
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.

PETITIONER'S ARTICLE DESCRIPTION

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

SELECTMEN'S RECOMMENDATION

State statutes provide that unpaid bills from previous fiscal years may not be paid from the current year's appropriations without the specific approval of Town Meeting. There are three bills that are recommended for approval. The first one, in the amount of \$7,949.76, is from the Police Department for Northeastern workstudy students. The bill is actually for FY06, but was not known to the Public Safety Business Office (PSBO) until this past September. In an effort to avoid similar occurrences in the future, the PSBO will be setting up purchase orders for these Northeastern workstudy students.

The second bill, in the amount of \$24,631.39, is from the Department of Public Works (DPW) for electricity. On September 1, DPW received an invoice from TransCanada for energy use for the months of July and August, 2007 (FY08). Included with the invoice was an additional bill of \$24,631.39 for energy use for October, 2006 (FY07). In November, 2006, DPW contacted TransCanada about the missing invoice and was referred to NStar. NStar was then contacted on two separate occasions about the missing invoice and each time they stated that they were looking into the matter. No further action was taken since NStar failed to respond. Now, one year later, the charges appear and the bill is due.

The final bill, in the amount of \$141.12, is from the Selectmen's Office for leased PC's. In early-October, Dell sent a notice for an unpaid February, 2007 (FY07) bill. Everything was done correctly on the Town's end, including contacting Dell in June about the status of the Selectmen's accounts. At that time, Dell told the Town that we were paid up for the fiscal year, so an encumbrance was not carried forward for the accounts payable period. Billing issues with Dell occur more frequently than we like, so

both the Purchasing Division and the Information Technology Department are working to simplify the procurement and bill paying processes for PC's.

All three unpaid bills are legal obligations of the Town and, therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 9, 2007, on the votes offered by the Advisory Committee.

ROLL CALL VOTE

Favorable Action

Daly

Hoy

Allen

DeWitt

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Unpaid bills of a prior year cannot be paid without specific approval of Town Meeting. This article is placed in the warrant for every Town Meeting where such bills arise and are deemed legal obligations of the town.

DISCUSSION

For the fiscal year ending 6/30/07 there were three unpaid bills that now need Town Meeting approval for payment. The bills are:

PAYEE	AMOUNT	DESCRIPTION	EXPLANATION
Dell Government Leasing And Finance Program	\$141.12	Cost of leasing 2 desktop computers for one month	Town management contacted Dell in June 2007 and was told the town had paid all its bills for the fiscal year. As a result no encumbrance was carried forward. There are frequent billing errors with Dell so Purchasing and Information Technology are working to streamline the procurement and bill paying process for PC's.
TransCanada Power Marketing LTD.	\$24,631.39	Energy costs for October 2006	The DPW was aware of the October error and contacted both TransCanada and NStar at least twice during fiscal 2007. However, it took almost a year for NStar/TransCanada to resolve the error.

Northeastern University Office of Financial Aid	\$7,949.76	Compensation for Northeastern work study students	The Police Department employed Northeastern work study students during fiscal 2007. The bill for these services arrived in fiscal 2008. There was no purchase order for the expense so the business office was unaware of it. Therefore there was no encumbrance at year end. However, there is a purchase order for the work study students for fiscal 2008 so this will not happen again.
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RECOMMENDATION

These bills are legal obligations of the Town for services rendered and received and should be paid.

The Advisory Committee, by a vote of 16 in favor, 0 opposed, and 2 abstentions, recommends FAVORABLE ACTION on the following votes:

VOTED: To authorize the payment of the following unpaid bill of a previous fiscal year from the FY2008 Selectmen’s Office budget:

Dell Government Leasing and Finance Program \$141.12

VOTED: To authorize the payment of the following unpaid bill of a previous fiscal year from the FY2008 Department of Public Works budget:

TransCanada Power Marketing LTD \$24,631.39

VOTED: To authorize the payment of the following unpaid bill of a previous fiscal year from the FY2008 Police Department budget:

Northeastern University Office of Financial Aid \$7,949.76

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.

PETITIONER'S ARTICLE DESCRIPTION

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 5-0 taken on October 16, 2007, on Article 2.

ADVISORY COMMITTEE'S RECOMMENDATION

As there are no collective bargaining agreements to consider at this time, the Advisory Committee unanimously (16-0) recommends NO ACTION on this article.

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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 2008 budget or transfer funds between said accounts;

- B) 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.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required. For FY2008, the warrant article is necessary to appropriate additional revenue, re-allocate savings in the Group Health Insurance line-item that were generated by plan design changes agreed to by the Town and the unions, and amend the Water and Sewer Enterprise Fund.

SELECTMEN'S RECOMMENDATION

Article 3 of the Warrant for the 2007 Fall Town Meeting proposes amendments to the FY08 budget. The article is required to address four issues:

- 1. additional Net State Aid the Town received as part of the final state budget;
- 2. savings from the Group Health budget realized from the plan design changes / coalition bargaining agreement;
- 3. a lowered Parking Meter receipt estimate;
- 4. to amend the Water and Sewer Enterprise Fund to reflect the budget used to set the rates.

ADDITIONAL NET STATE AID

The final state budget approved by the Legislature included \$53,101 more in Net Local Aid than was included in the budget approved by Town Meeting. Of that amount, \$3,914

is "Offset Aid"¹, meaning that \$49,187 is actually available for appropriation. The breakout of the additional funding is shown on the table below:

	FY08 CHERRY SHEET USED IN BUDGET	FY08 FINAL CHERRY SHEET	VARIANCE FROM ADOPTED BUDGET
<i>RECEIPTS</i>			
Quinn	687,788	730,059	42,271
Exemptions	26,427	45,177	18,750
Charter School Reimbursements		17,344	17,344
<i>OFFSETS</i>			
Libraries	94,408	98,322	3,914
TOTAL RECEIPTS	18,890,852	18,973,131	82,279
<i>CHARGES</i>			
Charter School Sending Tuition		29,178	29,178
TOTAL CHARGES	5,481,951	5,511,129	29,178
NET LOCAL AID	13,408,901	13,462,002	53,101
- Increase in "Non-Appropriated Expenses"			3,914
TOTAL AVAILABLE FOR APPROP.			49,187
Town Share			24,594
School Share			24,594

The 50% / 50% Split of this revenue results in the Schools receiving \$24,594 for their budget. The Town's share is recommended to go toward reducing the estimate for Parking Meter receipts (see below).

PARKING METER RECEIPTS

After reviewing the FY07 revenue actuals and analyzing the first couple months of FY08 actuals, it is recommended that the estimate for Parking Meter receipts be reduced. While rates were increased effective July 1, 2007 for non-Coolidge Corner area meters, the first couple months of FY08 do not trend to reaching the estimate used in building the FY08 budget. The primary reason for this is the impact of the Beacon St. Reconstruction project on meter receipts has been greater than originally anticipated. It is recommended that the estimate be reduced by \$124,514, with \$24,514 being offset by the Town's share of the additional Net State Aid detailed above and \$100,000 being offset by an increase in the estimate for Parking Ticket revenue, which is described below.

On July 28, 2007, this Board voted to increase the fine for violating the 2-hour parking regulation from \$15 to \$30, effective October 1, 2007. This allows for the \$100,000 increase for FY08. The final revenue adjustment (Medicare Part D Subsidy) is linked to the group health insurance changes, as detailed below.

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

GROUP HEALTH INSURANCE SAVINGS

As a result of the agreement between the Town and the unions, a set of plan design changes was implemented on October 1, 2007. The result is a \$950K reduction in premiums for the Town, partially offset by the loss of the Medicare Part D Subsidy from the Federal government (\$195K), yielding a net savings of \$755K. Based on health insurance enrollment, the School's share of the net savings is \$420K while the Town's is \$335K. It is recommended that the School's share be re-allocated to their budget. During the FY08 budget review process leading up to Town Meeting, the School Superintendent spoke about using any additional funds to reduce the School budget's reliance upon one-time revenues or use it for additional reserve capacity.

The Town's portion of the group health savings can remain unallocated at this time. If an urgent need or unavoidable obligation arises during the course of the current fiscal year, then recommendations can be made to the 2008 Annual Town Meeting for appropriations. Given the budget pressures anticipated for FY09, the Town would be well served if this budget capacity could be preserved for next fiscal year.

SUMMARY OF OPERATING BUDGET AMENDMENTS

The combination of the additional State Aid (+\$82,279) and the decreases in Local Receipts (-\$95,000) and Other Available Funds (-\$124,514) results in \$137,235 less being available for appropriation. However, the changes in group health insurance allow for a reduction in that line-item of \$950K. Of that amount, it is recommended that just the School's share (\$420K) be re-allocated, with the balance remaining in the group health insurance line-item. Lastly, there is an increase in Non-Appropriated Expenses (\$33,092) for State Assessments and Cherry Sheet Offsets. The end result is an increase in the School budget of \$445K. The table below summarizes the changes:

<u>Revenue</u>	
State Aid (Gross)	82,279
Local Receipts	(95,000)
Other Avail. Funds	<u>(124,514)</u>
TOTAL	(137,235)
<u>Expenditures</u>	
School Dept.	444,855
Group Health Insurance	(615,182)
Non-Appropriated	<u>33,092</u>
TOTAL	(137,235)

WATER AND SEWER ENTERPRISE FUND

When the Selectmen set the FY08 water and sewer rates in July, two adjustments were made: (a) a reduction in the MWRA Assessment (\$255,059), resulting from additional debt assistance funding by the State, and (b) a minor reduction within the Personnel category (\$1,849). As a result, it is recommended that Town Meeting amend the Enterprise Fund budget accordingly.

The Selectmen appreciate this carefully crafted approach that not only addresses FY08 issues, but also provides flexibility going into what stands to be a very difficult FY09 budget. By a vote of 5-0 taken on October 2, 2007, the Board recommends FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

From time to time financial circumstances change during the course of a fiscal year and changes must be formally considered in the budget. Since Town Meeting considered and approved Brookline's FY-08 budget this past spring, the State budget has been finalized, negotiations around health care costs and benefits have been resolved, local receipt projections have changed and adjustments have been made to the MWRA assessment.

The budget adjustments under Article 3 are divided into four actions:

- Appropriate additional State Aid.
- Make adjustments to Local Receipts/Other available Funds.
- Allocate realized Group Health savings.
- Amend Water and Sewer Enterprise Fund

DISCUSSION

When the State budget was finalized, Brookline enjoyed an increase in Net Local Aid. Receipts increased by \$82,279. This includes such things as Quinn Bill and Charter School reimbursements and Library offsets. Charges were \$29,178 (Charter School Tuition). Net Local Aid came in at \$53,101. Less Non-Appropriated Expenses of \$3,914, the total available for appropriation is \$49,187. The recommendation is that half go to the Schools and half to the Town.

The Beacon Street rehabilitation project has had a greater impact on revenues than had been expected. New projections of meter revenues estimate a reduction of \$125K from what had been anticipated. It is proposed that the original estimates be reduced by \$124,514. \$24,514 of this reduction is to be offset by the Town's share of addition Net State Aid, and \$100K by an increased estimate in Parking Ticket revenue. The Board of Selectmen voted earlier this year to increase the 2-hour violation ticket fee from \$15 to \$30, effective October 1, 2007.

During the FY-08 budget deliberations, much of the focus and discussion was around the spiraling cost of healthcare premiums and the exacerbating effect on the Town's budget. Maintaining the same number of employees without changing the structure of healthcare coverage has become untenable. This summer negotiations around healthcare costs and benefits resulted in fruitful progress. As a result of the agreed changes, both the Town

and her employees have seen a reduction in premium escalations. While more progress may need to be made in the future, the effects for FY-08 are quite significant. The result for Brookline is a \$950K reduction in premiums. This is partially offset by the loss of the Federal government's Medicare Part D subsidy, but the net savings for the Town is \$755K. Based on insurance enrollment levels, the proposal is for the Schools to receive \$420K of the savings and the Town to receive \$335K. Given that the Town is facing a very significant shortfall next year, it is recommended that the Town maintain some budget capacity and that the Town's FY-08 savings be left in the Healthcare line unallocated. The School's share would be allocated to its budget.

This past July, the Board of Selectmen set the FY-08 Water and Sewer rates. Because of additional debt assistance funding from the State, the MWRA Assessment was reduced by \$255,059. There was, as well, a Personnel reduction of \$1,849. Therefore, the Water and Sewer Enterprise Fund should be amended to reflect this.

RECOMMENDATION

Additional revenue and savings are things to be appreciated under any circumstances. However, as our Town approaches even more turbulent financial times, this measure of added capacity becomes all the more critical.

By a vote of 19 in favor, 0 opposed and 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town:

A. Amend the FY2008 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
23. Schools	\$62,480,009	+\$444,855	\$62,924,864
24 b.) Group Health	\$21,585,166	-\$615,182	\$20,969,984

2. by amending Section 7 (Water and Sewer Enterprise Fund) of Article 7 of the 2007 Annual Town Meeting so it reads as follows:

7.) WATER AND SEWER ENTERPRISE FUND: The following sums, totaling \$22,622,626, 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:

	<u>Water</u>	<u>Sewer</u>	<u>Total</u>
Salaries	1,931,689	266,577	2,198,267
Purchase of Services	159,334	147,226	306,560
Supplies	152,989	16,000	168,989
Other	3,600	0	3,600
Capital	189,800	135,000	324,800
Intergovernmental	4,868,576	10,011,208	14,879,784
Reserve	<u>103,148</u>	<u>123,818</u>	<u>226,966</u>
Total Appropriations	7,409,136	10,699,830	18,108,966
Indirect Costs	<u>2,987,341</u>	<u>1,526,319</u>	<u>4,513,660</u>
Total Costs	10,396,477	12,226,149	22,622,626

Total costs of \$22,622,626 to be funded from water and sewer receipts with \$4,513,660 to be reimbursed to the General Fund for indirect costs.

3. by amending Section 11 (Interfund Transfers) of Article 7 of the 2007 Annual Town Meeting by replacing:

Parking Meter Special Revenue Fund	\$2,620,000
(to the Department of Public Works - \$1,310,000)	
(to the Police Department - \$1,310,000)	

with:

Parking Meter Special Revenue Fund	\$2,495,486
(to the Department of Public Works - \$1,247,743)	
(to the Police Department - \$1,247,743)	

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FY08 AMENDED BUDGET - TABLE 1

		FY06 ACTUAL	FY07 BUDGET	FY07 BUDGET	FY08 ORIG. BUDGET	PROPOSED AMENDMENTS	FY08 AMENDED BUDGET	\$\$ CHANGE FROM FY07	% CHANGE FROM FY07
REVENUES									
	Property Taxes	121,812,454	129,825,273	130,076,534	134,994,153		134,994,153	4,917,619	3.8%
	Local Receipts	22,986,109	19,948,300	20,477,229	21,798,100	(95,990)	21,703,100	1,225,871	6.0%
	State Aid	17,951,657	17,751,533	18,021,104	18,890,852	82,279	18,973,131	952,027	5.3%
	Free Cash	4,606,534	5,387,435	5,387,435	3,814,792		3,814,792	(1,572,643)	-29.2%
	Other Available Funds	7,691,658	7,947,902	8,948,052	8,853,729	(124,814)	8,729,215	(218,837)	-2.4%
	TOTAL REVENUE	175,048,413	180,860,443	182,910,354	188,351,626	(137,235)	188,214,391	5,304,037	2.9%
EXPENDITURES									
DEPARTMENTAL EXPENDITURES									
	1 . Selectmen	568,510	574,045	584,508	591,303		591,303	6,795	1.2%
	2 . Human Resources	409,488	461,053	463,435	474,134		474,134	10,699	2.3%
	3 . Information Technology	1,358,698	1,371,174	1,390,498	1,370,141		1,370,141	(20,357)	-1.5%
(1)	4 . Finance Department	2,916,030	2,845,992	2,884,403	2,913,822		2,913,822	29,419	1.0%
	<i>a. Comptroller</i>	450,171	457,623	466,021	486,810		486,810	20,789	4.5%
	<i>b. Purchasing</i>	1,030,042	1,000,527	1,008,713	997,141		997,141	(11,572)	-1.1%
	<i>c. Assessing</i>	642,063	608,323	617,405	629,903		629,903	12,498	2.0%
	<i>d. Treasurer</i>	793,753	779,519	792,264	799,968		799,968	7,704	1.0%
	5 . Legal Services	753,767	606,811	611,929	635,877		635,877	23,948	3.9%
	6 . Advisory Committee	21,790	22,187	22,691	23,311		23,311	620	2.7%
	7 . Town Clerk	445,207	539,895	547,500	506,959		506,959	(40,540)	-7.4%
	8 . Planning and Community Development	414,522	454,831	450,267	465,303		465,303	15,035	3.3%
	9 . Economic Development	180,797	187,001	190,702	180,716		180,716	(9,986)	-5.2%
	10 . Police	13,492,219	13,711,717	13,757,597	13,715,379		13,715,379	(42,218)	-0.3%
	11 . Fire	11,675,645	11,590,538	11,599,448	11,644,504		11,644,504	45,056	0.4%
	12 . Building	5,619,611	6,116,025	6,154,527	6,431,092		6,431,092	276,566	4.5%
(1)	13 . Public Works	12,031,682	12,197,668	12,365,067	12,411,085		12,411,085	46,017	0.4%
	<i>a. Administration</i>	805,447	812,572	831,513	846,133		846,133	14,620	1.8%
	<i>b. Engineering/Transportation</i>	810,959	861,575	874,681	860,775		860,775	(13,905)	-1.6%
	<i>c. Highway</i>	5,034,546	5,002,422	5,066,190	5,108,732		5,108,732	42,542	0.8%
	<i>d. Sanitation</i>	2,742,398	2,858,811	2,882,917	2,969,009		2,969,009	86,093	3.0%
	<i>e. Parks and Open Space</i>	2,638,332	2,662,288	2,709,767	2,626,435		2,626,435	(83,332)	-3.1%
	14 . Library	3,145,823	3,276,369	3,326,370	3,327,445		3,327,445	1,075	0.0%
	15 . Health	1,011,289	1,013,053	1,023,221	1,003,592		1,003,592	(19,629)	-1.9%
	16 . Veterans' Services	195,490	200,998	203,688	204,240		204,240	552	0.3%
	17 . Council on Aging	698,791	719,059	732,860	752,912		752,912	20,051	2.7%
	18 . Human Relations	134,352	137,194	140,334	140,971		140,971	638	0.5%
	19 . Recreation	1,274,620	1,009,700	1,021,246	914,657		914,657	(106,589)	-10.4%
(2)	20 . Energy Reserve	445,303	0	370,000	0		0	(370,000)	-100.0%
(2)	21 . Personnel Services Reserve	1,072,632	750,000	1,415,017	750,000		750,000	(665,017)	-47.0%
(2)	22 . Collective Bargaining - Town	2,150,000	1,100,000	1,100,000	1,600,000		1,600,000	500,000	45.5%
	<i>Subtotal Town</i>	56,348,332	58,885,308	59,255,307	60,057,443	0	60,057,443	802,135	1.4%
	23 . Schools	58,236,785	59,836,680	60,096,385	62,480,009	444,855	62,924,864	2,828,478	4.7%
	TOTAL DEPARTMENTAL EXPENDITURES	114,585,117	118,721,989	119,351,693	122,537,452	444,855	122,982,306	3,630,614	3.0%
NON-DEPARTMENTAL EXPENDITURES									
(1)	24 . Employee Benefits	28,973,851	32,158,118	32,158,118	36,315,325	(615,182)	35,700,143	3,542,025	11.0%
(3)	<i>a.) Pensions</i>	10,065,393	10,165,009	10,165,009	11,277,159		11,112,150	1,112,150	10.9%
	<i>b.) Group Health</i>	16,562,370	18,936,109	18,936,109	21,585,166	(615,182)	20,969,984	2,033,875	10.7%
(3)	<i>c.) Retiree Group Health Trust Fund</i>	0	0	0	0		0	0	#DIV/0!
	<i>d.) Employee Assistance Program (EAP)</i>	24,568	25,000	25,000	25,000		25,000	0	0.0%
	<i>e.) Group Life</i>	147,675	157,000	157,000	161,000		161,000	4,000	2.5%
	<i>f.) Disability Insurance</i>				16,000		16,000	16,000	#DIV/0!
(3)	<i>g.) Worker's Compensation</i>	945,000	1,450,000	1,450,000	1,600,000		1,600,000	150,000	10.3%
(3)	<i>h.) Public Safety IOD Medical Expenses</i>	0	155,000	155,000	250,000		250,000	95,000	61.3%
(3)	<i>i.) Unemployment Compensation</i>	167,212	125,000	125,000	166,000		166,000	41,000	32.8%
	<i>j.) Medical Disabilities</i>	14,290	30,000	30,000	30,000		30,000	0	0.0%
	<i>k.) Medicare Coverage</i>	1,047,343	1,115,000	1,115,000	1,205,000		1,205,000	90,000	8.1%
(2)	25 . Reserve Fund	843,474	1,593,755	1,593,755	1,675,113		1,675,113	81,358	5.1%
	26 . Stabilization Fund	39,004	22,248	22,248	0		0	(22,248)	-100.0%
	27 . Liability/Catastrophe Fund	406,616	225,039	225,039	254,629		254,629	29,590	13.1%

		FY06 ACTUAL	FY07 BUDGET	FY07 BUDGET	FY08 ORIG. BUDGET	PROPOSED AMENDMENTS	FY08 AMENDED BUDGET	\$\$ CHANGE FROM FY07	% CHANGE FROM FY07
	28 Housing Trust Fund	0	0	0	0		0	0	#DIV/0!
	29 General Insurance	250,820	276,175	276,175	276,175		276,175	0	0.0%
	30 Audit/Professional Services	136,582	138,987	138,987	138,987		138,987	0	0.0%
	31 Contingency Fund	16,233	15,000	15,000	15,000		15,000	0	0.0%
	32 Out-of-State Travel	1,192	3,000	3,000	3,000		3,000	0	0.0%
	33 Printing of Warrants & Reports	16,008	20,000	20,000	20,000		20,000	0	0.0%
	34 MMA Dues	10,744	11,433	11,433	11,251		11,251	(182)	-1.6%
	<i>Subtotal General</i>	<i>877,199</i>	<i>2,305,636</i>	<i>2,305,636</i>	<i>2,394,155</i>	<i>0</i>	<i>2,394,155</i>	<i>88,519</i>	<i>3.8%</i>
(1)	35 Borrowing	13,831,466	14,396,621	14,396,621	14,052,910	0	14,052,910	(343,711)	-2.4%
	<i>a. Funded Debt - Principal</i>	<i>9,218,951</i>	<i>9,613,087</i>	<i>9,613,087</i>	<i>9,430,187</i>		<i>9,430,187</i>	<i>(182,900)</i>	<i>-1.9%</i>
	<i>b. Funded Debt - Interest</i>	<i>4,299,950</i>	<i>4,613,134</i>	<i>4,613,134</i>	<i>4,462,723</i>		<i>4,462,723</i>	<i>(150,411)</i>	<i>-3.3%</i>
	<i>c. Bond Anticipation Notes</i>	<i>197,024</i>	<i>110,400</i>	<i>110,400</i>	<i>100,000</i>		<i>100,000</i>	<i>(10,400)</i>	<i>-9.4%</i>
	<i>d. Abatement Interest and Refunds</i>	<i>115,541</i>	<i>60,000</i>	<i>60,000</i>	<i>60,000</i>		<i>60,000</i>	<i>0</i>	<i>0.0%</i>
	TOTAL NON-DEPARTMENTAL EXPENDITURES	43,682,516	48,860,375	48,860,375	52,762,390	(615,182)	52,147,208	3,286,833	6.7%
	TOTAL GENERAL APPROPRIATIONS	158,267,633	167,582,364	168,212,068	175,299,842	(170,328)	175,129,514	6,917,447	4.1%
	SPECIAL APPROPRIATIONS								
	36 Technology Applications (revenue financed)				225,000		225,000		
	37 Firefighter Turnout Gear (revenue financed)				135,000		135,000		
	38 Fire Engine #4 Replacement (revenue financed = \$39,595, capital project surplus = \$160,405)				200,000		200,000		
	39 Fire Apparatus Rehab (revenue financed)				90,000		90,000		
	40 Street Rehabilitation (revenue financed)				1,000,000		1,000,000		
	41 Traffic Calming Studies and Improvements (revenue financed)				50,000		50,000		
	42 Sidewalk Repair/Reconstruction (revenue financed)				200,000		200,000		
	43 Streetlight Replacement/Repairs (revenue financed)				100,000		100,000		
	44 Winthrop Square / Minot Rose Garden (revenue financed)				40,000		40,000		
	45 Playground Equipment, Fields, Fencing (revenue financed)				250,000		250,000		
	46 Town/School Grounds Rehab (revenue financed)				120,000		120,000		
	47 Tree Removal and Replacement (revenue financed)				100,000		100,000		
	48 Walnut Hills Cemetery Upgrades (revenue financed = \$115,000, special revenue fund = \$115,000)				230,000		230,000		
	49 Larz Anderson Skating Rink (revenue financed)				130,000		130,000		
	50 Soule Rec Center - HVAC / Fire Escape (revenue financed)				348,000		348,000		
	51 School Furniture Upgrades (revenue financed)				25,000		25,000		
	52 Town/School Asbestos Removal (revenue financed)				50,000		50,000		
	53 Town/School ADA Renovations (revenue financed)				50,000		50,000		
	54 School Facilities Master Plan (revenue financed = \$91,250, capital proj surpl = \$8,750)				100,000		100,000		
	55 Baldwin School Boiler (revenue financed)				50,000		50,000		
	56 Portable Classrooms (revenue financed)				400,000		400,000		
	57 Singletree Tank Interior Rehabilitation (enterprise bond)				250,000		250,000		
	58 Fisher Hill - Phase 1 (Acquisition & Make Safe / Accessible) (bond)				1,350,000		1,350,000		
	59 Town Hall Renovations (overlay reserve surplus = \$850,000, revenue financed = \$1,300,000, bond = \$13,800,000)				15,950,000		15,950,000		
(4)	TOTAL SPECIAL APPROPRIATIONS	6,060,803	7,874,562	7,874,562	5,928,000	0	5,928,000	(1,946,562)	-24.7%
	TOTAL APPROPRIATED EXPENDITURES	164,328,436	175,456,926	176,086,630	181,227,842	(170,328)	181,057,514	4,970,885	2.8%
	NON-APPROPRIATED EXPENDITURES								
	Cherry Sheet Offsets	1,280,287	116,116	117,738	116,835	3,914	120,749	3,011	2.6%
	State & County Charges	5,084,477	5,221,479	5,229,723	5,481,951	29,178	5,511,129	281,406	5.4%
	Overlay	1,490,442	1,200,000	1,451,262	1,500,000		1,500,000	48,738	3.4%
	Deficits-Judgments-Tax Titles	0	25,000	25,000	25,000		25,000	0	0.0%
	TOTAL NON-APPROPRIATED EXPEND.	7,855,206	6,562,595	6,823,723	7,123,786	33,092	7,156,878	333,155	4.9%
	TOTAL EXPENDITURES	172,183,642	182,019,522	182,910,354	188,351,626	(137,235)	188,214,391	5,304,038	2.9%
	SURPLUS/(DEFICIT)	2,864,770	1,159,079	0	0	0	0		

(1) Breakdown provided for informational purposes.

(2) Figures provided for informational purposes. Funds were transferred to departmental budgets for expenditure.

(3) Funds are transferred to trust funds for expenditure.

(4) Amounts appropriated. Bonded appropriations are not included in the total amount, as the debt and interest costs associated with them are funded in the Borrowing category (item #35).

FY08 AMENDED BUDGET - TABLE 2

Department/Board/Commission	Personnel Services	Purchase of Services	Supplies	Other Charges/ Expenses	Capital Outlay	Inter-Gov'tal	Debt Service	Personnel Benefits	Agency Total
Board of Selectmen (Town Administrator)	565,140	9,553	5,750	5,640	5,220				591,303
Human Resources Department (Human Resources Director)	231,984	230,307	8,500	500	2,843				474,134
Information Technology Department (Chief Information Officer)	804,743	488,433	34,127	2,450	40,388				1,370,141
Finance Department (Director of Finance)	1,796,794	1,038,895	42,018	14,349	21,766				2,913,822
Legal Services (Town Counsel)	466,194	89,191	1,950	74,400	4,142				635,877
Advisory Committee (Chair, Advisory Committee)	20,943	266	1,275	340	487				23,311
Town Clerk (Town Clerk)	426,425	61,854	11,401	1,800	5,480				506,959
Planning and Community Department (Plan. & Com. Dev. Dir.)	435,069	12,143	5,922	3,700	8,469				465,303
Economic Department (Econ. Devel. Officer)	153,148	18,308	7,785	250	1,225				180,716
Police Department (Police Chief)	12,427,254	567,256	296,099	5,500	419,270				13,715,379
Fire Department (Fire Chief)	11,136,160	300,807	130,580	4,850	72,105				11,644,503
Public Buildings Department (Building Commissioner)	1,795,742	4,430,234	146,530	1,900	56,687				6,431,093
Public Works Department (Commissioner of Public Works)	7,204,931	3,424,426	1,052,088	9,639	700,000	20,000			12,411,085
Public Library Department (Library Board of Trustees)	2,352,125	424,366	492,851	1,502	56,601				3,327,445
Health Department (Health Director)	698,052	278,681	16,825	3,620	6,414				1,003,592
Veterans' Services (Veterans' Services Director)	112,543	2,007	650	88,200	840				204,240
Council on Aging (Council on Aging Director)	568,328	151,553	18,850	2,900	11,281				752,912
Human Relations/Youth Resources (Human Relations Dir.)	131,010	4,307	4,100	600	954				140,971
Recreation Department (Recreation Director)	656,044	199,961	49,872	2,400	6,380				914,657
School Department (School Committee)									62,924,864
Total Departmental Budgets	41,982,630	11,732,548	2,327,173	224,540	1,420,552	20,000			120,632,307
DEBT SERVICE									
Debt Service (Director of Finance)							14,052,910		14,052,910
Total Debt Service:							14,052,910		14,052,910
EMPLOYEE BENEFITS									
Contributory Pensions Contribution (Director of Finance)								11,002,159	11,002,159
Non-Contributory Pensions Contribution (Director of Finance)								275,000	275,000
Group Health Insurance (Human Resources Director)								20,969,984	20,969,984
Employee Assistance Program (Human Resources Director)								25,000	25,000
Group Life Insurance (Human Resources Director)								161,000	161,000
Disability Insurance								16,000	16,000
Workers' Compensation (Human Resources Director)								1,600,000	1,600,000
Public Safety IOD Medical Expenses (Human Resources Director)								250,000	250,000
Unemployment Insurance (Human Resources Director)								166,000	166,000
Ch. 41, Sec. 100B Medical Benefits (Town Counsel)								30,000	30,000
Medicare Payroll Tax (Director of Finance)								1,205,000	1,205,000
Total Employee Benefits:								35,700,143	35,700,143
GENERAL / UNCLASSIFIED									
Reserve Fund (*) (Chair, Advisory Committee)									1,675,113
Liability/Catastrophe Fund (Director of Finance)									254,629
Stabilization Fund (Director of Finance)									
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)				11,251					11,251
Town Salary Reserve (*) (Director of Finance)	1,600,000								1,600,000
Personnel Services Reserve (*) (Director of Finance)	750,000								750,000
Total General / Unclassified:	2,350,000	428,162	10,000	11,251					4,744,155
TOTAL APPROPRIATIONS	44,332,630	12,160,709	2,337,173	235,791	1,420,552	20,000	14,052,910	35,700,143	175,129,515

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

ARTICLE 4

FOURTH ARTICLE

To see if the Town will review the necessity for the 18 year old "Trash Fee" now called a "Refuse Fee".

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In 1988 Town Meeting confronted a state economy with considerable inflation and the Town had only \$8,000,000 at the end of the Fiscal Year. This year the Town had

\$85,000,000 at the end of the 2006 Fiscal Year according to the Town Treasurer. Does Town Meeting wish to continue the Trash Fee or Refuse Fee regardless of the change in economic circumstances?

SELECTMEN'S RECOMMENDATION

This petitioned article deals with the Town's \$200 annual Refuse Fee. This issue has previously been debated on five separate occasions: as part of the 2003 Annual Town Meeting (Article 26), as part of the 2003 Special Town Meeting in November (Article 19), as part of the 2005 Annual Town Meeting (Article 8), as part of the 2006 Annual Town Meeting (Article 8), and as part of the 2006 November Town Meeting (Article 29).

The text of the article asks for a review of the necessity of the trash fee. As has been repeatedly explained, if the fee were eliminated, in order to balance the Town budget, the Town would need to do one or some combination of the following:

1. Cut \$2.5 million of essential services
2. Eliminate the entire sanitation operation
3. Raise \$2.5 million through a General Override of Proposition 2 ½

The Selectmen's report from last year's November Special Town Meeting goes into greater detail about the history of and need for the fee. It is reproduced below:

**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:

	<u>Direct Sanitation Expend.</u> <u>(Paid from Gen'l Fund)</u>	<u>Adj. to include</u> <u>benefits/overhead</u>	<u>Refuse Fee Revenue</u> <u>(Depos. In Gen'l Fund)</u>
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.

The Selectmen recommend NO ACTION, by a vote of 4-0 taken on September 18, 2007.

ROLL CALL VOTE:

Favorable Action

Daly

Allen
DeWitt
Mermell

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This Article asks if the Town “will review the necessity for the 18 year old ‘Trash Fee’ now called a ‘Refuse Fee’ or act on anything relative thereto.”

The petitioner proposes that Town Meeting consider the merits of the quarterly fee that the Town assesses upon property owners who avail themselves of the Town’s trash collection services. The petitioner notes that the Town first imposed the quarterly fee in the late-1980s when the Town’s end-of-fiscal year cash balance was approximately \$8 million. The petitioner argues that the Refuse Fee was intended as a temporary stop gap introduced when the Town faced financial exigencies and the Town’s current cash position no longer justifies a separate Refuse Fee.

DISCUSSION

The petitioner argues that the Town adopted the Refuse Fee as an interim measure and further suggests that the fee is in essence a tax disguised as a fee and is thus unlawful under Proposition 2 ½ in accordance with a recent court decision invalidating a refuse fee that had been imposed in Springfield, MA. However, the Refuse Fee has long been accepted as a continuing Town policy rather than an interim measure -- Town Meeting gives its tacit approval annually by approving budgets based on revenue streams that include Refuse Fee collections -- and in recent years Town Meeting has on several occasions rejected motions to eliminate this fee by near-unanimous votes. Furthermore the fee is voluntary -- property owners are free to avoid the fee by contracting with private trash haulers -- and inasmuch as the fee covers less than the full cost of providing municipal trash collection, the Town does not derive a profit from the fee. Hence the fee can be lawfully collected under Proposition 2 ½.

The petitioner also claims that the fee is not actually being used for trash collection and suggests that it is instead being banked by the Town, but this unfounded notion has repeatedly been shown to be without merit and untrue, a finding summarized once again in the accompanying Selectmen’s report on this article.

RECOMMENDATION

Inasmuch as the necessity for the retaining the Refuse Fee in balancing the Town budget without causing unacceptable cutbacks has been long established to the satisfaction of almost everybody, the Advisory Committee unanimously, by a vote of 22 to 0, recommends NO ACTION on Article 4.

