

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 no unpaid bills from a prior fiscal year. Therefore, the Board recommends NO ACTION, by a vote of 5-0 taken on September 16, 2008, on Article 1.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Unpaid bills 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:

There are currently no outstanding bills for consideration under this article.

RECOMMENDATION:

The Advisory Committee unanimously recommends NO ACTION

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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.



TOWN of BROOKLINE
Massachusetts

HUMAN RESOURCES OFFICE
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Sandra A. DeBow
Human Resources Director

October 3, 2008

To: Brookline Board of Selectmen

From: Sandra DeBow, Director
Human Resources Office

Re: Ratification of Police contract

On October 2, 2008, the Brookline Police Union, Local 1959, overwhelmingly ratified the Memorandum of Agreement between the Town and Police union by a 108/5 vote. The

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compensation provisions of this contract are in line with the other contracts that had previously been settled.

The Agreement is a three-year contract, July 1, 2006 to June 30, 2009, like the Fire contract, including the same wage (2% FY07, 2% / 1% FY08, and 2% FY09) and longevity increases (+\$100 for each level plus a 30+ year step). Also, included is a small increase to the night shift differential, lag time and the Homeland Security payment. **The overall cost of the three-year contract is approximately 8.9%.**

ITEM	FY07	FY08	FY09	FY10	TOTAL
7/1/06 - 2%	210,737	210,737	210,737		632,211
1/1/07 - 1%	53,738	107,476	107,476		268,689
7/1/07 - 2%		217,101	217,101		434,202
7/1/08 - 2%			221,443		221,443
1/1/09 - 1%			56,468	56,468	112,936
Shift Differential			24,696		24,696
Longevity Pay			8,550		8,550
Weapons Waiver/Homeland Security			34,500	13,800	48,300
Lag Time			9,987	9,987	19,975
TOTAL ROLL-OUT COSTS OF 3-YEAR PERIOD	264,475	535,314	890,958	80,255	1,771,002
Each 1% =	105,368	108,551	110,722	112,936	
	264,475	270,839	355,644	80,255	
	2.5%	2.5%	3.2%	0.7%	8.9%

Under this agreement the Town now has the right to share two-hour parking enforcement with the School Traffic Supervisor's bargaining unit. The agreement also incorporates the Town's bylaw regarding police details, mandates participation in in-service training for ranking officers, and commits the Union to engage in mid-term bargaining on new testing requirements for promotions.

Finally, the settlement of this contract is significant in that it put an end to protracted litigation before the state's Joint Labor Management Commission, thereby saving additional litigation costs.



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Sandra A. DeBow
Human Resources Director

October 24, 2008

To: Brookline Board of Selectmen

From: Sandra DeBow, Director
Human Resources Office

Re: Ratification of Engineering contract

On October 21, 2008, the Brookline Engineering Division Association (Union) agreed to the Memorandum of Agreement proposed by the Town of Brookline. The compensation provisions of this contract are in line with the other contracts that had previously been settled. The Agreement is a two-year contract, July 1, 2007 to June 30, 2009, and includes the same wage increases (2% FY08, 2% / 1% in FY09), longevity increases, and the ability to purchase an additional \$2,500 of life insurance as AFSCME units received. Also like the AFSCME bargaining units, the Union received a nominal, one-time ratification bonus of \$250. The overall cost of the two-year contract is approximately 6.3%.

ITEM	FY08	FY09	FY10	TOTAL
7/1/07 - 2%	14,977	14,977		29,954
7/1/08 - 2%		15,277		15,277
1/1/09 - 1%		3,896	3,896	7,791
Ratification Bonus	2,750			2,750
Step Changes		6,105		6,105
Longevity Pay	600	600		1,200
TOTAL ROLL-OUT COSTS OF 3-YEAR PERIOD	18,327	40,854	3,896	63,076
Each 1% Equals	7,489	7,638	7,791	
Annual Package Total Equals	2.4	3.3	0.5	6.3

SELECTMEN'S RECOMMENDATION

As detailed in the Human Resource Director's memos, the Town has reached agreements with two unions: Brookline Police Association and Brookline Engineering Division Associates (BEDA). The BEDA contract is for two years (FY08 and FY09) while the contract with police union is for a three-year period (FY07-FY09).

The contract with the Police union calls for a 2% / 1% split base wage increase for FY07, a 2% for FY08, and a 2% / 1% split for FY09. This represents a 7% payout over the three-year period and an 8% increase going forward on general wages. Also included in the agreement are increases in Shift Differential, Lag Time, Longevity, and the Weapons Waiver/Homeland Security payment. In total, the increase for this unit is 8.9%. In addition, the agreement includes a provision that allows two-hour parking enforcement to be performed by non-police officers, thereby allowing the Parking Control Officers to issue those tickets. This will not only improve enforcement of the two-hour parking rule, but it should also result in additional revenue. Lastly, it allows for mid-term bargaining by the parties relative to the promotional system.

For BEDA, the agreement calls for a 2% base wage increase for FY08 and a 2% / 1% split for FY09. This represents a 4.5% payout over the two-year period and a 5% increase going forward on general wages. Also included in the agreement is a ratification payment, a one-time lump sum payment of \$250. Other changes include adjustments to Longevity and the existing step schedule. In total, the increase for this unit is 6.3%, but 0.3% is one-time, so the on-going cost increase is 6%.

These contracts should be measured against the Override Study Committee's (OSC) recommendation to hold total compensation (i.e., salaries and benefits) to "sustainable" levels, with sustainable defined as growth in on-going revenues. (The OSC's analysis pegged this level at approximately 3.75%.) Based upon the plan design changes for employee health insurance plans made in FY08 and these proposed contracts, over a two-year period, the Town is below the recommended level. As the below shows, benefits and wages increase 7.3% over two-years, slightly below the 7.5% (3.75% x 2).

<u>ANNUAL % CHANGE</u>		
	<u>FY08</u>	<u>FY09</u>
Town Benefits	9.1%	5.3%
Town Wages	1.7%	2.4%
TOTAL	4.0%	3.3%

The Selectmen commend the unions and the Town negotiating team for working together to come to terms that reflect the fiscal realities while still providing sustainable and equitable compensation increases for employees. Therefore, the Board recommends

FAVORABLE ACTION, by a vote of 4-0 taken on October 7, 2008, on the following vote:

VOTED: To approve and fund by an appropriation, provided for in the FY2007 (Item #22), FY2008 (Item #22), and FY2009 (Item #21) budgets, for the cost items in the following collective bargaining agreement that commences on July 1, 2006 and expires on June 30, 2009:

Brookline Police Association

all as set forth in the report of Sandra Debow, Director of Human Resources, dated October 3, 2008, which report is incorporated herein by reference.

ROLL CALL VOTE

Favorable Action

Daly
Allen
Mermell
Benka

The Board also recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 28, 2008, on the following vote:

VOTED: To approve and fund by an appropriation, provided for in the FY2008 (Item #22) and FY2009 (Item #21) budgets, for the cost items in the following collective bargaining agreement that commence on July 1, 2007 and end on June 30, 2009:

Brookline Engineering Division Associates

all as set forth in the report of Sandra Debow, Director of Human Resources, dated October 24, 2008, which reports are incorporated herein by reference.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Town Meeting must approve all collective bargaining agreements between the Town and its unions (except for contracts in the schools which are negotiated by the School Committee). Article 2 proposes the Town fund two collective bargaining contracts (Brookline Police Union, Local 1959 and Brookline Engineering Division Associates [BEDA]) at a total combined cost of \$1.83M.

DISCUSSION:

1. Police, Local 1959

This three-year contract (retroactive for two years) will expire at the end of June 2009 and ends a litigation process with the Joint Labor Management Commission.

The contract is in line with previous collective bargaining agreements that Town Meeting funded in the spring of 2008 (2yr contract with AFSCME 1358 at 6.4%, 3yr contract with Fire Fighters Union at 8.9%). Funding for the contract is covered by budgeted collective bargaining reserves.

The total increase is approximately 8.9% over the term of the contract. The breakout of salary increases is as follows:

- 2% July 2006
- 1% Jan. 2007
- 2% July 2007
- 2% July 2008
- 1% Jan. 2009

The other increases include \$24.7K in Shift Differential, \$8.6K in Longevity Pay, \$48.4K in Weapons Waiver/Homeland Security and \$20K in Lag Time. The total rollout cost for the 3-year contract is \$1.77M.

Other provisions of this contract include a requirement that Officers participate in in-service training and an agreement by the Union to engage in mid-term bargaining around new testing requirements for promotions.

The contract provides that the Chief will have discretion in determining whether sworn officers are required for paid details.

A significant aspect of this contract is that there is agreement that School Traffic Supervisors may now share two-hour parking enforcement. There is currently a part-time person (15 hours/wk) who is dedicated to two-hour parking enforcement. The Chief hopes to have another such person in place working 19 hours/wk.

The Committee believes this is a reasonable contract for both the Town and the Union. Keep in mind, however, that this is a contract which looks backward. Given the financial turbulence we are heading into and the uncertainty of healthcare costs, we should not view this contract as a predictor of future contracts.

2. Brookline Engineering Division Associates (BEDA)

The Engineering Division Associates (of the DPW) is a new union that consists of only 11 members. The members felt they needed a bargaining unit with a focus on their particular profession.

This is a two-year contract with compensation in keeping with prior agreements (6.4% for a two-year AFSCME agreement in the spring of 2008).

The total increase in this agreement is approximately 6.3%. The breakout of salary increases is as follows:

- 2% July 2007
- 2% July 2008
- 1% Jan. 2009

In addition to the salary increases there is a one-time ratification bonus of \$2,750 (\$250 per employee), \$6,105 Step Changes and \$1,200 Longevity Pay. The total rollout cost of this contract is \$63.1K

Also, this agreement allows members to purchase an additional \$2,500 of life insurance (currently \$5,000) at no expense to the Town.

Furthermore, the Town has agreed to begin a comparative classification and compensation study. The Town will conduct a survey, in consultation with BEDA, of salary and benefits in comparable communities using the existing job descriptions. This will be done within the duration of this agreement.

Financially, this agreement is in keeping with the budgeted reserves of the Town and accommodates the needs and desires of the BEDA membership. The Advisory Committee understands the union's desire for a classification and pay study. However, no one should be under the illusion that this is simply a prologue to increases in wages and benefits. The reality is that the Town is facing significant financial challenges and the challenge will be in maintaining wages and positions in the future.

RECOMMENDATION:

In light of the Town's financial uncertainty, and particularly in light of the fact that collective bargaining units failed to enroll in the State's Group Insurance Cooperative (potentially saving the town \$3M annually), the Committee wrestle with the advisability of the Town committing to the cost increases in these contracts.

However, it was recognized that these are largely retroactive contracts for which we have already budgeted funds. And, there would be no real productive value to essentially holding these contracts hostage because of a current lack of resolution on the healthcare issues and the GIC. (Healthcare benefits are negotiated separately (as with all collective bargaining units) through coalition bargaining and are not subject to negotiation in these contracts).

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These contracts are in line with those supported by Town Meeting in the spring and are manageable within our budgeted reserves.

The Advisory Committee by a vote of 15-4-0 recommends FAVORABLE ACTION on the Brookline Police Union, Local 1959 contract, in the words of the vote offered by the Selectmen.

The Advisory Committee by a vote of 18-2-1 recommends FAVORABLE ACTION on the Brookline Engineering Division Associates contract, in the words of the vote offered by the Selectmen.

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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 2009 budget or transfer funds between said accounts;
- B) To see if the Town will vote to appropriate, borrow or transfer from available funds, a sum of money to be expended under the direction of the Building Commission, with the approval of the Board of Selectman and the School Committee for a feasibility study to understand the extent of facility and programming deficiencies at the John D. Runkle School located at 50 Druce Street in the Town of Brookline, Massachusetts and as further described as Parcel I.D. No. 245/01-00 in the Town of Brookline Assessor's map and database and to explore the formulation of a solution to those deficiencies, for which feasibility study the Town may be eligible for a grant from the Massachusetts School Building Authority. The MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town incurs in connection with the feasibility study in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town;
- C) 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 FY2009, the warrant article is necessary to slightly reduce the budget to reflect the final State budget, re-allocate a projected surplus in the Group Health Insurance line-item, fund an energy shortfall, and appropriate funds for the Runkle School renovation/addition project.

SELECTMEN'S RECOMMENDATION

As originally proposed, Article 3 recommended re-allocating a projected surplus of \$550,000 from the Group Health budget. Due to current economic conditions, this approach is no longer recommended. Instead, we are recommending that the surplus remain in the group health budget as a hedge against any mid-year local aid cuts. While the Governor has yet to recommend any cuts in state aid, all indications are that if the state must cut its budget again during FY09, local aid will be part of the proposal.

Therefore, the only item before Town Meeting under this article is the funding request of \$600,000 for the feasibility study / schematic design phase of the Runkle School renovation / addition project. The Town's CIP has included the Runkle School renovation / addition project for a number of years. The Runkle project is critical in terms of the School Department's overall plan to address the enrollment issue they face. As stated in the Statement of Interest (SOI) submitted to the MSBA, there is severe overcrowding in the school. The building is currently facing overcrowding and cannot accommodate either the size of the expected enrollments (3 sections per class) or the total number of classes, with support spaces, if it were needed to be a 3 section school from Grade K through Grade 8. Runkle currently has 3 sections at 6 of the 9 Grades. The structure was built for Grades K-8 in a building with two sections per Grade. Further pressure on space is coming from the expansion of pre-school programs in Brookline. The School's desire is to continue a pre-school program at every K- 8 including Runkle. It is expected that this population size increases in numbers in coming years.

Additionally, many of the specialized programs have been located in closed spaces that were originally designed as closets. These spaces have no windows and are inferior to spaces built or designed for program purposes. The need to squeeze program functions into smaller spaces has left no conference rooms or team meeting space. Finally, the Cafeteria is used for 5 lunch periods because all the students cannot be accommodated in 4 periods.

Live birth data from the 2005-2007 period shows that births are up 7.7% for this recent period in Brookline compared to a three-year average of the 1999-2001 period. Since the school system is already seeing a dramatic upswing in enrollment, not predicted by birth data alone, it appears as though a double push of births and move-ins will continue to push up our incoming enrollment, yielding continued growth in our incoming class, similar to that experienced during the past four years. Actual K-8 enrollment in Brookline has risen 404 students, or, 10.3% during the past 4 years (FY06-FY09) and it is projected to grow another 465 students, or another 9.2%, during the next 5 years (FY10-FY14). The growth of incoming students during the past 4 years has resulted in a total K-3 student population of 2,160 for FY09 compared to a corresponding 1,683 student total for Grades 5-8. These numbers mean that Brookline has 477 more students (28% more) in our 4 lowest K-8 grades than in our 4 highest K-8 grades. As these large grade counts move up through the grades, accompanied by large incoming Kindergarten cohorts, the schools will continue to be squeezed for classroom space.

The School Department is taking steps in the short-term to ensure that they are able to manage the population growth while the renovation projects that will allow for additional permanent capacity are planned for. Additionally, the Superintendent is working closely with the School Committee to review current buffer zones and rules affecting the student assignment process, to allow for more flexibility in this process.

In addition, the building is outdated. It is a three floor structure that is out of compliance with ADA requirements. Particularly egregious is that a wheelchair-bound person cannot access the third floor whatsoever. To move from the basement to the first floor, this same person would have to travel outside the building and around the block on sidewalks and access paths. Additionally, there are no handicapped accessible bathrooms at the School.

The goal of maintaining inclusive classrooms, where students with identified special needs can be supported and welcomed, is compromised. The expansion of certain identifiable student populations on the Autism Spectrum has resulted in program expansion to serve these populations within Brookline, particularly at Runkle. Unfortunately many of the spaces are not the most appropriate for the target population.

The School Department has remained flexible in the creation and assignment of students from special populations to the school. Rather than assign and/or expand students with physical handicaps to this building, the program focus has been to build a district wide program to serve students on the Autism Spectrum. Because this program has expanded exponentially, it has resulted in cramped quarters at the Runkle School. Additionally, the space utilized by most of the program was originally designed for other purposes and results in inadequate classrooms.

The Town is fortunate that this project is one of the few on the Massachusetts School Building Authority's (MSBA) "Targeted Feasibility Study" list. After having in-house staff approved as the Owner's Project Manager (OPM) for the project, an action that will save the Town hundreds of thousands of dollars, the Town and MSBA are now at a point where funding for the schematic design portion of the project is required.

The Town has been informed that 40% of the cost of schematics will be funded by the State, meaning that the Town's share of this phase is \$360,000. The Town will be reimbursed on a monthly basis by the MSBA once this phase commences, resulting in \$240,000 of this appropriation ultimately being available for the next phase (complete design and construction) of the project via a re-allocation by Town Meeting. The reimbursement rate for construction is yet to be determined, but will most likely be between 45% - 50%.

As of the writing of this Recommendation, the next steps in the process are as follows:

1. *Designer Selection Panel (DSP) for architect/designer* – on December 9, the DSP will choose an architect/designer.
2. *Scope and Budget agreement* – the Town and the MSBA will agree on a project scope and budget after the feasibility study / schematic design is complete. If both parties agree to this, then the project will move forward, pending local funding.

3. *Funding approval* – per MSBA guidelines, after schematic design, the Town must obtain all remaining project funds, including design completion, construction, and all other soft costs, within 120 days of the execution of the scope and budget agreement.
4. *Design completion/Bidding* – the design will be completed, leading to construction documents and bidding.
5. *Contract approval* – occurring approximately 9-12 months after the project scope and budget agreement is set, bids will be received and, pending funding approval by Town Meeting, a contract awarded. It is not until this point that the Town will know if the budget agreed to as part of item #3 above matches the actual bids.

The \$600,000 for this phase is recommended to come from the following sources:

- o Surplus in the FY09 debt service line-item = \$255,000 due to not having to borrow as originally anticipated and borrowing at lower interest rates than budgeted
- o Remaining balance in the Lawrence School account = \$245,000
- o Existing funds approved in FY07 for Runkle School Feasibility / Devotion School Needs Assessment = \$100,000

The Board is very excited about this important project and enthusiastically recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 21, on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Each year there are unforeseen differences in Town revenues and/or expenses and Town Meeting is asked to approve budget adjustments to address these differences.

For FY 2009 there is one request for a budget adjustment:

1. Funding for the next phase of renovating the Runkle School

DISCUSSION:

The Town's CIP has included the Runkle School renovation/addition project for a number of years. This year, Brookline is fortunate that the Runkle School project is one of only a few on the Massachusetts Building Authority's "Targeted Feasibility Study" list and the Town has been invited to "take the next step". The next step includes the completion of a feasibility study and a schematic of the renovation/addition design. To accomplish this Brookline must hire an architect.

The State absorbs 40% of the cost of completing the feasibility study and design schematic. Under new State rules, the Town must incur the cost first and then be reimbursed by the State on a monthly basis. It is the Town's understanding that if the

State decides not to go forward with construction the Town will still be reimbursed for 40% of the expenses incurred.

The estimated cost of the feasibility study and the schematic design is about \$600,000. Although the Town expects to be reimbursed for \$240,000 (40%), in order to sign a contract for \$600,000 the Town must make the allocation of \$600,000 out of its own budget.

The sources of the proposed funding are:

- 1) \$245,000 from what remains after completion of the Lawrence School project (these funds must be reallocated to another “bondable” project)
- 2) \$100,000 already allocated for the Devotion School needs assessment and Runkle School feasibility study
- 3) \$255,000 in lower debt service costs including \$180,000 from an amount budgeted for financing Fisher Hill which is not needed this year

RECOMMENDATION:

Based on the growth in the elementary school population, school program needs, and the condition of the Runkle School, by a vote of 18-0 the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town:

1. Amend the FY2009 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
34. Borrowing	\$12,629,047	-\$255,000	\$12,374,047

2. Appropriate the sum of \$600,000 for a feasibility study, schematic design, and costs associated with the feasibility study and schematic design to understand the extent of facility and programming deficiencies at the John D. Runkle School located at 50 Druce Street in the Town of Brookline, Massachusetts, and as further described as Parcel I.D. No. 245/01-00 in the Town of Brookline Assessor's map and database and to explore the formulation of a solution to those deficiencies, said sum to be expended under the direction of the Building Commission, with the approval of the Board of Selectman and the School Committee; and to meet said appropriation, raise \$255,000 and transfer \$245,000 from the balance remaining in the appropriation voted under Article 7, Section 12, Item 89 of the 2001 Annual Town Meeting; and transfer \$100,000 from the balance remaining in the appropriation voted under Article

7, Section 13, Item 68 of the 2006 Annual Town Meeting; and further that the Town acknowledges that the Massachusetts School Building Authority's ("MSBA") grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town.

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ARTICLE 3

Motion Offered by Stanley L. Spiegel, TMM Prec-2

MOVED: That the Town reduce the sum appropriated in line item 42A - Library RFID Conversion in the FY 2009 Town Budget by the amount of \$465,000 or such lesser amount as may be currently available for reduction, and transfer the amount of said reduction to line item 24 - Reserve Fund.

EXPLANATION:

This motion to defer RFID funding was only made recently because the financial situation, worsening almost daily since last May's vote, has finally reached the point where Brookline appears likely to face a significant revenue shortfall this fiscal year. Hence we'd better prepare for this eventuality now while we still have the opportunity to defer non-essential expenditures. Revenue from local receipts continues to decline, and House Speaker DiMasi has warned municipalities to be prepared for FY09 local aid cuts - a "last resort" perhaps but in what's been termed the worst downturn since the Great Depression, the Governor and Legislature may soon be forced to enact last resorts. If my crystal ball had been in better working order I would have filed this motion earlier. But those who let process arguments trump rational reassessment of changed conditions do so at their own (and the Town's) peril.

Placing the \$465,000 in the Reserve Fund makes it available to shore up either capital or operating budget needs, depending on what's most pressing and on the extent of the revenue shortfall, the full magnitude of which is not yet known but is potentially quite large. The concept of segregating the capital and operating budgets has its utility, but rigidly adhering to it when it might result in the laying off of cops, firefighters, teachers or librarians in order to fund an RFID system seems to me a wrongheaded public policy.

The RFID appropriation was the only problematic CIP item last May and passed only after vigorous debate with considerable opposition, so it's not unfair that this item be reexamined under the vastly different economic conditions that exist today. Of the other CIP items, almost all are either for energy efficiencies which will produce assured cost savings or are for the maintenance of buildings and infrastructure which, if delayed, will cause future cost increases. In contrast, deferring the RFID acquisition is, if anything, likely to bring us a more advanced technology and at a lower cost. The true fairness in budgeting is spending tax dollars as wisely as possible for Town residents.

While the RFID would make the Library more efficient -- no one questions that it would be beneficial -- the Library is functioning at a high level without it. If budget restrictions delay RFID acquisition and, in consequence, increasing library patronage causes somewhat longer check-out times or delays in receiving internet requests, these are endurable, minor inconveniences in these tough fiscal times. All around us, both consumer purchases and institutional expansion plans are being placed on hold, not because the deferred items are unwanted or foolish but because the times demand

frugality. Brookline should respond similarly to current financial pressures and be wary of new deferrable spending initiatives that could cause unacceptable midyear budget cuts elsewhere.

Whereas wealthy Cambridge with its massive commercial tax base is likely to fund RFID from its \$90 million in free cash, in Sudbury, the amount originally approved for partial RFID funding in FY09 was, according to the Library Director, "re-allocated to the Town's FY09 operating budget for reasons which we fully appreciate," while In Wellesley, the Chairman of Library Trustees states that RFID acquisition will depend entirely on private donations with no public funding. Thus not one penny of public money has been allocated in FY09 for RFID in Sudbury or Wellesley, and reasonable prudence requires that Brookline reconsider its previously voted stance. If by next May's Town Meeting, there's been no more pressing need for the \$465,000, it can readily be voted back into the RFID account and the only loss would be a one-month delay (the Library won't be ready to sign an RFID contract until next April). But if these funds are in fact needed to prevent higher priority cutbacks, we'll be happy if we kept the money in the bank, and distressed if it isn't there.

Finally, this motion must not be construed as an attack on the Library, its Trustees, or Town Librarian Chuck Flaherty. Neither should Town Meeting's vote be taken as a referendum on our regard for the Library – this is not a popularity contest. I've always been and remain a dedicated and enthusiastic Library supporter. But the RFID is not as high on the Town's priority list as are other needs threatened by budget cuts for which the \$465,000 could help provide essential emergency funding.

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

The Selectmen will consider the proposed amendment prior to the commencement of Town Meeting.

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

The Advisory Committee reviewed the proposed amendment and recommend favorable action on the following motion. A full report will be available prior to the commencement of Town Meeting.

MOVED: That the sum appropriated in line item 42A - Library RFID Conversion in the FY 2009 Town Budget in the amount of \$465,000 cannot be committed or expended until the adjournment of the 2009 Annual Town Meeting.

RECOMMENDATION OF THE BOARD OF LIBRARY TRUSTEES

The proposal to move an appropriation of \$465,000 from the capital budget to the Town's reserve fund is unnecessary. The Town is already protected against expending this money to acquire a radio-frequency identification (RFID) system for the library, if financial conditions change so as to make such a purchase unwise.

The reason for the proposed amendment, as stated by its proponent, is the need to safeguard the Town's financial position in light of present financial uncertainties. However, the Board of Selectmen must review and approve any capital expenditure, including the purchase of the RFID system to which this budget item is directed. The Selectmen can be expected to act in the best interests of the Town, especially in these difficult times.

The vote for the RFID program at last spring's Meeting read as follows:

To amend Section 13 of Article 8 by adding the following:

42a. Raise and appropriate \$465,000, to be expended under the direction of the Library Trustees, with the approval of the Board of Selectmen, for the purchase of a Radio Frequency Identification (RFID) system; expenditure of said funds shall not be approved by the Board of Selectmen until a recommendation is made by a group consisting of the Chief Information Officer (CIO), Library Director, Chief Procurement Officer and one representative appointed by each of the following bodies: Board of Selectmen, Library Trustees, and Advisory Committee.

This language makes clear that the money appropriated may be spent only "with the approval of the Board of Selectmen." If the Selectmen—who are constantly reviewing the Town's financial condition—determine that Brookline has needs that justify refusing to purchase an RFID system in the present fiscal year, they can simply decline to sign a contract. The money can then be held in reserve, and the Selectmen can request Town Meeting to allocate the money to another purpose at the May meeting.

At present, it is expected that bids for the RFID system will be solicited in January, and that a contract will not be ready until April. By then we will have a much clearer idea of the Town's actual financial position. If conditions have changed so that the purchase is not in our best interests, it will only be a short time before the funds can be re-allocated at the Spring Town Meeting.

Because the Selectmen already have authority over the actual use of the appropriation, the proposed amendment is unnecessary to protect the Town's financial condition, its stated purpose.

For these reasons, the Board of Library Trustees recommends that Town Meeting vote NO ACTION on the proposed amendment to Article 3.

ARTICLE 3

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

BACKGROUND

This amendment is before us as the result of a formal proposal by a Town Meeting Member to transfer the monies authorized for a Library RFID system at the 2008 Spring Town Meeting to the Reserve Fund. Specifically, the petitioner's proposal would move the authorized monies into the Reserve Fund now, and *require* an affirming vote of Town Meeting in the spring to restore these funds. Consistent with our charter and as we are obligated to do, we considered this proposed amendment – engaging in several hours of discussion and debate. The Advisory Committee members were well-acquainted with the RFID proposal from last spring's even more extensive discussions and did not get into the ultimate merits of the system.

The petitioner believes that the drastic changes in the economy of the past several months and the potential effect it may have on our Town Budget, warrant a revisiting of this proposed capital item. The petitioner reminds us that this is a large ticket item for a very helpful, but not (when compared to meeting our existing legal obligations or to preserve the public safety) a crucial matter. The project would also require additional spending in the future and does not address core maintenance and infrastructure costs the way other CIP items do. He also notes that the RFID rollout would supplement, but not replace, the existing bar code system. Finally, he asserts this is not an attempt to kill this project, just an appeal to give Town Meeting a little extra time and flexibility to consider it should our financial circumstances change severely during the remainder of this fiscal year.

The Advisory Committee voted to amend the petitioner's proposal. The Advisory Committee motion keeps the RFID funding in place. All it suggests is that the monies not be committed or expended until after the 2009 Annual Town Meeting next spring. It will *not require* another vote or approval by this body for the project to continue, but our recommendation preserves the option for Town Meeting to consider this item in light of any unforeseen or drastic changes to our financial situation between now and then. This is the fiscal equivalent of the emergency train brake that can be pulled, not without consequences, to ward off potential damage if necessary.

DISCUSSION

The Advisory Committee held lengthy discussions with the petitioner, Library Board of Trustees members, Town administrators and our Town Librarian.

The Town administration reminded us that the FY'09 budget was developed with an eye towards tougher financial times, allowing for reduced revenue and interest income assumptions. And, it noted that there is a structural cushion built into the current FY'09

budget. No one, of course, has a crystal ball and the economy has demonstrated itself to be rather capricious lately; however, most economists believe that a deep and lengthy recession has just started.

A few on the Committee were concerned that it might be a bad precedent to do anything concerning a previously approved expenditure, and that doing so would be tantamount to micro-management. They noted that funds had been budgeted and appropriated by Town Meeting this past spring. The salient issue for many was whether we had safely and conservatively budgeted in creating the FY'09 Financial Plan, and can we be reasonably secure that the appropriated funds will still be available toward the end of this fiscal year.

Others expressed concern that by parking the appropriation in the Reserve Fund for the rest of the fiscal year, those “capital” dollars may be used for “operational” expenses. This appropriation is one-time money that appears in the FY'09 budget. Some asserted that this approach risks reducing our capital expenditure percentage, and that this should really be considered under a larger discussion of the appropriateness (or not) of our adherence to the figure of 5.5% for capital items. It was noted that 5.5% is a guideline; Town Meeting is free to go above or below that figure. No one suggested using these funds for operating expenses.

Library representatives stressed the importance of continuing with the RFID project, explaining that the program offers more than simply a means of faster check out and shorter lines. They pointed to the time consuming work required once books have been returned; scanning and sorting by hand. RFID technology could significantly streamline this process (currently a barcode system is used). They also noted that this could obviate the need for the current security system, which requires a second swipe to deactivate, once all of the other towns in the Minuteman System embrace this technology. RFID technology simultaneously provides tracking and security. Timing was also mentioned as a consideration. A few other communities in the Minuteman System are adopting an RFID-based circulation system. Wellesley is incorporating it in its library and Cambridge, supported by significant levels of Free Cash because of its varied tax base, will presumably be introducing it as part of its new library construction project. The Brookline Library believes our adopting the RFID system would assist in achieving a critical mass, and allows us, by virtue of being early participants, to have more of a say in the RFID structure and implementation throughout the Minuteman System.

No one on the Advisory Committee disputed the inherent benefits of RFID technology. However, not everyone was convinced that Brookline needed to be among the early adopters – a “*when*,” rather than an “*if*” observation. There is precedent for subsequent events affecting whether the Town will go forward on approved projects. With issues like the ones bearing down on us, most budget considerations are horribly unpleasant, but it is not -- and should never be -- off limits to consider prior decisions.

WINDS OF CHANGE

It's news to no one that since last spring, the economy has been in a negative growth mode. Back when TM last met, not many of us knew what a credit default swap was, could name the Secretary of the Treasury, or could imagine a collapse of the stock market and the freeze-up of the credit markets over a fortnight. Few could imagine new challenges in floating bonds or the spike in borrowing costs.

In the past six months, the financial stresses for the Town have become more acute. The structural budget deficit continues and the unfunded benefits liabilities of well over a quarter of a billion dollars remain significant obstacles. Economists predict a decline in property values (even in Brookline), excise tax receipts, and other sources of revenue as we start what many economists are predicting to be the most severe recession in the past 30-40 years. Lottery receipts, the source of \$4.4 million to Brookline last year, are at record lows. Most people following the issue fear local aid from the Commonwealth, itself facing a \$2 to 3 billion deficit and seeking help from the Feds, will be cut through the legislative process. A few weeks back, the Mayor of Gloucester, commenting on her meeting with the Governor and Beacon Hill leadership said "What I got out of the meeting is that there will be cuts in local aid," and that budget cuts were necessary.

Projections of our position are based on assumptions. What happens if the mid year cuts are higher than the assumptions? What happens if the drop in auto excise taxes is higher than expected? What happens if construction and renovations stop in the spring? Anything is possible in the current environment. Prudence demands that we give ourselves as many options as possible to respond.

A Library Trustee's recent letter to all Town Meeting Members shows, we think, that the Advisory Committee and the Library are, at core, in agreement. That letter states (in part): "If the Town's financial condition deteriorates seriously by the Spring ... we would completely understand a decision to put the project on the shelf. If that happens, I am confident that the Trustees will support such a decision." The only difference is that while that letter expresses the hope that the Library Trustees would come to that decision on their own accord, this Article ensures that Town Meeting could, if needed, make that decision.

As mentioned, a few Advisory Committee members thought it was "bad process" to reconsider a prior vote despite the recent economic downturn. The majority, though, feel that sometimes, exigent circumstances permit a change in process.

Things have changed and the Advisory Committee's amended language is a modest proposal, which reflects that. In practical terms, it undoes nothing because program requests for proposal (RFPs) have not been generated or gone out and it is unlikely contracts would be signed before the end of April at the earliest. This proposal could delay the roll out by only a month or so. We hope by next May to have a clearer sense of the financial landscape.

The Advisory Committee believes that a month's delay is a token price for the fiscal flexibility this proposal would deliver.

RECOMMENDATION

By a vote of 14 – 8, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the sum appropriated in line item 42A – Library RFID Conversion in the FY 2009 Town Budget in the amount of \$465,000 cannot be committed or expended until the adjournment of the Brookline Annual 2009 Town Meeting.

ARTICLE 4

FOURTH ARTICLE

To see if the Town will amend the General By-Laws by adding a Section 3.1.8 to Article 3.1 Board of Selectmen, as follows:

“SECTION 3.1.8 SELECTMEN HEALTH BENEFITS

a. Eligibility

For purposes of determining the eligibility of a Selectman for health benefits pursuant to M.G.L. c. 32B, (i) all payments received by a Selectman from the Town in connection with his or her serving as a Selectman, including but not limited to receipt of any annual stipend, shall be for the reimbursement of expenses and shall not constitute “compensation,” regardless of how such payments may otherwise be designated or treated by either the Town or such Selectman, and (ii) the duties of a Selectman do not require twenty hours or more, regularly, in the service of the Town during the regular work week.

b. Retirement

Notwithstanding length of prior service, no former Selectman shall be eligible to receive health care benefits from the Town or to enroll in any health insurance plan provided or sponsored by the Town, if on the last day of such Selectman’s most recently completed term such Selectman was not eligible to receive such benefits or was not then enrolled in such a plan.”

or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

Petitioners have submitted two Articles for consideration by Town Meeting that address the question of healthcare benefits for Selectmen. Together, these two Articles form a single proposal. This proposal is divided into two Articles because one (Art. 4) is in the form of a Bylaw change and the other (Art. 5) is in the form of a Resolution. Both these Articles should be read in conjunction with each other and for this reason, including simplicity, this Explanation is the same for both Articles.

Until recently, the fact that some current and former Selectmen receive health insurance benefits equivalent to those received by Town employees was not widely known. Furthermore, the origin of this practice in Brookline is not entirely clear, although the awarding of this benefit does not appear to have been initiated or authorized via any formal vote either by Town Meeting or the Board of Selectmen itself.

State law (M.G.L. Chapter 32B) provides statutory authority for certain elected officials to become eligible for participation in a Town’s health insurance program. There appear

to be two ways in which such eligibility may occur: (1) the official's duties require no less than twenty hours, regularly, in the service of the Town during the regular work week, or (2) a vote of the Board of Selectmen itself determines that the Selectmen will be eligible for Town-paid health coverage regardless of the number of hours worked. In either instance, the official must also receive some form compensation for his or her service. Selectmen have, for several decades, received a small annual stipend in connection with their service, which currently has been at the following levels: \$3,500 for the Chair and \$2,500 for the other four Selectmen. The stipend amounts have been included in the budget but their payment does not appear to be based upon any underlying legal mandate.

In FY09 the Town was paying approximately \$70,000 toward the annual health insurance premiums of six current and past Selectmen. The Town's annual health insurance cost for the currently serving Selectmen ranges from zero, for those who have not sought to receive this benefit, to about \$5,000 for individual coverage, to about \$15,000 for those availing themselves of family coverage.

Of greater financial significance to the Town is a provision in state law that provides for locally elected officials to vest fully in state employees' retirement benefits entitlements—including health insurance—after six years of active service with participation in the health coverage plan. Retirement eligibility in this instance occurs at age 55. Therefore, some former Selectmen who are not among those currently receiving this benefit may seek Town-paid health coverage after they reach age 55.

The cost of Town-paid health insurance has risen dramatically over the past decade—far beyond what could have been originally anticipated by either the Town or the earlier Selectmen beneficiaries of this “fringe benefit”. For example, family plan coverage now costs nearly \$20,000 per year, with the Town picking up 75 percent of the total premium. This means that the Town's future unfunded retiree health insurance liability for *individual* Selectmen who serve two terms could easily reach well into six figures.

These two Articles seek to address in a fair and reasonable manner two needs: (1) to limit the Town's ongoing cost and future liability relating to the health care costs of our elected Selectmen, and (2) to provide all individual Selectmen who choose to serve the Town in this voluntary capacity equitable financial remuneration.

Because the health insurance element (#1 above) is governed by state law, whereas the specific terms of the Selectmen's compensation arrangement (#2 above) is determined under the Town's annual budget procedures and not under any Town Bylaw, this overall proposal (as noted above) is divided into two Articles, the first being in the form of a Bylaw change and the second being in the form of a Resolution, with the action proposed under the Resolution being effectively contingent upon passage of the Bylaw change.

If both Articles are passed and—with respect to the Resolution—effected through the budget process, the result for sitting Selectmen, as of the July 1, 2009 (FY10) effective date, would be to terminate their health insurance benefit (should they currently be electing to take advantage of such benefit), while simultaneously increasing the amount

each sitting Selectman receives in direct payment from the Town (proposed increase from \$2,500 to \$5,000 per year; \$3,500 to \$7,000 for the Chair).

The retiree health care benefit entitlement of any current or former Selectman who has already become vested in his or her retiree benefits under state law, whether or not that person is currently receiving any such retiree benefits, would be unaffected by the proposed Bylaw change. However, the Bylaw change Article would allow no further vesting and no further eligibility for future employee retirement benefits by a current or future Selectman.

Since Chapter 32B designates the Board of Selectmen—not Town Meeting—as the authorized local body to make certain votes regarding our municipal employees' health care plan, it would be preferable if the Selectmen were not themselves members and beneficiaries of that same plan. This Bylaw article would eliminate any such potential conflict."

Some observers who are aware that Selectmen can receive an employee health care benefit have expressed a greater concern for the open-ended, unfunded retiree aspect of this benefit and less concern with extending this benefit to sitting Selectmen. Unfortunately, state law does not permit such a distinction to be made; if a sitting Selectman takes health care coverage as a Town employee benefit, then he/she is also entitled to vest in the full retiree health benefit after six years. That is why this pair of Articles seeks to offset to some degree, by way of an increased annual stipend, the proposed elimination of Town-paid health care insurance for sitting Selectmen.

The proposed Bylaw change is worded to achieve this purpose in a manner that takes account of the specific provisions of Chapter 32B dealing with elected officials' eligibility for health care coverage. Because "compensation" is defined in state law as a baseline criterion for elected Selectmen to become eligible for current and future retiree health insurance benefits, and because these two Articles seek to provide financial equity among all Selectmen, not the elimination of all Selectmen financial benefits, the Articles' means of achieving this dual goal—consistent with a March 2008 legal opinion provided by to the Town by its labor counsel—is for Town Meeting to "vote that the . . . stipend/salary selectmen receive is merely a reimbursement for expenses and not compensation pursuant to M.G.L. c.32B, which would automatically disqualify them from [health insurance] eligibility;"

The proposed Bylaw change also confirms that the Selectmen's duties do not formally require 20 or more hours of service on a regular basis during the regular work week as referenced in M.G.L. Chapter 32B with respect to eligibility for health care insurance. While not required to do so, some Selectmen give more than 20 hours of dedicated service to the Town, and such service is encouraged and appreciated.

In addition, paragraph (b) of the proposed Bylaw change confirms that a former Selectman cannot, after reaching age 55, claim eligibility for retiree health care benefits

unless that individual was receiving such benefits at the time he/she completed active service as a Selectman.

SELECTMEN'S RECOMMENDATION

Town Counsel was advised by Ethics Commission legal staff that the Selectmen can not participate in Board deliberations about Articles 4-6 because of a direct interest in the subject matter. Town Counsel was further advised that the Selectmen can only join in the debate on these items at Town Meeting just narrowly in the role of individuals who were elected at-large, as individual Selectmen, to their Town Meeting seats. As a consequence of this advisory from the Ethics Commission, Articles 4 and 5 were not scheduled for Board discussion for the purpose of voting on recommendations to Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's recommendation on Article 4 will be included in the Supplemental Mailing.

XXX

ARTICLE 4

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Article 4, as initially proposed by the petitioner, would amend the Town’s by-laws to end the current eligibility of members of the Board of Selectmen for health insurance benefits while they serve as selectmen and after they retire. It would do so by defining any stipend received by selectmen as a reimbursement of expenses (as opposed to “compensation”) and by stating that any selectman must be receiving health care benefits on his or her last day in office in order to be eligible for such benefits after retirement. The petitioner drafted Article 4 to take account of the relevant state laws and the advice offered in a March 17, 2009, memorandum to Deputy Town Administrator Sean Cronin from Brian Magner of the law firm Deutsch/Williams to make selectmen ineligible for health insurance.

M.G.L. c. 32B, § 2 states that an elected official must receive compensation and work no less than twenty hours per week in order to be eligible for health insurance benefits. Eligible officials cannot be denied such benefits. Towns have the discretion to extend this eligibility to elected officials who work fewer than twenty hours per week, but they are not required to do so. In Shea v. Board of Selectmen of Ware, 34 Mass. App. Ct. 333 (1993), the court held that a town could discontinue eligibility of elected officials who work fewer than twenty hours per week, even though such officials previously had been considered eligible.

Officials who receive compensation and serve for at least six years vest in the state’s retirement system and thereby become eligible to participate in the Town’s health insurance system as a retiree after they turn 55. The six-year requirement is set by the state and cannot be changed by the Town. In the recent case, Cioch v. Treasurer of Ludlow, 449 Mass. 690 (2007), the Supreme Judicial Court ruled that municipalities could require retirees to be participants in the town’s health insurance plan at their time of retirement in order to participate after retirement. Although that ruling explicitly did not apply to inactive employees (e.g., former selectmen who served for at least six years), it is possible that the Town has the power to deny retirement health insurance benefits to selectmen by requiring them to have been receiving such benefits at the end of their terms.

DISCUSSION:

There are at least three arguments for Article 4. First, it reduces the Town’s spending on health insurance benefits. Second, it makes the provision of benefits more equitable. Third, it enables the selectmen to lead by example at a time when the Town is trying to control spending on health insurance benefits.

Budgetary Implications of Offering Health Insurance to Current and Former Selectmen

The primary rationale for Article 4 is that it would reduce health insurance spending in the Town’s operating budget in upcoming fiscal years and, in the longer run, limit Brookline’s liability for retiree health expenses.

As the January 2008 report of the Override Study Committee and the Town’s recent Financial Plans have noted, health insurance benefits are an increasing share of the Town’s budget and annual costs continue to rise faster than inflation and other categories of expenditures. Health insurance is now more than 13% of Brookline’s operating budget and these expenses are expected to grow at a rate of 10% or more in the coming years.

Expenditures for health insurance will place an even greater burden on the Town’s budget as employees retire and the Town continues to provide health insurance to these retirees. Although Article 10 from the spring 2008 Annual Town Meeting began to address this issue by establishing an independent board to supervise, manage, and invest the Retiree Health Trust Fund, Brookline still faces an unfunded liability for retiree health expenses estimated at \$220–330 million.

Currently, four present or former selectmen and one surviving spouse of a retired selectman receive health insurance benefits from the Town. The total annual FY09 cost is \$54,335.27. This cost reflects the Town’s 75% or 50% share of health insurance premiums (see below). Note that retirees who are eligible must apply for Medicare benefits when they reach 65. The health insurance plans available to Medicare-eligible retirees are less expensive for the retirees and the Town.

