from over development with the rights of the property owners, many of whom voiced their objections at the hearing to making their properties non-conforming. If after further analysis, additional parcels are found appropriate to be rezoned, they could be proposed at a future date. The Board noted that by making structures non-conforming, either to use or size, that there could be significant insurance and financial implications, especially in light of Zoning By-Law, Section 8.03, Rebuilding After Catastrophe. This section prohibits restoring or rebuilding the same structure or use if the structure has been damaged 50% or more of its replacement value and is currently not allowed by the Zoning By-Law. Other amendments to the original language of Article 4 included permitting lodging houses by special permit in the F zone; removing the word "Detached" from the three-family use in order to explicitly permit three family attached dwellings; and by permitting some home occupations by right rather than by special permit.

The Planning Board (two members recusing) voted (2-1) to make a non-binding recommendation that the Zoning By-Law Committee study Section 8.03, Rebuilding After Catastrophe.

Then, the Planning Board (two members recusing) voted (2-1) to recommend FAVORABLE ACTION on Article 4 with the following revisions as indicated. The member voting "no" was generally supportive of the proposal as amended but wanted to see a list of the parcels included in the proposed amended areas and their current uses prior to voting in support.

To see if the Town will amend the Zoning By-law as follows:
(Please note that all proposed additions are underlined.)

1. By adding a new zoning district F-0.75 ("Three Family Zones"), replacing the existing zoning in the areas shown in the attached map.

2. By adding a new section 3.01.d. as follows:

   "d. Three Family (F)

   1) F-0.75"

   and renumbering the existing 3.01.d as 3.01.e.

3. By adding a new "F" heading under Section 4.07 ("Table of Use Regulations") with the same use designations as the existing "T" column, with the exception of the uses listed in Principal Use 4A below, that Prinicpal Use 7 ("Lodging House, Licensed and Unlicensed") should read "SP", and that Accessory Use 59 should read "Yes*".

4. By amending Section 4.07 ("Table of Use Regulations") by adding a new Principal Use 4A immediately after Principal Use 4:

Principal Uses	S	SC	T	F	M	L	G	O	I
4A. Dwelling on a separate lot for three families	No	No	No	Yes	Yes	Yes	Yes	No	Yes

Deleted: Detached dwelling

5. By amending Principal Use to read as follows:

6. Multiple or attached dwelling of four or more units other than the preceding item divided into dwelling units each occupied by not more than one family but not including lodging house, hotel, dormitory, fraternity or sorority. *Compliance with **§4.08** required if containing 6 or more dwelling units Permitted by special permit in S-0.5P and S-0.75P Districts subject to **§5.06.** In L and G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use

6. By amending Section 5.01 ("Table of Dimensional Requirements") by adding a new district F-0.75 immediately following T-5 as follows:

DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM (feet)	LOT WIDTH MAXIMUM (feet)	HEIGHT[9] MAXIMUM	Front Yard	Side Yard	Rear Yard	Open Space Landsc.	Open Space Usable
F-0.75	1-family detached dwelling	4,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	2-family detached dwelling	5,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	3-family detached dwelling	6,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	Any other structure or prinicipal use	5,000	0.75	60	40	15	10+ L'/10	30	10%	30%

7. Amend footnote 2 in Section 5.01 ("Table of Dimensional Requirements") to read as follows:

"2. At the end of each row or block of one-family attached dwellings, a yard shall be provided along the street line or side lot line of at least ten feet plus one foot for each dwelling unit in excess of two. In T districts, see also §5.48. In M **and F** districts, a building subject to the side yard formula: 10+L/10 may be built to the side lot line: (a) as a matter of right if, on the adjoining lot, a principal building with no setback from that lot line already exists or is proposed to be built concurrently; (b) by special permit if the Board of Appeals finds that reasonable development of the lot necessitates building to the side lot line, such action does not unreasonably infringe upon the light and air of any existing adjoining building, and the party wall is solid and has neither doors nor windows. A building with no side yard shall not have a building wall on the side lot line extending more than 70 feet to the rear of the front yard required by this By-law; except that a building wall may be located along any part of a side lot line on which a principal building on the adjoining lot abuts between the rear yard required by this By-law and the required front yard line. Where building walls more than 70 feet to the rear of the required front yard are not permitted to be built along the side lot line, said walls shall have a side yard setback not less than: 10+L/10 the "L" dimension being that portion of the wall required to be set back from the side lot line."

, and

8. By changing the zoning of five properties shown on attached map from the M-1.0 and M-1.5 districts to the T-5 zoning district.

SELECTMEN'S RECOMMENDATION

Article 4 was filed by the Department of Planning and Community Development and is a direct outcome of the Coolidge Corner District Planning Council's work on the Coolidge Corner IPOD. The Selectmen appreciate the efforts of the Coolidge Corner District Planning Council and the Department of Planning and Community Development to develop an approach to protect pockets of three-family uses that exist in the area around Coolidge Corner. The current zoning does not provide adequate protection for these areas, while a rezoning to T would not be consistent with the large number of three-family units in these areas.

The Selectmen agree with the Planning Board, Zoning Bylaw Committee and Advisory Committee that the proposed language required some amendments to continue to permit lodging houses by Special Permit and certain Home Occupations by right. The Selectmen also agree with other changes that eliminate setback requirements for attached dwellings and clarify that attached three family dwellings are permitted.

The initial proposal submitted under Article 4 included approximately 270 parcels. Upon further analysis, the Selectmen agree with the Advisory Committee that many of these parcels require further analysis to determine if they should be included in the F-0.75 zone, remain in their existing zoning districts, or perhaps be included in a new zoning proposal that would find a middle ground between three-family and multi-family zoning. The Selectmen therefore recommend that the proposed map for the F-0.75 district be scaled back to approximately 90 parcels that are predominately consistent with the purpose of this zoning amendment.

The process of developing this article raised a Town-wide issue related to Section 8.03.2., which requires that nonconforming uses and structures that are damaged by catastrophes be rebuilt to conform to existing zoning. This issue has come up as a possible concern relating to Article 4, but is actually a much larger concern in areas such as Beacon Street where large buildings exist in areas that would currently require much smaller buildings. There are possible concerns about this section with respect to ability to obtain financing and/or insurance, but perhaps more importantly there is a basic issue related to fairness and the ability of displaced residents to rebuild and remain in their homes. A general overview has suggested that, in actual fact, any residents who have been unlucky enough to experience such catastrophes have been able to receive relief from existing zoning requirements to rebuild, but the concern remains nonetheless. While this section may not have seemed onerous when initially approved, given the trend towards more restrictive zoning in the past 20 years, the Selectmen are concerned that this section should be studied for possible revision.

The Selectmen discussed the proposal of the Advisory Committee to rename the proposed zoning district 'TR-0.75" rather than "F-0.75" but felt that the "F" designation was simpler and evoked the idea of a "family" district that was appealing. This is the only difference between the Board's vote and the Advisory Committee's vote.

The Selectmen recommended (4-1) FAVORABLE ACTION on the following language and map:

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

1. By adding a new zoning district F-0.75 ("Three Family Zones"), replacing the existing zoning in the areas shown in the attached map.

2. By adding a new section 3.01.d. as follows:

   "d. Three Family (F)

   1) F-0.75"

   and renumbering the existing 3.01.d as 3.01.e.

3. By adding a new "F" heading under Section 4.07 ("Table of Use Regulations") with the same use designations as the existing "T" column, with the exception of the uses listed in Principal Use 4A below, that Prinicpal Use 7 ("Lodging House, Licensed and Unlicensed") should read "SP", and that Accessory Use 59 should read "Yes*".

4. By amending Section 4.07 ("Table of Use Regulations") by adding a new Principal Use 4A immediately after Principal Use 4:

Principal Uses	S	SC	T	F	M	L	G	O	I
4A. Dwelling on a separate lot for three families	No	No	No	Yes	Yes	Yes	Yes	No	Yes

~~5.~~ By amending Principal Use 6to read as follows:

6. Multiple or attached dwelling of four or more units other than the preceding item divided into dwelling units each occupied by not more than one family but not including lodging house, hotel, dormitory, fraternity or sorority.

*Compliance with **§4.08** required if containing 6 or more dwelling units

Permitted by special permit in S-0.5P and S-0.75P Districts subject to **§5.06.**

In L and G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use

6. By amending Section 5.01 ("Table of Dimensional Requirements") by adding a new district F-0.75 immediately following T-5 as follows:

DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM (feet)	LOT WIDTH MAXIMUM (feet)	HEIGHT[9] MAXIMUM	Front Yard	Side Yard	Rear Yard	Open Space Landsc.	Open Space Usable
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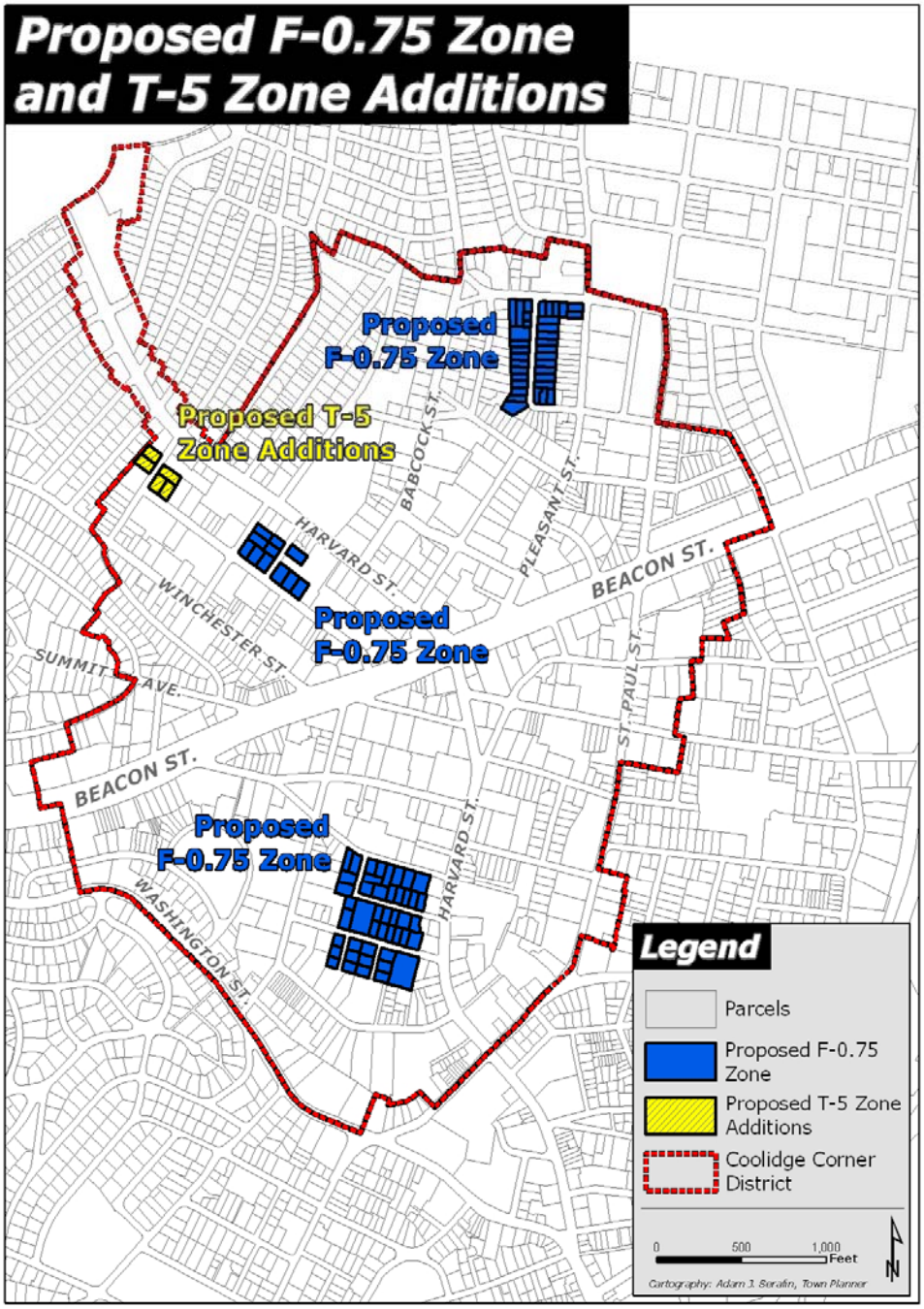
	2-family detached dwelling	5,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	3-family detached dwelling	6,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	Any other structure or prinicipal use	5,000	0.75	60	40	15	10+ L'/10	30	10%	30%

7. Amend footnote 2 in Section 5.01 ("Table of Dimensional Requirements") to read as follows:

> "2. At the end of each row or block of one-family attached dwellings, a yard shall be provided along the street line or side lot line of at least ten feet plus one foot for each dwelling unit in excess of two. In T districts, see also §5.48. In M **and F** districts, a building subject to the side yard formula: 10+L/10 may be built to the side lot line: (a) as a matter of right if, on the adjoining lot, a principal building with no setback from that lot line already exists or is proposed to be built concurrently; (b) by special permit if the Board of Appeals finds that reasonable development of the lot necessitates building to the side lot line, such action does not unreasonably infringe upon the light and air of any existing adjoining building, and the party wall is solid and has neither doors nor windows. A building with no side yard shall not have a building wall on the side lot line extending more than 70 feet to the rear of the front yard required by this By-law; except that a building wall may be located along any part of a side lot line on which a principal building on the adjoining lot abuts between the rear yard required by this By-law and the required front yard line. Where building walls more than 70 feet to the rear of the required front yard are not permitted to be built along the side lot line, said walls shall have a side yard setback not less than: 10+L/10 the "L" dimension being that portion of the wall required to be set back from the side lot line."

, and

8. By changing the zoning of five properties shown on attached map from the M-1.0 and M-1.5 districts to the T-5 zoning district.


Proposed F-0.75 Zone and T-5 Zone Additions
Proposed F-0.75 Zone
Proposed T-5 Zone Additions
Proposed F-0.75 Zone
Proposed F-0.75 Zone
BABCOCK ST.
PLEASANT ST.
HARVARD ST.
BEACON ST.
WINCHESTER ST.
SUMMIT AVE.
ST. PAUL ST.
BEACON ST.
HARVARD ST.
WASHINGTON ST.
Legend
Parcels
Proposed F-0.75 Zone
Proposed T-5 Zone Additions
Coolidge Corner District
0
500
1,000
Feet
N
Cartography: Adam J. Serafin, Town Planner

Proposed F-0.75 Zone

Coolidge Corner District

Parcel #	Address	Existing Zoning
035-13-00	222 FREEMAN ST	M-1.0
035-14-00	218 FREEMAN ST	M-1.0
035-15-00	214/216 FREEMAN ST	M-1.0
035-16-00	126 BROWNE ST	M-1.0
035-17-00	124 BROWNE ST	M-1.0
035-18-00	120 BROWNE ST	M-1.0
035-19-00	116 BROWNE ST	M-1.0
035-20-00	112 BROWNE ST	M-1.0
035-21-00	110 BROWNE ST	M-1.0
035-22-00	106 BROWNE ST	M-1.0
035-23-00	102 BROWNE ST	M-1.0
035-24-00	100 BROWNE ST	M-1.0
035-25-00	96 BROWNE ST	M-1.0
035-26-00	94 BROWNE ST	M-1.0
035-27-00	92 BROWNE ST	M-1.0
035-28-00	90 BROWNE ST	M-1.0
036-01-00	208 FREEMAN ST	M-1.0
036-01-01	206 FREEMAN ST	M-1.0
036-01-02	202 FREEMAN ST	M-1.0
036-02-00	200 FREEMAN ST	M-1.0
036-03-00	142/144 PLEASANT ST	M-1.0
036-04-00	140 PLEASANT ST	M-1.0
036-19-00	83 BROWNE ST	M-1.0
036-20-00	85 BROWNE ST	M-1.0
036-21-00	87 BROWNE ST	M-1.0
036-22-00	101 BROWNE ST	M-1.0
036-23-00	103 BROWNE ST	M-1.0
036-24-00	105 BROWNE ST	M-1.0
036-25-00	107 BROWNE ST	M-1.0
036-26-00	111 BROWNE ST	M-1.0
036-27-00	115 BROWNE ST	M-1.0
036-28-00	119 BROWNE ST	M-1.0
036-29-00	121 BROWNE ST	M-1.0
036-30-00	125 BROWNE ST	M-1.0
036-31-00	127 BROWNE ST	M-1.0
081-04-00	9 SHAILER ST	M-1.0
081-05-00	15 SHAILER ST	M-1.0
081-06-00	69 CENTRE ST/19 SHAILER ST	M-1.0
081-07-00	75 CENTRE ST	M-1.0
081-08-00	24 WILLIAMS ST	M-1.0
081-09-00	16 WILLIAMS ST	M-1.0
081-10-00	12 WILLIAMS ST	M-1.0
082-21-00	51 CENTRE ST	M-1.0
082-22-00	53 CENTRE ST	M-1.0
082-23-00	61 CENTRE ST	M-1.0

082-25-00	10/12 SHAILER ST	M-1.0
168-02-00	11 HARRIS ST	M-1.0
168-03-00	17 HARRIS ST	M-1.0
168-04-00	19 HARRIS ST	M-1.0
168-05-00	21 HARRIS ST	M-1.0
168-06-00	23 HARRIS ST	M-1.0
168-07-00	31 HARRIS ST	M-1.0
168-08-00	49 HARRIS ST	M-1.0
168-09-00	57 HARRIS ST	M-1.0
168-10-00	36 VERNON ST	M-1.0
168-11-00	32 VERNON ST	M-1.0
168-12-00	26/28 VERNON ST	M-1.0
168-13-00	22 VERNON ST	M-1.0
168-14-00	18 VERNON ST	M-1.0
168-15-00	12 VERNON ST	M-1.0
169-12-00	44/46 VERNON ST	M-1.0
169-13-00	42 VERNON ST	M-1.0
169-14-00	50 HARRIS ST	M-1.0
169-15-00	44/46 HARRIS ST	M-1.0
169-16-00	42 HARRIS ST	M-1.0
169-17-00	37 AUBURN ST	M-1.0
169-18-00	28/30 HARRIS ST	M-1.0
169-19-00	24/26 HARRIS ST	M-1.0
169-20-00	22 HARRIS ST	M-1.0
169-21-00	16 HARRIS ST	M-1.0
169-22-00	12 HARRIS ST	M-1.0
169-25-00	15 AUBURN ST	M-1.0
169-26-00	17 AUBURN ST	M-1.0
169-27-00	21 AUBURN ST	M-1.0
169-28-00	23 AUBURN ST	M-1.0
169-29-00	27/29 AUBURN ST	M-1.0
169-30-00	31/33 AUBURN ST	M-1.0
169-31-00	45 AUBURN ST	M-1.0
170-04-00	48 AUBURN ST	M-1.0
170-05-00	9 AUBURN PL	M-1.0
170-06-00	15 AUBURN PL	M-1.0
170-07-00	14 AUBURN PL	M-1.0
170-08-00	10 AUBURN PL	M-1.0
170-09-00	40 AUBURN ST	M-1.0
170-10-00	32 AUBURN ST	M-1.0
170-10-01	2 WASHBURN PL	M-1.0
170-10-02	4 WASHBURN PL	M-1.0
170-11-00	3 WASHBURN PL	M-1.0
170-12-00	1 WASHBURN PL	M-1.0
170-13-00	24 AUBURN ST	M-1.0
170-14-00	1-10 AUBURN CT	M-1.0

Proposed T-5 Zone Additions

Parcel #	Address	Existing Zoning
077-13-00	44 FULLER ST	M-1.5

077-14-00	38 FULLER ST	M-1.5
078-20-00	39 FULLER ST	M-1.0
078-19-00	129 CENTRE ST	M-1.0
078-18-00	123 CENTRE ST	M-1.0

ROLL CALL VOTE:

Favorable Action	No Action
Allen	Merrill
Hoy	
Daly	
DeWitt	

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 4 establishes a new residential zoning district specifically geared to permit and preserve Brookline's three family districts. The zoning bylaw currently has specific districts for single family and two family homes. (S and T districts respectively.) Zoning which permits three family homes would currently fall generally into the many "M" districts in town. M stands for "Multi family" and also covers buildings with more than three units. The goal of this rezoning is to reduce the economic incentive of developing more than 3 units in areas where that is appropriate. This zoning article was drafted by the Planning and Community Development Department in response to concerns raised during the proceedings of the Coolidge Corner District Planning Council. The article also changes five additional properties to a T-5 (two family) zone. The Planning and Community Development Department sent notices to all property owners in the listed in the warrant. Note that the Advisory Committee motion covers a much smaller number of parcels than the original proposal.

DISCUSSION

Article 4 grew out of a concern about the increasing density of proposed development over the past few years, which has the potential of changing the character of the neighborhood surrounding Coolidge Corner. This concern led to the establishment of the Coolidge Corner District Planning Council (CCDPC) and the Coolidge Corner IPOD.

All the areas proposed for rezoning are currently zoned as M at various Floor to Area Ratio (FAR) limits. M zones are geared towards multi family housing. Even though zoned M and that some of the areas in the Coolidge Corner District contain apartment buildings, other parts of the area are comprised of singles, twos and threes. The Zoning Bylaw contains S and T districts for singles and twos respectively, but there is no similar district geared for areas of three family homes. Areas that are predominately threes are generally zoned as M which encourages development denser than 3 family homes. The goal of this article is to preserve those areas that are predominately three family and below.

The Three Family Zone in concept was presented to the CCDPC in July, with the details presented and voted at an August meeting.

When originally drafted, the proposed map had about 120 parcels in the proposed Three Family district. Of the 120 parcels, 105 were 3 families or less (87.5% use compliance.) The Planning

Council was then asked by the Planning Department to examine the list and suggest other areas which should in the proposed Three Family zone. Out of that process, about 170 properties were added including some properties in the Harvard Ave. Historic District. Of the 170 added properties, 120 were 3 families or less (70.5 use compliance); a much lower degree of use compliance than in the original list. We were told that the thinking was to get a larger list into the warrant which could be winnowed in the vetting and public hearing process leading up to Town Meeting.

During the Advisory Committee's public process, including two public hearings by the Planning and Regulation Subcommittee, most speakers seemed to be general agreement on the need to preserve the neighborhood character of areas which are predominantly comprised of three family homes (detached and row houses), and a recognition that the zoning bylaw doesn't contain such a tool which meets this goal currently.

The Planning and Regulation Subcommittee did hear comments from a couple of speakers including one representing the Small Property Owners Association based in Cambridge, MA. that this zoning would reduce property values and thus the town's tax base. It also limits adding units to existing properties. Such units, which could be added in an attic or basement, for example, are sometimes the source of additional affordable housing units.

The Advisory Committee analysis turned to focusing on (1) which properties to include in the district in order to meet the goal of preserving the character of neighborhoods which are primarily three family homes or smaller and (2) the effects of non conformance.

Effects of non conformance

Brookline's zoning by-law is very strict with regard to nonconforming uses that are destroyed by a disaster. Specifically, Section 8.03.2 says that:

> "If a nonconforming building or use shall have been damaged or destroyed by fire, explosion, or other catastrophe to such an extent that the cost of restoration would equal or exceed 50 percent of the replacement value of the building at the time of the catastrophe, such building or use shall not be restored and may be replaced only by a conforming building or use."

We have been told that this section was first included in the zoning bylaw in the 1960s. This section creates some significant concerns regarding down zoning to the point of creating nonconforming uses. Under section 8.03.2, such destroyed buildings would not be able to be reconstructed by right in the event of such catastrophes.

When considering non conformance, we need to consider not only the use of the parcel but also the permitted parcel size, Floor to Area Ratio (FAR) and setbacks. We also need to consider the rules for exceptions, i.e., whether a special permit or variance is required for an exception or whether an exception is even permitted. (Consider, too, that Article 5 at this Town Meeting is written to reduce the flexibility of the Zoning Board of Appeals to grant setback exceptions.)

The practical effect in terms of drafting the zoning map is that we need to be very mindful of creating non-conformance as a matter of public policy. In the event of a fire or other disaster, do we really not want to allow the property to be rebuilt? (Note that the Planning Department found that a number of non conforming properties which were destroyed by fire were able to get the variances necessary to rebuild despite section 8.03.2.)

If we create non conformance by rezoning an area, it should be done deliberatively and with the intent that over time we actually want a neighborhood to change. Given the extent of legal non conformance throughout the town, the Advisory Committee suggests that the Planning and Community Development Department consider whether 8.03.2 should be revised to permit rebuilding within existing building footprints after a catastrophe. That consideration is clearly outside of the scope of the warrant for this Town Meeting.

We were told that the intent of Article 4 was to preserve the character of existing neighborhoods. It was not to encourage change. Given the philosophical underpinnings of this warrant article, the Advisory Committee wanted the new zone to create as few non conforming properties as possible while creating districts that made sense from a planning perspective and would pass legal muster.

Which parcels should be included in the Three Family zones?

Most of the Advisory Committee public process with respect to which parcels should be included revolved around parcels added beyond the Planning and Community Development Department original recommendation. There was a higher degree of non conforming properties in those added areas. While some of the properties could potentially benefit from being included in this district, many were apartment buildings that would have been extremely non conforming and seemed to be included to prevent more dense development; a purpose beyond the stated purpose of the article.

Based on these comments and the lack of time to perform a detailed careful study of all the parcels, the Planning Department recommended that the District be scaled back to their original proposal and that over the next 6-12 months they carefully study other parcels for candidates to be included in the Three Family zones. The Planning Board accepted this recommendation, as did the Advisory Committee.

The Advisory Committee motion removes some additional properties which were in the Planning Department's original proposal from the new zone. There was an existing cluster of row homes and apartment buildings on Pleasant and Browne Streets which are currently zoned M-1.5 which also would have been non-conforming as to FAR and/or use. The Advisory Committee motion removes those homes from the new district.

What we are left with are three contiguous clusters of predominantly 3 family homes with extremely low levels of non-compliance as to use. The revised map contains 91 parcels, down from the approximately 270 parcels in the original proposal.

Other Details

The Three Family zone was drafted to be a middle ground between the T and M. Two areas where the T provisions were carried into the proposal were with respect to permitted uses and side yard setbacks.

1. Side yard setbacks for row houses.

The article was drafted with the side yard setback provisions of a T (Two Family) zone. The existing M zone has a provision that allows no setbacks for attached dwellings (row homes) under certain circumstances. The Planning Department recommended that the setback footnote for M districts cover the Three Family District. Since this maintains the status quo in that all affected parcels are in M districts currently, it is within the scope of the warrant. The Advisory Committee motion accepted the Planning Department recommendation.

2. Permitted Uses

The original permitted use table was carried over from the existing T district for the most part. T Districts do not allow Lodging Houses and also require a special permit for all home offices (Accessory Use 59). M Districts permit lodging houses by special permit and allow small home offices by right and larger ones by special permit. The intent was not to change the permitted uses in the affected areas so the Planning Department recommended that the status quo be maintained with respect to uses. Again, the Advisory Committee motion accepts the Planning Department recommendation.

3. District Letter Designation

The Planning Department draft designated the new district as an "F" district. Beside the obvious ability to generate jokes regarding the name (and many jokes were generated!), some on the Advisory Committee noticed that the other letters which designate districts have some relationship to what they regulate. For example, S for single family homes, T for Two Family, M for Multi Family, I for Industrial, etc. Here, F had no obvious relationship to the term "Three Family." To make our zoning bylaw a little easier to comprehend, the Advisory Committee felt that the letter designation should have some meaning. The Committee settled on "TR" for "Triple Family."

RECOMMENDATION

The Advisory Committee believes that the public process for this article has effectively winnowed the list of potential properties to a point where the zone will actually meet its goal of preserving areas of predominantly 3 family homes. The original list of properties to be covered by this article had far too many non-conforming homes. The Advisory Committee by a 14-3-2 vote recommends FAVORABLE ACTION on the following vote:

VOTED: To amend the Zoning By-law as follows:

1. By adding a new zoning district TR-0.75 ("Three Family Zones"), replacing the existing zoning in the areas shown in the attached map.

2. By adding a new section 3.01.d. as follows:

"d. Three Family (F)

1) TR-0.75"

and renumbering the existing 3.01.d as 3.01.e.

3. By adding a new "TR" heading under Section 4.07 ("Table of Use Regulations") with the same use designations as the existing "T" column, with the exception of the uses listed in Principal Use 4A below, that Principal Use 7 ("Lodging House, Licensed and Unlicensed") should read "SP", and that Accessory Use 59 should read "Yes*".

4. By amending Section 4.07 ("Table of Use Regulations") by adding a new Principal Use 4A immediately after Principal Use 4:

Principal Uses	S	SC	T	TR	M	L	G	O	I
4A. Dwelling on a separate lot for three families	No	No	No	Yes	Yes	Yes	Yes	No	Yes

~~**5.**~~ By amending Principal Use 6. to read as follows:

> 6. Multiple or attached dwelling of four or more units other than the preceding item divided into dwelling units each occupied by not more than one family but not including lodging house, hotel, dormitory, fraternity or sorority.
>
> *Compliance with **§4.08** required if containing 6 or more dwelling units
>
> Permitted by special permit in S-0.5P and S-0.75P Districts subject to **§5.06.**
>
> In L and G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use

6. By amending Section 5.01 ("Table of Dimensional Requirements") by adding a new district TR-0.75 immediately following T-5 as follows:

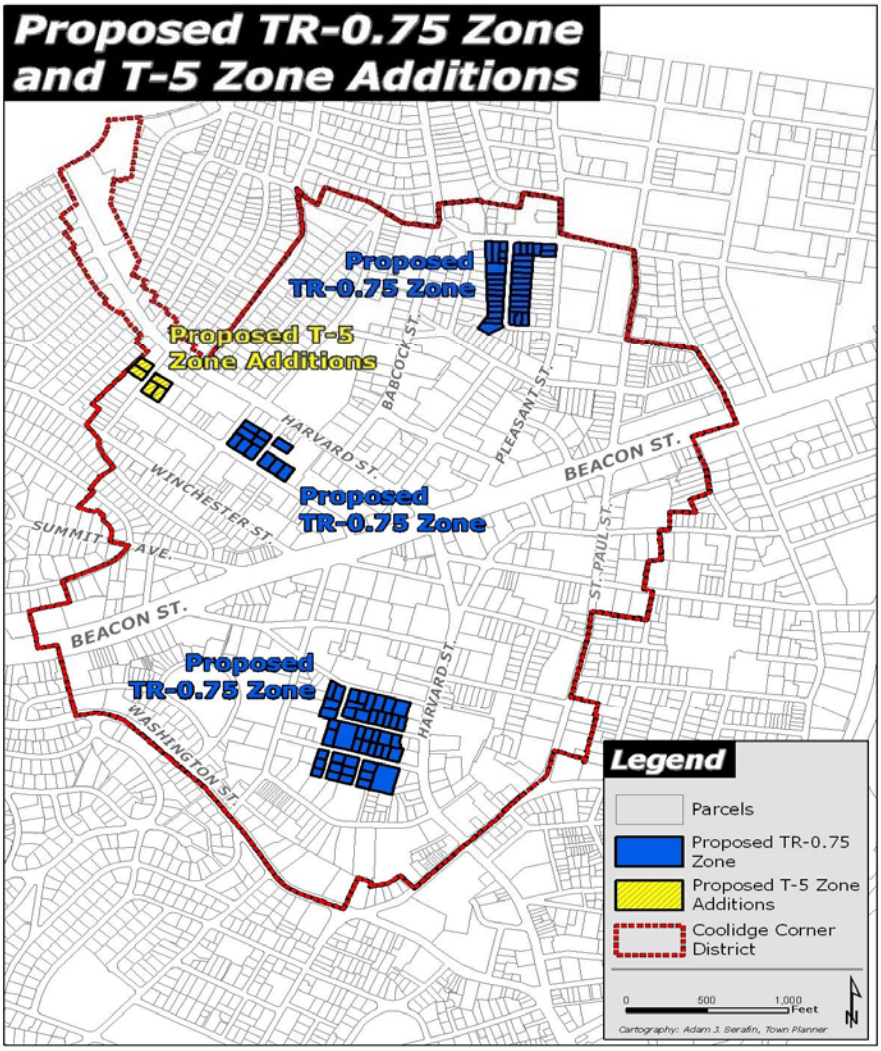
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM (feet)	LOT WIDTH MAXIMUM (feet)	HEIGHT[9] MAXIMUM	Front Yard	Side Yard	Rear Yard	Open Space Landsc.	Open Space Usable
TR-0.75	1-family detached dwelling	4,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	2-family detached dwelling	5,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	3-family detached dwelling	6,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	Any other structure or principal use	5,000	0.75	60	40	15	10+ L'/10	30	10%	30%

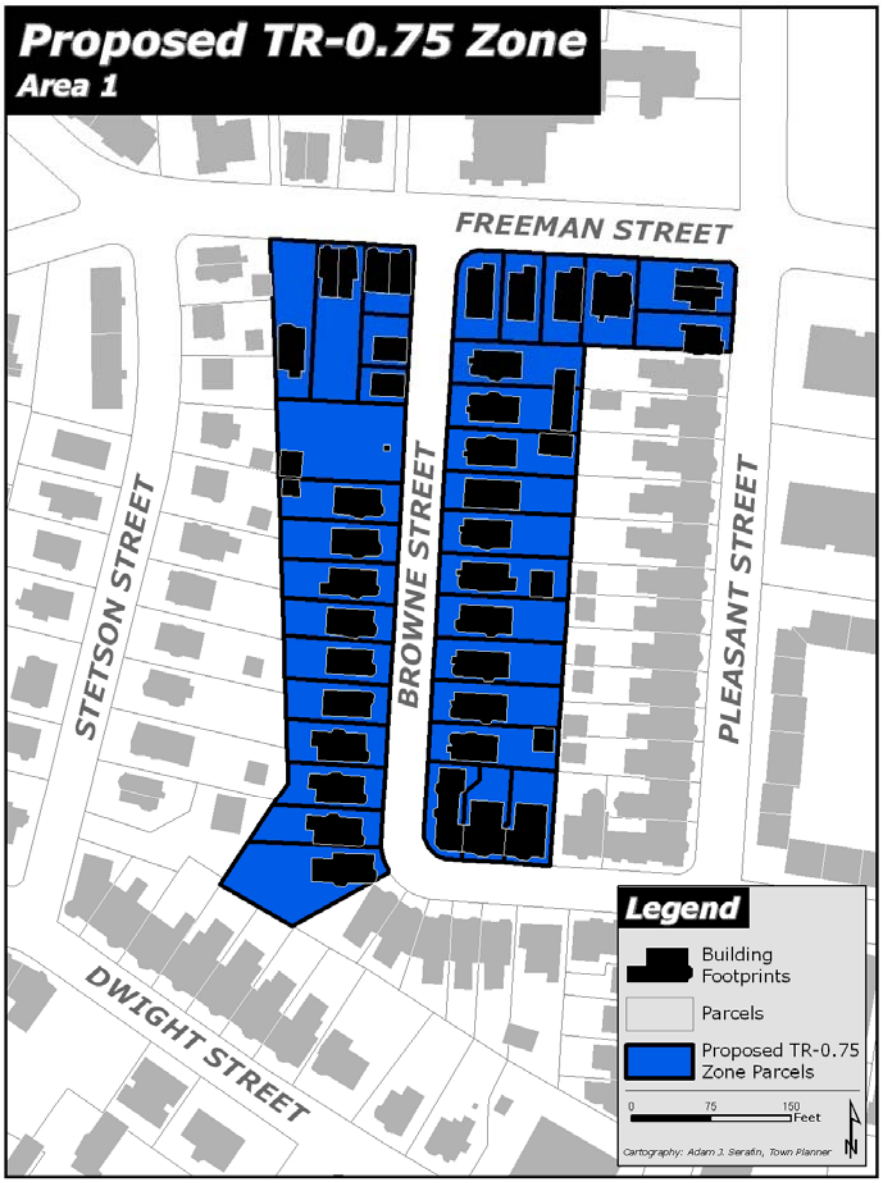
7. Amend footnote 2 in Section 5.01 ("Table of Dimensional Requirements") to read as follows:

> "2. At the end of each row or block of one-family attached dwellings, a yard shall be provided along the street line or side lot line of at least ten feet plus one foot for each dwelling unit in excess of two. In T districts, see also §5.48. In M **and TR** districts, a building subject to the side yard formula: 10+L/10 may be built to the side lot line: (a) as a matter of right if, on the adjoining lot, a principal building with no setback from that lot line already exists or is proposed to be built concurrently; (b) by special permit if the Board of Appeals finds that reasonable development of the lot necessitates building to the side lot line, such action does not unreasonably infringe upon the light and air of any existing adjoining building, and the party wall is solid

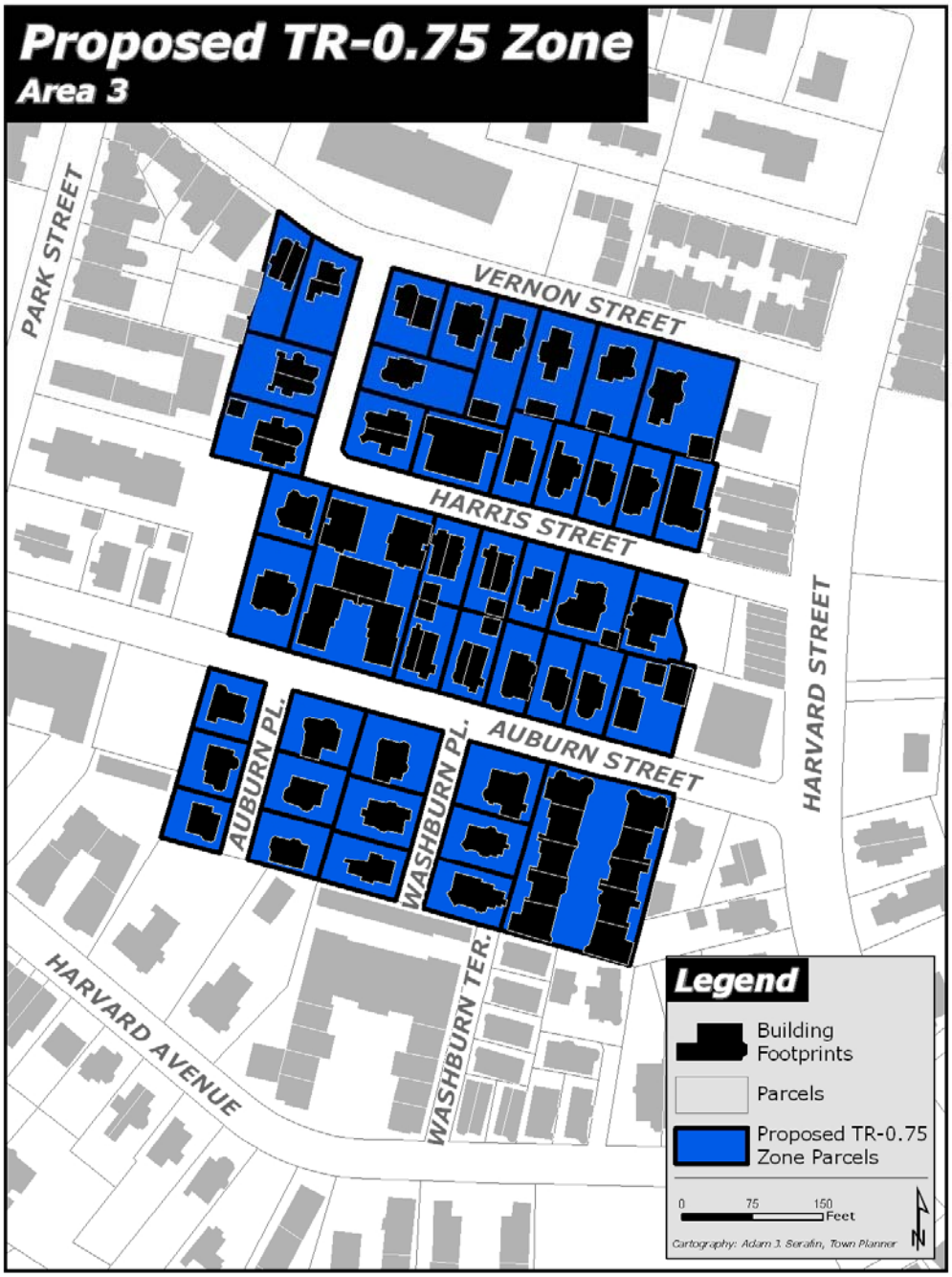
and has neither doors nor windows. A building with no side yard shall not have a building wall on the side lot line extending more than 70 feet to the rear of the front yard required by this By-law; except that a building wall may be located along any part of a side lot line on which a principal building on the adjoining lot abuts between the rear yard required by this By-law and the required front yard line. Where building walls more than 70 feet to the rear of the required front yard are not permitted to be built along the side lot line, said walls shall have a side yard setback not less than: 10+L/10 the "L" dimension being that portion of the wall required to be set back from the side lot line."; and,

8. By changing the zoning of five properties shown on attached map from the M-1.0 and M-1.5 districts to the T-5 zoning district.




Proposed TR-0.75 Zone
Area 1
FREEMAN STREET
STETSON STREET
BROWNE STREET
PLEASANT STREET
DWIGHT STREET
Legend
Building Footprints
Parcels
Proposed TR-0.75 Zone Parcels
0
75
150
Feet
N
Cartography: Adam J. Serafin, Town Planner

Proposed TR-0.75 Zone
Area 2
HARVARD STREET
WILLIAMS STREET
SHAILER STREET
CENTRE STREET
WELLMAN STREET
WINCHESTER STREET
Legend
Building Footprints
Parcels
Proposed TR-0.75 Zone Parcels
0
75
150
Feet
N
Cartography: Adam J. Serafin, Town Planner


Proposed TR-0.75 Zone
Area 3
PARK STREET
VERNON STREET
HARRIS STREET
AUBURN STREET
HARVARD STREET
AUBURN PL.
WASHBURN PL.
WASHBURN TER.
HARVARD AVENUE
Legend
Building Footprints
Parcels
Proposed TR-0.75 Zone Parcels
0
75
150
Feet
N
Cartography: Adam J. Serafin, Town Planner

Proposed T-5 Zone Additions
COOLIDGE ST.
HARVARD STREET
FULLER STREET
CENTRE STREET
Legend
Building Footprints
Parcels
Proposed T-5 Zone Additions
0
50
100
Feet
N
Cartography: Adam J. Serafin, Town Planner

Properties affected by map:
Change to TR-0.75 Zoning District

Block Number / Lot Number	House Number	Street
170-14-00	1	AUBURN CT
170-05-00	9	AUBURN PL
170-08-00	10	AUBURN PL
170-07-00	14	AUBURN PL
170-06-00	15	AUBURN PL
169-25-00	15	AUBURN ST
169-26-00	17	AUBURN ST
169-27-00	21	AUBURN ST
169-28-00	23	AUBURN ST
170-13-00	24	AUBURN ST
170-10-00	32	AUBURN ST
169-17-00	37	AUBURN ST
170-09-00	40	AUBURN ST
169-31-00	45	AUBURN ST
170-04-00	48	AUBURN ST
169-29-00	27-29	AUBURN ST
169-30-00	31-33	AUBURN ST
036-19-00	83	BROWNE ST
036-20-00	85	BROWNE ST
036-21-00	87	BROWNE ST
035-28-00	90	BROWNE ST
035-27-00	92	BROWNE ST
035-26-00	94	BROWNE ST
035-25-00	96	BROWNE ST
035-24-00	100	BROWNE ST
036-22-00	101	BROWNE ST
035-23-00	102	BROWNE ST
036-23-00	103	BROWNE ST
036-24-00	105	BROWNE ST
035-22-00	106	BROWNE ST
036-25-00	107	BROWNE ST
035-21-00	110	BROWNE ST
036-26-00	111	BROWNE ST
035-20-00	112	BROWNE ST
036-27-00	115	BROWNE ST
035-19-00	116	BROWNE ST
036-28-00	119	BROWNE ST
035-18-00	120	BROWNE ST
036-29-00	121	BROWNE ST
035-17-00	124	BROWNE ST
036-30-00	125	BROWNE ST
035-16-00	126	BROWNE ST
036-31-00	127	BROWNE ST
082-21-00	51	CENTRE ST
082-22-00	53	CENTRE ST
082-23-00	61	CENTRE ST
081-06-00	69	CENTRE ST

Block Number / Lot Number	House Number	Street
081-07-00	75	CENTRE ST
036-02-00	200	FREEMAN ST
036-01-02	202	FREEMAN ST
036-01-01	206	FREEMAN ST
036-01-00	208	FREEMAN ST
035-14-00	218	FREEMAN ST
035-13-00	222	FREEMAN ST
035-15-00	214-216	FREEMAN ST
168-02-00	11	HARRIS ST
169-22-00	12	HARRIS ST
169-21-00	16	HARRIS ST
168-03-00	17	HARRIS ST
168-04-00	19	HARRIS ST
168-05-00	21	HARRIS ST
169-20-00	22	HARRIS ST
168-06-00	23	HARRIS ST
169-18-00	28	HARRIS ST
168-07-00	31	HARRIS ST
169-16-00	42	HARRIS ST
169-14-00	50	HARRIS ST
168-09-00	57	HARRIS ST
169-19-00	24-26	HARRIS ST
168-08-00	37 & 49	HARRIS ST
169-15-00	44-46	HARRIS ST
036-04-00	140	PLEASANT ST
036-03-00	142-144	PLEASANT ST
081-04-00	9	SHAILER ST
081-05-00	15	SHAILER ST
082-25-00	10-12	SHAILER ST
168-15-00	12	VERNON ST
168-14-00	18	VERNON ST
168-13-00	22	VERNON ST
168-11-00	32	VERNON ST
168-10-00	36	VERNON ST
169-13-00	42	VERNON ST
168-12-00	26-28	VERNON ST
169-12-00	44-46	VERNON ST
170-12-00	1	WASHBURN PL
170-10-01	2	WASHBURN PL
170-11-00	3	WASHBURN PL
170-10-02	4	WASHBURN PL
081-10-00	12	WILLIAMS ST
081-09-00	16	WILLIAMS ST
081-08-00	24	WILLIAMS ST

Change to T-5

Block Number / Lot Number	House Number	Street
078-18-00	123	CENTRE ST
078-19-00	129	CENTRE ST

078-14-00	38 FULLER ST
078-20-00	39 FULLER ST
077-13-00	44 FULLER ST

XXX

PLANNING BOARD
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Mark J. Zarrillo, Clerk
Linda K. Hamlin
Steven A. Heikin
Jerome I. Kampler

Town of Brookline
Massachusetts

ARTICLE IV

PLANNING BOARD REPORT AND RECOMMENDATION

Article 4, submitted by the Department of Planning and Community Development (the Department), creates a new residential zoning district, F-0.75 (three family zone, with allowed FAR of 0.75) and changes some properties in the Coolidge Corner area from an M (multi-family) zone to F-0.75 and five additional properties to a T-5 (two family).

Currently, there are three residential zoning districts in Brookline: S for Single Family (only single family allowed), T for Two Family (single and two families allowed, and up to six attached single family townhouses by special permit), and M for Multi-family (single, two, attached townhouses, and three or more dwelling units allowed). The proposed Three Family district would have dimensional requirements in between those currently existing for the Two Family District and the Multi-Family district.

During the Interim Planning Overlay District period that was created by a zoning amendment passed by Town Meeting in Spring 2006, the Coolidge Corner District Planning Council, in conjunction with the Department, evaluated the current density, open space, and development pressures facing the Coolidge Corner area and proposed several zoning amendments to address future residential development. The Council will continue to study the core commercial area with the help of a transportation consultant, who is currently conducting a parking and traffic study, including evaluating revised parking requirements if upper story residential development were to be added to commercial buildings in the Coolidge Corner area.

At its Public Hearing on October 5, 2006, after listening to citizen comment and proposed revisions by Planning and Community Development Director Jeff Levine, the Planning Board voted to support the creation of a new three family district with several revisions, including significantly reducing the number of properties to be affected by the new zoning (see attached map).

The Planning Board felt that this zoning amendment was appropriate in order to reduce the economic incentive for demolishing some of the large Victorian and/or historic homes in these areas and to encourage preservation and reuse as three family dwellings. However, the Board was concerned about making too many structures non-conforming and therefore supported designating far fewer parcels for the change to a three family zone (F - 0.75), as had been shown in an original map for the proposed zoning change. (See attached.) The Board believed that the properties in the expanded area should be analyzed further to determine the appropriate zoning for them that would balance protecting the area from over development

with the rights of the property owners, many of whom voiced their objections at the hearing to making their properties non-conforming. If after further analysis, additional parcels are found appropriate to be rezoned, they could be proposed at a future date. The Board noted that by making structures non-conforming, either to use or size, that there could be significant insurance and financial implications, especially in light of Zoning By-Law, Section 8.03, Rebuilding After Catastrophe. This section prohibits restoring or rebuilding the same structure or use if the structure has been damaged 50% or more of its replacement value and is currently not allowed by the Zoning By-Law. Other amendments to the original language of Article 4 included permitting lodging houses by special permit in the F zone; removing the word "Detached" from the three-family use in order to explicitly permit three family attached dwellings; and by permitting some home occupations by right rather than by special permit.

The Planning Board (two members recusing) voted (2-1) to make a non-binding recommendation that the Zoning By-Law Committee study Section 8.03, Rebuilding After Catastrophe.

Then, the Planning Board (two members recusing) voted (2-1) to recommend FAVORABLE ACTION on Article 4 with the following revisions as indicated. The member voting "no" was generally supportive of the proposal as amended but wanted to see a list of the parcels included in the proposed amended areas and their current uses prior to voting in support.

To see if the Town will amend the Zoning By-law as follows:
(Please note that all proposed additions are underlined.)

1. By adding a new zoning district F-0.75 ("Three Family Zones"), replacing the existing zoning in the areas shown in the attached map.

2. By adding a new section 3.01.d. as follows:

   "d. Three Family (F)

   1) F-0.75"

   and renumbering the existing 3.01.d as 3.01.e.

3. By adding a new "F" heading under Section 4.07 ("Table of Use Regulations") with the same use designations as the existing "T" column, with the exception of the uses listed in Principal Use 4A below, that Prinicpal Use 7 ("Lodging House, Licensed and Unlicensed") should read "SP", and that Accessory Use 59 should read "Yes*".

4. By amending Section 4.07 ("Table of Use Regulations") by adding a new Principal Use 4A immediately after Principal Use 4:

Principal Uses	S	SC	T	F	M	L	G	O	I
4A. Dwelling on a separate lot for three families	No	No	No	Yes	Yes	Yes	Yes	No	Yes

Deleted: Detached dwelling

~~5.~~ By amending Principal Use to read as follows:

6. Multiple or attached dwelling of four or more units other than the preceding item divided into dwelling units each occupied by not more than one family but not including lodging house, hotel, dormitory, fraternity or sorority.

*Compliance with **§4.08** required if containing 6 or more dwelling units

Permitted by special permit in S-0.5P and S-0.75P Districts subject to **§5.06.**

In L and G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use

6. By amending Section 5.01 ("Table of Dimensional Requirements") by adding a new district F-0.75 immediately following T-5 as follows:

DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM (feet)	LOT WIDTH MAXIMUM (feet)	HEIGHT[9] MAXIMUM	Front Yard	Side Yard	Rear Yard	Open Space Landsc.	Open Space Usable
F-0.75	1-family detached dwelling	4,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	2-family detached dwelling	5,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	3-family detached dwelling	6,000	0.75	60	40	15	10+ L'/10	30	10%	30%
	Any other structure or prinicipal use	5,000	0.75	60	40	15	10+ L'/10	30	10%	30%

7. Amend footnote 2 in Section 5.01 ("Table of Dimensional Requirements") to read as follows:

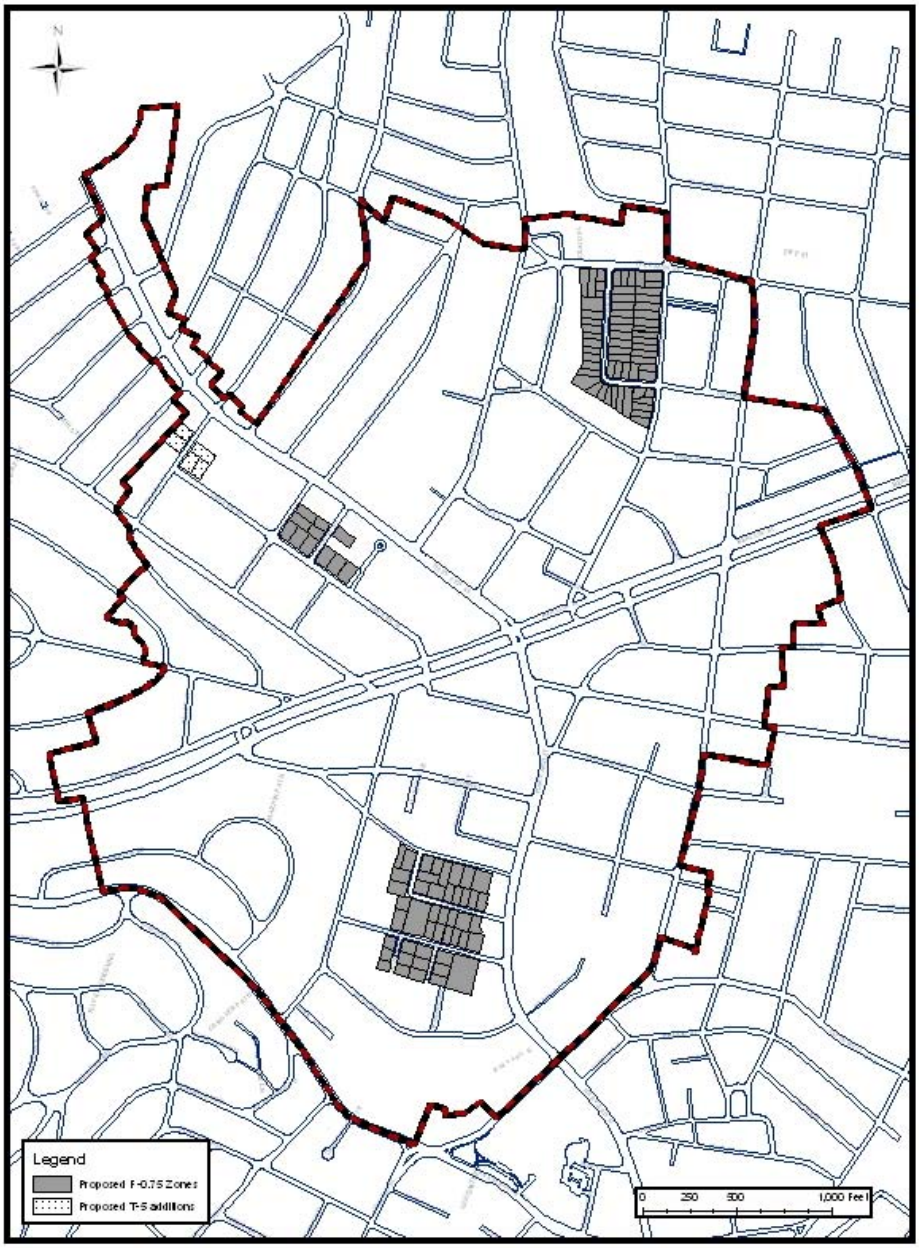
"2. At the end of each row or block of one-family attached dwellings, a yard shall be provided along the street line or side lot line of at least ten feet plus one foot for each dwelling unit in excess of two. In T districts, see also §5.48. In M **and F** districts, a building subject to the side yard formula: 10+L/10 may be built to the side lot line: (a) as a matter of right if, on the adjoining lot, a principal building with no setback from that lot line already exists or is proposed to be built concurrently; (b) by special permit if the Board of Appeals finds that reasonable development of the lot necessitates building to the side lot line, such action does not unreasonably infringe upon the light and air of any existing adjoining building, and the party wall is solid and has neither doors nor windows. A building with no side yard shall not have a building wall on the side lot line extending more than 70 feet to the rear of the front yard required by this By-law; except that a building wall may be located along any part of a side lot line on which a principal building on the adjoining lot abuts between the rear yard required by this By-law and the required front yard

line. Where building walls more than 70 feet to the rear of the required front yard are not permitted to be built along the side lot line, said walls shall have a side yard setback not less than: 10+L/10 the “L” dimension being that portion of the wall required to be set back from the side lot line.”

, and

8. By changing the zoning of five properties shown on attached map from the M-1.0 and M-1.5 districts to the T-5 zoning district.

Proposed F-0.75 Zones and T-5 Zone
Planning Board Recommendation



ARTICLE 4

Amendment offered by Jonathan Wadleigh, TMM-3, and Linda Dean, TMM-14

INCENTIVE EXCEPTIONS FOR SMALL PROPERTY OWNERS

To see if Town Meeting will amend Article 4 to include the following language. Insert after section 6 of the proposed amendments to the Town Zoning Bylaw:

Insert after section 5.22:

Section 5.23 ADDITIONAL EXCEPTIONS TO MAXIMUM FLOOR AREA RATIOS AND MAXIMUM ALLOWED DWELLING UNITS FOR SMALL PROPERTY OWNERS

Owners of two and three family houses in F-0.75 Districts will be allowed additional dwelling units and/or Floor Area Ratio subject to the conditions specified in Table 5.03 below, provided they preserve a minimum of 65% of the existing exterior wall area (including windows and doors) of buildings currently on the lot. In cases where Table 5.03 requires granting a Special Permit for additional dwelling units or Floor Area Ratio, such Special Permits may be conditioned to require that owners preserve the existing streetscape by preserving the existing character of the front of the property. These bonuses shall be available regardless of provisions to the contrary contained elsewhere in this Bylaw.

Table 5.03 TABLE of INCENTIVE BONUSES

Existing Dwelling Units	Required Lot Size for Incentive	Additional Units [1]	Maximum Permitted FAR[2]	Relief Required
2	5,ooo	1	0.75	Special Permit
3	6,000	1	0.75	Special Permit
2	7,500	1	1.0	By Right
2	10,000	2	1.0	Special Permit
3	7,500	1	1.0	By Right
3	10,000	2	1.0	Special Permit

[1] In addition to the number of units allowed in table 4.07
[2] Replacing the maximum floor area allowed in table 5.01

One of the major justifications for the Warrant article 4 put forward by its proponents is to prevent the tear-down of houses on lots zoned for multi-family and the creation of medium

sized condominium projects by developers. The impact of placing properties in the new F-0.75 District and in existing T-Districts will be to further limit the creation of new apartments in existing two and three family houses. This will have the impact of prohibiting creation of apartments in existing properties that require a small addition or are entirely within the existing envelope of the building (e.g. Attic and basement apartments). These apartments are often the least expensive (for rent or sale) units available and by prohibiting their creation we further deepen the chasm between the many available properties for the very rich and subsidized affordable housing. In addition, this type of unit has minimal visual impact on the neighborhood.

This amendment will make it possible for the owners of two and three family houses to create much needed midrange priced units, provided they do not tear down the existing buildings. It is limited to conforming lots (by size) and for most relief requires a large-size lot. The small amount of relief granted under this amendment is likely to be insufficient for a professional residential real-estate developer to justify the type of projects that have been controversial in the past few years. It does, however, provide enough relief to long-term owners who may be looking to create one or two additional apartments due to a change in family situation (e.g. in-law apartments, children moving back home) or in response to economic crises (in need of additional rental income). Additional units for small property owners are often needed for elderly parents that need to be cared for by family members or children who have jobs but cannot afford housing on their own. These situations must be addressed because there may be <u>no income</u> from those two types of apartments being added onto the small multi unit 2 or 3 family dwelling. This is now becoming the norm for 2 or 3 family owners that wish to keep their homes in Brookline and not be forced out by large developers. In essence, it would create a much-needed incentive to stay in Brookline and maintain their properties for rental and family. Freezing all changes in small rental properties is causing undo financial hardship to small property owners. This amendment to Warrant Article 4 will help ameliorate the impact of these changes to our zoning code for small property owners.

ARTICLE 4

ADVISORY COMMITTEE RECOMMENDATION ON WADLEIGH/DEAN AMENDMENT

BACKGROUND

The amendment to Article 4 (Three Family Zone) proposed by Jonathan Wadleigh and Linda Dean allows for adding 1 or 2 units beyond 3 families by right or special permit for homes on some of the larger lots in the district. The proponents argue that the three family zone will limit the creation of new apartments in existing properties that can be created now within the existing envelope or by way of a small addition. Such new apartments can aid in the affordability of these kinds of properties, allowing for additional income and additional units as economic and life circumstances change.

DISCUSSION

The Advisory Committee in its discussion of the proposed amendment was sympathetic to the concerns raised by the petitioners. For example, Article 4 would prohibit creation of a basement unit within an existing 3 family building envelope even if there was sufficient space for parking, FAR expansion, open space, etc. What would be the harm to the neighborhood from such a unit? Less clear is when an addition is necessary to create the unit.

The Advisory Committee then turned to a technical analysis of the proposal and saw many problems. For example, in the last sentence prior to Table 5.03, the bonuses (additional allowed units) allowed by the amendment would be available "regardless of provision to the contrary contained elsewhere in this Bylaw." This can be read to mean that if the required lot size and FAR are met, all other provisions of the zoning bylaw (setbacks, open space, etc.) do not apply. We are told that that was not the intent of the petitioners.

Also, the proposal allows for an addition to create additional units as long as a minimum of 65% of the exterior wall area on the lot is retained. This sets up 2 sets of rules; one for new construction and the other for additions. We can envision a scenario whereby a land owner builds a new building with 3 units and the day after receiving the occupancy permit applies to add 2 additional units. This is a plausible scenario under the current wording.

The Advisory Committee also noted that the same concerns expressed for the proposed three family district are present for all the existing single family and two family districts. In other words, this issue is not unique to the three family district and is really a town wide issue.

RECOMMENDATION

The petitioners raise some valid concerns which need to be carefully considered. The wording in the proposal contains too many technical issues to be fixed in such short time. While the issue has surfaced while considering the proposed three family district, it also applies to any zoning district which regulates the number of units (single, two and three family districts.) The

Advisory Committee by a vote of 20 in favor, 1 opposed, and 2 abstentions recommends favorable action on the following vote:

Voted: To refer the substance of the amendment to Article 4 offered by Jonathan Wadleigh and Linda Dean to the Zoning By-Law Review Committee.

ARTICLE 4

Amendment to amendment to article 4 "INCENTIVE EXCEPTIONS FOR SMALL PROPERTY OWNERS" offered by Jonathan Wadleigh and Linda Dean:

Eliminate the last sentence of the first paragraph of the Amendment, and replace it with the following: "These bonuses shall only be available to buildings existing at the time of passage of this Section of the Zoning Bylaw, and are not available to any property within 10 years of the issuance of a certificate of occupancy for the construction of any additional unit(s).

The final wording follows: (New wording underlined below)

INCENTIVE EXCEPTIONS FOR SMALL PROPERTY OWNERS
To see if Town Meeting will amend Article 4 to include the following language. Insert after section 6 of the proposed amendments to the Town Zoning Bylaw:

Insert after section 5.22:
Section 5.23 ADDITIONAL EXCEPTIONS TO MAXIMUM FLOOR AREA RATIOS AND MAXIMUM ALLOWED DWELLING UNITS FOR SMALL PROPERTY OWNERS
Owners of two and three family houses in F-0.75 Districts will be allowed additional dwelling units and/or Floor Area Ratio subject to the conditions specified in Table 5.03 below, provided they preserve a minimum of 65% of the existing exterior wall area (including windows and doors) of buildings currently on the lot. In cases where Table 5.03 requires granting a Special Permit for additional dwelling units or Floor Area Ratio, such Special Permits may be conditioned to require that owners preserve the existing streetscape by preserving the existing character of the front of the property. These bonuses shall only be available to buildings existing at the time of passage of this Section of the Zoning Bylaw, and are not available to any property within 10 years of the issuance of a certificate of occupancy for the construction of any additional unit(s).

Table 5.03 TABLE of INCENTIVE BONUSES

Existing Dwelling Units	Required Lot Size for Incentive	Additional Units [1]	Maximum Permitted FAR[2]	Relief Required
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2	10,000	2	1.0	Special Permit
3	7,500	1	1.0	By Right
3	10,000	2	1.0	Special Permit

[1] In addition to the number of units allowed in table 4.07
[2] Replacing the maximum floor area allowed in table 5.01

(End of Insertion)

Discussion: One of the major justifications for the Warrant article 4 put forward by its proponents is to prevent the tear-down of houses on lots zoned for multi-family and the creation of medium sized condominium projects by developers. The impact of placing properties in the new F-0.75 District and in existing T-Districts will be to further limit the creation of new apartments in existing two and three family houses. This will have the impact of prohibiting creation of apartments in existing properties that require a small addition or are entirely within the existing envelope of the building (e.g. Attic and basement apartments). These apartments are often the least expensive (for rent or sale) units available and by prohibiting their creation we further deepen the chasm between the many available properties for the very rich and subsidized affordable housing. In addition, this type of unit has minimal visual impact on the neighborhood.

This amendment will make it possible for the owners of two and three family houses to create much needed midrange priced units, provided they do not tear down the existing buildings. It is limited to conforming lots (by size) and for most relief requires a large-size lot. The small amount of relief granted under this amendment is likely to be insufficient for a professional residential real-estate developer to justify the type of projects that have been controversial in the past few years. It does, however, provide enough relief to long-term owners who may be looking to create one or two additional apartments due to a change in family situation (e.g. in-law apartments, children moving back home) or in response to economic crises (in need of additional rental income). Additional units for small property owners are often needed for elderly parents that need to be cared for by family members or children who have jobs but cannot afford housing on their own. These situations must be addressed because there may be no income from those two types of apartments being added onto the small multi unit 2 or 3 family dwelling. This is now becoming the norm for 2 or 3 family owners that wish to keep their homes in Brookline and not be forced out by large developers. In essence, it would create a much-needed incentive to stay in Brookline and maintain their properties for rental and family. Freezing all changes in small rental properties is causing undo financial hardship to small property owners. This amendment to Warrant Article 4 will help ameliorate the impact of these changes to our zoning code for small property owners.

ARTICLE 5

FIFTH ARTICLE

To see if the Town will amend Section 5.43 of the Zoning By-Law as follows:
(Please note that all proposed additions are underlined. Proposed deletions are ~~strikeout~~.)

SECTION 5.43 EXCEPTIONS TO YARD AND SETBACK REGULATIONS

Under a special permit after a hearing the Board of Appeals may permit, in lieu of the requirements for yards or setbacks specified in this By-law, the substitution of such other dimensional requirements as shall assure the same standard of amenity to nearby properties as would have been provided by compliance with the regulations of the By-law, as measured by off-setting a reduction in the depth or area of a required yard or setback by an increase in the depth or area of another yard or setback or by the provision ~~or preservation of a condition or a facility not otherwise required that will counterbalance such a reduction; provided, however, that under this Section the Board of Appeals shall not reduce the depth of a required front yard below 15 feet in M Districts.~~ of a significant green space, located at and visible from street level, that would counterbalance such a reduction, but that would not otherwise be possible given the existing yard and setback regulations. However, in the S, SC, T, M and F districts, the Board of Appeals shall not use this Section to reduce the depth of a required front yard below 15 feet or a required side yard below 7.5 feet.

As part of the Coolidge Corner planning process, the Department of Planning and Community Development (DPCD) has been working with the Coolidge Corner District Planning Council (DPC) to evaluate existing conditions and the opportunities and threats facing Coolidge Corner. Threats identified included the danger of development that is inconsistent with the built environment in the district; development of an excessive density; development providing too little publicly visible green space; and the dangers to the commercial core from encroaching residential development and difficult access. Opportunities identified included the possibility of upper story development over retail spaces in the commercial core; possible scenarios for redevelopment of sites in the commercial core; and the generally high quality of life.

In keeping with the charge of the DPC from the Board of Selectmen, Town staff developed three possible zoning by-law amendments that would help address these threats and opportunities in a more specific way than the relatively crude tool of the Coolidge Corner Interim Planning Overlay District. These three amendments were discussed at a DPC meeting in August. At that meeting, the DPC recommended that Town staff delay submission of one of the zoning articles, designed to encourage upper-story development in the commercial core by relaxing parking requirements, until further work was completed on a transportation analysis. This article is one of the other two amendments, which the DPC voted to submit to Town Meeting.

This bylaw amendment addresses the concern of the DPC and Town staff regarding the use of Section 5.43 to provide relief from setback requirements in the zoning by-law. Initially, DPC members and members of the public expressed an overall concern about the loss of private green space when new development is occurred. An analysis of this situation revealed that the use of this Section 5.43 was a likely reason that setbacks are smaller than the community would prefer.

Currently Section 5.43 permits relief from setback requirements by Special Permit, provided that counterbalancing amenities are provided elsewhere on the parcel. The only existing setback requirement that cannot be waived by Special Permit under this section is a 15 foot front yard setback in M zones. This amendment limits the type of counterbalancing amenities that can be provided under this section to the provision of significant green space at the street level. It adds a minimum 7.5 foot side yard setback that cannot be waived to the existing 15 front yard setback. Finally, it expands these front and side yard minimums to other residential zoning districts.

Note that, as written, this Section 5.43 would apply not just to the Coolidge Corner area but to the entire Town. Alternatives to this approach would be to create a special overlay in the Coolidge Corner area subject to these more stringent requirements or to not amend Section 5.43 at all. However, since the perceived misuse of this section is most keenly felt in the Coolidge Corner area, Town staff felt it was appropriate to apply consistent rules on waiving setback requirements by Special Permit throughout all of Brookline.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 5, which was submitted by the Department of Planning and Community Development (the Department), is a proposal in response to the Coolidge Corner District Planning Council's interest in preserving setbacks. The proposal language would limit the situations where special permit relief under Section 5.43 may be granted to waive a yard setback if counterbalancing amenities are provided. It would no longer allow special permit relief for a required front yard setback below 15', nor a side yard setback below 7.5', in an S, SC, T, M and F district. Under the current zoning, the only situation where a special permit is not allowed to reduce a front yard setback for a building is in an M district, where the front yard may not be reduced to less than 15'. It also changes the more general wording of "provision or preservation of a condition or facility not otherwise required for a counterbalancing amenity" to the more definitive "green space visible from the street".