XXX

ARTICLE 5

FIFTHARTICLE

To see if the Town will amend Article 3.5 of the General By-Laws as follows (deleted language appears underlined and in brackets) **new language appears in bold:**

Section 3.5.3 General Responsibilities

The Committee shall serve as an advisor to the Board of Selectmen **and to Town Meeting** with respect to the town's financial condition, financial management systems and controls, and annual audit. (In addition, the Committee shall report to Town Meeting as the Committee sees fit on matters within the scope of Town Meeting's concerns.)

Specific duties shall include but are not limited to the following:

- (a) Make recommendations to the Board of Selectmen on the selection of, and scope of services for, an independent auditor.
- (b) Review the annual financial statements and reports prepared by the independent auditor and make recommendations with respect thereto.
- (c) Make recommendations for areas on operations where expanded scope audits or reviews of the internal controls may be appropriate.
- (d) Review and make recommendations with respect to the town's financial management practices and controls.
- (e) Report to the Annual Town Meeting on the recommendations the Committee has made during the preceding twelve months. **The first paragraph of the Annual Audit Committee Report shall note the Auditor's "Cash and Short Term Investments" cash amount as noted in the current annual audit.**

Or act on anything relative to.

PETITIONER'S ARTICLE DESCRIPTION

The Public Records Law requires public disclosure of all Town records on request by a citizen. This By-Law gives Town Meeting Members the information it needs from the Audit Committee but the By-Law saves each Town Meeting Member the individual need to request the essential cash information that the Audit Committee must communicate to the Board of Selectmen and Town Meeting each year. The Board of Selectmen and 240 Town Meeting Members would get the annual "Cash and Short Term Investments" report without the necessity of sending individual requests to the Audit Committee for this essential information.

The Board of Selectmen and 240 Town Meeting Members have a fiduciary responsibility for the Towns' Cash. They need to be efficiently advised about the money for which they are responsible.

SELECTMEN'S RECOMMENDATION

Article 5 is a petitioned article that would modify the role of the Audit Committee. The petitioner proposes to have the Audit Committee serve as an advisor not only to the Selectmen, but also to Town Meeting.

The composition of the six-member Committee is laid out in the by-law as follows:

- Board of Selectmen shall appoint one member
- the Advisory Committee shall appoint one member
- the School Committee shall appoint one member
- the Town Moderator shall appoint three members.

The by-law also clearly outlines out the responsibilities of the Audit Committee:

- serve as an advisor to the Board of Selectmen with respect to the town's financial condition, financial management systems and controls, and annual audit.
- make recommendations to the Board of Selectmen on the selection of, and scope of services for, an independent auditor.
- review the annual financial statements and reports prepared by the independent auditor and make recommendations with respect thereto.
- make recommendations for areas of operations where expanded scope audits or reviews of the internal controls may be appropriate.
- review and make recommendations with respect to the Town's financial management practices and controls.
- report to the Annual Town Meeting on the recommendations the Committee has made during the preceding twelve months.

The Audit Committee is comprised of both members of official town bodies and residents appointed by the Moderator, the result being a well-balanced committee that carries out the critical functions of overseeing the Town's annual audit in an independent manner; ensuring that independence is maintained between the external auditor and those involved in managing the government's affairs; and meeting with the external auditors to get independent observations about management's efforts to maintain strong internal controls, appropriate financial reporting, and sound business practices. The Committee serves the executive branch of government and is required to report to Town Meeting. Having the Audit Committee serve as an advisor to Town Meeting is unnecessary due to the current reporting requirement. Therefore, the Selectmen recommend **NO ACTION**, by a vote of 5-0 taken on October 23, 2007.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This Article would amend §3.5.3 of the General Bylaws of the Town of Brookline relating to the Audit Committee (the "Audit Committee") as follows:

1. To provide that the Audit Committee would explicitly report to Town Meeting (in addition to the Board of Selectmen, as presently stated); and
2. To require the Audit Committee, in its Annual Audit Committee Report, to include the amount of the Town's cash and short-term investments in its first paragraph.

At present, the By-law merely requires the Audit Committee to serve as an advisor to the Board of Selectmen and to report as it sees fit to Town Meeting "on matters within the scope of Town Meeting's concerns," presumably with respect to budgetary matters and warrant articles having a financial impact.

DISCUSSION

The petitioner notes that "[t]he Board of Selectmen and (the) 240 Town Meeting Members have a fiduciary responsibility for the Towns' Cash," and therefore both bodies must be "efficiently (sic) advised about the money for which they are responsible." He also argues that the amount of the Town's cash and short-term investments balance is of such critical importance that the Annual Audit Committee Report should give the figure prominent billing.

The petitioner believes that the amendment to §3.5.3 of the Bylaws is required in order to allow Town Meeting Members full access to the Annual Audit Committee Report, and that amending the Bylaws to make the Audit Committee report dually to Town Meeting and the Board of Selectmen ensures that Town Meeting Members have access to information about the Town's position. However, all of the Town's audited information is fully available publicly and is part of the Town's annual report made available to Town Meeting Members and the public alike both through direct mailings and the Town's website (www.townofbrooklinemass.com).

The petitioner further asserts that the Town's cash holdings merit highlighting in Audit Committee reports. However the Advisory Committee notes that cash holdings are but one of many financial metrics and that reporting on just that figure would be misleading and confusing. The amount of cash and short-term investments held by the Town reflects just the holdings at the end of business on the 30th of June annually (the last day of the fiscal year) – a mere snapshot. In addition, displaying just such cash holdings without also indicating various (and sizeable) encumbrances upon these funds, for example, amounts earmarked to cover forthcoming voted expenditures, would place this figure out of context, giving no information about corresponding liabilities. The truly relevant number indicating that portion of cash on hand that's available for appropriation is the

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Town's amount of so-called Free Cash, which is certified annually by the Commonwealth's Department of Revenue.

RECOMMENDATION

Inasmuch as the findings of the Audit Committee are already widely available to Town Meeting Members as needed to conduct Town Meeting business, and extracting, out of context, the single figure of cash on hand would at best be non-informative and at worst confusing, the Advisory Committee unanimously (by a vote of 22-0) recommends NO ACTION on Article 5.

XXX

ARTICLE 6

SIXTH ARTICLE

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

SECTION 3.21 Readily Accessible Electronic Meeting Notices, Agendas, and Minutes

1. Purpose and Applicability: This by-law applies to all Brookline committee meetings subject to the Open Meeting Law, now G.L. c. 39, §§23A et seq. (hereinafter, respectively, “meetings” and “OML”), and is intended (a) to take advantage of the internet and its increasing use; (b) to better implement the spirit of the OML; and (c) to the extent reasonably practical, to improve opportunities for broader and more meaningful citizen participation in the business of Town committees.

2. Listserv & Calendar: The Information Technology Department (“ITD”) shall maintain a broadly available listserv or similar email list for Town Meeting Members and other Town residents who request to be included, prominently promoted on the Town website’s Homepage, along with a link to a readily available and current Calendar of upcoming meetings.

3. Meeting Notices and Agendas: Each meeting “notice” required by OML shall not only be “posted” under OML at least forty-eight hours before the meeting, but shall also, to the extent reasonably practical: (a) be posted at least either one week before each meeting, or, if the interval between meetings is only one week, then at least seventy-two hours beforehand; (b) include an agenda in electronic format, which at least in general terms is reasonably descriptive of the in-tended business of the meeting, and which is subject to later revisions as needed but attempting to comply with this by-law; (c) include a name, address, telephone number, and email address for (i) a contact person for further inquiries, for forwarding messages to the committee, and for obtaining background materials in electronic format to the extent readily available, and (ii) either the same contact information or a website link to it for all the committee’s members; and (d) with the assistance and direction of the Town Clerk and ITD, disseminate by email the information specified in (a) and (b) above, in simple text format if easier, to citizens who join the aforementioned listserv. Said agendas shall also be electronically accessible from the aforementioned website’s Calendar.

4. Records: OML records of meetings of all Town governmental bodies shall be: (a) filed in electronic format; (b) reasonably descriptive, at least in general terms, of the business conducted, including the main reasons for actions and votes taken; and (c) electronically accessible from the Town website, either by links to its Calendar or to the committee’s departmental page, no later than promptly after the second meeting

following the meeting at issue. When they see fit, the selectmen and ITD shall propose an amendment to this provision clarifying access to “archives.”

5. Enforcement: As to mandates of this by-law that exceed those of state laws, including the OML, all elected officials, boards, and committees shall supervise compliance with this by-law, both for their own meetings and for committees for which they are the ultimate appointing authority. No additional enforcement scope or responsibility is hereby conferred upon the district attorney’s office beyond those of the statewide law, including the OML.

or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

Our Information Technology Department now has a wonderful, user-friendly, action-packed website (www.town.brookline.ma.us/) and listserv (www.townofbrooklinemass.com/Listserv/whatsnew.asp, now 2194 subscribers), and – for ad hoc committees – is now doing much of this article’s mandates. This proposal is largely self-explanatory and will, as usual, be subject to welcome amendments of some details and specific language in the next three months; but hopefully preserving its overall goal to bring Brookline’s use of the Open Meeting Law into the 21st century internet age. Some petitioners have tried to get the thrust of this article accomplished for over a year; and the selectmen have commendably led by example, complying with virtually all of its provisions. Now all Town committees should do so – at minimal (if any) additional work. Cf., the lesser requirements of the Open Meeting Laws, currently Mass. G.L. c. 39, §§23A et seq.:

“Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk ... and the notice ... shall, at least forty-eight hours, including Saturdays but not Sundays and le-gal holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board ...” and ...

“A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting The records of each meeting shall become a public record and be available to the public; ...”

SELECTMEN’S RECOMMENDATION

Article 6 is a petitioned article that would add a new Town by-law requiring all governmental bodies, as defined under the Open Meeting Law (OML), to use the internet and e-mail as part of the meeting notification process. Currently, the OML requires any governmental body to post its meeting at least 48 hours in advance. Under the proposed by-law, the following would be required:

- place meeting notices on the Town's on-line calendar (this is currently done)
- e-mail meeting notices to residents via a listserv(s)
- include an agenda with the meeting notice
- place minutes of the meeting online

As stated in the "Purpose and Applicability" section, the purpose of the proposed by-law is to "take advantage of the internet", "better implement the spirit of the OML", and "improve opportunities for broader and more meaningful participation in the business of Town governmental bodies". No one can argue with those admirable goals. All governmental units at all levels should strive to improve openness and transparency. In Brookline, technology has been used effectively for a number of years now in this on-going effect - - meetings have been posted on-line and listservs have been utilized for notification.

While the proposed by-law will certainly help improve the meeting notification process, there are some issues with the proposal, the most significant being the requirement of having an agenda prepared 48 hours in advance of the meeting. A couple of boards/commissions have commented that, in many cases, an agenda is not set until the last minute. A good case in point is the Override Study Committee: its seven sub-committees meet numerous times, and in most cases, the meeting topics were being finalized as the start of the meeting drew near.

Another area of concern is the possible "end-user" reaction to receiving 50-80 e-mail notices a month. If a resident signs up for the listserv, s/he will be notified of all meetings, all agenda changes, all time/location changes, etc. Some residents on the receiving end of the e-mails might only be interested in a particular board/commission, yet would receive e-mails for all boards/commissions. While there may well be an easy technology fix to this issue, there will be an added component to staff responsibilities.

These issues do not, and should not, overpower the goal of the proposed by-law. These issues can be overcome. The July 1, 2008 start date gives the Information Technology Department (ITD), Town Clerk, and other departments time to work through these issues and develop a solution that works for all involved - - including the residents on the receiving end of the e-mail notices.

It needs to be made clear, however, that there will be some "rough patches" when first implemented, and some patience will be warranted. The Selectmen recommend FAVORABLE ACTION, by a vote of 4-1 taken on October 23, 2007, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The Massachusetts Open Meeting Law ("OML"), currently Mass. G.L. c. 39, §§23A et seq., currently requires that notices for meetings of all governmental bodies be filed with the municipal clerk and posted on the clerk's official bulletin board at least 48 hours in

advance of those meetings, and moreover mandates the taking and public availability of accurate meeting records, indicating the date, time, place, committee member attendance, and actions taken at each meeting. This article seeks adoption of a Town by-law that would augment the provisions of the OML by requiring:

- (a) that the notice requirement for governmental meetings in Brookline be increased to one week in most cases,
- (b) that meeting notices set forth a tentative agenda,
- (c) that notices be posted electronically on the Town website and be sent electronically to interested parties, and
- (d) that records of meetings include a summary of meeting discussions and be posted on the town website in a specified period after the meeting.

The intent is to take advantage of electronic and Internet capabilities in order to increase transparency and participation in town governmental proceedings. Such a by-law would also provide a helpful model for modernizing the Commonwealth's OML.

DISCUSSION

There was general support for the article's objectives. Requiring that meeting notices be posted as soon as possible after they have been scheduled, which in most cases would be prior to the 48 hour OML requirement, would make it easier for interested members of the public to plan to attend, especially if a tentative agenda, which is not required by the OML, were included in the meeting notice. And requiring that such meeting notices be filed electronically for inclusion on the Town website and additionally sending such postings via email or other means of electronic communication to interested parties would further enable increased citizen participation. Similarly, requiring the electronic filing of meeting records that include a summary of meeting discussions (in addition to existing OML requirements) on the Town website would make it easier for interested parties to find out what transpired at meetings they were unable to attend.

Several questions arose, such as (1) whether a by-law was necessary (as opposed to, say, a resolution), (2) whether the Town's current computer technology was capable of carrying out the by-law's requirements, (3) whether the notice and reporting timelines, although not legally enforceable, might seem too burdensome for volunteer committees and have a chilling effect on scheduling meetings, and (4) whether the requirement that the appointing authorities monitor their appointees to ensure by-law compliance might also prove too burdensome.

The Advisory Committee feels that a by-law, permanently inscribed and readily available for reference as part of the Town By-laws, would be preferable to an ephemeral resolution. We agree with the petitioner that, in view of existing OML notice and reporting requirements, the added by-law provisions requiring (implicitly) that these be typed electronically (as opposed to being handwritten) and include, respectively, an agenda and a discussion summary, are reasonable requirements given the resultant benefits to the public. And we have been assured that the Town's current technology is able to handle the by-law's requirements.

But we did have concerns about specifying explicit temporal guidelines for notices and reports, and also about the supervisory obligations of appointing authorities. And we felt

that there should be a delayed implementation date for the requirement of sending out electronic meeting notices in order to allow time to gather input from town departments, affected committees, Town Meeting Members and the general public regarding the best way of communicating this information.

We further note that nobody can predict how future advances in technology may impact the communication of governmental activities to the public, nor can we be certain of how well any by-law will work until we've had the experience of seeing it in action. All by-laws, including the one proposed below, are subject to amendment as might prove necessary; none should be regarded as perfect and permanent. Nevertheless the following proposed by-law, which has great flexibility regarding notice and report requirements and contains no penalties for noncompliance, seems a reasonable and timely attempt to further the important public goal of greater citizen participation in Brookline's town government.

RECOMMENDATION

The Advisory Committee, by a vote of 17 in favor and 3 opposed, with 1 abstention, recommends FAVORABLE ACTION on the motion listed below, which differs from the petitioner's warrant article language in the following principal respects:

1. Meeting notices should be posted electronically as soon as is practical after the meeting has been scheduled (rather than a week, or in some cases 72 hours, beforehand).
2. Similarly, reports should be posted electronically as soon as is practical (rather than by the second subsequent meeting) and should contain a summary of meeting discussions (rather than the main reasons for actions taken).
3. Appointing authorities should inform their appointees of these by-law requirements (rather than supervise compliance therewith).
4. The implementation date for certain by-law requirements is delayed until July 2008 to allow time for deciding upon and readying necessary IT machinery. Furthermore, the requirement for email notification has been altered to allow for alternative means of electronic notification.

In addition, the language has been streamlined to eliminate complexity and redundancy, and an explicit statement has been added to ensure that any noncompliance with by-law requirements that go beyond OML provisions shall not invalidate any actions taken at meetings.

VOTED: That the Town amend the By-laws by adding the following:

SECTION 3.21 Readily Accessible Electronic Meeting Notices, Agendas, and Records

1. Purpose and Applicability: This by-law applies to the meetings of all Brookline governmental bodies subject to the Open Meeting Law, now G.L. c. 39, §§23A et seq. (hereinafter, respectively, "meetings" and "OML"), and is intended (a) to take advantage

of the internet and its increasing use; (b) to better implement the spirit of the OML; and (c) to the extent reasonably practical, to improve opportunities for broader and more meaningful citizen participation in the business of Town governmental bodies.

2. Electronic notification list(s) & Calendar: The Information Technology Department ("ITD") shall maintain one or more broadly available list(s) for the purpose of providing electronic notifications (such as by email) to Town Meeting Members and other Town residents who request to be included, prominently promoted on the Town website's Homepage, along with a link to a readily available and current Calendar of upcoming meetings.

3. Meeting Notices and Agendas: (a) Each meeting "notice" required by OML shall not only be "posted" under the OML at least forty-eight hours before the meeting but, additionally, shall be posted in electronic format as soon as is practicable on the Town website Calendar after said meeting has been scheduled. To the extent possible, each posting shall include (i) an agenda that is reasonably descriptive of the intended business of the meeting, subject to later revisions as needed, and (ii) the name of a contact person along with contact information for further inquiries, for forwarding messages to the relevant governmental body, for obtaining background information to the extent readily available, and for obtaining contact information (or a website link containing such information) for all of members of the governmental body.

(b) With the assistance and direction of the Town Clerk and ITD, the information specified above shall be disseminated in a timely manner to citizens who join the aforementioned notification list(s).

4. Records: Records of meetings of all Town governmental bodies shall be reasonably descriptive of the business conducted. and shall include a summary of discussions, in addition to indicating actions taken and other requirements of the OML, and shall be accessible electronically from the Town website as soon as is practicable following the meeting at issue.

5. Enforcement: As to mandates of this by-law that exceed those of state laws, including the OML, all officials, boards and committees responsible for appointing members of committees subject to this by-law shall periodically notify their appointees in writing of the requirements of this by-law. No additional enforcement powers are hereby conferred upon the Norfolk County District Attorney beyond the responsibility of such office with respect to state law, including the OML, nor shall actions taken at any meeting be held invalid due to failure to comply with any requirements of this bylaw that exceed those of state laws, including the OML

6. Effective Date: The requirements of this by-law shall become effective on July 01, 2008 with the exception of paragraph 3(a) which shall take effect immediately.

removing such graffiti from any funds forfeited by the offender to the property owner under any related criminal or non-criminal enforcement action. If the Commissioner of Public Works or his designee determines that the graffiti cannot be safely removed or that it is not appropriate for the Town to remove it, he shall notify the property owner of his determination in writing and the property owner shall remove the graffiti within fourteen days of delivery of such notice.

In the case of graffiti on commercial property or private residential property consisting of more than thirty dwelling units, the property owner shall, within fourteen days of delivery of the notice, remove the graffiti at his own expense.

Notwithstanding any other provisions contained herein, if such graffiti is within an Historic District established under Section 5.6 of the Town's By-laws, then any guidelines or Rules or Regulations adopted by the Preservation Commission pertaining to the removal of graffiti shall apply if and to the extent not inconsistent with this by-law.

8.5.9.5 Enforcement

Failure to remove the graffiti or make a written request to the Commissioner of Public Works in accordance with the requirements of Section 8.5.9.4 within fourteen days of delivery of the notice may be deemed a violation of this section and shall be dealt with as a non-criminal offense in accordance with the provisions of G.L. c. 40, s. 21D and Article 10.3 of these By-laws.

Owners who repeatedly violate the provisions of Section 8.5.9.4 may be prosecuted under the provisions of Article 10.1 of these By-laws.

Any fee charged by the Town for the cost of graffiti removal under section 8.5.9.4 remaining unpaid after sixty days of notice of such charge shall be subject to the provisions of G.L. c. 40, s. 58.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This proposed by-law amendment is intended to provide a more comprehensive and contemporary approach to addressing the proliferation of graffiti on private and public property in the Town.

SELECTMEN'S RECOMMENDATION

In the Fall of 2006, two warrant articles were filed that proposed major changes to the Town's Graffiti by-law. The Selectmen established a committee to further study the proposals laid out in Articles 20 and 21 of the 2006 Fall Town Meeting. The Committee members were as follows:

Selectman Merrill
Police Chief and/or designee
Commissioner of Public Works 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 Committee worked diligently throughout the winter and developed its proposals, which were contained in Article 20 of the 2007 Annual Town Meeting. Town Meeting ultimately decided to return the article to the Committee for further revision after certain issues were raised.

The primary differences between last May's Article 20 and this Article 7 are as follows:

- narrows the "purpose and intent" clause and includes a "definition" section. In the prior version, the definition of graffiti was included in the "purpose and intent" clause.
- narrows the "prohibited conduct" clause to avoid the "appearance" of creating a "new, separately prosecutable offense."
- adds a "removal of graffiti" clause, where the Police Chief's initial notice to the property owner is discretionary, rather than mandatory.
- clarifies the property owner's obligation to reimburse to the Town, should the property owner recover restitution from the offender.
- adds a sentence indicating the procedure that is to be followed if the DPW Commissioner determines the graffiti cannot be safely/appropriately removed.

In summary, the Article 7 clarifies the intent that this be a remedial, rather than punitive, method to address graffiti within the Town.

Currently, 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.

A key to eliminating graffiti is to quickly remove it. Article 7 allows for this, as it provides for a town-wide effort to eliminate graffiti. The Police Department is taking the lead in this effort and will be the place to report incidences of it. The Police will

investigate, document through reports and photographs, and make the homeowner/building owner aware that graffiti has been placed on their property. These owners will also be provided with a letter detailing what is required under the by-law and that the option of having DPW remove it at nominal cost exists. Most building owners in town have custodial crews working for them and making them aware of the graffiti, and the need for its removal, will go a long way to ensuring its prompt removal.

Furthermore, the Police Department has entered into an understanding with both the School Department and the Brookline Housing Authority (BHA) about expectations on reporting, enforcement and removal. The DPW will remove graffiti from public properties and a reporting system between the Police and the DPW has been put in place. Other property owners, such as the Post Office, will also need to remove graffiti within the time frame specified in the by-law. The key to this is the time frame for renewal. People will know they must get graffiti removed by a certain date. This will prompt them to remove it instead of procrastinating

The Selectmen thank the Graffiti Committee for their continued efforts and recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 9, 2007, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Last year a citizen-petitioned Warrant Article was offered that would have significantly strengthened the Town Bylaws relative to graffiti. Due to some concerns regarding both the breadth and depth of the originally proposed article, a Selectmen's Committee was established to work through the language. In the spring of 2007, the Committee brought forward a revised article. Lingering concerns by some about specific references to and emphasis on existing State criminal statutes sent the Article back to the Committee for further revisions. Article 7 is the culmination of that series of revisions, with specificity and emphasis on the non-criminal compliance in our Bylaws.

DISCUSSION

Certain neighborhoods 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 St. and elsewhere. A proliferation of graffiti was documented in the commercial areas such as JFK Crossing and Brookline Village. From the viewpoint of some residents, there was 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. Interestingly, some of those "graffiti tags" noted last year still remain in the commercial areas.

The portion of our current bylaw 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.

This article is offering a new section for the Town Bylaws that will specifically address graffiti. It adds new elements to the Bylaws – *required remediation, and Town assistance with remediation.*

Under the new bylaw, once a property owner is notified by the Town of visible graffiti on their property, the owner has 14 days to remediate. If the property owner (less than 30 units) is unwilling or unable to do the work, they may request that the Town come onto their property and do the remediation. Should the Town find that it can safely and effectively do the work, the DPW will dispatch a crew to do the remediation (cleaning, painting etc.). The cost to the property owner will be the actual cost of remediation or \$100, whichever is less. Should the perpetrator be caught, they can be required to pay the full cost of clean-up (whether the work was done by the property owner, property owner's agent or the Town).

The Committee did not feel that a requirement of property owners to address the damage of graffiti in a timely manner was unreasonable. It is in the interest of the property owner and the surrounding community as well. One of the most effective ways to reduce the occurrence of graffiti is to be sure that it is quickly remediated. The longer graffiti remains intact, the more graffiti it attracts. This reality is a prime motivator for the provision requiring timely clean-up.

It was noted that when hazardous waste or garbage is dumped on a property, it is the legal responsibility of the owner to see that it is cleaned up. Applying this concept to graffiti did not seem out of line. It was also recognized that most owners have enough pride and concern invested in their property that graffiti remediation comes naturally. For those that do not; this bylaw will serve as a prompt. It was posited that some absentee landlords may need a bit more prompting than occupying landlords. Failure to comply with the bylaw may be dealt with as a non-criminal offense under Article 10.3 of our current Town Bylaws. Continued failure to comply can result in a misdemeanor charge under section 10.1 of our current Town Bylaws.

Help with remediation for residential units (30 units or less) is available from the Town in this proposed bylaw change. It is expected that larger residential complexes and commercial properties have reasonable access to cleaning and remediation services. Smaller complexes and individual homeowners are believed to be less likely to have quick access to that sort of expertise. Therefore, assistance from the DPW is available to them.

The associated provision of this proposed bylaw that provides Town assistance in remediation drew some concerns; specifically, costs to a property owner, potential costs to the Town, and any liability associated with the Town doing work on private property.

For small issues a little time spent cleaning or painting over some graffiti may be all that is required. In more severe cases where a property owner asks for Town assistance, the maximum charge of \$100 may well be a bargain. The Town will not engage in unsafe or risky work, and the property owner is required to sign a release prior the Town entering upon their property. The Town does not believe there will be that many cases to overburden the DPW, and it is not believed that related expenses will be significant. However, it is felt that if there is absolutely no associated costs to the property owner, there may develop a perverse incentive to simply rely on the DPW to do the smallest property/yard tasks. Only time and experience will tell us how extensively the Town's services may be used. The proposed language provides for cost recovery by the Town from restitution payments made to the victim.

The Committee had concerns around the notion of someone becoming a "serial victim" of graffiti vandalism. While it was noted that the proposed bylaw allows for flexibility and discretion in enforcement, the Committee felt it was worth having a more structured safeguard specifically built into the bylaw. The Advisory Committee's vote amends the original language by adding a provision that essentially caps that annual cleanup fee of a maximum of \$100.00 per event, to a cap of \$200.00 in aggregate over any twelve-month period. An owner will not be charged, cumulatively, more than \$200.00 per property in any given twelve months. That twelve-month period does not succeed the owner; with a new owner, a new period begins.

The Police Chief served on the Selectmen's Committee and believes there is merit in having this bylaw. The Police Department currently catalogues graffiti tags and will use surveillance cameras in particular situations. As a result of the Selectmen's Committee discussions, the Police department and the DPW have developed improved measures of communication and response to graffiti.

Graffiti is something that can quickly spin out of control unless addressed in serious and timely ways. It can be a corrosive and insidious element in a community. The proposed article underscores a pressing issue for our town and offers a productive tool in addressing the problem.

RECOMMENDATION

The Advisory Committee, by a vote of 14 in favor and 4 opposed, recommends favorable action on the following vote:

VOTED: That the Town amend the General By-Laws of the Town of Brookline by deleting Section 8.5.9 of Article 8.5 and replacing it with the following:

SECTION 8.5.9 VANDALISM AND THE DEFACEMENT OF PUBLIC AND PRIVATE PROPERTY

8.5.9.1 Purpose and Intent

Vandalism and the existence of graffiti within the Town are considered a public and private nuisance. The purpose of this by-law is to protect public and private property

from acts of vandalism and defacement by prohibiting the application of graffiti on such property and by requiring property owners to remove publicly visible graffiti from their property within a reasonable period of time.

8.5.9.2 Definitions

For the purposes of this by-law, “graffiti” is intended to mean the intentional painting, marking, scratching, etching, coloring, tagging, or other defacement of any public or private property without the prior written consent of the owner of such property.

8.5.9.3 Prohibited Conduct

The application of graffiti to the real or personal property of another is prohibited.

8.5.9.4 Removal of Graffiti

Upon determining that graffiti exists on any private or other non-Town owned property and that such graffiti can be viewed from a public place within the Town, the Chief of Police or his designee may mail or deliver a notice to the owner of the property on which the graffiti exists advising the owner that the graffiti must be removed within fourteen days.

In the case of graffiti on private residential property consisting of thirty dwelling units or less, the property owner shall, within fourteen days of delivery of the notice, either remove the graffiti or submit a written request to the Commissioner of Public Works along with a release, requesting the Town to enter the property and assist in removing the graffiti. Upon receipt of the property owner’s written request and release, the Commissioner of Public Works or his designee shall determine whether the graffiti can be safely removed, and, if so, whether it is appropriate to remove it. If the Town assists in the removal of such graffiti, the Town shall charge the property owner a fee in the amount of the actual cost of removal or one hundred dollars, whichever is less, provided that the property owner shall reimburse the Town for the Town’s actual costs of removing such graffiti from any funds forfeited by the offender to the property owner under any related criminal or non-criminal enforcement action. **Absent any forfeiture of funds to the property owner, as stated above, the Town shall not assess more than a total of two hundred dollars in fees per property per owner in any 12 month period.** If the Commissioner of Public Works or his designee determines that the graffiti cannot be safely removed or that it is not appropriate for the Town to remove it, he shall notify the property owner of his determination in writing and the property owner shall remove the graffiti within fourteen days of delivery of such notice.

In the case of graffiti on commercial property or private residential property consisting of more than thirty dwelling units, the property owner shall, within fourteen days of delivery of the notice, remove the graffiti at his own expense.

Notwithstanding any other provisions contained herein, if such graffiti is within an Historic District established under Section 5.6 of the Town’s By-laws, then any guidelines or Rules or Regulations adopted by the Preservation Commission pertaining to

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the removal of graffiti shall apply if and to the extent not inconsistent with this by-law.

8.5.9.5 Enforcement

Failure to remove the graffiti or make a written request to the Commissioner of Public Works in accordance with the requirements of Section 8.5.9.4 within fourteen days of delivery of the notice may be deemed a violation of this section and shall be dealt with as a non-criminal offense in accordance with the provisions of G.L. c. 40, s. 21D and Article 10.3 of these By-laws.

Owners who repeatedly violate the provisions of Section 8.5.9.4 may be prosecuted under the provisions of Article 10.1 of these By-laws.

Any fee charged by the Town for the cost of graffiti removal under section 8.5.9.4 remaining unpaid after sixty days of notice of such charge shall be subject to the provisions of G.L. c. 40, s. 58.

XXX

ARTICLE 8

EIGHTH ARTICLE

To see if the Town will amend the General By-Laws by adding an Article 8.28 as follows:

Article 8.28 **MANDATORY BICYCLE REGISTRATION**

All town residents who own bicycles shall be required to register their bicycle(s) with the Town by filling out a registration form provided by the Brookline Police Department Traffic Division. The registration form shall include, among other things, information such as make, color, size, model and serial number(s) of the bicycle(s). The Brookline Police Department Traffic Division shall provide a decal or similar small plate that shall be attached to the bicycle. The owner shall be required to renew the registration annually. The fee for registration shall be set by the Board of Selectmen and made payable to the Town.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

What has prompted the reinstatement of bicycle registration is that bicycles traveling on the streets of Brookline are on the increase. Now is the time to have mandatory registration of bicycles. This would be for the protection of bicycle owners, as a result of theft or any other occurrence that may take place.

SELECTMEN'S RECOMMENDATION

Article 8 is a petitioned article that would require all bicycle owners in town to register their bikes with the Police Department. The petitioner filed the article for the "protection of bicycle owners, as a result of theft or any other occurrences that may take place". While well-intentioned, the proposed by-law amendment would not offer additional protection for Brookline bike owners.

As reported to the Selectmen by the Bicycle Advisory Committee, the proposed solution would not deter thefts. In fact, it would impose a burden on bicycle owners with no apparent benefit. Compliance would likely be poor and enforcement would be difficult. Without universal registration throughout the state, registration would not be a deterrent to bike theft. A bike thief would simply remove the registration tag and nothing would be unusual about a bike without a registration tag. The thief could steal a bike with a registration tag no differently than a bike without one.

With no apparent benefit and quantifiable downsides (burden on bike owners, an administrative burden on the Police Department), the Selectmen recommend NO ACTION, by a vote of 5-0 taken on October 9, 2007 on Article 8.

ADVISORY COMMITTEE'S RECOMMENDATION

The Petitioners seek Town Meeting approval to require all residents who own bicycles to register them annually with the Police Department Traffic Division for a fee set by the Board of Selectmen and payable to the Town of Brookline.

BACKGROUND

The Petitioners brought this warrant article to Town Meeting in response to an observed recent increase in the number of bicycles and an increase in bicycle thefts. There was also a concern that bicyclists do not always abide by the rules of the road, posing a danger to both motorists and pedestrians. The regulation of bicycles, through mandatory registration, was proposed to encourage greater responsibility on the part of cyclists and as a benefit to both cyclists and the public.

At one time Brookline did have a bicycle registration program administered by the Police Department. For a nominal registration fee of twenty-five cents, a resident could register a bicycle with the Town and was given a small green license plate to attach to the bicycle. This practice was discontinued as a result of diminished community interest. The petitioners believe that now is the time to reinstate bicycle registration and to make it mandatory in the Town of Brookline.

DISCUSSION

The Advisory Committee heard testimony from members of the community and from the Chief of Police. Although sympathetic to many of the Petitioners' concerns, there was clear consensus that the warrant article, as submitted, was not the best way to achieve the desired results—the key concern being making bicycle registration mandatory.

Those who spoke against the article cited its lack of fairness—it penalizes Brookline bicycle owners and does not treat all cyclists evenly since many of those biking through Brookline are not Brookline residents. Some raised a concern that licensing should be a State issue, not a local issue, and that the warrant article should treat all Massachusetts cyclists equally—not single out Brookline residents. There were other concerns. First, that it might discourage bicycle ownership at a time when it is indeed desired to minimize environmental impacts and when we should promote bicycle usage as a key way to gain a more healthy lifestyle. Second, the fee may be perceived as unfair revenue-raising on the part of the Town, and lastly, bicycles are often transferred from one household to another, requiring additional registrations with the police and creating an inconvenience for families.

Peter Furth, Transportation Board member and liaison to the Bicycle Advisory Committee, presented written testimony in opposition to the article, saying that it proposed a “solution that won’t work to a problem (bicycle theft) that is not pressing.” Mandated registration would be a burden on bicycle owners with no apparent benefit to them or the Town. If this article passed, he stated, “compliance would be poor, and enforcement would be impractical.”

Police Chief Daniel O’Leary agreed with the petitioner that bicycle thefts are up and that usually an owner has to provide the police department with the bicycle identification after the fact. However, he did not support the warrant article as written because it makes no distinction between types of bikes (a tricycle vs. a 10-speed, for example), and it is a mandate for which the Police Department lacks the staff for enforcement. Brookline, particularly in the midst of numerous educational institutions, has a large transient population. Additionally, ownership of a particular bike is somewhat temporal and capricious for many youngsters in town as bikes tend to be passed among families. And, many bicyclists in and around town are not Brookline residents. Both the costs and administration of enforcement conspire to make a mandated program impractical.

The Massachusetts Bicycle Law [M.G.L. Chapter 85, Section 11] regulates the operation of bicycles on public ways. For example, the law requires that bicyclists obey motor vehicle traffic laws and other restrictions such as riding in single file, using lights and reflectors at night, and having working brakes. Violators are subject to noncriminal ticketing procedures and a fine. The State does not currently mandate bicycle registration.