FY09 Health Insurance Premiums (Town 75% share in parentheses)

	<i>Individual</i>	<i>Family</i>
Choice	\$7,639.32 (\$5,729.49)	\$20,439.36 (\$15,329.52)
Blue	\$7,138.32 (\$5,353.74)	\$19,156.44 (\$14,367.33)
Blue Care Elect	\$7,639.32 (\$5,729.49)	\$20,439.36 (\$15,329.52)

For Medicare-eligible retirees there are different plans. Note that there is no family coverage available, so spouses pay the same premium. The Town’s share of the Medicare Part B premium is 50%, not 75%.

Medex	\$2,301 (\$1,725.75)
Blue Rx	\$2,176.80 (\$1,632.60)
Medicare Part B	\$1,156.80 (50% = \$578.40)
TOTAL Medex	\$3,936.75
Blue Seniors	\$2,045.52 (\$1,531.89)
Blue Rx	\$2,176.80 (\$1,632.60)
Medicare Part B	\$1,156.80 (50% = \$578.40)
TOTAL Blue Seniors	\$3,742.89

The petitioner estimates that the Town's total expenses per selectman for health insurance could become very high over time. For example, if a selectman serves for six years and receives family coverage, the cost would exceed \$100,000 if health insurance premium increase at 6% per year—a very conservative estimate. If that selectman received health insurance after retirement at age 55, the total cost to the Town could exceed \$1 million, depending on the lifespan of the former selectman, whether and when he or she became eligible for Medicare, and the future rate of increase in health insurance premiums.

Note that it is difficult to predict future costs of providing health insurance to selectmen. Not all selectmen elect to join the Town's health insurance plan, but each can make this decision annually. Selectmen need to serve for two terms to become eligible for retiree health insurance, but those terms need not be consecutive. In theory, a former selectman who had served one term could be elected and rejoin for an additional term, thereby becoming eligible for retiree health insurance.

Restoring Equity

Although the budgetary impact of ending the current eligibility of selectmen for health insurance is the primary justification for Article 4, the Article also would restore some equity to the way in which the Town offers health insurance benefits. Under the current system, selectmen are entitled to the same health insurance benefits that are available to Town employees who work twenty or more hours per week. Selectmen become eligible for retiree health insurance after only six years of service, whereas regular employees must work for ten years to become eligible. Although some selectmen may devote a significant amount of their time to their civic duties, their positions and functions are not comparable to those of salaried Town employees. Offering selectmen the opportunity to receive health insurance may be regarded as an excessively generous fringe benefit. Moreover, members of the School Committee and other town boards and commissions are not entitled to this benefit. (Under the state statute, the Town could decide to make such elected officials eligible, but it has not done so.) Given the escalating cost of health insurance, the wisest way to restore equity would be to no longer provide health insurance benefits to selectmen. It is worth noting that selectmen enjoy what may seem to be an excessive benefit because they are currently offered a benefit that the state legislature initially intended to be available to state elected officials.

Leadership by Example

Finally, ending the eligibility of selectmen for health insurance could be regarded as an important symbolic step at a time when the Town is asking its employees to join the Group Insurance Commission (GIC) and to take other steps to reduce health insurance costs. Favorable action on Article 4 would make clear that Brookline's executive branch is also willing to do its share to limit the escalating growth of the Town's expenditures on health insurance benefits.

Arguments Against Article 4

There are at least three important arguments against Article 4.

First, at a time when many Americans do not have access to health insurance, it may seem wrong to take any further steps to limit the availability of health insurance. Even if members of the Board of Selectmen easily could obtain health insurance from other sources, any step to deny health insurance to anyone seems like a bad policy. This concern is offset, however, by the fact that any selectman that lost health insurance as a result of the passage of Article 4 would be eligible to purchase health insurance for up to eighteen months under the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986. Under the Massachusetts individual mandate for health insurance, selectmen without coverage would be required to purchase health insurance and would be able to get coverage through the state's Health Connector if it were not available from other sources. Unfortunately, under state law it would not be possible to set up a separate plan for the selectmen that would enable them to purchase health insurance at their own expense or to "grandfather" the current selectmen so that they would be able to retain their existing health insurance benefits.

Second, one could argue that the Article would have the effect of reducing the incentives for citizens to enter and remain in public service. Not only would selectmen not have the opportunity to enroll in the Town's health insurance plan while in office—a benefit that might encourage some candidates to run, but their years on the Board of Selectmen would not count as years of service for purposes of eligibility for post-retirement benefits. For example, a selectman who served one term might subsequently serve three or more years as a state representative and thus become eligible for retiree health insurance and other benefits. This prospect of further benefits might motivate some individuals to devote additional years to public service.

The Personnel Subcommittee recognizes that there should be incentives for individuals to enter and remain in public service, but it would be unwise to rely on financial rewards to encourage individuals to seek elective office. In the past, when health insurance costs were lower and were not increasing so rapidly, there may have been a case for offering insurance to encourage candidates to run for public office. Given the current trends in health insurance costs, lifetime health insurance is probably an incentive that Brookline cannot afford. The petitioner has pointed out that only 10 of 26 comparable communities that he surveyed offer health insurance benefits to their selectmen.

Finally, it is possible to argue that the fiscal impact of Article 4 would be relatively modest. In an annual budget of approximately \$200 million, health insurance costs of approximately \$55,000 may seem insignificant. Nevertheless, when slow growth in some revenue sources, the potential loss of state aid, and rising personnel and benefits costs make it likely that the Town will face budget deficits in the near term, any savings are welcome.

Advisory Committee Amendments to Article 4

The Advisory Committee made two amendments to the petitioner's proposal.

First, the Advisory Committee deleted paragraph (b), which states that former selectmen would not be eligible for health insurance during retirement unless they were enrolled in

the Town's health insurance plan when they left office. Although the Ludlow case did not apply to inactive employees, it is possible that paragraph (b) of the petitioner's proposal would deny retirement health insurance benefits to former selectmen who had served six or more years without enrolling in the Town's health insurance plan. The Advisory Committee felt that such a retroactive change would be unfair to former selectmen who had expected to be eligible for such benefits. Note that the inclusion or deletion of this paragraph has no effect on current selectmen who are not already eligible for retiree health insurance. Those selectmen would not be eligible for post-retirement benefits because paragraph (a) would make it impossible for them to accumulate six years of qualifying service.

Second, the Advisory Committee inserted an effective date of July 1, 2009, to clarify the by-law change and to ensure that current selectmen would continue to receive health insurance while they identify alternatives.

Article 4 and its Relationship to Article 5

The petitioner intended Articles 4 and 5 to be considered together. Article 4 would render selectmen ineligible for health insurance benefits while Article 5 would increase their stipend—which would be regarded as a reimbursement, not compensation—to at least partially offset the loss of health insurance. The Advisory Committee did not, however, regard the two Articles as inextricably intertwined. Article 5's recommended increase in the stipend paid to selectmen deserves consideration on its own merits, because the stipend has remained the same for many years. The Advisory Committee's separate report on Article 5 includes a more detailed discussion of these issues.

RECOMMENDATION:

An amendment to remove sec. b from the petitioner's original article carried by a vote of 9-8-3. A vote was then taken on the amended language. By a vote of 16-0-3 the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 4:

VOTED: That the Town amend the General By-Laws by adding a Section 3.1.8 to Article 3.1 Board of Selectmen, as follows:

“SECTION 3.1.1 SELECTMEN HEALTH BENEFITS

a. Eligibility

For purposes of determining the eligibility of a Selectman for health benefits pursuant to M.G.L. c. 32B, (i) all payments received by a Selectman from the Town in connection with his or her serving as a Selectman, including but not limited to receipt of any annual stipend, shall be for the reimbursement of expenses and shall not constitute “compensation,” regardless of how such payments may otherwise be designated or treated by either the Town or such Selectman, and (ii) the duties of a Selectman do not require twenty hours or more, regularly, in the service of the Town during the regular work week.

b. Effective Date
This by-law shall take effect on July 1, 2009.”

ARTICLE 5

FIFTH ARTICLE

To see if the Town will take the following action:

“Resolved, that beginning with the fiscal year ending June 30, 2010, Town Meeting recommends that each Selectman shall receive an annual budget allocation and payment of \$5,000 (in lieu of all prior stipend arrangements) to reimburse expenses incurred in connection with serving as a Selectman that are not otherwise reimbursed, provided, however, that the Chairman of the Board of Selectmen shall receive an annual budget allocation and payment of \$7,000 to reimburse such expenses, provided further, however, that no Selectman shall receive any such payment if at that time the Town is making any contribution on behalf of such Selectman for health insurance.”

or act on anything relative thereto

PETITIONER’S ARTICLE DESCRIPTION

Petitioners have submitted two Articles for consideration by Town Meeting that address the question of healthcare benefits for Selectmen. Together, these two Articles form a single proposal. This proposal is divided into two Articles because one (Art. 4) is in the form of a Bylaw change and the other (Art. 5) is in the form of a Resolution. Both these Articles should be read in conjunction with each other and for this reason, including simplicity, this Explanation is the same for both Articles.

Until recently, the fact that some current and former Selectmen receive health insurance benefits equivalent to those received by Town employees was not widely known. Furthermore, the origin of this practice in Brookline is not entirely clear, although the awarding of this benefit does not appear to have been initiated or authorized via any formal vote either by Town Meeting or the Board of Selectmen itself.

State law (M.G.L. Chapter 32B) provides statutory authority for certain elected officials to become eligible for participation in a Town’s health insurance program. There appear to be two ways in which such eligibility may occur: (1) the official’s duties require no less than twenty hours, regularly, in the service of the Town during the regular work week, or (2) a vote of the Board of Selectmen itself determines that the Selectmen will be eligible for Town-paid health coverage regardless of the number of hours worked. In either instance, the official must also receive some form compensation for his or her service. Selectmen have, for several decades, received a small annual stipend in connection with their service, which currently has been at the following levels: \$3,500 for the Chair and \$2,500 for the other four Selectmen. The stipend amounts have been included in the budget but their payment does not appear to be based upon any underlying legal mandate.

In FY09 the Town was paying approximately \$70,000 toward the annual health insurance premiums of six current and past Selectmen. The Town's annual health insurance cost for the currently serving Selectmen ranges from zero, for those who have not sought to receive this benefit, to about \$5,000 for individual coverage, to about \$15,000 for those availing themselves of family coverage.

Of greater financial significance to the Town is a provision in state law that provides for locally elected officials to vest fully in state employees' retirement benefits entitlements—including health insurance—after six years of active service with participation in the health coverage plan. Retirement eligibility in this instance occurs at age 55. Therefore, some former Selectmen who are not among those currently receiving this benefit may seek Town-paid health coverage after they reach age 55.

The cost of Town-paid health insurance has risen dramatically over the past decade—far beyond what could have been originally anticipated by either the Town or the earlier Selectmen beneficiaries of this “fringe benefit”. For example, family plan coverage now costs nearly \$20,000 per year, with the Town picking up 75 percent of the total premium. This means that the Town's future unfunded retiree health insurance liability for *individual* Selectmen who serve two terms could easily reach well into six figures.

These two Articles seek to address in a fair and reasonable manner two needs: (1) to limit the Town's ongoing cost and future liability relating to the health care costs of our elected Selectmen, and (2) to provide all individual Selectmen who choose to serve the Town in this voluntary capacity equitable financial remuneration.

Because the health insurance element (#1 above) is governed by state law, whereas the specific terms of the Selectmen's compensation arrangement (#2 above) is determined under the Town's annual budget procedures and not under any Town Bylaw, this overall proposal (as noted above) is divided into two Articles, the first being in the form of a Bylaw change and the second being in the form of a Resolution, with the action proposed under the Resolution being effectively contingent upon passage of the Bylaw change.

If both Articles are passed and—with respect to the Resolution—effected through the budget process, the result for sitting Selectmen, as of the July 1, 2009 (FY10) effective date, would be to terminate their health insurance benefit (should they currently be electing to take advantage of such benefit), while simultaneously increasing the amount each sitting Selectman receives in direct payment from the Town (proposed increase from \$2,500 to \$5,000 per year; \$3,500 to \$7,000 for the Chair).

The retiree health care benefit entitlement of any current or former Selectman who has already become vested in his or her retiree benefits under state law, whether or not that person is currently receiving any such retiree benefits, would be unaffected by the proposed Bylaw change. However, the Bylaw change Article would allow no further vesting and no further eligibility for future employee retirement benefits by a current or future Selectman.

Since Chapter 32B designates the Board of Selectmen—not Town Meeting—as the authorized local body to make certain votes regarding our municipal employees' health care plan, it would be preferable if the Selectmen were not themselves members and beneficiaries of that same plan. This Bylaw article would eliminate any such potential conflict."

Some observers who are aware that Selectmen can receive an employee health care benefit have expressed a greater concern for the open-ended, unfunded retiree aspect of this benefit and less concern with extending this benefit to sitting Selectmen. Unfortunately, state law does not permit such a distinction to be made; if a sitting Selectman takes health care coverage as a Town employee benefit, then he/she is also entitled to vest in the full retiree health benefit after six years. That is why this pair of Articles seeks to offset to some degree, by way of an increased annual stipend, the proposed elimination of Town-paid health care insurance for sitting Selectmen.

The proposed Bylaw change is worded to achieve this purpose in a manner that takes account of the specific provisions of Chapter 32B dealing with elected officials' eligibility for health care coverage. Because "compensation" is defined in state law as a baseline criterion for elected Selectmen to become eligible for current and future retiree health insurance benefits, and because these two Articles seek to provide financial equity among all Selectmen, not the elimination of all Selectmen financial benefits, the Articles' means of achieving this dual goal—consistent with a March 2008 legal opinion provided by to the Town by its labor counsel—is for Town Meeting to "vote that the . . . stipend/salary selectmen receive is merely a reimbursement for expenses and not compensation pursuant to M.G.L. c.32B, which would automatically disqualify them from [health insurance] eligibility;"

The proposed Bylaw change also confirms that the Selectmen's duties do not formally require 20 or more hours of service on a regular basis during the regular work week as referenced in M.G.L. Chapter 32B with respect to eligibility for health care insurance. While not required to do so, some Selectmen give more than 20 hours of dedicated service to the Town, and such service is encouraged and appreciated.

In addition, paragraph (b) of the proposed Bylaw change confirms that a former Selectman cannot, after reaching age 55, claim eligibility for retiree health care benefits unless that individual was receiving such benefits at the time he/she completed active service as a Selectman.

SELECTMEN'S RECOMMENDATION

Town Counsel was advised by Ethics Commission legal staff that the Selectmen can not participate in Board deliberations about Articles 4-6 because of a direct interest in the subject matter. Town Counsel was further advised that the Selectmen can only join in the

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debate on these items at Town Meeting just narrowly in the role of individuals who were elected at-large, as individual Selectmen, to their Town Meeting seats. As a consequence of this advisory from the Ethics Commission, Articles 4 and 5 were not scheduled for Board discussion for the purpose of voting on recommendations to Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's recommendation on Article 5 will be included in the Supplemental Mailing.

XXX

ARTICLE 5

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Article 5 is a resolution that would double the amount of money that Selectmen receive, called compensation under the existing framework, and to be called reimbursement if Article 4 passes. Article 5 was submitted by its Petitioners as a companion to Article 4, and has been ruled by the Moderator as inextricably intertwined with Article 4. Article 4 would amend the Town's by-laws to end the current eligibility of members of the Board of Selectmen for health insurance benefits while they serve as selectmen and after they retire. It would do so by defining any stipend received by selectmen as a reimbursement of expenses (as opposed to "compensation") and by stating that any selectman must be receiving health care benefits on his or her last day in office in order to be eligible for such benefits after retirement. Article 5 piggybacks on Article 4 by asking Town Meeting to approve a resolution would double the amount of the Selectmen's reimbursement (currently called compensation).

DISCUSSION:

The primary intent of the Petitioners for Article 5 is that it would compensate for the loss to the Selectmen of the health insurance benefit and, in that way, is a companion to Article 4. However, the Advisory Committee has concerns about the approach of Article 5.

In essence, Article 5 is a budget resolution. The Advisory Committee believes that the Town's budget should not be written in the form of resolutions on the floor of Town Meeting. Such a procedure is poor budgeting practice and not a prudent way to allocate resources. Budgeting should be done within the realm of our needs and resources, reviewing all factors in a comprehensive manner. Thus, a resolution which seeks to budget is not good precedent.

Second, since some Selectmen access the health insurance benefit now and some do not, it did not make sense to tie any increase to the loss of the benefit, since some were not actually losing anything.

We recognized that Article 5's recommended increase in the reimbursement paid to selectmen deserves consideration on its own merits, because the amount has remained the same for many years. While the cost to double the current amount paid to Selectman would increase the budget by a modest amount of \$13,500, these are not ordinary times. Since we do not yet know the specifics of our financial situation for the budget process which will begin in Spring 09, we believe that a recommendation on the amount of the increase, if any, is premature. At the May Town Meeting, Town Meeting will have ample opportunity to consider all budget factors and, within that context, raising the reimbursement at the May Town Meeting in the context of the Town's budget for FY10.

RECOMMENDATION:

The Advisory Committee, by a vote of 17-0-2, recommends NO ACTION on Article 5.

ARTICLE 6

SIXTH 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 TERMINATING THE HEALTH CARE BENEFITS AVAILABLE TO ANY SELECTMEN OF THE TOWN OF BROOKLINE UPON THEIR DEATH

Be it enacted, etc. as follows:

SECTION 1. Notwithstanding any general or special law, rule or regulation to the contrary, upon the death of any Town of Brookline Selectmen be they either currently serving as a Selectmen or a former Selectmen, who is also a member of the Town of Brookline’s group health insurance program, and under a so-called family plan, such healthcare benefits shall immediately terminate and the Town shall not be responsible for any further contributions toward such health care insurance.

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

or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

Cities and Towns, including Brookline are currently facing tough economic times and numerous decisions will need to be made to meet all of the Town’s fiscal responsibilities. Health insurance is an expensive benefit and the Town currently pays 75% of healthcare costs for its participating employees and Selectmen. A Selectman may receive the benefit, however, upon his/her death, the Town should no longer face this financial cost.

SELECTMEN’S RECOMMENDATION

Town Counsel was advised by Ethics Commission legal staff that the Selectmen can not participate in Board deliberations about Articles 4-6 because of a direct interest in the subject matter. Town Counsel was further advised that the Selectmen can only join in the debate on these items at Town Meeting just narrowly in the role of individuals who were elected at-large, as individual Selectmen, to their Town Meeting seats. As a consequence of this advisory from the Ethics Commission, Articles 4 and 5 were not scheduled for Board discussion for the purpose of voting on recommendations to Town Meeting.

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ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's recommendation on Article 6 will be included in the Supplemental Mailing.

XXX

ARTICLE 6

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

The purpose of this article is to request that the Commonwealth of Massachusetts pass legislation that would allow the Town of Brookline to terminate a Selectman's health benefit upon his or her death in order to relieve the Town from the ongoing obligation to continue to pay for family benefits for the minor children and surviving spouse. Under present Massachusetts law if a Selectman or former Selectman dies while a vested member of the Town of Brookline's group health insurance plan the Town is obligated to continue to pay for the group plan health insurance for the minor children and the surviving spouse. In the case of the surviving spouse this is a lifetime obligation for the Town.

DISCUSSION:

This is one of three articles proposed in order to end the Town's obligation to provide life time health insurance for Selectmen and their families which is triggered by M.G.L. c. 32B under provisions which apply to elected officials who receive a salary. Under M.G.L. c 32C the Selectmen are entitled to health insurance while in office and after a six year vesting period are entitled to lifetime health insurance coverage for themselves and their families under the Town of Brookline group health insurance plan on the same basis as all Town employees. As discussed in article 4, this may create a substantial burden on the Town and the petitioner feels that it is unreasonable to continue such benefits for the lifetime of former Selectmen and their spouses.

It was initially believed that the passage of this legislation would relieve the Town of payments it is presently making to former Selectmen and their surviving spouses and save the Town substantial health insurance costs of approximately thirty thousand dollars. Closer examination of the issue determined that the change in legislation would not terminate the vested benefits of past and present Selectmen. Vested benefits can not be terminated by the proposed legislative change under present state law.

Further, members of the Committee felt that this proposal sought to terminate benefits to a surviving spouse who was elderly and who might not be able to obtain other health care coverage at an affordable cost. Even if it was possible to change the vested benefit, there was some thought that it might not be fair or reasonable to do so now. Former Selectmen and their families had anticipated the benefit and made plans counting on its existence and changing the rules after the fact just seemed unfair. Since Article 4 is designed to prevent the Town from incurring this obligation in the future, and will allow for present and future Selectmen and their families to plan accordingly there was resistance to support this article. When it was realized that the article could not affect those presently receiving vested benefits there seemed to be no reason to go forward with the article.

RECOMMENDATION:

The Advisory Committee, by a vote of 17-0-1, recommends NO ACTION on Article 6.

ARTICLE 7

SEVENTH ARTICLE

To see if the Town will amend the General By-Laws by adding the following Article in Part VI, Public Property:

Article 6.11 Recycling Containers

The Town shall install recycling containers at all locations in town that have a trash waste barrel installed.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This proposed article is intended to help Brookline with its recycling efforts. More recently, we have seen the installation of a few paper and bottle recycling bins around Brookline's commercial districts. However, there are many other waste containers around town, both public streets and parks, and at MBTA stations that just have one waste container intended for all trash. Thus, many potential recyclables are tossed in those containers. It would be awesome to also install these recycling containers at all locations in town that have a trash waste barrel installed. Places like the T stops see the most in newspaper waste, and parks see many plastic bottles during the hot summer months. It would be great to get this done to help in the Solid Waste Committee with all their efforts. Please vote yes to help make Brookline greener.

SELECTMEN'S RECOMMENDATION

Article 7 is a petitioned article that would require the Town to install recycling containers at all locations where a trash waste barrel exists. The Board commends the petitioner for putting forward this green initiative that would help increase recycling. However, since there are currently 520 trash barrels around town, including 375 in parks / open spaces, there would be a significant cost associated with installing recycling containers in all of those locations. In addition, there are some logistical concerns, such as controlling the litter and contamination disposed of in these containers (if the recyclables are not clean, they will be rejected). This is a good idea that can be made better by some further analysis by the Solid Waste Advisory Committee (SWAC). The Board thanks the petitioner for putting this idea forward and is hopeful that SWAC will develop a plan that can be implemented by the Town. Therefore, by a vote of 3-0 taken on October 14, 2008, the Selectmen recommend FAVORABLE ACTION on the vote offered by the Advisory Committee.

ROLL CALL VOTE

Favorable Action

Daly

DeWitt

Mermell

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

The petitioner brought this Article to help Brookline with its recycling efforts by requiring recycling barrels for plastic bottles and other plastic containers “at all locations in town that have a trash waste barrel installed.” One impetus for the Article was the petitioner’s enthusiasm for the current limited pilot recycling barrel program in some of the commercial districts in Town. This Article would broaden additional recycling barrels throughout the Town, including the parks.

DISCUSSION:

While the Advisory Committee in general believed that greater recycling was worthwhile, there were a number of concerns. One concern is possible unintended consequences of any expansion of the program that could jeopardize recycling revenues. Another concern is additional costs – for barrels and manpower to collect the additional recycled waste.

DPW Commissioner DeMaio noted that collection of plastics and other material for recycling requires careful execution. The Town currently receives a good income, approximately \$275,000 annually, from recycled newspaper. It would be very important in any expanded recycling program to collect “clean” newspaper and prevent contamination in the waste stream. For example, plastics that are not clean can be rejected by the recycling center, and the Town has no plan to deal with rejected recyclable material. There were also cost concerns. The proposed Article would require the purchase of up to 375 additional barrels at approximately \$1,100 per recycling barrel – resulting in over \$400,000 in expenditures.

The DPW is currently exploring additional recycling in Town on a small scale to evaluate the idea of collecting recyclable materials in Town barrels. There is an ongoing \$25,000 pilot project by the DPW and the Solid Waste Advisory Committee funded in part by the Brookline Community Foundation at several areas in Town – including Coolidge Corner, Washington Square, St. Mary’s, Brookline Village, and the Brookline Village T-stop. Erin Gallentine, Director Parks and Open Space, noted that the Parks Department is planning another pilot program with 20 recycling containers in some parks this year. The

Director recommended evaluation of the pilot program before expanding it and making it mandatory.

RECOMMENDATION:

The full Advisory Committee recommended that the ongoing pilot programs be evaluated before any extensive roll out throughout the Town and voted unanimously (20 – 0) on the following:

VOTED: To refer Article 7 to the Solid Waste Advisory Committee (SWAC).

XXX

ARTICLE 8

EIGHTH ARTICLE

To see if the Town will amend Article 6.8, Section 6.8.2(A) of the General By-Laws as follows (language to be deleted is in brackets and language to be added is in bold and underlined):

ARTICLE 6.8 NAMING PUBLIC FACILITIES

Section 6.8.1

Except as hereinafter provided, town buildings, parks, squares and other facilities, may be named only by Town Meeting when such action is proposed in a Warrant Article. The Library Trustees may, in accordance with guidelines adopted and from time to time amended by them, name rooms and associated spaces of library buildings. The School Committee may, in accordance with guidelines adopted and from time to time amended by them name rooms and associated spaces of school buildings.

Section 6.8.2 REVIEW COMMITTEE

(A) Appointment - The Board of Selectmen shall appoint a Committee of [six] **five** members for staggered three year terms to review all proposals for naming public facilities except rooms and associated spaces under the jurisdiction of the School Committee and Library Trustees as specified above in Section 6.8.1. The Committee shall include one member of each of the Advisory Committee, the Park and Recreation Commission, the Preservation Commission and the School Committee. **In addition, the Board of Selectmen may appoint one alternate member to the Committee. Such alternate shall be appointed for a three year term and shall be designated by the Chair of the Committee from time to time to take the place of any member who is absent or unable or unwilling to act for any reason.**

(B) General Duties – The Review Committee shall be responsible for reviewing and reporting its recommendations on proposals for naming public facilities. The Committee may also, from time to time initiate its own proposals for naming public facilities. All recommendations of the Committee shall be subject to criteria to be established by the Committee and approved by the Board of Selectmen.

or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

This warrant article is intended to formalize the current composition of the Naming Committee. The suggested changes provide an odd number of members in order to facilitate the voting process and create an alternate position should a member of the committee be unwilling or unable to act.

SELECTMEN'S RECOMMENDATION

The Selectmen agree with the Naming Committee's recommendation on changing the number of members from six to five and the creation of an alternate position. The Board realizes that this change will mirror the current make up of the Committee, and sees that this arrangement has worked well for the Committee.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on September 16, 2008, on the following vote:

VOTED: That the Town amend Article 6.8, Section 6.8.2(A) of the General By-Laws as follows (language to be deleted is in brackets and language to be added is in bold and underlined):

ARTICLE 6.8 NAMING PUBLIC FACILITIES

Section 6.8.1

Except as hereinafter provided, town buildings, parks, squares and other facilities, may be named only by Town Meeting when such action is proposed in a Warrant Article. The Library Trustees may, in accordance with guidelines adopted and from time to time amended by them, name rooms and associated spaces of library buildings. The School Committee may, in accordance with guidelines adopted and from time to time amended by them name rooms and associated spaces of school buildings.

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(B) General Duties – The Review Committee shall be responsible for reviewing and reporting its recommendations on proposals for naming public facilities. The Committee may also, from time to time initiate its own proposals for naming public facilities. All recommendations of the Committee shall be subject to criteria to be established by the Committee and approved by the Board of Selectmen.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

The Article seeks to amend Section 6.8.2 of the By-Law entitled Review Committee which provides for a six member Committee for Naming Public Facilities. It enables the Board of Selectmen to appoint and alternate, assigned by the Committee Chair, to take the place of any member who is absent, unable or unwilling to act at a particular time. This article aims to formalize the current composition of five members and to facilitate the voting process by insuring an odd number of members.

DISCUSSION:

The Advisory Committee agrees that Article 8 is an effort to formalize the current composition of the Naming Public Facilities Committee by providing it with the authority to have an alternate member.

RECOMMENDATION:

The Advisory Committee unanimously (19-0-1) voted Favorable Action on the vote offered by the Selectmen.

XXX

ARTICLE 9

NINTH ARTICLE

To see if the Town will amend Article 8.15 of the General By-Laws (The Noise Control By-Law) by deleting the current version in its entirety and replacing it with the following (changes from the current version are tracked and red-lined):

ARTICLE 8.15
NOISE CONTROL

SECTION 8.15.1 SHORT TITLE

This By-law may be cited as the "Noise Control By-Law of the Town of Brookline".

SECTION 8.15.2 DECLARATION OF FINDINGS,
POLICY AND SCOPE

(a) Whereas excessive sound is a serious hazard to the public health and welfare, safety, and the quality of life; and whereas a substantial body of science and technology exists by which excessive sound may be substantially abated; and whereas the people have a right to and should be ensured an environment free from excessive sound that may jeopardize their health or welfare or safety or degrade the quality of life; now, therefore, it is the policy of the Town of Brookline to prevent excessive sound which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life.

(b) Scope.
This By-law shall apply to the control of all sound originating within the limits of the Town of Brookline.

1. Provisions in this By-law shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or to the emission of sound in the performance of emergency work or in training exercises related to emergency activities.

2. Emergency generators used for power outages and testing are exempt from this By-law. However, generator testing must be done during daylight hours.

23. Noncommercial public speaking and public assembly activities as guaranteed by state and federal constitutions shall be exempt from the operation of this By-law.

SECTION 8.15.3

~~DUTIES AND RESPONSIBILITIES OF TOWN~~
~~DEPARTMENTS/DEFINITIONS~~

(a) Ambient or Background Noise: Is the term used to describe the noise measured in the absence of the noise under investigation. It shall be calculated using the average lowest sound level measured over a period of not less than five minutes using a sound level meter set for slow response on the "A" weighting filter in a specific area of the town. In the absence of a specific measurement local ambient or background noise shall not be considered less than 30 dBA for interior spaces or 40 dBA for exterior areas.

(b) Construction and Demolition: Any site preparation, assembly erection, substantial repair, alteration, destruction or similar action for public or private rights-of-way, structures, utilities, or similar property.

(c) Day: 7:01 AM - 10:59 PM and Night: 11:00 PM – 7:00 AM

(d) Electronic Devices: Any radio, tape recorder, television, CD, stereo, public address system, loud speaker, amplified musical instrument including a hand held device, and any other electronic noise producing equipment.

Exemption: two-way communication radios used for emergency, safety and public works requirements.

(e) Emergencies: Any occurrence or set of circumstances necessary to restore, preserve, protect or save lives or property from imminent danger of loss or harm.

(f) Decibels (dB): The decibel is used to measure sound level. The dB is a logarithmic unit used to describe a ratio of sound pressure, loudness, power, voltage and several other things.

(g) Decibels "A" weighted scale dBA: The most widely used sound level filter is the "A" weighted scale. This filter simulates the average human hearing profile. Using the "A" weighted scale, the meter is less sensitive to very low and high frequencies.

(h) Decibels "C" weighted scale dBC: The "C" filter uses little filtering and has nearly a flat frequency response (equal magnitude of frequencies) throughout the audio range.

(i) Fixed Plant Equipment: Any equipment similar to the equipment i.e. generators, air conditioners, compressors, engines, pumps, refrigeration units, fans, boilers, heat pumps.

(j) Frequency response: Is the measure of any system's response at the output to a signal of varying frequency but constant amplitude at its input. The theoretical frequency range for humans is 20 - 20,000 cycles/second.

(k) Hertz (Hz): Cycles per Second (cps).

(l) Impulse Noise: Noise having a high peak of short duration of a sequence of such peaks. A sequence of impulses in rapid succession is termed repetitive impulsive noise.

(m) Intermittent Noise: The level suddenly drops to that of the background noise several times during the period of observation. The time during which the intermittent noise remains at levels different from that of the ambient is one second or more.

(n) Loudness: A rise of 10dB in sound level corresponds approximately to doubling of subjective loudness. That is, a sound of 65dB is twice as loud as a sound of 55 dB.

(o) Low-frequency noise: containing major components within the low frequency range (20Hz-250Hz) of the frequency spectrum.

(p) Leaf blowers: Any portable machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

(q) Noise: Sound which a listener does not wish to hear and exceeds the noise requirements located in the Noise By-Law.

(r) Noise Injury: Any sound that:

- (1) endangers the safety of, or could cause injury to the health of humans; or
- (2) endangers or injures personal or real property.

(s) Noise Level: All measurements shall be made with a Type I or II sound level meter as specified under American National Standard Institute (ANSI) standards.

(t) Noise Pollution: If a noise source increases noise levels 10 dB or more above the background noise level, it shall be judged that a condition of noise pollution exists. However, if the noise source is judged by ear to have a tonal sound, an increase of 5 dB above background noise level is sufficient to cause noise pollution.

(u) Person: Any individual, company, occupant, real property owner, or agent in control of real property.

(v) Reflection: Sound wave changed in direction of propagation due to a solid object obscuring its path.

(w) Sound: A fluctuation of air pressure which is propagated as a wave through air.

(x) Sound absorption: The ability of a material to absorb sound energy through its conversion into thermal energy.

(y) Sound Level Meter: An instrument meeting American National Standard Institute (ANSI) standards, consisting of a microphone, amplifier, filters, and indicating device, and designed to measure sound pressure levels accurately according to acceptable engineering practices.

(z) Sound Pressure Level: The level of noise, usually expressed in decibels, as measured by a standard sound level meter with a microphone.

(aa) Tonal Sound: Any sound that is judged by a listener to have the characteristics of a pure tone, whine, hum or buzz.

SECTION 8.15.3a MOTOR VEHICLE DEFINITIONS

(a) Gross Vehicle Weight Rating (GVWR): The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating, (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

(b) Motorcycle: Any unenclosed motor vehicle having two or three wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.

(c) Motor Vehicle: Any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snowmobiles, dune buggies, or racing vehicles, but not including motorcycles.

The following are examples are decibel readings of every day sounds:

<u>0dBA</u>	<u>The faintest sound we can hear</u>
<u>30dBA</u>	<u>A quiet library</u>
<u>45dBA</u>	<u>Typical office space</u>
<u>55dBA</u>	<u>Background noise of a typical urban environment at night</u>
<u>65dBA</u>	<u>Background noise of a typical urban environment during the day</u>
<u>70dBA</u>	<u>The sound of a car passing on the street</u>
<u>72dBA</u>	<u>The sound of two people speaking 4' apart</u>
<u>80dBA</u>	<u>Loud music played at home</u>
<u>90dBA</u>	<u>The sound of a truck passing on the street</u>
<u>100dBA</u>	<u>The sound of a rock band</u>
<u>115dBA</u>	<u>Limit of sound permitted in industry by OSHA</u>
<u>120dBA</u>	<u>Deafening</u>
<u>130dBA</u>	<u>Threshold of pain</u>
<u>140dBA</u>	<u>Rifle being fired at 3'</u>
<u>150dBA</u>	<u>Jet engine at 100'</u>

194dBA Theoretical limit for a sound wave at one atmosphere
environmental pressure

(a) Departmental Actions

All town departments and agencies shall, to the
fullest extent consistent with other laws, carry out
their programs in such a manner as to further the
policy of this By-law.

(b) Departmental Compliance with Other Laws

All town departments and agencies shall comply with
Federal and State laws and regulations and the provisions and intent of this By-
law respecting the control and abatement of noise to the same extent that any
person is subject to such laws and regulations.

SECTION 8.15.4 DUTIES AND RESPONSIBILITIES OF TOWN

DEPARTMENTS

PROHIBITIONS AND MEASUREMENT OF
NOISE EMISSIONS

(a) Departmental Actions

All town departments and agencies shall, to the
fullest extent consistent with other laws, carry out
their programs in such a manner as to further the
policy of this By-law.

(b) Departmental Compliance with Other Laws

All town departments and agencies shall comply with
Federal and State laws and regulations and the provisions and intent of this By-
law respecting the control and abatement of noise to the same extent that any
person is subject to such laws and regulations.

(c) The Department of Public Works is exempt for day and night time operations for
routine maintenance including but not limited to snow removal, street cleaning, litter
control, and graffiti removal, etc. However, the DPW should make every effort to reduce
noise in residential areas, particularly at night.

(d) Prior to purchasing new equipment, the Department of Public Works must
consider equipment with the lowest decibel rating for the performance standard required.

(e) Any proposed new or proposed upgrade for a park or recreation facility must
incorporate appropriate and feasible noise abatement measures during the design review
process.

SECTION 8.15.5 PROHIBITIONS AND MEASUREMENT OF NOISE
EMISSIONS

(a) Use Restrictions

- 1. The following devices shall be ~~prohibited from use during~~ allowed to operate between the hours of ~~89 (eightnine)~~ 89 (eightnine) A.P.M. to 8 (eight) P.A.M. Monday through Friday, and from ~~98 (nineeight)~~ 98 (nineeight) A.P.M. to ~~8:030 (eight-thirty)~~ 8:30 (eight-thirty) P.A.M. on Saturdays, Sundays and holidays:

All electric motor and internal combustion engined devices employed in yard and garden maintenance and repair.

Turf maintenance equipment employed in the maintenance of golf courses, snow blowers and snow removal equipment are exempt from this section.

- 2. The following devices shall be allowed to operate ~~between prohibited from use during~~ the hours of 7 (seven) A.P.M. to 7 (seven) P.A.M. Monday through Friday, and from ~~8:306 (eight-thirtysix)~~ 8:30 (eight-thirtysix) A.P.M. to ~~68:30 (sixeight-thirty)~~ 6:30 (sixeight-thirty) P.A.M. on Saturdays, Sundays and holidays:

(a) All devices employed in construction or demolition, subject to the maximum noise levels specified in Section 2b and 2c.

(b) Vehicular Sources: Maximum Noise Levels Measurements shall be made at a distance of 50 (fifty) feet from the closest point of pass-by of a source of 50 (fifty) feet from a stationery vehicle.

MAXIMUM NOISE LEVEL dB

Vehicle Class	Stationary Run-up or Speed Limit 35 mph or less	Speed Limit 35-45 mph
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All vehicles over 10,000 lbs.

863

9087

GVWR or GCWR		
All motorcycles	7982	7982
Automobiles and light trucks	75	75

(c) Construction and Maintenance Equipment:
Maximum Noise Levels

Noise measurements shall be made at 50 (fifty) feet from the source. The following noise levels shall not be exceeded:

Construction Item	Maximum Noise Level dBA	Maintenance Item	Maximum Noise Level dBA
Backhoe, bulldozer concrete mixer dumptruck, loader, paver, pneumatic tools, roller, scraper	90	Wood Chipper (running concrete mixer, full speed but not chipping) leaf vacuum	90
Air compressor	85	Chainsaw, solid waste compactor, tractor tractor (full-size)	85
Generator	80	Home tractor, leaf blower, snow blower	80
Electric drills, power tools, sanders, saws, etc.	75	Lawn mower, trimmer	75
		Leafblowers	65

(d) Fixed Plant Equipment

No person owning, leasing or controlling the operation of any source of noise of the type listed below [in this section shall operate such equipment in a manner not to exceed 10 dBA over the background level and not greater than 5 dBA of tonal sound over the background level. However, if the fixed equipment is operated during night time hours, the night time sound level measurement must not exceed the average daytime background levels to compensate for night time operations which is assumed to be 10dBA below daytime levels. See Definitions Section 8.15.3 \(c\).](#)

~~willfully, negligently or through failure to provide necessary equipment or facilities or to take necessary precautions, permit the establishment or continuation of a condition of noise pollution.~~

—The following sources, and any other similar noise producing device not specified here, shall be considered as potential sources of noise pollution:

Air conditioners, pumps, fans, furnaces, compressors, engines and similar fixed plant equipment.

Noise measurements shall be made at the boundary of the property in which the offending source is located or at the boundary line of the complainant.

(e) Electronic Devices and Musical Instruments

No person owning, leasing or controlling the operation of any electronic device shall willfully or negligently permit the establishment or condition of noise injury or noise pollution.

In public spaces, the existence of noise injury or noise pollution is to be judged to occur at any location a passerby might reasonably occupy. When the offending noise source is located on private property, noise injury or noise pollution judgments shall be made at the property line within which the offending source is located.

Any and all decibel levels of sound caused by playing non-electrified~~one~~ musical instruments between 9 A.M. and 9 P.M. shall be exempt with the exception of drums.

(f) Leaf Blowers

No person shall operate any portable leaf blower(s) with a power rating of at or under 4.5 horsepower which does not bear an affixed manufacturer's label indicating the model number of the leaf blower(s) and designating a noise level not in excess of sixty-five(65)dBa when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology. Any leaf blower(s) which bears such a manufacturer's label or town's label shall be presumed to comply with the approved noise level limit under this by-law. However, any leaf blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label is prohibited. However, any portable leaf blower(s) that have been modified or damaged, determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the town as provided for in this section, even if the unit has an affixed ANSI or town label. Any portable leaf blower(s) must comply with this by-law by January 1, 2010. However, any leaf blower(s) operating after January 1, 2010 without an ANSI label on the equipment, may obtain a label from the town by bringing the equipment to the

town's service center or such facility designated by the Town for testing. The testing will be provided by the town's designated person for a nominal fee and by appointment only. Testing will be provided only between the months of May and October. If the equipment passes, a town label will be affixed to the equipment indicating decibel level. Whether the equipment passes or not, the testing fee is non-refundable. Leaf blowers may be operated only during the hours specified in Section 8.15.5(2)

(gf) Animals

No person owning, keeping or controlling any animal shall willfully, negligently or through failure to provide necessary equipment or facilities or to take necessary precautions, permit the existence of noise pollution or noise injury.

(hg) Additional Noise Sources

No person shall emit noise so as to cause a condition of noise pollution or noise injury.

(ih) Alternative Measurement Procedures

If it is not possible to make a good noise level measurement at the distance as defined for specific equipment throughout Article 8.15, specified in Section 8.15.4, measurement may be made at an alternate distance and the level at the specified distance subsequently calculated. Calculations shall be made in accordance with established engineering procedures.

~~(i) Tonal Sound Corrections~~

~~When a tonal sound is emitted by a noise source, the limit on maximum noise levels shall be 5 dB lower than specified.~~

(j) Maximum Noise Level Exclusions

Any equipment that is used to satisfy local, state, federal health, welfare, environmental or safety codes shall be exempt from maximum noise limitations for hours of operation.(See Section 8.15.5(a)), except to the extent otherwise determined by the Board of Selectman. The following ~~device~~equipment shall also be exempt from Section 8.15.5(a): i.e.: Work involving routine maintenance or emergencies performed by the Department of Public Worksmaximum noise limitations (for time limits see Section 8.15.4(a):

jack hammers

pavement breakers

pile drivers

rock drills

or such other equipment as the DPW deems necessary.

providing that effective noise barriers are used to shield nearby areas from excessive noise.

~~However, noise shields shall not be required for devices located on public or private rights of way.~~

(k) Motor Vehicle Alarms

The sounding of any horn or signaling device as a part of a burglar, fire or alarm system (alarm) for any motor vehicle, unless such alarm is automatically terminated within ten minutes of activation and is not sounded again at all within the next sixty minutes, is prohibited. Any motor vehicle located on a public or private way or on public or private property whose alarm has been or continues to sound in excess of ten minutes in any sixty minute cycle is hereby deemed to be a public nuisance subject to immediate abatement. Any police officer who observes that the alarm has or is sounding in excess of ten minutes in any sixty minute cycle, who, after making a reasonable effort, is unable to contact the owner of such motor vehicle or, after contact, such owner fails or refuses to shut-off or silence the alarm or authorize the police officer to have the alarm shut-off or silenced, may abate the nuisance caused by the alarm by entering the vehicle to shut-off or disconnect the power source of the alarm, by authorizing a member of the fire department or a tow company employee to enter such vehicle to shut-off or disconnect the power source of the alarm and, if such efforts are unsuccessful, such officer is authorized to abate the nuisance by arranging for a tow company to tow the motor vehicle to an approved storage area or other place of safety. If a motor vehicle's alarm is shut-off or disconnected from its power source and a police officer determines that the motor vehicle is not safe in its then location and condition, the police officer may arrange for a tow company to tow the motor vehicle to an approved storage area or other place of safety. The registered owner of the motor vehicle shall be responsible for all reasonable costs, charges and expenses incurred for the shutting-off or silencing of the alarm and all costs of the removal and storage of the motor vehicle. The provisions of Article 10.1 shall not apply to paragraph (k).

(l) Tonal Sound Corrections

When a tonal sound is emitted by a noise source, the limit on maximum noise levels shall be 5 dB lower than specified.