At its Public Hearing on October 5, 2006, after listening to citizen comments, the Planning Board voiced its concern that this amendment would limit homeowners from making small changes on small non-conforming lots in Brookline, and that before it applies Townwide, there should be further study. The Board was not supportive of reducing flexibility in granting yard setbacks, because for certain cases it would be appropriate; for instance, where it was necessary to maintain a consistent front yard setback along a street edge or where a small addition was no closer to the side yard setback than the existing house. In the latter case, since the existing house did not meet the current yard setback requirement, a variance which has much more stringent criteria than a special permit, would be required. The Planning Board also discussed limiting this amendment just to the Coolidge Corner area but felt that at this point in the process it would be difficult to do this in an appropriate and fair manner. As for the modification to require that the counterbalancing amenity for a yard deficiency be "green space visible from the street", the Planning Board felt that this would not be appropriate in all cases, especially where a side or rear yard setback deficiency impacted a side or rear abutter, or where another measure, such as screening an upper story deck would provide the counterbalancing amenity of privacy to the impacted abutter.

Therefore, the Planning Board recommended unanimously (5-0) NO ACTION on Article 5 and that it be referred back to the Zoning By-Law Committee for further study.

SELECTMEN'S RECOMMENDATION

Article 5 was filed by the Department of Planning and Community Development and is a direct outcome of the Coolidge Corner District Planning Council's work on the Coolidge Corner IPOD. The Selectmen appreciate the efforts of the Coolidge Corner District Planning Council and the Department of Planning and Community Development to develop an approach to preserve green space by providing additional protections for setbacks as part of Section 5.43 of the Zoning By-Law. However, the Selectmen are concerned about a few aspects of the current proposal:

- While the proposal came out of the Coolidge Corner planning process, as currently written it would apply Town-wide. That is not necessarily a good or bad idea but should be examined in that context;
- The Planning Board has raised concerns about creative solutions to site planning under the existing 5.43 that may not be permitted under the proposed language; and
- There are some remaining issues relating to terms – such as "significant" – in the proposed amendment that need to be explored further before any amended language could be submitted.

Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 17, 2006, on the following vote:

VOTED: That the subject matter of Warrant Article 5 be referred to the Selectmen's Zoning By-Law Review Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 5 is an amendment to Zoning By-Law Section 5.43. Section 5.43 allows relief from setback requirements by Special Permit in S, SC, T, M and F (TR) districts. The proposed amendment was developed through work of the Coolidge Corner District Planning Council as a means to address the problem of the loss of street front greenspace in the Coolidge Corner area. It was felt that the flexibility allowed by the Special Permit process in providing counterbalancing amenities when setback relief is requested was problematic. The amendment calls for "greenspace visible from the street" rather than an unspecified "provision or preservation of a condition or facility not otherwise required for a counterbalancing amenity." The amendment would not allow for setback relief through Special Permit for front yards less than 15' or side yards less than 7.5'.

DISCUSSION

Private landscaped open space along public ways is a valued characteristic of the town's streetscape and should be encouraged and enhanced whenever possible. However, the restrictions proposed by this amendment to Section 5.43 of the Zoning By-Law would make certain well reasoned decisions by the Planning Board to provide side or rear yard amenities when side or rear abutters are impacted by a proposed project impossible through the special permit process. Many residences and garages are non-conforming in relation to set back requirements and the amendment's restrictions would require owners looking to make small changes to these types of structures to apply for variances

rather than special permits. The Advisory Committee would like to see zoning tools in place that would encourage and in some instances, require lawn trees and streetfront open space but did not feel these proposed restrictions on Section 5.43 would be appropriate means to accomplish this.

RECOMMENDATION

The Advisory Committee by a vote of 16 in favor, 2 opposed and 1 abstention recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

XXX

Town of Brookline
Massachusetts

PLANNING BOARD
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Kenneth M. Goldstein, Chairman
Mark J. Zarrillo, Clerk
Linda K. Hamlin
Steven A. Heikin
Jerome I. Kampler

ARTICLE V

PLANNING BOARD REPORT AND RECOMMENDATION

Article 5, which was submitted by the Department of Planning and Community Development (the Department), is a proposal in response to the Coolidge Corner District Planning Council's interest in preserving setbacks. The proposal language would limit the situations where special permit relief under Section 5.43 may be granted to waive a yard setback if counterbalancing amenities are provided. It would no longer allow special permit relief for a required front yard setback below 15', nor a side yard setback below 7.5', in an S, SC, T, M and F district. Under the current zoning, the only situation where a special permit is not allowed to reduce a front yard setback for a building is in an M district, where the front yard may not be reduced to less than 15'. It also changes the more general wording of "provision or preservation of a condition or facility not otherwise required for a counterbalancing amenity" to the more definitive "green space visible from the street".

At its Public Hearing on October 5, 2006, after listening to citizen comments, the Planning Board voiced its concern that this amendment would limit homeowners from making small changes on small non-conforming lots in Brookline, and that before it applies Townwide, there should be further study. The Board was not supportive of reducing flexibility in granting yard setbacks, because for certain cases it would be appropriate; for instance, where it was necessary to maintain a consistent front yard setback along a street edge or where a small addition was no closer to the side yard setback than the existing house. In the latter case, since the existing house did not meet the current yard setback requirement, a variance which has much more stringent criteria than a special permit, would be required. The Planning Board also discussed limiting this amendment just to the Coolidge Corner area but felt that at this point in the process it would be difficult to do this in an appropriate and fair manner. As for the modification to require that the counterbalancing amenity for a yard deficiency be "green space visible from the street", the Planning Board felt that this would not be appropriate in all cases, especially where a side or rear yard setback deficiency impacted a side or rear abutter, or where another measure, such as screening an upper story deck would provide the counterbalancing amenity of privacy to the impacted abutter.

Therefore, the Planning Board recommended unanimously (5-0) **NO ACTION** on Article 5 and that it be referred back to the Zoning By-Law Committee for further study.

ARTICLE 6

SIXTH ARTICLE

To see if the Town will amend the Zoning By-Law by deleting section 3.03.4 (f) and replacing it with the following:

f. length of time, not greater than twelve months, from the date of passage by Town Meeting, for which the district will be effective and for the completion of the supporting study necessary to submit Zoning By-Law and Map amendments for consideration by Town Meeting. If, following a twelve month period, work on Zoning By-Law and Map amendments is not complete despite the diligent efforts of all parties, Town Meeting shall have the option of extending an Interim Planning Overlay District for an additional six months.

and,

further amend Article 3.03 of the Zoning By-Law by deleting Section 3.03.6 (f) and replacing it with the following:

f. The CCIPOD will be effective for a period of eighteen months following its adoption by Town Meeting. While some zoning changes have been submitted to the Fall 2006 Town Meeting, as anticipated, the Coolidge Corner District Planning Council believes that an additional six months are required to complete the zoning work as part of its charge.

or act on anything relative thereto.

The Coolidge Corner Interim Planning Overlay District (CCIPOD) was created in the Fall of 2005 pursuant to enabling zoning legislation passed by Town Meeting in the Fall of 2004 that authorized the creation of Interim Planning Overlay Districts. The CCIPOD was approved for a period of one year, which was the maximum time permitted under the enabling legislation in Section 3.03.4. The CCIPOD generally restricted residential development in the M zones near Coolidge Corner to no more than 2 units, or up to 5 units by Special Permit. It also required that all development in the CCIPOD that requires a Special Permit meet new design guidelines.

It was anticipated that this one year period would be sufficient time to develop new zoning tools for Coolidge Corner. The Department of Planning and Community Development has worked with the Coolidge Corner District Planning Council (DPC) during the past year to develop such zoning tools and also complete other portions of a plan for Coolidge Corner. As a result of this work, the Department of Planning and Community Development has submitted two other zoning articles. One of these other zoning articles tightens the ability of the Board of Appeals to waive setback requirements in residential zones; the other article creates new three-family zoning districts in threatened areas near Coolidge Corner.

At its August meeting, the Coolidge Corner DPC meeting voted 12-0 (with 2 abstentions and 8 members not present) to also propose an extension of the CCIPOD and its reference to the DPC. The Department of Planning and Community Development agreed to draft and submit such an extension at the request of the DPC.

This proposed language would amend the enabling language in 3.03.4. by permitting a six month extension to any Interim Planning Overlay District, to a total of 18 months. It will also extend the CCIPOD by this six month period, until Spring 2007 Town Meeting.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 6, which was submitted by the Department of Planning and Community Development (the Department) at the request of the Coolidge Corner District Planning Council (the Council), revises Section 3.03.4(f), Interim Planning Overlay District, Establishment, by substituting language to allow continuance of the CCIPOD for another six months from its passage by the November 2005 Town Meeting, in order to allow the Council to complete its zoning study and make recommendations for this area before the IPOD zoning expires. The IPOD zoning prohibited the building of multi-family dwellings of more than five units and required a special permit for multi-family dwelling of three to five units. There are also Coolidge Corner IPOD Design Guidelines that were adopted by the Planning Board and these could remain in effect whether or not the IPOD was extended. It would be possible to extend the IPOD and at the same time adopt the zoning changes as proposed under Art. 4, which changes several Multi-Family properties to Three Family properties, and in a few cases to Two Family properties.

At its Public Hearing on October 5, 2006, after hearing public comment, the Planning Board expressed its view that continuing the IPOD for an additional six months presented a hardship to those property owners affected by the IPOD, many of whom attended the meeting to voice their opposition to the map change. Planning Board members differentiated between the work of the District Planning Council, which would continue based on the scope assigned to them by the Board of Selectmen regardless of the existence of the IPOD, and the IPOD, which was put in place for a limited time to allow their work to get under way. Additionally, Article 4, which the Planning Board supports with revisions, will protect many of the Victorian homes in the Coolidge Corner area from being demolished and replaced with multi-family buildings.

Planning Board members noted that, in their opinion and the opinion of staff, there were few if any proposals for development currently in Coolidge Corner that would be limited by the IPOD, and any such proposals would require substantial review and relief under the current zoning. The only proposed development they are aware of is at 74 Green Street, where Planning Board members felt that it was possible that the IPOD would result in an inferior project than one that might go forward under the base zoning. The Planning Board also noted that, whether or not the IPOD is continued, the Coolidge Corner District Planning Council could continue its work and propose additional zoning amendment changes for this area for Spring ‘07 Town Meeting.

Therefore, the Planning Board recommends **NO ACTION** on Article 6.

SELECTMEN'S RECOMMENDATION

The Board did not take a final action on Article 6 in time for it to make it in these Combined Reports. They took the matter up on November 2, a date that fell after the printing deadline for the Combined Reports.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The Coolidge Corner District Planning Council has requested an extension for the Interim Planning Overlay District that was established last year to enable a focused study of possible zoning changes in the Coolidge Corner area. The CC District Planning Council is the body appointed by the Selectman to help formulate the proposed plan while the Coolidge Corner Interim Planning Overlay District (CCIPOD) is the zoning tool that restricts certain types of development for a limited time period while the planning process is undertaken.

Article 6 proposes a revision to Section 3.03.4(f) to extend the one-year CCIPOD designation for an additional six months so that zoning restrictions remain in place while the CC District Planning Council continues its work. In addition to Article 6, Article 4 and Article 5 have also been submitted by the Department of Planning and Community Development at the request of the CC District Planning Council. These articles are a result of the work of the CC District Planning Council to date that has primarily focused on protections for the residential areas of Coolidge Corner. Additional work related to parking, transportation and the commercial heart of Coolidge Corner is ongoing. The planning work for Coolidge Corner can and will continue without the proposed extension of the Interim Planning Overlay District however, the temporary restrictions limiting the development of multi-family dwellings of more than five units and the requirement for a special permit for building multi-family dwellings of three to five units would be lifted. The Advisory Committee heard from one representative of property on Green Street, the former location of the Beacon School, where a development of over nine units is proposed. The representative indicated that the proposed project would be compromised because of the proposal to extend the restrictions imposed by the IPOD.

DISCUSSION

The Advisory Committee saw merits both for and against the proposed extension of the CCIPOD. There were concerns that the IPOD should be limited in duration and that the one-year period of interim zoning has been sufficient. No proposals for over-scaled developments are currently known to the Planning Department but that may be due to the fact that developers are aware of the restrictions temporarily in place through the IPOD. The CC District Planning Council can continue its work and it was felt by some that the work in the commercial heart of Coolidge Corner could be addressed without the IPOD protections. In support of an extension for the interim zoning restrictions through the IPOD were many who felt the work of the District Planning Council would benefit from an additional 6 months with the zoning protection in place. If the proposed F (TR) districts proposed under Article 4 are not voted upon favorably, then these residential neighborhoods would remain vulnerable to the same development pressures that the IPOD and planning work were

designed to prevent. It was also stated that because the Planning Department was understaffed at the start of the year, much of the substantial work in the planning process for Coolidge Corner occurred over the past few months now that the department is fully staffed. It was felt that an additional six months of work, with the IPOD in place would be productive and result in a more thorough planning process for the area. Since this is the town's first experience with using these zoning tools, some felt that the extension was well warranted. With an additional period of concentrated work, the Coolidge Corner District Planning Council will likely develop sound planning guidelines for the Coolidge Corner neighborhood that will balance the needs for neighborhood protection with sustainable and desirable commercial development.

RECOMMENDATION

The Advisory Committee by a vote of 12 in favor, 6 opposed and 1 abstention recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the Zoning By-Law by deleting section 3.03.4 (f) and replacing it with the following:

f. length of time, not greater than twelve months, from the date of passage by Town Meeting, for which the district will be effective and for the completion of the supporting study necessary to submit Zoning By-Law and Map amendments for consideration by Town Meeting. If, following a twelve month period, work on Zoning By-Law and Map amendments is not complete despite the diligent efforts of all parties, Town Meeting shall have the option of extending an Interim Planning Overlay District for an additional six months.

and,

further amend Article 3.03 of the Zoning By-Law by deleting Section 3.03.6 (f) and replacing it with the following:

f. The CCIPOD will be effective for a period of eighteen months following its adoption by Town Meeting. While some zoning changes have been submitted to the Fall 2006 Town Meeting, as anticipated, the Coolidge Corner District Planning Council believes that an additional six months are required to complete the zoning work as part of its charge.

XXX

Town of Brookline
Massachusetts

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ARTICLE VI

PLANNING BOARD REPORT AND RECOMMENDATION

Article 6, which was submitted by the Department of Planning and Community Development (the Department) at the request of the Coolidge Corner District Planning Council (the Council), revises Section 3.03.4(f), Interim Planning Overlay District, Establishment, by substituting language to allow continuance of the CCIPOD for another six months from its passage by the November 2005 Town Meeting, in order to allow the Council to complete its zoning study and make recommendations for this area before the IPOD zoning expires. The IPOD zoning prohibited the building of multi-family dwellings of more than five units and required a special permit for multi-family dwelling of three to five units. There are also Coolidge Corner IPOD Design Guidelines that were adopted by the Planning Board and these could remain in effect whether or not the IPOD was extended. It would be possible to extend the IPOD and at the same time adopt the zoning changes as proposed under Art. 4, which changes several Multi-Family properties to Three Family properties, and in a few cases to Two Family properties.

At its Public Hearing on October 5, 2006, after hearing public comment, the Planning Board expressed its view that continuing the IPOD for an additional six months presented a hardship to those property owners affected by the IPOD, many of whom attended the meeting to voice their opposition to the map change. Planning Board members differentiated between the work of the District Planning Council, which would continue based on the scope assigned to them by the Board of Selectmen regardless of the existence of the IPOD, and the IPOD, which was put in place for a limited time to allow their work to get under way. Additionally, Article 4, which the Planning Board supports with revisions, will protect many of the Victorian homes in the Coolidge Corner area from being demolished and replaced with multi-family buildings.

Planning Board members noted that, in their opinion and the opinion of staff, there were few if any proposals for development currently in Coolidge Corner that would be limited by the IPOD, and any such proposals would require substantial review and relief under the current zoning. The only proposed development they are aware of is at 74 Green Street, where Planning Board members felt that it was possible that the IPOD would result in an inferior project than one that might go forward under the base zoning. The Planning Board also noted that, whether or not the IPOD is continued, the Coolidge Corner District Planning Council could continue its work and propose additional zoning amendment changes for this area for Spring ‘07 Town Meeting.

Therefore, the Planning Board recommends **NO ACTION** on Article 6.

ARTICLE 6

BOARD OF SELECTMEN'S SUPPLEMENTAL REPORT

Article 6 was submitted by the Department of Planning and Community Development on behalf of the Coolidge Corner District Planning Council. This Article revises Section 3.03.4(f), Interim Planning Overlay District, Establishment, by substituting language to allow continuance of the CCIPOD for another six months from its passage by the November 2005 Town Meeting, in order to allow the Council to complete its zoning study and make recommendations for this area before the IPOD zoning expires. The IPOD zoning prohibited the building of multi-family dwellings of more than five units and required a special permit for multi-family dwelling of three to five units.

District Planning Council members argue that an extension of the CCIPOD is necessary because the planning work for Coolidge Corner is not complete. At various public hearings on the issue, opinions differed about whether the CCIPOD was truly necessary in order for the planning work to be completed. Some felt that the property rights of those affected by the CCIPOD may be excessively restricted by a six month extension. Others expressed the view that, without the CCIPOD in effect, inappropriate development may take place in the next six months, particularly if Article 4 were not to be approved.

The Board of Selectmen generally felt that a balance could be struck between these differing views. An extension of the CCIPOD until April 30th would provide some additional protection for neighborhoods without the implication that the CCIPOD could be extended again. At the same time the Selectmen felt that a deadline or March 15th should be set for the completion of the planning work, in order to ensure that the process moved forward and any additional zoning articles proposed as part of Spring 2007 Town Meeting. Therefore, the Board of Selectmen voted FAVORABLE ACTION, by a vote of 4-1 taken on November 2, 2006, on the following:

VOTED: That the Town amend the Zoning By-Law by deleting section 3.03.4 (f) and replacing it with the following:

f. length of time, not greater than twelve months, from the date of passage by Town Meeting, for which the district will be effective and for the completion of the supporting study necessary to submit Zoning By-Law and Map amendments for consideration by Town Meeting. If, following a twelve month period, work on Zoning By-Law and Map amendments is not complete despite the diligent efforts of all parties, Town Meeting shall have the option of extending an Interim Planning Overlay District for an additional six months.

and,

further amend Article 3.03 of the Zoning By-Law by deleting Section 3.03.6 (f) and replacing it with the following:

f. The CCIPOD will be effective until April 30, 2007. While some zoning changes have been submitted to the Fall 2006 Town Meeting, as anticipated, the Coolidge Corner District Planning Council believes that an additional six months are required to complete the zoning work as part of its charge. The District Planning Council shall, prior to the completion of its work, hold a public hearing, and the Department of Planning and Community Development shall present a final report to the Board of Selectmen by no later than March 15, 2007.

Deleted: for a period of eighteen months following its adoption by Town Meeting

ROLL CALL VOTE:

Favorable Action	No Action
Allen	Merrill
Hoy	
Daly	
DeWitt	

ARTICLE 7

SEVENTH ARTICLE

To see if the Town will amend the Zoning By-Law by adopting the following zoning map change:

> By rezoning a portion of the southeast side of the parcel located at 1040 West Roxbury Parkway, Block 373, Lot 06, from S-7 to L-0.5 or to act on anything relative thereto. Said parcel and the proposed zoning change are more particularly set fourth in the attached property description and Zoning Exhibit Plan dated August 16, 2006.

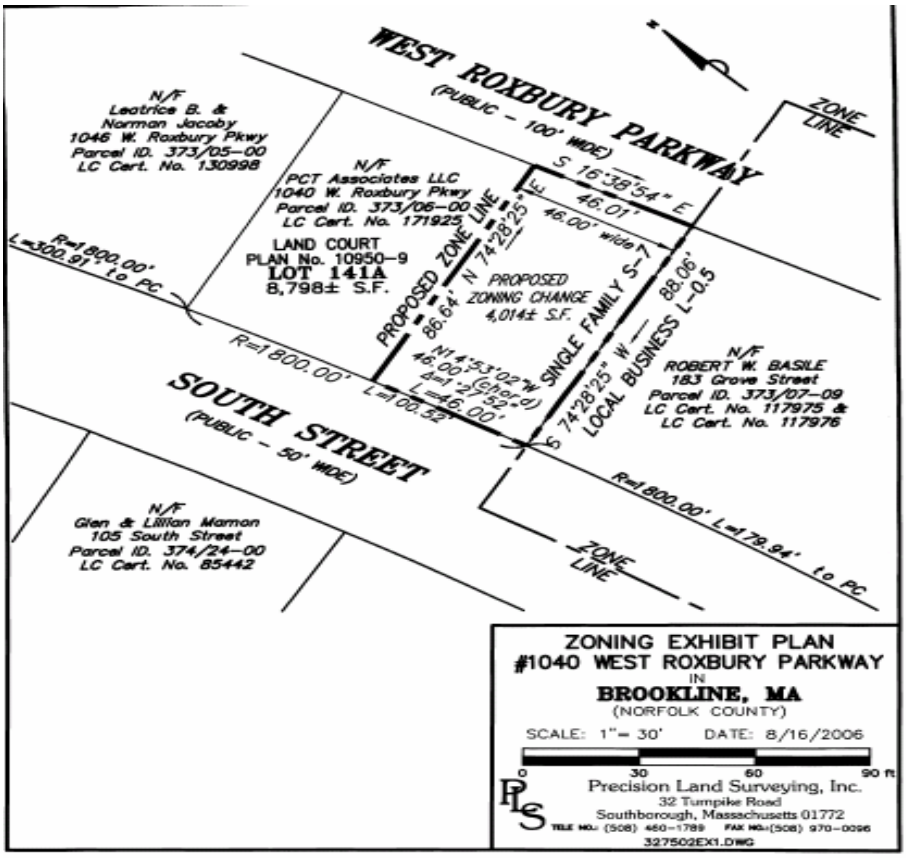
Proposed Zoning Change
#1040 West Roxbury Parkway
Brookline, MA

A Certain Parcel of land located in the Commonwealth of Massachusetts, County of Norfolk, Town of Brookline, situated on the westerly sideline of West Roxbury Parkway and the easterly sideline of South Street, and is shown as "PROPOSED ZONING CHANGE, 4,014 ± S.F." on "ZONING EXHIBIT PLAN, #1040 WEST ROXBURY PARKWAY, IN BROOKLINE, MA, (NORFOLK COUNTY) BY Precision Land Surveying, Inc. DATE: 8/16/2006", more particularly bounded and described as follows:

Beginning at a point on the westerly sideline of West Roxbury Parkway, said point being the most easterly corner of the parcel; thence running

S 74º28'25" W	88.06' by the southerly sideline of Lot 141A as shown on Land Court Plan No. 10950-9, now or formerly of PCT associates, LLC to a point on the easterly sideline of South Street; thence turning and running.
NORTHERLY	46.00' by a curve to the left having a radius of 1,800.00', by the easterly sideline of South Street to a point; thence turning and running.
N 74º28'25" E	86.64' by a line that is 46.00' northerly of and parallel to the first course described above to a point on the westerly sideline of West Roxbury Parkway; thence turning and running.
S 16º38'54" E	46.01' by the westerly sideline of West Roxbury Parkway to the POINT OF BEGINNING.

Containing 4,014 Square feet more of less.



This petition is submitted by the owner of the land to be affected by the proposed zoning change to rezone a portion of the parcel of land off West Roxbury Parkway to L-0.5 to allow for the expansion of the abutting commercial parking lot by forty-six (46) feet from the property line to include nine (9) additional parking spaces. The additional parking spaces will serve the adjacent commercial use by providing needed parking for patrons and employees, and to lessen street parking in the neighborhood. A single family home will be on the remaining residential portion of the parcel to be affected by the zoning change.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 7, which was submitted by Citizen Petitioner Bob Basile, proposes a rezoning of part of a lot that is adjacent to the Putterham Shops, from S-7 (single-family) to L-0.5 (local business). The remaining part of the lot would remain S-7 (single family). Mr. Basile owns the subject lot and the adjacent lot with the shops. He has stated that he is requesting this zoning change in order to provide more parking for the employees of the stores at Putterham. He also stated his intention to build a new single family home on one side of the lot to provide a buffer between the new parking and the adjacent single family home.

At its Public Hearing on October 5, 2006, after hearing public comment including much neighborhood opposition, the Planning Board stated its concern about setting a precedent by supporting an extension of a business zone into an adjacent residential zone. Although the Board is sympathetic to the petitioner's desire to provide more parking for his commercial uses, it could not support a zoning change that runs with the land and not an owner.

Therefore, the Planning Board recommends NO ACTION on Article 7.

SELECTMEN'S RECOMMENDATION

Article 7 is a petitioned article that proposes a rezoning of part of a lot that is adjacent to the Putterham Shops, from S-7 (single-family) to L-0.5 (local business). The remaining part of the lot would remain S-7 (single family). The petitioner owns the subject lot and the adjacent lot with the shops. He has stated that he is requesting this zoning change in order to provide more parking for the employees of the stores at Putterham. He also stated his intention to build a new single family home on one side of the lot to provide a buffer between the new parking and the adjacent single family home.

Since the submission of this Article, the petitioner has met with neighbors, who have expressed a number of concerns about the proposed zoning change. The Planning Board and Advisory Committee Planning and Regulatory Subcommittee have also held hearings on this article, as has the Zoning By-Law Review Committee. At these hearings, many neighbors came and expressed their concerns about the proposed change. While some people did testify in support of the change, the petitioner has decided that he does not want to move the article at Town Meeting.

The Selectmen recommend NO ACTION, by a vote of 4-0 taken on October 17, 2006, on Article 7.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This article was submitted by a citizen petitioner, a developer, who proposed rezoning part of a lot that is adjacent to the Putterham Shops, from S-7 (single-family) to L-0.5 (local business). The remaining part of the lot would remain S-7 (single family). The developer owns the subject lot and the adjacent lot with the shops. He originally requested this zoning change in order to provide more parking for the employees of the stores. He also stated his intention to build a new single family home on one side of the lot to provide a buffer between the new parking and the adjacent single family home.

DISCUSSION

The Advisory Committee heard much neighborhood opposition to this article. About a dozen residents who live close to the Putterham Shopping Center attended the Advisory Committee's Subcommittee public hearing on the article and expressed their opposition to the article and to commercial expansion in their residential area. They also said that the intersection of South Street and West Roxbury is already dangerous and the last thing they want are additional cars in the parking lot to contribute to this congestion. Neighbors were also concerned that even if the zoning were changed, there would be no guarantee that the plan that was presented to them by the developer would actually be implemented. Finally, the neighbors stated that the developer did not demonstrate that additional parking is warranted for the site.

The Subcommittee also received a signed petition from the businesses in the shopping center seeking support for this warrant article.

Approval of the article at Town Meeting would require a 2/3's vote. The Planning Board and the Selectmen's Zoning By-Law Review Committee voted not to support the article. The petitioner then informed the Advisory Committee that he was not going forward with the article and did not attend the Advisory Committee meetings when it was discussed.

RECOMMENDATION

The Advisory Committee, by a vote of 17 in favor of the motion for no action, 0 opposed and 1 abstention, recommends NO ACTION on Article 7.

XXX

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Massachusetts

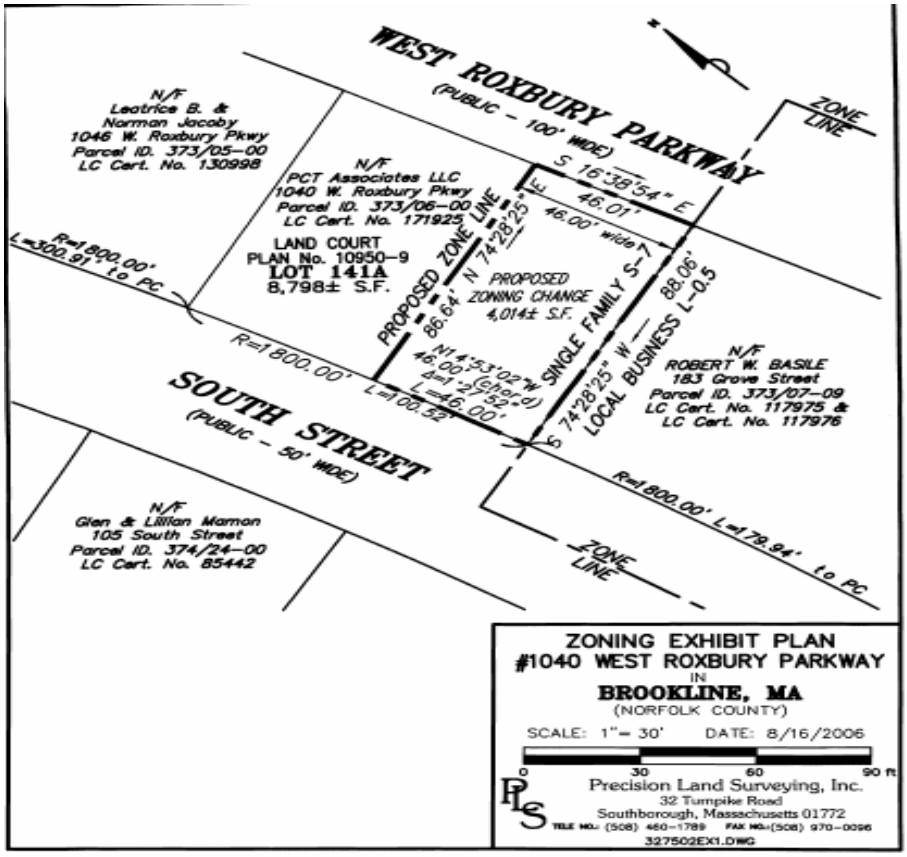
ARTICLE VII

PLANNING BOARD REPORT AND RECOMMENDATION

Article 7, which was submitted by Citizen Petitioner Bob Basile, proposes a rezoning of part of a lot that is adjacent to the Putterham Shops, from S-7 (single-family) to L-0.5 (local business). The remaining part of the lot would remain S-7 (single family). Mr. Basile owns the subject lot and the adjacent lot with the shops. He has stated that he is requesting this zoning change in order to provide more parking for the employees of the stores at Putterham. He also stated his intention to build a new single family home on one side of the lot to provide a buffer between the new parking and the adjacent single family home.

At its Public Hearing on October 5, 2006, after hearing public comment including much neighborhood opposition, the Planning Board stated its concern about setting a precedent by supporting an extension of a business zone into an adjacent residential zone. Although the Board is sympathetic to the petitioner's desire to provide more parking for his commercial uses, it could not support a zoning change that runs with the land and not an owner.

Therefore, the Planning Board recommends **NO ACTION** on Article 7.


WEST ROXBURY PARKWAY
(PUBLIC - 100' WIDE)
ZONE LINE
N/F
Leatrice B. &
Norman Jacoby
1046 W. Roxbury Pkwy
Parcel ID. 373/05-00
LC Cert. No. 130998
N/F
PCT Associates LLC
1040 W. Roxbury Pkwy
Parcel ID. 373/06-00
LC Cert. No. 171925
LAND COURT
PLAN No. 10950-9
LOT 141A
8,798± S.F.
S 16°38'54" E
46.01'
46.00' wide
N 74°28'25" W
PROPOSED ZONE LINE
86.64'
PROPOSED
ZONING CHANGE
4,014± S.F.
SINGLE FAMILY S-7
LOCAL BUSINESS L-0.5
88.06'
R=1800.00'
L=300.91' to PC
R=1800.00'
L=100.32'
N14°53'02" W
46.00' (Sphere)
Δ=1°37'52"
L=46.00'
S 74°28'25" W
N/F
ROBERT W. BASILE
183 Grove Street
Parcel ID. 373/07-09
LC Cert. No. 117975 &
LC Cert. No. 117976
SOUTH STREET
(PUBLIC - 50' WIDE)
N/F
Glen & Lillian Marron
105 South Street
Parcel ID. 374/24-00
LC Cert. No. 85442
R=1800.00' L=79.94' to PC
ZONE LINE
ZONING EXHIBIT PLAN
#1040 WEST ROXBURY PARKWAY
IN
BROOKLINE, MA
(NORFOLK COUNTY)
SCALE: 1"= 30'
DATE: 8/16/2006
0
30
60
90 ft
Precision Land Surveying, Inc.
32 Turnpike Road
Southborough, Massachusetts 01772
TELE NO.: (508) 460-1789
FAX NO.: (508) 970-0096
327502EX1.DWG

ARTICLE 8

EIGHTH ARTICLE

To see if the Town will amend Article 6.01, paragraph 4 of the Zoning By-Law as follows:

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

6.01 - GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIIES

4. All required parking facilities shall be provided and maintained so long as the use exists which the facilities were designed to serve. Off-street parking facilities shall not be reduced in total extent after their provision, except when such reduction is in conformity with the requirements of this Article. Reasonable precautions shall be taken by the owner or sponsor of particular uses to assure the availability of required facilities to the employees or other persons whom the facilities are designed to serve. Required parking spaces shall not be assigned to specific persons or tenants nor **licensed,** rented**,** [or] leased**, conveyed or otherwise set apart** so as to render them in effect unavailable to the persons whom the facilities are designed to serve[.]**, or so as to have the effect of reducing the number of spaces actually available for a particular use to less than the number of spaces required by this Article for that use. In zoning districts of 1.5 and above, developments with at least 8000 square feet devoted to retail use (whether new developments or pre-existing developments that by new construction or other means attain or exceed such square footage) shall make at least 80% of the aggregate number of spaces required for that use available to customers, clients or patrons of that retail use.** Such facilities shall be designed and used in such a manner as at no time to constitute a nuisance, or a hazard, or unreasonable impediment to traffic.

or act on anything relative thereto.

This warrant article is meant to make certain that customers, clients and patrons of retail establishments have access to the parking spaces designated for retail use. Some developers have interpreted the original language to mean that if there are enough overall spaces for the development to meet the By-Law, they need not allocate the appropriate number of spaces for the retail use. In addition, in the recent proposal to expand 1309 Beacon Street, the developer claimed she met the provisions of the current By-Law even though she intended to reserve over 30% of the required retail parking spaces for employees. Using the same logic, one could designate all the required retail parking

spaces for owners and employees and have none for customers. This interpretation would be a violation of the spirit, intent and implications of the By-Law.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 8, which was submitted by Citizen Petitioner Myra Trachtenberg, proposes to strengthen the parking requirements for large retail developments over 8,000 s.f. in zoning districts which have a permitted FAR requirement of 1.5 or above. In these zoning districts (G-1.75 and G-2.0), at least 80% of the total parking would be required to be allocated for the use of customers or clients of the retail use.

At its Public Hearing on October 5, 2006, after listening to public comment, the Planning Board expressed its belief that although the intent of this article is good, more information needs to be gathered before its passage to evaluate: 1) the proper ratio of employee to customer parking for retail use; to provide some flexibility by allowing a special permit when a specific retail use has a greater number of employees than average; methods of enforcement; and what economic or other unintended consequences might result. Some Planning Board members felt that a case-by-case evaluation of each project was a better method to determine appropriate parking requirements, and that these requirements could then be mandated through required conditions of the Board of Appeals decisions. A Transportation Management Plan to be reviewed and approved by the Transportation and Engineering Director is already a typical condition for large projects and could, for example, contain a requirement for a business owner to provide T pass subsidies to employees.

The Planning Board is concerned about proposed zoning that is reactive to a specific case. This warrant article was in response to the recently proposed addition at Center Place, where Trader Joe's grocery store is located. In that case, the parking was split between an outdoor parking lot for shoppers and an underground garage with card access for employees. A condition was imposed by the Board of Appeal decision that for the expansion the number of employee spaces in the underground garage be increased and that better signage be provided for customers alerting them to available parking in the evenings and weekends at adjacent parking lots. With the very limited off-street parking in Brookline in our business districts, it is important to allow some flexibility on how parking will be addressed.

Therefore, the Planning Board voted to recommend NO ACTION on Article 8 and to refer this warrant article to the Zoning By-Law Committee to evaluate whether to adopt this measure in some form, and, if so, in what cases this retail parking requirement should apply, what the correct proportion of parking for retail customers to employees is, how it would be enforced, and whether or not a special permit provision should be added for businesses with a higher proportion than average of employees to customers.

SELECTMEN'S RECOMMENDATION

Article 8 is a petitioned article that proposes to strengthen the parking requirements for large retail developments over 8,000 square feet in zoning districts that have a permitted FAR requirement of 1.5 or above. In these zoning districts (G-1.75 and G-2.0), at least 80% of the total parking would be required to be allocated for the use of customers or clients of the retail use.

The Selectmen agree with the Planning Board that further research should be conducted to determine the proper ratio of employee to customer parking for retail use; to provide some flexibility by allowing a special permit when a specific retail use has a greater number of employees than average; to determine methods of enforcement; and to ascertain what economic or other unintended consequences might result. The Selectmen are also concerned that the proposed zoning that is reactive to a specific case rather than based on overall Town-wide analysis.

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 24, 2006, on the following vote:

VOTED: To refer Article 8 to the Zoning By-Law Review Committee.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Daly
DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
Article 8, which was submitted by citizen petition, proposes that there be a specified amount of customer-only parking for large retail developments over 8,000 s. f. in zoning districts which have a permitted FAR requirement of 1.5 or above. In these zoning districts (G-1.75 and G-2.0), at least 80% of the total parking would be required to be allocated for the use of customers or clients of the retail establishment.

This warrant article is meant to make certain that customers, clients and patrons of retail establishments have access to the parking spaces designated for retail use. Some developers have interpreted the language in the existing By-Law to mean that if there are enough overall spaces for the development to meet the By-Law, they need not allocate the appropriate number of spaces for the retail use. In addition, in the recent proposal to

expand Trader Joe's on Beacon Street, the developer claimed the provisions of the current By-Law were met even though it was their intention to reserve over 30% of the required retail parking spaces for employees. The petitioner feels that using the same logic, one could designate all the required retail parking spaces for owners and employees and have none for customers. The petitioner felt that this interpretation would be a violation of the spirit, intent and implications of the By-Law.

DISCUSSION

The petitioner told the Advisory Committee that had this article been in place when Trader Joe's came to the Board of Appeals with their plan to expand its retail space without adding additional parking, the Board of Appeals would have had more leverage to require them to provide additional customer parking. The current By-Law does not distinguish between employee parking and customer parking – only the total amount of parking. The petitioner reported that the intention of this article is to plug the parking loophole in congested areas in a limited way by ensuring that an adequate amount of customer-only parking is made available.

In the petitioner's cited example, the neighborhood has become the victim of Trader Joe's success. The real problem seems to be an issue of vehicle flow. Cars clog the street and intersection at the parking lot's only entrance and exit. It was felt that adding more customer parking spaces was not the solution to this congestion problem. We should also bear in mind that this proposed zoning change is not specific to Trader Joe's, but has a town wide effect.

The Committee pointed out, from a market perspective, it is in the best interest of retailers to make accommodations for customer parking. Merchants understand this. Everyone agrees on the fundamental problem – a lack of retail parking. However, this article will not produce any more parking.

It was noted that there are 10-hour parking meters for employee parking, and it was suggested that more may be needed. It was also suggested that the Town should look more seriously at a Town lot on Center Street. However, neither of these two issues fall within the scope of this article.

While the Committee is sympathetic to the retail parking problem, it feels this proposed zoning change attempts to address symptoms without solving the underlying problem.

RECOMMENDATION

By a vote of 13-5-2, the Advisory Committee recommends NO ACTION on Article 8.

XXX

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ARTICLE VIII

PLANNING BOARD REPORT AND RECOMMENDATION

Article 8, which was submitted by Citizen Petitioner Myra Trachtenberg, proposes to strengthen the parking requirements for large retail developments over 8,000 s.f in zoning districts which have a permitted FAR requirement of 1.5 or above. In these zoning districts (G-1.75 and G-2.0), at least 80% of the total parking would be required to be allocated for the use of customers or clients of the retail use.

At its Public Hearing on October 5, 2006, after listening to public comment, the Planning Board expressed its belief that although the intent of this article is good, more information needs to be gathered before its passage to evaluate: 1) the proper ratio of employee to customer parking for retail use; to provide some flexibility by allowing a special permit when a specific retail use has a greater number of employees than average; methods of enforcement; and what economic or other unintended consequences might result. Some Planning Board members felt that a case-by-case evaluation of each project was a better method to determine appropriate parking requirements, and that these requirements could then be mandated through required conditions of the Board of Appeals decisions. A Transportation Management Plan to be reviewed and approved by the Transportation and Engineering Director is already a typical condition for large projects and could, for example, contain a requirement for a business owner to provide T pass subsidies to employees.

The Planning Board is concerned about proposed zoning that is reactive to a specific case. This warrant article was in response to the recently proposed addition at Center Place, where Trader Joe's grocery store is located. In that case, the parking was split between an outdoor parking lot for shoppers and an underground garage with card access for employees. A condition was imposed by the Board of Appeal decision that for the expansion the number of employee spaces in the underground garage be increased and that better signage be provided for customers alerting them to available parking in the evenings and weekends at adjacent parking lots. With the very limited off-street parking in Brookline in our business districts, it is important to allow some flexibility on how parking will be addressed.

Therefore, the Planning Board voted to recommend NO ACTION on Article 8 and to refer this warrant article to the Zoning By-Law Committee to evaluate whether to adopt this measure in some form, and, if so, in what cases this retail parking requirement should apply, what the correct proportion of parking for retail customers to employees is, how it would be enforced, and whether or not a special permit provision should be added for businesses with a higher proportion than average of employees to customers.

ARTICLE 9

NINTH ARTICLE

To see if the Town will amend Article _____ of the Zoning By-Law as follows:
(Please note all deleted language is in brackets [] and additional language is in bold and underlined)

Article V _____(Zoning)

Amend Article V, Table 5.01 (Table of demensional requirements) Add a new Footnote number 18 to the top of the "Minimum Yard" column on page 5-4 after footnotes 3 and 10. The proposed Footnote 18 at the bottom of the page after Footnote 17, is as follows: In S and T Zones, the following setbacks shall apply in cases of new construction on lots on which a structure was demolished and the new structure will not be built o the previous building's footprint: Front 25'; sides 30'; back 40.'

or act on anything relative thereto.

The intent of this zoning amendment is to limit rebuilding in S and T zones by imposing new setback requirements for buildings which have been torn down.

MOTION TO BE OFFERED BY THE PETITIONER

Moved: That the subject matter of Warrant Article 9 be referred to the Selectmen's Zoning By-Law Review Committee, with the request that the Committee report back to Town Meeting at the 2007 Annual Town Meeting.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 9, which was submitted by Citizen Petitioner Edward Richmond, proposes to change the front, side and rear yard setback requirements for S and T zoning districts to: 25', 30' and 40' for new construction, not built on the prior footprint of a demolished single or two family residential building. The setbacks for S-40 and S-25 zoning districts are actually more restrictive as they currently exist than those proposed by this warrant article.

Mr. Richmond has stated that his purpose is two-fold: to prevent replacement of teardowns with "McMansions" and to make it unlikely for a teardown in the first place, since for many small non-conforming lots, the new setback requirements would make it impossible to site a structure conforming to the yard setbacks.

At its Public Hearing on October 5, 2006, after listening to citizen comment, the Planning Board stated its belief that this article raises several issues. 1) It treats development of a vacant

lot differently from development of a lot where a house has been demolished, and therefore is unlikely to meet the requirement that zoning apply uniformly to all properties within the same zoning district. 2) The amendment needs further clarification, because it is unclear whether it applies only to the demolition of an entire house or the demolition of part of a house, such as a porch. In the latter case, for many of the homes in Brookline on small non-conforming lots, it would be impossible to tear down an old porch and rebuild a new one that met the more stringent yard setbacks. 3) appropriate yard setbacks should be established for each residential district whether a house is being built on a vacant lot or on a lot where a house has been demolished.

Additionally, Planning Board members noted that this zoning amendment would make it impossible to build a new house on many typical, conforming lots as well as small, non-conforming lots existing in Brookline and that, in some cases, it is appropriate to replace an older home with a new one. The building of new large homes, out-of-scale with the surrounding neighborhood, is better addressed through Floor Area Ratio requirements or design review, than yard setbacks.

Therefore, the Planning Board recommends NO ACTION on Article 9.

SELECTMEN'S RECOMMENDATION

Article 9 is a petitioned article that would amend the Zoning By-Law. The Selectmen appreciate the efforts of the petitioner to raise awareness of the issue of so-called "teardowns" and the impact of inappropriate redevelopment of sites in single- and two-family zones in Brookline. Similar efforts in other communities, such as Newton, have taken many different approaches, including decreasing permitted Floor Area Ratio and imposing design review on new construction.

The Selectmen are concerned, however, that this proposal has not taken into account a number of zoning changes that have been approved in the past few years to accomplish similar goals. In addition, it seems inequitable to treat new construction differently from existing buildings by imposing significantly larger setbacks on new buildings. The purpose of zoning is to create a set of rules that describe how an area should look. If the goal is to preserve existing buildings, Local Historic Districts can accomplish that goal. If the goal is to prevent buildings that are out of scale with an area, that can be accomplished by using Floor Area Ratio or other existing zoning tools that would apply to all buildings. Second, as mentioned above, a number of changes have been put in place in the last couple of years, and others are proposed for this Town Meeting from the Coolidge Corner planning process. It would seem prudent to assess whether the existing zoning tools put in place are working, and if not, what holes still exist in zoning that would create a problem that needs to be addressed.

Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 10, 2006, on the vote offered by the Advisory Committee.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Daly
DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
Article 9 addresses limitations on rebuilding in S and T zones, specifically by imposing new setbacks requirements for construction of buildings on lots where buildings have been torn down to make space new construction. The proposed setback requirements of this article are: 25 feet front, 30 feet side, and 40 feet rear for new construction that is not built on the prior building footprint. The purpose of these requirements is to discourage the tearing down of buildings in order to construct "MacMansions", since the new structures would be non-conforming by the new stricter setback requirements of this article.

DISCUSSION
The petitioner considers that the newly proposed setbacks are similar, but greater than the average existing setbacks. However, the report on this article by the Planning Board notes that the setbacks for S-40 and S-25 zoning districts are actually *more* restrictive as they currently exist than those proposed by this warrant article.

There was some vagueness and quite a bit of discussion about the definition of just what was covered by this article. Did it cover only a total demolition, or a partial demolition that might be done for an addition? In the case of an addition, it was suggested that for some homes with existing small setbacks, that the proposed change would not allow additions and renovations. During the public hearings by the Advisory Committee, questions arose as to whether this by-law change might create non-conforming properties. In addition there was concern that this zoning change would create inconsistencies across the town, since it doesn't apply to all zoning districts.

RECOMMENDATION
The Advisory Committee feels that more study is required since there are still a number of important unanswered questions: what exactly is covered in the article and are there any potential unintended consequences. By a vote of 14-0-1, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: To refer Article 9 to the Selectmen's Zoning By-Law Review Committee.

XXX

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ARTICLE IX

PLANNING BOARD REPORT AND RECOMMENDATION

Article 9, which was submitted by Citizen Petitioner Edward Richmond, proposes to change the front, side and rear yard setback requirements for S and T zoning districts to: 25', 30' and 40' for new construction, not built on the prior footprint of a demolished single or two family residential building. The setbacks for S-40 and S-25 zoning districts are actually more restrictive as they currently exist than those proposed by this warrant article.

Mr. Richmond has stated that his purpose is two-fold: to prevent replacement of teardowns with "McMansions" and to make it unlikely for a teardown in the first place, since for many small non-conforming lots, the new setback requirements would make it impossible to site a structure conforming to the yard setbacks.

At its Public Hearing on October 5, 2006, after listening to citizen comment, the Planning Board stated its belief that this article raises several issues. 1) It treats development of a vacant lot differently from development of a lot where a house has been demolished, and therefore is unlikely to meet the requirement that zoning apply uniformly to all properties within the same zoning district. 2) The amendment needs further clarification, because it is unclear whether it applies only to the demolition of an entire house or the demolition of part of a house, such as a porch. In the latter case, for many of the homes in Brookline on small non-conforming lots, it would be impossible to tear down an old porch and rebuild a new one that met the more stringent yard setbacks. 3) appropriate yard setbacks should be established for each residential district whether a house is being built on a vacant lot or on a lot where a house has been demolished.

Additionally, Planning Board members noted that this zoning amendment would make it impossible to build a new house on many typical, conforming lots as well as small, non-conforming lots existing in Brookline and that, in some cases, it is appropriate to replace an older home with a new one. The building of new large homes, out-of-scale with the surrounding neighborhood, is better addressed through Floor Area Ratio requirements or design review, than yard setbacks.

Therefore, the Planning Board recommends NO ACTION on Article 9.

ARTICLE 10

TENTH ARTICLE

To see if the Town will amend the Zoning By-Law, Section 5.09, Design Review, Paragraph 2, Scope, first sentence, as follows (proposed additions shown in bold and underlined, proposed deletions shown in bold and in square brackets):

> In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior changes**, including demolitions,** which require a [**building**] permit **from the Building Department** under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified.
> or act on anything relative thereto.

This Article is proposed to clarify that an application to the Building Department to demolish a structure is not exempt from the Design Review process provided by Section 5.09 of the Zoning By-Law.

Design Review provides for "individual detailed review of certain uses and structures which have a substantial impact upon the character of the Town and upon traffic, utilities and property values therein, thereby affecting the public health, safety and general welfare thereof." Design Review applies, for example, to exterior changes on lots near the Town's major thoroughfares: Beacon Street, Commonwealth Avenue, Boylston Street, Harvard Street, Brookline Avenue, and Washington Street. When an application is made to the Building Department for a project requiring Design Review, the Building Commissioner is supposed to deny the application. The applicant then must file for a Special Permit, opening a process that allows for public input, an advisory report from the Planning Board, and a public hearing at the Board of Appeals.

A demolition in the areas of Brookline covered by Design Review can have substantial impact. Several of the specific areas addressed under Design Review can affect neighbors in demolitions no less than in other projects: Preservation of Landscape, Open Space, Circulation, Surface Water Drainage, Special Features, Safety and Security, Microclimate (Paragraph 4 of section 5.09 of the Zoning By-Law, "Community and Environmental Impact and Design Standards"). For example: the demolition process itself may pose hazards; the structure's foundation after the demolition could pose a continuing nuisance; the space opened up by the demolition could provide miscreants with a shortcut between a major thoroughfare and a neighborhood that was previously screened from the thoroughfare; the temptation to fill the new open space with unapproved parking spaces may be intense.

In practice, nevertheless, an application to demolish a structure has been treated as exempt from Design Review. As a result of this exemption in practice, neighbors and other members of the public might have no opportunity to have their concerns heard about the consequences of demolishing an entire building on one of the Town's major thoroughfares, even though they could comment on a proposal to add a dormer to its roof.

Arguments that demolitions are exempt from Design Review have included: a permit to demolish is not the same as a "building permit" for determining the scope of Design Review; the Demolition By-Law provides the process in Brookline for dealing with applications for demolitions; an owner's decision to dispose of a structure and generate open space need not be subject to review. Although such arguments may ultimately be found to be invalid even under the present By-Laws, Town Meeting can close this loophole now by stating explicitly that demolitions are not exempt from Design Review.

The right of a property owner to demolish a structure will not be removed by this clarification of the Zoning By-Law. The proposed amendment will simply ensure a chance for neighbors in areas of Town covered by Design Review to be heard on and protected from untoward consequences of the demolition.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 10, submitted by Citizen Petitioner Edmund Mroz, proposes to require a special permit for any demolition of a structure as outlined in the Scope paragraph of Section 5.09, Design Review, even if a new structure is not proposed at the time. In Section 5.09, a special permit is required for exterior alterations, additions, and changes if they fall into one of the 12 listed categories, which include any structure on a major thoroughfare in Brookline, dwellings in attached groups of three or more, cluster developments, multi-families of ten or more units, lodging houses, and gas stations. This special permit, and therefore this warrant article, does not apply to structures not listed under the scope section, such as single and two family dwellings in residential districts.

The Preservation Commission currently has some regulations relating to demolition of structures, but they are limited in nature. They include: 1) approval by the Preservation Commission of any demolition in one of the five Local Historic Districts in Brookline; and 2) demolition delay of up to one year for a structure not in a Local Historic District but found architecturally or historically significant by the Preservation Commission. The one year delay provides the opportunity to explore alternatives, such as reuse or construction of an addition. If the owner finds no alternative acceptable and requests that the stay be lifted before the one year time period is up, mitigation measures may be required by the Preservation Commission, such as photographic documentation of the structure.

The Planning Board believes that the current Scope language of Section 5.09 Design Review can be read to include demolition. However, specifically adding "demolition" to the scope of the design review section of the zoning by-law for certain categories of structures emphasizes the concern the Town has for preserving its historic fabric and protecting neighborhoods. It will afford a case-by-case review and approval of demolition projects, and the opportunity to require mitigating measures, such as fencing or landscape screening, if warranted. The Planning Board agrees with the petitioner that the word "exterior" should be added to clarify that internal demolitions are not covered.

Therefore, the Planning Board recommends FAVORABLE ACTION on Article 10 with the revision to have the word "exterior" precede "demolition" as follows.

> To see if the Town will amend the Zoning By-Law, Section 5.09, Design Review, Paragraph 2, Scope, first sentence, as follows (proposed additions shown in bold and underlined, proposed deletions shown in bold and in square brackets):
>
> In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior changes**, including *exterior* demolitions,** which require a [**building**] permit **from the Building Department** under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified.

SELECTMEN'S RECOMMENDATION

Article 10 is a petitioned article that proposes to require a special permit for any demolition of a structure as outlined in the Scope paragraph of Section 5.09, Design Review, even if a new structure is not proposed at the time. In Section 5.09, a special permit is required for exterior alterations, additions, and changes if they fall into one of the 12 listed categories, which include any structure on a major thoroughfare in Brookline, dwellings in attached groups of three or more, cluster developments, multi-families of ten or more units, lodging houses, and gas stations.

The Board believes that the current Scope language of Section 5.09 Design Review can be read to include demolition. However, specifically adding "demolition" to the scope of the design review section of the zoning by-law for certain categories of structures emphasizes the concern the Town has for preserving its historic fabric and protecting neighborhoods. It will afford a case-by-case review and approval of demolition projects, and the opportunity to require mitigating measures, such as fencing or landscape screening, if warranted.

The Selectmen agree with the Planning Board that this article should clearly only apply to exterior demolition. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 24, 2006, on the following vote:

VOTED: That the Town amend the Zoning By-Law, Section 5.09, Design Review, Paragraph 2, Scope, first sentence, as follows (proposed additions shown in bold and underlined, proposed deletions shown in bold and in square brackets):

> In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior changes**, including *exterior* demolitions,** which require a [**building**] permit **from the Building Department**

under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Daly
DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
The petitioner seeks to amend the Zoning By-Law, Section 5.09, Design Review, Paragraph 2 dealing with Scope by requiring Design Review for exterior demolitions in which a new building or structure is not planned at the time of the demolition. Section 5.09 specifies that a special permit is required for exterior alterations, additions, and changes if the building or structure is on a major thoroughfare in the Town (Beacon, Commonwealth, Harvard, Washington, and Route 9) or is a large residential building (dwellings in attached groups of three or more, cluster developments, multi-families of ten or more units, lodging houses). Currently, a special permit (and hence design review) is also required for exterior alterations of gas stations.

Design review is already required in specified major areas in Town and for major buildings as described above if a building were to be demolished and a new structure built to replace the demolished structure. The design review in the special permit process focuses on the design of the replacement building. However, does the current language of Section 5.09 cover demolition without the construction of a replacement structure? In other words does design review apply to removal or to construction of new structures or altered exteriors?

DISCUSSION
The Advisory Committee considered the purpose of design review as a public process to consider proposed changes to a building or to a property and the effect that those changes could have on the character of a neighborhood. In that regard, "exterior demolition" without the construction of a new structure could have a significant effect on the neighborhood and should be covered by a design review process. For example, a demolition could significantly affect the lighting and screening afforded by the extant structure. In their consideration of this article, the Planning Board concluded that the current Scope language of Section 5.09 could be read to include demolition. Isn't an

"exterior demolition" an extreme form of "exterior alteration"? The Planning Board recommended favorable action on the article to "emphasize the concern the Town has for preserving its historic fabric and protecting neighborhoods." The petitioner advocates the amendment as a way to make explicit what is implicit in the current by-law.

Opponents of the article offered that a demolition without subsequent construction is a very rare event, and any construction would require a design review in the appropriate situations under the current by-law. Thus this amendment goes after a very unusual situation, and thus is really not required. Opponents also argued that the Zoning Board of Appeals has a different interpretation of the Section 5.09 - that a demolition is not an exterior alteration. While the Director of Planning and Community Development was supportive of the article, he raised the question of whether the Attorney General might challenge the by-law since this article would give the Planning Department authority for some demolitions. Throughout the state, the Preservation Commission (for Historic Districts) and the Building Department have authority for demolitions.

RECOMMENDATION

The Advisory Committee, by a vote of 14 in favor, 6 against and 1 abstention, recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

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ARTICLE X

PLANNING BOARD REPORT AND RECOMMENDATION

Article 10, submitted by Citizen Petitioner Edmund Mroz, proposes to require a special permit for any demolition of a structure as outlined in the Scope paragraph of Section 5.09, Design Review, even if a new structure is not proposed at the time. In Section 5.09, a special permit is required for exterior alterations, additions, and changes if they fall into one of the 12 listed categories, which include any structure on a major thoroughfare in Brookline, dwellings in attached groups of three or more, cluster developments, multi-families of ten or more units, lodging houses, and gas stations. This special permit, and therefore this warrant article, does not apply to structures not listed under the scope section, such as single and two family dwellings in residential districts.

The Preservation Commission currently has some regulations relating to demolition of structures, but they are limited in nature. They include: 1) approval by the Preservation Commission of any demolition in one of the five Local Historic Districts in Brookline; and 2) demolition delay of up to one year for a structure not in a Local Historic District but found architecturally or historically significant by the Preservation Commission. The one year delay provides the opportunity to explore alternatives, such as reuse or construction of an addition. If the owner finds no alternative acceptable and requests that the stay be lifted before the one year time period is up, mitigation measures may be required by the Preservation Commission, such as photographic documentation of the structure.

The Planning Board believes that the current Scope language of Section 5.09 Design Review can be read to include demolition. However, specifically adding “demolition” to the scope of the design review section of the zoning by-law for certain categories of structures emphasizes the concern the Town has for preserving its historic fabric and protecting neighborhoods. It will afford a case-by-case review and approval of demolition projects, and the opportunity to require mitigating measures, such as fencing or landscape screening, if warranted. The Planning Board agrees with the petitioner that the word “exterior” should be added to clarify that internal demolitions are not covered.

Therefore, the Planning Board recommends FAVORABLE ACTION on Article 10 with the revision to have the word “exterior” precede “demolition” as follows.

To see if the Town will amend the Zoning By-Law, Section 5.09, Design Review, Paragraph 2, Scope, first sentence, as follows (proposed additions shown in bold and underlined, proposed deletions shown in bold and in square brackets):

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior changes**, including *exterior* demolitions,** which require a [**building**] permit **from the Building Department** under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified.

ARTICLE 11

ELEVENTH ARTICLE

To see if the Town will amend its Zoning By-law by changing all lots within Block 135, and to the centerlines of the surrounding streets, i.e. Washington Street, Brookline Avenue, and River Road. designated in the 1986 Atlas of the Town of Brookline on Plate 29, now zoned 1-1.0 to the new zoning designation of G-1 .O,

or act on anything relative thereto.

The undersigned residents of Brookline propose rezoning the industrial strip between River Road and Brookline Avenue to the zoning of General Business-1 because of (1) its proximity to the Olmted Park; (2) continuing pollution problems of the park and the river caused in part because of industrial activities; and (3) because of the hindrance these industries and their vehicles offer to the recreational use of the park strip by walkers, joggers, and bicyclists. We feel that the decision to retain industrial zoning in this area by the Brookline Redevelopment Authority in the early 70's was a mistake. The character of the area has been determined by the relocation of small industries in the wake of development. Renewed attention to the Olmsted heritage in Brookline and its value for our community and the larger community and the prospect of improvements in the lower village and substantial funds for Olmsted restoration, dictate that everything should be done to arrest blight in the lower Village.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 11, which was submitted by Citizen Petitioner Isabella Callanan, proposes to change the Industrial zoning of a block of properties surrounded by River Road, Washington Street and Brookline Avenue, from I-1.0 (Industrial) to G-1.0 (General Business). The allowed FAR of 1 would not change. This amendment would not affect the current industrial uses, like Brookline Ice and Coal, which are located here, because the use is grandfathered. However, any new industrial use would be prohibited from locating here and expansion of existing industrial uses would not be allowed.

Years ago, the Brookline Redevelopment Authority took the property that Brookline Ice and Coal occupied across the street by eminent domain and created this small Industrially zoned area in its place. The Petitioners oppose the industrial uses because they believe there is danger that this or other industrial uses could pollute the Muddy River. They stated that they would eventually like to see these properties turned into parkland.

There are only two other areas in Brookline zoned Industrial, and both are owned by the Town: one is the location of the prior landfill and transfer station off of Newton Street, and the other is the Municipal Service Station on Hammond Street. Neither of these would be available to private businesses. Uses that are allowed in an Industrial zone, but

in no other zoning districts by-right, include: printing and publishing, plumbing, carpentry shop or other similar service or repair establishment, wholesale business and storage, steam laundry or dry cleaning plant, and light, non-nuisance manufacturing with no noxious fumes or nuisances by special permit.

At its Public Hearing on October 5, 2006, the Planning Board, after listening to public comment, did not support this zoning change. The Board knows of no documented on-going pollution from the industrial use to the adjacent parkland and waterway and noted the current strict environmental regulations that have been adopted. Additionally, this zoning amendment will not eliminate the current businesses located there, nor move the area closer to becoming parkland. The Planning Board feels strongly that the current business owners would be penalized by this zoning change and that the zoning change would be unfair to the owners since the Town moved them there in the first place. The owners, the Board felt, should be paid fair market value for their property, if the goal was to turn this area into parkland. Finally, the Planning Board supports having at least one location in Brookline where mixed uses, including industrial uses, could locate as these businesses serve vital needs of the Town residents.

Therefore, the Planning Board recommends NO ACTION on Article 11.

SELECTMEN'S RECOMMENDATION

Article 11 is a petitioned article that proposes to change the Industrial zoning of a block of properties surrounded by River Road, Washington Street and Brookline Avenue, from I-1.0 (Industrial) to G-1.0 (General Business). The allowed FAR of 1 would not change. This amendment would not affect the current industrial uses, like Brookline Ice and Coal, which are located here, because the use is grandfathered. However, any new industrial use would be prohibited from locating here and expansion of existing industrial uses would not be allowed.

Years ago, the Brookline Redevelopment Authority took the property that Brookline Ice and Coal occupied across the street by eminent domain and created this small industrially zoned area in its place. The petitioner opposes the industrial uses because she believes there is danger that this or other industrial uses could pollute the Muddy River. They stated that they would eventually like to see these properties turned into parkland.

There are only two other areas in Brookline zoned Industrial, and both are owned by the Town: one is the location of the prior landfill and transfer station off of Newton Street, and the other is the Municipal Service Station on Hammond Street. Neither of these would be available to private businesses. Uses that are allowed in an Industrial zone, but in no other zoning districts by-right, include: printing and publishing, plumbing, carpentry shop or other similar service or repair establishment, wholesale business and storage, steam laundry or dry cleaning plant, and light, non-nuisance manufacturing with no noxious fumes or nuisances by special permit.

The Selectmen are concerned that businesses such as Brookline Ice and Coal, which were already forcibly relocated once, will be forced to move again, leaving no room in the Town for light industrial uses that contribute to our tax base and the diversity of services in Town without notable environmental impacts. Therefore, the Selectmen recommend NO ACTION, by a vote of 4-0 taken on October 24, 2006, on Article 11.

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Daly
DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
The proposed article would change the zoning of a block of properties bordered by Brookline Avenue, River Road, and Washington Street from Industrial (I-1.0) to General Business (G-1.0). The Floor Area Ratio of 1.0 would remain the same. River Road borders the Emerald Necklace parkland in lower Brookline Village.

This is the third time an article similar to this one for this district has been proposed – the earlier versions having been submitted more than ten years ago. The goal has always been to correct a perceived mistake by the then Brookline Redevelopment Authority, of establishing this industrial district in the first place back in the 1970s. The area had been residential. It was taken and rezoned to create a small industrial area to relocate some of the businesses that had been in the larger nearby area now known as Brookline Place.

The petitioners feel that the site has a history of polluting the Muddy River and is a general eye-sore next to the ever improving Emerald Necklace parklands. With the increased interest in the park and in its famous landscape architect, Fredrick Law Olmsted, they feel the time has finally come to try and phase these uses out, and "dictate that everything should be done to arrest blight in the lower Village".

DISCUSSION
The existing properties have a wide range of business and light industrial uses, at least one originating from the other district. If changed to G, that company, Brookline Ice & Coal, would then become non-conforming and likely unable to rebuild if a natural disaster caused damage in excess of 50% of their assessed valuation. Others might also be affected.

The Advisory Committee heard of no ongoing pollution problems, and past ones two decades ago have been addressed with stringent EPA regulations. Some pollution may

have been the result of flooding and lack of containment, now rectified, or the pollutants may have come from across town, via an old storm drainage system.

The Planning Department said it may look for ways of improving the facade and signage guidelines for the district as it has done in other areas. Also, River Road may get studied as part of the Gateway East project to see if it can be narrowed – to the benefit of the parkland side.

The department also expressed the opinion that at some point in the future, the parcel may eventually become largely residential in use, if that becomes the "highest and best use". That is common to I & G districts.

This is the only remaining privately owned Industrial District in town; the other two are town owned. The businesses located here are reasonably successful, responsible and provide needed services to residents. Certainly, if given the right selling price and opportunities to move to less costly locations, some of them might.

RECOMMENDATION

The Advisory Committee commended the petitioner for trying again for what would be an aesthetically desirable outcome – creating more parkland. However, we pointed out that that would not be the outcome of the article as written. That would likely only happen by a new taking by the town and some of these owners have been subjected to that once already.

Therefore, by a vote of 18-1, the Advisory Committee recommends NO ACTION on Article 11.

XXX

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ARTICLE XI

PLANNING BOARD REPORT AND RECOMMENDATION

Article 11, which was submitted by Citizen Petitioner Isabella Callanan, proposes to change the Industrial zoning of a block of properties surrounded by River Road, Washington Street and Brookline Avenue, from I-1.0 (Industrial) to G-1.0 (General Business). The allowed FAR of 1 would not change. This amendment would not affect the current industrial uses, like Brookline Ice and Coal, which are located here, because the use is grandfathered. However, any new industrial use would be prohibited from locating here and expansion of existing industrial uses would not be allowed.

Years ago, the Brookline Redevelopment Authority took the property that Brookline Ice and Coal occupied across the street by eminent domain and created this small Industrially zoned area in its place. The Petitioners oppose the industrial uses because they believe there is danger that this or other industrial uses could pollute the Muddy River. They stated that they would eventually like to see these properties turned into parkland.

There are only two other areas in Brookline zoned Industrial, and both are owned by the Town: one is the location of the prior landfill and transfer station off of Newton Street, and the other is the Municipal Service Station on Hammond Street. Neither of these would be available to private businesses. Uses that are allowed in an Industrial zone, but in no other zoning districts by-right, include: printing and publishing, plumbing, carpentry shop or other similar service or repair establishment, wholesale business and storage, steam laundry or dry cleaning plant, and light, non-nuisance manufacturing with no noxious fumes or nuisances by special permit.

At its Public Hearing on October 5, 2006, the Planning Board, after listening to public comment, did not support this zoning change. The Board knows of no documented on-going pollution from the industrial use to the adjacent parkland and waterway and noted the current strict environmental regulations that have been adopted. Additionally, this zoning amendment will not eliminate the current businesses located there, nor move the area closer to becoming parkland. The Planning Board feels strongly that the current business owners would be penalized by this zoning change and that the zoning change would be unfair to the owners since the Town moved them there in the first place. The owners, the Board felt, should be paid fair market value for their property, if the goal was to turn this area into parkland. Finally, the Planning Board supports having at least one location in Brookline where mixed uses, including industrial uses, could locate as these businesses serve vital needs of the Town residents.

Therefore, the Planning Board recommends NO ACTION on Article 11.

ARTICLE 11

Motion to Be Offered by the Petitioner

Moved: That Article 11 be referred to the Zoning By-Law Review Committee.

ARTICLE 12

TWELFTH ARTICLE

To see if the Town will accept the provisions of Massachusetts General Laws Chapter 32, Section 20(6)(a) that provides for the members of the Retirement Board to receive a stipend of $3,000.00 per annum to be paid from the funds of the Retirement Board. The statute specifically provides as follows:

> The elected and appointed members of any city, town, county, district or authority retirement board upon the acceptance of the appropriate legislative body shall receive a stipend of three thousand dollars per annum; provided, however, that said stipend shall be paid from such funds under the control of said board as shall be determined by the public employee retirement administration; and, provided further, that the ex-officio member of any city, town, county, district or authority retirement board upon the acceptance of the appropriate legislative body shall receive a stipend of not more than three thousand dollars per annum in the aggregate for services rendered in the active administration of the retirement system.

or act on anything relative thereto.

Acceptance by the Town of Section 20(6) of Chapter 32 of the General Laws would grant members of Brookline's Retirement Board a stipend of $3,000.00 per year. The Legislature added this provision to Chapter 32 in 1995, calling for these payments to retirement board members upon the acceptance of the provision by the appropriate local legislative body. The stipend has been approved for 56 of the 106 retirement boards.

Among nearby cities and towns, stipends have been approved for the retirement boards in Arlington, Belmont, Boston, Cambridge, Chelsea, Newton, Quincy, Somerville, Waltham, and Watertown. Nearby communities that have rejected stipends for their retirement boards are Natick, Wellesley, and Winthrop.

The Retirement Board unanimously voted to support the acceptance of this provision.

SELECTMEN'S RECOMMENDATION

Article 12 was filed by the Retirement Board and would allow its members to be paid a $3,000 annual stipend. The stipend would be paid from the assets under the control of the Retirement Board, not from the Town's General fund. According to information on the Public Employee Retirement Administration Commission's (PERAC) website, 58 out of 104 local retirement boards have adopted this provision of state law and provide their members with an annual stipend.

In Brookline, just four of the nearly 30 boards and commissions receive stipends: Board of Assessors ($6,000 per year for the two resident members), Board of Appeals ($50 per meeting for each member, with the Chair receiving $140 per meeting) Board of Examiners ($30 per meeting for each member), and Board of Selectmen ($2,500 per year for each member, with the Chair receiving $3,500). The stipends for these boards are set by the Selectmen under the authority of MGL Ch. 41, Section 108.

The Town has numerous boards and commissions whose members work tremendously hard but do not get compensated. That reflects Brookline's volunteer-based form of government, where residents volunteer their valuable time to help make this community what it is. In the interest of fairness, the Selectmen do not feel that the volunteer members of one board should be compensated over others.

