

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 therefor, and appropriate from available funds, a sum or sums of money therefor.

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 15, 2009, on Article 1.

ROLL CALL VOTE

Favorable Action

Daly  
DeWitt  
Mermell  
Goldstein

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

The Town cannot pay any unpaid bills for goods purchased by it or services rendered to it until and unless Town Meeting has approved the specific appropriation. It is thus customary to place on the Warrant for every Town Meeting if there are any unpaid bills so that Town Meeting can consider and approve such obligations to permit the Town to pay for them.

November 17, 2009 Special Town Meeting

1-2

DISCUSSION:

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

RECOMMENDATION:

The Advisory Committee unanimously recommends NO ACTION on Article 1 as submitted, by a vote of 18-0.

**XXX**

ARTICLE 2

SECOND ARTICLE

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

or act on anything relative thereto.

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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.

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TOWN of BROOKLINE  
*Massachusetts*

HUMAN RESOURCES OFFICE  
333 Washington Street  
Brookline, MA 02445  
(617) 730-2120

[www.townofbrooklinemass.com](http://www.townofbrooklinemass.com)

Sandra A. DeBow  
Human Resources Director

September 29, 2009

To: Board of Selectmen

From: Sandra DeBow, Director  
Human Resources Office

Re: 2009 Special Town Meeting  
Article 2, Approval of Collective Bargaining Agreements

Over the course of the summer the Town negotiated settlements for two separate agreements with the Brookline Police Union, Mass Coalition of Police, Local 1959. One settlement (reached in August) is a two year successor agreement to the labor contract which expired on June 30, 2009. The other, which was actually settled earlier in July, was the result of mid-term bargaining over an item negotiated in the previous contract.

**I. Brookline Police Union, Local 1959, Successor Collective Bargaining Agreement 2009-2011**

Summary: The Town of Brookline and the Brookline Police Union came to a tentative agreement on August 3, 2009. The Agreement was approved by the Board of Selectmen on August 4, 2008 and was ratified by the Union on or about August 21, 2009.

Description: The contract is a two-year agreement commencing on July 1, 2009 and expiring on June 30, 2011. Under the Agreement, the Brookline Police Union agreed to no wage increases for both FY10 and FY11. In order to prevent significant wage decreases for Quinn-eligible police officer, the Town agreed to guarantee 100% payment of the contractual Quinn educational incentive. The Quinn educational incentive became fixed in the contract to those officers currently eligible for Quinn. Therefore, the number of officers eligible for this benefit will decrease each year as these officers retire. There is no additional funding required to hold these officers harmless from State budgetary cuts, although the Town will lose revenue as it will not be reimbursed for education incentive pay due to the State's under funding of its Quinn bill obligations.

The Town also agreed to move two stipends to base wages, the annual \$400 Weapons and Homeland Security Training stipend and the \$600 Defibrillator stipend. The Town also has the right to fill two titles, meter collectors and Information Technology officer, with civilian personnel rather than police officers. The civilianization of these positions was recommended by the Jan. 2009 report of the Efficiency Initiative Committee.

There is a re-opener clause in the contract for FY 11 wage negotiations if the Public Employee Committee agrees that the Town may enter the Group Insurance Commission (GIC) for FY 11.

**II. Brookline Police Union, Mid-Term Agreement**

On July 7, 2009 the Town and Local 1959 completed negotiations over a mid-term memorandum of agreement to implement a change in promotion practices and pay differential between ranks. This mid-term agreement arose out of the previous 2006-2009 collective bargaining contract wherein the parties agreed to future negotiations over these matters.

The Police Chief has long sought a measure of locally based flexibility in the statewide civil service system for promotions under which the Town must operate. It is his initiative to allow for questions in the promotion process relative to the Brookline Police Department's own rules and regulations which heretofore have not been allowed. The union agreed to this change and the Town in turn agreed to increase the rank differential by 1%. Because this increase will not be effective until July 1, 2010 there is not a need for appropriation at this time. The cost to be included in the FY11 budget to fund this increase is expected to be approximately \$45,000,

**RECOMMENDED ACTIONS**

- I. Approval of the July 2009 – June 2011 successor agreement with Brookline Police Union Local 1959 with a first year FY2010 cost of \$75,000.

II. Approval of the Mid-Term agreement signed July 7, 2009 relative to changing promotional procedures and rank pay differential with an annual cost of \$45,000 beginning in FY2011.

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SELECTMEN'S RECOMMENDATION

As detailed in the memorandum from the Town's Human Resources Director, the Town and the Police union agreed to two contracts: (1) a two-year contract that will cost an additional \$75,000 in FY10 and (2) a Mid-Term agreement that will cost the Town another \$45,000 in FY11. The main two-year contract calls for 0% wage adjustments in both FY10 and FY11. The total \$120,000 cost comes from adding two stipends to the base wage, which impact ancillary earnings codes that are tied to base wages, and increasing the rank differential.

The successor collective bargaining agreement is a two-year agreement starting on July 1, 2009 and expiring on June 30, 2011. As stated above, the Brookline Police Union agreed to no wage increases for both FY10 and FY11. In order to prevent significant wage decreases for Quinn-eligible police officers, the Town agreed to guarantee 100% payment of the contractual Quinn educational incentive. This became a significant issue for any municipality that had previously adopted Quinn when the final FY10 state budget funded only \$10 million of a \$58 million obligation. Without any changes in the new contract, officers who receive Quinn would have seen that payment decrease by 20%. Quinn educational incentive funding has previously been funded 50% by the Town and 50% by the State. For those officers who receive Quinn, it accounts for approximately 20% of their total salary. Approximately 100 officers are currently Quinn eligible.

The contract includes language that fixes the Quinn educational incentive to those officers currently eligible for Quinn. Therefore, the number of officers eligible for this benefit will decrease each year as these officers retire. There is no additional funding required to hold these officers harmless from State budgetary cuts, although the Town will lose revenue as it will not be reimbursed for education incentive pay due to the State's under funding of its Quinn bill obligations.

The Town also agreed to move two stipends to base wages, the annual \$400 Weapons and Homeland Security Training stipend and the \$600 Defibrillator stipend. The Town also has the right to fill two titles, meter collectors and Information Technology officer, with civilian personnel rather than police officers. The civilianization of these positions was recommended by the Jan. 2009 report of the Efficiency Initiative Committee.

The mid-term agreement arose out of the previous (2006-2009) collective bargaining contract wherein the parties agreed to future negotiations over these matters. The Police Chief has long sought a measure of locally based flexibility in the statewide civil service system for promotions under which the Town must operate. It is his initiative to allow for questions in the promotion process relative to the Brookline Police Department's own rules and regulations which heretofore have not been allowed. The union agreed to this

change and the Town in turn agreed to increase the rank differential by 1%. Because this increase will not be effective until July 1, 2010 there is not a need for appropriation at this time.

Securing 0% wage adjustments for two years helps the Town address its budgetary situation. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2009, on the following vote:

VOTED: To approve and fund by an appropriation, provided for in the FY2010 (Item #21) budget, for the cost items in the following collective bargaining agreement that commences on July 1, 2009 and expires on June 30, 2011:

Brookline Police Association

all as set forth in the report of Sandra Debow, Director of Human Resources, dated September 21, 2009, which report is incorporated herein by reference.

**ROLL CALL VOTE**

Favorable Action

Daly  
DeWitt  
Benka  
Goldstein

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

There is only one contract agreement for Town Meeting to consider. The Memo of Agreement (MOA) between the Town and the Police Union covers the following:

- The contract is effective from July 1, 2009 until June 30, 2011
- Freezes wages at **0%** for FY2010 AND FY2011
- Provides for a \$400 defibrillator stipend to be moved into base pay and for all employees to be trained in the proper use of defibrillators
- Provides for a \$600 Weapons Waiver and Homeland Security Training to become part of base pay
- That the Town will continue the educational benefits provided by the "Quinn Bill"
- Civilians and/or uniformed officers may do meter collection work
- Duties of an Information Technology Officer may be moved to a civilian when the incumbent(s) vacate the position(s)
- All employees will have 100% direct deposit payroll (no split checks)

DISCUSSION:

The Quinn Bill Incentive, Weapons Waiver/Homeland Security Training and Defibrillator Stipends are currently pensionable items. This contract will formalize that by incorporating them into the base salary.

The Quinn Bill educational incentive program (adopted by Town Meeting) provides supplemental salary payments (10% for an Associates Degree, 20% for a Bachelors Degree, 25% for a Masters Degree) paid as a lump sum in July. Degrees are typically in Public Administration, Criminal Justice, and Law. This law has been in effect for several years and most likely would have to be paid, whether or not the Town receives a reimbursement from the State of MA.

Current Quinn Bill beneficiaries are essentially “grandfathered” in, but new hires are not eligible for that Quinn benefit.

An agreement has also been reached for a new Promotional Exam format to include “rules and regulations” in addition to the usual workbook questions. The Chief believes this will better serve the unique conditions and requirements of Brookline. This is a change from the state-wide Civil Service system. The union agreed to this change and the Town agreed to 1% rank differential in return. The total net cost of that change is \$75K in the first year and \$45K in the second year.

The most notable aspect of this contract is the two years of 0% wage increases. This is a reflection of the fiscal reality Brookline faces. Simply maintaining jobs has become a challenge.

There is a “Re-opener” clause on the 0% agreement if entry to the GIC Health Plan is accepted.

Should a reasonable plan for joining the GIC emerge from the Coalition Bargaining process which ultimately leads to employees joining the far less expensive health insurance plan, negotiations around wage increases during the second year of this contract will be re-opened.

RECOMMENDATION:

Recognizing this contract to be both reasonable and realistic, the Advisory Committee, by a vote of 22 in favor, zero opposed, with zero abstentions, recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

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ARTICLE 3

THIRD ARTICLE

To see if the Town will rescind the unused portion of the following prior borrowing authorizations:

1. For repairs to the Brookline High School, authorized under Article 8, Section 13, Item 60 of the 2008 Annual Town Meeting, in the amount of \$100,000.
2. For assessment and corrective action associated with the Newton Street Landfill, authorized under Article 8, Section 13, Item 56 of the 2009 Annual Town Meeting, in the amount of \$1,000,000.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is also used for debt rescissions, of which two are recommended. The \$100,000 related to the High School projects can be rescinded because the bids came in under budget. The \$1,000,000 related to the Newton Street Landfill can be rescinded because the Town was awarded a \$1,000,000 State grant from the Environmental Bond Bill.

SELECTMEN'S RECOMMENDATION

Article 3 is required to rescind a portion of the following two prior bond authorizations:

1. High School Roof, Pointing, etc – this project was estimated to cost \$2.6 million, and Town Meeting approved a bond authorization in that amount in May, 2008. The final cost is estimated to be approximately \$2.5 million, so the Town borrowed that amount in April, 2009. The \$100,000 difference between the amount authorized and the amount borrowed can now be rescinded.
2. Newton St. Landfill Corrective Action – Town Meeting approved \$4.275 million for this project in May, 2009. The Town has since been notified that it will receive a \$1,000,000 state grant from the Environmental Bond Bill earmark. Therefore, the Town can rescind \$1,000,000 of bond authorization.

Approving these rescissions removes these amounts of unauthorized but unissued debt from the books of the Town. Therefore, the Board recommends FAVORABLE

ACTION, by a vote of 4-0 taken on October 20, 2009, on the vote offered by the Advisory Committee.

**ROLL CALL VOTE**

Favorable Action

Daly  
DeWitt  
Benka  
Goldstein

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**ADVISORY COMMITTEE'S RECOMMENDATION**

**BACKGROUND:**

This Warrant Article seeks Town Meeting's permission to formally rescind bonding authority in order to "close out" two previously-approved, bonded projects. The projects are now completed. By formally rescinding the bonding authority, the Town can save interest costs and administrative and other expenses, and can otherwise close out certain accounting functions associated with the offerings.

**DISCUSSION:**

Warrant Article 3, § 1 -- The \$3.3 million High School repair project approved at the 2008 Annual Town Meeting (see May 2008 Warrant Article 8.B.27 for reference to the FY 2009 Special Appropriation) came in under budget by \$100,000. As such, \$100,000 of bond authorization can be rescinded.

Warrant Article 3, § 2 – In May of this year, Town Meeting authorized the Town to incur \$1 million of bonded indebtedness to pay for work to be performed to remediate environmental contamination at the Town's former Newton Street landfill (not to fund any settlements of abutters' claims).

In the interim, the Town received a grant from the Commonwealth under the recent Environmental Bond Bill; therefore, the Town received the funds it was to have received through bonding directly from the Commonwealth, and the bonding authorization can now be rescinded.

**RECOMMENDATION:**

By a vote of 22 in favor and none apposed, the Advisory Committee recommends FAVORABLE ACTION on the following:

VOTED: That \$100,000 of the \$2,600,000 Bond Authorization for repairs to the Brookline High School, authorized under Article 8, Section 13, Item 60 of the 2008 Annual Town Meeting, be reduced and be rescinded.

VOTED: That \$1,000,000 of the \$4,275,000 Bond Authorization for assessment and corrective action associated with the Newton Street Landfill, authorized under Article 8, Section 13, Item 56 of the 2009 Annual Town Meeting, be reduced and be rescinded.

**XXX**

ARTICLE 4

FOURTH ARTICLE

To see if the Town will:

- A) Appropriate additional funds to the various accounts in the fiscal year 2010 budget or transfer funds between said accounts;
- B) To see if the Town will vote to appropriate, borrow or transfer from available funds, \$29,100,000, or any other sum, to be expended under the direction of the School Building Committee for 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, which school facility shall have an anticipated useful life as an educational facility for the instruction of school children of at least 50 years, and for which the Town may be eligible for a school construction grant from the Massachusetts School Building Authority ("MSBA"). The MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any project costs the Town incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town. Any grant that the Town of Brookline may receive from the MSBA for the Project shall not exceed the lesser of (1) 41.58% of eligible, approved project costs, as determined by the MSBA, or (2) the total maximum grant amount determined by the MSBA;
- C) Appropriate \$1,400,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the reconstruction of the Carlton Street Footbridge.
- D) And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or provided by any combination of the foregoing; and authorize the Board of Selectmen, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants and aid from both federal and state sources and agencies for any of the purposes aforesaid.

or act on anything relative thereto.

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 FY2010, the warrant article is necessary to balance the budget, appropriate the local option taxes approved at the August Special Town Meeting, seek a bond authorization for the Runkle School renovation/addition project, and seek a bond authorization for the Carlton St. Footbridge, per the position of the State Executive Office of Energy and Environmental Affairs as reflected in the

Memorandum of Understanding (MOU) recently executed by the Town of Brookline, City of Boston, and the Commonwealth.

SELECTMEN’S RECOMMENDATION

Article 4 proposes amendments to the FY10 budget. The article is required to address four areas of the budget:

1. make reductions in the Operating Budget to account for (a) the State Aid figures contained in the final state budget and (b) a reduction in Local Receipts;
2. allocate the local option meals and lodging taxes resulting from their approval at the August 26<sup>th</sup> Special Town Meeting;
3. amend the Water & Sewer Enterprise Fund budget to reflect the rates as set for July 1; and
4. appropriate funds for two capital projects (Runkle School and Carlton St. Footbridge).

**FY10 OPERATING BUDGET**

There are two issues that have put the budget as approved by Town Meeting in the Spring out of balance by a total of more than \$1M: (1) the final State budget resulted in \$618,880 less in Gross Local Aid than was included in the budget approved by Town Meeting and (2) Local Receipt estimates have been revised downward by \$400,000. Therefore, \$1,018,880 of reductions must be made to both revenue and expenses.

1. State Aid – the budget approved by Town Meeting used a Gross State Aid figure of \$17.16M. The final state budget included \$16.54M, a difference of \$618,880. The impact on the Operating Budget is \$618,973 (the reduction in “Offset Aid”<sup>1</sup> is accounted for by a reduction in the “Non-Appropriated” portion of the budget). The breakout of this is shown in the table below and continued on the following page.

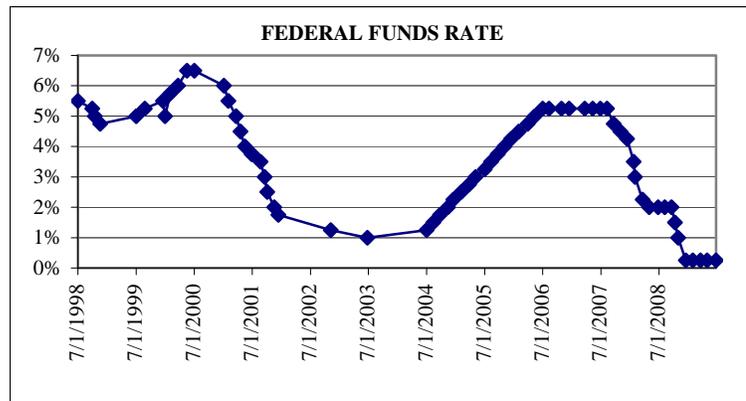
	FY10 CHERRY SHEET BASED ON H1 *	FY10 GAA	VARIANCE FROM ADOPTED BUDGET	% VARIANCE FROM ADOPTED BUDGET
<i>RECEIPTS</i>				
Ch. 70	7,473,142	7,323,679	(149,463)	-2.0%
School Constr.	3,267,372	3,267,372	0	0.0%
Unrestricted General Gov't Aid	5,645,898	5,593,780	(52,118)	-0.9%
Quinn	550,604	129,879	(420,725)	-76.4%
Vets Benefits	61,624	69,387	7,763	12.6%
Exemptions	41,896	41,896	0	0.0%
Charter School Reimbursements	4,534	7,421	2,887	63.7%
<b>TOTAL RECEIPTS</b>	<b>17,045,070</b>	<b>16,433,414</b>	<b>(611,656)</b>	<b>-3.6%</b>

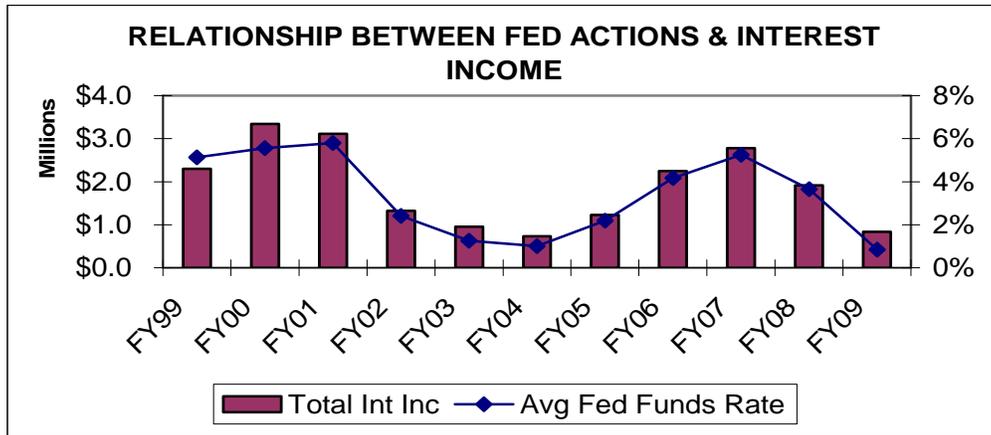
<sup>1</sup> “Offset Aid” is offset 100% by expenditures (so-called “Non-Appropriated” expenses) since it goes directly to the department without appropriation.

	<b>FY10 CHERRY SHEET BASED ON HI *</b>	<b>FY10 GAA</b>	<b>VARIANCE FROM ADOPTED BUDGET</b>	<b>% VARIANCE FROM ADOPTED BUDGET</b>
<b>CHARGES</b>				
County	622,569	622,569	0	0.0%
Retired Empl. Health Ins.	3,413	3,413	0	0.0%
Air Pollution Dist.	21,556	21,556	0	0.0%
MAPC	16,265	16,265	0	0.0%
RMV Surcharge	311,200	311,200	0	0.0%
MBTA	4,489,015	4,490,108	1,093	0.0%
SPED	48,791	53,007	4,216	8.6%
Charter School Sending Tuition	30,615	32,623	2,008	6.6%
<b>TOTAL CHARGES</b>	<b>5,543,424</b>	<b>5,550,741</b>	<b>7,317</b>	<b>0.1%</b>
<b>OFFSETS</b>				
School Lunch	21,913	21,913	0	0.0%
Libraries	90,198	82,974	(7,224)	-8.0%
<b>TOTAL OFFSETS</b>	<b>112,111</b>	<b>104,887</b>	<b>(7,224)</b>	<b>-6.4%</b>
<b>NET LOCAL AID</b>	<b>11,613,757</b>	<b>10,987,560</b>	<b>(626,197)</b>	<b>-5.4%</b>
<b>NET LOCAL AID W/O OFFSETS</b>	<b>11,501,646</b>	<b>10,882,673</b>	<b>(618,973)</b>	<b>-5.4%</b>
<b>GROSS LOCAL AID</b>	<b>17,157,181</b>	<b>16,538,301</b>	<b>(618,880)</b>	<b>-3.6%</b>

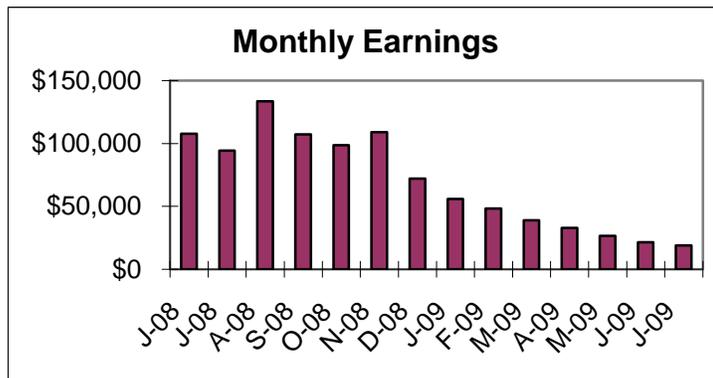
2. Local Receipts – Interest Income should be adjusted downward by \$400K, from \$850K to \$450K. This is directly related to the current interest rate environment.

Between January, 2001 and June, 2003, in an on-going effort to revitalize the nation’s economy, the Federal Reserve lowered the Federal Funds Rate 13 times, from 6.5% to 1%. Between June, 2003 and June, 2006, the Federal Reserve increased rates 17 times, bringing the rate to 5.25%, where it stayed until September, 2007, when the rate was dropped 50 basis points to 4.75%. Since then, it has been lowered nine more times to virtually 0%. This included an extraordinary week in late-January, 2008 when the rate dropped 75 basis points on January 22 and another 50 basis points on January 30. The Fed has now lowered interest rates by 1.75 percentage points since September 16, 2008. When the rate decreases, the interest rate applied to the Town’s cash investments also decreases, as shown in the graph on the following page:





While the FY10 estimate reflected a \$424K (33%) reduction from the FY09 budget, investment earnings have eroded even further, as shown in the graph to the right. As a result, the current FY10 estimate needs to be reduced.



In order to balance the budget, \$1,018,973 of budget reductions must be approved. As discussed with the School Administration, the Town will absorb the \$420,725 difference in Quinn between the Governor’s proposal (upon which the Town budget was predicated) and the final State budget. Therefore, the School’s share of the shortfall is \$299,124, as calculated below:

$$\begin{array}{r}
 \$1,018,973 \text{ (total Net revenue reduction)} \\
 - \$420,725 \text{ (Quinn House 1 vs Final)} \\
 \hline
 \$598,248 \\
 \swarrow \quad \searrow \\
 \$299,124 \quad \$299,124 \\
 \text{Town} \quad \quad \text{School}
 \end{array}$$

The School’s \$299,124 is offset by \$148,698, the amount associated with benefits of the reduced headcount in the final School budget (there was a net reduction of 20 FTE’s). This was not accounted for in the budget approved by Town Meeting in May because the final reduction in FTE’s had not been finalized.

To the Town’s \$299,124, add the \$420,725 Quinn loss and the total Town loss is \$719,849. To balance the Town budget, it is recommended that (1) the Purchasing Division budget be reduced by \$100,000 to account for the savings associated with the

Town's investment in VOIP technology and (2) the contingency reserve that can be used for contractual COLA increases be reduced by \$619,849.

If these recommendations are approved, \$340,151 would remain in this reserve. As discussed under Article 2, \$75,000 is required to fund the collective bargaining agreement with the Police Union. The balance (\$265,151) is recommended for transfer to the Pension line-item. This is recommended in order to permanently add the funds to the appropriation base as part of an effort to prepare for the substantial increase in that line-item in FY12, resulting from the market collapse in CY08. Eliminating the balance of the reserve in FY10 also means the FY11 budget base will be reduced by \$885K, thereby reducing the projected FY11 deficit by that amount. A summary of the proposed changes is shown in the table below:

<b><u>Revenue</u></b>	
State Aid (Gross)	(618,880)
Local Receipts	<u>(400,000)</u>
TOTAL	(1,018,880)
<b><u>Expenditures</u></b>	
School Dept.	(150,426)
Purchasing (VOIP)	(100,000)
Reserve	(885,000)
Pensions	265,151
Health Insurance (Schools)	(148,698)
Non-Appropriated	<u>93</u>
TOTAL	(1,018,880)

### **ALLOCATION OF LOCAL OPTION TAXES**

On August 26<sup>th</sup>, Town Meeting adopted the 0.75% Meals Excise Tax and increased the Lodging Excise Tax from 4% to 6%. It is estimated that these actions will yield \$700,000 in FY10. This amount is approximately \$130,000 (15%) less than the DOR estimate, which is based upon pre-recession data.

During the debate on these issues, it was urged to use these monies for one-time expenses and/or put them toward unfunded liabilities. It is being recommended that the \$700,000 be permanently added to the base of the Pension line-item as part of an effort to prepare for the substantial increase in that line-item in FY12. If this \$700,000 and the \$220,151 from the Collective Bargaining reserve (see above) are added to the base of the Pension line-item, the FY11 base will be approximately \$1,300,000 more than would otherwise be the case<sup>2</sup>. That will go a long way toward helping address what stands to be a multi-million dollar increase in FY12. The table on the following page illustrates how this works:

<sup>2</sup> The \$1.3M figure assumes the \$300K in additional local option taxes that will result from having a full year of revenue from those sources (in FY10, just 8 months of revenue will be realized).

	<u>FY10</u>	<u>FY11</u>
Current Base	12,063,565	12,565,355
Balance of FY10 C.B. Res	265,151	265,151
Local Option Taxes	<u>700,000</u>	<u>1,050,000</u>
Increased Base	13,028,716	13,880,506
Estimated FY12 Need		15,963,724
<b>FY12 Increase vs Current FY11 Base</b>		<b>3,398,370</b>
<b>FY12 Increase vs Increased FY11 Base</b>		<b>2,083,219</b>

**WATER & SEWER ENTERPRISE FUND**

When the FY10 Water and Sewer rates were set by the Selectmen in June, a number of adjustments were made in an effort to reduce the rate increase, the most significant of which was the elimination of two vacant positions. In addition to the approximately \$88,000 in salary savings, there was a savings in benefits of \$23,062. Since the Enterprise Fund will be reimbursing the General Fund \$23,062 less (this is accounted for within the General Fund in the Overhead Reimbursement, which is part of the “Other Available Funds” category of revenue), the expenditure side of the General Fund also needs to be reduced.

**SUMMARY OF BUDGET AMENDMENTS**

The table below summarizes all of the changes detailed above:

<b><u>Revenue</u></b>	
State Aid (Gross)	(618,880)
Local Option Taxes	700,000
Local Receipts	(400,000)
W&S Ent Fund Overhead Reimb.	<u>(23,062)</u>
TOTAL	(341,942)
<b><u>Expenditures</u></b>	
School Dept.	(150,426)
Purchasing (VOIP)	(100,000)
CB Reserve	(885,000)
Pensions	965,151
Health Insurance	(171,760)
Non-Appropriated	<u>93</u>
TOTAL	(341,942)

This Board believe that the proposed budget amendments not only closes the current fiscal year’s budget gap in a prudent manner, but it also helps put the Town in a better position for what stands to be a very difficult FY11 budget. Therefore, the Selectmen recommend **FAVORABLE ACTION**, by a vote of 5-0 taken on October 13, on the vote offered by the Advisory Committee under Parts 1 and 2 of Article 4.

**CAPITAL PROJECTS**

Runkle School Renovation / Addition

Last November, Town Meeting approved \$600,000 for the Feasibility Study / Schematic Design stage of the Runkle School renovation/addition, a critical project required to address the district-wide enrollment issue. Since then, the Massachusetts School Building Authority (MSBA) and the Town, through the Designer Selection Panel (DSP), recommended that a contract be awarded to Design Partnership of Cambridge, Inc for the design of the Runkle School project; the Runkle School Building Committee (RSBC) has met more than 20 times and held three public forums for parents and abutters; various governmental bodies (Board of Selectmen, School Committee, Planning Board, Zoning Board of Appeals, Building Commission, Transportation Board) have discussed the matter at public meetings; and a preliminary design was approved by the RSBC.

On September 30, the MSBA approved the Runkle project and voted to reimburse 41.58% of reimbursable costs, resulting in the State funding approximately \$11.8 million of the \$29.1 million project. This level of funding is contingent upon the Town securing its own funding, and Article 4 does so via a bond authorization.

The excellent report of the Advisory Committee on the Runkle project is very detailed and thorough, so there is no need to repeat it in this recommendation. However, a couple of highlights deserve to be reiterated:

- Runkle has 516 students in a building that was designed for about 420. The project is designed to accommodate 560 students, the projected enrollment of students within the Runkle district.
- Zoning concerns have been raised and questions remain as to the appropriate floor area ratio (FAR) to apply to this project. Those questions will not be resolved before this Town Meeting. The Town anticipates moving through the permitting process and addressing those questions as expeditiously as possible, but due to the many steps in the process, each of which have notice requirements, this is likely to happen after the Town Meeting. There is reason to believe that a special permit can be obtained even if the Zoning Board of Appeals (SBA) calculates FAR differently.
- Under the MSBA rules, a bond authorization must be secured within 120 days of the MSBA approval (Sept. 30). Failure to obtain the authorization within this timeframe means the loss of \$11.8 million in state assistance.
- Numerous changes to the project were made during the development of the design in an effort to address concerns of the neighborhood.
- A number of environmentally friendly, green/high performance features are incorporated into the design. In fact, the Town was awarded the maximum number of incentive points by the MSBA for green. With more than 34 points on the MA-CHPS scorecard, the building will be the equivalent of LEED silver.