- (a) The Board of Selectmen, or designee, may give a special permit for any activity, otherwise forbidden by the provisions of this By-law. A person seeking such a permit should make a written application to the Board of Selectmen, or designee, on the appropriate form which shall be available at the office of the Selectmen.
- (b) The Board of Selectmen, or designee, may issue guidelines defining the procedures to be followed in applying for a special permit. The following criteria shall be considered:
 - (1) the cost of compliance will not cause the applicant excessive financial hardship;
 - (2) additional noise will not have an excessive impact on neighboring citizens.
- (c) The Board of Selectmen, or designee, may issue guidelines defining procedures to be followed in applying for an extension of time to comply with the provisions of these regulations and the criteria to be considered in deciding whether to grant a permit. [A condition of the permit may require portable acoustic barriers during night time hours.](#) The guidelines shall include reasonable deadlines for compliance.
- (d) In some instances, when it can be demonstrated that bringing a source of noise into compliance with the provisions of this By-law would create undue hardship on a person or the community, a special permit may be granted for an exemption from this By-law. A person seeking a special permit shall make written application within 5 (five) days of receiving notification from the Town that (s)he is in violation of the provisions of this By-law. If the Board of Selectmen find that sufficient controversy exists regarding the application, a public hearing may be held.
- (e) If the Board of Selectmen, or designee, orders abatement of a noise source not complying with this By-law, a person who feels (s)he cannot meet the stated time schedule for compliance may file an application for an extension of time. A written application shall be filed within 5 (five) days of receipt of notification of violation and shall propose a new compliance schedule. A person who claims that the allowance of a extension of time would have adverse effects may file a statement with the Board of Selectmen, or designee, to support this claim. If the Board of Selectmen, or designee, find that sufficient controversy exists regarding the application, a public hearing may be held.

Resolution of controversy shall be based upon the information supplied by both sides in support of their individual claims and shall be in accordance with the procedures defined in the appropriate guidelines issued by the Board of Selectmen, or designee.

SECTION 8.15.87 APPEALS

Appeals from a decision of the Board of Selectmen, or designee, shall be to the Superior Court. Judicial review shall be limited to whether the decision was supported by substantial evidence.

SECTION 8.15.98 PENALTIES

(a) Any person who violates any provision of this bylaw shall be subject to a fine pursuant to Article 10:3 (Non-Criminal Disposition) in accordance with GL c.40. Section 21d or they may be guilty of a misdemeanor in accordance with Article 10.1 of the Town Bylaw and each violation shall be subject to fines according to the following schedule:

- (1) \$50.00 for first offense;
- (2) \$100.00 for the second offense;
- (3) \$200.00 for the third offense;
- (4) \$200.00 for successive violations, plus court costs for any enforcement action.

Each day of a continuing violation shall be considered a separate violation. Fines that remain unpaid after 30 days shall accrue interest at the statutory rate of interest.

(b) If a person in violation of the Noise Bylaw at a real property is an occupant but not the record owner of the real property, the Police, Health, or Building Departments may notify the owner of record of the real property of the violation. If a fine issues in connection with excessive noise at real property to someone other than the record owner of the property then the record owner of that property shall be notified. If there are any successive violations at least 14 days after the notification of the real property owner but within a one-year period, then the record owner of the property shall also be subject to the fine schedule delineated in Section (a).

(c) An object that is the source of a noise violation may be seized by the Police if the violation is not mitigated within an hour and may be held until the fine is paid or for 60 days, whichever is sooner, and if unclaimed it may be sold at auction by the Town. Removal and storage costs of the object shall be paid by the person violating the Noise Bylaw, in addition to any fine imposed according to the schedule listed in Section (a).

N.B. The Health, Building, Police and Public Works Departments all have enforcement authority for the By-law. To report a violation, contact the appropriate department.

~~(a) — Any person who violates any provision of this By law if convicted, shall be guilty of a misdemeanor and shall be fined an amount not to exceed \$50.00 (fifty dollars), or the offending source shall be confiscated by the appropriate agency until the fine is paid, or for 60 (sixty) days, whichever is sooner, and, if unclaimed, may be sold at auction by the Police Department. Removal and storage costs of the offending source shall be in addition to the fine.~~

~~(b) — Each day that the offense continues shall be considered to be a separate violation.~~

~~SECTION 8.15.109 — DEFINITIONS~~

~~(a) — Construction and Demolition: Any site preparation, assembly erection, substantial repair, alteration, destruction or similar action for public or private rights of way, structures, utilities, or similar property.~~

~~(b) — Electronic Devices: Any radio, tape recorder or player, television, phonograph, public address system, loud speaker, amplified musical instrument and any other similar device.~~

~~— Exemption: two way communication radios.~~

~~(c) Emergency: Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.~~

~~(d) — Emergency Work: Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.~~

~~(e) — Gross Vehicle Weight Rating (GVWR): The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating, (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.~~

~~(f) — Motorcycle: Any unenclosed motor vehicle having two or three wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.~~

~~(g) — Motor Vehicle: Any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck trailers, semi trailers, campers, go carts, snowmobiles, dune buggies, or racing vehicles, but not including motorcycles.~~

~~(h) — Noise Injury: Any sound that:~~

~~— (a) — endangers the safety of, or could cause~~

~~injury to the health of humans; or
(b) endangers or injures personal or real
property.~~

~~(i) Noise Level: All measurements shall be made with a
Type I or II sound level meter as specified under ANSI standards.~~

~~(j) Noise Pollution: If a noise source increases noise levels 10 dB or more above the
background noise level, it shall be judged that a condition of noise pollution
exists. However, if the noise source is judged by ear to have a tonal sound, an
increase of 5 dB above background noise level is sufficient to cause noise
pollution.~~

~~(k) Tonal Sound: Any sound that is judged by a listener to
have the characteristics of a pure tone, whine, hum or buzz.~~

~~SECTION 8.15.10 SEVERABILITY~~

If any provisions of this article or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of this article and the applicability of such provision to other persons or circumstances shall not be affected thereby.

Footnotes:

ADDITIONAL DEFINITIONS NOT USED IN THE CURRENT BYLAW

(a) Sound Transmission Class (STC): This is a measure of the extent of the sound reduction of noise going through a building element. It denotes the sound attenuation properties of walls, floors and ceilings used to construct building spaces. The higher the STC rating, the better the sound reduction performance of the construction.

(b) Structure Borne Noise: This refers to noise which is generated by vibrations induced in the ground and/or structure. These vibrations excite walls and slabs in buildings and cause them to radiate noise. This type of noise can not be attenuated by barriers or walls but requires the interposition of a resilient (acoustic isolators, springs, floating floors, etc.) break between the source and the receiver.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

At the request of Town Meeting, the Board of Selectmen charged a committee with reviewing and revising the Town's Noise Bylaw. The Committee has worked for several years reviewing the bylaws of other municipalities, learning about methods of noise reduction, and rewriting the bylaw. This warrant article is a revised noise bylaw offered by the Committee set up by the Board of Selectmen.

SELECTMEN'S RECOMMENDATION

Article 9 is a revision of the Town's Noise Control By-Law. It is the result of the hard work of the Selectmen's committee charged with reviewing and revising the By-Law. The Committee has worked for several years reviewing the by-laws of other municipalities, learning about methods of noise reduction, and rewriting the existing by-law.

The revised by-law includes an extensive list of definitions along with a section that provides examples of sound readings at various decibel levels. The by-law also provides a revision to times of the days during which equipment, devices, and musical instruments may be used, as well as modifications to the decibel limits for such equipment. Exemptions are made for the Department of Public Works (DPW), but it should be noted that the DPW is encouraged to make every reasonable effort to reduce noise in residential areas, and the Department must consider low-decibel equipment when making new equipment purchases.

Substantial language has been added to address the use of portable leaf blowers. Portable leaf blowers will require either a manufacturer or Town label that indicates the leaf blower does not have a noise level that exceeds 67 dBA when measured from a distance of fifty feet. All leaf blowers must be in compliance with this regulation by January 1, 2010. Finally, the by-law provides a penalty section, which spells out a fine schedule along with consequences for continued violations.

The Selectmen thank the Noise By-Law Committee for their hard work. Although there were some spirited discussions during the process, all are agreed that the final work product is the result of much collaboration and compromise. The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 28, 2008, on the following vote:

VOTED: That the Town amend Article 8.15 of the General By-Laws (The Noise Control By-Law) by deleting the current version in its entirety and replacing it with the following:

ARTICLE 8.15
NOISE CONTROL

SECTION 8.15.1 SHORT TITLE

This By-law may be cited as the "Noise Control By-law of The Town of Brookline".

SECTION 8.15.2 DECLARATION OF FINDINGS,
 POLICY AND SCOPE

(a) Whereas excessive Noise is a serious hazard to the public health and welfare, safety, and the quality of life; and whereas a substantial body of science and technology exists by which excessive Noise may be substantially abated; and whereas the people have a right to and should be ensured an environment free from excessive Noise that may jeopardize their health or welfare or safety or degrade the quality of life; now, therefore, it is the policy of the Town of Brookline to prevent excessive Noise which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life.

(b) Scope.
 This By-law shall apply to the control of all sound originating within the limits of the Town of Brookline.

1. Provisions in this By-law shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or to the emission of sound in the performance of emergency work or in training exercises related to emergency activities, and in the performance of public safety activities.
2. Emergency generators used for power outages or testing are exempt from this By-law. However, generator testing must be done during daylight hours.
3. Noncommercial public speaking and public assembly activities as guaranteed by state and federal constitutions shall be exempt from the operation of this By-law.

SECTION 8.15.3 DEFINITIONS

(a) Ambient or Background Noise Level: Is the term used to describe the Noise measured in the absence of the Noise under investigation. It shall be calculated using the average lowest sound pressure level measured over a period of not less than five minutes using a sound pressure level meter set for slow response on the “A” weighting filter in a specific area of the town under investigation.

(b) Construction and Demolition: Any site preparation, assembly erection, substantial repair, alteration, destruction or similar action for public or private rights-of-way, structures, utilities, or similar property.

(c) Day: 7:01 AM - 10:59 PM and Night: 11:00 PM – 7:00 AM

(d) Electronic Devices: Any radio, tape recorder, television, CD, stereo, public address system, loud speaker, amplified musical instrument including a hand held device, and any other electronic noise producing equipment.

Exemption: two-way communication radios used for emergency, safety and public works requirements.

(e) Emergencies: Any occurrence or set of circumstances necessary to restore, preserve, protect or save lives or property from imminent danger of loss or harm.

(f) Decibels (dB): The decibel is used to measure sound pressure level. The dB is a logarithmic unit used to describe a ratio of sound pressure, loudness, power, voltage and several other things.

(g) Decibels “A” weighted scale (dBA): The most widely used sound level filter is the “A” weighted scale. This filter simulates the average human hearing profile. Using the “A” weighted scale, the meter is less sensitive to very low and high frequencies.

(h) Decibels “C” weighted scale (dBC): The “C” filter uses little filtering and has nearly a flat frequency response (equal magnitude of frequencies) throughout the audio range.

(i) Fixed Plant Equipment: Any equipment such as generators, air conditioners, compressors, engines, pumps, refrigeration units, fans, boilers, heat pumps and similar equipment.

(j) Frequency response: Is the measure of any system’s response at the output to a signal of varying frequency but constant amplitude at its input. The theoretical frequency range for humans is 20 - 20,000 cycles/second (Hz).

(k) Hertz (Hz): Cycles per Second (cps).

(l) Loudness: A rise of 10dB in sound pressure level corresponds approximately to doubling of subjective loudness. That is, a sound of 65dB is twice as loud as a sound of 55dB.

(m) Leaf blowers: Any portable machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

(n) Noise: Sound which a listener does not wish to hear and is under investigation that may exceed the Noise requirements located in this Noise By-law.

(o) Noise Injury: Any sound that:

- (1) endangers the safety of, or could cause injury to the health of humans; or
- (2) endangers or injures personal or real property.

(p) Noise Level: The Sound Pressure Level measurements shall be made with a Type I or II sound level meter as specified under American National Standard Institute (ANSI) standards.

(q) Noise Pollution: If a Noise source increases Noise levels 10 dBA or more above the Background Noise Level, it shall be judged that a condition of Noise Pollution exists. However, if the Noise source is judged by ear to have a tonal sound, an increase of 5 dBA above Background Noise Level is sufficient to cause Noise Pollution.

(r) Person: Any individual, company, occupant, real property owner, or agent in control of real property.

(t) Sound: A fluctuation of air pressure which is propagated as a wave through air.

(u) Sound Level Meter: An instrument meeting Type I or Type II American National Standard Institute (ANSI) standards, consisting of a microphone, amplifier, filters, and indicating device, and designed to measure sound pressure levels accurately according to acceptable engineering practices.

(v) Sound Pressure Level: The level of Noise, normally expressed in decibels, as measured by a sound level meter.

(w) Tonal Sound: Any sound that is judged by a listener to have the characteristics of a pure tone, whine, hum or buzz.

SECTION 8.15.3A MOTOR VEHICLE DEFINITIONS

(a) Gross Vehicle Weight Rating (GVWR): The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating, (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

(b) Motorcycle: Any unenclosed motor vehicle having two or three wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.

(c) Motor Vehicle: Any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snowmobiles, dune buggies, or racing vehicles, but not including motorcycles.

SECTION 8.15.4 SOUND LEVEL EXAMPLES

The following are examples of approximate decibel readings of every day sounds:

0dBA	The faintest sound we can hear
30dBA	A typical library
45dBA	Typical office space
55dBA	Background Noise of a typical urban environment at night
65dBA	Background Noise of a typical urban environment during the day
70dBA	The sound of a car passing on the street
72dBA	The sound of two people speaking 4' apart
80dBA	Loud music played at home
90dBA	The sound of a truck passing on the street
100dBA	The sound of a rock band
115dBA	Limit of sound permitted in industry by OSHA
120dBA	Deafening
130dBA	Threshold of pain
140dBA	Rifle being fired at 3'
150dBA	Jet engine at a distance of 100'
194dBA	Theoretical limit for a sound wave at one atmosphere environmental pressure

SECTION 8.15.5 DUTIES AND RESPONSIBILITIES OF TOWN OF TOWN DEPARTMENTS

(a) Departmental Actions

All town departments and agencies shall, to the fullest extent consistent with other laws, carry out their programs in such a manner as to further the policy of this By-law.

(b) Departmental Compliance with Other Laws

All town departments and agencies shall comply with federal and state laws and regulations and the provisions and intent of this By-law respecting the control and abatement of Noise to the same extent that any person is subject to such laws and regulations.

(c) The Department of Public Works is exempt for Day and Night time operations for routine maintenance including but not limited to snow removal, street cleaning, litter control, and graffiti removal, etc. However, the DPW shall make every effort to reduce Noise in residential areas, particularly at night.

(d) Prior to purchasing new equipment, the Department of Public Works must consider equipment with the lowest Decibel rating for the performance standard required.

(e) Any proposed new or proposed upgrade for a park or recreation facility must incorporate appropriate and feasible Noise abatement measures during the design review process.

SECTION 8.15.6 PROHIBITIONS AND MEASUREMENT OF NOISE EMISSIONS

(a) Use Restrictions

1. The following devices shall not be operated except between the hours of 8 (eight) A.M. to 8(eight) P.M. Monday through Friday, and from 9 (nine) A.M. to 8(eight) P.M. on Saturdays, Sundays and holidays:

All electric motor and internal combustion engine devices employed in yard and garden maintenance and repair.
Turf maintenance equipment employed in the maintenance of golf courses, snow blowers and snow removal equipment are exempt from this section.

2. The following devices shall not be operated except between the hours of 7(seven) A.M. to 7(seven) P.M. Monday through Friday, and from 8:30(eight-thirty) A.M. to 6(six) P.M. on Saturdays, Sundays and holidays:

All devices employed in construction or demolition, subject to the maximum Noise Levels specified in Section 8.15.6b and 8.15.6c.

(b) Vehicular Sources: Maximum Noise Levels Measurements shall be made at a distance of 50 (fifty) feet from the closest point of pass-by of a Noise source or 50(fifty) feet from a stationary vehicle.

MAXIMUM NOISE LEVEL dBA

Vehicle Class	Stationary Run-up or Speed Limit 35 mph or less	Speed Limit 35-45 mph
All vehicles over 10,000 lbs. GVWR or GCWR	83	87
All motorcycles	79	79
Automobiles and light trucks	<u>75</u>	<u>75</u>

(c) Construction and Maintenance Equipment:

Maximum Noise Levels

Noise measurements shall be made at 50 (fifty) feet from the source. The following Noise Levels shall not be exceeded:

<u>Construction Item</u>	<u>Maximum Noise Level dBA</u>	<u>Maintenance Item</u>	<u>Maximum Noise Level dBA</u>
Backhoe, bulldozer concrete mixer dumptruck, loader, roller, scraper, pneumatic tools,paver	90	Wood Chipper running concrete mixer,leaf vacuum	90
Air compressor	85	Chainsaw, solid waste compactor, tractor (full-size)	85
Generator	80	Home tractor, snow blower	80
Electric drills, power tools, sanders, saws, etc.	75	Lawn mower, trimmer, Leafblowers	75

(d) Fixed Plant Equipment

Any person shall operate such equipment in a manner not to exceed 10 dBA over the Background Noise and not greater than 5 dBA of Tonal sound over the Background Noise. However, if the fixed equipment is operated during night time hours, the night time Sound Pressure Level of the Fixed Plant Equipment must not exceed the average daytime Background Noise to compensate for night time operations, which is assumed to be 10dBA below daytime Background Noise. See Definitions Section 8.15.3(c).

Noise measurements shall be made at the boundary of the property in which the offending source is located, or at the boundary line of the complainant if the complainant is not a direct abutter.

(e) Electronic Devices and Musical Instruments

No person owning, leasing or controlling the operation of any electronic device shall willfully or negligently permit the establishment or condition of Noise Injury or Noise Pollution.

In public spaces, the existence of Noise Injury or Noise Pollution is to be judged to occur at any location a passerby might reasonably occupy. When the offending Noise source is located on private property, Noise Injury or Noise Pollution judgments shall be made at the property line within which the offending source is located.

Any and all Decibel Levels of sound caused by playing non-electrified musical instruments between 9 A.M. and 9 P.M. shall be exempt with exception of drums.

(f) Leaf Blowers

No person shall operate any portable Leaf Blower(s) which does not bear an affixed manufacturer's label or a label from the town indicating the model number of the Leaf Blower(s) and designating a Noise Level not in excess of sixty-seven(67)dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology. Any Leaf Blower(s) which bears such a manufacturer's label or town's label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, any Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any portable Leaf Blower(s) that have been modified or damaged, determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or town label. Any portable Leaf Blower(s) must comply with the labeling provisions of this By-law by January 1, 2010. However, the owner's of any Leaf Blower(s) operating after January 1, 2010 without a manufacturer's ANSI label on the equipment, may obtain a label from the town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. The testing will be provided by the town's designated person for a nominal fee and by appointment only. Testing will be provided only between the months of May and October. If the equipment passes, a town label will be affixed to the equipment indicating Decibel Level.

Whether the equipment passes or not, the testing fee is non-refundable. Leaf blowers may be operated only during the hours specified in Section 8.15.6(a)(1). In the event that the label has been destroyed, the Town may replace the label after verifying the specifications listed in the owner's manual that it meets the requirements of this By-law.

(g) Animals

No person owning, keeping or controlling any animal shall willfully, negligently or through failure to provide necessary equipment or facilities or to take necessary precautions, permit the existence of Noise Pollution or Noise Injury.

(h) Additional Noise Sources

No person shall emit noise so as to cause a condition of Noise Pollution or Noise Injury.

(i) Alternative Measurement Procedures

If it is not possible to make a good Sound Pressure Level measurement at the distance as defined for specific equipment throughout Article 8.15, measurement may be made at an alternate distance and the level at the specified distance subsequently calculated. Calculations shall be made in accordance with established engineering procedures.

(j) Noise Level Exclusions

Any equipment that is used to satisfy local, state, federal health, welfare, environmental or safety codes shall be exempt from limitations for hours of operation (See Section 8.15.6(a)), except to the extent otherwise determined by the Board of Selectman. The following equipment shall also be exempt from Section 8.15.6(a) if necessary for emergency work performed by the Department of Public Works:

- jack hammers
- pavement breakers
- pile drivers
- rock drills
- or such other equipment as the DPW deems necessary,

providing that effective Noise barriers are used to shield nearby areas from excessive Noise.

(k) Motor Vehicle Alarms

The sounding of any horn or signaling device as a part of a burglar, fire or alarm system (alarm) for any motor vehicle, unless such alarm is automatically terminated within ten minutes of activation and is not sounded again at all within the next sixty minutes, is prohibited. Any motor vehicle located on a public or private way or on public or private property whose alarm has been or continues to sound in excess of ten minutes in any sixty minute cycle is hereby deemed to be a public nuisance subject to immediate abatement. Any police officer who observes that the alarm has or is sounding in excess of ten minutes in any sixty minute cycle, who, after making a reasonable effort, is unable to contact the owner of such motor vehicle or, after contact, such owner fails or refuses to shut-off or silence the alarm or authorize the police officer to have the alarm shut-off or silenced, may abate the nuisance caused by the alarm by entering the vehicle to shut off or disconnect the power source of the alarm, by authorizing a member of the fire department or a tow company employee to enter such vehicle to shut off or disconnect the power source of the alarm and, if such efforts are unsuccessful, such officer is authorized to abate the nuisance by arranging for a tow company to tow the motor vehicle to an approved storage area or other place of safety. If a motor vehicle's alarm is shut off or disconnected from its power source and a police officer determines that the motor

vehicle is not safe in its then location and condition, the police officer may arrange for a tow company to tow the motor vehicle to an approved storage area or other place of safety. The registered owner of the motor vehicle shall be responsible for all reasonable costs, charges and expenses incurred for the shutting-off or silencing of the alarm and all costs of the removal and storage of the motor vehicle. The provisions of Article 10.1 or Section 8.15.10 shall not apply to this paragraph (k).

(l) Tonal Sound Corrections

When a Tonal Sound is emitted by a Noise source, the limit on maximum Noise levels shall be 5 dB lower than specified.

SECTION 8.15.7 PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

- (a) The Board of Selectmen, or designee, may give a special permit
 - (i) for any activity otherwise forbidden by the provisions of this By-law,
 - (ii) for an extension of time to comply with the provisions of this By-law and any abatement orders issued pursuant to it, and
 - (iii) when it can be demonstrated that bringing a source of Noise into compliance with the provisions of this By-law would create an undue hardship on a person or the community. A person seeking such a permit should make a written application to the Board of Selectmen, or designee. The Town will make all reasonable efforts to notify all direct abutters prior to the date of the Selectmen's meeting at which the issuance of a permit will be heard.

(b) The applications required by (a) shall be on appropriate forms available at the office of the Selectman. The Board of Selectmen, or designee, may issue guidelines defining the procedures to be followed in applying for a special permit. The following criteria and conditions shall be considered:

(1) the cost of compliance will not cause the applicant excessive financial hardship;

(2) additional Noise will not have an excessive impact on neighboring citizens.

(3) the permit may require portable acoustic barriers during Night.

(4) the guidelines shall include reasonable deadlines for compliance or extension of non-compliance.

(5) the number of days a person seeking a special permit shall have to make written application after receiving notification from the Town that (s)he is in violation of the provisions of this By-law.

(b) If the Board of Selectmen, or designee, finds that sufficient controversy exists regarding the application, a public hearing may be held. A person who claims that any special permit granted under (a) would have adverse effects may file a statement with the Board of Selectmen, or designee, to support this claim.

SECTION 8.15.8 HEARINGS ON APPLICATION FOR PERMITS FOR EXEMPTIONS

Resolution of controversy shall be based upon the information supplied by both sides in support of their individual claims and shall be in accordance with the procedures defined in the appropriate guidelines issued by the Board of Selectmen, or designee.

SECTION 8.15.9 APPEALS

Appeals from a decision of the Board of Selectmen, or designee, shall be to the Superior Court. Judicial review shall be limited to whether the decision was supported by substantial evidence.

SECTION 8.15.10 PENALTIES

(a) Any person who violates any provision of this By-law shall be subject to a fine pursuant to Article 10.3 (Non-Criminal Disposition) in accordance with GL c.40. Section 21d or they may be guilty of a misdemeanor in accordance with Article 10.1 of the Town By-law and each violation shall be subject to fines according to the following schedule:

- (1) \$50.00 for first offense;
 - (2) \$100.00 for the second offense;
 - (3) \$200.00 for the third offense;
 - (4) \$200.00 for successive violations;
- plus (5) court costs for any enforcement action.

Each day of a continuing violation shall be considered a separate violation. Fines that remain unpaid after 30 days shall accrue interest at the statutory rate of interest.

(b) If a person in violation of the Noise Control By-law at a real property is an occupant but not the record owner of the real property, the Police, Health, or Building Departments may notify the owner of record of the real property of the violation. If a fine is issued in connection with excessive Noise at real property to someone other than the record owner of the property then the record owner of that property shall be notified. If there are any

successive violations at least 14 days after the notification of the record owner but within a one-year period, then the record owner of the property shall also be subject to the fine schedule delineated in Section (a).

(c) An object that is the source of a noise violation may be seized by the Police if the violation is not mitigated within an hour and may be held until the fine is paid or for 60 days, whichever is sooner, and if unclaimed it may be sold at auction by the Town. Removal and storage costs of the object shall be paid by the person violating the Noise Control By-law, in addition to any fine imposed according to the schedule listed in Section (a).

(d) The Health, Building, Police and Public Works Departments shall have enforcement authority for the By-law. To report a violation, contact the appropriate department.

SECTION 8.15.11 SEVERABILITY

If any provisions of this article or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of this article and the applicability of such provision to other persons or circumstances shall not be affected thereby.

The following will not be included as part of the By-law.

Footnotes:

ADDITIONAL DEFINITIONS NOT USED IN THE CURRENT BY-LAW

- (a) Impulse Noise: Noise having a high peak of short duration of a sequence of such peaks. A sequence of impulses in rapid succession is termed repetitive impulsive noise.
- (b) Intermittent Noise: The level suddenly drops to that of the background noise several times during the period of observation. The time during which the intermittent noise remains at levels different from that of the ambient is one second or more.
- (c) Low-frequency noise: containing major components within the low frequency range (20Hz-250Hz) of the frequency spectrum.
- (d) Reflection: Sound wave changed in direction of propagation due to a solid object obscuring its path.
- (e) Sound absorption: The ability of a material to absorb sound energy through its conversion into thermal energy.
- (f) Sound Transmission Class (STC): This is a measure of the extent of the sound reduction of noise going through a building element. It denotes the sound attenuation properties of walls, floors and ceilings used to construct building spaces. The higher the STC rating, the better the sound reduction performance of the construction.
- (g) Structure Borne Noise: This refers to noise which is generated by vibrations induced in the ground and/or structure. These vibrations excite walls and slabs in buildings and cause them to radiate noise. This

type of noise can not be attenuated by barriers or walls but requires the interposition of a resilient (acoustic isolators, springs, floating floors, etc.) break between the source and the receiver.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 9 of the warrant seeks to amend Article 8.15 NOISE CONTROL of the Town's General By-laws. The amendment is an outgrowth of a Selectmen's Committee established several years ago to consider changes based on, among other things, issues dealing with leaf blowers and musical instruments. The amendment included in the warrant was subsequently revised by the Advisory Committee during its review process, and the revision included in this Combined Report reflects collaborative changes by the Selectmen's Committee, the Advisory Committee and other people.

DISCUSSION:

The existing Article 8.15 of the by-laws has been on the books for quite some time. The amendment, if adopted, would offer improvements in a number of areas, including:

- Exempting equipment and operations of the town that deal with public works, public safety, health, welfare, environment and safety
- Expanding and clarifying definitions
- Establishing techniques for measuring, monitoring and evaluating sound pressure levels (i.e., the level of noise)
- Revising times of the days during which equipment, devices and musical drums may be used
- Lowering the maximum allowed noise levels of equipment and devices
- Adding portable leaf blowers to the equipment subject to the by-law, and establishing a maximum noise level for them, as well as a process for measuring and monitoring such
- Establishing a penalty section, with fines, consequences and responsibility for enforcement

In the Advisory Committee's opinion, the only substantive change in the original proposed amendment included in the warrant and the revision presented herein is an increase in the maximum noise level of portable leaf blowers from 65 dbA to 67 dbA (db is the defined measure for expressing sound pressure levels; A is a reference to the scale of the filter used in measurements). The lowest level for most machines currently in use 67 dbA; local chain hardware stores have recently added 65 dbA machines to their inventory. A rise of 10 db represents a doubling of loudness; 72 dbA is the sound pressure level of two people speaking four feet apart.

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Existing town resources may not be sufficient to manage certain aspects of the leaf blower provisions, but the Advisory Committee believes these issues will not present a significant problem.

Portable leaf blowers are the subject of Article 10 of the warrant. That article both overlaps and expands on this Article 9, whose singular purpose is noise control. The Advisory Committee considered Article 10 as it deliberated this Article 9.

RECOMMENDATION:

The Advisory Committee unanimously recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

XXX

ARTICLE 9

ADVISORY COMMITTEE SUPPLEMENTAL INFORMATION

Summary of Significant Changes to Noise By-law

- 8.15.1, 8.15.8, 8.15.9 and 8.15.11 (old 8.15.1, 8.15.6, 8.15.7 and 8.15.10) – no changes
- 8.15.2, 8.15. 5 and 8.15.6 (old 8.15. 2 and 8.15.3) - exempts equipment and operations of the town that deal with public works, public safety, health, welfare, environment and safety
 - DPW must consider ways to abate noise
 - All emergency generators are exempt, but testing is limited to daylight hours
- 8.15.3 (old 8.15.9) - expands and clarifies definitions
 - Makes “Noise” rather than sound the major focus
 - Noise is defined as sound which the listener does not wish to hear, is under investigation, and may be excessive
 - Newly defined terms
 - Ambient or background noise, i.e. noise level without the noise under investigation
 - Day (7am to 11pm) and Night (11pm to 7am)
 - Decibels, frequency, sound level meter and other technical terminology – objective, accepted usage
 - Loudness – cites a 10dB increase as a doubling of sound pressure level
 - Leaf blower – a portable device to blow leaves and other objects
- 8.15.4 (no old section) – examples of common noise levels
- 8.15.6 (old 8.15.4)
 - Revises times of the days during which yard and garden devices may be used – weekdays until 8:00 pm from existing 9:00 pm; weekends and holidays starting at 8:30 am from 9:00 am
 - Lowers the maximum allowed noise levels of vehicles over 10,000 lbs. and motorcycles by 3 decibels
 - Adds portable leaf blowers to the equipment subject to the by-law, and establishes a maximum noise level for them (67 dBs), as well as a process for measuring and monitoring
 - Strengthens provisions for fixed plant and equipment – 10 dB over background noise
 - Removes drums from the 9:00 am to 9:00 pm exemption for playing non-electrified musical instruments
- 8.15.7 (old 8.15.5) – requires best efforts notification for special permit hearings

- 8.15.10 (old 8.15.8) – establishes a more severe penalty section, with graduated fines, consequences for real property owners, and responsibility for enforcement by Town departments

ARTICLE 10

TENTH ARTICLE

To see if the town will amend the General By-Laws by adding in Part VIII Public Health and Safety a new Article 8.-- as follows: **By-Law**

Article 8. -- Leaf Blowers

Section 8.---.1: STATEMENT OF PURPOSE

Reducing the use of gasoline and other carbon- emitting fuels is a public purpose of the Town and the reduction of noise and emissions of particulate matter resulting from the use of leaf blowers are public purposes in protecting the health, welfare and environment of the Town. Therefore, this by-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

Section 8.---.2: USE REGULATIONS

1. *Definitions.*

Leaf blower. Leaf blowers are defined as portable, handheld, backpack-style or other power equipment intended to be used in landscape maintenance, construction, property repair or maintenance for the purpose of blowing, moving, removing, dispersing or redistributing leaves, dust, dirt, grass clippings, cuttings, trimmings and the like from driveways, walkways, lawns, beds, trees and shrubs.

b. *Commercial leaf blower operator.* Any entity or organization that employs two (2) or more persons and that receives compensation for services that include the operation of one or more leaf blowers. Employees and agencies of the Town, and those operating under contract to the Town shall not be considered as commercial leaf blower operators.

2. *Limitations on Use.*

a. Leaf blowers shall not be operated except between March 15 and May 15 and between September 15 and November 15 in each year. The provisions of this subsection do not apply to the use of leaf blowers in accordance with the provisions of this Leaf Blower By-Law and any regulations promulgated hereunder by the Town and its contractors in municipal parks or open space, or performing emergency operations and clean-up associated with storms, hurricanes and the like.

b. The use of leaf blowers is permitted only between the hours of 8:00 a.m. and 5:00 p.m. Mondays through Fridays and 9:00 a.m. and 5:00 p.m. on Saturdays and Sundays.

c. Commercial leaf blower operators shall be permitted to operate leaf blowers, only upon approval of an operations plan submitted to the Commissioner of Public Works or his or her designee. Such operations plan shall include, but not be limited to the owner's or operator's efforts to mitigate the use of gasoline and other carbon emitting fuels and the impacts of noise and emissions upon citizens generally and particularly on the occupants and owners of nearby property, include an inventory of all leaf blowing equipment owned and to be used by the owner or operator, which shall comply with the noise and emission restrictions set forth in this By-Law and regulations promulgated hereunder, and include the owner's or operator's plan for educating users of its equipment on the proper use of equipment as well as the need to mitigate impacts upon others. The operations plan shall be reviewed by the Commissioner of Public Works or his or her designee, who shall ensure that it complies with the applicable provisions of this By-Law and the regulations promulgated hereunder, and shall impose such conditions that may be necessary for the purposes of this By-Law. .

d. Leaf blower operations shall not cause leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris to be deposited on any adjacent or other parcel of land, lot, or public right-of-way or property, other than the parcel, land, or lot upon which the leaf blower is being operated. Leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris shall not be blown, swept or raked onto or into an adjacent street or gutter, except by municipal employees or municipal contractors or leaf blower operators placing leaves, dust, dirt, grass clippings, cuttings and trimmings from trees and shrubs on a municipal street or sidewalk in appropriate containers for collection and pick-up, during municipal street and sidewalk sweeping and cleaning operations. In no event shall leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris be blown, swept or raked onto or into catch basins or on to vehicles, persons or pets. Deposits of leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris shall be removed and disposed of in a sanitary manner that will prevent disbursement by wind, vandalism or similar means.

e. All leaf blowers shall satisfy the emissions standards of the United States Environmental Protection Agency [THIS NEEDS A CITATION] and noise level standards as follows: the sound emitted from

any leaf blower shall be rated by the manufacturer to be no greater than 65 decibels.

f. On parcels of 10,000 square feet or less, only one leaf blower at a time may be used, and on parcels larger than 10,000 square feet, only one leaf blower may be used within each 10,000 square foot area

3. *Fees.*

A fee for the Town to recover all costs connected with emission or sound testing and enforcement may be charged in an amount set by the Board of Selectmen.

4. *Regulations.*

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Leaf Blower By-Law.

5. *Enforcement and Penalties*

a. This bylaw may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-Laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

b. For the purposes of this section “person” shall be defined as any individual, company, occupant, real property owner, or agent in control of real property. Each violation shall be subject to fines according to the following schedule:

- (a) \$50.00 for the first offense;
- (b) \$100.00 for the second offense;
- (c) \$200.00 for the third offense;
- (d) \$200.00 for successive violations, plus
- (e) court costs for any enforcement action.

Each day of a continuing violation shall be considered a separate violation.

6. *Effective Date.*

The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32 on March 1, 2009 except as to Town contracts now in effect, as to which the provisions of

this Leaf Blower By-Law shall be effective commencing on September 15, 2009 whichever occurs later.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is offered in conjunction with and supplementary to the amendments to the noise ordinance. Leafblowers are not just noise pollution but are a usually wholly unnecessary source of carbon emissions. At a time when we seek to reduce our carbon footprint and our dependence on foreign oil, we see too many instances where a landscape employee powers up a gas powered leafblower to blow a few grass clippings off a walkway. This is an unnecessary use of oil and the kind of behavior we need to eliminate if we are to battle global warming and our dependence on foreign oil.

While the noise ordinance regulates leafblowers in part, it does not limit their use. On the other hand, while some would ban leafblowers altogether, this article provides a reasonable regulation, still allowing homeowners to use leafblowers for their intended use, to gather leaves up in the fall, without limitation (except as regulated by the noise ordinance) but limiting the excessive use where inappropriate.

SELECTMEN'S RECOMMENDATION

Article 10 is a petitioned article that would amend the section of the Noise Control By-Law pertaining specifically to the regulation of leaf blowers. The major change of this article would be the limitation on the times during which leaf blowers could be used. The amended version of this article would permit the use of leaf blowers only between the hours of 7:00 a.m. and 7:00 p.m. Mondays through Fridays and 9:00 a.m. and 6:00 p.m. on Saturdays and Sundays and holidays. The dates allowed for use would be between March 15 and May 15, and between September 15 and December 15 each year.

While the Selectmen agree that the noise from leaf blowers should be addressed in the Noise Control By-Law, a majority of the Selectmen felt that the changes offered by the petitioner may be too restrictive. Some Selectmen agreed with the petitioner and felt that addressing environmental concerns by limiting the use of leaf blowers was an added benefit of the proposal. In this context, a motion for Favorable Action was moved, but failed 2-3.

A majority of the Board thought that the proposed changes to the Noise Control By-Law offered under Article 9 should be allowed to be tested before further regulations be made on leaf blowers. The extensive changes made under Article 9 were the result of over two

years of work by the Noise By-law Committee. This work included numerous public hearings where concerns on leaf blowers were heard from proponents on both sides of the issue. Changing the by-law without this kind of process would not be well received by those who were part of the debate. If the changes made under Article 9 do not bring satisfactory results, the issue could always be revisited.

The Board voted NO ACTION, which was adopted by a 3-2 vote on October 28, 2008

Roll Call Vote:

No Action

Daly

Allen

Benka

Favorable Action

DeWitt

Mermell

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 10 of the warrant seeks to add a new article to Part VIII Public Health and Safety the Town's General By-laws. The stated purpose of the warrant article is to reduce the use of gasoline and other carbon emitting-fuels by leaf blowers, and the noise and emissions of particulate matter consequential to their use. The article's language included in the Combined Report reflects changes made by the petitioners to the original language included in the warrant based on public hearings held by the Advisory Committee during its review process.

DISCUSSION:

The revised content of Article 10:

- conforms to overlapping provisions in Article 9 – definition of leaf blower, time of use, maximum sound pressure levels and effective date
- omits provisions relating to the regulation of commercial leaf blower businesses, which the Advisory Committee did not favor
- omits provisions dealing with cleanliness and tidiness that are otherwise dealt with in town rules and regulations

There remain two points in Article 10 that are not covered in Article 9:

- restricting the seasonal use of leaf blowers to spring and fall, and proscribing use during winter and summer
- limiting the operation of leaf blowers to one per each 10,000 sq. ft. of parcel size

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The Advisory Committee gave considerable attention to these two matters, and concluded that they were too restrictive, not well defined and impracticable to implement.

RECOMMENDATION:

The Advisory Committee, by a vote of 6-14 with 1 abstention, recommends NO ACTION on Article 10, as amended by the petitioners.

XXX

ARTICLE 10

TENTH ARTICLE

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b. *Commercial leaf blower operator.* Any entity or organization that employs two (2) or more persons and that receives compensation for services that include the operation of one or more leaf blowers. Employees and agencies of the Town, and those operating under contract to the Town shall not be considered as commercial leaf blower operators.

2. *Limitations on Use.*

a. Leaf blowers shall not be operated except between March 15 and May 15 and between September 15 and November 15 in each year. The provisions of this subsection do not apply to the use of leaf blowers in accordance with the provisions of this Leaf Blower By-Law and any regulations promulgated hereunder by the Town and its contractors in municipal parks or open space, or performing emergency operations and clean-up associated with storms, hurricanes and the like.

b. The use of leaf blowers is permitted only between the hours of 8:00 a.m. and 5:00 p.m. Mondays through Fridays and 9:00 a.m. and 5:00 p.m. on Saturdays and Sundays.

c. Commercial leaf blower operators shall be permitted to operate leaf blowers, only upon approval of an operations plan submitted to the Commissioner of Public Works or his or her designee. Such operations plan shall include, but not be limited to the owner's or operator's efforts to mitigate the use of gasoline and other carbon emitting fuels and the impacts of noise and emissions upon citizens generally and particularly on the occupants and owners of nearby property, include an inventory of all leaf blowing equipment owned and to be used by the owner or operator, which shall comply with the noise and emission restrictions set forth in this By-Law and regulations promulgated hereunder, and include the owner's or operator's plan for educating users of its equipment on the proper use of equipment as well as the need to mitigate impacts upon others. The operations plan shall be reviewed by the Commissioner of Public Works or his or her designee, who shall ensure that it complies with the applicable provisions of this By-Law and the regulations promulgated hereunder, and shall impose such conditions that may be necessary for the purposes of this By-Law. .

d. Leaf blower operations shall not cause leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris to be deposited on any adjacent or other parcel of land, lot, or public right-of-way or property, other than the parcel, land, or lot upon which the leaf blower is being operated. Leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris shall not be blown, swept or raked onto or into an adjacent street or gutter, except by municipal employees or municipal contractors or leaf blower operators placing leaves, dust, dirt, grass clippings, cuttings and trimmings from trees and shrubs on a municipal street or sidewalk in appropriate containers for collection and pick-up, during municipal street and sidewalk sweeping and cleaning operations. In no event shall leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris be blown, swept or raked onto or into catch basins or on to vehicles, persons or pets. Deposits of leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris shall be removed and disposed of in a sanitary manner that will prevent disbursement by wind, vandalism or similar means.

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The Board voted NO ACTION, which was adopted by a 3-2 vote on October 28, 2008

Roll Call Vote:

No Action

Daly

Allen

Benka

Favorable Action

DeWitt

Mermell

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 10 of the warrant seeks to add a new article to Part VIII Public Health and Safety the Town's General By-laws. The stated purpose of the warrant article is to reduce the use of gasoline and other carbon emitting-fuels by leaf blowers, and the noise and emissions of particulate matter consequential to their use. The article's language included in the Combined Report reflects changes made by the petitioners to the original language included in the warrant based on public hearings held by the Advisory Committee during its review process.

DISCUSSION:

The revised content of Article 10:

- conforms to overlapping provisions in Article 9 – definition of leaf blower, time of use, maximum sound pressure levels and effective date
- omits provisions relating to the regulation of commercial leaf blower businesses, which the Advisory Committee did not favor
- omits provisions dealing with cleanliness and tidiness that are otherwise dealt with in town rules and regulations

There remain two points in Article 10 that are not covered in Article 9:

- restricting the seasonal use of leaf blowers to spring and fall, and proscribing use during winter and summer
- limiting the operation of leaf blowers to one per each 10,000 sq. ft. of parcel size

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The Advisory Committee gave considerable attention to these two matters, and concluded that they were too restrictive, not well defined and impracticable to implement.

RECOMMENDATION:

The Advisory Committee, by a vote of 6-14 with 1 abstention, recommends NO ACTION on Article 10, as amended by the petitioners.

XXX

ARTICLE 10

Motion Offered by the Petitioners – Andrew Fischer, TMM Prec. 13 and Jonathan Margolis, TMM Prec. 7

MOVED: That the Town amend the General By-Laws by adding in Part VIII Public Health and Safety a new Article 8. -- as follows:

By-Law

Article 8. -- Leaf Blowers

Section 8.---.1: STATEMENT OF PURPOSE

Reducing the use of gasoline and other carbon- emitting fuels is a public purpose of the Town and the reduction of noise and emissions of particulate matter resulting from the use of leaf blowers are public purposes in protecting the health, welfare and environment of the Town. Therefore, this by-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

Section 8.---.2: USE REGULATIONS

1. Leaf blower. Leaf blowers are defined as any portable machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.

a. Leaf blowers shall not be operated except between March 15 and May 15 and between September 15 and December 15 in each year. The provisions of this subsection do not apply to the use of leaf blowers in accordance with the provisions of this By-Law and any regulations promulgated hereunder by the Town and its contractors for operations in municipal parks or open space, or for performing emergency operations and clean-up associated with storms, hurricanes and the like.

b. The use of leaf blowers is permitted only between the hours of 7:00 a.m. and 7:00 p.m. Mondays through Fridays and 9:00 a.m. and 6:00 p.m. on Saturdays, Sundays and holidays.

The sound emitted from any leaf blower shall be no greater than 67 decibels (dBA) when measured at 50 (fifty) feet from the leafblower.

d. On parcels of 10,000 square feet or less, only one leaf blower at a time may be used, and on parcels larger than 10,000 square feet, only one leaf blower may be used within each 10,000 square foot area

3. Fees.

A fee for the Town to recover all costs connected with sound testing and enforcement may be charged in an amount set by the Board of Selectmen.

4. Regulations.

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Leaf Blower By-Law.