This belief should not be viewed as a lack of appreciation for the Retirement Board's efforts. This Board fully acknowledges the hard work of the Retirement Board over the past years, years that have been quite challenging. The Retirement Board has performed well when compared against the broader stock market indices, and the pension fund is in better condition than it would otherwise be. Consider the following: during the three-year market downturn between CY00-CY02, the Dow Jones lost approximately 30% of its value and the S&P 500 lost approximately 40% of its value. During the same period, the Brookline pension fund lost approximately 5%. This is proof of their strong stewardship.

The Retirement Board has notified the Selectmen that they will not be making a motion to move this article at Town Meeting.

For a majority of the Board, this issue comes down to providing the Retirement Board a stipend while other equally deserving boards and commissions go without one. As a result, the Selectmen recommend NO ACTION, by a vote of 3-1 taken on October 10, 2006 on Article 12.

ROLL CALL VOTE:

No Action	Favorable Action
Hoy	Allen
Daly	
DeWitt	

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This article asks the town to approve implementation of the provisions of M.G.L. Ch. 32, Section 20(6) (A) which allows, but does not require, compensation for Retirement Board members of $3,000 per annum. Several years ago a similar article was submitted for the

Town Meeting. However, while the previous vote among Retirement Board members was only 3-2 in favor with the two town official Board members voting in opposition, the vote among Board members this year was unanimously in favor of submission.

The Retirement Board does a difficult and very important job managing the $200 million retirement fund to benefit 800 town retirees and 1420 active employees. It was the consensus in the room that the Board's decisions have led to strong investment performance and have reduced or rescheduled required town contributions.

DISCUSSION

The Retirement Board, in requesting $3,000 annual stipends for their members, provided several supporting arguments. These were:

1. Massachusetts law permits the payment of the $3,000 stipend to retirement board members. This is an "all or nothing" amount.

2. Board members have fiduciary responsibilities and personal liability. The stipend would help to offset any legal costs incurred in defending against a suit for breach of fiduciary duty.

3. Other communities provide this stipend to their retirement boards. Data provided showed that 70 of 105 towns in Massachusetts allow their pension funds to pay a $3,000 stipend to their retirement board members.

4. Other Brookline town boards receive compensation

5. Retirement Board members want to enhance their effectiveness and decision making capabilities through training to improve their knowledge of retirement funds and capital markets.

6. The stipend is a symbol of recognition for a difficult job well done. The Retirement Board has always been mindful of the town's budgetary situation and helpful to the extent possible in setting its funding assumptions and schedules.

The Advisory Committee's discussion addressed each of the foregoing points:

1. Massachusetts law permits, but does not require, the $3,000 annual stipend.

2. It was agreed that the $3,000 stipend would not make a meaningful contribution to defending against a lawsuit for breach of fiduciary duty. Retirement Board members rely on a $25 million state-wide fund intended to provide protection in the event of a lawsuit. However, there is no provision to replace this amount should it be spent due to liabilities incurred by another town. As a result, the Advisory Committee discussed the possibility of having the pension fund buy liability insurance for board members. The Retirement Board will revisit this. Several years ago the costs were deemed too high (approximately $130,000 per year).

3. It was not clear that consistency with what other towns were doing justified the payment of stipends in Brookline. The same was true for payments to other board members within Brookline as justification for payment to Retirement Board members. Other town boards getting stipends include:
a. Registrar of Voters
b. Board of Assessors
c. Board of Appeals

4. Additional training was seen as a valid request but one best addressed through other means.

Further discussion noted that the Finance Director Steve Cirillo and the Comptroller Judy Haupin, both of whom are known for their fiscal prudence, favored this article.

RECOMMENDATION

The Advisory Committee recognizes the important and difficult decision making responsibilities that are part of being a member of the Retirement Board. However, the Committee found it difficult to justify the payment of stipends to individual members because, after discussion, the stipends were characterized by Retirement Board members as "recognition for a difficult and important job well done" and also because the Retirement Board members receive compensation for costs incurred to attend pension-related events.

The Committee's views on making payments in recognition of service were, for the most part, consistent with the prevailing view that it is an honor, even a citizen's duty, to offer services for the greater good of the town. Hence the Advisory Committee, by a vote of 12 in favor of the motion for no action, 3 opposed, and 2 abstentions, recommends NO ACTION under Article 12.

XXX

ARTICLE 13

THIRTEENTH ARTICLE

To see if the Town will, in accordance with G.L. c. 40, section 4A, authorize the Brookline Department of Public Health and the Director of Health and Human Services, with the approval of the Board of Selectmen, to enter into an inter-municipal agreement with one or more other governmental units to provide public health services which the Brookline Department of Public Health is authorized to perform; in accordance with an Inter-Municipal Aid Agreement to be entered into by the Town and various other governmental units,

or act on anything relative thereto.

Every day, municipal Boards of Health and Health Departments effectively protect Massachusetts' communities from infectious disease and environmental hazards through a variety of preventative measures. However, an event that threatens the public health could overwhelm the public health resources of any municipality in the Commonwealth, even if the event does not constitute a declared emergency. For example, an infectious disease outbreak may require immediate action to prevent the development of a major epidemic. Additional public health expertise and personnel could be critical to addressing and controlling such an event.

To enhance emergency preparedness and response capabilities, the Massachusetts Department of Public Health (MDPH) recommends that municipal Boards of Health and Health Departments enter into mutual aid agreements with cities and towns within their Emergency Preparedness Regions, and with other neighboring communities if appropriate. Only by sharing resources, expertise and equipment across borders will local health authorities be able to respond effectively to situations that can threaten public health and interrupt critical services.

The cities of Newton, Boston and Cambridge as well as the Towns of Wellesley, Needham, Watertown, Dedham, Arlington, Belmont and Westwood have all entered into similar agreements. If approved, this warrant article would authorize the Board of Selectmen to enter into an Agreement with other cities and towns for such purposes.

SELECTMEN'S RECOMMENDATION

Article 13 was submitted by the Town's Director of Health and Human Services to formalize a critical inter-municipal framework that has helped avert serious infectious disease and environmental hazards from spreading. These mutual aid agreements between local boards of health allow cities and towns to work together and share resources when faced with the potential of a major epidemic, an arrangement that benefits

all 351 municipalities. Recommended by the Massachusetts Department of Public Health, mutual aid agreements for local health departments work similar to mutual aid agreements for police and fire departments.

Surrounding cities and towns, including Newton, Boston, Cambridge, Wellesley, and Needham, have all entered into similar agreements. If approved by Town Meeting, Article 13 will authorize the Board of Selectmen to enter into an inter-municipal agreement per the provisions of MGL, Ch. 40, Sec. 4A. This Board fully supports any and all efforts to enhance emergency response and recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 17, 2006, on the following vote:

VOTED: That the Town, in accordance with G.L. c. 40, section 4A, authorize the Brookline Department of Public Health and the Director of Health and Human Services, with the approval of the Board of Selectmen, to enter into an inter-municipal agreement with one or more other governmental units to provide public health services which the Brookline Department of Public Health is authorized to perform; in accordance with an Inter-Municipal Aid Agreement to be entered into by the Town and various other governmental units.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Mutual Aid agreements are familiar to towns and cities – including Brookline. Brookline has entered into Mutual Aid agreements involving our Public Safety services. These agreements provide for aid & support and communication & coordination among communities during extraordinary circumstances such as major fires, natural disasters or special policing situations (e.g. major events). Article 13 proposes adoption of MGL Chapter 40, sec4A, for the purpose of entering into a regional Public Health Mutual Aid agreement.

Two years ago the State approached municipalities asking that they form regional Mutual Aid agreements with regards to Public Health services. To date, most Metro-Boston communities have entered into the agreement. These include Brookline's surrounding communities of Boston, Newton, and Cambridge.

DISCUSSION

Public Health "Mutual Aid" has existed to a certain extent between Brookline and her neighbors in an informal and ad hoc manner. One community may ask another for help with staffing during a community inoculation day or to exchange (or plan to gather) information on a Public Health issues such as West Nile virus. Entering into a regional Public Health Mutual Aid agreement would formalize what is now standard practice and contribute to a better-coordinated structure that benefits both Brookline and her surrounding communities.

MGL Chpt. 40, sec. 4A allows the Town to enter into such an agreement. This article, if passed, would allow the Department of Public Health, with the authorization of the Board of Selectmen, to enter into a Mutual Aid agreement that State statute allows for a maximum of up to 25 years. However, this agreement could be severed at any time. Brookline would not be "locked in". Entering into the agreement would not require a financial commitment on the part of the Town. Also, it is not believed that adherence to the Mutual Aid agreement would create a conflict with any collective bargaining issues.

RECOMMENDATION

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

XXX

ARTICLE 14

FOURTEENTH ARTICLE

To see if the Town will amend the General By-Laws by adding the following article:

Article 8.28

The Brookline Health Department's authorized personnel shall only administer Flu Shots, vaccines and immunizations to town employees and residents that are 100% thimerosal free, and are free of all other toxins or substances, the introduction of which have been documented through credible scientific study to cause significant risk to human health.

or act on anything relative thereto.

Scientific Studies document a positive correlation between thimerosol and increased risk for Autism and Alzheimer's disease. Health initiatives should "Do No Harm" to human health. Scientific data will respectfully be submitted to the Town of Brookline's dedicated and conscientious Advisory Committee members.

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"Finding one cow in the U.S. with Mad Cow Disease, from Canada, prompted the Federal government to spent millions of dollars examining other cows to see if they had contracted it. However, the government spends $59.00 in research for every case of autism diagnosed in this country," (Mercury on the Mind by Donald W. Miller, Jr., M.D.).

Vaccines and Autism

Date	**Micrograms mercury**	**Autism cases**	**Percent increase**
1950	100	1 /10,000 children	
1981	135	1 / 2,600 children	385% increase
1996	246	1 / 350 children	2,857% increase
2003	850	1 / 400 girls	*2,500% increase
2003	850	1 / 100 boys	*5,000 % increase
2003	850	1 / 68 families	

- Mercury on the Mind, Donald W. Miller M.D.www.lewrockwell.com/miller/miller14.html
- * 2003 Approximates: 1950 data equal male:female ratio approximates
- * 2003 25micrograms industry standard x #vaccines: www.lewrockwell.com/miller/miller14.html

Flu Shots and Alzheimer's

"Hugh Fudenberg, MD, an immunogeneticist and biologist with nearly 850 papers published in peer review journals, has reported that if an individual had five consecutive flu shots between 1970 and 1980 (the years studied), his/her chances of getting Alzheimer's Disease is ten times higher than if they had zero, one, or two shots. When asked why Dr. Fudenberg stated that it is due to the mercury and aluminum buildup that is in every flu shot. The gradual mercury and aluminum buildup in the brain causes cognitive dysfunction. [vii]"

- (1) Dr. Fudenberg at the NVIC International Vaccine Conference, Arlington, VA September, 1997 transcribed/quoted with permission.
- (2) John Hopkins Newsletter Nov 1998.
- (3) www.ghchealth.com

"Alzheimer's disease was discovered in 1906, again in America, where dentists used mercury-laden amalgams to fill cavities (dentists in Europe largely avoided them). Today, more than 4 million Americans now have **Alzheimer's** disease. It afflicts half of people over the age of 85 and 20 percent aged 75 to 84.

The first symptoms of this disease are difficulty concentrating and variable degrees of memory loss, leading ultimately to devastating mental deterioration. The brains of people with **Alzheimer's** disease shrink by 25 percent and have distinct pathologic hallmarks (neurofibillary tangles, amyloid plaques, and phosphorylation of tau protein). Brain cells grown in the laboratory develop the same three pathologic findings when exposed to nanomolar (3.6 × 10-10 molar) doses of mercury, an amount approximating that found in the brains of people who have a lot of amalgam fillings." Mercury on the Mind by Donald W. Miller, Jr., M.D.

http://64.233.161.104/search?q=cache:8FWk7p2aC5kJ:mercuryexposure.org/index.php%3Farticle_id%3D175+Thimerasol+Alzheimer%E2%80%99s&hl=en&gl=us&ct=clnk&cd=4

(*Why isn't everyone affected?)

"The amount of damage a given dose of mercury can do to the brain (and also the heart) depends on one's age, sex, and genetically determined ability to excrete mercury. Young children with still developing brains are more susceptible, and males are more vulnerable to a given dose of mercury because **testosterone enhances its neurotoxicity**. Most important, however, is one's **genetically programmed ability to rid the body of mercury**. The brain has a house-cleaning protein that removes dangerous waste products, which comes in three varieties: **APO-E2, APO-E3, and APO-E4.** The APO-E2 protein can carry 2 atoms of mercury out of the brain; APO-3, one; and AOP-E4, none. The genes we acquire from each parent determine which two we have. People with **two APO-E4 proteins** (and thus no APO-E2 or -E3) have an **80 percent chance of acquiring Alheimer's disease**. And according to one study, autistic children have a huge preponderance of APO-E4 protein in their brains."

- Congressional Record, Subcommittee on Human Rights and Wellness, "Mercury in Medicine – Taking Unnecessary Risks," review of thimerosal and autism

Subcommittee on Human Rights and Wellness, Congressman Dan Burton, Congressional Record, May 21 2003, E1011-E1030.

- Mercury on the Mind, Donald W. Miller M.D.www.lewrockwell.com/miller/miller14.html

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Vaccine manufacturers have started removing thimerosal from vaccines. And for the first time since the state began keeping records on this disease, California has had a decrease, of 6 percent, in the annual number of children over the age of 3 who have been diagnosed with autism. This occurred in children born in 2000, when the phase-out of thimerosal in vaccines began. Iowa has passed a law banning thimerosal in that state, and California has done the same thing for pregnant women and children under 3 (the bill awaits the governor's signature). But pharmaceutical companies still add thimerosal in their Flu vaccines; and pediatricians are vaccinating children with their remaining supply of thimerosal-containing vaccines, which the FDA has chosen not to recall.

Why the silence on Autism and Alzheimer's Disease?

SafeMinds president, Lyn Redwood, presented testimony at a Congressional hearing held on September 8, 2004 that exposes malfeasance by the CDC and FDA related to thimerosal. It is titled "Truth Revealed: New Scientific Discoveries Regarding Mercury in Medicine and Autism" and is posted on their website, safeminds.org. See also this organization's 84-page Report to Congress titled, "A Brief Analysis of Recent Efforts in Medical Mercury Induced Neurological and Autism Spectrum Disorders" (September 8, 2004).

Mercury on the Mind by Donald W. Miller, Jr., M.D.
http://64.233.161.104/search?q=cache:8FWk7p2aC5kJ:mercuryexposure.org/index.php%3Farticle_id%3D175+Thimerasol+Alzheimer%E2%80%99s&hl=en&gl=us&ct=clnk&cd=4

Aluminum Hydroxide and Parkinson's ALS (Lou Gehrig's), & Alzheimer's

If two dozen once-jittery mice at UBC are telling the truth postmortem, the world's governments may soon be facing one hell of a lawsuit. New, so-far-unpublished research led by Vancouver neuroscientist Chris Shaw shows a link between the aluminum hydroxide used in vaccines, and symptoms associated with Parkinson's, amyotrophic lateral sclerosis (ALS, or Lou Gehrig's disease), and Alzheimer's.

Vaccines show sinister side By pieta woolley Publish Date: 23-Mar-2006
http://www.straight.com/content.cfm?id=16717

Explanation:

Scientific Studies document a positive correlation between Thimerasol and increased risk for Autism and Alzheimer's Disease.

Scientific data will respectfully be submitted to the Town of Brookline's dedicated and conscientious Advisory Committee

Article:
http://64.233.161.104/search?q=cache:SQmej9ygoGIJ:www.mothering.com/articles/growing_child/vaccines/toxic.html+Thimerosal+Alzheimer%27s&hl=en&gl=us&ct=clnk&cd=9

Mothering Magazine/ Toxic Overload: Assessing the Role of Mercury in Autism By Boyd E. Haley Issue 115, November/December 2002

From 1996 to 1997, J. Curtis Pendergrass, PhD, did some experiments in my research laboratory at the University of Kentucky that confirmed the toxicity of **thimerosal** in vaccines. The results appeared on our website (www.altcorp.com), where they attracted the attention of some parents of autistic children.

These parents informed me that increased mandatory vaccination of infants was, in their opinion, the cause of an apparent epidemic of autism. This was the first time I had heard of this situation. The rationale for considering vaccinations as the cause of their children's problems seemed sensible and worth an investigation. I would like to state here that I am a very strong supporter of the national vaccine program, and that nothing in this article should be construed to imply that parents should avoid getting their children vaccinated. But I do recommend avoiding vaccines that contain **thimerosal**.

My laboratory was well experienced in mercury research. We had earlier demonstrated that mercury, when exposed to normal human brain tissue homogenates, is capable of causing many of the same biochemical aberrancies found in **Alzheimer's** diseased (AD) brains.1-4 Also, rats exposed to mercury vapor show the same major protein aberrancy as AD brains. Specifically, the rapid inactivation of important brain enzymes occurs following the addition of low levels of mercury or exposure to mercury vapor, and these same enzymes are significantly inhibited in AD brains.5 Also, mercury exposure to neurons in culture by other researchers, at a concentration lower than that found in many human brains, has now been shown to produce three of the widely accepted pathological diagnostic hallmarks of AD.6,7

Therefore, we hypothesized that exposure to mercury is involved in the etiology of AD, or at least would exacerbate this disease. We also proposed that other heavy metals, such as lead and cadmium, which act synergistically to enhance the toxicity of mercury, could be involved. Additionally, we proposed that exposure to organic-mercury compounds like methyl mercury from fish and ethyl mercury from **thimerosal** would also enhance the toxicity of any exposure to mercury. The early work of Dr. Pendergrass confirmed this with pure **thimerosal**, with some interesting additional observations. First, in human brain samples the exposure to mercury dramatically reduced the viability of a major brain protein called tubulin, but had little if any effect on another major protein, actin. Both tubulin and actin are critically important for the growth of dendrites or maintenance of axon structures of neurons. Exposing neurons to mercury rapidly results in the stripping of tubulin from the axon structure, leaving bare neurofibrils that form the tangles that are

the diagnostic hallmark of AD. **Thimerosal**, like mercury, also rapidly reduces the viability of tubulin; in addition, however, it abolishes the viability of actin. This likely represents a major difference in the mechanism of mercury versus organic-mercury (more neurotoxic) toxicity. However, both mercury and organic-mercury inhibit tubulin viability and would work in concert to damage neurons of the central nervous system.

We therefore decided to investigate vaccines with and without **thimerosal** present as a preservative, using human brain tissues. To date the data have been very consistent: the toxicity of the vaccines is primarily dependent on the presence of **thimerosal** and, in my opinion, would be classified as severely toxic to numerous brain proteins. In the spring of 2001 these data were presented to the Institute of Medicine Immunization Safety Review Committee, which concluded its analysis by suggesting that **thimerosal** involvement in autism was a plausible hypothesis. Since then I have formed a collaboration with one of my colleagues, Mark Lovell, PhD, who uses cultured neurons in some of his experiments. Using his cultured neuron system, we studied the extent of neurotoxicity of pure **thimerosal** and of vaccines with and without **thimerosal** present. The experiments were done as follows: Neurons were grown in culture for 24 hours. Then pure **thimerosal** or vaccines were added to test cultures. The death of neurons was observed for the next 24 hours and compared to the death of neurons in the absence of toxicant.

The results were almost identical to the results observed with brain tissues: vaccines with **thimerosal** present were much more toxic than **thimerosal**-free vaccines. Pure **thimerosal** was toxic at the low nanomolar level--an extremely low concentration, about 10,000 times less than the **thimerosal** concentration found in most vaccines. These results leave little doubt about **thimerosal** being the toxic agent in the vaccines. However, many vaccines contain aluminum ions that have neurotoxic properties, and aluminum was once considered a factor in AD etiology. So we tested aluminum in the same system.

Aluminum is not nearly as toxic to neurons in culture as is **thimerosal**. However, we had earlier observed with mercury that the presence of other metals would enhance toxicity. Experiments were done to determine if aluminum would increase the toxicity of very low levels of **thimerosal**. The results were unequivocal: the presence of aluminum dramatically increased the rate of neuronal death caused by **thimerosal**. Therefore, the aluminum and **thimerosal** combination found in vaccines produces a toxic mixture that cannot be compared to situations where **thimerosal** alone is the toxic exposure.

The enhanced toxicity of **thimerosal** created by the addition of aluminum represents a problem with all forms of mercury toxicity. Synergism of toxic metals is well known. A slightly toxic solution of lead, mixed with a slightly toxic solution of mercury, results in a very toxic mixture. This is similar to the enhanced adverse reactivity to **thimerosal** found in optomological solutions, when subjects were prescribed to take the antibiotic tetracycline. For some reason, tetracycline increased the ocular toxic reaction to **thimerosal**. We have done some experiments to determine if certain antibiotics could also increase **thimerosal**-induced neuronal death in the neuron culture system. Our preliminary results indicate that this is the case, especially with tetracycline and ampicillin. Further research is needed in this area for accurate evaluation. But our results

support previous reports and indicate how important it is to check out the effects of other compounds on the exacerbation of mercury and organic-mercury compound toxicity.

One of the conundrums of autism is why there is an approximate ratio of four boys to every girl who gets this disease. Dr. Lovell therefore tested the possibility that this could be hormone related. The latest results were quite marked in their effects. Neurons that were pre-incubated with estrogen demonstrated substantial protection against **thimerosal**-induced neuron death. In contrast, the addition of testosterone caused a very large increase in **thimerosal**-induced neuron death. A low nanomolar level of **thimerosal** that gave less than 5 percent neuron death in three hours could be increased to 100 percent cell death by the addition of one micromolar level of testosterone. Testosterone alone at this level also showed less than 5 percent cell death. The opposing effects of estrogen and testosterone may explain the gender-based four-to-one ratio. Most important, the tremendous enhancement of **thimerosal** toxicity by testosterone points out the impact of synergistic effects when addressing mercury toxicity.

Those involved in promoting the use of mercury in medicine and dentistry favor the old adage "Dose makes the toxin," and pick a supposedly safe level based on testing young, healthy mammals that have been exposed to mercury compounds. The synergistic enhancement of **thimerosal** toxicity by testosterone and aluminum demonstrates that no one can pick a concentration of mercury or organic-mercury and say with confidence, "This is a safe dose for human infants"--at least not with our current level of knowledge.

MMR (measles-mumps-rubella) has been widely discussed as a vaccine involved in autism-related problems. Our studies did not find MMR vaccines (no **thimerosal** added) to be nearly as neurotoxic as **thimerosal**-containing vaccines. So how does this fit into the observations of measles virus in the intestines of a large percentage of autistic children?

My theory, and it is only a theory at this time, is based on the fact that **thimerosal** is an inhibitor of the brain protein tubulin. One of the jobs of tubulin is to support the axon structure of nerve axons; exposure to **thimerosal**, or mercury, destroys this capability. Tubulin also has another job: it is involved in formation of the meiotic spindle on which a cell splits in two. In other words, tubulin is needed for cell division, and cell division is needed for development of an immune response. Inhibit tubulin function with **thimerosal** injections, and you inhibit the immune response.

I have been told that the MMR vaccination is often given at the same time that three **thimerosal**-containing vaccines are given. Inhibit the immune response with the **thimerosal**-containing vaccinations, and an infant has less ability to respond to the measles virus in the MMR vaccination that is injected at the same setting. This might explain the presence of measles virus in about 80 percent of autistic children.

The research results we have obtained on the toxicity of **thimerosal** are not really surprising. This ethyl mercury-releasing compound was known to be neurotoxic through the publication of several research articles, some quite old. Any competent biochemist would look at the structure of the compound and identify it as a potent enzyme inhibitor. What is surprising is that the appropriate animal and laboratory testing was not done on

the vaccines containing **thimerosal** (and aluminum) before the government embarked on a mandated vaccine program that exposed infants to the levels of **thimerosal** that occurred.

At this time it appears that exposure to **thimerosal** is the most likely suspect in vaccines that may be involved in causing autism and related disorders. The final verdict will come with observing the rate of autism now that **thimerosal** has been removed from the infant vaccine program. Let us therefore give credit to those who have worked to remove **thimerosal** from the vaccines given to infants and emphasize that continued testing of all vaccines is imperative to obtain the safest national vaccine policy possible, including a **thimerosal**-free flu vaccine for our elderly citizens.

NOTES

1. S. Khatoon et al., "Aberrant GTP-Tubulin Interaction in **Alzheimer's** Disease," Annals of Neurology 26 (1989): 210-215.
2. S. David et al., "Abnormal Properties of Creatine Kinase in **Alzheimer's** Disease Brain," Molecular Brain Research 54 (1998): 276-287.
3. E. F. Duhr et al., "HgEDTA Complex Inhibits GTP Interactions with the E-Site of Brain-Tubulin," Toxicology and Applied Pharmacology 122 (1993): 273-288.
4. J. C. Pendergrass and B. E. Haley, "Mercury-EDTA Complex Specifically Blocks Brain-Tubulin-GTP Interactions: Similarity to Observations in **Alzheimer's** Disease," in Status Quo and Perspective of Amalgam and Other Dental Materials, International Symposium Proceedings, L. T. Friberg and G. N. Schrauzer, eds., 98-105 (Stuttgart and New York: Georg Thieme Verlag, 1995).
5. J. C. Pendergrass et al., "Mercury Vapor Inhalation Inhibits Binding of GTP to Tubulin in Rat Brain: Similarity to a Molecular Lesion in **Alzheimer's** Disease Brain," Neurotoxicology 18, no. 2 (1997): 315-324.
6. G. Olivieri et al., "Mercury Induces Cell Cytotoxicity and Oxidative Stress," J. Neurochemistry 74 (2000): 231-241.
7. C. C. W. Leong et al., "Retrograde Degeneration of Neurite Membrane Structural Integrity and Formation of Neurofibillary Tangles at Nerve Growth Cones Following in Vitro Exposure to Mercury," NeuroReports 12, no. 4 (2001): 733-737.

Boyd E. Haley, PhD, is a professor and chair of the department of chemistry at the University of Kentucky, Lexington. His research on biochemical aberrancies in **Alzheimer's** disease led to his identifying mercury toxicity as a major exacerbating factor, perhaps even a causal factor. Haley has testified before numerous government agencies on the effects of mercury toxicity from dental amalgams and vaccines.

For more information on vaccines see the *Mothering* Reprint: *Vaccines: Mercury, Autism and Chronic Disease*

SELECTMEN'S RECOMMENDATION

Article 14 is a petitioned article that would require the Town to administer flu shots, vaccines, and immunizations that are 100% thimerosal free. The petitioner believes that there exists a correlation between thimerosal and an increased risk for autism and Alzheimer's disease.

The Town's Director of Health and Human Services and the Advisory Council on Public Health have spent a great deal of time researching this issue. Numerous experts from various institutions assisted the Director and the Advisory Council, including the Boston Medical Center, the Harvard School of Public Health, Children's Hospital, Beth Israel Deaconess Medical Center, Massachusetts Department of Public Health, and Brigham and Women's Hospital. Their bottom-line conclusion is that there is no clear and credible scientific evidence linking the receipt of a flu shot containing thimerosal with the development of Alzheimer's disease. Similarly, their research shows no casual relationship between thimerosal containing vaccines and autism. On the other hand, there is strong evidence regarding the impact of influenza on older persons in general and frail older persons, including those with Alzheimer's disease, in particular.

The Board thanks Alan Balsam and the Advisory Council on Public Health for all of their work on his issue. It was clear from their presentation that this is an issue they take very seriously. Since the research shows the risk to individuals of influenza clearly outweighs any theoretical and not scientifically validated risk of thimerosal as a cause of Alzheimer's disease and autism, the Selectmen recommend NO ACTION, by a vote of 5-0 taken on October 17, 2006, on Article 14.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 14 seeks to prohibit Brookline Health Department health professionals from administering flu vaccines and other vaccines and immunizations containing thimerosal. Thimerosal is a mercury-containing organic compound that has, since the 1930s, been widely used in many vaccines as a bactericide and preservative to help prevent potentially life-threatening contamination by bacteria in large-batch, multi-dose vials of vaccine. Thimerosal, a derivative of ethyl mercury, has been removed from or reduced to trace amounts in all vaccines routinely recommended for children 6 years of age and younger (which in 1999 numbered 32), with the exception of the flu vaccine. According to Dr. Jerome Klein, Boston Medical Center, in prepared remarks for the Public Health Department hearing on September 29th, about 8 million single vial doses of thimerosal-free influenza vaccine will be available for infants and toddlers this fall, up from 3.2 million doses that were available during the 2003-04 influenza season, but far short of the number needed to cover all U.S. residents who wish to be immunized. Dr. Alan Balsam

stated that he has obtained from the Commonwealth 200 doses of thimerosal-free vaccine for the current flu season. The petitioner has brought this warrant article to the Town because she is "concerned that vaccines and immunizations should do no harm."

DISCUSSION

The petitioner is particularly concerned about a link between thimerosal and increased risk for autism in children and Alzheimer's disease in adults. The discussions at the subcommittee hearing and full Advisory Committee meeting focused on these specific concerns, as well as the more general public health policy issues. A summary follows:

1. Ethyl Mercury vs. Methyl Mercury. Mercury is a known toxin, but different forms of mercury are associated with different levels of toxicity. Methyl mercury has been well studied and its negative health effects well documented. Methyl mercury is a neurotoxin whose molecules directly enter the nervous system and accumulate in the body, causing serious environmental damage and posing a major health risk, especially to pregnant women and children. This form of mercury is found in fish and is related to industrial and environmental exposures. The toxicity of methyl mercury was first recognized during the late 1950s and early 1960s when industrial waste in Minimata Bay, Japan, led to the widespread consumption of mercury-contaminated fish. Epidemics of methyl mercury poisoning also occurred in Iraq during the1970s when seed grain treated with a methyl mercury fungicide was accidentally used to make bread. ***But the type of mercury found in thimerosal is ethyl mercury, not methyl mercury, and it is metabolized in the body differently.*** For instance, the body is able to eliminate both thimerosal and ethyl mercury much more rapidly than it can methyl mercury, ethyl mercury having a half-life of 7 – 20 days (shorter in children, longer in adults).

2. Confusion arises because there have been few peer-reviewed research studies on the toxicity of ethyl mercury, and the research data from methyl mercury has been used in assessing the risks associated with ethyl mercury. Various agencies have developed guidelines for safe exposure to methyl mercury, including the U.S. Environmental Protection Agency (1997), U.S. Agency for Toxic Substances and Disease Registry (1999) and the World Health Organization (1996). These exposure levels vary from 0.1 micrograms/kilogram body weight/day (EPA) to 0.47 micrograms/kilogram body weight/day (WHO). To address the conflicting guidelines, Congress asked the National Academy of Sciences to study the toxicological effects of methyl mercury and provide recommendations. The report that followed concluded that the EPA's current reference dose of 0.1 micrograms/kilogram body weight/day is a scientifically justifiable level for the protection of human health. In 1999, the Food and Drug Administration recommended that exposure of infants and children to mercury should be minimized and thimerosal should be removed from vaccines. There was some concern that with the increased number of childhood vaccines containing thimerosal, infants might be exposed to cumulative doses of ethyl mercury that would exceed the EPA guidelines for exposure to methyl mercury. The safety level for ethyl mercury is ten times below the lowest dose associated with methyl

mercury toxicity. However, recent papers indicate that ethyl mercury is much less toxic.

3. Thimerosal and Autism: In 2004, IOM's Immunization Safety Review Committee issued its final report, examining the hypothesis that vaccines, specifically the MMR vaccines and thimerosal containing vaccines are causally associated with autism. In this report, the committee incorporated new epidemiological evidence from the U.S., Denmark, Sweden, and the United Kingdom, as well as studies of biologic mechanisms related to vaccines and autism. The committee concluded that this body of evidence showed no causal relationship between thimerosal-containing vaccines and autism, and that concern about such causality remained theoretical only. It further stated that the benefits of vaccination are proven and that widespread rejection of vaccines would lead to increases in incidences of serious infectious diseases like measles and whooping cough. The petitioner presented studies that showed a purported link between exposure to thimerosal and the development of autism, but medical experts in the room noted that those studies were not published in peer-reviewed journals and were methodologically unsound. Five methodologically acceptable epidemiological studies showed no association between thimerosal exposure and vaccines.

4. Thimerosal and Alzheimer's Disease: The Advisory Committee received a letter from Dr. Dennis Selkoe, a scientific researcher who has worked in the field of Alzheimer's disease for nearly three decades. He stated that in his professional judgment, "no clear, reproducible and credible scientific evidence exists to link the receipt of a flu shot containing thimerosal with the development of Alzheimer's disease." He further wrote that there was significant evidence to show that older persons, especially frail older persons, including those with Alzheimer's disease, face a serious health risk from developing the flu.

PUBLIC HEALTH POLICY ISSUES

1. The primary concern is risk versus benefit. Removing thimerosal as a preservative from flu vaccines is said to be a complicated process. However, as manufacturing capabilities are expanded and the manufacturing process itself, improved, the total amount of flu vaccine available without thimerosal will continue to increase. According to the Centers for Disease Control (CDC), "it is important to keep in mind that the benefits of influenza vaccination outweigh the theoretical risk, if any, for exposure to thimerosal. Each year, an average of about 36,000 people in the United States die from influenza, and 114,000 have to be admitted to the hospital as a result of influenza." There was some discussion about the accuracy of those statistics and whether people were being admitted to the hospital as flu victims when they were actually suffering from another illness. Dr. Balsam told the Committee that in recent years the flu diagnosis is being confirmed with blood tests.

2. Dr. Alan Balsam, Director, Public Health and Human Services, after a comprehensive review of the literature, reported that in his professional opinion

there is no causal link between thimerosal and autism, and no scientific evidence that thimerosal causes Alzheimer's disease. There is, however, strong evidence that influenza is a major cause of morbidity and mortality, and that the flu shot is both safe and effective in reducing morbidity and mortality. Of particular note are the following comments:

a. The Commonwealth of Massachusetts has purchased doses of flu vaccine with thimerosal as a preservative, and this is what municipalities are being given to distribute. Passing this warrant article would mean that the Brookline Health Department could not offer flu shots to residents at risk.
b. The Brookline Health Department uses informed consent for all immunizations and, as part of the consent process, people are given a Vaccine Information Statement (VIS), which provides information about the risks and benefits of the influenza vaccine. The document states: "Some inactivated influenza vaccine contains thimerosal, a preservative that contains mercury. Some people believe thimerosal may be related to developmental problems in children. In 2004, the Institute of Medicine published a report concluding that, based on scientific studies, there is no evidence of such a relationship. If you are concerned about thimerosal, ask your doctor about thimerosal-free influenza vaccine." Before receiving a flu shot a person must read and sign the informed consent form, acknowledging that they have read the VIS and understand the procedure.
c. Any person may refuse a flu shot for any reason, including the presence of thimerosal, but Dr. Balsam feels strongly that no individual or group should dictate what a person can or cannot do with their own body and for their own health, and wants to protect an individual's right to choose whether or not to receive the flu vaccine.
d. In the event of an avian flu outbreak, or similar outbreaks or bioterrorist attacks, the Brookline Health Department will be responsible for the distribution of available vaccines. These vaccines will likely contain thimerosal, and so passing this warrant article would prevent Brookline residents from receiving the avian influenza vaccine, leading to a potential catastrophe for Brookline.

3. In written comments provided to the Advisory Committee, Ruthann Dobek, LICSW, Director of the Council on Aging, wrote that elders are especially at risk for flu deaths and there is a great deal of evidence that the annual flu shot is both safe and effective. She noted that a review of the literature found no evidence that thimerosal causes Alzheimer's disease. The Brookline Health Department uses informed consent for all immunizations, and as stated above, persons are free to decline a flu shot for any reason, including the presence of thimerosal. Ms. Dobek wrote, "We support their right to refuse a flu shot. We feel strongly that this is a matter of personal choice. However, we feel equally strong that those who want a flu shot have access." The COA also feels that the question of thimerosal's safety and continued use is a federal issue, not a local one. A vote to oppose Warrant Article 14 was taken on 9/13/06 by the Council on Aging at their September meeting.

The petitioner is not against immunizations, but only against vaccines containing thimerosal, which she views as a significant public health threat. The broad consensus of those present at the Committee meeting was that in an ideal situation, the Town of Brookline would provide only thimerosal-free flu vaccines. However, the Brookline Health Department needs latitude to use vaccines containing thimerosal to protect the health of the community. The Brookline Health Department and the Advisory Council on Public Health have taken this issue very seriously and studied it extensively – convening a panel of recognized experts to explore this. There is overwhelming scientific evidence that influenza is a major cause of morbidity and mortality for those at risk, and the annual flu shot is both safe and effective in reducing morbidity and mortality. While there is now a flu vaccine available without thimerosal, it is in short supply and more expensive since it is packaged in single-dose vials. And, should there be a serious epidemic (e.g., avian flu), multi-use vials may need to be employed. Should this warrant article pass, the Town of Brookline would be prohibited from taking the most effective public health measure to save lives.

RECOMMENDATION

By a unanimous vote of 16-0, the Advisory Committee strongly recommends NO ACTION on Article 14.

XXX

ARTICLE 15

FIFTEENTH ARTICLE

To see if the Town will amend the language in the first sentence of the first paragraph of Section 2.1.11 of the General By-Laws as follows:

By deleting the language appearing in brackets and adding the underlined language as follows:

[Fifteen minutes before the scheduled beginning] After the beginning of the first or opening session of any annual or special Town Meeting, except for a Special Town Meeting within the Town Meeting, the Town Meeting Members who so desire shall be given the opportunity, prior to the consideration of any warrant articles, to recite the pledge of allegiance to the flag of the United States Of America and to sing the National Anthem.

Or act on anything relative thereto.

What prompted the reinstatement of the pledge of Allegiance to the Flag and to sing our national anthem as part of the opening ceremony at Town Meeting, I that we are at war, whether one is willing to admit or not. In times like this we must be united. Where there is unity there is strength. We must act as one, be united as one, with the common cause to protect and stand by our country. In a world filled with unrest and uncertainty, we must show the world we are behind our government. If our enemies don't like a leader they assassinate him. At this time there are enemy cells within our country. For those of you who don't believe this, what happened in New York on 9/11. The flag is a symbol of our great country. That is why we display and pledge to the flag with pride. Show the Nation and the world, Brookline believes in All For One And One For All. Vote for the Pledge of Allegiance, and to sing the national anthem, at the opening ceremony at Town Meeting as it was before 1983. There shall be no obligation or requirement imposed upon any individual Town Meeting Member or person present to participate in any way of they do not desire to do so.

SELECTMEN'S RECOMMENDATION

Article 15 is a petitioned article that would amend the Town by-law that dictates when the pledge of allegiance is offered at Town Meeting for those who wish to recite it. Under the current by-law, the pledge is offered 15 minutes before the scheduled beginning of Town Meeting. As proposed by the petitioner, the pledge would be offered after the actual commencement of Town Meeting. It would also codify the current practice of singing the National Anthem prior to the start of Town Meeting.

After discussions with the petitioner, the language being proposed by the Selectmen was developed and basically codifies the past practice of Town Meeting. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 17, 2006, on the following:

VOTED: That the Town amend the language in the first sentence of the first paragraph of Section 2.1.11 of the General By-Laws as follows:

By deleting the language appearing in brackets and adding the underlined language as follows:

[Fifteen minutes before the scheduled beginning] Before the opening session [of the first or opening session] of any annual or special Town Meeting, except for a Special Town Meeting within the Town Meeting, the Town Meeting Members who so desire shall be given the opportunity, prior to the consideration of any warrant articles, to recite the pledge of allegiance to the flag of the United States Of America and to sing the National Anthem.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 15 would amend Brookline Town By-Laws Section 2.1.11 to require that the Pledge of Allegiance and the singing of the National Anthem be incorporated as official parts of Town Meeting proceedings. The first paragraph of Section 2.1.11 on Town Meeting Procedure of the Brookline Town By-Laws currently reads as follows:

"Fifteen minutes before the scheduled beginning of the first or opening session of any annual or special Town Meeting, except for a Special Town Meeting within the Town Meeting, the Town Meeting members who so desire shall be given the opportunity to recite the pledge of allegiance to the flag of the United States of America. There shall be no obligation or requirement imposed upon any individual Town Meeting Member or other person present to participate in any way if he or she does not desire to so do."

Prior to 1983, Town Meeting practiced the informal procedure of singing the "Star Spangled Banner" followed by an invocation from a member of the Brookline clergy.

The practice of an opening prayer had fallen out of favor by the early 1980s. Although Town Clerk Pat Ward could find no official evidence of it, he advised that it is the institutional memory of many Town Meeting Members that Town Moderator Carl Sapers when so requested in 1983, declined to include a Pledge of Allegiance to the Flag due to many concerns raised by Town Meeting members.

In 1984, Town Meeting passed a By-Law authorizing the singing of the National Anthem after the opening of Town Meeting. The original article included the Pledge of

Allegiance but the main motion was amended to delete reference to the Pledge. The amended article passed Town Meeting by a vote of 103-94.

A warrant article to institute the Pledge appeared at each Annual Town Meeting between 1985 and 1992. All failed to pass.

In 1992, Town Meeting passed, by a vote of 105-85, a compromise, which allows the Pledge to be said 15 minutes prior to Town Meeting. This vote (intentionally or unintentionally) struck the By-Law requirement for the singing of the National Anthem during Town Meeting.

The current practice of singing the National Anthem during Town Meeting has not been formalized in the Town By-Laws, hence its inclusion in Article 15.

DISCUSSION

The petitioner maintains that it is not fitting to keep recital of the Pledge of Allegiance at 15 minutes before Town Meeting begins. He maintains that since we are at war and that enemy cells are on U.S. soil, it is thus important to demonstrate, by pledging with pride to our flag, the symbol of our great country, that we are all united in a common cause. This, he said, would show the nation and the world that we are behind our men and women in the armed forces who carry the flag into battle. The least we can do, he says, is to show our respect and dignity by saluting the flag. This will help to correct Brookline's reputation and show that we are unified and have “the best nation in the world.” He reminded us that the Pledge would be optional.

While acknowledging the petitioner's sincerity, most of the Advisory Committee views this article as a divider rather than a unifier. We have been reminded that the Pledge issue generated many threatening phone calls, debates and demonstrations during and after the nine Town Meetings in eight years when it came up for discussion. There are many further reasons for opposition to Article 15: Insistence on formalizing the Pledge has been construed as possibly leading to a loyalty oath, an anathema to many, especially Holocaust survivors who remember forced Nazi oaths. Also remembered are the oaths required during the hysteria of the McCarthy House Un-American Activities Committee hearings in the 1950s. The flag has been likened to a graven image by those who oppose pledging to such a false idol rather than to God. Although the Pledge has been, and would continue to be, optional at Town Meeting, many elected officials who voted against it in the past became objects of much finger pointing, criticism and negative campaigning. Former Town Moderator Carl Sapers said, “Once you make it a part of the ceremony, you are possibly holding up to opprobrium people who don't stand and do it. I don't see the necessity of requiring anyone to prove their patriotism.” (New York Times, April 12, 1984). Incorporating the Pledge after Town Meeting officially begins could therefore result in “implicit coercion”. For these and other reasons, children are not legally required to recite the Pledge in school.

Another important objection is the inclusion (in 1954) of “under God” in the Pledge. This introduces a religious theme and interferes with the basic U.S.Constitutional mandate of the separation of Church and State. The Establishment Clause specifically bans all forms of state intervention in religious affairs. With the inclusion of the phrase

“under God”, the Pledge would seem to exclude atheists, agnostics, polytheists, and those of many religions not related to the Judeo-Christian God.

Town Moderator Sandy Gadsby has advised us that he doesn't adhere rigidly to the 15-minute rule but, rather, waits until there is a significant number of Town Meeting members present before leading the Pledge. As soon as a quorum is reached, he then officially convenes Town Meeting.

RECOMMENDATION

The Advisory Committee understands that the Pledge of Allegiance is meant to represent support for a set of common ideals. However, the Committee believes that this article can be highly divisive. Timing of the Pledge makes a critical difference. Retaining the Pledge at its current time before Town Meeting would enable us to continue to show our respect and patriotism. We recognize that some are offended by the religious aspect of the Pledge and may not wish to recite the Pledge during official Town proceedings. Rather than participate in this formalized symbolic display, we prefer instead to encourage citizens to remain active in their attempts to make our country a better place by working for the issues and candidates they believe will help further our country's democratic ideals.

The Advisory Committee agrees that singing of the National Anthem should be officially included during Town Meeting and therefore, by a vote of 21 in favor and 1 opposed, recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the language in the first paragraph of Section 2.1.11 of the General By-Laws and add two new paragraphs as follows:

By deleting the language appearing in brackets and adding the underlined language as follows:

[Fifteen minutes before the scheduled beginning of the first or opening session] Before the opening session of any annual or special Town Meeting, except for a Special Town Meeting within the Town Meeting, the Town Meeting members who so desire shall be given the opportunity to recite the pledge of allegiance to the flag of the United States of America. [There shall be no obligation or requirement imposed upon any individual Town Meeting Member or other person present to participate in any way if he or she does not desire to so do.]

After the beginning of the first or opening session of any annual or special Town Meeting, except for a Special Town Meeting within the Town Meeting, the Town Meeting members who so desire shall be given the opportunity, prior to consideration of any warrant articles, to sing the National Anthem.

There shall be no obligation or requirement imposed upon any individual Town Meeting member or other person present to participate in any way if he or she does not desire to do so.

XXX

ARTICLE 16

SIXTEENTH ARTICLE

To see if the town will amend the by-laws section 2.1.5 of the General By-Laws as follows:

By amending Section (A) changing notification from seven days before the Annual Town Meeting to fourteen days before the Town Meeting.

By amending the last sentence of Section (B) to read as follows: The requirements provided in this subsection (B) shall be deemed to be a part of the legal notification of such meeting or the legal service of such warrant.

Add a new Section (C) In the event notices provided for in Sections (A) and (B) above are not complied with, except for declared State or Federal emergencies, the notice periods shall be reduced to 10 days and where a majority vote is required to adopt an Article, the adoption requirements shall increase to two thirds. Where the requirements are a two thirds vote to adopt an Article, the requirement shall increase to an 80% vote for adoption.

It seems to have become the rule, rather than the exception for Town Meeting Members to be greeted by a flurry of changes to the Articles in the Warrant on multi-colored papers usually on the weekend before the opening of the Town Meeting.

Once in a while these changes arrive on the day before the opening of Town Meeting or only become available to those attending Town Meeting as a pass out.

The practice has become so prevalent on complex or important matters under consideration that Town Meeting Members (the elected representatives of the Town's People), do not, in many cases, have a reasonable time to consider same.

Many Town Meeting Members feel that Town Meeting has to a degree become a "rubber stamp" for approval of matters as proposed or amended at the last minute. Most elected Town Meeting Members serve voluntarily without compensation and the 'powers that be' don't seem to be respecting the value, experience, time and knowledge these people bring in serving the Town. If appointees or elected Members to boards or committees responsible for Articles will not be available or make adequate time to present completed proposals, they should not be put into such positions of responsibility.

Most of us have become accustomed to meeting deadlines as a part of our lives; such as getting to school on time, getting to jobs on time, doctors and other professionals meeting and keeping obligations and getting to the polls when they are open for voting.

Of course there will be some reasonably excused absences but we are faced with important business not being done or properly addressed or given proper consideration.

We usually have only two Town Meetings annually in the spring and in the fall. The Ton's People we are elected to represent are not well served in this situation.

SELECTMEN'S RECOMMENDATION

Article 16 is a petitioned article that, per the petitioner's explanation, attempts to limit last minute amendments to motions made under the articles in the warrant. It proposes to amend Article 2.1.5 of the General By-Laws, which deals with notice and distribution of the warrant, not motions made under warrant articles. Therefore, the proposed amendments, even if adopted, would not have the intended result. In addition, with respect to section (C), which proposes to change the quantum of vote required for a particular article, the Attorney General's Office has consistently disapproved such by-laws finding that altering the quantum of vote required by state law is inconsistent with the Home Rule Amendment.

The Moderator also provided the Selectmen with the following three issues:

1. The change in section (A), from seven to 14 days prior to Town Meeting is, unnecessary, as the Town Clerk's posting of the warrant for the Annual Town Meeting takes place weeks before the meeting convenes.

2. The proposed amendment of section (B) would change a provision that was inserted in order to assure that a Town Meeting would not be invalidated by technical failures or alleged failures to comply with the distribution requirements of this section. If this change were made, a Town Meeting Member would be able to claim that a Town Meeting should not be held, or that the proceedings of a Town Meeting were invalid, if he or she was for some reason not on the list of distributees for the warrant under this section. The same result would obtain as a result of a failure of the constables to post the warrant in at least ten public places.

3. This new section provides that the "notice periods [in sections (A) and (B)] shall be reduced to ten days." However, the notice period under (B) is seven days for a Special Town Meeting. Secondly, the increased percentage voting requirements seem draconian and may not even be legal.

Since the article as drafted does not actually amend the by-laws in the manner required to deal with the petitioner's concern regarding late amendments, the Board recommends NO ACTION, by a vote of 4-0 taken on September 26, 2006, on Article 16. If the petitioner wants to ameliorate the issue of late amendments, we encourage the petitioner to work with Town Counsel to draft a warrant article for the 2007 Annual Town Meeting that would do so.

ROLL CALL VOTE:
No Action

Hoy
Merrill
Daly
DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 16 proposes several amendments to the Town By-Laws, Section 2.1.5 with regard to warrant articles. The amendment to Section (A) would increase the required notification time before the Annual Town Meeting to fourteen days. The Section (B) amendment would define, in part, what constitutes legal notification. And the proposed addition of Section (C) would change the votes required for an article's adoption from a majority to 2/3's and from 2/3's to 80% in some situations.

DISCUSSION

The Advisory Committee concluded that the first section of the article, amending Section (A) of 2.1.5 of the By-Laws would serve to codify current practice. While preparation and hand delivery of the warrant in the past required more time, modern printing allows for the process to be completed well before the 14 day notification requested in the article. The Advisory Committee supported favorable action on this portion of Article 16.

However, the Advisory Committee, upon receiving the opinion of Town Counsel that the amendment of Section (B) would change a provision that was inserted in order to assure that a Town Meeting would not be invalidated by technical failures of alleged failures to comply with the distribution requirements, decided that this section of the article would not be in the best interest of the Town and voted not to change section (B).

The proponent had concerns that last minute changes in articles could cause confusion for Town Meeting Members who had not had time to properly consider those changes preceding the debate. The Advisory Committee realizes that last minute changes or amendments can impart a degree of confusion, but felt that so called last minute changes were in order to obtain the best possible product for the town. Closing off change could result in a sub-optimal warrant.

The third section of Article 16 states, in a new Section (C), that if (A) and (B) are not complied with, except for declared State or Federal emergencies, the notice periods shall be reduced to 10 days. In addition, a super-majority would then be required to adopt an article. The Advisory Committee was advised by Town Counsel that this provision of the article may not pass muster with the Attorney General who in the past has disapproved of the changing of majority numbers as inconsistent with the Home Rule Amendment and thus voted not to support the addition of Section (C) to the Town By-Law.

RECOMMENDATION

This article offers much, but requires some more deliberative consideration. Parts (B) and (C) were felt to be too restrictive, in part, and of questionable legal sturdiness.

The Committee sees no reason why the Town can't be compliant with the provisions of (A), and sees this as a reasonable change to our by-laws. Therefore, by a unanimous vote of 21 in favor, the Advisory Committee recommends FAVORABLE ACTION on the following vote.

VOTED: To amend the by-laws section 2.1.5 of the General By-Laws by amending Section (A) changing notification from seven days before the Annual Town Meeting to fourteen days before the Town Meeting.

XXX

ARTICLE 17

SEVENTEENTH ARTICLE

To see if Town Meeting will amend the first sentence of ARTICLE 2.5 of the General By-Laws as follows:

> Section 2.5.1 SPECIAL COMMITTEE REPORTS
>
> All special committees, including Moderator's committees created by a vote taken at Town Meeting [or the Moderator] shall, within 280 days following the vote, make a report of their findings and submit recommendations by filing a signed copy thereof with the Town Clerk.

A deadline is a measure of compliance. A judge's ruling that someone must pay damages comes with a set date, signifying a deadline, after which, if not paid, the person may be ruled as non-compliant and other legal measures can be taken. If the judge did not set a deadline, there would be no legal incentive to cause the individual to pay. Without a set deadline, the individual would never have to comply with the judge's ruling. Therefore without setting deadlines, many legal actions are ineffective.

In turn, to insure that requirements are met, Town Meeting's rulings for reviews of warrant articles by a Moderator's Committee needs deadlines as well. Current by-laws allow Town Meeting to cause a Moderator's Committee to review warrant articles, but given the lack of set deadlines, Moderator's committees are not legally required to ever turn in their recommendations.

Lack of deadlines subverts the public process as no other person can submit a warrant article on the same issue, as long as it's still under review in a Moderator's Committee. Lack of deadlines has enabled one Moderator's committee to review a warrant article on Clean Elections for three years.

Given common legal procedure requires deadlines to insure that requirements are being met in a timely manner, it's important that deadlines are created to expedite the review process and insure that Town Meeting's requirements for the committee's submitted recommendations are actually met. Therefore, this proposal recommends the standardization of a Moderator's Committee review to the reasonable time period of 280 days, equivalent to nine months, to achieve the objective of returning the warrant article to Town Meeting within, approximately, a year's time.

BENEFITS

This proposal is win win. It gives town officials the opportunity to increase the public's trust in the legislative process, while remaining fiscally conservative.
Additional benefits are:

1. The warrant article returns to Town Meeting in one year.

2. 280 days allows reentry into the warrant 75 days before Town Meeting one year later.

3. With passage, it allows the public to access the benefits of the warrant article sooner.

4. Time limits eliminates hindering, procrastination, and delays.

5. Professionals would be less likely to prioritize work on a Moderator's Committee last when having to deal with other more time sensitive commitments of work on a Moderator's Committee would be less subject to delays.

6. The public is likely to find the one-year timeframe acceptable.

7. A reduction in delays may increase the public's trust and appreciation of the work done in Moderator's committees.

8. It's likely to reduce complaints and calls from the petitioners to town offices with questions regarding the article's return to Town Meeting.

9. Standardization of a process involving legislative review process can be expected to increase the public's perception of Town of Brookline's professionalism, efficiency, and ability to make a good process even better.

MOTION TO BE OFFERED BY THE PETITIONER

Moved: To amend the first sentence of Article 2.5 of the General By-laws to read as follows:

All special committees, including Moderator's committees, created by a vote taken at Town Meeting shall, within two years of the effective date of such vote or within such earlier time as may be specified in the vote, make a report of their findings and submit recommendations by filing a signed copy thereof with the Town Clerk.

SELECTMEN'S RECOMMENDATION

Article 17 is a petitioned article that would amend the Town's General By-Laws by requiring any Moderator's Committee to report its findings to Town Meeting within 280 days. The Selectmen recommended a slightly different version: it would require a two-

year time frame. A majority of the Selectmen are in favor of this revised motion, as is the petitioner.

The petitioner argues that a two-year reporting date is good public policy, as having matters sit "in committee" for longer than that gives residents the impression that no action is being taken on a matter that Town Meeting felt should be studied. A majority of the Selectmen agree that two years is a sufficient time for Moderator Committees to complete their work - - or at least to make a report of their findings to date to Town Meeting.

It should be made clear that adoption of such language will take away the ability of Town Meeting to give Moderator Committees an "open-ended" report back date, something that has been done in the recent past (e.g., campaign finance committee). Town Meeting still has the ability to put a shorter time frame on the committee, but all Moderator Committees will now have to report back to Town Meeting within two years.

As previously stated, the Selectmen recommend FAVORABLE ACTION, by a vote of 3-1 taken on October 10, 2006, on the following vote:

VOTED: To amend the first sentence of Article 2.5 of the General By-laws to read as follows:

> All special committees, including Moderator's committees, created by a vote taken at Town Meeting shall, within two years of the effective date of such vote or within such earlier time as may be specified in the vote, make a report of their findings and submit recommendations by filing a signed copy thereof with the Town Clerk.

ROLL CALL VOTE:

Favorable Action	No Action
Hoy	Allen
Daly	
DeWitt	

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 17, as revised by the petitioner after publication of the warrant, would amend Article 2.5 of the Town's By-laws to include the requirement that all special committees created by vote of Town Meeting file their reports and recommendations with the Town Clerk within two years of the effective date of that vote or by an earlier date specified by that vote. (The initial proposed deadline was one year.) Currently, the only timing

requirement in the By-law states that, in the absence of a final report, an interim report shall be filed at least thirty days before the start of the Annual Town Meeting.

The petitioner offered a number of reasons for submitting this article, including a belief in the need for the standardization of a process, the opportunity to increase both governmental efficiency and public trust, and the reduction of calls and complaints to town offices regarding the status of a special committee's report.

DISCUSSION

In its discussion of the article, the Advisory Committee raised questions both about the need for standardized deadlines and about the consequences of using the Town's By-laws to achieve that objective. In making her case, the petitioner stated that one Moderator's Committee had taken three years to complete its work, and that without set deadlines, Moderator's committees "are not legally required to ever turn in their recommendations." The petitioner stated that most people are very busy, and that without a deadline, their committee work could likely fall towards the bottom of their priority lists.

In reviewing an informal survey of the work of Moderator's Committees during the past ten years (Spring 1995-Spring 2005), the Advisory Committee noted that in almost all cases, the citizens serving on these committees, all of whom are volunteers, performed their tasks in a timely fashion. Of the 17 committees identified, ten had completed their work within one year; three required two years; and only three required between two and three years. (One additional committee, established by the 2005 Annual Town Meeting, is still in operation.)

Reasons for one committee needing more time than another varied and included the complexity of the issue(s) being studied as well as circumstances beyond the control of the committee such as waiting for the outcome of State legislation. In any case, committees needing more than one year filed interim reports, which were distributed to Town Meeting members in the Combined Reports. The fact that the By-law contemplates interim reports acknowledges that not all issues studied by Moderator's Committees can be researched and analyzed on a rigid schedule.

The Advisory Committee considered a further proposed revision that would have given Town Meeting the option to specify a time longer than two years (by changing "or within such *earlier* time as may be specified by the vote" to "or within such *other* time as may be specified in the vote"). Even with that revision, the Advisory Committee still found serious problems with legislated deadlines and made the following observations:

1. The By-law change would not apply to Selectmen's Committees or any other authority that Town Meeting asks to form a special committee. Essentially, this proposal pertains only to Moderator's Committees, which although frequently called upon to research matters of importance to Town Meeting, are not the only groups of citizens upon whom Town Meeting depends for timely reports and recommendations.

2. Although the petitioner has stated it is not the proposal's intent, there could nevertheless be a basis for a civil action in Superior Court against committee members under this proposal if a Moderator's Committee failed to meet its deadline.

3. The proposal raises the question of whether a committee that fails to meet the legislated deadline would have to disband and be recreated by another vote of Town Meeting. In contrast, the current practice allows the Moderator simply to extend the life of a committee for the time necessary to complete its work, including the issuance of its final report.

4. Last but not least, despite claims of "procrastination", there is no evidence of widespread failure on the part of Moderator's Committees to complete their work in a timely fashion, and there is no expectation that committee members will not continue to take their responsibilities seriously. If Town Meeting determines that there is a need for expedited treatment of an issue in a particular case, it can so stipulate in its vote of referral, and there is no reason to assume that committee members will flout the will of Town Meeting.

RECOMMENDATION

The following motion failed by a vote of 0-19-3:

"All special committees, including Moderator's committees, created by a vote taken at Town Meeting shall, within two years of the effective date of such vote or within such other time as may be specified in the vote, make a report of their findings and submit recommendations by filing a signed copy thereof with the Town Clerk."

The Advisory Committee strongly recommends NO ACTION on Article 17.

XXX

ARTICLE 18

EIGHTEENTH ARTICLE

To see if the Town will amend Article 3.1 of the Town's By-Laws – Board of Selectmen – by adding the following section:

SECTION 3.1.7 CAMPAIGNS FOR OFFICE

(A) Definitions

(1) As used herein, the term "person" shall refer to any natural person, firm, corporation, partnership, union, association, organization, political committee or campaign, governmental entity, trust, educational institution, financial institution, or any other entity, however constituted.

(2) As used herein, the term "relative" shall refer to a parent, step-parent, parent-in-law, child, step-child, child-in-law, sibling, step-sibling, half-sibling, sibling-in-law, or spouse.

(3) As used herein, the term "Chapter 55" shall refer to Chapter 55 of the Massachusetts General Laws and those regulations promulgated pursuant thereto, as the same may be amended from time to time.

(4) As used herein, the terms "candidate," "candidate's committee," "contribution," and "expenditure" shall have the same meanings ascribed to such terms in Chapter 55, unless the context in which such term is used indicates otherwise.

(5) As used herein, the term "State Campaign Finance Report" shall refer to a report required to be filed by a candidate or candidate's committee under Chapter 55.

(6) Should any ambiguity arise regarding any term not expressly defined herein, that term shall be construed consistently with the manner in which such term is used in Chapter 55, unless the context in which such term is used herein indicates otherwise.

(B) Campaign Finance Reports

On or before the fifteenth day preceding the Annual Town Election, and at the time of filing any State Campaign Finance Report, each candidate for the office of Selectman shall file with the Town Clerk a Town Campaign Finance Report on a form prescribed by and made available to candidates by the Town Clerk. The reporting period applicable to the Town Campaign Finance Report filed on or before the fifteenth day preceding the Annual Town Election shall begin on the same date as the reporting period applicable to the State Campaign Finance Report required to be filed on or before the eighth day preceding the Annual Town Election. The reporting period applicable to the Town

Campaign Finance Report filed on or before the fifteenth day preceding the Annual Town Election shall end on the tenth day preceding the last day for filing such report. The reporting period for each other Town Campaign Finance Report shall be the same as that required for the corresponding State Campaign Finance Report. The Town Campaign Finance Report filed on or before the fifteenth day preceding the Annual Town Election shall be substantially in such form and contain such information as that required to be provided on the State Campaign Finance Report that must be filed on or before the eighth day preceding the Annual Town Election. Each other Town Campaign Finance Report shall be substantially in such form and contain such information as that required to be provided on the corresponding State Campaign Finance Report. Each Town Campaign Finance Report shall additionally contain the following information:

(1) the full name, listed alphabetically, of each person whose contribution or aggregate contributions within the reporting period equal an amount or value greater than fifty dollars but less than two hundred dollars, together with the aggregate amount of each such person's contributions and the occupation and the name of the employer or employers of each such person; provided, however, that no candidate shall be required to include such occupation and employer if said candidate or a candidate's committee organized on his or her behalf has been unable to obtain such information after requesting it when soliciting a contribution and making one additional written request.

(2) the total number of persons who have made a contribution in the reporting period but whose aggregate contributions within the reporting period equal an amount or value of fifty dollars or less; and

(3) the full name of each person whose aggregate contributions within the reporting period equal an amount or value of more than fifty dollars and who is a relative of the candidate, as well as the aggregate amount of each such relative's contributions within the reporting period.

(C) Publication of Campaign Finance Reports

Each campaign finance report filed with the Town Clerk pursuant to Chapter 55 and this By-Law shall be posted by the Town Clerk on the Town website within two business days after the date of its filing.

(D) Provision of Information by the Town Clerk

The Town Clerk shall provide each candidate for the office of Selectman with a copy or written summary of the requirements and restrictions pertaining to campaigns for the office of Selectman prescribed by Chapter 55 and this By-Law. Said copy or written summary shall state that the requirements, restrictions, and other provisions of this By-Law are additional to those of Chapter 55 and to any other applicable provisions of the constitutions, laws, and regulations of the United States and of the Commonwealth. Said copy or written summary shall be provided by the Town Clerk within the later of thirty days after the enactment of this Article or fourteen days after the filing of a statement of

organization by a candidate's committee organized on behalf of such candidate pursuant to Chapter 55.

(E) Penalties for Noncompliance

For each day that a candidate is tardy in filing a Town Campaign Finance Report, the Town Clerk shall collect a fine from a candidate's committee organized on his or her behalf in an amount equal to one percent of the total amount or value of contributions received by the candidate and any candidate's committee organized on his or her behalf during the reporting period applicable to said Report. In the event that no such candidate's committee exists, such fine shall be collected from the candidate.

(F) Contribution Limits

(1) No candidate for the office of Selectman or candidate's committee organized on his or her behalf shall accept an aggregate amount or value of more than two hundred and fifty dollars in contributions in any calendar year from any one person.

(2) No candidate for the office of Selectman or candidate's committee organized on his or her behalf shall accept an aggregate amount or value of more than seventy-five dollars in contributions in any calendar year from any one person who is not domiciled within the Town.

(3) Notwithstanding the foregoing, no candidate or candidate's committee organized on his or her behalf shall be in violation of this By-Law if a contribution in excess of the above contribution limits is accepted mistakenly, not deposited in any bank account, and returned within seven days of its receipt to the person making the contribution.

(G) Committee on Campaigns

(1) There shall be a Committee on Campaigns consisting of seven members: the Town Clerk or his designee; a member or designee of the Board of Selectmen; and five Brookline residents appointed by the Moderator for three-year staggered terms. No holder of or candidate for the office of Selectman shall be eligible for appointment by the Moderator to said committee. Should any individual vacate his office as committee member, the applicable appointing authority shall appoint another individual to fill his or her unexpired term.

(2) The responsibilities of said committee shall include the following:

(a) analyzing information provided on campaign finance reports filed by candidates for Town office pursuant to Chapter 55 and this By-Law;

(b) publicly reporting such information and the results of such analysis;

(c) considering and recommending to Town Meeting measures that may be taken by the Town to improve upon this By-Law and ensure its effective

implementation, and to establish a system of electronic reporting and accessible electronic posting of campaign finance information;

(d) considering additional measures that may be taken by the Town to improve the process by which Town officials are elected;

(e) receiving public comment concerning the process by which Town officials are elected;

(f) conducting public forums concerning the process by which Town officials are elected;

(g) providing vehicles for the publicizing information concerning candidates for Town office;

(h) working with local media to publicize information concerning elections and candidates for Town office;

(i) examining the relationship between campaign finance and appointments to Town boards, commissions, and offices; and

(j) examining the feasibility and potential parameters of a system of public financing with respect to campaigns for Town office.

(H) Interpretation

(1) The requirements, restrictions, and other provisions set forth in this By-Law are intended to be in addition to all requirements, restrictions, and other provisions set forth in Chapter 55 and other applicable provisions of the constitutions, laws, and regulations of the United States and of the Commonwealth.

(2) The provisions of this By-Law are intended to be interpreted in such a way as to make them conformable to the constitutions and laws of the United States and of the Commonwealth and enforceable to the maximum extent permitted by law.

(I) Severability

Each provision of this By-Law shall be construed as separate to the extent that if any section, sentence, clause, or phrase is held to be invalid for any reason, the remainder of the By-Law shall continue in full force and effect.

or act on anything relative thereto.

This warrant article is the product of the analysis and deliberations of the Moderator's Committee on Campaign Finance (the "Committee"), which was established by the Fall

2003 Town Meeting and "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 Committee has held approximately forty meetings, thoroughly analyzed all campaign finance reports filed by candidates for the Board of Selectman since 1988, researched state and federal legal issues pertaining to the enactment of municipal campaign finance reform measures, solicited input from Town Meeting Members and other Town officials through two questionnaires, heard from a series of experts in relevant fields, conducted a public hearing, and extensively discussed potential approaches for reform.

In preparing the article, the Committee took into account a wide range of factors, including its findings and concerns regarding the nature of campaign finance in Brookline, the effectiveness of current state requirements and restrictions, the views of Town Meeting Members and their constituents, the legal limitations on the Town's ability to enact campaign finance restrictions, the need of campaigns to raise and spend funds in order to reach voters, the burdens placed on campaign committees and Town officials by campaign finance restrictions, and the local political culture.

The Committee's warrant article proposes the enactment of a By-Law amendment dealing with the financing of campaigns for Town office, particularly the office of Selectman. Section A provides definitions. Sections B and C concern the disclosure of campaign finance information. A hallmark of campaign finance law is the requirement that candidates file reports providing information on contributions received by and expenditures made by their campaigns. Such filings are publicly accessible and thus offer voters an opportunity to evaluate the sectors and interests from which a candidate has received financial support. The article would extend the disclosure requirements of state law to make them more effective.

First, Section B would require candidates to file a Town Campaign Finance Report modeled on the state report already in use, but containing additional information of interest to voters. Under state law, a candidate must list the occupation and employer of donors contributing $200 or more to the candidate's campaign, unless the campaign could not obtain such information after making two requests. Voters can use this information to evaluate the potential influence that may be held by certain donors or interests. In fact, the Committee used it to conduct an analysis of campaign donations of $200 or more by source category, which is summarized in Appendices A-D. An additional benefit of this disclosure requirement is that it may make a candidate or officeholder more careful to avoid the appearance of undue support for those interests that have been particularly generous to his or her campaign. A problem with the requirement, however, is that it does not enable voters to see the occupations and employers of those who have given $200 or less. The contributions of such individuals are not insignificant to a campaign. Moreover, a number of smaller contributions from members of the same business or sector may raise the same issues in the mind of a voter as a single large contribution. Accordingly, the Town Campaign Finance Report would call for candidates to furnish the occupation and employer of each contributor who has given more than $50 but less than $200 to the campaign.

Another piece of information not required under state law that would be required by the Town Campaign Finance Report is the number of contributors who have given an aggregate amount of $50 or less. The provision of such information would enable voters and analysts of the Town's campaign finance practice to determine whether candidates have received widespread support or only support from a limited number of contributors.

Finally, the Town Campaign Finance Report would require contributors of more than $50 who are close relatives of the candidate (parent, step-parent, parent-in-law, child, step-child, child-in-law, sibling, step-sibling, half-sibling, sibling-in-law, or spouse) to be identified as such. Voters have an interest in knowing the degree to which candidates are self-financing their campaigns, and they may view donations from a candidate's close relatives as little different from donations from the candidate. While campaign finance reports filed pursuant to current state law reflect the extent to which a candidate's campaign is self-financed, they do not reflect the extent to which the candidate has received contributions from close relatives. The requirement contained in the proposed Town Campaign Finance Report would address this shortcoming in state law.