In terms of financing the project and the Town's ability to afford a \$17+ million share of the project, the projected level of debt service fits within the Town's CIP Financing Policies. In particular, (1) the totality of CIP funding remains within the 5.5% of prior year net revenue policy and (2) the level of debt recommended falls within all of the Town's debt management policies.

Each annual update of the Town's CIP since CY2006 included the Runkle project at \$26.4 million. Prior to that, it had been in the CIP for years. When the first set of cost estimates were provided to the RSBC back in the Spring, they exceeded \$32 million. In an effort to reduce costs, the RSBC adopted \$4 million of value engineering options, bringing the budget down to \$28.5M. In July, the estimate was increased to \$29.1 million after the chosen design option was adopted. In mid-August, the estimate increased to \$29.8 million, and the RSBC adopted approximately \$750,000 of value engineering options to bring the estimate back down to \$29.1 million. The Town is able to afford a \$29.1 million project versus a \$26.4 million project due to a couple of factors that come into play:

1. the interest rate assumption for a 20-year bond issuance used in the most recent Debt Management Plan, which guides the split of the CIP's 5.5% policy, was 5.25%. While the Town is still approximately 18 months away from borrowing for the construction component of the project, the Town's finance team is comfortable reducing the assumption to 4.75% in light of the current interest rate environment. This allowed the Town to increase the total project budget to \$27.7 million without negatively impacting the CIP.
2. recognizing the scope of the project has changed since the \$26.4 million figure was used in the CIP, it was determined that additional debt service capacity should be considered for allocation to this project. After much analysis and discussion, in August, the Town Administrator presented the RSBC with the concept of increasing the debt service capacity for the Runkle project by \$100K, while staying within the annual level of 5.5% of revenue. This allowed the Town to increase the total project budget to \$29.1 million. Since that time, we have learned that our reimbursement rate will be 41.58%, so the impact on the CIP of going to \$29.1 million will be less than \$100,000.

The critical nature of this project cannot be understated. Every available space has been transformed into classroom space -- even spaces, such as custodial closets, that should not be used as classroom space. In addition, the financing is in place: the MSBA is paying for 40 cents of every dollar; the interest rate environment is friendly for a Aaa-rated community to issue debt; and the bidding climate is quite favorable. The Board of Selectmen recommends **FAVORABLE ACTION**, by a vote of 4-0 taken on October 20, 2009, on the vote offered by the Advisory Committee under Part 3 of Article 4.

**ROLL CALL VOTE:**

Favorable Action

Daly

DeWitt

Benka

Goldstein

Carlton St. Footbridge

The Board has reviewed and discussed the issues surrounding the Carlton St. Footbridge but has not taken a vote yet on this section of Article 4. The Board will include its recommendation in a Supplemental Report that will be sent to Town Meeting Members prior to the commencement of Town Meeting.

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ADVISORY COMMITTEE'S RECOMMENDATIONBACKGROUND:

Article 4 was submitted by the Town Administrator's office in order to address a number of budget issues which have arisen since Town Meeting met in the Spring of 2009 and FY 2010 began.

In August 2009, Town Meeting availed itself of the ability to institute local option taxes afforded under the FY 2010 State Budget and adopted a 0.75 percent local option meals tax and increased the existing local option lodging tax by 2.00 additional percentage points. The first part of Article 4 would appropriate all funds collected under the two local option taxes to Brookline's outstanding pension deficit.

The final part of Article 4 is a vote to make alterations to the FY 2010 budget in order to bring it back into balance. Much of the deficit reflects decreased local aid – a trend that is likely to continue for at least several more years.

The Town based its original FY2010 budget proposal on the then most up-to-date numbers that were available (namely, the Governor's budget proposal—H. 2). The final Conference Committee budget passed by the legislature, however, differed substantially from the budget the Governor submitted to the legislature for approval. For these reasons the Town must now revise its current operating budget to bring it into balance. Currently, the Town's budget is out of balance by \$1,018,973. This amount of money must either be cut from, or transferred within, Brookline's budget.

In order to bring the Town's FY2010 back into balance it is proposed that Town Meeting do the following:

- Reduce the Purchasing budget by \$100,000
- Reduce the Town's so-called "Contingency Reserve" by \$620,000.
- Appropriate \$75,000 from the remaining "Contingency Reserve" to fund the recently agreed to collective bargaining agreements with the Police Union.
- Appropriate the remaining \$265,000 from the "Contingency Reserve" to the Town's Pension line-item (thereby exhausting the Town's "Contingency Reserve Fund").
- Reduce the schools budget by \$130,684.
- Reduce the Group Health Insurance line-item by \$191,502.

- Revise the Water and Sewer Enterprise Fund's budget.

DISCUSSION:

When presenting Article 4 to the Advisory Committee Mr. Cronin explained that when created the Town's budget was premised on the then most up-to-date figures available. However, during the State's budget process significant changes were made to the State's budget because of a revision to the State's Consensus Revenue Estimate. The marked decline in the amount of tax receipts the State expected to receive during the 2010 fiscal year led the legislature's Conference Committee budget to make severe cuts to several accounts which, in turn, led to decreases in the amount of money Brookline actually received from the state when compared to what Brookline expected to receive. The net result is that the FY 2010 budget is running at a deficit and thus must to be revised.

Mr. Cronin explained that Brookline's current budget deficit was specifically linked to moneys that the Town had relied upon from the State that did not materialize in the following areas: Chapter 70 funds, Unrestricted Government Aid, and Quinn Bill funds. In addition, direct grants to the Schools (e.g., Circuit Breaker) realized cuts, placing further pressure on the School budget. Mr. Cronin also explained that as a result of historically low interest rates the Town will receive less interest on the money it has on deposit. The result of all of these factors is the Town currently has an unbalanced budget.

A specific discussion of each of the proposed solutions was held.

The proposed \$100,000 reduction in the Purchasing budget will have no effect upon the Town's procurement of goods and services. In fact, the reduction in this section of the budget represents the savings that the Town has realized as a result of its switch to Voice Over IP (VOIP) phone service in May of 2009. Specifically, the \$100,000 savings is made possible because of Brookline's ability to cancel an existing phone maintenance contract.

The \$620,000 reduction in the Town's "Contingency Reserve" line-item is recommended because employee wage increases in FY10 are simply unaffordable in this cutback environment.

The appropriation of \$75,000 from the "Contingency Reserve" fund is necessary to settle the contract that the Town agreed to with the union representing its police officers.

The transfer of the remaining \$265,000 from the "Contingency Reserve" to the Town's pension line-item is not only a smart use of these funds, but also a necessary one to help prepare for the large increase in the pension line-item expected in FY12 as a result of the market losses in CY08.

The net reduction of the School Department's budget by \$130,684 represents the department's share of the million dollar plus deficit. Their share was actually close to \$299,124, but that was partially offset by the \$168,440 in benefit savings associated with personnel reductions made in their budget. In addition to this reduction, the state's

contribution to the Circuit Breaker program was reduced by approximately \$700,000 for Brookline. In order to close their budget deficit, the Schools will eliminate their “Contingency Reserve”.

Finally, the Water and Sewer Enterprise Fund budget is proposed to be revised as a result of the elimination of two vacant FTEs.

During debate of Article 4 members of the Advisory Committee discussed with Mr. Cronin the issue of how the cuts and transfers proposed would affect the ability of the Town to continue to deliver services to its citizens, however it was agreed that the proposed alterations would have no effect upon Town services. This is because of the choice to eliminate the “Contingency Reserve” rather than cutting back on services to the residents.

Mr. Cronin also explained the Town’s effort to address a pending pension liability due in 2012 by devoting every dollar received from the higher meals and hotel taxes to offset this liability (even though meals receipts are down due to the economic downturn). The Committee discussed other possible uses for these funds, but agreed ultimately that the proposed plan was best for the long-term financial health of the town.

**RECOMMENDATION:**

The Advisory Committee unanimously recommends FAVORABLE ACTON by a vote of 22-0 on Parts 1 and 2 of the vote presented at the end of this report.

**RUNKLE SCHOOL RENOVATION/ADDITION PROJECT**

**BACKGROUND:**

Article 4 (B) asks Town Meeting to approve a \$29,100,000 bond for the renovation and expansion of the Runkle School; bond authorization requires a 2/3 vote of Town Meeting.

The Runkle project has been anticipated in the “Future Years” category of the Town’s Capital Improvement Program since at least FY 2002. By FY 05, a \$7 million bonded project was forecast for FY 10; the description of the project not only identified the increasing enrollment at the school but also noted that “the location and footprint of the building may make it appropriate for the creation of additional capacity to allow for the modification of existing buffer zones.” In FY 07, the CIP projected a \$26.4 million undertaking that contemplated the creation of additional classrooms and a reconfigured cafeteria, library and other spaces. According to School Department records, Runkle’s enrollment has now increased to 517 students (501 in K-8, with the remainder in Pre-K) who are housed in a facility designed to accommodate about 420 children. Among Runkle’s current student body are those attending a district-wide program serving students on the Autism Spectrum. This program has expanded exponentially and is housed in insufficient spaces at the school.

As currently proposed, plans developed by the Design Partnership of Cambridge provide space for 560 students, thus relieving overcrowding at this facility, allowing families in

Runkle's core to send their children to Runkle (as opposed to Driscoll as is now sometimes the case), and providing one element of an evolving, larger plan to address the needs of the growing number of school age children in the district. MGT of America, Inc., author of the February 2009 School Facilities Master Plan, has projected that 535 students will be added district-wide in the next ten years. Of this number, 412 will be in grades K-8.

Over the past few years, the School Department has addressed the lack of space for Runkle's growing enrollment by:

- 1) Converting the original multi-purpose room, formerly used for performances and large meetings, into two classrooms and using the auditorium and stage at the Heath School for Runkle performances.
- 2) Instituting five lunch periods, with the first starting at 10:15 a.m.; and
- 3) Transforming former closets and janitorial storage areas into meeting spaces for small groups and for conferences.

Other ways to address overcrowding, such as transferring the Autism Program and/or adjusting the buffer zones, were considered and rejected by the School Department. In the case of the former, School personnel have stated that relocating the program to a different school would be costly and programmatically disruptive. In the case of the latter, the growing number of school-age children is a district-wide challenge, and changing buffer zones will not provide a long-term solution.

In the architects' plans for the renovated/expanded school, the building's systems will be upgraded, the existing gym will be converted into a multi-purpose room (with stage), a new gym will be added, more classrooms (three sections per grade) and conference spaces will be created, space for the Extended Day program, much of which is to be shared, will be provided, cafeteria space will be enlarged, and a newly enclosed courtyard will provide outdoor learning space. The result will be an addition of approximately 40,000 square feet to the existing 65,000 square foot building.

According to the current design development and construction schedule, work will begin on the site shortly after the end of the school year in June 2010. Students and staff will use the old Lincoln School for two academic years, returning to a renovated Runkle in September 2012.

#### DISCUSSION:

##### 1. Finances

Bonded Funds - The Runkle project is one of 15 school projects in Massachusetts that has recently been approved for state funds under the new guidelines and procedures of the Massachusetts School Building Authority (MSBA). The MSBA's dedicated funding source is 1% of the annual sales tax, with a \$500 million annual MSBA grant cap, according to the Massachusetts Municipal Association's website. On September 30<sup>th</sup>, 2009, the MSBA voted to approve the project at its schematic design stage and to reimburse the Town for 41.58% of all eligible costs, on the condition that bond authorization is approved by Town Meeting within 120 days of September 30th. State reimbursement of eligible costs will result in a total MSBA grant of approximately \$11,800,000. The non-reimbursable expenses amount to \$1,324,253 and represent line

items that are categorically ineligible such as transporting students to the Old Lincoln School during the renovations as well as soft costs in excess of 20% of construction and site costs in excess of 8% of building costs. The Town has already started to draw down its reimbursement from the MSBA for feasibility and schematic design phase costs.

A number of options were produced during the schematic design phase of the Runkle project. The preferred plan, known as Option B3, was value engineered twice in order to bring down costs. Value engineered changes included unit ventilators instead of a central heating/ventilating system; elimination of some small classroom spaces and gym bleachers; replacement of a glass "curtain wall" with a storefront window system; plastic laminate-faced cabinets instead of hardwood, and the substitution of one larger concrete slab under the gym floor for two smaller slabs.

The proposal that was presented to and accepted by the MSBA carries a \$29.1 million price tag, of which \$23,876,757 is construction costs including sitework and bidding and construction contingencies. In addition to construction costs, the budget includes Furniture/Equipment/Appliances; Educational Technology; Playground Equipment/Surfacing; and Indirect Expenses, including \$1,601,000 in architectural and engineering fees covering the design development through contract administration phases.

Additional funding - Additional dollars allocated for the project that are not part of the \$29.1 million bond include \$600,000 for feasibility and schematic design, voted by Town Meeting in November 2008. The MSBA will reimburse 41.58% of the funds expended for these purposes. Additionally, there will be an estimated \$75,000 - \$150,000 outlay for the implementation of an on-street parking program and other measures aimed at addressing transportation, traffic, and student safety at Runkle. These funds will come from the Town's FY 11 and FY 12 CIP budgets for streets, sidewalks, and traffic calming line items. If final cost estimates for these traffic-related items exceed \$150,000, funds will be sought through a separate line item in the FY 12 CIP budget.

Cost estimates for the bonded portion of this project have changed from \$26.4 million, a figure predicated on a project that included 4-6 classrooms, to a May 2009 increased estimate of \$32 million, to a twice value-engineered decreased estimate of \$28.5 million, to the current estimate of \$29.1 million reached after Schematic Design Option B3 was chosen. According to Town Hall staff, if the interest rate paid by the Town, calculated at 5.25% in the most recent Debt Management Plan, is ultimately set at 4.75%, the project budget can increase to from the FY 09 \$26.4 million figure to \$27.7 million without impacting the CIP. Funding the remaining \$1.4 million can be addressed by increasing the debt service capacity for the Runkle project with a reduction of approximately \$50,000 - \$75,000 in the CIP "pay-as-you-go" budget for several years.

Future Costs - A larger school with three sections of each grade will require additional staff and other increases in the School department's operating budget. There will also be increased costs in energy, custodial care, and maintenance. Although the repair budget should not increase immediately after construction, heating, cooling, and electrical bills will increase as will those for custodial maintenance and cleaning. While the School Department does not yet have precise projected costs, it has provided the Advisory

Committee with figures for the renovated Lawrence School, now 95,000 square feet. (Runkle's projected size is some 10,000 square feet larger). Based on the Lawrence model, the increase in energy costs will be approximately \$73,000 and the increase in custodial costs will be approximately \$30,000. A number of energy saving approaches and devices have been incorporated into the plans for Runkle, but recent building code requirements may offset some of the financial savings, as demonstrated in the recently renovated Health Department building.

## 2. Green Building

Calling for a number of "green" features, Runkle building plans are a Mass CHPS (Collaborative for High Performance Schools) equivalent of LEED Silver. Green features include a more energy-efficient boiler and heating system, low-flow plumbing features, white roof, motion-sensitive light switches, and possibly solar panels. The Runkle Building Committee is both researching the possibility of leasing solar panels and identifying grant monies for their purchase. Even if there are insufficient funds to install solar panels during the renovations, plans for the roof will allow their installation at a later time.

## 3. Parking, Traffic and Pupil Safety

Parking, traffic, and student safety, particularly in instances of pick-ups and drop-offs, are important issues related to the Runkle project. DPW's Transportation Division and the Town's Transportation Board have developed an on-street parking plan intended to contribute to student safety by keeping parked cars away from the immediate proximity of the school, thereby leaving pick-up and drop-off areas in front of the school car-free. These pick-up and drop-off areas will be well marked.

In addition, Town staff have reviewed a conceptual traffic calming plan developed by the Runkle project's traffic consultants and will use it as a basis to develop a Safety Improvement Plan that will likely focus on the intersections of Druce/Chesham/Buckminster; Druce/Dean; Druce/Clinton; Clinton/Dean; and Dean/Clark. In addition to improving pedestrian access and safety, the Safety Improvement Plan is intended to improve vehicle sightlines and traffic flow through the use of bulb-outs and curb extensions, reconfiguration of intersections to create more of a "T" at intersecting roadways, installation of new ADA compliant ramps, "Pedestrian Crossing" signs, pavement markings, and parking restrictions.

## 4. Growing Student Population

During the public hearings on Article 4 (B), one member of the public expressed a concern that there does not appear to be a system-wide plan to address the expanding school age population and that the State's reimbursement program might be driving the Town to fund a solution to an immediate need without knowing how solutions to the larger problem of insufficient capacity will be funded.

Town Meeting members may recall approving three CIP appropriations in the past few years that reflect recognition of growing public school enrollment. A total of \$800,000 from FY 08 and FY 10 CIP funds were voted to implement short-term steps to address space needs during the next few years while \$100,000 in the FY 08 CIP was voted to

fund a School Facilities Master Plan. The Plan, prepared by MGT of America, Inc. and distributed in February 2009, includes a capacity and utilization analysis, facility assessments, and a number of recommendations, including the expansion of existing schools to resolve capacity issues. Representatives from the Board of Selectmen, Selectmen's staff, School Committee, School Administration, Building Commission, and Advisory Committee have met to discuss the findings of the Master Plan and to explore a range of options, including reconfiguring existing space at other K-8 schools, consolidating K and Pre-K programs in an Early Childhood Center, and building additional permanent classrooms at the Heath School. It is expected that there will be more discussions generating additional ideas in the near future.

### 5. Zoning

In some discussions of Article 4(B), aesthetic concerns, objections from abutter(s) and zoning issues have been lumped together, potentially hindering a clear understanding of the situation facing the Runkle School Building Committee. While resolution of the zoning issues related to Runkle's renovations and expansion is not within the Advisory Committee's purview, the Advisory Committee believes that the issues which have been identified are not frivolous, affect all properties in Town potentially covered by the Dover Amendment, and cannot be dismissed as merely a tactic of disgruntled abutters.

Questions regarding the current interpretation of Section 5.08 of the Zoning by-law have been raised both in writing and at public meetings and hearings. It has been argued that, historically, a different interpretation (and therefore a different method of calculation) has been used to determine Floor Area Ratio and the allowable square footage for uses covered by the Dover Amendment. Based on this argument, in order to comply with the Zoning by-law, the Town would need to reduce the Gross Floor Area and size of the proposed school to bring it into compliance or to seek a special permit under 5.08(b), which allows the Zoning Board of Appeals to allow "further modifications in the dimensional requirements in Article V as applied to Uses 9 and 10 [places of worship, other religious uses and educational uses exempt from use regulation by the Dover Amendment] to the extent necessary to allow reasonable development of such a use in general harmony with other uses permitted and as regulated in the vicinity."

Permitting the Runkle project will likely involve two sequential processes, the first of which is outlined in Section 9.11 of the Zoning by-law and is already underway. Section 9.11 requires that a site plan for an educational use project that has a major impact on a surrounding residential neighborhood go through an administrative review procedure that is overseen by the Planning Director. A second process will be required if, under Section 5.08, a special permit for the project is sought. This process will involve the Planning Board's review and an advisory report, followed by the Zoning Board of Appeals review and decision.

There are legal requirements regarding public notice and waiting periods as the Runkle plans make their way towards implementation, but the Advisory Committee urges Town departments and agencies to move forward as expeditiously as possible since it would be in everyone's best interest to bring the zoning matter to the Board of Appeals at the earliest allowable date.

It is important for Town Meeting to be aware of a potential zoning dispute. However, this warrant article only seeks bonding authority for the Runkle School project. The article does not consider, and Town Meeting can not address, zoning issues.

Summary

At multiple public meetings and hearings, there has been consistent and widespread support for the Runkle project. While sometimes acknowledging that the current building site is small, parents and other members of the public have stressed the need for performance space, more classrooms, and a larger cafeteria, noting that too often teaching and learning are now taking place in substandard spaces.

In past years, it has been the practice of Town Meeting to vote capital funds for major construction projects in three phases: Feasibility, Design, and Construction. Current MSBA regulations create a different framework; consequently Article 4 asks Town Meeting to approve funds that will finance the remaining phases of the Runkle project from design development through construction completion. In addition, it has been stated by Town officials that the MSBA will not consider any changes to the design that it accepted and on which it voted to reimburse the Town 41.58% of eligible costs. How the MSBA would respond to any changes that might be requested by the ZBA as part of the permitting process remains to be seen. What is certain is that Town Meeting must authorize bonding authority in order for Brookline to secure State funds for this project.

The Advisory Committee believes that Town Meeting should approve bonding \$29.1 million for the Runkle project in order to 1) execute the Project Funding Agreement with the MSBA, and 2) allow the design development phase and subsequent preparation of bid documents to move forward. However, it also recognizes that the zoning questions that have been raised are, in the words of Article 4 proponents, "legitimate." If approved, the following recommended vote would fund scheduled design work and studies, but unless zoning issues are resolved, it would not permit the expenditure of any other funds without approval by both the School Committee and the Board of Selectmen. If, as a result of the permitting process, design changes became necessary, then some of the money approved for design development could be at risk, but that risk and those dollars are far less than those that would result from voting down this article.

RECOMMENDATION:

By a unanimous vote, the Advisory Committee recommends FAVORABLE ACTION on Part 3 of the vote presented at the end of this report.

**CARLTON STREET FOOTBRIDGE PROJECT**

The Advisory Committee has reviewed and discussed the issues surrounding the Carlton St. Footbridge but has not taken a vote yet on this section of Article 4. The Committee will include its recommendation in a Supplemental Report that will be sent to Town Meeting Members prior to the commencement of Town Meeting.

**RECOMMENDED VOTE:**

VOTED: That the Town:

1. Amend the FY2010 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
4. Finance Department	\$ 3,049,791	(\$100,000)	\$ 2,949,791
21. Collective Bargaining – Town	\$ 960,000	(\$885,000)	\$ 75,000
22. Schools	\$68,974,271	(\$130,684)	\$68,843,587
23. Employee Benefits	\$40,270,929	\$773,649	\$41,044,578

2. by amending Section 7 (Water and Sewer Enterprise Fund) of Article 8 of the 2009 Annual Town Meeting so it reads as follows:

**7.) WATER AND SEWER ENTERPRISE FUND:** The following sums, totaling \$23,953,371, shall be appropriated into the Water and Sewer Enterprise Fund, and may be expended under the direction of the Commissioner of Public Works for the Water and Sewer purposes as voted below:

	<u>Water</u>	<u>Sewer</u>	<u>Total</u>
Salaries	1,850,202	274,851	2,125,053
Purchase of Services	102,968	186,326	289,294
Supplies	97,815	21,000	118,815
Other	6,400	0	6,400
Utilities	136,297	0	136,297
Capital	141,400	138,300	279,700
Intergovernmental	5,242,610	11,000,000	16,242,610
Debt Service	1,432,218	1,040,135	2,472,352
Reserve	<u>106,169</u>	<u>130,417</u>	<u>236,585</u>
Total Appropriations	9,116,078	12,791,028	21,907,107
Indirect Costs	<u>1,606,944</u>	<u>439,320</u>	<u>2,046,264</u>
Total Costs	10,723,023	13,230,348	23,953,371

Total costs of \$23,953,371 to be funded from water and sewer receipts with \$2,046,264 to be reimbursed to the General Fund for indirect costs.

3. That the Town appropriate the sum of \$29,100,000 for remodeling, renovating, reconstructing or making extraordinary repairs to 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, which school facility shall have an anticipated useful life as an educational facility for the instruction of school children for at least 50 years, said sum to be expended under the direction of the **Building Commission, with the approval of the School Committee and Board of Selectmen**, and to meet said appropriation the Treasurer, is authorized to borrow said sum under M.G.L. Chapter 44, or any other enabling authority; 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 project costs the Town incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town; provided further that any grant that the Town may receive from the MSBA for the Project shall not exceed the lesser of (1) 41.58% of eligible, approved project costs, as determined by the MSBA, or (2) the total maximum grant amount determined by the MSBA; and that the amount of borrowing authorized pursuant to this vote shall be reduced by any grant amount set forth in the Project Funding Agreement that may be executed between the Town and the MSBA, **provided, however, that no funds, except those required for design work or studies, shall be expended until such time as zoning matters related to the project have been resolved, unless the expenditure of such funds has been approved by both the School Committee and Board of Selectmen.**

**XXX**

**FY10 AMENDED BUDGET - TABLE 1**

		FY07 ACTUAL	FY08 ACTUAL	FY09 BUDGET	FY10 ORIG BUDGET	PROPOSED AMENDMENTS	FY10 AMENDED BUDGET	\$\$ CHANGE FROM FY09	% CHANGE FROM FY09
<b>REVENUES</b>									
	Property Taxes	128,871,387	133,849,950	147,273,069	152,552,834		152,552,834	5,279,765	3.6%
	Local Receipts	23,281,093	24,524,074	20,475,664	20,217,125	300,000	20,517,125	41,461	0.2%
	State Aid	18,023,846	18,946,277	19,623,691	17,157,180	(618,880)	16,538,300	(3,085,391)	-15.7%
	Free Cash	5,387,435	3,814,792	5,954,963	7,053,295		7,053,295	1,098,332	18.4%
	Overlay Surplus	950,000	850,000	0	1,505,000		1,505,000	1,505,000	#DIV/0!
	Other Available Funds	7,998,053	7,753,612	5,986,332	5,938,101	(23,062)	5,915,039	(71,294)	-1.2%
	<b>TOTAL REVENUE</b>	<b>184,511,814</b>	<b>189,738,706</b>	<b>199,313,719</b>	<b>204,423,534</b>	<b>(341,942)</b>	<b>204,081,593</b>	<b>4,767,874</b>	<b>2.4%</b>
<b>EXPENDITURES</b>									
<b>DEPARTMENTAL EXPENDITURES</b>									
	1 . Selectmen	583,148	622,009	615,989	600,160		600,160	(15,828)	-2.6%
	2 . Human Resources	400,705	478,335	485,892	512,008		512,008	26,115	5.4%
	3 . Information Technology	1,411,216	1,362,103	1,416,878	1,421,058		1,421,058	4,180	0.3%
	4 . Finance Department	2,923,699	2,934,091	2,997,394	3,049,791	(100,000)	2,949,791	(47,603)	-1.6%
	5 . Legal Services	690,527	772,840	688,792	748,648		748,648	59,857	8.7%
	6 . Advisory Committee	18,507	21,940	19,439	19,615		19,615	176	0.9%
	7 . Town Clerk	551,363	525,170	577,007	480,094		480,094	(96,913)	-16.8%
	8 . Planning and Community Development	663,106	644,375	715,849	627,081	0	627,081	(88,768)	-12.4%
	9 . Police	13,708,009	13,636,806	14,724,421	14,381,212		14,381,212	(343,209)	-2.3%
	10 . Fire	11,719,128	12,125,596	12,513,780	12,206,045		12,206,045	(307,735)	-2.5%
	11 . Building	6,059,407	6,542,701	6,826,827	6,982,354		6,982,354	155,526	2.3%
(1)	12 . Public Works	12,309,177	13,178,799	12,913,639	12,879,990	0	12,879,990	(33,649)	-0.3%
	<i>a. Administration</i>	860,631	868,055	902,881	910,739		910,739	7,858	0.9%
	<i>b. Engineering/Transportation</i>	811,671	849,680	879,764	924,628		924,628	44,864	5.1%
	<i>c. Highway</i>	4,597,800	4,723,284	4,893,195	4,767,067		4,767,067	(126,128)	-2.6%
	<i>d. Sanitation</i>	2,785,605	2,870,421	2,726,872	2,816,942		2,816,942	90,070	3.3%
	<i>e. Parks and Open Space</i>	2,670,725	2,694,138	3,143,199	3,092,487		3,092,487	(50,712)	-1.6%
	<i>f. Snow and Ice</i>	582,745	1,173,221	367,729	368,127		368,127	399	0.1%
	13 . Library	3,366,890	3,398,242	3,473,208	3,465,937		3,465,937	(7,270)	-0.2%
	14 . Health	1,055,741	1,024,069	1,081,115	1,099,574		1,099,574	18,459	1.7%
	15 . Veterans' Services	203,128	203,829	214,521	241,409		241,409	26,888	12.5%
	16 . Council on Aging	718,469	746,900	778,480	762,772		762,772	(15,708)	-2.0%
	17 . Human Relations	139,109	143,236	146,939	101,870		101,870	(45,069)	-30.7%
	18 . Recreation	1,024,380	992,864	943,196	972,808		972,808	29,611	3.1%
(2)	19 . Energy Reserve	153,167	0	0	0		0	0	#DIV/0!
(2)	20 . Personnel Services Reserve	1,416,017	750,000	1,282,281	750,000		750,000	(532,281)	-41.5%
(2)	21 . Collective Bargaining - Town	1,100,000	1,600,000	3,042,804	960,000	(885,000)	75,000	(2,967,804)	-97.5%
	<i>Subtotal Town</i>	57,545,709	59,353,905	62,415,647	62,262,426	(985,000)	61,277,426	(1,138,221)	-1.8%
	22 . Schools	60,671,696	62,924,864	68,021,240	68,974,271	(130,684)	68,843,587	822,347	1.2%
	<b>TOTAL DEPARTMENTAL EXPENDITURES</b>	<b>118,217,405</b>	<b>122,278,769</b>	<b>130,436,887</b>	<b>131,236,696</b>	<b>(1,115,684)</b>	<b>130,121,012</b>	<b>(315,874)</b>	<b>-0.2%</b>
<b>NON-DEPARTMENTAL EXPENDITURES</b>									
(1)	23 . Employee Benefits	32,289,078	34,564,193	38,307,598	40,270,929	773,649	41,044,578	2,736,980	7.1%
(3)	<i>a.) Pensions</i>	10,129,853	11,256,221	11,651,618	12,293,565	965,151	13,258,716	1,607,098	13.8%
	<i>b.) Group Health</i>	19,011,273	19,855,771	23,084,980	24,245,364	(191,502)	24,053,862	968,882	4.2%
(3)	<i>c.) Retiree Group Health Trust Fund</i>	0	0	0	250,000		250,000	250,000	#DIV/0!
	<i>d.) Employee Assistance Program (EAP)</i>	24,568	24,968	28,000	28,000		28,000	0	0.0%
	<i>e.) Group Life</i>	152,721	151,643	161,000	162,000		162,000	1,000	0.6%
	<i>f.) Disability Insurance</i>	0	12,813	16,000	16,000		16,000	0	0.0%
(3)	<i>g.) Worker's Compensation</i>	1,450,000	1,600,000	1,550,000	1,350,000		1,350,000	(200,000)	-12.9%
(3)	<i>h.) Public Safety IOD Medical Expenses</i>	245,000	250,000	300,000	300,000		300,000	0	0.0%
(3)	<i>i.) Unemployment Compensation</i>	125,000	166,000	166,000	166,000		166,000	0	0.0%
	<i>j.) Medical Disabilities</i>	16,643	15,718	30,000	30,000		30,000	0	0.0%
	<i>k.) Medicare Coverage</i>	1,134,020	1,231,059	1,320,000	1,430,000		1,430,000	110,000	8.3%
(2)	24 . Reserve Fund	603,861	774,834	1,746,546	1,834,186		1,834,186	87,640	5.0%
	25 . Stabilization Fund	22,248	0	0	0		0	0	#DIV/0!
	26 . Liability/Catastrophe Fund	225,039	254,629	297,476	1,443,397		1,443,397	1,145,921	385.2%