5. Enforcement and Penalties

a. This bylaw may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-Laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

b. For the purposes of this section “person” shall be defined as any individual, company, occupant, real property owner, or agent in control of real property. Each violation shall be subject to fines according to the following schedule:

- (a) \$50.00 for the first offense;
- (b) \$100.00 for the second offense;
- (c) \$200.00 for the third offense;
- (d) \$200.00 for successive violations, plus
- (e) court costs for any enforcement action.

Each day of a continuing violation shall be considered a separate violation.

6. Effective Date.

The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32 or on March 1, 2009 except as to Town contracts now in effect, as to which the provisions of this Leaf Blower By-Law shall be effective commencing on September 15, 2009 whichever occurs later.

or act on anything relative thereto.

PETITIONER’S EXPLANATION

This article is offered in conjunction with and supplementary to the amendments to the noise bylaw. The noise bylaw is a broad and comprehensive revision while this warrant specifically addresses the waste and pollution as well as noise problems of leafblowers. Leafblowers are not just a source of offensive noise but are a usually wholly unnecessary source of carbon emissions. At a time when we seek to reduce our carbon footprint and our dependence on foreign oil, we see too many instances where a landscape employee powers up a gas powered leafblower to blow a few grass clippings off a walkway. This is an unnecessary use of oil and the kind of behavior we need to eliminate if we are to battle global warming and our dependence on foreign oil.

While the noise ordinance regulates leafblowers in part, it does not limit their use. On the other hand, while some would ban leafblowers altogether, this article provides a reasonable regulatory balance, still allowing homeowners to use leafblowers for their intended use, to gather leaves up in the fall, without limitation (except as regulated by the noise ordinance) but limiting the excessive use where inappropriate. Finally, this bylaw s

much easier to enforce, not requiring sound meters or other complicated enforcement mechanisms.

ARTICLE 10

ADVISORY COMMITTEE SUPPLEMENTAL INFORMATION

BACKGROUND:

Article 10 of the warrant seeks to add a new article to Part VIII Public Health and Safety the Town's General By-laws. The stated purpose of the warrant article is to reduce the use of gasoline and other carbon emitting-fuels by leaf blowers, and the noise and emissions of particulate matter consequential to their use. The article's language included in the Combined Report reflects changes made by the petitioners to the original language included in the warrant based on public hearings held by the Advisory Committee during its review process.

DISCUSSION:

The revised content of Article 10:

- conforms to overlapping provisions in Article 9 – definition of leaf blower, time of use, maximum sound pressure levels and effective date
- omits provisions relating to the regulation of commercial leaf blower businesses, which the Advisory Committee did not favor

The proposed article would have required that commercial landscapers first file an approved plan with the DPW. Evaluating, monitoring and enforcing such plans was considered to be beyond the current capacity of the department.

- omits provisions dealing with cleanliness and tidiness that are otherwise dealt with in town rules and regulations

The casting of debris toward other properties, while perhaps impolite, was seen as something to be dealt with in other ways. A new Bylaw to include this was not seen as the most practical approach.

There remain two points in Article 10 that are not covered in Article 9:

- restricting the seasonal use of leaf blowers to spring and fall, and proscribing use during winter and summer

The Committee felt that restricting the use of leaf blowers to certain seasons was somewhat haphazard in that a subjective determination would have to be made as what constituted the spring and fall seasons (the petitioner altered those definitions during the course of the article's review). Furthermore, it was observed that not all trees shed their foliage during these prescribed seasons. Members felt that the seasonal restrictions presented were not well justified.

- limiting the operation of leaf blowers to one per each 10,000 sq. ft. of parcel size

Limiting the operation of one leaf blower per 10,000 sq. ft. seems an artificial construct that may not meet its purported purpose. If these are separate parcels, two or three neighbors may use leaf blowers simultaneously and in close proximity. If the 10,000 sq. ft. straddles property lines, it means neighbors can't walk too closely to each other when operating leaf blowers. Enforcing that orchestrated dance would clearly not be realistic.

The Advisory Committee gave considerable attention to these two matters, and concluded that they were too restrictive, not well defined and impracticable to implement. This article also fails to take into account other devices such as lawn mowers or snow blowers (also noise generators). Additionally, this proposal makes no distinction between leaf blower use in densely populated areas such as North Brookline, and other areas of town where one neighbor's leaf blower may be hardly audible to others.

Over time, the Noise Bylaw may need further amending. However, the proposed changes to the Noise Bylaw under Article 9 include a reduction in the decibel level of leaf blowers. The effects of this change are not yet known. The Committee feels that this proposed article (Article 10) is premature at best.

RECOMMENDATION:

The Advisory Committee by a vote of 6-14 with 1 abstention, recommends **NO ACTION** on Article 10, as amended by the petitioners.

ARTICLE 11

ELEVENTH ARTICLE

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

Article ____ 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 numbers(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 of any other occurrences that may take place.

SELECTMEN'S RECOMMENDATION

Article 11 is a petitioned article that would require all bicycle owners in town to register their bikes with the Police Department. It is identical to Article 8 of last November's Special Town Meeting. 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.

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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 4-0 taken on October 7, 2007 on Article 11.

ROLL CALL VOTE

No Action

Daly

Allen

Mermell

Benka

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's recommendation on Article 11 will be included in the Supplemental Mailing.

XXX

ARTICLE 11

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Article 11 seeks to amend the Town By-laws to require all residents of Brookline who own bicycles to register them annually with the Police.

The petitioner of this article believes that passage would be a step toward safer cycling, benefitting both cyclists and pedestrians. He cites a number of potentially dangerous situations that he has witnessed and feels that cyclists might drive more safely when they can be identified and reported. He recognizes that this is not a total solution to the problem he sees, but believes it is a start.

DISCUSSION:

This article is familiar to Town Meeting in that it was proposed last fall. Because of that last consideration, the Brookline Police Department has put in place a registration program for bicycle owners. However, it is voluntary and not mandatory. The Chief has been clear that the institution of an annual mandatory system is not practical. The current system does provide an opportunity for residents and can be helpful in recovering stolen bikes.

The Committee was not persuaded that this proposed article would accomplish what the petitioner hopes for; safer operation by bicyclists and accountability. It was noted that many bikes in town belong to children and often are passed from family to family over time. Also, many cyclist in Brookline are not residents, they are commuters from other communities. This potential by-law would only apply to Brookline residents. It was also observed that it would be unlikely someone could read a decal or small plate as a cyclist ran a red light or committed some other traffic infraction. There was sympathy from Committee members for the frustration felt when cyclists flagrantly and dangerously violate existing traffic laws. It was suggested that these sorts of violation would be better dealt with through enhanced law enforcement. Enforcement would be applied to all cyclists regardless of residence status. It was acknowledged much of Brookline is urban terrain with narrow roadways that do not readily accommodate bicycles. Also, it was noted that in Cambridge tickets are issued to cyclist who break the law.

The Committee believes that implementing a by-law requiring annual bike registration for town residents would be impractical an ineffective. A better approach is to continue the existing optional registration program and increase bicycle, motor vehicle and pedestrian safety through more proactive enforcement of existing laws by the Brookline Police Department; as well as look for safe ways to accommodate bicycle traffic.

In addition, the Bicycle Advisory Committee of the Transportation Board is currently working on issues of bicycle safety. Given that the concerns expressed by the petitioner,

as well as Committee members, revolve around substantially transportation related matters it was felt that the Transportation Board should consider bicycle safety and the related traffic issues. The Transportation Board has expressed an interest in considering this.

RECOMMENDATION:

By a vote of 15-5-0, the Advisory Committee recommends referring Article 11 to the Transportation Board.

ARTICLE 12

TWELFTH ARTICLE

To see if the Town will amend the General By-Laws by adding in Part VIII Public Health and Safety an Article as follows:

Article 8. __ Use of Green Cleaning Products in all Town Buildings

Section 8. __

The Town of Brookline shall use green cleaning products in all town owned buildings whenever a green product has been shown to work as well as the traditional cleaning product. A green product for the purposes of this by-law shall be defined as one which complies with the criteria in the Green Seal Standard GS-37 for Institutional and Industrial Cleaning Products, or in the event of its absence a comparable standard as the Director of Public Health shall certify. Any decision to continue using a traditional cleaning product when there exists a green cleaning product must be approved by the Superintendent of Schools or designee when used in school buildings, and by the Building Commissioner or designee when used in other town owned buildings, and only if the green product is not as effective as the traditional product. Such decision shall be made in writing and kept on file by the Superintendent of Schools and the Building Commissioner.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Traditional cleaning products can lead to acute or chronic injury to both janitorial staff and general occupants of buildings, through direct contact, inhalation, or ingestion, and result in temporary or permanent pain, discomfort, and health side effects, including but not limited to burns to the eyes and skin, headaches, nausea, and increased rates of reproductive disorders, cancers, allergies, and respiratory ailments. (fn 1) Traditional cleaning products can lead to environmental problems both locally and globally, including bioaccumulation of toxic substances in living organisms, ozone depletion, eutrophication, and air, water, and groundwater pollution. (fn 1) Many cleaning products have green options -- equally effective alternatives which are safer for both building users and the surrounding environment, and tested and certified by independent organizations such as Green Seal (tm) and EcoLogo (tm). (fn 2, 3)

Other communities in the Commonwealth of Massachusetts and the United States are implementing green cleaning requirements for schools and/or town buildings, including but not limited to the City of Boston, and the states of Illinois and New York, and Massachusetts. (fn 4, 5, 6, 7)

GS-37 is the Green Seal environmental standard for general-purpose, bathroom, glass, and carpet cleaners used for industrial and institutional purposes. Green Seal is a nonprofit organization devoted to environmental standard setting, product certification, and public education. The Commonwealth of Massachusetts uses GS-37 as the standard by which all cleaning products must comply. (fn 7)

Because most green cleaning products have a similar cost to traditional products and because the Town is already using green cleaning products in many applications, it is not anticipated that there will be a substantial impact on the cleaning chemical budget. Furthermore, savings due to reduced illness and injury may generate a cost savings. When Southeast Polk Community School District (IA) implemented a green cleaning program using GS-37, they found that the number of doctor visits declined 34%, total illness decreased 24%, and attendance increased 4.5%. (fn 8) While these statistics are specific to their school system, a reduction in illness amongst building occupants and custodial staff is a common outcome when green cleaning products are used instead of conventional cleaners, and can result in significant Town savings due to reduced employee illness and injury. (fn 9)

fn 1: <http://www.doi.gov/greening/sustain/trad.html>

fn 2: <http://www.greenseal.org/>

fn 3: <http://www.ecologo.org/en/>

fn 4: <http://www.newdream.org/cleanschools/success.php>

fn 5: Illinois Public Act 095-0084

fn 6: New York State Assembly Bill No S05435

fn 7: OSD Update # 04-05A RE: Cleaning Products, Environmentally Preferable (Reduced Health and Environmental Impacts), GRO16

fn 8: <http://www.se-polk.k12.ia.us/district/buildings-grounds.html>

fn 9: "Cleaning for Health: Products and Practices for a Safer Indoor Environment", INFORM, Inc. 2002, p. 1, 2.

SELECTMEN'S RECOMMENDATION

Article 12 is a resolution that encourages the use of green cleaning products in all Town-owned buildings whenever a green product has been shown to work as well as the traditional cleaning product. The Selectmen support the use of such products because of the benefits to both the individual and the environment. Some departments are already using the products with much success. The School Department was able to make the switch to these products without adversely impacting their budget. The Chief Procurement Officer also expressed his support and agreed that the Town should follow the outlines of the Article. Given this consensus, the Board decided it was appropriate to vote the following policy:

VOTED: That the Board of Selectmen adopt a policy of using green cleaning products along the lines of Mr. Vitolo's resolution

The Chief Procurement Officer will develop a policy that follows the resolution's guidelines and report back to the Board for approval. Keeping the spotlight on environmental issues is an important part of the public education process. The Board thanks the petitioner for bringing this issue to their attention and looks forward to joining the list of communities making a commitment towards improving the environment for our custodial staff and building occupants.

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 21, 2008, on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

The original intent of Article 12 was a change to the General By-Laws by adding in Part VIII Public Health and Safety a requirement to use a "green" cleaning product in all town owned buildings whenever a green product has been shown to work as effectively as a traditional cleaning product.

DISCUSSION:

The intent of the bylaw is the petitioners' desire for the Town to use environmentally friendly and healthy cleaning chemicals. At the Advisory Committee, the petitioner, Thomas Vitolo, expressed concern about the health effects of non – green cleaning products that are used in Town buildings as a major reason for offering the Article. Global and local environmental concerns were also offered as reasons for the Article.

The petitioner pointed out that most of the office cleaning products currently used by the Town are in fact compliant with GS-37 standards, which are Green Seal certified as "green" products that satisfy health, environmental, and health criteria and have been shown to be effective cleaning agents. GS-37 compliant office cleaning products are mandated today by the City of Boston and the State of New York. In fact the School Department in Brookline has been using GS-37 compliant products for over a year. Many times decisions to use GS-37 products are based on cost effectiveness, not on health or environmental factors. Since there are departments in the Town that do not

currently use cleaning products meeting GS-37 standards, the petitioner felt that the Article would drive the Town to be uniform in its purchasing of cleaning products.

Since there were several ambiguities posed by the language in the original proposed By-Law amendment, the petitioner authored a substitute resolution on the same matter after a public hearing held by the Capital Subcommittee of the Advisory Committee. The petitioner's substitute resolution, however, presented new problems for the Advisory Committee, because several passages in the resolution suggested potential future liability for the Town.

Some on the Advisory Committee were opposed to the resolution, stating that there was no need for Town Meeting action, since the Town was already partially compliant, and open to the use of green cleaning products. Those in favor of the resolution believed that Town Meeting should discuss this important issue and insure that Brookline take a lead in environmental issues. In addition the majority felt that the Town should ensure that the healthiest and most environmentally friendly cleaning products are used for its citizens, its employees, and for the custodians who work in Town buildings.

RECOMMENDATION:

The Advisory Committee proposes a substitute resolution, which moves the Town to have a uniform "green" cleaning products purchasing policy. By a vote of 14 – 6, the Advisory Committee recommends Favorable Action on the following vote:

VOTED: That the Town adopt the following Resolution:

Resolution Seeking the Use of Environmentally Friendly Cleaning Products

Whereas, there are environmentally friendly cleaning products available which are as effective as existing, traditional cleaning products;

Whereas, the increased cost of using green products instead of traditional products is often negligible or non-existent, as evidenced by the Public School and Building Department's transition to exclusive use of green certified cleaning products in their all-purpose, wash room, multi-surface, and floor cleaning operations;

Whereas, independent non-profit certification programs such as Green Seal are relied upon by agencies including but not limited to the World Bank, the United States Army, the United States Post Office, numerous federal agencies, numerous states and commonwealths, and cities across the country; and

Whereas, other communities have already implemented green cleaning strategies and requirements, including but not limited to Boston, Milton, New York City, and the states of Illinois and New York.

Now, therefore, be it resolved that the Town of Brookline should purchase and employ green certified cleaning products including but not limited to glass cleaners, neutral

cleaners, and general purpose cleaners, provided that such products meet the necessary specifications of the proposed function and are cost effective.

Therefore, be it further resolved that the use of the current stock of cleaning supplies should be phased out and replaced with green certified cleaning products where available, appropriate, and cost effective.

Therefore, be it further resolved that the Town, vendors, and contractor cleaning staff should be trained in or made aware of the safe and proper use of all cleaning products and equipment and relevant hazards, in order to appropriately and safely support the resolutions proposed herein.

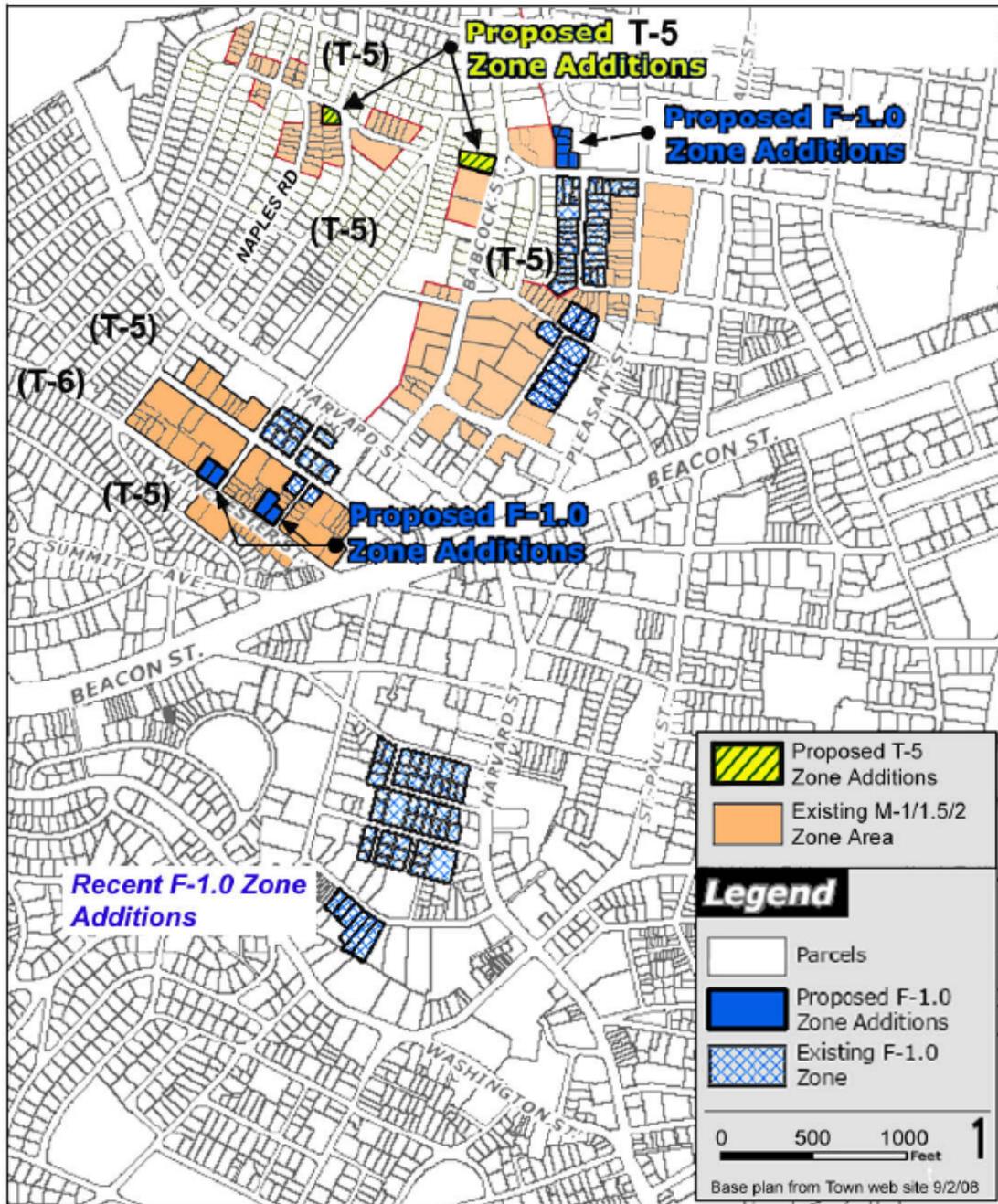
Therefore, be it further resolved that the Town should review its cleaning product purchasing decisions annually, and that the Town should pursue cleaning service and related contractors to work in municipal buildings who will follow the resolutions proposed herein.

XXX

ARTICLE 13

THIRTEENTH ARTICLE

To see if the Town will amend the Zoning By-Law by changing the zoning of certain parcels on the Zoning Map as follows:



Address*	Existing Zoning	Proposed Zoning
7, 9 Craig PL	M- 1.5	F-1.0
11, 13 Craig Pl	M- 1.5	F-1.0
15 Craig Pl	M- 1.5	F-1.0
17 19 Craig Pl	M- 1.5	F-1.0
219 Freeman St	M- 1.5	F-1.0
221, 223 Freeman St	M- 1.5	F-1.0
134 Babcock St	M- 1.5	T-5
106 Naples Rd	M- 2.0	T-5
37, 35 Winchester St	M- 2.0	F-1.0
43 Winchester St	M- 2.0	F-1.0
67 Winchester St	M- 2.0	F-1.0
73, 71 Winchester St	M- 2.0	F-1.0

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Zoning districts are established at moments in time when Town Meeting determines that the parcels of property in a particular part of town need regulations created for those parcels that represent their best use, for the foreseeable future. Among other things, those assumptions are based on the economics, demographics and the Comprehensive Plan in force at that time.

The petitioners feel that times have changed once again in parts of North Brookline.

There have been a number of recent changes involving tearing down houses and building taller buildings, radically adding density on originally single-family sites. Often, the visual quality of the newer buildings is jarring next to the much older houses and apartment buildings, which are the remainder of our heritage from the last two centuries.

Lately we have seen a heartening trend in another direction. Houses once likely considered out of fashion and destined to be torn down for an allowed new dense rebuilding have instead, because of the more recent and current high property values, been carefully restored, or renovated into reasonably permanent condominium units.

The petitioners believe that it is in Brookline's best interests to encourage this trend and protect our vulnerable neighborhoods in North Brookline through areas perceived to be most at risk. Down-zoning these parcels will also lessen the possibility of "clear-cutting" our small remaining Single-Family housing stock in these key areas, and their replacement by big-box, urban-scaled development.

The parcels recommended for down-zoning are currently part of dense M-1.0 to M-2.0 Multi-Family zones. However, these parcels are also typically near or next to low-density, F-1.0, T-5 and T-6 Two and Three-Family zoning. They make up a key part of the visual environment, our varied and charming “streetscape.”

Those parcels that currently contain more dwelling units than the proposed down-zoning would allow will *not* have to change, and will be considered “grandfathered.”

Parcel Change Descriptions:

The parcels listed and proposed for down-zoning are within districts established decades ago to encourage large-scale development, as exemplified by the large, dense and sometimes tall existing buildings from the 1970s and ‘80s that stand out along Centre, Winchester, and Babcock Streets.

Recent changes on Freeman St. at the St. Aidan’s project are an example of the changes possible in that neighborhood. However, actions last year by Town Meeting to create the new F-1.0 Three Family Zone, and then downzone one half of Browne St. and houses on one side of Freeman, have inspired the proposed inclusion of the last two Freeman St. houses and the four adjacent Craig Pl. houses shown on the attached map and list.

The nearby proposed 134 Babcock St. Victorian house is a recognized visual landmark when residents drive or walk down Freeman toward the Freeman St. Triangle Park and Babcock St.. The 106 Naples Road house is likewise a visual landmark when heading up Naples toward Gibbs St. They both frame a view flanked mostly by houses and buildings from the turn of the 19th and early 20th Century and large shade trees. Both of these houses are proposed for inclusion into the adjoining T-5 Two Family District.

The four houses proposed for change on Winchester to become F-1.0 properties are in pairs, both starting on a street corner. Because of that, they open up views around those corners that larger, even 1920’s three-story residential buildings couldn’t have done – had that happened to them way back then. They also have open space with front and corner grass yards and mature old trees – a welcome heritage of green-space for the neighborhood to enjoy.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 13, which was submitted by Citizen Petitioner Bill Powell, would rezone certain parcels near the Coolidge Corner area from M (multi-family) zoning to either F (three-family) or T (two-family) zoning. The Zoning By-law Committee has reviewed the proposed article and voted to recommend referral of the amendment back to the Zoning By-law Committee for further study.

The proposed article would change six M-1.5 zoned and four M-2.0 zoned parcels to F-1.0; one M-1.5 zoned parcel to T-5; and one M-2.0 zoned parcel to T-5. The amendment would rezone not only the allowed use, from a multi-family use to a three-family or two-family use, but the allowed floor area ratio (FAR) as well, lowering the limits of the size

of the dwellings. Several of the proposed parcels to be rezoned to F are located on Craig Place, a small private way off of Freeman Street, as well as two parcels on Freeman Street. Also proposed for the F zone are two sets of two parcels, for a total of four, on Winchester Street. Two separate parcels, one on Babcock Street and another on Naples Road, are proposed to be rezoned from M to the T-5 zoning district.

The F-1.0 zone was originally created and adopted by Town Meeting in spring 2007, and more parcels were added to the F zone in fall 2007. All of the parcels under the currently proposed amendment were previously considered for down zoning by the Zoning By-Law Committee and were not supported.

The Planning Board is not opposed to the further consideration of the Craig Place and Freeman Street parcels for rezoning, and these parcels should be referred back to the Zoning By-law Committee for further evaluation. However, the Planning Board is opposed to the rezoning of the other proposed parcels, as doing so would be singling out the parcels, separating them from the established multi-family neighborhoods that surround them, and transforming half of them from conforming to clearly non-conforming uses and floor area ratios. The Planning Board felt that the Citizen Petitioner had not provided the criteria and methodology for choosing these properties for down zoning and that including these properties in a local historic district would be a more appropriate method of preserving the buildings. The Planning Board also pointed out that these properties now require a special permit for demolition since they are located in the Coolidge Corner Design Overlay District.

Therefore, the Planning Board recommends NO ACTION on Article 13, with referral back to the Zoning By-law Committee of the Craig Place and Freeman Street parcels for further evaluation.

SELECTMEN'S RECOMMENDATION

Article 13 is a petitioned article that would rezone 12 parcels in the Coolidge Corner neighborhood. Ten of these parcels would be rezoned from M-1.5 or M-2.0 to F-1.0. Two parcels would be rezoned from M-1.5 or M-2.0 to T-5. These rezonings emerged from concerns by some residents that the earlier downzonings in Coolidge Corner, which rezoned about 100 parcels from multifamily to two- and three-family, left out certain buildings that required similar protection. Since those downzonings, the Department of Planning and Community Development and the Zoning Bylaw Committee successfully submitted an additional zoning change that required a Special Permit for all substantial demolitions in the Coolidge Corner area. The petitioners did not feel this zoning change offered adequate protection for these 12 buildings.

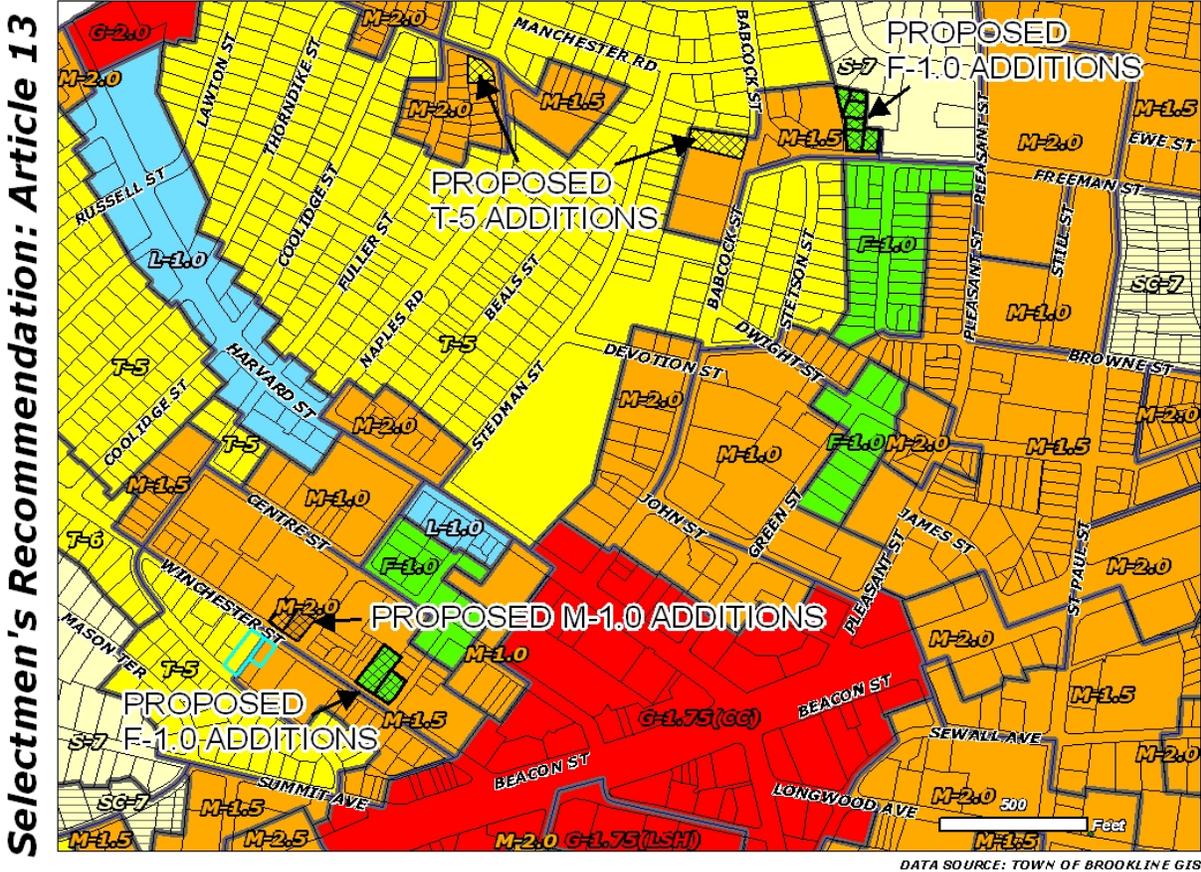
The Board was generally supportive of these changes, while expressing some concerns about the method by which these parcels were selected. In addition, some Board members were concerned that the citizen petitioners submitted these changes without notifying the affected property owners or consulting with the Zoning Bylaw Committee.

Finally, some concerns were specifically raised about the buildings on Winchester Street, which would become pockets of 2 buildings zoned three-family each.

Several residents of the neighborhood told the Board that they supported the downzoning. In addition, the parent of one of the owners of a six-unit condominium building at 67 Winchester attended to express his opposition to the building being rezoned F-1.0, but to also say he was willing to consider a rezoning proposed by the Advisory Committee to M-1.0.

The Board discussed the rezoning proposal at length and decided that the buildings at 67 and 71-73 Winchester should both be rezoned M-1.0 rather than F-1.0. The remainder of the rezoning as proposed by the petitioners was supported by the Board as an additional protection for these parcels from large-scale redevelopment. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-1 taken on October 28, 2008, on the following:

VOTED: That the Town amend the Zoning By-Law by changing the zoning of certain parcels on the Zoning Map as follows:



Address	Existing Zoning	Proposed Zoning
7, 9 Craig Pl	M- 1.5	F-1.0
11, 13 Craig Pl	M- 1.5	F-1.0
15 Craig Pl	M- 1.5	F-1.0
17 19 Craig Pl	M- 1.5	F-1.0
219 Freeman St	M- 1.5	F-1.0
221, 223 Freeman St	M- 1.5	F-1.0
134 Babcock St	M- 1.5	T-5
106 Naples Rd	M- 2.0	T-5
37, 35 Winchester St	M- 2.0	F-1.0
43 Winchester St	M- 2.0	F-1.0
67 Winchester St	M- 2.0	M-1.0
73, 71 Winchester St	M- 2.0	M-1.0

ROLL CALL VOTE:

Favorable Action

Daly

DeWitt

Mermell

Benka

No Action

Allen

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 13 proposes a downzone of 12 parcels in the North Brookline, Coolidge Corner neighborhood. It may be easiest to think of the proposal in 4 clusters each with its own characteristics and rationale for zoning:

Craig Pl., Freeman St. Craig Place, a private way, is a "hidden" dead end street coming off Freeman St. next to a 3-story brick attached condominium building at the corner of Babcock and Freeman. Two triple-deckers, a duplex and a single-family house currently occupy this street. Of the Freeman St. properties, 219 is an owner-occupied three-family with an existing FAR of 1.56 and 221-223 is an apartment building of approximately the same scale. These buildings are located between St. Aiden's and The Mayflower Place condominium buildings, across Freeman from the recently created F-1 zone. The proposal is to extend the F-1 zone into this cluster.

134 Babcock St. - A historic Victorian that has been converted to an apartment building with 4 or 5 units. The parcel is large, 13,664 square feet and could therefore potentially hold a large-scale development. The proposal will shift the line of the adjacent T-5 zone to include this property.

106 Naples St. - Sandwiched between rows of three story brick condo-buildings, this owner-occupied three-family is below the T-5 FAR of 1 (it's .69). Being on the corner, it is very prominent in the neighborhood. The proposal would extend the T-5 zone from across the street into this property.

35-37, 43, 67 and 71-73 Winchester St. 35-37 Winchester has 2 units. 43 Winchester is a single-family house on a relatively large lot for the area. Its current FAR is .26. 67 Winchester appears to have been built as a single but is now a 6-unit condo. 71-73 Winchester is a non-owner-occupied two-family with an existing FAR of .67. The Advisory Committee motion is to rezone 67 Winchester as M-1.0 and the other properties as F-1.0.

Generally, an M district allows multi unit development, i.e., apartment buildings. The F District allows for development up to 3 units on a site. The T District allows for 2 units on the site. Any non conforming properties are "grandfathered" and would be permitted to be rebuilt in its existing dimensions and uses should there be a catastrophe per Section 8.03.

DISCUSSION:

Zoning is a delicate balance act between what is good for a neighborhood and the town (i.e., the public good) and private property rights. In a simple illustrative example offered in a public comment on this article by a Winchester Street homeowner, while the homeowner might welcome the right to build a large apartment building on his property to achieve its highest economic potential, he supports zoning that prevents him from doing so because he'd hate it if his abutting neighbor were permitted to do the same thing. Zoning attempts to balance the rights of all and "encourage the most appropriate use of land." The preamble of the zoning bylaw lays out the purpose of the zoning bylaw as the promotion of "public health, safety, convenience and welfare..."

For quite a while, North Brookline has been under intense development pressure. We have seen properties torn down and replaced by much denser development covering more of the land and reducing green space. Examples of this are at 121 Centre St and 75 Winchester St. This increased density has affected the character of the neighborhood.

These pressures were recognized in the Town's Comprehensive Plan. Responses to these pressures have included an "IPOD" which froze the existing zoning and imposed design review on many projects temporarily while the Coolidge Corner District Planning Council (CCDPC) could consider what the zoning response to the pressures should be. Out of the CCDPC process grew the new "F" (three-family) zoning district and a Coolidge Corner Design Overlay District (CCDO). The F District is an attempt to create a new type of zoning district which reflects the existing character of the district. In other words, it was created as an attempt to zone to the existing conditions. There have been two proposals to add properties to the F Districts which have already passed Town Meeting.

With respect to the Coolidge Corner Design Overlay District, its most notable requirement is the need to obtain a special permit from the Zoning Board of Appeals before a demolition permit is issued. The intent is to force a developer to state his or her plans prior to a tear-down and provide a forum for the affected neighborhood to provide

comments to the Planning Board and Board of Appeals. Arguably, this could serve as a deterrent to tearing properties down. Whether it serves as an effective deterrent is unproven.

The recent Graffam-McKay Historic District grew out of many of the same pressures.

F District History

In the original Fall 2006 proposal to establish the F District, a long list of properties was proposed for inclusion. The list was comprised of properties proposed by the Planning and Community Development Department plus properties added by members of the Coolidge Corner District Planning Council (CCDPC). In the Town Meeting vetting process, the long list was pared back to the smaller list proposed by the Planning and Community Development Department with a promise to more carefully study the additional properties for inclusion. Town Meeting then voted to refer the F Zone back to the Zoning Bylaw Committee. The Planning Department proposed the F zone again at the May 2007 Town Meeting, this time with an allowed 1.0 FAR (it was .75 in the original) but only with the original smaller list (which was pared down even further.) At the time, some community activists stated their disappointment that more properties were not included in accordance with the promise to carefully study the CCDPC additions. Town Meeting passed the F zone with the smaller list.

For the November 2007 Town Meeting, the Planning and Community Development Department proposed that an additional 18 properties be added to the district. Town Meeting passed this addition. Again, some community activists stated their disappointment that more properties were not included.

The current proposal by a number of North Brookline community activists adds properties which were not included in the previous Planning and Community Development Department proposals which passed Town Meeting. All the properties except one (134 Babcock St.) were included in the original Fall 2006 proposal to establish the F zone at the Fall 2006 Special Town Meeting that was an outcome of the CCDPC process. The properties proposed for rezoning are, according to the petitioners, properties that they have wanted included in prior rezoning efforts. The proponents have stated that should this pass, no further downzoning efforts are anticipated. The proponents have also stated that each of the four clusters contain properties which should be preserved, if possible, and the character of the affected areas should be preserved. This proposal is an attempt to do that.

Zoning Rationale

While each of the clusters has a distinct rezoning rationale, the proposal for each cluster has the same common goals, that is, to attempt to preserve the remaining remnants of less dense development by removing incentives for demolition and denser development that may exist in the zoning bylaw with respect to these properties.

If Town Meeting Members merely look at the proposed zoning map, the properties involved in these zoning changes may appear to be random as stated by some opponents to this proposal. We encourage all Town Meeting members to visit the sites to examine the relationships between these buildings and the surrounding neighborhoods, including

across the streets and 1-2 doors away. The zoning rationale for each of the clusters becomes more apparent with a site visit.

Additional zoning rationale for each of the clusters is as follows:

Craig Place Cluster. While not entirely three family home, all the properties are of similar scale and character. The properties are currently zoned M 1.5. The parcels are small and fully developed. Given the parcels' small sizes, 3 of the 6 buildings exceed an FAR of 1.0. Only one of the parcels would be rendered non conforming as to use. This is an attempt to zone to existing conditions as were the previously rezoned F-1.0 parcels. This rezoning would discourage an assembling of the small parcels into a large multi unit development which would be difficult but not impossible—particularly if a developer also were to acquire the 219 and 221-223 Freeman Street parcels.

134 Babcock St. This was built as a large single family which has since been subdivided into 5 units. The building is quite near the Graffam-McKay Local Historic District, echoes the style of Colonial Revival homes in the nearby LHD, and serves as a transition between the smaller scale T district buildings and the historic district adjacent to it on the right and the apartment buildings to its left on Babcock Street. . The proponents believe, and the majority of the Advisory Committee agrees, that it would be a great loss to the neighborhood if this building were to be torn down. This proposal would rezone the property to T-5. While this rezoning does not guarantee that the building will be preserved, it does lessen the economic incentive of redeveloping this property. Once rezoned the property would be nonconforming as to use.

106 Naples Rd. This is a three-family house which already covers much of the parcel. It serves to knit together the denser multi-unit buildings to the neighborhood of large homes across the street. Being on the corner it is very visible, and a build-out on the lot would create a feel of much greater mass for the entire streetscape. This proposal would rezone the property to T-5 lessening the economic incentive of redeveloping this property. Once rezoned the property would be nonconforming as to use.

Winchester St Properties. The properties proposed for rezoning on Winchester St. are the only properties on this stretch which have not been previously redeveloped into more dense apartment buildings. This rezoning is an attempt to preserve the existing streetscape and reduce the economic incentive to increase the density. The proposal in the warrant is to rezone 4 parcels to F-1.0 from M-2.0. Of special note is the lot at 43 Winchester which is comparable to, but larger than 75 Winchester, a Victorian which recently underwent a tear-down and redevelopment into a big-box condominium building.

The property at 67 Winchester is currently used as a 6 unit condo for disabled adults and would be rendered non conforming as to use under the original proposal. One of the owners stated the there may be a need to create a caretaker unit for the disabled adults residing in the property in the future, and he was concerned that this zoning would preclude them from doing this. The Advisory Committee motion is for this property to be rezoned to M-1.0 instead of F-1.0 to more closely rezone to current conditions. This change keeps the property conforming as to use, gives the neighborhood more protection

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against denser development while giving the owners the ability to make the desired adjustments to the property, if needed.

With the Advisory Committee motion, all properties in the Winchester St. cluster will be conforming as to use and FAR.

Arguments against the proposal

1. Other Zoning Changes: Since the prior rezoning proposals, the Coolidge Corner Design Overlay district was approved, which requires that any applicant to tear down a building in Coolidge Corner receive a Special Permit from the Board of Appeals. The Planning & Community Development Department believes this would provide a strong incentive for developers to retain these buildings as part of any redevelopment scenario for any of these sites.

2. Creation of New Nonconformities: Some of these parcels are currently conforming with respect to Floor Area Ratio, and would be made nonconforming as a result of this rezoning. The owners of these buildings would lose the ability to add to their buildings by right, and would instead have to receive relief from the Board of Appeals for additions, no matter how small. With respect to use nonconformities, this rezoning would clearly require use variances to increase the number of units above 2 or 3, depending on the exact rezoning. However, even if nonconforming, these buildings could generally be rebuilt in event of a catastrophe, as long as they were not larger than the buildings currently on these properties.

The extent of the non conformities created by this rezoning are described in each of the cluster descriptions above.

3. Creation of Small Zoning Districts: Some of these rezonings, particularly on Winchester St, would create small isolated zones.

Other reasons stated by opponents were:

They believe the properties are being singled out unfairly.

They believe it diminishes the value of the affected properties and is an infringement of their property rights.

They believe it would reduce the taxes paid to the town.

One Winchester St. owner stated at the Planning Board hearing that he liked the increased density on the street, and we must recognize that the street is in an urban environment.

One owner at the Planning Board hearing was very upset by the repeated attempts to rezone his property and thought it was unfair.

With respect to the small zone argument, we note that while the proposed zones on Winchester St. may be small, none of the rezoned properties under the Advisory

Committee motion will be non conforming. The rezoning merely reflects the current conditions, the diversity of housing types on the street and actually allows for some growth given the current FAR's and uses of the properties.

With respect to the property value and tax arguments, no evidence has been presented that, for those properties previously rezoned to F in the prior two rezoning proposals, there's been a reduction in assessed property values that's attributable to those rezonings. In any case, it's important to note that the town's total property tax revenue as determined under Proposition 2 1/2 would be unaffected by any changes in assessed values that might result from the rezoning. The only possible future tax impact would be a potential reduction of new growth tax revenue from redeveloping the properties in the way that this rezoning is attempting to discourage, and since increased residential density is typically associated with increased demands on town services, the net town benefit of residential (as opposed to commercial) development is speculative at best.

RECOMMENDATION:

The Advisory Committee by an 11-4 vote, agrees with the petitioners that proposal has merit. The Advisory Committee therefore recommends FAVORABLE ACTION on the following motion. The motion differs slightly from the original proposal in that 67 Winchester is rezoned to M-1 in order to avoid creating a nonconforming use for that property:

VOTED:

That the Town will amend the Zoning Map by changing the zoning of the parcels on the attached map to M-1.0, F-1.0 and T-5 as indicated:

Address	Current Zoning	Revised Zoning
7, 9 Craig Pl	M- 1.5	F-1.0
11, 13 Craig Pl	M- 1.5	F-1.0
15 Craig Pl	M- 1.5	F-1.0
17, 19 Craig Pl	M- 1.5	F-1.0
219 Freeman St	M- 1.5	F-1.0
221, 223 Freeman St	M- 1.5	F-1.0
134 Babcock St	M- 1.5	T-5
106 Naples Rd	M- 2.0	T-5
37, 35 Winchester St	M- 2.0	F-1.0
43 Winchester St	M- 2.0	F-1.0
67 Winchester St	M- 2.0	M-1.0
73, 71 Winchester St	M- 2.0	F-1.0

ARTICLE 13

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

The Advisory Committee considered an amendment to its original motion on Article 13 to consider whether the zoning of 73, 71 Winchester St should be changed to M-1.0 rather than F-1.0. This would bring the Advisory Committee recommendation on Article 13 in agreement with the Selectmen's recommendation.

During the discussion, the Advisory considered whether it made zoning sense to have a zoning district which is 1 parcel in size. Without specifically addressing that issue, committee members felt it made better zoning sense to have the proposed zoning for 73,71 Winchester St. agree with 67 Winchester St. This change permits the same building mass (and setbacks) as the F-1.0 but gives the owners additional flexibility as to how many units could be permitted on the property.

By a 13-1 vote, the Advisory Committee voted to amend it recommendation and therefore recommends FAVORABLE ACTION on the vote offered by the SELECTMEN.