Under Section B, a candidate would be required to file a Town Campaign Finance Report at the time of filing any state report and at one additional point in time when it will be particularly useful to voters. Currently, state reports must be filed by the eighth day preceding the Annual Town Election, by the thirtieth day following the Annual Town Election, and by January 20th of each year. The Committee concluded that none of these reports is filed close enough to the election to provide an accurate picture of the sources of a candidate's funding but also far enough in advance to enable the public and local news media to analyze the information and take it into account in evaluating candidates. Section B would therefore require the filing of another Town Campaign Finance Report fifteen days before the Annual Town Election.

Section C would require the Town Clerk to post campaign finance reports on the Town website within two business days of their filing. The rationale for this provision is that the effectiveness of disclosure is determined to a major degree by the ease and convenience with which the public and news media are able to access the information being disclosed. The Town Clerk, a Committee member, has stated that his office is willing to scan and post campaign finance report forms.

Section D would direct the Town Clerk to provide information to candidates regarding state and Town campaign finance requirements and restrictions. This provision is based on the notion that campaign finance requirements and restrictions are only effective if candidates are aware of and understand them. The Town Clerk would be required to note in particular that the mandates of the Town's By-Law are in addition to all mandates imposed by state law.

Section E would establish a penalty for tardiness in filing the new Town Campaign Finance Report. This penalty would be in the amount of 1% of the total amount raised by the candidate during the reporting period for each day by which the submission deadline is exceeded. The Committee recognized that campaign finance restrictions are only

effective to the extent that they are adhered to by campaigns. Unfortunately, however, the requirements of state law are often not strictly adhered to, and the penalty prescribed by state law is only $10 per day and is rarely if ever imposed. The penalty arrived at by the Committee would ensure that reporting timeliness is taken seriously and that campaigns are penalized in proportion to the amounts they have raised.

Section F would establish contribution limits that are lower than those imposed by state law. State law currently allows candidates to accept contributions of up to $500 per calendar year from a single individual. The Committee would lower this cap to $250. Its recommendation is based largely on its findings that: there is a strong correlation between amount raised and victory at the polls; the amounts raised and spent on campaigns are high and rising, as reflected in the last column of Appendix B; and campaigns are financed greatly by large donations from a small group of contributors. Lowering the cap on individual donations would reduce the actual and perceived influence over a candidate that any one contributor or donor category may have; minimize the discrepancy in influence over the political process between wealthier contributors and less wealthy contributors; and likely reduce the total amount required to run for office successfully. The Committee arrived at the figure of $250 because it is consistent with the following: the state's implicit recognition that contributions of $200 or more deserve special scrutiny, as evinced by its requirement that candidates list the occupation and employer of those who give at that level; the level of restrictions imposed by comparably-sized municipalities in other states; and the Committee's conclusion that a $250 limit would clearly enable candidates to reach voters without being heavily financed by large contributions. Appendix E, *Effects of Lowering Contribution Cap*, reflects the Committee's analysis of the effects of different donation caps.

Section F would also prohibit campaigns from accepting more than $75 per calendar year from any one non-resident contributor. The analysis reflected in Appendix E revealed that, in addition to the fact that there is a correlation between funds raised and victory at the polls, a large proportion of campaign contributions frequently comes from outside Brookline. In 13 of the 35 campaigns since 1994, more than 20% of the funding came from non-residents – and in five campaigns, 35% or more, up to a maximum of 65%. (See Appendix F, *Non-resident Funding of Selectman Campaigns*.) The Committee believes it is inconsistent with our democratic system for those who do not reside in Brookline to have such a great influence over the outcome of its elections and the decisions made by its government. Moreover, the Committee recognized that there is at least a perception that out-of-town contributors are at times motivated to donate to Brookline campaigns by a personal financial interest in issues considered by Town officials. The figure arrived at by the Committee is based in part on the fact that respondents to its Town Meeting questionnaire, on average, wished to see candidates accept no more than about 30% of their contributions from outside Brookline. The $75 figure is 30% of the $250 figure discussed above.

Finally, Section G proposes the creation of a Town Committee on Campaigns. Such a committee would promote public awareness of campaign finance issues by analyzing and reporting on information supplied through campaign finance reports. It would also further the effort to reform the financing of campaigns for Town office by receiving public comment and, as appropriate, proposing new measures for consideration by Town

Meeting. Additionally, it could help reduce the need for large contributions and expenditures by providing alternative vehicles for campaigns to reach voters.

The Committee expects to supplement this explanation with a more extensive discussion of its work, its findings, relevant legal issues, the various recommendations it has considered, and the rationale behind the proposals that it has included within its warrant article.

Appendices (located beginning on page 8-13)

A - Which occupational categories provide the most campaign donations of $200 and more?

B - Donations of More than $50 from Attorneys and the Real Estate Industry to Selectman Candidates

C - Donations of More than $50 from Retirees, Brookline Business Owners, Selectmen, Miscellaneous, and Unidentified Sources to Selectman Candidates

D - Donations of More than $50 from Candidate, Family and Non-residents to Selectman Candidates

E - Effects of Lowering Contribution Cap

F - Non-resident Funding of Selectman Campaigns

SELECTMEN'S RECOMMENDATION

The Board did not take a final action on Article 6 in time for it to make it in these Combined Reports. They took the matter up on November 2, a date that fell after the printing deadline for the Combined Reports.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 18 seeks to amend Brookline Town By-Law Section 3.1 "Board of Selectmen" by adding Section 3.1.7 "Campaigns for Office" by proposing to regulate campaign contributions solely for candidates seeking election to the Board of Selectmen. Article 18 is the result of three years of efforts by the Moderator's Committee on Campaign Finance, created pursuant to a motion passed at the November 2003 Town Meeting. The Moderator's Committee was created in response to Article 27, submitted by petitioner

Ron Goldman, which sought to obtain a Town Meeting Resolution approving voluntary contribution and spending limits by candidates for the office of Selectman. Article 18 is a more refined and comprehensive attempt to adopt measures that would limit campaign donations, limit campaign spending and limit the influence of so-called special interest contributors.

DISCUSSION

The Committee's Findings

The Moderator's Committee's findings focused on three major themes:

(1) The correlation between the amount of money raised and victory. The Committee examined data from Selectmen's contests from 1988-2004 and found that the chances of a candidate being elected were positively related to the amount of campaign contributions received by the candidate. The greater the amount of money raised, the better the chances that the candidate would win.

(2) The source of the funds. An analysis of campaign contributions in 2000-2004 found that a significant amount of contributions to candidates for Selectmen came from a small group of big contributors. In addition, the Committee found that a significant amount of contributions came from non-Brookline residents. The Committee also found that certain businesses and professions, such as the real estate industry and lawyers, were significant contributors and that the public perceived these groups as having a disproportionate influence on the outcome of town elections. The Committee noted that a significant amount of donations came from close relatives and family members.

(3) Perception that contributions influence town elections and decision-making. A majority of respondents to a survey of Town Meeting members believed that town elections were influenced by money and that the decision-making process was not free from the influence of money.

Summary of Proposed Provisions

(B) Campaign Finance Reports -

- requirement that campaign finance reports be filed with the Town Clerk not less than 15 days before election (more strict than the state requirement that such reports be filed not less than 8 days prior to the election)
- require listing occupation and employer of contributors of over $50 and less than $200 (state requires names and addresses only of contributors of over $50 and occupations and employers of contributors of $200 or over)
- require reporting of total number of contributors of $50 or less
- identification of "close relatives" who contribute over $50

(C) Publication of Campaign Finance Reports - requirement that the Town Clerk post each campaign finance report on the town's website within 2 days of its filing.

(D) Provision of Information by the Town Clerk - requirement that the Town Clerk provide Selectmen candidates with copies or written summaries of both the State requirements found in Massachusetts General Laws Chapter 55 and the Town By-Law and that such written material inform the candidates that the Town By-Law contains requirements that are in addition to the state's requirements.

(E) Penalties for Noncompliance - each day of late filing fined at the rate of 1% of the total amount of contributions, such fines to be collected by the Town Clerk. (The state penalty is $10 per day for each day of late filing.)

(F) Contribution Limits – Selectmen candidates' contributions limited as follows:

- $250 per person per year in the aggregate (state limit is $500)
- $75 per person per year in the aggregate from non-residents
- no violation for excess contributions if accepted mistakenly not deposited and returned within seven days to sender.

(G) Committee on Campaigns - creation of a seven member committee to study campaign finance reports, publicly report the information in such reports, make recommendations to Town Meeting for amending and improving the campaign finance process and otherwise analyze the data.

Legal Issues

The subject of campaign finance is found in M.G.L. c. 55 and 970 CMR. The legal question presented by Article 18 is whether the state has preempted the subject matter of campaign finance so as to forbid adoption of local regulation that might interfere with the state's own regulation of campaign finance. Such was the opinion of former Town Counsel David Turner in advising the Selectmen and Town Meeting on Article 27 of the November 2003 Town Meeting. In addition, Section 7 of the Home Rule Amendment specifically limits the power of cities and towns to regulate elections by local By-Law.

Town Counsel Jennifer Dopazo, in a memorandum addressed to the Selectmen and the Advisory Committee, stated that it was her opinion that the Town of Brookline does not have the legal authority to regulate campaign finance by local By-Law as proposed under Article 18 because Section 7 of the Home Rule Amendment specifically limits the power of cities and towns to regulate elections by local by-law and the State Legislature has adopted a comprehensive statute governing the financing of political campaigns. M.G.L. c. 55 and 970 CMR 1.00, *et. seq.* Town Counsel believes that Article 18 proposes a by-law that is

> inconsistent with Chapter 55 because the proposed by-law would interfere with the purpose of the state statute, which was intended by the Legislature to be inclusive on the subject of campaign and political finance.
>
> Based on her discussions with the Attorney General's Office and counsel for the State Office of Campaign and Political Finance, Town Counsel believes that the Attorney General will not approve Article 18.
>
> The Chair of the Moderator's Committee, Randy Ravitz, TMM, Pct. 8, and an Assistant Attorney General for the Commonwealth, and Committee members Professor Christine Desan of Harvard Law School and Frank Farlow, TMM, Pct. 4, speaking in support of Article 18, expressed the view that if, in fact, the Attorney General did not approve a by-law adopted by Town Meeting, as proposed under Article 18, the proponents would return to Town Meeting and request the adoption of Home Rule legislation permitting Brookline to regulate campaign finance. Professor Desan noted that there had been no appellate court decision rendered to date directly on the subject of local regulation of campaign finance similar to that being proposed under Article 18. In her opinion, the proposed by-law would supplement the existing state statute and would not interfere with its purpose and intent.

While sympathetic to the goals of the Moderator's Committee and recognizing the Committee's prodigious efforts in tackling a very complex subject, a majority of the members of the Advisory Committee, in addition to relying on Town Counsel's legal opinion, were concerned with several of the proposed provisions which conflicted with the state statute, such as campaign finance report requirements and campaign contribution limits. The majority of the Advisory Committee also believed that the conflicting requirements between the state statute and the local by-law would make for a great deal of confusion for both candidates and contributors.

The petitioners argue that if the Town does not have legal authority over every provision, perhaps it has authority over some. They maintain the Town should at least attempt to get this through the AG's office and see what sticks. The Advisory Committee believes this could set the Town up for a bad case of "unintended consequences" should portions of the article be struck while others are maintained. The Committee does not feel this is an advisable way of honing legislation.

Members of the Advisory Committee also questioned the reliability of the survey data used to support the Moderator's Committee's conclusions. The surveys were distributed to Town Meeting members but the response rate was less than 25%. Because of the modest response rate, some Advisory Committee members thought that the results could not be generalized to all Town Meeting members.

Some members questioned whether the Town Clerk's Office was equipped to handle the additional duties placed on it by the proposed by-law and many believed that the enforcement responsibilities were too burdensome for such a small office staff while other members believed that regulation of campaign finance contained potential loopholes that would make enforcement very difficult if not impossible.

One member of the Advisory Committee believed that the best way to deal with the problems expressed by the Moderator's Committee was to have a strong grass roots campaign organization to offset the effects of the influence of campaign contributions.

RECOMMENDATION

The Advisory Committee by a vote of 15 in favor of the motion for no action, 6 opposed, and 1 abstention recommends NO ACTION on Article 18.

XXX

ARTICLE 18

Motion offered under Article 18 by Randall Ravitz, TMM-8 and chair of the **Moderator's Committee on Campaign Finance**, in behalf of committee members Professor Christine Desan, Selectman Gilbert Hoy, TMM-2 Rita McNally, Barbara Pastan, TMM-7 Sloan Sable, and Town Clerk Patrick Ward.

Moved: To amend Article 18 by substitution of the following language:

To see if the Town will amend Article 3.1 of the Town's By-Laws – Board of Selectmen – as follows:

MOTION 1: Add the following section:

Section 3.1.7 Campaigns for Office

(A) Definitions

(1) As used herein, the term "person" shall refer to any natural person, firm, corporation, partnership, union, association, organization, political committee or campaign, governmental entity, trust, educational institution, financial institution, or any other entity, however constituted.

(2) As used herein, the term "Chapter 55" shall refer to Chapter 55 of the Massachusetts General Laws and those regulations promulgated pursuant thereto, as the same may be amended from time to time.

(3) As used herein, the terms "candidate," "candidate's committee," "contribution," and "expenditure" shall have the same meanings ascribed to said terms in Chapter 55, unless the context in which such term is used indicates otherwise.

(4) As used herein, the term "State Campaign Finance Report" shall refer to a report required to be filed by a candidate or candidate's committee under Chapter 55.

(5) Should any ambiguity arise regarding any term not expressly defined herein, that term shall be construed consistently with the manner in which it is used in Chapter 55, unless the context in which it is used herein indicates otherwise.

(B) Campaign Finance Reports

On or before the fifteenth day preceding the Annual Town Election, and at the time of filing of any State Campaign Finance Report, each candidate for the office of Selectman shall file with the Town Clerk a Town Campaign Finance Report on a form prescribed by and made available to candidates by the Town Clerk. The reporting periods for the Town Campaign Finance Report shall be as indicated in the following table.

Reporting periods for Town Campaign Finance Report

Report due by	Reporting period begins	Reporting period ends
15 days before Town election	Incumbents: January 1 of prior year, or the day after the end of the reporting period of last report filed, whichever period is shorter Challengers: January 1 of year of Town election	December 31 of prior year
8 days before Town election	Day after end of reporting period for last report filed	18 days before Town election
30 days after Town election	Day after end of reporting period for last report filed	20 days after Town election
January 20 of year after Town election	Day after end of reporting period for last report filed	Last day of year of Town election

The Town Campaign Finance Report shall be substantially in the same format and require the same information as that required by the State Campaign Finance Report. It shall also require the following information:

(1) the full name, listed alphabetically, of each person whose contribution or aggregate contributions within the reporting period equal an amount or value greater than $50 but less than $200, together with the aggregate amount of each such person's contributions and the occupation and the name of the employer or employers of each such person; provided, however, that no candidate shall be required to include such occupation and employer if said candidate or a candidate's committee organized on his or her behalf has been unable to obtain such information after requesting it when soliciting a contribution.

(2) the total number of contributors of $50 or less.

(C) Publication of Campaign Finance Reports

Each campaign finance report filed with the Town Clerk pursuant to Chapter 55 and this By-Law shall be posted by the Town Clerk on the Town website within two business days of its filing.

(D) Provision of Information to Candidates by Town Clerk

The Town Clerk shall provide each candidate for the office of Selectman with a copy or written summary of the requirements and restrictions pertaining to campaigns for the office of Selectman prescribed by Chapter 55 and this By-Law. Said copy or written summary shall state that the requirements, restrictions, and other provisions of this By-Law are additional to those of Chapter 55. It shall be provided by the Town Clerk to incumbents and known challengers within thirty days of the effective date of this Article and, thereafter, within fourteen days of the filing of a statement of organization by a candidate's committee organized on behalf of new candidates pursuant to Chapter 55.

(E) Interpretation

(1) The requirements, restrictions, and other provisions set forth in this By-Law are intended to be in addition to all requirements, restrictions, and other provisions set forth in Chapter 55 and other applicable provisions of the constitutions, laws, and regulations of the United States and of the Commonwealth.

(2) The provisions of this By-Law are intended to be interpreted in such a way as to make them conformable to the constitutions and laws of the United States and of the Commonwealth and enforceable to the maximum extent permitted by law.

(F) Severability

Each provision of this By-Law shall be construed as separate to the extent that if any section, sentence, clause, or phrase is held to be invalid for any reason, the remainder of the By-Law shall continue in full force and effect.

MOTION 2: Insert the following after paragraph (D) – Provision of Information to Candidates by Town Clerk – and re-letter subsequent paragraphs as appropriate:

(E) Committee on Campaigns

(1) There shall be a Committee on Campaigns consisting of seven members: the Town Clerk or his designee; an appointee of the Board of Selectmen who may be a member of the Board; and five Brookline residents appointed by the Moderator for three-year staggered terms. No holder of or candidate for the office of

Selectman shall be eligible for appointment by the Moderator to the committee. Should any individual vacate his office as committee member, the applicable appointing authority shall appoint another individual to fill his or her unexpired term.

(2) The responsibilities of said committee shall include the following:

(a) analyzing information provided on campaign finance reports filed by candidates for Town office pursuant to Chapter 55 and this By-Law;

(b) publicly reporting such information and the results of such analysis;

(c) considering and recommending to Town Meeting measures that may be taken by the Town to improve upon this By-Law and ensure its effective implementation, and to establish a system of electronic reporting and accessible electronic posting of campaign finance information;

(d) considering additional measures that may be taken by the Town to improve the process by which Town officials are elected;

(e) examining the feasibility and potential parameters of a system of public financing with respect to campaigns for Town office.

(3) Additional activities that may be undertaken by the Committee include, but are not limited to, the following: receiving public comment and conducting public forums concerning the process by which Town officials are elected; providing vehicles for publicizing, and working with local media to publicize, information concerning elections and candidates for Town office; and examining the relationship between campaign finance and appointments to Town boards and commissions.

MOTION 3: Insert the following after paragraph (D) – Provision of Information to Candidates by Town Clerk – and re-letter subsequent paragraphs as appropriate:

(E) Contribution Limits

(1) No candidate for the office of Selectman or candidate's committee organized on his or her behalf shall accept an aggregate amount or value of more than $250 in contributions in any calendar year from any one person.

(2) Notwithstanding the foregoing, no candidate or candidate's committee organized on his or her behalf shall be in violation of this By-Law if a contribution in excess of the above contribution limits is accepted mistakenly but not deposited in any bank account and returned within seven days of its receipt to the person making the contribution.

MOTION 4: Insert the following after paragraph F (1) and renumber existing paragraph F (2) as F (3):

(2) No candidate for the office of Selectman or candidate's committee organized on his or her behalf shall accept an aggregate amount or value of more than $150 in contributions in any calendar year from any one person who is not domiciled within the Town.

or act on anything relative thereto.

EXPLANATION

The Moderator's Committee on Campaign Finance has submitted this amendment – an extensive revision of its original article – for two primary reasons.

First, the original was lengthy and multifaceted. Consequently, the hearings conducted by the Selectmen and the Advisory Committee were long and difficult. We had assumed that the Advisory Committee, if it did not favor the proposal as a whole, would carve out certain provisions and submit its own, less complex version. But this was not done. So to make its consideration by Town Meeting more straightforward, we have broken the single motion of the original article into four motions, which deal with its provisions in the following order:

1. Increased disclosure of campaign finance information (all original paragraphs except F and G)
2. Creation of Committee on Campaigns (par. G)
3. Lower contribution cap for Brookline residents (par. F1)
4. Separate contribution cap for nonresidents (par. F2)

Second, having considered the observations and concerns voiced by various Advisory Committee members and Selectmen, the Committee has made the following changes in its proposal:

1. Eliminated the provision requiring candidates to identify contributors who are relatives;
2. Doubled the proposed contribution cap for nonresidents from $75 to $150;
3. Reduced the daily fine for late submission of the proposed Town Campaign Finance Report from 1% of the total contributions reported to $25;
4. Made several "responsibilities" of the proposed Committee on Campaigns optional; and

5. For clarity, replaced the text that prescribes reporting periods with a table.

The remainder of the explanation has been revised in light of the foregoing and in order to provide additional information regarding questions raised during the hearings conducted by the Selectmen and the Advisory Committee. Additionally, certain small revisions have been made to the statistics presented in the attached appendices.

Committee history and process

This warrant article is the product of the analysis and deliberations of the Moderator's Committee on Campaign Finance, which was established by the Fall 2003 Town Meeting and 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 Committee has held approximately forty meetings, analyzed all campaign finance reports filed by candidates for the Board of Selectman since 1988, researched state and federal legal issues pertaining to the enactment of municipal campaign finance reform measures, solicited input from Town Meeting Members and other Town officials through two questionnaires, heard from a series of experts in relevant fields, conducted a public hearing, and extensively discussed the current practice of campaign finance in Brookline and potential approaches for reform.

In preparing its recommendations, the Committee took into account a wide range of factors, including its findings and concerns regarding the nature of campaign finance in Brookline, the effectiveness of current state requirements and restrictions, the views of Town Meeting Members and their constituents, the legal limitations on the Town's ability to enact campaign finance restrictions, the amounts required by a candidate to reach voters, the burdens placed on campaign committees and Town officials by campaign finance restrictions, and the local political culture.

<u>Problems with current system of financing selectman campaigns</u>

The current rules governing the financing of campaigns for Selectman give rise to several problems that the Committee feels can be significantly reduced:

(1) they undermine the democratic principle of "one person, one vote" by allowing large contributors to have a disproportionate influence on the outcome of elections, thereby diminishing the rights of other citizens to equal and meaningful participation in the democratic process;

(2) they allow nonresidents to play on an equal footing with residents in funding and therefore influence the outcome of our community's elections, again undermining the principle of "one person, one vote";

(3) they increase the cost of election campaigns over time, making it increasingly difficult for qualified candidates without substantial personal means or access to large contributors to mount competitive campaigns;

(4) they enable some candidates to present themselves and their views to the voters more widely and effectively than others, undermining the ideal of open and robust debate on issues of public interest and concern;

(5) they promote the spread of a perception within the general public of potential or actual undue influence and conflicts of interest and undermine public confidence in the fairness of the electoral process;

(6) they could potentially reduce the accountability of Selectmen to their broad constituency by encouraging them to be disproportionately attentive to the interests of major contributors to their campaigns; and

(7) they disadvantage challengers, who are substantially outspent by incumbents, thus discouraging average citizens from running for office and leading to fewer competitive elections.

The Committee feels that most of these shortcomings would probably be best addressed by establishing a public funding system – a complex subject that should be addressed by the Committee on Campaigns proposed above. In the absence of such a system that would place citizens on a much more equal financial footing, however, the Committee feels that the set of reforms proposed under the four motions of the article constitute reasonable steps which, taken together, will make a substantial improvement on current practice.

Committee recommendations

The Committee proposes the enactment of a By-Law amendment dealing with the financing of campaigns for the office of Selectman. Section A provides definitions.

Sections B and C concern the disclosure of campaign finance information. A hallmark of campaign finance law is the requirement that candidates file reports providing information on contributions received by and expenditures made by their campaigns. Such filings are publicly accessible and thus offer voters an opportunity to evaluate the sectors and interests from which a candidate has received financial support. The article would extend the disclosure requirements of state law to make them more effective.

First, Section B would require candidates to file a Town Campaign Finance Report modeled on the state report already in use, but containing additional information of interest to voters. Under state law, a candidate must list the occupation and employer of donors contributing $200 or more to the candidate's campaign, unless the campaign could not obtain such information after making two requests. Voters can use this information to

evaluate the potential influence that may be held by certain donors or interests. In fact, the Committee used it to conduct an analysis of campaign donations of $200 or more by source category, which is summarized in *Appendices A-D*. An additional benefit of this disclosure requirement is that it may make a candidate or officeholder more careful to avoid the appearance of undue support for those interests that have been particularly generous to his or her campaign. A problem with the requirement, however, is that it does not enable voters to see the occupations and employers of those who have given $200 or less. The contributions of such individuals are not insignificant to a campaign. Moreover, a number of smaller contributions from members of the same business or sector may raise the same issues in the mind of a voter as a single large contribution. Accordingly, the Town Campaign Finance Report would call for candidates to furnish the occupation and employer of each contributor who has given more than $50 but less than $200 to the campaign.

Another piece of information not required under state law that would be required by the Town Campaign Finance Report is the number of contributors who have given an aggregate amount of $50 or less. The provision of such information would enable voters and analysts of the Town's campaign finance practice to determine whether candidates have received widespread support or only support from a limited number of contributors.

Under Section B, a candidate would be required to file a Town Campaign Finance Report at the time of filing any state report and at one additional point in time when it will be particularly useful to voters. Currently, state reports must be filed by the eighth day preceding the Annual Town Election, by the thirtieth day following the Annual Town Election, and by January 20th of each year. The Committee concluded that none of these reports is filed close enough to the election to provide an accurate picture of the sources of a candidate's funding but also far enough in advance to enable the public and local news media to analyze the information and take it into account in evaluating candidates. Section B would therefore require the filing of another Town Campaign Finance Report fifteen days before the Annual Town Election.

<u>Section C</u> would require the Town Clerk to post campaign finance reports on the Town website within two business days of their filing. The rationale for this provision is that the effectiveness of disclosure is determined to a major degree by the ease and convenience with which the public and news media are able to access the information being disclosed. The Town Clerk, a Committee member, has stated that his office is willing to scan and post campaign finance report forms.

<u>Section D</u> would direct the Town Clerk to provide information to candidates regarding state and Town campaign finance requirements and restrictions. This provision is based on the notion that campaign finance requirements and restrictions are only effective if candidates are aware of and understand them. The Town Clerk would be required to note in particular that the mandates of the Town's By-Law are in addition to all mandates imposed by state law.

Section E would establish a penalty for tardiness in filing the new Town Campaign Finance Report. This penalty would be in the amount of $25 for each day by which the submission deadline is exceeded. The Committee recognized that campaign finance restrictions are only effective to the extent that they are adhered to by campaigns. Unfortunately, however, the requirements of state law are often not strictly adhered to, and the penalty prescribed by state law is only $10 per day and is rarely if ever imposed. The penalty arrived at by the Committee would ensure that reporting timeliness is taken seriously and that campaigns are penalized in proportion to the amounts they have raised.

Section F would establish contribution limits that are lower than those imposed by state law. State law currently allows candidates to accept contributions of up to $500 per calendar year from a single individual. The Committee would lower this cap to $250. Its recommendation is based largely on its findings that: there is a strong correlation between amount raised and victory at the polls; the amounts raised and spent on campaigns are high and rising, as reflected in the last column of Appendix B; and campaigns are financed greatly by large donations from a small group of contributors. Lowering the cap on individual donations would reduce the actual and perceived influence over a candidate that any one contributor or donor category may have; minimize the discrepancy in influence over the political process between wealthier contributors and less wealthy contributors; and likely reduce the total amount required to run for office successfully. The Committee arrived at the figure of $250 because it is consistent with the following: the state's implicit recognition that contributions of $200 or more deserve special scrutiny, as evinced by its requirement that candidates list the occupation and employer of those who give at that level; the level of restrictions imposed by comparably-sized municipalities in other states; and the Committee's conclusion that a $250 limit would clearly enable candidates to reach voters without being heavily financed by large contributions. *Appendix E, Effects of Lowering Contribution Cap*, reflects the Committee's analysis of the effects of different donation caps.

Section F would also prohibit campaigns from accepting more than $150 per calendar year from any one non-resident contributor. The analysis reflected in Appendix F revealed that, in addition to the fact that there is a correlation between funds raised and victory at the polls, a large proportion of campaign contributions frequently comes from outside Brookline. In 12 of the 35 campaigns since 1994, more than 20% of the funding came from non-residents – and in five campaigns, 35% or more, up to a maximum of 65%.[1] (See *Appendix F, Non-resident Funding of Selectman Campaigns*.) The Committee believes it is inconsistent with our democratic system for those who do not reside in Brookline to have such a great influence over the outcome of its elections and the decisions made by its government. Moreover, the Committee recognized that there is at least a perception that out-of-town contributors are at times motivated to donate to Brookline campaigns by a personal financial interest in issues considered by Town officials. The figure arrived at by the Committee is based in part on the fact that respondents to its Town Meeting

[1] Note that the figure regarding the number of campaigns receiving 20% or more of their funds from out of town has been revised from the figure of 13 stated in the original Explanation.

questionnaire, on average, wished to see candidates accept no more than about 30% of their contributions from outside Brookline. The $75 figure is 30% of the $250 figure discussed above.

Finally, Section G proposes the creation of a Town Committee on Campaigns. Such a committee would promote public awareness of campaign finance issues by analyzing and reporting on information supplied through campaign finance reports. It would also further the effort to reform the financing of campaigns for Town office by receiving public comment and, as appropriate, proposing new measures for consideration by Town Meeting. Additionally, it could help reduce the need for large contributions and expenditures by providing alternative vehicles for campaigns to reach voters.

The Committee expects to supplement this explanation with a more extensive discussion of its work, its findings, relevant legal issues, the various recommendations it has considered, and the rationale behind the proposals that it has included within its warrant article.

Appendices (all found after the Selectmen's Supplemental Report, which follows below)

A - Which occupational categories provide the most campaign donations of $200 and more?

B - Donations of More than $50 from Attorneys and the Real Estate Industry to Selectman Candidates

C - Donations of More than $50 from Retirees, Brookline Business Owners, Selectmen, Miscellaneous, and Unidentified Sources to Selectman Candidates

D - Donations of More than $50 from Candidate, Family and Non-residents to Selectman Candidates

E - Effects of Lowering Contribution Cap

F - Non-resident Funding of Selectman Campaigns

G - Funds Raised by All Candidates in Contested Races (1988-2004), Including Trend Line

H - Funds Raided by Winning Candidates in Contested Races (1988-2004), Including Trend Line

I - Success Rates for All Candidates in Contested Races at Various Fundraising Levels (1988-2004)

J - Contributions (2000-2004), Total vs. $200 or More

K - Average of All Non-Resident Contributions Over $50 (1995-2004), Including Trend Line

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BOARD OF SELECTMEN'S SUPPLEMENTAL REPORT

Article 18 was submitted by the Moderator's Committee on Campaign Finance, which was created by Town Meeting in November, 2003. It proposes to regulate campaign contributions solely for candidates seeking election to the Board of Selectmen. The vote Town Meeting took to establish the Moderator's Committee asked for a review of the

financing of campaigns for election to the Board of Selectmen and, if appropriate, recommend 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 Committee has held approximately 40 meetings, thoroughly analyzed all campaign finance reports filed by candidates for the Board of Selectman since 1988, researched state and federal legal issues pertaining to the enactment of municipal campaign finance reform measures, solicited input from Town Meeting Members and other Town officials through two questionnaires, heard from a series of experts in relevant fields, conducted a public hearing, and extensively discussed potential approaches for reform. The Board appreciates the time and effort put in by the Committee and thanks them for their hard work.

Some of the Selectmen had a number of concerns with the original language of the warrant article. While each member of the Board believes that the matter of campaign finance is an issue at the federal and state levels, some members of the Board do not believe that it is also an issue locally in Brookline likewise in need of comprehensive remediation. The Committee re-worked the article and submitted a revised version with four separate motions. The Selectmen reviewed these motions, shown below, at its November 2, 2006 meeting.

MOTION 1: Add the following section:

Section 3.1.7 Campaigns for Office

(A) Definitions

(1) As used herein, the term "person" shall refer to any natural person, firm, corporation, partnership, union, association, organization, political committee or campaign, governmental entity, trust, educational institution, financial institution, or any other entity, however constituted.

(2) As used herein, the term "Chapter 55" shall refer to Chapter 55 of the Massachusetts General Laws and those regulations promulgated pursuant thereto, as the same may be amended from time to time.

(3) As used herein, the terms "candidate," "candidate's committee," "contribution," and "expenditure" shall have the same meanings ascribed to such terms in Chapter 55, unless the context in which such term is used indicates otherwise.

(4) As used herein, the term "State Campaign Finance Report" shall refer to a report required to be filed by a candidate or candidate's committee under Chapter 55.

(5) Should any ambiguity arise regarding any term not expressly defined herein, that term shall be construed consistently with the manner in which such term is used in

Chapter 55, unless the context in which such term is used herein indicates otherwise.

(B) Campaign Finance Reports

On or before the fifteenth day preceding the Annual Town Election, and at the time of filing of any State Campaign Finance Report, each candidate for the office of Selectman shall file with the Town Clerk a Town Campaign Finance Report on a form prescribed by and made available to candidates by the Town Clerk. The reporting periods for the Town Campaign Finance Report shall be as indicated in the following table. The Town Campaign Finance Report shall be substantially in the same format and require the same information as that required by the State Campaign Finance Report. It shall also require the following information:

(1) the full name, listed alphabetically, of each person whose contribution or aggregate contributions within the reporting period equal an amount or value greater than $50 but less than $200, together with the aggregate amount of each such person's contributions and the occupation and the name of the employer or employers of each such person; provided, however, that no candidate shall be required to include such occupation and employer if said candidate or a candidate's committee organized on his or her behalf has been unable to obtain such information after requesting it when soliciting a contribution.

(2) the total number of contributors of $50 or less.

(C) Publication of Campaign Finance Reports

Each campaign finance report filed with the Town Clerk pursuant to Chapter 55 and this By-Law shall be posted by the Town Clerk on the Town website within two business days of its filing.

(D) Provision of Information to Candidates by Town Clerk

The Town Clerk shall provide each candidate for the office of Selectman with a copy or written summary of the requirements and restrictions pertaining to campaigns for the office of Selectman prescribed by Chapter 55 and this By-Law. Said copy or written summary shall state that the requirements, restrictions, and other provisions of this By-Law are additional to those of Chapter 55. It shall be provided by the Town Clerk to incumbents and known challengers within thirty days of the effective date of this Article and, thereafter, within fourteen days of the filing of a statement of organization by a candidate's committee organized on behalf of new candidates pursuant to Chapter 55.

(E) Interpretation

(1) The requirements, restrictions, and other provisions set forth in this By-Law are intended to be in addition to all requirements, restrictions, and other provisions set forth in Chapter 55 and other applicable provisions of the constitutions, laws, and regulations of the United States and of the Commonwealth.

(2) The provisions of this By-Law are intended to be interpreted in such a way as to make them conformable to the constitutions and laws of the United States and of the Commonwealth and enforceable to the maximum extent permitted by law.

(F) Severability

Each provision of this By-Law shall be construed as separate to the extent that if any section, sentence, clause, or phrase is held to be invalid for any reason, the remainder of the By-Law shall continue in full force and effect.

MOTION 2: Insert the following after paragraph (D) – Provision of Information to Candidates by Town Clerk, and re-letter subsequent paragraphs as appropriate:

(E) Committee on Campaigns

(1) There shall be a Committee on Campaigns consisting of seven members: the Town Clerk or his designee; an appointee of the Board of Selectmen who may be a member of the Board; and five Brookline residents appointed by the Moderator for three-year staggered terms. No holder of or candidate for the office of Selectman shall be eligible for appointment by the Moderator to the committee. Should any individual vacate his office as committee member, the applicable appointing authority shall appoint another individual to fill his or her unexpired term.

(2) The responsibilities of said committee shall include the following:

(a) analyzing information provided on campaign finance reports filed by candidates for Town office pursuant to Chapter 55 and this By-Law;

(b) publicly reporting such information and the results of such analysis;

(c) considering and recommending to Town Meeting measures that may be taken by the Town to improve upon this By-Law and ensure its effective implementation, and to establish a system of electronic reporting and accessible electronic posting of campaign finance information;

(d) considering additional measures that may be taken by the Town to improve the process by which Town officials are elected;

(e) examining the feasibility and potential parameters of a system of public financing with respect to campaigns for Town office.

Additional activities that may be undertaken by the Committee include, but are not limited to, the following: receiving public comment and conducting public forums concerning the process by which Town officials are elected; providing vehicles for publicizing, and working with local media to publicize, information concerning elections and candidates for Town office; and examining the relationship between campaign finance and appointments to Town boards and commissions.

MOTION 3: Insert the following after paragraph (D) – Provision of Information to Candidates by Town Clerk – and re-letter subsequent paragraphs as appropriate:

(E) Contribution Limits

(1) No candidate for the office of Selectman or candidate's committee organized on his or her behalf shall accept an aggregate amount or value of more than $250 in contributions in any calendar year from any one person. [The committee is currently discussing pegging this $250 cap to the CPI – All Urban Consumers for the Northeast Region.]

(2) Notwithstanding the foregoing, no candidate or candidate's committee organized on his or her behalf shall be in violation of this By-Law if a contribution in excess of the above contribution limits is accepted mistakenly but not deposited in any bank account and returned within seven days of its receipt to the person making the contribution.

MOTION 4: Insert the following after paragraph F (1) and renumber existing paragraph F (2) as F (3):

(2) No candidate for the office of Selectman or candidate's committee organized on his or her behalf shall accept an aggregate amount or value of more than $150 in contributions in any calendar year from any one person who is not domiciled within the Town.

The following briefly describes each motion:

- **MOTION 1** calls for greater disclosure requirements for campaign contributions. More specifically, the proposal calls for a listing of all contributors, by name, who donated more than $50 but less than $200, along with their occupation and name of employer(s). The Town Clerk would be required to post these reports on the

Town's website. The penalty provision originally proposed in the warrant article has been eliminated in the revised motion.

- **MOTION 2** would establish a Committee on Campaigns, consisting of seven members: the Town Clerk (or designee), an appointee of the Board of Selectmen, who may be a member of the Board, and five residents appointed by the Moderator for three-year staggered terms. The Committee would analyze the information provided in the campaign finance reports and publicly report their results. The Committee could also recommend modifications to the by-law to Town Meeting.

- **MOTION 3** would reduce the current maximum campaign contribution from $500 per year to $250 per year.

- **MOTION 4** would limit contributions from non-residents to $150 per year.

The Board voted favorably on Motions 1 and 2 and against Motions 3 and 4 [2], as some members of the Board still have concerns with the article and its underlying assumptions. A majority of the Selectmen voted favorably on Motions 1 and 2, because they consider more public disclosure of campaign finance information and the existence of a committee to analyze that information as positive actions that will facilitate access to data that more specifically identifies sources of contributions as well as how those funds are spent. While much of this information is currently available for public viewing, a majority believes that obtaining more detailed information and having it posted on-line are improvements to the current system.

The No Action votes on Motions 3 and 4 grew out of fundamental concerns of some members of the Board that these two proposals went beyond just improving the system of reporting fund raising information, but had potential implications for the election process itself. Town Counsel in her opinion of October 10, 2006, suggested as much when she observed that under the Home Rule Amendment, corresponding case law, and the comprehensive nature of state election statutes that "the Town does not have the authority to regulate campaign finance by local by-law."

One concern expressed about Motions 3 and 4 is that they may have the unintended consequence of resulting in more self-financed campaigns. The $250 donation limit requires soliciting more of the smaller donations, thereby causing candidates to spend more time fund raising. In addition, the increased time dedicated to asking for money could well discourage potential candidates and deter them from running for Selectmen.

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[2] The Roll Call votes for **FAVORABLE ACTION** for Motions 1 and 2 are found below under each Motion. The Roll Call votes for **NO ACTION** on Motions 3 and 4 were 3-2 (Selectmen Allen, Merrill, and DeWitt for No Action and Selectmen Hoy and Daly for Favorable Action) and 4-1 (Selectmen Allen, Merrill, Daly, and DeWitt for No Action and Selectman Hoy for Favorable Action), respectively.

The proposal to limit annual contributions from non-residents (Motion 4) is also a concern of some Board members. If this provision were to be adopted, candidate family members who do not live in town would not be able to donate the same amount as someone living in Brookline. Another area where the majority sees an inequity is how business owners would be treated: two businesses located next to each other could have different donation limits simply because one owner lives in Brookline and the other lives in another community. Both have similar interests, yet one can only contribute $150 while the other can contribute $250. Former residents would also be treated differently. Think of the individual who lived here and paid taxes for decades but has decided to down-size and move out of town. Even though that individual might still have family here and still care very deeply for the town, his/her donation could only be $150 versus $250 for a resident.

For all of the reasons explained above, the Selectmen recommend FAVORABLE ACTION, by votes of 3-2 taken on November 2, 2006, on the following two motions:

VOTED: That the Town amend Article 3.1 of the Town's By-Laws – Board of Selectmen, as follows:

MOTION 1: Add the following section:

Section 3.1.7 Campaigns for Office

(A) Definitions

(1) As used herein, the term "person" shall refer to any natural person, firm, corporation, partnership, union, association, organization, political committee or campaign, governmental entity, trust, educational institution, financial institution, or any other entity, however constituted.

(2) As used herein, the term "Chapter 55" shall refer to Chapter 55 of the Massachusetts General Laws and those regulations promulgated pursuant thereto, as the same may be amended from time to time.

(3) As used herein, the terms "candidate," "candidate's committee," "contribution," and "expenditure" shall have the same meanings ascribed to such terms in Chapter 55, unless the context in which such term is used indicates otherwise.

(4) As used herein, the term "State Campaign Finance Report" shall refer to a report required to be filed by a candidate or candidate's committee under Chapter 55.

(5) Should any ambiguity arise regarding any term not expressly defined herein, that term shall be construed consistently with the manner in which such term is used in Chapter 55, unless the context in which such term is used herein indicates otherwise.

(B) Campaign Finance Reports

On or before the fifteenth day preceding the Annual Town Election, and at the time of filing of any State Campaign Finance Report, each candidate for the office of Selectman shall file with the Town Clerk a Town Campaign Finance Report on a form prescribed by and made available to candidates by the Town Clerk. The reporting periods for the Town Campaign Finance Report shall be as indicated in the following table. The Town Campaign Finance Report shall be substantially in the same format and require the same information as that required by the State Campaign Finance Report. It shall also require the following information:

(1) the full name, listed alphabetically, of each person whose contribution or aggregate contributions within the reporting period equal an amount or value greater than $50 but less than $200, together with the aggregate amount of each such person's contributions and the occupation and the name of the employer or employers of each such person; provided, however, that no candidate shall be required to include such occupation and employer if said candidate or a candidate's committee organized on his or her behalf has been unable to obtain such information after requesting it when soliciting a contribution.

(2) the total number of contributors of $50 or less.

(C) Publication of Campaign Finance Reports

Each campaign finance report filed with the Town Clerk pursuant to Chapter 55 and this By-Law shall be posted by the Town Clerk on the Town website within two business days of its filing.

(D) Provision of Information to Candidates by Town Clerk

The Town Clerk shall provide each candidate for the office of Selectman with a copy or written summary of the requirements and restrictions pertaining to campaigns for the office of Selectman prescribed by Chapter 55 and this By-Law. Said copy or written summary shall state that the requirements, restrictions, and other provisions of this By-Law are additional to those of Chapter 55. It shall be provided by the Town Clerk to incumbents and known challengers within thirty days of the effective date of this Article and, thereafter, within fourteen days of the filing of a statement of organization by a candidate's committee organized on behalf of new candidates pursuant to Chapter 55.

(E) Interpretation

(1) The requirements, restrictions, and other provisions set forth in this By-Law are intended to be in addition to all requirements, restrictions, and other provisions set forth in Chapter 55 and other applicable provisions of the constitutions, laws, and regulations of the United States and of the Commonwealth.

(2) The provisions of this By-Law are intended to be interpreted in such a way as to make them conformable to the constitutions and laws of the United States and of the Commonwealth and enforceable to the maximum extent permitted by law.

(F) Severability

Each provision of this By-Law shall be construed as separate to the extent that if any section, sentence, clause, or phrase is held to be invalid for any reason, the remainder of the By-Law shall continue in full force and effect.

ROLL CALL VOTE:

Favorable Action	No Action
Hoy	Allen
Daly	Merrill
DeWitt	

MOTION 2: Insert the following after paragraph (D) – Provision of Information to Candidates by Town Clerk, and re-letter subsequent paragraphs as appropriate:

(E) Committee on Campaigns

(1) There shall be a Committee on Campaigns consisting of seven members: the Town Clerk or his designee; an appointee of the Board of Selectmen who may be a member of the Board; and five Brookline residents appointed by the Moderator for three-year staggered terms. No holder of or candidate for the office of Selectman shall be eligible for appointment by the Moderator to the committee. Should any individual vacate his office as committee member, the applicable appointing authority shall appoint another individual to fill his or her unexpired term.

(2) The responsibilities of said committee shall include the following:

(a) analyzing information provided on campaign finance reports filed by candidates for Town office pursuant to Chapter 55 and this By-Law;

(b) publicly reporting such information and the results of such analysis;

(c) considering and recommending to Town Meeting measures that may be taken by the Town to improve upon this By-Law and ensure its effective implementation, and to establish a system of electronic reporting and accessible electronic posting of campaign finance information;

(d) considering additional measures that may be taken by the Town to improve the process by which Town officials are elected;

(e) examining the feasibility and potential parameters of a system of public financing with respect to campaigns for Town office.

Additional activities that may be undertaken by the Committee include, but are not limited to, the following: receiving public comment and conducting public forums concerning the process by which Town officials are elected; providing vehicles for publicizing, and working with local media to publicize, information concerning elections and candidates for Town office; and examining the relationship between campaign finance and appointments to Town boards and commissions.

ROLL CALL VOTE:

Favorable Action	No Action
Hoy	Allen
Daly	Merrill
DeWitt	

ARTICLE 18

Motion offered under Article 18 by Randall Ravitz, TMM-8 and chair of the **Moderator's Committee on Campaign Finance**, in behalf of committee members Professor Christine Desan, Selectman Gilbert Hoy, TMM-2 Rita McNally, Barbara Pastan, TMM-7 Sloan Sable, and Town Clerk Patrick Ward.

Moved: To amend Article 18 by substitution of the following language:

To see if the Town will amend Article 3.1 of the Town's By-Laws – Board of Selectmen – as follows:

MOTION 1: Add the following section:

Section 3.1.7 Campaigns for Office

(A) Definitions

(1) As used herein, the term "person" shall refer to any natural person, firm, corporation, partnership, union, association, organization, political committee or campaign, governmental entity, trust, educational institution, financial institution, or any other entity, however constituted.

(2) As used herein, the term "Chapter 55" shall refer to Chapter 55 of the Massachusetts General Laws and those regulations promulgated pursuant thereto, as the same may be amended from time to time.

(3) As used herein, the terms "candidate," "candidate's committee," "contribution," and "expenditure" shall have the same meanings ascribed to said terms in Chapter 55, unless the context in which such term is used indicates otherwise.

(4) As used herein, the term "State Campaign Finance Report" shall refer to a report required to be filed by a candidate or candidate's committee under Chapter 55.

(5) Should any ambiguity arise regarding any term not expressly defined herein, that term shall be construed consistently with the manner in which it is used in Chapter 55, unless the context in which it is used herein indicates otherwise.

(B) Campaign Finance Reports

On or before the fifteenth day preceding the Annual Town Election, and at the time of filing of any State Campaign Finance Report, each candidate for the office of Selectman shall file with the Town Clerk a Town Campaign Finance Report on a form prescribed by and made available to candidates by the Town Clerk. The reporting periods for the Town Campaign Finance Report shall be as indicated in the following table.

Reporting periods for Town Campaign Finance Report

Report due by	Reporting period begins	Reporting period ends
15 days before Town election	Incumbents: January 1 of prior year, or the day after the end of the reporting period of last report filed, whichever period is shorter Challengers: January 1 of year of Town election	December 31 of prior year
8 days before Town election election	Day after end of reporting period for last report filed	18 days before Town
30 days after Town election	Day after end of reporting period for last report filed	20 days after Town election
January 20 of year after Town election	Day after end of reporting period for last report filed	Last day of year of Town election

The Town Campaign Finance Report shall be substantially in the same format and require the same information as that required by the State Campaign Finance Report. It shall also require the following information:

(1) the full name, listed alphabetically, of each person whose contribution or aggregate contributions within the reporting period equal an amount or value greater than $50 but less than $200, together with the aggregate amount of each such person's contributions and the occupation and the name of the employer or employers of each such person; provided, however, that no candidate shall be required to include such occupation and employer if said candidate or a candidate's committee organized on his or her behalf has been unable to obtain such information after requesting it when soliciting a contribution.

(2) the total number of contributors of $50 or less.

(C) Publication of Campaign Finance Reports

Each campaign finance report filed with the Town Clerk pursuant to Chapter 55 and this By-Law shall be posted by the Town Clerk on the Town website within two business days of its filing. Any failure to file such a report on a timely basis shall likewise be posted by the Town Clerk on the Town website within one business day of the date by which it should have been filed.

(D) Provision of Information to Candidates by Town Clerk

The Town Clerk shall provide each candidate for the office of Selectman with a copy or written summary of the requirements and restrictions pertaining to campaigns for the office of Selectman prescribed by Chapter 55 and this By-Law. Said copy or written summary shall state that the requirements, restrictions, and other provisions of this By-Law are additional to those of Chapter 55. It shall be provided by the Town Clerk to incumbents and known challengers within thirty days of the effective date of this Article and, thereafter, within fourteen days of the filing of a statement of organization by a candidate's committee organized on behalf of new candidates pursuant to Chapter 55.

(E) Interpretation

(1) The requirements, restrictions, and other provisions set forth in this By-Law are intended to be in addition to all requirements, restrictions, and other provisions set forth in Chapter 55 and other applicable provisions of the constitutions, laws, and regulations of the United States and of the Commonwealth.

(2) The provisions of this By-Law are intended to be interpreted in such a way as to make them conformable to the constitutions and laws of the United States and of the Commonwealth and enforceable to the maximum extent permitted by law.

(F) Severability

Each provision of this By-Law shall be construed as separate to the extent that if any section, sentence, clause, or phrase is held to be invalid for any reason, the remainder of the By-Law shall continue in full force and effect.

MOTION 2: Insert the following after paragraph (D) – Provision of Information to Candidates by Town Clerk – and re-letter subsequent paragraphs as appropriate:

(E) Committee on Campaigns

(1) There shall be a Committee on Campaigns consisting of seven members: the Town Clerk or his designee; an appointee of the Board of Selectmen who may be a member

of the Board; and five Brookline residents appointed by the Moderator for three-year staggered terms. No holder of or candidate for the office of Selectman shall be eligible for appointment by the Moderator to the committee. Should any individual vacate his office as committee member, the applicable appointing authority shall appoint another individual to fill his or her unexpired term.

(2) The responsibilities of said committee shall include the following:

(a) analyzing information provided on campaign finance reports filed by candidates for Town office pursuant to Chapter 55 and this By-Law;

(b) publicly reporting such information and the results of such analysis;

(c) considering and recommending to Town Meeting measures that may be taken by the Town to improve upon this By-Law and ensure its effective implementation, and to establish a system of electronic reporting and accessible electronic posting of campaign finance information;

(d) considering additional measures that may be taken by the Town to improve the process by which Town officials are elected;

(e) examining the feasibility and potential parameters of a system of public financing with respect to campaigns for Town office.

(3) Additional activities that may be undertaken by the Committee include, but are not limited to, the following: receiving public comment and conducting public forums concerning the process by which Town officials are elected; providing vehicles for publicizing, and working with local media to publicize, information concerning elections and candidates for Town office; and examining the relationship between campaign finance and appointments to Town boards and commissions.

MOTION 3: Insert the following after paragraph (D) – Provision of Information to Candidates by Town Clerk – and re-letter subsequent paragraphs as appropriate:

(E) Contribution Limits

(1) No candidate for the office of Selectman or candidate's committee organized on his or her behalf shall accept an aggregate amount or value of more than $250 in contributions in any calendar year from any one person.

(2) Notwithstanding the foregoing, no candidate or candidate's committee organized on his or her behalf shall be in violation of this By-Law if a contribution in excess of the above contribution limits is accepted mistakenly but not deposited in any bank

account and returned within seven days of its receipt to the person making the contribution.

MOTION 4: Insert the following after paragraph F (1) and renumber existing paragraph F (2) as F (3):

(2) No candidate for the office of Selectman or candidate's committee organized on his or her behalf shall accept an aggregate amount or value of more than $150 in contributions in any calendar year from any one person who is not domiciled within the Town.

or act on anything relative thereto.

ARTICLE 18

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT ON ARTICLE 18

BACKGROUND

The majority of the Advisory Committee recommended NO ACTION on the original version of Article 18 by a vote of 15-6-1 (See the complete Recommendation in the Combined Reports). The Advisory Committee, in addition to its other concerns with the proposed by-law, relied on Town Counsel's legal opinion that the Town does not have the legal authority to regulate campaign finance by local by-law because the State has preempted the subject matter of campaign finance under M.G.L. c. 55 so as to forbid adoption of local regulation that might interfere with the State's own regulation of campaign finance.

The Moderator's Committee on Campaign Finance has revised its original proposal in response to comments from the Advisory Committee and the Board of Selectmen. The petitioner is now offering four motions under an amended Article 18 summarized as follows:

- Motion 1 - retains original provisions requiring increased disclosure of campaign contributions, posting by the Town Clerk of campaign finance reports on the Town website and adds under (C) a new requirement that Town Clerk post on the website a candidate's noncompliance with filing requirements. The 1% penalty provision under the original proposal has been eliminated and the provision requiring identification of contributors who are relatives has been removed.

- Motion 2 - revised provision on the proposed Committee on Campaigns, retaining original requirements of: (a) analyzing reports; (b) public reporting of such analysis; (c) recommending by-law improvements to Town Meeting; (d) recommending improvements in the election process; and (j) examining possibility of public financing of future campaigns. The original required provisions of (f), (g), (h) and (i) are now made optional.

- Motion 3 - retains the original campaign contribution limitation of $250 per person per year and the exculpation provision concerning mistaken acceptance of excess contribution.

- Motion 4 - retains limitation on contributions from non-residents but increases the original proposed limit of $75 to $150.

DISCUSSION

The majority of the Advisory Committee voted to recommend FAVORABLE ACTION on Motions 1 and 2. The votes on Motions 1 and 2 reflected the opinion of the majority that increasing transparency of campaign finances is an important step toward maintaining public confidence in the integrity of the political process. Motion 1 requires candidates to provide additional information on contributors to their campaigns and requires the Town Clerk to post

reports from candidates on the Town website. Motion 2 establishes a Committee on Campaigns to work with the Town Clerk to ensure that the new by-law is implemented and publicized. The committee also would analyze information submitted in campaign finance reports and study further potential steps.

The majority of the Advisory Committee were aware that motions 1 and 2 might be found to be in conflict with state law, but they concluded—as did the Moderator's Committee—that Brookline might have the authority to take these limited steps to regulate campaign finance. According to the Moderator's Committee's Supplemental Explanation for Article 18 of the Fall 2006 Special Town Meeting (Part V. Par. B.), an ethics by-law, similar to the subject matters under Motions 1 and 2, was adopted by Amesbury in 2002 and has not been challenged. The Amesbury Town Clerk stated that they do not send local regulations to the Attorney General's Office for approval, claiming that under their particular Charter form of government, they are considered a city for such purposes.[1]

A minority of the Advisory Committee argued that the changes to the Town by-laws in motions 1 and 2 were unnecessary, counterproductive, and, more than likely, appear to be in conflict with Massachusetts state law.

A majority of the Advisory Committee voted to recommend NO ACTION on Motions 3 and 4. The votes reflected several concerns. First, these motions impose limits on campaign contributions that are lower than those currently provided by M.G.L. c. 55. They are thus more likely to be interpreted as being in conflict with State law. Second, many members of the Advisory Committee questioned the fairness of imposing a lower limit on contributors from outside Brookline. Such contributors might be relatives of candidates, former residents, owners of businesses in Brookline, or others with a strong interest in Brookline government and civic affairs.

RECOMMENDATION

By a vote of 13-10, the Advisory Committee recommends FAVORABLE ACTION on Motion 1.

By a vote of 12-11, the Advisory Committee recommends FAVORABLE ACTION on Motion 2.

By a vote of 7-16, the Advisory Committee recommends NO ACTION on Motion 3.

By a vote of 4-19, the Advisory Committee recommends NO ACTION on Motion 4.

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[1] It should be noted that at the time of the votes on the four motions, the Advisory Committee did not have the benefit of Town Counsel's further legal opinion on the proposed revised Article 18. The Advisory Committee has since been informed that Town Counsel's original opinion concerning the inability of the Town to regulate campaign finance applies as well to all four motions being proposed under the revised Article 18.

Appendix A – Which occupational categories provide the most campaign donations of $200 and more?

Among donors of $200 or more, three occupational categories – real estate, lawyers, and retired – stand out in terms of the percentage of donors they represent. The category with the fourth largest percentage – Brookline business owners – was also singled out, although it was substantially smaller than the third largest, since it seemed likely to be of interest to students of municipal campaign finance. (Company executives, although equally large, were not singled out since they were mostly non-Brookline residents.)

The data below were obtained in 2004 from the campaign finance reports for the most recent campaigns (one each) of the following successful candidates for election (or re-election) to the Board of Selectman: Robert Allen (2003), Joseph Geller (2002), Deborah Goldberg (2001), Gilbert Hoy (2002), Donna Kalikow (2000), Michael Merrill (2004) and Michael Sher (2003).

Occupational category	Number of donations	% of total
Real estate		
Owner/investor	6	
Broker	12	
Developer	15	
Other	24	
Total	57	(25%)
Lawyer	26	(11%)
Retired	16	(7%)
Brookline business owner	9	(4%)
Company executive – CEO, Pres, VP, Executive (mostly non-Bro.)	9	(4%)
Consultants, non-Brookline	7	(3%)
Business owner, non-Bro.	6	"
Medical doctor	6	"
Consultants, Brookline	5	(2%)
Engineer	4	"
Professor	4	"
Self-employed	4	"
Architect	3	(1%)
Publisher	3	"
Selectman	3	"
Certified public accountant	2	"
Housewife/homemaker	2	"
Investor	2	"
Landscape architect	2	"
Literary agent	2	"
Manufacturer	2	"
Mason	2	"
Rabbi	2	"
Sales rep	2	"
Student	2	"
University administrator	2	"

(continued)

Advertising	1	(1%)
Author	1	"
Bank president	1	"
Brookline Golf Association	1	"
Chief financial officer	1	"
Dentist	1	"
Electrician	1	"
Finance	1	"
Financial administrator	1	"
Financial planner	1	"
Gas station operator	1	"
Insurance sales	1	"
Investment	1	"
Lobbyist	1	"
Manager	1	"
Managing director	1	"
Marketer	1	"
Medical administrator	1	"
Mortgage broker	1	"
MWRA	1	"
Nurse	1	"
Nursing home	1	"
Plumber	1	"
Public relations	1	"
Research officer	1	"
Secretary	1	"
State employee	1	"
Store manager	1	"
Teacher	1	"
Teaching fellow	1	"
Volunteer	1	"
Unidentified	13	(6%)
Total	228	(100%)

Appendix B – Attorney and Real Estate Industry Donations of More than $50 to Selectman candidates, 1995-2006

Campaigns ordered by percentage in column Total RE+Atty, %, in bold. Amounts expressed in 2005 dollars.

			RE owners/investors			RE brokers			RE developers			RE, other			Attorneys			Total RE+Atty			
Cand.	Year	W/L	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Total	%	W/L	Total Receipts
29	"	W	599	4	599	--	--	--	--	--	--	2936	17	436	1138	7	380	4673	**27**	W	39,442
14	2003	W	478	1	239	2124	5	353	1964	5	393	1645	4	274	4033	10	202	10244	**26**	W	40,000
21	2001	W-u*	--	--	--	--	--	--	551	4	551	1654	11	551	1323	9	147	3533	**24**	W-u	14,426
18	"	W	--	--	--	--	--	--	--	--	--	4451	18	262	1574	6	143	6025	**24**	W	24,890
13	"	W	--	--	--	--	--	--	--	--	--	3153	16	326	672	3	169	3700	**20**	W	19,250
33	"	W-u	--	--	--	934	8	467	560	5	280	--	--	--	622	5	622	2116	**18**	W-u	14,326
1	2006	W	--	--	--	145	1	145	241	1	241	579	2	145	2607	11	172	3572	**15**	W	24,265
22	2000	W	170	0	170	1590	5	398	--	--	--	1022	3	256	1987	6	284	4749	**14**	W	34,798
16	"	W	--	--	--	796	2	265	--	--	--	1114	3	371	3025	8	275	4935	**14**	W	35,980
31	"	L	--	--	--	--	--	--	243	4	243	--	--	--	608	10	608	851	**14**	L	8,819
19	"	W	271	2	271	--	--	--	760	6	253	271	2	271	380	3	190	1682	**13**	W	17.942
9	2005	W	--	--	--	--	--	--	700	5	233	500	3	250	500	3	250	1700	**12**	W	14,703
7	"	L	--	--	--	--	--	--	--	--	--	--	--	--	1175	12	294	1175	**12**	L	10,016
32	1996	W-u	--	--	--	--	--	--	560	8	280	311	4	311	--	--	--	871	**12**	W-u	7,451
23	"	W	--	--	--	--	--	--	284	1	284	1646	7	412	795	3	397	2725	**12**	W	23,623
8	2005	L	--	--	--	200	3	200	--	--	--	--	--	--	500	8	500	700	**11**	L	6,331
6	2005	W	--	--	--	--	--	--	200		200	700		233	250		250	1400	**9**	W	15,245
27	"	W-u	--	--	--	--	--	--	293	4	293	--	--	--	293	4	293	586	**9**	W-u	6,722
28	1998	L	--	--	--	--	--	--	659	4	330	--	--	--	599	4	599	1258	**8**	L	19,927
5	2006	L	--	--	--	193	1	193	--	--	--	--	--	--	1014	5	338	1207	**5**	L	21,192
34	1995	L	--	--	--	256	1	200	128	1	100	641	3	500	--	--	--	800	**5**	L	22,325
20	"	L	--	--	--	--	--	--	--	--	--	--	--	--	489	4	244	489	**4**	L	12,478
25	"	L	--	--	--	--	--	--	--	--	--	--	--	--	568	2	568	568	**2**	L	23,294
15	"	L	--	--	--	159	1	159	--	--	--	--	--	--	106	0	106	265	**1**	L	23,219
17	2002	L	--	--	--	--	--	--	--	--	--	--	--	--	271	1	271	271	**1**	L	22,262
10	2005	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	337
2	2006	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	1,685
3	"	W	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W	23,648
4	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	0
11	2004	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	731
12	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	5,262
24	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	3,836
26	1999	W-u	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W-u	0
30	1997	W	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W	470
35	"	W	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W	25,039

EXPLANATORY NOTES

- Column headings: W/L = won or lost; W-u = won, unopposed; Amt = total amount of donations in a category during campaign season; % = total amount of donations in a category expressed as a percentage of total receipts (i.e., all Donations) during campaign season; Ave = average amount of donation.
- Many dollar amounts and percentages shown would be greater if all large donors complied with candidate's request for identification of their occupation; a small percentage do not.
- Occupation is reported only for donors of $200 or more. Many amounts and percentage figures would be higher if they were also reported for donors of less than $200 were also reported.

*Won, unopposed

(Summary of table below)

(Appendix B, cont.)

TABLE SUMMARY

Average total RE + attorney donations for winning candidates (excluding candidates running unopposed)	$3,605	(15%)
Average total RE + attorney donations for winning candidates (including candidates running unopposed)	$2,810	(16%)
Average total RE + attorney donations for losing candidates	$367	(2%)
Average total receipts for winning candidates (excluding candidates running unopposed)	$23,422	
Average total receipts for winning candidates (including candidates running unopposed)	$18,035	
Average total receipts for losing candidates	$12,153	

Appendix C – Donations of $200 or more from Retirees, Brookline Business Owners, Selectmen, Miscellaneous and Unidentified Sources to Brookline Selectman Candidates, 1995-2006*

			A Retirees			B Bro. business owners			C Selectmen			D Miscellaneous			Unidentified			Total A-D		Total receipts	
Candidate	Year	W/L	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	W/L	Amount
1	2006	W	1979	8	153	531	2	177	193	1	193	9220	38	214	5295	22	98	11923	49	W	24,265
2	"	L	--	--	--	--	--	--	--	--	--	--	--	--	145	9	145	--	0	L	1,685
3	"	W	965		483	--	--	--	--	--	--	--	--	--	9234		106	965	4	W	23,648
4	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	L	0
5	"	L	1255	6	418	--	--	--	--	--	--	3910	18	262	6225	29	95	5165	24	L	21,192
6	2005	W	--	--	--	--	--	--	--	--	--	3200	21	246	6771	44	98	3200	21	W	15,245
7	"	L	--	--	--	--	--	--	--	--	--	825	8	206	3333	36	98	825	8	L	10,016
8	"	L	1800	28	257	--	--	--	--	--	--	2300	36	256	1175	19	98	4100	65	L	6,331
9	"	W	100	1	100	400	3	200	--	--	--	2650	18	266	4625	31	105	765	5	W	14,703
10	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	W	337
11	2004	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	L	731
12	"	L	--	--	--	--	--	--	--	--	--	--	--	--	2309	44	100	2309	44	L	5,262
13	"	W	258	1	258	517	3	258	931	3	310	2895	15	241	7879	41	108	4601	24	W	19,250
14	2003	W	2547	6	196	2707	7	271	106	0	106	9844	25	246	9340	23	113	15204	38	W	40,000
15	"	L	--	--	--	--	--	--	--	--	--	531	2	177	2547	10	116	3078	12	L	23,219
16	"	W	1061	3	265	531	1	531	531	2	531	7483	21	325	9946	28	138	9606	27	W	35,980
17	2002	L	760	3	253	--	--	--	--	--	--	2171	10	271	9053	41	162	2931	15	L	22,262
18	"	W	1303	5	144	543	3	543	--	--	--	8115	3	189	3908	16	126	9961	40	W	24,890
19	"	W	217	1	217	814	5	271	--	--	--	2443	14	305	7525	42	112	3474	19	W	17,942
20	"	L	--	--	--	--	--	--	--	--	--	2388	19	478	1357	11	113	2388	19	L	12,478
21	2001	W-u**	1434	10	441	--	--	--	--	--	--	6451	45	365	1599	11	114	7886	55	W-u	14,426
22	2000	W	795	2	265	852	2	426	341	1	114	10220	29	379	12462	36	121	11810	33	W	34,798
23	"	W	1022	4	341	--	--	--	--	--	--	4712	20	377	9169	40	141	5734	24	W	23,623
24	"	L	--	--	--	--	--	--	--	--	--	1103	50	221	937	43	117	1103	50	L	3,836
25	"	L	--	--	--	568	2	568	--	--	--	--	--	--	2742	12	125	568	2	L	23,294
26	1999	W-u	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	W-u	0
27	"	W-u	--	--	--	--	--	--	--	--	--	1055	16	264	1641	24	117	1055	16	W-u	6,722
28	1998	L	1198	6	599	--	--	--	--	--	--	2217	11	277	7985	4	127	4014	20	L	19,927
29	"	W	2696	4	539	--	--	--	--	--	--	18713	47	334	8795	40	135	21409	54	W	39,442
30	1997	W	--	--	--	--	--	--	--	--	--	470	100	235	--	--	--	470	100	W	470
31	"	L	--	--	--	--	--	--	--	--	--	450	5	450	2555	29	122	450	5	L	8,819
32	1996	W-u	--	--	--	--	--	--	--	--	--	934	16	311	3081	53	134	934	13	W-u	7,451
33	"	W-u	--	--	--	249	2	249	--	--	--	1245	9	622	4108	29	159	1494	10	W-u	14,326
34	1995	L	--	--	--	--	--	--	128	1	128	2563	11	366	5885	26	159	2691	12	L	22,325
35	"	W	--	--	--	--	--	--	--	--	--	--	--	--	12706	51	155	0	0	W	25,039

NOTES: • Definitions: W/L = won/lost; W-u = won, unopposed; Amt = total amount of donations in category during campaign season; % = total amount of donations in category expressed as a percentage of total receipts (i.e., all donations) during campaign season; Ave = average amount of donation.

• **Note that many dollar amounts shown would be greater if all large donors complied with request for identification of their occupation – some do not. Also, when considering percentages of total receipts, bear in mind that this table reflects only donations of $200 or more; percentages would often be greater if donors of less than $200 were also reflected.**

*Table begins with 1995 since it was in that year that state law was amended to require candidates to ask for occupation of donors of $200 or more.

**Won, uncontested

(Summary of table below)

(Appendix C, cont.)

Average total A+B+C+D donations for winning candidates (including candidates running unopposed)	$6,472	(28%)
Average total A+B+C+D donations for winning candidates (excluding candidates running unopposed)	$7,589	(32%)
Average total A+B+C+D donations for losing candidates	$1,937	(16%)
Average total of all donations for winning candidates (including candidates running unopposed)	$22,979	
Average total of all donations for winning candidates (excluding candidates running unopposed)	$26,132	
Average total of all donations for losing candidates	$12,089	

Appendix D – Donations of More than $50 from Candidate, Family and Non-residents to Brookline Selectman Candidates, 1995-2006

			Candidate			Candidate's family*			Outside Brookline				Total
Cand.	Year	Won/Lost	Amt	A	B	Amt	A	B	Amt	A	B	Won/Lost	Receipts
1	2006	W	--	--	--	--	--	--	$7144	28%	34%	W	$24,265
2	"	L	$1540	91%	100%	--	--	--	--	--	--	L	$1,685
3	"	W	$10434	44%	44%	--	--	--	$917	4%	--	W	$23,648
4	"	L	--	--	--	--	--	--	--	--	--	L	$0
5	"	L	$4537	21%	41%	$1062	5%	9%	$8687	41%	43%	L	$21,192
6	2005	W	$2000	13%	30%	$250	2%	3%	$765	5%	6%	W	$15,245
7	"	L	--	--	--	$100	1%	--	$2158	22%	53%	L	$10,016
8	"	L	--	--	--	--	--	--	$100	2%	--	L	$6,331
9	"	W	$2553	17%	54%	--	--	--	$1550	11%	19%	W	$14,700
10	"	L	$337	100%	100%	--	--	--	--	--	--	L	$317
11	2004	L	$731	100%	100%	--	--	--	--	--	--	L	$731
12	"	L	--	--	--	--	--	--	$835	16%	--	L	$5,262
13	"	W	--	--	--	--	--	--	$2762	14%	16%	W	$19,250
14	2003	W	$106	0%	0%	$106	0%	0%	$17620	44%	53%	W	$40,000
15	"	L	$17352	75%	98%	--	--	--	$764	3%	--	L	$23,219
16	"	W	$9133	25%	36%	$1952	5%	6%	$8771	24%	25%	W	$35,980
17	2002	L	--	--	--	$3440	15%	55%	$1650	7%	9%	L	$22,262
18	"	W	--	--	--	--	--	--	$5998	24%	33%	W	$24,890
19	"	W	--	--	--	--	--	--	$2405	13%	16%	W	$12,479
20	"	L	$6085	49%	68%	$2171	17%	24%	$2865	23%	24%	L	$12,479
21	2001	W-u**	--	--	--	$3308	23%	34%	$9319	65%	89%	W-u	$14,426
22	2000	W	--	--	--	$227	1%	1%	$12887	37%	53%	W	$34,798
23	"	W	--	--	--	$227	1%	3%	$5564	24%	36%	W	$23,623
24	"	L	--	--	--	--	--	--	$199	9%	0%	L	$3,836
25	"	L	$15897	68%	92%	--	--	--	$681	3%	3%	L	$23,294
26	1999	W-u	--	--	--	--	--	--	--	--	--	W-u	$0
27	"	W-u	$890	13%	35%	$59	1%	0%	$938	16%	0%	W-u	$6,722
28	1998	L	$240	1%	5%	$599	3%	12%	$425	2%	11%	L	$19,927
29	"	W	$2152	5%	8%	$1797	5%	6%	$13813	35%	38%	W	$39,442
30	1997	W-u	--	--	--	--	--	--	--	--	--	W-u	$470
31	"	W-u	$1526	17%	52%	$304	3%	10%	$669	8%	10%	W-u	$8,819
32	1996	W-u	--	--	--	$249	4%	0%	$1556	21%	41%	W-u	$7,451
33	"	W-u	--	--	--	$1245	9%	34%	$2147	15%	22%	W-u	$14,326
34	1995	L	$8971	40%	66%	$256	1%	0%	$705	3%	2%	L	$22,325
35	"	W	--	--	--	$1538	6%	19%	$1698	7%	9%	W	$25,039

SUMMARY (Note: The following data ignore campaigns with total receipts of less than $1000.)