Chief O’Leary expressed interest in supporting a voluntary bicycle registration program as a community service. Individuals and families might come to the police department to register their bicycles and receive a sticker for each bike. Also, bicycle rodeos or bicycle safety programs held at public schools could be venues for registering bicycles. These are also good opportunities to impress upon young bicyclists the importance of safety and courtesy. In addition, the Police Department could develop brochures to hand out to people who register their bicycles, providing education on bicycle safety and the rules of the road.

The Town has technology that can be configured to maintain a bicycle registry database to aid in the recovery of stolen bicycles. This could be a benefit to both the public and the Police. However, there are associated costs to instituting such a program, depending on the scope of service.

RECOMMENDATION

While this proposed article is well intentioned, it is impractical as an enforceable bylaw. With the understanding that the Advisory Committee encourages the Police Department to develop a voluntary bicycle registration program in the Town, by a vote of 18 in favor, 0 opposed, and 1 abstention, the Advisory Committee recommends **NO ACTION** on Warrant Article 8.

ARTICLE 8

Motion to be Offered by the Petitioner, Seymour Ziskend, TMM-7

Moved to amend the General By-Laws by adding an Article 8.28 as follows:

Article 8.28 OPTIONAL BICYCLE REGISTRATION

Town residents who own bicycles may register their bicycle(s) with the Town free of charge by filling out a registration form provided by the Brookline Police Department Traffic Division. The registration form shall include, among other things, information such as make, color, size, model and serial number(s) of the bicycle(s). The Brookline Police Traffic Division shall provide a decal or similar small plate that shall be attached to the bicycle. Bicycle registrations shall be effective for one year and may be renewed annually."

ARTICLE 9

NINTH ARTICLE

To see if the Town will amend the General By-Laws by adding an Article 8.29 as follows:

Article 8. 29 FOUNDATION PERMITS

Section 8.29.1 Issuance of a Foundation Permit

Construction of a foundation for any building or structure may commence only upon issuance of a foundation permit by the Building Commissioner or Chief Building Inspector. Additional permits for such project may only be issued as provided below.

Section 8.29.2 Process to Obtain a Foundation Permit

To obtain a foundation permit, plans must be submitted to the Building Department that are labeled “foundation/footing only permit”. Upon approval of such plans by the Building Department, a separate permit will be issued for the foundation and the fees for the permit will be based upon the contract price for the foundation work. The valuation costs for the foundation work will be subtracted from the entire project’s valuation costs when determining the permit fees for the balance of the project’s permits. If the lot is on septic, the permit for the septic tank will be included. Three sets of plans signed by a Professional Engineer shall be submitted, which must include foundation calculations, grading, location of setbacks, flood plain elevation, and septic system location, if required.

Section 8.29.3 Submission by Registered Land Surveyor

Upon the foundation being completed, the applicant shall retain a registered Land Surveyor (RLS) to survey the newly constructed foundation and submit “as built drawings” (stamped by the RLS), which show the location and the size of the foundation as constructed. Such drawings shall then be reviewed by the Building Department, which shall sign off if it determines that such “as built drawings” are substantially the same as the original approved plans with respect to the location and size of the foundation.

Section 8.29.4 Additional Permits; Further Action

No additional permits for the project shall be issued unless and until (1) the aforesaid submission by the RLS, and (2) a sign off by the Building Department that the “as built drawings” that are submitted are substantially the same as the original approved plans with respect to the location and size of the foundation. In the event that the Building Department determines that the “as built drawings” are not substantially the same as the

original approved plans, the Building Commissioner may also, in addition to not issuing any additional permits, take such further action as the Commissioner deems appropriate under the circumstances.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

A foundation permit protects a contractor from inadvertently constructing a foundation in the wrong location or which is not the correct size. It also serves to protect the Town from a developer over building or building on a location that was not approved by the Town.

These objectives can be achieved through the foundation permitting process, which will insure that the foundation for a proposed project is in conformity with the Town's zoning bylaws, special permit, and any variance granted by the Zoning Board of Appeals, and by having an independent entity, a Registered Land Surveyor, verify that the location and size of the foundation as constructed conforms with the original approved plans.

SELECTMEN'S RECOMMENDATION

Article 9 is a petitioned article that would amend the Town's General By-Laws by requiring a foundation permit be issued by the Building Department. While the petitioner, based on the explanation filed with the warrant article, believes that such a permit protects the Town and contractors, the Building Department believes that the current system of having a Registered Land Surveyor survey the forms for the foundation prior to the foundation being poured is safer and more responsible.

The primary issue raised by this article is when and how to verify that a foundation is properly placed. The State Building Code, 780 CMR, clearly has jurisdiction over the matter. Town Counsel does not believe that the article, if passed by Town Meeting, would be approved by the Attorney General's Office, as the January 31, 2002 opinion written by Assistant Attorney General Kelli E. Lawrence addresses the issue. Ms. Lawrence wrote the following:

“If a proposed local enactment is properly and exclusively the subject matter of the State Building Code, then we must disapprove of the enactment regardless of whether it is less, as, or more stringent than a corresponding provision of the Code. This is so because the subject matter of the regulation has been staked out and occupied exclusively by the Code, leaving no room for local government to regulate the same area.”

It appears as though the administration of the State Building Code relative to the verification of locations of foundations on lots is properly and exclusively the subject matter of the State Building Code. Sections 111.13 and 110.13 specifically dictate the procedure for the issuance of foundation permits. The proposed town by-law would

interfere with the proper application of this part of the State Building Code. It would appear that the proposed by-law is invalid on this point and would not be approved by the Attorney General.

At Town Counsel's suggestion, the petitioner explored the possibility of implementing the substance of the warrant article through an administrative procedure. The Building Commissioner agreed to implement an administrative procedure that will have a separate foundation signoff line on the standard building permit and a requirement that "as built" drawings stamped by a Registered Land Surveyor will be submitted to the Building Department. The "as built" drawings will then be compared with the approved plans to insure they are "substantially the same" as to what was approved before the permit will be signed. The text of the procedure is below:

Building Department Administrative Procedures regarding Foundation Signoffs on Building Permits

The Building Department will adhere to the following administrative procedures regarding foundations.

1. Building permits will have an additional signoff line for foundations. Unless exempt, construction beyond the foundation may commence only upon issuance of a foundation signoff by the Building Commissioner or designee.
2. Generally, projects under \$250,000 would be exempt from the requirement for a foundation signoff. However the Building Commissioner in his discretion may require a foundation signoff for projects smaller than \$250,000 in situations where compliance with the zoning bylaw or building permit is not readily apparent or is in question.
3. Upon the foundation being completed, the applicant shall submit three "as built drawings" stamped by a Registered Land Surveyor (RLS), which show the location and the size of the foundation as constructed. Such drawings shall then be reviewed by the Building Department, which shall sign off if it determines that such "as built drawings" are substantially the same as the original approved plans with respect to the location and size of the foundation.
4. There will be no construction beyond the foundation for the project until (1) the aforesaid submission by the RLS, and (2) a sign off by the Building Department that the "as built drawings" that are submitted are substantially the same as the original approved plans with respect to the location and size of the foundation. In the event that the Building Department determines that the "as built drawings" are not substantially the same as the original approved plans, the Building Commissioner may also, in addition to not issuing any additional permits, take such further action as the Commissioner deems appropriate under the circumstances.

The Selectmen, therefore, recommend NO ACTION, by a vote of 5-0 taken on October 23, 2007, on Article 9.

ADVISORY COMMITTEE'S RECOMMEDATION

BACKGROUND

Article 9 is a citizen petition which aims to amend the town bylaws to require a separate permit for foundations. Under the proposal, no construction beyond the foundation can occur until a Registered Land Surveyor (RLS) submits "as built" drawings and the Building Commissioner reviews and approves the foundation.

DISCUSSION

At the Planning and Regulation Subcommittee public hearing, the petitioner stated that he filed this proposed bylaw due to a perception by many of uneven inspections of foundations in new construction. A formal foundation permit or signoff would protect not only the town, but also the developer and abutters. It would also increase public confidence in the Building Department. He noted that there is no formal process to insure that foundations are inspected as exists in other communities. Some other communities (such as Boston) have a separate signoff line on the building permit for foundations.

The Building Commissioner denied there was a problem. He also stated that the bylaw as written would conflict with the state building code and would not pass review by the Massachusetts Attorney General's office. Separately, Town Counsel agreed that in all likelihood the bylaw, if enacted would not pass review by the Attorney General's office. This opinion came after informal discussions with AG staff. Town Counsel suggested that the Building Commissioner can implement the substance of the proposed bylaw through administrative procedure.

The Advisory Committee agrees with the petitioner that there should be a formal mechanism to insure that foundations are built in the approved location. In response to Town Counsel's suggestion, the petitioner explored the possibility of implementing the substance of the warrant article through an administrative procedure. The Building Commissioner has agreed to implement an administrative procedure which will have a separate foundation signoff line on the standard building permit and a requirement that "as built" drawings stamped by a Registered Land Surveyor will be submitted to the Building Department. The "as built" drawings will then be compared with the approved plans to insure they are "substantially the same" as to what was approved before the permit will be signed.

Some Advisory Committee members were concerned that this will impose an undue burden on homeowners with small projects such as decks and room additions. Therefore the policy applies to projects which cost more than \$250,000 which have foundations. However, the Building Commissioner can require that smaller projects follow the

procedure in situations where compliance with the zoning bylaw or building permit is not readily apparent and therefore could raise questions.

The full text of the agreed upon procedure follows:

Building Department Administrative Procedures regarding Foundation Signoffs on Building Permits

The Building Department will adhere to the following administrative procedures regarding foundations.

1. Building permits will have an additional signoff line for foundations. Unless exempt, construction beyond the foundation may commence only upon issuance of a foundation signoff by the Building Commissioner or designee.
2. Generally, projects under \$250,000 would be exempt from the requirement for a foundation signoff. However the Building Commissioner in his discretion may require a foundation signoff for projects smaller than \$250,000 in situations where compliance with the zoning bylaw or building permit is not readily apparent or is in question.
3. Upon the foundation being completed, the applicant shall submit three “as built drawings” stamped by a Registered Land Surveyor (RLS), which show the location and the size of the foundation as constructed. Such drawings shall then be reviewed by the Building Department, which shall sign off if it determines that such “as built drawings” are substantially the same as the original approved plans with respect to the location and size of the foundation.
4. There will be no construction beyond the foundation for the project until (1) the aforesaid submission by the RLS, and (2) a sign off by the Building Department that the “as built drawings” that are submitted are substantially the same as the original approved plans with respect to the location and size of the foundation. In the event that the Building Department determines that the “as built drawings” are not substantially the same as the original approved plans, the Building Commissioner may also, in addition to not issuing any additional permits, take such further action as the Commissioner deems appropriate under the circumstances.

RECOMMENDATION

It appears likely that an amendment to the town bylaws requiring foundation permits will not be permitted by the Attorney General. Additionally, the Building Commissioner has agreed to implement the substance of this article administratively. Since the petitioner’s goal has been achieved, the Advisory Committee by a vote of 16 in favor, 0 opposed and 3 abstentions, recommends NO ACTION on Article 9.

XXX

ARTICLE 10

TENTH ARTICLE

To see if the Town will amend the Town by-laws by adding a new Article 9.2 as follows:

ARTICLE 9.2 COOLIDGE CORNER DISTRICT COUNCIL

SECTION 9.2.1 ESTABLISHMENT

There shall be a Coolidge Corner District Council (CCDC) and a Coolidge Corner District (District). The geographical area of the District shall consist of the parcels outlined in the map entitled "Coolidge Corner Design Overlay District" as set forth in the proposed Zoning Bylaw Warrant Article XI for Town Meeting of November, 2007 or as outlined in the "Coolidge Corner Design Overlay District" map as approved by Town Meeting in November, 2007.

SECTION 9.2.2 APPOINTMENT OF MEMBERS

Town Meeting members of each precinct any portion of which is located within the District shall caucus and, by majority vote of a quorum of all Town Meeting members of the precinct, elect annually one Town Meeting member from that precinct to serve on CCDC. Also, the Board of Selectmen shall appoint annually to CCDC: one representative of the Board of Selectmen who may but need not be a Selectman; one representative nominated by the Brookline Neighborhood Alliance if it so chooses; two representatives and one alternate nominated by the Coolidge Corner Merchants Association if it so chooses; one representative nominated by each neighborhood association if it so chooses that is a member of the Brookline Neighborhood Alliance and whose purview concerns all or part of the District; and, nominated representatives of such other Town boards and commissions, community advocacy groups and any other interest groups as Town Meeting may specify in this section. CCDC members shall comply with the Conflict of Interest Law under M.G.L. c. 268A.

SECTION 9.2.3 PROCEDURE

CCDC shall follow Robert's Rules of Order, elect chair(s) and a secretary annually and shall keep minutes of each meeting. The meetings and minutes of CCDC shall be subject to the Open Meeting Law under M.G.L. c. 39. Town staff, boards and commissions shall assist CCDC relative to specific issues as needed.

SECTION 9.2.4 GENERAL DUTIES

CCDC shall meet at least quarterly to identify and review matters of community planning and development relating to the District. CCDC shall have the following authority: 1) to provide a venue for the exchange of views by different interest groups within the District community and a forum for consensus-building with respect to common concerns; 2) to

educate CCDC members, the public and Town officials about District issues; 3) to monitor and report as needed to the Department of Planning and Community Development, Planning Board, Zoning Board of Appeals, Board of Selectmen, Zoning Bylaw Committee and Town Meeting whether existing or proposed development within the District and existing or proposed Town policies that affect the District conform to the Coolidge Corner District Plan; 4) to propose from time to time to the Department of Planning and Community Development and the Planning Board amendments to the Coolidge Corner District Plan; and, 5) to make any other recommendations as deemed appropriate to relevant Town boards, departments and commissions to address District issues.

SECTION 9.2.5 VACANCIES

Whenever a vacancy occurs in CCDC, the designated elective or nominating and appointing authorities as set forth in Section 9.2.2 may choose a replacement for the unexpired term.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In the fall of 2005, Town Meeting established the Coolidge Corner "Interim Planning Overlay District" (IPOD) in which most development was suspended pending study leading to the creation of a Coolidge Corner District Plan. Town Meeting also created the Coolidge Comer District Planning Council to (in the words of that Warrant Article) "guide" the study. The Coolidge Corner District Plan itself was to be "a one year planning process." Town Meeting set a sunset date for the IPOD, but not for the Council. In the fall of 2006, Town Meeting extended the life of the IPOD until April 30, 2007 and required the Council to hold a public hearing prior to the completion of its work but imposed no termination date for the Council.

The Comprehensive Plan provides that, "District Plan(s) . . . each be developed by a District Planning Council of neighborhood representatives, Town Meeting members, small business owners, property owners and Town officials" (page 3 1) and "adopted by the Planning Board as an integral part of the Comprehensive Plan. . . ." (page 32) It specifies no termination date for District Planning Councils.

According to the Comprehensive Plan, however, circumstances may require the District Plan as submitted to the Planning Board to be amended. (page 34) As the Planning Board is not charged with creating the District Plan, the implication is that the Coolidge Corner District Planning Council, which is charged with "guiding" the District Plan, should also guide any "agreed amendment[s]" to the District Plan. (page 34)

Additionally, the Comprehensive Plan maintains that "from time to time" it itself "will need updating" and "public review..." (page 9) Given that the Comprehensive Plan envisions the District Plan to be an "integral part" of the Comprehensive Plan, the implication is that the Coolidge Corner District Planning Council should continue as long as the Comprehensive Plan is subject to update and review.

The Coolidge Corner District Planning Council was the first of the District Planning Councils called for by the Comprehensive Plan. It was able to guide a community study and, with the invaluable and dedicated work of the Dept. of Planning and Community Development, produce a District Plan for Coolidge Comer. This planning process encouraged the major interest groups of Coolidge Corner - notably the commercial community and the residents - to understand each other's often conflicting needs and goals and reach consensus on a variety of key issues with respect to the future of the Coolidge Corner area. Of note, the Coolidge Comer District Plan itself recommends that the Coolidge Corner Council continue as a mechanism for residents and merchants to work together (as they rightly should given that Coolidge Corner is where they live and make their living) to address Coolidge Corner issues as they arise.

The most intensively developed part of Brookline, Coolidge Comer is also the leading target in the Town for further development. Sponsors of this Warrant Article believe that during the coming years of anticipated unprecedented development pressures, it is particularly important for the District Council to continue its work as the only forum for creating community agreement among residents and business owners in Coolidge Corner relative to matters such as parking, traffic and the need for open space, to be a voice to enforce the hard-won consensus already embodied in the District Plan and to "guide" subsequent amendments and revisions to the District Plan as needed.

The sponsors also believe that because neither the Comprehensive Plan nor the enabling legislation for the Coolidge Corner District Planning Council specifies any termination date for the Council, and that, if anything, both the Comprehensive Plan and this legislation imply a continuance of the Council, that Town Meeting should take this opportunity to formalize the composition and responsibilities of the Coolidge Corner Council. To leave the matter murky and in limbo would not only miss an opportunity but, also, would pave the way for future misunderstandings and unnecessary future complications.

MOTION TO BE OFFERED BY THE PETITIONER

That the Town amend the Town by-laws by adding a new Article 9.2 as follows:

ARTICLE 9.2

COOLIDGE CORNER DISTRICT COUNCIL

SECTION 9.2.1

ESTABLISHMENT

There shall be a Coolidge Corner District Council (CCDC) and a Coolidge Corner District (District). The geographical area of the District shall consist of the parcels outlined in the map entitled "Coolidge Corner Design Overlay District" as set forth in the Zoning Bylaw and Zoning Map.

SECTION 9.2.2 APPOINTMENT OF MEMBERS

Town Meeting members of each precinct, any portion of which is located within the District, shall caucus and, by majority vote of a quorum of all Town Meeting members of the precinct, nominate annually one Town Meeting member from that precinct to serve on CCDC. The Board of Selectmen shall appoint annually to CCDC: each of these nominated Town Meeting members; one representative of the Board of Selectmen who may but need not be a Selectman; one representative nominated, if it chooses to do so, by the Brookline Neighborhood Alliance; two representatives and one alternate nominated, if it chooses to do so, by the Coolidge Corner Merchants Association; one representative nominated, if it chooses to do so, by each neighborhood association that is a member of the Brookline Neighborhood Alliance and whose purview concerns all or part of the District; and, two representatives and one alternate nominated, if it chooses to do so, by the Brookline Chamber of Commerce. CCDC members shall comply with the Conflict of Interest Law under M.G.L. c. 268A.

SECTION 9.2.3 PROCEDURE

CCDC shall follow Robert's Rules of Order, elect chair(s) and a secretary annually and shall keep minutes of each meeting. The meetings and minutes of CCDC shall be subject to the Open Meeting Law under M.G.L. c. 39. Town staff, boards and commissions shall assist CCDC relative to specific issues as needed.

SECTION 9.2.4 GENERAL DUTIES

CCDC shall meet at least quarterly to identify and review matters of community planning and development relating to the District. CCDC shall have the following authority: 1) to provide a venue for the exchange of views by different interest groups within the District community and a forum for consensus-building with respect to common concerns; 2) to inform CCDC members, the public and Town officials about District issues; 3) to monitor and report as needed to the Department of Planning and Community Development, Planning Board, Zoning Board of Appeals, Board of Selectmen, Zoning Bylaw Committee and Town Meeting whether existing or proposed development within the District and existing or proposed Town policies that affect the District conform with the Coolidge Corner District Plan; 4) to propose from time to time, to the Department of Planning and Community Development and the Planning Board, amendments to the Coolidge Corner District Plan; and, 5) to make any other recommendations as deemed appropriate to relevant Town boards, departments and commissions to address District issues.

SECTION 9.2.5 VACANCIES

Whenever a vacancy occurs in CCDC, the designated nominating and appointing authorities as set forth in Section 9.2.2 may choose a replacement for the unexpired term.

SELECTMEN'S RECOMMENDATION

Article 10 is a petitioned article that proposes to add a Town By-Law creating a Coolidge Corner District Council (CCDC). This CCDC would generally be a permanent replacement for the existing Coolidge Corner District Planning Council, although its membership would be smaller than that of the District Planning Council, eliminating two seats for businesses and/or property owners and several seats for Town Board and Commission representatives. The current District Planning Council worked with Town staff and consultants to draft a Coolidge Corner District Plan. That District Plan has been approved by the District Planning Council and, as envisioned in the Comprehensive Plan, will be going to the Planning Board later this year for consideration as an amendment to the Comprehensive Plan.

The language in this proposed by-law raises many questions, including:

- How does the jurisdiction of the CCDC relate to existing Town Boards and Commissions, and to neighborhood groups?
- Is the membership of the CCDC fair and equitable to all stakeholders in the Coolidge Corner area?
- How does the creation of a CCDC affect Town capacity to staff standing Boards and Commissions?
- Many standing committees in Town are created informally and therefore have a great deal of flexibility to evolve over time. For example, the Zoning By-Law Committee is not in the Town's By-Laws. Why does the CCDC need to be codified in the Town By-Law?
- The Comprehensive Plan sets forth a system of developing District Plans for various parts of Town, with District Planning Councils guiding that development. How does the creation of a standing CCDC relate to these planning processes? Will permanent district councils be created for each part of Town?

The Town's Committee on Town Organization and Structure (CTO&S) exists specifically to consider such changes to the Town's Bylaws. CTO&S discussed this proposal at two meetings this fall and felt they would like the opportunity to discuss the article and the overall system of district planning in Town. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 2, 2007, on the following:

VOTED: To refer the subject matter of Article 10 to the Committee on Town Organization and Structure for further study, and specifically:

1. to review the authority and responsibility of municipal planning boards to make a master plan under MGL Chapter 41, section 81D or any other related statute, bylaw or regulation.
2. to review the Brookline Comprehensive Plan 2005-15 with regard to intent and direction for a District Planning process including the question of permanent district planning councils.
3. to review the current and best practices and procedures for implementing any

- District Plan(s) within the existing enabling Brookline framework, including regulating and advising entities and staffing capacity.
4. to make a report to the 2008 Annual Town Meeting with recommendations for an appropriate approach to a district planning process for all neighborhoods and districts throughout the Town. If an approach is proposed that differs from recent practice, the recommendation should include a plan for implementation within an organizational framework (including details such as appointing authority, membership and terms, sun-setting, work product, timelines, etc.) that clearly identifies delegated responsibilities and authority, if any.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The Article would establish in the by-laws a Coolidge Corner District Council (the "Council") and a Coolidge Corner District. It speaks to membership, process and duties of the Council. The Town's by-laws as they exist do not provide for the creation of districts nor district councils.

DISCUSSION

The genesis of this idea is embodied in the:

- Coolidge Corner Interim Planning Overlay District
- study leading to the Coolidge Corner District Plan (submitted to the Planning Board in March 2007)
- Coolidge Corner District Planning Council which guided the study

The Comprehensive Plan provides for, among other things, the development of district plans by district planning councils and other interested parties, which plans could be adopted by the Planning Board as amendments to the Comprehensive Plan. The Coolidge Corner District Plan recommends among many actions (by Town Meeting and the District Planning Council) the continuation of the District "Planning" Council as a mechanism for residents and merchants together to play a central role in addressing Coolidge Corner issues as they arise. The Planning Board has not yet fully acted on the District Plan because of competing priorities, not intention; it will get to it after the coming Town Meeting.

The petitioner, in a written explanation of the article, concludes through implications and inferences that the District "Planning" Council remains in existence, outliving its mission as being part of the community of interest that guided the study of the district plan. Such conclusion is arguable, and may not be correct. But in the end, its "continuing existence" seems irrelevant in that the council proposed in this Article is a permanent body with far different and expanded duties and authorities. The written explanation says "...it is particularly important for the District Council (sic – not the District "Planning" Council) to continue its work as the only forum for creating community agreement among residents and business owners....."

The need for the council centered on the inherent conflict between maintaining residential-life quality and the consequences of commercial development. Among the issues are:

- Council membership. The article seemed originally to be weighted to residential interests. The petitioner submitted a revised article to include the Brookline Chamber of Commerce.
- Empowerment. Residential proponents feel there is a need for a bottoms-up approach to address district issues, from the grass-roots community to the Board of Selectmen. They want greater clout and earlier collaboration, and see the council as a way of generating greater input. Some were excited about the community “coming together”, and see this as a conduit for focusing on the specific issues of the District. However, there is already a great deal of citizen clout in the Coolidge Corner area, including two active neighborhood associations and a great many TMMs representing the area.
- Residential bias. Commercial interests felt the council would be potentially biased towards residential interests, mindful of the importance to the Town of the 175% real estate tax burden allocation to commercial property.
- Developer behavior. Proponents expressed particular dissatisfaction with the sincerity, substance and timing of neighborhood meetings relating to Major Impact projects (and their not being required for lesser projects). Commercial interests rebutted these concerns.
- Bureaucracy. There is concern as to whether the bureaucratic layer created by the district council would have positive or negative benefits, and whether the Town’s processes were working well without change.
- Precedent. There is recognition that creation of the Council would set a precedent for other, later Overlay Districts of the Town.

RECOMMENDATION

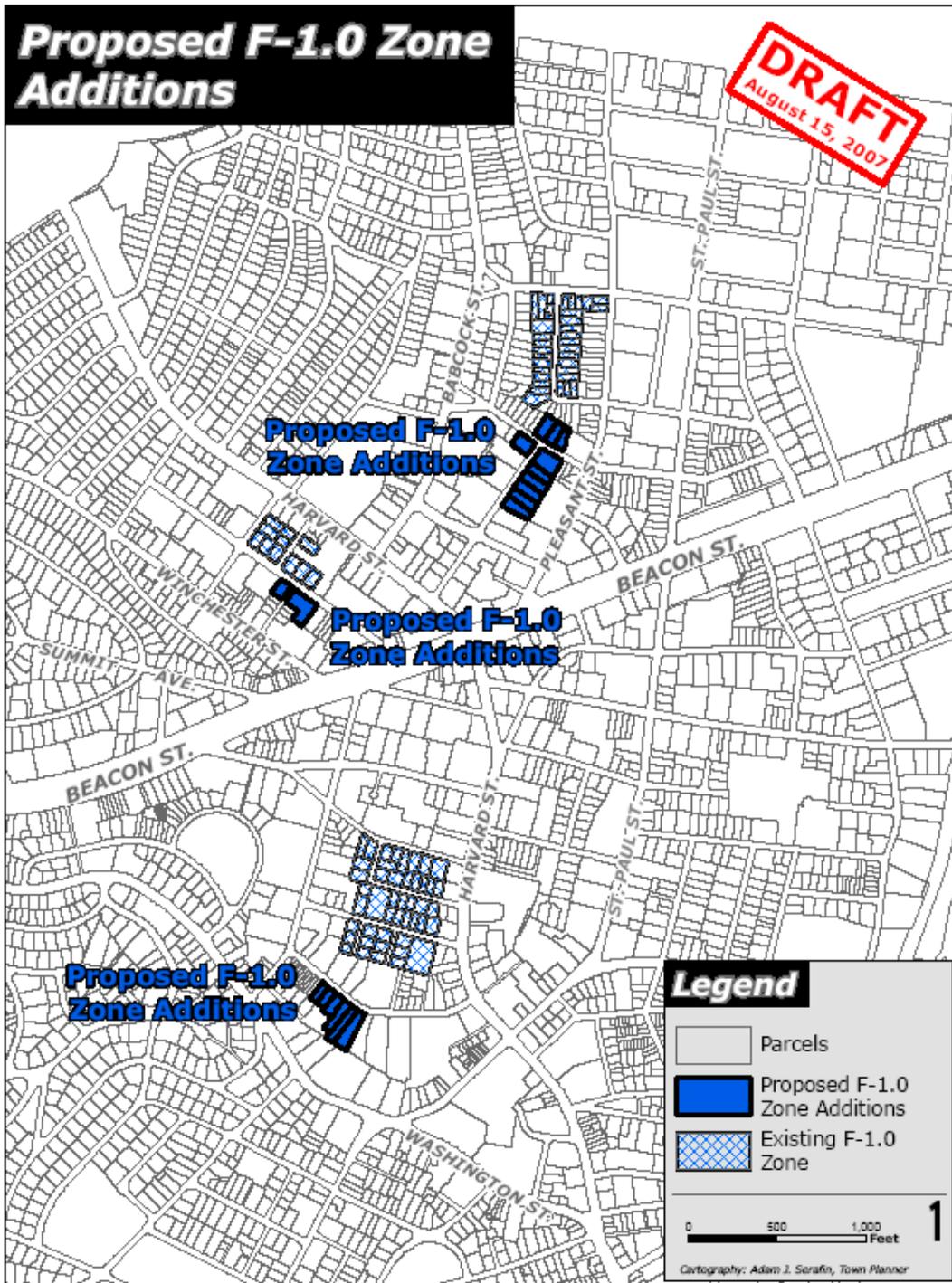
There was substantial Advisory Committee support for the article’s concerns, as reflected in its voting chronology. It was noted that this proposal is likely to set a precedent. Therefore, its proposed role and structure should be carefully considered with respect to it possibly being a town model. The Advisory Committee considered the article’s original language and the petitioner’s revised language (which changed membership composition and the appointment process). By a vote of 8 in favor and 11 against, the motion for the petitioner’s revised language failed.

By a vote of 12-7-0, the Advisory Committee recommends REFERRAL of the subject matter of Article 10 to the Town’s Committee on Town Organization and Structure (the “CTOS”) for further study.

ARTICLE 11

ELEVENTH ARTICLE

To see if the Town will amend the Zoning Map by changing the zoning of the parcels on the attached map to F-1.0 as indicated.



Proposed F-1.0 Zone Additions

Address*	Existing Zoning
62 CENTRE ST.	M-2.0
15 DWIGHT ST.	M-1.0
21 DWIGHT ST.	M-1.0
25 DWIGHT ST.	M-1.0
55 GREEN ST.	M-1.0
59 GREEN ST.	M-1.0
63-65 GREEN ST.	M-1.0
67-69 GREEN ST.	M-1.0
71-73 GREEN ST.	M-1.0
81 GREEN ST.	M-1.0
82 GREEN ST.	M-1.0
54 HARVARD AVE.	M-1.0
56 HARVARD AVE.	M-1.0
60 HARVARD AVE.	M-1.0
66-68 HARVARD AVE.	M-1.0
70 HARVARD AVE.	M-1.0
74 HARVARD AVE.	M-1.0
6 WELLMAN ST./50 CENTRE ST.	M-1.0

**Parcel Address as listed in Brookline Assessor's Data.*

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This zoning amendment is being submitted by the Planning and Community Development Department with the support of the Zoning Bylaw Committee. At last spring's Town Meeting, a new zoning district was created for about 90 parcels near Coolidge Corner that limited development to three dwelling units per lot. This new F-1.0 zone was designed to serve as a middle ground between two-family (T) zones and multi-family (M) zones, and followed from the recommendations of the Coolidge Corner planning process. At the time only a limited list of properties were included in the new zone. This article adds new properties to the F zones that have predominately three-family uses and which have a massing and density consistent with the goals of the F-1.0 zone. Not all properties considered for the F-1.0 zone are included in this article. After discussion and analysis, the Zoning Bylaw Committee decided to exclude some

properties that were in smaller groups of buildings rather than those that representative of a larger streetscape.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is being submitted by the Planning and Community Development Department with the support of the Zoning By-law Committee. The article proposes to add 18 more parcels to the F-1.0, or three-family zoning district, which was initially adopted at 2007 Spring Town Meeting for 90 parcels.

The F-1.0 zoning district arose out of the Coolidge Corner District Planning process, which illustrated a neighborhood concern regarding the demolition of dwellings to make way for larger developments. By rezoning parcels from multi-family (M) to three-family zoning, the incentive to replace single-, two- and three-family dwellings with new development diminishes. Additionally, the F zone provides for a transition zone between single- and two-family zoned neighborhoods and multi-family zoned neighborhoods.

The Planning Board considered carefully whether all of the parcels proposed were appropriate for a rezoning from a multi-family district to a three-family district and evaluated the current use, lot size, and surrounding environment of each property. The property owners at 54 and 56 Harvard Avenue attended the Planning Board public hearing and expressed strong opposition to the inclusion of their parcels in this rezoning. Other Harvard Avenue owners expressed support for having their property rezoned. After making a site visit to Harvard Avenue, the Planning Board supports the zoning change for 60, 66-68, 70 and 74 Harvard Avenue, but not for 54 and 56 Harvard Avenue. The latter two are on larger and deeper lots than the others. 56 Harvard Avenue is an existing four family and would be made non-conforming in use by the zoning change. It is also included in the Harvard Avenue local historic district and therefore could not be torn down without Preservation Commission approval. The Planning Board believes some appropriately designed redevelopment of this site would not negatively impact the neighborhood. For 54 Harvard Avenue, which is not in the local historic district but would require a special permit for demolition, the Planning Board considered not only its size but its sloped topography, which would allow parking under a rear addition. The Planning Board believes that because as-built conditions are not significant and it is surrounded on three sides by apartment buildings, a downzoning is not appropriate.

The Planning Board also considered carefully the appropriateness of rezoning 62 Centre Street and 6 Wellman Street/50 Centre Street – one, a very large two unit house; the other, a two unit house with an adjacent parking lot. Initially, it was thought that the adjoining parking area was part of this lot; however, subsequent research by the Planning and Community Development Department staff discovered that the parking lot is actually a separate lot and provides parking for the rear apartment building at 19 Winchester Street.

After a continued public hearing on Article 11, the Planning Board concluded that downzoning 62 Centre Street from an FAR of 2 to an FAR of 1 was too severe and that this large house should not be limited to three dwelling units. Without significantly affecting the exterior appearance, the building could be converted to four units, which under the F zone would not be allowed. The Planning Board also felt that the new zoning should not apply to the parking lot adjacent to 50 Centre Street/6 Wellman Street, since the goal of the rezoning is to prevent tear downs. If the 62 Centre Street lot and the parking area lot are not included in the rezoning, only the lot at 50 Centre Street/6 Wellman Street would be left in this proposed rezoning area. The Planning Board felt that this lot and, in fact, most of the properties on the west side of Centre Street, were not similar enough to the F zoned properties across the street and that a change to a single lot could be considered spot zoning. The Planning Board noted that Article 12, which proposes the requirement for a design review special permit for demolitions in the Coolidge Corner Design Overlay District and/or for new residential structures of four or more units, would also provide some protection to these large houses. Regarding the rezoning of the third area (Green and Dwight Streets), the Planning Board voted to support it as proposed.

Therefore, the Planning Board is selectively supportive of this amendment to rezone some M-zoned parcels to the F-1.0 zoning district. For the most part, the selected parcels are not made non-conforming as they are currently single-, two- and three-family dwellings. These parcels are located in established moderate-density residential neighborhoods that have seen increased development pressure in the recent past, and this rezoning should help discourage intense residential development and enhance the preservation of the existing neighborhood character.

Therefore, the Planning Board recommends FAVORABLE ACTION on Article 11 with the following properties excluded from the zoning change: 54 Harvard Avenue, 56 Harvard Avenue, 62 Centre Street, and 50 Centre Street/6 Wellman Street.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen, at its October 23 meeting, decided to hold off of taking a vote due to concerns voiced by the Planning Board (in their report) and some effected property owners (at public hearings). The Planning Board recommends excluding 54 Harvard Avenue, 56 Harvard Avenue, 62 Centre Street, and 50 Centre Street/6 Wellman Street while the Advisory Committee recommends including them. The Board will hold another discussion on the article at its October 30 meeting, so a recommendation will be included in a Supplemental Report.