		FY07 ACTUAL	FY08 ACTUAL	FY09 BUDGET	FY10 ORIG BUDGET	PROPOSED AMENDMENTS	FY10 AMENDED BUDGET	\$\$ CHANGE FROM FY09	% CHANGE FROM FY09
	27 . General Insurance	275,989	276,146	279,490	286,198		286,198	6,708	2.4%
	28 . Audit/Professional Services	196,148	99,433	138,987	138,987		138,987	0	0.0%
	29 . Contingency Fund	15,796	11,806	15,000	15,000		15,000	0	0.0%
	30 . Out-of-State Travel	2,260	1,979	3,000	3,000		3,000	0	0.0%
	31 . Printing of Warrants & Reports	16,805	14,487	20,000	20,000		20,000	0	0.0%
	32 . MMA Dues	11,389	10,959	11,532	11,820		11,820	288	2.5%
	<i>Subtotal General</i>	<i>765,674</i>	<i>1,444,273</i>	<i>2,512,031</i>	<i>3,752,588</i>	<i>0</i>	<i>3,752,588</i>	<i>1,240,557</i>	<i>49.4%</i>
(1)	33 . Borrowing	14,376,306	13,824,443	12,374,047	12,572,215	0	12,572,215	198,168	1.6%
	<i>a. Funded Debt - Principal</i>	<i>9,696,587</i>	<i>9,432,797</i>	<i>8,218,816</i>	<i>8,536,243</i>		<i>8,536,243</i>	<i>317,427</i>	<i>3.9%</i>
	<i>b. Funded Debt - Interest</i>	<i>4,582,344</i>	<i>4,354,324</i>	<i>3,978,698</i>	<i>3,686,572</i>		<i>3,686,572</i>	<i>(292,126)</i>	<i>-7.3%</i>
	<i>c. Bond Anticipation Notes</i>	<i>55,593</i>	<i>0</i>	<i>116,533</i>	<i>289,400</i>		<i>289,400</i>	<i>172,867</i>	<i>148.3%</i>
	<i>d. Abatement Interest and Refunds</i>	<i>41,782</i>	<i>37,322</i>	<i>60,000</i>	<i>60,000</i>		<i>60,000</i>	<i>0</i>	<i>0.0%</i>
	<b>TOTAL NON-DEPARTMENTAL EXPENDITURES</b>	<b>47,431,058</b>	<b>49,832,909</b>	<b>53,193,676</b>	<b>56,595,732</b>	<b>773,649</b>	<b>57,369,381</b>	<b>4,175,706</b>	<b>7.9%</b>
	<b>TOTAL GENERAL APPROPRIATIONS</b>	<b>165,648,463</b>	<b>172,111,678</b>	<b>183,630,562</b>	<b>187,832,429</b>	<b>(342,035)</b>	<b>187,490,394</b>	<b>3,859,831</b>	<b>2.1%</b>
	<b>SPECIAL APPROPRIATIONS</b>								
	34 . Reservoir Buildings (revenue financed)				75,000		75,000		
	35 . Technology Applications (revenue financed)				239,000		239,000		
	36 . Fire Apparatus Rehab (revenue financed)				350,000		350,000		
	37 . Fire Engine (\$475,000 = revenue financed, \$255,000 = overlay surplus, \$270,000 = capital project surplus)				1,000,000		1,000,000		
	38 . Street Rehabilitation (revenue financed)				1,720,000		1,720,000		
	39 . Traffic Calming Studies and Improvements (revenue financed)				100,000		100,000		
	40 . Sidewalk Repair/Reconstruction (revenue financed)				256,000		256,000		
	41 . Parking Meter System Replacement (capital project surplus)				60,000		60,000		
	42 . Parking Lot Rehabilitation (revenue financed)				120,000		120,000		
	43 . Playground Equipment, Fields, Fencing (revenue financed)				260,000		260,000		
	44 . Town/School Grounds Rehab (revenue financed)				120,000		120,000		
	45 . Tree Removal and Replacement (revenue financed)				150,000		150,000		
	46 . School Furniture Upgrades (revenue financed)				25,000		25,000		
	47 . Town/School Asbestos Removal (revenue financed)				50,000		50,000		
	48 . Town/School ADA Renovations (revenue financed)				50,000		50,000		
	49 . Town/School Building Security / Life Safety (revenue financed)				100,000		100,000		
	50 . Town/School Energy Conservation Projects (revenue financed)				105,572		105,572		
	51 . Town/School Energy Management System (revenue financed)				100,000		100,000		
	52 . Town/School Roof Repair / Replacement (\$125,000 = revenue financed, \$500,000 = capital project surplus)				625,000		625,000		
	53 . Pierce School Auditorium - Design (revenue financed)				75,000		75,000		
	54 . Classroom Capacity (revenue financed)				400,000		400,000		
	55 . Newton St. Landfill Settlement (\$1,250,000 = overlay surplus, \$2,030,000 = revenue financed)				3,280,000		3,280,000		
	56 . Newton St. Landfill - Corrective Action (bond)				4,275,000		4,275,000		
	57 . Town Hall / Main Library Garage Repair & Driveway Improvements (bond)				1,200,000		1,200,000		
	58 . Runkle School Renovation / Addition (bond)						29,100,000		
	59 . Carlton St. Footbridge (bond)						1,400,000		
(4)	<b>TOTAL SPECIAL APPROPRIATIONS</b>	<b>7,874,562</b>	<b>5,928,000</b>	<b>8,575,746</b>	<b>9,260,572</b>	<b>0</b>	<b>9,260,572</b>	<b>684,826</b>	<b>8.0%</b>
	<b>TOTAL APPROPRIATED EXPENDITURES</b>	<b>173,523,025</b>	<b>178,039,678</b>	<b>192,206,308</b>	<b>197,093,001</b>	<b>(342,035)</b>	<b>196,750,966</b>	<b>4,544,657</b>	<b>2.4%</b>
	<b>NON-APPROPRIATED EXPENDITURES</b>								
	Cherry Sheet Offsets	117,738	120,749	122,866	112,111	(7,224)	104,887	(17,979)	-14.6%
	State & County Charges	5,375,086	5,410,405	5,424,518	5,543,424	7,317	5,550,741	126,223	2.3%
	Overlay	1,451,262	1,858,148	1,535,026	1,650,000		1,650,000	114,974	7.5%
	Deficits-Judgments-Tax Titles	0	0	25,000	25,000		25,000	0	0.0%
	<b>TOTAL NON-APPROPRIATED EXPEND.</b>	<b>6,944,086</b>	<b>7,389,302</b>	<b>7,107,410</b>	<b>7,330,535</b>	<b>93</b>	<b>7,330,628</b>	<b>223,218</b>	<b>3.1%</b>
	<b>TOTAL EXPENDITURES</b>	<b>180,467,111</b>	<b>185,428,981</b>	<b>199,313,719</b>	<b>204,423,535</b>	<b>(341,942)</b>	<b>204,081,593</b>	<b>4,767,873</b>	<b>2.4%</b>
	<b>SURPLUS/(DEFICIT)</b>	<b>4,044,703</b>	<b>4,309,725</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		

(1) Breakdown provided for informational purposes.

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

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

(4) Amounts appropriated. Bonded appropriations are not included in the total amount, as the debt and interest costs associated with them are funded in the Borrowing category (item #33).

		<b>FY07 ACTUAL</b>	<b>FY08 ACTUAL</b>	<b>FY09 BUDGET</b>	<b>FY10 ORIG BUDGET</b>	<b>PROPOSED AMENDMENTS</b>	<b>FY10 AMENDED BUDGET</b>	<b>\$\$ CHANGE FROM FY09</b>	<b>% CHANGE FROM FY09</b>
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**FY10 AMENDED BUDGET - TABLE 2**

Department/Board/Commission	Personnel Services	Purchase of Services	Supplies	Other Charges/ Expenses	Utilities	Capital Outlay	Inter-Gov'tal	Snow & Ice	Debt Service	Personnel Benefits	Agency Total
Board of Selectmen (Town Administrator)	578,497	7,463	4,500	6,400		3,300					600,160
Human Resources Department (Human Resources Director)	256,646	228,587	8,500	15,900		2,375					512,008
Information Technology Department (Chief Information Officer)	864,971	490,432	22,336	27,550		15,769					1,421,058
Finance Department (Director of Finance)	1,886,930	988,839	39,502	17,783	1,011	15,727					2,949,791
Legal Services (Town Counsel)	511,541	126,442	2,200	104,700		3,765					748,648
Advisory Committee (Chair, Advisory Committee)	17,247	36	1,275	570		487					19,615
Town Clerk (Town Clerk)	398,974	67,270	9,000	1,600		3,251					480,094
Planning and Community Department (Plan. & Com. Dev. Dir.)	588,793	16,817	9,432	4,513		7,525					627,081
Police Department (Police Chief)	13,083,437	334,845	224,103	53,000	324,357	361,470					14,381,212
Fire Department (Fire Chief)	11,609,007	95,284	119,500	25,125	230,486	126,643					12,206,045
Public Buildings Department (Building Commissioner)	1,911,243	1,851,968	127,770	5,800	3,056,685	28,887					6,982,354
Public Works Department (Commissioner of Public Works)	7,184,246	2,902,776	625,972	35,150	1,043,719	700,000	20,000	368,127			12,879,991
Public Library Department (Library Board of Trustees)	2,482,871	141,702	503,454	4,502	281,307	52,101					3,465,937
Health Department (Health Director)	756,548	255,518	14,570	4,120	40,817	28,000					1,099,574
Veterans' Services (Veterans' Services Director)	121,116	2,718	650	116,200		725					241,409
Council on Aging (Council on Aging Director)	601,207	58,282	18,825	5,300	70,258	8,900					762,772
Human Relations/Youth Resources (Human Relations Dir.)	96,017	1,807	2,800	450		796					101,870
Recreation Department (Recreation Director)	678,334	89,179	40,703	2,400	131,312	30,880					972,808
School Department (School Committee)											68,843,587
<b>Total Departmental Budgets</b>	<b>43,627,626</b>	<b>7,659,964</b>	<b>1,775,092</b>	<b>431,063</b>	<b>5,179,952</b>	<b>1,390,601</b>	<b>20,000</b>	<b>368,127</b>			<b>129,296,016</b>
<b>DEBT SERVICE</b>											
Debt Service (Director of Finance)									12,572,215		12,572,215
<b>Total Debt Service:</b>									<b>12,572,215</b>		<b>12,572,215</b>
<b>EMPLOYEE BENEFITS</b>											
Contributory Pensions Contribution (Director of Finance)										13,028,716	13,028,716
Non-Contributory Pensions Contribution (Director of Finance)										230,000	230,000
Group Health Insurance (Human Resources Director)										24,053,862	24,053,862
Retiree Group Health Insurance - OPEB's (Director of Finance)										250,000	250,000
Employee Assistance Program (Human Resources Director)										28,000	28,000
Group Life Insurance (Human Resources Director)										162,000	162,000
Disability Insurance										16,000	16,000
Workers' Compensation (Human Resources Director)										1,350,000	1,350,000
Public Safety IOD Medical Expenses (Human Resources Director)										300,000	300,000
Unemployment Insurance (Human Resources Director)										166,000	166,000
Ch. 41, Sec. 100B Medical Benefits (Town Counsel)										30,000	30,000
Medicare Payroll Tax (Director of Finance)										1,430,000	1,430,000
<b>Total Employee Benefits:</b>										<b>41,044,578</b>	<b>41,044,578</b>
<b>GENERAL / UNCLASSIFIED</b>											
Reserve Fund (*) (Chair, Advisory Committee)				1,834,186							1,834,186
Liability/Catastrophe Fund (Director of Finance)				1,443,397							1,443,397
General Insurance (Town Administrator)		286,198									286,198
Audit/Professional Services (Director of Finance)		138,987									138,987
Contingency (Town Administrator)				15,000							15,000
Out of State Travel (*) (Town Administrator)		3,000									3,000
Printing of Warrants (Town Administrator)		10,000	10,000								20,000
MMA Dues (Town Administrator)				11,820							11,820
Town Salary Reserve (*) (Director of Finance)	75,000										75,000
Personnel Services Reserve (*) (Director of Finance)	750,000										750,000
<b>Total General / Unclassified:</b>	<b>825,000</b>	<b>438,185</b>	<b>10,000</b>	<b>3,304,403</b>							<b>4,577,588</b>
<b>TOTAL APPROPRIATIONS</b>	<b>44,452,626</b>	<b>8,098,149</b>	<b>1,785,092</b>	<b>3,735,467</b>	<b>5,179,952</b>	<b>1,390,601</b>	<b>20,000</b>	<b>368,127</b>	<b>12,572,215</b>	<b>41,044,578</b>	<b>187,490,393</b>

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

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ARTICLE 4

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BOARD OF SELECTMEN SUPPLEMENTAL RECOMMENDATION

The Board voted unanimously to recommend funding the restoration and reconstruction of the Carlton Street Footbridge. That action was taken under Article 5 and the Board's discussion is set forth under that article. Because funding is being recommended under Article 5, the Selectmen, by a vote of 5-0 on November 3, 2009, recommend NO ACTION on Article 4, Part C.

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ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

Article 4C and Article 5 both pertain to the question of appropriating funds for the Carlton Street Footbridge. The Advisory Committee therefore considered the two Articles simultaneously and is offering one report on both Articles.

BACKGROUND:

Article 4C was placed on the Warrant by the Board of Selectmen. The placeholder language called for the Town to appropriate \$1,400,000 for the reconstruction of the Carlton Street Footbridge.

Article 5 was placed on the Warrant by citizen petitioners Rob Daves and Bob Schram. It called for the Town to appropriate \$1,400,000 for the restoration of the Carlton Street entrance to Riverway Park and to carry out the project in accordance with various documents issued by the Commonwealth.

The Carlton Street Footbridge was built in 1894 and is owned by the Town of Brookline. One entrance to the footbridge is located at the intersection of Carlton Street, Colchester Street, and Carlton Path. The bridge crosses the MBTA Green Line tracks from that intersection to its other entrance in Riverway Park. The bridge fell into disrepair after not being maintained adequately and has been closed since approximately 1976.

Between 1998 and 2003, the Carlton Street Footbridge inspired a vigorous debate between proponents of restoring the bridge and those who opposed restoration and, in some cases, advocated demolishing or relocating the bridge. The Board of Selectmen appointed 17 concerned citizens to a Carlton Street Footbridge Advisory Committee and subsequently appointed a Selectmen's subcommittee chaired by Gil Hoy. The Town commissioned several consultants to study the feasibility of restoration, historic

significance, funding strategies, accessibility issues, and the consequences of reopening the bridge.

In May 2003, the Annual Town Meeting voted to appropriate \$90,000 “for the restoration and reopening of the Carlton Street Footbridge in its current location and with necessary ADA compliance; provided, however, that the expenditure of such funds shall be contingent upon the receipt of outside funds for the remaining costs of such restoration.” Because estimates of the cost of restoring the bridge have increased since 2003, \$90,000 now represents less than 10% of the likely cost of restoration. The 2003 vote also made expenditure of the \$90,000 contingent on the Commonwealth funding its share of Phase I of the Muddy River Restoration Project, which it has done. (This project is discussed below.)

Since the 2003 Annual Town Meeting, the Commonwealth has continued to request that Brookline commit to restoration of the Carlton Street Footbridge.

*Why is the Carlton Street Footbridge on the Warrant for this Town Meeting?*

The Commonwealth (i.e., the Executive of Energy and Environmental Affairs) considers the Carlton Street Footbridge to be an essential component of the Muddy River Restoration Project (which includes historic restoration, habitat enhancement, water quality improvement, and flood control) and has required Brookline to restore the bridge. The Secretary of Environmental Affairs has made this clear in the April 16, 2002, Certificate on the Draft Environmental Impact Report (DEIR), the May 1, 2003, Certificate on the Final Environmental Impact Report (FEIR), and the April 1, 2005, Certificate on the Supplemental Final Environmental Impact Report (SFEIR), two of which specifically refer to third-party funding and offer to help Brookline to secure grants.

The Memorandum of Understanding (MOU) signed by a majority of the Board of Selectmen on July 14, 2009, specifies the responsibilities of the Commonwealth, City of Boston, and Town of Brookline with regard to the Muddy River Restoration Project. The MOU contains the following statement:

“The Town has authorized \$90,000 to date for restoration of the Carlton Street Footbridge and has committed to the schedule in Attachment A. The SFEIR requires that the Town demonstrate enforceable commitments with respect to the Carlton Street Footbridge. If the Town does not demonstrate enforceable commitments by December 31, 2009, the Commonwealth may terminate this MOU or may limit its participation or funding under the MOU.”

The requested “enforceable commitments” must take the form of an appropriation of funds by Town Meeting, because the Board of Selectman does not have the authority to appropriate such funds.

On October 7, 2009, the Office of Governor Deval Patrick issued a press release that noted that, “The Governor’s capital plan commits \$24 million for the state’s share of the Muddy River Project” and reiterated that, “Release of the state funds is contingent on the Town of Brookline voting at its fall town meeting to fund the restoration of the Carlton Street Footbridge, an historic bridge at the Muddy River that the Town is required to restore as a condition of the environmental approval for the Muddy River project.”

The actions that the Commonwealth would take in the absence of an enforceable commitment from Brookline are unclear. The Commonwealth could terminate the Muddy River Restoration Project, increase Brookline’s currently small share (\$1.625 million plus the cost of restoring the bridge) of the \$91 million overall cost of the project, or end or limit funding for the parts of the project that are of greatest interest to Brookline. (See below for more discussion of those parts of the project.)

Articles 4C and 5 are both intended to demonstrate an “enforceable commitment” to restore the Carlton Street Footbridge and to thereby enable the funds to be released for the Muddy River Restoration Project. Both Articles would appropriate funds for restoration of the bridge.

*What is the Muddy River Restoration Project?*

The Muddy River Restoration Project is a \$91 million collaborative project involving the Commonwealth of Massachusetts, the City of Boston, the Town of Brookline, and the U.S. Army Corps of Engineers. It includes “daylighting” the area in front of the Landmark Center so that the Muddy River will no longer flow underground there, dredging of the Muddy River in Riverway Park in Brookline, removal of sediment that has built up and created an island in Leverett Pond, removal of contaminated sediment from Willow Pond, and restoration of historic landscapes.

Benefits to Brookline from the project include elimination of the risk of flooding, restoration of the parks along the Muddy River, removal of sediment from Leverett Pond, and removal of contaminated sediment from Willow Pond. These benefits are substantial. Brookline Precincts 1, 3, 4, and 5 suffered severe flooding from the Muddy River in 1996 and 1998. The dredging of the Muddy River and other flood control measures would prevent similar future floods. The project also has important fiscal benefits to Brookline. Removal of sediment from Leverett Pond was estimated to cost over \$6 million in November 2000, including \$775,000 for replacement and mitigation plantings. Removal of contamination from Willow Pond and restoration of plantings there was then estimated to cost approximately \$2.1 million. (The eventual costs of each of these project components are uncertain; estimates may have increased due to inflation, but they could be reduced if the scope of work changes.) Because the contamination of Willow Pond is attributed to leakage of fuel oil from the former Town garage, Brookline would be liable for removing the contaminated sediment. Brookline would also be advised to remove the sediment from Leverett Pond, because that sediment has reduced the ability of the pond to hold water, thereby increasing the risk of flooding. (Because part of Leverett Pond is in Boston, Brookline might not need to pay the entire cost of

removing sediment from that pond, but it would have a strong interest in dredging the pond to reduce the risk of flooding in Brookline.) Last, but not least, the project would restore the landscaping and historic beauty of the sections of the Emerald Necklace in Brookline and along Brookline's border with Boston, reversing years of neglect of some sections of parkland.

In addition to restoring the Carlton Street Footbridge, Brookline would contribute \$1.625 million to the project and also would maintain the parks along the Muddy River in Brookline. The Town would thus receive significant benefits in return for a very modest contribution that represents a small percentage of the project's total cost of \$91 million. Most of the project would be paid for with state and federal funds. (Note that the \$91 million is an estimate from 2000 and includes capital costs, but not expenses for ongoing maintenance. Brookline's maintenance expenditures for the restored Muddy River parks are estimated at \$100,000 per year. The 2008 override included funds for this purpose.)

*What is the Historic Status of the Carlton Street Footbridge?*

Proponents and opponents of bridge restoration debate the historic status of the bridge. Frederick Law Olmsted drew up plans in 1890–92 that included a footbridge over the Boston and Albany railroad tracks at the end of Carlton Street. (The plans showed another footbridge over the tracks near Hawes Street.) Olmsted's plans included a curved pathway that met the Carlton Street Footbridge on the Muddy River side of the railroad tracks. He designed the landscaping in the park, including the islands in the river, to provide impressive vistas to those who entered the park by crossing the footbridge. Charles Beveridge, series editor of the Frederick Law Olmsted papers, concludes that "the Carlton Street entrance to the Muddy River park is a crucial 'missing link' in the Emerald Necklace, a feature that Olmsted carefully design to provide both convenient access and landscape amenity for many potential users of his park." (Letter to Nancy Daly, chair, Brookline Board of Selectmen, May 19, 2009.)

Opponents argue that Olmsted did not design the bridge and note that it is attributed to Alexis French, Brookline town engineer. Proponents reply that French placed the bridge according to plans prepared by Olmsted. They also note that the fact that Olmsted did not design the bridge is irrelevant. Olmsted generally did not design the bridges in parks that the Olmsted firm worked on, but instead selected other qualified individuals to design the bridges, including other bridges in Riverway Park, which were designed by Shepley, Rutan, and Coolidge, the successor firm to H.H. Richardson's architectural practice.

Differences of opinion over the role Olmsted played in the design of the bridge and the Carlton Street entrance to Riverway Park pale into insignificance in light of one key fact: The Commonwealth of Massachusetts (the EOEEA) has determined that the Carlton Street Footbridge is an important element in the historic landscape of the Muddy River and has required the Town of Brookline to restore the footbridge as a component of the Muddy River Restoration Project.

The April 16, 2002, Certificate of the Secretary of Environmental Affairs states:

“After review of the record, including the Master Plan, and supporting materials, and the opinion of MHC [Massachusetts Historical Commission], I find that the Carlton Street Footbridge is historically significant and is an integral component of the Olmsted Park System, and its eventual rehabilitation and reopening is an established part of the wider Emerald Necklace rehabilitation effort.”

*What about Accessibility?*

A restored and reopened bridge would need to be ADA-compliant, but the Town has the option of requesting a variance from the Massachusetts Architectural Access Board (MAAB) on grounds such as “the cost of compliance is excessive without and substantial benefit to persons with disabilities.” (The quotation is from the MAAB’s guide to requesting variances.)

The Town requested such a variance in 2005. The request was denied by the MAAB. The Town could have requested an adjudicatory hearing to present its case for a variance, but the Town waived its right to such a hearing, which is often requested by applicants.

The 2009 report from SEA Consultants includes drawings and the following estimates (in 2013 dollars) for bridge restoration with various types of access:

- No ramps or lifts (\$933,227)
- Inclined lifts (\$1,199,483)
- Vertical lifts (\$1,306,821)
- Ramps (\$1,376,393)

The ramps would extend to the east of the bridge, parallel to the MBTA tracks and at right angles to the main bridge structure.

Some have expressed concern that either form of lifts would not provide sufficient accessibility, because a key would be required to operate the lifts and the system might not be reliable.

The MBTA has requested that the bridge be raised to a height of 15’6” above the MBTA tracks from its current height of 14’1”. The SEA Consultants estimates and designs assumed that the bridge would be raised to a height of 15’. Peter Ditto of the Department of Public Works believes that the additional height would require extensions of no more than 10’ to the proposed ramps on each side of the bridge and that regarding the site might eliminate the need for an extension of 10’ on the river side of the bridge.

*What Work Would be Carried out if Town Meeting Votes this Appropriation?*

The appropriation of \$1,400,000 would fund restoration of the bridge structure, including installation of new footings and replacement of damaged, deteriorated, and missing elements of the bridge itself. It also would fund necessary ADA compliance, with the cost depending on whether lifts or ramps were chosen. The project also includes other work on the area around the bridge, such as new sidewalks that approach the bridge on both sides, trees and other plantings in Riverway Park and on Carlton and Colchester Streets, new streetlights, and a new fence along Chapel Street, Colchester Street, and Carlton Path.

*Would a Grant be Available to Fund Restoration of the Bridge?*

If the Town receives a grant for restoration of the Carlton Street Footbridge, it could reduce the \$1,400,000 million appropriation accordingly. The schedule attached to the July 14, 2009, MOU assumes that the Town would apply for and receive a grant. The application process would begin in 2009–2010 and the project would be completed in 2013.

The federal Transportation Enhancement Program (TEP) has been identified as a potential source of grant funding for the restoration of Carlton Street Footbridge. The TEP provides funding for various transportation projects that are not covered by traditional transportation funding programs. Projects that serve pedestrians, rehabilitation of historic transportation facilities (including bridges), landscaping and scenic beautification, are all specifically identified as potential candidates for TEP funding. The Metropolitan Area Planning Council (MAPC) reviews applications and forwards them to MassHighway (or its successor organization) for decisions.

The TEP can provide up to 90% of the costs of a project (80% federal and 10% state), which means that Brookline would have to provide matching funds for at least 10% of project costs.

Whether Brookline would receive TEP funding obviously depends on the outcome of the grant application process. Town officials have been optimistic, because the Footbridge appears to meet many of the criteria for TEP grants. The secretary of environmental affairs has offered to help the Town obtain a grant. The Town DPW is preparing to start that process and a decision probably would be made by April–June 2010. It is possible that a grant would not cover the entire cost of the project (excluding the local 10% match). TEP guidelines state that “a project may have eligible and non-eligible components.”

DISCUSSION:

The Advisory Committee voted unanimously to recommend a motion under Article 5 that includes these key provisions:

- Appropriation of up to \$1,400,000 for restoration and reconstruction of the Carlton Street Footbridge, to be raised by borrowing;

- Completion of this project by early 2013 (as specified in the schedule attached to the July 14 Memorandum of Understanding) if the Town receives a grant for 60% or more of the cost of restoration and reconstruction;
- Completion of this project on or before substantial completion of Phase 2 of the Muddy River Project if the Town does not receive a grant for at least 60% of the project's cost.

The Advisory Committee's discussion of Articles 4C and 5 focused on the following four factors, all of which influenced the precise form of the motion it voted unanimously to recommend: (1) Brookline's interest in seeing the Muddy River Project proceed; (2) Brookline's interest in ensuring that the Town benefits fully from the Muddy River Project; (3) the importance of using language that provides an "enforceable commitment"; and (4) the importance of formulating a motion that enjoys maximum support.

1. *Brookline's Interest in Seeing the Muddy River Project Proceed*

There are various arguments for supporting restoration of the Carlton Street Footbridge. Some advocates of restoration would support restoring the bridge on its own merits and without a grant. Others would prefer to restore the bridge only with grant funds. For others, the case for restoring the bridge becomes compelling when the bridge is viewed as a component of the Muddy River Restoration Project. Restoration of the bridge would enable Brookline to enjoy the many benefits of the Muddy River Restoration Project, including a reduced risk of flooding, removal of contamination and sediment from Willow and Leverett Ponds, and landscape restoration in the parks along the Muddy River. The prospect of receiving such benefits gives Brookline a strong incentive to restore the bridge.

Given that the secretary of energy and environmental affairs has stated that the restoration of the bridge is an integral part of the Muddy River Restoration Project and that funds for the project will not be released until Brookline makes an enforceable commitment to restore the bridge, it is in Brookline's interest to invest up to \$1.4 million in bridge restoration. The Advisory Committee recognized the Town's interest in enabling the Muddy River Project to start so that it can benefit residents of Brookline (e.g., by reducing the risk of flooding) and relieve pressure on the Town's budget (e.g., by ensuring that the Town does not have to pay for dredging Leverett or Willow Pond).

2. *Ensuring that Brookline Benefits Fully and "Gets the Benefit of the Bargain"*

The Muddy River Project offers benefits to Brookline that justify appropriation of \$1.4 million, but some of those benefits would not be received rapidly. Although the planned earlier phases of work on the project (e.g., daylighting the Muddy River in front of the Landmark Center) benefit Brookline, some of the key benefits to Brookline would result from work now planned for a later phase: dredging the Riverway, removing sediment from Leverett Pond, removing contamination from Willow Pond, and restoring the plantings and landscaping in the Brookline sections of the Emerald Necklace. The motion

recommended by the Advisory Committee anticipates a situation in which funds might not be available to complete this work or might not be available to complete it in the manner currently proposed. The July 14, 2009, MOU states that “no authorization exists on the part of the Commonwealth to fund costs and obligations of the non-federal sponsor in an amount greater than the \$24 million authorized in item 2000-2030 in Chapter 236 of the Acts of 2002.” There is similar language in the Project Partnership Agreement regarding federal funds for the U.S. Army Corps of Engineers.

It is difficult to assess the likelihood that the Muddy River Restoration Project will run out of funds before the work of greatest interest to Brookline is completed (Phase 2). The U.S. Army Corps of Engineers has a reputation for finishing projects that it starts. From an engineering and flood control standpoint, it would make little sense to do the work on the “downstream” but not the “upstream” segments on the Muddy River. On the other hand, dredging Willow Pond, because of its size, has no flood control benefit; park and ecosystem restoration are not needed at all for flood control; and that flood control efforts in the Upper Muddy River could be redesigned to include a narrow channel adequate for flood control rather than bank-to-bank dredging if there is a need to reduce project scope due to insufficient funds.