Candidate donations	Amt range	% of total	Ave amt
Winning candidates (including candidates running unopposed)	$0 - $10,434	0% - 44%	$1,837
Winning candidates (excluding candidates running unopposed)	$0 - $10,434	0% - 44%	$2,074
Losing candidates	$0 - $18,752	0% - 91%	$5,717
Family donation totals			
Winning candidates	$0 - $3,308	0% - 23%	$704
Losing candidates	$0 - $3,440	0% - 17%	$636
Donations from Outside Brookline			
Winning candidates	$0 - $17,620	0% - 65%	$6,050
Losing candidates	$0 - $8,687	0% - 41%	$1,520

*Parents, siblings and children

(See below for explanatory notes)

(Appendix D, cont.)

EXPLANATORY NOTES:

- Amounts of donations are expressed in 2005 dollars.
- Definitions: Amt = total amount of donations in category during campaign season; A = total amount of donations in category as a percentage of *all donations* during campaign season; B = total amount of *donations of $200 or more* in category as a percentage of *all donations of $200 or more* during campaign season; Ave = average amount of donation; % of total = amounts expressed as percentages of all donations received by candidate.
- The table begins with 1995 since prior to that year, state law did not require campaign committees to ask the occupation of donors of $200 or more.
- Note that figures shown for Candidate's family would be larger if family members were required to identify themselves as such. Amounts shown have been identified simply on the basis of same last name. Parents, siblings and children with different last names are generally not reflected.
- Also, note that this table reflects only donations of $50 or more; in many cases the amounts shown for non-resident donors would be larger if donors of less than $50 were also reflected.

Appendix E – Effects of Lowering Contribution Cap

Data (expressed in 2005 dollars) derived from finance reports for the ten most recent successful campaigns for election to the office of Selectman.

		$500 Cap	$400 Cap			$300 Cap			$250 Cap			$200 Cap			$150 Cap		
	I/C*	(actual receipts)	Receipts	Decrease		Receipts	Decrease		Receipts	Decrease		Receipts	Decrease		Receipts	Decrease	
Allen 2006	I	$23,425	$22,267	$1,158	5%	$21,108	$2,317	10%	$20,481	$2,944	12%	$19,515	$3,910	17%	$17,729	$5,696	24%
DeWitt 2006	C	$23,648	$23,455	$193	1%	$23,262	$386	2%	$23,165	$483	2%	$23,069	$579	2%	$22,972	$676	3%
Daly 2005	C	$15,445	$15,245	$200	1%	$15,045	$400	3%	$14,845	$600	4%	$14,370	$1,075	7%	$13,470	$1,975	13%
Hoy 2005	I	$14,703	$14,603	$100	1%	$14,503	$200	1%	$14,453	$250	2%	$13,753	$950	6%	$12,803	$1,900	13%
Merrill 2004	C	$19,250	$18,733	$517	3%	$18,216	$1,034	5%	$17,803	$1,447	8%	$17,027	$2,223	12%	$15,528	$3,722	19%
Allen 2003	I	$40,000	$37,346	$2,654	7%	$34,693	$5,307	13%	$33,313	$6,687	17%	$31,243	$8,757	22%	$28,218	$11,782	29%
Sher 2003	C	$35,980	$34,494	$1,486	4%	$32,955	$3,025	8%	$31,942	$4,033	11%	$30,036	$5,944	16%	$27,170	$8,810	24%
Geller 2002	I	$22,910	$22,367	$543	2%	$21,824	$1,086	5%	$21,444	$1,466	6%	$19,707	$3,203	14%	$17,699	$5,211	23%
Hoy 2002	I	$16,527	$16,310	$217	1%	$16,093	$434	3%	$15,930	$597	4%	$15,387	$1,140	7%	$14,302	$2,225	13%
Goldberg 2001	I	$13,081	$10,986	$2,095	16%	$9,442	$3,639	28%	$8,670	$4,411	34%	$7,788	$5,293	40%	$4,700	$8,381	64%

*Incumbent.Challenger

Appendix F – Non-resident Funding of Selectman Campaigns, 1995-2006

Campaigns listed in order of percentage of total receipts (column 6). All amounts expressed in 2005 dollars.

Cand.	Year	Won/Lost	Total reeipts	Donations from non-residents	**% of total receipts**	% of donations of $200 or more
21	2001	W-u*	$14,426	$9,319	**65%**	89%
14	2003	W	$40,000	$17,620	**44%**	53%
5	2006	L	$21,192	$8,687	**41%**	43%
22	2000	W	$34,798	$12,887	**37%**	53%
29	1998	W	$39,442	$13,813	**35%**	38%
1	2006	W	$24,265	$7,144	**29%**	34%
23	2000	W	$23,623	$5,564	**24%**	22%
18	2002	W	$24,890	$5,998	**24%**	33%
16	2004	W	$35,980	$8,771	**24%**	25%
20	2002	L	$12,478	$2,865	**23%**	24%
7	2005	L	$10,016	$2,158	**22%**	53%
32	1996	W-u	$7,451	$1,556	**21%**	41%
33	"	W-u	$14,326	$2,147	**15%**	0%
27	1999	W-u	$6,722	$938	**14%**	0%
13	2004	W	$19,250	$2,762	**14%**	16%
19	2002	W	$17,942	$2,405	**13%**	16%
9	2005	W	$14,703	$1,550	**11%**	19%
31	1997	W-u	$8,819	$669	**8%**	10%
17	2002	L	$22,262	$1,650	**7%**	0%
35	1995	W	$25,039	$1,698	**7%**	9%
24	2000	L	$3,836	$199	**5%**	0%
6	2005	W	$15,245	$765	**5%**	6%
3	2006	W	$23,648	$917	**4%**	0%
25	2000	L	$23,294	$681	**3%**	3%
34	1995	L	$22,325	$705	**3%**	2%
15	2003	L	$23,219	$764	**3%**	0%
8	2005	L	$6,331	$100	**2%**	0%
28	1998	L	$19,927	$425	**2%**	11%
2	2006	L	$1,685	--	--	--
4	"	L	$0	--	--	--
10	1005	L	$337	--	--	--
11	2004	L	$731	--	--	--
12	"	L	$5,262	--	--	--
26	1999	W-u	$0	--	--	--
30	1997	W-u	$470	--	--	--

SUMMARY:

	Non-resident donations	Percentage of total	Average amount
Winning candidates	$0 - $17,620	0% - 65%	$5,362**
Losing candidates	$0 - $8,687	0% - 41%	$1,520**

NOTE: This table does not reflect non-resident donations of $50 or less. Since state law does not require the reporting of residences for such donations, there is no way to tell from campaign reports whether they are from outside Brookline. In many cases, therefore, the non-resident donation total and its percentage are actually somewhat larger than shown.

* Won, uncontested
** Campaigns with total receipts of less than $1000 are ignored in this calculation.

Exhibit G - Funds Raised by All Candidates in Contested Races (1988-2004), Including Trend Line

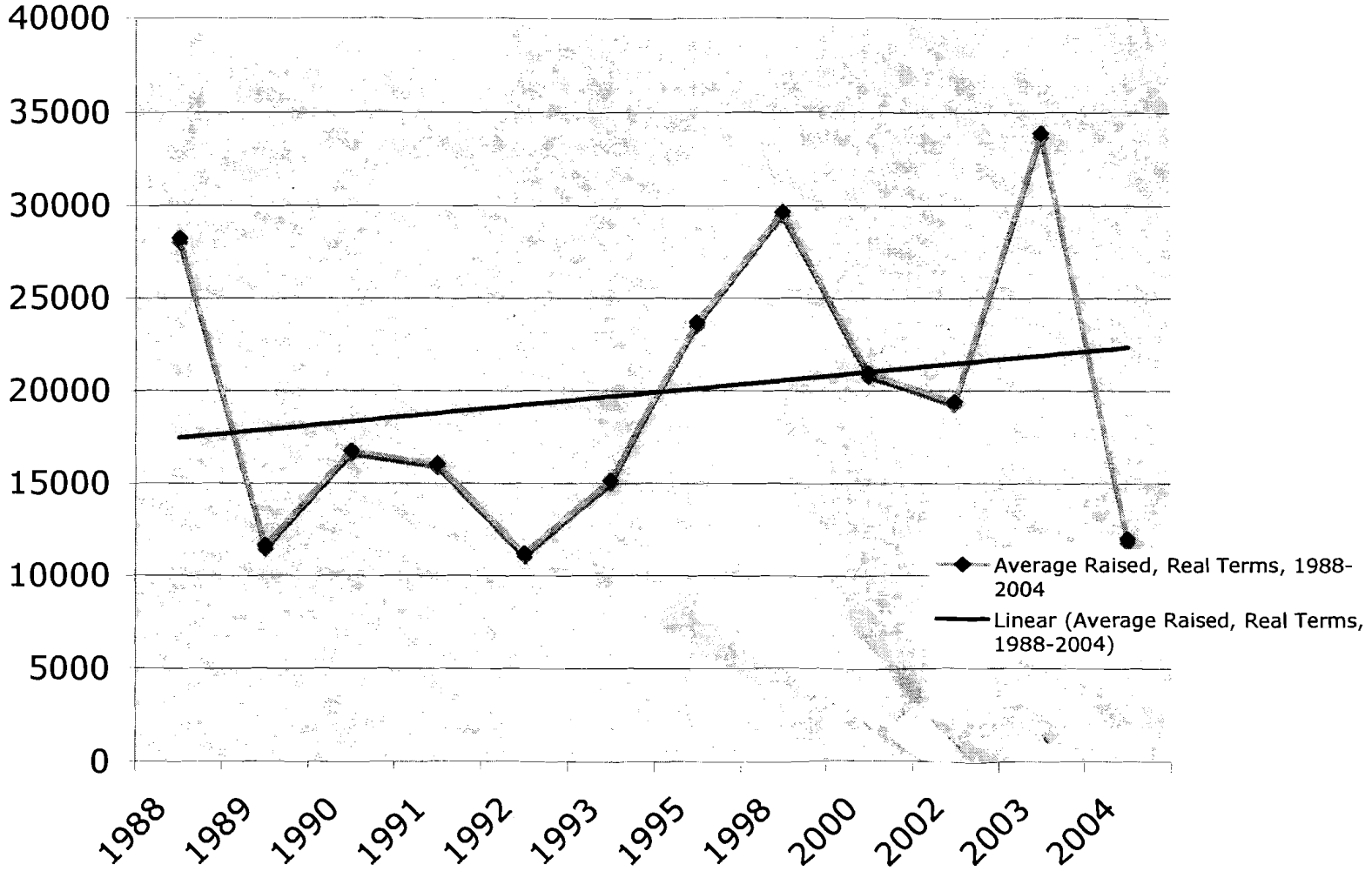


Exhibit H - Funds Raised by Winning Candidates in Contested Races (1988-2004), Including Trend Line

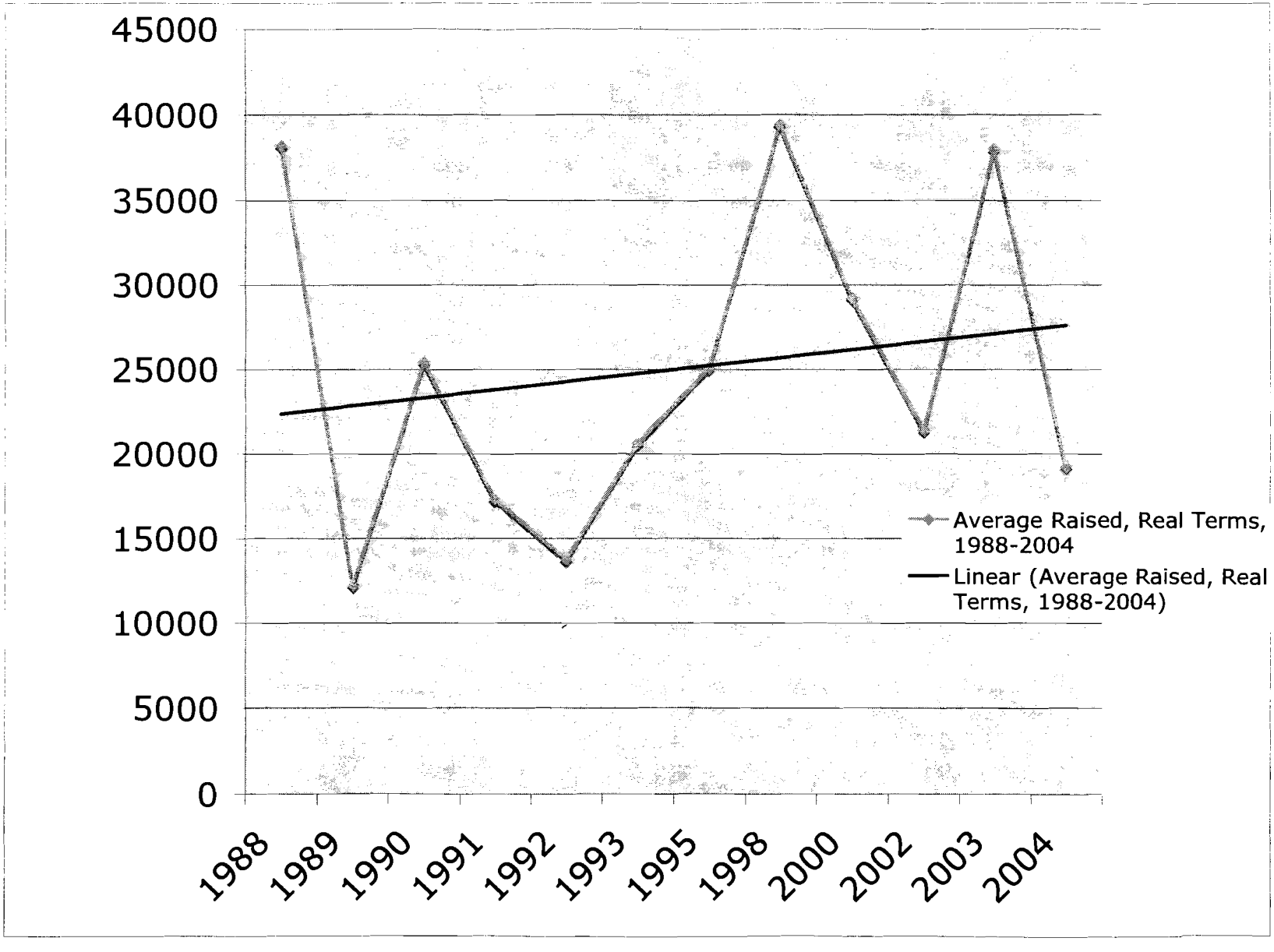


Exhibit *I* - Success Rates for All Candidates in Contested Rac at Various Fundraising Levels (1988-2004)

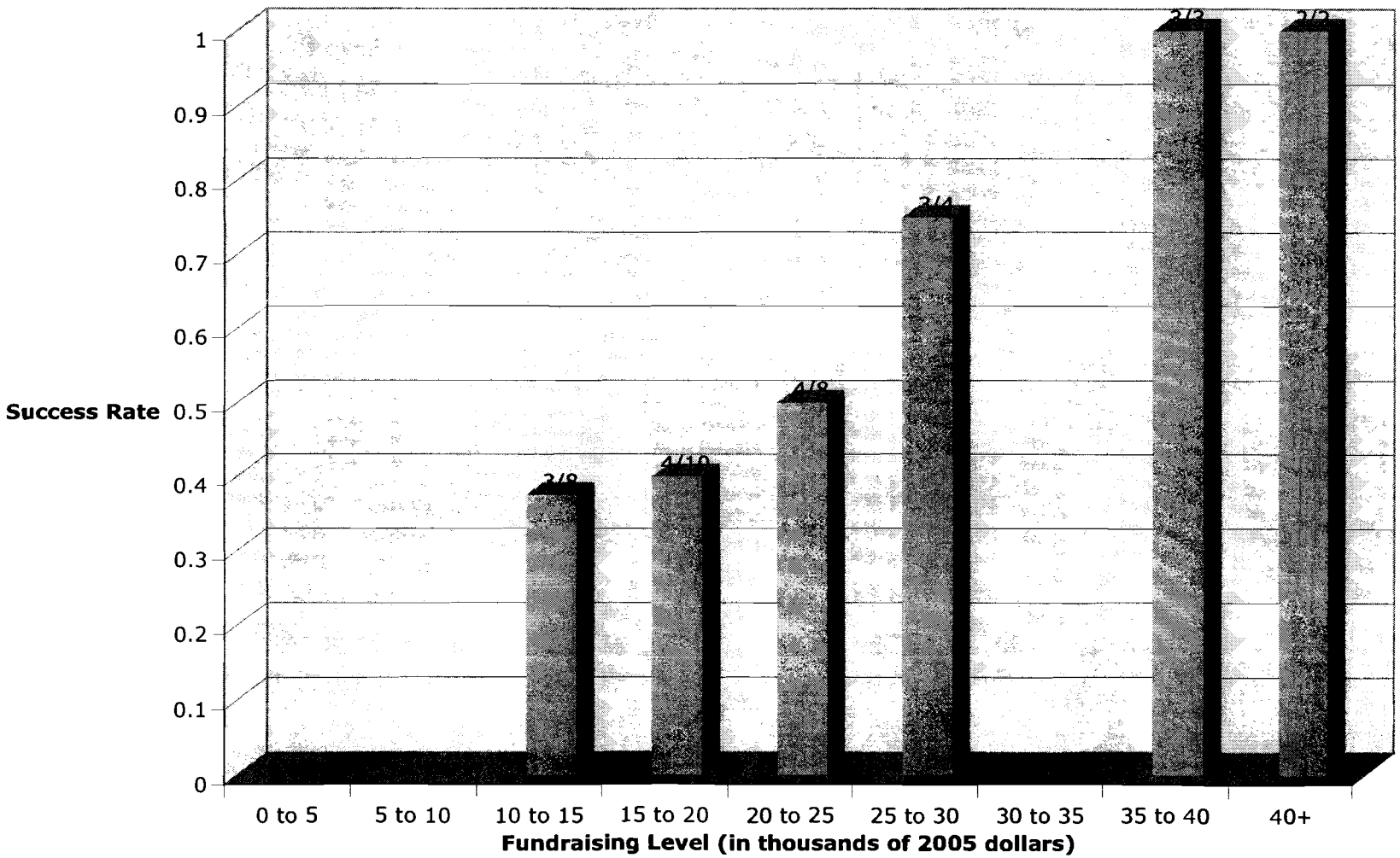


Exhibit J - Contributions (2000-2004), Total vs. $200 or More

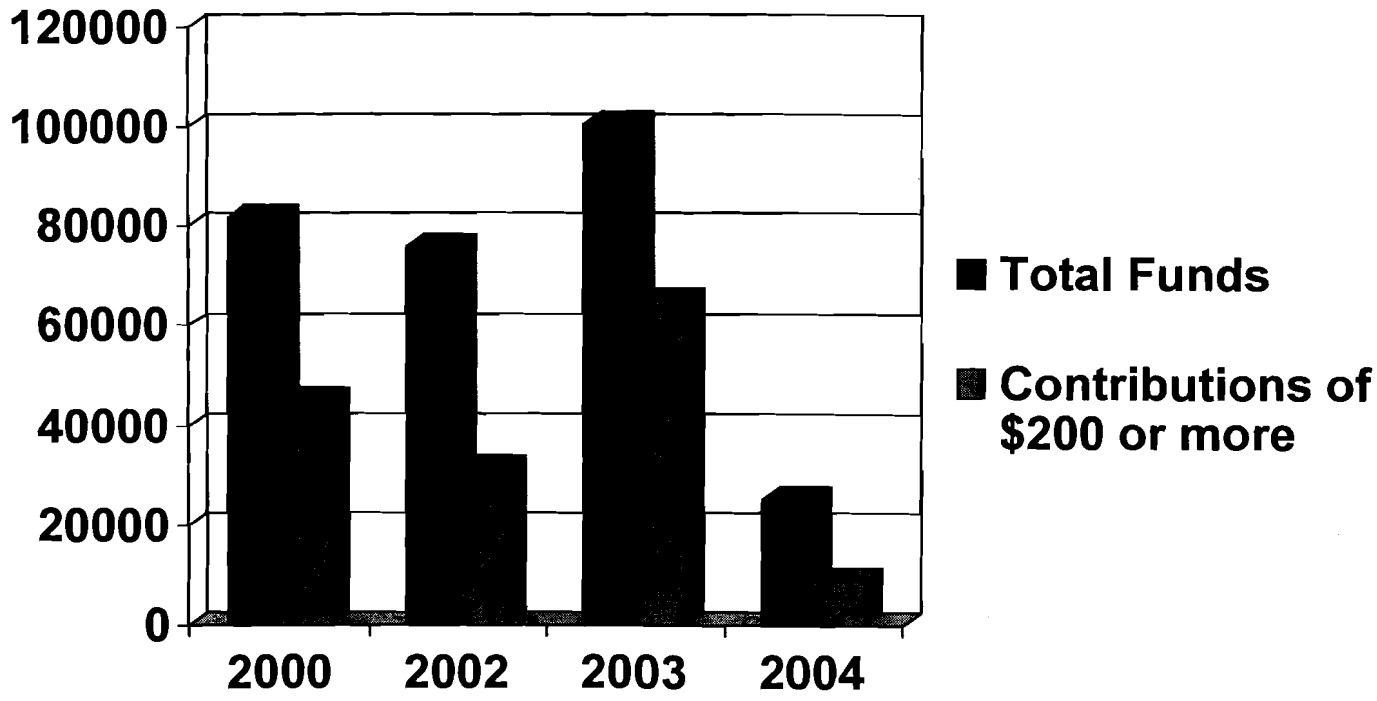
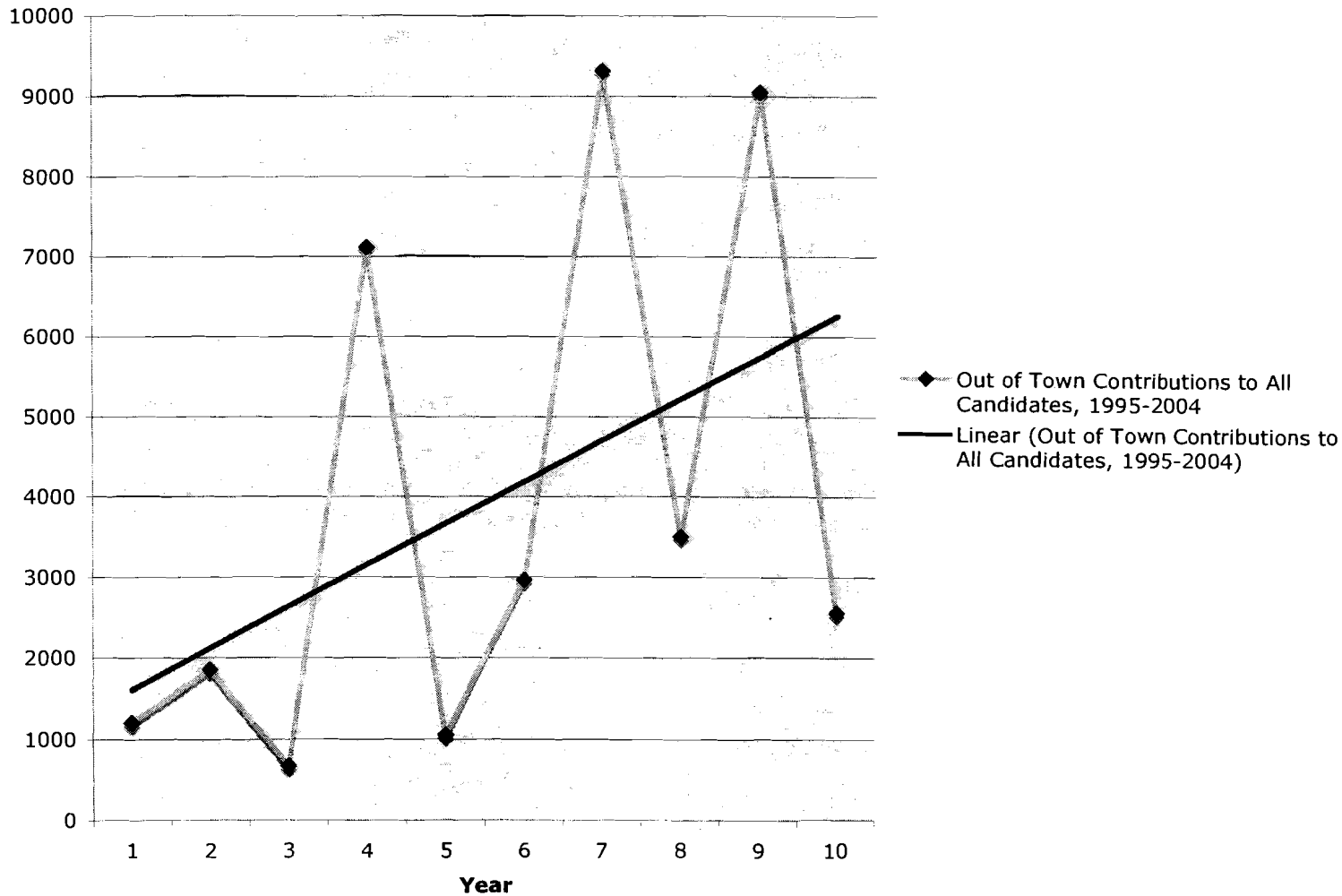


Exhibit K - Average of All Non-Resident Contributions Over $50 (1995-2004), Including Trend Line



Appendix A

Which occupational categories provide the most campaign donations of $200 and more?

Among donors of $200 or more, three occupational categories – real estate, lawyers, and retired – stand out in terms of the percentage of donors they represent. The category with the fourth largest percentage – Brookline business owners – was also singled out, although it was substantially smaller than the third largest, since it seemed likely to be of interest to students of municipal campaign finance. (Company executives, although equally large, were not singled out since they were mostly non-Brookline residents.)

The data below were obtained in 2004 from the campaign finance reports for the most recent campaigns (one each) of the following successful candidates for election (or re-election) to the Board of Selectman: Robert Allen (2003), Joseph Geller (2002), Deborah Goldberg (2001), Gilbert Hoy (2002), Donna Kalikow (2000), Michael Merrill (2004) and Michael Sher (2003).

Occupational category	Number of donations	% of total
Real estate		
Owner/investor	6	
Broker	12	
Developer	15	
Other	24	
Total	57	(25%)
Lawyer	26	(11%)
Retired	16	(7%)
Brookline business owner	9	(4%)
Company executive – CEO, Pres, VP, Executive (mostly non-Bro.)	9	(4%)
Consultants, non-Brookline	7	(3%)
Business owner, non-Bro.	6	"
Medical doctor	6	"
Consultants, Brookline	5	(2%)
Engineer	4	"
Professor	4	"
Self-employed	4	"
Architect	3	(1%)
Publisher	3	"
Selectman	3	"
Certified public accountant	2	"
Housewife/homemaker	2	"
Investor	2	"
Landscape architect	2	"
Literary agent	2	"
Manufacturer	2	"
Mason	2	"
Rabbi	2	"
Sales rep	2	"
Student	2	"
University administrator	2	"

(continued)

Advertising	1	1%
Author	1	"
Bank president	1	"
Brookline Golf Association	1	"
Chief financial officer	1	"
Dentist	1	"
Electrician	1	"
Finance	1	"
Financial administrator	1	"
Financial planner	1	"
Gas station operator	1	"
Insurance sales	1	"
Investment	1	"
Lobbyist	1	"
Manager	1	"
Managing director	1	"
Marketer	1	"
Medical administrator	1	"
Mortgage broker	1	"
MWRA	1	"
Nurse	1	"
Nursing home	1	"
Plumber	1	"
Public relations	1	"
Research officer	1	"
Secretary	1	"
State employee	1	"
Store manager	1	"
Teacher	1	"
Teaching fellow	1	"
Volunteer	1	"
Unidentified	13	6%
Total	228	(100%)

Attorney and Real Estate Industry Donations of More than $50 to Selectman candidates, 1995-2006

Campaigns ordered by percentage in column Total RE+Atty, %, in bold. Amounts expressed in 2005 dollars.

			RE owners/investors			RE brokers			RE developers			RE, other			Attorneys			Total RE+Atty			
Cand.	Year	W/L	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Total	%	W/L	Total Receipts
29	"	W	599	4	599	--	--	--	--	--	--	2936	17	436	1138	7	380	4673	**27**	W	39,442
14	2003	W	478	1	239	2124	5	353	1964	5	393	1645	4	274	4033	10	202	10244	**26**	W	40,000
21	2001	W-u*	--	--	--	--	--	--	551	4	551	1654	11	551	1323	9	147	3533	**24**	W-u	14,426
18	"	W	--	--	--	--	--	--	--	--	--	4451	18	262	1574	6	143	6025	**24**	W	24,871
13	"	W	--	--	--	--	--	--	--	--	--	3153	16	326	672	3	169	3700	**20**	W	19,250
33	"	W-u	--	--	--	964	8	437	560	5	280	--	--	--	622	5	622	2116	**18**	W-u	14,326
1	2006	W	--	--	--	145	1	145	241	1	241	579	2	145	2607	11	172	3572	**15**	W	24,265
22	2000	W	568	2	568	--	--	--	--	--	--	2612	7	374	1987	6	284	5280	**15**	W	35,479
16	"	W	--	--	--	796	2	265	--	--	--	1114	3	371	3025	8	275	4935	**14**	W	35,980
31	"	L	--	--	--	--	--	--	243	4	243	--	--	--	608	10	608	851	**14**	L	8,821
19	"	W	271	2	271	--	--	--	760	6	253	271	2	271	380	3	190	1682	**13**	W	17.942
9	2005	W	--	--	--	--	--	--	700	5	233	500	3	250	500	3	250	1700	**12**	W	14,703
7	"	L	--	--	--	--	--	--	--	--	--	--	--	--	1175	12	294	1175	**12**	L	10,016
32	1996	W-u	--	--	--	--	--	--	560	8	280	311	4	311	--	--	--	871	**12**	W-u	7,451
23	"	W	--	--	--	--	--	--	284	1	284	1646	7	412	795	3	397	2725	**12**	W	23,651
8	2005	L	--	--	--	200	3	200	--	--	--	--	--	--	500	8	500	700	**11**	L	6,331
6	2005	W	--	--	--	--	--	--	200		200	700		233	250		250	1400	**9**	W	15,445
27	"	W-u	--	--	--	--	--	--	293	4	293	--	--	--	293	4	293	586	**9**	W-u	6,722
28	1998	L	--	--	--	--	--	--	659	4	330	--	--	--	599	4	599	1258	**8**	L	19,927
5	2006	L	--	--	--	193	1	193	--	--	--	--	--	--	101	5	338	1207	**5**	L	21,216
34	1995	L	--	--	--	200	1	200	100	1	100	500	3	500	--	--	--	800	**5**	L	17,421
20	"	L	--	--	--	--	--	--	--	--	--	--	--	--	489	4	244	489	**4**	L	12,478
25	"	L	--	--	--	--	--	--	--	--	--	--	--	--	568	2	568	568	**2**	L	23,180
15	"	L	--	--	--	159	1	159	--	--	--	--	--	--	106	0	106	265	**1**	L	25.612
17	2002	L	--	--	--	--	--	--	--	--	--	--	--	--	271	1	271	271	**1**	L	22,262
10	2005	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	337
2	2006	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	1,685
3	"	W	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W	23,648
4	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	0
11	2004	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	731
12	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	5,262
24	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	2,204
26	1999	W-u	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W-u	0
30	1997	W	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W	696
35	"	W	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W	19,539

EXPLANATORY NOTES

- Column headings: W/L = won or lost; W-u = won, unopposed; Amt = total amount of donations in a category during campaign season; % = total amount of donations in a category expressed as a percentage of total receipts (i.e., all Donations) during campaign season; Ave = average amount of donation.
- Many dollar amounts and percentages shown would be greater if all large donors complied with candidate's request for identification of their occupation; a small percentage do not.
- Occupation is reported only for donors of $200 or more. Many amounts and percentage figures would be higher if they were also reported for donors of less than $200 were also reported.

*Won, unopposed

TABLE SUMMARY

Average total RE + attorney donations for winning candidates (excluding candidates running unopposed)	$3,605	(15%)
Average total RE + attorney donations for winning candidates (including candidates running unopposed)	$2,810	(16%)
Average total RE + attorney donations for losing candidates	$367	(2%)
Average total receipts for winning candidates (excluding candidates running unopposed)	$23,422	
Average total receipts for winning candidates (including candidates running unopposed)	$18,035	
Average total receipts for losing candidates	$12,153	

APPENDIX C

Donations of $200 or more from Retirees, Brookline Business Owners, Selectmen, Miscellaneous and Unidentified Sources to Brookline Selectman Candidates, 1995-2006*

			A Retirees			B Bro. business owners			C Selectmen			D Miscellaneous			Unidentified			Total A-D			Total receipts	
Candidate	Year	W/L	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	W/L	Amount
1	2006	W	1979	8	153	531	2	177	193	1	193	9220	38	214	5295	22	98	11923	49	W	24,265
2	"	L	--	--	--	--	--	--	--	--	--	--	--	--	145	9	145	--	0	L	1,685
3	"	W	965		483	--	--	--	--	--	--	--	--	--	9234		106	965	4	W	23,648
4	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	L	0
5	"	L	1255	6	418	--	--	--	--	--	--	3910	18	262	6225	29	95	5165	24	L	21,216
6	2005	W	--	--	--	--	--	--	--	--	--	3200	21	246	6771	44	98	3200	21	W	15,445
7	"	L	--	--	--	--	--	--	--	--	--	825	8	206	3333	36	98	825	8	L	10,016
8	"	L	1800	28	257	--	--	--	--	--	--	2300	36	256	1175	19	98	4100	65	L	6,331
9	"	W	100	1	100	400	3	200	--	--	--	265	2	265	4625	31	105	765	5	W	14,703
10	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	W	337
11	2004	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	L	731
12	"	L	--	--	--	--	--	--	--	--	--	--	--	--	2309	44	100	2309	44	L	5,262
13	"	W	258	1	258	517	3	258	931	3	310	2895	15	241	7621	41	108	4601	24	W	19,250
14	2003	W	2547	6	196	2707	7	271	106	0	106	9844	25	246	9340	23	113	15204	38	W	40,000
15	"	L	--	--	--	--	--	--	--	--	--	531	2	177	2547	10	116	3078	12	L	25,612
16	"	W	1061	3	265	531	1	531	531	2	531	7483	21	325	9946	28	138	9606	27	W	35,980
17	2002	L	760	3	253	--	--	--	--	--	--	2171	10	271	9053	41	162	2931	15	L	22,262
18	"	W	1303	5	144	543	3	543	--	--	--	8115	3	189	3908	16	126	9961	40	W	24,871
19	"	W	217	1	217	814	5	271	--	--	--	2443	14	305	7525	42	112	3474	19	W	17,942
20	"	L	--	--	--	--	--	--	--	--	--	2388	19	478	1357	11	113	2388	19	L	12,479
21	2001	W-u**	1323	9	441	--	--	--	--	--	--	6562	45	365	1599	11	114	7886	55	W-u	14,426
22	2000	W	795	2	265	1590	4	397	341	1	114	9084	26	363	13143	37	121	11810	33	W	35,479
23	"	W	1022	4	341	--	--	--	--	--	--	4712	20	377	9169	40	141	5734	24	W	23,651
24	"	L	--	--	--	--	--	--	--	--	--	534	24	178	1504	68	155	534	24	L	2,204
25	"	L	--	--	--	568	2	568	--	--	--	--	--	--	2742	12	125	568	2	L	23,190
26	1999	W-u	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	W-u	0
27	"	W-u	--	--	--	--	--	--	--	--	--	1055	16	264	1641	24	117	1055	16	W-u	6,722
28	1998	L	1198	6	599	--	--	--	599	4	599	2217		277	7985	4	127	4014	20	L	19,927
29	"	W	2696	4	539	--	--	--	--	--	--	18713	11	334	8795	40	135	21409	54	W	39,442
30	1997	W	--	--	--	--	--	--	--	--	--	696	100	232	--	--	--	696	100	W	696
31	"	L	--	--	--	--	--	--	--	--	--	450	5	450	2555	29	122	450	5	L	8,821
32	1996	W-u	--	--	--	--	--	--	--	--	--	934	16	311	3081	53	134	934	13	W-u	7,451
33	"	W-u	--	--	--	249	2	249	--	--	--	1245	9	622	4108	29	159	1494	10	W-u	22,325
34	1995	L	--	--	--	--	--	--	128	1	128	2563	11	366	5885	26	159	2691	12	L	22,325
35	"	W	--	--	--	--	--	--	--	--	--	--	--	--	12706	51	155	0	0	W	25,039

Average total A+B+C+D donations for winning candidates (including candidates running unopposed)..... $6,472 28% W
Average total A+B+C+D donations for winning candidates (excluding candidates running unopposed)..... $7,589 32% W minus W-u
Average total A+B+C+D donations for losing candidates..... $1,937 16% L
Average total of all donations for winning candidates (including candidates running unopposed)..... $22,979
Average total of all donations for winning candidates (excluding candidates running unopposed)..... $26,132
Average total of all donations for losing candidates..... $12,089

(Explanatory notes below)

NOTES: • Definitions: W/L = won/lost; W-u = won, unopposed; Amt = total amount of donations in category during campaign season; % = total amount of donations in category expressed as a percentage of total receipts (i.e., all donations) during campaign season; Ave = average amount of donation.

• **Note that many dollar amounts shown would be greater if all large donors complied with request for identification of their occupation – some do not. Also, when considering percentages of total receipts, bear in mind that this table reflects only donations of $200 or more; percentages would often be greater if donors of less than $200 were also reflected**.

*Table begins with 1995 since it was in that year that state law was amended to require candidates to ask for occupation of donors of $200 or more..
**Won, uncontested

Appendix D – Donations of More than $50 from Candidate, Family and Non-residents to Brookline Selectman Candidates, 1995-2006

			Candidate			Candidate's family*			Outside Brookline				Total
Cand.	Year	Won/Lost	Amt	A	B	Amt	A	B	Amt	A	B	Won/Lost	Receipts
1	2006	W	--	--	--	--	--	--	$7144	28%	34%	W	$24,265
2	"	L	$1540	91%	100%	--	--	--	--	--	--	L	$1,685
3	"	W	$10434	44%	44%	--	--	--	$917	4%	--	W	$23,648
4	"	L	--	--	--	--	--	--	--	--	--	L	$0
5	"	L	$4537	21%	41%	$1062	5%	9%	$8687	41%	43%	L	$21,216
6	2005	W	$2000	13%	30%	$250	2%	3%	$765	5%	6%	W	$15,445
7	"	L	--	--	--	$100	1%	--	$2158	22%	53%	L	$10,016
8	"	L	--	--	--	--	--	--	$100	2%	--	L	$6,331
9	"	W	$2553	17%	54%	--	--	--	$1550	11%	19%	W	$14,700
10	"	L	$337	100%	100%	--	--	--	--	--	--	L	$317
11	2004	L	$707	100%	100%	--	--	--	--	--	--	L	$731
12	"	L	--	--	--	--	--	--	--	--	--	L	$5,262
13	"	W	--	--	--	--	--	--	$2472	13%	14%	W	$19,250
14	2003	W	--	--	--	$100	0%	0%	$17620	44%	53%	W	$40,000
15	"	L	$19903	78%	99%	--	--	--	$764	3%	--	L	$25,612
16	"	W	$9133	25%	36%	$1952	5%	6%	$8771	24%	25%	W	$35,980
17	2002	L	--	--	--	$3440	15%	55%	$1650	7%	9%	L	$22,262
18	"	W	--	--	--	--	--	--	$5998	24%	33%	W	$24,971
19	"	W	--	--	--	--	--	--	$2405	13%	16%	W	$12,479
20	"	L	$6085	49%	68%	$2171	17%	24%	$2865	23%	24%	L	$12,479
21	2001	W-u**	--	--	--	$3308	23%	34%	$9319	65%	89%	W-u	$14,426
22	2000	W	$114	0%	0%	$227	1%	1%	$13456	38%	45%	W	$35,479
23	"	W	--	--	--	$227	1%	3%	$5564	24%	36%	W	$23,651
24	"	L	--	--	--	--	--	--	$199	9%	0%	L	$2,204
25	"	L	$15897	68%	92%	--	--	--	$681	3%	3%	L	$23,180
26	1999	W-u	--	--	--	--	--	--	--	--	--	W-u	$0
27	"	W-u	$890	13%	35%	$59	1%	0%	$938	16%	0%	W-u	$6,722
28	1998	L	$240	1%	5%	$599	3%	12%	$425	2%	11%	L	$19,927
29	"	W	$2722	7%	10%	$1797	5%	6%	$13813	35%	38%	W	$39,442
30	1997	W-u	--	--	--	--	--	--	--	--	--	W-u	$696
31	"	W-u	$1526	17%	52%	$304	3%	10%	$669	8%	10%	W-u	$8,821
32	1996	W-u	--	--	--	$249	4%	0%	$1556	21%	41%	W-u	$7,451
33	"	W-u	--	--	--	$1245	9%	34%	$2147	15%	22%	W-u	$14,326
34	1995	L	$8971	40%	66%	$256	1%	0%	$705	3%	2%	L	$22,325
35	"	W	--	--	--	$1538	6%	19%	$1698	7%	9%	W	$25,039

SUMMARY (Note: The following data ignore campaigns with total receipts of less than $1000.)

Candidate donations	Amt range	% of total	Ave amt
Winning candidates (including candidates running unopposed)	$0 - $10,434	0% - 44%	$1,837
Winning candidates (excluding candidates running unopposed)	$0 - $10,434	0% - 44%	$2,074
Losing candidates	$0 - $18,752	0% - 91%	$5,717
Family donation totals			
Winning candidates	$0 - $3,308	0% - 23%	$704
Losing candidates	$0 - $3,440	0% - 17%	$636
Donations from Outside Brookline			
Winning candidates	$0 - $17,620	0% - 65%	$6,050
Losing candidates	$0 - $8,687	0% - 41%	$1,520

*Parents, siblings and children

(See below for explanatory notes)

EXPLANATORY NOTES:

- Amounts of donations are expressed in 2005 dollars.
- Definitions: Amt = total amount of donations in category during campaign season; A = total amount of donations in category as a percentage of *all donations* during campaign season; B = total amount of *donations of $200 or more* in category as a percentage of *all donations of $200 or more* during campaign season; Ave = average amount of donation; % of total = amounts expressed as percentages of all donations received by candidate.
- The table begins with 1995 since prior to that year, state law did not require campaign committees to ask the occupation of donors of $200 or more.
- Note that figures shown for Candidate's family would be larger if family members were required to identify themselves as such. Amounts shown have been identified simply on the basis of same last name. Parents, siblings and children with different last names are generally not reflected.
- Also, note that this table reflects only donations of $50 or more; in many cases the amounts shown for non-resident donors would be larger if donors of less than $50 were also reflected.

Effects of Lowering Contribution Cap

Data (expressed in 2005 dollars) derived from finance reports for the ten most recent successful campaigns for election to the office of Selectman.

	$500 Cap	$400 Cap			$300 Cap			$250 Cap			$200 Cap			$150 Cap		
Candidate	(actual receipts)	Receipts	Decrease		Receipts	Decrease		Receipts	Decrease		Receipts	Decrease		Receipts	Decrease	
1 (2006)	$23,648	$22,490	$1,158	5%	$21,331	$2,317	10%	$20,704	$2,944	13%	$19,738	$3,910	17%	$17,952	$5,696	24%
3 (2006)	$23,648	$23,455	$193	1%	$23,262	$386	2%	$23,165	$483	2%	$23,069	$579	2%	$22,972	$676	3%
6 (2005)	$15,445	$15,245	$200	1%	$15,045	$400	3%	$14,845	$600	4%	$14,370	$1,075	7%	$13,470	$1,975	13%
9 (2005)	$14,703	$14,603	$100	1%	$14,503	$200	1%	$14,453	$250	2%	$13,753	$950	6%	$12,803	$1,900	13%
13 (2004)	$19,250	$18,733	$517	3%	$18,216	$1,034	5%	$17,803	$1,447	8%	$17,027	$2,223	12%	$15,528	$3,722	19%
14 (2003)	$40,000	$37,346	$2,654	7%	$34,693	$5,307	13%	$33,313	$6,687	17%	$31,243	$8,757	22%	$28,218	$11,782	29%
16 (2003)	$35,980	$34,494	$1,486	4%	$32,955	$3,025	8%	$31,942	$4,033	11%	$30,036	$5,944	16%	$27,170	$8,810	24%
18 (2002)	$24,871	$24,328	$543	2%	$23,786	$1,086	4%	$23,405	$1,466	6%	$21,668	$3,203	13%	$19,660	$5,211	21%
19 (2002)	$17,942	$17,725	$217	1%	$17,508	$434	2%	$17,345	$597	3%	$16,802	$1,140	6%	$15,717	$2,225	12%
21 (2001)	$14,426	$12,331	$2,095	15%	$10,787	$3,639	25%	$10,015	$4,411	31%	$9,133	$5,293	37%	$6,045	$8,381	58%

Appendix F Non-resident Funding of Selectman Campaigns, 1995-2006

Campaigns listed in order of percentage of total receipts (column 6). All amounts expressed in 2005 dollars.

Cand.	Year	Won/Lost	Total reeipts	Donations from non-residents	% of total receipts	% of donations of $200 or more
21	2001	W-u*	$14,426	$8,450	**65%**	89%
14	2003	W	$40,000	$16,601	**44%**	53%
5	2006	L	$21,216	$8,687	**41%**	43%
22	2000	W	$35,479	$11,850	**38%**	45%
29	1998	W	$39,442	$11,528	**35%**	38%
1	2006	W	$24,265	$7,144	**28%**	34%
32	1996	W-u	$7,451	$1,250	**27%**	41%
23	2000	W	$23,651	$4,900	**24%**	36%
18	2002	W	$24,971	$5,525	**24%**	33%
16	2004	W	$35,980	$8,264	**24%**	25%
20	2002	L	$12,479	$2,639	**23%**	24%
19	2002	W	$12,479	$2,639	**23%**	24%
7	2005	L	$10,016	$2,158	**22%**	53%
27	"	W-u	$6,722	$900	**16%**	0%
33	1996	W-u	$14,326	$1,725	**15%**	22%
13	2004	W	$19,250	$2,472	**13%**	14%
9	2005	W	$14,700	$1,550	**11%**	19%
24	2000	L	$2,204	$175	**9%**	0%
31	1997	W-u	$8,821	$550	**8%**	10%
17	2002	L	$22,262	$1,520	**7%**	9%
35	1995	W	$25,039	$1,325	**7%**	9%
6	2005	W	$15,445	$765	**4%**	6%
3	2006	W	$23,648	$917	**4%**	0%
25	2000	L	$23,180	$600	**3%**	3%
34	1995	L	$14,326	$550	**3%**	2%
15	2003	L	$25,612	$720	**3%**	0%
8	2005	L	$6,331	$100	**2%**	0%
28	1998	L	$19,927	$355	**2%**	11%
2	2006	L	$1,685	--	--	--
4	"	L	$0	--	--	--
10	1005	L	$1,550	--	--	--
11	2004	L	$731	--	--	--
12	"	L	$5,262	--	--	--
26	1999	W-u	$0	--	--	--
30	1997	W-u	$696	--	--	--

SUMMARY:

	Non-resident donations	Percentage of total	Average amount
Winning candidates	$0 - $17,620	0% - 65%	$6,050**
Losing candidates	$0 - $8,687	0% - 41%	$1,520**

NOTE: This table does not reflect non-resident donations of $50 or less. Since state law does not require the reporting of residences for such donations, there is no way to tell from campaign reports whether they are from outside Brookline. In many cases, therefore, the non-resident donation total and its percentage are actually somewhat larger than shown.

* Won, uncontested

** Campaigns with total receipts of less than $1000 are ignored in this calculation.

ARTICLE 19

NINETEENTH ARTICLE

To see if the Town will amend Town by-law Article 5.3 of the General By-Laws of the Town of Brookline as follows:

[Please note that all proposed amendments appear in **bold underlined type**. Proposed deletions are ~~struck through.~~]

ARTICLE 5.3 DEMOLITION **DELAY** BY-LAW

SECTION 5.3.1 INTENT AND PURPOSE

This by-law is adopted to preserve and protect **S**ignificant **B**uildings within the Town which reflect distinctive features of the architectural, cultural, political, economic or social history of the Town and/or Commonwealth; to encourage property owners of **S**ignificant **B**uildings to seek ways to preserve, rehabilitate or restore such buildings rather than demolish them; and by furthering these purposes, to preserve the resources of the Town and promote the public welfare. To achieve these purposes, the Brookline ~~PRESERVATION~~ **Preservation** Commission ~~is empowered to direct~~ **and** the Building Commissioner **are empowered** with respect to the issuance of demolition permits as provided in this by-law.

SECTION 5.3.2 DEFINITIONS

The following terms when used in this by-law, shall have the meanings set forth below, unless the context otherwise requires:

a. "Applicant"- any person or entity who files an Application for a Demolition Permit.

~~f.~~ **b**. "Application" - an **A**pplication to the Building Department for a demolition permit.

~~a.~~ **c.** "Building" - any combination of materials having a roof and permanent foundation and forming a shelter for persons, animals or property.

d. "Building Commissioner" - the person occupying the office of Building Commissioner or otherwise authorized to issue Demolition Permits.

~~i.~~ **e.** "Business Day" - a day which is not a legal municipal holiday, Saturday or Sunday.

~~c.~~ **f.** "Commission"- the Brookline ~~PRESERVATION~~ **Preservation** Commission or its successor.

~~d.~~ **g.** "Commission **S**taff" - the persons(s) regularly providing staff services for the Commission whom the Commission has designated Commission **S**taff for the purposes of this by-law.

h. "Demolition" - the act of pulling down, destroying, removing or razing a building **or a significant portion thereof, including removing one side of the building, removing the roof, removing 25% of the structure, gutting a significant public or communal (non-residential) interior space, the systematic removal, effacement, or destruction of the exterior architectural elements which define or contribute to the historic character of the building,** or commencing the work of **such** total or substantial destruction**, or moving a Building from its site for storage with no permitted new location for said Building. "Demolition" as used herein shall be deemed to include Demolition by Neglect.**

i. "Demolition by Neglect" - a process of ongoing damage to the fabric, viability and/or functionability of a building leading towards and/or causing its eventual demolition due to decay and/or structural failure and/or severe degradation over a period of time as a result of a general lack of maintenance, and/or failure to secure the building from pests or vandals, and/or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls, or apertures.

~~g.~~ **j. "Demolition** Permit" - a **building** permit issued by the Building Commissioner **allowing** ~~for~~ the **total or partial** demolition of a building pursuant to an **A**pplication.

~~e.~~ **k.** "Initial **D**etermination" - any determination contemplated in Section 5.3.5 of this by-law made by the Commission or its staff.

~~j.~~ **l. "Local** Historic District" - Cottage Farm **Local** Historic District, Pill Hill **Local** Historic District, **Graffam McKay Local Historic District, Chestnut Hill North Local Historic District, Harvard Avenue Local Historic District** or any other historic district which from time to time may be established under M.G.L. Ch. 40C.

m. "Mitigation" – actions taken to partially compensate for the demolition of a Significant Building, including without limitation: removal of the building to a new location; offering the building for removal to a new location; monetary support for same; incorporation of part or all of the building into a new building; submitting any replacement building to design review by the Commission; and recordation and visual documentation of the existing building.

~~b.~~ **n.** "Significant Building" - any **existing** building, **including without limitation any existing public or communal interior non-residential space substantially original to its building,** within the Town which the Commission determines, as provided in Section 5.3.5 AND 5.3.8 of this by-law, to be in the public interest to be preserved or rehabilitated, and whose demolition would be detrimental to the historical and/or architectural heritage and resources of the Town **or in the case of a building that has been demolished without a Demolition Permit any building which the Commission determines in a public hearing would have met said criteria.**

SECTION 5.3.3 PROCEDURE

General - No permit for the demolition of a building shall be issued other than in

conformity with the provisions of this by-law, notwithstanding the provision of other codes and by-laws applicable to demolition of buildings and permits issued therefore, **except with respect to buildings in local Historic Districts for which MGL 40c and section 5.6 the Town's by-laws shall take precedence, where applicable.**

SECTION 5.3.4 APPLICATION

a. An **A**pplication to the Building Department for a **D**emolition **P**ermit shall be made or co-signed by the owner of record at the time of **A**pplication **and shall contain or be accompanied by the following information, without which it shall not be deemed complete:**

i. The address of the building to be demolished.
ii. The owner's name, address and telephone number.
iii. A description of the type of building.
iv. The scope of the proposed demolition.

b. A separate Application shall be made for each building on the property.

c. The Applicant shall deliver a copy of said Application to the Commission, and the submission of said copy shall be a precondition to completing an Application for a Demolition Permit to the Building Department.

SECTION 5.3.5 INITIAL DETERMINATION

Within ten **B**usiness **D**ays of the receipt of the **A**pplication by the Commission, the Commission **S**taff **in consultation with the Chair of the Commission,** shall make an **I**nitial **D**etermination as to whether the building falls into one or more of the categories listed as a **through d** of this section, and shall notify in writing the Commission, the Building Commissioner, Town Clerk, Planning Director ~~and~~ the owner of record as indicated on the **A**pplication **and the Applicant if different from owner of record,** of its initial determination. The categories shall be as follows:

a. The building is located within any **L**ocal **H**istoric **D**istrict;

b. The building is listed on or is within an area listed on the National or State Registers of Historic Places; is eligible for listing on the National or State Registers of historic places; or is a building for which a preliminary determination of eligibility has been made by the Massachusetts Historical Commission ~~or~~;

c. The building is associated with one or more significant historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the Town or Commonwealth; or

d. The building is historically or architecturally significant in terms of its period, style, method of building construction, or its association with a significant architect or builder, either by itself or as part of a group of buildings.

SECTION 5.3.6 WITHHOLDING OF DEMOLITION PERMIT

The Building Commissioner shall ~~**withhold**~~ **not issue** a **D**emolition **P**ermit until the procedural requirements of Sections 5.3.3 THROUGH 5.3.12, INCLUSIVE, have been

satisfied unless:

a. The Building Commissioner receives written notice from the Commission **S**taff that the building does not fall into one or more of the categories in Section 5.3.5;

b. The Building Commissioner fails to receive written notice from the Commission **S**taff of its **I**nitial **D**etermination required by Section 5.3.5 within the specified time period; ~~or~~

c. The Building Commissioner receives written notice from the Commission **S**taff that while the building falls into one or more of the categories in Section 5.3.5, the building clearly could not be deemed significant by the Commission**; or**

d. The Building Commissioner receives written notice from the Commission Staff that the proposed demolition is limited to the systematic removal, effacement, or destruction of the exterior architectural elements which define or contribute to the historic character of the building and the building does not fall into category b of Section 5.3.5.

SECTION 5.3.7 PUBLIC HEARINGS
Within 20 **B**usiness **D**ays of an **I**nitial **D**etermination ~~by the Commission Staff~~ that the building falls into one or more of the categories in Section 5.3.5, the Commission shall review the **A**pplication and **I**nitial **D**etermination, **without reference to any proposed replacement use or design,** at a public hearing with notice given as provided in Section 5.3.12 to determine whether the building is significant as defined in Section 5.3.2.

SECTION 5.3.8 FINAL DETERMINATION
If the Commission determines after a public hearing that a building is ~~significant~~ **a Significant Building** it shall notify the Building Commissioner, Town Clerk, Planning Director, ~~and~~ the owner of record as indicated on the **A**pplication, **and the Applicant if different from owner of record,** of its final determination within 15 **B**usiness **D**ays from the date of the public hearing.

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT
a. The Building Commissioner shall withhold the Demolition Permit for a period of one year**, or for a period of eighteen months if** ~~from the date upon which the final determination that~~ the building **meets the criteria of Section 5.3.5.b** ~~is~~**, from the date upon which the final determination** ~~significant~~ was made **that a building is a Significant Building** except as provided **below in this section and** in Section 5.3.11.

b. Not withstanding Section 5.3.9.a, upon the expiration of the aforesaid withholding period, no permit for the demolition of a Significant Building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and found to comply with all laws pertaining to the issuance of a building permit or, if for a parking lot, open space or other project not requiring a building permit, with all laws pertaining thereto. All approvals necessary for the issuance of such building permit or necessary for the development of the site if the project does not require a building permit, including without limitation any necessary zoning variances and/or special permits, must be granted

and all appeals from the granting of such approvals must be concluded, prior to the issuance of a permit under this section, and, no Demolition Permit shall be granted without evidence that a contract has been entered into for the construction or development of the permitted project.

c. If the permitted future use or the described future use of all or any part of the footprint of a Significant Building in an Application for a Demolition Permit is for a parking lot or open space then, after demolition has been completed, no subsequent permit shall be issued for construction of a building in said permitted or described parking lot/open space portion of the footprint for a period of two years following the completion of said demolition.

d. If no Demolition Permit is issued within three years of the Commission's determination of significance and of the termination of any court action preventing the issuance of said permit, whichever period shall be longer, or if a Demolition Permit is issued but the building is not demolished before the expiration of said permit, including any extensions allowed by the Building Commissioner, then any subsequent Application for the demolition of the building shall be processed in accordance with sections 5.3.3. through 5.3.12 inclusive, without reference to any prior determination with respect to Significance.

SECTION 5.3.10 ALTERNATIVES TO DEMOLITION **AND MITIGATION**
If the Commission makes a final determination that the building is **S**ignificant, the Commission chairman and staff shall invite the owner of record of the building, the Building Commissioner, and the Planning Director to participate in an investigation of alternatives to demolition including but not limited to incorporation of the building into the future development of the site; adaptive reuse of the building; utilization of financial incentives to rehabilitate the building; seeking a new owner willing to purchase and preserve, restore or rehabilitate the building; ~~or~~ moving the building**; design review by the Commission of any replacement building; and recordation of the building with photographs and measured drawings.**

SECTION 5.3.11 EXCEPTIONS TO WITHHOLDING OF DEMOLITION PERMIT / EMERGENCY DEMOLITION
a. Notwithstanding the provisions of Section 5.3.9, the Building Commissioner may issue a **D**emolition **P**ermit for a **S**ignificant **B**uilding at any time after receipt of written advice from the Commission to the effect that the Commission is satisfied that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved**, the issuance of said permit being subject to such stipulations, if any, as the Commission and the Applicant may have agreed upon as Mitigation for said demolition.**

b. Nothing in this by-law shall restrict the Building Commissioner from immediately ordering the demolition of any building in the event of imminent danger to the public's safety or health due to deteriorated conditions. **Prior to such demolition** the structure shall be inspected by the Building Commissioner, and findings and reasons for immediate demolition shall be recorded in a written report, a copy of which shall be forwarded promptly to the Commission.

SECTION 5.3.12 NOTICE

Notice of any public hearing required by this by-law shall be given by the Commission to the owner of record; the **A**pplicant for the demolition permit (if different from the owner of record); the immediate abutters to the subject property, the owners of land directly opposite on any public or private street, and abutters to the abutters within three hundred feet of the property line of the subject property as they appear on the most recent applicable tax list; to each elected Town Meeting member for the precinct in which the subject property is located; the Building Commissioner; Town Clerk; Planning Director; and to such other persons as the Commission may determine. The Commission may among other forms of notice require that the **A**pplicant maintain on the subject building a notice, in a form designated by the Commission visible from the nearest public way, of any hearing upon the subject matter of such **A**pplication.

SECTION 5.3.13 ENFORCEMENT

The Building Commissioner shall institute any and all actions and proceedings as may be necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a violation or threatened violation thereof.

SECTION 5.3.14 ~~CERTIFICATE OF SIGNIFICANCE~~ **ADMINISTRATION**

The Commission may from time to time adopt such rules and regulations as are necessary to administer the terms of this bylaw. ~~There is hereby established a filing fee for a Certificate of Significance.~~ The amount of the fee **for costs associated with the administration of this bylaw** shall be established, and may be amended from time to time, by the Board of Selectmen.

SECTION 5.3.15 NON-COMPLIANCE

Anyone who demolishes a **S**ignificant **B**uilding except pursuant to court order without complying fully with the provisions of this by-law shall be subject to a fine not to exceed $300. Each day from the date of the commencement of demolition to the final determination by **a** court of competent jurisdiction shall constitute a separate offense. In addition, no building permit may be issued for such premises while such court action is pending, or ~~after~~ **within two years of** a judicial determination that there has been a violation of this by-law. Notwithstanding the foregoing, a building permit may be issued ~~two years after the completion of such demolition of a significant building, and a building permit may be issued~~ at any time for new construction **that** ~~which~~ would **faithfully** replicate the exterior of the demolished **S**ignificant **Building** ~~structure~~, ~~including but not limited to~~ **Such replication shall be subject to prior review and approval by the Commission, whose review shall consider** use of materials, design, dimensions, massing, arrangement of architectural features, ~~and~~ execution of decorative details, **and other relevant factors**. As used herein, premises refers to the parcel of land upon which the demolished building was located and all abutting parcels of land under common ownership or control on or subsequent to the date **that** this by-law was ~~voted~~ **adopted** by Town Meeting.

SECTION 5.3.16 SECURING BUILDINGS FROM DESTRUCTION AFTER INITIAL DETERMINATION OF SIGNIFICANCE

If, a) following an Application for a demolition permit for a building for which the Commission Staff has made an Initial Determination of significance or b) following notification to the owner of a hearing for Demolition by Neglect of a building under Section 5.3.17, or c) during the period of demolition delay for a building determined to be significant, or d) during a period when a building has been determined to be undergoing Demolition by Neglect under Section 5.3.17, the building is demolished or destroyed as a result of fire or other cause a rebuttable presumption shall arise that the owner voluntarily demolished the building without obtaining a demolition permit in accordance with the provisions of this ordinance and Section 5.3.15 shall be deemed applicable. In such cases, the Building Commissioner shall not issue any permit required under the State Building Code for such premises (except as necessary to secure public safety or health) for a period of two years from the date of destruction of the building or structure, unless the owner can provide evidence satisfactory to the Building Commissioner that the owner took reasonable steps to secure the building against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence. As used herein, premises refers to the parcel of land upon which the demolished building was located and all abutting parcels of land under common ownership or control on or subsequent to the date this clause of this by-law was voted by Town Meeting.

SECTION 5.3.17 DEMOLITION BY NEGLECT

a. If the Commission Staff has reason to believe, through visual inspection or other means, that a building which it believes falls into one or more of the categories listed as a through d of Section 5.3.5, may be undergoing Demolition by Neglect, then the Commission shall notify the Building Commissioner and the owner and the Commission and the Building Commissioner shall jointly hold a public hearing to i) confirm whether or not the building is significant which shall require a vote of the Preservation Commission only and ii) determine whether or not it is undergoing Demolition by Neglect which shall require a vote of the Preservation Commission and the concurrence of the Building Commissioner. In furtherance of determining its condition, the Commission may, at any time, request an inspection of the building by the Building Commissioner.

b. If the Commission and Building Commissioner both determine that the building is undergoing Demolition by Neglect, the Commission and the Building Commissioner shall attempt to negotiate a voluntary agreement with the owner for appropriate and timely repairs sufficient to structurally stabilize the building and/or prevent further deterioration.

c. In the event that the Commission and the Building Commissioner both determine that they are not able to negotiate such an agreement with the owner, for any reason, or that the owner has agreed to undertake but has failed to satisfactorily complete such repairs in a timely manner, then the Commission and the Building Commissioner may take such action as is permitted under Sections 5.3.13 and/or 5.3.15, including seeking a court order that specific repairs be undertaken to secure the building against the elements, vandals, and vermin, to halt further deterioration, and to stabilize it structurally.

d. Upon completion of all repairs that have been agreed upon between the owner and the Commission and Building Commissioner or that have been ordered by the Commission and Building Commissioner, or that have been ordered by the court, and upon certification by the Building Commissioner that said repairs have been completed and that the building has no current building code violations, the Commission shall certify that the building is no longer undergoing Demolition by Neglect.

SECTION ~~5.3.16~~ **5.3.18** HISTORIC DISTRICTS
If any of the provisions of this by-law shall conflict with the Historic Districts Act, MG.L. Ch. 40C, the state statute shall prevail.

SECTION ~~5.3.*17*~~ **5.3.19** VALIDITY
The invalidity of any section or provision of this by-law shall not render invalid any other section or provision of this by-law.

or to take any other action relative thereto.

The proposed amendments to article 5.3 (Demolition Delay By-law) will:

- Make the bylaw more consistent with the MHC's model Demolition Delay law.
- Make the bylaw more fully consistent with its current administration.
- Strengthen its wording.
- Make technical corrections to eliminate errors or omissions. (e.g. Section 5.3.14)
- Add, expand, correct, or clarify the definitions of key terms. (Section 5.3.2)
- Eliminate "timing out" of the demolition delay through demolition permit applications when there is no immediate intention to demolish. (Section 5.3.9)
- Limit speculative demolition. Demolition would have to be tied to construction of a specific replacement project. (Section 5.3.9)
- Extend the delay period from 12 months to 18 months for buildings listed on or formally determined to be eligible for listing the National Register of Historic Places. (Section 5.3.9) This would have affected about 10% of the 191 cases cited below.
- Add an anti-arson clause. (Section 5.3.16)
- Add a Demolition by Neglect clause. (Section 5.3.17)

Background

Brookline's Demolition Delay By-law was originally passed in 1987 to help protect buildings of significant historic or architectural character in the town that are not located within one of the town's historic districts. Its language closely followed Cambridge's Ordinance and was one of the first to impose a delay of up to 12 months, which has since become the typical length. The second case to come under Brookline's by-law was a developer's proposal to gut the Coolidge Corner Theater and turn it into a mini-shopping mall. It took almost the full 12 months for the community to develop, implement, and

fund the strategy which saved the Theater. Today such a near loss of this Brookline treasure would seem inconceivable.

After nearly two decades of experience in Brookline and statewide, the Commission believes it is time to update our existing by-law. Today 75 Massachusetts cites and towns have demolition delay by-laws. The Massachusetts Historical Commission ("MHC") has now developed a widely used model Demolition Delay law. Other towns have strengthened their existing demolition delay by-laws though new administrative regulations or amendments — e.g. Newton has adopted anti-arson language. (Unlike Local Historic District by-laws, which are based on MGL 40c, there is no specific enabling legislation or legislated model for demolition delay laws.) Also, Brookline's new comprehensive plan also calls for strengthening our Demolition Delay By-law.

Over the years Brookline's administration of the by-law has developed with experience. For example, design review of replacement buildings, as one form of mitigation, is used when appropriate—paralleling the practice in Cambridge and elsewhere. At the same time, difficulties have come to light, such as developers applying for a permit and then "timing out" the delay with no attempt to work with the Commission to see if it might be possible save the building or incorporate it into their project.

Brookline's experience with demolition delay In the seven years from FY-98 to FY-05, the Commission reviewed 191 applications for the demolition of houses, garages, carriage houses, commercial buildings, or portions of buildings and a greenhouse. Of those, 136 were found to be Non-Significant with no delay imposed. Almost all the Non-Significant structures were soon demolished.

Of the 55 structures found to be Significant, 28 or just over half, were eventually demolished. In some of those cases there was meaningful mitigation, such as:

- Professional documentation of a ca. 1800 house with half-timber-like construction.
- Design review of several replacement buildings.
- Saving the most significant building of a group on Beacon St. in exchange for letting others be immediately demolished and assuring design review of the replacement.

Significant structures have been saved as a result of this law, ranging from an 18th century carriage house from Isabella Stewart Gardner's estate, now relocated to the Gov. Shirley-Eustis House, in Dorchester, to an all porcelain enameled steel, post WWII "Lustron" house. They also include, of course, the Coolidge Corner Theater.

The process for establishing each of the three recent Local Historic Districts also began with hearings under the Demolition Delay law in response to threats of multiple demolitions.

However, far too many demolition permits are taken out on a speculative basis. Even in our historic districts it is possible for a developer to allow a building to undergo demolition by neglect, with the town powerless to stop it. These amendments will help the town to better preserve its architectural heritage.

Brief descriptions of the reason for the proposed changes in each section:
5.3 Recaption the By-law to properly describe its purpose.

5.3.2 In addition to the expansion and addition of sections, the definitions have been reorganized in alphabetical order.

5.3.2.a & d Both add definitions from the MHC model Demolition Delay law.

5.3.2.h Makes definition of Demolition more consistent with usage and experience in Brookline and elsewhere (e.g., applying the original definition to the proposed gutting of the Coolidge Corner Theater was a little "assertive") and adds reference to Demolition by Neglect. Brookline's new Comprehensive Plan also calls for expanding the definition of Demolition.

5.3.2.i Adds definition of "Demolition by Neglect" (See 5.3.17 below.)

5.3.2.j Makes definition of Demolition Permit consistent with practice

5.3.2.m Adds definition of Mitigation which was always implicitly encouraged by 5.3.10 but not previously defined and is also now more explicitly recognized in 5.3.11.a.