ADVISORY COMMITTEE'S RECOMMENDATIONBACKGROUND

This Article proposes to add 18 more parcels to the F-1.0, or three-family zoning district, which was initially adopted at the 2007 Spring Town Meeting for 90 parcels in the Coolidge Corner area.

The F-1.0 zoning district arose out of the Coolidge Corner district planning process, which illustrated a neighborhood concern regarding the demolition of dwellings to make way for larger developments. By rezoning parcels from multi-family (M) to three-family zoning, the incentive to replace single, two- and three-family dwellings with new development diminishes. Additionally, the F zone provides for a transition zone between single- and two-family zoned neighborhoods and multi-family zoned neighborhoods.

DISCUSSION

At the Advisory Committee Planning and Regulation Subcommittee public hearing, the Planning and Community Development Department representative stated that there is generally an intent of the residents of the neighborhood and of this Article to preserve the two and three family look and feel in Coolidge Corner and the surrounding former CCIPOD area. The spokesperson for the Department noted that all the areas proposed for rezoning are currently zoned as M at various FAR limits. M zones are geared toward multifamily housing.

The spokesperson for the Planning and Community Development Department noted that the article is being submitted by the Planning and Community Development Department with the support of the Zoning By-law Committee. The Department reported on letters in support of the proposal from residents of Dwight Street, Green Street and Harvard Avenue.

A member of the Advisory Committee's Planning and Regulation Subcommittee expressed his support for including all the original properties, as he had worked with others in the community in compiling the list with the overall goal of reducing the risk of teardowns and because of that, he would abstain from the subcommittee's vote. In addition, as an architect he expressed the opinion that reasonable extra additions could be built at 54 and 56 Harvard Avenue that could take advantage of their large lots and at 62 Centre to create a third large unit; they could indeed greatly increase the potential extra value of their properties. Also, he felt a suggestion that 54 and 56 were surrounded on three sides by large buildings doesn't hold true when the Harvard Avenue streetscape is seen and appreciated from its sidewalks.

A member of the Subcommittee also noted the email statements in support of the article from a TMM9, that pointed out how the 11 Centre St. F-zone properties down-zoned last year benefit these houses across the street by helping to preserve that block's original character. In addition that TMM raised the question of should the needs of one owner outweigh the benefits to the larger community. Other town meeting members contacted the Advisory Committee in favor of these points and the original list.

Another Subcommittee member noted that there is no opposition to the proposal from the residents of Dwight Street, Green Street and Harvard Avenue (less the residents of 54 and 56 Harvard Avenue). Also, a letter from a TMM noted that the two Centre Street properties had been originally part of last year's article and possibly could have been approved along with the 11 across the street at the time, instead of being now looked at by some as individual, isolated properties. The owner of 54 Harvard Avenue stated that she thought it was unfair that her house—given its lot size—would be included. The owner noted that there may be a spot zoning concern. The owner read a letter that had been previously submitted to the Subcommittee by the owner of 56 Harvard Avenue also stating his opposition to including his property in the F zone. The owner of 62 Centre Street spoke in opposition to being included due to the large FAR reduction that would happen on his small lot—although he is currently only planning to convert the interior of his two family to four smaller units without changing or adding on to the exterior.

At the Advisory Committee meeting the Planning Department commented that 62 Centre is somewhat an anomaly as the only M-2.0 property that is an individual house bordered on three sides by M-1.5, M-1.0 and F-1.0 buildings and houses. It is instead attached to that part of the block that has the M-2.0 apartment towers on Centre Street.

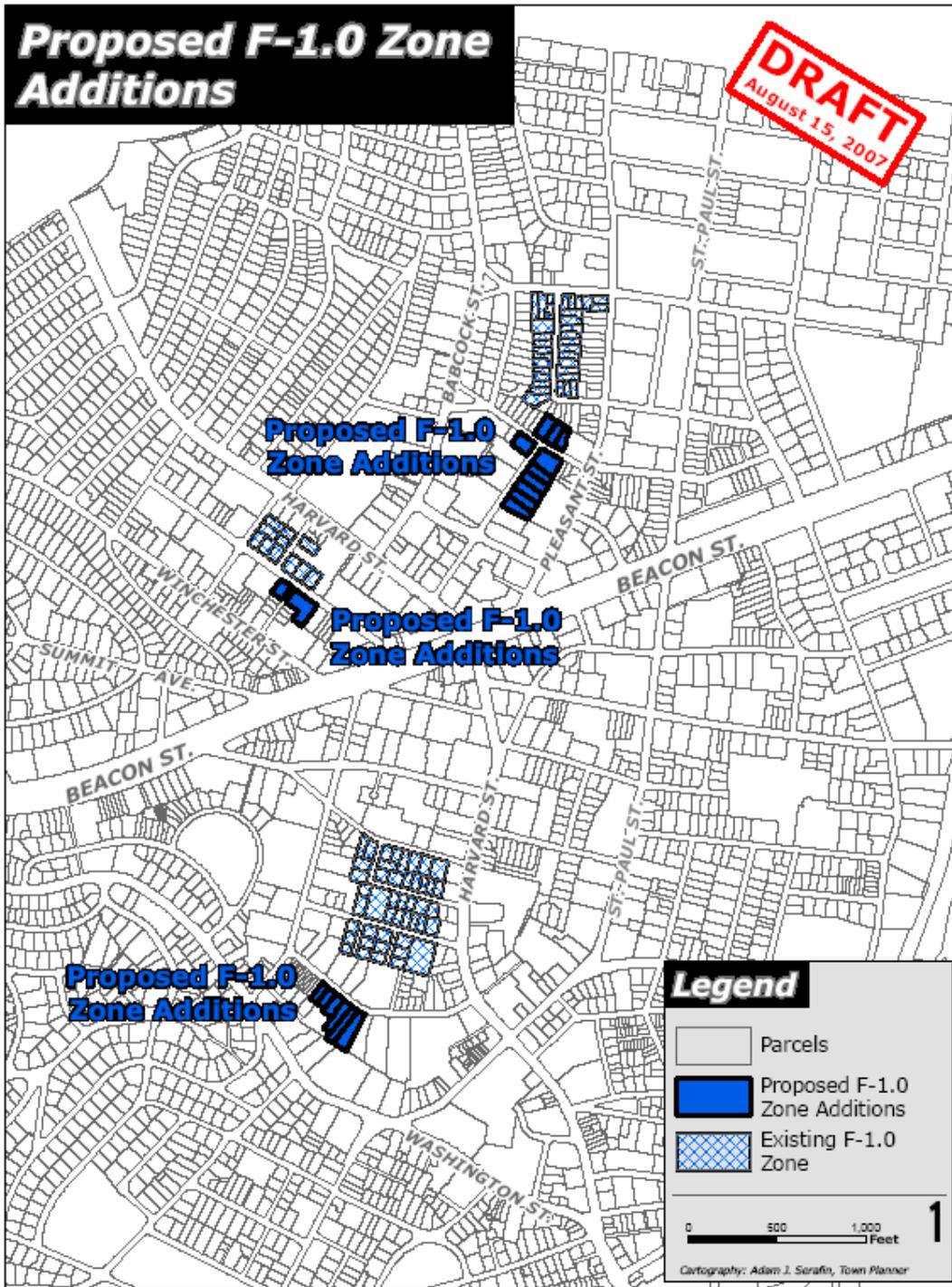
Note: Between the time of the Advisory Committee's Planning and Regulation Subcommittee Public Hearing and the Advisory Meeting and vote, after a question was raised by the Subcommittee, the Town determined that the large L-shaped lot at 50 Centre/6 Wellman St (a two unit condo within an original two-family house) is really two separate properties. The parking lot (of approx. 10,600 square feet) is actually a different address from the house, which really has 7,465 s.f. of land. Therefore, because the parking lot's address is not listed in Article 11, it is not included or affected by it; only a technical change to the maps included needs to be made.

RECOMMENDATION

The Advisory Committee reviewed the factors used in determining the applicability of the F-1.0 zoning district to the 18 properties in question with a specific focus on the parcels on Centre Street (62 & 50) and the two parcels on Harvard (54 & 56) Street where the owners objected to their inclusion either based on "spot zoning" concerning lot size, or in the case of 62 Centre Street, the extent of down zoning (2.0 FAR to 1.0 FAR).

The Advisory Committee, by a vote of 16 in favor, 3 opposed, and 1 abstention, voted to recommend FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the Zoning Map by changing the zoning of the parcels on the attached map to F-1.0 as indicated.



Proposed F-1.0 Zone Additions

Address*	Existing Zoning
62 CENTRE ST.	M-2.0
15 DWIGHT ST.	M-1.0

21 DWIGHT ST.	M-1.0
25 DWIGHT ST.	M-1.0
55 GREEN ST.	M-1.0
59 GREEN ST.	M-1.0
63-65 GREEN ST.	M-1.0
67-69 GREEN ST.	M-1.0
71-73 GREEN ST.	M-1.0
81 GREEN ST.	M-1.0
82 GREEN ST.	M-1.0
54 HARVARD AVE.	M-1.0
56 HARVARD AVE.	M-1.0
60 HARVARD AVE.	M-1.0
66-68 HARVARD AVE.	M-1.0
70 HARVARD AVE.	M-1.0
74 HARVARD AVE.	M-1.0
6 WELLMAN ST./50 CENTRE ST.	M-1.0

**Parcel Address as listed in Brookline Assessor's Data.*

XXX

ARTICLE 11

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

This article is being submitted by the Planning and Community Development Department with the support of the Zoning By-law Committee. The article proposes to add 18 more parcels to the F-1.0, or three-family zoning district, which was initially adopted at 2007 Spring Town Meeting for 90 parcels.

The F-1.0 zoning district arose out of the Coolidge Corner District Planning process, which illustrated a neighborhood concern regarding the demolition of dwellings to make way for larger developments. By rezoning parcels from multi-family (M) to three-family zoning, the incentive to replace single-, two- and three-family dwellings with new development diminishes. Additionally, the F zone provides for a transition zone between single- and two-family zoned neighborhoods and multi-family zoned neighborhoods.

The Board of Selectmen considered both the Planning Board and Advisory Committee recommendations on whether all of the parcels proposed were appropriate for a rezoning from a multi-family district to a three-family district and evaluated the current use, lot size, and surrounding environment of each property. The Board of Selectmen also heard from many property owners affected by the potential rezoning, some in favor and some opposed to the change. In particular, there was a great deal of discussion about whether the parcels on Centre Street and the two parcels at 54 and 56 Harvard Avenue should be included in this rezoning.

The Harvard Avenue parcels are a four-family dwelling in the Local Historic District (LHD) and a two-family dwelling that is not in the LHD. The two-family dwelling is surrounded by buildings with four or more units, and is also located on its lot in a way that would make its redevelopment difficult. Both of these property owners have objected to being included in the rezoning.

The Centre Street parcels consist of two two-family buildings and a parking lot. Initially, the assessor's records showed the parking lot as included on the parcel of one of the other buildings. However, further research indicated that the parking lot is actually used by a condominium building at 19 Winchester Street and is on a separate parcel. This raises the concern that the parcel is not specifically called out in the list of addresses for rezoning, and the fact that the owners of record were not notified that their parcel was being considered for rezoning. This does not raise a legal issue, since there is no requirement that property owners receive specific notice of a rezoning, but does raise a concern of fairness. While it might be possible to exclude this parcel from the rezoning, the need to rezone 50 Centre Street is reduced by the smaller parcel size, since its existing Floor Area Ratio is likely above 1.0, meaning that any external expansion of that building is unlikely. The building at 62 Centre Street is in an M-2.0 district at present, so this rezoning would cut in half its permitted Floor Area Ratio (FAR). This

significant reduction in permitted FAR is of concern to the Board of Selectmen. All the other properties in this proposed rezoning are currently zoned M-1.0, so while the permitted uses would be restricted, the permitted FAR would not change.

There was extensive discussion about the appropriateness of including 54 and 56 Harvard Avenue. Some members felt they should be included in the rezoning, but others agreed with the Planning Board that the 54 and 56 Harvard Avenue should be excluded. At their November 6, 2007 meeting, the Board reconsidered its 2-1-1 vote taken the previous week that excluded all four properties (54 Harvard Avenue, 56 Harvard Avenue, 62 Centre Street, and 50 Centre Street/6 Wellman Street). A motion was made by Selectmen Hoy to have all four properties included in the rezoning, but that failed 2-3, with Selectmen Hoy and DeWitt voting in favor. A second motion was then made to exclude the two Harvard Avenue properties but include the two Centre Street properties. That failed 2-3, with Selectmen Hoy and DeWitt voting in favor. The final motion was to exclude all four properties. That motion passed 3-1-1 with the following roll call vote:

Favorable Action

Daly
Allen
Mermell

No Action

Hoy

Abstaining

DeWitt

Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 3-1 with 1 abstaining, on the following motion:

VOTED: That the Town amend the Zoning Map by changing the zoning of the parcels on the attached map to F-1.0 as indicated.



Proposed F-1.0 Zone Additions

Address*	Existing Zoning
15 DWIGHT ST.	M-1.0
21 DWIGHT ST.	M-1.0
25 DWIGHT ST.	M-1.0
55 GREEN ST.	M-1.0
59 GREEN ST.	M-1.0
63-65 GREEN ST.	M-1.0
67-69 GREEN ST.	M-1.0
71-73 GREEN ST.	M-1.0
81 GREEN ST.	M-1.0
82 GREEN ST.	M-1.0
60 HARVARD AVE.	M-1.0
66-68 HARVARD AVE.	M-1.0
70 HARVARD AVE.	M-1.0
74 HARVARD AVE.	M-1.0

**Parcel Address as listed in Brookline Assessor's Data.*

ARTICLE 12

TWELFTH ARTICLE

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

1. By adopting the attached map change creating a Coolidge Corner Design Overlay District.
2. By amending Section 3.00 by adding a new item at the end:
 4. In any Overlay Districts created in Section 3.01, below, both the requirements of the base zoning district and those of the overlay district shall apply.
3. By amending Section 3.01 by adding a new item at the end:
 4. *Overlay Districts*
 - a. Coolidge Corner Design Overlay District

4. By amending Section 5.09 (Design Review) as follows:

- a) Adding a new Section 5.09.2.m. reading:

“m. Any demolition as defined in Section 5.3 of the Town Bylaws in the Coolidge Corner Design Overlay District except those located in Local Historic Districts.”

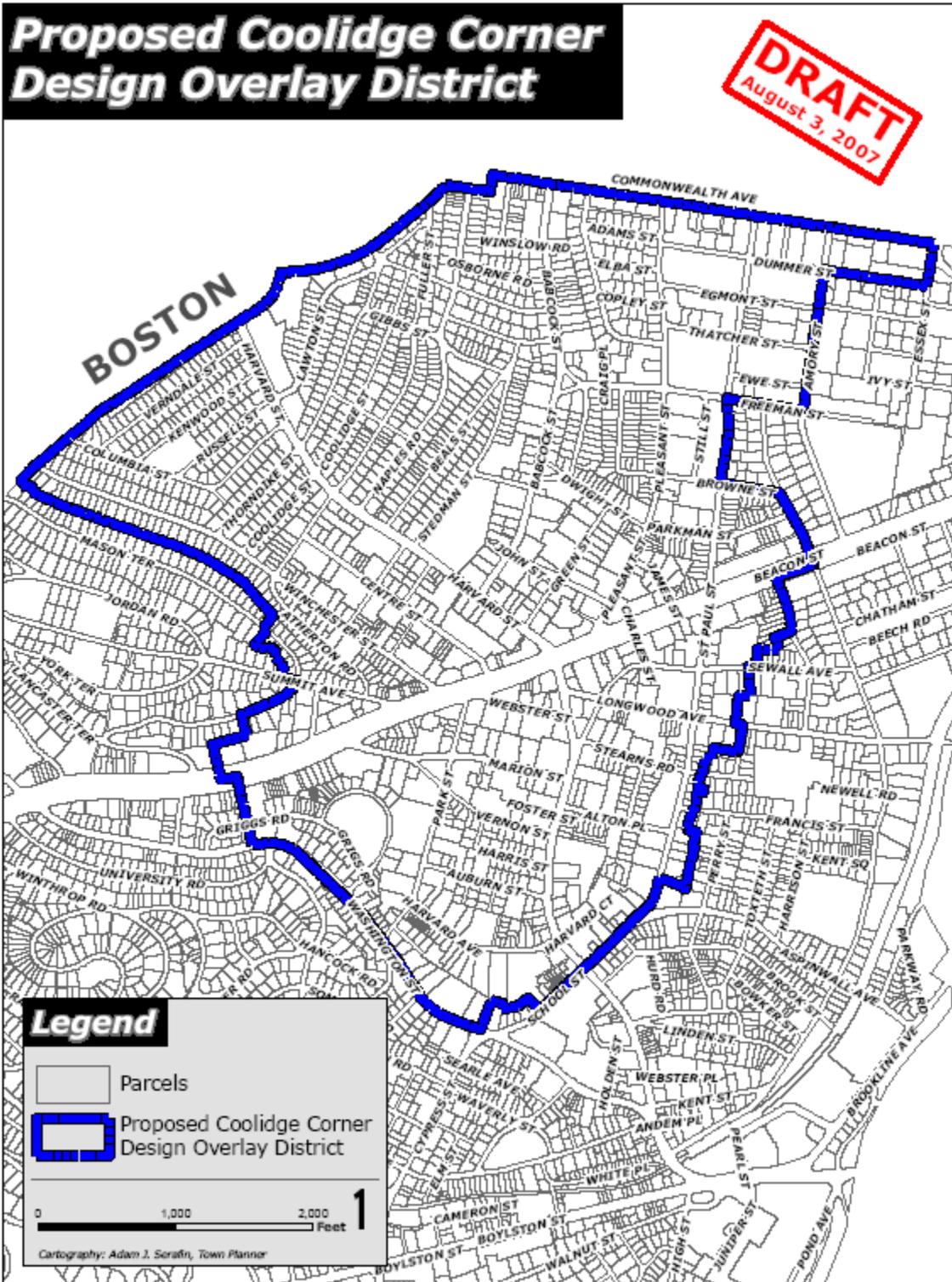
- b) Amending Section 5.09.2.d. to read: “d. multiple dwellings with ~~10~~ **four** or more units on the premises, whether contained in one or more structures”

- c) Amending Section 5.09.4.b. as follows:

“b. Relation of Buildings to Environment—Proposed development shall be related harmoniously to the terrain, trees, landscape, **and** natural features ~~and to the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings.~~ The Board of Appeals may require a modification in massing so as to reduce the effect of shadows on abutting property or on public open space and public streets. ~~The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph, 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.~~”

- d) Inserting a new Section 5.09.4.c. as follows and renumbering the existing Sections 5.09.4.c through o accordingly as 5.09.4.d through p:

“c. Relation of Buildings to the Form of the Streetscape and Neighborhood – Proposed development shall be consistent with the use, scale, yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area. The Board of Appeals may require a modification in massing or design so as to make the proposed building more consistent with the form of the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the height of the building to more closely match existing buildings that conform to the zoning by-law, or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph, 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.”



or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This zoning amendment is being submitted by the Planning and Community Development Department, following a vote of approval from the Zoning Bylaw Committee, in response to concerns about applications to demolish existing buildings in the Coolidge Corner area. The planning process recently completed for the Coolidge Corner area specified that the existing streetscapes in the district should be preserved. This proposed amendment to the Zoning Bylaw would create a new overlay district roughly matching the study area for the planning process. This overlay would retain all of the existing zoning requirements in place for this area, but would also add a requirement that any demolition of a building undergo design review. This requirement builds on an amendment to the design review section approved last year that required design review for certain exterior demolitions.

This article would also make a few other changes to the design review section of the bylaw. It would reduce the threshold for design review of multifamily dwelling units from ten units to four. It would also add a design criterion that explicitly requires reviewing a proposed development for consistency with the existing streetscape. This criterion is based on the discussion of Form Based Zoning that followed the Coolidge Corner planning process. It would incorporate some elements of Form Based Zoning into the existing design review process, rather than creating an entirely new process for looking at the relationship of a proposed development to the surrounding urban form.

PLANNING BOARD REPORT AND RECOMMENDATION

This article, which was submitted by the Planning and Community Development Department with the support of the Zoning By-law Committee, would establish a Coolidge Corner Design Overlay District for the Coolidge Corner area and much of North Brookline. This overlay district includes and expands upon the initial study area for the recently completed Coolidge Corner district planning process. The overlay would retain the existing zoning requirements for this area, but it would add the requirement that any building demolition would require a special permit under design review. This amendment builds on an amendment approved by Town Meeting last fall that required design review for certain exterior demolitions.

This article would also make other changes to the design review section of the Zoning By-law: the threshold for requiring design review of multi-family dwellings would be reduced from ten units to four; and the design review criteria would be expanded to explicitly require consistency with the existing streetscape.

The Planning Board supports this article and the establishment of a Coolidge Corner Design Overlay District. The Coolidge Corner district planning process underscored an intense local concern among residents over recent "tear-down" development projects and the possibility of future demolitions. This amendment seeks to ensure affected residents can voice concerns at public meetings about possible demolitions and the

development projects that follow by bringing in developers early on to discuss their plans for a parcel's redevelopment. Requiring a developer to discuss and show redevelopment plans, even if they are only in draft form, can lend some predictability to the development process for affected residents by giving them an idea of what to expect. By coming in early, a developer can determine the chief concerns of local residents and, if possible, modify a proposal's design. This amendment also emphasizes the value the Town places on the preservation of existing buildings.

Though the Planning Board supports the establishment of the Coolidge Corner Design Overlay District, the Town should consider modifying the article to limit its application only to principal buildings. As currently proposed, the amendment may be applicable to both principal and accessory buildings, which may not be its intent. A landowner that wants to remove a garage in deteriorating condition already must obtain a determination of non-significance from Preservation Staff after consulting with the chair of the Preservation Commission; undergoing an additional three- to four-month process to obtain a special permit from the Board of Appeals might be considered excessive in such instances.

Additionally, the Preservation Commission has indicated a desire to modify the article so that the Commission provides an advisory design review opinion on the demolition of a building in a National Register District and any replacement structures. Currently, the Board of Appeals and Planning Board often seek the opinion of the Preservation Commission for National Register properties undergoing Board of Appeals review, and the Board is not opposed to establishing this process formally in the article. The Planning Board recommends the Preservation Commission adopt rules and regulations that formally incorporate this process and establish time frames for making recommendations.

The Planning Board is also supportive of the other aspects of this article, including requiring developments with four residential units, as opposed to ten, to undergo design review, and modifying the community and environmental impact and design standards to require consideration of a development's consistency with the existing streetscape. The Planning Board feels that even moderately-sized developments of four or more units can have a significant impact on neighboring properties and their residents, and therefore a project's exterior design and relationship to surrounding environmental features and buildings should be evaluated. Also, by modifying the design standards to require consideration of the existing streetscape, the amendment attempts to make sure new developments fit in well with neighboring structures, and it allows the Board of Appeals to require design changes in a project to ensure consistency.

Therefore, the Planning Board recommends FAVORABLE ACTION on Article 12, with the following revisions (revised language in bold):

Art. 12 Section 4.a:

"m. Any **substantively complete demolition of a principal structure** ~~demolition as defined in Section 5.3.2.h.i. of the Town Bylaws~~ in the Coolidge

Corner Design Overlay District except those located in Local Historic Districts, **provided any demolition of a building in a National Register District shall be presented to the Preservation Commission for advisory design review that may include consideration of any replacement structure(s)."**

SELECTMEN'S RECOMMENDATION

This article, which was submitted by the Planning and Community Development Department with the support of the Zoning By-Law Committee, would establish a Coolidge Corner Design Overlay District for the Coolidge Corner area and much of North Brookline. This overlay district includes and expands upon the initial study area for the recently completed Coolidge Corner district planning process. The overlay would retain the existing zoning requirements for this area, but it would add the requirement that any building demolition would require a special permit under design review. This article would also reduce the threshold for design review of multi-family dwellings from ten units to four, and expand the design review criteria to explicitly require consistency with the existing streetscape.

There have been several applications for demolition of existing homes in the Coolidge Corner area in the recent past. These buildings are generally worthy of preservation and, if anything, adaptive reuse and possible expansion rather than demolition. For this reason, the Board of Selectmen agrees with the need for this amendment in order to bring building demolitions in Coolidge Corner into a zoning review process.

The Planning Board and Advisory Committee tightened up the definition of demolitions that would be regulated under this amendment, and also added a requirement for consultation with the Preservation Commission in cases of demolitions within National Register Districts. The Board of Selectmen agrees with these changes and is pleased to see that the Preservation Commission will have a role in reviewing some demolitions.

However, the Board is concerned that the language recommended for this section by the Planning Board and Advisory Committee is unnecessarily confusing. The Board recommends the section be rewritten for clarity's sake, without changing the meaning of it.

Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 23, 2007, on the following:

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

1. By adopting the attached map change creating a Coolidge Corner Design Overlay District.

2. By amending Section 3.00 by adding a new item at the end:
 4. In any Overlay Districts created in Section 3.01, below, both the requirements of the base zoning district and those of the overlay district shall apply.
3. By amending Section 3.01 by adding a new item at the end:
 4. *Overlay Districts*
 - a. Coolidge Corner Design Overlay District
4. By amending Section 5.09 (Design Review) as follows:

- a. Adding a new Section 5.09.2.m. reading:

“m. Any substantively complete demolition of a principal structure demolition as defined in Section 5.3.2.h.i. of the Town Bylaws in the Coolidge Corner Design Overlay District with the exception of ~~except~~ those located in Local Historic Districts. Any demolition of a building in a National Register District shall be presented to the Preservation Commission for advisory design review that may include consideration of any replacement structure(s).”

- b. Amending Section 5.09.2.d. to read: “d. multiple dwellings with ~~10~~ **four** or more units on the premises, whether contained in one or more structures”
- c. Amending Section 5.09.4.b. as follows:

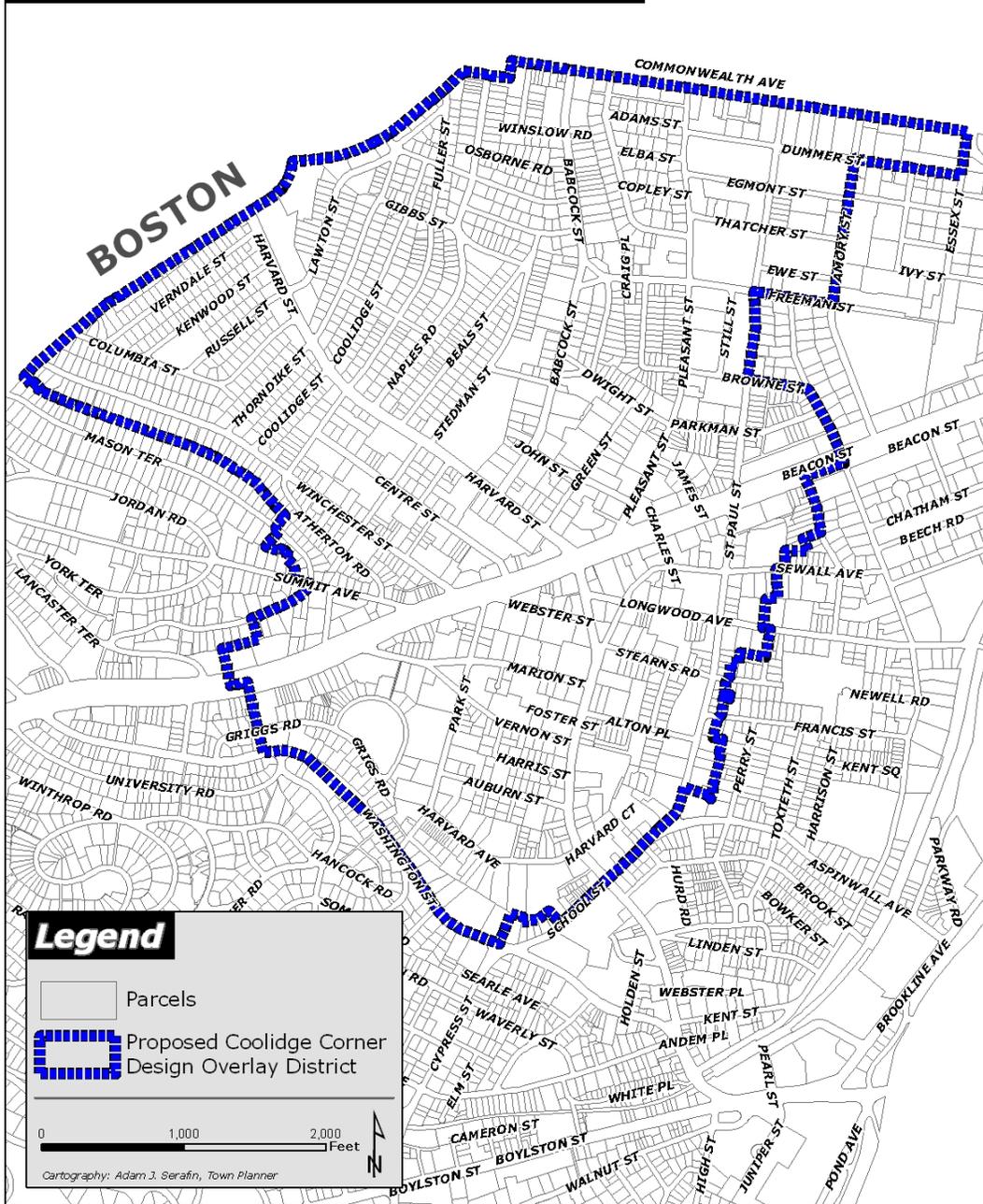
~~“b. Relation of Buildings to Environment—Proposed development shall be related harmoniously to the terrain, trees, landscape, and natural features and to the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. The Board of Appeals may require a modification in massing so as to reduce the effect of shadows on abutting property or on public open space and public streets. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph, 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.”~~

- d. Inserting a new Section 5.09.4.c. as follows and renumbering the existing Sections 5.09.4.c through o accordingly as 5.09.4.d through p:

“c. Relation of Buildings to the Form of the Streetscape and Neighborhood – Proposed development shall be consistent with

the use, scale, yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area. The Board of Appeals may require a modification in massing or design so as to make the proposed building more consistent with the form of the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the height of the building to more closely match existing buildings that conform to the zoning by-law, or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph, 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.”

Proposed Coolidge Corner Design Overlay District



ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This article was submitted by the Planning Department, after working with citizens from North Brookline and has been reviewed and supported by the Zoning By-law Committee. It would create in the Coolidge Corner area, the first Design Overlay District in Brookline. It grew out of the work of the CCIPOD committee, covering the area of that district encircling Coolidge Corner, and fanning out north of Beacon Street to Commonwealth Avenue.

Existing zoning would remain in place for all district types, but it would require a Special Permit Sect. 5.09 design review if a demolition permit was applied for. This is also hoped to help deter the demolition of existing houses – all types of which many residents feel add importantly to the character of the neighborhoods within this overlay area.

Two other changes related to Sect. 5.09 review, would be town-wide. One would lower the threshold for requiring Special Permit review, for proposed multiple dwelling projects, from 10 units in size, to 4. The other is partially a reorganizing of Section 5.09.4.b. "Relation of Buildings to Environment," to be more clear about the *natural* environment. It also added new Section 5.09.4.c. "Relation of Buildings to the Form of the Streetscape and Neighborhood" to add design requirements that the ZBA may call for related to preserving the existing streetscape – the *built* environment. It also folds in requirements from the previous section relating to ground level uses and the screening of parking.

Those two changes are also geared toward neighborhood preservation as called for in the Comprehensive Plan.

DISCUSSION

Since the original warrant article came out, additional review by the Planning Department led to modifying the new Section 5.09.2.m. to limit review to "any *total* demolition of a *principal* structure" in Overlay District. That way a minor building on a site, like a simple garage would not need that review. The Preservation Commission has added reference to National Register District properties, for their advisory design review. These have been judged to be within the scope of the original article.

The Committee found the phrase "total demolition" somewhat ambiguous, and recommended a change to "*substantively complete* demolition," as the Planning Board has. The intended affect is to make demolition requests more specific for the applicants. Currently, a number of demolition delays have been issued that only seem to be a way of "timing out" the requirement before getting a permit; the developer does not have to show what they'll do with the leveled site nor open a dialogue with the abutters. With this change, that would have to happen via the Special Permit process.

Questions were raised about the real need for lowering the threshold for projects from "10 or more units" projects to "4 or more units". Dir. Levine cited other sections of the

By-law where Special Permit design review is already required; for example, for projects of 6 to 10 units under the Affordable Housing requirements.

There was also discussion about the introduction of some of the qualities of “Form Based Zoning” in the final section. Concerns were raised about the unintended consequences of matching the massing and height of surrounding buildings – where they are very tall and out of scale with two-family, three story row houses or older apartment buildings. It was pointed out that the wording says “existing buildings that *conform* to the zoning by-law”, not ones that were built before a subsequent down-zoning occurred – which of course would not be allowed now.