ARTICLE 14

FOURTEENTH ARTICLE

To see if the Town will amend the Zoning By-Law by adding a new principal use regulation in Section 4.07, Table of Use Regulations and amend Section 4.07 Use No.15A as follows (new language appears in **bold** deleted language is underlined):

§4.07 – TABLE OF USE REGULATIONS

Principal Uses	Residence					Business			In d.
	S	SC	T	F	M	L	G	O	I
<p>15A. Family day care home defined as any private residence, operated by the occupant of that residence, which on a regular basis receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the residence.</p> <p><u>*(Use 15 and 15A) A day care center or a family day care home shall be licensed in accordance with M.G.L. chapter 28A, §10. If such facility has an outdoor play area, that area shall be at such a distance and so screened from any lot line and from any residential structure on an adjoining lot to avoid a noise nuisance.</u></p>	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*
<p>15B. Large family day care home defined as any private residence, operated by the occupant of that residence, which on a regular basis receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours, children of school age in accordance with regulations promulgated by the Commonwealth’s Department of Early Education and Care; provided, however, in either case, that the total number of children under sixteen in a large family day care home shall not exceed ten, including participating children living in the residence.</p>	No*	SP*	SP*	SP*	SP*	Yes*	Yes*	Yes*	Yes*

Principal Uses	Residence					Business			In d.
	S	S C	T	F	M	L	G	O	I
<p>*(Use 15, 15A and 15B) A day care center or a family day care home shall be licensed in accordance with M.G.L. chapter 28A, §10. If such facility has an outdoor play area, that area shall be at such a distance and so screened from any lot line and from any residential structure on an adjoining lot to avoid a noise nuisance.</p>									

or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

According to the EEC regulations (Office of Childcare Services) family day care is form of childcare provided in the residential homes of primary care givers. It is licensed and governed by the EEC, a state run organization, and currently state issues licenses for 6, 8 or 10 children. As you are aware every town in the Commonwealth of Massachusetts, other then Brookline, allows for 10 children licenses. Brookline is the only town in the state that has not yet joined other communities in their effort to comply with state regulations. I believe it is crucial for the town to change the By-Laws, since the need for quality day care is overwhelming. Moreover there are more then dozen of family daycares in Brookline, who are licensed by the State for 10 children. Enforcement of current by-laws would be detrimental and devastating to those families effected, and will cause highly negative impact to the community. I hereby request the the Town to amend the Zoning By-Law by adding a new principal use regulation in Section 4.07, Table of Use Regulation and amend Section 4.07 Use No. 15A, as proposed regarding family daycare, making 10 children maximum capacity – uniform throughout the state. Town of Brookline planning board is in favor of this long needed update.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 14, which was submitted by Citizen Petitioner Alexander Shabelsky, proposes changes to *Section 4.07*, Table of Use Regulations. This article would alter the use table by adding a new principal use to allow large family day care homes. The Zoning By-law Committee has reviewed the proposed article, and voted to recommend favorable action

on this amendment without changes. The Table of Use Regulations already allows small family home day cares (Use 15A) by right in all zoning districts. Small family day care homes may care for of up to six children under seven years of age, or sixteen years of age if special needs, provided that outdoor play areas are screened from lot lines and other residential structures to avoid noise nuisances. The day care must be operated in a home by a resident who cares for the children for all or part the day and is licensed in accordance with M.G.L ch.28A, §10. The state issues licenses for six, eight, or ten children to be cared for in home day cares.

Article 14 would amend the Table of Use Regulations to include a new regulation to be Use 15B. The new use would allow a large family day care home for up to 10 children under the age of seven, or under the age of sixteen if special needs. Massachusetts General Law requires at least one approved assistant in large family home day cares. The proposed amendment would allow large family home day cares by right in L, G, O, and I zones; by special permit in SC, T, F, and M zones; and would prohibit them in S zones.

M.G.L. ch.40A, §3 states the land and structures for child care facilities are subject to reasonable regulation regarding the bulk and height of the structures, lot area, setbacks, open space, parking and building coverage requirements. While family day care homes are not included within the State's definition of "child care facilities," these standards for regulation would likely be used by the Board of Appeals to determine the suitability of a proposed large family day care home at a given site.

The Planning Board supports allowing licensed large family day care homes by special permit in residential districts. Logically, the Town's standard for the maximum size of a large family day care should match the State's licensing standard. However, the Board has some concerns about the exclusion of single family districts and would support in the future a modification making a special permit available for large family day cares in S districts, because residences in these districts would be more suitable in many cases for a large family day care because of larger yards, lower population density, and possibly less traffic impact during drop off and pick up times. The Planning Board feels that large family day care homes should be reviewed through the special permit process to determine if a site is an appropriate one and, if so, to ensure that the day care facilities are safe for children, there is adequate parking and drop-off and pick-up space, and that any impacts to the surrounding neighborhood are mitigated.

Therefore, the Planning Board recommends FAVORABLE ACTION on Article 14 as proposed.

SELECTMEN'S RECOMMENDATION

The Selectmen will be voting on Article 14 at their November 5, 2008 meeting. A supplemental report detailing their recommendation will be provided prior to the start of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 14 proposes changes to Brookline Zoning By-Law Section 4.07, Table of Use Regulations. Our current By-Law, under Use 15A, allows homeowners to operate small Family Day Cares at their private residences by right in all zoning districts provided the total number of children (including those participating children who live in the home) does not exceed six. Article 14 adds a new regulation as Use 15B which allows a "Large family day care home" for up to ten children. New use 15B also adds, "and receives for temporary custody and care for a limited number of hours, children of school age in accordance with regulations promulgated by the Commonwealth's Department of Early Education and Care;..." The new 10-child family daycares would be allowed by right in L, G, O and I zones but only by special permit in residential zones SC, T, F and M zones. They would be prohibited in Single family zones.

These family day care facilities are licensed by the State Department of Early Education & Care (DEEC). In the mid-1990's, the State began licensing Large Family Day Cares for up to 10 children. There are now three types of family child care provided by a person licensed by the State to care for children in his/her home:

- Regular family child care – care for up to 6 children;
- Large family child care – care for up to 10 children with help from at least one approved assistant;
- Family child care plus – care for 6 children, plus 2 school age children

These home-based family child care providers who are licensed by the State have to abide by specific State regulations relating to space, number and ages of children, adult provider qualifications, etc. For example, a provider has to have had at least 3 years of experience at the 6-child capacity before he/she is licensed for 10. DEEC personnel inspect the home premises with specific regard for the safety of the supervised children. Peggy Politis, Family Child Care Licensor at DEEC advises that it is not the Dept's responsibility to investigate specific traffic and parking situations or other impacts upon neighbors but says they "strongly suggest" that providers sit down and discuss these issues with their neighbors. Family Child Care owners do not have to register their facility in their own cities or towns. Municipal officials can obtain lists of facilities and

providers from the State DEEC website (www.eec.state.ma.us). Local officials often learn of particular daycares in their community only when there are complaints from neighbors. Newton Fire Dept. personnel check with DEEC regularly for updates on facilities located in their city.

According to Joyce Savis-Zak, of the Brookline Health Dept., Brookline licenses all privately-owned early childhood centers (29) and private after-school programs not affiliated with the schools (9) in Brookline. These are subject to a different set of regulations (lead inspections, building permits, etc.) than are family child care homes. Brookline requested this licensing authority from the state and is one of five “delegated communities” to do so.

DISCUSSION:

The petitioners own a family day care facility for up to 10 children at 709 Hammond St. and lease to a tenant at 711 Hammond St. who operates a facility for up to 6 children. Both facilities are licensed by the State Dept. of Early Education & Care (DEEC). They claim that they did not realize until recently that their 10-child family day care facility was not allowed in Brookline, even though it was licensed as such by the State. Hence this Article. They stated that there are currently at least a dozen Large (up to 10 children) Day Care homes in Brookline, most or all of which cater exclusively to Russian children. (This was confirmed by Peggy Politis, at DEEC, who stated that there are also approximately 90 licensed regular Family Day Cares, of up to 6 children, in Brookline.) The petitioners believe that these larger daycares fill an important and necessary need in the town for quality day care. There are long waiting lists. Agencies send non-English-speaking children to them. Operating a 10-child daycare facility enables them to pay for the second adult provider (mandated by the State for Large Day Cares). These facilities provide their livelihood. They also believe that Brookline should be in conformity with State regulations on this issue, claiming that we are the only town in the Commonwealth that does not allow Large Day Cares. (Preliminary research of surrounding communities indicates that several, including Newton and Needham, do conform to the State definitions and allow Large Family Daycares by right for up to ten children. No Special Permits are required. As an Accessory Use in Newton, they are subject only to specific parking and dimensional requirements. Arlington allows no more than 6 children in home daycares as an Accessory Use and a Special Permit is required in all residential areas. Large Day Cares are not allowed there. Belmont allows State-licensed 6 -children and 10-children Home Day Cares as an Accessory Use and requires a Special Permit for each in all residential areas.

John Lojack, Inspection Services Supt. in Newton believes that day cares are considered to be covered under the Dover Amendment (MGL.Ch.40A) and as such are exempt from local zoning ordinances. He claimed that if a town rules that Family Day Cares can exist only in non-single-family districts, it could be appealed as being discriminatory and unreasonable. He cited the Teddy Bear Club Child Care Center which was sued by its Newton residential neighbors. The neighbors lost their case. (Note: this was a large Center, not based in a home where only a portion is used for day care) Belmont Town Counsel was quoted to us as ruling that these Home Family Day Cares would not be subject to the Dover Amendment. (We are awaiting an opinion from Brookline Town

Counsel Dopazo on this issue.) Brookline's Planning Board supports allowing licensed Large Day Care homes by Special Permit in residential districts but has concerns about excluding them in Single family districts.

The Advisory Committee heard testimony and received written and phone communications, including a Petition, from several neighbors in opposition to the two day care facilities on 709 & 711 Hammond Street. Complaints centered around the disruptive impacts on their neighborhood and the dangers to children and others especially during the four "rush" hours of each day when children are delivered and picked up at the facilities. The constant flow of parents and children, the lack of suitable on-street and off-street parking in the area which often forces parents to park on tree lawns and sidewalks with cars jutting out into heavy speeding traffic along busy Hammond Street, cause neighbors to worry about the safety hazards especially when winter snows narrow traffic lanes. They claim that these facilities have negatively impacted their quality of life and criticize the current lack of requirements for suitable parking and safe and legal drop-off and pick-up areas. They cite Town Zoning By-Law Article IV Use Regulations; Sec.4.01; 3f, requiring a Special Permit if it "create(s) any objectionable impact in terms of noise, traffic, parking or other nuisance."

The Advisory Committee recognizes the need for quality day care facilities in Brookline, but realizes also that the above-mentioned problems related to Home Day Cares in the Hammond St. area can also exist in other areas of Town where these State-licensed facilities are allowed. Some members questioned the advisability of having up to ten children in each Day Care home (even though licensed by the State) especially if it were in a multi-family dwelling where attendant parking and traffic problems could be compounded. They also questioned the ban on Large Day Cares in Single family zones (as does the Planning Board) as the larger lots would be a logical site for them and the Dover Amendment issue would probably not be invoked. Some suggested that this should be classified as an Accessory Use in our Zoning By-Law to allow more restrictions. There was a concern about the "disconnect" between local and state oversight of these facilities and a feeling by the Majority that this legislation is flawed.

A Minority of members believe that the Town should be in conformity with State regulations allowing Large Family Day Cares to help satisfy the need for quality day care. There are currently twelve non-conforming Large Family Day Cares operating in Brookline. Without a provision for these Large Family Day Cares in our zoning by-laws, the twelve existing Large Family Day Cares will be forced to downsize to six children or close. A balance has to be made between the need for quality day care and the impact of Family Day Cares upon residential neighborhoods. One member expressed the opinion that Family Day Cares should not be singled out as the cause of all bad parking and traffic conditions in Town (citing the Post Offices at Coolidge Corner and Brookline Village as prime other examples) and that we shouldn't vote against this article for that reason alone. However, it was also noted there is a distinction between commercial areas and residential areas. Another stated that the Zoning By-Law is not intended to be used to solve licensing issues. When there is a change of use, they would have to apply for a Special Permit and the conditions of a Special Permit are pretty specific. This could afford more protection than currently exists and allow issues of traffic, parking, etc. to be

considered with public input allowed during the process. There was concern by some that, through their vote, the Majority is expressing a lack of confidence in the Zoning Board of Appeals, in the State, and in our Town Management to do their jobs.

However, the majority of the Committee feels there is a legitimate question as to whether a day care facility with ten children should reasonably be viewed as a “family” operation as opposed to a more commercial operation and that the location of these larger facilities should be carefully reviewed. The current proposal would allow them to operate in residential multi-unit dwellings with a Special Permit, but prohibit them in single family areas. The majority of members feel the issues of size and location should be better explored and a more comprehensive article crafted. Therefore, the Committee voted to refer this article to the Zoning By-Law Committee.

RECOMMENDATION:

By a vote of 9 in favor and 6 opposed, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: To refer Article 14 to the Zoning By-Law Committee.

XXX

ARTICLE 14

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 14 is a petitioned article that proposes to alter the use table by adding a new principal use to allow large family day care homes. The Table of Use Regulations already allows small family home day cares (Use 15A) by right in all zoning districts. Small family day care homes may care for up to six children under seven years of age, or sixteen years of age if special needs, provided that outdoor play areas are screened from lot lines and other residential structures to avoid noise nuisances. The day care must be operated in a home by a resident who cares for the children for all or part the day and is licensed in accordance with M.G.L Ch.28A, §10. The state issues licenses for six, eight, or ten children to be cared for in home day cares.

Article 14 would amend the Table of Use Regulations to include a new regulation to be Use 15B. The new use would allow large family day care for up to 10 children under the age of seven, or under the age of sixteen if special needs. Massachusetts General Law requires at least one approved assistant in large family home day cares. The proposed amendment would allow large family home day cares by right in L, G, O, and I zones; by special permit in SC, T, F, and M zones; and would prohibit them in S zones.

During review of this article, it came to the attention of the Board that there are currently about ten large family daycare facilities in Brookline. While these are all licensed by the state, the Town's Zoning By-Law does not currently permit facilities of this scale. If no form of Article 14 were to pass, the Town would have to take action to close these facilities, or require that they reduce their size to six children or less, which some Board members felt might result in these facilities closing. The Board was not interested in suddenly forcing the closure of facilities that provide a needed service such as day care. However, the issue clearly requires further analysis to ensure that the external impacts of these facilities are addressed.

The Board discussed at length the issue of family day care in Brookline. They were generally supportive of small family day care, but were interested in further discussion and analysis of the issue of large family day care programs and whether they were appropriate in all cases. At the same time, the state is proposing changes to its regulations on family day care over the next year, which may impact the Town's zoning mechanisms for family day care. The Board felt that requiring a special permit made sense as a way of providing some Town review of these facilities, at least in the short term.

For this reason, the Board felt that a reasonable solution to this issue would be to recommend approval for Article 14, with the amendment that it would sunset after some time period. The also felt that this time period should be used to have the Zoning By-Law Committee and appropriate Town officials develop a more lasting approach in light of the possible regulatory changes at the state level and the overall need to examine this issue

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	0	I
<u>avoid a noise nuisance.</u>									
<p>15B. Large family day care home defined as any private residence, operated by the occupant of that residence, which on a regular basis receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours, children of school age in accordance with regulations promulgated by the Commonwealth’s Department of Early Education and Care; provided, however, in either case, that the total number of children under sixteen in a large family day care home shall not exceed ten, including participating children living in the residence.**</p> <p>*(Use 15, 15A and 15B) A day care center or a family day care home shall be licensed in accordance with M.G.L. chapter 28A, §10. If such facility has an outdoor play area, that area shall be at such a distance and so screened from any lot line and from any residential structure on an adjoining lot to avoid a noise nuisance.</p> <p>** THIS USE SHALL BE PERMITTED UNTIL JUNE 1, 2010</p>	No*	SP*	SP*	SP*	SP*	Yes*	Yes*	Yes*	Yes*

and further recommended that the Zoning Bylaw Committee shall work with the Planning Board and Advisory Committee on Public Health to develop a more permanent solution to the regulation of large family daycare, for submission to a future Town Meeting prior to June 1, 2010.

ROLL CALL VOTE:

Favorable Action

Daly
Allen
Mermell

No Action

DeWitt
Benka

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

In light of the board of Selectmen's motion under this article (which includes an 18-month "sunset" provision), the Advisory Committee reconsidered its original vote for referral of the article to the Zoning Bylaw Committee.

By a unanimous vote, the Advisory Committee recommends FAVORABLE ACTION on Article 14 in language of the Selectmen's motion.

ARTICLE 15

FIFTEENTH ARTICLE

To see if the Town will amend Section 4.08 of the Zoning By-law by adding the following sentence to the end of Paragraph 6.c.

Section 4.08 - Affordable Housing Requirements

6. Standards

c. The affordable units shall contain square footage which is no less than (1) the average size of market rate units containing the same number of bedrooms, or (2) the following, whichever is the smaller:

- 0 bedrooms: 500 square feet
- 1 bedroom: 700 square feet
- 2 bedrooms: 900 square feet
- 3 bedrooms: 1100 square feet
- 4 bedrooms: 1300 square feet

For purposes of this subparagraph only, square footage shall be calculated within the interior surfaces of the perimeter walls of the unit.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This zoning amendment is being submitted by the Housing Advisory Board, with the support of the Department of Planning and Community Development and the Zoning By-Law Committee. Paragraph 6 allows that affordable units included in market-rate developments subject to Section 4.08 differ from market rate units. However, Subparagraph c provides minimum standards – in terms of square footage in accordance with the number of bedrooms in the unit -- should the affordable units proposed be smaller than the market rate units. Developers typically design to these minimums. Experience has indicated a difference in assumptions about how square footage is to be counted.

For purposes of establishing FAR, the Zoning By-law measures from exterior wall to exterior wall. The measurement goal, however, is different for public entities, which typically establish minimum standards for affordable rental and ownership units in order to assure quality of life. The square foot count typically applies to the amount of living space within the apartment, as was intended by 6.c.

Developers of condominiums, however, may count square footage otherwise. Because ownership interest in a condominium unit in a multifamily building is usually defined as extending beyond the wall surface of the unit to some point inside the perimeter wall

itself (that is, between the unit and another unit, common area or exterior building wall), developers often count, as part of the unit square footage, areas within the walls themselves.

When a unit is designed to the smallest size permitted, and that size is a modest one, the difference in definition of square footage is not insubstantial. The above change clarifies that, for purposes of meeting the size standard for affordable units per Subsection 6.c., the square footage counted for affordable units is the space within the interior surfaces of the perimeter walls.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is being submitted by the Housing Advisory Board with the support of the Zoning By-law Committee, who voted to recommend favorable action without changes. The article proposes to standardize the method for calculating square footage where affordable housing units are required. The current regulations require affordable units to be the same size as market rate units with the same number of bedrooms, or conform to a set scale; whichever is smaller. The set scale is as follows:

Number of Bedrooms in Unit	Total Square Footage
0 Bedrooms	500 Square Feet
1 Bedrooms	700 Square Feet
2 Bedrooms	900 Square Feet
3 Bedrooms	1100 Square Feet
4 Bedrooms	1300 Square Feet

This article proposes that the square footage for affordable units be calculated by measuring from the interior surfaces of the perimeter walls of the unit, so that only the living space in the unit is counted. In the Brookline Zoning By-Law, however, for the purpose of calculating floor area to determine the allowable floor area ratio, measurements for habitable space must be from the outside of the exterior walls. A different approach is often used when condominiums are sold or leased; the floor area is measured from the middle of the interior walls between units. Because exterior walls can be of different thicknesses, measurements including the space within the walls can result in reduced net square footage in affordable units. This amendment codifies how square footage is calculated for affordable units, and ensures that the minimum allowed square footage for affordable units is truly living space.

The Planning Board supports this article because the potential difference in unit size depending on the method by which the square footage is measured can be substantial. This article clarifies how minimum unit floor area standards should be measured, ensuring affordable units are of adequate size.

Therefore, the Planning Board recommends FAVORABLE ACTION on Article 15 as proposed.

SELECTMEN'S RECOMMENDATION

Article 15 was submitted by the Housing Advisory Board (HAB) with the support of the Zoning By-Law Committee, who voted to recommend favorable action without changes. The article proposes to standardize the method for calculating square footage where affordable housing units are required. The current regulations require affordable units to be the same size as market rate units with the same number of bedrooms, or to conform to a minimum square footage, whichever is smaller. The set scale for square footage is as follows:

Number of Bedrooms in Unit	Total Square Footage
0 Bedrooms	500 Square Feet
1 Bedrooms	700 Square Feet
2 Bedrooms	900 Square Feet
3 Bedrooms	1100 Square Feet
4 Bedrooms	1300 Square Feet

This article proposes that the square footage for affordable units be calculated by measuring from the interior surfaces of the perimeter walls of the unit, so that only the living space in the unit is counted. In the Brookline Zoning By-Law, however, for the purpose of calculating floor area to determine the allowable floor area ratio, measurements for habitable space must be from the outside of the exterior walls. A different approach is often used when condominiums are sold or leased; the floor area is measured from the middle of the interior walls between units. Measurements that include all space within the exterior walls can, for example, include common space and therefore result in reduced net square footage in affordable units. This amendment codifies how square footage is calculated for affordable units, and ensures that the minimum allowed square footage for affordable units is truly living space.

This appears to be a straightforward change that is easily implemented by the Building Department and the Planning and Community Development Department. It will make the practice of measuring these units consistent with industry standards in affordable housing development. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 3-0 taken on October 14, 2008, on the following vote:

VOTED: That the Town amend Section 4.08 of the Zoning By-Law by adding the following sentence to the end of Paragraph 6.c.

Section 4.08 - Affordable Housing Requirements

6. Standards

- c. The affordable units shall contain square footage which is no less than (1) the average size of market rate units containing the same number of bedrooms, or (2) the following, whichever is the smaller:

- 0 bedrooms: 500 square feet
- 1 bedroom: 700 square feet
- 2 bedrooms: 900 square feet
- 3 bedrooms: 1100 square feet
- 4 bedrooms: 1300 square feet

For purposes of this subparagraph only, square footage shall be calculated within the interior surfaces of the perimeter walls of the unit.

ROLL CALL VOTE:

Favorable Action

Daly
DeWitt
Mermell

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 15 is submitted by the Housing Advisory Board, with the support of the Zoning By-law Committee. It would clearly spell out the how the living space area within affordable apartments and condominiums, is to be measured. Currently, in Section 4.08 the following schedule of unit sizes is given:

- 0 bedrooms: 500 square feet
- 1 bedroom: 700 square feet
- 2 bedrooms: 900 square feet
- 3 bedrooms: 1100 square feet
- 4 bedrooms: 1300 square feet

This article would add the following sentence after the schedule:

For purposes of this subparagraph only, square footage shall be calculated within the interior surfaces of the perimeter walls of the unit.

DISCUSSION:

It was reported by the Housing Division of the Planning department that instances have occurred where finished units have ended up smaller than anticipated. This occurred

because unit sizes are measured in a different way when determining the overall F.A.R. of a building and for condominium documents. In those cases the area is determined by measuring from the outside of the exterior building wall and from the centerline of walls between units. If the building is a converted older brick building it has thick exterior walls, and so the actual interior living space ends up smaller than expected.

This proposal would count only the space within the unit, measured from between the inside wall surfaces of the perimeter walls, leaving the thickness of those walls out of the tabulation. Since by their nature affordable units are modest in size, the Advisory Committee felt that this was a sensible adjustment to this By-law section in order to not waste any of that living space.

RECOMMENDATION:

The Advisory Committee therefore unanimously recommends FAVORABLE ACTION by a vote of 19-0 on the vote offered by the Selectmen.

XXX

ARTICLE 16

SIXTEENTH ARTICLE

To see if the Town will amend Section 5.09.3.d. of the Zoning By-law as follows:

Section 5.09 Design Review

3. Procedures

d. Design Advisory Teams

The Planning Board is authorized to appoint a Design Advisory Team (DAT) **to assist it in design review of any project that requires a special permit under Section 5.09, Design Review. In the case of a Major Impact Project, or substantial modification to a Major Impact Project as determined by the Building Commissioner or Planning and Community Development Director, the Planning Board shall appoint a DAT.** The DAT ~~that~~ shall consist of the following: one or more Planning Board member(s); professional architect(s), landscape architect(s) or other design related professional(s); and one or more neighborhood representatives. The DAT will provide professional design review assistance to the Planning Board and the Planning and Community Development Department in review of certain §5.09 projects which may have a significant impact on the character of the area. The Planning Board may, in its discretion, also appoint representatives from other appropriate Town boards and commissions to serve on a DAT, but only if deemed necessary to insure coordinated project review. The Planning Board shall appoint a DAT at a regularly scheduled meeting where public notice has been provided pursuant to Section 9.08. At the direction of the Planning Board, the applicant may be required to meet with the DAT to discuss resolution of design concerns. Following a meeting with the DAT, the applicant must include in any further submissions its responses to issues raised by the DAT. The DAT may also submit a report to the Planning Board and the Board of Appeals for consideration.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This zoning amendment is being submitted by the Department of Planning and Community Development with the support of the Zoning By-Law Committee. The Planning Board is currently authorized to appoint a Design Advisory Team (DAT) for any development project undergoing design review under the Brookline Zoning Bylaw. Currently, the practice is to appoint a DAT for any Major Impact Project, defined as a project of a certain scale (16 units of housing or 25,000 sf. of commercial development) or a project "with the potential for substantial environmental impact on the community". This proposed change in language would codify current practice of requiring the creation of a DAT for all Major Impact Projects. It would also keep the existing option open of creating a DAT for other projects undergoing design review.

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, who voted to recommend favorable action on the amendment with one modification. The article proposes changes to the part of *Section 5.09*, the design review section of the Zoning By-law, that deals with Design Advisory Teams (DATs).

Currently, when the Planning Board reviews development proposals, the Board may appoint a Design Advisory Team for any project that qualifies for design review under *Section 5.09* and they think it is appropriate, whether the project is large or small. Typically though, the Planning Board appoints a DAT for those proposals that also qualify as major impact projects, which are defined as those that are of a certain scale (16 or more units of housing or 25,000 s.f. of commercial development) or have “the potential for substantial environmental impact on the community.” This amendment would simply codify this practice by requiring the Planning Board to appoint a DAT for all major impact projects. The option to appoint a DAT for other projects undergoing design review would still exist should the Planning Board feel it is necessary.

Additionally, this amendment would require the Planning Board to appoint a DAT for substantial modifications to previously-approved major impact projects. Currently this is up to the discretion of the Planning Board. Under this amendment, the Building Commissioner or the Director of Planning and Community Development would determine whether a change in a previously-approved major impact project was substantial, and if so, refer it to the Planning Board, who would subsequently be required to appoint a DAT. This ensures that significant changes to major impact projects are reviewed for design considerations prior to proceeding with the Board of Appeals modification process. The DAT review also would ensure that neighbors are adequately noticed early on regarding changes to significant development projects.

Therefore, the Planning Board recommends FAVORABLE ACTION on Article 16 as submitted.

The Zoning By-law Committee’s modification to the amendment is as follows:

(bold underlined added, bold strikeout removed):

The Planning Board is authorized to appoint a Design Advisory Team (DAT) **to assist it in design review of any project that requires a special permit under Section 5.09, Design Review. In the case of a Major Impact Project, or substantial modification as determined by the Building Commissioner or Planning and Community Development Director to a Major Impact Project as ~~determined by the Building Commissioner or Planning and Community Development Director~~, the Planning Board shall appoint a DAT. The DAT ~~that~~ shall consist of the following: one or more Planning Board member(s); professional architect(s), landscape architect(s) or other design related professional(s); and one or more neighborhood representatives. The DAT will provide professional design review assistance to the Planning Board and the**

Planning and Community Development Department in review of certain §5.09 projects which may have a significant impact on the character of the area. The Planning Board may, in its discretion, also appoint representatives from other appropriate Town boards and commissions to serve on a DAT, but only if deemed necessary to insure coordinated project review. The Planning Board shall appoint a DAT at a regularly scheduled meeting where public notice has been provided pursuant to Section 9.08. At the direction of the Planning Board, the applicant may be required to meet with the DAT to discuss resolution of design concerns. Following a meeting with the DAT, the applicant must include in any further submissions its responses to issues raised by the DAT. The DAT may also submit a report to the Planning Board and the Board of Appeals for consideration.

SELECTMEN'S RECOMMENDATION

This article is being submitted by the Planning and Community Development Department with the support of the Zoning By-Law Committee, who voted to recommend favorable action on the amendment with one modification. The article proposes changes to the part of the Zoning By-law that authorizes the creation of Design Advisory Teams (DATs).

Currently, when the Planning Board reviews development proposals, the Board may appoint a Design Advisory Team for any project that qualifies for design review under *Section 5.09* whether the project is large or small. Typically, the Planning Board appoints a DAT for those proposals that also qualify as Major Impact Projects, defined as those that are of a certain scale (16 or more units of housing or 25,000 s.f. of commercial development) or that have “the potential for substantial environmental impact on the community.” This amendment would simply codify this practice by requiring the Planning Board to appoint a DAT for all Major Impact Projects. The option to appoint a DAT for other projects undergoing design review would still exist should the Planning Board feel it is necessary. The Planning Board has also been moving towards a less formal design review process for projects that are of a smaller scale (“moderate impact projects”.)

This amendment would also require the Planning Board to appoint a DAT for substantial modifications to previously approved major impact projects. Under this amendment, the Building Commissioner or the Director of Planning and Community Development would determine whether a change in a previously-approved major impact project was substantial, and if so, refer it to the Planning Board, who would subsequently be required to appoint a DAT. This ensures that significant changes to major impact projects are reviewed for design considerations prior to proceeding with the Board of Appeals modification process. The DAT review also would ensure that neighbors are adequately noticed early on regarding changes to significant development projects.

The Board supports the clarification, supported by the Advisory Committee and Planning Board, to this article as submitted to clarify when staff might have discretion to

reconvene a DAT. In addition, the Board feels that the article should clarify that coordination of the DAT process with applicable Town Boards and Commissions shall take place. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 28, 2008, on the following vote:

VOTED: That the Town amend Section 5.09.3.d. of the Zoning By-law as follows:

Section 5.09 Design Review

3. Procedures

d. Design Advisory Teams

The Planning Board is authorized to appoint a Design Advisory Team (DAT) **to assist it in design review of any project that requires a special permit under Section 5.09, Design Review. In the case of a Major Impact Project, or substantial modification as determined by the Building Commissioner or Planning and Community Development Director to a Major Impact Project as determined by the Building Commissioner or Planning and Community Development Director, the Planning Board shall appoint a DAT. DAT review of a project shall be coordinated with any other applicable review of the same project by other Town Boards and Commissions. The DAT that shall consist of the following: one or more Planning Board member(s); professional architect(s), landscape architect(s) or other design related professional(s); and one or more neighborhood representatives. The DAT will provide professional design review assistance to the Planning Board and the Planning and Community Development Department in review of certain §5.09 projects which may have a significant impact on the character of the area. The Planning Board may, in its discretion, also appoint representatives from other appropriate Town boards and commissions to serve on a DAT, but only if when deemed necessary to insure coordinated project review. The Planning Board shall appoint a DAT at a regularly scheduled meeting where public notice has been provided pursuant to Section 9.08. At the direction of the Planning Board, the applicant may be required to meet with the DAT to discuss resolution of design concerns. Following a meeting with the DAT, the applicant must include in any further submissions its responses to issues raised by the DAT. The DAT may also submit a report to the Planning Board and the Board of Appeals for consideration.**

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee will include report in the Supplemental mailing.

ARTICLE 16

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Article 16 is being proposed by the Planning and Community Development Department with the support of the Zoning By-Law Committee as an amendment to Brookline's Zoning By-Law Section 5.09 in order to further codify the instances for the appointment of a Design Advisory Team (DAT) for development projects.

DISCUSSION:

The Planning Board is authorized to appoint a Design Advisory Team (DAT) to assist in design review of any project that requires a special permit under Section 5.09, Design Review. Currently, the practice is to appoint a DAT for any Major Impact Project, defined as a project of a certain scale (16 or more units of housing or 25,000 or more square feet of commercial development), or a project "with the potential for substantial environmental impact on the community" as determined by the Building Commissioner or Planning and Community Development Director.

The proposed changes in language would codify current practice of requiring the creation of a DAT for all Major Impact Projects. Additionally, those changes would extend the requirement of creating a DAT for other projects undergoing design review. Clarification is needed, for example, in a case where a DAT was appointed for a project but an extension of the project did not previously merit the establishment of a DAT even though there was a substantial modification to the initial project. With these changes a Design Advisory Team would be reconvened for substantial modifications. This amendment allows for greater flexibility for the Planning Board and the chance for increased community notification of changes to Major Impact Projects or those with substantial environmental impact.

RECOMMENDATION:

The Advisory Committee unanimously recommends FAVORABLE ACTION by a vote of 14-0 on the wording of the Article 16 as offered by the Selectmen.

ARTICLE 17

SEVENTEENTH ARTICLE

To see if the Town will amend Section 6.02, subparagraph 1.b. of the Zoning By-law as follows:

§6.02 - OFF-STREET PARKING SPACE REGULATIONS

1. Off-street parking facilities shall be provided for each type of land use, in accordance with the following table, which is part of this Article, except as otherwise permitted in this section, and subject to the further provisions of Article VI. Parking spaces for the physically handicapped shall meet the number and dimensional requirements set forth in the Rules and Regulations of the Architectural Access Board and any other applicable provisions of law.
 - a. Where the computation of required parking space results in a fractional number, only the fraction of one-half or more shall be counted as one.
 - b. **The Board of Appeals by special permit may waive up to six required parking spaces for a non-residential use in a business district.** ~~Where the computed requirement for non-residential use in a business district is six space or less, the Board of Appeals by special permit may waive all or part of such computed requirement.~~ In determining whether a waiver of parking is appropriate, the Board of Appeals shall consider evidence which shall be provided by the applicant regarding the following items:
 1. the operating characteristics of the proposed use including but not limited to a description of the type of business, hours of operation, number of employees, and delivery service requirements;
 2. the peak parking demand for the proposed use in relation to the peak parking demand generated by other uses in the area;
 3. the need for and provision of employee parking; and
 4. the availability and/or shortage of existing public parking and transit facilities in the area.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This zoning amendment is being submitted by the Department of Planning and Community Development with the support of the Zoning By-Law Committee. The Town's Zoning Board of Appeals and Building Commissioner have always interpreted

Section 6.02.b. to allow relief from up to six parking spaces for a commercial use in a business district. However, as worded the language in the Zoning Bylaw may appear to only allow such relief if the total parking requirement for the use is six spaces or less. This change would codify current practice with respect to this section by providing clarification.

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, who voted to recommend favorable action on the article as submitted. The article proposes to change the wording of §6.02.1.b. to codify how the existing regulation is interpreted in practice. The language of the current regulation states that for non-residential uses in commercial districts that require six parking spaces or less, the Board of Appeals may grant a waiver by special permit for all or part of the parking spaces. In practice, the parking waiver by special permit has been used to reduce a parking requirement for non-residential parking lots in commercial districts by six parking spaces, regardless of the total number of parking spaces required. The article proposes to change the language of the regulation to read that the Board of Appeals may waive, by special permit, all or part of six required parking spaces for a non-residential use in a business district.

To determine if the waiver is appropriate, the Board of Appeals considers the characteristics of the business including: the type of business and services offered, hours of operation, number of employees and their parking needs, and delivery service requirements. The Board of Appeals also considers the peak parking demand for the business in relationship to the peak parking demand for neighboring uses to determine if waiving parking spaces will have an adverse impact on the area. In addition, the availability of existing public transit or transit facilities in the area is also considered. These criteria will remain under the proposed amendment.

The Planning Board supports this article because it codifies the way the existing regulation is interpreted and successfully practiced by the Board of Appeals, and clarifies the special permit options for applicants.

Therefore, the Planning Board recommends FAVORABLE ACTION on Article 17.

SELECTMEN'S RECOMMENDATION

This article was submitted by the Planning and Community Development Department with the support of the Zoning By-Law Committee. The article proposes to change the wording of §6.02.1.b. to codify the manner in which the current regulation is actually applied. The language of the current regulation states that for non-residential uses in

commercial districts that require six parking spaces or less, the Board of Appeals may grant a waiver by special permit for all or part of the parking spaces. In practice, however, the parking waiver by special permit has been used to reduce a parking requirement for non-residential parking lots in commercial districts by six parking spaces, regardless of the total number of parking spaces required. The article proposes to change the language of the regulation to read that the Board of Appeals may waive, by special permit, up to six required parking spaces for a non-residential use in a business district, regardless of the total number of spaces otherwise required.

To determine if the waiver is appropriate, the Board of Appeals considers the characteristics of the business including: the type of business and services offered, hours of operation, number of employees and their parking needs, and delivery service requirements. The Board of Appeals also considers the peak parking demand for the business in relationship to the peak parking demand for neighboring uses to determine if waiving parking spaces will have an adverse impact on the area. In addition, the availability of existing public transit or transit facilities in the area is also considered. These criteria will remain under the proposed amendment.

The Board supports this article because it codifies the way the existing regulation is interpreted and successfully practiced by the Board of Appeals, and clarifies the special permit options for applicants.

The Board supports this article because it codifies the way the existing regulation is interpreted and successfully practiced by the Board of Appeals, and clarifies the special permit options for applicants. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 21, 2008, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

This change to the Zoning Bylaw is being proposed by the Planning and Community Development Department to clarify and codify how the section in question is being interpreted in practice. Section 6.02.1.b currently allows the Zoning Board of Appeals to; by special permit reduce the number of required parking spaces for non residential uses in commercial districts that require 6 spaces or less, by up to six spaces. The proposal is to permit the ZBA to reduce the required number of spaces by up to 6 for any non residential use in a business district if the ZBA deems it to be appropriate.

DISCUSSION:

It has recently come to light that the ZBA has been interpreting section 6.02.1.b to permit waiving up to 6 required parking spaces by special permit for any non residential use in a business district if requested by the applicant. In granting the request, the ZBA must

consider factors including the type of business, hours of operation, number of employees, delivery services, peak parking required and other requirements in making the determination of whether a special permit should be granted as per Section 6.02.1.b.

A literal reading of the section, however, only permits the ZBA to reduce the number of parking spaces by special permit in only the smallest commercial uses, those requiring 6 or fewer spaces (roughly 1,200 square feet for retail uses.) So we are faced with a public policy choice, leave the bylaw as is or give the ZBA the flexibility it thought it had.

The discussion at the Advisory Committee focused on whether the up to 6 parking space reduction was the appropriate level of flexibility or should it be higher, remembering the discussions of parking during the B-2 debate earlier this year. The number 6 seemed arbitrary to some. Advisory Committee members then realized that going higher than 6 or changing the framework to a percentage is clearly outside the scope of the warrant and we couldn't go higher, even if we thought that was desirable. It was also pointed out that the Selectmen have appointed a committee to review parking requirements in the zoning bylaw town wide. That review is currently ongoing. Any substantive town wide changes to the parking requirements needs to be carefully considered and subject to broad public review and that parking review committee is the venue to begin that process.

We note that under the proposal the ZBA will continue to need to consider the same factors in determining whether or not a reduction should be granted by special permit.

RECOMMENDATION:

The Advisory Committee by a unanimous 20-0 vote recommends favorable action on the following vote:

VOTED: That the Town amend Section 6.02, subparagraph 1.b. of the Zoning By-Law as follows:

§6.02 - OFF-STREET PARKING SPACE REGULATIONS

1. Off-street parking facilities shall be provided for each type of land use, in accordance with the following table, which is part of this Article, except as otherwise permitted in this section, and subject to the further provisions of Article VI. Parking spaces for the physically handicapped shall meet the number and dimensional requirements set forth in the Rules and Regulations of the Architectural Access Board and any other applicable provisions of law.
 - a. Where the computation of required parking space results in a fractional number, only the fraction of one-half or more shall be counted as one.
 - b. **The Board of Appeals by special permit may waive up to six required parking spaces for a non-residential use in a business district.** Where the computed requirement for non-residential use in a business district is six spaces or less, the Board of Appeals by special permit may waive all or

part of such computed requirement. In determining whether a waiver of parking is appropriate, the Board of Appeals shall consider evidence which shall be provided by the applicant regarding the following items.

1. the operating characteristics of the proposed use including but not limited to a description of the type of business, hours of operation, number of employees, and delivery service requirements;
2. the peak parking demand for the proposed use in relation to the peak parking demand generated by other uses in the area;
3. the need for and provision of employee parking; and
4. the availability and/or shortage of existing public parking and transit facilities in the area.

XXX

ARTICLE 18

EIGHTEENTH ARTICLE

To see if the Town will delete Section 6.04 (14) of the Zoning By-law and replace it with the following:

Section 6.04 – Design of All Off-Street Parking Facilities

- 14. **That portion of a garage, parking area, driveway, or other vehicular use facing a street, and less than 50 feet from the front lot line, may not be greater than twenty-four feet (thirty-six feet in S-25 and S-40 districts) or 40% of the width of the principal building’s facade facing the street, whichever is less. The foregoing limitation shall not apply to a detached garage that is entirely behind the principal building. However, if all other provisions of this by-law are met, the Board of Appeals may waive these restrictions by special permit if the applicant can demonstrate that there is no other practical and safe way to provide parking or vehicular access, and the following criteria are met: the design shall minimize the visual impact on the streetscape and all remaining space between the garage, parking area or other vehicular use and the street shall be landscaped open space as defined in Section 2.15, paragraph 2.**

or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

This zoning amendment is being submitted by the Department of Planning and Community Development with the support of the Zoning By-Law Committee. In Spring, 2006, Town Meeting approved an amendment proposed by the Moderator’s Committee on Zoning for a new provision that prohibited “snout-nosed” buildings, where large garages and driveways would negatively impact the streetscape. In addition to setting a limit on the size of garages facing the street (no greater than 40%, or 24 feet, of the building’s facade, whichever is less), some exceptions for public safety and corner lots with multiple street frontages were allowed, as long as the Planning Board determined that no other safe design was feasible. In application, this regulation was found overly restrictive because no special permit was provided to allow for evaluation of an individual case and because for larger residential lots in S-25 and S-40 zoning districts, no flexibility was allowed for three car garages, nor for houses set so far back on a lot that they were not visible from the street. This zoning amendment addresses these issues by allowing greater width, although not greater percentage, in proportion to a front façade on larger residential lots, and special permit relief where alternatives for providing safe or practical parking are not possible and specific criteria are met.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is being submitted by the Planning and Community Development Department. The Zoning By-law Committee has voted to continue reviewing the article in order to clarify and possibly propose alternate language. The article proposes modifications to *Section 6.04.14* of the Zoning By-law, which restricts the width of parking facilities, such as garages, facing the street. The section was first adopted in Spring 2006 after being developed by the Moderator's Committee on Zoning during their examination of how to regulate floor area ratio and the bulk of buildings. The main goal behind *Section 6.04.14* was to restrict the construction of what is commonly termed "snout-nosed" houses, or dwellings where most of the front façade consists of garage doors or front yard parking.

Currently, *Section 6.04.14* restricts the width of garage or parking areas facing the street in all zoning districts to either 24 feet or 40 percent of the width of the front building façade, whichever is less. The proposed amendment would modify *Section 6.04.14* so that parking facilities facing the street in S-25 and S-40 districts would be restricted to a maximum of 36 feet wide, as long as 36 feet is less than 40 percent of the width of the dwelling's front façade. In all other districts, garage and parking facilities would still be limited to 24 feet or less. One further exception is that the restriction would not apply if garage or parking facilities are more than 50 feet from the front lot line. The Planning Board was concerned that these modifications would weaken this section too much.

Additionally, the amendment would allow the Board of Appeals to waive restrictions in this section by special permit if the applicant can demonstrate that there is no other practical and safe way to provide parking or vehicular access, the parking design minimizes the visual impact on the streetscape, and all remaining space between the garage and the street is landscaped. The Planning Board supports substituting this special permit language for the current language which involves reports from the Commissioner of Public Works and Director of Transportation.

Therefore, the Planning Board recommends NO ACTION on Article 18 as proposed and recommends referral back to the Zoning By-Law Committee for further review. However, the Planning Board does support the concept of providing a special permit provision where there is no other practical and safe way to provide parking or vehicular access and the proposed design minimizes the visual impact on the streetscape.

SELECTMEN'S RECOMMENDATION

This article, submitted by the Planning and Community Development Department, proposes modifications to *Section 6.04.14* of the Zoning By-Law, which restricts the width of parking facilities, such as garages, facing the street. The section was first adopted in Spring 2006 after being developed by the Moderator's Committee on Floor Area Ratio during their examination of how to regulate floor area ratio and the bulk of buildings. The main goal behind *Section 6.04.14* was to restrict the construction of what is commonly termed "snout-nosed" houses, or dwellings where most of the front façade consists of garage doors or front yard parking.

Currently, *Section 6.04.14* restricts the width of garage or parking areas facing the street in all zoning districts to either 24 feet or 40% of the width of the front building façade, whichever is less. The proposed amendment would modify *Section 6.04.14* so that parking facilities facing the street in S-25 and S-40 districts would be restricted to a maximum of 36 feet wide, as long as 36 feet is less than 40% of the width of the dwelling's front façade. In all other districts, garage and parking facilities would still be limited to 24 feet or less. One further exception is that the restriction would not apply if garage or parking facilities are more than 50 feet from the front lot line. Additionally, the amendment would allow the Board of Appeals to waive restrictions in this section by special permit if the applicant can demonstrate that there is no other practical and safe way to provide parking or vehicular access, the parking design minimizes the visual impact on the streetscape, and all remaining space between the garage and the street is landscaped.