5.3.2.n Adds provision for significant historic public spaces — for cases like the Coolidge Corner Theater.

Eliminates a potential loophole which could have excluded buildings that were demolished or partially demolished without a permit application.

5.3.4. Spells out requirements for application, based on MHC model Demolition Delay law.

5.3.3, 5.3.5, 5.3.7, 5.3.8, 5.3.10, & 5.3.11.a Each adds language consistent with the Commission's current practice.

5.3.5 Adds language which makes stripping a building to the bare frame without complete demolition to avoid being subject to review or the application of artificial siding wherein all of the trim is removed or covered subject to delay but only with respect to buildings listed on, or eligible for, the National Register.

5.3.9 b Derived in part from MHC model bylaw, it is intended to limit speculative demolition applications and to require that demolition not occur until construction of an actual replacement project is ready to proceed.

5.3.9.c Without penalizing a genuine non-building use, it is intended to limit speculative demolitions that leave a cleared site without any immediate replacement building under the pretext that no future building is intended for the site.

5.3.9.d Clarifies that a demolition permit expires like any other Building Permit issued by the Building Commissioner. It is based on Cambridge procedures that were in use

when Brookline adopted Cambridge's ordinance language but were not were not well spelled out in their ordinance nor in Brookline's original bylaw language. It is consistent with the MHC model bylaw and with general practice.

5.3.11.b Adds a clarification

5.3.14 Eliminates erroneous caption and sentence based on Local Historic District practice which never had any relevance to the operation of the bylaw. Adds caption and administrative language from MHC model bylaw.

5.3.15 Adds correction, clarification, and administrative language from MHC model bylaw, and re-orders sentence for clarity.

5.3.16 Adds an anti-arson clause, relative to improperly secured buildings, adopted from language in Newton's Demolition Delay ordinance. Determination with respect to whether owner took reasonable steps to secure building is solely under the final purview of the Building Commissioner.

5.3.17 Adds a demolition by neglect clause drawing on models from elsewhere in the country per research by MHC. It gives the Preservation Commission and the Building Commissioner acting jointly a means of requiring a building owner to secure and maintain the integrity of a Significant Building, as opposed to the building code whose provisions only allow the Building Commissioner to require that the owner remove the building or make it safe. Enforcement under this clause can only occur with the concurrence of the Building Commissioner. The Preservation Commission cannot enforce this clause on its own.

5.3.18 & 5.3.19 Unchanged but renumbered

SELECTMEN'S RECOMMENDATION

Article 19 was filed by the Preservation Commission and proposes changes to the Town's Demolition Delay By-Law, which was originally passed in 1987 to help protect historically or architecturally significant buildings outside of historic districts. The by-law is now nearly 20 years old and the Preservation Commission believes it is time to update it. The Board had some concerns with the article as originally proposed, but is comfortable with the revised language being offered by the Advisory Committee. The proposed amendments will do the following:

- Make the by-law more consistent with the Massachusetts Historical Society's (MHC) model demolition delay by-law;
- Make the by-law more fully consistent with its current administration;
- Clarify and update its wording;
- Make technical corrections;
- Add, expand, correct, or clarify definitions;

- Extend the delay period from 12 months to 18 months for buildings listed on or formally determined to be eligible for listing on the National Register of Historic Places;
- Close a loophole that might have allowed an illegal demolition without a permit to bypass the law; and
- Recognize "demolition by neglect".

The Selectmen commend the Preservation Commission for their efforts on this and thank them for recognizing the Board's concerns by making modifications to their original proposal. The Selectmen recommend FAVORABLE ACTION, by a vote of 3-0-1 taken on October 24, 2006, on the vote offered by the Advisory Committee.

ROLL CALL VOTE:

Favorable Action	Abstain
Allen	DeWitt
Hoy	
Daly	

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The Article as originally presented in the warrant was both a substantial upgrading and strengthening of the bylaw together with the addition of some extensive new features. Those new features (deleted in the final motion) had included (a) regulations to prevent submitting a demolition application just to get the delay "out of the way," (b) regulations tying demolition following a delay to commencement of construction of the replacement project (to avoid "speculative demolitions"), (c) regulations dealing with stabilizing buildings undergoing "demolition by neglect" and, (d) a regulation securing buildings during delays from the risk of destruction from accident or fire.

In the public hearings on Article 19, the Advisory Committee Subcommittee on Capital suggested that the ramifications of all of these changes at once were difficult to understand and that it was preferable to concentrate primarily on making all of the editorial, updating, and "housekeeping" changes to the bylaw first, before attempting to add extensive new sections. The Subcommittee also felt that it might be both possible and desirable to address some of the new sections through rulemaking, rather than by adding further to the bylaw.

After consultation with Town Counsel and the Moderator, the Preservation Commission returned with the article substantially reduced by the deletion of the four new sections described above. There appears to have been some disagreement as to whether those issues were appropriate for rulemaking but that debate is deferred for another day. In addition, there were other changes, including the definition of "demolition" and "gutting".. It was agreed to preface the word "gutting" with "substantial" and to add a requirement that the Commission publish rules further specifying the nature of

"substantial gutting" so that would be clear that this clause could not be invoked for ordinary changes, even if those changes themselves were substantial.

Summary of effects of the Article as revised

Delays of total demolitions
• No change in the number of cases.
• 40% of delays (National Register properties only) could be for up to 18 months, rather than up to 12 months.

Delays related to partial demolitions
• No change re houses with garages or other appendages removed (now less than one delay per year).
• One or two additional delays per year for systematic stripping of architectural detail from National Register (NR) properties. Artificial siding can be applied to structures in a way to avoid this clause.

18 month delays for National Register properties only and the creation of Local Historic Districts
• Primary reason for 18 month delay on NR properties is to give both sides more time in creation of new Local Historic Districts (LHDs)
• No presently known proposed new LHDs.

Delays related to gutting interior spaces open to the public and integral to historic character of a building
• About 20 applicable public spaces in town, all on National Register.
• Only applies to "substantially total gutting," not normal changes and adaptations
• Only applies to public spaces currently used for non-residential purposes
• Only applies to substantially intact spaces "integral to the historic character of the building"
• One potential case per decade, based on past 30 years.
• Coolidge Corner Theater was one such case

Mitigation
• Simply spells out present practices. No effect on the number or duration of stays or types of mitigation.

Demolition without a permit
• Closes loophole that could allow "end run" on bylaw.
• No significant case in Brookline in at least 20 years.

DISCUSSION
This article is a revision and expansion of the Town's Demolition Delay bylaw, which was passed over 20 years ago. The Preservation Commission notes that over the years this law has been instrumental in saving buildings ranging from an 18th carriage barn to a post World War II all steel house, as well as the Coolidge Corner Theater. The Commission also believes that the Demolition Delay bylaw was critical in the establishment of the last three Local Historic Districts.

During the last few fiscal years the town has averaged about 30 demolition applications per year. Approximately two thirds of the requests are approved immediately. Of the approximately 10 per year which the Commission does delay, about half are eventually acted upon — often soon after the completion of "mitigation" of some form, such as photographs taken or drawings made.

There are currently 75 cities and towns in Massachusetts with demolition delay bylaws; Brookline's is one of the earlier versions.. Based on the Preservation Commission's experience in administering this law as well as an evaluation of the features contained in the Massachusetts Historical Commission's model bylaw, technical corrections and adjustments are being proposed. These range from changing captions, to incorporating new or expanded definitions, to correcting some original errors and omissions.

On an operational level there are also the following changes:

Extension of maximum delay to 18 months for National Register properties only (all others stay 12 months) — This would affect about 10% of the demolition cases reviewed and less than half the delays. The Commission's primary reason for wanting this change is that each of the three new Historic Districts was triggered by multiple demolition cases. In some cases opponents said the process of creating the districts was made hasty by the 12 month delay limit. This change is intended to assure both sides of the most fully deliberative process.

Including in "Demolition" the gutting of historic, publicly accessible, interiors that are on the National Register — the Preservation Commission states that the Town was lucky to have saved the Coolidge Corner Theater because a careful reading at that time of the bylaw might have successfully challenged the delay. This proposed definitional change might apply to about 20 historic intact, publicly accessible spaces in town that are listed on the National Register. It only affects guttings and not ordinary changes and adaptations. The Commission estimates such a case might occur once a decade. An example of the space to which this new provision might apply is the historic concert hall attached to the mansion at Pine Manor College.

Including in "Demolition" the stripping of all exterior details of National Register houses — The Commission observes that the number of houses being vinyl sided has declined in recent years and that more houses are being restored by the removal of siding. It notes two ways of applying siding: stripping off all the detail and leaving a bare box or leaving the trim in place and putting the siding only over the clapboards. Often homeowners don't know they have that choice. Recently there have also been a few historic houses stripped to the bare sheathing by developers and recovered with McMansion type plastic stucco. The Commission expects there might be a couple of additional cases each year related to these two types of stripping. This definition is used elsewhere in the State.

Demolition without a permit — Language is added to close a loophole that might have allowed an illegal demolition without a permit to bypass the law.

Recognizing demolition by neglect as "Demolition" Intentionally allowing a house fall to pieces is a form of demolition. The Commission cited a couple of examples in Historic Districts where buildings were deliberately allowed to decay to the point that they were at risk of being condemned. While the Town cannot force repairs, except by ordinary code enforcement, this change can prevent a developer from easily profiting from such behavior. The Commission estimates such a case once every few years.

The Advisory Committee finds the proposed changes, as amended, to be reasonable. In its discussion of the article, the Committee focused on such issues as the number of properties which could be affected by the "gutting" of historic, publicly accessible interiors and the definition of "demolition by neglect". The Committee notes that in the first instance, less than two dozen properties could be affected by the provision. Regarding "demolition by neglect", the Advisory Committee observes that the Commission is well aware that financial hardship can lead to the deterioration of a property and that this provision in no way would apply to those situations. The Committee supports extending the demolition delay period from 12 to 18 months, because for those cases in which a proposed demolition triggers a local historic district initiative, it is important that the creation of an lhd not to be rushed.

RECOMMENDATION

The Advisory Committee by a vote of 19 to 2 recommends the following motion (additions and newly capitalized letters are **bold face and underlined**; deletions are ~~stricken thru~~.):

Moved under Article 19 that Article 5.3 of the Town's Bylaws be amended as follows:

ARTICLE 5.3
DEMOLITION **DELAY** BY-LAW

SECTION 5.3.1 INTENT AND PURPOSE

This by-law is adopted to preserve and protect **S**ignificant **B**uildings within the Town which reflect distinctive features of the architectural, cultural, political, economic or social history of the Town and/or Commonwealth; to encourage property owners of **S**ignificant **B**uildings to seek ways to preserve, rehabilitate or restore such buildings rather than demolish them; and by furthering these purposes, to preserve the resources of the Town and promote the public welfare. To achieve these purposes, the Brookline Preservation Commission ~~is empowered to direct~~ **and** the Building Commissioner **are empowered** with respect to the issuance of demolition permits as provided in this by-law.

SECTION 5.3.2 DEFINITIONS

The following terms when used in this by-law, shall have the meanings set forth below, unless the context otherwise requires:

a. "Applicant"- any person or entity who files an Application for a Demolition Permit.

~~f.~~ **b**. "Application" - an **A**pplication to the Building Department for a demolition permit.

~~a.~~ **c.** "Building" - any combination of materials having a roof and permanent foundation and forming a shelter for persons, animals or property.

d. "Building Commissioner" - the person occupying the office of Building Commissioner or otherwise authorized to issue Demolition Permits.

~~i.~~ **e.** "Business Day" - a day which is not a legal municipal holiday, Saturday or Sunday.

~~c.~~ **f.** "Commission"- the Brookline Preservation Commission or its successor.

~~d.~~ **g.** "Commission **S**taff" - the persons(s) regularly providing staff services for the Commission whom the Commission has designated Commission **S**taff for the purposes of this by-law.

h. "Demolition" – **(a)** the act of pulling down, destroying, removing or razing a **B**uilding **or a significant portion thereof, by removing one side of the building, or removing the roof, or removing 25% of the structure; (ii) moving a Building from its site with no permitted new location for said Building; (iii) in the case of a Building within Section 5.3.5(b), substantially gutting (as defined by the Preservation Commission per section 5.3.14) an interior space that has generally been open to the public and is integral to the historic character of the building; (iv) in the case of a building within Section 5.3.5(b), the systematic removal, effacement, or destruction of the exterior architectural elements which define or contribute to the historic character of the Building,** or **(v)** commencing **any of** the **foregoing** work ~~of total or substantial destruction,~~**. "Demolition" as used herein shall be deemed to include Demolition by Neglect.**

i. "Demolition by Neglect" - a process of ongoing damage to the fabric, viability and/or functionability of a building leading towards and/or causing its eventual demolition due to decay and/or structural failure and/or severe degradation over a period of time as a result of a general lack of maintenance, and/or failure to secure the building from pests or vandals, and/or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls, or apertures.

~~g.~~ **j. "Demolition** Permit" - a **building** permit issued by the Building Commissioner **allowing** ~~for~~ the **total or partial** demolition of a building pursuant to an **A**pplication.

~~e.~~ **k.** "Initial **D**etermination" - any determination contemplated in Section 5.3.5 of this by-law made by the Commission or its staff.

~~j.~~ **l. "Local** Historic District" - Cottage Farm **Local** Historic District, Pill Hill **Local** Historic District, **Graffam McKay Local Historic District, Chestnut Hill North Local Historic District, Harvard Avenue Local Historic District** or any other historic district which from time to time may be established under M.G.L. Ch. 40C.

m. "Mitigation" – actions taken to partially compensate for the demolition of a Significant Building, including without limitation: removal of the building to a new location; offering the building for removal to a new location; monetary support for same; incorporation of part or all of the building into a new building; submitting any replacement building to design review by the Commission; and recordation and visual documentation of the existing building.

~~b.~~ **n.** "Significant Building" - any **existing** building, **including without limitation any interior space that has generally been open to the public and is integral to the historic character of the building,** within the Town which the Commission determines, as provided in Section 5.3.5 and 5.3.8 of this by-law, to be in the public interest to be preserved or rehabilitated, and whose demolition would be detrimental to the historical and/or architectural heritage and resources of the Town **or in the case of a building that has been demolished without a Demolition Permit any building which the Commission determines in a public hearing would have met said criteria.**

SECTION 5.3.3 PROCEDURE
General - No permit for the demolition of a building shall be issued other than in conformity with the provisions of this by-law, notwithstanding the provision of other codes and by-laws applicable to demolition of buildings and permits issued therefore, **except with respect to buildings in Local Historic Districts for which MGL 40c and section 5.6 the Town's by-laws shall take precedence, where applicable.**

SECTION 5.3.4 APPLICATION
a. An **A**pplication to the Building Department for a **D**emolition **P**ermit shall be made or co-signed by the owner of record at the time of **A**pplication **and shall contain or be accompanied by the following information, without which it shall not be deemed complete:**

i. The address of the building to be demolished.
ii. The owner's name, address and telephone number.
iii. A description of the type of building.
iv. The scope of the proposed demolition.

b. A separate Application shall be made for each building on the property.

~~B~~ **c**. The Applicant shall deliver a copy of said Application to the Commission, and the submission of said copy shall be a precondition to completing an Application for a Demolition Permit to the Building Department**.**

SECTION 5.3.5 INITIAL DETERMINATION
Within ten **B**usiness **D**ays of the receipt of the **A**pplication by the Commission, the Commission **S**taff **in consultation with the Chair of the Commission,** shall make an **I**nitial **D**etermination as to whether the building falls into one or more of the categories listed as **(**a**) through (d)** of this section, and shall notify in writing the Commission, the Building Commissioner, Town Clerk, Planning Director ~~and~~ the owner of record as indicated on the **A**pplication **and the Applicant if different from owner of record,** of its initial determination. The categories shall be as follows:

a. The building is located within any **L**ocal **H**istoric **D**istrict;

b. The building is listed on or is within an area listed on the National or State Registers of Historic Places; is eligible for listing on the National or State Registers of historic places; or is a building for which a preliminary determination of eligibility has been made by the Massachusetts Historical Commission ~~or~~;

c. The building is associated with one or more significant historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the Town or Commonwealth; or

d. The building is historically or architecturally significant in terms of its period, style, method of building construction, or its association with a significant architect or builder, either by itself or as part of a group of buildings.

SECTION 5.3.6 WITHHOLDING OF DEMOLITION PERMIT
The Building Commissioner shall ~~withhold~~ **not issue** a **D**emolition **P**ermit until the procedural requirements of Sections 5.3.3 through 5.3.12, inclusive, have been satisfied unless:

a. The Building Commissioner receives written notice from the Commission **S**taff that the building does not fall into one or more of the categories in Section 5.3.5;

b. The Building Commissioner fails to receive written notice from the Commission **S**taff of its **I**nitial **D**etermination required by Section 5.3.5 within the specified time period; ~~or~~

c. The Building Commissioner receives written notice from the Commission **S**taff that while the building falls into one or more of the categories in Section 5.3.5, the building clearly could not be deemed significant by the Commission~~.~~ **or;**

d. The Building Commissioner receives written notice from the Commission Staff that the proposed work is not Demolition as defined by Section 5.3.2(h).

SECTION 5.3.7 PUBLIC HEARINGS
Within 20 **B**usiness **D**ays of an **I**nitial **D**etermination ~~by the Commission Staff~~ that the building falls into one or more of the categories in Section 5.3.5, the Commission shall review the **A**pplication and **I**nitial **D**etermination, **without reference to any proposed replacement use or design,** at a public hearing with notice given as provided in Section 5.3.12 to determine whether the building is significant as defined in Section 5.3.2.

SECTION 5.3.8 FINAL DETERMINATION
If the Commission determines after a public hearing that a building is **a S**ignificant **Building** it shall notify the Building Commissioner, Town Clerk, Planning Director, ~~and~~ the owner of record as indicated on the **A**pplication, **and the Applicant if different from owner of record,** of its final determination within 15 **B**usiness **D**ays from the date of the public hearing.

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT
The Building Commissioner shall withhold the Demolition Permit for a period of one year**, or for a period of eighteen months if** ~~from the date upon which the final determination that~~ the building **meets the criteria of Section 5.3.5(b)** ~~is~~**, from the date upon which the final determination** ~~significant~~ was made **that a building is a Significant Building** except as provided in Section 5.3.11.

SECTION 5.3.10 ALTERNATIVES TO DEMOLITION **AND MITIGATION**
If the Commission makes a final determination that the building is **S**ignificant, the Commission chairman and staff shall invite the owner of record of the building, the Building Commissioner, and the Planning Director to participate in an investigation of alternatives to demolition including but not limited to incorporation of the building into the future development of the site; adaptive reuse of the building; utilization of financial incentives to rehabilitate the building; seeking a new owner willing to purchase and preserve, restore or rehabilitate the building; or moving the building**.**

SECTION 5.3.11 EXCEPTIONS TO WITHHOLDING OF DEMOLITION PERMIT / EMERGENCY DEMOLITION
a. Notwithstanding the provisions of Section 5.3.9, the Building Commissioner may issue a **D**emolition **P**ermit for a **S**ignificant **B**uilding at any time after receipt of written advice from the Commission to the effect that the Commission is satisfied that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved**, the issuance of said permit being subject to such stipulations, if any, as the Commission and the Applicant may have agreed upon as Mitigation for said demolition.**

b. Nothing in this by-law shall restrict the Building Commissioner from immediately ordering the demolition of any building in the event of imminent danger to the public's safety or health due to deteriorated conditions. **Prior to such demolition** the structure shall be inspected by the Building Commissioner, and findings and reasons for immediate demolition shall be recorded in a written report, a copy of which shall be forwarded promptly to the Commission.

SECTION 5.3.12 NOTICE
Notice of any public hearing required by this by-law shall be given by the Commission to the owner of record; the **A**pplicant for the demolition permit (if different from the owner of record); the immediate abutters to the subject property, the owners of land directly opposite on any public or private street, and abutters to the abutters within three hundred feet of the property line of the subject property as they appear on the most recent applicable tax list; to each elected Town Meeting member for the precinct in which the subject property is located; the Building Commissioner; Town Clerk; Planning Director; and to such other persons as the Commission may determine. The Commission may among other forms of notice require that the **A**pplicant maintain on the subject building a notice, in a form designated by the Commission visible from the nearest public way, of any hearing upon the subject matter of such **A**pplication.

SECTION 5.3.13 ENFORCEMENT
The Building Commissioner shall institute any and all actions and proceedings as may be

necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a violation or threatened violation thereof.

SECTION 5.3.14 ~~CERTIFICATE OF SIGNIFICANCE~~ **ADMINISTRATION**
The Commission may from time to time adopt such rules and regulations as are necessary to administer the terms of this bylaw. ~~There is hereby established a filing fee for a Certificate of Significance.~~ The amount of the fee **for costs associated with the administration of this bylaw** shall be established, and may be amended from time to time, by the Board of Selectmen.

SECTION 5.3.15 NON-COMPLIANCE
Anyone who demolishes a **S**ignificant **B**uilding except pursuant to court order without complying fully with the provisions of this by-law shall be subject to a fine not to exceed $300. Each day from the date of the commencement of demolition to the final determination by **a** court of competent jurisdiction shall constitute a separate offense. In addition, no building permit may be issued for such premises while such court action is pending, or ~~after~~ **within two years of** a judicial determination that there has been a violation of this by-law. Notwithstanding the foregoing, a building permit may be issued ~~two years after the completion of such demolition of a significant building, and a building permit may be issued~~ at any time for new construction **that** ~~which~~ would **faithfully** replicate the exterior of the demolished **S**ignificant **Building** ~~structure~~, ~~including but not limited to~~ **Such replication shall be subject to prior review and approval by the Commission, whose review shall consider** use of materials, design, dimensions, massing, arrangement of architectural features, ~~and~~ execution of decorative details, **and other relevant factors**. As used herein, premises refers to the parcel of land upon which the demolished building was located and all abutting parcels of land under common ownership or control on or subsequent to the date **that** this by-law was ~~voted~~ **adopted** by Town Meeting.

SECTION 5.3.16 HISTORIC DISTRICTS
If any of the provisions of this by-law shall conflict with the Historic Districts Act, MG.L. Ch. 40C, the state statute shall prevail.

SECTION 5.3.17 VALIDITY
The invalidity of any section or provision of this by-law shall not render invalid any other section or provision of this by-law.

XXX

ARTICLE 19

CORRECTED MOTION OF THE ADVISORY COMMITTEE

Moved under Article 19 that Article 5.3 of the Town's Bylaws be amended as follows: (Additions and newly capitalized letters are **bold face and underlined**; deletions are ~~stricken thru~~)

ARTICLE 5.3
DEMOLITION **DELAY** BY-LAW

SECTION 5.3.1 INTENT AND PURPOSE
This by-law is adopted to preserve and protect **S**ignificant **B**uildings within the Town which reflect distinctive features of the architectural, cultural, political, economic or social history of the Town and/or Commonwealth; to encourage property owners of **S**ignificant **B**uildings to seek ways to preserve, rehabilitate or restore such buildings rather than demolish them; and by furthering these purposes, to preserve the resources of the Town and promote the public welfare. To achieve these purposes, the Brookline Preservation Commission ~~is empowered to direct~~ **and** the Building Commissioner **are empowered** with respect to the issuance of demolition permits as provided in this by-law.

SECTION 5.3.2 DEFINITIONS
The following terms when used in this by-law, shall have the meanings set forth below, unless the context otherwise requires:

a. "Applicant"- any person or entity who files an Application for a Demolition Permit.

~~f.~~ **b**. "Application" - an **A**pplication to the Building Department for a demolition permit.

~~a.~~ **c.** "Building" - any combination of materials having a roof and permanent foundation and forming a shelter for persons, animals or property.

d. "Building Commissioner" - the person occupying the office of Building Commissioner or otherwise authorized to issue Demolition Permits.

~~i.~~ **e.** "Business Day" - a day which is not a legal municipal holiday, Saturday or Sunday.

~~c.~~ **f.** "Commission"- the Brookline Preservation Commission or its successor.

~~d.~~ **g.** "Commission **S**taff" - the persons(s) regularly providing staff services for the Commission whom the Commission has designated Commission **S**taff for the purposes of

this by-law.

h. "Demolition" – **(a)** the act of pulling down, destroying, removing or razing a **B**uilding **or a significant portion thereof, by removing one side of the building, or removing the roof, or removing 25% of the structure; (ii) moving a Building from its site with no permitted new location for said Building; (iii) in the case of a Building within Section 5.3.5(b), substantially gutting (as defined by the Preservation Commission per section 5.3.14) an interior space that has generally been open to the public and is integral to the historic character of the building; (iv) in the case of a building within Section 5.3.5(b), the systematic removal, effacement, or destruction of the exterior architectural elements which define or contribute to the historic character of the Building,** or **(v)** commencing **any of** the **foregoing** work ~~of total or substantial destruction~~**,. "Demolition" as used herein shall be deemed to include Demolition by Neglect.**

i. "Demolition by Neglect" - a process of ongoing damage to the fabric, viability and/or functionability of a building leading towards and/or causing its eventual demolition due to decay and/or structural failure and/or severe degradation over a period of time as a result of a general lack of maintenance, and/or failure to secure the building from pests or vandals, and/or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls, or apertures.

~~g.~~ **j. "Demolition** Permit" - a **building** permit issued by the Building Commissioner **allowing** ~~for~~ the **total or partial** demolition of a building pursuant to an **A**pplication.

~~e.~~ **k.** "Initial **D**etermination" - any determination contemplated in Section 5.3.5 of this by-law made by the Commission or its staff.

~~j.~~ **l.** "**Local** Historic District" - Cottage Farm **Local** Historic District, Pill Hill **Local** Historic District, **Graffam McKay Local Historic District, Chestnut Hill North Local Historic District, Harvard Avenue Local Historic District** or any other historic district which from time to time may be established under M.G.L. Ch. 40C.

m. "Mitigation" – actions taken to partially compensate for the demolition of a Significant Building, including without limitation: removal of the building to a new location; offering the building for removal to a new location; monetary support for same; incorporation of part or all of the building into a new building; submitting any replacement building to design review by the Commission; and recordation and visual documentation of the existing building.

~~b.~~ **n.** "Significant Building" - any **existing** building, **including without limitation any interior space that has generally been open to the public and is integral to the historic character of the building,** within the Town which the Commission determines, as provided in Section 5.3.5 and 5.3.8 of this by-law, to be in the public interest to be

preserved or rehabilitated, and whose demolition would be detrimental to the historical and/or architectural heritage and resources of the Town **or in the case of a building that has been demolished without a Demolition Permit any building which the Commission determines in a public hearing would have met said criteria.**

SECTION 5.3.3 PROCEDURE
General - No permit for the demolition of a building shall be issued other than in conformity with the provisions of this by-law, notwithstanding the provision of other codes and by-laws applicable to demolition of buildings and permits issued therefore, **except with respect to buildings in Local Historic Districts for which MGL 40c and section 5.6 the Town's by-laws shall take precedence, where applicable.**

SECTION 5.3.4 APPLICATION
a. An **A**pplication to the Building Department for a **D**emolition **P**ermit shall be made or co-signed by the owner of record at the time of **A**pplication **and shall contain or be accompanied by the following information, without which it shall not be deemed complete:**

i. The address of the building to be demolished.
ii. The owner's name, address and telephone number.
iii. A description of the type of building.
iv. The scope of the proposed demolition.

b. A separate Application shall be made for each building on the property.

~~B~~ **c**. The Applicant shall deliver a copy of said Application to the Commission, and the submission of said copy shall be a precondition to completing an Application for a Demolition Permit to the Building Department**.**

SECTION 5.3.5 INITIAL DETERMINATION
Within ten **B**usiness **D**ays of the receipt of the **A**pplication by the Commission, the Commission **S**taff **in consultation with the Chair of the Commission,** shall make an **I**nitial **D**etermination as to whether the building falls into one or more of the categories listed as **(**a**) through (d)** of this section, and shall notify in writing the Commission, the Building Commissioner, Town Clerk, Planning Director ~~and~~ the owner of record as indicated on the **A**pplication **and the Applicant if different from owner of record,** of its initial determination. The categories shall be as follows:

a. The building is located within any **L**ocal **H**istoric **D**istrict;

b. The building is listed on or is within an area listed on the National or State Registers of Historic Places; is eligible for listing on the National or State Registers of historic places; or is a building for which a preliminary determination of eligibility has been made by the Massachusetts Historical Commission ~~or~~;

c. The building is associated with one or more significant historic persons or events, or

with the broad architectural, cultural, political, economic, or social history of the Town or Commonwealth; or

d. The building is historically or architecturally significant in terms of its period, style, method of building construction, or its association with a significant architect or builder, either by itself or as part of a group of buildings.

SECTION 5.3.6 WITHHOLDING OF DEMOLITION PERMIT
The Building Commissioner shall ~~withhold~~ **not issue** a **D**emolition **P**ermit until the procedural requirements of Sections 5.3.3 through 5.3.12, inclusive, have been satisfied unless:

a. The Building Commissioner receives written notice from the Commission **S**taff that the building does not fall into one or more of the categories in Section 5.3.5;

b. The Building Commissioner fails to receive written notice from the Commission **S**taff of its **I**nitial **D**etermination required by Section 5.3.5 within the specified time period; ~~or~~

c. The Building Commissioner receives written notice from the Commission **S**taff that while the building falls into one or more of the categories in Section 5.3.5, the building clearly could not be deemed significant by the Commission~~.~~ **or;**

d. The Building Commissioner receives written notice from the Commission Staff that the proposed work is not Demolition as defined by Section 5.3.2(h).

SECTION 5.3.7 PUBLIC HEARINGS
Within 20 **B**usiness **D**ays of an **I**nitial **D**etermination ~~by the Commission Staff~~ that the building falls into one or more of the categories in Section 5.3.5, the Commission shall review the **A**pplication and **I**nitial **D**etermination, **without reference to any proposed replacement use or design,** at a public hearing with notice given as provided in Section 5.3.12 to determine whether the building is significant as defined in Section 5.3.2.

SECTION 5.3.8 FINAL DETERMINATION
If the Commission determines after a public hearing that a building is **a S**ignificant **Building** it shall notify the Building Commissioner, Town Clerk, Planning Director, ~~and~~ the owner of record as indicated on the **A**pplication, **and the Applicant if different from owner of record,** of its final determination within 15 **B**usiness **D**ays from the date of the public hearing.

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT
The Building Commissioner shall withhold the Demolition Permit for a period of one year**, or for a period of eighteen months if** ~~from the date upon which the final determination that~~ the building **meets the criteria of Section 5.3.5(b)** ~~is~~**, from the date upon which the final determination** ~~significant~~ was made **that a building is a Significant Building** except as provided in Section 5.3.11.

SECTION 5.3.10 ALTERNATIVES TO DEMOLITION **AND MITIGATION**
If the Commission makes a final determination that the building is **S**ignificant, the Commission chairman and staff shall invite the owner of record of the building, the Building Commissioner, and the Planning Director to participate in an investigation of alternatives to demolition including but not limited to incorporation of the building into the future development of the site; adaptive reuse of the building; utilization of financial incentives to rehabilitate the building; seeking a new owner willing to purchase and preserve, restore or rehabilitate the building; or moving the building**.**

SECTION 5.3.11 EXCEPTIONS TO WITHHOLDING OF DEMOLITION PERMIT / EMERGENCY DEMOLITION
a. Notwithstanding the provisions of Section 5.3.9, the Building Commissioner may issue a **D**emolition **P**ermit for a **S**ignificant **B**uilding at any time after receipt of written advice from the Commission to the effect that the Commission is satisfied that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved**, the issuance of said permit being subject to such stipulations, if any, as the Commission and the Applicant may have agreed upon as Mitigation for said demolition.**

b. Nothing in this by-law shall restrict the Building Commissioner from immediately ordering the demolition of any building in the event of imminent danger to the public's safety or health due to deteriorated conditions. **Prior to such demolition** the structure shall be inspected by the Building Commissioner, and findings and reasons for immediate demolition shall be recorded in a written report, a copy of which shall be forwarded promptly to the Commission.

SECTION 5.3.12 NOTICE
Notice of any public hearing required by this by-law shall be given by the Commission to the owner of record; the **A**pplicant for the demolition permit (if different from the owner of record); the immediate abutters to the subject property, the owners of land directly opposite on any public or private street, and abutters to the abutters within three hundred feet of the property line of the subject property as they appear on the most recent applicable tax list; to each elected Town Meeting member for the precinct in which the subject property is located; the Building Commissioner; Town Clerk; Planning Director; and to such other persons as the Commission may determine. The Commission may among other forms of notice require that the **A**pplicant maintain on the subject building a notice, in a form designated by the Commission visible from the nearest public way, of any hearing upon the subject matter of such **A**pplication.

SECTION 5.3.13 ENFORCEMENT
The Building Commissioner shall institute any and all actions and proceedings as may be necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a violation or threatened violation thereof.

SECTION 5.3.14 ~~CERTIFICATE OF SIGNIFICANCE~~ **ADMINISTRATION**
The Commission may from time to time adopt such rules and regulations as are necessary to administer the terms of this bylaw. ~~There is hereby established a filing fee for a Certificate of Significance.~~ The amount of the fee **for costs associated with the administration of this bylaw** shall be established, and may be amended from time to time, by the Board of Selectmen.

SECTION 5.3.15 NON-COMPLIANCE
Anyone who demolishes a **S**ignificant **B**uilding except pursuant to court order without complying fully with the provisions of this by-law shall be subject to a fine not to exceed $300. Each day from the date of the commencement of demolition to the final determination by **a** court of competent jurisdiction shall constitute a separate offense. In addition, no building permit may be issued for such premises while such court action is pending, or ~~after~~ **within two years of** a judicial determination that there has been a violation of this by-law. Notwithstanding the foregoing, a building permit may be issued ~~two years after the completion of such demolition of a significant building, and a building permit may be issued~~ at any time for new construction **that** ~~which~~ would **faithfully** replicate the exterior of the demolished **S**ignificant **Building** ~~structure~~, ~~including but not limited to~~ **Such replication shall be subject to prior review and approval by the Commission, whose review shall consider** use of materials, design, dimensions, massing, arrangement of architectural features, ~~and~~ execution of decorative details, **and other relevant factors**. As used herein, premises refers to the parcel of land upon which the demolished building was located and all abutting parcels of land under common ownership or control on or subsequent to the date **that** this by-law was ~~voted~~ **adopted** by Town Meeting.

SECTION 5.3.16 HISTORIC DISTRICTS
If any of the provisions of this by-law shall conflict with the Historic Districts Act, MG.L. Ch. 40C, the state statute shall prevail.

SECTION 5.3.17 VALIDITY
The invalidity of any section or provision of this by-law shall not render invalid any other section or provision of this by-law.

XXX

ARTICLE 19

REVISED -- CORRECTED MOTION OF THE ADVISORY COMMITTEE

Moved under Article 19 that Article 5.3 of the Town's Bylaws be amended as follows: (additions and newly capitalized letters are **bold face and underlined**; deletions are ~~stricken thru~~.):

ARTICLE 5.3
DEMOLITION **DELAY** BY-LAW

SECTION 5.3.1 INTENT AND PURPOSE
This by-law is adopted to preserve and protect **S**ignificant **B**uildings within the Town which reflect distinctive features of the architectural, cultural, political, economic or social history of the Town and/or Commonwealth; to encourage property owners of **S**ignificant **B**uildings to seek ways to preserve, rehabilitate or restore such buildings rather than demolish them; and by furthering these purposes, to preserve the resources of the Town and promote the public welfare. To achieve these purposes, the Brookline Preservation Commission ~~is empowered to direct~~ **and** the Building Commissioner **are empowered** with respect to the issuance of demolition permits as provided in this by-law.

SECTION 5.3.2 DEFINITIONS
The following terms when used in this by-law, shall have the meanings set forth below, unless the context otherwise requires:

a. "Applicant"- any person or entity who files an Application for a Demolition Permit.

~~f.~~ **b**. "Application" - an **A**pplication to the Building Department for a demolition permit.

~~a.~~ **c.** "Building" - any combination of materials having a roof and permanent foundation and forming a shelter for persons, animals or property.

d. "Building Commissioner" - the person occupying the office of Building Commissioner or otherwise authorized to issue Demolition Permits.

~~i.~~ **e.** "Business Day" - a day which is not a legal municipal holiday, Saturday or Sunday.

~~c.~~ **f.** "Commission"- the Brookline Preservation Commission or its successor.

~~d.~~ **g.** "Commission **S**taff" - the persons(s) regularly providing staff services for the Commission whom the Commission has designated Commission **S**taff for the purposes of

this by-law.

h. "Demolition" – **(a)** the act of pulling down, destroying, removing or razing a **B**uilding **or a significant portion thereof, by removing one side of the building, or removing the roof, or removing 25% of the structure; (ii) moving a Building from its site with no permitted new location for said Building; (iii) in the case of a Building within Section 5.3.5(b), substantially gutting (as defined by the Preservation Commission per section 5.3.14) an interior space that has generally been open to the public and is integral to the historic character of the building; (iv) in the case of a building within Section 5.3.5(b), the systematic removal, effacement, or destruction of the exterior architectural elements which define or contribute to the historic character of the Building,** or **(v)** commencing **any of** the **foregoing** work ~~of total or substantial destruction,~~**. "Demolition" as used herein shall be deemed to include Demolition by Neglect.**

i. "Demolition by Neglect" - a process of ongoing damage to the fabric, viability and/or functionability of a building leading towards and/or causing its eventual demolition due to decay and/or structural failure and/or severe degradation over a period of time as a result of a general lack of maintenance, and/or failure to secure the building from pests or vandals, and/or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls, or apertures.

~~g.~~ **j. "Demolition** Permit" - a **building** permit issued by the Building Commissioner **allowing** ~~for~~ the **total or partial** demolition of a building pursuant to an **A**pplication.

~~e.~~ **k.** "Initial **D**etermination" - any determination contemplated in Section 5.3.5 of this by-law made by the Commission or its staff.

~~j.~~ **l.** "**Local** Historic District" - Cottage Farm **Local** Historic District, Pill Hill **Local** Historic District, **Graffam McKay Local Historic District, Chestnut Hill North Local Historic District, Harvard Avenue Local Historic District** or any other historic district which from time to time may be established under M.G.L. Ch. 40C.

m. "Mitigation" – actions taken to partially compensate for the demolition of a Significant Building, including without limitation: removal of the building to a new location; offering the building for removal to a new location; monetary support for same; incorporation of part or all of the building into a new building; submitting any replacement building to design review by the Commission; and recordation and visual documentation of the existing building.

~~b.~~ **n.** "Significant Building" - any **existing** building, **including without limitation any interior space that has generally been open to the public and is integral to the historic character of the building,** within the Town which the Commission determines, as provided in Section 5.3.5 and 5.3.8 of this by-law, to be in the public interest to be

preserved or rehabilitated, and whose demolition would be detrimental to the historical and/or architectural heritage and resources of the Town **or in the case of a building that has been demolished without a Demolition Permit any building which the Commission determines in a public hearing would have met said criteria.**

SECTION 5.3.3 PROCEDURE
General - No permit for the demolition of a building shall be issued other than in conformity with the provisions of this by-law, notwithstanding the provision of other codes and by-laws applicable to demolition of buildings and permits issued therefore, **except with respect to buildings in Local Historic Districts for which MGL 40c and section 5.6 the Town's by-laws shall take precedence, where applicable.**

SECTION 5.3.4 APPLICATION
a. An **A**pplication to the Building Department for a **D**emolition **P**ermit shall be made or co-signed by the owner of record at the time of **A**pplication **and shall contain or be accompanied by the following information, without which it shall not be deemed complete:**

i. The address of the building to be demolished.
ii. The owner's name, address and telephone number.
iii. A description of the type of building.
iv. The scope of the proposed demolition.

b. A separate Application shall be made for each building on the property.

~~B~~ **c**. The Applicant shall deliver a copy of said Application to the Commission, and the submission of said copy shall be a precondition to completing an Application for a Demolition Permit to the Building Department**.**

SECTION 5.3.5 INITIAL DETERMINATION
Within ten **B**usiness **D**ays of the receipt of the **A**pplication by the Commission, the Commission **S**taff **in consultation with the Chair of the Commission,** shall make an **I**nitial **D**etermination as to whether the building falls into one or more of the categories listed as **(**a**) through (d)** of this section, and shall notify in writing the Commission, the Building Commissioner, Town Clerk, Planning Director ~~and~~ the owner of record as indicated on the **A**pplication **and the Applicant if different from owner of record,** of its initial determination. The categories shall be as follows:

a. The building is located within any **L**ocal **H**istoric **D**istrict;

b. The building is listed on or is within an area listed on the National or State Registers of Historic Places; is eligible for listing on the National or State Registers of historic places; or is a building for which a preliminary determination of eligibility has been made by the Massachusetts Historical Commission ~~or~~;

c. The building is associated with one or more significant historic persons or events, or

with the broad architectural, cultural, political, economic, or social history of the Town or Commonwealth; or

d. The building is historically or architecturally significant in terms of its period, style, method of building construction, or its association with a significant architect or builder, either by itself or as part of a group of buildings.

SECTION 5.3.6 WITHHOLDING OF DEMOLITION PERMIT
The Building Commissioner shall ~~withhold~~ **not issue** a **D**emolition **P**ermit until the procedural requirements of Sections 5.3.3 through 5.3.12, inclusive, have been satisfied unless:

a. The Building Commissioner receives written notice from the Commission **S**taff that the building does not fall into one or more of the categories in Section 5.3.5;

b. The Building Commissioner fails to receive written notice from the Commission **S**taff of its **I**nitial **D**etermination required by Section 5.3.5 within the specified time period; ~~or~~

c. The Building Commissioner receives written notice from the Commission **S**taff that while the building falls into one or more of the categories in Section 5.3.5, the building clearly could not be deemed significant by the Commission~~.~~ **or;**

d. The Building Commissioner receives written notice from the Commission Staff that the proposed work is not Demolition as defined by Section 5.3.2(h).

SECTION 5.3.7 PUBLIC HEARINGS
Within 20 **B**usiness **D**ays of an **I**nitial **D**etermination ~~by the Commission Staff~~ that the building falls into one or more of the categories in Section 5.3.5, the Commission shall review the **A**pplication and **I**nitial **D**etermination, **without reference to any proposed replacement use or design,** at a public hearing with notice given as provided in Section 5.3.12 to determine whether the building is significant as defined in Section 5.3.2.

SECTION 5.3.8 FINAL DETERMINATION
If the Commission determines after a public hearing that a building is **a S**ignificant **Building** it shall notify the Building Commissioner, Town Clerk, Planning Director, ~~and~~ the owner of record as indicated on the **A**pplication, **and the Applicant if different from owner of record,** of its final determination within 15 **B**usiness **D**ays from the date of the public hearing.

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT
The Building Commissioner shall withhold the Demolition Permit for a period of one year**, or for a period of eighteen months if** ~~from the date upon which the final determination that~~ the building **meets the criteria of Section 5.3.5(b)** ~~is~~**, from the date upon which the final determination** ~~significant~~ was made **that a building is a Significant Building** except as provided in Section 5.3.11.

SECTION 5.3.10 ALTERNATIVES TO DEMOLITION **AND MITIGATION**
If the Commission makes a final determination that the building is **S**ignificant, the Commission chairman and staff shall invite the owner of record of the building, the Building Commissioner, and the Planning Director to participate in an investigation of alternatives to demolition including but not limited to incorporation of the building into the future development of the site; adaptive reuse of the building; utilization of financial incentives to rehabilitate the building; seeking a new owner willing to purchase and preserve, restore or rehabilitate the building; or moving the building**.**

SECTION 5.3.11 EXCEPTIONS TO WITHHOLDING OF DEMOLITION PERMIT / EMERGENCY DEMOLITION
a. Notwithstanding the provisions of Section 5.3.9, the Building Commissioner may issue a **D**emolition **P**ermit for a **S**ignificant **B**uilding at any time after receipt of written advice from the Commission to the effect that the Commission is satisfied that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved**, the issuance of said permit being subject to such stipulations, if any, as the Commission and the Applicant may have agreed upon as Mitigation for said demolition.**

b. Nothing in this by-law shall restrict the Building Commissioner from immediately ordering the demolition of any building in the event of imminent danger to the public's safety or health due to deteriorated conditions. **Prior to such demolition** the structure shall be inspected by the Building Commissioner, and findings and reasons for immediate demolition shall be recorded in a written report, a copy of which shall be forwarded promptly to the Commission.

SECTION 5.3.12 NOTICE
Notice of any public hearing required by this by-law shall be given by the Commission to the owner of record; the **A**pplicant for the demolition permit (if different from the owner of record); the immediate abutters to the subject property, the owners of land directly opposite on any public or private street, and abutters to the abutters within three hundred feet of the property line of the subject property as they appear on the most recent applicable tax list; to each elected Town Meeting member for the precinct in which the subject property is located; the Building Commissioner; Town Clerk; Planning Director; and to such other persons as the Commission may determine. The Commission may among other forms of notice require that the **A**pplicant maintain on the subject building a notice, in a form designated by the Commission visible from the nearest public way, of any hearing upon the subject matter of such **A**pplication.

SECTION 5.3.13 ENFORCEMENT
The Building Commissioner shall institute any and all actions and proceedings as may be necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a violation or threatened violation thereof.

SECTION 5.3.14 ~~CERTIFICATE OF SIGNIFICANCE~~ **ADMINISTRATION**
The Commission may from time to time adopt such rules and regulations as are necessary to administer the terms of this bylaw. ~~There is hereby established a filing fee for a Certificate of Significance.~~ The amount of the fee **for costs associated with the administration of this bylaw** shall be established, and may be amended from time to time, by the Board of Selectmen.

SECTION 5.3.15 NON-COMPLIANCE
Anyone who demolishes a **S**ignificant **B**uilding except pursuant to court order without complying fully with the provisions of this by-law shall be subject to a fine not to exceed $300. Each day from the date of the commencement of demolition to the final determination by **a** court of competent jurisdiction shall constitute a separate offense. In addition, no building permit may be issued for such premises while such court action is pending, or ~~after~~ **within two years of** a judicial determination that there has been a violation of this by-law. Notwithstanding the foregoing, a building permit may be issued ~~two years after the completion of such demolition of a significant building, and a building permit may be issued~~ at any time for new construction **that** ~~which~~ would **faithfully** replicate the exterior of the demolished **S**ignificant **Building** ~~structure~~, ~~including but not limited to~~ **Such replication shall be subject to prior review and approval by the Commission, whose review shall consider** use of materials, design, dimensions, massing, arrangement of architectural features, ~~and~~ execution of decorative details, **and other relevant factors**. As used herein, premises refers to the parcel of land upon which the demolished building was located and all abutting parcels of land under common ownership or control on or subsequent to the date **that** this by-law was ~~voted~~ **adopted** by Town Meeting.

SECTION 5.3.16 HISTORIC DISTRICTS
If any of the provisions of this by-law shall conflict with the Historic Districts Act, MG.L. Ch. 40C, the state statute shall prevail.

SECTION 5.3.17 VALIDITY
The invalidity of any section or provision of this by-law shall not render invalid any other section or provision of this by-law.

ARTICLE 20

TWENTIETH ARTICLE

To see of the Town will amend the General By-Laws by deleting Article 8.5.9 Defacing Property and replacing it with the following:

Article 8.5.9 Defacing Property and Graffiti

8.5.9.1 DEFINITIONS

(a) **Graffiti** means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the Town.

(b) **Graffiti implement** means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

8.5.9.2 PROHIBITED CONTACT

(a) Defacement. It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any town-owned property or, without the permission of the owner or occupant, on any non-town-owned property.

(b) Possession of Graffiti Implements.

1. By Minors at or Near School Facilities. It shall be unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on any school property, grounds, facilities, buildings, or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property. The provisions of this Section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers. The burden of proof in any prosecution for violation of this Section shall be upon the minor student to establish the need to possess a broad-tipped marker.
2. In Designated Public Places. It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by the Town or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the Town.

8.5.9.3 PENALTY

Any person violating this Bylaw shall be punished by a fine of three hundred dollars ($300.00) for each offense.

8.5.9.4 GRAFFITI AS A NUISANCE

(a) Existence of Graffiti. The existence of graffiti on public or private property in violation of this Bylaw is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Bylaw.

(b) Removal of Graffiti

1. Removal by the Perpetrator. Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the Town or private owner of the property involved. Such removal shall be done in a manner prescribed by the Chief of Police, the Director of the Department of Public Works, or any additional Town department head, as authorized by the Board of Selectmen. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this Bylaw. Where graffiti is applied by an unemancipated minor, the parents or legal guardian shall also be responsible for such removal or for the payment for the removal.
2. Removal by Town: Public Property. If graffiti found on public property is not removed by the perpetrator according to the Section above, the Town shall remove or otherwise remediate this graffiti.
3. Removal by Town: Private Property. When graffiti is found on private property, the property owner shall be served with a notice by first class mail containing the following information:
    a. The street address and legal description of the property sufficient for identification of the property;
    b. A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;
    c. A waiver authorizing the Town to remove the graffiti;
    d. A statement that the property owner may choose to either sign and return the waiver within ten (10) days following receipt of the notice; or remove the graffiti within ten (10) days following receipt of the notice.

If the signed waiver is not received within ten (10) days, the Town may commence removal pursuant to the following provisions.

8.5.9.5 RIGHT OF THE TOWN TO REMOVE

(a) Use of Public Funds. Whenever the Town becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable

from a public or quasi-public place, the Town shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the Town Administrator, or the designee of the Town Administrator, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

(b) Right of Entry on Private Property. Prior to entering upon private property or property owned by a public entity other than the Town for the purpose of graffiti removal the Town shall attempt to secure the consent of the property owner or responsible party and a release of the Town from liability for property damage or personal injury. If the Town has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the Town and consistent with the terms of this Section, the Town shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.

8.5.9.6 ABATEMENT AND COST RECOVERY PROCEEDINGS

(a) Notice of Due Process Hearing. The Town Administrator, or the designee of the Town Administrator, serving as the Hearing Officer, shall provide the property owner of record and the party responsible for the maintenance of the property, if a person different from the owner, not less than forty-eight (48) hours notice of the Town's intent to hold a due process hearing at which the property owner or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance. Notice shall be served in the same manner as a summons in a civil action. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in the area in which the property is located.

(b) Determination of Hearing Officer. The determination of the Hearing Officer after the due process hearing shall be final and not appealable. If, after the due process hearing, regardless of the attendance of the Owner or the responsible party or their respective agents, the Hearing Officer determines that the property contains graffiti viewable from a public or quasi-public place, the Hearing Officer shall give written notice in an eradication order that, unless the graffiti is removed within ten (10) days, the Town shall enter upon the property, cause the removal, painting over (in such color as shall meet with the approval of the Hearing Officer), or such other eradication thereof as the Hearing Officer determines appropriate, and shall provide the Owner and the responsible party thereafter with an accounting of the costs of the eradication effort on a full cost recovery basis.

(c) Eradication Effort. Not sooner than the time specified in the order of the Hearing Officer, the Town Administrator, or the designee of the Town Administrator, shall

implement the eradication order and shall provide an accounting to the Owner and the responsible party of the costs thereof.

1. Cost Hearing. The Owner or responsible party may request a cost hearing before the Hearing Officer on the eradication accounting, and appropriate due process must be extended to the Owner or responsible party. If following the cost hearing or, if no hearing is requested, after the implementation of the eradication order, the Hearing Officer determines that all or a portion of the costs are appropriately chargeable to the eradication effort, the total amount set forth in the eradication accounting, or an amount thereof determined as appropriate by the Hearing Officer, shall be due and payable by the Owner or responsible party within thirty (30) days.
2. Lien. As to such property where the responsible party is the property owner, if all or any portion of the assessed eradication charges remain unpaid after thirty (30) days, the portion thereof that remains unpaid shall constitute a lien on the property that was the subject of the eradication effort.

or act on anything relative thereto.

This article:

- Specifies penalties for defacing property with graffiti
- Specifies penalties for possessing graffiti implements (e.g. aerosol paints, markers, etc.)
- Permits the Town to remove graffiti found on private property, with the owner's consent, at no cost to the owner
- Requires property owners to either consent to Town removal of graffiti or to independently remove graffiti. Failure to do so within 10 days then allows the Town to remove the graffiti and charge all associated costs to the property owner.

The cities of Boston and Cambridge both remove graffiti from private property with the consent of the property owner. Numerous other communities across the U.S. also do so, including Providence, Rhode Island; Concord, California; St. Louis, Missouri; Fullerton, California; and Washington, DC.

The text for this article was developed from example legislation developed by The National Council to Prevent Delinquency as part of the Anti-Graffiti Project.

Over 30 examples of graffiti were discovered along the eight blocks of Pleasant Street on one weekend in late August 2006 as this article was being prepared. While the majority of these incidents were on public property including a light pole, "No Parking" signs, mail boxes, and a police call box, a few incidents were on private property including fencing at a single family home, fencing at a two-family home, the brick walls of a condominium building, and sides or fronts of 4 different retail establishments. At the same time, other graffiti was noted on a Brookline Housing Authority facility, the exterior of a restaurant in Washington Square, and on a traffic control device in Brookline Village.

Graffiti Hurts, a Keep America Beautiful program, states that "Immediate removal – within 24-48 hours – is the key to successful graffiti prevention." Unfortunately for Brookline, much of this graffiti, particularly that on private property, has been in place for over three months which, according to Graffiti Hurts, makes it 20 times more likely to reoccur. This article assists the private property owner and empowers the town to eradicate graffiti quickly and decrease the likelihood it will return.

According to a 2002 U.S. Department of Justice publication, "Graffiti contributes to lost revenue associated with reduced ridership on transit systems, reduced retail sales and declines in property value. In addition, graffiti generates the perception of blight and heightens fear of gang activity." Graffiti Hurts adds that "The appearance of graffiti is often perceived by residents and passers-by as a sign that a downward spiral has begun, even though this may not be true."

SELECTMEN'S RECOMMENDATION

Articles 20 and 21 are petitioned articles that propose major changes to the Town's Graffiti by-law. As the petitioner has correctly pointed out, Brookline is not void of graffiti and suffers from defaced properties such as light poles, street signs, mailboxes, and even private properties. With its urban/suburban composition, Brookline faces the same challenge as other urban areas in terms of fighting graffiti. Graffiti is not welcome in Brookline, as it detracts from the town's appearance and tarnishes its image. Left unchecked, graffiti could transform the community into a far less desirable place.

The Town's graffiti removal efforts are coordinated by the Department of Public Works (DPW). In addition, the Police Department, together with the Brookline Court, coordinates a graffiti removal program within the Town. Young persons who are involved with the Brookline Court may be given community service hours as part of the disposition of their court case. When this occurs, these youths are assigned to work under the supervision of a police officer who is responsible for ensuring the youths complete their required amount of community service hours. These youths have been assigned to remove graffiti from public areas in the Town and have also removed graffiti from Post Office properties throughout the Town. The Town and/or the Post Office will provide the materials for these youths to use while the youths do the required labor.

While the Board clearly agrees with the petitioner that this is an important issue that should be addressed, there are some proposed remedies that are of concern. For example, should anyone under the age of 18 be arrested for being in possession of a broad-tipped marker? Or should the Town Administrator be made a hearings officer to settle graffiti disputes? That is why we strongly support the formation of a committee to look at current graffiti eradication procedures and to develop ways to improve them, including amendments to by-laws, if deemed necessary.

We applaud the petitioner for bringing this back to the agenda. As a result, at its October 17 meeting, the Selectmen voted to form a committee consisting of the following people:

Selectmen Merrill
Police Chief and/or designee
Commissioner and/or designee
Building Commissioner
Commercial Areas Coordinator
Recreation Director
Housing Authority Executive Director
Town Counsel or designee
Director of Health and Human Services or designee
3 residents

The Selectmen have asked the committee to report to the Board by no later than March 1, 2007 so any warrant articles that might be required could be filed in time for the 2007 Annual Town Meeting. By a vote of 5-0, the board recommends FAVORABLE ACTION on the following vote:

VOTED: To refer Articles 20 and 21 to the Selectmen's Committee on Graffiti. Said Committee shall review the Town's current graffiti removal procedures and recommend potential amendments to the Town's By-Laws, if necessary, and report back to the Selectmen prior to March 1, 2007.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Graffiti's history is as old as mankind. It has appeared in ancient caves, on the walls of Pompeii, uncountable public transit vehicles, and here in Brookline. While it is, in its place, a meaningful form of expression, the concern addressed by this warrant article is graffiti as vandalism and visual blight.

The article's petitioner and his neighbors noticed an increase in the amount of unsightly graffiti in their neighborhood and adjacent areas. It appeared on a considerable number of public items (signs, mailboxes, fire hydrants) along Pleasant Street and elsewhere. A proliferation of graffiti was also documented in commercial areas such as JFK Crossing and Brookline Village. From the petitioner's viewpoint there appeared to be a somewhat limited (or not overly effective) response to graffiti on public property, and an indifferent (seemingly no) response to graffiti appearing on private properties in the commercial areas.

The petitioner's concern is that a timely, effective and credible response to the graffiti issue is lacking, particularly as addressed in the Town By-Laws. Our current by-laws treat graffiti as vandalism, without specifying graffiti as its own offense. The portion of

the current by-law that addresses graffiti and vandalism (defacement of property) is rather succinct:

SECTION 8. 5. 9 DEFACING PROPERTY

No person shall deface by marks, or otherwise, in any manner, any fence, building, sidewalk, crosswalk, or ledge.

The petitioner of Article 20 is offering a new section for the Town By-Laws that would specifically address graffiti. The proposed by-law contains a number of new and significant provisions. Among these are:

- A definition of graffiti that includes unauthorized inscription or defacement with, among other things, paint, marker or labels.

- A definition of "Graffiti Implement" that includes, among other things, paint, markers, labels or brushes.

- Outlaws possession of "Graffiti Implements" by minors on public property or adjacent private property (without prior written consent of private property owner). It also would outlaw the possession of "Graffiti Implements" by *anyone* on public property or "within fifty feet of an underpass, bridge abutment, storm drain …". There is a provision allowing students to possess a broad-tipped marker while in transit to a class that has formally required such a tool.

- Sets a fine of $300 per offense.

- Defines graffiti as a nuisance and assigns specific responsibilities for its removal.

- Requires graffiti removal be done by the perpetrator within 24 hours.

- If the perpetrator is not known, the Town will remove graffiti from public property and property owners have ten days to remove graffiti from private properties.

- If a property owner fails to remove graffiti within ten days of having been notified by the Town, the Town may enter upon the property to commence abatement and charge the property owner. [If the owner permits the Town access and signs a release, the cost will be borne by the Town.]

- An *unappealable* Due Process Hearing would be conducted by the Town Administrator (or designee) prior to assessing a property owner. A lien may be placed against the property for charges not paid within thirty days.

This is a lot to script into a by-law, and requires a very deliberative approach that considers the ramifications socially, financially and legally.

DISCUSSION

The petitioner has put considerable thought and effort into this article and offers some constructive approaches to grappling with this issue. Much of the proposed legislation is modeled after recommendations from various national anti-graffiti groups, as well as elements of legislation enacted in such places as New York City and Philadelphia. The detrimental effects of graffiti have been well documented, and dealing with it is not easy.

It should be noted that there are enforceable State laws governing graffiti. MGL Chapter 266 [Crimes Against Property], Section 126a states in part that malicious graffiti may be "… punished by imprisonment in a state prison for a term of not more than three years or by imprisonment in a house of correction for not more than two years or by a fine of not more than fifteen hundred dollars or not more than three times the value of the property so marked… and shall also be required to pay for the removal…". Obviously this is meant for severe instances.

The Committee heard from the petitioner, interested neighbors and Town Meeting members, Police Chief Daniel O'Leary, and Director of Youth Resources C. Stephen Bressler. All parties agreed that there is insufficient heft to the current by-laws with regard to graffiti. Also, we need a multi-faceted approach for any legislation to be truly effective. Concerns were voiced as to the scope of the proposed article, noting that the legislative reach is both wide and deep. It seeks to establish new definitions, assign costs and liabilities to both private property owners and the Town, establishes fines and creates a new Due Process procedure. This is a big bite, legislatively speaking.

One of the most effective ways to reduce the occurrence of graffiti is to be sure that it is remediated quickly. The longer graffiti remains intact, the more graffiti it attracts. This reality is a prime motivator for the provision requiring timely clean-up. The provision that allows the Town to enter upon private property to remediate graffiti damage, however, raises concerns of both expense and liability to the Town – assessments and indemnifications not withstanding.

The definition of "Graffiti Implements" (paint, markers, labels, brushes) and the prohibitions on possession raised concerns as well. There is currently a stay against the implementation of similar constraints enacted in New York City legislation. The petitioner wants there to be a way for the police to respond to someone with a can of spray paint in their hands at the scene of graffiti. It seems pretty reasonable to argue that adolescents shouldn't be free to roam around Town at 11 p.m. on a Saturday night with cans of spray paint in their hands. By the same token, however, it can be reasonably argued that prohibiting anyone from possessing a Magic Marker within fifty feet of any storm drain is a bit excessive. There is room for balance here.

Stephen Bressler noted that the fine of $300 per occurrence (a fine levied against the legal guardians of minors as well) might be a bit onerous. The Police Chief suggested that an "up to" provision in the language could provide some latitude for a Judge. Mr. Bressler and the Chief explained some of the history of graffiti in Brookline. Many years ago it developed as a result of a number of Brighton parks being closed. Youths traveled to Brookline where they "tagged" our town parks. Mr. Bressler went on to describe

various forms of graffiti such as gang-related graffiti (which does not appear to be the issue here), tagging by individuals as a way of marking one's territory (a concept appreciated by pet owners) and spontaneous destructive vandalism born by frustration, boredom or thrill seeking.

While graffiti can cause visual blight, attract more graffiti, and reduce property values; it is, also, symptomatic of other issues. Graffiti is often perpetrated by adolescents who are contending with other issues in their lives. While meaningful laws and enforcement are necessary, outreach and education in the youth community is needed as well. Both the Chief and Mr. Bressler commented on efforts made to identify and deal with offending youth. The Police Department catalogues graffiti tags and will use surveillance cameras in particular situations.

There was also discussion around the need for the business community to become engaged. It was noted that graffiti tags appeared on a number of businesses, and when no attempt was made to clean them up, more appeared. Some of this graffiti is still there. One problem may be that many businesses lease from absentee landlords. However, it is in the business community's best interest to establish policies and procedures for responding to graffiti in an expedient manner. Much of this, of course, may be accomplished outside of the prescriptive dictum of a by-law.

Graffiti is something that can quickly spin out of control unless addressed in serious and timely ways. The proposed article underscores a pressing issue for our community and offers some solutions. However, there needs to be a deliberative look at any proposed legislation - deliberation that assesses the legal and financial liabilities to the Town; that takes a thoughtful, serious and balanced look at what are reasonable abridgements of individual rights; and that properly aligns and balances both the law and its enforcement. There must also be an understanding of the importance of outreach and education.

While the Committee supports the general thrust and intent of the proposed by-law, it has reservations about a number (and the extent) of some of its provisions. It isn't clear that all provisions can stand up to legal scrutiny. The Committee would like to see some fine tuning with input from the Police Department, DPW, Town Counsel, Youth Services and the business community, to name a few. Clearly there is a growing issue in Brookline and there should be a timely response. The Board of Selectmen has established a Graffiti Committee to review and craft anti-graffiti efforts. The Advisory Committee recommends a referral of Article 20 (and its accompanying article) to that committee. We encourage the committee to act swiftly so that legislation may be available for consideration at the next annual Town Meeting, and to use it as an opportunity to engage in a large discussion and approach toward dealing with both the causes and effects of graffiti in Brookline.

RECOMMENDATION

By a unanimous vote of 14-0, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 21

TWENTY-FIRST ARTICLE

To see if the Town will amend Articles 10.2 Prosecutions and Enforcement and 10.3 Non-Criminal Disposition as follows: (Please note new language appears in bold and underlined):

10.2 Prosecutions and Enforcement

By adding **8.5.9** to the Articles listed in the Article column under the enforcement of the Building Commissioner and Commissioner of Public Works.

and

10.3 Non-Criminal Disposition

By adding under the "Table of Specific Penalties Under Article 10.3" the following:

Article 8.5.9 Defacing Property and Graffiti

Section 8.5.9.4 Penalties $300.00

or act on anything relative thereto.

This article modifies existing Town Articles 10.2 Prosecutions and Enforcement and 10.3 Non-Criminal Disposition to include Article 8.5.9 Defacing Property and Graffiti.

This change is necessary to support section 8.5.9.4 which calls for a fine of three hundred dollars ($300.00) for each offense.

SELECTMEN'S RECOMMENDATION

Articles 20 and 21 are petitioned articles that propose major changes to the Town's Graffiti by-law. As the petitioner has correctly pointed out, Brookline is not void of graffiti and suffers from defaced properties such as light poles, street signs, mailboxes, and even private properties. With its urban/suburban composition, Brookline faces the same challenge as other urban areas in terms of fighting graffiti. Graffiti is not welcome in Brookline, as it detracts from the town's appearance and tarnishes its image. Left unchecked, graffiti could transform the community into a far less desirable place.

The Town's graffiti removal efforts are coordinated by the Department of Public Works (DPW). In addition, the Police Department, together with the Brookline Court, coordinates a graffiti removal program within the Town. Young persons who are involved with the Brookline Court may be given community service hours as part of the disposition of their court case. When this occurs, these youths are assigned to work under the supervision of a police officer who is responsible for ensuring the youths complete their required amount of community service hours. These youths have been assigned to remove graffiti from public areas in the Town and have also removed graffiti from Post Office properties throughout the Town. The Town and/or the Post Office will provide the materials for these youths to use while the youths do the required labor.

While the Board clearly agrees with the petitioner that this is an important issue that should be addressed, there are some proposed remedies that are of concern. For example, should anyone under the age of 18 be arrested for being in possession of a broad-tipped marker? Or should the Town Administrator be made a hearings officer to settle graffiti disputes? That is why we strongly support the formation of a committee to look at current graffiti eradication procedures and to develop ways to improve them, including amendments to by-laws, if deemed necessary.

We applaud the petitioner for bringing this back to the agenda. As a result, at its October 17 meeting, the Selectmen voted to form a committee consisting of the following people:

Selectmen Merrill
Police Chief and/or designee
Commissioner and/or designee
Building Commissioner
Commercial Areas Coordinator
Recreation Director
Housing Authority Executive Director
Town Counsel or designee
Director of Health and Human Services or designee
3 residents

The Selectmen have asked the committee to report to the Board by no later than March 1, 2007 so any warrant articles that might be required could be filed in time for the 2007 Annual Town Meeting. By a vote of 5-0, the board recommends FAVORABLE ACTION on the following vote:

VOTED: To refer Articles 20 and 21 to the Selectmen's Committee on Graffiti. Said Committee shall review the Town's current graffiti removal procedures and recommend potential amendments to the Town's By-Laws, if necessary, and report back to the Selectmen prior to March 1, 2007.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 21 is the accompanying article to Article 20 (Graffiti). It seeks to amend Articles 10.2 Prosecutions and Enforcement and 10.3 Non-Criminal Dispositions to specifically reference graffiti associated enforcement and fines.

DISCUSSION

In maintaining consistency with its prior recommendation under Article 21, the Advisory Committee feels this article should be considered as part of a graffiti committee's charge as well.

RECOMMENDATION

By a vote of 12-2, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 22

TWENTY-SECOND ARTICLE

To see if the Town will amend the general by-laws by adding the following article:

Article 8.28, The Prohibition of Leaf Blowers in Certain Areas.

The use of gas powered leaf blowers is to be prohibited within 500 feet of unobstructed space around hospitals, nursing homes, homes for the elderly and disabled, places of worship during religious ceremonies, funeral homes during their hours of operation, and schools during school hours unless there is no complaint made to the police about any violation or if the proper authorities of these above designated establishments explicitly waive their rights by granting permission for the use of the leaf blowers around their areas. The first violation of this by-law would subject the violator to a fine of $100, a second to a fine of $150 and a third or more to one of $200.

Or act on anything relative thereto.

There are many who believe these leaf blowers are not only an ear-rending nuisance but even pollute the air as they blow up dust and particles from the ground. Many cities and towns throughout the nation have actually banned these machines altogether. This article is a modest inroad toward the solution of the problem. For many years the Town has done without them. Why now tolerate them? Whatever advantages they may offer to the operators of these machines, they do not at all outweigh the degree of stressful noise and pollution, which they inflict on our neighbors.

SELECTMEN'S RECOMMENDATION

Article 22 is a petitioned article that calls for the prohibition of leaf blowers in certain areas. In particular, the article, as proposed, would make it illegal to use gas-powered leaf blowers within 500 feet of unobstructed space around the following places:

- hospitals
- nursing homes
- homes for elderly and disabled
- places of worship during their hours of operation
- funeral homes during their hours of operation
- schools during school hours

The above-designated establishments could waive their rights by granting permission for the use of leaf blowers around their areas.

Article 18 to the November, 2005 Special Town Meeting proposed eliminating the exemption from noise limits currently afforded to non-electrical musical instruments between the hours of 9:00 am – 9:00 pm. Town Meeting requested that the Selectmen establish a committee to review the noise control by-law in its entirety.

The Selectmen have established the committee, and the committee has begun its work. The Board believes that the subject matter of Article 22 falls under the purview of the Noise Control By–law Committee and therefore recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 3, 2006, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 22 is a petitioned article that would amend the Town's By-laws by adding a provision directed at the use of gas-powered leaf blowers. Specifically, the use of such equipment would be prohibited within 500 feet of hospitals, nursing homes, homes for the elderly and disabled, places of worship during religious ceremonies, funeral homes during hours of operation, and schools while they are in session unless no complaint were made to the police about any violation or a particular institution granted permission for leaf blowers to be used within the prohibited area. Article 22 also provides for fines: $100 for the first violation, $150 for the second, and $200 for the third.

The petitioner stated that this article responds to noise and pollution produced by many of the gas-powered leaf blowers used in Brookline. Noting that some cities and towns in the United States had banned them altogether, he stated that limiting their use would be a good way to start reducing the stress and unhealthy air quality that are created by their operation.