RECOMMENDATION

A majority of the Advisory Committee felt that the article as revised would add further protections for Brookline’s neighborhoods while allowing continued variety and by a vote of 19 in favor and 1 opposed recommends FAVORABLE ACTION on the following language:

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

1. By adopting the attached map change creating a Coolidge Corner Design Overlay District.
2. By amending Section 3.00 by adding a new item at the end:
 4. In any Overlay Districts created in Section 3.01, below, both the requirements of the base zoning district and those of the overlay district shall apply.
3. By amending Section 3.01 by adding a new item at the end:
 4. *Overlay Districts*
 - a. Coolidge Corner Design Overlay District
4. By amending Section 5.09 (Design Review) as follows:
 - a) Adding a new Section 5.09.2.m. reading:

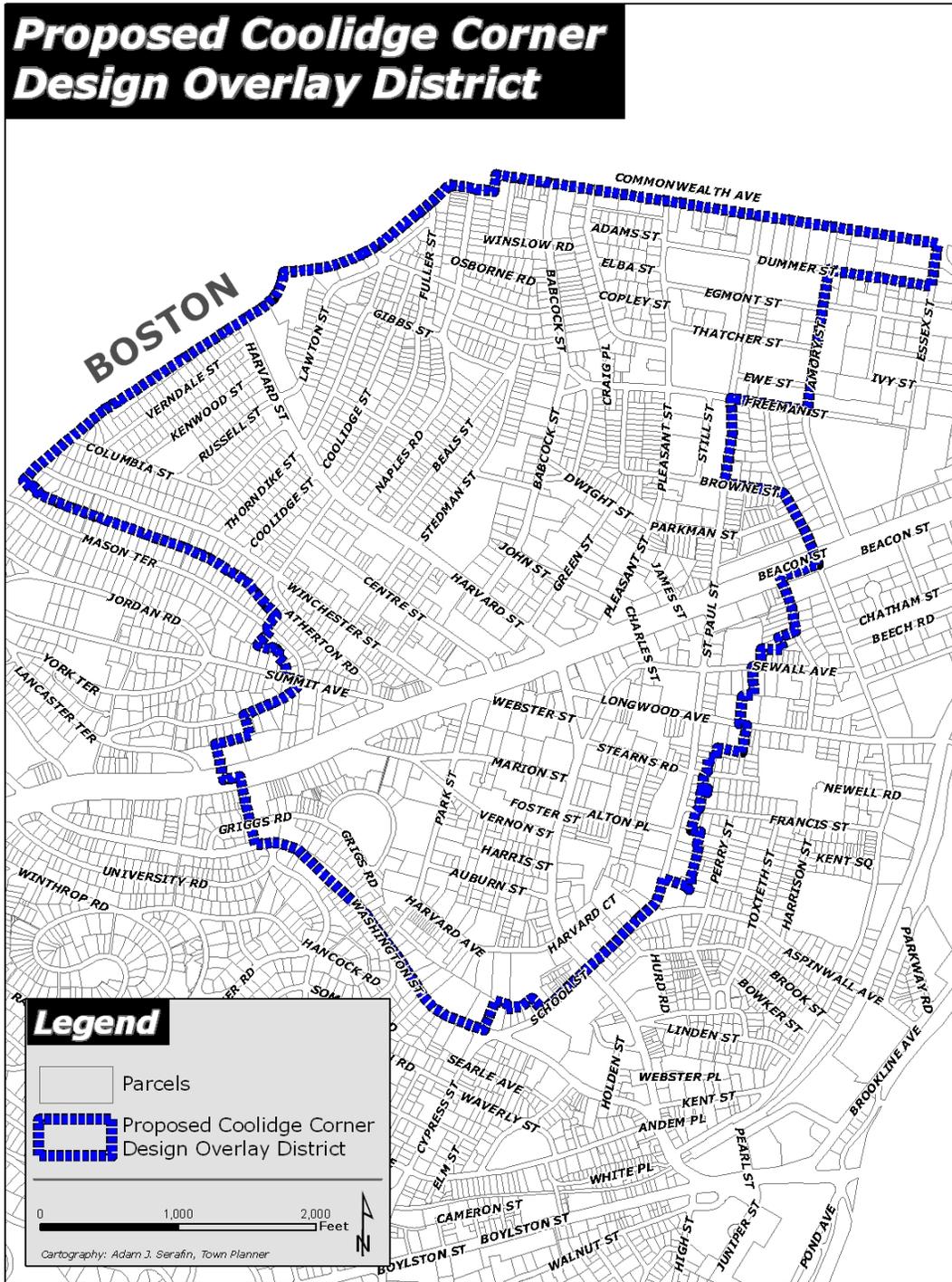
“m. Any **substantively complete demolition of a principal structure** in the Coolidge Corner Design Overlay District except those located in Local Historic Districts, provided any demolition of a building in a National Register District shall be presented to the Preservation Commission for advisory design review that may include consideration of any replacement structure(s).”
 - b) Amending Section 5.09.2.d. to read: “d. multiple dwellings with ~~10~~ **four** or more units on the premises, whether contained in one or more structures”
 - c) Amending Section 5.09.4.b. as follows:

“b. Relation of Buildings to Environment—Proposed development shall be related harmoniously to the terrain, trees, landscape, and natural features ~~and to the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings.~~ The Board of Appeals may require a modification in massing so as to reduce the effect of shadows on abutting property or on public open space and public streets. ~~The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph, 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.”~~

- d) Inserting a new Section 5.09.4.c. as follows and renumbering the existing Sections 5.09.4.c through o accordingly as 5.09.4.d through p:

“c. Relation of Buildings to the Form of the Streetscape and Neighborhood – Proposed development shall be consistent with the use, scale, yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area. The Board of Appeals may require a modification in massing or design so as to make the proposed building more consistent with the form of the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the height of the building to more closely match existing buildings that conform to the zoning by-law, or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph, 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.”

Proposed Coolidge Corner Design Overlay District



**Report to the 2007 Special Town Meeting
From the Brookline Conservation Commission
On Article 12 of the 2007 Annual Town Meeting**

Article 12 of the 2007 Annual Town Meeting requested a vote to accept an easement on private land behind 150 Princeton Road so that the road could be extended to provide access to this private parcel which is designated Lot 2, 150 Princeton Road. The owner of the residence at 150 Princeton Road is proposing to develop Lot 2, which also lies immediately adjacent to the Town's D. Blakely Hoar Sanctuary. At the Annual Town Meeting it was observed that the proposed residential construction on Lot 2, including the extension of the roadway, was the subject of a pending proceeding before the Brookline Conservation Commission under state and local wetlands laws. Town Meeting referred the matter to the Conservation Commission with the charge to report back upon the completion of the review process. That process is now complete. This report describes the Commission's regulatory actions, as well as some policy considerations regarding the extension of the Princeton Road and the proposed development of Lot 2.

The Conservation Commission is charged with administering and applying the Massachusetts Wetlands Protection Act and the Brookline Wetlands Bylaw. On April 30, 2007, the Commission received a Notice of Intent filing that proposed extending Princeton Road and constructing a single family house within the buffer zone of wetland resource areas which are subject to protection under both the Massachusetts Wetlands Protection Act and the Brookline Wetlands Bylaw. Some of these resource areas are located within the Hoar Sanctuary and some are on Lot 2 itself. The buffer zone is an area which borders a protected wetland area and functions as a zone of scrutiny. Activities that alter land within the buffer zone must be reviewed and approved by the Conservation Commission. Here the applicant was required to demonstrate that the work and alterations proposed would have no adverse impact on the wetland resource areas from which the buffer zone extends.

During the course of its review the Conservation Commission held five public hearings and two additional public meetings. Approximately thirty concerned residents attended the hearings. The Commission also conducted a site visit with the applicant and the neighbors, listened to testimony provided by neighbors and the applicant, and commissioned an outside peer review of the proposed development to assist the Commission in its analysis. In response to concerns raised by the Conservation Commission during the review process, the applicant agreed to locate the house further away from the wetland resource areas, to reduce the footprint of the house and to make modifications to ensure that post-construction drainage of the site will closely follow the preexisting drainage patterns. The applicant further agreed to create a natural area with woodland plants and trees in a 3,200 square foot portion of the site and to place a conservation restriction over this area to ensure that it remains undisturbed. The Commission also required the use of pervious pavement for the driveway and the roadway extension.

The final public hearing was closed on August 21, 2007. At the conclusion of this process the Conservation Commission determined this project as modified would have no

adverse impact to the bordering wetland resource areas and voted unanimously to issue an Order of Conditions which allows the project to proceed. This Order of Conditions was issued on September 11, 2007 and includes fifty three separate conditions the applicant must follow to construct the project.

During its review, the Conservation Commission did not take a position for or against the easement proposed at the 2007 Annual Town Meeting which would allow the construction of a new end portion of Princeton Road. The Commission's mandate was to determine if the roadway extension as proposed could be constructed without any adverse impact on the adjacent wetland resource areas. The Commission ultimately concluded that the proposed work as modified met this standard. It should be noted that the Order of Conditions requires that prior to construction the applicant must provide copies of all other regulatory permissions needed for the project.

Although the Conservation Commission approved the final project under state and local wetlands protection laws, this is not to say that the Commission has no concerns about the proposed development of Lot 2. In addition to administering the wetlands laws, the Commission has several other responsibilities. Of particular relevance here are the Commission's role as steward of the adjacent Hoar Sanctuary and its policy role to advocate for preserving open space in Brookline. Viewed from these vantage points, the property on Lot 2 in its current state has some values that are not explicitly taken into account by the wetlands laws.

The Hoar Sanctuary is one of only three nature sanctuaries in Brookline. The presence of unbuilt land adjacent to it strengthens the ecosystem within the sanctuary and enlarges its natural resource value. The 2005 Brookline Open Space Plan, prepared under the leadership of the Conservation Commission, recognizes the value of wildlife corridors: "connected or accessible areas of sufficient habitat for native plants and animals which allow for movement and survival, independent of residential and urban surroundings." State and local wetlands laws do not regard the wildlife habitat value of Lot 2 as legally relevant and the parcel is only ½ acre in size, while the Hoar Sanctuary is almost 25 acres. Nonetheless, the parcel does contribute to Sanctuary.

Of particular interest to the Commission is the likely role the wooded portion of Lot 2 plays in sustaining the life of spotted salamanders, a species which spends most of the year burrowed underground in wooded upland areas but returns annually to a wet vernal pool to mate and spawn. At least one vernal pool that supports salamander life has been documented to exist within the Hoar Sanctuary. Although Lot 2 is outside of the legally protected area around this vernal pool, salamanders have been observed emerging from the slope of the wooded portion of Lot 2 on their annual trek to the Hoar Sanctuary vernal pool. This connection was noted in the 2005 Open Space Plan (p. 129).

The proximity of the proposed development of Lot 2 to the Sanctuary is also likely to have some detrimental impact on the aesthetic experience of visitors to Hoar Sanctuary. The house at 150 Princeton Rd is located 150 feet from the Sanctuary border, up a wooded slope from the trail. The proposed house on Lot 2 will be approximately 22 feet from the edge of the Sanctuary. While adjacent homes are visible from several points

along the Sanctuary trail, from the Commission's standpoint it is undesirable to increase this type of visual impact.

Over the past several years, the Conservation Commission has urged Brookline to investigate proactive measures which would increase protection at sanctuary borders. In the case of Lot 2, the Commission had jurisdiction to review the proposed development only because of the location of nearby protected wetland resource areas. No special setback requirements exist to protect sanctuary borders. Both the Brookline Open Space Plan and the 2005-2015 Comprehensive Plan recommend review of sanctuary setback requirements, as well as a municipal conservation restriction policy to encourage the preservation of valuable, unbuilt land.

ARTICLE 13

THIRTEENTH ARTICLE

To see if the Town will amend the Zoning By-law to make the following changes to the T-5 and T-6 zones:

1. Replace the existing Principal Use 5 in Section 4.07 as follows:

<u>Principal Uses</u>	S	SC	T	F	M	L	G	O	I
5. Attached dwelling occupied by not more than one family in each unit between side walls, provided that in T Districts no row of such units shall consist of more than six two such units. *Except as permitted by Use 1A above and §5.11 .	No*	No	SP Yes	SP	SP	SP	No	SP	No

2. Amend the Dimensional Table as follows:

1. Delete the sentence “In T districts, see also §5.48.” from Section 5.01 Footnote 2.
2. Delete section 5.48 (“Attached One-Family Dwellings in T Districts.”)

or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

This zoning amendment is being submitted by the Planning and Community Development Department, with the support of the Zoning Bylaw Committee. Currently, T zones permit two dwelling units on a parcel, with an exception that permits up to six attached townhouses by Special Permit. This amendment would reduce the number of permitted attached townhouses from six to two, making it consistent with the number of units otherwise permitted on a lot in a T zone. In order to create a level playing field among all forms of two-family dwellings, this article would permit those two attached units by right rather than by Special Permit.

PLANNING BOARD REPORT AND RECOMMENDATION

This article, which is being submitted by the Planning and Community Development Department with the support of the Zoning By-law Committee, amends the Zoning By-

law's Use Table with respect to the number of units allowed in a T (two-family) zoning district. Currently, the T district typically allows up to two units on a land parcel, hence its "two-family" title, but an exception exists that allows up to six attached dwellings on a T-zoned parcel by special permit. This amendment would remove this exception so that the maximum number of dwelling units on a T-zoned parcel would be two, and those two units would be by right.

The Planning Board supports this amendment because it clarifies what use can actually occur on a T-zoned property. Currently, the T district classification is somewhat misleading, as residents may assume that a property zoned for two-family use could not have more than two units, but a developer could apply for a special permit for significantly more than two units, depending on the size of the parcel. Amending the use table to remove this exception for attached dwellings, and allowing both attached and detached two-family dwellings by-right in T zones, is more in character with the original intent of T districts. The amendment would ensure the Zoning By-law does not distinguish between dwelling forms, attached or detached, and instead, places the emphasis appropriately on the total number of dwelling units on a property.

Therefore, the Planning Board recommends FAVORABLE ACTION on Article 13.

SELECTMEN'S RECOMMENDATION

This article, which is being submitted by the Planning and Community Development Department with the support of the Zoning By-Law Committee, amends the Zoning By-Law's Use Table with respect to the number of units allowed in a T (two-family) zoning district. Currently, the T district typically allows up to two units on a land parcel, hence its "two-family" title, but an exception exists that allows up to six attached dwellings on a T-zoned parcel by special permit. This amendment would remove this exception so that the maximum number of dwelling units on a T-zoned parcel would be two, and those two units would be by right.

The Board of Selectmen agrees with the Planning Board and Advisory Committee in supporting this amendment as a clarification of the intent that T zones should be for two-family dwellings. By reducing the number of townhouses permitted to two, and then allowing those two townhouses by right, rather than by Special Permit, the amendment would ensure the Zoning By-law does not distinguish between dwelling forms.

Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 23, 2007, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This article seeks to limit the development of townhouses in the T zoning districts, i.e. two family residential areas to one two-family townhouse. Currently, up to six attached townhouses could be built by special permit in T zones as long as at least 3,000 square feet of land exists for each unit in T-6 or 2,500 s.f. in T-5 zones. Without this protection, some large parcels, currently within the T zones, could be subject to additional speculative tear down and the development of a row of up to six townhouses or units. The Planning Department has identified a number of potential sites.

Principal Use 5, an attached single family dwelling (or "townhouse"), is currently allowed town wide in T, M, L (Loc. Bus.) and O (Office) zoning districts by Special Permit design review. Nowhere is it currently allowed by-right.

DISCUSSION

This article would only change the bylaw in *T zones*, but make it a *by-right use* there. In the other three zones, townhouse rows longer than 2 units are and will remain possible to build, even beyond six units in length. Also, if a large T-zone lot can legally be subdivided, each lot at least 2,500 and 3,000 square feet in size, can have a two-unit townhouse.

By changing Principal Use 5 in Section 4.07, townhouses would also help maintain the two-family character of the neighborhood. For some on the Advisory Committee, it simply closes a loophole that allowed for exceeding the "two-family" limit.

The Advisory Committee was generally in favor of the article, but there were objections from some. One member expressed the opinion that many working families with children seek an alternative to condo/apartment living, one atop another, where the sound of young children's footsteps can be a nuisance to downstairs neighbors, and to single family homes which require more maintenance for which busy working couples lack the time. Many look to townhouses as a viable alternative to solve those issues. As mentioned, though, there are still options to build such units.

This article will help maintain the cohesiveness of Brookline's neighborhoods by closing an incongruous loophole; thereby curtailing an incentive to demolish some of Brookline's older and characteristic homes. The Advisory Committee felt this article is simply an affirmation of existing zoning: to maintain the two family limit on what are rather small lots, and not a matter of downzoning.

RECOMMENDATION

The Advisory Committee, by a vote of 17 in favor and 2 opposed, recommends FAVORABLE ACTION on the following vote offered:

VOTED: That the Town amend the Zoning By-law to make the following changes to the T-5 and T-6 zones:

1. Replace the existing Principal Use 5 in Section 4.07 as follows:

Principal Uses	S	SC	T	F	M	L	G	O	I
5. Attached dwelling occupied by not more than one family in each unit between side walls, provided that in T Districts no row of such units shall consist of more than six two such units. *Except as permitted by Use 1A above and §5.11 .	No*	No	SP Yes	SP	SP	SP	No	SP	No

2. Amend the Dimensional Table as follows:

1. Delete the sentence “In T districts, see also §5.48.” from Section 5.01 Footnote 2.
2. Delete section 5.48 (“Attached One-Family Dwellings in T Districts.”)

ARTICLE 14

FOURTEENTH ARTICLE

To see if the Town will amend the Zoning By-law by replacing the existing Section 5.21 with the following language:

**“§5.21 - EXCEPTIONS TO MAXIMUM FLOOR AREA RATIO REGULATIONS
(PUBLIC BENEFIT INCENTIVES)**

The following public benefits have been determined to be of sufficient importance to the Town to provide eligibility for additional Floor Area Ratio. The Board of Appeals shall find that the size of any bonus granted is commensurate with the public benefit offered.

1. The Board of Appeals may grant by special permit a maximum gross floor area higher than is permitted in Table 5.01, subject to the procedures, limitations, and conditions specified in this Section, and provided that public benefits including but not limited to the following are provided by the developer of the lot as required by the Board of Appeals: affordable housing, in excess of that required by the Zoning By-Law; landscaped and/or usable open space within public view, in excess of that required by the Zoning By-Law; support, financial or otherwise, for community facilities and services, including maintenance, enhancement, and acquisition of Town parks or open space; environmentally friendly sustainable building and site planning practices, significant provision of public parking and/or parking for car sharing rental services; subsidized MBTA passes for employees; provision of daycare space, either on or off-site; and preservation of historic structures.
2. Public Benefit Incentives may be granted under this Section only for a lot (or part of a lot) which meets the following basic requirements:
 - a. The lot (or part of a lot) is located in a district with a floor area ratio of 1.5 or greater.
 - b. The lot (or part of a lot) is not less than 20,000 square feet.
 - c. No lot (or part of a lot) within a buffer area, as defined in §5.31, paragraph 3., shall be eligible for any provision or counted toward any requirement of this Section for gross floor area in excess of that permitted in **Table 5.01**, nor shall such bonus floor area be located thereon.
 - d. No driveway from the lot shall enter a street opposite from an S, SC, or T district.
3. To aid the Board of Appeals in making the findings required in §9.05 and the Planning Board in preparing the advisory report provided for in §9.04, the applicant

shall submit the materials required by §5.09, paragraph 3. in addition to the usual drawings at the time of application.

4. The additional gross floor area granted in accordance with this Section, as calculated by the following percentage, shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of **Table 5.01**:

Table 5.02 – Table of Maximum Gross Floor Area Increase

Each Condition	M-2.5 Districts	M-1.5, M-2.0, G-1.75(CC),G-2.0 GMR-2.0 & O-2.0(CH) Districts
Affordable Housing	30%	20%
Landscaped and/or Usable Open Space	20%	15%
Community Facilities and Services Support	20%	15%
Preservation of Historic Structures	20%	15%

5. The Board of Appeals may grant additional gross floor area where any of the following conditions obtain, subject to the limitations in paragraph 4. above. The additional gross floor area shall be calculated separately for each condition based upon the gross floor area permitted in **Table 5.01**.

a. Affordable Housing

Where on site affordable units, as defined in Section 4.08 of the zoning by-law, are provided in excess of the requirement in the zoning by-law, such gross floor area attributable to such affordable units may be allowed to exceed the maximum gross floor area in **Table 5.01**, **up to the percentage listed in Table 5.02 above, per the limitations in paragraph 4 above.**

b. Landscaped or Usable Open Space

Where public landscaped open space or usable open space within public view is provided in excess of the minimum specified in **Table 5.01**, additional gross floor area may be allowed at the rate of two square feet of gross floor area for each one square foot of either kind of open space in excess of the minimum requirements, **up to the percentage listed in Table 5.02 above, per the limitations in paragraph 4 above.**

c. Community Services and Facilities Support

Where support, financial or otherwise, for Community Services and/or Facilities is provided, such as maintenance or enhancement of Town parks or open space, provision of public parking and/or parking for car rental sharing services; subsidized MBTA passes for employees; provision of daycare space, either on or offsite, the allowed gross floor area in **Table 5.01 may be exceeded by up to the percentage listed in Table 5.02 , per the limitations in paragraph 4 above.**

d. Preservation of Historic Structures

Where preservation of historic structures, not otherwise required by the zoning by-law, is undertaken the gross floor area in **Table 5.01 may be exceeded by up to the percentage listed in Table 5.02, per the limitations in paragraph 4 above.**”

Or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

This zoning amendment is being submitted by the Planning and Community Development Department after close work with the Zoning Bylaw Committee. The purpose of the proposed change is to make Paragraph 1, which lists public benefit categories, consistent with Table 5.02, which lists how much bonus floor area for each category may be allowed by the Board of Appeals. Additionally, an introductory paragraph has been added, which states that the Board of Appeals must find that the public benefits offered are commensurate with the requested FAR bonus. Please note that FAR bonuses may not exceed the maximum FARs listed in Table 5.01 – Table of Dimensional Requirements. Furthermore, the only projects that can take advantage of this section are those developments on properties that are 20,000 sq. ft. or greater as well as in a zoning district with an allowed FAR of 1.5 or greater.

PLANNING BOARD REPORT AND RECOMMENDATION

This article, which was submitted by the Planning and Community Development Department with the support of the Zoning By-law Committee, would amend the Public Benefits Incentives section of the Zoning By-law with respect to Maximum Floor Area Regulations. The article seeks to clarify and update Section 5.21 – Exceptions to Maximum Floor Area Regulations.

The intention of Section 5.21 is to encourage the provision of public benefits by a developer in return for allowing more floor area on a parcel than what would otherwise be permitted. Currently the section is poorly written and hard to understand; for example, the items mentioned as possible public benefits in the beginning of the section do not match those listed in a table also in the same section.

This article aims to clearly delineate what public benefits should qualify for a floor area bonus. The amendment would group possible public benefits into four categories: affordable housing in excess of what is required; landscaped or usable open space in excess of what is required; community facilities and services support, such as maintenance of Town parks or provision of public parking; and preservation of historic structures. Each of these categories would correspond to a table that lists maximum allowed floor area bonuses, and language at the beginning of the section would emphasize that the Board of Appeals must determine that the size of any bonus is commensurate with the public benefit(s) offered.

The Planning Board supports this article because it clearly establishes what public benefits should be provided in order to qualify for a floor area bonus. Currently, the section is confusing, and this amendment should reduce any uncertainty regarding what is expected from developers who apply for a floor area bonus. Only amenities that are truly public benefits will be considered appropriate under the revised article. Since a developable lot must be at least 20,000 square feet and zoned for an allowed floor area ratio of at least 1.5 to qualify for a floor area bonus, few developments actually take advantage of this section. This article does not change these initial qualifying requirements. Instead, the article clarifies and updates the public benefit expectations for both developers and residents, and clearly states how and to what projects the section should be applied. The Board of Appeals would retain the flexibility to determine if the offered public benefits are adequate to warrant a floor area bonus, and are instructed to ensure that the size of any bonus is comparable to the size of the offered public benefits. Concerned residents would still have the opportunity to comment on the appropriateness of any public benefits and floor area bonus throughout the Board of Appeals process.

The Housing Advisory Board has expressed concern regarding the article's possible negative impact on incentives to create affordable housing, specifically on-site affordable units that are generally preferable to payments to the Affordable Housing Trust Fund. The HAB has commented that the affordable housing definition in the article referencing Section 4.08 is narrower than the current definition in Section 5.21, and therefore not all affordable housing projects would qualify for the floor area bonus under the new article. The Planning Board supports this proposed revision with one minor deletion to make the paragraph more readable. Additionally, the HAB has commented that allowing additional floor area only for affordable housing units in excess of what is required is not a significant incentive for a developer to create either excess affordable units or to put affordable units on site; instead, a developer might prefer to make a payment to the Affordable Housing Trust Fund. The Town typically prefers on-site affordable units for a development project rather than a payment because the developer builds the units and integrates them into a market-rate development; otherwise, the Town must construct the affordable units independently, which might not happen until a much later date.

In response to the HAB's concerns, the Planning Board recommends modifying the article to retain the broader definition of affordable housing in the existing Section 5.21.5.b. The article is not intended to limit the number of affordable housing projects that qualify for a floor area bonus, and therefore, the article should integrate a broad definition of affordable housing so that those projects that comply with federal and state regulations are also eligible. The Planning Board also agrees that the article may not provide enough of an incentive to create on-site affordable housing, but the Board feels that further discussion is necessary to determine how to provide that incentive. For now, the Planning Board supports this article because it clarifies a confusing and difficult section, with the expectation that further review of affordable housing incentives will occur in the future.

Additionally, the Preservation Commission has suggested that if the Board of Appeals considers granting bonus floor area for preserving an historic structure, the Preservation Commission should be consulted about the historic determination and about any design changes affecting the structure. Currently, the Board of Appeals and Planning Board seek the opinion of the Preservation Commission about design changes on historic properties undergoing Board of Appeals review, and the Board is not opposed to establishing this process formally in the article. However, the Preservation Commission should adopt rules and regulations to formally incorporate this process and establish appropriate time frames for making recommendations.

Therefore, the Planning Board recommends FAVORABLE ACTION on Article 14, with the following revisions to paragraphs 5a through d, which incorporate modifications suggested by the Housing Advisory Board and Preservation Commission and some minor clarifications of the language and corrections of inconsistencies (revised language in bold):

To see if the Town will amend the Zoning By-law by replacing the existing Section 5.21 with the following language:

**“§5.21 - EXCEPTIONS TO MAXIMUM FLOOR AREA RATIO REGULATIONS
(PUBLIC BENEFIT INCENTIVES)**

The following public benefits have been determined to be of sufficient importance to the Town to provide eligibility for additional Floor Area Ratio. The Board of Appeals shall find that the size of any bonus granted is commensurate with the public benefit offered.

1. The Board of Appeals may grant by special permit a maximum gross floor area higher than is permitted in Table 5.01, subject to the procedures, limitations, and conditions specified in this Section, and provided that public benefits including but not limited to the following are provided by the developer of the lot as required by the Board of Appeals: affordable housing, in excess of that required by the Zoning By-Law; landscaped and/or usable open space within public view, in excess of that required by the Zoning By-Law; support, financial or otherwise, for community facilities and services, including maintenance, enhancement, and acquisition of Town parks or open space; environmentally friendly sustainable building and site planning practices, significant provision of public parking and/or parking for car rental sharing services; subsidized MBTA passes for employees; provision of daycare space, either on or off-site; and preservation of historic structures.
2. Public Benefit Incentives may be granted under this Section only for a lot (or part of a lot) which meets the following basic requirements:
 - a. The lot (or part of a lot) is located in a district with a floor area ratio of 1.5 or greater.
 - b. The lot (or part of a lot) is not less than 20,000 square feet.

- c. No lot (or part of a lot) within a buffer area, as defined in §5.31, paragraph 3., shall be eligible for any provision or counted toward any requirement of this Section for gross floor area in excess of that permitted in **Table 5.01**, nor shall such bonus floor area be located thereon.
 - d. No driveway from the lot shall enter a street opposite from an S, SC, or T district.
3. To aid the Board of Appeals in making the findings required in §9.05 and the Planning Board in preparing the advisory report provided for in §9.04, the applicant shall submit the materials required by §5.09, paragraph 3. in addition to the usual drawings at the time of application.
 4. The additional gross floor area granted in accordance with this Section, as calculated by the following percentage, shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of **Table 5.01**:

Table 5.02 – Table of Maximum Gross Floor Area Increase

Each Condition	M-2.5 Districts	M-1.5, M-2.0, G-1.75(CC), G-2.0, GMR-2.0 & O-2.0(CH) Districts
Affordable Housing	30%	20%
Landscaped and/or Usable Open Space	20%	15%
Community Facilities and Services Support	20%	15%
Preservation of Historic Structures	20%	15%

5. The Board of Appeals may grant additional gross floor area where any of the following conditions obtain, subject to the limitations in paragraph 4. above. The additional gross floor area shall be calculated separately for each condition based upon the gross floor area permitted in **Table 5.01**.
 - a. **Affordable Housing**
Where on site affordable units, **defined as dwelling units subject to restrictions on the income of occupants and on maximum rents or sales prices in order to conform with federal, state or local legislation or regulations, including Section 4.08 of the Zoning By-Law, relating to low or moderate income housing,** are provided in excess of the requirement in the zoning by-law, such gross floor area attributable to such affordable units **may be allowed up to the bonus percentage listed in Table 5.02 above but the total FAR shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of Table 5.01.**
 - b. **Landscaped or Usable Open Space**

Where public landscaped open space or usable open space within public view is provided in excess of the minimum specified in **Table 5.01**, additional gross floor area may be allowed at the rate of two square feet of gross floor area for each one square foot of either kind of open space in excess of the minimum requirements, **up to the bonus percentage listed in Table 5.02 above but the total FAR shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of Table 5.01.**

c. Community Services and Facilities Support

Where support, financial or otherwise, for community services and/or facilities is provided, such as maintenance, enhancement, and acquisition of Town parks or open space, **environmentally friendly sustainable building and site planning practices, significant** provision of public parking and/or parking for car rental sharing services; subsidized MBTA passes for employees; provision of daycare space, either on or offsite, the allowed gross floor area in **Table 5.01 may be exceeded up to the bonus percentage listed in Table 5.02 above but the total FAR shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of Table 5.01.**

d. Preservation of Historic Structures

Where preservation of historic structures, not otherwise required by the zoning by-law, is undertaken, the gross floor area in **Table 5.01 may be exceeded up to the bonus percentage listed in Table 5.02 above, but the total FAR shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of Table 5.01. In any such case, the Board of Appeals shall, prior to allowing additional gross floor area, consult with the Preservation Commission in connection with determining whether the structure in question is historic, and the Preservation Commission shall advise the Board of Appeals in connection with the design review of changes affecting the structure in question.**

SELECTMEN'S RECOMMENDATION

This article, which was submitted by the Planning and Community Development Department with the support of the Zoning By-Law Committee, would amend the Public Benefits Incentives section of the Zoning By-law with respect to Maximum Floor Area Regulations. The article seeks to clarify and update Section 5.21 – Exceptions to Maximum Floor Area Regulations. It would continue to permit these possible exceptions only in certain, higher density zoning districts.

The intention of Section 5.21 is to encourage the provision of public benefits by a developer in return for allowing more floor area on a parcel than what would otherwise be permitted. Currently the section is hard to understand; for example, the items mentioned as possible public benefits in the beginning of the section do not match those listed in a table also in the same section.

This article aims to clearly delineate what public benefits should qualify for a floor area bonus. The amendment would group possible public benefits into four categories: affordable housing in excess of what is required; landscaped or usable open space in excess of what is required; community facilities and services support, such as maintenance of Town parks or provision of public parking; and preservation of historic structures. Each of these categories would correspond to a table that lists maximum allowed floor area bonuses, and language at the beginning of the section would emphasize that the Board of Appeals must determine that the size of any bonus is commensurate with the public benefit(s) offered.

This amendment should reduce any uncertainty regarding what is expected from developers who apply for a floor area bonus. Only amenities that are truly public benefits will be considered appropriate under the revised article. Since a developable lot must be at least 20,000 square feet and zoned for an allowed floor area ratio of at least 1.5 to qualify for a floor area bonus, few developments actually take advantage of this section. This article does not change these initial qualifying requirements. Instead, the article clarifies and updates the public benefit expectations for both developers and residents, and clearly states how and to what projects the section should be applied. Concerned residents would still have the opportunity to comment on the appropriateness of any public benefits and floor area bonus throughout the Board of Appeals process.

The Housing Advisory Board commented that the affordable housing definition in the article referencing Section 4.08 is narrower than the current definition in Section 5.21, and therefore not all affordable housing projects would qualify for the floor area bonus under the new article. Additionally, the HAB has commented that allowing additional floor area only for affordable housing units in excess of what is required is not a significant incentive for a developer to create either excess affordable units or to put affordable units on site; instead, a developer might prefer to make a payment to the Affordable Housing Trust Fund. The Town typically prefers on-site affordable units for a development project rather than a payment; otherwise, the Town must construct the affordable units independently, which might not happen until a much later date.

In response to the HAB's concerns, the Planning Board recommended modifying the article to broaden the types of affordable housing encouraged by this section. The Advisory Committee agreed with these proposed changes.

The Preservation Commission suggested that if the Board of Appeals considers granting bonus floor area for preserving an historic structure, the Preservation Commission should be consulted about the historic determination and about any design changes affecting the structure. The Planning Board and Advisory Committee revised the article's language to incorporate such a process.

The Board of Selectmen agrees with the need for this warrant article and the changes recommended by the Planning Board and Advisory Committee. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 23, 2007, on the following:

VOTED: That the Town amend the Zoning By-law by replacing the existing Section 5.21 with the following language:

**“§5.21 - EXCEPTIONS TO MAXIMUM FLOOR AREA RATIO REGULATIONS
(PUBLIC BENEFIT INCENTIVES)**

The following public benefits have been determined to be of sufficient importance to the Town to provide eligibility for additional Floor Area Ratio. The Board of Appeals shall find that the size of any bonus granted is commensurate with the public benefit offered.

1. The Board of Appeals may grant by special permit a maximum gross floor area higher than is permitted in Table 5.01, subject to the procedures, limitations, and conditions specified in this Section, and provided that public benefits including but not limited to the following are provided by the developer of the lot as required by the Board of Appeals: affordable housing, in excess of that required by the Zoning By-Law; landscaped and/or usable open space within public view, in excess of that required by the Zoning By-Law; support, financial or otherwise, for community facilities and services, including maintenance, enhancement, and acquisition of Town parks or open space; environmentally friendly sustainable building and site planning practices, significant provision of public parking and/or parking for car rental sharing services; subsidized MBTA passes for employees; provision of daycare space, either on or off-site; and preservation of historic structures.
2. Public Benefit Incentives may be granted under this Section only for a lot (or part of a lot) which meets the following basic requirements:
 - a. The lot (or part of a lot) is located in a district with a floor area ratio of 1.5 or greater.
 - b. The lot (or part of a lot) is not less than 20,000 square feet.
 - c. No lot (or part of a lot) within a buffer area, as defined in §5.31, paragraph 3., shall be eligible for any provision or counted toward any requirement of this Section for gross floor area in excess of that permitted in **Table 5.01**, nor shall such bonus floor area be located thereon.
 - d. No driveway from the lot shall enter a street opposite from an S, SC, or T district.

3. To aid the Board of Appeals in making the findings required in §9.05 and the Planning Board in preparing the advisory report provided for in §9.04, the applicant shall submit the materials required by §5.09, paragraph 3. in addition to the usual drawings at the time of application.
4. The additional gross floor area granted in accordance with this Section, as calculated by the following percentage, shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of **Table 5.01**:

Table 5.02 – Table of Maximum Gross Floor Area Increase

Each Condition	M-2.5 Districts	M-1.5, M-2.0, G-1.75(CC), G-2.0, GMR-2.0 & O-2.0(CH) Districts
Affordable Housing	30%	20%
Landscaped and/or Usable Open Space	20%	15%
Community Facilities and Services Support	20%	15%
Preservation of Historic Structures	20%	15%

5. The Board of Appeals may grant additional gross floor area where any of the following conditions obtain, subject to the limitations in paragraph 4. above. The additional gross floor area shall be calculated separately for each condition based upon the gross floor area permitted in **Table 5.01**.

a. **Affordable Housing**

Where on site affordable units, **defined as dwelling units subject to restrictions on the income of occupants and on maximum rents or sales prices in order to conform with federal, state or local legislation or regulations, including Section 4.08 of the Zoning By-Law, relating to low or moderate income housing**, are provided in excess of the requirement in the zoning by-law, such gross floor area attributable to such affordable units **may be allowed up to the bonus percentage listed in Table 5.02 above but the total FAR shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of Table 5.01.**

b. **Landscaped or Usable Open Space**

Where public landscaped open space or usable open space within public view is provided in excess of the minimum specified in **Table 5.01**, additional gross floor area may be allowed at the rate of two square feet of gross floor area for each one square foot of either kind of open space in excess of the minimum requirements, **up to the bonus percentage listed in Table 5.02 above but the total FAR shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of Table 5.01.**

c. Community Services and Facilities Support

Where support, financial or otherwise, for community services and/or facilities is provided, such as maintenance, enhancement, and acquisition of Town parks or open space, **environmentally friendly sustainable building and site planning practices, significant** provision of public parking and/or parking for car rental sharing services; subsidized MBTA passes for employees; provision of daycare space, either on or offsite, the allowed gross floor area in **Table 5.01 may be exceeded up to the bonus percentage listed in Table 5.02 above but the total FAR shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of Table 5.01.**

d. Preservation of Historic Structures

Where preservation of historic structures, not otherwise required by the zoning by-law, is undertaken, the gross floor area in **Table 5.01 may be exceeded up to the bonus percentage listed in Table 5.02 above, but the total FAR shall not exceed the maximum floor area ratio specified in the Public Benefit Incentives column of Table 5.01. In any such case, the Board of Appeals shall, prior to allowing additional gross floor area, consult with the Preservation Commission in connection with determining whether the structure in question is historic, and the Preservation Commission shall advise the Board of Appeals in connection with the design review of changes affecting the structure in question.**

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This article is a major revision of section 5.21 of the Town's Zoning Bylaw which pertains to "Public Benefit Incentives". The section provides a framework for Floor to Area Ratio (FAR) bonuses for certain desirable public benefits whereby a larger project can be built if the developer provides benefits to the Town in accordance with this section. The existing §5.21 is poorly written and the benefits are not necessarily in sync with current thinking as set forth in the Comprehensive Plan. This proposed change cleans up the language and more clearly enumerates the desired public benefits.