During its discussion of this Article, it became apparent that the proposed language was not adequate to provide the protection desired under Section 6.04.14 for community character while also providing some additional clarification and flexibility for property owners. Any changes that need to be made to this article require additional analysis that cannot be completed before Town Meeting, and may further result in changes that are outside the scope of this article. In addition, the Zoning By-Law Committee has voted to continue reviewing the article in order to clarify and possibly propose alternate language. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 21, 2008 on the following:

VOTED: To refer Article 18 to the Zoning By-Law Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

This zoning amendment is being submitted by the Department of Planning and Community Development with the support of the Zoning By-Law Committee. In Spring, 2006, Town Meeting approved an amendment proposed by the Moderator's Committee on Zoning for a new provision that prohibited "snout-nosed" buildings, where large garages and driveways would negatively impact the streetscape. In addition to setting a limit on the size of garages facing the street (no greater than 40%, or 24 feet, of the building's façade, whichever is less), some exception for public safety and corner lots with multiple street frontages were allowed, as long as the Planning Board determined that no other design was feasible. In application, this regulation was found overly restrictive because no special permit was provided to allow for evaluation of an individual case and because for larger residential lots in S-25 and S-40 zoning districts, no flexibility was allowed for three car garages, nor for houses set so far back on a lot that they were not visible from the street. This zoning amendment attempts to address these issues by allowing greater width, although not greater percentage, in proportion to the front façade on larger residential lots, and special permit relief where alternatives for providing safe or practical parking are not possible and specific criteria are met.

DISCUSSION:

The article proposes modifications to Section 6.04.14 of the Zoning By-law, which restricts the width of parking facilities, such as garages, facing the street. The section was first adopted in Spring 2006 after being developed by the Moderator's Committee on Zoning during their examination of how to regulate floor area ratio and the bulk of buildings. The main goal behind Section 6.04.14 was to restrict the construction of what is commonly termed "snout-nosed" houses, or dwellings where most of the front façade consists of garage doors or front yard parking.

Currently, Section 6.04.14 restricts the width of garage or parking areas facing the street in all zoning districts to either 24 feet or 40 percent of the width of the front building façade, whichever is less. The proposed amendment would modify Section 6.04.14 so that parking facilities facing the street in S-25 and S-40 districts would be restricted to a maximum of 36 feet wide, as long as 36 feet is less than 40 percent of the width of the dwelling's front façade. In all other districts, garage and parking facilities would still be limited to 24 feet or less. One further exception is that the restriction would not apply if garage or parking facilities are more than 50 feet from the front lot line.

The Planning Board was concerned that these modifications would weaken this section too much, and recommended no action on Article 18 with a further recommendation of a referral to the Zoning By-law Committee. The Zoning By-law Committee has voted to continue reviewing the article in order to clarify and possibly propose alternate language.

Additionally, the amendment would allow the Board of Appeals to waive restrictions in this section by special permit if the applicant can demonstrate that there is no other practical and safe way to provide parking or vehicular access, the parking design minimizes the visual impact on the streetscape, and all remaining space between the garage and the street is landscaped. The Planning Board supported substituting this special permit language for the current language which involves reports from the Commissioner of Public Works and Director of Transportation. Advisory Committee members along with staff of the Planning and Community Development Department attempted to craft language along these lines but decided not to propose such a revision at this time given the difficulty of trying to fit it within the framework presented in the warrant.

RECOMMENDATION:

The Advisory Committee by an 18-0 vote agrees with the Planning Board and recommends a motion to refer the substance of this article back to the Zoning By-law Committee, as recommended in the Selectmen's vote.

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ARTICLE 19

NINETEENTH ARTICLE

To see if the Town will accept, pursuant to the provisions of G.L.c. 82, §23 an alteration and widening of a portion of Heath Street as laid out by the Selectmen on October 21, 2008, and as shown on a plan dated October 3, 2008 prepared by Commonwealth Engineers and Consultants, Inc. and on file in the Town Clerk's office, and authorize the Selectmen to acquire the land within said way in fee simple and upon such other terms and conditions as the Selectmen determine to be in the best interests of the Town.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

As part of the Department of Public Works review and approval of the site plan for the project known as Hammond Woods, also known as Chestnut Hill Place located at 629 Hammond Street it was recommended that a portion of Heath Street be widened to facilitate safe access to the site.

SELECTMEN'S RECOMMENDATION

The developer of the project at 629 Hammond Street, as part of the site plan approval process, proposed the widening of Heath Street, which is one of the oldest streets in the Town and has a very inconsistent layout (its width is variable throughout the length of the road). The Engineering/Transportation Division reviewed the proposal and modified it to conform the proposed widening plan of Heath Street done in June 1, 1922. The Developer's proposal is a continuation of a widening done in this section of Heath Street in 1949, which widened the layout from 28' +/- to 40'. This widening will allow for more on-street parking, improved public safety, and aesthetically pleasing sidewalks.

The Selectmen recommend FAVORABLE ACTION, by a vote of 3-0 taken on October 14, 2008, on the vote offered by the Advisory Committee.

ROLL CALL VOTE

Favorable Action

Daly
DeWitt
Mermell

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 19 is submitted by A. Thomas DeMaio, Commissioner of Public Works. Article 19 seeks Town Meeting approval to accept the widening of a portion of Heath Street at Hammond Street, pursuant to M.G.L. c. 82 section 23, as per a plan dated October 3, 2008, prepared by Commonwealth Engineers and Consultants, Inc. and filed with the Town Clerk's office and authorizes the Board of Selectmen to acquire the land within said way in fee simple and upon such terms as the Selectmen determine to be in the best interests of the Town.

This portion of Heath Street is adjacent to 629 Hammond Street at a development known as Hammond Woods and/or Chestnut Hill Place. During the recent construction of the aforementioned property, the Town Department of Public Works and the Developer worked together to ensure that Heath Street was widened so as to provide a safer entry to Heath Street at Hammond Street and to provide a wider sidewalk and tree lawn along the portion of Heath Street.

DISCUSSION:

Heath Street is one of the oldest streets in Brookline. When originally constructed Heath Street ran from property border to property border in an inconsistent manner with little or no thought to the width of sidewalks and tree lawns. During the recent development known as Hammond Woods and/or Chestnut Hill Place, through the work of the DPW, the developer agreed to gift to the Town a 10' wide swath of land originally part of McNeely car dealership formerly located at 629 Hammond Street. This allowed the developer to widen a portion of Heath Street to allow for a safer access to Heath Street; to allow for minor additional street parking, safer pedestrian access and to allow for the construction of this small portion of Heath Street to conform to plans developed by the Town in 1922. Again, this work has already been completed and the vote of Town Meeting is unfortunately a formality so that the Town may accept the gift of the land used for the widening of the roadway, sidewalk and tree lawn.

RECOMMENDATION:

The Advisory Committee, by a vote of 15-0 recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town accept, pursuant to the provisions of G.L.c. 82, §23 an alteration and widening of a portion of Heath Street as laid out by the Selectmen on October 21, 2008, and as shown on a plan dated October 3, 2008 prepared by Commonwealth Engineers and Consultants, Inc. and on file in the Town Clerk's office, and authorize the Selectmen to acquire the land within said way in fee simple and upon such other terms and conditions as the Selectmen determine to be in the best interests of the Town.

ARTICLE 20

TWENTIETH ARTICLE

To see if the Town will, pursuant to G.L. c.82A, §2, vote to designate the Commissioner of the Department of Public Works as the Town's officer to issue permits for the purpose of creating a trench as that term is defined by G.L. c.82A, §4 and 520 CMR 14.00. The fee collected for these permits shall be subject to the review and approval of the Board of Selectmen, as prescribed by G.L. c.40, §22F.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

On November 2, 2007, the Massachusetts Department of Public Safety and the Massachusetts Division of Occupational Safety promulgated regulations in accordance with G.L. c.82A. These regulations are codified at 520 CMR 14.00 and pertain to trench excavation and safety. The law requires that cities and towns, by January 1, 2009, begin requiring permits for all trench excavation on public and private property and to enforce the new public safety requirements related thereto. The law further requires that cities and towns designate one board or officer as the local permitting authority responsible for issuing trench permits, collecting permit fees, and enforcement.

The Town, through its Department of Public Works, currently administers a street opening permit program that requires anyone excavating in a public way to obtain a permit. The new law adds new requirements to the current program and extends the program to trench work on private property. Because the majority of trench excavation will continue to be utility-related and occur in public ways, and because the regulated community is accustomed to the established permitting process, the Department of Public Works is best suited to be the designated permitting authority. In cases where trench excavation will occur solely on private property, the Building Department will assist the Department of Public Works by communicating to building permit applicants the need for a trench permit and by insuring a permit is obtained and its requirements followed.

SELECTMEN'S RECOMMENDATION

On December 4, 2002, the Legislature enacted legislation relative to excavation and trench safety. The legislation, known as "Jackie's Law", was in response to a tragic accident that occurred in 1999 when a four-year-old girl was killed when she climbed into a trench that collapsed on her. On November 2, 2007, the Massachusetts Department of Public Safety and the Massachusetts Division of Occupational Safety promulgated

regulations in accordance with the law (M.G.L. Ch. 82A). These regulations are codified at 520 CMR 14.00 and pertain to trench excavation and safety.

The regulations require all excavators to obtain a permit prior to the creation of a trench made for a construction-related purpose on public or private land or rights-of-way beginning on January 1, 2009. All municipalities must also establish a local permitting authority for the purpose of issuing these permits, with the designation of the local permitting authority left to the discretion of the individual municipalities. The purpose of this article is to designate the Department of Public Works (DPW) as the permitting authority. The article also allows the Board of Selectmen to set the fee for these permits under M.G.L. Ch. 40, Sec. 22F.

In addition to the permit and local permitting authority requirements mandated by statute, the trench safety regulations require that all excavators, whether public or private, take specific precautions to protect the general public and prevent unauthorized access to unattended trenches. Accordingly, unattended trenches must be covered, barricaded or backfilled. Covers must be road plates at least ¾” thick or equivalent; barricades must be fences at least 6’ high with no openings greater than 4” between vertical supports; backfilling must be sufficient to eliminate the trench. Alternatively, excavators may choose to attend trenches at all times, for instance by hiring a police detail, security guard, or other attendant who will be present during times when the trench will be unattended by the excavator.

The regulations further provided that local permitting authorities, the Department of Public Safety, or the Division of Occupational Safety, may order an immediate shutdown of a trench in the event of a death or serious injury; the failure to obtain a permit; or the failure to implement or effectively use adequate protections for the general public. The trench is to remain shutdown until it is re-inspected and authorized to re-open provided, however, that excavators shall have the right to appeal an immediate shutdown. Permitting authorities are further authorized to suspend or revoke a permit following a hearing. Excavators may also be subject to administrative fines issued by the Department of Public Safety for identified violations.

The Selectmen recommend FAVORABLE ACTION, by a vote of 3-0 taken on October 14, 2008, on the vote offered by the Advisory Committee.

ROLL CALL VOTE

Favorable Action

Daly

DeWitt

Mermell

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Last year, following incidents involving citizens falling into open trenches, the state departments of Public Safety and Occupational Safety issued regulations, pertaining to trench excavation and safety, in accordance with G.L. c82A. The new law requires the Town, by January 1, 2009, begin issuing permits for private property trench excavations in addition to the trenches on public property now permitted, and to enforce new public safety rules related thereto. To implement the new regulations the law requires the Town to designate one board or officer as the permitting authority responsible for issuing trench permits, collecting fines, and enforcement.

DISCUSSION:

The Town's Department of Public Works (DPW) oversees the majority of trench work in the Town relating to utility excavations in the public ways. The DPW Commissioner is best suited to be the designated permitting and enforcement authority for the new law extension onto private property. For private property trenches the Building Department will communicate to building permit applicants the need for a DPW trench permit and the safety requirements to be followed.

RECOMMENDATION:

The Advisory Committee, by unanimous vote of 17-0, recommends Favorable Action on the following vote:

VOTED: That the Town, pursuant to G.L. c.82A, §2, designate the Commissioner of the Department of Public Works as the Town's officer to issue permits for the purpose of creating a trench as that term is defined by G.L. c.82A, §4 and 520 CMR 14.00.

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ARTICLE 21

TWENTY-FIRST 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 AMENDING CHAPTER 317 OF THE ACTS OF 1974 (as amended on May 19, 2006) TO ALLOW THE TOWN OF BROOKLINE, THROUGH ITS BOARD OF SELECTMEN, TO SELL TAXI LICENSES

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

SECTION 1. The purposes of this Act consist of the following:

- a) to generate revenue for the Town of Brookline by selling licenses to operate taxis, and in doing so, balance any competing interests in maintaining the continuity of existing taxi businesses, acknowledging the investment by existing taxi license holders in their businesses, and augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole;
- b) notwithstanding the requirements of General Laws Chapter 40, Section 3, and General Laws Chapter 30B, to create a mechanism for the town to sell taxi licenses that expedites the process to the extent possible, giving due consideration to the interest of town residents, existing taxi businesses and other stakeholders in having input into the process.

SECTION 2. Section 1 of chapter 317 of the acts of 1974 is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: -

Except as otherwise provided herein, all statutes and by-laws applicable to transportation, vehicular licensing and traffic rules, regulations and orders shall apply to the division of transportation.

SECTION 3. Section 4 of chapter 317 of the acts of 1974 is hereby amended by striking out the first sentence of the first paragraph and inserting in place thereof the following sentence: -

Except as otherwise set forth herein with regard to taxi license sales, the Board shall have exclusive authority, generally consistent with the transportation policies of the Board of Selectmen and except as otherwise provided in this act, to take any and all of the following actions after public notice and at a public meeting, if it determines, by the vote

of at least four members, that such actions serve the public safety, welfare, environment or convenience.

SECTION 4. Section 4 of chapter 317 of the acts of 1974 is hereby amended by striking out the second sentence of the second paragraph and inserting in place thereof the following sentence:-

The Board shall also have all authority previously granted to the Selectmen by virtue of the provisions of Section Twenty-Two for Chapter Forty of the General Laws, except with respect to the sale of taxi licenses as set forth in Section 4A below.

SECTION 5. Section 4 of chapter 317 of the acts of 1974 is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

Except as otherwise set forth herein with regard to taxi license sales, no such adoption, alteration or repeal of a rule or regulation shall take effect, except for special rules or regulations that are declared by the Board to be urgently required for public safety or welfare or are of temporary nature and are able to be effective for a period of not more than 60 days, until 30 days have expired after both publication in a newspaper published or distributed in the Town and action on any appeal petition filed under this section.

SECTION 6. Section 4 of chapter 317 of the acts of 1974 is hereby amended by inserting as the first sentence of the fourth paragraph the following sentence:-

Except as set forth herein with regard to taxi license sales, the following describes the appeal procedures applicable to any board action.

SECTION 7. Chapter 317 of the acts of 1974 is hereby amended by inserting after Paragraph 4 the following Paragraph 4A: -

Notwithstanding the provisions of General Laws Chapter 40, Section 3, General Laws Chapter 30B, or any other general or special law to the contrary, the board of selectman shall have the exclusive authority to sell taxi licenses by public auction, public sale, sealed bid or other competitive process established by regulations promulgated by the board. The board of selectmen may entrust to the board broad discretion to take such actions as are necessary to implement this section and to sell taxi licenses, including, but not limited to, determining the number of licenses that shall be sold, the timing of any such sale(s), and any conditions and limitations pertaining to such sale(s) (including the power to revoke, suspend, renew and assign such licenses), except that the board of selectman shall approve sales prices and execute sales contracts. Proceeds from any such sale(s) of licenses shall be paid to the collector-treasurer of the town of Brookline for deposit into the general fund to be appropriated pursuant to the provisions of General Laws Chapter 40, Section 5. Notwithstanding the provisions of General Laws Chapter 30B, the board of selectmen may direct the board that in taking any action the board deems necessary to implement this section and to sell taxi licenses (including the adoption, alteration or repeal of rules and regulations), the board may balance, in its

discretion, the interest of Brookline residents in the continuity of existing Brookline taxi businesses, the interest of existing license holders in their investment in their businesses, the interest of the town in augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole, and the town's interest in maximizing revenue generated from sales of taxi licenses. The board of selectmen may consider these factors in determining whether to agree to a taxi license sales price. Any appeal from the board of selectmen's sale of a taxi license shall be to a court of competent jurisdiction.

The provisions of this section shall not apply to a license issued and outstanding on the effective date of this Act.

Any rules and regulations adopted, altered, or repealed by the board in connection with implementing this section, including any rules or regulations adopted, altered, or repealed for the purpose of creating a property interest in the licenses and of undertaking the sales of taxi licenses, shall not take effect until 30 days have expired after publication of such rules and regulations in a newspaper published or distributed in the town and on the town's website. Any appeal from the board's adoption, alteration, or repeal by the board in connection with implementing this section shall be to a court of competent jurisdiction.

SECTION 8. This act shall take effect upon its passage.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

M.G.L. Ch. 40, Sec. 22 and 22F authorize towns and cities to regulate taxi businesses and charge annual license fees and impose fines, but they do not authorize towns and cities to sell taxi licenses. Thus, to do so requires the enactment of special legislation. It is estimated that if the Transportation Board were to change its regulations to create a legally-cognizable property interest in taxi licenses (for example, the current regulations prohibit sale and assignment; a legally-cognizable property interest could be created by altering such regulations) and then sell at least some of the existing licenses once they expire, substantial revenue would be generated. At the same time, the Selectmen wish to balance against the Town's interest in generating revenue the interest of residents in continuity of existing taxi businesses, the interest of existing taxi license holders in their investment in their businesses, and the interest of the Town in augmenting the portion of the taxi fleet serving the Town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the Town's carbon emissions as a whole, such as by increasing the portion of the fleet comprised of accessible and hybrid vehicles.

The proposed article seeks to balance these interests by vesting the Selectmen with authority to approve sales prices and to delegate to the Transportation Board responsibility for designing the implementation of a plan to sell taxi licenses, so that due

consideration can be given to these factors and so that stakeholders such as Town residents and existing taxi businesses can be afforded appropriate input. While it appears likely that M.G.L. Ch. 30B is inapplicable to a municipality's sale of intangible property such as taxi medallion licenses, in an abundance of caution, the proposed article explicitly authorizes the Town to balance such interests notwithstanding the requirements of Chapter 30B. Finally, given the need to expedite sales in light of likely financing arrangements by purchasers and other business considerations purchasers may have, the proposed article vests the Selectmen with final approval with regard to sales price, and creates an appeal mechanism only to court from the determination of the sales price and from any regulations adopted by the Board to implement a plan to sell taxi licenses.

SELECTMEN'S RECOMMENDATION

Article 21 is a home rule petition that would authorize the Town to convert its taxi industry to a medallion-based system. Brookline regulates its taxi industry through an annual licensing process coordinated by and under the authority of the Transportation Board. Approximately 14 Hackney Business Licenses are issued each year for the right to operate 187 taxicabs within the Town. These businesses are assessed an annual \$300 per vehicle regulatory fee which offsets a portion of the Town's expense regulating the industry. These taxicabs may charge a unified taximeter rate of fare which is established by the Transportation Board. Because this is an annual municipal license, there are no property or renewal rights attached to them and each applicant must agree to this fact during the licensing process. This system differs from a medallion-based system that places a property right on the license which the owner may sell.

The idea of converting our license-based system to a medallion-based system similar to the cities of Boston and Cambridge was first proposed to the Town by its hackney business license holders over five years ago to the Transportation Board. At that time, then-Transportation Board Chairman Fred Levitan and Selectman Allen assembled an ad hoc working group of town staff to investigate the benefits and drawbacks of a conversion. This working group includes the following:

Selectman Robert Allen	Todd Kirrane, Transportation Administrator
Daniel O'Leary, Police Chief	Sean Cronin, Deputy Town Administrator
Michael Gropman, Police Captain	Patty Correa, Associate Town Counsel
Pat Maloney, Asst. Health Director	David Geanakakis, Chief Procurement Officer
Michael Sandman, Transportation Board	Fred Levitan – TMM & Advisory Committee

As a way to bring direction and focus to the efforts to address this question, in December of 2006 the Transportation Division contracted with Bruce Schaller of Schaller Consulting to conduct a review of the Town's current Taxi system and recommend improvements in our current regulatory structure and alternative licensing systems. Mr. Schaller is a leading authority on taxi systems within the United States with over 25 years

of experience with transportation, environmental and economic issues. He has extensive experience in the areas of policy development, market research, economic and statistical analysis, fare policy, taxicab regulation, service design, customer communications and intergovernmental cooperation. Upon completion of his contract with the Town of Brookline Mr. Schaller reentered the public sector as the Deputy Commissioner for Planning and Sustainability at the New York City Department of Transportation overseeing the planning, design and implementation of the transportation elements of Mayor Bloomberg's PlaNYC.

Although the exact system design that Mr. Schaller had suggested has not been pursued, both his final report and discussions he had with staff provided useful information, including:

1. based on a meter study conducted in January and February 2007, the current average income of drivers was \$130-140 per day, not including tips. This average income is above that of drivers within the City of Boston and is enough to support a medallion based system.
2. because of M.G.L. governing the setting of municipal fees, the Town does not see any return on the value it creates for the business license holder by limiting the number of taxicabs allowed to operate within the Town of Brookline. The current license system only allows the Town to recoup the cost of monitoring and implementing the rules and regulations.
3. the \$300 administrative fee charged to the business license holder for each taxicab is below the current cost to the Town in staffing time needed to properly regulate the industry.
4. in most major markets (including Boston and Cambridge in Massachusetts), the demand for business is predominantly "hail fares" originating from taxi stands at or near airports, hotels, convention centers. In Brookline the large majority (80%) of the system's work is derived from calls to a company dispatch service, and this requires any new system to have a strong focus on company-owned medallions and required affiliations for owner-occupied taxicabs to ensure responsive service.
5. the current regulatory control under the Transportation Division is understaffed and does not allow for a constant monitoring of the safety of the vehicles. Although there are semi-annual safety inspections of the taxicabs, there are currently no resources to monitor the taxicab fleet's adherence to vehicle safety requirements during the six-month period between inspections.
6. the current hackney division at the Police Department is currently understaffed with only one officer assigned part-time to handle the licensing of taxicab drivers, investigate claims of fraud by residents, enforce regulations against out of town taxis, and ensure driver compliance with the Town's Taxi Rules and Regulations.

In April, 2007 the Selectmen appointed an Override Study Committee (OSC) that was tasked with developing ways in which the Town could capture new revenue to help sustain the level of services currently provided. Both their short-term and long-term proposals focused on the increased revenues that could be gained from altering the

current system. In the short-term, the OSC recommended that the Transportation Board and the Board of Selectmen raise the current per license fee to a level that fully reimburses the Town for the expense it incurs for regulating the industry. In the long-term, the OSC recommended that the Town move to convert the industry structure to a medallion based one and sell the medallions for a large one-time monetary gain.

With both the consultant and the Override Study Committee recommending that the Town move forward with the process of a conversion, Article 21 is the next logical step to take to proceed through the conversion process. Currently, the right of a municipality to issue taxi licenses is governed under MGL Chapter 40 G.L. c. 40, §§ 22 and 22F, which authorizes towns and cities to regulate taxi businesses, and in doing so, charge annual license fees and impose fines, but they do not authorize towns and cities to sell taxi licenses. In order convert to a medallion-based system, a municipality must file a special home rule petition gaining the right to create and sell such property. Warrant Article 21 accomplishes this goal by amending Chapter 317 of the Acts of 1974, which provided the authority granted in MGL Chapter 40 G.L. c. 40, §§ 22 to the Transportation Board, and allow the Board of Selectmen to oversee the sale of the medallions in a manner that they deem in the best interest of the Town.

The goal is to organize this sales process in a manner that balances the Town's interest to maximize revenue against the interest of residents in maintaining the continuity of existing taxi services, the interest of the Town in augmenting the portion of the taxi fleet serving the Town that meets the needs of its elderly and disabled residents, and the interest of the Town in promoting a taxi fleet that minimizes the fleet's detrimental impact on the town's air quality and on the level of the Town's carbon emissions as a whole, such as by mandating that all vehicles being placed on the road meet a certain fuel efficiency standard. Although it is Town Counsel's opinion that MGL 30B, which normally governs the sale of municipal property and requires that the property be sold to the highest bidder, does not apply to the sale of a taxi medallion, this article seeks exemption from this law in recognition that the working group's stated goals will most likely lead to a lower per medallion price than an unrestricted medallion. All other regulatory aspects of the industry will continued to be regulated by the Transportation Board with support from the Department of Public Works and the Police Department.

While this piece of legislation is making its way through the Commonwealth's legislative process (if approved by Town Meeting), the working group will continue to explore the best option for a conversion and present that to the Transportation Board and the Board of Selectmen during future public hearings. Included in this conversion proposal will be any agreement between the Town and existing Business License holders, strategies to ensure the continued high level of service currently enjoyed by residents, increasing the amount of vehicles within the fleet that meets the needs of handicap citizens, decreasing the environmental impact of the fleet by establishing a minimum miles per gallon requirement, and increasing staff's ability to monitor and enforce the Taxicab Regulations.

The Selectmen thank the working group for their hard work; without it, this multi-million dollar revenue-raising opportunity would not be before us. While the taxi industry has some concerns about moving to a medallion-based system, this Board has confidence in the Transportation Board's ability to develop a framework that works for the industry, continues the quality taxi services offered to Brookline residents, and allows the Town to raise much-needed revenue. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 28, 2008, 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 AMENDING CHAPTER 317 OF THE ACTS OF 1974 (as amended on May 19, 2006) TO ALLOW THE TOWN OF BROOKLINE, THROUGH ITS BOARD OF SELECTMEN, TO SELL TAXI LICENSES

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

SECTION 1. The purposes of this Act consist of the following:

- a) to generate revenue for the Town of Brookline by selling licenses to operate taxis, and in doing so, balance any competing interests in maintaining the continuity of existing taxi businesses, acknowledging the investment by existing taxi license holders in their businesses, and augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole;
- b) notwithstanding the requirements of General Laws Chapter 40, Section 3, and General Laws Chapter 30B, to create a mechanism for the town to sell taxi licenses that expedites the process to the extent possible, giving due consideration to the interest of town residents, existing taxi businesses and other stakeholders in having input into the process.

SECTION 2. Section 1 of chapter 317 of the acts of 1974 is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: -

Except as otherwise provided herein, all statutes and by-laws applicable to transportation, vehicular licensing and traffic rules, regulations and orders shall apply to the division of transportation.

SECTION 3. Section 4 of chapter 317 of the acts of 1974 is hereby amended by striking out the first sentence of the first paragraph and inserting in place thereof the following sentence: -

Except as otherwise set forth herein with regard to taxi license sales, the Board shall have exclusive authority, generally consistent with the transportation policies of the Board of Selectmen and except as otherwise provided in this act, to take any and all of the following actions after public notice and at a public meeting, if it determines, by the vote of at least four members, that such actions serve the public safety, welfare, environment or convenience.

SECTION 4. Section 4 of chapter 317 of the acts of 1974 is hereby amended by striking out the second sentence of the second paragraph and inserting in place thereof the following sentence:-

The Board shall also have all authority previously granted to the Selectmen by virtue of the provisions of Section Twenty-Two for Chapter Forty of the General Laws, except with respect to the sale of taxi licenses as set forth in Section 4A below.

SECTION 5. Section 4 of chapter 317 of the acts of 1974 is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

Except as otherwise set forth herein with regard to taxi license sales, no such adoption, alteration or repeal of a rule or regulation shall take effect, except for special rules or regulations that are declared by the Board to be urgently required for public safety or welfare or are of temporary nature and are able to be effective for a period of not more than 60 days, until 30 days have expired after both publication in a newspaper published or distributed in the Town and action on any appeal petition filed under this section.

SECTION 6. Section 4 of chapter 317 of the acts of 1974 is hereby amended by inserting as the first sentence of the fourth paragraph the following sentence:-

Except as set forth herein with regard to taxi license sales, the following describes the appeal procedures applicable to any board action.

SECTION 7. Chapter 317 of the acts of 1974 is hereby amended by inserting after Paragraph 4 the following Paragraph 4A: -

Notwithstanding the provisions of General Laws Chapter 40, Section 3, General Laws Chapter 30B, or any other general or special law to the contrary, the board of selectman shall have the exclusive authority to sell taxi licenses by public auction, public sale, sealed bid or other competitive process established by regulations promulgated by the board after public hearing. The board of selectmen may entrust to the board broad discretion to take such actions as are necessary to implement this section and to sell taxi licenses, including, but not limited to, determining the number of licenses that shall be sold, the timing of any such sale(s), and any conditions and limitations pertaining to such sale(s) (including the power to revoke, suspend, renew and assign such licenses), except that the board of selectman shall approve sales prices and execute sales contracts. Proceeds from any such sale(s) of licenses shall be paid to the collector-treasurer of the town of Brookline for deposit into the general fund to be appropriated pursuant to the

provisions of General Laws Chapter 40, Section 5. Notwithstanding the provisions of General Laws Chapter 30B, the board of selectmen may direct the board that in taking any action the board deems necessary to implement this section and to sell taxi licenses (including the adoption, alteration or repeal of rules and regulations after public hearing), the board may balance, in its discretion, the interest of Brookline residents in the continuity of existing Brookline taxi businesses, the interest of existing license holders in their investment in their businesses, the interest of the town in augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole, and the town's interest in maximizing revenue generated from sales of taxi licenses. The board of selectmen may consider these factors in determining whether to agree to a taxi license sales price. Any appeal from the board of selectmen's sale of a taxi license shall be to a court of competent jurisdiction.

The provisions of this section shall not apply to a license issued and outstanding on the effective date of this Act.

Any rules and regulations adopted, altered, or repealed by the board after public hearing in connection with implementing this section, including any rules or regulations adopted, altered, or repealed for the purpose of creating a property interest in the licenses and of undertaking the sales of taxi licenses, shall not take effect until 30 days have expired after publication of such rules and regulations in a newspaper published or distributed in the town and on the town's website. Any appeal from the board's adoption, alteration, or repeal by the board in connection with implementing this section shall be to a court of competent jurisdiction.

SECTION 8. This act shall take effect upon its passage.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's recommendation on Article 21 will be included in the Supplemental Mailing.

XXX

ARTICLE 21

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Warrant Article 21 seeks Town Meeting’s approval to file a “home rule” petition with the state legislature to allow the Town to issue “permanent,” transferable taxi licenses (“medallions”). Unlike Boston, Newton, Cambridge, and most of the adjacent towns/cities, Brookline has never issued medallions; instead, Brookline collects a \$300 per vehicle annual taxi license.

For the past five years, the Transportation Board and interested citizens has considered and vetted a medallion program. Two years ago, the Town retained Bruce Schaller¹ to study the Brookline taxi cab market and the pros and cons of a medallion sale program. Mr. Schaller is a nationally-recognized expert on the economics of public transportation and the taxi cab business who recently helped overhaul of New York City’s environmentally-oriented taxi regulations.

Mr. Schaller’s comprehensive 2007 study, issued after seven months of meetings with taxi users, drivers, the Police Dept., and many other groups, estimated that a medallion sale program could yield approximately \$11 million on an NPV basis (considerably more in actual dollars). The report also proposed alternatives to an outright sale to the highest bidder(s) – estimating for each how much less the Town would yield; addressed the market effects of a “staged approach” whereby medallions would be sold over time; explained how medallion owners, even after a five-figure investment to buy a medallion, would have a bankable asset around which to build a business; and opined on how many medallions should be available to create a self-sustaining taxi industry without sacrificing service levels.

In its January 2008 final report, the Override Study Committee discussed actions the Town could take to increase its revenue, and listed a medallion sale program as its first suggestion.² Based on an estimate that a well-run medallion sale could yield over \$12.1 million in revenue, the report recommended: *Continue to actively pursue ... medallion sales ... to ... to raise revenue for the [T]own.*

From a legal perspective, there are two reasons why getting the state legislature’s permission would be helpful. First, there is no specific authority in the state laws

¹ More information about Mr. Schaller’s work and background is available at www.shallerconsult.com.

² Section 8.6.6 of the Override Study Committee report notes that “[t]he ... Transportation Board is studying the potential of selling medallions ... to raise revenue for the Town (up to \$12.1 million). This initiative has been under discussion for more than five years. The Transportation Board is beginning to prepare potential bid documents and regulations.”

allowing municipalities to sell medallions;³ the state laws providing a municipality's control over its taxi fleet (Mass. General Laws ch. 40, §§ 22 and 22F) allow it to only receive an annual license fee for taxi usage. Another potential pitfall of not getting the home rule authority is that one could -- and perhaps a disgruntled party would -- argue that an ambiguity in the state procurement law (Mass. General Laws ch. 30B) requires compliance with it, although what the Town is trying to do is not really what the law is intended to regulate; compliance with the letter of an arguably inapplicable law would require a time-consuming and complex process and would also reduce the Town's autonomy over the how it operates the sale.⁴ Town Counsel's office advises that were Chapter 30B to apply, the Town could not structure the sale program so as to offer discounted medallions to existing operators or similar incentives and could also delay the sale process.

Were the home rule petition granted, the Selectmen or the Transportation Board could determine the terms of any sale program (other than the pricing terms which must be approved by the Selectmen and not the Transportation Board), set the number of medallions to be sold, and issue relevant regulations. The Warrant Article provides that the decision makers ought to give "*due consideration*" to various stakeholders – such as Town residents and existing operators (that is, license holders) – and *permits* the Transportation Board to balance the following factors (among others, perhaps):

- the interests of Town residents in operator continuity,
- the existing licensee's stake in their existing investment in their businesses,
- the interest of the Town in augmenting the taxi cab fleet to serve the needs of seniors and the disabled,
- the environmental impact of taxi cab usage, and
- the Town's "*interest in maximizing revenue ... from (medallion) sales.*"

After a medallion is sold, the taxi operator owns it and s/he or it could hypothecate or sell it (subject always to compliance with rules issued by the Transportation Board). The Transportation Board could, after requisite public hearing, impose a variety of regulations. In addition, the Town would continue to collect annual license fees, transfer fees and similar items; conduct inspections; and, along the same lines as liquor licenses, specify who can acquire a medallion and otherwise set rules regarding transfers or loans collateralized by a medallion.

In summary, this Warrant Article merely seeks to "advance the ball" on this proposal. If the home rule authority is granted, there will be extensive opportunity at the Town level for further rule making as to the terms of the sale, how the medallions can be sold or

³ It was *perhaps* for that reason why Boston sought the legislature's approval before it recently sold an additional 260 medallions.

⁴ The official explanation to the Warrant Article states that the Town believes that it can sell medallions without violating chapter 30B. However, the Selectmen believe, in the words of the official explanation, that "an abundance of caution" dictates that the Town seek the legislature's approval.

borrowed against, and how the fleet will operate. There is a consensus that the bulk of the taxi cab fleet should quickly meet stringent fuel economy standards and can make the transition to a largely hybrid fleet.

DISCUSSION:

In the several meetings of the Advisory Committee and its subcommittee formed to consider this proposal, there was general consensus that:

- This initiative was quite timely, as the Town's financial challenges have grown because of the disruption to the debt markets, the economic slowdown, threats to local aid, possible future declines in tax receipts, and the ongoing structural budget deficit;
- Medallion sales could be structured in such a way as to minimize or even eliminate any disruption to the Town's residents' use and enjoyment of taxi cab services;
- Once the legislature confirms the Town's rights, the Town would be able to execute on any proposal quickly and in a businesslike manner with the assistance of the Transportation Board, the Police Dept., and the citizenry generally;
- The program presents an opportunity to be environmentally responsible by increasing fleet fuel efficiency and encouraging -- or even requiring -- a largely hybrid fleet;⁵
- While limits on concentration of medallion ownership may in some cases be beneficial, they are very hard to enforce as owning companies can be structured to evade the restrictions; and
- It is prudent to hold off on specific policy initiatives (for instance, whether to charge existing operators less for medallions and whether and how to advance environmental goals) at this stage until the Town can determine how much each policy goal would cost in terms of reduced medallion sale proceeds. In the event that the state legislature does not grant the home rule, much -- if not all -- of the discussions will be moot.

The following comments or observations were made by some of the attendees, but were not shared by all persons present:

⁵ In a development that occurred just before the full Advisory Committee considered this Warrant Article, the Federal District Court in Manhattan ruled that that NYC's fleet efficiency mandates violated the federal Energy Policy and Conservation Act of 1975. It is not clear how the decision could, at the time Brookline is ready to set the rules for its post-sale fleet, affect the Town's initiatives.

- Most of the meeting attendees/committee members favored giving existing licensees some sort of leg up in acquiring medallions -- whether by offering existing licensees a lower price for a medallion or by setting aside some portion of the medallions for the existing operators – although there was a minority view that existing licensees have been receiving rights of significant value for many years at a nominal cost, and thus such “favoritism” should be discouraged;
- While all agreed that the sale process ought to be done in an “open” and “transparent” manner, although there was a minority view that Chapter 30B’s rigorous criteria may best achieve these aims (albeit with the downside that preferences for existing operators or for encouraging environmental goals would not be permitted);
- Town representatives and some members of the Transportation Board felt that expensive medallions could have the unintended consequence to encourage drivers to illegally “poach” fares from Boston and, to a lesser extent, Newton, although the Advisory Committee members noted that because the drivers themselves merely rent the medallion for a shift and have to charge the Town-set rates, the likelihood of such activity would be no higher in a medallion-environment than it is now;
- Several members of the public felt that environmental considerations should be given pre-eminence over the other competing factors referenced in the warrant article and disagreed with the some Committee-members’ comments that focusing primarily on an environmental agenda could negatively effect both the amount the Town would get from a medallion sale and the overall health/profitability of the local taxi industry; and
- One member of the subcommittee noted that the more complicated and precise the warrant article is in terms of describing the sale terms, the more likely that it will invite changes on Beacon Hill through a process in our neighbors may have greater political sway (a town representative reporting that there is already some opposition mounting from the Boston cab industry).

There was a general consensus that, to assuage concerns about “back-room deals” or the like, it would do no harm to make explicit the requirement that the Transportation Board promulgate any relevant regulations after hearing from the public. Members of the Transportation Board stated that any future rule making would be done after public hearing(s) anyway, so the proposed revisions codified what would otherwise happen. Specifically, it was suggested that Warrant Article proposal be amended to insert the phrase “after public hearing” three places in Section 7 of the Warrant Article as set forth in the attached amendment.

To conclude, the proposed Warrant Article merely represents the next step in this already lengthy process. If and when the legislature's permission is granted, it would be appropriate to engage in a Town-wide dialog as to how our taxi system will operate and how it adapts to the concerns of today; until then, however, such discussions -- while perhaps interesting to many -- run the risk of being premature attempts to shape a system that is still in flux and to create rules governing a sale process that could possible end up not happening.

RECOMMENDATION:

The Advisory Committee by a vote of 19-0, recommends FAVORABLE ACTION on Warrant Article 21, as amended.

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 AMENDING CHAPTER 317 OF THE ACTS OF 1974 (as amended on May 19, 2006) TO ALLOW THE TOWN OF BROOKLINE, THROUGH ITS BOARD OF SELECTMEN, TO SELL TAXI LICENSES

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

SECTION 1. The purposes of this Act consist of the following:

- a) to generate revenue for the Town of Brookline by selling licenses to operate taxis, and in doing so, balance any competing interests in maintaining the continuity of existing taxi businesses, acknowledging the investment by existing taxi license holders in their businesses, and augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole;
- b) notwithstanding the requirements of General Laws Chapter 40, Section 3, and General Laws Chapter 30B, to create a mechanism for the town to sell taxi licenses that expedites the process to the extent possible, giving due consideration to the interest of town residents, existing taxi businesses and other stakeholders in having input into the process.

SECTION 2. Section 1 of chapter 317 of the acts of 1974 is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: -

Except as otherwise provided herein, all statutes and by-laws applicable to transportation, vehicular licensing and traffic rules, regulations and orders shall apply to the division of transportation.

SECTION 3. Section 4 of chapter 317 of the acts of 1974 is hereby amended by striking out the first sentence of the first paragraph and inserting in place thereof the following sentence: -

Except as otherwise set forth herein with regard to taxi license sales, the Board shall have exclusive authority, generally consistent with the transportation policies of the Board of Selectmen and except as otherwise provided in this act, to take any and all of the following actions after public notice and at a public meeting, if it determines, by the vote of at least four members, that such actions serve the public safety, welfare, environment or convenience.

SECTION 4. Section 4 of chapter 317 of the acts of 1974 is hereby amended by striking out the second sentence of the second paragraph and inserting in place thereof the following sentence:-

The Board shall also have all authority previously granted to the Selectmen by virtue of the provisions of Section Twenty-Two for Chapter Forty of the General Laws, except with respect to the sale of taxi licenses as set forth in Section 4A below.

SECTION 5. Section 4 of chapter 317 of the acts of 1974 is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

Except as otherwise set forth herein with regard to taxi license sales, no such adoption, alteration or repeal of a rule or regulation shall take effect, except for special rules or regulations that are declared by the Board to be urgently required for public safety or welfare or are of temporary nature and are able to be effective for a period of not more than 60 days, until 30 days have expired after both publication in a newspaper published or distributed in the Town and action on any appeal petition filed under this section.

SECTION 6. Section 4 of chapter 317 of the acts of 1974 is hereby amended by inserting as the first sentence of the fourth paragraph the following sentence:-

Except as set forth herein with regard to taxi license sales, the following describes the appeal procedures applicable to any board action.

SECTION 7. Chapter 317 of the acts of 1974 is hereby amended by inserting after Paragraph 4 the following Paragraph 4A: -

Notwithstanding the provisions of General Laws Chapter 40, Section 3, General Laws Chapter 30B, or any other general or special law to the contrary, the board of selectman shall have the exclusive authority to sell taxi licenses by public auction, public sale, sealed bid or other competitive process established by regulations promulgated by the board after public hearing. The board of selectmen may entrust to the board broad discretion to take such actions as are necessary to implement this section and to sell taxi licenses, including, but not limited to, determining the number of licenses that shall be sold, the timing of any such sale(s), and any conditions and limitations pertaining to such

sale(s) (including the power to revoke, suspend, renew and assign such licenses), except that the board of selectman shall approve sales prices and execute sales contracts. Proceeds from any such sale(s) of licenses shall be paid to the collector-treasurer of the town of Brookline for deposit into the general fund to be appropriated pursuant to the provisions of General Laws Chapter 40, Section 5. Notwithstanding the provisions of General Laws Chapter 30B, the board of selectmen may direct the board that in taking any action the board deems necessary to implement this section and to sell taxi licenses (including the adoption, alteration or repeal of rules and regulations **after public hearing**), the board may balance, in its discretion, the interest of Brookline residents in the continuity of existing Brookline taxi businesses, the interest of existing license holders in their investment in their businesses, the interest of the town in augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole, and the town's interest in maximizing revenue generated from sales of taxi licenses. The board of selectmen may consider these factors in determining whether to agree to a taxi license sales price. Any appeal from the board of selectmen's sale of a taxi license shall be to a court of competent jurisdiction.

The provisions of this section shall not apply to a license issued and outstanding on the effective date of this Act.

Any rules and regulations adopted, altered, or repealed by the board **after public hearing** in connection with implementing this section, including any rules or regulations adopted, altered, or repealed for the purpose of creating a property interest in the licenses and of undertaking the sales of taxi licenses, shall not take effect until 30 days have expired after publication of such rules and regulations in a newspaper published or distributed in the town and on the town's website. Any appeal from the board's adoption, alteration, or repeal by the board in connection with implementing this section shall be to a court of competent jurisdiction.

SECTION 8. This act shall take effect upon its passage.

ARTICLE 22

TWENTY-SECOND ARTICLE

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

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO LEASE 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 22 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 Legislature is required for anything longer than that. The identical article was filed as Article 16 of last November's Special Town Meeting. It was approved by Town Meeting, but failed to make it through the State Legislature.

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.

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 difficult 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 3-0 taken on October 14, 2008, 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.

ROLL CALL VOTE

Favorable Action

Daly

DeWitt

Mermell

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 22 is identical to an article which was approved by Town Meeting a year ago and subsequently submitted to the Massachusetts Legislature. Because the Legislature did not act on the proposal, the article has been resubmitted to Town Meeting to begin the legislative process again. Article 22 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 signed its first lease with the Town in 1967, and after repairs and renovations to the structure were completed, art classes began the following year. 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.