DISCUSSION

This is not the first time that a proposal to restrict the use of leaf blowers has been submitted to Town Meeting. Two other articles, one addressing leaf blower decibel levels and hours of operation and one addressing their environmental impacts, were submitted in 2001 and 2002, respectively, while a third, offered in 2003, tweaked the weekend and holiday hours of operation for electric and gas-powered yard and lawn maintenance equipment. The third article was approved, but the other two were defeated, with those in opposition citing such issues as enforcement difficulties, convenience, and efficiency. The importance of leaf blowers to DPW operations was noted in a recent memo from Deputy Commissioner Andrew Pappastergion who wrote that approval of Article 22 would severely limit the department's ability to provide timely maintenance in specific areas of the town and would burden the scheduling of such maintenance operations to the degree that work would not be completed.

While acknowledging DPW's point as well as Town Meeting's past decisions on restricting the use of leaf blowers, the Advisory Committee also notes that the noise this equipment produces and the pollution it generates remain of concern to a number of our fellow citizens. Last year, Town Meeting voted to refer an article dealing with a different kind of noise to a Selectmen's Noise By-Law Committee. While the Advisory Committee believes that the noise aspect of leaf blowers could and should be addressed by the Selectmen's Committee, it also stresses that the air pollution issue must not be ignored. Accordingly, the Advisory Committee urges DPW and any other town department which uses gas-powered leaf blowers in maintenance assignments to consider their environmental impact when operating them and before purchasing new or replacement models.

RECOMMENDATION

The Advisory Committee unanimously (22-0) recommends FAVORABLE ACTION on the following vote:

VOTED: To refer Article 22 to the Selectmen's Noise By-Law Committee.

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ARTICLE 23

TWENTY-THIRD ARTICLE

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

AN ACT AUTHORIZING THE TRANSFER OF THE FORMER FISHER HILL RESERVOIR IN THE TOWN OF BROOKLINE.

SECTION 1. The commissioner of the division of capital asset management and maintenance (the commissioner) may, notwithstanding the provisions of sections 40E to 40H, inclusive, of chapter 7 of the General Laws, convey by deed a certain parcel of land in the town of Brookline to the town of Brookline. The parcel, known as the "former Fisher Hill Reservoir" is located on the southwest side of Fisher Avenue. The boundaries of the parcel shall be established by a survey commissioned by the commissioner.

SECTION 2. The parcel is currently open space and after conveyance, the parcel shall be used for open space or active or passive recreation purposes with the exception of a certain portion of the parcel not to exceed 12,000 square feet that will be dedicated and used for a storage facility.

SECTION 3. The sale price paid by the town of Brookline for the parcel described in section 1 shall be not less than the full and fair market value of the parcel determined by the commissioner based on an independent appraisal and based on its use as described in this act. The inspector general shall review and approve the appraisal and the review shall include an examination of the methodology utilized for the appraisal. The inspector general shall have thirty days to prepare a report of his review and file the report with the commissioner of the division of capital asset management and maintenance for submission within fifteen days thereafter to the house and senate committees on ways and means and to the joint committee on state administration.

SECTION 4. The town of Brookline shall be responsible for any costs for appraisals, surveys and other expenses relating to the transfer of the parcel. Upon completion of the transfer of the parcel, the town shall be solely responsible for all costs, liabilities and expenses of any nature and kind for the development, maintenance, use and operation of the parcel. In the event the parcel ceases at any time to be substantially used for the purposes set forth in section 2 or for municipal use, the commissioner shall give written notice to the town of the unauthorized use. The town shall upon receipt of the notice have thirty days to respond and a reasonable time to establish an authorized use of the parcel. If an authorized use of the parcel is not thereafter established, the title to the parcel shall, upon the recording of a notice thereof by the commissioner in the appropriate registry of deeds, revert to the commonwealth with the parcel to be under the care and control of the division of capital asset management and maintenance. Any further disposition of the parcel shall be subject to sections 40E to 40J, inclusive, of chapter 7 of the General Laws.

SECTION 5. The sale price paid under section 3 shall be deposited in the General Fund of the commonwealth.

SECTION 6. This act shall take effect upon its passage.

or act on anything relative thereto.

This warrant article would enable the Town to acquire the state surplus property formerly known as the Massachusetts Water Resources Authority Fisher Hill Reservoir located on Fisher Avenue in Brookline. It is being resubmitted for approval by Town Meeting since the Home Rule petition approved by Town Meeting in May, 2005 failed to get a bill number, and the formal legislative session has ended.

The Parks and Open Space Director and the Director of Recreation have both met with state representatives. They have also communicated with the representatives' offices about ten times to express the importance of passing this bill within the current legislative session. Although we have clearly articulated the urgency, the public process and the town wide support to acquire this property, there unfortunately has been no movement on this bill within the House of Representatives. This will be our third attempt at getting approval from the legislature.

Background:
This Article is a Home Rule petition that authorizes Town Meeting to file legislation with the State authorizing the Division of Capital Asset Management (DCAM) to transfer the State-owned former MWRA reservoir on Fisher Avenue to the Town of Brookline. This 10-acre property, located on the top of Fisher Hill, was identified over a decade ago by Dan Ford, former Chair of the Park and Recreation Commission, as a rare opportunity to increase public open space in Brookline. Purchase of this property offers the Town a unique opportunity to create a park that provides passive walking areas, natural wildlife habitat and an active playing field.

DCAM will appraise the property only after legislation approving a sale is passed and signed by the Governor. Once the site appraisal is complete, Town Meeting will be asked to review and authorize funds for the purchase of the property. In June of 2001, the State Division of Capital Management (DCAM) notified the Town that the State-owned former reservoir property on Fisher Avenue had been declared surplus property. The Town was offered the property for a direct municipal use. The Town requested and was granted permission to review use alternatives for the site.

In the December of 2001 a Master Planning Committee was established by the Board of Selectmen to evaluate the reuse potential of the 10-acre State-owned site on Fisher Avenue as well as the 4.8 acre Town-owned underground reservoir site immediately across the street from the state site. The Committee evaluated several types of municipal uses for both sites, including affordable housing, active recreation, passive recreation, open space, and public amenities such as a skating rink or public pool. In December,

2002 a presentation was made to the Board of Selectmen with the Committee's recommended uses for both properties.

The recommended use for the State-owned site was a scenic amenity and public park that incorporates an athletic field, passive recreation, and open space. The design was to be compatible with the character of the neighborhood, be handicap accessible, provide a reasonable amount of parking, provide wooded areas and habitat, protect the historic gatehouse, and provide pedestrian access.

On January 7, 2003 the Board of Selectmen established a Design Review Committee to work within the guidelines set by the Master Planning Committee to develop a plan and program for the park with associated costs. The Design Review Committee held public meetings over a period of nine months and developed a preliminary plan and cost estimate for a design that incorporates all of the required elements. The total estimated budget for land acquisition, improvements, and playing field development is $4.6 million, with $1.35 million coming from the Town and the balance coming from the development of the old Town-owned reservoir site across the street. (This article does not request funding nor does it mandate that the Town appropriate funds for the stated purposes.)

If Town Meeting authorizes the Town to file legislation with the State, as authorized twice previously, the following will take place:

Legislation will be filed by the Town's local legislative delegation;
If approved by the Legislature, it will move on to the Governor to be signed;
DCAM would then be authorized to begin the appraisal process;
DCAM would draft documents for the transfer of land to the Town;

At a future date, Town Meeting would be requested to appropriate funding for the purchase of the property; then the sale would be finalized. The time frame for the legislation to pass and for development of the sale documents is estimated at 12-16 months, or more.

The Park and recreation Commission recognizes the great opportunity to expand the Town's existing inventory of parks and open space and therefore requests FAVORABLE ACTION on this article.

SELECTMEN'S RECOMMENDATION

Article 23 is a Home Rule petition that authorizes Town Meeting to file legislation with the State authorizing the Division of Capital Asset Management (DCAM) to transfer the State-owned former MWRA reservoir on Fisher Avenue to the Town of Brookline. This 10-acre property, located on the top of Fisher Hill, was identified over a decade ago by Dan Ford, former Chair of the Park and Recreation Commission, as a rare opportunity to increase public open space in Brookline. Purchase of this property offers the Town a unique opportunity to create a park that provides passive walking areas, natural wildlife

habitat and an active playing field. DCAM will appraise the property only after legislation approving a sale is passed and signed by the Governor.

This is the third time since November 2003 that this article has been before Town Meeting. On the prior two occasions, Town Meeting has approved it, but the bill did not make it through the State's legislative process. We are hopeful that the third time is the charm.

Background:

- In June of 2001, the State Division of Capital Management (DCAM) notified the Town that the State-owned former reservoir property on Fisher Avenue had been declared surplus property. The Town was offered the property for a direct municipal use. The Town requested and was granted permission to review use alternatives for the site.
- In the December of 2001, a Master Planning Committee was established by the Board of Selectmen to evaluate the reuse potential of the 10-acre State-owned site on Fisher Avenue as well as the 4.8 acre Town-owned underground reservoir site immediately across the street from the state site.
- The Committee evaluated several types of municipal uses for both sites, including affordable housing, active recreation, passive recreation, open space, and public amenities such as a skating rink or public pool.
- In December 2002, a presentation was made to the Board of Selectmen with the Committee's recommended uses for both properties. The recommended use for the State-owned site was a public park that incorporates an athletic field, passive recreation, and open space. The design was to be compatible with the character of the neighborhood, be handicap accessible, provide a reasonable amount of parking, provide wooded areas and habitat, protect the historic gatehouse, and provide pedestrian access.
- On January 7, 2003, the Board of Selectmen established a Design Review Committee to work within the guidelines set by the Master Planning Committee to develop a plan and program for the park with associated costs.
- The Design Review Committee held public meetings over a period of nine months and developed a preliminary plan and cost estimate for a design that incorporates all of the required elements. The total estimated budget for land acquisition, improvements, and playing field development is $4.6 million. (This article does not request funding nor does it mandate that the Town appropriate funds for the stated purposes.)

If Town Meeting authorizes the Town to file legislation with the State, the following will take place:

- Legislation will be filed by the Town's local legislative delegation;
- If approved by the Legislature, it will move on to the Governor to be signed;
- DCAM would then be authorized to begin the appraisal process;
- DCAM would draft documents for the transfer of land to the Town;
- At a future date, Town Meeting would be requested to appropriate funding for the purchase of the property;

- The sale would be finalized.

The time frame for the legislation to pass and for development of the sale documents is estimated at 12-24 months.

This Board recognizes the great opportunity to expand the Town's existing inventory of parks and open space and recommends FAVORABLE ACTION, by a vote of 5-0 taken on September 12, 2006, on the following vote:

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

AN ACT AUTHORIZING THE TRANSFER OF THE FORMER FISHER HILL RESERVOIR IN THE TOWN OF BROOKLINE.

SECTION 1. The commissioner of the division of capital asset management and maintenance (the commissioner) may, notwithstanding the provisions of sections 40E to 40H, inclusive, of chapter 7 of the General Laws, convey by deed a certain parcel of land in the town of Brookline to the town of Brookline. The parcel, known as the "former Fisher Hill Reservoir" is located on the southwest side of Fisher Avenue. The boundaries of the parcel shall be established by a survey commissioned by the commissioner.

SECTION 2. The parcel is currently open space and after conveyance, the parcel shall be used for open space or active or passive recreation purposes with the exception of a certain portion of the parcel not to exceed 12,000 square feet that will be dedicated and used for a storage facility.

SECTION 3. The sale price paid by the town of Brookline for the parcel described in section 1 shall be not less than the full and fair market value of the parcel determined by the commissioner based on an independent appraisal and based on its use as described in this act. The inspector general shall review and approve the appraisal and the review shall include an examination of the methodology utilized for the appraisal. The inspector general shall have thirty days to prepare a report of his review and file the report with the commissioner of the division of capital asset management and maintenance for submission within fifteen days thereafter to the house and senate committees on ways and means and to the joint committee on state administration.

SECTION 4. The town of Brookline shall be responsible for any costs for appraisals, surveys and other expenses relating to the transfer of the parcel. Upon completion of the transfer of the parcel, the town shall be solely responsible for all costs, liabilities and expenses of any nature and kind for the development, maintenance, use and operation of the parcel. In the event the parcel ceases at any time to be substantially used for the purposes set forth in section 2 or for municipal use, the commissioner shall give written notice to the town of the unauthorized use. The town shall upon receipt of the notice have thirty days to respond and a reasonable time to establish an authorized use of the parcel. If an authorized established, the title upon the recording of a notice thereof by the commissioner in the appropriate registry of deeds, revert to

the commonwealth with the parcel to be under the care and control of the division of capital asset management and maintenance. Any further disposition of the parcel shall be subject to sections 40E to 40J, inclusive, of chapter 7 of the General Laws.

SECTION 5. The sale price paid under section 3 shall be deposited in the General Fund of the commonwealth.

SECTION 6. This act shall take effect upon its passage.use of the parcel is not thereafter to the parcel shall,

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 23 seeks Town Meeting approval authorizing the Selectmen to file a petition with the General Court to transfer the former Fisher Hill Reservoir to the Town of Brookline. Two prior attempts to have the state transfer this land to the town have stalled in the State Legislature.

DISCUSSION

This matter is again being brought before Town Meeting as was done in FY2003 and FY2005. In both FY2003 and FY2005 identical articles were approved by Town Meeting. Difficulty in getting the attention of the General Court has caused this matter to languish within the General Court.

This article, if passed, would authorize the Board of Selectmen to file a petition with the General Court to transfer the former Fisher Hill Reservoir to the Town of Brookline. The reservoir site, approximately ten acres in size, is located on the west side of Fisher Avenue. A Master Plan for its future use (as well as the town-owned reservoir on the east side of Fisher Avenue) has been developed by Halvorson Design Partnership. The Master Plan Committee, by a vote of 13-1, has recommended the plan with conditions to the Board of Selectmen.

If this article is approved and the Legislature authorizes transfer of the land, the Commonwealth's Department of Capital Asset Management (DCAM) will be permitted to sell the parcel for not less than full and fair market price, based on an independent appraisal of its value for public use. Based on the experience of other municipalities, the estimate for acquisition is $500,000. Funds totaling $1,350,000 for the purchase and preliminary development of the site, including $500,000 to acquire the property, $800,000 to make it safe and accessible to the public for open space use and $50,000 to cover the costs of design and construction documents, were allocated in the FY2004 CIP. At a later date, a separate vote of Town Meeting will be needed to appropriate these funds. Mechanisms to finance further improvements to the site, currently estimated at $3,250,000, will continue to be explored.

The town expects to sell 4.8 acres of town-owned property in the same area for a price of

$3.25 million to a developer. The developers are expected to develop residential housing with an affordable housing component. This leaves a balance of $1.35 million, which will be financed from a bond authorization.

The balance of the property will be used for a combination of active and passive recreational uses, but additional time will be needed to explore available options. Based on the current proposal, the annual maintenance costs have been estimated at $40,000-$50,000. The purchase of the former reservoir property will add to the town's inventory of open space and will address the current shortage of recreational fields.

RECOMMENDATION

The Advisory Committee unanimously (18-0) recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 24

TWENTY-FOURTH ARTICLE

To see if the Town will vote to extinguish, abandon or otherwise release all or a portion of a sewer and surface water drain easement on a date and to the extent to be determined by the Board of Selectman. Said easement is situated on the westerly side line of Heath Street and contains approximately 8702 square feet as shown on a plan numbered 5287, dated April 24, 1924 prepared by Henry A.Varney, Town Engineer and entitled "Proposed Change in Sewer Location"; said easement is recorded in the Norfolk Registry of Deeds in Book 1904, Pages 271-272 being bounded and described as follows:

> Beginning at a point on the boundary line between the City of Newton and the Town of Brookline, said point being situated five hundred eighty-one and five hundredths (581.05) feet south westerly from the stone monument marking an angle in said boundary line at the southerly corner of Lowell Playground, thence running south seventy (70) degrees, forty-three (43) minutes fifty-eight (58) seconds east for a distance of three hundred forty and seventy-two hundredths (340.72) feet to the westerly side line of Heath Street. The southerly side line of the proposed taking is situated parallel with and twenty-five (25) feet southerly from the line above described as having a length of three hundred forty and seventy-two (340.72) feet, and containing about 8702 square feet. Said parcel of land is shown on plan by Henry A. Varney, Town Engineer, dated April 24, 1924, and numbered 5287.

or act on anything relative thereto.

No. 317, 321, 327 Hammond Pond Parkway, 36 and 39 Glenland Road (contiguous lots) are all under one ownership. The existing sewer and drain easement encumbers the lots at 317, 321 and 327 Hammond Pond Parkway and inhibits the redevelopment of these lots for residential purposes as approved by the Board of Appeals. In connection with the approved redevelopment and relocation and replacement of the existing sewer and drain, the Town needs to authorize the Board of Selectmen to abandon and extinguish all or portions of the existing easement. Over the years this section of sewer has been a maintenance problem for the Town in that the sewer pipe has cracks and fills with silt and sand. Periodically, the Water and Sewer Division must flush out the debris and free the line. In addition, the line is very flat which lends itself to having solids build up in the line causing blockages. A new larger pipe to be installed by the owner in a relocated easement would solve the aforementioned problems.

SELECTMEN'S RECOMMENDATION

Article 24 calls for the abandonment of a sewer easement and water drain easement at Hammond Pond Parkway and Glenland Road. The Zoning Board of Appeals (ZBA) has

approved the redevelopment of these lots (317, 321, and 327 Hammond Pond Parkway and 36 and 39 Glenland Road) and the existing easement inhibits the ability to undertake the redevelopment.

The approved plan calls for the relocation and replacement of the existing sewer and drain, all at the expense of the developer. Having new and redesigned pipes will be a significant improvement for the Town, as this section of sewer has, for years, been a maintenance problem. The sewer pipe has cracked over the years and gets filled with sand and silt, causing the Water and Sewer Division to flush out the debris and clean out the line.

The proposed easement abandonment is a win for the Town and a win for the developer. The new, larger pipe that is to be configured differently than the current pipe eliminates a problem spot for the Water and Sewer Division and the redevelopment, as approved by the ZBA, will improve the area along Hammond Pond Parkway and Glenland Road. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on September 19, 2006, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 24 seeks Town Meeting approval upon the recommendation of the Commissioner of Public Works to extinguish and or abandon a portion of or all of an easement of a sewer and surface water drain easement located at the Brookline/Newton line and running upon a parcel of land between Heath Street and Hammond Pond Parkway. The parcel of land in question has a planned five-unit housing development in the process of obtaining necessary permitting.

DISCUSSION

The surface water drain, which runs through the present easement, has had a history of overflowing due to blockage with silt and a drain line flattened with years of use and movement. A minimal amount of soil covers both the sewer line and the surface water drain. The ground above the surface water drain and sewer line is improperly pitched due to years of settlement. Peter Ditto, Director of Engineering and Transportation explained that the town is forced regularly to clean the surface water drain to stop overflowing during heavy rainstorms. Rainstorms in recent years have caused the flooding of this area and of Hammond Street properties due to the condition of the lines within the current easement.

This change of easement would have nothing to do with the proposed construction of new properties in the Chestnut Hill area of Newton.

This article, if passed, would allow the owner of this land to reconstruct both the sewer line and surface water drain line, at his own expense, and to run both a new sewer line and surface water drain line at a different location upon this property.

If passed by Town Meeting, Article 24 will allow the Selectmen, at a date after a new easement together with a new sewer line and surface water drain line is created, to abandon and or extinguish the current easement or portion thereof. In return, the town will obtain a new easement upon this property with a newly designed, sized and built sewer line and surface water drain line.

RECOMMENDATION

The Advisory Committee unanimously (19-0) recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town vote to extinguish, abandon or otherwise release all or a portion of a sewer and surface water drain easement on a date and to the extent to be determined by the Board of Selectman. Said easement is situated on the westerly side line of Heath Street and contains approximately 8702 square feet as shown on a plan numbered 5287, dated April 24, 1924 prepared by Henry A.Varney, Town Engineer and entitled "Proposed Change in Sewer Location"; said easement is recorded in the Norfolk Registry of Deeds in Book 1904, Pages 271-272 being bounded and described as follows:

> Beginning at a point on the boundary line between the City of Newton and the Town of Brookline, said point being situated five hundred eighty-one and five hundredths (581.05) feet south westerly from the stone monument marking an angle in said boundary line at the southerly corner of Lowell Playground, thence running south seventy (70) degrees, forty-three (43) minutes fifty-eight (58) seconds east for a distance of three hundred forty and seventy-two hundredths (340.72) feet to the westerly side line of Heath Street. The southerly side line of the proposed taking is situated parallel with and twenty-five (25) feet southerly from the line above described as having a length of three hundred forty and seventy-two (340.72) feet, and containing about 8702 square feet. Said parcel of land is shown on plan by Henry A. Varney, Town Engineer, dated April 24, 1924, and numbered 5287.

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ARTICLE 25

TWENTY-FIFTH ARTICLE

Have the moderator appoint a committee to Investigate and audit to determine the most revenue positive way to assess Lodging Houses and expend $1 or any amount necessary to make a comprehensive report to the Selectmen with recommendations.

or act on anything relative thereto.

It is LEGAL to assess a properties value in several ways. Historically Brookline Lodging Houses have been 'assessed' based on '**INCOME'**. (for over 20 years).

But the last reevaluation period switched to **'arms length sales'** and **'comparable value'** to boost town revenues. Will it serve the town favorably? Would random audits of all Lodging Houses generate a more favorable revenue stream while preserving the long term lodging houses using the 'INCOME' formula? We need answers!

Qui Bono - who benefits? Brookline can do better, and should!

Exactly what are the facts?
We should not operate in a vacuum but investigate which method would generate the most revenue for the town, while preserving the shrinking supply of safe, LEGAL, affordable housing. The Assessing Department is the economic engine of every town and should be fully staffed.Ê Is it? Brookline provides housing to BC, BU, MIT, Harvard, HSPH, MGH, BI-Deaconess, Brigham, Dana Farber, Children's, Forsyth, Simmons, Berkeley, Saint Elizabeth's Hospital and the entire LMA, and many, many others.

If this NEW assessment scheme does not revert QUICKLY to the former income method Brookline demographics will be missing many diverse people, as Lodging Houses will not be able to provide long term housing and survive. They will be sold, developed / condoed out or become another Toni, Bed & Breakfast.

Should not this town show the same care and concern for people that it directs to endangered wildlife and wetlands? We do have a practicable alternative to this draconian shift. Plus additional revenue is available with careful auditing of all Lodging Houses earnings statements. A ballpark check would be the rooms taxes paid to the Commonwealth of Massachusetts that could trigger closer review by the Assessor.

SELECTMEN'S RECOMMENDATION

Article 25 is a petitioned article that asks the Moderator to appoint a committee to investigate the assessment of property taxes on lodging houses. The petitioner was

moved to file the article by a change in the Town's assessment practices for lodging houses that resulted in a substantial increase in tax bills for these properties.

The Board of Assessors, the independent body required by law to assess all properties at their full and fair value, changed its assessment model for lodging houses from an income-based model to a comparative sales model. The Board of Assessors did this because they realized that some lodging houses were being sold at values well above their assessments for conversion into condos or multi-family residences. This finding prompted the Assessors to conclude that the income approach was not producing the correct fair market value for rooming houses, and they determined that a different appraisal methodology must be used to reach fair market value.

The Board of Assessors recognizes encumbrances on lodging house titles that restrict the property's use to affordable housing per the provisions of MGL Ch. 184, Sec. 26-32, which results in a lower assessed value. They therefore argue that if lodging house owners want to have lower assessments, they need to commit their properties to affordable housing via a deed restriction. If they do not, then the property is more valuable, and it should be assessed appropriately.

While the Selectmen understand the Assessors' justification, they are concerned about the impact the change in assessment practices will have on lodging houses, a valuable source of affordable housing for the Town. The Selectmen also respect the Board of Assessors' autonomy and realize that they cannot direct the Assessors to change their practices. However, due to the high priority the Board places on affordable housing, we are asking that the Housing Advisory Board (HAB) study this issue with the Board of Assessors.

Therefore, by a vote of 5-0 taken on October 17, 2006, the Selectmen recommend NO ACTION on Article 25.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The town's assessors have changed the method of determining the valuation of lodging houses from the so-called income method to one based on comparable sales. This was done because in several recent sales of lodging houses, the sale prices were significantly greater, in some cases nearly three times more, than the income-determined assessed values. The evident reason for this is that these lodging houses were worth more to buyers because they could readily be converted into higher-valued single family residences or condominiums. The newly employed comparable sales method of assessing, based on the highest and best legal uses of these properties, has resulted in substantial increases in their assessed values, and as a result property taxes have gone up by as much as 25 percent or more in some cases. This has impacted existing lodging house owners' ability to continue to provide low-cost housing. Article 25 seeks to have a

moderator's committee appointed to investigate and make recommendations about the best way of assessing of lodging houses.

DISCUSSION

The petitioner makes the valid point that the increased tax burden on lodging houses will tend to reduce the affordability of lodging house to the extent that tax increases are passed on to tenants, and that this result will work against the town's oft-proclaimed commitment to maintain and increase the town's supply of affordable housing. There are a substantial number of housing units currently in the town's lodging houses, some renting for a little as around $500 to $600 per month. However, the assessors are mandated by state law to determine assessed values solely in accordance with fair market value, and are not permitted to factor in social, economic or other objectives of the town. Fair market value is the price that a willing buyer and a willing seller will agree upon in an arms-length transaction, and normally will be governed by the highest and best legal use for a property. (The assessors are taking due consideration of the reduced sales potential for those lodging houses with affordability deed restrictions or physical limitations that would prevent their conversion to higher-valued residential use.)

The assessors are legally an independent body whose actions are determined by state law and Town Meeting has no authority to pass a by-law or otherwise instruct the assessors as to how to do their job. The only action Town Meeting could take as a result of the sort of study envisioned by the wording of this article would be to adopt a resolution regarding assessing practices, but inasmuch as assessing practices are governed by the mandates of state law and not by popular sentiment, any such resolution would (or at least should) be pointless. Questions of the appropriateness of the methodology for assessing lodging houses would have to ultimately be through legal challenges, not by the preference or vote of Town Meeting.

RECOMMENDATION

The Advisory Committee sympathizes with the petitioner's desire to continue to provide affordable housing, and recognizes that the change in assessing practice for lodging houses makes this more difficult. But we also recognize that the assessors have the legal duty to establish the fair market value of property as accurately as possible, and believe that they have the responsibility and are best qualified to determine how this is to be accomplished. Hence we can find no useful purpose to be served by appointing a moderator's committee to study this issue and, by a vote of 21 in favor of the motion for no action, 0 opposed, and 1 abstention, recommend, NO ACTION under Article 25.

However the Advisory Committee does believe that the petitioner has raised an important issue in that it is important to ascertain the role of lodging house units in the town's overall affordable housing picture, and to investigate what if any town policies might be brought to bear on discouraging the loss of these units through conversion and on preserving their affordability. Hence we urge the Selectmen to embark on such a study, possibly utilizing the expertise of the Housing Advisory Board, in order to determine how the town can and should address this issue.

XXX

ARTICLE 26

TWENTY-SIXTH ARTICLE
To see if the Town will adopt the following:

RESOLUTION Reaffirming Sanctuary Status for Undocumented Immigrants:

WHEREAS: The Town of Brookline has been built and enriched by generations of immigrants, and has a proud history since November, 1985, as a Sanctuary for refugees from El Salvador, Guatemala, and Haiti;

WHEREAS: There are now approximately 12 million undocumented immigrants in the USA who have been systematically denied the opportunity enjoyed by past generations of immigrants to become legal permanent residents or citizens of this country; over the past two decades, immigration policy has become even more restrictive and punitive and closed off avenues previously available for immigrants to obtain legal permanent residency, while the US-Mexico border has been further militarized;

WHEREAS: While borders have been closed off to people over the past two decades, they have been simultaneously opened up to trade and capital; these same "free trade" economic policies have increased poverty and decreased opportunities for people to make a dignified living and support their families;

WHEREAS: In 2005, record numbers of migrants seeking to support their families, with no means to migrate safely into the USA, perished in the desert along the US-Mexico border, while countless others died in the journey; and the migration experience has adverse emotional and psychological effects on families, kept apart for many years due to unjust immigration policies and backlogs in visa applications; and undocumented immigrants are especially vulnerable to workplace abuses and housing discrimination;

WHEREAS: Current US immigration policy does not reflect the standards of Brookline residents regarding what is just, humane and moral; and both undocumented and documented immigrants in the U.S. fuel our economy and those of their countries of origin;

WHEREAS: On December 16, 2005, the House of Representatives passed HR-4437, which would have drastic consequences for nearly all immigrants to this country, their families, their neighbors, and those who support them; and the US Senate has been considering a companion bill that contains many of the same counterproductive, misguided measures, including criminalization of immigrants and those who help them, further militarization of the border, turning police into immigration agents, and the erosion of cherished legal traditions such as due process; and the US Senate is also considering guest worker programs that would create a second-class citizenry without basic rights, disenfranchised and vulnerable to exploitation by unscrupulous employers;

WHEREAS: Much public discourse surrounding immigration has taken a tone ranging from irrational to racist, including the pejorative use of terms like "illegal" and "alien" to describe immigrants, with a dehumanizing effect that helps to justify policies criminalizing and excluding immigrants;

WHEREAS: Raids by the federal government, ranging from the highly publicized, nationwide workplace raids on April 17, 2006, that resulted in the arrest of 1,187 employees to the less widely known sweeps of homes such as occurred in Massachusetts on March 6, 2006, have instilled fear and panic in immigrant communities and created environments that are ripe for intimidation, harassment and racial profiling;

WHEREAS: Following the raids in April of this year, the US Homeland Security Secretary announced plans to intensify such enforcement measures, an announcement that came in the midst of unprecedented numbers of immigrants demonstrating in defense of their dignity, against HR-4437, and for an opportunity to obtain legal permanent residency; and

WHEREAS: Numerous cities, including Maywood, Huntington Park, and Coachella, CA have recently declared themselves Sanctuary Cities, and cities from Cambridge MA (May 8, 2006) to Chicago and San Francisco have reaffirmed their earlier commitments as Sanctuaries,

THEREFORE, BE IT HEREBY RESOLVED THAT:

1. The Town of Brookline reaffirms its commitment as a Sanctuary Town, as declared by Town Meeting in November, 1985, and expands it now to include all undocumented immigrants from all countries;[1]
2. The Town endorses the platform of the Keep Our Families Together Campaign, an initiative of the National Alliance of Latin American and Caribbean Communities that seeks to (a) enable immigrants who currently live and work in the United States to obtain Permanent Resident status and have the option to apply for citizenship; (b) increase the number of visas available in the quota system with a preference for family unification; (c) establish a limit of no more than six months for the processing and resolution of immigration applications; (d) facilitate the integration and participation of immigrants into the political, social and economic life of this country; and (e) enable future immigrants to enter the United States under a legal system that is just and respectful of human rights;
3. The Town calls upon the US Department of Homeland Security and the US Immigration and Customs Enforcement to declare a moratorium on immigrant raids, at least until the US Congress comes to an agreement on comprehensive immigration reform, so that the debate can be carried out in good faith rather than against a backdrop of fear, repression and intimidation;
4. The Town affirms the basic human rights and dignity of every human being;
5. The Town rejects the use of the word “illegal” to describe human beings and the use of the word “aliens” to describe immigrants, and hereby adopts the language “undocumented” when referring to those who do not have federally recognized resident status and “immigrant” to refer to those who have migrated to the US from another country;
6. The Town of Brookline urges the US Senate to defeat HR 4437 and urges the President to veto such legislation if approved by the Senate; and

7. The Town Clerk shall forward a copy of this resolution on behalf of the Town of Brookline to the Massachusetts Congressional delegation and to the President of the United States.

1 The operative 1985 language "RESOLVED THAT:

"the Town of Brookline become a sanctuary for refugees from El Salvador, Guatemala, and Haiti, and that they shall be afforded all rights and privileges offered and supplied to all people residing or working in the Town;

"it is the policy of the Town that, to the extent legally possible, no department or employee of the Town will violate established or future sanctuaries by officially assisting or voluntarily cooperating with investigations or arrest procedures, public or clandestine, relating to alleged violations of immigration law by refugees from El Salvador, Guatemala or Haiti or by those offering sanctuary;

"the Town supports and appreciates its residents who may provide bedding, food, health and other settlement assistance, as well as friendship to refugees from El Salvador, Guatemala, and Haiti; and the Town will not participate in any form in the compounding of injustice against these refugees or in the Federal Government's persecution of those who in good faith offer humanitarian assistance to these refugees;

"the Town supports all efforts intended to provide free, effective legal representation for any person residing in Massachusetts who is seeking asylum in the U.S. because of fear of persecution in his or her homeland, including Mass. Senate Bill #1063 sponsored by Senator Jack Backman."

or act on anything relative thereto.

This "speaking" Resolution is largely is self-explanatory, especially the "Resolved" clauses. For the sake of both consistency and political impact, the text is closely modeled on that passed by the Cambridge City Council on May 8, 2006.

SELECTMEN'S RECOMMENDATION

Article 26 is a petitioned article that asks Town Meeting to adopt a resolution reaffirming sanctuary status for undocumented immigrants. The Town first declared its commitment as a Sanctuary Town in November, 1985, by a vote of Town Meeting. The resolved clauses ask Town Meeting to do the following:

- Reaffirm the Town's commitment as a Sanctuary Town
- Endorse the platform of the Keep Our Families Together Campaign
- Call upon the U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement to issue a moratorium on immigration raids until Congress comes to an agreement on comprehensive immigration reform
- Reaffirm the basic human rights of every human being
- Use "undocumented" instead of "illegal" and use "immigrant" instead of "alien"
- Urge the U.S. Senate to defeat HR 4437 and urge the President to veto any such legislation

- Forward a copy of the resolution to the Massachusetts Congressional delegation and to President Bush.

The Selectmen worked with the petitioner to make a number of changes that included recognizing the efforts of immigrants who go through the process and get documentation and eliminating the reference to international trade.

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 24, 2006, on the following resolution:

VOTED: That the Town adopt the following resolution:

WHEREAS, The Town of Brookline has been built and enriched by generations of immigrants, and has a proud history since November 1985 as a Sanctuary for refugees from El Salvador, Guatemala, and Haiti:

WHEREAS, There are now approximately 12 million undocumented immigrants in the USA who have been systematically denied the opportunity enjoyed by past generations of immigrants to become legal permanent residents or citizens of this country; over the past two decades, immigration policy has become even more restrictive and punitive and closed off avenues previously available for immigrants to obtain legal permanent residency, while the US-Mexico border has been further militarized;

WHEREAS, In 2005, record numbers of migrants seeking to support their families, with no means to migrate safely into the USA, perished in the desert along the US-Mexico border; and the migration experience has adverse emotional and psychological effects on families, kept apart for many years due to unjust immigration policies and backlogs in visa applications; and undocumented immigrants are especially vulnerable to workplace abuses and housing discrimination;

WHEREAS, Current US immigration policy does not reflect the standards of Brookline residents regarding what is just, humane and moral; and both undocumented and documented immigrants in the US fuel our economy and those of their countries of origin;

WHEREAS, On December 16, 2005, the US House of Representatives passed HR-4427, which would have drastic consequences for nearly all immigrants to this country, their families, their neighbors, and those who support them; and the US Senate recently agreed to a companion bill with some of the same counterproductive measures, including further militarization of the border.

WHEREAS, We commend the great effort and expense that many immigrants to the United States have made and continue to make to become legal residents of this country, but we recognize that immigrants are facing increasingly onerous and expensive barriers to becoming fully legal residents:

WHEREAS, The public discourse surrounding immigration has become increasing negative using pejorative terms to describe undocumented immigrants with the resulting

dehumanizing effect that helps to justify policies criminalizing and excluding such immigrants, such as the raids by the federal government on workplaces and homes. Those raids instilled fear and panic in the immigrant communities and created an environment that is ripe for intimidation, harassment, and racial profiling.

WHEREAS, Numerous cities, including Maywood, Huntington Park, and Coachella, CA have recently declared themselves Sanctuary Cities, and cities from Cambridge, MA (May 8, 2006) to Chicago and San Francisco have reaffirmed their earlier commitments as Sanctuaries,

THEREFORE, BE IT HEREBY RESOLVED THAT:

1. The Town of Brookline reaffirms its commitment as a Sanctuary Town, as declared by Town Meeting in November 1985, and expands it now to include all undocumented immigrants from all countries;[1]

2. The Town endorses the platform of the Keep Our Families Together Campaign, an initiative of the National Alliance of Latin American and Caribbean Communities that seeks to (a) enable immigrants who currently live and work in the United States to Obtain Permanent Resident status and have the option to apply for citizenship through a fair and rational process; (b) increase the number of visas available in the quota system with a preference for family unification; (c) establish a limit of no more than six months for the processing and resolution of immigration applications; (d) facilitate the integration and participation of immigrants into the political, social and economic life of this country; and (e) enable future immigrants to enter the United States under a legal system that is just and respectful of human rights;

3. The Town calls upon the US Department of Homeland Security and the US Immigration and Customs Enforcement to issue a moratorium on immigration raids, at least until the US Congress comes to an agreement on comprehensive immigration reform, so that the debate can be carried out in good faith rather than against a backdrop of fear, repression and intimidation;

4. The Town affirms the basic human rights and dignity of every human being;

5. We reject the use of the word “illegal” to describe human beings and the use of the word “aliens” to describe immigrants, and hereby adopt the language “undocumented” when referring to those who do not have federally recognized resident status and “immigrant” to refer to those who have migrated to the US from another country;

6. The Town of Brookline urges the US Senate to defeat any further harsh proposals from HR 4437 and urges the President to veto any such legislation if approved by the Senate; and

7. The Town Clerk shall forward a copy of this resolution to the Massachusetts Congressional delegation and to the President of the United States on behalf of the Town of Brookline.

[1] The operative 1985 language "RESOLVED THAT:

"the Town of Brookline become a sanctuary for refugees from El Salvador, Guatemala, and Haiti, and that they shall be afforded all rights and privileges offered and supplied to all people residing or working in the Town;

"it is the policy of the Town that, to the extent legally possible, no department or employee of the Town will violate established or future sanctuaries by officially assisting or voluntarily cooperating with investigations or arrest procedures, public or clandestine, relating to alleged violations of immigration law by refugees from El Salvador, Guatemala or Haiti or by those offering sanctuary;

"the Town supports and appreciates its residents who may provide bedding, food, health and other settlement assistance, as well as friendship to refugees from El Salvador, Guatemala, and Haiti; and the Town will not participate in any form in the compounding of injustice against these refugees or in the Federal Government's persecution of those who in good faith offer humanitarian assistance to these refugees;

"the Town supports all efforts intended to provide free, effective legal representation for any person residing in Massachusetts who is seeking asylum in the U.S. because of fear of persecution in his or her homeland, including Mass. Senate Bill #1063 sponsored by Senator Jack Backman."

ROLL CALL VOTE:
Favorable Action
Allen
Hoy
Daly
DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
In November of 1985, Town Meeting voted to designate Brookline as a sanctuary for refugees from Salvador Guatemala and Haiti. The present punitive climate has produced events among which have been:

1) Passage of HR-4437 on December 16, 2005 which would criminalize immigrants and those who help them, many of whom have led productive lives and contributed greatly to American society.

2) On April 17, 2006, federal raids on the workplace and on March 6, 2006, sweeps of homes.

This article aims to reaffirm Town Meeting's position designating Brookline as a sanctuary for undocumented immigrants, expanding Brookline's commitment to include immigrants from all countries.

DISCUSSION
The resolution:

1) Decries "the use of pejorative terms like illegal and alien".

2) Objects to raids by the federal government at workplaces and homes and plans by the U.S. Homeland Secretary to intensify such enforcement measures.

3) Endorses the platform of the Keep Our Families Together campaign spelling out a process for handling undocumented immigrants.

4) Points to numerous cities across the country, which have recently reaffirmed their earlier commitment to sanctuary.

The entire thrust of the resolution is expressed in Resolve #1, from which all others flow.

Committee members held a variety of opinions on this issue and this specific resolution. While a number of members were concerned about some of the wording in this resolution, they were nonetheless sympathetic to its intent.

RECOMMENDATION
The Advisory Committee by a vote of 9 in favor, 8 opposed and 1 abstention recommends FAVORABLE ACTION on the following:

VOTED: That the Town adopt the following resolution:

RESOLUTION Reaffirming Sanctuary Status for Undocumented Immigrants:

WHEREAS: The Town of Brookline has been built and enriched by generations of immigrants, and has a proud history since November, 1985, as a Sanctuary for refugees from El Salvador, Guatemala, and Haiti;

WHEREAS: There are now approximately 12 million undocumented immigrants in the USA who have been systematically denied the opportunity enjoyed by past generations of immigrants to become legal permanent residents or citizens of this country; over the past two decades, immigration policy has become even more restrictive and punitive and closed off avenues previously available for immigrants to obtain legal permanent residency, while the US-Mexico border has been further militarized;

WHEREAS: While borders have been closed off to people over the past two decades, they have been simultaneously opened up to trade and capital; these same "free trade" economic policies have increased poverty and decreased opportunities for people to make a dignified living and support their families;

WHEREAS: In 2005, record numbers of migrants seeking to support their families, with no means to migrate safely into the USA, perished in the desert along the US-Mexico border, while countless others died in the journey; and the migration experience has adverse emotional and psychological effects on families, kept apart for many years due to unjust immigration policies and backlogs in visa applications; and undocumented immigrants are especially vulnerable to workplace abuses and housing discrimination;

WHEREAS: Current US immigration policy does not reflect the standards of Brookline residents regarding what is just, humane and moral; and both undocumented and documented immigrants in the U.S. fuel our economy and those of their countries of origin;

WHEREAS: On December 16, 2005, the House of Representatives passed HR-4437, which would have drastic consequences for nearly all immigrants to this country, their families, their neighbors, and those who support them; and the US Senate has been considering a companion bill that contains many of the same counterproductive, misguided measures, including criminalization of immigrants and those who help them, further militarization of the border, turning police into immigration agents, and the erosion of cherished legal traditions such as due process; and the US Senate is also considering guest worker programs that would create a second-class citizenry without basic rights, disenfranchised and vulnerable to exploitation by unscrupulous employers;

WHEREAS: Much public discourse surrounding immigration has taken a tone ranging from irrational to racist, including the pejorative use of terms like “illegal” and “alien” to describe immigrants, with a dehumanizing effect that helps to justify policies criminalizing and excluding immigrants;

WHEREAS: Raids by the federal government, ranging from the highly publicized, nationwide workplace raids on April 17, 2006, that resulted in the arrest of 1,187 employees to the less widely known sweeps of homes such as occurred in Massachusetts on March 6, 2006, have instilled fear and panic in immigrant communities and created environments that are ripe for intimidation, harassment and racial profiling;

WHEREAS: Following the raids in April of this year, the US Homeland Security Secretary announced plans to intensify such enforcement measures, an announcement that came in the midst of unprecedented numbers of immigrants demonstrating in defense of their dignity, against HR-4437, and for an opportunity to obtain legal permanent residency; and

WHEREAS: Numerous cities, including Maywood, Huntington Park, and Coachella, CA have recently declared themselves Sanctuary Cities, and cities from Cambridge MA (May 8, 2006) to Chicago and San Francisco have reaffirmed their earlier commitments as Sanctuaries,

THEREFORE, BE IT HEREBY RESOLVED THAT:

1. The Town of Brookline reaffirms its commitment as a Sanctuary Town, as declared by Town Meeting in November, 1985, and expands it now to include all undocumented immigrants from all countries;[1]
2. The Town endorses the platform of the Keep Our Families Together Campaign, an initiative of the National Alliance of Latin American and Caribbean

Communities that seeks to (a) enable immigrants who currently live and work in the United States to obtain Permanent Resident status and have the option to apply for citizenship; (b) increase the number of visas available in the quota system with a preference for family unification; (c) establish a limit of no more than six months for the processing and resolution of immigration applications; (d) facilitate the integration and participation of immigrants into the political, social and economic life of this country; and (e) enable future immigrants to enter the United States under a legal system that is just and respectful of human rights;

3. The Town calls upon the US Department of Homeland Security and the US Immigration and Customs Enforcement to declare a moratorium on immigrant raids, at least until the US Congress comes to an agreement on comprehensive immigration reform, so that the debate can be carried out in good faith rather than against a backdrop of fear, repression and intimidation;
4. The Town affirms the basic human rights and dignity of every human being;
5. The Town rejects the use of the word "illegal" to describe human beings and the use of the word "aliens" to describe immigrants, and hereby adopts the language "undocumented" when referring to those who do not have federally recognized resident status and "immigrant" to refer to those who have migrated to the US from another country;
6. The Town of Brookline urges the US Senate to defeat HR 4437 and urges the President to veto such legislation if approved by the Senate; and
7. The Town Clerk shall forward a copy of this resolution on behalf of the Town of Brookline to the Massachusetts Congressional delegation and to the President of the United States.

1 The operative 1985 language "RESOLVED THAT:

"the Town of Brookline become a sanctuary for refugees from El Salvador, Guatemala, and Haiti, and that they shall be afforded all rights and privileges offered and supplied to all people residing or working in the Town;

"it is the policy of the Town that, to the extent legally possible, no department or employee of the Town will violate established or future sanctuaries by officially assisting or voluntarily cooperating with investigations or arrest procedures, public or clandestine, relating to alleged violations of immigration law by refugees from El Salvador, Guatemala or Haiti or by those offering sanctuary;

"the Town supports and appreciates its residents who may provide bedding, food, health and other settlement assistance, as well as friendship to refugees from El Salvador, Guatemala, and Haiti; and the Town will not participate in any form in the compounding of injustice against these refugees or in the Federal Government's persecution of those who in good faith offer humanitarian assistance to these refugees;

"the Town supports all efforts intended to provide free, effective legal representation for any person residing in Massachusetts who is seeking asylum in the U.S. because of fear of persecution in his or her homeland, including Mass. Senate Bill #1063 sponsored by Senator Jack Backman."

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ARTICLE 27

TWENTY-SEVENTH ARTICLE

A Resolution Supporting a World Language Program as proposed by the Brookline K-6 World Language Planning Committee

Whereas, in today's multicultural, global economy, knowledge of language and culture have emerged as two of the most important advantages in the competition for jobs;

Whereas, implementation of an elementary world languages program would help preserve the tradition of excellence in The Public Schools of Brookline and enhance student achievement in language proficiency attainment that is currently not being met;

Whereas, scientific research shows that early language instruction improves learning in other subjects, most notably math, and raises overall standardized test scores;

Whereas, scientific research has shown that the ability to acquire languages with the skills of a native peaks in children up to the age of six and diminishes steadily until shortly after puberty;

Whereas, our children will need to live and work in a multilingual, multicultural world in which it is increasingly necessary to speak in a language other than English to conduct one's life;

Whereas, research has shown that students who develop language proficiency have lower rates of unemployment than those that do not;

Whereas, the Brookline K-6 World Language Planning Committee completed a year-long study of successful programs across Massachusetts and the United States and has presented a report to the School Committee and the Superintendent outlining in detail the resources, costs and timeframe necessary to implement a world-class language program based on its in-depth research (the final report is available at http://www.brookline.k12.ma.us/PSB/TEACHING+AND+LEARNING/Curriculum+Areas/WorldLang/K+-+6+World+Language+Proposal.htm);

Therefore, be it resolved that Town Meeting hereby expresses its support for the World Language Program proposed by the Brookline K-6 World Language Planning Committee, and further, encourages the School Committee and the Board of Selectmen to create a plan for the implementation and funding of a World Language program in grades K-6 to be included in the FY08 budget recommendation or act on anything relative thereto.

Brookline's K-6 WL Planning Committee was formed during the 2004-2005 school year to explore and recommend options to re-implement the study of world languages at the elementary level starting in the 2006-2007 academic year. The committee, made up of 27

members including classroom and world language teachers, administrators, parents, and community members met bi-weekly from January 2005 to June 2005. Additional meetings were scheduled as needed. Two subcommittees were established to conduct internal and external research regarding the implementation of an elementary world language program. The internal research subcommittee interviewed building principals, curriculum coordinators, classroom teachers, and world language teachers. They organized a successful public forum with experts in international business, second language acquisition, bilingualism, and elementary world language programs. Several members of the internal research committee also met with parents and presented findings and updates on the committee's work at PTO meetings. The external review subcommittee contacted more than 30 school districts across Massachusetts and the greater Northeast that have or had an elementary language program. Data was collected and analyzed from approximately 23 of these districts. Members visited communities with successful programs including Bedford, Wellesley, and Needham. Christine Brown, of the nationally acclaimed language program in the Glastonbury Public Schools in Glastonbury, Connecticut spent a day in Brookline and met with various constituencies to discuss the success of the Glastonbury program as well as the future of a language program in Brookline. Committee members also attended the Northeast Conference for the Teaching of Foreign Languages in New York.

The committee's work culminated in a report that outlines a proposed program model, program goals, class schedule, language choice, program implementation plan, staff and training requirements and overall budget designed to meet the expectations of the Massachusetts Foreign Languages Curriculum Framework as well as the nationally established standards for foreign language education. The full report is available as a PDF file at:
http://www.brookline.k12.ma.us/PSB/TEACHING+AND+LEARNING/Curriculum+Areas/WorldLang/K+-+6+World+Language+Proposal.htm.

SELECTMEN'S RECOMMENDATION

Article 27 is a petitioned article asking Town Meeting to adopt a resolution supporting an elementary world language program in the Brookline Public Schools. The issue of elementary world language is an important one that has been discussed at Town Meeting in the past. In fact, at this past Annual Town Meeting in May, there was a motion to increase the School Department budget in order to fund the elementary world language program.

As the petitioner highlighted for the Selectmen, scientific research exists showing that the ability to acquire linguistic fluency peaks in children at about age six and diminishes thereafter. While the benefits of an elementary world language program are clear, this Board understands the difficult budget situation the School Department finds itself in due to cost pressures from enrollment growth, special education costs, utilities, and employee benefits. The Selectmen will work with the School Committee in upcoming budget

cycles with the intention of exploring all possible opportunities for the development of an elementary world language program.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 17, 2006, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 27 is a resolution that expresses support for restoration of world language instruction in grades K-6 in the Public Schools of Brookline.

World language instruction in most Brookline schools currently begins in 7th grade. The Public Schools of Brookline offered world languages in earlier grades between 1998 and 2004. Chinese, Spanish, or Japanese was taught at the elementary schools with the support of a grant from the Freeman Foundation. This program ended when the grant expired in 2004. Supported by a separate Freeman grant and school budget funds, a Chinese program continues at the Driscoll School.

After the Freeman grant expired, the Public Schools of Brookline convened a K-6 World Language Planning Committee that included parents, teachers, and administrators. This committee met during 2004-2005. It conducted interviews in Brookline, performed research on other elementary world language programs, examined data on the benefits of early language instruction, discussed the rationales for teaching several different languages, and considered a variety of strategies for program implementation. In the fall of 2005 the committee offered a K-6 World Language Proposal. This proposal recommends that Brookline implement an elementary world language program based on a content-enriched Foreign Language in the Elementary School (FLES) model that includes 100-180 minutes of instruction per week in grades K-6. Elementary schools would have the option of offering Chinese, Spanish, or Japanese. The proposal presents alternatives for implementing this program, including introducing language instruction simultaneously in multiple grades or rolling it out first in kindergarten and then in subsequent grades. The cost of the proposed program in its first year would be far lower (approximately $300,000 compared to $800,000) under the single-grade rollout scenario. When fully implemented, the proposed program would require approximately $1.3 million in annual funding. These estimates are subject to change due to inflation, changing enrollments, and decisions about how many hours of language instruction to offer.

The School Committee has included restoration of an elementary language program as a priority item in its budget directives to the superintendent. Current fiscal constraints suggest that funding is most likely to come from grants or other external sources.

At the 2006 Annual Town Meeting, the petitioner offered a budget amendment that would have increased the school budget by $250,000 for the purpose of implementing an elementary world language program. After Superintendent Lupini and School Committee Chair Judy Meyers reminded Town Meeting of the Town/School Partnership process and stated that any increase in

the school budget might be used for other purposes, Town Meeting voted to take no action on the petitioner's motion.

DISCUSSION

Proponents of Article 27 and world language instruction more generally make several arguments.

First, language proficiency is increasingly important in the globalized contemporary world. Learning a language can be an economic advantage and it frequently increases cultural awareness.

Second, research conclusively shows that children learn new languages much more easily at an early age. The ability to acquire language proficiency diminishes until puberty and then does not improve. Thus it makes the most sense to teach languages in the early grades instead of waiting until children are 12 or older.

Third, children who learn languages may also improve their performance in other subjects. Some research suggests that language learners fare better in math and language arts, even after a short period of language study.

The proponents of Article 27 argue that elementary language study is a necessity, not a luxury, and that restoration of a world language program would be fully consistent with Brookline's tradition of excellence in public education.

The petitioner and other parents have proposed Article 27 to call attention to the importance of world languages and to seek broad community support for a restored program.

Members of the Advisory Committee were concerned about several elements of Article 27. First, several members were concerned that the resolution went too far in its attempts to direct the School Committee on how to prepare the school budget. There is a clear difference between an expression of support and a call for funding and implementation of a program in FY08. It is the prerogative of the School Committee to allocate spending on items in the school budget, although Chapter 71, Section 34 of the Massachusetts General Laws states that Town Meeting "may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations."

Second, the petitioner's resolution itself is ambiguous as to whether it is recommending "a" world language program or "the" program proposed by the K-6 World Language Planning Committee.

School Committee Vice-Chair Henry Warren has indicated that the School Committee and Superintendent Lupini share similar concerns, although they also support world language instruction.

After discussions with members of the School Committee and Dr. Lupini, the petitioner agreed that the resolution should be revised to streamline its "Whereas" clauses and to remove the reference to the FY08 budget. School Committee members have said that they would not object to the motion to be offered under Article 27. This motion also has the support of the petitioner.

Obvious barriers to implementation of an elementary world language program remain. It will be difficult to find funding in the current budgetary circumstances. Finding time in the school day for the amount of language instruction recommended by the K-6 World Language Planning Committee would not be easy, although the Driscoll School has found time for instruction in Chinese. Nevertheless, the initial step in this situation is to identify elementary world languages as a high priority. By providing a clear statement of community support, favorable action on this resolution might also help the Public Schools of Brookline to obtain external funding for elementary world language instruction.

RECOMMENDATION

By a vote of 19 in favor and 2 opposed, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town adopt the following resolution:

A Resolution Supporting an Elementary World Language Program

Whereas, in the multicultural, global economy, knowledge of language and culture is desirable for our children who will live and work in an increasingly interconnected world;

Whereas, scientific research has shown that the ability to acquire linguistic fluency peaks in children at about age six and diminishes steadily thereafter until shortly after puberty, and that early language instruction can improve student learning in other subjects;

Whereas, implementation of an elementary world language program would enhance student attainment of language proficiency and would thus build on a tradition of excellence in The Public Schools of Brookline;

Whereas, the Brookline Elementary World Language Planning Committee completed a year-long study of successful programs across Massachusetts and the United States and has presented a report to the School Committee and the Superintendent outlining their view of the resources, costs and timeframe required to implement a world language program at the elementary level;

Whereas, the Public Schools of Brookline has identified elementary world languages as a priority in the FY07 budget guidelines and has shown its desire for such a program by investing in the planning for implementation of an Elementary World Language Program in the allocation of FY'07 funds for a .40 FTE Curriculum Coordinator;

Therefore, be it resolved that Town Meeting hereby expresses its support for an Elementary World Language Program, and further, encourages the School Committee to create a plan for the implementation of a world language program in grades K-6 and to work with the Board of Selectmen to ensure funding of said program.

XXX

ARTICLE 28

TWENTY-EIGHTH ARTICLE

To see if the Town will adopt the following resolution:

RESOLVED: That Brookline Town Meeting urges every Town committee, subcommittee, or study, by whatever classification, whether appointed by the Board of Selectmen or the Town Moderator or otherwise, including subcommittees of the Advisory Committee, to conduct at least half its meetings during evening hours and subject to all public meeting, public record, and conflict of interest laws. In particular, all meetings at which an expert or consultant to advise the committee is expected to attend should be held during evening hours.

or act on anything relative thereto.

Article 19 of the 2006 Annual Town Meeting proposed a bylaw requiring committees and subcommittees created by vote of Town Meeting to hold at least 50% of their meetings during evening hours. There was a lot of sentiment in favor of the basic idea, but there was also concern about various issues that would arise if meeting schedules were mandated by Town Meeting, and the Article failed to pass.

This Article proposes a resolution in which Town Meeting would not require, but would urge that at least 50% of Town committee meetings should be held in the evening. While it is non-binding, the proponents hope that these committees, subcommittees, and other bodies will honor the preferences of Town Meeting in this regard. Because it is non-binding, many of the concerns expressed regarding Article 19 of the Annual Town Meeting would not apply.

Since it is a non-binding resolution, the proponents also decided to expand its scope to explicitly include sub-committees of the Advisory Committee, since those subcommittees often have meetings in the early morning, at times inconvenient to many people who want to attend.

As the proponents of Article 19 said last spring, “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.”

SELECTMEN'S RECOMMENDATION

Article 28 is a petitioned article that asks Town Meeting to adopt a resolution urging all Town committees, subcommittees, and study committees to conduct at least half of its meetings during evening hours. This issue was discussed at the 2006 Annual Town Meeting. The Selectmen place a high value on public process and input. However, the Board recognizes that it is not possible for some citizens to attend meetings during the workday, while at the same time many committee members find morning meetings preferable because of other evening commitments. A committee cannot hold a meeting unless a quorum is present and it is often hard to schedule around the commitments of the committee members. The Selectmen believe that committees have respect for good process and can schedule meetings that work best for both members and the general public.

As a result, the Board does not believe any resolution is required regarding committee meeting times. The Selectmen recommend NO ACTION, by a vote of 4-0 taken on October 24, 2006, on Article 28.

ROLL CALL VOTE:
No Action
Allen
Hoy
Daly
DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
This warrant article is a follow up to an article concerned with hours of meetings considered at the spring 2006 Town Meeting. The spring 2006 article proposed a **bylaw** concerning hours of town meetings held by town committees. In spite of considerable support for the proposal, Town Meeting voted no action. The current warrant article concerns the same subject but it is a **resolution.**

The spring 2005 Town Meeting passed a resolution (Article 18) urging that at least a portion of all **hearings** be held after 5:30 PM. The motion considered by the Advisory Committee was modified by the petitioner to reflect the 2005 resolution. The effect of the revised resolution would be to extend the preference for scheduling of committee activities in the evening to all **meetings** whether or not they are **hearings.** More specifically, the resolution urges that whenever possible every town committee or subcommittee conduct at least half of its meetings no earlier than 5:30 PM.

The purpose of the resolution is to increase opportunities for the public to attend all meetings held by town committees. While many committees meet at night, some

committee meetings are held at other times. Some committees schedule all of their working meetings during the day.

Some members of the public want more than an opportunity to participate in hearings. These individuals are interested in the process through which committee members study issues and develop recommendations; they appreciate opportunities that are provided by many committees to allow members of the public to ask questions or to make comments at meetings.

Some members of the public are available to attend meetings only in the evening; others could attend meetings held at other times but find it more convenient to attend meetings in the evening. Scheduling of more meetings in the evening is expected to facilitate attendance of members of the public who are available only in the evening or who prefer evening meetings.

The resolution would apply to all town committees and subcommittees. It would apply not only to committees appointed by the Moderator or the Board of Selectmen but also to committees appointed by other boards and commissions. The resolution applies, for example, to the School Committee which has a number of subcommittees including those on policy, government relations, curriculum, capital projects, and finance.

DISCUSSION

Although there is a consensus that scheduling of meetings at a time convenient for the general public is desirable, committees are often confronted with logistical difficulties in scheduling meeting. The scheduling experiences of the School Committee's subcommittees illustrate the problem. According to the testimony of School Committee member Henry Warren, more evening meetings would create substantial difficulties for members of the School committee, members of subcommittees, school personnel expected to attend meetings, and the administrators responsible for scheduling the meetings. Some School Committee members cannot attend more evening meetings because their evenings are already solidly booked with town committee meetings. In addition, some of the School subcommittee meetings require attendance of a significant number of School Department employees. More evening meetings would be burdensome for them. In addition, if more evening meetings were scheduled, some citizens who now serve on committees would no longer be willing to serve because they are not available in the evening.

The petitioner allowed as how he would be open to eliminating the application of this resolution to the School Committee. However, the expectation of holding evening meetings would be constraining for committees other than just the School Committee and its subcommittees. In some instances, night meetings would be burdensome for volunteers and town staff members who are expected to participate. Some Design Advisory Teams, for example, meet during the day to accommodate expert volunteers who would otherwise not be available to serve on the committees.

Another obstacle to a greater reliance on evening meetings is heavy demand on the town's limited number of meeting rooms. The booking of evening meetings is already

difficult because of the great demand for the town's meeting spaces, and this would just add to delays.

The petitioner argued that since the motion is a resolution, committees could set aside the provisions of the resolution when it was impractical to hold evening meetings. Critics of the motion argued that if committees were free to disregard the provisions of the resolution at will, the resolution would have little meaning.

Some members of the Advisory Committee expressed concern that attendance of members of the public at public meetings tends to be very modest regardless of the time of day at which the meetings are scheduled. On that basis they argue that the scheduling preferences of the general public should not be the only factor in the scheduling of meetings. Proponents of the resolution argue that the scheduling of more night meetings would increase attendance at meetings. Critics of the resolution believe that interested members of the public currently find it possible to attend important meetings regardless of the time at which they are scheduled.

RECOMMENDATION

As indicated above, the Advisory Committee did not vote on the resolution originally proposed by the petitioner. The Committee voted on a revised resolution urging that whenever possible every town committee or subcommittee conduct at least half of its meetings no earlier than 5:30 PM.

The Advisory Committee by a vote of 12 in favor of the motion for no action and 6 opposed recommends NO ACTION on the proposed resolution.

At a subsequent meeting, the petitioner again presented revised language, intended to clarify the intent of the article. The Advisory Committee did not feel that the changes were substantive in nature and did not vote to reconsider the previous vote for NO ACTION.

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ARTICLE 28

Motion to Be Offered by the Petitioner

RESOLVED: That Brookline Town Meeting urges every Town committee, subcommittee, or study which is appointed by the Board of Selectmen or the Town Moderator, whenever possible, to conduct at least half its meetings no earlier than 5:30 PM.

ARTICLE 29

TWENTY-NINTH ARTICLE

To see if the the Town will ask the Board of Selectmen to describe how collections of the Refuse Disposal Fee, about $40 million, was expended in Town budgets for the past 18 years or whether the $40 million was placed in Town surplus accounts. The Selectmen are asked to report to Town Meeting especially about last year's (FY 2006) collection of $2,100,000 of the Fee. How was this supplemental money disbursed? This Selectmen's report shall be presented to the present 2006 Town Meeting or act on anything relative thereto.

The Board of Selectmen have been in charge of the Refuse Disposal Fee since it was created in 1989 for a money emergency. In these 18 years about $40 Million have been collected but now there is an absence of clear information as to how the $40 Million has been expected or saved. The Town Administrator said he could not simply report on how this money was disbursed or saved. The Town Meeting has not received a report on how the previous year's (FY2006) collection of $2,100.00 of Refuse Disposal Fee was disbursed. Bills sent 4 times a year to half of the Town's taxpayer because of a past urgency but there has been no discussion about the current urgency or the current needs for this supplemental money. Is one department supplemented or several or none? Is the current collection kept in surplus accounts?

The Board of Selectmen are asked to report to Town Meeting about this year's spending of the supplemental Fee money and its urgency. Town Meeting about is to request a report for the current fiscal year (FY2006) especially and for the past 18 years or act on anything thereto.

SELECTMEN'S RECOMMENDATION

Article 29 deals with the refuse fee, an issue the Board and Town Meeting are quite familiar with. The Board recommends FAVORABLE ACTION, by a vote of 4-0 taken on September 26, 2006, on the article and provides the following report as requested in the article.

Report of the Selectmen on the Refuse Fee
September 26, 2006

Since 1989 the Town has been collecting a fee from the residents of the Town who use the Town's refuse collection services. That fee is presently set at $165 per year, for each household. The money collected through this fee goes into the general fund, not a segregated account, and it is used to offset the expenses of refuse collection. All money coming out of the general fund is documented each year in the Town's budget book (officially called the "Financial Plan") and publicly debated and voted at Town Meeting

after review by the Town's Advisory Committee and the Board of Selectmen. The Refuse Fee, as with all money in the General Fund, cannot be spent without moving through the entire budget process and being voted by Town Meeting.

At the level the fee is presently set, it does not fully cover the expenses of refuse collection and the difference must be paid out of the remainder of the general fund. The general fund of $182 million is primarily comprised of property tax revenue ($130 million). It also includes local receipts, such as parking tickets, building permits, and the Refuse Fee, and aid from the State.

Over the 18 year period that the Town has had the Refuse Fee the total cost and fees of refuse collection have been as follows:

	Direct Sanitation Expend. (Paid from Gen'l Fund)	Adj. to include benefits/overhead	Refuse Fee Revenue (Depos. In Gen'l Fund)
Total (FY89-FY06)	$42,954,201	$48,108,877	$40,578,839

The direct cost of Refuse collection in Fiscal Year 2006 was $2,742,398. With benefits for the Town's sanitation employees who collect trash and other allocated expenses, this cost rises to $3,071,486. In the same Fiscal Year, only $2,257,936 was collected through the Refuse Fee, leaving a gap of $813,550 that had to be funded from other monies in the general fund (i.e. through property taxes). This gap has been growing over the past several years, leading to discussions as to whether the Town should consider raising the Refuse Fee.

Only those households that use the Town's refuse collection pay the Refuse Fee. Other people living in Town, primarily those in larger apartment buildings and condominiums have private trash collection. However, through their property taxes, they are contributing a slight subsidy to the collection of refuse for those who use the Town's service.

While the money collected by the Town from the Refuse Fee is deposited in the General Fund and not in an earmarked account, it is widely understood by the Selectmen, the Advisory Committee and by Town Meeting that the funds collected through the Refuse Fee offset the majority of the expenses of refuse collection. These funds have been thoroughly reviewed by the Town's outside auditors as are all aspects of the Town's income and revenues and they have been found appropriate within the generally accepted accounting practices for government bodies. State law MGL c. 44, s. 28C (f) specifically give the Board of Selectmen authority to establish and set refuse fees.

ROLL CALL VOTE:
Favorable Action
Hoy
Merrill
Daly
DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
Article 29 asks the Board of Selectmen to provide certain information about the refuse fee and report on such.

DISCUSSION
Prior to the Advisory Committee's consideration of this article it learned that the Selectmen had reviewed the article and had voted favorable action, and that they had provided and reported on the information sought by the petitioner. The Advisory Committee was presented with this report dated September 26, 2006 (included under the Selectmen's Recommendation), as was the petitioner.

Based on the events that had taken place, the Advisory Committee felt there was no need for this article, the petitioner's request being satisfied without the action of Town Meeting.

RECOMMENDATION
The Advisory Committee by a vote of 20 in favor of the motion for no action, 0 opposed and 2 abstentions recommends NO ACTION on Article 29.

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ARTICLE 30

THIRTIETH ARTICLE

Reports of Town Officers and Committees

MODERATOR'S COMMITTEE ON VOTING TECHNOLOGY

INTERIM REPORT

The Moderator' Committee on Voting Technology for Town Meeting was established under Article Twenty in the Warrant for the November 15, 2005 Special Town Meeting. The vote, passed by a majority vote of Town Meeting, reads as follows:

> VOTED: That Town Meeting authorize the Moderator to appoint a committee to investigate and report to the 2006 Fall Town Meeting the available options for forms of voting that record and/or display the votes of each Town Meeting member on matters at Town Meeting, without the necessity of a so-called "roll call" vote.

The committee, appointed by Moderator Edward (Sandy) Gadsby, still has work to complete before filing a final report to Town Meeting. It has, however, held several productive meetings and herewith submits an Interim Report.

The committee reviewed the basic minimum features that were highlighted by the 2000 Moderator's Committee on Alternative Voting Methods. Several of these features, including the ability to track individual responses, speed of voting, portability and simplicity of use, were investigated by the committee and were quickly determined to no longer be of significant concern. The committee discovered that every radio frequency, group response, hand-held device on the market met all of these requirements.

The committee also discovered, through its research, that the cost of such a radio frequency system has dropped considerably over the past four years, following the trend of all other consumer electronic products. The committee has received requests for 280 keypads, including the required interface unit, software (to collect, identify and manage individual handheld votes and to interface the results with standard MS Office products) and license, for as low as $22,500. This is $45,500 less than the average price per system that the previous Moderator's Committee reported in 2002. Thus, cost and other factors such as usability and presentation means are no longer the concerns that they were four years ago. However, remaining as a concern is the issue of spoofing and security.

The committee plans to present a final report to the May 2007 Annual Town Meeting. In the interim, the committee expects to have vendor presentations, either in person or over the internet. The committee also intends to focus on the single major outstanding issue of voting security as well as non-electronic voting alternatives. The committee also expects to hold at least one public hearing concerning these issues.

The committee appreciates the opportunity it has been given, by Town Meeting and the Moderator, to study such an important issue.

Respectfully,

Gilbert Hoy
Stanley L. Spiegel
Alexandra "Sandy" Spingarn
Robert M. Stein
Patrick J. Ward

SUPPLEMENTAL EXPLANATION FOR ARTICLE 18 OF THE FALL 2006 SPECIAL TOWN MEETING

AND

PART I OF THE FINAL REPORT OF THE BROOKLINE TOWN MODERATOR'S COMMITTEE ON CAMPAIGN FINANCE

Respectfully submitted,

THE BROOKLINE TOWN MODERATOR'S COMMITTEE ON CAMPAIGN FINANCE

November 2006

I. INTRODUCTION

The Brookline Town Moderator's Committee on Campaign Finance (the "Committee") is pleased to submit this report on its analysis, findings, and recommendations. This document first serves as a supplemental explanation for Article 18 of the Warrant for the Fall 2006 Special Town Meeting, as revised in November 2006 ("Article 18"), pursuant to Section 2.1.4 of the By-Laws. It additionally serves as Part I of the Committee's final report pursuant to Section 2.5.1 of the Town's General By-Laws (the "By-Laws"). Part II of the Committee's final report will discuss proposals that the Committee considered, and in some cases would recommend, but decided not to include in Article 18.