The recommended motion includes an amendment offered by Selectman Benka that is intended to ensure that Brookline “gets the benefit of the bargain” and that would delay release of the appropriated funds for restoring the Footbridge until contracts are signed for the portions of the Muddy River Restoration Project that would have the greatest benefit to Brookline. Restoration of the bridge would be completed on or before substantial completion of those portions of the Muddy River project. If a grant for 60% of the cost of the bridge restoration were received, these provisions would not apply and the Town would restore the bridge according to the schedule appended to the July 14, 2009, MOU.

3. *Using Language that Provides an “Enforceable Commitment”*

A key question regarding any motion to be offered was whether the Executive Office of Energy and Environmental Affairs (EOEEA) would regard it as an enforceable commitment. Town Counsel, Selectman Benka, and Tom Brady of the Department of Public Works consulted with EOEEA staff to determine whether various potential motions and amendments would satisfy the EOEEA’s request for an enforceable commitment.

In a November 3, 2009, email, Philip Griffiths, undersecretary for environment of the EOEEA, commented on a motion recommended by the Advisory Committee Ad Hoc Subcommittee on the Carlton Street Footbridge and recommended changes that would ensure that the motion would be regarded as an enforceable commitment. Those changes included deletion of the phrase “and a commitment to universal access” (regarding accessibility and ADA compliance); insertion of language to make clear that the Town’s appropriation was not limited to a 10% match for a grant; insertion of language to make clear that the Town could seek grants that would provide reimbursement after the Town

had incurred expenses; deletion of language that would specify that contracts for Phase 2 of the Muddy River Project would have to include “performance and payment bonds” before the Town would begin to restore the bridge; insertion of language that recognizes that some elements of Phase 2 of the Muddy River Project may change and that the Town should not limit its appropriation for the bridge if such changes take place; and deletion of the word “scheduled” to ensure that the motion states that restoration of the bridge will coincide with or precede substantial completion of Phase 2 of the Muddy River Project.

The changes requested by Undersecretary Griffiths did not fundamentally change the motion recommended by the Advisory Committee. Their most important effects were (1) to preclude more specific language on making the bridge accessible, and (2) to make more flexible the list of Muddy River Project Phase 2 projects that would “trigger” release of funds for the Carlton Street Footbridge.

Another issue that arose in discussions with EOEEA is whether the appropriation should be for “restoration” or “reconstruction” of the bridge. The Commonwealth has requested that the Town restore the bridge, but some of the work might be more accurately described as reconstruction. The motion voted thus includes both. Town Counsel has indicated that Bond Counsel approves this language.

4. *Supporting a Compromise that Can Command Wide Support*

Members of the Advisory Committee were concerned that having two Warrant Articles on the Carlton Street Footbridge might make it difficult for any motion to receive the necessary two-thirds majority to authorize an appropriation by bonding. It was possible to imagine scenarios in which no motion received a two-thirds majority, even though two-thirds of Town Meeting might support one or both motions.

The motion recommended by the Advisory Committee is supported by the petitioners of Article 5, other proponents of restoring the Carlton Street Footbridge, proponents of the Muddy River Project, individuals who have been skeptical of the benefits of restoring the Carlton Street Footbridge, Selectman Richard Benka, and many others. The Advisory Committee was impressed by the willingness of many of those involved to make the compromises necessary to guarantee that the motion would have wide support. In particular, two compromises were pivotal: (1) agreement on restoring the bridge according to the July 14, 2009, MOU schedule if the Town received a grant of at least 60% of the project’s costs; and (2) agreement on tying the start and completion of restoration to Phase 2 of the Muddy River Project if the Town does not receive a grant of at least 60%.

Political compromises and other attempts to resolve differences are often commendable and may be regarded as ends in themselves. In relation to Articles 4C and 5 and the topic of appropriating funds for the Carlton Street Footbridge, the compromises had two important effects. First, having a single motion with wide support makes it more likely that the motion will receive the necessary two-thirds vote in Town Meeting. Second, the broad support for the motion recommended by the Advisory Committee makes it more

likely that there will be a sufficient level of consensus as the hitherto contentious Carlton Street Footbridge process moves forward.

*The Question of Accessibility*

The Advisory Committee considered the question of whether and how to make the Carlton Street Footbridge accessible to all users, including those with disabilities or handicaps. The unanimous recommendation of the Advisory Committee's Ad Hoc Subcommittee on Articles 4C and 5 included the phrase "with necessary ADA compliance and a commitment to provide universal access." As noted above, this wording was rejected by the Commonwealth as "prescriptive" and amended to "with necessary ADA compliance," a phrase used in the 2003 Annual Town Meeting vote to appropriate \$90,000 for the Carlton Street Footbridge. The reference to "necessary ADA compliance" is consistent with the Commonwealth's requirement that the process of restoring the Carlton Street Footbridge include consultations with the Massachusetts Historical Commission and the Massachusetts Architectural Access Board and does not explicitly rule out the option of seeking a variance from the requirements of the Americans with Disabilities Act. A number of Advisory Committee members, however, feel that the Town should not seek a variance from the ADA and that the footbridge should be made accessible via ramps, thereby offering the benefits of the reopened bridge to the greatest number of park users and visitors.

In discussing accessibility, some proponents of bridge restoration have stated that making the footbridge accessible would have a negative visual impact on the park and would compromise its historical topography as well as the historicity of the bridge. They have noted that a fully accessible entrance to the park now exists at the Longwood MBTA station.

In response, it was observed that the route to the Longwood station includes a long, steep hill and that an oft-cited argument for reopening the Footbridge is to afford the unique view of the park that is offered from the bridge, an opportunity that should be available to everyone. In addition, Olmsted was well known for his social vision and his belief that parks could serve as meeting grounds for all. Making the bridge fully accessible would be consistent with this commitment.

The Advisory Committee did not amend the Commonwealth's recommended language in Article 5, but addressed the issue of accessibility in a separate resolution.

RECOMMENDATION:

The Advisory Committee decided to offer its motion under Article 5 in recognition of the dedication, energy, and commitment of the petitioners and proponents of that Article.

The Advisory Committee by a vote of 25–0 recommends NO ACTION on Article 4C.

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ARTICLE 4

**CORRECTED BUDGET VOTE**

The budget vote shown under Article 4 in the Combined Reports contained an error: the reduction in the School budget was incorrectly listed. Below is the corrected vote and the revised Tables 1 and 2 are attached.

VOTED:                That the Town:

1.     Amend the FY2010 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
4. Finance Department	\$ 3,049,791	(\$100,000)	\$ 2,949,791
21. Collective Bargaining – Town	\$ 960,000	(\$885,000)	\$ 75,000
22. Schools	\$68,974,271	(\$150,426)	\$68,823,845
23. Employee Benefits	\$40,270,929	\$793,391	\$41,064,320

2.     by amending Section 7 (Water and Sewer Enterprise Fund) of Article 8 of the 2009 Annual Town Meeting so it reads as follows:

**7.) WATER AND SEWER ENTERPRISE FUND:** The following sums, totaling \$23,953,371, shall be appropriated into the Water and Sewer Enterprise Fund, and may be expended under the direction of the Commissioner of Public Works for the Water and Sewer purposes as voted below:

	<u>Water</u>	<u>Sewer</u>	<u>Total</u>
Salaries	1,850,202	274,851	2,125,053
Purchase of Services	102,968	186,326	289,294
Supplies	97,815	21,000	118,815
Other	6,400	0	6,400
Utilities	136,297	0	136,297
Capital	141,400	138,300	279,700
Intergovernmental	5,242,610	11,000,000	16,242,610
Debt Service	1,432,218	1,040,135	2,472,352
Reserve	<u>106,169</u>	<u>130,417</u>	<u>236,585</u>
Total Appropriations	9,116,078	12,791,028	21,907,107
Indirect Costs	<u>1,606,944</u>	<u>439,320</u>	<u>2,046,264</u>
Total Costs	10,723,023	13,230,348	23,953,371

Total costs of \$23,953,371 to be funded from water and sewer receipts with \$2,046,264 to be reimbursed to the General Fund for indirect costs.

3. That the Town appropriate the sum of \$29,100,000 for remodeling, renovating, reconstructing or making extraordinary repairs to 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, which school facility shall have an anticipated useful life as an educational facility for the instruction of school children for at least 50 years, said sum to be expended under the direction of the **Building Commission, with the approval of the School Committee and Board of Selectmen**, and to meet said appropriation the Treasurer, is authorized to borrow said sum under M.G.L. Chapter 44, or any other enabling authority; 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 project costs the Town incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town; provided further that any grant that the Town may receive from the MSBA for the Project shall not exceed the lesser of (1) 41.58% of eligible, approved project costs, as determined by the MSBA, or (2) the total maximum grant amount determined by the MSBA; and that the amount of borrowing authorized pursuant to this vote shall be reduced by any grant amount set forth in the Project Funding Agreement that may be executed between the Town and the MSBA, **provided, however, that no funds, except those required for design work or studies, shall be expended until such time as zoning matters related to the project have been resolved, unless the expenditure of such funds has been approved by both the School Committee and Board of Selectmen.**

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ARTICLE 5

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FIFTH ARTICLE

To see if the Town will raise and appropriate a total of \$1,400,000, or any other sum, by tax levy, by transfer from an existing appropriation, by borrowing, or by any combination of these, for the restoration of the Carlton Street entrance to Riverway Park; such restoration to be completed in accordance with the schedule submitted with the Memorandum of Understanding signed by a majority of the Board of Selectmen on July 14, 2009, and any amendments to that schedule approved by the Commonwealth; such restoration to be carried out in accordance with the requirements of the certificates of the Secretary of Environmental Affairs dated April 16, 2002, May 1, 2003, and April 1, 2005, issued for the Muddy River Restoration Project (EOEEA No. 11865), in consultation with the Massachusetts Historical Commission and Massachusetts Architectural Access Board; such funds to be expended under the direction of the Commissioner of Public Works with the approval of the Board of Selectmen; provided that such appropriation shall be reduced by the amount of any third-party funding for such purpose; or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This Article authorizes the appropriation of \$1.4 million, to be expended if required, for the restoration of the C I Carlton Street entrance, including its footbridge, to the Riverway Park. This amount reflects the Town Engineer's best estimate of the current cost, plus contingencies and an annual cost escalation.

The restoration of the park entrance is a component of the Muddy River Restoration Project, a project that will remove the threat of flooding from a number of Brookline precincts. The goals of this \$91 million project -- 98.2% of which is funded by the Army Corps of Engineers, the Commonwealth, and Boston -- include flood control, improved water quality, landscape restoration, habitat enhancement, and historic restoration of the Muddy River portion of Olmsted's Emerald Necklace, a landmark on the National Register of Historic Places. It includes the 1996 flooding in Olmsted Park. Water level was 11 feet above normal. dredging and removal of sediment and contaminated soil from Leverett and Willow Ponds, which is estimated to cost \$8 million and which the Town would be otherwise required to carry out at its own expense.

As one element of the restoration of the park's historic features, the Secretary of Environmental Affairs has required that Brookline renovate and reopen its Carlton Street entrance to Riverway Park - the Footbridge.

The Town has estimated its costs, including those for handicapped access, contingencies and cost escalation, to be \$1.4 million. The Town intends to submit an application to Metropolitan Area Planning Council (MAPC) in November for funding to defray these costs of restoration. The program, which provides funding for pedestrian improvements

and gives priority to those that involve renovation of historic facilities and park improvements, could provide up to 90 percent of the costs of the Carlton Street project. This is the same program that funded part of the Beacon Street project.

In a letter from the Secretary of Energy and Environmental Affairs (the Secretary) dated May 15, 2009, to the Chair of the Board of Selectmen, Ian Bowles states:

The Commonwealth has been carrying \$24 million on its capital spending plan for several years – a significant statement of the Commonwealth’s financial support of Boston’s and Brookline’s Project. Such a clear commitment from the Commonwealth deserves a corresponding commitment on the part of the Town. I support and encourage the Town in its efforts to seek third party funding to assist in its restoration of the Carlton Street Footbridge, but I reiterate that the responsibility for achieving full restoration remain with the Town. Without a demonstrated and enforceable commitment on the part of the Town to complete the restoration of this historic structure, the Commonwealth will not be able to release the funds necessary to begin this important Project of flood control, environmental restoration, and historic preservation. Indeed, should the Town be unable or unwilling to live up to the commitments memorialized in previous Certificates, the Commonwealth will be forced to reconsider its continued commitment of these resources for the Muddy River Project.

In July 2009, the Board of Selectmen signed a Memorandum of Understanding (MOU) with Boston and the Commonwealth setting forth the roles of each in the Muddy River Restoration Project. The MOU commits Brookline to complete the restoration of the Carlton Street park entrance by March 31, 2013 which conforms to the schedule that the Town has provided. It goes on to state that, "If the Town does not demonstrate enforceable commitments (to the entrance's restoration) by December 31, 2009, the Commonwealth may terminate this MOU or may limit its participation or funding under the MOU." This Warrant Article implements that requirement by appropriating funding for the park entrance's restoration, funding that would be available in the event that and to the extent that the Town does not obtain outside grants of other funds for the purpose.

In implementing the MOU requirement, the appropriation protects Brookline from the loss of state and federal funds for the Muddy River Restoration Project, including those for the cleanup of Leverett and Willow ponds. Should the Town not comply with the terms of the MOU by appropriating these funds, the river conditions that led to flooding in 1996 and 1998 will remain unaddressed, the fetid condition of the river would remain, and the Town would be obligated to remediation of Leverett and Willow Ponds (previously estimated to cost \$8 million).

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SELECTMEN'S RECOMMENDATION

The Board has reviewed and discussed the issues surrounding the Carlton St. Footbridge but has not taken a vote yet on Article 5. The Board will include its recommendation in a Supplemental Report that will be sent to Town Meeting Members prior to the commencement of Town Meeting.

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ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee has reviewed and discussed the issues surrounding the Carlton St. Footbridge but has not taken a vote yet on Article 5. The Committee will include its recommendation in a Supplemental Report that will be sent to Town Meeting Members prior to the commencement of Town Meeting.

**XXX**

ARTICLE 5

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

**Resolution Concerning The Accessibility Of The Carlton Street Footbridge**

A resolution encouraging full access to the Carlton Street Footbridge (CSF) is offered as a *separate* and *distinct* vote from the appropriation vote under combined Articles 4c and 5.

This non-binding resolution will not alter, amend nor add new conditions to that appropriation. It serves only as guidance to our own local officials.

**BACKGROUND:**

A critical balance had to be struck in crafting language for the CSF appropriation. The wording of that vote needed to satisfy the legal requirements for bonding, reasonably protect the Town's interests, affirm compliance to ADA requirements and remain within the confines of what the State viewed as an acceptable "enforceable commitment" in adherence to the Memorandum of Understanding (MOU).

With much deliberation, discussion and compromise, the final language was refined and ultimately vetted by the State.

During exhaustive discussions to craft that language, much attention was paid to the issue of accessibility. There were recommendations and proposals for greater specificity around accessibility, the inclusion of a preamble and the insertion of a resolution.

Given the importance of the appropriation vote, and the close scrutiny by the State regarding its precise wording, it was clear that the inclusion of additional language or conditions would be unacceptable.

This separate resolution is being proposed as a way for Town Meeting to express its priorities in a vote of conscience without directly impacting (or jeopardizing) the appropriation vote.

**DISCUSSION:**

Olmsted envisioned the Carlton Street entrance to Riverway Park as an ideal vantage point for viewing the park. It is a place where one can appreciate the river at its widest point from a raised overlook.

As we contemplate using public funds to restore a park's entrance, we must be mindful of who constitutes the "public". It is all of us; it is each member of our community. Metaphorically, a bridge means to link or to provide access. In Brookline, that means [equal] access for all. The Massachusetts Architectural Access Board (MAAB) ruled in

2005 that a restored bridge must include handicapped accommodations such as ramps. There has been no change to that ruling.

If one believes recent articles in the Globe and Tab, however, it appears that this issue may still be contentious. But, a request for waiver would be required to consider the elimination of accommodations.

Ultimately, this issue will be resolved through a State and/or Federal process, but the Town will have a voice. The proposed resolution encourages the Selectmen and others to use that voice actively and clearly in expressing Brookline's commitment to equal access.

Some may consider ramps or other accommodations visually unappealing. But if we allow a parochial sense of aesthetics to blind us to the physical limitations of our citizens or cause us to curb our compassion, we will have lost something as a community – something of deeper significance than a mere physical structure.

The re-opening of this entrance provides an opportunity for all of us to share a common view.

RECOMMENDATION:

Recognizing that this resolution of principal is meant as a guide for Brookline; and recognizing this is not a condition of appropriation, the Advisory Committee, by a vote of 25-0-0, unanimously recommends FAVORABLE ACTION of the following vote:

VOTED: That the Town adopt the following resolution:

WHEREAS accessibility to public facilities for everyone, regardless of whether able-bodied or physically challenged, has come to be understood as a basic human right that the town of Brookline supports, and

WHEREAS reconstruction of the Carlton Street Footbridge will restore an important entry point to Riverway Park and offer a superb Olmsted-designed view of the park at this entry point,

THEREFORE BE IT RESOLVED THAT the Brookline Town Meeting requests that the Board of Selectmen and other relevant Town officials work diligently with appropriate State officials in order that the reconstruction of the Carlton Street Footbridge includes suitable handicap-accessible features so that all may benefit from access to Riverway Park and the vista thereof that the reconstructed footbridge will provide.

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ARTICLE 5

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BOARD OF SELECTMEN SUPPLEMENTAL RECOMMENDATION

Article 5 is a petitioned article that would appropriate \$1.4 million for the restoration and reconstruction of the Carlton Street Footbridge (CSF). The funds would be raised by borrowing.

The need to restore the CSF has been made clear in recent communications from the Secretary of Energy and Environmental Affairs, who has stated that the Commonwealth will not release funds for the Muddy River Restoration Project unless Brookline commits itself to the restoration of the bridge.

The Project is a flood control and ecosystem restoration project to be undertaken by the Army Corps of Engineers (USACE). As planned, the Project will include dredging, removal of invasive species, and restoration and replanting of the banks of rivers and ponds from the Charlesgate portion of the Muddy River (near Commonwealth Avenue in Boston) upstream through Boston and Brookline as far as Wards Pond (in Boston near Jamaica Pond).

The Project as planned will have significant benefits for the Commonwealth, Boston and Brookline. First and foremost, the Project will substantially reduce the risk of severe flooding. In 1996, for example, flooding caused more than \$60 million in damage to the MBTA's Kenmore Station, as well as tens of millions of dollars in additional damage to the Museum of Fine Arts, to hospitals in Boston and to properties adjacent to the Muddy River in Brookline.

In addition to the benefits accruing to private property owners in Brookline, the Project, if fully implemented, will provide direct benefits to Town-owned properties. The Project will include the removal of contaminated sediments in Willow Pond; the 2001 estimate for the dredging and disposal of those sediments was approximately \$875,000. Additional work at Willow Pond, including park restoration, was estimated at approximately \$1.25 million. The Project is also expected to dredge Leverett Pond (part of which is in Brookline) and to restore parkland on its banks, work estimated in 2001 to cost \$6.125 million. Finally, dredging and park restoration along the Riverway (again, part of which is in Brookline) was estimated at \$9 million in 2001.

The total cost of the project was estimated in 2001 at \$91 million, of which approximately 2/3 will be funded by the federal government. The Commonwealth has committed \$24 million. Brookline's share of project costs is \$1.625 million in addition to the mandated cost of restoring the footbridge, or, in total, slightly over 3% of the total Project costs. With respect to ongoing costs, memoranda have stated that the Town will provide resources to maintain and manage the restored parklands to certain standards for a period of 30 years, and will contribute \$20,000 per year to an oversight committee for

the duration of the Project plus five years. The 2008 Override vote included \$100,000 per year for the Muddy River Project, although Town Meeting is not bound in the future.

Town Meeting addressed CSF restoration in 2002 and in 2003, assuming both times that outside funding would pay for the majority of the bridge restoration costs. In contrast, Article 5 would fund CSF restoration and reconstruction without regard to the receipt of outside funding.

On April 16, 2002, Secretary of the Executive Office of Environmental Affairs stated in her Certificate on the Environmental Impact Report (EIR) for the Muddy River Project that the rehabilitation and reopening of the CSF was an established part of the wider Project. Anticipating grant funding, Town Meeting in May 2002 passed a resolution stating that the Town's share was not to exceed \$100,000 or 13% of the total costs after preliminary design.

A year later, on May 1, 2003, the Secretary stated in her Certificate on the Final EIR that she would require "enforceable commitments and a timetable for restoration and reopening of the CSF in its current location" but would "work with the Town...to identify possible sources of additional funding for the restoration work." In a letter dated May 27, 2003, the Secretary reiterated that the "Town's objective to appropriate a matching share while seeking third party funding sources is a reasonable approach" and "by working together, we can secure the matching funds necessary to restore the Carlton Street Footbridge." The next day, May 28, 2003, Town Meeting accordingly voted to appropriate \$30,000 for preliminary plans and \$90,000 for the restoration and reopening of the bridge, with the expenditure of such funds contingent on, among other things, the receipt of outside funds for the remaining costs. In her April 1, 2005 Certificate on the Supplemental Final EIR, the Secretary reaffirmed the statements in her May 27, 2003 letter.

In a June 29, 2009 letter to the Selectmen, the current EOEEA Secretary stated: "[I]t was always assumed that the town would seek outside support for this historic restoration. But the burden of seeking and obtaining this funding rested with the town, and if no such funding is secured, the town will bear the financial burden itself." A July, 2009 Memorandum of Understanding stated: "If the Town does not demonstrate enforceable commitments by December 31, 2009 the Commonwealth may terminate this MOU or may limit its participation or funding under the MOU."

Although some believe that the Commonwealth would not back out of the Muddy River Project if the Town refused to fund the footbridge, the Selectmen believe that it would not be prudent to risk losing the substantial benefits that the Project will afford Brookline residents and the Town itself. At the same time, the Selectmen believe that the Town should ensure that it will receive the "benefit of the bargain" – that is, all of the promised flood control and ecosystem restoration work planned for Brookline as part of the Project. This is particularly critical because the first stage of the Project being undertaken by the USACE is "daylighting" of the Muddy River and related work near the Landmark Center, with the work in Brookline coming next, at best, or at the end of the Project, at worst.

The State has made clear that it has committed no funds beyond the existing \$24 million, and the USACE has stated that it operates on a year-to-year funding basis and that federal participation is limited to funds that the federal government makes available to the Project. The USACE has indicated that one possible option in the event of cost overruns would be to dredge only a narrow flood control channel rather than undertaking bank-to-bank dredging and restoration.

The original version of Article 5 would have committed funds for CSF restoration pursuant to an established schedule regardless of whether the promised work was ultimately done in Brookline on the Riverway, Leverett Pond and Willow Pond, and regardless of whether grant funding was received. There have been lengthy discussions with the State to craft an article providing assurances that Brookline will get the promised benefits of the Muddy River Project.

As voted unanimously by the Advisory Committee and the Board of Selectmen, Article 5:

- Provides the “enforceable commitment” for CSF restoration demanded by the State.
- Authorizes the expenditure of up to \$1.4 million on the CSF and authorizes the Town to borrow those funds.
- Reiterates that the restoration and reconstruction must include necessary compliance with the ADA, echoing language in prior Town Meeting votes. Article 5 does not attempt to resolve a simmering dispute about whether ADA compliance should (or, indeed, could) be satisfied through a variance negating the need for handicapped accessibility. The \$1.4 million authorization is sufficient to cover not only the estimated cost of restoring the existing structure but also the estimated cost of making the bridge accessible to the disabled.
- Authorizes design work on the bridge to proceed immediately, including design work necessary to apply for grants.
- Provides that if a grant for at least 60% of CSF restoration and reconstruction is received, the bridge will follow a schedule consistent with the grant process.
- Provides that if such a grant is not received, contracts for CSF bridge restoration will not be issued until after contracts have been executed and funded ensuring the dredging and park restoration work along the Muddy River, Leverett Pond, and Willow Pond. The CSF work will then be substantially completed before the substantial completion of such dredging and park restoration work.

Although the language of the vote provides some flexibility, it was the result of extensive negotiations with the State and provides the greatest realistic degree of assurance that the

Town will receive the promised benefits of the Muddy River Restoration Project for its contributions to the Project. Therefore, by a vote of 5-0 on November 3, 2009, the Selectmen recommend FAVORABLE ACTION on the vote proposed by the Advisory Committee on Article 5.

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ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

Article 4C and Article 5 both pertain to the question of appropriating funds for the Carlton Street Footbridge. The Advisory Committee therefore considered the two Articles simultaneously and is offering one report on both Articles.

BACKGROUND:

Article 4C was placed on the Warrant by the Board of Selectmen. The placeholder language called for the Town to appropriate \$1,400,000 for the reconstruction of the Carlton Street Footbridge.

Article 5 was placed on the Warrant by citizen petitioners Rob Daves and Bob Schram. It called for the Town to appropriate \$1,400,000 for the restoration of the Carlton Street entrance to Riverway Park and to carry out the project in accordance with various documents issued by the Commonwealth.

The Carlton Street Footbridge was built in 1894 and is owned by the Town of Brookline. One entrance to the footbridge is located at the intersection of Carlton Street, Colchester Street, and Carlton Path. The bridge crosses the MBTA Green Line tracks from that intersection to its other entrance in Riverway Park. The bridge fell into disrepair after not being maintained adequately and has been closed since approximately 1976.

Between 1998 and 2003, the Carlton Street Footbridge inspired a vigorous debate between proponents of restoring the bridge and those who opposed restoration and, in some cases, advocated demolishing or relocating the bridge. The Board of Selectmen appointed 17 concerned citizens to a Carlton Street Footbridge Advisory Committee and subsequently appointed a Selectmen's subcommittee chaired by Gil Hoy. The Town commissioned several consultants to study the feasibility of restoration, historic significance, funding strategies, accessibility issues, and the consequences of reopening the bridge.

In May 2003, the Annual Town Meeting voted to appropriate \$90,000 "for the restoration and reopening of the Carlton Street Footbridge in its current location and with necessary ADA compliance; provided, however, that the expenditure of such funds shall be contingent upon the receipt of outside funds for the remaining costs of such restoration." Because estimates of the cost of restoring the bridge have increased since 2003, \$90,000 now represents less than 10% of the likely cost of restoration. The 2003 vote also made expenditure of the \$90,000 contingent on the Commonwealth funding its share of Phase I

of the Muddy River Restoration Project, which it has done. (This project is discussed below.)

Since the 2003 Annual Town Meeting, the Commonwealth has continued to request that Brookline commit to restoration of the Carlton Street Footbridge.

*Why is the Carlton Street Footbridge on the Warrant for this Town Meeting?*

The Commonwealth (i.e., the Executive of Energy and Environmental Affairs) considers the Carlton Street Footbridge to be an essential component of the Muddy River Restoration Project (which includes historic restoration, habitat enhancement, water quality improvement, and flood control) and has required Brookline to restore the bridge. The Secretary of Environmental Affairs has made this clear in the April 16, 2002, Certificate on the Draft Environmental Impact Report (DEIR), the May 1, 2003, Certificate on the Final Environmental Impact Report (FEIR), and the April 1, 2005, Certificate on the Supplemental Final Environmental Impact Report (SFEIR), two of which specifically refer to third-party funding and offer to help Brookline to secure grants.

The Memorandum of Understanding (MOU) signed by a majority of the Board of Selectmen on July 14, 2009, specifies the responsibilities of the Commonwealth, City of Boston, and Town of Brookline with regard to the Muddy River Restoration Project. The MOU contains the following statement:

“The Town has authorized \$90,000 to date for restoration of the Carlton Street Footbridge and has committed to the schedule in Attachment A. The SFEIR requires that the Town demonstrate enforceable commitments with respect to the Carlton Street Footbridge. If the Town does not demonstrate enforceable commitments by December 31, 2009, the Commonwealth may terminate this MOU or may limit its participation or funding under the MOU.”

The requested “enforceable commitments” must take the form of an appropriation of funds by Town Meeting, because the Board of Selectman does not have the authority to appropriate such funds.

On October 7, 2009, the Office of Governor Deval Patrick issued a press release that noted that, “The Governor’s capital plan commits \$24 million for the state’s share of the Muddy River Project” and reiterated that, “Release of the state funds is contingent on the Town of Brookline voting at its fall town meeting to fund the restoration of the Carlton Street Footbridge, an historic bridge at the Muddy River that the Town is required to restore as a condition of the environmental approval for the Muddy River project.”

The actions that the Commonwealth would take in the absence of an enforceable commitment from Brookline are unclear. The Commonwealth could terminate the Muddy River Restoration Project, increase Brookline’s currently small share (\$1.625 million plus the cost of restoring the bridge) of the \$91 million overall cost of the project,

or end or limit funding for the parts of the project that are of greatest interest to Brookline. (See below for more discussion of those parts of the project.)

Articles 4C and 5 are both intended to demonstrate an “enforceable commitment” to restore the Carlton Street Footbridge and to thereby enable the funds to be released for the Muddy River Restoration Project. Both Articles would appropriate funds for restoration of the bridge.

*What is the Muddy River Restoration Project?*

The Muddy River Restoration Project is a \$91 million collaborative project involving the Commonwealth of Massachusetts, the City of Boston, the Town of Brookline, and the U.S. Army Corps of Engineers. It includes “daylighting” the area in front of the Landmark Center so that the Muddy River will no longer flow underground there, dredging of the Muddy River in Riverway Park in Brookline, removal of sediment that has built up and created an island in Leverett Pond, removal of contaminated sediment from Willow Pond, and restoration of historic landscapes.

Benefits to Brookline from the project include elimination of the risk of flooding, restoration of the parks along the Muddy River, removal of sediment from Leverett Pond, and removal of contaminated sediment from Willow Pond. These benefits are substantial. Brookline Precincts 1, 3, 4, and 5 suffered severe flooding from the Muddy River in 1996 and 1998. The dredging of the Muddy River and other flood control measures would prevent similar future floods. The project also has important fiscal benefits to Brookline. Removal of sediment from Leverett Pond was estimated to cost over \$6 million in November 2000, including \$775,000 for replacement and mitigation plantings. Removal of contamination from Willow Pond and restoration of plantings there was then estimated to cost approximately \$2.1 million. (The eventual costs of each of these project components are uncertain; estimates may have increased due to inflation, but they could be reduced if the scope of work changes.) Because the contamination of Willow Pond is attributed to leakage of fuel oil from the former Town garage, Brookline would be liable for removing the contaminated sediment. Brookline would also be advised to remove the sediment from Leverett Pond, because that sediment has reduced the ability of the pond to hold water, thereby increasing the risk of flooding. (Because part of Leverett Pond is in Boston, Brookline might not need to pay the entire cost of removing sediment from that pond, but it would have a strong interest in dredging the pond to reduce the risk of flooding in Brookline.) Last, but not least, the project would restore the landscaping and historic beauty of the sections of the Emerald Necklace in Brookline and along Brookline’s border with Boston, reversing years of neglect of some sections of parkland.