DISCUSSION

This article is intended to clarify which public benefits should qualify for a floor area bonus. Bonuses would be granted by the Zoning Board of Appeals. The section only applies to large lots in areas of town where large projects are allowed by zoning. It adds a preamble which sets out the objective of the section in plain English and most

importantly introduces the concept that any bonus granted must be commensurate with the public benefit offered.

Section 5.21 will now group possible public benefits into four categories: affordable housing in excess of what is required; landscaped or usable open space in excess of what is required; community facilities and services support, such as maintenance of Town parks or provision of public parking; and preservation of historic structures. Each of these categories would correspond to a table that lists maximum allowed floor area bonuses, and language at the beginning of the section would emphasize that the Board of Appeals must determine that the size of any bonus is commensurate with the public benefit(s) offered. As part of the public process, concerned citizens will have an opportunity to provide comments to the ZBA as to whether the proposed benefit is commensurate with the public benefit offered.

This section only applies to lots over 20,000 sq. ft in M-1.5, M-2.0, M-2.5, G-1.75(CC), G-2.0, GMR-2.0 & O-2.0(CH) Districts. This means that it will apply only to relatively large projects. The incentives are cumulative between categories up to a maximum which is listed in the Dimensional Table for each zoning district.

The current table which describes the FAR bonus increases is as follows:

Current Table 5.02 – Table of Maximum Gross Floor Area Increase

<u>Each Condition</u>	M-2.5 Districts	M-1.5, M-2.0, G-1.75(CC), G-2.0, GMR-2.0 & O-2.0(CH) Districts
Large Lot	30%	20%
Low or Moderate Income	30%	20%
Extra Open Space on Lot	20%	15%
Large Apartments	15%	10%

The table contains some benefit categories which we might not wish to provide incentives; for example “Large lots” and “Large Apartment”.

The proposed table is as follows:

Proposed Table 5.02 – Table of Maximum Gross Floor Area Increase

<u>Each Condition</u>	M-2.5 Districts	M-1.5, M-2.0, G-1.75(CC), G-2.0, GMR-2.0 & O-2.0(CH) Districts
Affordable Housing	30%	20%
Landscaped and/or Usable Open Space	20%	15%
Community Facilities and Services	20%	15%

Support		
Preservation of Historic Structures	20%	15%

Each of these “conditions” has well developed definitions with each requiring benefits in addition to requirements of the zoning bylaw. For example, to take advantage of the Affordable Housing bonus, the provided Affordable Housing must be on site and over and above that already required by Brookline inclusionary zoning. Another example; to take advantage of the “Landscaped and/or Usable Open Space” incentive, the landscape land must be “public” and the open space must be “in public view”. This is a significant tightening up of the language.

The Housing Advisory Board reviewed the original language providing incentives for affordable housing and is seeking a broader definition of Affordable Housing to include not only units used for credit under section 4.08 of the zoning bylaw but also other price restricted units (rents or sales) that conform to federal, state or other local affordable housing statutes. The Advisory Committee supported the HAB’s requested change.

We also note that the HAB believes that these proposed incentives may not be sufficient to produce affordable housing. They will be reviewing the zoning bylaw in the future and may be proposing additional changes and incentives at a future Town Meeting.

With respect to the “Preservation of Historic Structures” incentive, the Preservation Commission requested that the bylaw state that the Preservation Commission be consulted when this incentive is being granted. Since the Planning Board (and Board of Appeals) already consults the Preservation Commission with respect to changes to historic properties, the Planning Board had no problem with formalizing this as a requirement. The Advisory Committee concurs.

RECOMMENDATION

The Advisory Committee believes that this proposal is a marked improvement over the existing language. It clarifies the nature of the desired public benefits and sets forth the principle that the bonus should be commensurate with the benefit offered. By a unanimous vote of 19 in favor, the Advisory Committee recommends FAVORABLE ACTION on the language offered by the Selectmen, which incorporates the changes suggested by the HAB and the Preservation Commission. It is the same language the Planning Board is recommending.

XXX

ARTICLE 15

FIFTEENTH ARTICLE

To see if the Town will authorize and empower the Board of Selectmen to accept title to a parcel of land adjacent to Davis Path containing 502 s.f. more or less described below and shown and denoted as "Parcel Proposed To Be Conveyed To The Town" on Exhibit "A" hereto, such parcel to be subject to the provisions of Article XCVII of the Massachusetts Constitution pertaining to park land and to authorize and empower the Board of Selectmen, in exchange therefor, to convey to the owner of the land adjacent thereto a parcel owned by the Town containing 502 s.f. more or less located at the end of a private way known as Kerrigan Place, which parcel is shown and denoted as "Parcel To Be Conveyed by the Town" on Exhibit "A" hereto for the sum of Twenty Thousand Dollars (\$20,000.00) plus the Parcel To Be Conveyed To The Town, and on such additional terms and conditions determined by The Board of Selectmen to be in the best interests of the Town.

The parcel to be conveyed by the Town being bounded and described as follows:

Beginning at a point on the easterly sideline of Kerrigan Place, said point being N 13°52'40" W 106.50' of a stone bound on the northerly sideline of Boylston Street, said point being the most southwesterly comer of the parcel; thence running

N 13°52'40" W	30.89' by the easterly sideline of Kerrigan Place to a point; thence turning and running
N 86°40'50" E	17.29' to a point; thence turning and running
S 13°52'40" E	27.72' to a point; thence turning and running
S 76°07'20" W	17.00' to the POINT OF BEGINNING.

Containing 502 square feet more or less.

The parcel to be conveyed to the Town being bounded and described as follows:

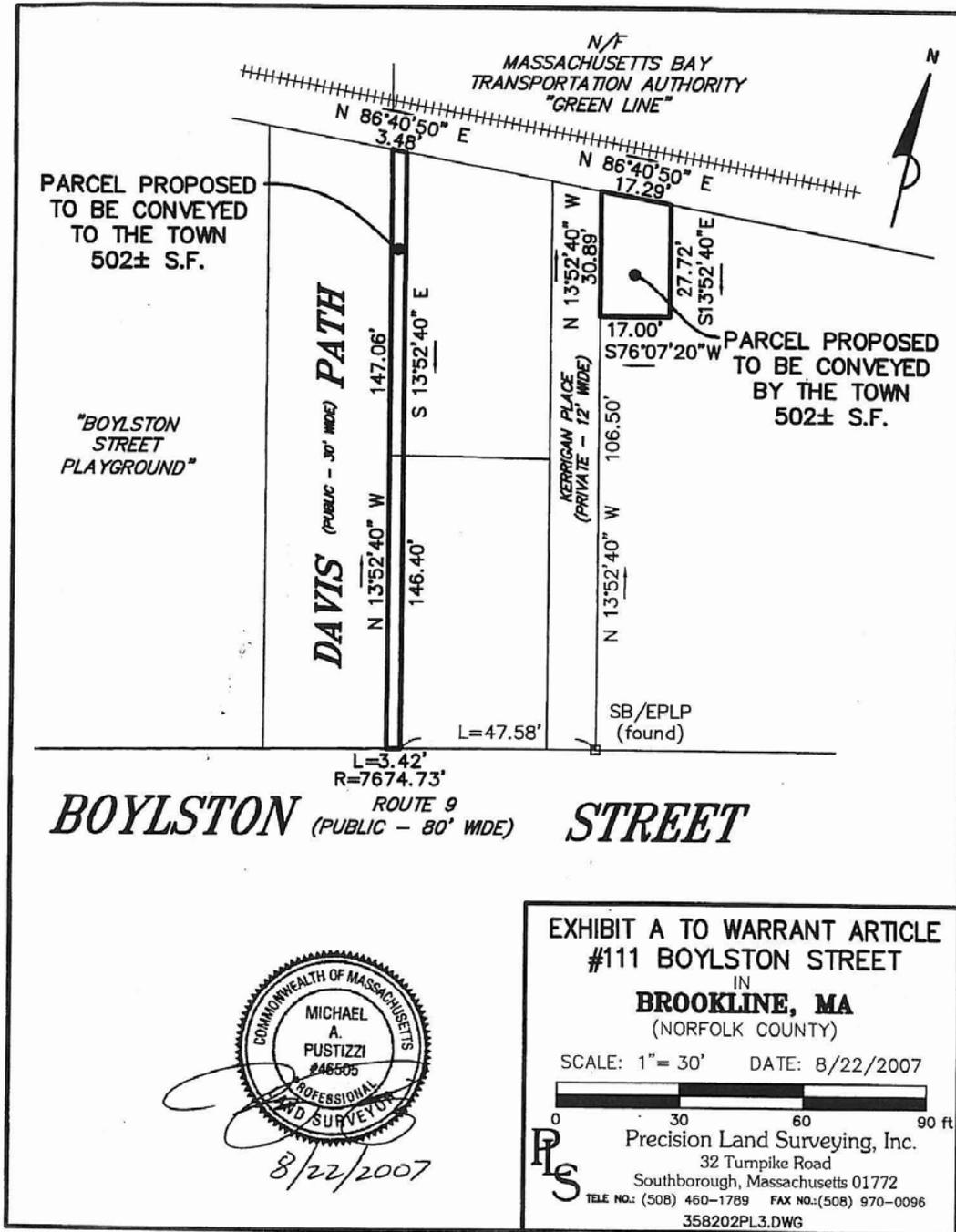
Beginning at a point on northerly sideline of Boylston Street, said point being westerly along a curve to the left having a radius of 7,674.73', 47.58' of a stone bound and being the most southeasterly comer of the parcel; thence running

WESTERLY	3.42' by the northerly sideline of Boylston Street, by a curve to the left having a radius of 7,674.73' to a point of non-tangency; thence turning and running
N 13°52'40" W	147.06' to a point; thence turning and running
N 86°40'50" E	3.48' to a point; thence turning and running
S 13°52'40" E	146.40' to the POINT OF BEGINNING.

Containing 502 square feet more or less.

or act on anything relative thereto.

EXHIBIT A



PETITIONER'S ARTICLE DESCRIPTION

In 1905 the Town acquired through a "taking" approximately 502 s.f. of land at the northern end of the private way known as Kerrigan Place situated off of Boylston Street near the Boylston Street Playground. The taking was done in connection with the abolition of the railroad grade crossing which extended Kerrigan Place across the tracks of the Boston & Albany Railroad, now the MBTA Green Line. The Railroad Commissioners at the time directed that, in connection with the abandonment of the grade crossing, Kerrigan Place be "widened," presumably to permit room for carriages to turn around at the end of Kerrigan Place. Kerrigan Place is approximately 12 feet wide for its entire length. The 502 s.f. parcel is being used by the occupants of the only remaining house on Kerrigan Place, a 3 story building, to park a motor vehicle and to keep trash cans and outdoor storage of children's play equipment. The land on which the building is located is under agreement to be sold and the building demolished in connection with the proposed redevelopment of 111 Boylston Street, the former Red Cab property. The remaining houses that were located on Kerrigan Place have long since been demolished. The 502 s.f. parcel is of no particular use to the Town, particularly since Kerrigan Place as a private way will be abolished. The developer of 111 Boylston Street has offered to convey to the Town an equivalent parcel along Davis path, a 30' wide public walkway adjacent to the Boylston Street Playground. The parcel to be conveyed to the Town would become part of the Boylston Street Playground and Davis Path and be subject to Article XCVII of the Massachusetts Constitution requiring a 2/3 vote of the General Court to allow it to be used for any purpose other than open space. The developers have indicated to the Board of Selectmen that they would enter into a Memorandum of Understanding with the Town once the development approvals for 111 Boylston Street have been obtained to maintain the landscaping along Davis Path. An aerial photograph of the affected land is attached as Exhibit "B".

EXHIBIT B



8/22/2007

EXHIBIT B TO WARRANT ARTICLE
#111 BOYLSTON STREET

IN
BROOKLINE, MA
(NORFOLK COUNTY)

SCALE: 1" = 80'± DATE: 8/22/2007



PLS

Precision Land Surveying, Inc.
32 Tumpike Road
Southborough, Massachusetts 01772

TELE NO.: (508) 460-1789 FAX NO.: (508) 970-0096
358202PL3.DWG

SELECTMEN'S RECOMMENDATION

111 Boylston Street, the former location of Red Cab, has been vacant and unsightly for years. This location was identified as desirable for redevelopment by both the Economic Development Advisory Board (EDAB) and the Comprehensive Plan. Previous outreach to the property owner had not resulted in any action since the owner was not interested in acting as a developer for the property. Leggat McCall now has an option to purchase the property and is interested in developing a medical office building with retail space at the site. A preview of their plans was shown at a June, 2006 EDAB meeting and was met with general approval by the neighborhood. During the preparation of the preliminary development application, it was discovered that the Town owned a 502 square foot parcel of land abutting the MBTA tracks. The developer has indicated that they do not necessarily need this parcel to develop the site. However, a design that does not include the town parcel would create a less than optimum building.

Article 15, as originally proposed, offered the town a land swap and \$20,000 rather than a straight sale. The developer expressed willingness for an outright purchase of the land and, during further discussions, agreed upon a purchase price of \$85,000. The Moderator has ruled that Article 15 may be changed from a swap to a sale. Such a sale would be conducted under the requirements of MGL Chapter 30B (the procurement statute). EDAB, in promoting only appropriate development, was concerned that this property remains taxable. The developer has stated its willingness to enter into an agreement with the Town that would guarantee tax certainty for the property; full taxes would be collected even if the property were to be sold to a tax-exempt entity. Discussions are presently taking place with Town Counsel to create such an agreement.

Concern about resulting shadows on abutting residential White Place from the new building has been expressed by many. The developer has shown some preliminary massing options/shadow studies to explore alternatives, even prior to the Town's extensive design review process. The building design is not part of the scope of this article. Should this developer move forward with its plan, it will undergo an extensive design review process prior to the Planning Board and Zoning Board of Appeals (ZBA) hearings. Public benefits will be required, due to the proposed building height, and a landscaped buffer abutting Davis Path might well become part of those benefits.

The language of the vote specifically authorizes the Board of Selectmen to negotiate terms and conditions for the sale of the parcel, which can include final transfer of the parcel at the completion of all necessary approvals, including final design and public benefits.

In order to obtain the best possible building for Brookline at this site, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 23, 2007, on the motion offered by the Advisory Committee, which is modified to allow for a straight sale.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 15 asks that Town Meeting authorize the Board of Selectmen to accept an approximately 502 square foot strip of land abutting Davis Path and \$20,000 from the developer of 111 Boylston Street in exchange for a similarly sized parcel of Town-owned land located at the end of Kerrigan Place.

The "old Red Cab site" at 111 Boylston Street is under agreement with Leggat McCall. The Comprehensive Plan has identified this site, along with most of Boylston Street between Brookline Village and Cypress Street, as prime sites for redevelopment. The site under consideration for redevelopment now consists of a three-family house on Kerrigan Place and the old Red Cab property. During the preparation of the developer's preliminary development application, it was discovered that the Town owned a parcel of land of some 502 square feet at the end of Kerrigan Place. While the developer could build around the Town-owned land, he would prefer to have the fluidity of a cohesive parcel at the rear of the site.

It was determined that this 502 sq. ft. of land was deeded to the Town in 1906 when Kerrigan Place was dead-ended and disconnected from White Place due to the placement of train tracks that are now operated by the MBTA. This land created an area for vehicles (presumably horse drawn wagons) to turn around if a vehicle proceeded into Kerrigan Place and reached its newly constructed dead end.

DISCUSSION

Leggat McCall, by means of this Article, stated that it was willing to deed the Town a three-foot wide buffer zone along the Boylston Street Playground, at Davis Path, which abuts its site and to pay the Town an additional \$20,000, all in exchange for the Kerrigan Place parcel. Furthermore, the developer verbally agreed to landscape the three-foot wide buffer zone, approximately equal to the Town-owned Kerrigan Place lot in square footage, and to maintain it in perpetuity. In addition, the developer expressed interest in working with the Economic Development Advisory Board (EDAB) and Town Counsel to ensure that the property will remain taxable or produce payments in lieu of taxes, despite the possibility of its sale to a non-profit entity in the future

The developer plans to construct a medical/office building with first floor commercial space. With zoning relief and exchange for public benefits, the building could have an FAR of 2.0 and a maximum height of 60'. The developer is working with the neighborhood on the massing of the proposed building and has prepared shadow studies to show how the building, with various designs and sitings, could affect White Place residences.

Initial consideration of Article 15 by the Advisory Committee's Capital Subcommittee led to the recommendation that the Kerrigan Place parcel be sold outright for \$85,000. When calculated by allowable FAR, this sum is slightly higher than that which the developer paid for the entire developable site. It was also recommended that the developer's offer to deed and landscape the three-foot buffer be accepted. Deeding this

land could be considered part of the public benefits that will be required of the developer to reach an FAR of 2.0.

During subsequent Advisory Committee discussions, Town Counsel noted the need to adhere to the requirements of M.G.L. Ch. 30B (Disposition of Public Lands), regardless of whether the land was sold or “swapped”. She also described the nature of the steps which could be taken to maximize taxes or tax-equivalent payments to the Town in the event the property were sold to a non-profit owner. A number of Committee members reiterated the need to address concerns raised by neighbors regarding the potential loss of light on White Place. The Design Advisory Team and the Planning Board and Board of Appeals reviews will be critical to ensuring a satisfactory outcome for all parties. Finally, the Committee noted EDAB’s endorsement of both this project and of the Advisory Committee’s proposed amendment that authorizes the Board of Selectmen to sell, not swap, the Kerrigan Place parcel. In its written comments, EDAB states: “We believe this Proposed Project, after going through the Planning process, will meet all of our criteria for good and appropriate development.”

RECOMMENDATION

By a unanimous vote of 21 in favor, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town authorize and empower the Board of Selectmen to sell and convey a parcel of land owned by the Town containing 502 s.f. more or less located at the end of a private way known as Kerrigan Place, which parcel is shown and denoted as “Parcel To Be Conveyed by the Town” on Exhibit “A” hereto, in accordance with the requirements of G.L.c.30B and for a sum not less than Eighty Five Thousand Dollars (\$85,000.00) and on such additional terms and conditions determined by the Board of Selectmen to be in the best interests of the Town.

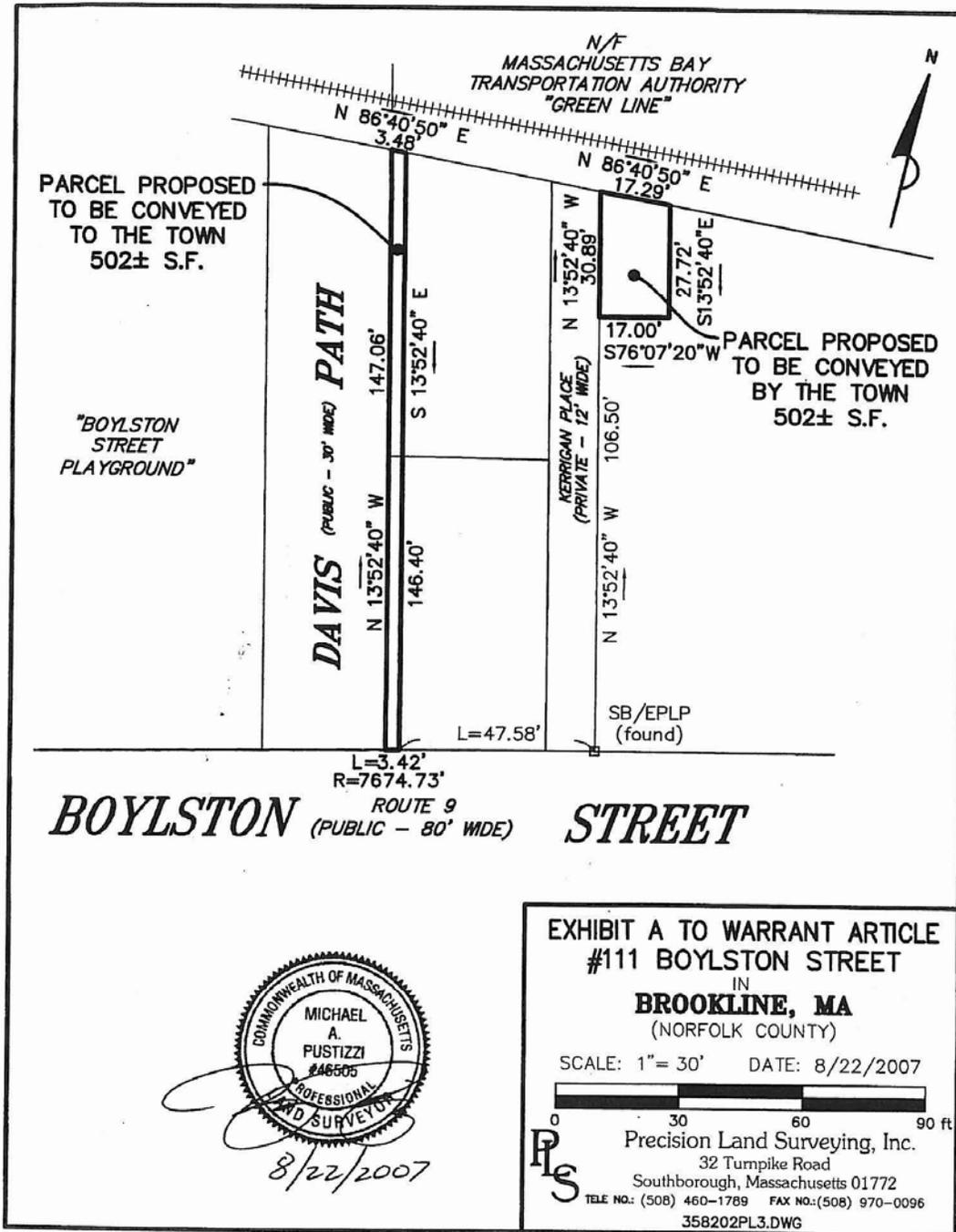
The parcel to be conveyed by the Town being bounded and described as follows:

Beginning at a point on the easterly sideline of Kerrigan Place, said point being N 13°52'40" W 106.50' of a stone bound on the northerly sideline of Boylston Street, said point being the most southwesterly corner of the parcel; thence running

N 13°52'40" W	30.89' by the easterly sideline of Kerrigan Place to a point; thence turning and running
N 86°40'50" E	17.29' to a point; thence turning and running
S 13°52'40" E	27.72' to a point; thence turning and running
S 76°07'20" W	17.00' to the POINT OF BEGINNING.

Containing 502 square feet more or less.

EXHIBIT A



ARTICLE 16

SIXTEENTH ARTICLE

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

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO LEASE TOWN-OWNED PROPERTY FOR AN ADDITIONAL THIRTY YEARS

Be it enacted, etc., as follows:

Section 1. Notwithstanding any general or special law to the contrary, the town of Brookline is hereby authorized to lease the town-owned property located at 86 Monmouth Street and shown as Parcel 28 in Block 112 on Sheet 24 of the Town's 2005 Assessors Atlas, to the Brookline Arts Center, Inc., for another period not exceeding thirty years. Said time period is in addition to the thirty year period previously granted pursuant to Chapter 79 of the Acts of 1977. Any such lease shall be upon such terms and conditions as the Board of Selectmen shall determine to be in the best interest of the town.

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Existing statutes prohibit the leasing of Town-owned property for more than five years. This article is seeking legislation which would permit the Town to give the Brookline Arts Center (BAC) long-term occupancy of its current building, which will allow the BAC to offer art education classes and continue to maintain its building.

The Brookline Arts Center has occupied the old Monmouth Street Fire Station at 86 Monmouth Street since 1968: under short leases for the first twelve years, and for twenty-seven years of its current thirty-year lease. During this time, the Arts Center has offered art classes and other educational programs in the visual arts for all ages. Many of its programs are free to the public, and BAC offers many scholarship programs for low-income residents that allow them to take art classes at reduced rates.

During this time, the BAC has repaired and maintained the historic building, including extensive renovations of the interior space, a new roof, new heating system, new stairs, new second means of egress, the addition of a ceramics studio, addition of a jewelry studio and a new art gallery. The BAC has always been a good neighbor and asset to the community. The Town has not provided any funds for renovations or maintenance of the building.

In order to raise outside grants to support the continued maintenance and long-term improvement of its building, the BAC needs a longer term lease than 5 years, in order to convince the various sources of funds of the continued occupancy of the building. They are not contemplating any immediate expansion of the building. As in the past, all renovations in the building would be subject to the review of the Building Department.

The BAC started in 1964 with 15 students. In recent years, 1900 students attend 325 classes annually; 7000 people attend other free cultural and educational programs at the Arts Center and its gallery; senior citizens have attended discounted art classes; \$10,000 to \$12,000 in scholarships have been given to low-income students, faculty and volunteers; and an estimated 15,000 have seen "Artist Spotlight" programs produced with the BAC on Brookline Public Access TV.

The Arts Center organizes free gallery receptions and artist talks regularly, offering approximately 35 such programs annually. In addition, the BAC has offered ArtReach (free art classes for low-income children and seniors) at Brookline Housing Authority buildings since 1971. For the past 33 years, BAC has organized Crafts Showcase, a free exhibition and sale of fine crafts in December, featuring more than 100 artists from around the nation. In combination, these programs introduce a broad audience to the experience of art and encourage easy public interaction with working artists.

This article is not seeking any funds from the Town.

SELECTMEN'S RECOMMENDATION

Article 16 is a Home Rule petition that would authorize the Selectmen to enter into a lease of up to 30 years with the Brookline Arts Center for the Town-owned property located at 86 Monmouth Street. State law only allows for a maximum lease of 10 years, so approval of the Legislative is required for anything longer than that.

The Brookline Arts Center has occupied the old fire station at 86 Monmouth Street since 1968 under leases with the Town. In 1977, the Legislature approved a similar special act allowing Brookline to enter into a 30-year lease with the Arts Center, and that lease is due to expire in 2010. Under the current lease, the Brookline Arts Center is responsible for the maintenance and repairs of the facility in lieu of lease payments. A number of improvements have been made to the facility, making it a much improved building.

The Arts Center offers art classes and other educational programs in the visual arts for all ages, making it a key component of the Town's overall arts education efforts. It has been a great neighbor in Precinct 1 and it is hard to envision that area without the Arts Center. The 30-year lease is critical to the long-term success of the Arts Center, and the Arts Center is critical to the Town's long-term community fabric. The need for a 30-year lease comes from the Arts Center's need to fundraise. Particularly with outside grants and loans, a long-term lease is required to secure such funding.

The Selectmen fully support the Brookline Arts Center and the prudent use of a Town-owned asset to help it deliver its community-based mission to enhance the visual arts in Brookline. Therefore, the Board of Selectmen fully supports the Brookline Arts Center and recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 16, 2007, on the following vote:

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

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO LEASE TOWN-OWNED PROPERTY FOR AN ADDITIONAL THIRTY YEARS

Be it enacted, etc., as follows:

Section 1. Notwithstanding any general or special law to the contrary, the town of Brookline is hereby authorized to lease the town-owned property located at 86 Monmouth Street and shown as Parcel 28 in Block 112 on Sheet 24 of the Town's 2005 Assessors Atlas, to the Brookline Arts Center, Inc., for another period not exceeding thirty years. Said time period is in addition to the thirty year period previously granted pursuant to Chapter 79 of the Acts of 1977. Any such lease shall be upon such terms and conditions as the Board of Selectmen shall determine to be in the best interest of the town.

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

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 16 asks Town Meeting to initiate a process that would ultimately allow the Town to lease the building at 86 Monmouth Street to the Brookline Arts Center (BAC) for a period of up to 30 years. Currently the Town, under state law, may not offer a lease of more than ten years. At present, the BAC has a 30-year lease that will expire on May 30, 2010. The BAC board firmly believes that a long-term lease is critical to the organization's ability to raise private funds and to obtain state grants to support not only its programs but also capital improvements to the building.

Formerly a "Chemical Engine House" designed in 1886 by the well-known architectural firm of Peabody and Stearns, 86 Monmouth Street is one of three Town-owned buildings that is leased to a non-profit, cultural organization. The other two properties are the Kennard House, home to the Brookline Music School, which was awarded a 10-year lease, later extended by an additional 10 years after its \$1,232,000 investment in the building, and the Larz Anderson Carriage House, now occupied by the Transportation

Museum which has a long-term lease and an annual requirement for \$40,000 worth of repairs to the property and in-kind services to the community.

The Arts Center signed its first lease with the Town in 1967. After repairs and renovations to the structure were completed, art classes were held there beginning in 1968. In March 1977, the State Legislature authorized the Town to lease the building for a period not to exceed 30 years, and by May 1980, a 30-year lease had been signed. It called for the BAC to pay the Town \$1/quarter or \$4/year for the space and to be financially responsible for utility costs, for repairs, and for work required to meet code and keep the building in good condition.

During its tenancy, the Arts Center has undertaken roof repairs and interior renovations. It has also installed a metal fire escape, added a small gallery for exhibits, and carried out efforts to make the building handicap accessible. Susan Navarre, BAC executive director, estimates that in today's dollars, the organization has spent approximately \$397,000 on the building. It should also be noted that negotiations for a payment in lieu of taxes (PILOT) are underway between the Town and Arts Center, with a target amount of 15% of the levy, to be reached over six years. The building, exclusive of the land, is assessed for \$325,000.

While their current lease does not expire for another two and one-half years, the BAC has developed a property improvement strategy and would like to begin fundraising efforts to undertake substantial roof and gutter repairs, chimney reconstruction and improvements that address handicap accessibility issues, energy conservation, and increased storage and exhibition space.

DISCUSSION

The Advisory Committee recognizes and appreciates the importance of the BAC to the Town. With a \$400,000 annual budget, 2000 students, 325 classes, 40-45 teachers, and over 200 volunteers, it is a vibrant educational, cultural, and community institution. During the Article 16 discussion some members noted that 30 years is an exceptionally long period of time for any tenancy; that there is no solid evidence that a 30-year lease would be required to obtain foundation funding; and that with such high enrollments, increased fees for classes and events could make a significant contribution to covering capital costs, thereby reducing the need for "outside" dollars.

In response, other members pointed out that 86 Monmouth Street is not a commercial property and common business practices are not necessarily applicable to this situation. Furthermore, it was observed that a 30-year lease could make it easier for the BAC to secure financing for the property improvements under consideration and would have more appeal to serious donors looking for assurance of a secure site for the organization, a long-term commitment of the BAC to this property, and Town support of the organization. Finally, it was emphasized that approval of the article and subsequent authorization of the State Legislature would give the Board of Selectmen merely the flexibility, but not the mandate, to enter a 30-year lease with the BAC.

RECOMMENDATION

By a vote of 21-1, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 17

SEVENTEENTH ARTICLE

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

AN ACT PROVIDING FOR A ZONING ENFORCEMENT OFFICER IN THE TOWN OF BROOKLINE

Be it Enacted, etc. as follows:

Section 1. Notwithstanding any provision of any general or special law to the contrary, the town of Brookline is hereby authorized to appoint, by its board of selectmen, a zoning enforcement officer who shall be the officer charged with enforcement of zoning bylaws for the purpose of application of the provisions of Chapter forty A of the General Laws.

Section 2. The position of zoning enforcement officer shall be exempt from the provisions of chapter thirty-one of the General Laws.

Section 3. The town of Brookline is hereby authorized to enact general and zoning bylaws consistent with the terms of this act to provide for the employment and duties of the zoning enforcement officer.

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In almost every week's *Brookline TAB* we hear of widespread dissatisfaction with Brookline's zoning enforcement. Town Meeting Members were told that the new position of Zoning Administrator was created to address that dissatisfaction. But since the new position has no enforcement powers, it's not at all clear what the Zoning Administrator does.

This Article is meant to finish the job we thought we were doing back in 2006, by creating a Zoning Enforcement Officer who will have the power and duty to enforce the Town's zoning bylaw. To do that takes home rule legislation. This proposed Home Rule Petition is based on legislation which has been in effect in Watertown since 1987.

This is not intended to create a new position, but to enhance the present position of Zoning Administrator, converting it into a true Zoning Enforcement Officer, with power to enforce our zoning bylaw.

SELECTMEN'S RECOMMENDATION

Authority for zoning enforcement is vested by State Law through G.L.c 40A Section 7, in the Building Commissioner. If there is no Commissioner (or other such local building official) the statute allows for the appointment of a zoning enforcement officer through adoption of local by-law. In our Town's case an established Building official – the Building Commissioner - exists and therefore special legislation is required to shift responsibility for zoning enforcement to another position.

The more complex authorization process of special legislation to shift zoning enforcement responsibility away from the Building Commissioner reflects the Legislative intent to encourage enforcement by the local building official. A 1988 Advisory from the State Executive Office of Community Development explains that the trend emerging at that time of establishing zoning enforcement officers who are not building officials had begun to arise out of concern within small towns that “a part-time local building official possesses neither the time nor expertise to deal with the ever increasing number and complexity of zoning related issues.” The Advisory cites by way of example the by-law of the Town of Huntington (pop. 2,222) establishing a Zoning Enforcement Officer. The Advisory also states that where “building officials have the necessary time to undertake the chores of enforcement...,designating the building official as the Zoning Enforcement Officer represents the most efficient and logical system of zoning enforcement...”

As time has passed at least one more moderately sized community has established a Zoning Enforcement Officer. The most notable example in the Metropolitan Boston area is Watertown (pop. 32,915). Watertown stands out as the largest community by far of which we are aware that has established a Zoning Enforcement Officer apart from the building official. This limited experience in larger communities reflects the inherent complexity and scale of zoning enforcement in cities and towns of Brookline's size, requiring the resources that only a fully staffed Building Department can bring to bear on zoning demands.

This is not to say that communities the size and build-out of Brookline should not under any circumstances consider the establishment of a Zoning Enforcement Officer. The 2004 study of Brookline zoning conducted by Janet Stearns offered the option of the Zoning Enforcement Officer as one of three possible staffing possibilities that the Town could consider. The Town eventually opted for the Zoning Administrator approach that was intended, and in fact, has successfully provided much needed administrative and technical support to the Zoning Board of Appeals.