II. COMMITTEE CREATION, MEMBERSHIP, AND PARTICIPATION

A. Creation of the Committee

The Committee was created by the Fall 2003 Town Meeting's passage of a motion under Article 27 of the Warrant before it ("Article 27"). That article was one of three submitted to that Town Meeting by citizen petitioner Ronald Goldman ("Mr. Goldman") concerning conflicts of interest among Town officials and the financing of campaigns for Town office.[1] In its original

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[1] The first of these articles, Article 25, initially put forward a resolution recommending that former selectmen and their immediate family members not represent others before any Town bodies consisting of individuals appointed by such selectmen. The article also proposed the creation of a system whereby candidates for selectman would be given the opportunity to commit to such restrictions, and the Town Clerk would publicize whether they made and honored such commitments. At the time of Town Meeting, Mr. Goldman offered a motion to replace his initial article with a resolution simply urging former selectmen and their professional associates to avoid the apparent conflicts of interest created by their representation of others before Town bodies consisting of individuals appointed by such selectmen. Town Meeting did not pass the initial article or the substitute motion.

The second article, Article 26, originally offered a resolution establishing that the acceptance by a selectman or school committee member, or the immediate family member or campaign of such an official, of anything exceeding $100 in value shall create a conflict of interest with regard to that official's debate or vote on any issue affecting the donor, unless incidental to a question of the pubic good. The article further proposed a system for giving such officials the opportunity voluntarily to disclose such conflicts, withdraw from debate on such issues, and abstain from voting on such issues. At Town Meeting, Mr. Goldman offered a motion to replace his original article with a resolution establishing that transactions of the type described above appear to be conflicts of

form, Article 27 offered a resolution concerning the adoption of voluntary limits on campaign spending and contributions. In particular, it proposed a system in which candidates for selectman would be given the opportunity to commit to any or all of the following: limiting total campaign spending to $15,000 or less; limiting donations from individual donors to $100 or less; limiting self-donations to $4000 or less; limiting donations from outside Brookline to $2000 or less; returning donations over $200 that are not accompanied by information on the donor's occupation and employer; refusing donations from real estate interests, political action committees, other campaigns for selectman, and other entities substantially likely to have matters pending before the Town; and participating in public debates. Such amounts would be adjusted for inflation, and the Town Clerk would publicly post the extent to which each campaign accepted and adhered to such commitments. At Town Meeting, Mr. Goldman offered a motion to replace his initial article with a resolution simply urging candidates for selectman to commit voluntarily to any or all of the following: limiting donations from individual donors to $100 or less; limiting self-donations to $5000 or less; limiting donations from outside Brookline to $3000 or less; and returning donations over $200 that are not accompanied by information on the donor's occupation and employer.

Instead of adopting either of Mr. Goldman's proposals under Article 27, Town Meeting passed a motion offered by Town Meeting Member Jesse Mermell "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

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interest, and urging officials to disclose such conflicts, withdraw from debate on such issues, and abstain from voting on such issues. Town Meeting passed neither the original article nor the substitute motion.

campaign spending, and to minimize the influence of special interests" (the "Motion to Refer Article 27").

B. Committee Membership and Participation

Town Moderator Edward N. "Sandy" Gadsby, Jr. (the "Moderator") has appointed the following Brookline residents as Committee members: Christine Desan, an attorney and a Professor of Law at Harvard University ("Professor Desan"); Gilbert Hoy, an attorney and a Town Selectman ("Selectman Hoy"); Rita McNally, an attorney and a Town Meeting Member ("Ms. McNally"); Randall Ravitz, an attorney and a Town Meeting Member ("Mr. Ravitz");[2] Sloan Sable, a teacher and a Town Meeting Member ("Ms. Sable"); Patrick Ward, an attorney and Town Clerk ("Town Clerk Ward"); and Barbara Pastan, the designee of the Brookline chapter of the League of Women Voters ("Ms. Pastan"). The Committee has elected Mr. Ravitz as its Chair, and Ms. McNally and Ms. Sable as its Secretaries.

Additionally, the Committee has benefited greatly from the dedicated involvement of the following: Frank Farlow, a Town Meeting Member ("Mr. Farlow"); Mr. Goldman; Andrew Awerbrock, Jared Fleisher, Jane Manners, Nicole Mariani, Michelle Petersen, Luke Peterson, Daniel Richenthal, and Eli Rosenbaum, all of whom served as interns for the Committee while studying at Harvard Law School; and Harvard Law School itself. The Committee is enormously grateful for the substantial contributions provided by all of these parties to the Committee, the Town of Brookline, and the study of campaign finance reform.

[2] While Mr. Ravitz happens to be an assistant attorney general for the Commonwealth, this report represents the opinions and legal conclusions of its authors an not necessarily those of the Office of the Attorney General. Opinions of the Attorney General are formal documents rendered pursuant to specific statutory authority.

III. COMMITTEE ACTIVITY

A. Committee Operations Generally

The Committee was convened by the Moderator on January 14, 2004. At that time, he directed the Committee to study the issues presented in Article 27 and, if appropriate, propose measures that could be taken by the Town to regulate campaign financing. Citing the broad language of the Motion to Refer Article 27, he advised the Committee not to view its charge as limited to the issues raised by Mr. Goldman's proposals. The Moderator further indicated that the Committee may wish to consider the following: whether and to what extent the Town can regulate the campaign process; whether campaign fundraising promotes corruption; whether the cost of running for office in Brookline is too high; the amount of funds required to run for Town office; and whether the Committee should issue any recommendations. Additionally, he suggested that the Committee meet with experts in relevant fields, hold a public hearing on the issues before it, and consider whether the submission of a warrant article is appropriate. At that time, Committee members expressed an intention to set aside any preconceptions they may have and view the issues before them with an open mind. As it has executed its responsibilities, the Committee has remained mindful of the language of the Motion to Refer Article 27, the Moderator's instructions, and its pledge of open-mindedness.

Since the Committee was assembled, it has held approximately forty full Committee meetings and a number of subcommittee meetings. Its members and other participants have also conducted considerable research and drafting outside of those meetings. Each participant has offered unique contributions based on his or her involvement in Town offices and affairs, educational training and professional experience, participation in political campaigns and other

organizations, and viewpoints. All participants agree that the Committee's operations have been characterized by a high level of dedication, enthusiasm, collegiality, and productivity.

B. Analysis of Campaign Finance Data

Consistent with the Committee's charge of "reviewing the financing of campaigns for election to the Board of Selectmen," its participants devoted considerable attention to the analysis of campaign finance data gleaned from candidates' campaign finance reports. In particular, participants have examined issues such as the amounts raised by campaigns; the amounts spent by campaigns; the size of individual contributions; the extent of contributions made by those who are not Brookline residents; the extent of contributions made by candidates themselves; the extent of contributions made by relatives of candidates; the extent of contributions made by members of various industries; whether any particular occupations are disproportionately represented; the items on which funds are spent by campaigns; the relationship between incumbency, and raising and spending; and the relationship between electoral victory, and raising and spending; and the extent to which total fundraising could be expected to be impacted by stricter limits on individual contributions. With respect to each of these factors, participants have looked at whether any temporal trends or other patterns are revealed. In this analysis, the Committee benefited greatly from a series of analytical reports that Mr. Farlow prepared as a result of countless hours of dissecting campaign finance reports filed with the Town Clerk's Office and based on Committee input. Its analysis was also aided by a series of graphs that reflected campaign finance data and temporal trends and were prepared by its interns.

C. Analysis of Legal Issues

Another major undertaking of Committee participants was to analyze the legal issues arising from the consideration of municipal campaign finance restrictions. Certain individuals suggested to the Committee that the relevant legal issues were settled and uncomplicated. However, true to the intentions they expressed at their first meeting, Committee participants declined to accept any propositions as settled and instead sought to examine such issues independently. Issues examined included the following: the nature and scope of current restrictions and requirements concerning municipal campaign finance under Chapter 55 of the Massachusetts General Laws ("Chapter 55") and Title 970 of the Code of Massachusetts Regulations; the extent to which the Town is authorized to enact its own campaign finance restrictions under relevant provisions of the Massachusetts Constitution, including its "home rule" provisions and in light of Chapter 55's provisions; the extent to which the interpretation of other state constitutions is instructive in construing the Massachusetts Constitution; the limitations on the regulation of campaign finance under the United States Constitution; the nature of campaign finance restrictions enacted by other municipalities throughout the nation, and the legal challenges thereto; the various methods by which the Town may enact its own campaign finance restrictions; and the parameters of state conflict-of-interest laws applicable to Town officials.

In analyzing these legal issues, the Committee benefited greatly from the work of its Harvard Law School interns, several of whom had previously worked for organizations dealing with campaign finance reform or had otherwise done legal and public policy research in related fields. They prepared a series of thorough legal memoranda that capture many, valuable hours of legal analysis and that received high praise from experts in campaign finance law from the

Massachusetts Office of Campaign and Political Finance ("OCPF"). The Committee also drew upon that which Mr. Goldman learned in developing his initial warrant articles concerning reforms taken by other municipalities nationwide and legal opinions tendered by the Town Counsel's Office.

D. Questionnaires Concerning Issues, Attitudes, and Perceptions

Committee participants additionally believed that, in order to consider "the influence of special interests" in Town government arising from campaign contributions, it would be useful to identify the types of issues that special interests may wish to influence. At the same time, participants believed that such identification should be made by those most qualified to do so and not by the same body charged with analyzing campaign finance data. Accordingly, the Committee asked the Town Moderator, members of the Board of Selectmen, and members of the Advisory Committee to "list what [they] believe to have been the several most significant questions to come before Town Meeting in each of the last five years or so," and in doing so, to "judge a question's 'significance' by its perceived impact on the Town at the time that it came before Town Meeting" (the "Major Issues Questionnaire").

Participants further recognized the need to gather information on the attitudes and perceptions of Brookline residents regarding campaign finance, campaign activity, and the operation of government in Brookline. The Committee thus distributed a questionnaire to residents' elected representatives in Town Meeting (the "TMM Questionnaire"). That questionnaire sought Town legislators' beliefs about, among other things: what successful campaigns for Town office do cost and should cost; the impact of that cost; the extent to which appointments and decisions are influenced by or are perceived to be influenced by campaign contributions; the extent to which elections and/or decisions are affected by contributions from

particular industries or from outside Brookline; and the desirability of potential reforms. The questionnaire also asked Town Meeting Members what suggestions they have for the Committee's work and for ensuring fair elections and minimizing any influence that campaign contributions may have on government.

The TMM Questionnaire was sent by e-mail to all individuals on the list maintained by the Town Meeting Members Association ("TMMA"), made available and handed to Town Meeting Members on multiple evenings of Town Meeting, and was made the subject of announcements at Town Meeting by the Moderator. Its processing was aided through the use of an web-based system created by Committee interns and financed by Harvard Law School and Mr. Ravitz. The Committee received sixty responses.

A benefit of the TMM Questionnaire is that all those who responded have been elected to represent their neighbors and can be expected to have an awareness of community attitudes, the workings of Town government, electoral campaigns. Limitations in the usefulness of the TMM Questionnaire arise from the facts that responses were received from only about 25% of Town Meeting Members, the group surveyed did not represent a randomly-drawn cross-section of the community, and those with strong feelings about campaign finance reform may have been more inclined to respond.

As used herein, the term "Respondents" refers to those who responded to the particular TMM Questionnaire question at issue.

E. Discussions with Experts

In order to further enhance their understanding on all of the topics discussed above, Committee participants met with the following experts: David Barron, a Professor of Law at Harvard University with expertise on local government law in Massachusetts ("Professor

Barron"); Gregory Birne, General Counsel of OCPF ("Mr. Birne"); Lisa Danetz, an attorney at the National Voting Rights Institute ("Ms. Danetz"); Denis Kennedy, Director of Public Information for OCPF ("Mr. Kennedy"); Galen Nelson, Director of the Massachusetts Money and Politics Project, a program of the Commonwealth Education Project ("Mr. Nelson"); and Ben Vivante of the Town's Information Technology Department ("Mr. Vivante"). Professor Barron spoke about the extent to which the Town possesses the legal authority to enact its own campaign finance restrictions, the methods by which the Town could enact such restrictions, and the practical and political issues that would be raised by such an endeavor. Mr. Birne and Mr. Kennedy discussed Massachusetts statutory and regulatory provisions regulating campaign finance, the methods by which municipalities may enact new regulatory measures generally, and the procedural steps and practical issues that must be confronted by a municipality that seeks to do so. Ms. Danetz and Mr. Nelson addressed the range of possible reforms that the Town might consider, particularly with respect to disclosure requirements and campaign spending, the experience of other municipalities throughout the nation that have enacted campaign finance restrictions, and the legal challenges that have arisen from such enactments. Mr. Vivante helped participants 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 is very appreciative for the time devoted by these individuals, the useful information that they imparted, the clarity of their presentations, and the patience that they displayed in responding to inquiries.

F. Discussion with Members of the Public

On June 26, 2006, the Committee conducted a public hearing at Brookline High School concerning the issues within its charge. Notice of the hearing was publicly posted, and it was e-

mailed to individuals on the list maintained by the TMMA and to members of interested organizations. In the first part of the hearing, the Committee delivered a roughly-one-hour presentation concerning its charge and work, its findings and the concerns it identified, relevant legal issues, and potential reforms. The second part of the hearing was devoted to receiving and responding to questions and comments from attendees. The hearing was videotaped and has been broadcast multiple times by Brookline Access Television ("BAT").

Professor Desan and Mr. Ravitz also spoke about the topics referenced above with Selectman Hoy on an episode of the Gil Hoy Show, a BAT television program. The episode was taped on or about August 8, 2006 has been aired several times by BAT. Committee participants also heard from Mr. Goldman concerning feedback he received when developing and introducing his original warrant articles. They have further discussed reform proposals and the provisions of Article 18 informally with members of the public, some of whom have run for or served as treasurer of a campaign for Selectman.

In addition to the above, following the filing of Article 18, Committee participants delivered presentations to and responded to questions and comments from the following Town bodies: the Schools Subcommittee of the Advisory Committee, on October 5, 2006; the full Advisory Committee, on October 10, 2006; and the Board of Selectmen, on October 17, 2006 and November 2, 2006.

G. Involvement in Related Organizations

Committee participants also have been involved in organizations and attended programs dealing with issues related to the Committee's charge. Such organizations have included the League of Women Voters, Massachusetts Voters for Fair Elections, Brookline Voters for Fair Elections ("BVFE"), and the Massachusetts Voter Education Network (MassVOTE). Among

the programs attended by Committee participants were a forum on campaign finance reform sponsored by BVFE, candidate nights held in connection with Brookline elections, a conference on campaign finance law sponsored by the Federal Election Commission, and an OCPF public hearing on campaign finance regulations. Additionally, participants have been active in national, state, and local political campaigns. Participants often raised questions at programs on the Committee's behalf and reported to the Committee on information they obtained through their involvement.

H. Committee Discussion and Development of Proposals

In addition to these pursuits, Committee participants devoted time at their meetings to learning about the history of campaign activity in Brookline and those trends that have been observed. Particularly informative in this regard were Mr. Ward and Mr. Hoy, in light of their experience and resources, and Mr. Farlow's research. Tapping outside sources, Committee participants also regularly distributed compilations of campaign finance data, materials on campaign finance law, and relevant news articles at Committee meetings. Based on all of the foregoing, Committee participants had extensive discussions on the range of measures the Town could take to further the public interest, as well as the need for, wisdom of, practicality of, and possible methods of instituting each measure.

IV. COMMITTEE FINDINGS[3]

The Committee has made a number of findings concerning campaign finance in Brookline. Such findings are based largely on its analysis of campaign finance data, the results of its questionnaires, its review of current provisions of state campaign finance law, its

[3] All statistical figures herein have been rounded to the nearest whole number.

discussions with members of the public, and its own deliberations. They have been categorized and presented in the sections below.[4]

A. The Size and Growth of Campaign Fundraising, and the Correlation Between Fundraising and Victory

A review of campaign finance reports for campaigns conducted between 1988 and 2004 reveals that the amount of funds raised in campaigns for Selectman is substantial and has been growing. For example, between 1988 and 2005, candidates have commonly raised around $20,000 and have raised as much as $46,085 (in 2005 dollars). Campaign finance trends in Town are reflected in Appendix G to Article 18, a graph reflecting the average amounts raised by candidates in contested races in each year of this period, with adjustments for inflation, and showing a computer-generated statistical trend line. As the graph demonstrates, the average amounts raised have risen and fallen, but the overall trend is that fundraising has been increasing. The same is true with respect to winning candidates in particular, as demonstrated in Appendix H to Article 18. That is, the average amounts raised by winning candidates in such races has seen increases and decreases, but the overall trend is that such amounts have been rising.

The data also reveals a correlation between fundraising and victory. The existence of a correlation, of course, does not mean that the two variables necessarily relate to one another in exactly the same manner in all situations or that any particular outcome can be predicted with certainty.[5] It does mean, though, that there is a statistical relationship between the two variables.[6] That is, those who won at the polls were generally better fundraisers. For example,

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[4] It should be made clear that, while some such sections discuss the potential for contributors to seek greater influence with elected officials, the Committee is not suggesting that it has any evidence that any particular members of the Board of Selectmen have in fact been influenced in their decisions by campaign contributions.

[5] See generally, e.g., Charles Bonney, Correlation and Causality, in Earl Babbie, The Practice of Social Research 68, 68-69 (7th ed. 1995) (explaining distinction between “correlation” or “relationship” and “causality”).

between 1988 and 2005, while the average candidate raised close to $20,000, the average successful candidate raised around $25,000, and the average unsuccessful candidate raised less than $15,000. Thus, the average winning candidate raised 84% more than the average losing candidate.

The reverse is true as well. Generally speaking, those who raised more, won more often. In sixteen of the nineteen contested elections between 1988 and 2004, the best-funded candidate won. The table below lists the percentage of candidates within particular fundraising brackets (in 2005 dollars) who won contested races between 1988 and 2004:

Amount Raised	Percentage of Contested Candidates Who Won
$0 to $5,000	0%
$5,000 to $10,000	0%
$10,000 to $15,000	38%
$15,000 to $20,000	40%
$20,000 to $25,000	50%
$25,000 to $30,000	75%
$30,000 to $35,000	100%
$35,000 to $40,000	100%

The same information is presented graphically in Appendix *I* to Article 18.

The influence of money in Town elections appeared to be a source of concern for those who responded to the TMM Questionnaire. Sixty-nine percent of Respondents indicated that they believed candidates should be spending less than what they believed candidates currently were spending, and 54% of Respondents indicated that they thought the cost of campaigning has prohibited people from running. Moreover, 69% of Respondents indicated that they believe there is a sentiment among Brookline citizens that Town elections are free from the influence of money. Two-thirds of Respondents would like to see candidates accept voluntary campaign finance limits.

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[6] See, e.g., id. (using terms "correlation" and "relationship" interchangeably); Webster's Encyclopedic Unabridged Dictionary of the English Language 455 (1996) (listing primary definition for "correlation" as a "mutual relation of two or more things, parts, etc.")

The Committee also found that it is questionable whether candidates in Brookline need to spend as much as they have been spending to promote their candidacies. Using data provided on campaign finance reports, the Committee determined the major categories of campaign spending and the median amount spent by campaigns under each category, and it totaled all such median amounts. It then compared its analysis against estimates of major campaign expenditures supplied by Mr. Hoy, a veteran campaigner for the office of Selectman. Based on this analysis, the Committee concluded that a candidate would generally not need to spend more than $20,000 to promote his or her candidacy effectively. Moreover, any argument that members of the public view better fundraisers as being more legitimate or more worthy of support was not supported by the responses to the TMM Questionnaire. Only 9% of Respondents indicated that a candidate's ability to raise more funds than his or her opponent causes the Respondent to view the candidate more favorably. A candidate's fundraising success would have no impact on how he or she is viewed by 74% of Respondents and would actually cause the candidate to be viewed less favorably by 17% of Respondents.

All of the foregoing information raises concerns. In particular, it suggests that potentially promising candidates may be deterred from running for Town office due to considerations about the cost of doing so. Moreover, the outcome of elections may be impacted by the amount that a candidate is able to invest in his or her own campaign or raise from contributors. As a result of these circumstances, candidates may feel a need to take significant time away from their discussion of public issues or their responsibilities as incumbents in order to fundraise. There may even be candidates who feel compelled to fundraise aggressively or to give special attention to past or potential large donors.

B. The Sources of Campaign Contributions

The Committee has additionally made findings concerning the sources of contributions to campaigns for the office of Selectman. Such findings are especially significant given the apparent correlation between fundraising and victory discussed above.

1. *Funds from a Small Group of Large Contributors*

Data supplied on campaign finance reports reveals that a large proportion of campaign contributions come from a very small group of large donors. Between 2000 and 2004, contributors of $200 or more provided 53% of the funds raised in contested races, as reflected graphically in Appendix J to Article 18. Data from seven of the eight winning campaigns during this period show that this group consisted of no more than 230 individuals.[7]

This data Town elections are disproportionately impacted by a small group of individuals, and that such individuals may be in a position to maintain that impact as a result of personal wealth. As a result, election results may be skewed in favor of particular interests. Moreover, given the significant role that such contributors play in the political process, they may expect or demand to receive greater access to elected officials. To the extent that other members of the public perceive the influence exerted by this small group, they may feel disenfranchised, less inclined to participate in or trust government, or less confident in their ability to win public office themselves. Such an effect would only cause an even greater skewing of the political outcomes in favor of large contributors. It would also make Town government less effective, because the ability of any government to achieve its goals is weakened when it cannot depend as much as possible on public support, participation, and trust.

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[7] This examination looked at one campaign finance report from the most recent campaign of each candidate who won an election during this period.

2. *Funds from Outside Brookline*[8]

It is further evident that a substantial and increasing portion of campaign funds are contributed by donors who reside outside Brookline, as reflected in Appendix F to Article 18. Between 1995 and 2004, candidates raised an average of 16% of their funds from out-of-town. Of contributions of $200 or more, an average of 19%, and as much as 89%, came from non-residents. In 12 of the 35 campaigns since 1994, more than 20% of the funding came from non-residents – and in five campaigns, 35% or more, up to a maximum of 65%.[9] Candidates raised as much as $17,620 (in 2005 dollars) from outside the Town. As reflected in Appendix K to Article 18, the average amounts raised from beyond Brookline's borders have risen and fallen in recent years, but the overall trend is that fundraising has been increasing.

Interestingly, non-resident contributors overwhelmingly supporting winning candidates. While the average winning candidate raised twice as much in total funds as the average losing candidate, out-of-town donors gave seven times as much to winning candidates than to losing candidates. This statistic raises questions about whether a number of out-of-town contributors are simply donating to candidates perceived to be frontrunners, or winning candidates for some reason have a wider circle of contacts outside Brookline, or there is another explanation for out-of-towners' tendency to support winners. In any event, if out-of-town contributors were nothing other than friends and family members, one would expect them to support winning candidates just as often as do other contributors.

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[8] State law requires contributors' names and addresses to be reported only for contributions of over $50. M.G.L. c. 55, § 18. Thus, the percentages of funds from outside Brookline may actually have been higher in many cases.

[9] Note that the figure regarding the number of campaigns receiving 20% or more of their funds from out of town has been revised from the figure of 13 stated in the original Explanation to Article 18.

A significant number of Town Meeting Members who returned the TMM Questionnaire expressed concerns about contributions from outside Brookline. Forty-three percent of Respondents believed that out-of-town donations affected Town elections, while 37% felt that contributions from out of town affected Town decision-making. While these amounts do not constitute majorities, they should be viewed as troubling. Significantly, 83% of Respondents would favor some cap on donations from outside Brookline.

The above facts raise legitimate concerns. A large degree of donations from outside the Town creates a risk that Brookline elections are being impacted by those who are not affected by all Town decisions in the same manner as Town residents are. Indeed, some of such contributors may be motivated by specific, personal financial interests. They may also expect to receive greater access to Town officials. There is also a risk that candidates who do not necessarily have as much support within the Town will be victorious. Furthermore, any perception by Brookline residents that their Town's elections are largely affected by out-of-town interests could lead to the same type of mistrust and feelings of disenfranchisement discussed above.

3. *Funds from Particular Industries and Professions*[10]

A significant amount of campaign funding also appears to come disproportionately from particular industries and professions, as shown in Appendices A through C to Article 18. An examination of seven of the eight winning campaigns between 2000 and 2004 revealed that, of the total amount raised from donors of $200 or more, 25% came from the real estate sector and 11% came from the legal profession.[11] By way of comparison, the occupational group that gave

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[10] State law requires the occupations and employers of contributors to be reported only for contributions of $200 or more where the candidate has been able to obtain such information after two attempts. M.G.L. c. 55, § 18. Thus, the data presented in this subsection is based only on reported contributions for which occupations and/or employers have been supplied. The statistics herein could differ if occupations and employers were supplied for all contributions.

the next highest amount, retirees, contributed 7% of the amount raised, and each other occupational group contributed no more than 4% of the amount raised. Furthermore, while contributions of $200 or more from the real estate and legal sectors provided 14% of winning candidates' funds between 1995 and 2004, all other contributions of $200 or more for which occupations were identified provided 28% of winning candidates' funds.

Data analysis also showed that winning candidates raise a higher percentage of their funds from these two sectors than do losing candidates. Between 1995 and 2006, on average, winning candidates in contested races raised 15% of their funds from the real estate and legal sectors, while losing candidates raised only 2% of their funds from these groups.

Those who returned the TMM Questionnaire appeared to perceive and have concerns about the patterns discussed above. Fifty-three percent of Respondents felt that campaign contributions from particular industries, professions, or other categories disproportionately affected Town elections. Of the Respondents who elaborated on this view, 93% named the real estate industry as one such group, 29% identified attorneys, 14% listed business, 7% named the wealthy, and 4% identified homeowners. Meanwhile, 57% of Respondents believed that decision-making by Town officials was affected by campaign contributions from particular industries, professions, or other categories. When such Respondents were asked to indicate the degree of influence that they perceived such groups as having on a scale from 1 to 10, with 1 meaning "not at all" and 10 meaning "greatly," the average answer supplied was roughly 5. Of those Respondents who elaborated on the specific groups that they perceived as having such an impact, 86% listed the real estate industry among their answers, 18% identified business, 14% named lawyers, 5% listed the wealthy, and 5% identified restaurants and liquor stores.

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[11] Given that five of seven Committee members are attorneys, the Committee's identification of attorneys as a group that contributes significantly to campaigns should be viewed as sign of its intention to be objective in its analysis and reporting.

These results deserve attention in part because real estate is an industry that is particularly subject to Town regulation. In fact, in response to the Committee's Major Issues Questionnaire, which asked Town officials to identify the most significant issues to come before Town Meeting in recent years, Respondents largely named real estate-related matters. Thus, there is a risk that those who may have a disproportionate financial interest in Town decisions could also have a disproportionate impact on Town elections. Such contributors could also expect greater access to Town officials. As discussed above, any perception that such a disproportionate impact exists could lead to cynicism and feelings of disenfranchisement that would hurt the effectiveness of Town government and skew the outcome of Town decision-making.

4. *Funds from Close Relatives*

Another observation made by the Committee is that a large degree of funding appears to come from candidates' close relatives. As reflected in Appendix D to Article 18, campaign finance data shows that candidates have raised up to 23% of their funds from their parents, siblings, and children. Moreover, between 1995 and 2006, while winning candidates have raised an average of $704 from family members, losing candidates have raised an average of only $636 from such individuals (in 2005 dollars).[12]

This observation, too, is significant. Many members of the public have strong feelings about candidates' substantial financing of their own campaigns. Some resent those who largely self-finance campaigns, while others believe that such candidates are less likely to be subject to

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[12] State law requires contributors' names and addresses to be reported only for contributions of over $50. M.G.L. c. 55, § 18. Moreover, Committee participants could only identify contributions made by parents, siblings, and children where the donors shared the candidate's surname or were known by Committee participants to be close relatives of the candidate. Thus, the percentages of funds from close relatives may actually have been higher in many cases.

influence by contributors. In any event, financing by close relatives may be seen as little different from self-financing. The degree of contributions from close relatives is thus revealing.

C. Perceptions About the Impact of Campaign Contributions

Added to the above, the Committee found there to be substantial concern among TMM Questionnaire Respondents about the impact of campaign finance in Brookline. In particular, 69% of Respondents felt that there was a sentiment among Brookline citizens that Town elections are not free from the influence of money. Furthermore, 48% of Respondents believed that Town officials were inappropriately influenced by campaign contributions in making appointments to boards and commissions or in hiring employees, while 72% thought that there was a sentiment among Brookline citizens that Town decision-making is not free from the influence of money.

Even taking into account the number of individuals who responded to the TMM Questionnaire, any Town official should be troubled to see such results yielded by survey of Town legislators. As discussed above, negative public perceptions about the influence of money in politics could produce more far-reaching damage to the political system and the effectiveness of Town government.

V. LEGAL ISSUES CONCERNING MUNICIPAL CAMPAIGN FINANCE REFORM

The Committee has additionally made certain determinations regarding the impact of federal and state law on the Town's ability to enact its own campaign finance reform measures. Such determinations are based on its analysis of federal and state constitutional law, its examination of state statutory and regulatory provisions, and its review of challenges brought to campaign finance restrictions enacted elsewhere, and consultations with Mr. Barron and representatives of OCPF. The Committee has found the legal issues involved in municipal

campaign finance reform to be more complex than originally suggested. In short, it has determined that, while certain forms of restriction are almost guaranteed to be found legally invalid, other types of municipal restrictions could be subject to, but possibly withstand, legal challenge.

A. Federal Law

The United States Supreme Court has determined that the ability of any governmental entity to restrict campaign finance activity is circumscribed by the First Amendment to the United States Constitution. In its landmark 1976 decision in Buckley v. Valeo, the Court considered the constitutionality of a recently passed federal campaign finance law.[13] It concluded that making campaign contributions and expenditures constitutes a form of political speech subject to First Amendment protection, such that governmentally-imposed limitations on such contributions and expenditures will survive only if they are found to be the least restrictive means of satisfying a compelling governmental interest.[14] Using this standard, the Buckley Court found that the law's limitations on spending by a candidate or campaign committee that has not received public financing, on contributions by a candidate to his or her own campaign, and on independent expenditures by a third party in support of an individual's candidacy were unconstitutional.[15] Accordingly, neither federal nor Massachusetts law places a ceiling on these types of contributions and expenditures.[16] However, the Buckley Court upheld the law's limitations on third-party contributions to a candidate, stating that these limits were significantly

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[13] 424 U.S. 1 (1976).

[14] Id.

[15] Id. at 19.

[16] In fact, the Massachusetts General Laws explicitly provide that "[a] candidate may make expenditures without limitation for the purposes of his own campaign and may make campaign contributions without limitation for the benefit of the non-elected political committee organized on his behalf." M.G.L. c. 55, § 7.

less severe restrictions on political expression than the law's expenditure limits, and were justified by the government's interest in preventing corruption or the appearance of corruption.[17] Similarly, the Court upheld the law's provisions mandating disclosure of campaign finance information, finding them the "least restrictive means" of curbing "campaign ignorance and corruption."[18] Today, disclosure provisions are quite common with respect to elections at various levels of government.

B. State Law

Brookline's ability to enact its own campaign finance laws may also be impacted by two areas of state law. The first is the set of "home rule" provisions within the Massachusetts Constitution. This set of provisions generally authorizes municipalities to govern themselves, but carves out a number of exceptions to that grant of authority.[19] One such exception is that

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[17] Id. at 23. This past June, the Supreme Court issued its decision in Randall v. Sorrell, 126 S. Ct. 2479 (2006), in which it struck down Vermont's statewide contribution limits - $400 per election cycle (a period that includes both the primary and the general election) for candidates for governor and other statewide offices, $300 for candidates for the State Senate, and $200 for candidates for the State House of Representatives - as "well below the limits" the Court had previously upheld. Id. at 2493. Relative to district size, these limits are significantly lower than those the Committee proposes. Additionally, they comprehend the entire election cycle, rather than the calendar year proposed by the Committee. Thus, Randall is unlikely to affect Article 18's constitutionality.

[18] Buckley, 424 U.S. at 68.

[19] Mass. Const. amends. art. 89, amending amends. art. 2. These home rule provisions provide in relevant part as follows:

> It is the intention of this article to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters, subject to the provisions of this article and to such standards and requirements as the general court may establish by law . . .
>
> Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court in conformity with powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city or town by its charter. This section shall apply to every city and town, whether or not it has adopted a charter . . . .

Id.

municipalities may not "regulate elections," except in certain circumstances.[20] While there is some authority suggesting that the exceptions to home rule should be read "broadly enough to accomplish their purposes," the Committee uncovered no definitive interpretation of the exception concerning the regulation of elections that would govern in the instant situation.[21] Moreover, it may be argued that the phrase "regulate elections" in this context refers to the administration and control of the process by which voters actually cast ballots on election day, as opposed to regulations related to the financing of campaigns.

The second potential source of limitation on the Town's ability to enact campaign finance measures is the Massachusetts Constitution's restriction on municipal action that is inconsistent with or preempted by state law.[22] Preemption may be found where the state has comprehensively or clearly occupied the relevant field of law by enacting statutes thoroughly regulating it.[23] In this case, there is some authority indicating that Chapter 55 of the Massachusetts General Laws, which regulates campaign finance with respect to state and municipal elections, is comprehensive in scope.[24] However, other authority suggests that a local

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[20] Id. ("Nothing in this article shall be deemed to grant to any city or town the power to (1) regulate elections other than those prescribed . . . provided, however, that the foregoing enumerated powers may be granted by the general court in conformity with the constitution and with the powers reserved to the general court . . . .").

[21] See Marshal House, Inc. v. Rent Review and Grievance Bd., 260 N.E. 2d. 200, 205 (Mass. 1970).

[22] Mass. Const. amends. art. 89, amending amends. art. 2.

[23] See Town of Wendell v. Attorney General, 394 Mass. 518, 589 (1985) ("Legislation which deals with a subject comprehensively, describing (perhaps among other things) what municipalities can and cannot do, may reasonably be inferred as intended to preclude the exercise of any local power or function on the same subject because otherwise the legislative purpose of that statute would be frustrated.").

[24] See Anderson v. City of Boston, 380 N.E.2d 628 (Mass. 1978) ("We interpret G. L. c. 55 as intended to reach all political fund raising and expenditures within the Commonwealth. The absence of any reference to municipal corporations is significant, not as an indication that municipal action to influence election results was intended to be exempt from regulation, but rather as an indication that the Legislature did not even contemplate such municipal action could occur."). The Anderson court's language referred, however, to a very specific set of facts. The "municipal action to influence election results" at issue was an attempt by the City of Boston to use public funds to influence the result on a referendum, not an attempt to reform campaign finance. Id.

measure is more likely to be found preempted by state law where it frustrates or is in conflict with the objectives of the state enactments.[25] It may be argued that municipal campaign finance measures that further such objectives or supplement state laws do not fall within this category.

It should be noted that Amesbury, Massachusetts, passed an ethics by-law in 2002 requiring all candidates for municipal office to report publicly all contributions of $50 or more, including monetary and in-kind contributions.[26] The by-law mandated that the reports contain the name, address, occupation and employer of each contributor of $50 or more, together with the amount of the contribution, and that the information be reported on the forms provided by OCPF and filed with the Town Clerk prior to the state deadlines.[27] Although this clearly regulates campaign finance, the Massachusetts Attorney General's Office has apparently never reviewed the by-law.[28] According to Bonni Kitchin, Amesbury's Town Clerk, this is because Amesbury is a city form of government, and thus does not need to submit its by-laws to the Attorney General's Office for review.[29]

C. Potential Approaches in Enacting Municipal Campaign Finance Reform

Remaining mindful of the actual and potential legal restrictions discussed above, the Committee has identified several approaches that could be taken by the Town in order to pursue

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[25] See Wendell, 394 Mass. at 589 ("[T]he legislative intent to preclude local action must be clear." (quoting Bloom v. City of Worcester, 363 Mass. 136, 155 (1973))). The Wendell court went on to explain that if "the State legislative purpose can be achieved in the face of a local by-law on the subject, the local by-law is not inconsistent with the State legislation, unless that legislation explicitly forbids the adoption of a by-law." Id. (citing Bloom, 363 Mass. at 156).

[26] See An Act to Establish a Code of Ethics § 2A (2002) (visited Nov. 8, 2006) <http://www.ci.amesbury.ma.us/home.nfs?a=amesbury&l=;PROCEDURES;PROCEDURE_ID='216'>.

[27] Id.

[28] See Memorandum from Jennifer Dopazo, Brookline Town Counsel, to Brookline Board of Selectmen and Advisory Committee (Oct. 10, 2006) (on file with the Town Counsel's Office) ("According to the Attorney General's Office, they have never reviewed a local by-law that attempted to regulate campaign finance.").

[29] Telephone interview by Jane Manners with Bonni Kitchin, Town Clerk, Amesbury, Massachusetts (Nov. 8, 2006).

the institution of municipal campaign finance measures. As one option, the Town could enact a by-law containing provisions that supplement state campaign finance laws. Such a by-law, like all Town by-laws, would be subject to review by the Massachusetts Attorney General.[30] Its lawfulness may also be challenged in court. However, the enactment of a by-law would represent an assertion by the Town of its authority to act directly and would also demonstrate a local commitment to reform that may prove significant in the event of a challenge. Also, assuming the enactment is not struck down, the Town would maintain the ability to modify or repeal its provisions more easily in the future.

As a second option, the Town may file a "home rule petition" requesting special statutory authorization from the Massachusetts Legislature. Authorization of this type is provided for under the Massachusetts Constitution.[31] It would thus resolve any issues about the Town's authority to enact such measures under state law. Unlike a by-law, though, it would not represent an assertion of the Town's authority to govern itself or allow for easy amendment through Town action.

Town Meeting could employ other options, including encouraging candidates to agree voluntarily to abide by certain restrictions, submitting a non-binding question to voters on the desirability of voluntary campaign finance restrictions, or developing and adopting a town charter that specifies certain campaign finance provisions.[32] These options are, however, either less effective or much more involved. The options of action by by-law or home-rule petition therefore appear to be preferable strategies for the Town to consider first.

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[30] See M.G.L. c. 40, § 32 (providing, in relevant part, that "before a by-law takes effect it shall be approved by the attorney general or ninety days shall have elapsed without action by the attorney general").

[31] Mass. Const. amends. art. 89, art. II, § 8.

[32] See generally M.G.L. c. 40 (setting forth provisions regarding adoption of municipal charter).

VI. PROPOSALS INCLUDED IN ARTICLE 18

Based on all of the foregoing, the Committee concluded that the Town would benefit from additional campaign finance reform measures, and that the adoption of a by-law was the best route by which to institute those measures. The preference for a by-law was based in part upon a belief that, if there is uncertainty in the law regarding the Town's authority to enact campaign finance reform measures, the Town should take those steps that it deems beneficial for its citizens and not necessarily assume that such measures would be invalidated. The Committee also found the argument that the Town should affirmatively assert its own authority to be persuasive. Accordingly, Article 18 proposes the enactment a new Article 3.1.7 of the Town-By-Laws that would concern campaigns for Town office.[33] Its decision to propose a by-law and all of its decisions regarding the terms of that proposed by-law were arrived at by consensus.

In preparing Article 18, the Committee took into account a wide range of factors, including its findings and concerns regarding the nature of campaign finance in Brookline, the effectiveness of current state requirements and restrictions, the views of Town Meeting Members and their constituents, the legal limitations on the Town's ability to enact campaign finance restrictions, the need of campaigns to raise and spend funds in order to reach voters, the burdens placed on campaign committees and Town officials by campaign finance restrictions, and the local political culture. The Committee exercised restraint and views Article 18 to be modest in scope. As referenced above, there were a number of additional proposals that its participants considered. Some the Committee found undesirable or unnecessary. Others the Committee decided not to include in Article 18 for various reasons, but would recommend for future

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[33] Section 3.1.6 of the By-Laws deals with "Public Broadcast in Board of Selectmen."

implementation by the Town. Such proposals will be discussed in Part II of the Committee's final report.

The following discussion explains Article 18's provisions and the rationales therefor.

A. Providing for More Effective Disclosure of Campaign Finance Information

Sections B and C of Article 18 concern the disclosure of campaign finance information. A hallmark of campaign finance law is the requirement that candidates file reports providing information on contributions received by and expenditures made by their campaigns. Such filings are publicly accessible and thus offer voters an opportunity to evaluate the sectors and interests from which a candidate has received financial support. The article would extend the disclosure requirements of state law to make them more effective.

First, Section B would require candidates to file a Town Campaign Finance Report modeled on the state report already in use, but containing additional information of interest to voters. Under state law, a candidate must list the occupation and employer of donors contributing $200 or more to the candidate's campaign, unless the campaign could not obtain such information after making two requests.[34] Voters can use this information to evaluate the potential influence that may be held by certain donors or interests. In fact, the Committee used it to conduct an analysis of campaign donations of $200 or more by source category, which is summarized in Appendices A through D to Article 18. An additional benefit of this disclosure requirement is that it may make a candidate or officeholder more careful to avoid the appearance of undue support for those interests that have been particularly generous to his or her campaign. A problem with the requirement, however, is that it does not enable voters to see the occupations and employers of those who have given $200 or less. The contributions of such individuals are

[34] M.G.L. c. 55, § 18.

not insignificant to a campaign. Moreover, a number of smaller contributions from members of the same business or sector may raise the same issues in the mind of a voter as a single large contribution. Accordingly, the Town Campaign Finance Report would call for candidates to furnish the occupation and employer of each contributor who has given more than $50 but less than $200 to the campaign. This would not place a great burden on candidates, as they are already required to list donors of over $50,[35] and most campaigns have 200 or fewer donors. This is consistent with measures enacted in other municipalities nationwide, including, as noted above, Amesbury, Massachusetts.

Another piece of information not required under state law that would be required by the Town Campaign Finance Report is the number of contributors who have given an aggregate amount of $50 or less. The provision of such information would enable voters and analysts of the Town's campaign finance practice to determine whether candidates have received widespread support or only support from a limited number of contributors.

Under Section B, a candidate would be required to file a Town Campaign Finance Report at the time of filing any state report and at one additional point in time when it will be particularly useful to voters. Currently, state reports must be filed by the eighth day preceding the Annual Town Election, by the thirtieth day following the Annual Town Election, and by January 20th of each year.[36] The Committee concluded that none of these reports is filed close enough to the election to provide an accurate picture of the sources of a candidate's funding but also far enough in advance to enable the public and local news media to analyze the information

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[35] Id.

[36] Id.

and take it into account in evaluating candidates. Section B would therefore require the filing of another Town Campaign Finance Report fifteen days before the Annual Town Election.

Section C would require the Town Clerk to post campaign finance reports on the Town website within two business days of their filing. The rationale for this provision is that the effectiveness of disclosure is determined to a major degree by the ease and convenience with which the public and news media are able to access the information being disclosed. The Town Clerk, a Committee member, has stated that his office is willing to scan and post campaign finance report forms.

B. Ensuring Compliance with State and Town Requirements

Article 18's Section D would direct the Town Clerk to provide information to candidates regarding Massachusetts and Brookline campaign finance requirements and restrictions. This provision is based on the notion that campaign finance requirements and restrictions are only effective if candidates are aware of and understand them. The Town Clerk would be required to note in particular that the mandates of the Town's By-Law are in addition to all mandates imposed by state law.

Section E would establish a penalty for tardiness in filing the new Town Campaign Finance Report. This penalty would be in the amount of $25 for each day by which the submission deadline is exceeded. The Committee recognized that campaign finance restrictions are only effective to the extent that they are adhered to by campaigns. Unfortunately, however, the requirements of state law are often not strictly adhered to, and the penalty prescribed by state law is only $10 per day is often not imposed.[37] The penalty arrived at by the Committee would

[37] M.G.L. c. 55, § 3.

ensure that reporting timeliness is taken seriously and that campaigns are penalized in proportion to the amounts they have raised.

C. Lowering Caps on All Individual Contributions

Section F of Article 18 would establish contribution limits that are lower than those imposed by state law. State law currently allows candidates to accept contributions of up to $500 per calendar year from a single individual. The Committee would lower this cap to $250. Its recommendation is based largely on its aforementioned findings that: there is a strong correlation between amount raised and victory at the polls; the amounts raised and spent on campaigns are high and rising; and campaigns are financed greatly by large donations from a small group of contributors. Lowering the cap on individual donations would reduce the actual and perceived influence over a candidate that any one contributor or donor category may have; minimize the discrepancy in influence over the political process between wealthier contributors and less wealthy contributors; and likely reduce the total amount required to run for office successfully. Notably, this appears to be the most popular type of municipal campaign finance reform measure adopted by other localities nationwide. The Committee arrived at the figure of $250 because it is consistent with the following: the state's implicit recognition that contributions of $200 or more deserve special scrutiny, as evinced by its requirement that candidates list the occupation and employer of those who give at that level;[38] the level of restrictions imposed by comparably-sized municipalities in other states; and the Committee's conclusion that a $250 limit would clearly enable candidates to reach voters without being heavily financed by large contributions. Appendix F, Effects of Lowering Contribution Cap, to Article 18 reflects the Committee's analysis of the effects of different donation caps.

[38] M.G.L. c. 55, § 18.

D. Further Lowering Caps on Contributions from Outside Brookline

Section F would also prohibit campaigns from accepting more than $150 per calendar year from any one non-resident contributor. Other municipalities nationwide have put similar restrictions in place.[39] The analysis reflected in Appendix E to Article 18 revealed that, in addition to the fact that there is a correlation between funds raised and victory at the polls, a large proportion of campaign contributions frequently comes from outside Brookline. The Committee believes it is inconsistent with our democratic system for those who do not reside in Brookline to have such a great influence over the outcome of its elections and the decisions made by its government. Moreover, the Committee recognized that there is at least a perception that out-of-town contributors are at times motivated to donate to Brookline campaigns by a personal financial interest in issues considered by Town officials. The Committee believed that placing a cap on the total percentage raised from out-of-town donors would be difficult for campaigns to adhere to, given that such percentages would change with each new contribution. While it also considered proposing a cap on the total amount raised from outside Brookline, such a cap would still allow individual out-of-town donors to have great influence. Participants thus preferred a lower cap on individual contributions. The figure arrived at by the Committee is based in part on the fact that respondents to its Town Meeting questionnaire, on average, wished to see candidates accept no more than about 30% of their contributions from outside Brookline. The $75 figure is 30% of the $250 figure discussed above.

E. Providing for Continued Analysis and Systemic Improvement

Finally, Section G of Article 18 proposes the creation of a Town Committee on Campaigns with the following responsibilities:

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[39] See Carl Castillo & Mike McGrath, Localism and Reform: The Benefits of Political Diversity, Nat'l Civic Rev., Jun. 22, 2001, supra.

(a) analyzing information provided on campaign finance reports filed by candidates for Town office pursuant to Chapter 55 and this By-Law;

(b) publicly reporting such information and the results of such analysis;

(c) considering and recommending to Town Meeting measures that may be taken by the Town to improve upon this By-Law and ensure its effective implementation, and to establish a system of electronic reporting and accessible electronic posting of campaign finance information;

(d) considering additional measures that may be taken by the Town to improve the process by which Town officials are elected;

(e) examining the feasibility and potential parameters of a system of public financing with respect to campaigns for Town office.

Additional activities that may be undertaken by the Committee include, but are not limited to, the following: receiving public comment and conducting public forums concerning the process by which Town officials are elected; providing vehicles for publicizing, and working with local media to publicize, information concerning elections and candidates for Town office; and examining the relationship between campaign finance and appointments to Town boards and commissions.

Such a committee would promote public awareness of campaign finance issues by analyzing and reporting on information supplied through campaign finance reports. Additionally, it could help reduce the need for large contributions and expenditures by providing alternative vehicles for campaigns to reach voters. It would also further the effort to reform the financing of campaigns for Town office by receiving public comment and, as appropriate, proposing new measures for consideration by Town Meeting. Indeed, creating such a committee would provide a mechanism to evaluate the effectiveness, strengths, and weaknesses of Article 18 and improve upon its new provisions as needed.

VIII. CONCLUSION

The Committee appreciates the opportunity that it has been given to analyze the important topics discussed above and to contribute to the public interest. It is also grateful for the support that it has received from others in Town government. Its members and participants firmly believe that the enactment of its proposals will enhance confidence in and improve Town government in Brookline.

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 16 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 staffers. 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 Spring of 2007. We have now turned our attention to moderately complex issues of 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.

Appendix A

Which occupational categories provide the most campaign donations of $200 and more?

Among donors of $200 or more, three occupational categories – real estate, lawyers, and retired – stand out in terms of the percentage of donors they represent. The category with the fourth largest percentage – Brookline business owners – was also singled out, although it was substantially smaller than the third largest, since it seemed likely to be of interest to students of municipal campaign finance. (Company executives, although equally large, were not singled out since they were mostly non-Brookline residents.)

The data below were obtained in 2004 from the campaign finance reports for the most recent campaigns (one each) of the following successful candidates for election (or re-election) to the Board of Selectman: Robert Allen (2003), Joseph Geller (2002), Deborah Goldberg (2001), Gilbert Hoy (2002), Donna Kalikow (2000), Michael Merrill (2004) and Michael Sher (2003).

Occupational category	Number of donations	% of total
Real estate		
Owner/investor	6	
Broker	12	
Developer	15	
Other	24	
Total	57	(25%)
Lawyer	26	(11%)
Retired	16	(7%)
Brookline business owner	9	(4%)
Company executive – CEO, Pres, VP, Executive (mostly non-Bro.)	9	(4%)
Consultants, non-Brookline	7	(3%)
Business owner, non-Bro.	6	"
Medical doctor	6	"
Consultants, Brookline	5	(2%)
Engineer	4	"
Professor	4	"
Self-employed	4	"
Architect	3	(1%)
Publisher	3	"
Selectman	3	"
Certified public accountant	2	"
Housewife/homemaker	2	"
Investor	2	"
Landscape architect	2	"
Literary agent	2	"
Manufacturer	2	"
Mason	2	"
Rabbi	2	"
Sales rep	2	"
Student	2	"
University administrator	2	"

(continued)

Advertising	1	1%
Author	1	"
Bank president	1	"
Brookline Golf Association	1	"
Chief financial officer	1	"
Dentist	1	"
Electrician	1	"
Finance	1	"
Financial administrator	1	"
Financial planner	1	"
Gas station operator	1	"
Insurance sales	1	"
Investment	1	"
Lobbyist	1	"
Manager	1	"
Managing director	1	"
Marketer	1	"
Medical administrator	1	"
Mortgage broker	1	"
MWRA	1	"
Nurse	1	"
Nursing home	1	"
Plumber	1	"
Public relations	1	"
Research officer	1	"
Secretary	1	"
State employee	1	"
Store manager	1	"
Teacher	1	"
Teaching fellow	1	"
Volunteer	1	"
Unidentified	13	6%
Total	228	(100%)

Attorney and Real Estate Industry Donations of More than $50 to Selectman candidates, 1995-2006

Campaigns ordered by percentage in column Total RE+Atty, %, in bold. Amounts expressed in 2005 dollars.

			RE owners/investors			RE brokers			RE developers			RE, other			Attorneys			Total RE+Atty			
Cand.	Year	W/L	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Total	%	W/L	Total Receipts
29	"	W	599	4	599	--	--	--	--	--	--	2936	17	436	1138	7	380	4673	**27**	W	39,442
14	2003	W	478	1	239	2124	5	353	1964	5	393	1645	4	274	4033	10	202	10244	**26**	W	40,000
21	2001	W-u*	--	--	--	--	--	--	551	4	551	1654	11	551	1323	9	147	3533	**24**	W-u	14,426
18	"	W	--	--	--	--	--	--	--	--	--	4451	18	262	1574	6	143	6025	**24**	W	24,871
13	"	W	--	--	--	--	--	--	--	--	--	3153	16	326	672	3	169	3700	**20**	W	19,250
33	"	W-u	--	--	--	964	8	437	560	5	280	--	--	--	622	5	622	2116	**18**	W-u	14,326
1	2006	W	--	--	--	145	1	145	241	1	241	579	2	145	2607	11	172	3572	**15**	W	24,265
22	2000	W	568	2	568	--	--	--	--	--	--	2612	7	374	1987	6	284	5280	**15**	W	35,479
16	"	W	--	--	--	796	2	265	--	--	--	1114	3	371	3025	8	275	4935	**14**	W	35,980
31	"	L	--	--	--	--	--	--	243	4	243	--	--	--	608	10	608	851	**14**	L	8,821
19	"	W	271	2	271	--	--	--	760	6	253	271	2	271	380	3	190	1682	**13**	W	17.942
9	2005	W	--	--	--	--	--	--	700	5	233	500	3	250	500	3	250	1700	**12**	W	14,703
7	"	L	--	--	--	--	--	--	--	--	--	--	--	--	1175	12	294	1175	**12**	L	10,016
32	1996	W-u	--	--	--	--	--	--	560	8	280	311	4	311	--	--	--	871	**12**	W-u	7,451
23	"	W	--	--	--	--	--	--	284	1	284	1646	7	412	795	3	397	2725	**12**	W	23,651
8	2005	L	--	--	--	200	3	200	--	--	--	--	--	--	500	8	500	700	**11**	L	6,331
6	2005	W	--	--	--	--	--	--	200		200	700		233	250		250	1400	**9**	W	15,445
27	"	W-u	--	--	--	--	--	--	293	4	293	--	--	--	293	4	293	586	**9**	W-u	6,722
28	1998	L	--	--	--	--	--	--	659	4	330	--	--	--	599	4	599	1258	**8**	L	19,927
5	2006	L	--	--	--	193	1	193	--	--	--	--	--	--	101	5	338	1207	**5**	L	21,216
34	1995	L	--	--	--	200	1	200	100	1	100	500	3	500	--	--	--	800	**5**	L	17,421
20	"	L	--	--	--	--	--	--	--	--	--	--	--	--	489	4	244	489	**4**	L	12,478
25	"	L	--	--	--	--	--	--	--	--	--	--	--	--	568	2	568	568	**2**	L	23,180
15	"	L	--	--	--	159	1	159	--	--	--	--	--	--	106	0	106	265	**1**	L	25.612
17	2002	L	--	--	--	--	--	--	--	--	--	--	--	--	271	1	271	271	**1**	L	22,262
10	2005	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	337
2	2006	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	1,685
3	"	W	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W	23,648
4	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	0
11	2004	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	731
12	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	5,262
24	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	L	2,204
26	1999	W-u	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W-u	0
30	1997	W	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W	696
35	"	W	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	**0**	W	19,539

EXPLANATORY NOTES

- Column headings: W/L = won or lost; W-u = won, unopposed; Amt = total amount of donations in a category during campaign season; % = total amount of donations in a category expressed as a percentage of total receipts (i.e., all Donations) during campaign season; Ave = average amount of donation.
- Many dollar amounts and percentages shown would be greater if all large donors complied with candidate's request for identification of their occupation; a small percentage do not.
- Occupation is reported only for donors of $200 or more. Many amounts and percentage figures would be higher if they were also reported for donors of less than $200 were also reported.

*Won, unopposed

APPENDIX B

TABLE SUMMARY

Average total RE + attorney donations for winning candidates (excluding candidates running unopposed)	$3,605	(15%)
Average total RE + attorney donations for winning candidates (including candidates running unopposed)	$2,810	(16%)
Average total RE + attorney donations for losing candidates	$367	(2%)
Average total receipts for winning candidates (excluding candidates running unopposed)	$23,422	
Average total receipts for winning candidates (including candidates running unopposed)	$18,035	
Average total receipts for losing candidates	$12,153	

Donations of $200 or more from Retirees, Brookline Business Owners, Selectmen, Miscellaneous and Unidentified Sources to Brookline Selectman Candidates, 1995-2006*

			A Retirees			B Bro. business owners			C Selectmen			D Miscellaneous			Unidentified			Total A-D			Total receipts	
Candidate	Year	W/L	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	Ave	Amt	%	W/L	Amount
1	2006	W	1979	8	153	531	2	177	193	1	193	9220	38	214	5295	22	98	11923	49	W	24,265
2	"	L	--	--	--	--	--	--	--	--	--	--	--	--	145	9	145	--	0	L	1,685
3	"	W	965		483	--	--	--	--	--	--	--	--	--	9234		106	965	4	W	23,648
4	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	L	0
5	"	L	1255	6	418	--	--	--	--	--	--	3910	18	262	6225	29	95	5165	24	L	21,216
6	2005	W	--	--	--	--	--	--	--	--	--	3200	21	246	6771	44	98	3200	21	W	15,445
7	"	L	--	--	--	--	--	--	--	--	--	825	8	206	3333	36	98	825	8	L	10,016
8	"	L	1800	28	257	--	--	--	--	--	--	2300	36	256	1175	19	98	4100	65	L	6,331
9	"	W	100	1	100	400	3	200	--	--	--	265	2	265	4625	31	105	765	5	W	14,703
10	"	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	W	337
11	2004	L	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	L	731
12	"	L	--	--	--	--	--	--	--	--	--	--	--	--	2309	44	100	2309	44	L	5,262
13	"	W	258	1	258	517	3	258	931	3	310	2895	15	241	7621	41	108	4601	24	W	19,250
14	2003	W	2547	6	196	2707	7	271	106	0	106	9844	25	246	9340	23	113	15204	38	W	40,000
15	"	L	--	--	--	--	--	--	--	--	--	531	2	177	2547	10	116	3078	12	L	25,612
16	"	W	1061	3	265	531	1	531	531	2	531	7483	21	325	9946	28	138	9606	27	W	35,980
17	2002	L	760	3	253	--	--	--	--	--	--	2171	10	271	9053	41	162	2931	15	L	22,262
18	"	W	1303	5	144	543	3	543	--	--	--	8115	3	189	3908	16	126	9961	40	W	24,871
19	"	W	217	1	217	814	5	271	--	--	--	2443	14	305	7525	42	112	3474	19	W	17,942
20	"	L	--	--	--	--	--	--	--	--	--	2388	19	478	1357	11	113	2388	19	L	12,479
21	2001	W-u**	1323	9	441	--	--	--	--	--	--	6562	45	365	1599	11	114	7886	55	W-u	14,426
22	2000	W	795	2	265	1590	4	397	341	1	114	9084	26	363	13143	37	121	11810	33	W	35,479
23	"	W	1022	4	341	--	--	--	--	--	--	4712	20	377	9169	40	141	5734	24	W	23,651
24	"	L	--	--	--	--	--	--	--	--	--	534	24	178	1504	68	155	534	24	L	2,204
25	"	L	--	--	--	568	2	568	--	--	--	--	--	--	2742	12	125	568	2	L	23,190
26	1999	W-u	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	0	W-u	0
27	"	W-u	--	--	--	--	--	--	--	--	--	1055	16	264	1641	24	117	1055	16	W-u	6,722
28	1998	L	1198	6	599	--	--	--	599	4	599	2217		277	7985	4	127	4014	20	L	19,927
29	"	W	2696	4	539	--	--	--	--	--	--	18713	11	334	8795	40	135	21409	54	W	39,442
30	1997	W	--	--	--	--	--	--	--	--	--	696	100	232	--	--	--	696	100	W	696
31	"	L	--	--	--	--	--	--	--	--	--	450	5	450	2555	29	122	450	5	L	8,821
32	1996	W-u	--	--	--	--	--	--	--	--	--	934	16	311	3081	53	134	934	13	W-u	7,451
33	"	W-u	--	--	--	249	2	249	--	--	--	1245	9	622	4108	29	159	1494	10	W-u	22,325
34	1995	L	--	--	--	--	--	--	128	1	128	2563	11	366	5885	26	159	2691	12	L	22,325
35	"	W	--	--	--	--	--	--	--	--	--	--	--	--	12706	51	155	0	0	W	25,039

Average total A+B+C+D donations for winning candidates (including candidates running unopposed)..... $6,472 28% W
Average total A+B+C+D donations for winning candidates (excluding candidates running unopposed)..... $7,589 32% W minus W-u
Average total A+B+C+D donations for losing candidates..... $1,937 16% L
Average total of all donations for winning candidates (including candidates running unopposed)..... $22,979
Average total of all donations for winning candidates (excluding candidates running unopposed)..... $26,132
Average total of all donations for losing candidates..... $12,089

(Explanatory notes below)

APPENDIX C

NOTES:
- Definitions: W/L = won/lost; W-u = won, unopposed; Amt = total amount of donations in category during campaign season; % = total amount of donations in category expressed as a percentage of total receipts (i.e., all donations) during campaign season; Ave = average amount of donation.
- **Note that many dollar amounts shown would be greater if all large donors complied with request for identification of their occupation – some do not. Also, when considering percentages of total receipts, bear in mind that this table reflects only donations of $200 or more; percentages would often be greater if donors of less than $200 were also reflected**.

*Table begins with 1995 since it was in that year that state law was amended to require candidates to ask for occupation of donors of $200 or more..
**Won, uncontested

Appendix D – Donations of More than $50 from Candidate, Family and Non-residents to Brookline Selectman Candidates, 1995-2006

			Candidate			Candidate's family*			Outside Brookline				Total
Cand.	Year	Won/Lost	Amt	A	B	Amt	A	B	Amt	A	B	Won/Lost	Receipts
1	2006	W	--	--	--	--	--	--	$7144	28%	34%	W	$24,265
2	"	L	$1540	91%	100%	--	--	--	--	--	--	L	$1,685
3	"	W	$10434	44%	44%	--	--	--	$917	4%	--	W	$23,648
4	"	L	--	--	--	--	--	--	--	--	--	L	$0
5	"	L	$4537	21%	41%	$1062	5%	9%	$8687	41%	43%	L	$21,216
6	2005	W	$2000	13%	30%	$250	2%	3%	$765	5%	6%	W	$15,445
7	"	L	--	--	--	$100	1%	--	$2158	22%	53%	L	$10,016
8	"	L	--	--	--	--	--	--	$100	2%	--	L	$6,331
9	"	W	$2553	17%	54%	--	--	--	$1550	11%	19%	W	$14,700
10	"	L	$337	100%	100%	--	--	--	--	--	--	L	$317
11	2004	L	$707	100%	100%	--	--	--	--	--	--	L	$731
12	"	L	--	--	--	--	--	--	--	--	--	L	$5,262
13	"	W	--	--	--	--	--	--	$2472	13%	14%	W	$19,250
14	2003	W	--	--	--	$100	0%	0%	$17620	44%	53%	W	$40,000
15	"	L	$19903	78%	99%	--	--	--	$764	3%	--	L	$25,612
16	"	W	$9133	25%	36%	$1952	5%	6%	$8771	24%	25%	W	$35,980
17	2002	L	--	--	--	$3440	15%	55%	$1650	7%	9%	L	$22,262
18	"	W	--	--	--	--	--	--	$5998	24%	33%	W	$24,971
19	"	W	--	--	--	--	--	--	$2405	13%	16%	W	$12,479
20	"	L	$6085	49%	68%	$2171	17%	24%	$2865	23%	24%	L	$12,479
21	2001	W-u**	--	--	--	$3308	23%	34%	$9319	65%	89%	W-u	$14,426
22	2000	W	$114	0%	0%	$227	1%	1%	$13456	38%	45%	W	$35,479
23	"	W	--	--	--	$227	1%	3%	$5564	24%	36%	W	$23,651
24	"	L	--	--	--	--	--	--	$199	9%	0%	L	$2,204
25	"	L	$15897	68%	92%	--	--	--	$681	3%	3%	L	$23,180
26	1999	W-u	--	--	--	--	--	--	--	--	--	W-u	$0
27	"	W-u	$890	13%	35%	$59	1%	0%	$938	16%	0%	W-u	$6,722
28	1998	L	$240	1%	5%	$599	3%	12%	$425	2%	11%	L	$19,927
29	"	W	$2722	7%	10%	$1797	5%	6%	$13813	35%	38%	W	$39,442
30	1997	W-u	--	--	--	--	--	--	--	--	--	W-u	$696
31	"	W-u	$1526	17%	52%	$304	3%	10%	$669	8%	10%	W-u	$8,821
32	1996	W-u	--	--	--	$249	4%	0%	$1556	21%	41%	W-u	$7,451
33	"	W-u	--	--	--	$1245	9%	34%	$2147	15%	22%	W-u	$14,326
34	1995	L	$8971	40%	66%	$256	1%	0%	$705	3%	2%	L	$22,325
35	"	W	--	--	--	$1538	6%	19%	$1698	7%	9%	W	$25,039

SUMMARY (Note: The following data ignore campaigns with total receipts of less than $1000.)

Candidate donations	Amt range	% of total	Ave amt
Winning candidates (including candidates running unopposed)	$0 - $10,434	0% - 44%	$1,837
Winning candidates (excluding candidates running unopposed)	$0 - $10,434	0% - 44%	$2,074
Losing candidates	$0 - $18,752	0% - 91%	$5,717
Family donation totals			
Winning candidates	$0 - $3,308	0% - 23%	$704
Losing candidates	$0 - $3,440	0% - 17%	$636
Donations from Outside Brookline			
Winning candidates	$0 - $17,620	0% - 65%	$6,050
Losing candidates	$0 - $8,687	0% - 41%	$1,520

*Parents, siblings and children

(See below for explanatory notes)

EXPLANATORY NOTES:

- Amounts of donations are expressed in 2005 dollars.
- Definitions: Amt = total amount of donations in category during campaign season; A = total amount of donations in category as a percentage of *all donations* during campaign season; B = total amount of *donations of $200 or more* in category as a percentage of *all donations of $200 or more* during campaign season; Ave = average amount of donation; % of total = amounts expressed as percentages of all donations received by candidate.
- The table begins with 1995 since prior to that year, state law did not require campaign committees to ask the occupation of donors of $200 or more.
- Note that figures shown for Candidate's family would be larger if family members were required to identify themselves as such. Amounts shown have been identified simply on the basis of same last name. Parents, siblings and children with different last names are generally not reflected.
- Also, note that this table reflects only donations of $50 or more; in many cases the amounts shown for non-resident donors would be larger if donors of less than $50 were also reflected.

Effects of Lowering Contribution Cap

Data (expressed in 2005 dollars) derived from finance reports for the ten most recent successful campaigns for election to the office of Selectman.

	$500 Cap	$400 Cap			$300 Cap			$250 Cap			$200 Cap			$150 Cap		
Candidate	(actual receipts)	Receipts	Decrease		Receipts	Decrease		Receipts	Decrease		Receipts	Decrease		Receipts	Decrease	
1 (2006)	$23,648	$22,490	$1,158	5%	$21,331	$2,317	10%	$20,704	$2,944	13%	$19,738	$3,910	17%	$17,952	$5,696	24%
3 (2006)	$23,648	$23,455	$193	1%	$23,262	$386	2%	$23,165	$483	2%	$23,069	$579	2%	$22,972	$676	3%
6 (2005)	$15,445	$15,245	$200	1%	$15,045	$400	3%	$14,845	$600	4%	$14,370	$1,075	7%	$13,470	$1,975	13%
9 (2005)	$14,703	$14,603	$100	1%	$14,503	$200	1%	$14,453	$250	2%	$13,753	$950	6%	$12,803	$1,900	13%
13 (2004)	$19,250	$18,733	$517	3%	$18,216	$1,034	5%	$17,803	$1,447	8%	$17,027	$2,223	12%	$15,528	$3,722	19%
14 (2003)	$40,000	$37,346	$2,654	7%	$34,693	$5,307	13%	$33,313	$6,687	17%	$31,243	$8,757	22%	$28,218	$11,782	29%
16 (2003)	$35,980	$34,494	$1,486	4%	$32,955	$3,025	8%	$31,942	$4,033	11%	$30,036	$5,944	16%	$27,170	$8,810	24%
18 (2002)	$24,871	$24,328	$543	2%	$23,786	$1,086	4%	$23,405	$1,466	6%	$21,668	$3,203	13%	$19,660	$5,211	21%
19 (2002)	$17,942	$17,725	$217	1%	$17,508	$434	2%	$17,345	$597	3%	$16,802	$1,140	6%	$15,717	$2,225	12%
21 (2001)	$14,426	$12,331	$2,095	15%	$10,787	$3,639	25%	$10,015	$4,411	31%	$9,133	$5,293	37%	$6,045	$8,381	58%

APPENDIX E

Appendix F– Non-resident Funding of Selectman Campaigns, 1995-2006

Campaigns listed in order of percentage of total receipts (column 6). All amounts expressed in 2005 dollars.

Cand.	Year	Won/Lost	Total reeipts	Donations from non-residents	**% of total receipts**	% of donations of $200 or more
21	2001	W-u*	$14,426	$8,450	**65%**	89%
14	2003	W	$40,000	$16,601	**44%**	53%
5	2006	L	$21,216	$8,687	**41%**	43%
22	2000	W	$35,479	$11,850	**38%**	45%
29	1998	W	$39,442	$11,528	**35%**	38%
1	2006	W	$24,265	$7,144	**28%**	34%
32	1996	W-u	$7,451	$1,250	**27%**	41%
23	2000	W	$23,651	$4,900	**24%**	36%
18	2002	W	$24,971	$5,525	**24%**	33%
16	2004	W	$35,980	$8,264	**24%**	25%
20	2002	L	$12,479	$2,639	**23%**	24%
19	2002	W	$12,479	$2,639	**23%**	24%
7	2005	L	$10,016	$2,158	**22%**	53%
27	"	W-u	$6,722	$900	**16%**	0%
33	1996	W-u	$14,326	$1,725	**15%**	22%
13	2004	W	$19,250	$2,472	**13%**	14%
9	2005	W	$14,700	$1,550	**11%**	19%
24	2000	L	$2,204	$175	**9%**	0%
31	1997	W-u	$8,821	$550	**8%**	10%
17	2002	L	$22,262	$1,520	**7%**	9%
35	1995	W	$25,039	$1,325	**7%**	9%
6	2005	W	$15,445	$765	**4%**	6%
3	2006	W	$23,648	$917	**4%**	0%
25	2000	L	$23,180	$600	**3%**	3%
34	1995	L	$14,326	$550	**3%**	2%
15	2003	L	$25,612	$720	**3%**	0%
8	2005	L	$6,331	$100	**2%**	0%
28	1998	L	$19,927	$355	**2%**	11%
2	2006	L	$1,685	--	--	--
4	"	L	$0	--	--	--
10	1005	L	$1,550	--	--	--
11	2004	L	$731	--	--	--
12	"	L	$5,262	--	--	--
26	1999	W-u	$0	--	--	--
30	1997	W-u	$696	--	--	--

SUMMARY:

	Non-resident donations	Percentage of total	Average amount
Winning candidates	$0 - $17,620	0% - 65%	$6,050**
Losing candidates	$0 - $8,687	0% - 41%	$1,520**

NOTE: This table does not reflect non-resident donations of $50 or less. Since state law does not require the reporting of residences for such donations, there is no way to tell from campaign reports whether they are from outside Brookline. In many cases, therefore, the non-resident donation total and its percentage are actually somewhat larger than shown.

* Won, uncontested
** Campaigns with total receipts of less than $1000 are ignored in this calculation.