DISCUSSION:

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. Last spring, Town Meeting supported a temporary Preservation Restriction for the building in expectation of the BAC receiving a matching grant from the Massachusetts Historical Commission. The grant was awarded this past summer and will be used to undertake a conditions study and capital spending plan for the building

In order to pay for anticipated capital improvements, including substantial roof and gutter repairs, chimney reconstruction and improvements that address handicap accessibility issues, energy conservation, and storage and exhibition space, the BAC plans to increase fundraising efforts in the near future. The Arts Center board firmly believes that a long-term lease is critical to the organization's ability to raise private funds and to continue to seek state grants to support not only its programs but also its renovation efforts.

During its discussion of the article, some members noted that 30 years is an exceptionally long period of time for any tenancy, that a 30-year lease is "too much like ownership", and that with such a long lease, the Town may miss an opportunity to find a tenant which can offer more in rent. It was further noted that there is no solid evidence to support the belief that a 30-year lease is critical to obtaining foundation funding.

In response, other members noted that the Arts Center was an asset to the community and that under the current 30-year lease; it had contributed much to the cultural life of the Town. In addition, it was 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 would likely 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 20-3, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 23

TWENTY-THIRD ARTICLE

To see if the Town of Brookline 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 TWENTY YEARS

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 19-25 Kennard Road, Parcel ID NO. 322/01-00 to Brookline Music School Inc. for another period not exceeding twenty years. Said time period is in addition to the twenty year period previously granted pursuant to Chapter 294 of the Acts of 1993. Any such lease shall be upon terms and conditions as the Board of Selectmen and School Committee 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 that would permit the Town to give Brookline Music School Inc. long-term occupancy of its current building, which will allow it to continue to offer music programs and continue to maintain the building.

Brookline Music School (the School) is the oldest cultural institution in the Town of Brookline. Founded in 1924 by the Brookline Public Schools as a means to enhance public school orchestras, the School was incorporated in 1967 as a private non-profit community arts school and continued to serve the Town by providing music lessons after hours in the public schools. This unusual private-public collaboration exists and flourishes to this day.

Until the early 1990's, the School's administration was housed first in the public schools, then a local church. In 1994-1995, the School completed a successful \$1 million capital campaign that underwrote the cost of renovating its first permanent home, the historic Town-owned Hill-Kennard-Ogden House.

Since that time, Brookline Music School has doubled its programs and enrollment to over 1,000 students and created an important cultural venue for all aspects of music education and appreciation.

Almost half the private lessons taught by the School's faculty continue to take place in the public schools, a valuable and safe convenience for the hundreds of children who are in extended day programs and live close to their respective schools. Kennard House provides a place for these students to enhance their lessons by meeting other musicians and participating in the many group activities that are held throughout the year.

Kennard House houses not only the administration and a welcoming environment for consultation and registration, it also provides space for additional private lessons, classes, dance, ensembles, workshops, evaluations, master-classes and hundreds of recitals. The historic building has become the hub of music activity for Brookline Music School students, families, friends and music lovers, and is well known in the Town.

The School is proud of its place in the Town and its collaboration with the Brookline Public Schools and other local institutions. Last year, Lincoln School 8th grade students participated in free weekly ensembles coached by a faculty member. Annually, over 100 free concerts are performed by faculty and students at outside venues, such as local arts festivals school fairs, nursing homes, senior residential facilities, libraries and the Brookline Housing Authority. A Scholarship Program provides \$40,000 in tuition assistance annually and ensures that everyone has access to a music education.

The Kennard House renovations in 1994-1995 were a major and expensive accomplishment. However, the building dates from 1844 and, like any historic building, needs constant maintenance, which Brookline Music School has been diligent in providing.

The extended lease of Kennard House will ensure that Brookline Music School continues to provide student musicians and music lovers of all ages with a beautiful, welcoming location in which to share and enjoy their love of music.

This article is not seeking any funds from the Town.

SELECTMEN'S RECOMMENDATION

Article 23 is a Home Rule petition that would authorize the Selectmen to enter into a lease of up to 20 years with the Brookline Music School for the Town-owned property located at 19-25 Kennard Road. State law only allows for a maximum lease of 10 years, so approval of the Legislative is required for anything longer than that.

Brookline Music School is the oldest cultural institution in the Town. Founded in 1924 by the Brookline Public Schools as a means to enhance public school orchestras, the School was incorporated in 1967 as a private non-profit community arts school and

continued to serve the Town by providing music lessons after hours in the public schools. This unusual private-public collaboration exists and flourishes to this day.

Almost half the private lessons taught by the School's faculty take place in the public schools, a valuable and safe convenience for the hundreds of children who are in extended day programs and live close to their respective schools. The Kennard House provides a place for these students to enhance their lessons by meeting other musicians and participating in the many group activities that are held throughout the year. The Kennard House also provides space for additional private lessons, classes, dance, ensembles, workshops, evaluations, master-classes, and hundreds of recitals.

The Selectmen fully support the Brookline Music School and the prudent use of a Town-owned asset to help it deliver its mission. Therefore, the Board of Selectmen fully supports the Brookline Arts Center and recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 28, 2008, on the following vote, which includes the amendment recommended by the School Committee:

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 TWENTY YEARS

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 19-25 Kennard Road, Parcel ID NO. 322/01-00 to Brookline Music School Inc. for another period not exceeding twenty years. Said time period is in addition to the twenty year period previously granted pursuant to Chapter 294 of the Acts of 1993. Any such lease shall be upon terms and conditions as the Board of Selectmen and School Committee shall determine to be in the best interest of the Town and Schools.

Section 2 This act shall take effect upon its passage.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 23, a citizens' petition, asks Town Meeting to initiate a process that would ultimately allow the Town to lease the building at 25 Kennard Road, known as the "Kennard House," to the Brookline Music School for a period of up to 20 years. State statute currently limits the Town to offering leases of not more than ten years. The existing lease will expire on May 10, 2014.

The Brookline Music School was founded in 1924 and is the oldest cultural institution in the town. Originally part of the Public Schools, it was incorporated in 1967 as a private, non-profit community arts school and now provides after-school music lessons in both public school buildings (in donated space) and in the Kennard House.

The Music School has occupied the Kennard House since 1994, after undertaking and paying approximately \$1 million for significant renovations to the building in the accordance with the lease agreement. It continues to be responsible for utility costs and any repair and maintenance that are necessary to keep the premises in a “proper, safe, and attractive condition.” In addition, as part of the lease agreement, the Music School provides services to the Town valued at \$29,100 per year. Included are scholarships, free concerts and performances at town-wide events, and partnerships with the Brookline Housing Authority, Goddard House, and the Senior Center.

Since renovating and moving into 25 Kennard Road, the school has doubled its programs and enrollment, offering private lessons and music classes for all ages – from 3-months to adults. In addition, it hosts master classes, workshops, ensembles, and numerous recitals, performed by individuals, families, and faculty members. Approximately \$40,000 in scholarship aid is offered annually.

The Music School’s growth and success, combined with scheduling challenges in public school facilities, have resulted in its need for additional space. A search is now underway for a second building to supplement the 5400 square feet of the Kennard House currently in use for offices, classrooms, and a recital hall. Music School representatives acknowledge that it could take a number of years to identify such an additional facility and to raise the necessary funds to acquire and renovate it. Therefore, they believe it is critical that the school retain the Kennard House as it’s publicly recognized home and obtain a long-term lease to assure both its constituents and its funders of the school’s stability and continuity.

DISCUSSION:

The Advisory Committee agrees that with an annual budget of \$1.6 million, approximately 1000 students, 90 part-time and full-time faculty members, and free recitals and performances throughout the year, the Music School, like the Brookline Arts Center, is a vibrant educational and cultural institution and a worthy organization that has an excellent track record and plays an important role in our community. A small minority of the Committee opposes this article because they are opposed to leasing any town-owned building for more than ten years. They maintain that 20 years is more than “long term” and is akin to ownership of the building. Furthermore, they believe that a 20-year lease dramatically decreases opportunities for the Town to entertain other proposed uses and tenants for the property.

The majority of Advisory Committee members, however, support the article, believing that a long-term lease will be valuable to the organization as it continues to expand its programs and enrollment, and recognizing that approval of the article would give the

Board of Selectmen and School Committee the flexibility, but not the mandate, to enter a 20-year lease with the Music School.

RECOMMENDATION:

By a vote of 17-1-1, the Advisory Committee recommends Favorable Action on the vote offered by the Selectmen.

XXX

ARTICLE 24

TWENTY-FOURTH 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

Town Meeting voted in favor of this article at the November 2007 Town Meeting, however, the State Legislature failed to act on this Home Rule Petition within the current legislative session. Therefore, it must be filed again for further consideration by the legislature.

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

Article 24 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. It was approved by Town Meeting last November as Article 18, but not make it through the Legislature. Therefore, the Town need to re-file the bill.

Up until April of 2007 the Transportation Board, under Article V Section 17 of the Traffic Rules and Regulations, has regulated valet services that operate within the Town of Brookline that use public spaces. Under these regulations all valet services were required to submit an application to the Transportation Board each June asking for permission to occupy an on-street parking space for the purpose of loading or off-loading of customers. These applications were considered by the Transportation Board and granted after a review of the proposed route and impact on abutting neighborhoods. The cost of the permit, which was in effect from July 1 to June 30 of each year, was \$200 for the permit fee and an additional \$500 per public space occupied.

In March of 2007 residents of the neighborhood surrounding the Metropolitan Club restaurant sought intervention by the Transportation Board to force the valet service operating at this location to apply for a license and fall under our regulatory watch. At the same time members of the community offered a warrant article for the May, 2007 Annual Town Meeting that would grant the authority of regulating valet services that do not use a public space but does use a public way to move the vehicle from its on/off-loading area to an offsite garage to the Board of Selectmen or their designee. The agreement between the Transportation Division staff, members of the Board of Selectmen, and Town Counsels office is that rather than going through the home rule process, the better and more efficient choice was to amend the Traffic Rules & Regulations to include the valet services using a public way but not a public space.

In April of 2007 the Transportation Board adopted a new Article V, Section 17 “Valet Parking Licenses”, which accomplished this goal. The two operations within the town that now fell under the new regulations (The Met Club and La Mora) were notified to submit an application or risk being fined for operating a non-licensed valet service. The attorney for the Met Club appealed the decision of the Transportation Board to the Board of Selectmen on the basis that:

1. The enabling legislation of the Transportation Board does not specifically grant the Transportation Board the authority to regulate a valet Service that only operates on a public way,
2. More importantly he points out that MGL Chapter 90 prohibits a municipal government from banning a licensed driver from operating a registered vehicle on a public way.

The Transportation Board and Town Counsel’s office reviewed the Transportation Board’s enabling legislation and the cases cited by their attorney and concluded that the Transportation Board does have the authority under its power to regulate “the movement...of vehicles..., and their exclusion from, all or any streets...under the control of the town...” To this point the Board of Selectmen have not acted on the appeal because they have allowed the Transportation Board to strengthen its regulation as much as possible from a likely court challenge and their attorney has waived any hearing deadlines awaiting resolution of this issue by the State Legislature.

Although the Town is comfortable with its position and power under the current language, Selectmen Chairwoman Nancy Daly worked with the Transportation Board and Town Counsel to draft a home rule petition as a plan B that amends the Board’s enabling legislation, specifically granting the Transportation Board the authority to regulate any and all valet services that use either a public way or a public parking space. This warrant article was recommended by the Board of Selectmen, Transportation Board, and Advisory Committee and was put before the November, 2007 Special Town Meeting. That warrant article passed Town Meeting with a unanimous vote. State Representative Michael Rush filed the home rule petition on behalf of the Town of Brookline (H. 4492), which was positively reported by the Joint House and Senate Committee on Municipalities and Regional Government. The bill continued through the legislative process, which included a second reading, but failed to get a third reading before the Legislature adjourned for the year on July 29, 2008. According to state law, all legislation not passed by the House of Representatives on or before the close of the session must start the process over again. In terms of home rule petitions, this requires passage of a new warrant article by Town Meeting that can be filed with the State Legislature at the beginning of their new session in January, 2009.

The Board of Selectmen continues to support this article because it is the only way to protect residential neighborhoods from the negative impacts a valet operation can have. The situation at the Metropolitan Club is a great test case on what can happen to a residential neighborhood when a valet service is un-regulated. This situation can happen to any residential neighborhood within the town that borders a commercial district where

a new valet operation is established that does not fall under the Transportation Board's current regulations. Therefore, the recommends FAVORABLE ACTION, by a vote of 3-0 taken on October 14, 2008 on the following:

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.

ROLL CALL VOTE

Favorable Action

Daly

DeWitt

Mermell

ADVISORY COMMITTEE'S RECOMMENDATIONBACKGROUND:

At the November 2007 Special Town Meeting an identically worded article (WA18) was passed unanimously and sent to the State Legislature as a home rule petition. Earlier this year the petition was filed by Representative Michael Rush and referred to the Joint Committee on Municipalities and Regional Government. A public hearing was held at the State House on February 20th. On February 27th the bill (H. 4492) was favorably reported and it was referred to the Committee on House Steering, Policy and Scheduling. On April 1st the House Committee reported the bill be placed in the Orders of the Day for the next sitting for a second reading. On April 2nd it was ordered to a third and final reading. However, speaking before the Board of Selectmen on October 14th, Rep. Rush informed the Town that although the bill was recently released from the Committee on Bills in the Third Reading, it was still awaiting action by the House of Representatives.

Although the Legislature ended its formal session on July 29th non-controversial bills, such as Brookline's home rule petition, can be brought to the floor for a vote by the House Speaker in informal session until December 31st. Once the bill receives a favorable vote in the House, it then goes to the Senate for approval and, finally, to the Governor for his signature. The current article, which would restart the legislative process from the beginning, was filed by Selectman Nancy Daly on behalf of the Board of Selectmen, just in case Brookline's home rule petition fails to complete the legislative process by the end of December.

DISCUSSION:

This warrant article has its roots in a neighborhood initiative to enlist the aid of Town agencies to regulate a valet parking service that had for several years negatively affected their quality of life and the safety of their residential streets. At the urging of this neighborhood group, the Board of Selectmen submitted a Warrant Article for a Home Rule Petition for the May 2007 Town Meeting. The petition would give the Board of Selectmen or its designee (the Transportation Board) the authority to regulate valet services that use a public way when moving vehicles from one on/off loading area to an off-site private lot. At the same time, the Transportation Division staff, Town Counsel's Office and the members of the Board of Selectmen agreed to pursue a different approach, amending the Traffic Rules & Regulations to include valet services using a public way. In April 2007, prior to Town Meeting, the Transportation Board adopted a new Article V, Section 17 "Valet Parking Licenses" hoping to achieve the same goal as the home rule petition without needing to go through the State House procedure.

The May 2007 warrant article was voted No Action at Town Meeting, with the hope that the issue was now resolved, but with the caveat that if the Transportation Board's authority was challenged, a similar warrant article would be placed on the Special Town Meeting warrant for November.

As it turned out, the attorney for one of the two businesses affected by the change in wording appealed the decision of the Transportation Board to the Board of Selectmen. A home rule petition to amend the Transportation Board's enabling legislation was placed on the Special Town Meeting November 2007 Warrant, where it received the full support of the Board of Selectmen, the Advisory Committee, the Transportation Board and Town Meeting.

Timing is everything, and by the time the petition was filed, the Legislature was well into its two-year legislative session, giving it less than a year to get through the lengthy legislative process. The same home rule petition is before Town Meeting again this year. Passing Article 24 will give the petition the benefit of a full legislative session to obtain the votes and signature it needs to become law.

The Transportation Board, based on the opinion of Town Counsel, believes that Section 4 of Chapter 317 of the Acts of 1974 already gives the Transportation Board the authority to regulate valet parking throughout the Town. The amended language in this Article would clarify that the Transportation Board is empowered to regulate the routes, the number of vehicles, and hours of operation, for example, of valet services at restaurants and medical facilities in Brookline. What began as a single neighborhood's appeal for help with regard to the disruptive operation of a restaurant's valet service has broader implications in the Town. As the Longwood Medical Area (LMA) extends further into Brookline, this amendment would also strengthen the regulatory authority of the Transportation Board over shuttle services that drive to and from medical offices in Brookline and the LMA, to ensure that routes keep to major roadways and avoid residential streets. Article 24 would give the Town, through its Transportation Board, a much-desired extra layer of oversight.

RECOMMENDATION:

By a vote of 15-0-1, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

ARTICLE 25

TWENTY-FIFTH 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 AMENDING CHAPTER 534 OF THE ACTS OF 1973 RELATIVE TO THE OFFICE OF CHIEF OF THE FIRE DEPARTMENT OF THE TOWN OF BROOKLINE

Be It Enacted, etc., as follows:

Section 1. The first, second and third sentences in SECTION 5 in Chapter 534 of the Acts of 1973, are hereby deleted and replaced with the following:

SECTION 5. The board of selectmen shall appoint a chief of the fire department for a term of one year, unless a different term is otherwise determined in an employment contract established under the provisions of Section 108O in Chapter 41 of the general laws.

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The effect of this warrant article, if adopted, would lift the restriction on candidates for the position of Fire Chief currently limited to the incumbent Deputies and Captains of the Brookline Fire Department. The Town always looks to Town employees as their first choice. However, the Town should have the same flexibility as they have in choosing every other department heads including the Police Chief. This flexibility would allow the Town to extend the search to those with diverse backgrounds and experiences. Town Meeting passed this very same article in May of 2003 but was turned down by the state legislature. There is only a limited of number of applicants in the Fire Department that the Town can pick from based on the fact that the appointed Fire Chief must have held the permanent position of Captain or higher in the Brookline Fire Department and that the term of the appointment shall be one year according to Section 5 of Chapter 534 of the Acts of 1973. Many other municipal Fire Departments have no such restriction.

SELECTMEN'S RECOMMENDATION

Article 25 proposes Home Rule Legislation to amend Chapter 534 of the Acts of 1973 in order to consider qualified persons for the position of Fire Chief outside of the rank of

Captain or Deputy Chief of the Brookline Fire Department. Chapter 534 restricts candidates for the position of Chief of Department to those ranks within the Department only.

A majority of the members of the Board raised a number of concerns about this proposed change, ranging from undermining the internal career ladder; to the lack of familiarity with the Town/department by outside candidates; to current circumstances not being conducive for this change at this time. Fire Chief Skerry is not supportive of this proposal, expressing the concern that it would cut short the aspirations of upward mobility within the Department. The Firefighters union is also opposed.

It has been clearly pointed out that a predecessor Board supported this very same special legislation in 2003. In fact, it was a Board of Selectmen Article that year. However, that bill failed to make it out of the Legislative Joint Committee on Public Service due to lack of unanimity within the town government and lack of consensus with the labor union on the issue.

A minority of the Board expressed the opinion that the advantages of opening up the candidate pool to a broader and more diverse group of outside applicants could likely outweigh the benefits of restricting eligibility to internal candidates. A number of the very same reasons put forth supporting this in 2003 were reiterated by members of the Board. In this context, a motion for Favorable Action was moved, but failed 2-3.

As the Chairman noted, with so many Town initiatives underway requiring cooperation with the unions including group health coverage, this is not the time to pursue such a potentially contentious proposal without a strong likelihood of success and she therefore moved NO ACTION, which was adopted by a 3-2 vote on October 21, 2008.

Roll Call Vote:

No Action

Daly

Allen

Mermell

Favorable Action

DeWitt

Benka

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

With the supporting vote of Brookline Town Meeting, Chapter 534 of the Acts of 1973 of the

Commonwealth of Massachusetts abolished the office of Fire Commissioner in the Town of Brookline. This act transferred the powers and duties to the Office of the Selectmen as the overseeing authority.

Section 5 of Chapter 534 of the Acts of 1973 specifies that the appointed Fire Chief must have held the permanent position of Captain or higher in the Brookline Fire Department.

The petitioner of Article 25 is requesting that the Town vote to change Section 5, thereby permitting the appointment of the Fire Chief to be made from an open applicant pool rather than just the 16 Captains and Deputies from within the Brookline Fire Department.

This is not unusual among fire departments. Belmont, Newton, Framingham and Wellesley, among others, provide for applicants beyond their own internal ranks, though they also have chosen to appoint from within.

If adopted here, applicants could apply from anywhere including, of course, the Brookline Fire Department; and the conditions of the Chief's appointment would be specified in an employment contract as it is for other Department Heads.

This same issue was brought to Town Meeting in the spring of 2003 where it was passed and sent to the Legislature. The article was "sent to committee" at the State House where it died.

The Fire Department is the only department in the Town of Brookline that restricts the hiring process to internal candidates.

DISCUSSION:

The Fire Fighters' Union is adamantly opposed to this article. They cite a need for any Chief to have come up through the Brookline ranks and have an intimate familiarity with the town (both small t and large T) and the individual members of the Brookline Fire Fighters. They feel this will ensure that the Chief has a full understanding of the town, the staff, hazards of the streets and the budget process. They also feel it is an important ingredient in leadership; Fire Fighters will have more respect for someone they have served alongside. This point of trust and the time it takes to establish a relationship was well taken by the Committee. But, members noted it is hard to imagine there can be no competent or qualified person who can service the community well as Fire Chief other than in Brookline's 16 Captains and Deputies. Members acknowledged the merit in having someone familiar with the department and undoubtedly that will carry great weight in the hiring process. However, they questioned what course should be taken when there are few internal applicants. Fire Fighters agreed that at a certain point the applicant pool may be too small, but that incentives should be in place to prevent that. It was acknowledged, though, that the competition of an open applicant pool may spur potential internal candidates to prepare a bit more in order to enhance their qualifications.

The Union believes, as does the current Chief, that there is a competitive pool of potential Fire Chiefs within the ranks of the Brookline Fire Department. They offered the idea that there should be a management track program to train potential Chiefs. The Committee

felt this was a good idea since the ideal candidate would come from Brookline's own ranks. The Chief allowed as while he enthusiastically supports that concept, he realizes it would be a very costly program. Committee members expressed an interest in considering such programs in the future.

The Union is also concerned that this could lead to a Chief being hired because of cronyism rather than merit; that it could result in a Chief more concerned with budgeting than public safety. However, it was noted a similar argument could be used with regard to internal candidates who may be "pre-qualified" by those he or she may be directing in the future. Most felt that any hint of cronyism would quickly provoke a public outcry.

RECOMMENDATION:

The Committee understands and is sympathetic to the concerns of the Fire Fighters who spoke at the hearing---that a Fire Chief who comes up the ranks of the Fire Department knows the Fire Fighters and the Town best. It is felt, however, that a larger, more diverse applicant pool is a reasonable approach to any search for any department, with the understanding that in-house candidates would have some advantage. Perhaps more importantly, during the last search for a Fire Chief, only 4 people applied for consideration, and next time it may be only two. If no Fire Fighter wished to apply (or because of family circumstances can not apply), the Town will have no structure in place to fill that position.

The Fire Fighters' union representatives voiced concern over this proposed change the last time it was brought to Town Meeting. The concern they emphasized then most regarded the "timing" of implementing the change. They felt that it was unwise to make the change then given the morale issues and the unsettled nature of the department during that year. Now, however, we have a Chief and stability without undue pressures. This is the time to consider a change, with the idea that it is better to have a structure in place now, while there is no immediate need, rather than having to contend with it during an 11th hour crisis.

By a vote of 17-0-1, the Advisory Committee recommends FAVORABLE ACTION on the following:

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 AMENDING CHAPTER 534 OF THE ACTS OF 1973 RELATIVE
TO THE OFFICE OF CHIEF OF THE FIRE DEPARTMENT OF THE
TOWN OF BROOKLINE**

Be It Enacted, etc., as follows:

Section 1. The first, second and third sentences in SECTION 5 in Chapter 534 of the Acts of 1973, are hereby deleted and replaced with the following:

SECTION 5. The board of selectmen shall appoint a chief of the fire department for a term of one year, unless a different term is otherwise determined in an employment contract established under the provisions of Section 108O in Chapter 41 of the general laws.

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

XXX

ARTICLE 26

TWENTY-SIXTH ARTICLE

To see if the Town will adopt the following resolution:

Resolution to appreciate the role of the City of Tsuruga, Japan in the saving of over 2000 Jewish families rescued by Chiune Sugihara in 1941

WHEREAS, the leadership of the city of Tsuruga Japan supported the entry into Japan of over 2000 Jewish families (over 6000 Jews) with visas issued by Consul Chiune Sugihara in the spring and summer of 1941 in Lithuania.

WHEREAS, the current leadership of the City of Tsuruga, Japan continue to embrace this life-saving legacy of Consul Sugihara by reaching out to Consul Sugihara survivor Samuil Manski, a member of Temple Emeth of South Brookline.

WHEREAS, Consul Sugihara and the people of Tsuruga, Japan, epitomize the teachings of the Talmudic sages that if you save one life it is as if you have saved the world.

WHEREAS, the Jewish and Japanese communities of the Town of Brookline for the past decade have hosted celebrations of the heroism and righteousness of Consul Chiune Sugihara initiated by Samuil Manski through the good offices of Temple Emeth of South Brookline.

WHEREAS the Sugihara Commemoration Committee at Temple Emeth has created programming at Brookline Schools in conjunction with school staff and Facing History and Ourselves that teaches the ethics of Chiune Sugihara to a broad swath of students including those of Japanese descent in our community.

WHEREAS a monument celebrating the heroism of Chiune Sugihara located at Temple Emeth in South Brookline is recognized worldwide and has been visited by descendents of Chiune Sugihara.

NOW, THEREFORE, BE IT RESOLVED THAT Town Meeting recognizes the city of Tsuruga, Japan as a City of New Beginnings and requests that the Selectmen welcome officials of the city of Tsuruga to the Town of Brookline in the Fall of 2008 and declare a day of memorial to Chiune Sugihara.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

When history brings an awareness of a righteous person into our midst, it is behest upon us to bring it to the attention of our community in the most effective ways.

In 1941, Chiune Sugihara, a mid level diplomat of Japan found himself in Lithuania where many Jews were arriving with hopes of escaping slaughter at the hands of the Nazi's. Consul Sugihara, ignoring the reticence of his superiors, provided over 2000 visas to Jewish families to go to Japan as a path to survival.

A steppingstone on the path to freedom was the entry point to Japan, the city of Tsuruga. The leaders of this city are proud of their role in saving the Eastern European Jews coming from Lithuania.

The leaders of Tsuruga have recognized an association with the Town of Brookline through the initiatives of Sugihara survivor Samuil Manski, who has promoted the appreciation and remembering of the righteous person, Chiune Sugihara, through the creation of a stone of remembrance at Temple Emeth, through activities with the local Japanese community and families of visiting Japanese scholars at Temple Emeth in South Brookline, and most recently through new programming at the Lawrence School.

Last school year, the Brookline public schools program was sanctioned by the school committee and superintendent of schools Dr. Lupini. Social studies teacher Jonathan Greiner of the Lawrence school worked with a mini curriculum designed at Temple Emeth which he incorporated into the Facing History and Ourselves curriculum. The process included three classes; the study of the deeds of Sugihara, viewing the WGBH video, "Sugihara - Conspiracy of Kindness" and a compelling personal testimonial by survivor Samuil Manski. The presence of representatives from both the Israeli and Japanese Consulates in the classroom exemplified for the students inter-cultural dialogue on a diplomatic level which enhanced the message of acceptance given in the deeply moving narrative of "Saba Sam." The relationship with the Brookline schools was also initiated with the enthusiastic support of Akiko Kawai, teacher in the Brookline schools English Language Learning program that supports a large population of Japanese speaking families. Possibilities are being explored to continue this program and, perhaps, to expand it to other Brookline public schools.

Outside of the schools, in April, 2008, The Sugihara Commemoration Committee at Temple Emeth in South Brookline, under the auspices of the Japanese Consulate and Israeli Consulate, created a Panel discussion on "Japanese, Christian and Jewish Perspectives on Ethical Actions in an Immoral Setting", featuring Prof. Yasushi Toda, a visiting scholar at Harvard; Father Walter Cuenin, Catholic Chaplain at Brandeis University, and Dr. Nir Eisikovits, Director of the Graduate Program in Ethics and Public Policy at Suffolk University. Supporting organizations include Temple Emeth, Anti-Defamation League New England Region, Federation of Jewish Men's Clubs New England Region, the Brookline Superintendent, School Committee and ELL Program, Japan Society of Boston, Congregation Mishkan Tefila and Temple Reyim.

Through this resolution, the Town of Brookline will welcome and celebrate the visit of the Mayor of Tsuruga to Brookline as he visits Samuil Manski at Temple Emeth in South Brookline to strengthen the connection between the City of Tsuruga, the legacy of Consul Sugihara, and the people of Brookline.

SELECTMEN'S RECOMMENDATION

As detailed in the Petitioner's Article Description, the city of Tsuruga, Japan played a significant role in saving more than 2,000 Jewish families fleeing the Nazis by supporting their entry into Japan. The leaders of this city are proud of their role in saving the Jews from Lithuania. Today, Tsuruga continues to embrace this history and, locally, this legacy is kept alive through activities with the local Japanese community, families of visiting Japanese scholars at Temple Emeth in South Brookline, and new programming at the Lawrence School. This Board of Selectmen is proud to welcome the Mayor of Tsuruga to Brookline and recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 7, 2008, on the following resolution:

VOTED: That the Town adopt the following resolution:

Resolution to appreciate the role of the City of Tsuruga, Japan in the saving of over 2000 Jewish families rescued by Chiune Sugihara in 1941

WHEREAS, the leadership of the city of Tsuruga Japan supported the entry into Japan of over 2000 Jewish families (over 6000 Jews) with visas issued by Consul Chiune Sugihara in the spring and summer of 1941 in Lithuania.

WHEREAS, the current leadership of the City of Tsuruga, Japan continue to embrace this life-saving legacy of Consul Sugihara by reaching out to Consul Sugihara survivor Samuil Manski, a member of Temple Emeth of South Brookline.

WHEREAS, Consul Sugihara and the people of Tsuruga, Japan, epitomize the teachings of the Talmudic sages that if you save one life it is as if you have saved the world.

WHEREAS, the Jewish and Japanese communities of the Town of Brookline for the past decade have hosted celebrations of the heroism and righteousness of Consul Chiune Sugihara initiated by Samuil Manski through the good offices of Temple Emeth of South Brookline.

WHEREAS the Sugihara Commemoration Committee at Temple Emeth has created programming at Brookline Schools in conjunction with school staff and Facing History and Ourselves that teaches the ethics of Chiune Sugihara to a broad swath of students including those of Japanese descent in our community.

WHEREAS a monument celebrating the heroism of Chiune Sugihara located at Temple Emeth in South Brookline is recognized worldwide and has been visited by descendents of Chiune Sugihara.

NOW, THEREFORE, BE IT RESOLVED THAT Town Meeting recognizes the city of Tsuruga, Japan as a City of New Beginnings and requests that the Selectmen welcome

November 18, 2008 Special Town Meeting

26-4

officials of the city of Tsuruga to the Town of Brookline in the Fall of 2008 and declare a day of memorial to Chiune Sugihara.

ROLL CALL VOTE:

Favorable Action

Daly

Allen

Mermell

Benka

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Chiune Sugihara has been honored in Brookline for having saved 6000 lives through providing 2000 visas to Jewish Families. These visas enabled Jewish families to leave Lithuania and enter the city of Tsuruga, Japan.

One of these survivors is Samuil Manski, a member of Brookline's Temple Emeth Samuel Manski's story of survival and the caring actions of Chiune Sugihara, is incorporated into the "Facing History and Ourselves" curriculum . His story is also included in the WGBH video: "Sugihara-Conspiracy of Kindness". In addition, the Lawrence School developed a curriculum that incorporated both Israeli and Japanese perspectives through the participation of representatives from both Consulates and from our large population of Japanese and Jewish families in Brookline.

A stone of remembrance, honoring Mr. Sugihara is located at Temple Emeth in South Brookline.

DISCUSSION:

In November the Mayor of the City of Tsuruga will visit Brookline and Samuel Manski. Mr. Manski's family received a visa from Consul Sugihara; together with his mother and sister, he traveled for two weeks through Siberia and arrived in Tsuruga. This port city is now building a museum to honor Chiune Sugihara. The mayor of Tsuruga will arrive with a film crew to interview Samuel Manski for the new museum. The leaders of Tsuruga feel very connected to Brookline through the many acts of remembrance and appreciation for Chiune Sugihara.

Through the acceptance of this resolution Brookline will honor the legacy of Chiune Sugihara and the city of Tsungu; acceptance will also strengthen bonds between a Town and a City who both value the caring actions of a righteous person. It is appropriate for Brookline to support this resolution because of our large Japanese and Jewish populations and their shared history.

RECOMMENDATION:

The Advisory Committee voted unanimously for Favorable Action by a vote of 19-0-0 on the vote offered by the Selectmen.

XXX

ARTICLE 27

TWENTY-SEVENTH ARTICLE

To see if the Town will adopt the following Resolution:

Resolution Seeking More Resident Sidewalk Snow & Ice Clearing

WHEREAS: despite many committees and Town Meeting articles over two decades, the Town remains fiscally unable to dramatically increase sidewalk snow removal and resident compliance with the removal By-Law remains erratic; and

WHEREAS: failure to remove sidewalk snow leaves many serious safety problems, especially for children, seniors, and people with disabilities who are forced to walk in streets; and

WHEREAS: the 2007 Moderator's Committee on Sidewalk Snow Removal urged that the "Town work to dramatically increase resident involvement in maintaining clear sidewalks," stating, "The actions to be taken should include increased enforcement of existing regulations and regular use of citations for failure to clear sidewalks"; and

WHEREAS: the Moderator's Committee urged the Town to "make procedural, contractual, and budget changes to allow for seasonal employees to assist with sidewalk snow removal. An annual budget of \$35,000 should be provided to maintain a pool of seasonal employees responsible for sidewalk snow removal"; and

WHEREAS: our systems for helping residents who are unable to shovel and for giving citations and warnings are both far from adequate -- the latter according to a May 29, 2008 Police Dept. memorandum, showing, "[a]s of this date, Permits Plus has 977 snow tickets issued in the Town since 2003. The breakdown is as follows: Health Dept. 615, DPW 501, Building 114, Police 108"; and a May 27, 2008 BPD memorandum, "Snow Enforcement Tickets Issued: 2005= 21, 2006 = 16, 2007 = 9, 2008 = 2";

NOW, THEREFORE BE IT RESOLVED that the Town Meeting urges that the Selectmen:

- A. establish a unified snow removal enforcement/warning program so that far more citations -- especially warnings -- are issued, and that enforcement not be merely complaint-driven; and
- B. as part of such program, prioritize town-wide enforcement by cruising police officers -- if necessary by recording date & time of violations, then afterwards issuing/delivering citations and warnings by mail or by DPW and/or Health Dept. officials; and
- C. establish a credible, well-publicized, fair, and readily available fee-based program, and/or a pool of seasonal employees or laborers, Town-employed and/or independent contractors, to help residents who cannot clear their own abutting sidewalks; and

D. review at a public hearing each November the various departments' plans for public education, enforcement, and assistance for residents who need help.

, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This resolution with its "WHEREAS" clauses as the background, is intended to be self-explanatory. We the undersigned registered voters of Brookline hereby petition and request that the above article, "Resolution Seeking More Resident Sidewalk Snow & Ice Clearing" be placed on the warrant for the next Town Meeting.

SELECTMEN'S RECOMMENDATION

The Selectmen will be voting on Article 27 at their November 5, 2008 meeting. A supplemental report detailing their recommendation will be provided prior to the start of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

The petitioner is requesting that the Town pass a resolution calling for improved enforcement and enhancement of by-law 7.7 – "*Removal of Snow and Ice from Sidewalks.*" This by-law was approved in 1987 and mandated that sidewalks contiguous to one's property be maintained in a non-slippery condition suitable for pedestrian travel.

Since that time the petitioners of Article 27 claim there has been very little enforcement of this by-law. Since 2003 only 977 tickets have been issued. In 2005 the number of tickets was 21, in 2006 the number was 16, in 2007 the number was 9 and finally in 2008 the number was 2.

The Town is divided into four enforcement zones with a different agency assigned enforcement responsibility. The agencies are: Health Department, Police Department, DPW and Building.

DISCUSSION:

Specifically, Article 27 calls for:

1. A unified enforcement process rather than the current fragmented approach
2. A proactive, rather than citizen complaint driven, warning and citation process spearheaded by the police department – perhaps with other departments actually tracking/delivering citations
3. The establishment of a readily available list of those willing to shovel sidewalks for Brookline residents particularly those who are elderly or disabled
4. Review at a public meeting in November the plans for public education, enforcement and assistance for those who need it

The Advisory Committee agreed that failure to clear snow from walkways around Brookline is a serious safety issue and that there is only at best sporadic enforcement of snow clearing rules. The Committee also felt that some of the problems were because elderly or disabled Brookline citizens maybe unable to comply with the requirements. Article 27 encourages the Town to make Brookline safer and help its least able residents comply with Town-wide rules.

RECOMMENDATION:

The Advisory Committee voted 16-3 in support of FAVORABLE ACTION on the following:

VOTED: That the Town adopt the following Resolution:

Resolution Seeking More Resident Sidewalk Snow & Ice Clearing

WHEREAS: despite many committees and Town Meeting articles over two decades, the Town remains fiscally unable to dramatically increase sidewalk snow removal and resident compliance with the removal By-Law remains erratic; and

WHEREAS: failure to remove sidewalk snow leaves many serious safety problems, especially for children, seniors, and people with disabilities who are forced to walk in streets; and

WHEREAS: the 2007 Moderator's Committee on Sidewalk Snow Removal urged that the "Town work to dramatically increase resident involvement in maintaining clear sidewalks," stating, "The actions to be taken should include increased enforcement of existing regulations and regular use of citations for failure to clear sidewalks"; and

WHEREAS: the Moderator's Committee urged the Town to "make procedural, contractual, and budget changes to allow for seasonal employees to assist with sidewalk snow removal. An annual budget of \$35,000 should be provided to maintain a pool of seasonal employees responsible for sidewalk snow removal"; and

WHEREAS: our systems for helping residents who are unable to shovel and for giving citations and warnings are both far from adequate -- the latter according to a May 29, 2008 Police Dept. memorandum, showing, "[a]s of this date, Permits Plus has 977 snow tickets issued in the Town since 2003. The breakdown is as follows: Health Dept. 615, DPW 501, Building 114, Police 108"; and a May 27, 2008 BPD memorandum, "Snow Enforcement Tickets Issued: 2005= 21, 2006 = 16, 2007 = 9, 2008 = 2";

NOW, THEREFORE BE IT RESOLVED that the Town Meeting urges that the Selectmen:

- A. establish a unified snow removal enforcement/warning program so that far more citations -- especially warnings -- are issued, and that enforcement not be merely complaint-driven; and
- B. as part of such program, prioritize town-wide enforcement by cruising police officers -- if necessary by recording date & time of violations, then afterwards issuing/delivering citations and warnings by mail or by DPW and/or Health Dept. officials; and
- C. establish a credible, well-publicized, fair, and readily available fee-based program, and/or a pool of seasonal employees or laborers, Town-employed and/or independent contractors, to help residents who cannot clear their own abutting sidewalks; and
- D. review at a public hearing each November the various departments' plans for public education, enforcement, and assistance for residents who need help.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

The text of the Advisory Committee vote under Article 27 was misprinted in the Combined Reports. The proper text of the resolution as voted and recommended by the Advisory Committee appears below (amended language appears in bold).

Resolution Seeking More **Sidewalk Snow Clearing by Residents.**

That the Town will adopt the following Resolution:

WHEREAS: existing Brookline By-Laws mandate sidewalk snow removal by owners of abutting properties; and

WHEREAS: despite many committees and Town Meeting articles over two decades, the Town remains fiscally unable to dramatically increase sidewalk snow removal and resident compliance with the removal By-Law remains erratic; and

WHEREAS: failure to remove sidewalk snow leaves many serious safety problems, especially for children, seniors, and people with disabilities who are forced to walk in streets; and

WHEREAS: the 2007 Moderator's Committee on Sidewalk Snow Removal urged that the "Town work to dramatically increase resident involvement in maintaining clear sidewalks," stating, "The actions to be taken should include increased enforcement of existing regulations and regular use of citations for failure to clear sidewalks"; and

WHEREAS: the Moderator's Committee urged the Town to "make procedural, contractual, and budget changes to allow for seasonal employees to assist with sidewalk snow removal. An annual budget of \$35,000 should be provided to maintain a pool of seasonal employees responsible for sidewalk snow removal"; and

WHEREAS: our systems for helping residents who are unable to shovel and for giving citations and warnings are both far from adequate -- the latter according to a May 29, 2008 Police Dept. memorandum, showing, "[a]s of this date, Permits Plus has 977 snow tickets issued in the Town since 2003. The breakdown is as follows: Health Dept. 615, DPW 501, Building 114, Police 108"; and a May 27, 2008 BPD memorandum, "Snow Enforcement Tickets Issued: 2005= 21, 2006 = 16, 2007 = 9, 2008 = 2";

NOW, THEREFORE BE IT RESOLVED that the Town Meeting urges that the Selectmen:

A. establish a unified snow removal enforcement/warning program so that far more citations -- especially warnings -- are issued, and that enforcement not be merely complaint-driven; and

B. as part of such program, prioritize town-wide enforcement by cruising police officers -- if necessary by recording date & time of violations, then afterwards issuing/delivering citations and warnings by mail or by DPW and/or Health Dept. officials; and

C. establish **and maintain** a credible, well-publicized, fair, and readily available fee-based program, and/or a pool of seasonal employees or laborers, Town-employed and/or independent contractors, to help residents who cannot clear their own abutting sidewalks; and

D. review at a public hearing each November the various departments' plans for public education, enforcement, and assistance for residents who need help.

, or act on anything relative thereto.

XXX

ARTICLE 27

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 27 is a proposed resolution that resolves four actions be taken to address issues regarding sidewalk snow removal. The Board is in general agreement with the resolution as originally proposed, with one exception: paragraph C of the resolves. That section would—among other things-- have the Town establish a fee-based program to help residents who cannot clear their sidewalk of snow. Last year, the Moderator's Committee on Sidewalk Snow Removal recommended that existing snow removal assistance programs be expanded and better advertised. The Selectmen continue to urge this approach while examining the possibilities suggested in paragraph C. The Board is concerned that paragraph C as originally proposed could convey the impression that all of the suggested options could be accomplished when there is no evidence yet as to what extent any Massachusetts municipality has been able to implement them. The Board proposes a very slight wording amendment to clarify how the implementation of paragraph C would actually be carried out.

In addition, the Selectmen will take up reconsideration of this Article to discuss Favorable Action on the Advisory Committee's insertion of a new, initial WHEREAS clause. It has only been a matter of scheduling for both bodies that has prevented this action up to this point.

Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on November 5, 2008, on the following amended version of the resolution:

VOTED: That the Town adopt the following Resolution:

Resolution Seeking More Residential Sidewalk Snow & Ice Clearing

WHEREAS: despite many committees and Town Meeting articles over two decades, the Town remains fiscally unable to dramatically increase sidewalk snow removal and resident compliance with the removal By-Law remains erratic; and

WHEREAS: failure to remove sidewalk snow leaves many serious safety problems, especially for children, seniors, and people with disabilities who are forced to walk in streets; and

WHEREAS: the 2007 Moderator's Committee on Sidewalk Snow Removal urged that the "Town work to dramatically increase resident involvement in maintaining clear sidewalks," stating, "The actions to be taken should include increased enforcement of existing regulations and regular use of citations for failure to clear sidewalks"; and

WHEREAS: the Moderator's Committee urged the Town to "make procedural, contractual, and budget changes to allow for seasonal employees to assist with sidewalk snow removal. An annual budget of \$35,000 should be provided to maintain a pool of seasonal employees responsible for sidewalk snow removal"; and

WHEREAS: our systems for helping residents who are unable to shovel and for giving citations and warnings are both far from adequate -- the latter according to a May 29, 2008 Police Dept. memorandum, showing, "[a]s of this date, Permits Plus has 977 snow tickets issued in the Town since 2003. The breakdown is as follows: Health Dept. 615, DPW 501, Building 114, Police 108"; and a May 27, 2008 BPD memorandum, "Snow Enforcement Tickets Issued: 2005= 21, 2006 = 16, 2007 = 9, 2008 = 2";

NOW, THEREFORE BE IT RESOLVED that the Town Meeting urges that the Selectmen:

A. establish a unified snow removal enforcement/warning program so that far more citations -- especially warnings -- are issued, and that enforcement not be merely complaint-driven; and

B. as part of such program, prioritize town-wide enforcement by cruising police officers -- if necessary by recording date & time of violations, then afterwards issuing/delivering citations and warnings by mail or by DPW and/or Health Dept. officials; and

C. ~~establish~~ examine whether a credible, well-publicized, fair, and readily available fee-based program, and/or a pool of seasonal employees or laborers, Town-employed and/or independent contractors, to help residents who cannot clear their own abutting sidewalks can be reasonably established; and

D. review at a public hearing each November the various departments' plans for public education, enforcement, and assistance for residents who need help.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

The text of the Advisory Committee vote under Article 27 was misprinted in the Combined Reports. The proper text of the resolution as voted and recommended by the Advisory Committee appears below (amended language appears in bold).