A recent memorandum by the Director of Planning and Community Development highlights the progress that has been made since the Zoning Administrator has come on board. Among other functions the Zoning Administrator now:

- Posts actual ZBA decisions on the Town website

- Confirms that the Building Department permit review conforms with ZBA decisions.
- Ensures that project engineer certifications are received to confirm that foundation specifications conform with the approved plan.
- Monitors construction to ensure development meets ZBA conditions.
- Reviews as-built plans to ensure that final construction conforms with approved plans before Certificate of Occupancy is issued.

Finally, as observed in the recent Report of the Advisory Committee's Zoning Enforcement Committee in light of Commissioner Nickerson's recent retirement announcement "it would make sense to defer changes to Brookline's zoning enforcement system...". As that Report goes on to note, establishing a zoning enforcement function outside the Building Department would likely require the hiring of additional staff. Not only would adequate professional staff need to be deployed, which could well entail more than one position, but clerical assistance would also likely be sought. The one-person Watertown Zoning Enforcement Office has a full time assistant.

In conclusion, the Board wants to take this opportunity to once again thank Commissioner Nickerson for his 22 years of service to the Town. The Selectmen recognized the Commissioner in his September 11th appearance before the Board, especially for his 19 years as department head. The range of responsibility for our Building Department is exceptionally broad, encompassing both inspectional services and oversight of public buildings. For nearly two decades Commissioner Nickerson has led these two very distinct and complex operations. The Department's accomplishments with town and school buildings have been particularly extensive (Lincoln School, Health School, Brookline High School, Public Safety Building, Senior Center, Baker School, Health Building, Lawrence School and soon Town Hall). His imprint on the Town will be long lasting.

Therefore, the Selectmen recommend NO ACTION, by a 5-0 voted taken on October 23, 2007, on Article 17.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 17 proposes that Brookline seek home rule legislation that would enable the town to appoint a zoning enforcement officer who would be responsible for the enforcement of zoning by-laws.

In recent years, many Brookline residents have expressed concern about the zoning enforcement process. Neighbors of the buildings constructed as part of the Longyear at Fisher Hill development have complained that these buildings do not comply with current zoning and/or the conditions of special permits granted by the Zoning Board of Appeals (ZBA). Similar complaints have been made regarding houses at 1 Somerset Road, 135 Lagrange Street, and others.

In 2004, consultants Janet R. Stearns and Peter L. Freeman were hired by Brookline to report on the zoning administration process that development projects go through in Brookline, from early contact with town employees, through consideration by the Planning Board and the ZBA, and Building Department permitting. Their December 6, 2004 report made many recommendations for improving the zoning process in Brookline and suggested that Brookline consider delegating responsibility for zoning enforcement to a zoning enforcement officer instead of relying on the Building Department, its commissioner, and building inspectors who have other responsibilities. The relevant town departments set up an Interdepartmental Team to implement the report's recommendations. Brookline created a Zoning Implementation Monitoring Committee to track the implementation of the consultants' recommendations and to develop further recommendations. As a result of the work of the committee, a position of zoning administrator was created and funded by the 2005 Annual Town Meeting.

Several members of the Zoning Implementation Monitoring Committee had hoped that Brookline would appoint a zoning enforcement officer. The zoning administrator does not, however, have responsibility for zoning enforcement. The zoning administrator provides administrative support to the ZBA, writes ZBA decisions, and interacts with the public and developers regarding ZBA cases and other zoning issues. The zoning administrator has no authority over zoning enforcement, but may communicate to the building commissioner as to whether ZBA conditions have been met or not.

Under Massachusetts state law, a municipality's building commissioner is responsible for zoning enforcement. Only Watertown has a separate zoning enforcement officer. Article 17 asks that a home rule petition be filed to enable Brookline to designate a zoning enforcement officer who is not the building commissioner. The proposed legislation is modeled on the legislation filed by Watertown two decades ago.

After Article 17 was placed on the Warrant, the Building Commissioner James Nickerson announced his decision to retire as of December 7, 2007. Several members of the ZBA also announced their resignations.

The Advisory Committee created a Zoning Enforcement Study Committee in September 2007 to examine Brookline's zoning enforcement process.

DISCUSSION

Article 17 reflects a belief that the current building commissioner has not enforced Brookline's Zoning By-Law effectively. The petitioner contends that the building commissioner may have performed well in many areas of his job, but has been weaker at zoning enforcement. (Building Commissioner James Nickerson disagrees and has pointed out that in nineteen years as Brookline's zoning enforcement officer he has sent 1,273 cases to the ZBA. His interpretation has been appealed to the ZBA approximately twelve times and overturned only once.) Even though the current commissioner will leave the position in December, the petitioner argues that Brookline should seek home rule legislation that would create the option of appointing a zoning enforcement officer who is not the building commissioner.

There are several arguments in favor of creating a zoning enforcement officer position. A zoning enforcement officer might be able to focus his or her attention on zoning issues. He or she would not have to manage a large department with responsibility for building permits and inspections and Brookline's many public buildings. Like the current zoning administrator, the zoning enforcement officer could look at plans early in the process, receive public input, monitor that zoning conditions have been met, and compare original plans to "as built" drawings, but he or she also would have enforcement authority.

Although many residents of Brookline feel that there is a need to improve the town's zoning enforcement process, appointment of a zoning enforcement officer is not necessarily the best approach to improving the process, for several reasons.

First, Article 17 appears to be attempting to change the structure of an organization to deal with a personnel issue.

Second, there is reason to believe that retaining the zoning enforcement function in the Building Department could be the most effective means of carrying out zoning enforcement. The Building Department includes several building inspectors who will become familiar with construction projects in the course of their permitting inspections. If these inspectors are properly trained and informed of the provisions of Brookline's zoning by-law, they are likely to be in a position to identify zoning violations and enforce the by-law as well as any conditions of special permits granted by the ZBA. The relatively recent addition of the zoning administrator to this process may make it even more effective in the future.

Third, the zoning enforcement process used in Watertown might not be effective in Brookline, which has a population about twice that of Watertown's, a higher population density, more buildings to monitor, a complex and changing zoning by-law, and (probably) greater development pressures. In Brookline, it might be more difficult for a single official without a large staff to cope with all zoning enforcement issues.

Fourth, appointing a zoning enforcement officer would have an impact on the budget. Creating a new position probably would require hiring an additional staff person and/or increasing the time devoted to zoning enforcement by current personnel. If the zoning administrator were to become the zoning enforcement officer, someone else would have to assume responsibility for the work the zoning administrator performs for the ZBA. In effect, a new ZBA clerk would be needed. The zoning enforcement officer in Watertown has a full-time assistant.

Finally, given that a new building commissioner is likely to be appointed in 2008, it would make sense to defer changes to Brookline's zoning enforcement system until after that person is in place.

At present, it is not clear that creation of a zoning enforcement officer position is the best way to improve the zoning enforcement process in Brookline, although there are reasons to consider this option. The Advisory Committee did not agree that Brookline should seek home rule legislation now "just in case" the town later decides that it should appoint and empower a zoning enforcement officer. The Advisory Committee's Zoning

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Enforcement Study Committee will continue to conduct research on the current zoning enforcement process and alternatives.

RECOMMENDATION

By a vote of 19 in favor, 1 opposed, and 1 abstaining, the Advisory Committee recommends NO ACTION on Article 17.

XXX

ARTICLE 18

EIGHTEENTH ARTICLE

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

**AN ACT AUTHORIZING THE TRANSPORTATION BOARD OF THE TOWN
OF BROOKLINE TO REGULATE VALET PARKING SERVICES IN THE
TOWN OF BROOKLINE**

Be it enacted, etc. as follows:

Section 1. Section 4 of chapter 317 of the acts of 1974, as amended, is hereby further amended by inserting the following paragraph between the second and third paragraphs thereof:

Also, notwithstanding the provisions of any general or special law to the contrary, the board shall have exclusive authority to adopt, alter or repeal rules and regulations relative to the operation, licensing or permitting of any valet parking service that utilizes any part of a town-controlled public way, public off-street parking area, or public property for the movement, transport, parking, standing, storage, pick-up, drop-off, or delivery of a motor vehicle, if it determines, by a vote of at least four members, that such actions serve the public safety, welfare, environment or convenience. For the purposes of this section, a valet parking service is defined as a parking service offered, with or without a fee, to an operator or owner of a motor vehicle who is a patron, customer, visitor, employee, guest, invitee or licensee of any restaurant, store, hotel, club, business, institution, or commercial establishment wherein the operator or owner delivers possession or control of the motor vehicle to an attendant commonly known as a valet who then transports, parks, stores, retrieves and/or delivers the motor vehicle.

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article seeks to clarify and fully establish the authority of the Transportation Board to regulate and license valet parking services in the Town that utilize public ways, public off-street parking areas or other public property under the control of the Town. Under Chapter 317 of the Acts of 1974, it appears that the Transportation Board already has the

statutory authority to regulate valet parking under its power to adopt regulations "relative to...the movement, stopping, standing, or parking of vehicles...on, and their exclusion from, all or any streets, ways,...and public off-street parking areas under the control of the town,," However, the Transportation Board's authority to regulate valet parking services under this provision has been challenged on the ground that such regulation unlawfully conflicts with provisions of the General Laws. This proposed amendment to Chapter 317 of the Acts of 1974 is intended to eliminate any potential conflict with other provisions of law and should eliminate any uncertainty as to whether or not the Transportation Board has the legal authority to regulate valet parking services that utilize public ways, public off-street parking areas or other public property under the control of the Town.

SELECTMEN'S RECOMMENDATION

In 1974, the Town, through a Home Rule Petition, moved the authority for regulating transportation matters from the Board of Selectmen to the Transportation Board. The Transportation Board, pursuant to that authority, regulates valet parking when the valets park the cars on public or metered spaces. However, the Transportation Board has not regulated valet parking in situations where the cars are parked in a private lot, even if the cars were driven by the valets over public streets to get to that private lot.

Presently, there are several restaurants that fall into the latter category. For the past several years, the Board of Selectmen have been getting complaints from the neighbors near one of those restaurants that the valets were driving on public streets without sufficient regard for the safety and welfare of nearby residents, pedestrians, and other vehicles. Although the Board of Selectmen held several public hearings on this matter at which both the neighbors and the owners of the restaurant were present and spoke to the issue, the neighbors concerns were not alleviated.

Last Spring, Article 15 was included in the Warrant for the Annual Town Meeting. In the course of legally analyzing the issue in connection with that article, it became apparent to the Transportation Division and to Town Counsel's Office that the Transportation Board could simply amend its rules and regulations and begin regulating this type of valet parking almost immediately.

In light of that significant realization, the Board of Selectmen recommended No Action on Article 15, but did state "[S]hould the situation not be resolved by the Transportation Board, the Board of Selectmen will refile this warrant article at the next Town Meeting." While the Transportation Board did go forward as promised, objections were raised by counsel for one restaurant. As a result, the Transportation Board had to revise its rules and reissue them. Unfortunately, there are still objections and the Town anticipates an appeal from the counsel for that restaurant. Town Counsel believes that the Transportation Board has the authority to issue these regulations and to regulate valet parking that goes from one private lot to another but uses the public ways to do so. The restaurant in question argues that they cannot be forced to ask Town permission to use

the public ways. Therefore, the Selectmen submitted Article 18 to make absolutely clear that the Transportation Board has this authority and to avoid lengthy litigation over the issue.

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 2, 2007, on the following vote:

VOTED: That the Town authorize and approve the filing of a petition with the General Court in substantially the following form:

**AN ACT AUTHORIZING THE TRANSPORTATION BOARD OF THE TOWN
OF BROOKLINE TO REGULATE VALET PARKING SERVICES IN THE
TOWN OF BROOKLINE**

Be it enacted, etc. as follows:

Section 1. Section 4 of chapter 317 of the acts of 1974, as amended, is hereby further amended by inserting the following paragraph between the second and third paragraphs thereof:

Also, notwithstanding the provisions of any general or special law to the contrary, the board shall have exclusive authority to adopt, alter or repeal rules and regulations relative to the operation, licensing or permitting of any valet parking service that utilizes any part of a town-controlled public way, public off-street parking area, or public property for the movement, transport, parking, standing, storage, pick-up, drop-off, or delivery of a motor vehicle, if it determines, by a vote of at least four members, that such actions serve the public safety, welfare, environment or convenience. For the purposes of this section, a valet parking service is defined as a parking service offered, with or without a fee, to an operator or owner of a motor vehicle who is a patron, customer, visitor, employee, guest, invitee or licensee of any restaurant, store, hotel, club, business, institution, or commercial establishment wherein the operator or owner delivers possession or control of the motor vehicle to an attendant commonly known as a valet who then transports, parks, stores, retrieves and/or delivers the motor vehicle.

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

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

This home rule petition has been introduced by the Board of Selectmen on behalf of a group of neighbors surrounding a restaurant, which uses valet parking to transfer vehicles from a private drop-off via the public way to a private parking lot. Several residents of the neighborhood surrounding this restaurant cited the impact of the current regulations on their lives. According to the neighbors, starting around 5:00 PM, the speed of traffic significantly increases. Valets need to park vehicles rapidly so that they can return quickly to valet other cars. They drive fast and often return the quickest way. It is not unusual, according to neighbors, for them to run through private backyards in the area. The speed limit for the affected streets is 25 MPH. Neighbors have also requested a stop sign to increase safety.

DISCUSSION

During the past 2.5 years, the neighbors have expressed their concerns frequently and directly with the restaurant's owner to no avail. They noted that without the goodwill of the restaurant and better monitoring of the valet service, this dangerous driving and behavior will increasingly impact their quality of life and the safety of residential streets. Residents have worked closely with the Transportation Board and the Police in an attempt to mitigate this problem. Issuing speeding tickets and increased monitoring of driving behaviors have not had any effect and the problem continues to increase. The Selectmen have stated that they have limited tools to deal with this problem.

Town Counsel believes the Town has the authority to amend traffic rules about vehicles standing, stopping, and parking and that it has the authority to make our roads safe through licensing and regulating an occupation.

Although Town Counsel is not certain how the legislature will deal with this Home Rule Petition, Representatives Mike Rush and Frank Smizik have been supportive of this issue.

The town's position has been challenged by the offending restaurant through its attorney on the following basis:

1. Enabling legislation of the Transportation Board does not specifically grant the Transportation Board the authority to regulate a Valet Service that operates on the public way.
2. MGL Chapter 90 prohibits a municipal government from banning a licensed driver from operating a registered vehicle on a public way.

(However, these vehicles are being driven by professional drivers paid to provide valet service.)

Despite the difficulties experienced between the neighbors in a particular situation, the proponents stress that this article is not intended to punish a particular establishment but

to create a safer environment for all areas where there is valet parking in a residential area. In fact, this will not apply only to restaurants. It was noted that medical establishments in town provide valet parking. The safeguards and oversight provided by this article will apply to them as well as all other establishments. The Advisory Committee supports Transportation Board oversight of establishments providing valet services. This article will clarify the Transportation Board's legislative authority to regulate valets on a public way.

RECOMMENDATION

The Advisory Committee by a unanimous vote of 20 in favor recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 19

NINETEENTH ARTICLE

To see if the Town will approve a change in the name of the municipal golf course from The Brookline Golf Club at Putterham to the “Robert T. Lynch Municipal Golf Course at Putterham Meadows”, or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

After 35 years of professional public service (and a lifetime commitment) to the Town of Brookline, Robert T. Lynch, Director of Park and Recreation will retire December 31, 2007. Robert T. Lynch has been a mentor, a coach, a friend and a leader to many. His civic pride and commitment to the community are exemplary. He dedicated his personal life and his professional life to Brookline, to Recreation and to the citizens of Brookline. He graduated from the Heath School and Brookline High School. He coached Brookline Pop Warner and Brookline High School Football for over twelve years. He was a Town Meeting member from 1975-1981. This proposal will acknowledge Bob Lynch’s life-long service and commitment to the Town of Brookline’s recreation programs. The Town’s Naming Committee, in accordance with the by-law, has evaluated the proposal to change the name of the municipal golf course by applying its established guidelines and criteria and supports the proposed name change. In addition, the Park and Recreation Commission also unanimously support this proposal.

SELECTMEN’S RECOMMENDATION

The name Lynch and Brookline Recreation have been linked for decades. James J. Lynch served as the Director of Recreation for 28 years. His son, Robert T. Lynch -- better known as Bob -- will be retiring on December 1 after 35 years of dedication to the residents of Brookline, the past 13+ of which were as Director of Recreation. In addition to his work at the Recreation Department, Bob also coached Pop Warner and high school football and served as a Town Meeting Member. Bob was born in Brookline, raised in Brookline, and committed his life to improving the recreation experience for Brookline’s boys and girls and men and women. His commitment to teaching the experience of sports and other recreational activities for all age groups is something that has made a lasting impact on Brookline.

Bob’s list of accomplishments while Director are impressive and lengthy. A couple of examples rise to the top of our list:

- maximization of athletic opportunities the Town offers by securing agreements with Boston University, Boston College, Beaver Country Day, Pine Manner, Brimmer and May, the Park School, Hellenic College, and Newbury College.

- championing improvements to the Eliot Rec Center, the Soule Rec Center, the golf course, and the Evelyn Kirrane Aquatics Center.
- increasing the number of program offerings for residents of all ages, from pre-schoolers to “golden agers”.
- transforming the golf course from a money loser to a profitable operation.

While those are no doubt impressive, the greatest accomplishment of Bob’s is assuring that everyone who wants to participate in Recreation programs, regardless of their ability to pay, participates. In his mind, winning was not what it was all about; it was about being together and having a positive experience. And everyone should have that opportunity, not just those able to afford the program fee.

The Selectmen unanimously agree with both the Park and Recreation Commission and the Naming Committee that Bob Lynch’s accomplishments and commitment should be recognized and memorialized. We also agree that there is no more fitting of a place to do so than the golf course, as he was integral to the transformation of the golf course into an open and profitable facility that folks of all ages enjoy -- from junior golfers who stand to be the future of the game to the retirees who spend quality time on the course. It is our pleasure to recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 2, 2007, on the following:

VOTED: That the Town approve a change in the name of the municipal golf course from The Brookline Golf Club at Putterham to the “Robert T. Lynch Municipal Golf Course at Putterham Meadows”.

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

Robert T. Lynch will retire on December 31, 2007 after serving the Town for 28 years. The petitioner Nancy Daly on behalf of the Board of Selectmen proposes to re-name the Brookline Golf Club at Putterham the “Robert T. Lynch Municipal Golf Course at Putterham Meadows” to honor Bob Lynch’s lifelong service and professional commitment to the Town of Brookline’s recreation programs.

DISCUSSION

Bob Lynch’s retirement is different from the retirement of most Town employees as his retirement will affect many hundreds of families in this Town. Bob was committed to enabling all community members to participate in recreational sports and he maximized athletic opportunities by securing agreements with the many private schools and institutions in our Town. Under Bob’s Leadership many of our Town’s youngest citizens were able to join soccer teams, swim teams, after school homework clubs, summer camp and so on. Bob’s philosophy

that “Everyone Gets to Play” has made a deep impact on the way all of our Town’s teams support a true team spirit.

Under Bob’s guidance the recreational programs expanded and his work at the Brookline Golf Club at Putterham enabled more residents to play and increased revenue from \$400,000 in 1991 to \$1,200,000.

The Park and Recreation Commission stated: “Bobby’s success in transforming the underutilized, underperforming golf course into a valuable community resource was even acknowledged by the New England Professional Golf Association, who recently presented him with the George S. Wemyss Award.”

The Park and Recreation Committee, as well as the Naming Committee support the re-naming of the Brookline Golf Club at Putterham to the “Robert T. Lynch Municipal Golf Course at Putterham Meadows”.

RECOMMENDATION

The Advisory Committee, by a vote of 21 in favor and 2 opposed, recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 20

TWENTIETH ARTICLE

To see if the Town will encourage the Board of Selectmen and the Advisory Committee to include in the Fiscal Year 2009 budget that is proposed to Town Meeting an appropriation to purchase equipment to make possible electronic voting at Town Meeting.

Whereas Brookline residents should readily be able to find out how Town Meeting members vote on motions considered by Town Meeting,

Whereas roll call votes at Town Meeting are rare because of the time required in conducting a roll call vote,

Whereas electronic voting technology is now available that makes it possible for Town Meeting members to use hand-held devices to record their votes and for the Moderator to display accurate vote totals instantly,

Whereas the cost of electronic voting technology is affordable,

Whereas Brookline has the capacity to administer an electronic voting system at Town Meeting,

Whereas an electronic voting system can be administered more efficiently if the projection system in the high school auditorium is upgraded,

Whereas Brookline has the capacity to display the votes cast electronically by Town Meeting members on its Web site,

Resolved: The Board of Selectmen and Advisory Committee are encouraged to include in the fiscal year 2009 budget presented to Town Meeting an appropriation to fund the purchasing of a system to permit electronic voting at Town Meeting and to permit an upgrade to projection equipment in the high school auditorium to facilitate projection of the results of electronic votes.

PETITIONER'S ARTICLE DESCRIPTION

At the Annual Town Meeting in May 2007, the Moderator's committee on Voting Technology for Town Meeting presented its final report. The committee was concerned with "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. Electronic voting is one of three methods analyzed by the committee. The other options considered were a card system and the current roll call vote system. The committee found electronic voting to be the fastest of the methods. The report included a relatively

detailed description of the anticipated working of an electronic voting system. The committee judged that electronic voting promised moderately high security. Electronic voting was estimated to have an acquisition cost of \$20,000, a modest annual maintenance cost, and some ongoing costs for administration.

The committee did not make a recommendation. Instead, the committee invited each Town Meeting member to weigh the underlying issues.

This warrant article asks Town Meeting explicitly to consider electronic voting. The petitioner is attracted to electronic voting not only because it would quickly provide an electronic record of the vote of each Town Meeting member, but that the electronic record could also be easily posted on the Town web site to make the information readily available to the public. If electronic voting can be done quickly, the petitioner believes that Town Meeting will record the votes of members on many more votes than is the case currently with the roll-call voting system that is now in place.

The warrant article also identifies a need for improved projection equipment for the high school auditorium. Administration of an electronic voting system will be much more efficient if the projection system is improved. The cost of an improved projection system is estimated to be \$8,000.

The warrant article is a resolution asking only that a budget item for an electronic voting system to be used at Town Meeting be included in the fiscal year 2009 budget that is presented at the 2008 annual Town Meeting. The resolution will be helpful to the Board of Selectmen and the Advisory Committee in preparing the FY 2009 budget.

The resolution leaves open questions about the manner in which an electronic voting system would be used. The petitioner's premise is that a sensible pattern of use of electronic voting will be developed by Town Meeting as it gains experience in using the method.

SELECTMEN'S RECOMMENDATION

Article 20 is a proposed resolution that, in the words of the Petitioner, asks Town Meeting explicitly to consider electronic voting. The issue of electronic voting at Town Meeting has been discussed twice in the recent past: the November, 2000 Special Town Meeting and the 2005 Special Town Meeting.

In 2000, the Moderator's Committee on Alternative Voting Methods was established and issued a report after nearly two years of thorough work and extensive research that requested that the Moderator employ a color-coded card recording system on a trial basis for the 2003 Annual Town Meeting. The Committee also requested that the Board of Selectmen include funds in the FY04 budget to rent an electronic group response system to be used on a trial basis at the November 2003 Special town Meeting. Neither request was implemented. Problems associated with practicality and cost interfered with the adoption of even the two trial steps proposed by the 2000-2002 Moderator's Committee.

That Committee's budget recommendation fell into the very budget cycle when the Governor implemented mid-year so-called "9C" local aid cuts. Ultimately that year, the Town experienced a \$2.7 million loss in local aid. That simply was not a year for additional budget items, particularly when the trial manual card system was not employed for the 2003 Annual Town Meeting.

Article 20 of the 2005 Special Town Meeting requested an appropriation sufficient to create an efficient and reliable electronic tabulation system to securely record all roll call votes at Town Meeting. Town Meeting voted to authorize the Moderator to appoint a committee to investigate and report to 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. At the Annual Town Meeting in May 2007, the Moderator's committee on Voting Technology for Town Meeting presented its final report.

The petitioner's proposed resolution asks that the Selectmen and Advisory Committee to include funding for an electronic voting system in the FY2009 budget. While a majority of the Board is in favor of such a system, the fiscal realities of FY09 make it impossible to promise that any funding will be included. Therefore, the Selectmen recommended changing the word "include" to "consider" in the resolve clause.

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-1 taken on October 23, 2007, on the following motion:

VOTED: That the Town adopt the following resolution:

Whereas Brookline residents should readily be able to find out how Town Meeting members vote on motions considered by Town Meeting,

Whereas roll call votes at Town Meeting are rare because of the time required in conducting a roll call vote,

Whereas electronic voting technology is now available that makes it possible for Town Meeting members to use hand-held devices to record their votes and for the Moderator to display accurate vote totals instantly,

Whereas the cost of electronic voting technology may now be affordable,

Whereas Brookline has the capacity to administer an electronic voting system at Town Meeting,

Whereas an electronic voting system can be administered more efficiently if the projection system in the high school auditorium is upgraded,

Whereas Brookline has the capacity to display the votes cast electronically by Town Meeting members on its Web site,

Resolved: The Board of Selectmen and Advisory Committee are encouraged to consider in the budget deliberations for the fiscal year 2009 budget presented to Town Meeting an appropriation to fund the purchasing or leasing of a system to permit electronic voting at Town Meeting and to permit an upgrade to projection equipment in the high school auditorium to facilitate projection of the results of electronic votes.

ROLL CALL VOTE:

Favorable Action

Daly

Hoy

DeWitt

Mermell

No Action

Allen

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 20 is a resolution that calls upon the Board of Selectmen and the Advisory Committee to include an appropriation in the fiscal 2009 town budget for the purchase of an electronic voting system that could record the votes of individual town meeting members at Town Meeting. The resolution also calls for an appropriation to fund a better projection system to display the results of electronic votes at Town Meeting. The acquisition cost of the electronic voting system would be approximately \$20,000. The petitioner estimates that the new projection system would be approximately \$8,000-10,000 and that the total capital expenditure would thus be about \$30,000.

Two Moderator's Committees have studied the issue of electronic voting in recent years.

The Moderator's Committee on Voting Technology for Town Meeting was established under Article 20 at the November 2005 Special Town Meeting. Its mandate was to report on options to record the results of Town Meeting votes without conducting a roll call vote. It delivered its report at the spring 2007 Annual Town Meeting. The committee used four criteria—time, security and assurance, cost, and “other” (e.g., procedural complications) to evaluate three different voting methods: the current roll call procedure; colored cards; and wireless electronic voting. The committee found that a state-of-the-art electronic voting system would include wireless handheld voting devices, a base station to collect the responses, and software to make the system work. Town meeting members would press buttons for “yes,” “no,” or “present” on the wireless devices. Votes would be recorded by the base unit and could be displayed at Town Meeting and posted rapidly on the Town website.

The 2005-2007 committee recognized that any electronic voting system might face issues of fraudulent voting and security. To address, these concerns it outlined a possible procedure under which each town meeting member would take an oath not to let others cast votes electronically with his or her voting device, reminders of that oath would be

displayed during electronic votes, town meeting members voting “yes,” “no,” or “present” would in turn stand while voting, and town meeting members would have an opportunity to change their own votes or to challenge votes recorded for town meeting members who appeared to have been absent during the vote.

The committee estimated that it would cost approximately \$20,000 to acquire an electronic voting system. It would require approximately four person-hours (an information technology clerk) to operate per Town Meeting session. The system would probably last 10-15 years. To restock units lost, damaged, or destroyed might cost \$1,500 every five years.

The committee did not make a recommendation and instead suggested that each town meeting member make his or her own judgment.

The Moderator’s Committee on Alternative Voting Methods, which had been created under Article 19 at the November 2000 Special Town Meeting, delivered its report to the November 2002 Special Town Meeting. It recommended that Town Meeting use color-coded cards on a trial basis for voting at the 2003 Annual Town Meeting. The committee also recommended that the Town rent an electronic voting system to be used on a trial basis at the November 2003 Special Town Meeting, but it appeared to be concerned about the cost of purchasing such a system, which was then estimated at \$68,000 or more. (The costs have fallen in recent years.)

Relatively few other governmental committees appear to use electronic voting systems. The Metropolitan Area Planning Council (MAPC) uses an audience response system and is willing to lend the technology to other groups at no charge except for the cost of staff time. A committee in Brookline—possibly the Advisory Committee—could use the MAPC system to test the feasibility of recording votes electronically.

DISCUSSION

Proposals for electronic voting raise many complicated political, administrative, technical, budgetary, and procedural questions.

Democracy, Accountability, and Recorded Votes

The case for Article 20 rests largely on the belief that representatives who are elected democratically should make their voting decisions available to the public as much as possible. Proponents of an electronic voting system for Town Meeting argue that it would advance a clear objective of democratic governance—making elected representatives more accountable to the public. By providing information on many, although not necessarily all, votes taken at Town Meeting, electronic voting would give the public more information, help voters to make informed choices, and make town meeting members more accountable to their constituents.

At present, very few Town Meeting votes are recorded and made available to the public, because roll call votes are time-consuming (twenty minutes on average). It is thus very difficult to determine how town meeting members have voted on various issues. If votes could be recorded electronically, Town Meeting probably would record more of its votes

and these votes could be posted on the town website. Residents of Brookline could then determine how their town meeting members were voting. At a time when turnout and interest in Brookline local elections seems to be low and falling, the availability of recorded votes might stimulate more political awareness and activity.

Skeptics of the notion of the inherent democratizing power of electronic voting argue that specific votes by a town meeting member can (and have) been taken out of context and used unfairly by that town meeting member's critics or political opponents. Proponents counter that the principle that elected representatives should reveal their votes to their constituents is well established and that the Board of Selectmen and state and federal legislatures record their votes. However, town meeting members are volunteers, and town meeting members, unlike members of Congress, do not have easy access to the media to defend their voting records or explain a nuanced vote. And, interested citizens often find out how their town meeting members have voted or how they stand on issues, even in the absence of recorded votes.

Practical and Technical Issues

The kind of electronic voting system that is available now might be vulnerable to technical failures and human error. Many members of the Advisory Committee believe that any electronic voting system may involve practical problems in addition to the security and fraud/accuracy issues discussed in the Moderator's Committee report. Town meeting members may forget to bring their voting devices to Town Meeting. The devices may fail to operate properly. Batteries may need to be replaced. Some stated that they would not like to see electronic voting replace the time-honored tradition of roll call votes in all circumstances. It was also questioned whether the cost of the system and the possible procedural and administrative difficulties might not exceed the benefit of being able to record the results of a vote almost immediately.

Town Clerk Patrick Ward, who would have to implement any electronic voting system, has noted that the clear benefit of an electronic voting system would be to "memorialize" the votes cast by town meeting members so that they would be available to the public. Potential security issues, such as the possibility that town meeting members would give their electronic voting devices to friends or family members to use, would have to be addressed. Perhaps devices could be distributed at Town Meeting. The system also would mean the Town would have to spend money on back-up devices, tech support, and a part-time person to operate the system. Despite these difficulties, the town clerk believes that an electronic voting system could be efficiently managed at Town Meeting.

It is not clear whether an electronic voting system would function with a high degree of reliability. If the system were to break down and fail to record votes correctly, however, Town Meeting could easily rely on existing methods of recording an accurate vote—including standing and roll call votes. Moreover, on any given vote, requiring town meeting members to stand as they cast their votes with their electronic devices, would quickly make clear whether the vote totals recorded electronically were approximately accurate. Thus there would be a relatively low risk that the electronic system would record inaccurate vote totals. Individual town meeting members would be responsible for

confirming the accuracy of their individual votes within the challenge period and would have strong incentives to do so.

Fiscal Concerns

At a time when Brookline faces a large projected deficit for fiscal year 2009, any proposed new expenditures should be scrutinized carefully. Proponents of Article 20 point out that the \$30,000 estimated cost of an electronic voting system is small in comparison to the overall budget. Moreover, it is a capital expense, not an annual appropriation for the operating budget. In addition, a new projection system often would be useful at Town Meeting and would not be used only to display votes cast electronically. On the other hand, \$30,000 may be too much to spend if the benefits of recording votes electronically are not significant. Town Meeting has not “test driven” a system in order to gauge whether to commit to a particular technology’s use. It is also possible that the system would not last 10-15 years. New technologies often become obsolete rapidly and need to be replaced. The software used to operate the system might have to be upgraded frequently. The voting devices might fail or be lost more frequently than expected, which would require replacing the devices often and make the life-cycle cost higher. And there would be some annual operating expenses, because someone would have to be hired to operate the system at Town Meeting.

Procedural Questions

Electronic voting also raises some complicated procedural questions. If Town Meeting ultimately votes to acquire and use an electronic voting system, it and/or the moderator would need to address a number of procedural issues.

- When should the electronic voting system be used? For all votes? For substantive—but not procedural—votes? When a certain number of town meeting members requests?
- Would Town Meeting be required to record some or all of its votes or would it decide on a case-by-case basis on each vote?
- Would roll call votes still take place in some circumstances?
- Would town meeting members have the opportunity to change their votes after seeing the results of their electronically cast votes displayed?
- Would Town Meeting be able to challenge the result of an electronic vote and, for example, request a roll call vote if they believed that a technical failure had taken place?

These and other potential procedural issues are not addressed in Article 20, but they should be discussed and resolved if Brookline decides to acquire an electronic voting system.

November 13, 2007 Special Town Meeting
20-8

RECOMMENDATION

By a vote of 13 in favor, 7 opposed, and 1 abstention, the Advisory Committee recommends NO ACTION on Article 20.

XXX

ARTICLE 21

TWENTY-FIRST ARTICLE

To see if the Town will adopt the following Resolution:

A Resolution in Support of the Taking of Certain Land Adjacent to the Hoar Sanctuary in Order to Preserve the Town's Natural Resources and Open Space

WHEREAS, the Hoar Sanctuary is one of the last remaining tracts of undeveloped land in Brookline, is home to a significant number of species of wildlife and vegetation and contains valuable wetlands;

WHEREAS, the Hoar Sanctuary is an invaluable natural resource and educational treasure utilized by students at the adjacent Baker School and wildlife enthusiasts including birdwatchers, there being a significant number of avian species in the sanctuary;

WHEREAS, Town Meeting last year amended the town's Wetlands Protection By-law by expanding "Buffer Zones" around wetlands from 100 feet to 150 feet with the intention of preserving a buffer between development and wetlands to protect wetlands such as those in the Hoar Sanctuary from encroaching development;

WHEREAS, the end of Princeton Road nearest the Sanctuary is only partially paved with the portion closest to the Sanctuary consisting of an unpaved "paper road;"

WHEREAS, two undeveloped parcels, one on either side of the "paper road" portion of Princeton Road, abut the Sanctuary and its wetlands, are within the Buffer Zone which protects the Sanctuary and its wetlands and are owned by residents who live in homes adjacent to these parcels;

WHEREAS, one of these residents has applied for permits to develop one of these parcels, the majority of which lies within the Buffer Zone now protecting the Sanctuary and proposes developing the parcel into a large private residence which will entail the cutting down of majestic trees, the blasting of ledge and the paving of Buffer Zone forest causing untold permanent harm to the Sanctuary and the wildlife which takes refuge there;

Therefore, Be It Resolved that Town Meeting requests the Board of Selectmen to appoint a committee for the purpose of exploring the taking by eminent domain of the two parcels of private property abutting the Hoar Sanctuary at the end of Princeton Road for the purpose of maintaining these parcels as public open space and preserving the Buffer Zone and the Hoar Sanctuary which it protects and reporting back to the Board of Selectmen within one hundred twenty (120) days with a report and recommendation on how best to effectuate a taking of these parcels by eminent domain, which report and recommendation is to be made available to the public.