In addition to restoring the Carlton Street Footbridge, Brookline would contribute \$1.625 million to the project and also would maintain the parks along the Muddy River in Brookline. The Town would thus receive significant benefits in return for a very modest contribution that represents a small percentage of the project’s total cost of \$91 million. Most of the project would be paid for with state and federal funds. (Note that the \$91

million is an estimate from 2000 and includes capital costs, but not expenses for ongoing maintenance. Brookline’s maintenance expenditures for the restored Muddy River parks are estimated at \$100,000 per year. The 2008 override included funds for this purpose.)

*What is the Historic Status of the Carlton Street Footbridge?*

Proponents and opponents of bridge restoration debate the historic status of the bridge. Frederick Law Olmsted drew up plans in 1890–92 that included a footbridge over the Boston and Albany railroad tracks at the end of Carlton Street. (The plans showed another footbridge over the tracks near Hawes Street.) Olmsted’s plans included a curved pathway that met the Carlton Street Footbridge on the Muddy River side of the railroad tracks. He designed the landscaping in the park, including the islands in the river, to provide impressive vistas to those who entered the park by crossing the footbridge. Charles Beveridge, series editor of the Frederick Law Olmsted papers, concludes that “the Carlton Street entrance to the Muddy River park is a crucial ‘missing link’ in the Emerald Necklace, a feature that Olmsted carefully design to provide both convenient access and landscape amenity for many potential users of his park.” (Letter to Nancy Daly, chair, Brookline Board of Selectmen, May 19, 2009.)

Opponents argue that Olmsted did not design the bridge and note that it is attributed to Alexis French, Brookline town engineer. Proponents reply that French placed the bridge according to plans prepared by Olmsted. They also note that the fact that Olmsted did not design the bridge is irrelevant. Olmsted generally did not design the bridges in parks that the Olmsted firm worked on, but instead selected other qualified individuals to design the bridges, including other bridges in Riverway Park, which were designed by Shepley, Rutan, and Coolidge, the successor firm to H.H. Richardson’s architectural practice.

Differences of opinion over the role Olmsted played in the design of the bridge and the Carlton Street entrance to Riverway Park pale into insignificance in light of one key fact: The Commonwealth of Massachusetts (the EOEEA) has determined that the Carlton Street Footbridge is an important element in the historic landscape of the Muddy River and has required the Town of Brookline to restore the footbridge as a component of the Muddy River Restoration Project.

The April 16, 2002, Certificate of the Secretary of Environmental Affairs states:

“After review of the record, including the Master Plan, and supporting materials, and the opinion of MHC [Massachusetts Historical Commission], I find that the Carlton Street Footbridge is historically significant and is an integral component of the Olmsted Park System, and its eventual rehabilitation and reopening is an established part of the wider Emerald Necklace rehabilitation effort.”

*What about Accessibility?*

A restored and reopened bridge would need to be ADA-compliant, but the Town has the option of requesting a variance from the Massachusetts Architectural Access Board

(MAAB) on grounds such as “the cost of compliance is excessive without and substantial benefit to persons with disabilities.” (The quotation is from the MAAB’s guide to requesting variances.)

The Town requested such a variance in 2005. The request was denied by the MAAB. The Town could have requested an adjudicatory hearing to present its case for a variance, but the Town waived its right to such a hearing, which is often requested by applicants.

The 2009 report from SEA Consultants includes drawings and the following estimates (in 2013 dollars) for bridge restoration with various types of access:

- No ramps or lifts (\$933,227)
- Inclined lifts (\$1,199,483)
- Vertical lifts (\$1,306,821)
- Ramps (\$1,376,393)

The ramps would extend to the east of the bridge, parallel to the MBTA tracks and at right angles to the main bridge structure.

Some have expressed concern that either form of lifts would not provide sufficient accessibility, because a key would be required to operate the lifts and the system might not be reliable.

The MBTA has requested that the bridge be raised to a height of 15’6” above the MBTA tracks from its current height of 14’1”. The SEA Consultants estimates and designs assumed that the bridge would be raised to a height of 15’. Peter Ditto of the Department of Public Works believes that the additional height would require extensions of no more than 10’ to the proposed ramps on each side of the bridge and that regarding the site might eliminate the need for an extension of 10’ on the river side of the bridge.

*What Work Would be Carried out if Town Meeting Votes this Appropriation?*

The appropriation of \$1,400,000 would fund restoration of the bridge structure, including installation of new footings and replacement of damaged, deteriorated, and missing elements of the bridge itself. It also would fund necessary ADA compliance, with the cost depending on whether lifts or ramps were chosen. The project also includes other work on the area around the bridge, such as new sidewalks that approach the bridge on both sides, trees and other plantings in Riverway Park and on Carlton and Colchester Streets, new streetlights, and a new fence along Chapel Street, Colchester Street, and Carlton Path.

*Would a Grant be Available to Fund Restoration of the Bridge?*

If the Town receives a grant for restoration of the Carlton Street Footbridge, it could reduce the \$1,400,000 million appropriation accordingly. The schedule attached to the July 14, 2009, MOU assumes that the Town would apply for and receive a grant. The

application process would begin in 2009–2010 and the project would be completed in 2013.

The federal Transportation Enhancement Program (TEP) has been identified as a potential source of grant funding for the restoration of Carlton Street Footbridge. The TEP provides funding for various transportation projects that are not covered by traditional transportation funding programs. Projects that serve pedestrians, rehabilitation of historic transportation facilities (including bridges), landscaping and scenic beautification, are all specifically identified as potential candidates for TEP funding. The Metropolitan Area Planning Council (MAPC) reviews applications and forwards them to MassHighway (or its successor organization) for decisions.

The TEP can provide up to 90% of the costs of a project (80% federal and 10% state), which means that Brookline would have to provide matching funds for at least 10% of project costs.

Whether Brookline would receive TEP funding obviously depends on the outcome of the grant application process. Town officials have been optimistic, because the Footbridge appears to meet many of the criteria for TEP grants. The secretary of environmental affairs has offered to help the Town obtain a grant. The Town DPW is preparing to start that process and a decision probably would be made by April–June 2010. It is possible that a grant would not cover the entire cost of the project (excluding the local 10% match). TEP guidelines state that “a project may have eligible and non-eligible components.”

#### DISCUSSION:

The Advisory Committee voted unanimously to recommend a motion under Article 5 that includes these key provisions:

- Appropriation of up to \$1,400,000 for restoration and reconstruction of the Carlton Street Footbridge, to be raised by borrowing;
- Completion of this project by early 2013 (as specified in the schedule attached to the July 14 Memorandum of Understanding) if the Town receives a grant for 60% or more of the cost of restoration and reconstruction;
- Completion of this project on or before substantial completion of Phase 2 of the Muddy River Project if the Town does not receive a grant for at least 60% of the project’s cost.

The Advisory Committee’s discussion of Articles 4C and 5 focused on the following four factors, all of which influenced the precise form of the motion it voted unanimously to recommend: (1) Brookline’s interest in seeing the Muddy River Project proceed; (2) Brookline’s interest in ensuring that the Town benefits fully from the Muddy River Project; (3) the importance of using language that provides an “enforceable commitment”; and (4) the importance of formulating a motion that enjoys maximum support.

1. *Brookline's Interest in Seeing the Muddy River Project Proceed*

There are various arguments for supporting restoration of the Carlton Street Footbridge. Some advocates of restoration would support restoring the bridge on its own merits and without a grant. Others would prefer to restore the bridge only with grant funds. For others, the case for restoring the bridge becomes compelling when the bridge is viewed as a component of the Muddy River Restoration Project. Restoration of the bridge would enable Brookline to enjoy the many benefits of the Muddy River Restoration Project, including a reduced risk of flooding, removal of contamination and sediment from Willow and Leverett Ponds, and landscape restoration in the parks along the Muddy River. The prospect of receiving such benefits gives Brookline a strong incentive to restore the bridge.

Given that the secretary of energy and environmental affairs has stated that the restoration of the bridge is an integral part of the Muddy River Restoration Project and that funds for the project will not be released until Brookline makes an enforceable commitment to restore the bridge, it is in Brookline's interest to invest up to \$1.4 million in bridge restoration. The Advisory Committee recognized the Town's interest in enabling the Muddy River Project to start so that it can benefit residents of Brookline (e.g., by reducing the risk of flooding) and relieve pressure on the Town's budget (e.g., by ensuring that the Town does not have to pay for dredging Leverett or Willow Pond).

2. *Ensuring that Brookline Benefits Fully and "Gets the Benefit of the Bargain"*

The Muddy River Project offers benefits to Brookline that justify appropriation of \$1.4 million, but some of those benefits would not be received rapidly. Although the planned earlier phases of work on the project (e.g., daylighting the Muddy River in front of the Landmark Center) benefit Brookline, some of the key benefits to Brookline would result from work now planned for a later phase: dredging the Riverway, removing sediment from Leverett Pond, removing contamination from Willow Pond, and restoring the plantings and landscaping in the Brookline sections of the Emerald Necklace. The motion recommended by the Advisory Committee anticipates a situation in which funds might not be available to complete this work or might not be available to complete it in the manner currently proposed. The July 14, 2009, MOU states that "no authorization exists on the part of the Commonwealth to fund costs and obligations of the non-federal sponsor in an amount greater than the \$24 million authorized in item 2000-2030 in Chapter 236 of the Acts of 2002." There is similar language in the Project Partnership Agreement regarding federal funds for the U.S. Army Corps of Engineers.

It is difficult to assess the likelihood that the Muddy River Restoration Project will run out of funds before the work of greatest interest to Brookline is completed (Phase 2). The U.S. Army Corps of Engineers has a reputation for finishing projects that it starts. From an engineering and flood control standpoint, it would make little sense to do the work on the "downstream" but not the "upstream" segments on the Muddy River. On the other hand, dredging Willow Pond, because of its size, has no flood control benefit; park and ecosystem restoration are not needed at all for flood control; and that flood control efforts

in the Upper Muddy River could be redesigned to include a narrow channel adequate for flood control rather than bank-to-bank dredging if there is a need to reduce project scope due to insufficient funds.

The recommended motion includes an amendment offered by Selectman Benka that is intended to ensure that Brookline “gets the benefit of the bargain” and that would delay release of the appropriated funds for restoring the Footbridge until contracts are signed for the portions of the Muddy River Restoration Project that would have the greatest benefit to Brookline. Restoration of the bridge would be completed on or before substantial completion of those portions of the Muddy River project. If a grant for 60% of the cost of the bridge restoration were received, these provisions would not apply and the Town would restore the bridge according to the schedule appended to the July 14, 2009, MOU.

3. *Using Language that Provides an “Enforceable Commitment”*

A key question regarding any motion to be offered was whether the Executive Office of Energy and Environmental Affairs (EOEEA) would regard it as an enforceable commitment. Town Counsel, Selectman Benka, and Tom Brady of the Department of Public Works consulted with EOEEA staff to determine whether various potential motions and amendments would satisfy the EOEEA’s request for an enforceable commitment.

In a November 3, 2009, email, Philip Griffiths, undersecretary for environment of the EOEEA, commented on a motion recommended by the Advisory Committee Ad Hoc Subcommittee on the Carlton Street Footbridge and recommended changes that would ensure that the motion would be regarded as an enforceable commitment. Those changes included deletion of the phrase “and a commitment to universal access” (regarding accessibility and ADA compliance); insertion of language to make clear that the Town’s appropriation was not limited to a 10% match for a grant; insertion of language to make clear that the Town could seek grants that would provide reimbursement after the Town had incurred expenses; deletion of language that would specify that contracts for Phase 2 of the Muddy River Project would have to include “performance and payment bonds” before the Town would begin to restore the bridge; insertion of language that recognizes that some elements of Phase 2 of the Muddy River Project may change and that the Town should not limit its appropriation for the bridge if such changes take place; and deletion of the word “scheduled” to ensure that the motion states that restoration of the bridge will coincide with or precede substantial completion of Phase 2 of the Muddy River Project.

The changes requested by Undersecretary Griffiths did not fundamentally change the motion recommended by the Advisory Committee. Their most important effects were (1) to preclude more specific language on making the bridge accessible, and (2) to make more flexible the list of Muddy River Project Phase 2 projects that would “trigger” release of funds for the Carlton Street Footbridge.

Another issue that arose in discussions with EOEEA is whether the appropriation should be for “restoration” or “reconstruction” of the bridge. The Commonwealth has requested that the Town restore the bridge, but some of the work might be more accurately described as reconstruction. The motion voted thus includes both. Town Counsel has indicated that Bond Counsel approves this language.

4. *Supporting a Compromise that Can Command Wide Support*

Members of the Advisory Committee were concerned that having two Warrant Articles on the Carlton Street Footbridge might make it difficult for any motion to receive the necessary two-thirds majority to authorize an appropriation by bonding. It was possible to imagine scenarios in which no motion received a two-thirds majority, even though two-thirds of Town Meeting might support one or both motions.

The motion recommended by the Advisory Committee is supported by the petitioners of Article 5, other proponents of restoring the Carlton Street Footbridge, proponents of the Muddy River Project, individuals who have been skeptical of the benefits of restoring the Carlton Street Footbridge, Selectman Richard Benka, and many others. The Advisory Committee was impressed by the willingness of many of those involved to make the compromises necessary to guarantee that the motion would have wide support. In particular, two compromises were pivotal: (1) agreement on restoring the bridge according to the July 14, 2009, MOU schedule if the Town received a grant of at least 60% of the project’s costs; and (2) agreement on tying the start and completion of restoration to Phase 2 of the Muddy River Project if the Town does not receive a grant of at least 60%.

Political compromises and other attempts to resolve differences are often commendable and may be regarded as ends in themselves. In relation to Articles 4C and 5 and the topic of appropriating funds for the Carlton Street Footbridge, the compromises had two important effects. First, having a single motion with wide support makes it more likely that the motion will receive the necessary two-thirds vote in Town Meeting. Second, the broad support for the motion recommended by the Advisory Committee makes it more likely that there will be a sufficient level of consensus as the hitherto contentious Carlton Street Footbridge process moves forward.

*The Question of Accessibility*

The Advisory Committee considered the question of whether and how to make the Carlton Street Footbridge accessible to all users, including those with disabilities or handicaps. The unanimous recommendation of the Advisory Committee’s Ad Hoc Subcommittee on Articles 4C and 5 included the phrase “with necessary ADA compliance and a commitment to provide universal access.” As noted above, this wording was rejected by the Commonwealth as “prescriptive” and amended to “with necessary ADA compliance,” a phrase used in the 2003 Annual Town Meeting vote to appropriate \$90,000 for the Carlton Street Footbridge. The reference to “necessary ADA compliance” is consistent with the Commonwealth’s requirement that the process of

restoring the Carlton Street Footbridge include consultations with the Massachusetts Historical Commission and the Massachusetts Architectural Access Board and does not explicitly rule out the option of seeking a variance from the requirements of the Americans with Disabilities Act. A number of Advisory Committee members, however, feel that the Town should not seek a variance from the ADA and that the footbridge should be made accessible via ramps, thereby offering the benefits of the reopened bridge to the greatest number of park users and visitors.

In discussing accessibility, some proponents of bridge restoration have stated that making the footbridge accessible would have a negative visual impact on the park and would compromise its historical topography as well as the historicity of the bridge. They have noted that a fully accessible entrance to the park now exists at the Longwood MBTA station.

In response, it was observed that the route to the Longwood station includes a long, steep hill and that an oft-cited argument for reopening the Footbridge is to afford the unique view of the park that is offered from the bridge, an opportunity that should be available to everyone. In addition, Olmsted was well known for his social vision and his belief that parks could serve as meeting grounds for all. Making the bridge fully accessible would be consistent with this commitment.

The Advisory Committee did not amend the Commonwealth's recommended language in Article 5, but addressed the issue of accessibility in a separate resolution.

RECOMMENDATION:

The Advisory Committee decided to offer its motion under Article 5 in recognition of the dedication, energy, and commitment of the petitioners and proponents of that Article.

The Advisory Committee by a vote of 25–0 recommends NO ACTION on Article 4C.

The Advisory Committee by a vote of 25–0 recommends FAVORABLE ACTION on the following motion under Article 5:

VOTED: That the Town appropriate \$1,400,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, to pay the costs of restoration and reconstruction of the Carlton Street Footbridge (CSF), with necessary ADA compliance, including the payment of any and all other costs incidental and related thereto; that to meet this appropriation, the Treasurer, with the approval of the Selectmen, is authorized to borrow said amount under and pursuant to Chapter 44, Sections 7(4) and 7(22) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore; that the Selectmen are authorized to apply for, accept and expend any grants or gifts from any source whatsoever that may be available to pay any portion of this project, provided, however, that the total amount authorized to be borrowed pursuant to this vote shall be

reduced or credited by the reimbursement to the extent of any grants or gifts received by the Town on account of this project; provided that if grants and/or gifts are received to pay for at least sixty percent of the costs of restoration and reconstruction of the CSF, that such restoration and reconstruction is to be completed in accordance with the schedule submitted with the Memorandum of Understanding signed by a majority of the Board of Selectmen on July 14, 2009, and with any amendments to that schedule approved by the Commonwealth, and, if such grants and/or gifts are not received, in accordance with an alternate schedule as specified below and submitted to the Commonwealth; provided further that no funds beyond the Town's match for such grant, except insofar as such funds are required for design work in connection with any grant application, to accept or implement such grant and/or gift, or to comply with the schedule below, shall be expended until the execution of contracts for completion of those portions of the so-called Muddy River Project (the "Project") (EOEA No. 11865) by the Army Corps of Engineers under the Project Participation Agreement that include dredging, removal and disposal of sediment and invasive species from, and preservation, restoration and planting of historic park shoreline at, the Riverway, Leverett Pond and Willow Pond, with all such work to be performed as part of such Project, and all as further set forth in the Draft, Final and Supplemental Final Environmental Impact Reports as accepted by the certificates of the Secretary of Environmental Affairs dated April 16, 2002, May 1, 2003, and April 1, 2005 or other certificates, environmental approvals or permits as may be lawfully issued, granted or modified; provided further that upon the execution and funding of such contracts the request(s) for proposals(s) for bids for the restoration and reconstruction of the CSF shall be issued within thirty days and contract(s) for such CSF restoration and reconstruction shall be executed within thirty days after the receipt of qualified bid(s), with such CSF restoration and reconstruction to be substantially completed on or before the substantial completion of the Project work described above, and the Town shall at all times after this vote inform the Commonwealth of its progress with regard to this schedule.

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ARTICLE 6

SIXTH ARTICLE

To see if the Town will amend the Conditions of Appropriations in the Fiscal Year 2010 Town Budget by adding the following paragraph:

15.) LIMITATION ON EXPENDITURES

No Town funds or funds whose expenditure is controlled by the Town shall be expended after December 31, 2009, for the purpose of compensating Town employees, engaging contractual services, providing electric power or other utilities, or any other purpose associated with the operation, monitoring, maintenance, data recording, or with any other aspect of the functioning of the surveillance cameras that have been provided by the Department of Homeland Security and installed on Town property, except that such funds may be employed for the sole purpose of rendering said surveillance cameras inoperative and removing them from Town property.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

*They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety. — Ben Franklin*

For six months beginning in November 2008, Brookline engaged in an extended debate – in the community, at numerous public hearings, and at warrant article meetings. It culminated at last May's Town Meeting in two votes sufficiently strong that the Moderator deemed counted votes unnecessary – one against Article 24, the selectmen's "*Resolution to Support a Public Surveillance Camera Pilot Program*," and the other for Article 25, a "*Resolution Opposing Police Surveillance Cameras from the Department of Homeland Security*" which "*urge[d] the Board of Selectmen to immediately terminate the trial period and order the removal of the general police surveillance cameras funded by the Department of Homeland Security.*"

Since the selectmen have yet to comply with these votes, this warrant article would achieve the intent of Town Meeting's resolution against the DHS surveillance cameras by prohibiting the use of town funds for activities related in any way to their operation and use.

The main arguments for Article 25 were:

- The purposes of the cameras are unclear, shifting, and don't justify the huge privacy losses;
- Whatever the purposes, there's scant evidence the cameras will achieve them – especially, helping with evacuations and preventing crime;

- There are other methods available that do decrease crime, especially violent crime, such as improved lighting and community policing;
- The DHS camera system is not by any stretch of the imagination “free” of costs to the Town;
- As demonstrated in Britain, where there is now one camera for every 14 citizens, installing our first dozen cameras is stepping onto a long, slippery slope;
- Police surveillance cameras are different from private business cameras; these digital images are subject to the public records law and can be shared with other government agencies and databases; and
- A free society is one in which government does not track citizen activities in public places.

So what has changed since earlier in 2009, other than the passage of several months with the surveillance system still in full operation? Most importantly, the **May votes of Town Meeting!** However, the selectmen have kept the system operational 24-7 and instructed their Camera Oversight Committee to complete its one-year study of the results. In addition, they are now considering a “compromise” proposal by Chief O’Leary: leaving the cameras in place but operating them only for special events such as the Marathon and to deal with specific crime situations. And most recently, press reports have quoted the Chief concerning the usefulness of a DHS camera in arresting two men charged with a rape in Coolidge Corner.

Despite the extensive debate prior to and at the last Town Meeting, some of the same arguments in favor of the cameras are still being made. It is baffling to hear people who don’t themselves mind the privacy intrusion of the cameras say, “We’re videoed by cameras in banks and stores, so what’s the problem?” In fact, the community’s privacy concern has never been the “legal” issue as circumscribed by four decades of a reactionary Supreme Court’s Fourth Amendment jurisprudence, but a *subjective one*. The Town Meeting votes made it clear that most of our community *does* have major concerns about (1) the creation of a government infrastructure that allows our activities in public places to be watched and recorded, and (2) a sophisticated computerized camera system which, at a future time of pervasive fear, could readily be connected to the enormous DHS databases only recently used to data-mine our e-mails and phone calls.

Regarding the Chief’s “compromise” proposal, it doesn’t solve either of the two community concerns, subjective *expectations of privacy* or objections to *government data sharing*; and neither of these concerns can be weighed meaningfully by the 12-month trial period and study committee. As stated in the TAB’s 7/2/09 editorial “*Town Meeting has spoken,*” the Chief’s proposal “**does an end-run** around the Town Meeting vote. The ... vote was not close. The body that most closely represents the residents of Brookline clearly does not want permanent surveillance cameras.”

Lastly, has the recent sexual assault case changed everything? Not if we put emotion aside. Chief O’Leary, whom we all respect, says the cameras were “crucial” in locating the suspects. But that begs the central questions. How crucial? Would there have been a

prompt arrest without them? And how often will a truly crucial image be captured? Further, and even more basically, the cameras obviously did not prevent the crime.

The Chief has noted that “the investigation also involved footage from private cameras.” Specifically what information did the DHS camera provide that, in its absence, our highly capable detectives wouldn’t have been able to obtain from the victim, other eyewitnesses or cameras, or police departments in neighboring communities? The key “break” was reportedly a Boston police officer who recognized the image of the suspect’s truck from previous similar experience. The same result could well have been achieved through a routine, high-priority teletype/e-mail alert read at neighboring police department roll-calls: “*Brookline PD looking for a red pickup truck for an alleged rape in Coolidge Corner last night.*” Brookline’s police have carried out excellent crime investigation for decades and can be relied upon to continue to do so without DHS cameras.

Although professional U.S. and British studies show that even widespread police surveillance cameras have not prevented crime or even increased the rate at which crimes are solved, we’ve always acknowledged that these cameras would probably help solve some cases. But the important questions have always been: *how much help will they provide* (hard to determine) and *how many cases* (perhaps easier). Answers to these questions – particularly the former – will be the most important product of the Camera Oversight Committee’s work. Unfortunately, as members of that committee have observed, it will be nearly impossible for them to assess the extent to which the marginal benefit of the cameras outweighs the privacy concerns of many citizens.

We still maintain that comprehensive studies conducted professionally elsewhere are much more useful than anecdotal evidence, e.g., the recent BBC study that led to a story headlined “1,000 cameras ‘solve one crime,’” or the seminal 2005 British Home Office analysis of many different professional studies evaluating “13 Closed Circuit Television Camera projects comprising 14 separate systems ... including town centres, city centres, car parks, hospitals and residential areas,” which concluded that the cameras had “no overall effect” on crime rates.

Finally, given the attention that the recent alleged rape incident will receive during consideration of this article, another TAB editorial, “*Cameras: Helpful, still wrong*”, written in the wake of that incident, is also worthy of quotation:

Everyone who cares about public safety and delivering justice for the victim has likely re-evaluated their position on the cameras. We did. And in the end, we came to the same conclusion as before: The cameras may be useful, but they're still not right for Brookline. ... It certainly seems that the cameras helped in this case. But we always knew they had that possibility, even if we couldn’t have imagined how horrible the circumstances would be. We still need to ask ourselves if that’s worth living under surveillance. ... [O]n a street crowded with shops and banks, there were private cameras that police may have used instead. There could have been witnesses who helped with the investigation ... .

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SELECTMEN'S RECOMMENDATION

The petitioners of Article 6 notified the Board that they will not make a motion at Town Meeting. On October 13, 2009, by a vote of 5-0, the Board voted NO ACTION on Article 6.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Warrant Article 6 seeks to end the current surveillance camera pilot program by cutting off funding as of December 31st for the continued operation of the cameras. The article follows up a vote at the May 2009 Annual Town Meeting, at which a clear majority of town meeting members voted to support a resolution opposed to police surveillance cameras in Brookline. The resolution called for the Selectmen to end the 1-year trial period and remove the surveillance cameras.

In April 2009, following a six-month period of public comment, the BOS-approved installation of 12 surveillance cameras along strategic intersections on major vehicular roadways through the Town of Brookline went "live". Also in April the BOS appointed a Camera Oversight Committee to evaluate a one-year trial use of the cameras.

Petitioners presented the main reasons for Warrant Article 6 ,which would eliminate availability of Town funds to support continued use of these surveillance cameras. The stated reasons are:

1. Belief that cameras will not reduce crime;
2. Objection to increasing federal involvement in local police work;
3. Infringement of cameras on the privacy rights of citizens; concern that over time data recorded by cameras will be added to federal data bases which track information about ordinary citizens.

Since the last May Town Meeting, a number of events have occurred:

4. The Board of Selectmen allowed the cameras to continue to operate during the one-year trial period;
5. There was a high-profile sexual assault in Coolidge Corner – the vehicle was caught on two of the surveillance cameras and an arrest occurred in 48 hours;
6. Following public hearings, a compromise was reached between the BOS and the Chief of Police to restrict the camera use to the hours between 10:00 PM and 6:00 AM, when there is a statistical increase in criminal activity and there are fewer

police patrols. Under the agreement cameras can also be turned on when there are daytime emergencies or during special events, such as the Boston Marathon.

The petitioners have decided not to move their original article at the November Town Meeting, but instead will wait for the final report of the Camera Oversight Committee, which is expected to be available prior to the May 2010 Town Meeting.

DISCUSSION:

At the time of the passage of the resolution at last May's Town Meeting, calling for the termination of Brookline's use of permanently installed surveillance cameras along major roadways in the Town, the cameras had been in operation for a short time—about a month. Then, it was largely a philosophical debate. There was little data available on the effectiveness of the cameras in crime prevention and/or investigation. The cameras have now been operational for about six months and the Camera Oversight Committee now has some data to analyze. They are focusing on three primary areas: (1) the costs to the Town; (2) the issue of invasion of privacy; and (3) the usefulness of the cameras in investigating and solving crime.

Although the seed money for the cameras came from the Department of Homeland Security (DHS), the decision to purchase surveillance cameras with the money did not. The initial monies from DHS were given to the Urban Area Security Initiative (UASI) Program, a regional planning program that among other functions provides financial support for the protection of critical infrastructure and for emergency preparedness activities. The Boston urban area defined under the UASI Program consists of nine surrounding municipalities, including the Town of Brookline. It was the decision of this regional group to invest the DHS monies in the purchase of surveillance cameras to be installed along emergency evacuation routes. Each municipality has jurisdiction over its own cameras. Police Chief Daniel C. O'Leary and Officer Scott Wilder, Director of Technology at the Brookline Police Department, explained to the Advisory Committee that the twelve cameras that Brookline obtained through the federal grant, are a stand-alone system—not tied to any other municipality and not tied into any state or federal agency. The cameras are the property of the Town of Brookline and under the full control of the Town. The images are also controlled by the Town and are stored only for a limited period of time (14 days). They are not made available to a federal fusion center. They can, however, be accessed through the Freedom of Information Act, and images may be stored for longer periods of time if they provide visual evidence needed for a legal action. Since Brookline owns its surveillance cameras, BOS can decide at any time to discontinue their use. Were Brookline to remove the cameras, they would be redistributed to other UASI Program municipalities. The camera that Brookline installed at Cleveland Circle, for instance, has recently been transferred to Boston.

Chief O'Leary argued that the limited use of cameras approved by the Selectmen represents a reasonable compromise. Night time use of cameras will mean that cameras are used mostly when there is a reduced presence of police and others to monitor potential law violations. He assured Brookline residents that the use of the cameras for crime solving was part of the agenda from the outset.

Chief O'Leary reported that the cameras have been useful in solving a number of crimes and expressed the firm belief that the cameras played a critical role in the investigation and swift arrest of the two suspects in the August sexual assault in Coolidge Corner. Although the cameras did not prevent that crime, the two alleged perpetrators were arrested, preventing them from committing subsequent criminal acts. Chief O'Leary also acknowledged that the Town currently has a limited number of portable cameras that can transmit data through the Town's Wi-Fi system. These cameras are used strategically; they are currently in use to monitor night-time activities around Dexter Park.

The petitioners, in not moving their original article, will be looking for the answers to four questions related to the use of the cameras as an important tool for crime investigation, from the Camera Oversight Committee report:

1. How often were the cameras critical to the investigation?
2. How much necessary data did the cameras provide?
3. Could the crime have been solved using other investigative tools?
4. At what costs? – Both monetary costs invested in keeping the system running, and societal costs in terms of giving up a measure of privacy.