VOTED: That the Town adopt the following Resolution:

Resolution Seeking More Sidewalk Snow Clearing by Residents.

WHEREAS: existing Brookline By-Laws mandate sidewalk snow removal by owners of abutting properties; and

WHEREAS: despite many committees and Town Meeting articles over two decades, the Town remains fiscally unable to dramatically increase sidewalk snow removal and resident compliance with the removal By-Law remains erratic; and

WHEREAS: failure to remove sidewalk snow leaves many serious safety problems, especially for children, seniors, and people with disabilities who are forced to walk in streets; and

WHEREAS: the 2007 Moderator's Committee on Sidewalk Snow Removal urged that the "Town work to dramatically increase resident involvement in maintaining clear sidewalks," stating, "The actions to be taken should include increased enforcement of existing regulations and regular use of citations for failure to clear sidewalks"; and

WHEREAS: the Moderator's Committee urged the Town to "make procedural, contractual, and budget changes to allow for seasonal employees to assist with sidewalk snow removal. An annual budget of \$35,000 should be provided to maintain a pool of seasonal employees responsible for sidewalk snow removal"; and

WHEREAS: our systems for helping residents who are unable to shovel and for giving citations and warnings are both far from adequate -- the latter according to a May 29, 2008 Police Dept. memorandum, showing, "[a]s of this date, Permits Plus has 977 snow tickets issued in the Town since 2003. The breakdown is as follows: Health Dept. 615, DPW 501, Building 114, Police 108"; and a May 27, 2008 BPD memorandum, "Snow Enforcement Tickets Issued: 2005= 21, 2006 = 16, 2007 = 9, 2008 = 2";

NOW, THEREFORE BE IT RESOLVED that the Town Meeting urges that the Selectmen:

A. establish a unified snow removal enforcement/warning program so that far more citations -- especially warnings -- are issued, and that enforcement not be merely complaint-driven; and

B. as part of such program, prioritize town-wide enforcement by cruising police officers -- if necessary by recording date & time of violations, then afterwards issuing/delivering citations and warnings by mail or by DPW and/or Health Dept. officials; and

C. establish **and maintain** a credible, well-publicized, fair, and readily available fee-based program, and/or a pool of seasonal employees or laborers, Town-employed and/or independent contractors, to help residents who cannot clear their own abutting sidewalks; and

D. review at a public hearing each November the various departments' plans for public education, enforcement, and assistance for residents who need help.

, or act on anything relative thereto.

ARTICLE 28

TWENTY-EIGHTH ARTICLE

To see if the Town will adopt the following resolution:

RESOLUTION TO REDUCE THE PROLIFERATION OF INVASIVE PLANT SPECIES

Whereas, there exists certain plant species which are considered invasive because they starve out native species and plant material we work to maintain;

Whereas, these species are on the Massachusetts Prohibited Plant List as of January 2009 and are specifically banned from sale, propagation by the Commonwealth of Massachusetts Department of Agriculture. <http://www.mass.gov/agr/>;

Whereas, these species growing on private property may create offspring growing in Brookline parks, conservancies, or other public property or private property;

Whereas, these species kill trees and affect the life cycle of desirable wildlife and destroy the health of wetlands;

and

Whereas, these species are costly to control on public land and these costs will increase over time.

Therefore Be It Resolved, that the Selectmen of the Town of Brookline acknowledge that there is a need to control invasive species in the Town and that proliferation of invasive species on private property can have a direct effect on the number of such plants on public land and the cost of controlling them, and resolve to provide information to citizens on the Town Website and actively encourage through other appropriate media available to them the removal of invasive species from private land, and they encourage the continued training of Town workers in the recognition of and proper handling of invasive species.

Therefore, Be It Further Resolved, that the Town Meeting Members of the Town of Brookline have voted in favor of this invasive species resolution.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Invasive species defined:

By definition, an "invasive" species is a non-native plant, animal or other organism that, once introduced into a new environment, outcompetes native species for habitat and food. Although not all exotic species are invasive, those that are can cause tremendous problems

<http://www.nwf.org/gardenersguide/invasives.cfm>

The purpose of this resolution is to advise all residents and employees of our Town that there exist harmful invasive species. Information about these species should be made available to the public and they should be encouraged to remove and properly dispose of these plants so that they do not spread to public land where removal is an additional burden to the Town budget. The majority of these species are on the Massachusetts Prohibited Plant List

http://www.mass.gov/agr/farmproducts/proposed_prohibited_plant_list_v12-12-05.htm

SELECTMEN'S RECOMMENDATION

The Selectmen will be voting on Article 28 at their November 5, 2008 meeting. A supplemental report detailing their recommendation will be provided prior to the start of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Of concern are non-native plant species that grow readily in Brookline that have harmful consequences for other plants species or wildlife. The Massachusetts Department of Agriculture monitors the plants that grow in the state, classifies some species as invasive, and encourages measures to eliminate or at least control the spread of these invasive species. The Department's list of invasive plants changes over time reflecting patterns of growth of various species.

Some plants that are now recognized as invasive were introduced deliberately on the basis of their positive characteristics. Some were initially regarded highly for their ornamental qualities. Only after the plants were well established and widely dispersed have their harmful characteristics been recognized. To some extent, the spread of invasive species is controlled by regulations that prohibit nurseries from selling

designated plants. The invasive species that are of greatest concern are those that once established, spread aggressively through underground runners or dispersal of seeds by wind, birds, squirrels, and other animals. Homeowners are sometimes reluctant to remove invasive species because they are attractive. Mature, well placed Norway maples, for example, are valued as shade trees. Bittersweet, an aggressive vine whose seeds are widely dispersed by birds, produces beautiful clusters of berries in the fall. Removal of invasive plants is sometimes difficult. Norway maples, for example, are expensive to remove when they are mature and grow close to buildings and overhead utility wires. Phragmites, a tall reed that grows in wetlands, is challenging because its aggressive root systems make it difficult to dig out. In addition, many gardeners are reluctant to use herbicides to control phragmites and other plants because safety concerns.

Petitioner Bruce Wolf has offered the black swallow wort as an example of an invasive plant that has been found in Brookline. The black swallow wort is poisonous to monarch butterflies, an endangered species. A member of the milk weed family, black swallow wort is spread by wind blown seeds. It is likely that many of those who maintain properties are unable to identify this plant.

The Town through its Parks and Open Spaces Division has recognized invasive species as a problem. The Division has taken a number of steps to address the problem: 1) a guide to invasive species has been published on the Town's website (<http://www.townofbrooklinemass.com/parks/conservation/plantguide.shtml>), 2) in conjunction with the Recreation department, an environmental educator offers workshops to children and adults, and 3) the Division engages in a comprehensive invasive species control and removal program on public land.

The resolution is particularly focused on invasive plants that are growing on private land. The resolution acknowledges the efforts that are currently being made by the Town but asks that the Town seek more effective strategies to educate those responsible for maintenance of private properties regarding recognition, removal, and safe disposal of invasive plants.

DISCUSSION:

The environmental threat posed by invasive species is widely recognized by horticulturalists. In spite of the efforts that are currently being made by various organizations including the MA Department of Agriculture and the Brookline Parks and Open Space Division, the control of invasive plants is a challenge everywhere, including Brookline. Owners of private land within the Town have a role to play in controlling invasive plants. Property owners have reason to be sensitive to the spread of invasive plants to properties other than their own. The Town's efforts to address the problem are commendable but there is reason to seek more effective solutions.

The resolution is a welcome opportunity for public education on an issue that deserves more attention. The resolution will make the greatest contribution if it helps to stimulate a variety of creative and continuing public education measures both by the Town and others with horticultural concerns.

RECOMMENDATION:

The Advisory Committee voted Favorable Action by a vote of 16 in favor and 3 opposed on the following vote:

VOTED: That the Town adopt the following resolution:

Whereas, there exist certain plant species which are considered invasive because they starve out native species and plant material we work to maintain;

Whereas, the species are on the Massachusetts Prohibited Plant List as of January 2008 and are specifically banned from sale or propagation by the Commonwealth of Massachusetts Department of Agriculture. <http://www.mass.gov/agr/>;

Whereas, these species growing on private property may create offspring growing in Brookline parks, conservancies, or other public or private property.;

Whereas, these species kill trees and affect the life cycle of desirable wildlife and destroy the health of wetlands; and

Whereas, these species are costly to control on public land and these costs will increase over time.

Therefore Be It Resolved, that the Town urges the Board of Selectmen to acknowledge that there is a need to control invasive species in the Town and that proliferation of invasive species on private property can have a direct effect on the number of such plants on public land and the cost of controlling them, and resolve to provide additional information to citizens on the Town website and actively encourage through other appropriate media available to them the removal and proper disposal of invasive species from private land, and the Town encourages the continued training of Town workers in the recognition of and proper handling of invasive species.

XXX

ARTICLE 28

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 28 is a proposed resolution regarding invasive plant species and the harm they cause when they spread to our parks, conservancies, and other open spaces. The Board appreciates the petitioner bringing this issue forward, as it allows us the opportunity to highlight the efforts of the Department of Public Works' Parks and Open Space Division on managing the proliferation of these invasive plant species on public property and the importance of continued education of the public about the dangers of invasive plant species on private property. The Division has published on-line a 15 page "Guide to Invasive Species in Brookline, Massachusetts", trains its employees on invasives so that they can maintain the Town's sanctuaries, created an Environmental Educator and Outreach Coordinator who provides workshops on invasive species and healthy ecosystems, and works with Friends and volunteer groups on the removal of invasives in parks and sanctuaries.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on November 5, 2008, on the following revised resolution:

VOTED: That the Town adopt the following resolution:

RESOLUTION TO REDUCE THE PROLIFERATION OF INVASIVE PLANT SPECIES

Whereas, there exists certain plant species which are considered invasive because they are not native to the region and they can starve out native species and plant ("invasive species")

Whereas, these invasive species are on the Massachusetts Prohibited Plant List as of January 2009 and are specifically banned from sale or propagation by the Commonwealth of Massachusetts Department of Agriculture. <http://www.mass.gov/agr/>;

Whereas, when these species grow on private property, they may spread to Brookline parks, conservancies, other public property or other private property;

Whereas, these species can harm trees, wetlands, or the habitat of wildlife;

Whereas, these species are growing increasingly costly to control on public land; and

Whereas, the Parks Department and the Conservation Commission of the Town of Brookline has been working to get information to the public about the dangers of invasive species and to eradicate invasive species from public land wherever possible;

Therefore Be It Resolved, that Town Meeting acknowledge the need to control invasive species on both public and private land in the Town, recognize the efforts of the Parks Department and the Conservation Commission to control invasive species on public property and to encourage the Town to continue to provide information to the public on invasive species and how to control those species on private property.

ARTICLE 29

TWENTY-NINTH ARTICLE

Reports of Town Officers and Committees

**Selectmen's Sanctuary Study Committee
Final Report
Prepared for Fall Town Meeting 2008**

I. INTRODUCTION

- A. History and Mandate of Committee
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IV. CONCLUSION AND RECOMMENDATIONS

V. ATTACHMENTS

- A. Conservation Restriction Policy

I. INTRODUCTION

A. History and Mandate of Committee

The Sanctuary Study Committee was created to evaluate ways to protect land abutting the Town’s three nature sanctuaries - D. Blakely Hoar Sanctuary, Lost Pond Sanctuary, and Hall’s Pond Sanctuary and Amory Woods - as well as other environmentally sensitive land in Brookline. Its formation was spurred largely by a citizen’s petition filed at the Fall 2007 Special Town Meeting as Article 21 in the Town Meeting Warrant. This article sought “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.” In response, the Board of Selectmen voted on October 16, 2007, to form a 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.” They further voted to refer Article 21 to this Committee. The Advisory Committee and Town Meeting also voted to refer Article 21 to the Committee. The Committee was appointed by the Board of Selectmen in the fall of 2007 and met regularly from January to November 2008.

B. Committee Members and Affiliations

The Sanctuary Study Committee is comprised of the following individuals:

<i>Name</i>	<i>Affiliation</i>
Nancy Daly (Chair)	Board of Selectmen
Tom Brady	Parks and Open Space Division/Conservation
John Buchheit	Office of Town Counsel
Lara Curtis (representing Jeff Levine)	Planning and Community Development
Ken Kurnos	Resident and Petitioner of Article 21
Gary McCabe	Board of Assessors
Roberta Schnoor	Conservation Commission

Note that on May 2, 2008, Ken Kurnos resigned from the Committee.

In addition, Heather Charles, Conservation Assistant in the Parks and Open Space Division, attended the meetings and provided administrative support. Eileen and John Gallagher, residents of Brookline and abutters to D. Blakely Hoar Sanctuary, also regularly attended the Committee and Subcommittee meetings.

C. Organization of Report

This report presents the findings and recommendations of the Sanctuary Study Committee. It builds on pertinent information from the Interim Report, presented for Spring Town Meeting 2008, and includes additional findings and progress made by the Committee. The Interim Report is fully incorporated herein by reference. It is part of the Annual Town Meeting Report for Spring 2008, on file in Town Hall.

This Final Report begins with the Committee's analysis of how the conservation tools identified in the Interim Report could be applied to protect lands adjacent to Town-owned sanctuaries and other environmentally valuable land. The report also updates the information regarding Lot 2, Princeton Road and discusses relevant protective measures for this parcel. Finally, conclusions and specific recommendations are presented.

II. CONSERVATION TOOLS

A. Overview

The Interim Report of the Committee prepared for the Spring 2008 Town Meeting identified several conservation tools for protecting land bordering sanctuaries and other environmentally sensitive land. These included various transfers of property or property interests to the Town or other entities for conservation purposes including eminent domain, acquisition of property by purchase or gift and establishment of conservation restrictions to protect invaluable land. With regard to the last of these conservation methods, the Committee stressed that adoption of a municipal Conservation Restriction Policy would be an effective way to encourage restrictions and ensure that they are properly applied. More generally, the Committee recognized the need to develop sources of funding to support land acquisitions and also the valuable role private land trusts and other private conservation-oriented groups could play in this type of land protection. Finally, the Committee proposed to study further whether several possible zoning tools might be applied to afford greater protection to land bordering sanctuaries. In its meetings over the last few months, the Committee has further analyzed all of these tools to determine which might provide the greatest benefit in Brookline and what conditions are needed to ensure their success.

B. Eminent Domain Takings

Eminent domain, the strategy sought by the citizen petition to protect Lot 2, Princeton Road from development, was described in detail in the Interim Report. An arms-length transaction, it requires money be paid as "just compensation" for the property taken and can be subject to legal challenge by the affected property owner. Given the risks and expense of this mechanism, the Committee concluded that eminent domain is not a preferred strategy for environmental protection if other options are available.

C. Acquisition by Purchase or Gift

For more than 100 years, Brookline has actively acquired open space and conservation land by purchase and gift. All three of the Town's conservation sanctuaries and many of its parks and playgrounds were bought by Brookline. Several town parks, such as Larz Anderson Park in South Brookline and Robinson Playground in North Brookline were gifts to the Town. Sometimes a property owner will retain ownership of the land and sell or donate a conservation restriction, which is a form of property interest, to the Town or another party (See section on Conservation Restrictions below). Acquiring property by purchase of course requires that funds be available to the Town for such a purpose. Possible funding options are discussed further on in this report. In some instances, a local land trust or public/private partnerships can successfully acquire and protect land for conservation. For instance, the Brookline Conservation Land Trust owns three properties and holds a conservation restriction on one property in Town.

D. Conservation Restrictions and a Municipal Conservation Restriction Policy

As the Interim Report described, a Conservation Restriction (CR) is a well-established device to protect environmentally valuable land, and open land adjacent to a nature sanctuary is likely to qualify for this protection. Sometimes private landowners will donate CRs; other times, they are purchased. In many cases, the restriction leads to a reduced property tax assessment; often there are other tax benefits as well, including possible federal and income tax benefits. Brookline currently holds fourteen CRs, three of which protect land abutting town-owned sanctuaries.

The Interim Report emphasized the value of a municipal Conservation Restriction policy to establish broad guidance in this area and to heighten the visibility of this approach, encouraging the establishment of CRs on land where such protection is appropriate. In the course of its early work, the Committee reviewed and revised a draft policy and, in the Interim Report, urged the Board of Selectmen, in conjunction with the Conservation Commission and Board of Assessors, to consider adopting a final town policy on CRs.

Following the Spring 2008 Town Meeting, the Sanctuary Study Committee held a joint public hearing with the Conservation Commission on June 18, 2008 on the draft CR policy. There were good clarification questions asked at the hearing and no substantial changes to the policy. On October 7, 2008, the Sanctuary Study Committee made a presentation of the draft CR policy to the Board of Selectmen. On October 21st, the Board of Selectmen discussed the policy, made a minor change, and voted to approve the Brookline Conservation Restriction Policy by a unanimous vote. Earlier in the fall, both the Conservation Commission and the Board of Assessors voted preliminary approval of the CR Policy. Following the Board of Selectmen's recent vote, they are expected to approve and execute the CR Policy as well, making it an official town policy (Attachment A hereto).

E. Funding Options for Property Purchases

1. The Brookline Open Space Trust Fund

The Committee recognizes that the purchase of property or conservation restrictions depends upon the availability of money for this purpose. There may not be time for extensive fundraising to take place for purchase of a specific property. For instance, if the purchase must be made within a narrow window of time, funds must be readily available that were raised without regard to a clear goal or project. The Committee has noted the existence of an Open Space Trust Fund in the Town's accounts. Currently, no monies are put into it on any regular or even occasional basis. One option would be for the Town to commit to putting monies in this account as part of the operating budget or the Capital Improvement Plan (CIP). The Committee believes that regular funding of the Open Space Trust Fund would be a valuable investment for land protection in the future. This could also be helpful in securing grants that require matching funds. The Town's Comprehensive Plan also recommends actively funding the existing Open Space Trust Fund whenever extra resources become available, to conserve open space through land acquisition or purchase of development rights.

Another strategy would be to seek private donations to this account. In that regard, it would be valuable for the Town to continue to identify environmentally significant properties that are currently unprotected, and to communicate with landowners about conservation goals whenever possible and appropriate. In addition, the Committee suggests that donation opportunities could

be advertised, guidelines could help encourage donations, and the Town could seek the assistance of interested residents, friends groups and environmental organizations in these efforts.

Public/private partnerships hold a lot of potential for fundraising. All three of the town's sanctuaries have "friends groups" associated with them. In addition, the Brookline GreenSpace Alliance is active as an umbrella for a wide range of friends groups as well as an advocate for land conservation and environmental protection generally. At this time, the Town works with these private groups, though there currently are no joint fundraising efforts for land acquisition. These organizations might be willing to help with future fundraising and publicity efforts.

2. Private Trusts and Non-Profits

The land on which the D. Blakely Hoar Sanctuary is located was purchased by the Town with funds bequeathed by town resident D. Blakely Hoar. The Committee determined that a D. Blakely Hoar Trust still exists, which is invested in land assets in New Hampshire. While profits from timber from this land do go to some Brookline institutions as specified in D. Blakely Hoar's will, no further funds are available for purchase of conservation land in Brookline.

As noted above, the Brookline Conservation Land Trust has acquired property and a conservation restriction on land in Brookline and could continue to be a useful partner for protecting land.

Several other non-profit environmental groups in Massachusetts also are known to purchase environmentally valuable property, including The Massachusetts Audubon Society and The Trustees of Reservations. However, the Committee determined that these organizations typically focus their land protection efforts on tracts larger than the parcels abutting Brookline's nature sanctuaries.

3. State Government Options

At the state level, the Division of Conservation Services, in the Executive Office of Energy and Environmental Affairs, awards grants to municipalities for conservation land acquisition. A review of grants awarded for FY08, however, showed that most of the grants are for much larger properties with a lower project cost than anticipated in Brookline. Grants for smaller areas were only awarded in locations with significant conservation value or substantial benefits. Thus, it is unlikely that state funds could be used to purchase smaller properties, such as the undeveloped land abutting the D. Blakely Hoar Sanctuary.

4. Federal Government Options

At the federal level, the government has just renewed the tax code including tax benefits for landowners who donate property for conservation and/or preservation purposes.

F. Zoning Measures

The Town's Comprehensive Plan, approved in 2005, recommended that zoning tools to help protect the Town's sanctuaries be explored. The Sanctuary Study Committee has been a good mechanism for this exploration, and was able to clarify whether new zoning tools, such as increased setbacks, would be beneficial or appropriate. Most abutting lots around the D. Blakely

Hoar Sanctuary, except for those along Princeton Road, are already fully developed. Additionally, most of the lots that abut sanctuary lands do so along their rear lot lines, where current zoning requires a 30-foot rear yard setback.

The following options for new zoning measures with regards to protecting the Town's sanctuary lands have been considered:

- Create new setbacks and zoning restrictions for those properties abutting sanctuary lands. These could include greater rear or side yard setback requirements, a larger minimum lot size requirement to prevent extensive subdivision, etc.
- Establish a design review process that would require new construction on properties abutting sanctuary lands to undergo design review by the Planning Board or Conservation Commission. This design review could either be through a special permit from the Board of Appeals or similar to the design review process used by the Planning Board to review signs and façade alterations.

In reviewing the parcels in question the Committee felt that, because of topography, several adjacent lots might be further developed without a significant impact on the sanctuaries. After discussion, the Committee determined that the actual risk of substantial development on these parcels without review by at least one Town board or commission is minimal. Most properties would have to undergo some sort of review, either through the Preservation Commission process for those properties located in the Cottage Farm Local Historic District, or through the Planning Board/Board of Appeals process to seek dimensional relief. During those processes, concerns regarding development and its impacts on sanctuary lands could be discussed. Additional formal processes for review of projects or increased setbacks may therefore not be warranted.

Notwithstanding the number of formal review processes, however, the Committee concluded that more could be done on an administrative basis to ensure that any proposed development of a parcel adjacent to a sanctuary comes to the notice of the Conservation Commission, which manages the nature sanctuaries for the Town. The technology used to manage the municipal permit process allows for automatic email notification to particular town bodies. For instance, currently Preservation Commission staff are automatically notified by email of new building permit applications for properties in national and local historic districts. A similar process should be put in place for those parcels abutting sanctuaries, ensuring that Conservation Commission staff is notified and given a chance to comment on new building permit applications on properties adjacent to sanctuaries. This would provide the Conservation Commission an opportunity to discuss the application with both the Building Department and the property owner early in the planning process.

III. UPDATE ON LOT 2, PRINCETON ROAD, ADJACENT TO D. BLAKELY HOAR SANCTUARY

The possible development of Lot 2, Princeton Road an unbuilt parcel adjacent to the Hoar Sanctuary, first came to the Planning and Community Development Department's attention in early 2007, when the owner of the property requested a turn-around design be approved by the Planning Board in accordance with an earlier Board decision from 1955. Ultimately, the

Planning Board approved a hammerhead design where municipal vehicles would use a portion of the lot's new driveway to turn around. This decision was subject to a condition that an easement reflecting this turn-around be granted to the Town and accepted by Town Meeting. This proposed easement was first submitted for the warrant for Spring 2007 Town Meeting. At that time, Town Meeting learned that a filing had been made on the property under the state Wetlands Protection Act and the Brookline Wetlands Protection By-law to the Brookline Conservation Commission. The Spring 2007 Town Meeting decided to defer the article pending the outcome of the wetlands permitting process.

After an extensive process involving a site visit, review by the Commission, an outside peer review of the proposed development, and five public hearings and two additional public meetings, the Commission voted to approve a modified version of the project. The Order of Conditions issued in September 2007 contained 53 conditions. It also included a Conservation Restriction on a portion of the parcel.

Subsequently, the property owner submitted a new article seeking approval of the easement for a turnaround for the property to the Spring 2008 Town Meeting. Having already determined that no funding options were currently available for the purchase of this parcel, the Sanctuary Study Committee did not oppose the warrant article. The easement was accepted by Town Meeting in Spring 2008. As a result, the property owner will now be able to develop Lot 2. Any such development is subject to the Conservation Commission's Order of Conditions and will include a conservation restriction on a portion of the property.

IV. CONCLUSION AND RECOMMENDATIONS

Based on its research and findings, the Sanctuary Study Committee recommends the following actions to the Board of Selectmen and the Town of Brookline:

- ❖ Encourage the use of conservation restrictions where appropriate, and publicize the Brookline Conservation Restriction Policy to landowners. (The Committee expects to meet a few additional times after this Town Meeting before disbanding in order to finalize the guidance document to accompany the new CR Policy and to initiate publicity efforts.)
- ❖ Implement a project notification for parcels abutting Town-owned nature sanctuaries, which would require notification to the Conservation Commission for all development on the parcels. This can be done internally through an e-mail notification system set up by the Town's IT Department and updated by the appropriate departments (e.g., Building or Planning Departments).
- ❖ Commit to setting aside a portion of the annual operating budget or Capital Improvements Program (CIP) each year to be placed in the Brookline Open Space Trust Fund for conservation purposes and land acquisition.
- ❖ Encourage private donations into the Open Space Trust Fund, with better education and marketing of this opportunity and guidelines for potential donors.
- ❖ Foster public/private partnerships as a way to increase awareness of land protection or acquisition opportunities, as well as to facilitate fundraising efforts. Communicate with promising partners to strategize for fundraising.

- ❖ Finally, be prepared to reach out to property owners and to discuss the available conservation tools with them when the opportunity arises or the timing is appropriate.

At this time, the Sanctuary Study Committee has fulfilled its charge from the Board of Selectmen 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.” Understanding the available options should lead to better stewardship of the nature sanctuaries, particularly with regard to the buffer lands surrounding them, as well as other unprotected land in Town. The Committee encourages the Town to use this information to assist decision-making and to inform future land protection efforts.

VI. ATTACHMENTS

See attached Conservation Restriction Policy.

Report of the Moderator's Committee on Participation of the Town of Brookline in Norfolk County

November 14, 2008

Committee Members:

Robert L. Allen, Jr.
Deborah K. Cohen
Peter H. Collins
David J. Cotney
David-Marc Goldstein
Michael S. Traister

Background

At the Annual Town Meeting in 2005, Town Meeting voted to refer Article 21 (see Appendix) to a Moderator's Committee to study the status of the Town of Brookline in Norfolk County. The purpose of the Moderator's Committee was to review the substance of Article 21 which proposed to remove the Town of Brookline from Norfolk County government, what the impact of such a move would be, and to investigate alternatives to leaving Norfolk County government.

Article 21 was offered by a Town Meeting Member after comparing the costs and benefits of being a part of Norfolk County government. Brookline contributes more than any other community in Norfolk County (over \$604,000 in Fiscal Year 2009), while receiving little if any benefits. Most county governments were abolished in the 1990's after a recommendation by the League of Women Voters. However, Norfolk County and several other counties on the South Shore and the Islands were maintained. The Article was offered as a means of removing Brookline from Norfolk County government, although not from the Norfolk County district for state-run programs such as the courts, the Registry of Deeds, and the Sheriff's Office.

Following the vote of Town Meeting, the Moderator appointed the Committee in the fall of 2005. The Committee met on numerous occasions through the fall of 2005 and into 2006. The Committee met with various representatives of the Town, including the General Counsel, Deputy General Counsel, Chief of Police, members of the Pension Board, Department of Public Works, and procurement officials. The Committee also met with officials from Norfolk County, including a County Commissioner (who was also a member of the Moderator's Committee) and the County Administrator. In addition, the Committee met with Representative Frank Smizik.

Effect of Leaving Norfolk County Government

Based on its deliberations, the Moderator's Committee has determined the following practical effects of leaving Norfolk County government as originally proposed under Article 21:

What would happen?

If the Town of Brookline were to remove itself from Norfolk County government, the following would happen:

- Brookline residents would lose the right to vote for Norfolk County Treasurer
- Brookline residents would lose the right to vote for Norfolk County Commissioners
- Brookline would lose the right to send its students for free to the Norfolk County Agricultural School in Walpole. However, the Town would still have the option of paying the tuition to send students to the Agricultural School.

- Brookline would not be able to use the services of the County government, including purchasing, transportation, and pension management. However, the Town has reviewed the services of the County and determined that it can obtain the same services at a similar or lower cost on its own. Although the Town has made use of the County's transportation engineers on an infrequent basis, Brookline's Town Management have no intention to use County services at this time.
- Brookline residents would lose the ability to obtain a resident's discount at the President's Golf Club in Wollaston.

What would not happen?

Based on the Committee's review of the difference between the county-run programs v. the state-run programs, there would be no impact on the following state-run services:

- ***Registry of Deeds.*** Brookline residents would continue to file all land records at the Norfolk County Registry of Deeds and could vote to elect the County Registrar. The Registry is supervised by the Secretary of State. In addition, there is a funding formula that devotes a portion of the Registry's fees to the State (including revenue to fund the Community Preservation Act fund) as well as funds to the County for use of the County-owned buildings.
- ***Courts and Court Buildings.*** The Brookline courthouse is owned by the County. However, the State has an exclusive right to use the building and pays a fee to the County to cover rent and maintenance. The Brookline courthouse is considered an important resource for the community and the Police Department. One possible consequence of Brookline leaving Norfolk County government would be that the County or the other County communities could petition the State to close the Brookline Courthouse. On the other hand, the County would be left with a vacant building it would have to dispose. Brookline residents would also continue to be called for jury service within the Norfolk County court system.
- ***County Jails, Prisons, and the Sheriff's Office.*** The Brookline Police Chief expressed reservations about any action that might jeopardize access to County jails for lockups. There would appear to be no impact on access to the jail or prison as these are run by the Norfolk County Sheriff which is under the supervision and direction of the State.

Discussion

As was pointed out during Town Meeting's deliberations of Article 21 as well by the Committee, getting Brookline removed from Norfolk County government would be politically difficult. It would require a home rule petition to be passed by the Legislature and signed by the Governor. Members of the Legislature that represent other communities in Norfolk County or other county governments that still exist would likely oppose such a petition. Brookline could be accused of being unwilling to share the

burden that other communities in Norfolk County have to bear. It was suggested that filing such a petition could also jeopardize other home rule petitions that the Town files that may be critical. For these reasons, the Committee does not recommend that Brookline pursue a home rule petition to remove Brookline from Norfolk County government.

Recommendations

While the Committee does not recommend the removal of Brookline from Norfolk County government at this time, the Committee recognizes that Brookline receives little, if any, tangible value from Norfolk County government. County government remains a bit of an anachronism from over 300 years ago with little relevance to most Brookline residents. Nevertheless, Brookline is assessed a substantial amount each year for Norfolk County; money that could be used for other purposes during lean fiscal years such as these.

The Committee recommends that the Town pursue some or all of the following options to reduce or eliminate Brookline's Norfolk County assessment obligations:

Change the Assessment Methodology

The current county assessment is based on the assessed valuation of property in each municipality. Although Brookline does not have the highest population in the County, it does have the highest assessed property valuation. The Town could work with members of the Legislature and the County to adjust the methodology based on population or based on the municipality's use of County services or some hybrid of all three approaches.

Cap or Reduce the County Budget

Each community in Norfolk County has representation on the Advisory Board that sets the County budget. The voting is distributed proportionately based on the proportion of the budget that each municipality pays. Because Brookline pays 12.5% of the County budget, its vote on the Advisory Board is worth 12.5%. Brookline's representative on the Advisory Board could work with other municipalities to cap or reduce the County Budget. While there may be a willingness by some of the communities that pay a large portion into the County budget, it could have an adverse effect on smaller communities that do not pay much into the budget but receive substantial services from the County.

Eliminate All County Government

Brookline could work with the League of Women Voters, members of the Legislature, and other officials to finish the work that began over 10 years ago by eliminating the remaining county governments in Massachusetts. While there is a need for shared or collective services at the local level, there is not a compelling need for a separate government infrastructure to support such efforts. There would likely be resistance for such an approach from some communities in the remaining counties.

Appendix

See below for the text and discussion of Article 21 as proposed to the 2005 Annual Town Meeting.

ARTICLE 21

TWENTY-FIRST 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 THAT REMOVES THE TOWN OF BROOKLINE AS A MEMBER COMMUNITY IN NORFOLK COUNTY.

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline shall, on the first day of July, in the year two thousand and six, cease to be a member community in Norfolk County.

SECTION 2. Notwithstanding the provisions in SECTION 1., above, the town of Brookline shall continue to be in the Norfolk Registry District, court system and penal system.

SECTION 3. This act shall take effect upon its passage;

or act on anything relative thereto.

In 1997 and 1998 the Massachusetts Legislature abolished most county governments in the Commonwealth (Berkshire, Essex, Franklin, Hampden, Hampshire, Middlesex, Suffolk, and Worcester Counties). Therefore, many of the duties of the former county offices were transferred to state offices. For example, the duties of the Registries of Deeds all now come under the Office of the Secretary of State while the Sheriffs and jails come under the Executive Office of Public Safety. However, several counties in southeastern Massachusetts remained untouched, including Norfolk County.

The Town of Brookline has been a part of Norfolk County since Norfolk County broke away from Suffolk County in 1793. (Interestingly, “In 1795, Brookline petitioned the Supreme Judicial Court to “change its allegiance” back to Suffolk County; the court however, ignored the petition”.¹) Brookline became an island of Norfolk County

¹ 1 See the Secretary of State’s web site at www.sec.state.ma.us/cis/cisctlist/ctlistidx.htm

(meaning it is completely noncontiguous to the rest of the County) when several former towns in Norfolk County, including West Roxbury, were annexed by the City of Boston. Brookline is therefore contiguous to Middlesex County (Newton) and Suffolk County (Boston).

Because Norfolk County was not abolished, Brookline continues to pay mandatory assessments to the County. (These assessments are taken out of the Town's portion of the State aid and distributed to the County.) In Fiscal Year 2006, the county assessment for Brookline is over \$572,000. In addition, the assessment has grown by between 2.5% and 4.5% over the last 4 years. (While the County assessment to all cities and towns is capped at 2 ½%, there is no cap on an individual town's Brookline's assessment increase.) At a 3% growth rate, Brookline will pay nearly \$610,000 to Norfolk County in assessments by FY2008. However, Town officials question what the citizens of Brookline get for that money and most residents would be hard pressed to even name what services Norfolk County provides. On the other hand, cities and towns in abolished counties pay no county assessments. If you look at the budget for the City of Newton, they pay no county assessment. Just think what Brookline could do with \$600,000! Think what the schools could do with another \$300,000 under the Town-School partnership.

This home rule petition would ask the Legislature to remove Brookline as a member community in Norfolk County. It would also keep Brookline as a part of the Norfolk Registry and Courts which are administered by the State.

SELECTMEN'S RECOMMENDATION

Article 21 is a petitioned Article calling for the removal of the Town from being a member of Norfolk County. The core of the issue is the Town's annual assessment, which is approaching \$600,000. The petitioner argues that these funds, which are not even approved by Town Meeting (they are so-called "Non-Appropriated Expenses"), could be applied directly to Town needs.

NORFOLK COUNTY

Norfolk County consists of 28 eastern Massachusetts communities, located to the South and West of Boston. The County was incorporated as a regional governmental entity in 1793, and has its county seat at the town of Dedham. A map is shown on the following page. The executive authority of Norfolk County is vested in the County Commissioners, who are popularly elected by its residents. The three Commissioners are elected for a four-year term with only one permitted from any one city or town.

The county provides regional services, including the following:

- Superior, probate and trial courthouses
- Norfolk County Agricultural High School
- President's Golf Course in Quincy
- Registry of Deeds
- Sheriff's Department
- Engineering Services for Communities
- Retirement Board Administration

Since the County is without a popularly elected legislative authority, it is therefore dependent upon its Advisory Board and the General Court for its budgetary appropriations and capital outlay proposals, which require borrowing. The Advisory Board is composed of a representative from each Norfolk County municipality. The executive authority (Selectman, Mayor, Manager, etc.) of each municipality appoints its own representative annually. Each municipality and their representative's vote on the Advisory Board is weighted in accordance with the valuation of the assessment of the combined land values in that community. In Brookline's case, its Advisory Board member's vote accounts for 12% of the total vote.

County revenues are derived from the Registry of Deeds, a tax on the cities and towns of Norfolk County based on their land values, the Commonwealth of Massachusetts, and various grants. The County Tax is estimated to total \$4.6 million in FY06, with Brookline providing \$572,204 for the County, or 12.5% of the total tax. The total tax levy, per the provisions of MGL Ch 35, Sec.31, cannot increase by more than 2½ % each year; however, individual tax assessments can increase more or less than that, since the formula is based on equalized valuation (property value), and that value changes every two years.

COUNTY ABOLITION

In 1997 and 1998, the State abolished eight of the 14 counties. The six remaining counties are Barnstable, Bristol, Dukes, Nantucket, Norfolk and Plymouth. Of the eight abolished counties, only two (Hampden and Worcester) continues to pay a county tax—and they are frozen at FY01 and FY98 levels, respectively. Municipalities in the other six counties pay no county tax.

When a county was abolished, the state absorbed both the assets and liabilities of the county, and if assets exceeded liabilities, the county tax was eliminated. If liabilities exceeded assets, the county tax remained until the outstanding liability was paid off.

ARTICLE 21

As originally proposed, Brookline as a municipality would no longer be a member of Norfolk County as of July 1, 2006; however, for purposes of the registry district, court system, and penal system, Brookline residents and businesses would utilize regional services located in Norfolk County. This means that Brookline individuals and businesses would continue to use, and pay for, the Registry of Deeds; have legal matters heard in the

County; and have the services of the Norfolk County jail, which is funded by a combination of State funding and Registry of Deeds revenue (again, which Brookline pays for on a fee for service basis).

One major unanswered question is whether the Brookline District Court would continue to operate if the Town of Brookline was not paying County tax. The pure judicial function (e.g., judges, court security officers, stenographers) is funded by the State, but the operational aspects (e.g., custodial services), are paid for by the County. While the State does pay lease payments to the county for the courthouse, it is not sufficient to cover all of the operational costs associated with the courthouse. As a result, county funds (e.g. county tax, Registry of Deeds) must make up the difference. Therefore, an argument could be made that with Brookline paying no county tax, the other 27 communities within the county could choose not to support the maintenance of the courthouse, since the court is used for Brookline cases. The Selectmen would be quite concerned about the impact on the community if the District Court were no longer located in Town, especially from losing the availability of the Juvenile Court.

CONCLUSION

It is quite evident that Brookline does not avail itself to all of the services the county offers. That is not the fault of the county; rather, it is due to the extremely professional operation run by the Town. For example, the Town has a full-service Engineering Division, so it does not use the county engineering services as much as communities with a small engineering staff. Similarly, with its own Retirement Board, the Town is not part of the county's retirement system. Brookline has its own Municipal Golf Course at Putterham, with which the County's course in Quincy actually competes.

A majority of the Board believes that having Brookline leave Norfolk County on its own is not the proper course to take. It would send the wrong message to the other Norfolk County communities, perhaps reduce needed support from other legislators in the county for the special legislation the Town now has before the General Court, and, most importantly, could result in the closing of the Brookline Municipal Court. This Article has focused the Town on our relationship with the County and we will work with the County to investigate how the Town can take better advantage of their services.

The Board recommends NO ACTION, by a vote of 4-1 taken on April 26, 2005, on the article.

ROLL CALL VOTE:

No Action

Allen
Geller
Hoy
Sher

Favorable Action

Merrill

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

The proposal calls for a home rule petition to the Legislature to remove Brookline from Norfolk County. If Brookline were removed from the County, Brookline would continue to use Norfolk County courts, the Sheriff's department, and the Norfolk County Registrar of Deeds. However, Brookline would cease using other services provided by Norfolk County.

DISCUSSION

Brookline is currently assessed nearly \$600,000 per year by Norfolk County. This nonappropriated expense is increasing at a rate of approximately 2.5% per year. Benefits for the Town of Brookline that justify an expenditure of \$600,000 per year are difficult to identify.

Present Norfolk County was established in 1793 with Brookline as a member. Over the years, the boundaries of the County have changed. Brookline became an "island off the shore" of Norfolk County when other towns left. West Roxbury left Norfolk County to join Boston in 1872; Hyde Park left in 1911. Cohasset is also a noncontiguous town in Norfolk County. These are the only instances in the United States in which counties include noncontiguous towns.

In many other states, counties are a major unit of government. In Massachusetts, the role of counties is marginal. Seven years ago, the Legislature sought to eliminate all county governments. In fact, most county governments were dismantled through that reform effort. However, Norfolk County has survived as a functioning entity.

The State has assumed responsibility of financing of the "county" courts. The salaries of judges and other court personnel are paid by the State. In Norfolk County, the County continues to own and maintain the court buildings. The state leases the buildings from the County. One of the Norfolk County courts is in Brookline.

The Registrar of Deeds is financed entirely on the basis of user fees.

A major service offered by Norfolk County is an agricultural high school located in Walpole. The school enrolls 419 students; one of the students is from Brookline. County

residents are eligible to attend the school without charge. Students from outside the County pay tuition.

Norfolk County operates the Presidents Golf Course in Wollaston. County residents receive a discount on season tickets.

Norfolk County operates a correctional center in Walpole located between the north and southbound lanes of Route 128.

The County engineering department provides services that assist cities and towns in designing and maintaining their roads. Brookline makes some use of the engineering services.

The County Treasurer chairs the county retirement board. The retirement system has 9,250 members. (Current Massachusetts Treasurer Timothy Cahill campaigned for the office on the basis of his experience as Norfolk County Treasurer.) Chairman of the Norfolk County Commissioners Peter Collins suggested that Brookline might save \$150,000 annually if it were to use the County retirement system.

The County budget is reviewed and approved by an advisory board with 28 members. Each city and town in the county is represented. Municipalities have weighted votes based on their share of total county property tax assessments. Sean Becker is the current Brookline representative on the Norfolk County Advisory Board.

Cities and towns contribute to the County's financing on the basis of their proportion of the total property tax assessments. In FY2006, County taxes total \$4.6 million. Brookline is the largest contributor accounting for 12.5 percent of the budget. Brookline has an estimated 8.7 percent of the population of the County. Brookline is not the only town paying a disproportionate share of County expenses. Wellesley, for example, with 4.1 percent of the County population pays 8.1 percent of County taxes.

RECOMMENDATION

The Advisory Committee recommends that Article 21 be referred to a Moderator's Committee to study the proposal and make recommendations to the 2006 Annual Town Meeting. The Committee should consider a variety of possibilities including Brookline's removal from the County, more extensive use of County services, a funding formula more favorable to Brookline, and encouragement to the County to provide services that are more responsive to Brookline's needs.

Rationale

The proposal to remove Brookline from a number of services offered by Norfolk County is intriguing because the annual cost to Brookline appears to exceed substantially the benefits to the Town. Brookline appears to get little from the County services that are financed through property tax assessments. The County Agricultural high school is a

conspicuous example of a county service which provides only a minimal benefit for Brookline. Further, because mandated payments to the County are based on property tax assessments, Brookline's financial contribution is disproportionate to its population. A study will be useful to determine the following:

1. The full extent to which Brookline makes use of various services offered by Norfolk County,
2. The extent to which Brookline might benefit by taking greater advantage of County services such as those provided by the Engineering and Sheriff's Departments and the County Retirement Board,
3. Implications for the Brookline Municipal Court (Would the municipal court continue? If the Court were to close, how adversely would Brookline be affected? If the court were to remain open, would the Town purchase the courthouse? Alternately, would the State purchase the courthouse?)
4. The extent to which the County might offer Brookline more attractive services,
5. Financial options that would make continued participation by Brookline more attractive,
6. Interest on the part of other towns in the County for reexamination of their continued participation in the County.

Consultation with other towns may initiate a useful process through which participating towns seek collectively to negotiate services from the County that are more responsive to their needs. In the event that efforts to negotiate more cost-effective services from the County were unsuccessful, Brookline would have the basis for a coalition of towns that would collectively seek their removal from Norfolk County. Such a coalition would be more likely to attract the support that would ultimately be needed in the Legislature.

The committee will require strong staff support to assure that that various Town departments provide necessary information about their experiences in using County services and offer advice on the potential for making more extensive use of County services.

The Advisory Committee, by a vote of 13 in favor, 2 opposed, and 1 abstention, recommends FAVORABLE ACTION on the following vote:

VOTED: To refer Article 21 to a Moderator's Committee to study the proposal and make recommendations to the 2006 Annual Town Meeting.