PETITIONER'S ARTICLE DESCRIPTION

The Hoar Sanctuary, named after the family which donated this large undeveloped wooded and wetlands area for the purpose of preserving this priceless natural resource and open, undeveloped space, is perhaps the last such wildlife refuge in the Town of Brookline. The Sanctuary is home to innumerable species of wildlife. It is home to a vast array of birds and the last known refuge for certain species of amphibians which depend upon the Sanctuary's wetlands. Importantly, the Sanctuary has become home to animals such as foxes, wild turkeys and the like which have been displaced by the ever increasing development of every square inch of developable space in Brookline. The Sanctuary is also an educational treasure utilized by students in our community. Natural resources and open space such as this, once lost, can never be regained. Even if land can be reacquired, once developed, it is never the same. Wetlands cannot be simply restored. The development proposed for the buffer zone to the Sanctuary by a Princeton Road resident, will result in the cutting down of majestic trees which took hundreds of years to grow, the blasting of ledge which exists throughout this area and the paving of ground, all resulting in a harmful and irremediable change in the environment of the Sanctuary. The term "buffer zone" is actually a misnomer under our town's Wetlands By-Law. It is simply a zone in which development cannot take place absent review by the Conservation Commission. It is not, as the term implies, a zone in which development is prohibited. Thus, the protections afforded by such zones can be eroded by development such as that proposed on the border of the Hoar Sanctuary. To create a true Buffer Zone for the Hoar Sanctuary, the town must acquire this land to insure that it can never be developed and threaten the Sanctuary and its wildlife inhabitants. Of course, the Town must compensate the owners of these properties for this "taking." However, this is a small price to pay for protecting the treasure which is the Sanctuary for all Brookline residents for all time.

The purpose of this article is to explore the options for preserving this natural resource through the process of eminent domain including a determination of the cost of such an undertaking and how best to effectuate it. Since budget items are scheduled for the regular town meeting in the spring, this article is in the form of a resolution to have a committee formed to determine the necessary facts and process and report back in time for an appropriate appropriations warrant article in the spring.

SELECTMEN'S RECOMMENDATION

Article 21 proposes the formation of a committee to explore the options for preserving natural resources on a two specific pieces of property through the process of eminent domain including a determination of the cost of such an undertaking and how best to effectuate it. Since budget items are scheduled for the regular town meeting in the spring, this article is in the form of a resolution to have a committee formed to determine the necessary facts and process and report back in time for an appropriate appropriations warrant article in the spring

The two parcels of land that were the target of Article 21 directly abut D. Blakely Hoar Sanctuary. One of these parcels of land was the subject of a warrant article as it related to

an easement during the 2007 Town Meeting. The matter of the easement was referred to the Conservation Commission with a requirement to report back to Town Meeting in the Fall of 2007 on the issue.

The Conservation Commission conducted an extensive review process on the project during the summer months of 2007, and a report to Town Meeting has been submitted detailing this process. At the conclusion of this process the Conservation Commission determined this project as modified would have no adverse impact to the bordering wetland resource areas and voted unanimously to issue an Order of Conditions that allows the project to proceed. This Order of Conditions was issued on September 11, 2007 and includes 53 separate conditions the applicant must follow to construct the project.

The Selectmen are cognizant of the need to preserve and protect open space in Brookline. The Board also feels the issue of protecting the lands adjacent to our sanctuaries is one that has been raised in the 2000 and 2005 Open Space plans and the Comprehensive Plan, and is one of significance for the community. There is concern Article 21 narrowly defines the issues and opportunities surrounding open space protection in Brookline.

After reviewing these facts and hearing from the petitioner and the Conservation Commission, the Boards believes the most appropriate approach would be to form a Selectman's Committee who would study this issue in a comprehensive fashion. At their October 16, 2007 session, the Board voted to form the committee as follows:

VOTED: That the Board of Selectmen appoint a Committee to study ways in which the Town may protect town-owned sanctuaries and conservation lands, particularly with respect to the buffer areas surrounding those lands. The Committee shall comprise of one Selectman, Town Counsel or her designee and five additional members to be selected by the Board of Selectmen. The Committee shall be appointed as soon as reasonably practicable and shall begin its review with the areas surrounding the Hoar Sanctuary.

Therefore, the Selectmen recommend the following referral by a vote of 5-0 taken on October 16, 2007.

VOTED: To refer Article 21 to the Selectmen's Committee on Sanctuaries.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The petitioners propose that Town Meeting, by resolution, request that the Selectmen establish a committee to examine the taking by eminent domain of private property abutting Hoar Sanctuary. Hoar Sanctuary is a unique conservation land in South Brookline. One of the neighbors abutting the Sanctuary has filed plans to construct a

house on a parcel adjacent to the conservation land.

In the words of the petitioners, “The purpose of this article is to explore the options for preserving this natural resource through the process of eminent domain including a determination of the cost of such an undertaking and how best to effectuate it. Since budget items are scheduled for the regular town meeting in the spring, this article is in the form of a resolution to have a committee formed to determine the necessary facts and process and report back in time for an appropriate warrant article in the spring.”

This particular area of the town has been the subject of an article recently before Town Meeting. The subject of the town accepting an easement for a road extension “turn-around” abutting Hoar Sanctuary was discussed at the Spring 2006 Town Meeting. During the discussion at that Town Meeting it was revealed that not all of the neighbors were consulted about the potential removal of many mature trees and that the Conservation Commission had not recently evaluated potential impacts of the proposed turn-around which was located, in part, in the wetland buffer zone. As a result, Town Meeting referred the matter to the Conservation Commission to evaluate the potential harm to Hoar Sanctuary and to report back to Town Meeting.

DISCUSSION

Tom Brady, the Town’s Tree Warden and Conservation Administrator, noted the activities undertaken by the Conservation Commission. A Notice of Intent was filed by the owners of the lot abutting the wetland, and the Conservation Commission issued an order of conditions requiring changes in the construction plans so that any construction will have less impact on wetlands. For example, the orders require that the house be moved back from the Sanctuary, and the driveway must be reduced in size. A blasting plan review will be required by the Conservation Commission. In addition a conservation restriction explicitly protecting the mature trees at the border of a lot near the Sanctuary was imposed. The Conservation Commission felt that this conservation restriction and the orders of conditions provided adequate protection to the wetlands. However, the petitioners were skeptical and felt that the builder might not obey the restriction. When the trees were cut, it would be too late.

Timing was problematic. The resolution proposed a study be undertaken by a Selectmen’s committee to be established after the Fall Town Meeting, that this committee hold public meetings, and then file a recommendation to the Spring Town Meeting. Members of the Advisory Committee felt that there was insufficient time to meet this schedule, and suggested that the petitioners ask the Selectmen to establish the committee as soon as possible, before the Fall Town Meeting. The petitioners felt that time was short, since permits for construction of the new house have already been applied for. While the Conservation Commission has recently issued an order of conditions, it was felt that trees might be cut down soon since the land in question was private property. During the discussion it was pointed out that the “turn around easement” referred to by the Conservation Commission at the Spring Town Meeting must still be passed by Town Meeting.

Tom Brady stated that the Conservation Commission needs to consider the larger issue and evaluate all available tools in order to develop proper protocols and guidelines

involved in acquiring land by taking. The Conservation Commission's main role is the enforcement of the Massachusetts Wetlands Protection Act and the Brookline Wetlands By-Law. A member of the Conservation Commission commented that any request of the Town by the Commission for funds to purchase open space must be studied thoroughly since funds are so short. Instead the Conservation Commission would rather study a number of similar parcels throughout the town as a whole and evaluate how the expenditure of any available funds should be prioritized. Without a town-wide study, the Commission couldn't be sure that the Hoar Sanctuary was the highest priority.

The petitioner responded that immediate protection of this open space was of the essence because of imminent felling of irreplaceable trees. Waiting for a Town-wide study may put significant parcels in jeopardy. The Hoar Sanctuary is very important to South Brookline and to the Town as a whole, is constantly used by the schools, and it is under potential danger at this time.

Tom Brady noted that the third "whereas" in the proposed resolution is not correct, because it does not accurately reflect the reasons that he expounded for the changes in the wetlands bylaw. The petitioner said that if that was an error, it would fine to strike it from the article.

The Advisory Committee initially voted to table the article by a vote of 15 – 0 in order to see if the Selectmen would create a study committee. The Selectmen subsequently did propose the formation of a committee, the SANCTUARY STUDY COMMITTEE, to study the ways in which the Town could best protect town-owned sanctuaries.

On motion, it was unanimously,

VOTED: That the Board of Selectmen appoint a Committee to study ways in which the Town may protect town-owned sanctuaries and conservation lands, particularly with respect to the buffer areas surrounding those lands. The Committee shall be comprised of one Selectman, Town Counsel or her designee and five additional members to be selected by the Board of Selectmen. The Committee shall be appointed as soon as reasonably practicable and shall begin its review with the areas surrounding the Hoar Sanctuary.

RECOMMENDATION

The Advisory Committee then reconsidered Article 21 and voted to refer the subject matter of Article 21 to the Committee established by the Selectmen to study ways in which the Town may protect town-owned sanctuaries and conservation lands.

By a unanimous vote of 20 in favor, 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 adopt the following Resolution:

A Resolution by the Town of Brookline To Support Tax Exemptions and Incentives Legislation for Certain Property Owners Using Wind and Solar Power

Whereas, tax exemptions are a well used and successful means to encourage individual actions that will benefit the entire community, state, and society as a whole;

Whereas, it is necessary under the Massachusetts Constitution and Massachusetts General Laws for the state to permit a community to adopt a local option to accept tax exemptions for certain homeowners;

Whereas, the purpose of this credit or exemption would be to benefit society because of the resulting reduction in reliance on carbon fuels such as coal, oil and gas which harm our climate and our environment;

Therefore, be it resolved, that the Town of Brookline is committed to supporting the use of alternative energy sources and encourages the Board of Selectmen to promote such policies locally and to contact Brookline's State Representatives to encourage state-wide legislation giving Brookline and other municipalities a local option to provide certain real estate tax exemptions and/or credits for property owners installing solar or wind-powered devices.

PETITIONER'S ARTICLE DESCRIPTION

Existing federal and state tax credits are available under current tax laws for purchase and installation of alternative energy equipment. However, there is no option at the local level to allow municipalities to encourage development of alternative energy sources.

Massachusetts General Laws authorize municipalities, by a vote of the city council or town meeting, to adopt annually real estate tax exemptions. Brookline town meeting annually votes for real estate tax exemptions for real estate owned by the elderly, a surviving spouse with a child, the blind, or veterans.

This article requests the Board of Selectmen to ask Brookline's State Representatives to submit legislation that would allow the Town and other municipalities to adopt tax exemptions or credits for the purchase cost of any new solar or wind-powered device. (The increased value of a home for solar and wind-powered devices is already exempt from increased valuation.)

Just as a goal of the Patrick administration is to develop Massachusetts as a leader in alternative energy by promoting the use of clean and renewable energy, this resolution

will encourage support for a local option that would allow municipalities to complement these state sustainability goals at the local level by providing real estate tax exemptions or credits to owners utilizing such energy sources. Ideally, this local tax exemption would be adjusted annually for inflation.

For example, if a homeowner spent \$20,000 on a new photovoltaic or solar hot water system, the net cost after tax credits would be calculated as follows:

Purchase/installation cost	\$20,000
Federal tax credit (lesser of 20% of cost, or \$2,000)	-2,000
State tax credit (lesser of 20% of cost, or \$1,000)	<u>-1,000</u>
Net cost before local option tax abatement	\$17,000
Local option real estate tax exemption (draft legislation)	<u>-2,000*</u>
Net cost	\$15,000

* a level of \$2,000 is used in this example because this would likely be a reduction of an itemized deduction (as opposed to a tax credit) for federal individual income taxes, and therefore the financial advantage would be reduced by the taxpayer's tax bracket.

The homeowner would have to apply to the assessor for this abatement. This option would be available annually, if authorized by a vote of Town Meeting.

SELECTMEN'S RECOMMENDATION

Article 22 is a petitioned article that asks Town Meeting to adopt a resolution in support of state-wide legislation giving Brookline and other municipalities a local option to provide real estate tax exemptions for property owners installing solar or wind-powered devices. This Board understands the issues surrounding climate change and has been supportive of initiatives to promote a cleaner and greener environment. The approach the petitioner has taken to help foster more clean energy use is yet another example of Brookline leading the way in an important policy issue. A coordinated state-wide approach using property tax incentives is a creative strategy that could help in the effort to reduce dependence on fossil fuels.

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-1 taken on October 23, 2007, on the modified language offered by the Advisory Committee.

ROLL CALL VOTE

Favorable Action

Daly
Hoy
DeWitt
Mermell

No Action

Allen

ADVISORY COMMITTEE'S RECOMMENDATIONBACKGROUND

Motivated by a concern for the environment and the need to reduce our burning of fossil fuels, which produces greenhouse gases, this Article is a resolution that calls for the following actions:

- That the Town support the use of alternative energy sources.
- That the Board of Selectmen promote such policies.
- That our State delegation initiate state-wide legislation giving municipalities the local option to provide property tax incentives for the installation of solar or wind-powered devices.

Currently there are federal and state tax incentives available for solar and wind installations, but no local incentives. The petitioner envisions local incentives along the lines of those voted every year by Town Meeting for veterans, the disabled, and others.

Benefits to the property owner and costs to the Town cannot be known precisely without the specifics of actual legislation, but two hypothetical calculations give some flavor of the possible impact of this Article. For the property owner, a \$20,000 installation, reduced to \$17,000 by federal and state incentives, could be reduced another \$2,000, to a net cost of \$15,000, improving the payback period of the project.

On the Town side, one guestimate by the petitioner posits 20 installations per year. A \$2,000 property tax reduction per installation translates to an annual cost to the Town of \$40,000.

DISCUSSION

There was general agreement that if tax incentives are offered, they should not be limited to just solar and wind devices, but should also include other alternative technologies, such as geothermal. This point was incorporated in new language for the resolution, along with some modifications to make the language more consistent. The amended version is found below as the Advisory Committee's motion, and has the support of petitioner.

Several questions were raised, not necessarily in opposition to the Resolution, but more in the spirit of exploring the implications of such legislation.

- Might it not be better to pay for such a program as a Town budgetary expense rather than as a tax rebate?
- Given modern zoning ordinances, are wind turbine installations realistic?
- Would an installation on a McMansion be entitled to the same tax reduction as an installation on a more modest building? (Yes.)
- Would condo owners be at a disadvantage under such a program?

In reference to wind installations, it was pointed out that this is meant to create statewide legislation: while many communities would not find such structures appropriate, there are some that would, especially along the coast and in the Berkshires.

RECOMMENDATION

A minority of the Advisory Committee opposed this Resolution, for a variety of reasons. There was concern that the Resolution constituted a piecemeal approach to climate change: the Town should first develop a comprehensive approach. Similarly, there were also questions about how the Town would administer any such program.

There were also questions raised as to the necessity of such a local incentive. Opponents identified three existing mechanisms: federal and state incentives, efficiency rebates from NSTAR, and the fuel savings inherent in any such installation. These should be enough, they say, to obviate the need for additional local incentives.

A majority of the Advisory Committee were persuaded that this Resolution deserves support. While acknowledging the validity of some of the questions raised, it was felt that they could be worked out in the details of the resulting state legislation or by the Selectmen in the design of any subsequent program.

More importantly, this Resolution was seen as a modest, reasonable attempt to do something at the local level in response to the crisis of climate change, and as such is worthy of support.

Concern with the ambiguity of the phrase "Clean energy sources" inspired a motion to change it to "non-fossil based energy generation." A majority of the committee, however, preferred the original language, and the motion was defeated by a vote of 7-9-3.

By a vote of 13-6-1, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town adopt the following Resolution:

**A Resolution by the Town of Brookline To Support Real Estate Tax
Incentives Legislation for Property Owners Using Wind, Solar, and/or Other Clean
Energy Sources**

Whereas, real estate tax incentives are a well used and successful means to encourage individual actions that will benefit the entire community, state, and society as a whole;

Whereas, it is necessary under the Massachusetts Constitution and Massachusetts General Laws for the state to permit a community to adopt a local option to accept real estate tax incentives for property owners;

Whereas, the purpose of these real estate tax incentives would be to benefit society because of the resulting reduction in reliance on carbon fuels such as coal, oil and gas which harm our climate and our environment;

Therefore, be it resolved, that the Town of Brookline is committed to supporting the use of alternative energy sources and encourages the Board of Selectmen to promote such policies locally and to contact Brookline's State Representatives to encourage state-wide legislation giving Brookline and other municipalities a local option to provide real estate tax incentives for property owners installing solar, wind, and/or other clean energy sources.

XXX

ARTICLE 23

TWENTY-THIRD ARTICLE

To see if the Town will adopt the following resolution:

A Resolution Supporting Statewide Legislation to Encourage the Purchase of Fuel-Efficient Vehicles

RESOLVED: That the Town of Brookline supports Statewide legislation to encourage the purchase of fuel-efficient vehicles and/or discourage the purchase of fuel-inefficient vehicles, such as, but not limited to, Massachusetts bills H. 3027, H. 3067, S. 1772, S. 2080, S. 2082, California Assembly Bill No. 493, and/or New York State Assembly Bill No. A09003. Such legislation may make use of a sales tax, automobile excise tax, state gas tax, point-of-sale fee, rebate or other incentives or disincentives.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In May 2007, Town Meeting passed a Resolution calling for the creation of a Selectmen's Committee, tasked with creating state legislation as described above, to be submitted within 90 days. The Committee is off to a good start, but due to the difficulty of meeting during the summer months, it will require some additional time to formulate specific legislation. This Resolution is meant to be a place holder, which will allow a more specific motion to be presented to the 2007 Fall Special Town Meeting.

SELECTMEN'S RECOMMENDATION

Article 23 is a proposed resolution in support of the filing of proposed legislation drafted by the Selectmen's Committee on Clean Cars. If Town Meeting votes to approve this article, the Town will ask the State Legislature to consider passing this legislation, which seeks to encourage the purchase of fuel-efficient vehicles and discourage the purchase of fuel-inefficient vehicles by requiring that the Executive Office of Energy and Environmental Affairs (EOEEA) establish a schedule of clean vehicle rebates and emission surcharges for all new motor vehicles. If the State adopts the draft legislation, it would apply to all 2011 model year vehicles purchased after July 1, 2010.

The Board recognizes that the problems of climate change and air pollution have an adverse impact on residents here in Brookline and around the world. Improving vehicle fuel efficiency has long been understood to be an effective way to reduce the vehicular contribution to greenhouse gas emissions. The Board feels that the draft legislation can be implemented at the State level and will allow for easier implementation by the

EOEAA and the Registry of Motor Vehicles (RMV). The Board also supports the concept of “feebates” which are generally thought to be a more efficient way of producing the desired outcome of reducing greenhouse gas emissions rather than imposing a tax on fuel-inefficient vehicles. The program is revenue neutral as the surcharge on fuel-inefficient vehicles would serve as the funding mechanism for the rebate program. The proposed legislation includes a maximum rebate and surcharge of 10%. The amount of the rebate or surcharge would be known to the consumer at the time of the sale and would be displayed on the purchase receipt and sale contract or lease agreement.

The Board thanks the Selectmen’s Committee on Clean Cars for their good work. Their work is another example of Brookline’s continued commitment towards reducing greenhouse gas emissions. The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 23, 2007, on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

A vote at the Annual Town Meeting in May 2007 led to the establishment of the Selectmen’s Committee on Clean Cars (CCC). The CCC has drafted statewide legislation that would address issues involving fuel efficiency of automobiles. Article 23 asks that the Town adopt a resolution in support of the proposed legislation to encourage the purchase of fuel-efficient vehicles. If the State adopts the legislation, it would apply to all 2011 model year vehicles purchased after July 1, 2010.

DISCUSSION

About 27% of all global warming gas emissions in the U.S. come from transportation. This is the second largest source of global warming gas emissions in the U.S., the largest source being energy generation. By buying fuel-efficient vehicles today, consumers can begin reducing global warming gas emissions and can help to minimize the effects of global warming.

The CCC has attempted to address this problem by drafting legislation to be enacted on a statewide level. They looked at several economic incentive mechanisms that might be used – excise tax, sales tax, gas tax, rebates and fees. The CCC felt that use of “feebates” would have the best chance of success. The simple concept of feebates is to charge fees and surcharges on bad automobiles and provide rebates on good ones.

Current bills before the Legislature use state monies to pay for incentives. Feebates is a point of sale mechanism; it is revenue neutral and simple. Consumers will see an immediate impact on the price of their new automobile. This plan is market driven. It provides choice for consumers by rewarding the best, punishing the worst and having a large neutral zone. The CCC believes that feebates are generally a more efficient way of promoting greater fuel efficiency and other socially desirable outcomes than traditional taxes and fees.

The Advisory Committee was told that the program determines the rebate for each model automobile as a percentage of the manufacturer's suggested retail price. The percentage assigned to a vehicle is a function of the greenhouse gas emissions rating of the vehicle. The proposed legislation includes a maximum rebate and surcharge of 10%. There are only two models (the best and the worst) that would qualify for the full 10%. The proposed program establishes a zero band (20 – 25% of all automobiles sold) for which there would be no rebate or surcharge.

The CCC told the Advisory Committee that the Executive Office of Energy and Environmental Affairs would administer the program and that it would be self financing.

RECOMMENDATION

The Advisory Committee commends the CCC for its efforts to address the serious issue of global warming. Most members of the Committee expressed support for the Resolution and proposed legislation. Those in opposition noted that most everyone would choose to purchase a fuel-efficient vehicle if possible and practical. Some people, however, may be limited in their choice of vehicle for various reasons such as finances and space needs.

Applying an incentive/disincentive system at the state level has a much more significant impact than attempting it only locally. A “feebate” approach is a clever way of structuring a revenue neutral State program.

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

VOTED: That the Town adopt the following resolution:

RESOLVED: That the Town supports the filing of the following general legislation to encourage the purchase of fuel-efficient vehicles and discourage the purchase of fuel-inefficient vehicles:

AN ACT to promote the REDUCTION OF GREEN HOUSE GAS EMISSIONS AND TO REDUCE THE USE OF FOSSIL FUELS FOR VEHICLES in the Commonwealth

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 6. Chapter 25A of the General Laws is hereby amended by inserting after Section 12 the following new section:

SECTION 13. Clean Vehicle Incentive Program

One. Definitions: For the purposes of this chapter the following words shall have the following meanings:—

(a) “Carbon dioxide equivalent” means a metric, as determined by the Executive Office

of Energy and Environmental Affairs (EOEEA), used to compare or identify the emissions from various greenhouse gases based upon their global warming potential derived by multiplying the tons of the gas by the associated global warming potential.

(b) "Global Warming Potential" means a measure of the relative radiative effect of a given substance compared to carbon dioxide, integrated over a time horizon of 100 years, as determined by the most recent Assessment Report from the United Nations Intergovernmental Panel on Climate Change.

(c) "Greenhouse gas factor" means a percentage, as determined by EOEEA, assigned to carbon dioxide equivalent emissions per mile from a motor vehicle. At the discretion of the EOEEA, this may be expressed in percentage divided by grams of carbon dioxide equivalent per mile (%/g CO₂ -eq/mi).

(d) "Greenhouse gases" means carbon dioxide, hydrofluorocarbons, methane, oxides of nitrogen, perfluorocarbons, and sulfur hexafluoride, and any other gases that the EOEEA determines contributes significantly to global warming.

(e) "Motor vehicle" and "vehicle" means a passenger vehicle, light-duty truck, or any other vehicle that is required to be registered under Chapter 90 Section 2 of the General Laws.

(f) "Program" means the Clean Vehicle Incentive Program established pursuant to this act.

(g) "Zero band" means that portion of a linear scale of rebates and surcharges in which vehicles are assigned neither a rebate nor a surcharge.

Two. No later than July 1, 2009, the EOEEA, in consultation with those other agencies that it determines are appropriate, shall adopt regulations to create and implement a clean vehicle incentive program as described in this act and thereafter it shall administer this program.

(a) The regulations shall establish a schedule of clean vehicle rebates and emissions surcharges for all new motor vehicles sold after July 1, 2010.

(b) The schedule of rebates and surcharges shall take effect July 1, 2010, and shall apply to motor vehicles with the 2011 model year and each model year thereafter.

Three. The EOEEA shall calculate, using a linear scale, the rebate or surcharge to be applied to any motor vehicle subject to the program based on the vehicle's emissions of greenhouse gases, compared to the greenhouse gas emissions of all vehicles of the same model year that are subject to the program. To calculate the rebate or surcharge, as a percentage of the Manufacturer's Suggested Retail Price (MSRP), the EOEEA shall determine the difference between a motor vehicle's emissions of greenhouse gases, and the average emissions of greenhouse gases of all vehicles subject to the program, for a given model year. The difference identified for each vehicle based on emissions of greenhouse gases shall be multiplied by a greenhouse gas factor, to determine the rebate or surcharge percentage attributed to emissions of greenhouse gases. This percentage shall be multiplied by the vehicle's MSRP to determine the value of the rebate or surcharge. Based on these calculations the EOEEA shall assign a rebate or surcharge to every motor vehicle subject to this program that reflects its relative emissions of greenhouse gases, compared to all vehicles for the same model year that are subject to the program, and subject to all of the following:

(a) The EOEEA shall establish a zero band that includes the midpoint of the linear scale and includes not less than 20 percent, nor more than 25 percent, of the fleet of a given

model year. Motor vehicles that fall within the zero band shall not be assigned a rebate or a surcharge. The zero band shall be designed, placed, and adjusted along the linear scale to ensure that vehicle buyers continue to have a variety of choices among multiple vehicle types, including light trucks, that are not assigned a surcharge.

(b) The schedule of rebates and surcharges shall be designed to ensure that the program will be self-financing and will generate adequate revenues to do all the following:

- (1) Fund the cost of all rebates and surcharge refunds associated with the program.
- (2) Fund all administrative costs associated with the program.
- (3) Provide for a reserve within the program equal to approximately 15 percent of estimated rebates to ensure the account, to the extent possible, will have a positive balance at the end of each fiscal year.

(c) Once the schedule of rebates and surcharges are set for vehicles in a specified model year, the schedule may be adjusted no more than once per model year to meet the requirements of this section. Any adjustments pursuant to this section shall become operative on the first day of the first month that commences at least 90 days after the EOEEA formally adopts the adjustment to the schedule.

(d) The EOEEA shall make annual adjustments to the schedule of surcharges and rebates, and the placement of the zero band, based on recent and anticipated changes in motor vehicle sales to ensure that the program continues to generate adequate revenues to meet the requirements of this section.

(e) The schedule of rebates and surcharges, as adjusted annually, shall take effect no earlier than July 1 of each subsequent year, and be applied to new vehicles of the next model year accordingly.

(f) The maximum rebate and surcharge shall be 10%.

Four. The rebates and surcharges adopted under this section by the EOEEA shall be assigned to the price of the motor vehicle after applicable taxes have been added. Sales taxes shall not have an effect on the assigned rebate or surcharge. Any Massachusetts resident who purchases a new motor vehicle at a retail sale in Massachusetts shall receive a clean vehicle rebate for the purchase on or after July 1, 2010, of a new motor vehicle of model year 2011 or later, determined by the EOEEA to be eligible for a rebate in the amount assigned by the EOEEA pursuant to regulations adopted under this act.

(a) The dealer shall clearly display on the vehicle the amount of the rebate or fee owed, and indicate the amount on the purchase receipt and sales contract or lease agreement as applicable for each vehicle available for sale or lease at the dealership.

(b) In order to receive the rebate, the motor vehicle owner shall file a claim through the dealer at the time of purchase.

(c) The dealer shall facilitate and accept these claims from the new motor vehicle owner and shall submit these claims to the Registry of Motor Vehicles (RMV) on a form prescribed by the EOEEA.

(d) Any Massachusetts resident who purchases a new motor vehicle outside of the state that would otherwise have been subject to an emissions surcharge shall pay the surcharge when the resident returns to Massachusetts with the vehicle within 90 days and registers or is required to register the motor vehicle.

(e) The surcharge shall be paid to the RMV at the time of the vehicle's initial registration. The EOEEA and the RMV shall cooperate to develop procedures to implement the Program.

(f) Vehicles purchased outside of Massachusetts shall not be eligible for a rebate.

(g) Any Massachusetts resident who leases from a dealer a new motor vehicle, otherwise subject to an emissions surcharge, for a term of one year or more, shall be assessed and shall pay the surcharge, but may amortize the surcharge over the life of the lease. Any Massachusetts resident who leases from a dealer a new motor vehicle, otherwise subject to a rebate, for a term of one year or more shall qualify for and receive the rebate.

(h) The RMV shall collect all surcharges and pay all rebates assessed under this section.

(i) Not later than May 1, 2010, the EOEEA shall make available to the public the schedule of rebates and surcharges applicable in the fiscal year following their publication. The updated schedule shall be made available to the public at the time when it is updated.

(j) The EOEEA shall disseminate information to dealers and consumers about the program.

(k) The EOEEA may regularly collect adequate data from motor vehicle manufacturers to calculate a vehicle's emissions of greenhouse gases to carry out the provisions of this act. This act does not require the board to conduct additional vehicle testing to make the determinations required by this act.

(l) In adopting regulations pursuant to this section, the EOEEA shall determine a manner to account for vehicles that run on an alternative fuel.

XXX

ARTICLE 24

TWENTY-FOURTH ARTICLE

Reports of Town Officers and Committees

**Report to the 2007 Special Town Meeting
From the Brookline Conservation Commission
On Article 12 of the 2007 Annual Town Meeting**

Article 12 of the 2007 Annual Town Meeting requested a vote to accept an easement on private land behind 150 Princeton Road so that the road could be extended to provide access to this private parcel which is designated Lot 2, 150 Princeton Road. The owner of the residence at 150 Princeton Road is proposing to develop Lot 2, which also lies immediately adjacent to the Town's D. Blakely Hoar Sanctuary. At the Annual Town Meeting it was observed that the proposed residential construction on Lot 2, including the extension of the roadway, was the subject of a pending proceeding before the Brookline Conservation Commission under state and local wetlands laws. Town Meeting referred the matter to the Conservation Commission with the charge to report back upon the completion of the review process. That process is now complete. This report describes the Commission's regulatory actions, as well as some policy considerations regarding the extension of the Princeton Road and the proposed development of Lot 2.

The Conservation Commission is charged with administering and applying the Massachusetts Wetlands Protection Act and the Brookline Wetlands Bylaw. On April 30, 2007, the Commission received a Notice of Intent filing that proposed extending Princeton Road and constructing a single family house within the buffer zone of wetland resource areas which are subject to protection under both the Massachusetts Wetlands Protection Act and the Brookline Wetlands Bylaw. Some of these resource areas are located within the Hoar Sanctuary and some are on Lot 2 itself. The buffer zone is an area which borders a protected wetland area and functions as a zone of scrutiny. Activities that alter land within the buffer zone must be reviewed and approved by the Conservation Commission. Here the applicant was required to demonstrate that the work and alterations proposed would have no adverse impact on the wetland resource areas from which the buffer zone extends.

During the course of its review the Conservation Commission held five public hearings and two additional public meetings. Approximately thirty concerned residents attended the hearings. The Commission also conducted a site visit with the applicant and the neighbors, listened to testimony provided by neighbors and the applicant, and commissioned an outside peer review of the proposed development to assist the Commission in its analysis. In response to concerns raised by the Conservation Commission during the review process, the applicant agreed to locate the house further away from the wetland resource areas, to reduce the footprint of the house and to make modifications to ensure that post-construction drainage of the site will closely follow the preexisting drainage patterns. The applicant further agreed to create a natural area with woodland plants and trees in a 3,200 square foot portion of the site and to place a conservation restriction over this area to ensure that it remains undisturbed. The Commission also required the use of pervious pavement for the driveway and the roadway extension.

The final public hearing was closed on August 21, 2007. At the conclusion of this process the Conservation Commission determined this project as modified would have no

adverse impact to the bordering wetland resource areas and voted unanimously to issue an Order of Conditions which allows the project to proceed. This Order of Conditions was issued on September 11, 2007 and includes fifty three separate conditions the applicant must follow to construct the project.

During its review, the Conservation Commission did not take a position for or against the easement proposed at the 2007 Annual Town Meeting which would allow the construction of a new end portion of Princeton Road. The Commission's mandate was to determine if the roadway extension as proposed could be constructed without any adverse impact on the adjacent wetland resource areas. The Commission ultimately concluded that the proposed work as modified met this standard. It should be noted that the Order of Conditions requires that prior to construction the applicant must provide copies of all other regulatory permissions needed for the project.

Although the Conservation Commission approved the final project under state and local wetlands protection laws, this is not to say that the Commission has no concerns about the proposed development of Lot 2. In addition to administering the wetlands laws, the Commission has several other responsibilities. Of particular relevance here are the Commission's role as steward of the adjacent Hoar Sanctuary and its policy role to advocate for preserving open space in Brookline. Viewed from these vantage points, the property on Lot 2 in its current state has some values that are not explicitly taken into account by the wetlands laws.

The Hoar Sanctuary is one of only three nature sanctuaries in Brookline. The presence of unbuilt land adjacent to it strengthens the ecosystem within the sanctuary and enlarges its natural resource value. The 2005 Brookline Open Space Plan, prepared under the leadership of the Conservation Commission, recognizes the value of wildlife corridors: "connected or accessible areas of sufficient habitat for native plants and animals which allow for movement and survival, independent of residential and urban surroundings." State and local wetlands laws do not regard the wildlife habitat value of Lot 2 as legally relevant and the parcel is only ½ acre in size, while the Hoar Sanctuary is almost 25 acres. Nonetheless, the parcel does contribute to Sanctuary.

Of particular interest to the Commission is the likely role the wooded portion of Lot 2 plays in sustaining the life of spotted salamanders, a species which spends most of the year burrowed underground in wooded upland areas but returns annually to a wet vernal pool to mate and spawn. At least one vernal pool that supports salamander life has been documented to exist within the Hoar Sanctuary. Although Lot 2 is outside of the legally protected area around this vernal pool, salamanders have been observed emerging from the slope of the wooded portion of Lot 2 on their annual trek to the Hoar Sanctuary vernal pool. This connection was noted in the 2005 Open Space Plan (p. 129).

The proximity of the proposed development of Lot 2 to the Sanctuary is also likely to have some detrimental impact on the aesthetic experience of visitors to Hoar Sanctuary. The house at 150 Princeton Rd is located 150 feet from the Sanctuary border, up a wooded slope from the trail. The proposed house on Lot 2 will be approximately 22 feet from the edge of the Sanctuary. While adjacent homes are visible from several points

along the Sanctuary trail, from the Commission's standpoint it is undesirable to increase this type of visual impact.

Over the past several years, the Conservation Commission has urged Brookline to investigate proactive measures which would increase protection at sanctuary borders. In the case of Lot 2, the Commission had jurisdiction to review the proposed development only because of the location of nearby protected wetland resource areas. No special setback requirements exist to protect sanctuary borders. Both the Brookline Open Space Plan and the 2005-2015 Comprehensive Plan recommend review of sanctuary setback requirements, as well as a municipal conservation restriction policy to encourage the preservation of valuable, unbuilt land.