We think such considerations are reasonable and encourage the Camera Surveillance Committee to consider them.

While members of the Advisory Committee are respectful of the concerns about privacy, we are persuaded that the cameras are useful in solving some crimes. Overall, we believe that the compromise negotiated by the Board of Selectmen is reasonable and we support the use of funds that are in the FY 2009 budget to continue the year-long evaluation of the surveillance cameras.

Given the recent series of events, the analysis yet to be completed and the fact that the petitioners do not wish to move the article: the Advisory Committee on a vote of 15-0-0, recommends NO ACTION on Warrant Article 6.

*XXX*

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ARTICLE 7

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SEVENTH ARTICLE

To see if the Town will authorize and empower the Board of Selectmen to sell and convey, for a specified minimum amount or a larger amount, the Town-owned land known as the Town-owned Fisher Hill Reservoir Site, shown as Lot 13 in Block 250 on Sheet 54 of the 2005 Assessor's Atlas and containing 208,545 square feet (the "Land") or such greater or lesser area as is determined by an accurate survey, and upon such other terms and conditions as determined by the Board to be in the best interests of the Town; said Land to be developed generally as proposed in a response to the Town's Request for Proposals, dated December 16, 2008 and submitted by New Atlantic Development Corporation.

or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

A favorable vote under this Article will authorize the Board of Selectmen to execute a deed transferring the roughly 4.8 acre Town-owned parcel, currently enclosing two underground reservoirs on Fisher Hill, to an entity or entities controlled by New Atlantic Development Corporation for the development of a mixed income community, including a mix of market rate single family homes and affordable condominiums. New Atlantic Development Corporation's proposal and the Letter of Intent with the Town can be found on the Town's website at [www.brooklinema.gov/planning](http://www.brooklinema.gov/planning) and is also available for inspection at the Office of Planning and Community Development.

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SELECTMEN'S RECOMMENDATION

This is one of three related articles, including Articles 8 and 9, before Town Meeting resulting from a lengthy planning process concerning the future of the Town-owned and state-owned reservoir sites on Fisher Hill.

BACKGROUND

The 4.8 acre Town-owned Reservoir Site is located on the crest of Fisher Hill, across Fisher Avenue from a 10 acre State-owned Reservoir. It abuts Newbury College and two single family homes on Holland Road to the north, Longyear Estates to the east, a single-family home on Hayden Road to the south, and Fisher Avenue to the west. The land includes two underground reservoirs, completed in 1903, which were taken off line in the 1950's. The land also includes a small storage area used by the Department of Public Works.

On June 30, 2009, a developer selection committee composed of representatives of the Fisher Hill neighborhood and of the larger community unanimously recommended New

Atlantic Development Corporation (NADC) to the Board of Selectmen for the redevelopment of this site, subject to certain terms and conditions based on the Developer's Olmsted Hill proposal and further elaborated during the review process. The Board of Selectmen concurred, and with the unanimous support of the Housing Advisory Board, signed a Letter of Intent, outlining terms for a Land Disposition Agreement contingent upon Town Meeting approval of the sale of the land and of the rezoning of the site.

### **DEVELOPMENT TEAM**

The developer, New Atlantic Development Corporation, is a Boston-based company with a history of creating high-quality mixed-income housing developments in the Boston area. Its founder and principal, Peter Roth, will be personally involved throughout the development process. Architect Richard Bertman of CBT Childs Bertman Tseckares Inc. and Clara Batchelor of CBA Landscape Architects will lead their firms' participation. Other members include New Ecology, Inc. for sustainable design, Klein Hornig LLP as Project Attorney, Samiotes Consultants for civil engineering, McPhail Associates for geotechnical and environmental engineering, Marc Truant and Associates for construction management, and Hammond Residential for marketing the single family lots.

### **DEVELOPMENT CONCEPT**

Olmsted Hill will be organized around a complex of buildings that resemble a turn-of-the-century hillside estate, with main house, gate house and guest house, containing 24 affordable condominium units, surrounded by 10 single-family homes reflecting a variety of styles. Twelve condominium units in the "estate" buildings will be affordable to families with incomes up to 80% of area median income, and 12 will be affordable to families with incomes up to 120% of area median income. Half will be two-bedroom and half will be three-bedroom units. They will be built on one and one-half acres of landscaped green space over underground parking.

There will be six large, detached homes of up to 4,500 square feet, and four semi-attached townhomes of up to 3,500 square feet. The developer will sell lots for the six larger homes subject to deed covenants limiting the lots for single family use and dictating certain design and landscaping guidelines, which will be developed by the developer's design consultants working with a Planning Board Design Advisory Team. The remaining four lots will be offered for sale subject to designs that have already been approved, or will be built out by the developer.

In order to carry out this plan, the developer will take possession of the land when certain conditions are met, including a certain number of presales of buildable lots. The developer will provide a note and mortgage to the Town. Income from lot sales will be placed in a Town-controlled escrow account, to be drawn upon for land development work, including the dismantling of the underground reservoirs and the installation of a road and utilities. As these activities are completed, additional revenues from lot sales will pay the Town for the cost of the land, including interest. As soon as the infrastructure is sufficiently complete, the developer will close on construction financing

with a private lender for the affordable housing, which will be subsidized from State and/or Town resources.

Please refer to the schematic drawings that follow this summary.

### **LAND DISPOSITION AGREEMENT**

Subject to Town Meeting approval of this warrant article and the zoning overlay district described in Article 8, the developer and Town will enter into a Land Disposition Agreement (LDA) which will require a developer deposit totaling \$250,000. The LDA will detail all requirements relating to implementation of the Olmsted Hill proposal, plus other terms preliminarily agreed upon by the parties, as set forth in the Letter of Intent. These include, but are not limited, to requirements for accessing Town affordable housing funds, currently assumed at \$2.74 million; terms for the release of the property to the developer for site work and ultimately to buyers; required developer guarantees, including the escrowing and release of developer-budgeted overhead and profit; limits on developer profit; and third-party certification of project costs for the sharing of excess project revenues, if any. The project will also be subject to the requirements for a special permit under the zoning provisions proposed in this Warrant. Because of the complexity of the development proposal, with multiple transactions and phased timing, expert outside counsel will be retained to assist in preparing the legal documents. Also, a project oversight committee will be established to work with the developer and Building Commissioner to monitor the construction.

### **SITE PLANNING HISTORY**

This warrant article and the accompanying rezoning Article 8 represent the fulfillment of the goals of two parallel planning processes which engaged hundreds of citizens of Brookline during the past nine years.

#### **Fisher Hill Study**

The first step in the long planning process began in 2001 when the Town was notified by the Commonwealth that the 10-acre State reservoir site had been declared surplus property. Interested in the acquisition of that site, the Town immediately undertook an evaluation of the potential reuse of both that site and a neighboring 5-acre site on Fisher Hill owned by the Town. That year-long process was presided over by a 14-member Fisher Hill Study Committee representing a diversity of neighborhood and Town-wide interests, and informed by the services of a consultant team that included Goody, Clancy and Associates, the Halvorson Company, Vanasse Hangen Brustlin, Inc., and GLC Development Resources. It concluded with a recommendation that the Town acquire the 10-acre State-owned site for passive and active open space, and suggested that the 5-acre Town-owned site could be made available for development, with mixed income housing being a potential use.

This Study Committee was succeeded by two separate committees early in 2003, each dedicated to further planning for its respective site. The State-owned reservoir committee worked with the Halvorson Company to develop schematics for a park for that site. It developed a two-stage plan. The first stage, estimated at \$1,350,000, would include acquisition, design and minimal improvements to make the space safe and accessible; the

final improvements were estimated to cost \$3.25 million. Because the Town included the first-stage costs in its Capital Plan, it looked towards the sale of the Town-owned reservoir site to generate the \$ 3.25 million.

#### Town-owned Reservoir Committee

The 15-member Town Site Committee, including abutters and representatives of the neighborhood and of Town-wide interests, concluded in 2003 that a mixed-income residential use on this site best met Town goals. A subcommittee worked with Cambridge Seven Associates, which provided schematic site studies. After reaching consensus on initial design, massing and affordable housing guidelines, this group continued to meet on and off over the following three years to discuss several areas of disagreement. In January of 2006, the Town sponsored an all day design charrette at Newbury College, organized and facilitated by designers at Arrowstreet, and attended by 80 to 90 neighbors and interested Town residents. Three-dimensional models of the site and immediate neighborhood provided the subcommittee and other participants with the opportunity to explore the relationship among site massing, site density and the goal of accommodating new development into the existing neighborhood fabric.

#### Comprehensive Plan

Another planning process was the development of the Town's *Comprehensive Plan 2005-2015*, which sought to increase the supply of housing affordable to a range of underserved households in all parts of Brookline, and identified the Town-owned reservoir site as an opportunity to do so. In particular, the Plan listed, among the Town's affordable housing strategies, supporting the development of small-to medium-scale projects that are compatible with neighborhood context and that include high proportions of affordable units, providing zoning incentives while being sensitive to neighborhood character, and using Town and other publicly owned land as potential sites.

#### Re-Constituted Committee

The Selectmen reinvigorated the process when, in early 2007, it designated Selectwoman DeWitt to lead a new committee of 21 members representing the Fisher Hill Neighborhood Association, site abutters, affordable housing advocates and representatives of other Town-wide interests. A breakthrough occurred when the Fisher Hill members presented a site plan drawn up by the architectural firm CYMA 2, leading to a consensus on the mix of housing, including the inclusion of 24 affordable units. The Committee met 17 times during 18 months. Their accomplishments included the development and release of a "Request for Information" (RFI), testing the development community's reaction to the Town's concept and goals. After reviewing responses to the RFI, the committee drafted and recommended a formal Request for Proposals (RFP) that was released in September 2008.

The NADC Olmsted Hill proposal was the only one received prior to the RFP's December, 2008 deadline. The proposal provided a creative response to the multiple and sometimes conflicting goals that the RFP tried to balance: keeping overall site density low, with massing and design appropriate to the surrounding neighborhood; creating a significant number of affordable units; providing the targeted \$3.25 million price for the

land; undertaking the costly dismantling of the two reservoirs; and drawing as little as possible on the Town's affordable housing resources.

A nine-member Project Selection Committee, once again representing local and Town-wide interests as well as a variety of relevant professional skills, met eight times, including three occasions with the developer and members of his team, to evaluate the developer and proposed plan. During that time, the Committee assured itself not only that the development team had met all standards with regard to responsiveness to the RFP, experience, development program, and project feasibility, but that it distinguished itself for its vision for the site and the inventiveness of its strategy.

Following tentative developer designation, the Planning Department initiated contracts to both survey the site and carry out initial environmental assessment and testing, work not yet completed.

The Town's goals for the project are ambitious. It must create 24 units of high quality, contextually designed affordable housing, which requires significant subsidies – both funding from federal, state and local sources and a write-down in land costs. In addition, this project must absorb extraordinary site development costs, including removal of the underground reservoirs and construction of underground parking for the 24-unit condominium complex. Finally, the project must meet the Town's sales price of \$3.25 million, reflecting estimated costs for redeveloping the State-owned site as a public park. We are fortunate to have an outstanding development proposal that balances all the neighborhood and Town-wide goals.

This Board is very excited about the projects at Fisher Hill and wants to thank everyone involved in the planning process for both sites. The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2009, on the following vote:

VOTED: That the Town authorize and empower the Board of Selectmen to sell and convey for the price of \$3,250,000 the Town-owned land known as the Town-owned Fisher Hill Reservoir Site, shown as Lot 13 in Block 250 on Sheet 54 of the 2005 Assessor's Atlas and containing 208,545 square feet (the "Land") or such greater or lesser area as is determined by an accurate survey, and upon such other terms and conditions as determined by the Board to be in the best interests of the Town; said Land to be developed generally as proposed in a response to the Town's Request for Proposals, dated December 16, 2008 and submitted by New Atlantic Development Corporation.

**ROLL CALL VOTE:**

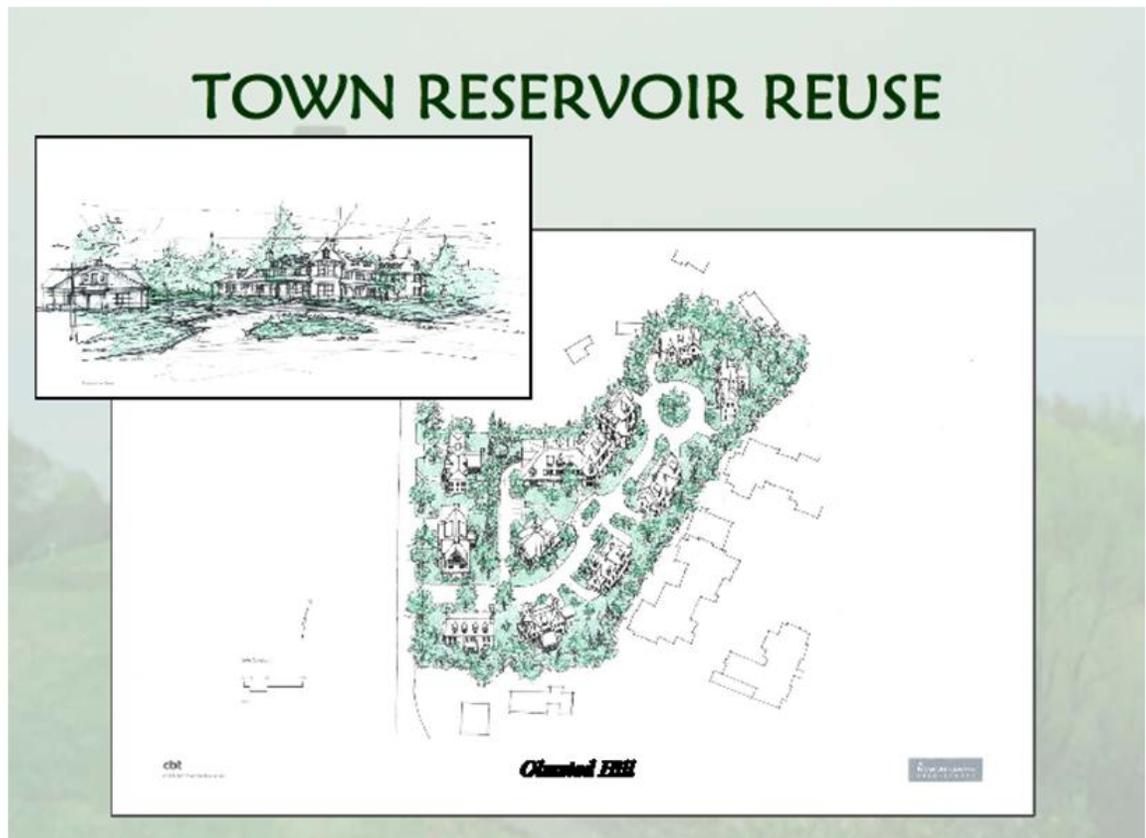
Favorable Action

Daly

DeWitt

Benka

Goldstein



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ADVISORY COMMITTEE'S RECOMMENDATION

If approved Article 7 will authorize the Board of Selectmen to execute a deed transferring the 4.8 acre Town-owned land containing two underground reservoirs on Fisher Hill to the New Atlantic Development Corporation for the purpose of development of mixed income housing units. These units will be a mix of market rate single-family homes and affordable home ownership units (condominiums). Proceeds from the housing development at this site will be used to finance the purchase and future improvements to the State-owned reservoir across Fisher Hill Avenue for park and recreational uses. (Article 9 will be discussed separately, which addresses the purchase of the State-owned reservoir.) Taken together, both Article 7 and Article 9 represent the culmination of work over a period of eight years by selectmen, Town Departments, Town boards and commissions, abutters, neighborhood associations, and interested citizens to accomplish several goals: to increase the number of affordable housing units in the town, to increase the park and recreational facilities – especially playing fields, and to increase the overall asset base of the Town.

**BACKGROUND:**

The work undertaken by two Fisher Hill Study committees in 2003, and an all-day charrette attended by nearly 100 neighbors and other interested citizens in 2006 provided a useful conceptual basis for the work of a new committee formed in 2007. That committee issued in 2008 a request for information (RFI) and a request for proposal (RFP) for development of the site. The current "Olmsted Hill" project was the sole proposal submitted to the Town. It addressed the many goals of the RFP: to keep overall site density low and appropriate to the neighborhood, to create a significant number of affordable units, to undertake the costly dismantling of the two underground reservoirs, and to draw as little as possible on the Town's affordable housing resources. A Selection Committee rated the Olmsted Hill proposal as innovative and responsive to the RFP.

In general, the committee felt that the overall process that led to the current project was open and well conceived, and the hard work of all participants over many years effectively balanced the various needs of the Town.

**DISCUSSION:**

Olmsted Hill is envisioned to be a collection of housing units that complement the hillside estate aesthetic of Fisher Hill. (plot plan) There will be 10 single-family market priced units and 24 two and three bedroom condominium affordable homes, 42 surface and below-grade parking spaces, and almost a half-acre of landscaped green space. In return for New Atlantic agreeing to work on a restricted compensation basis, the Town will finance the acquisition of the land. The Town will oversee the implementation of the project and will control all sales proceeds of the units. New Atlantic will defer all profits on the project until the Town's acquisition financing mortgage is repaid. The financing details are discussed below.

New Atlantic will create two entities that reflect the different types of units that will be built: 1) a land development entity to prepare the land for housing. This includes dismantling the reservoirs, grading the site, and installing roads and utilities. This entity will build and sell 10 single-family units. 2) an affordable housing development entity that will develop the affordable units.

Note that the proposal specifies that single family lots would be sold; the purchaser of the lot would then construct the building. There are four attached single-family units in the project, which may be built by a subsidiary of New Atlantic; however, that is an open issue. The affordable units will be built by a subsidiary of New Atlantic.

**Financing:**

How will New Atlantic acquire the land from the Town? The acquisition price has been set by the selectmen at \$3.25 million, based on a number of factors, including market factors, the Town's desire to meet its affordability goals at the lowest public cost, the desire of the Town to control the project, and the Town's need to avoid excessive risk. First, upon signing of the Land Disposition Agreement (LDA), the developer will place a deposit of \$250,000. Second, the Town will write a seller's mortgage of \$2,620,000 to New Atlantic @ 5% interest with an anticipated term of three years. Third New Atlantic

will pay \$380,000, upon closing of construction financing, for the portion of the site land dedicated to affordable housing.

Where does the money go as single-family lots are sold by New Atlantic? As the lots are sold, 100% of the net sales proceeds will be deposited by New Atlantic into an escrow account controlled by the Town, and must requisition funds for development of the site. The proceeds from the sale of the first two or three single-family lots will be used to cover predevelopment costs that the New Atlantic incurs.

How does the affordable housing portion of the project get funded? The Town will advance the first \$500,000 of its “affordable” funding for predevelopment costs after the developer has invested a total of \$500,000 in deposits and third party expenses. In total, approximately \$2.74 million will come from the Town for affordable units – using Housing Trust, HOME and CDBG funds. Additional anticipated funds (\$1.6 million) will come from a State affordable subsidy, which is consistent with the Town’s experiences with comparable affordable units.

How much does New Atlantic net from the project? The developer’s compensation for overhead and profit will be capped at 12.5% of the project’s direct costs, estimated at \$14 million. Excess revenues will first go to reduce any additional Town subsidy for affordable housing (over and above \$2.74 million), then to New Atlantic’s 12/5%, then shared 50/50 between the Town and New Atlantic.

The Advisory Committee reviewed the proposal that would be adopted upon passage of Article 7 with specific focus on potential financial risks. Several questions involved the complex financing of the project:

**Risks and other questions:**

- 1) What if the State does not come through with the expected \$1.6 million contribution for affordable housing? The expected State contribution is well within the Town’s experience. If the money is substantially less, then new funding sources for the affordable units must be found. This is considered a low risk by the Town planning department.
- 2) What if sufficient funds are not procured with the sale of the single-family lots? The project was based on estimates of an average of \$775,000 per lot. This is considered a very conservative number. As the economy improves, the likelihood is that the price for the lots will be higher than the price used in the financial plan. This is considered a low risk.
- 3) What if the subcontractors used by New Atlantic go broke? New Atlantic will require bonding by their subcontractors. This is not considered a risk.
- 4) What if New Atlantic finds that there is contamination on the site? They could withdraw from the deal. However, the Town has paid for testing of contamination by an

independent environmental firm, McPhail Associates. They are conducting a limited site assessment and should have the results by Town Meeting. The likelihood of contamination is low, since the site has not been used since the reservoirs were built in the late 1800's. This is considered a low risk, since testing will be complete before Town Meeting votes.

5) What if a tax-exempt entity, such as Newbury College, buys the lots for faculty housing? The town would not see increased taxes. This is considered a low risk, since they have shown little interest in expansion and in this project in particular. A low risk.

6) Will the additional housing units put yet another burden on the schools? At the public hearing, using the experience from Saint Aidans, an additional 10 – 12 children might be added to the school rosters.

7) When does the money become available for the park improvements? According to the project schedule, three years at the earliest, after the project is complete and the mortgage is paid off. Design documents for the park improvements would not be ready for a couple of years at the earliest.

8) How does the Town ensure that the affordable units remain affordable? There will be deed restrictions on the properties. The experience in the Town is that the people who buy affordable housing tend to stay in the unit for a long time.

#### RECOMMENDATION

The Advisory Committee was impressed with the community's effort to address two overwhelming needs - affordable housing and open space. While there are risks, they are considered low or moderate and are well balanced against the positive gains for the Town.

The Advisory Committee voted 19-0-1 in favor of the vote offered by the Board of Selectmen.

**XXX**

ARTICLE 8

EIGHTH ARTICLE

To see if the Town will amend the Zoning Bylaw and Map by incorporating the attached map into the Zoning Map and adding a new section 5.06.4.e as follows:

*“e. Fisher Hill Town-Owned Reservoir Site Mixed Income Housing Overlay*

- 1) It is found that the Fisher Hill Town-Owned Reservoir Site (the “Site”) has been identified in the Town’s Comprehensive Plan and through a Fisher Hill Planning Process (“Planning Process”) as an appropriate site for mixed-income housing development of a high quality and contextual design. For this reason, the development of the Site shall be permitted under the criteria of this section. It is further found that, due to the sensitive nature of the Site, a construction oversight committee of neighbors and other stakeholders will be charged to advise the Building Commissioner during construction.
- 2) Any applicant may seek relief under this overlay, provided it meets the following requirements:
  - a) It contains no more than 40 units of housing
  - b) More than 50% of the units on the Site shall be affordable, defined generally in accordance with Section 4.08.2.c., to households with incomes up to 120% of median income, defined in accordance with Section 4.08.2.f. These units shall include at least 25% of the units on the Site that shall be affordable to households with incomes up to 80% of median income and which shall also qualify for the Town's Subsidized Housing Inventory as per Massachusetts General Laws Chapter 40B and 760 CMR 56., including requirements for minimum unit size. In no case, however, shall an affordable unit be smaller than those sizes listed in Section 4.08.6.c. of the Zoning Bylaw. These affordable units shall, to the extent feasible, consist of an equal mix of 2 or 3 bedroom units.
- 3) Based on the work completed in the Planning Process, and in close consultation with those involved in the Planning Process to date, the Planning Board, as per 5.09.4.o., shall adopt building design and landscape guidelines for this overlay district.
- 4) A project that qualifies for use of this overlay district shall be subject to the following review criteria and process:
  - a) The applicant shall apply for a Special Permit, which Board of Appeals may grant if, upon review of a master site plan, it finds the project meets the following criteria:
    - 1) It has met all requirements of Section 9.05 of the Zoning Bylaw;
    - 2) It has met the requirements of Section 5.09 of the Zoning Bylaw relating to Design Review for a Major Impact Project.

- 3) It is consistent with the design guidelines adopted by the Planning Board as per 5.06.4.e.3. above.
- 4) It has a viable plan for maintaining affordability for the longest period permitted by law that has been approved by the Department of Planning & Community Development;
  - b) A preliminary subdivision plan for the site must be approved by the Planning Board. In addition, if any Approval Not Required lots are to be created along Fisher Avenue as part of this project, the Planning Board must complete its review of the ANR plan. A definitive subdivision plan that addresses any conditions placed on the preliminary plan and ANR lots may be submitted subsequent to receipt of this Special Permit. A Special Permit granted under this overlay shall be conditioned upon approval of the definitive subdivision.
  - c) If this initial Special Permit is granted, and the land is subdivided as per the approved definitive subdivision plan, construction on each lot shall be permitted subject to the conditions set forth in the Special Permit, which shall include design review by the Planning Board. Such design review shall be conducted as per sign/façade review in Section 7 of the Zoning Bylaw, and shall determine consistency with the project Special Permit, including design guidelines. The specific location of each single-family detached and attached dwelling unit within a parcel may be adjusted as part of this review, provided that it meets all setback requirements and is otherwise consistent with the dimensional requirements of the Special Permit and design guidelines.
  - d) Any lot that is created as part of this process and is not built upon within 3 years of issuance of the Special Permit must be landscaped consistent with the overall landscape plan approved for the Site as part of the Special Permit.
- 5) Any Special Permit sought under this overlay district shall permit the following uses for lots located in their entirety more than 100 feet from Fisher Avenue:
  - a) Principal Use 5 (attached dwelling unit.) For this use, no side yard setback is required on the attached side of the structure.
  - b) Principal Use 4A, however, only three family dwellings shall be permitted; and
  - c) Principal Use 6 (multiple or attached dwelling of four or more units,) provided that no more than 4 units may be contained on any one lot other than as provided for in 5.06.e.6.a.4 below.Any other uses sought shall be in accordance with other relevant sections of this Zoning Bylaw.
- 6) Any Special Permit sought under this overlay district shall permit development subject to the following dimensional requirements, superseding any conflicting requirements in Sections 5 and 6 of the Zoning Bylaw for the underlying zoning district:
  - a) Provided that the Site is laid out consistent with the design guidelines outlined above and in the Planning Process, the Site may be developed subject to the following restrictions:
    1. An overall maximum Floor Area Ratio of 0.4, or a maximum total of 72,000 square feet of Gross Floor Area, shall be permitted.

2. No building located on any part of the site other than the “Multifamily Lot” referred to in 5.06.e.6.4.a. below, shall be larger than 4,500 square feet of Gross Floor Area.
  3. No attached single-family dwelling unit shall be larger 3,500 square feet.
  4. One lot (“the Multifamily Lot”) shall be permitted to have a set of buildings under uses 4A, 5 and 6, provided the combined Gross Floor Area of these buildings does not exceed 36,000 square feet.
- b) Minimum lot sizes and widths, yard setbacks, and open space requirements in the overlay may be reduced as part of the overall Special Permit provided the plan is consistent with the vision for the Site referred to in the Planning Process. However, no more than four lots on the site shall be smaller than 15,000 square feet.
  - c) Consistent with the Town’s Planning Process, more than one principal structure shall be permitted on the same lot, for the Multifamily Lot only. For that parcel only, the maximum height permitted may also be increased to 45 feet. For all other buildings, the base zoning district maximum height requirement of 35 feet shall apply.
  - d) Consistent with the Town’s Planning Process, parking requirements under Section 6 of the Zoning Bylaw may be modified. In particular, the parking requirement for the affordable units shall be 1.75 spaces per unit. A significant majority of the parking shall be located below grade, in garages, or otherwise shielded from public view.
  - e) Consistent with the higher level of affordability on this site required by Town’s Planning Process, Section 4.08 of the Zoning Bylaw shall not apply to projects using this overlay, with the exception of the minimum unit sizes in Section 4.08.6.c.
  - f) These dimensional restrictions apply to the overlay district as a whole and shall not be exceeded on the Site if it is developed by more than one applicant. Any other dimensional relief sought shall be pursued as per any other relevant sections of this Zoning Bylaw.
- 7) Once any lot in the Site is subdivided and conveyed to be used for construction of a single family home or an attached dwelling unit (a “Sold Lot”), the Sold Lot shall not be in violation of this section 5.06.4.e or any other provision of the Zoning Bylaw or any Special Permit granted with respect to the Site by virtue of any violation of any other lot in the Site. Likewise, no other lot in the Site shall be in violation of this section 5.06.4.e or any other provision of the Zoning Bylaw or any Special Permit granted with respect to the Site by virtue of any violation of any Sold Lot.”

And further, by adding a new section under 3.01.4. (*Overlay Districts*):

“b. Fisher Hill Town-Owned Reservoir Mixed Income Housing Overlay”

or act on anything relative thereto.

Fisher Hill Town Reservoir Mixed Income Housing Overlay District



1 inch = 200 feet

 Fisher Hill Town-Owned Reservoir Mixed Income Housing Overlay

PETITIONER'S ARTICLE DESCRIPTION

This article, submitted by the Board of Selectmen with the support of the Zoning Bylaw Committee, would create a zoning overlay that would permit redevelopment of the Fisher Hill Town Reservoir site in conformance with the Request for Proposals that was issued for this site in 2008. This Zoning Amendment is a companion article to Article XX, which would authorize disposition of the Fisher Hill Town Reservoir site for redevelopment as mixed income housing. For much of the explanation of the Fisher Hill redevelopment process and proposal, please refer to the explanation under Article XX.

The base zoning for the reservoir is S-15. Therefore, currently, it can only be redeveloped only for single family homes on parcels of 15,000 square feet or more. This zoning overlay would permit redevelopment for up to 40 units under certain circumstances:

- the overall plan must be consistent with the vision developed for the site by the Town and articulated in the Request for Proposals;
- the project must follow design guidelines to be adopted by the Planning Board;
- more than 50% of the units on the site must be affordable;
- only single family homes are permitted along Fisher Avenue;
- the overall site must receive a Special Permit, and then individual buildings would undergo design review;
- the site must be developed with an overall landscape plan and even parcels remaining undeveloped for a period of time must be landscaped according to that overall plan.
- detached single family homes on the site are allowed up to 4,500 square feet and attached single family homes, located on the site's interior, are allowed up to 3,500 square feet;
- one larger building or set of buildings is permitted, set back from Fisher Avenue, and may exceed the existing 35 foot height by up to 10 feet; and
- an overall building program of no greater than 72,000 square feet, or a Floor Area Ratio of 0.4.

Any development of the site may be further limited by a warrant article authorizing conveyance of the property and by a land disposition agreement between the Town and developer. For example, the current proposal for the site by New Atlantic Development Corporation calls for 34 units, of which 24 are to be affordable.

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article is being submitted by the Board of Selectmen with the support of the Zoning By-law Committee. It would establish a new overlay zoning district for the Fisher Hill Town Reservoir site to allow for multi-family and mixed-income housing in accordance with certain principles which were developed through the on-going Fisher Hill planning process. This planning process resulted in the creation of a Request for Proposals (RFP) for the redevelopment of the Town reservoir, issued by the Board of Selectmen in

September 2008. A Selectmen-appointed project selection committee recommended a developer for the site and the Selectmen officially designated New Atlantic Development Corporation as developer in June 2009. The establishment of a zoning overlay will allow New Atlantic to proceed with the redevelopment of the site in accordance with the RFP. This article is in conjunction with warrant article 7, which would authorize the conveyance of the property for redevelopment into mixed income housing.

Currently the site is zoned S-15, which allows for single-family homes on lots of at least 15,000 square feet. This overlay would provide an option for multi-family development on the site, however, at least 50 percent of the units developed would have to be affordable and other restrictions would have to be met: only single-family homes may be built along Fisher Avenue; the overall floor area is restricted to 0.4; and individual buildings must undergo design review prior to building permits being issued. The total number of dwelling units allowed in the overlay district would be 40. The actual number of units proposed by New Atlantic is 34, with 24 of those units designated as affordable.

The Planning Board is supportive of this warrant article; the new overlay allows for the redevelopment of the site in accordance with the Town's RFP, which was developed after a long planning process that involved both neighborhood and affordable housing interests. The proposed zoning overlay respects that process, allowing for some flexibility in the development's design, while still ensuring neighborhood concerns regarding housing type and size are respected. While the Planning Board expects to be involved throughout the redevelopment process, they would like the proposed language under Section 5.06.4.e.3 to clarify their role in the development of design guidelines in the district. The amendment currently reads as follows:

“Based on the work completed in the Planning Process, and in close consultation with those involved in the Planning Process to date, the Planning Board, as per 5.09.4.o., shall adopt building design and landscape guidelines for this overlay district.”

The Planning Board has suggested the language of proposed Section 5.06.4.e.3 be altered so that it reads as follows:

“Any development plan that is created under this overlay district shall include the full design and/or design guidelines for each component of the development as well as landscape guidelines for the overall district. The Planning Board shall review and approve the guidelines with any modifications the Board sees fit. The approved design and/or guidelines shall be binding on any future purchaser or developer of any component of the development.”

The Planning Board also noted there should be a change to the language of proposed Section 5.06.4.e.2.b. The language currently reads:

“These affordable units shall, to the extent feasible, consist of an equal mix of 2 **or** 3 bedroom units.”

The Planning Board suggests the language should read:

“These affordable units shall, to the extent feasible, consist of an equal mix of 2 and 3 bedroom units.”

**Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 8, with revisions as follows:**

## **ARTICLE 8**

To see if the Town will amend the Zoning Bylaw and Map by incorporating the attached map into the Zoning Map and adding a new section 5.06.4.e as follows:

*“e. Fisher Hill Town-Owned Reservoir Site Mixed Income Housing Overlay*

- 1) It is found that the Fisher Hill Town-Owned Reservoir Site (the “Site”) has been identified in the Town’s Comprehensive Plan and through a Fisher Hill Planning Process (“Planning Process”) as an appropriate site for mixed-income housing development of a high quality and contextual design. For this reason, the development of the Site shall be permitted under the criteria of this section. It is further found that, due to the sensitive nature of the Site, a construction oversight committee of neighbors and other stakeholders will be charged to advise the Building Commissioner during construction.
- 2) Any applicant may seek relief under this overlay, provided it meets the following requirements:
  - a) It contains no more than 40 units of housing
  - b) More than 50% of the units on the Site shall be affordable, defined generally in accordance with Section 4.08.2.c., to households with incomes up to 120% of median income, defined in accordance with Section 4.08.2.f. These units shall include at least 25% of the units on the Site that shall be affordable to households with incomes up to 80% of median income and which shall also qualify for the Town's Subsidized Housing Inventory as per Massachusetts General Laws Chapter 40B and 760 CMR 56., including requirements for minimum unit size. In no case, however, shall an affordable unit be smaller than those sizes listed in Section 4.08.6.c. of the Zoning Bylaw. These affordable units shall, to the extent feasible, consist of an equal mix of 2 and 3 bedroom units.
- 3) Any development plan that is created under this overlay district shall include the full design and/or design guidelines for each component of the development as well as landscape guidelines for the overall district. The Planning Board shall review and approve the guidelines with any modifications the Board sees fit. The approved design and/or guidelines shall be binding on any future purchaser or developer of any component of the development.
- 4) A project that qualifies for use of this overlay district shall be subject to the following review criteria and process:

- a) The applicant shall apply for a Special Permit, which Board of Appeals may grant if, upon review of a master site plan, it finds the project meets the following criteria:
  - 1) It has met all requirements of Section 9.05 of the Zoning Bylaw;
  - 2) It has met the requirements of Section 5.09 of the Zoning Bylaw relating to Design Review for a Major Impact Project.
  - 3) It is consistent with the design guidelines adopted by the Planning Board as per 5.06.4.e.3. above.
  - 4) It has a viable plan for maintaining affordability for the longest period permitted by law that has been approved by the Department of Planning & Community Development;
- b) A preliminary subdivision plan for the site must be approved by the Planning Board. In addition, if any Approval Not Required lots are to be created along Fisher Avenue as part of this project, the Planning Board must complete its review of the ANR plan. A definitive subdivision plan that addresses any conditions placed on the preliminary plan and ANR lots may be submitted subsequent to receipt of this Special Permit. A Special Permit granted under this overlay shall be conditioned upon approval of the definitive subdivision.
- c) If this initial Special Permit is granted, and the land is subdivided as per the approved definitive subdivision plan, construction on each lot shall be permitted subject to the conditions set forth in the Special Permit, which shall include design review by the Planning Board. Such design review shall be conducted as per sign/façade review in Section 7 of the Zoning Bylaw, and shall determine consistency with the project Special Permit, including design guidelines. The specific location of each single-family detached and attached dwelling unit within a parcel may be adjusted as part of this review, provided that it meets all setback requirements and is otherwise consistent with the dimensional requirements of the Special Permit and design guidelines.
- d) Any lot that is created as part of this process and is not built upon within 3 years of issuance of the Special Permit must be landscaped consistent with the overall landscape plan approved for the Site as part of the Special Permit.
- 5) Any Special Permit sought under this overlay district shall permit the following uses for lots located in their entirety more than 100 feet from Fisher Avenue:
  - a) Principal Use 5 (attached dwelling unit.) For this use, no side yard setback is required on the attached side of the structure.
  - b) Principal Use 4A, however, only three family dwellings shall be permitted; and
  - c) Principal Use 6 (multiple or attached dwelling of four or more units,) provided that no more than 4 units may be contained on any one lot other than as provided for in 5.06.e.6.a.4 below.

Any other uses sought shall be in accordance with other relevant sections of this Zoning Bylaw.

6) Any Special Permit sought under this overlay district shall permit development subject to the following dimensional requirements, superseding any conflicting requirements in Sections 5 and 6 of the Zoning Bylaw for the underlying zoning district:

a) Provided that the Site is laid out consistent with the design guidelines outlined above and in the Planning Process, the Site may be developed subject to the following restrictions:

1. An overall maximum Floor Area Ratio of 0.4, or a maximum total of 72,000 square feet of Gross Floor Area, shall be permitted.
2. No building located on any part of the site other than the "Multifamily Lot" referred to in 5.06.e.6.4.a. below, shall be larger than 4,500 square feet of Gross Floor Area.
3. No attached single-family dwelling unit shall be larger 3,500 square feet.
4. One lot ("the Multifamily Lot") shall be permitted to have a set of buildings under uses 4A, 5 and 6, provided the combined Gross Floor Area of these buildings does not exceed 36,000 square feet.

b) Minimum lot sizes and widths, yard setbacks, and open space requirements in the overlay may be reduced as part of the overall Special Permit provided the plan is consistent with the vision for the Site referred to in the Planning Process. However, no more than four lots on the site shall be smaller than 15,000 square feet.

c) Consistent with the Town's Planning Process, more than one principal structure shall be permitted on the same lot, for the Multifamily Lot only. For that parcel only, the maximum height permitted may also be increased to 45 feet. For all other buildings, the base zoning district maximum height requirement of 35 feet shall apply.

d) Consistent with the Town's Planning Process, parking requirements under Section 6 of the Zoning Bylaw may be modified. In particular, the parking requirement for the affordable units shall be 1.75 spaces per unit. A significant majority of the parking shall be located below grade, in garages, or otherwise shielded from public view.

e) Consistent with the higher level of affordability on this site required by Town's Planning Process, Section 4.08 of the Zoning Bylaw shall not apply to projects using this overlay, with the exception of the minimum unit sizes in Section 4.08.6.c.

f) These dimensional restrictions apply to the overlay district as a whole and shall not be exceeded on the Site if it is developed by more than one applicant.

Any other dimensional relief sought shall be pursued as per any other relevant sections of this Zoning Bylaw.

7) Once any lot in the Site is subdivided and conveyed to be used for construction of a single family home or an attached dwelling unit (a "Sold Lot"), the Sold Lot shall not be in violation of this section 5.06.4.e or any other provision of the Zoning Bylaw or any Special Permit granted with respect to the Site by virtue of any violation of any

other lot in the Site. Likewise, no other lot in the Site shall be in violation of this section 5.06.4.e or any other provision of the Zoning Bylaw or any Special Permit granted with respect to the Site by virtue of any violation of any Sold Lot.”

And further, by adding a new section under 3.01.4. (*Overlay Districts*):

“b. Fisher Hill Town-Owned Reservoir Mixed Income Housing Overlay”

or act on anything relative thereto.

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### SELECTMEN’S RECOMMENDATION

Article 8, which was submitted by the Planning and Community Development Department with the support of the Zoning By-Law Committee, creates a new special district at the Fisher Hill Town-owned reservoir site that would permit its redevelopment in accordance with both the Request for Proposals issued for the site and the selected response by New Atlantic Development Corporation (NADC). In addition to Articles 7 and 9, this is one of three articles before Town Meeting that relate to the master planning process concerning the Town-owned and state-owned reservoir sites.

For more information on the site history and planning process, refer to the Selectmen’s recommendation on Article 7. Article 8 creates a new zoning special district that would permit redevelopment of the site as envisioned, via a Special Permit process. Under the proposed zoning special district, the site could be developed under the following process and conditions:

- the overall plan must be consistent with the vision developed for the site by the Town and articulated in the Request for Proposals;
- the project must follow design guidelines submitted by the developer and adopted by the Planning Board;
- no more than 40 units are permitted on the site;
- more than 50 percent of the units on the site must be affordable;
- only single family homes are permitted along Fisher Avenue;
- the overall site must receive a Special Permit, and then individual buildings must undergo design review;
- the site must be developed with an overall landscape plan and any parcels remaining undeveloped for a period of time must be landscaped according to that overall plan.
- detached single family homes of up to 4,500 square feet and attached single family homes, located on the site's interior, of up to 3,500 square feet are permitted;
- one larger building or set of buildings is permitted, set back from Fisher Avenue, and may exceed the existing 35 foot height by up to 10 feet; and
- an overall building program of no greater than 72,000 square feet or a Floor Area Ratio of 0.4 is permitted.

This zoning amendment and the review process it includes provides adequate safeguards that the land use of the site will be guided by the Town and informed by the public process, and is in line with flexibility that is included within the Town's Request for Proposals, whoever the developer may be. It is not designed to be a substitute for the land disposition process that the Town will engage in if Article 7 passes. Assuming passage of Article 7, the development of the site will be further limited by a land disposition agreement between the Town and developer based upon NADC's proposal and the further terms and conditions outlined in a letter of intent signed with NADC. These call, for example, for 34 units, of which 24 are to be affordable.

The changes to the initial proposed language by the Planning Board and the Advisory Committee are minor and clarify both the intent of the language and the role of the Planning Board in approving design guidelines for the site. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2009, on the language offered by the Advisory Committee.

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#### ADVISORY COMMITTEE'S RECOMMENDATION

##### BACKGROUND:

Article 8 has been submitted by the Board of Selectmen. It has the support of the Zoning Bylaw Committee and, with amendments, the Planning Board.

Article 8 is one product of a long process of planning for the re-use of the Town-owned and state-owned reservoirs on Fisher Hill. The process began in 2001 when the Department of Capital Asset Management declared the state-owned reservoir surplus. This process has involved extensive consultations with Fisher Hill residents and other stakeholders. Much of the recent work has been done by the Town Reservoir Planning Committee, which the Board of Selectmen appointed in January 2007. A Request for Proposals was issued in September 2008. New Atlantic Development was designated as the developer in 2009.

Based on comments offered at meetings of the Zoning Bylaw Committee, Planning Board, and Planning and Regulation Subcommittee of the Advisory Committee, it appears that neighbors and abutters agree that the overlay district and guidelines development included in the planning process will create the conditions for redevelopment of the site in a way that is consistent with the character of the surrounding neighborhood. Gill Fishman of the Fisher Hill Association described the process as "amazingly complete and thorough" and said "everyone had a voice." He feels that "as a whole, the neighborhood supports the plan" and he is "very confident" about the development.

The current zoning for the Town-owned reservoir site is S-15, which would only allow development of single-family homes on lots of at least 15,000 feet. The zoning overlay

district that Article 8 would create would permit development consisting of up to 40 units, including detached single-family houses, attached single-family townhouses, a multifamily building, and affordable housing units.

Article 8 would establish the following requirements for any development on the Fisher Hill Town-owned reservoir site.

- The overall plan must be consistent with the vision developed for the site in the Town's planning process and articulated in the Request for Proposals.
- The project must follow design guidelines to be approved by the Planning Board. Such design guidelines will cover preferred material, fenestration, and the desired mix of various architectural styles.
- More than 50% of the units on the site must be affordable to households with incomes up to 120% of the median income and at least 25% must be affordable to households with incomes up to 80% of the median income. The affordable units also must satisfy requirements for minimum unit size and are likely to be 2 and 3 bedroom units. Resale prices would be calculated on the basis of an index tied to incomes.
- Only single-family houses would be permitted along Fisher Avenue.
- The overall site must receive a Special Permit and individual buildings would undergo design review.
- The site must be developed according to an overall landscape plan and parcels remaining undeveloped three years after issuance of a Special Permit would have to be landscaped according to that plan.
- Detached single-family houses on the site could be up to 4,500 square feet and attached single-family houses (located in the interior of the lot) could be up to 3,500 square feet.
- One larger multifamily building or set of buildings would be permitted (set back from Fisher Avenue) and could be as high as 45 feet.
- Parking requirements would be reduced to 1.75 spaces for the affordable units and underground and garage parking would be encouraged.
- The overall gross floor area could not exceed 72,000 square feet, or a Floor Area Ratio (FAR) of 0.4.

Somewhat ironically, Article 8 would exempt the Fisher Hill overlay district from the Town's inclusionary zoning/affordable housing bylaw, because the zoning changes in Article 8 would actually require more affordable housing on the site than would Section

4.08 of the Zoning Bylaw. The Housing Advisory Board unanimously supports the proposal.

Article 8 provides for some flexibility in the development of the proposed overlay district. The proposal from New Atlantic Development includes 34 units, of which 24 would be affordable. The developer plans to sell at least some of the single-family lots. Buyers would design and build their own houses, subject to the design guidelines for the site.

If Town Meeting approves Article 8, as well as Articles 7 and 9, the next steps in the development process would include a land disposition agreement with the developer, appropriate permitting by the Preservation Commission, Planning Board, and Zoning Board of Appeals, affordable housing financing, issuance of building permits, and creation of a Project Oversight Committee.

DISCUSSION:

Article 8 reflects a great deal of discussion and consultation over many years. It balances neighborhood concerns with the Town's interest in creating affordable housing and raising funds to finance the acquisition of the state-owned reservoir on Fisher Hill and the creation of a park on that site. The overlay district makes possible some multi-family and affordable housing development, while also establishing a framework for redevelopment of the site in accordance with the Town's Request for Proposals and the vision supported by the site's neighbors.

The Planning Board voted to make two amendments to Article 8.

The first Planning Board amendment alters the current language of proposed Section 5.06.4.e.3 so that it reflects the Planning Board's understanding of its role in the process. Instead of having the Planning Board adopt "building design and landscape guidelines" the amendment would have the Planning Board review and approve such guidelines with any necessary modifications.

The current language is:

"Based on the work completed in the Planning Process, and in close consultation with those involved in the Planning Process to date, the Planning Board, as per 5.09.4.o., shall adopt building design and landscape guidelines for this overlay district."

The amended language is:

"Any development plan that is created under this overlay district shall include the full design and/or design guidelines for each component of the development as well as landscape guidelines for the overall district. The Planning Board shall review and approve the guidelines with any modifications the Board sees fit. The approved design and/or guidelines shall be binding on any future purchaser or developer of any component of the development."

The second Planning Board amendment corrects an apparent typographical error in the proposed Section 5.06.4.e.2.b by changing “or” to “and”. It would be illogical to have an “equal mix of 2 or 3 bedroom units” so it is clear that the intent was to call for an “equal mix of 2 and 3 bedroom units.”

The Advisory Committee agreed with the Planning Board’s recommended amendments, particularly because one of the amendments reflects the Planning Board’s understanding of its role in the zoning and development process. The Advisory Committee accordingly voted to recommend favorable action on Article 8 as amended by the Planning Board and with several additional technical amendments to replace missing words and insert clarifying language.

The Advisory Committee was impressed by the way in which the long planning process has generated broad agreement on how the Town-owned reservoir site should be developed.

RECOMMENDATION:

By a vote of 19–0–0, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town amend the Zoning Bylaw and Map by incorporating the attached map into the Zoning Map and adding a new section 5.06.4.e as follows:

*“e. Fisher Hill Town-Owned Reservoir Site Mixed Income Housing Overlay*

- 1) It is found that the Fisher Hill Town-Owned Reservoir Site (the “Site”) has been identified in the Town’s Comprehensive Plan and through a Fisher Hill Planning Process (“Planning Process”) as an appropriate site for mixed-income housing development of a high quality and contextual design. For this reason, the development of the Site shall be permitted under the criteria of this section. It is further found that, due to the sensitive nature of the Site, a construction oversight committee of neighbors and other stakeholders will be charged to advise the Building Commissioner during construction.
- 2) Any applicant may seek relief under this overlay, provided it meets the following requirements:
  - a) It contains no more than 40 units of housing
  - b) More than 50% of the units on the Site shall be affordable, defined generally in accordance with Section 4.08.2.c, to households with incomes up to 120% of median income, defined in accordance with Section 4.08.2.f. These units shall include at least 25% of the units on the Site that shall be affordable to households with incomes up to 80% of median income and which shall also qualify for the Town’s Subsidized Housing inventory as per Massachusetts General Laws Chapter 40B and 760 CMR 56., including requirements for minimum unit size. In no case, however,

shall an affordable unit be smaller than those sizes listed in Section 4.08.6.c. of the Zoning Bylaw. These affordable units shall, to the extent feasible, consist of an equal mix of 2 and 3 bedroom units.

- 3) Any development plan that is created under this overlay district shall include the full design and/or design guidelines for each component of the development as well as landscape guidelines for the overall district. The Planning Board shall review and approve the guidelines with any modifications the Board sees fit. The approved design and/or guidelines shall be binding on any future purchaser or developer of any component of the development.
- 4) A project that qualifies for use of this overlay district shall be subject to the following review criteria and process:
  - a) The applicant shall apply for a Special Permit, which the Board of Appeals may grant if, upon review of a master site plan, it finds that the project meets the following criteria:
    - 1) It has met all the requirements of Section 9.05 of the Zoning Bylaw;
    - 2) It has met the requirements of Section 5.09 of the Zoning Bylaw relating to Design Review for a Major Impact Project;
    - 3) It is consistent with the design guidelines **approved** by the Planning Board as per 5.06.4.e.3. above;
    - 4) It has a viable plan for maintaining affordability for the longest period permitted by law that has been approved by the Department of Planning and Community Development.
  - b) A preliminary subdivision plan for the Site must be approved by the Planning Board. In addition, if any Approval Not Required lots are to be created along Fisher Avenue as part of this project, the Planning Board must complete its review of the ANR plan. A definitive subdivision plan that addresses any conditions placed on the preliminary plan and ANR lots may be submitted subsequent to receipt of this Special Permit. A Special Permit granted under this overlay shall be conditioned upon approval of the definitive subdivision.
  - c) If this initial Special Permit is granted, and the land is subdivided as per the approved definitive subdivision plan, construction on each lot shall be permitted subject to the conditions set forth in the Special Permit, which shall include design review by the Planning Board. Such design review shall be conducted as per sign/façade review in Section 7 of the Zoning Bylaw, and shall determine consistence with the project Special Permit, including design guidelines. The specific location of each single-family detached and attached dwelling unit within a parcel may be adjusted as

part of this review, provided that it meets all setback requirements and is otherwise consistent with the dimensional requirements of the Special Permit and design guidelines.

- d) Any lot that is created as part of this process and is not built upon within 3 years of issuance of the Special Permit must be landscaped consistent with the overall landscape plan approved for the Site as part of the Special Permit.
- 5) Any Special Permit sought under this overlay district shall permit the following uses for lots located in their entirety more than 100 feet from Fisher Avenue:
- a) Principal Use 5 (attached dwelling unit). For this use, no side yard setback is required on the attached side of the structure.
  - b) Principal Use 4A (**dwelling in a separate lot for three families or attached dwelling on a separate lot for two families**); however, only three-family dwellings shall be permitted; and
  - c) Principal Use 6 (multiple or attached dwelling of four or more units), provided that no more than 4 units may be contained on any one lot other than as provided for in 5.06.e.6.a.4 below.

Any other uses sought shall be in accordance with other relevant sections of this Zoning Bylaw.

- 6) Any Special Permit sought under this overlay district shall permit development subject to the following dimensional requirements, superseding any conflicting requirements in Sections 5 and 6 of the Zoning Bylaw for the underlying zoning district.
- a) Provided that the Site is laid out consistent with the design guidelines outlined above and in the Planning Process, the Site may be developed subject to the following restrictions:
    - 1. An overall maximum Floor Area Ratio of 0.4, or a maximum total of 72,000 square feet shall be permitted.
    - 2. No building located on any part of the Site other than the “Multifamily Lot” referred to in 5.06.e.6.4.a. below, shall be larger than 4,500 square feet of Gross Floor Area.
    - 3. No attached single-family dwelling unit shall be larger **than** 3,500 square feet.
    - 4. One lot (“the Multifamily Lot”) shall be permitted to have a set of buildings under uses 4A, 5, and 6, provided the Gross Floor Area of these buildings does not exceed 36,000 square feet.

- b) Minimum lot sizes and widths, yard setbacks, and open space requirements in the overlay may be reduced as part of the overall Special Permit provide the plan is consistent with the vision for the Site referred to in the Planning Process. However, no more than four lots on the site shall be smaller than the 15,000 square feet.
- c) Consistent with the Town's Planning Process, more than one principal structure shall be permitted on the same lot, for the Multifamily Lot only. For that parcel only, the maximum height permitted may also be increased to 45 feet. For all other buildings, the base zoning district maximum height requirement of 35 feet shall apply.
- d) Consistent with the Town's Planning Process, parking requirements under Section 6 of the Zoning Bylaw may be modified. In particular, the parking requirement for the affordable units shall be 1.75 spaces per unit. A significant majority of the parking shall be located below grade, in garages, or otherwise shielded from public view.
- e) Consistent with the higher level of affordability on this site required by **the** Town's Planning Process, Section 4.08 of the Zoning Bylaw shall not apply to projects using this overlay, with the exception of the minimum unit sizes in Section 4.08.6.c.
- f) These dimensional restrictions apply to the overlay district as a whole and shall not be exceeded on the Site if it is developed by more than one applicant.

Any other dimensional relief sought shall be pursued as per any other relevant sections of this Zoning Bylaw.

- 7) Once any lot in the Site is subdivided and conveyed to be used for construction of a single-family home or an attached dwelling unit (a "Sold Lot"), the Sold Lot shall not be in violation of this section 5.06.4.e or any other provision of the Zoning Bylaw or any Special Permit granted with respect to the Site by virtue of any violation of any other lot in the Site. Likewise, no other lot in the Site shall be in violation of this section 5.06.4.e or any other provision of the Zoning Bylaw or any Special Permit granted with respect to the Site by virtue of any violation of any Sold Lot."

And further, by adding a new section under 3.01.4. (*Overlay Districts*):

"b. Fisher Hill Town-Owned Reservoir Mixed Income Housing Overlay"

***Fisher Hill Town Reservoir Mixed Income Housing Overlay District***



1 inch = 200 feet

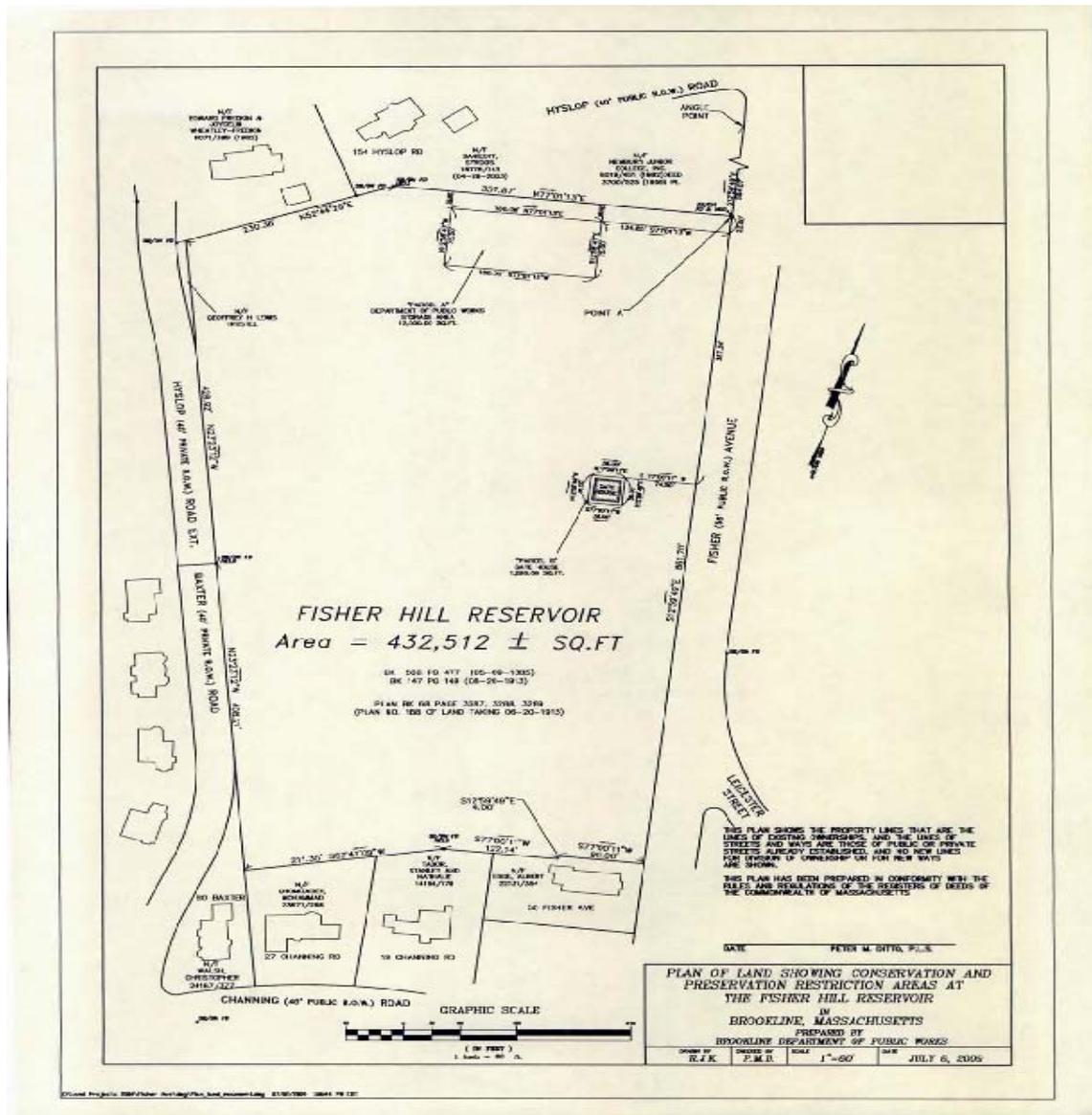
☒ Fisher Hill Town-Owned Reservoir Mixed Income Housing Overlay

ARTICLE 9

NINTH ARTICLE

To see if the Town will authorize and empower the Board of Selectmen to purchase and take title on behalf of the Town for a specified minimum amount or a larger amount, the land and buildings thereon owned by the Commonwealth of Massachusetts and known as the State-owned Fisher Hill Reservoir, containing approximately 432,512 square feet and shown as Lot 1 in Block 256 of the Assessors' Atlas; and to accept as part of such conveyance a conservation restriction of approximately 420,512 square feet and preservation restriction of approximately 1296 square feet on the portion(s) of said land as generally shown in a plan attached hereto and incorporated herein as Exhibit A; and to use said land exclusively for active and passive recreation and/or to further conservation and open space uses consistent with Chapter 218 of the Acts of 2000; and upon such other terms and conditions as the Board of Selectmen shall consider proper and in the best interests of the town, or act on anything relative thereto.

EXHIBIT A



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PETITIONER'S ARTICLE DESCRIPTION

The Town passed a home rule petition for the purchase of the state surplus Fisher Hill Reservoir. The legislation was signed into law in 2008. The Town has since been working with DCAM on the purchase and sale requirements including completion of a site survey, language for both a preservation and conservation restriction on the park, the final appraisal report, and any other requirements for successful conveyance to the Town. This article authorizes the Town to purchase the land from the State.

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SELECTMEN'S RECOMMENDATION

Article 9 authorizes the Board of Selectmen to purchase the state-owned former reservoir on Fisher Avenue. In addition to Articles 7 and 8, this is one of three articles before Town Meeting that relate to the master planning process concerning the Town-owned and state-owned reservoir sites.

In June of 2001, the State Division of Capital Asset Management (DCAM) notified the Town that the state-owned former reservoir on Fisher Avenue had been declared surplus property. The Town was offered the property for a direct municipal use. The Town requested and was granted permission to review use alternatives for the site. In the spring of 2002 a Master Planning Committee was established by the Board of Selectmen to evaluate the reuse potential of the 10-acre state-owned site on Fisher Avenue as well as the 4.8 acre Town-owned underground reservoir and storage site immediately across the street from the state site. The Committee evaluated several types of municipal uses for both sites including affordable housing, open space protection and active/passive recreation. In December 2002, a presentation was made to the Board of Selectmen with the Committee's recommended uses for both properties. The recommended use of the State-owned site was a scenic amenity and public park that incorporates an athletic field, active and passive recreation and open space. The design was to be compatible with the neighborhood, be handicap accessible, provide a reasonable amount of parking, walking paths, provide wooded areas and habitat, protect the historic gatehouse and provide pedestrian access.

On January 7, 2003 the Board of Selectmen established a Design Review Committee to work within the guidelines set by the Master Planning Committee to develop a plan and program for the park with associated costs. The Design Review Committee held public meetings over a period of nine months and developed a plan and program for the park with associated costs. The plan is to develop the park in two phases. The purchase and initial development of the site is anticipated to cost \$1.35 million. The project will include walking paths, grading, fencing and invasive vegetation removal. The second phase of the project is budgeted at \$3.25 million and will be funded by development of mixed income housing on the Town owned underground reservoir site across the street. The Town is incorporating the renovation of the historic gatehouse into the plan. This gatehouse was built in 1887, designed by Arthur Vinal, and is an important visual marker of the historic nature of the site. Its reuse will assure its permanent presence in the life of

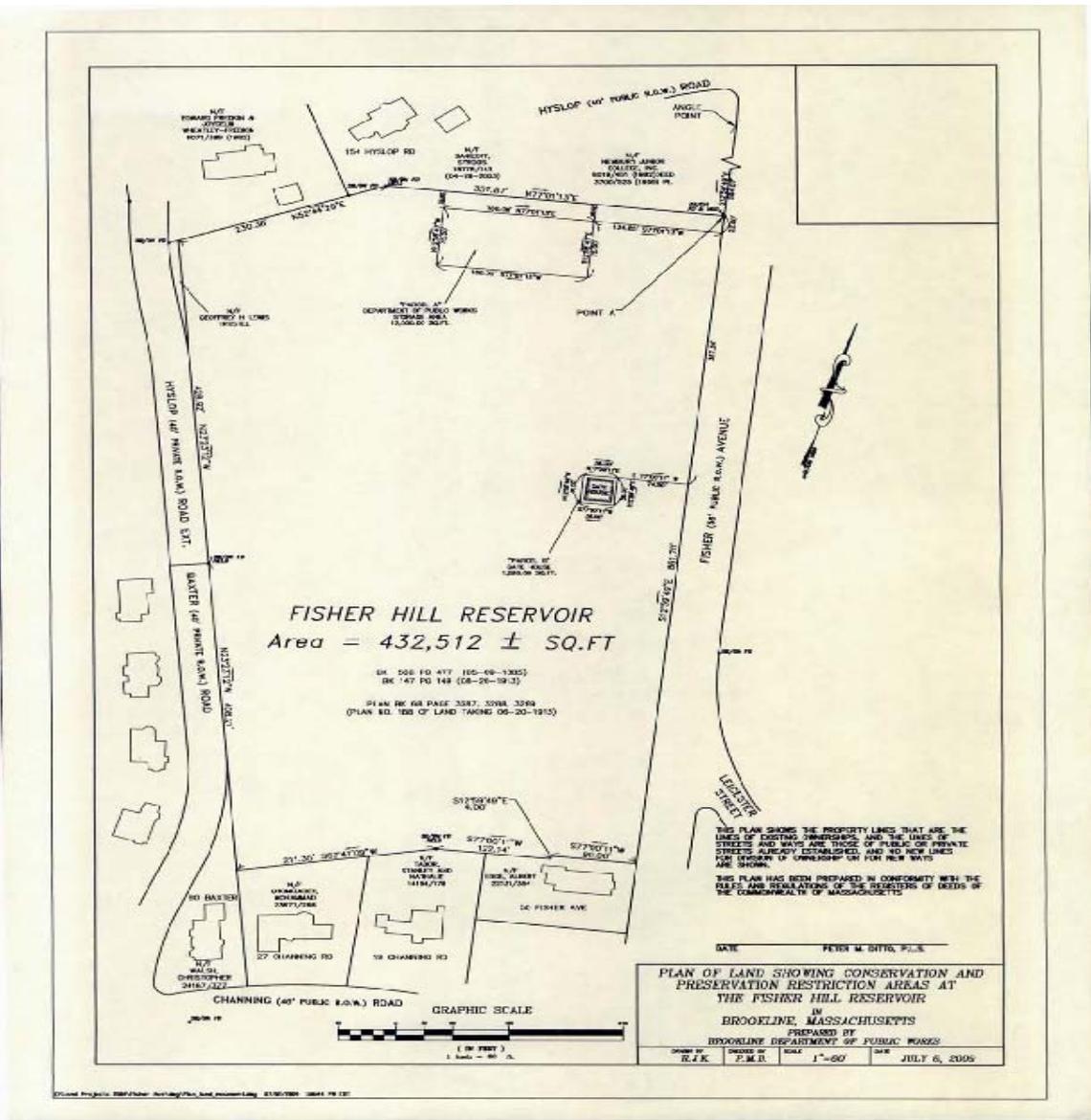
the community. The plan for the new park also incorporates relocation of the Water Division storage area from the Town-owned reservoir site to the new park. Development of both parcels will enable the Town to further many of its parks, conservation, preservation, planning and community development goals by increasing open space in the community, building a new park and increasing affordable housing opportunities.

The Town of Brookline passed a home rule petition and filed enabling legislation for the purchase of the state surplus Fisher Hill Reservoir. The legislation was approved by the House, the Senate and signed by the Governor of Massachusetts in 2008. The Town has since been working with DCAM on the purchase and sale requirements including completion of a site survey, language for both a preservation and conservation restriction on the park, the final appraisal report and any other requirements for successful conveyance to the Town. The Town has worked strategically to keep both projects moving forward together.

Following purchase of the property for the purpose of a public park, the Town will have a Design Review Process led by the Park and Recreation Commission to develop construction documents for the park. Convening such a committee is a Brookline tradition that allows for public, inclusive yet efficient, design development.

This Board is very excited about the projects at Fisher Hill wants to thank everyone involved in the planning process for both sites. The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2009, on the following vote:

VOTED: That the Town authorize and empower the Board of Selectmen to purchase and take title on behalf of the Town for a specified minimum amount or a larger amount, the land and buildings thereon owned by the Commonwealth of Massachusetts and known as the State-owned Fisher Hill Reservoir, containing approximately 432,512 square feet and shown as Lot 1 in Block 256 of the Assessors' Atlas; and to accept as part of such conveyance a conservation restriction of approximately 420,512 square feet and preservation restriction of approximately 1296 square feet on the portion(s) of said land as generally shown in a plan attached hereto and incorporated herein as Exhibit A; and to use said land exclusively for active and passive recreation and/or to further conservation and open space uses consistent with Chapter 218 of the Acts of 2000; and upon such other terms and conditions as the Board of Selectmen shall consider proper and in the best interests of the town.



**ROLL CALL VOTE:**

**Favorable Action**

- Daly
- DeWitt
- Benka
- Goldstein

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**ADVISORY COMMITTEE'S RECOMMENDATION**

If approved, the Board of Selectman will be authorized to purchase and take title of the State Reservoir site, including the building and land, owned by the Commonwealth of Massachusetts (State) known as the "Fisher Hill Reservoir".

**BACKGROUND:**

Park and Recreation commissioner Dan Ford originally contacted the state about the availability of the Fisher Hill Reservoir for park use many years ago. Subsequently the Department of Capital Asset Management officially notified the Town that the Fisher Hill Reservoir was indeed considered surplus. In December 2002 the Fisher Hill Master Plan committee considered the potential use of both the State and Town reservoirs, and the Board of Selectmen formed two new committees to focus on the sites individually. In May 2005, Town Meeting passed a home rule petition for the purchase of the State reservoir. In May 2007, the State approved a \$1.35 million bond authorization for and preliminary improvements to the site. In February 2008, the State authorized the sale of the State reservoir. In January 2009 a site survey was completed and in September 2000 an appraisal of the site was completed and valued at \$800,000.

**DISCUSSION:**

The 9.93-acre site was built in 1884 and was last used during the 1950's. In 2007 the purchase price for the site was estimated at \$500,000, and the bond authorization previously passed by Town Meeting was to cover both purchase and preliminary improvements (then estimated at \$800,000). The current assessed value of the site is higher than estimated in 2007, leaving fewer funds for park improvements. However, substantial preliminary improvements can be made one the site has been purchased by the Town. A conceptual plan for the site was developed from the work of the Park and Recreation Commission and the Fisher Hill Committees. The plan includes an athletic field as well as walking paths and parking - addressing the need for both increased passive and active open space in the Town. The plan preserves the historic gatehouse building and there is a storage area allocated for the water and sewer department. The use of the Gatehouse will be decided as part of the Design Review process. While ideally the park would be completely focused on open space use, some area must be allocated for Water and Sewer equipment that is being displaced from the Town owned reservoir across the street. There is no space for this equipment at the Municipal Service Center or the Transfer Station.

**RECOMMENDATION:**

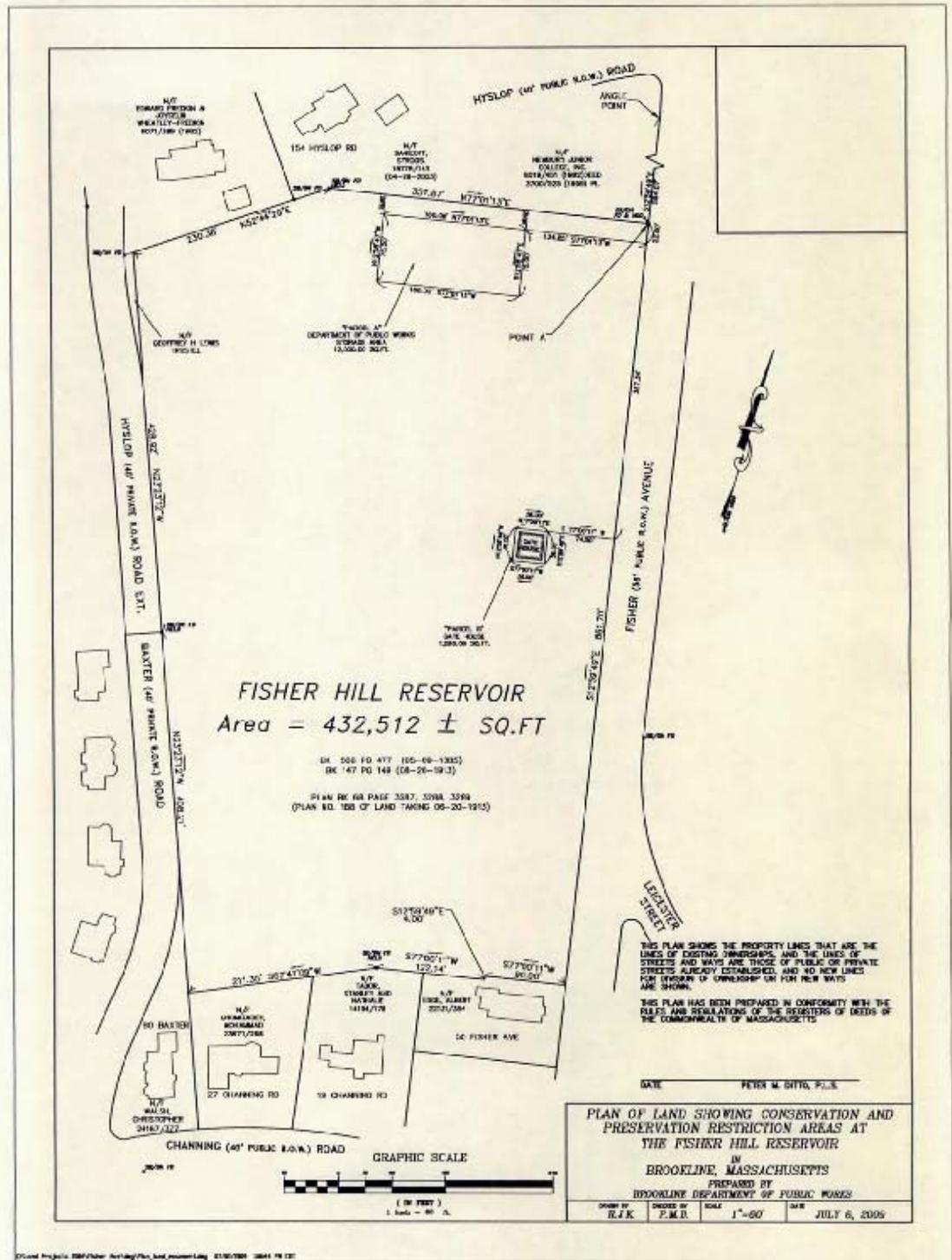
The Advisory Committee voted 17-2-1 in overwhelming favor of the vote offered by the Board of Selectmen.

**XXX**

ARTICLE 9

On Tuesday, prior to the commencement of Town Meeting, both the Board of Selectmen and the Advisory Committee plan on considering an amendment to the language originally voted by both bodies under Article 9 so that it reads as follows:

VOTED: That the Town authorize and empower the Board of Selectmen to purchase and take title on behalf of the Town, for a minimum amount of \$500,000, or a greater amount not to exceed \$800,000, the land and building thereon owned by the Commonwealth of Massachusetts and known as the State-owned Fisher Hill Reservoir, containing approximately 432,512 square feet and shown as Lot 1 in Block 256 of the Assessors' Atlas; and to accept as part of such conveyance a conservation restriction of approximately 420,512 square feet and preservation restriction of approximately 1296 square feet on the portion(s) of said land as generally shown in a plan attached hereto and incorporated herein as Exhibit A; and to use said land exclusively for active and passive recreation and/or to further conservation and open space uses consistent with Chapter 218 of the Acts of 2000; and upon such other terms and conditions as the Board of Selectmen shall consider proper and in the best interests of the town.



Original Project: 009/Fisher Hill/Res/Plan, last revision: July 27/06/06 0844 PG 02

ARTICLE 10

TENTH ARTICLE

To see if the Town will amend the Zoning Bylaw and Map by incorporating the attached map into the Zoning Map and amending the Zoning Bylaw as follows:

1. Amend Section under 3.01.2.a.(Local Business (L)):

“**2) L-0.5 (CL)**

**3) ↷ L-1.0”**

2. Add a new section 5.06.4.e. under *Special District Regulations*:

“*e. Cleveland Circle Local Business District L-0.5 (CL)*

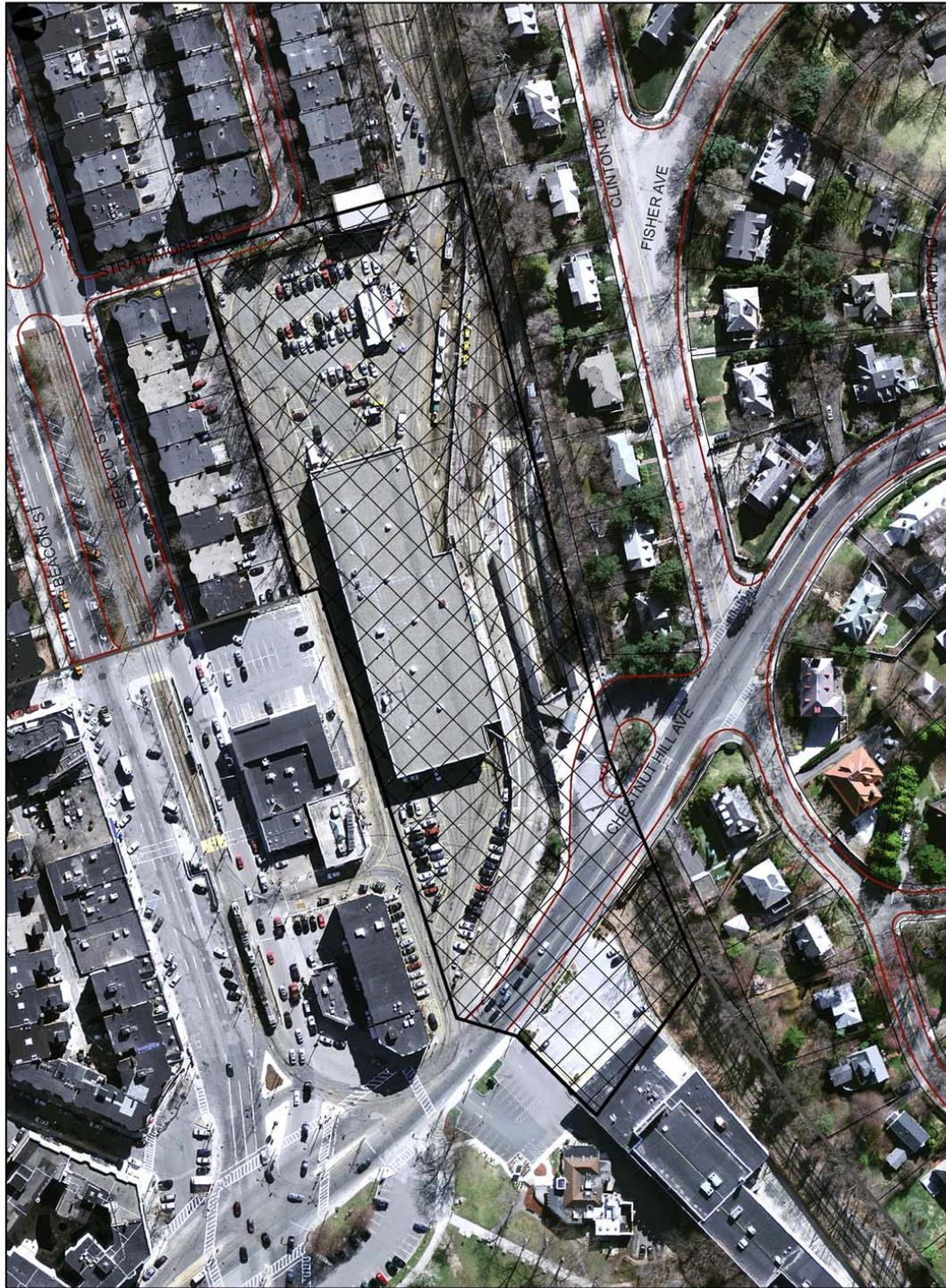
- 1) It has been determined through study of the Local Business District in Cleveland Circle that there exists potential for redevelopment of much of this district. It has further been determined that, due to the circulation and multiple transit systems in this area as well as the proximity of the municipal boundary with Boston, any redevelopment in this district would need to be closely analyzed for its impacts on the roadway, transit and pedestrian system and for its overall design taking into consideration previous mitigation due to traffic flow patterns within the district.
- 2) All applications in the L-0.5 (CL) district shall be subject to **§5.09, Design Review**. Further, any development in this district shall, for the purposes of determining if it is a Major Impact Project under **§5.09.3.b.**, be viewed in its entirety, even if a portion of the project is located in another municipality.
- 3) All Major Impact Projects in this special district shall be required to submit a traffic impact and access study that clearly outlines the strategy for providing access to and from the proposed development and the impacts of that access on the transportation system of the Town, the area’s mass transit systems, pedestrian and bicycle circulation, and public safety in this area. The Board of Appeals may condition any Special Permit under **§5.09** on a specific plan for traffic mitigation that will take into consideration previous mitigation due to traffic patterns within the district and, if appropriate, compliance with an approved Transportation Demand Management program.”

2. Amend Section 5.09.2.a. as follows:

"a. Any structure or outdoor use on a lot any part of which is located in the G-1.75(CC) **or L-0.5 (CL)** Districts or which fronts on or is within 100 feet of: Beacon Street, Commonwealth Avenue, Boylston Street, Harvard Street, Brookline Avenue, or Washington Street.”

4. Amend Table 5.01 (Table of Dimensional Requirements) to add the words “L-0.5 (CL)” immediately below the words “L-0.5” in the District column.

or act on anything relative thereto.



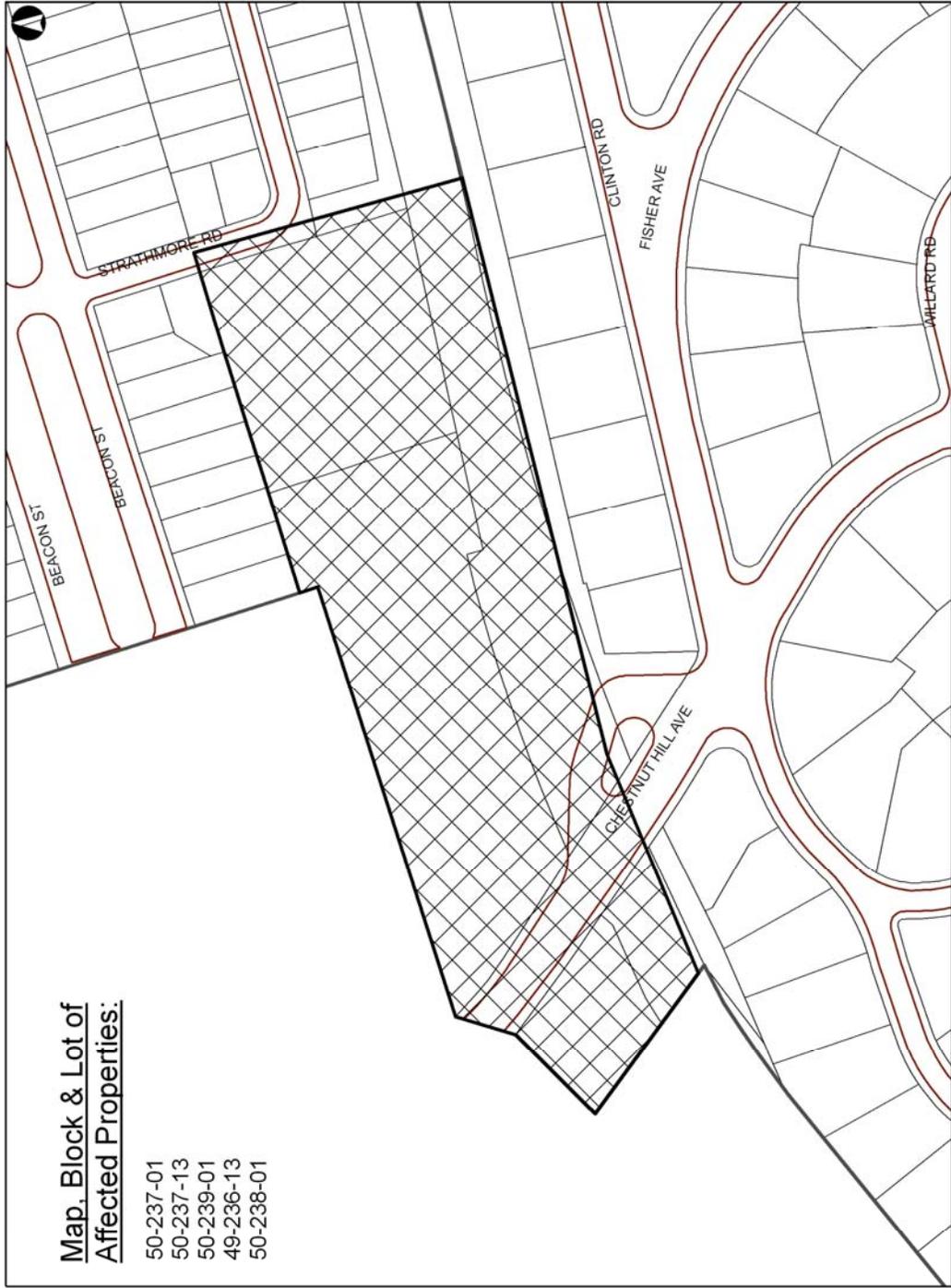
1 inch = 150 feet

 L-0.5 Zoning District

L-0.5 (CL) Special District

Map, Block & Lot of  
Affected Properties:

- 50-237-01
- 50-237-13
- 50-239-01
- 49-236-13
- 50-238-01



1 inch = 150 feet

 L-0.5 Special District

#### PETITIONER'S ARTICLE DESCRIPTION

This article is being submitted by the Department of Planning & Community Development with the unanimous support of the Zoning Bylaw Committee. It would create a new Special District under Section 5.06 of the Zoning Bylaw. It is designed to provide the Town with some additional controls over the quality of development that might occur in the L-0.5 zoning district in Cleveland Circle by requiring design review of all projects in that district, and also requiring a Traffic Impact and Access Study of all Major Impact Projects in that district. It would also clarify that redevelopment of a site that is partially outside Brookline would still be viewed as if the entire development were in Brookline. While the current Zoning Bylaw probably would require such reviews in any case, this proposed overlay would eliminate any doubt.

The L-0.5 zoning district in Cleveland Circle consists of the front segment of the former Circle Cinema site and the Reservoir MBTA station yards. Both sites are possible development sites in the future- the Circle Cinema site most imminently because the theatre is closed and the property is for sale. The existing L-0.5 zoning will significantly constrain the redevelopment potential of both sites. However, since much of the Circle Cinema site is in Boston, where a higher density is permitted than on the Brookline portion of the site, it is possible that the site could be redeveloped in Boston and have an adverse impact on Brookline, even if none of the new development is in Brookline. This zoning amendment would explicitly require design review and transportation analysis of any such redevelopment proposal, which would include examination of how such a project would impact pedestrian, bicycle and transit access, as well as vehicle traffic impacts on surround roads such as Chestnut Hill Avenue which historically have been mitigated due to traffic exiting the property directly onto Beacon Street in Boston.

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#### **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 unanimously recommended favorable action on the article as submitted. The article was drafted in response to development pressures in Cleveland Circle due to the future sale of the Circle Cinema site, the bulk of which is located in Boston, as well as potential redevelopment of the Reservoir MBTA station yards. The article will establish a Special District under Section 5.06 of the Zoning By-Law that will be known as the Cleveland Circle Local Business District L-0.5 (CL). The purpose of the district will be to clarify that all projects in the district will require design review; and all Major Impact Projects will require a Traffic Impact and Access Study. Further, it will clarify that redevelopment of a site that is partially outside Brookline would still be viewed as if the entire development were in Brookline.

The Planning Board is supportive of this article because it will ensure there is review of design issues and traffic impacts from any redevelopment of either the Circle Cinema site or the Reservoir MBTA station yards in the special district. As much of the Circle Cinema site is in Boston, where a higher density is permitted, the special district will help mitigate any adverse effects the redevelopment could have on Brookline. However, the

Planning Board has concerns the FAR of an L-0.5 district is too low and feels that issue should be examined at a later date.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 10 as submitted.

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SELECTMEN'S RECOMMENDATION

Article 10, which was submitted by the Planning and Community Development Department with the support of the Zoning By-Law Committee, is designed to provide the Town with some additional review powers in the event that either of the two properties in the L-0.5 district in Cleveland Circle are proposed for redevelopment. It creates a new special district in that zoning district called the L-0.5 (CL) district, and imposes new review requirements on projects in that area.

These requirements are designed to address the unique characteristics of that area. Specifically that:

1. Much of the contiguous commercial district is located in Boston, rather than Brookline. In fact, both of the parcels are split between the two municipalities, with the primary automotive entry point in Brookline.
2. These parcels front on a crowded location on Chestnut Hill Avenue, with trolley tracks, a T station, and significant non-automotive traffic all converging into Cleveland Circle.

This special district would require that any development in this district conduct design review under Section 5.09 of the Zoning By-Law. It would also require that the Building Commissioner and Director of Planning and Community Development look at any proposed redevelopment in its entirety for determination as to whether the redevelopment is a Major Impact Project under the Zoning By-Law. That requirement removes any ambiguity as to whether the portion of a redevelopment in Boston should be considered when thinking about how to review the portion of the redevelopment in Brookline.

This special district would also require that any Major Impact Project in this district conduct a specific type of transportation impact and access study, including examination of non-motorized traffic and possibly requiring a Transportation Demand Management plan as part of any mitigation plan. This would clarify that solving the transportation issues in this district require looking beyond single-occupant vehicles into alternatives such as bicycling, walking, and using the Reservoir T station.

These requirements are important clarifications and safeguards for the Town from development that occurs either within its boundaries or partially in Boston. The Board understands that this article was submitted as a partial solution to the issues of development in this area. A longer-term solution, looking at why properties in the L-0.5 districts in Town in general have had problems, is currently under way by the Economic Development Advisory Board. Hopefully, any recommendations of that study will help

inform the Selectmen, Town Meeting, and the Advisory Committee as to whether any other Town actions are appropriate in this district.

However, the Board agrees that a short-term solution is appropriate at this time, given the interest in redeveloping the cinema site at this time, as well as the Urban Land Institute redevelopment study under way at the Reservoir T station site. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2009, on the following vote:

VOTED: That the Town will the Zoning By-Law and Map by incorporating the attached map into the Zoning Map and amending the Zoning By-Law as follows:

1. Amend Section under 3.01.2.a.(Local Business (L)):

“**2) L-0.5 (CL)**

**3) ↗ L-1.0”**

2. Add a new section 5.06.4.e. under *Special District Regulations*:

“*e. Cleveland Circle Local Business District L-0.5 (CL)*

- 1) It has been determined through study of the Local Business District in Cleveland Circle that there exists potential for redevelopment of much of this district. It has further been determined that, due to the circulation and multiple transit systems in this area as well as the proximity of the municipal boundary with Boston, any redevelopment in this district would need to be closely analyzed for its impacts on the roadway, transit and pedestrian system and for its overall design taking into consideration previous mitigation due to traffic flow patterns within the district.
- 2) All applications in the L-0.5 (CL) district shall be subject to **§5.09, Design Review**. Further, any development in this district shall, for the purposes of determining if it is a Major Impact Project under **§5.09.3.b.**, be viewed in its entirety, even if a portion of the project is located in another municipality.
- 3) All Major Impact Projects in this special district shall be required to submit a traffic impact and access study that clearly outlines the strategy for providing access to and from the proposed development and the impacts of that access on the transportation system of the Town, the area’s mass transit systems, pedestrian and bicycle circulation, and public safety in this area. The Board of Appeals may condition any Special Permit under **§5.09** on a specific plan for traffic mitigation that will take into consideration previous mitigation due to traffic patterns within the district and, if appropriate, compliance with an approved Transportation Demand Management program.”

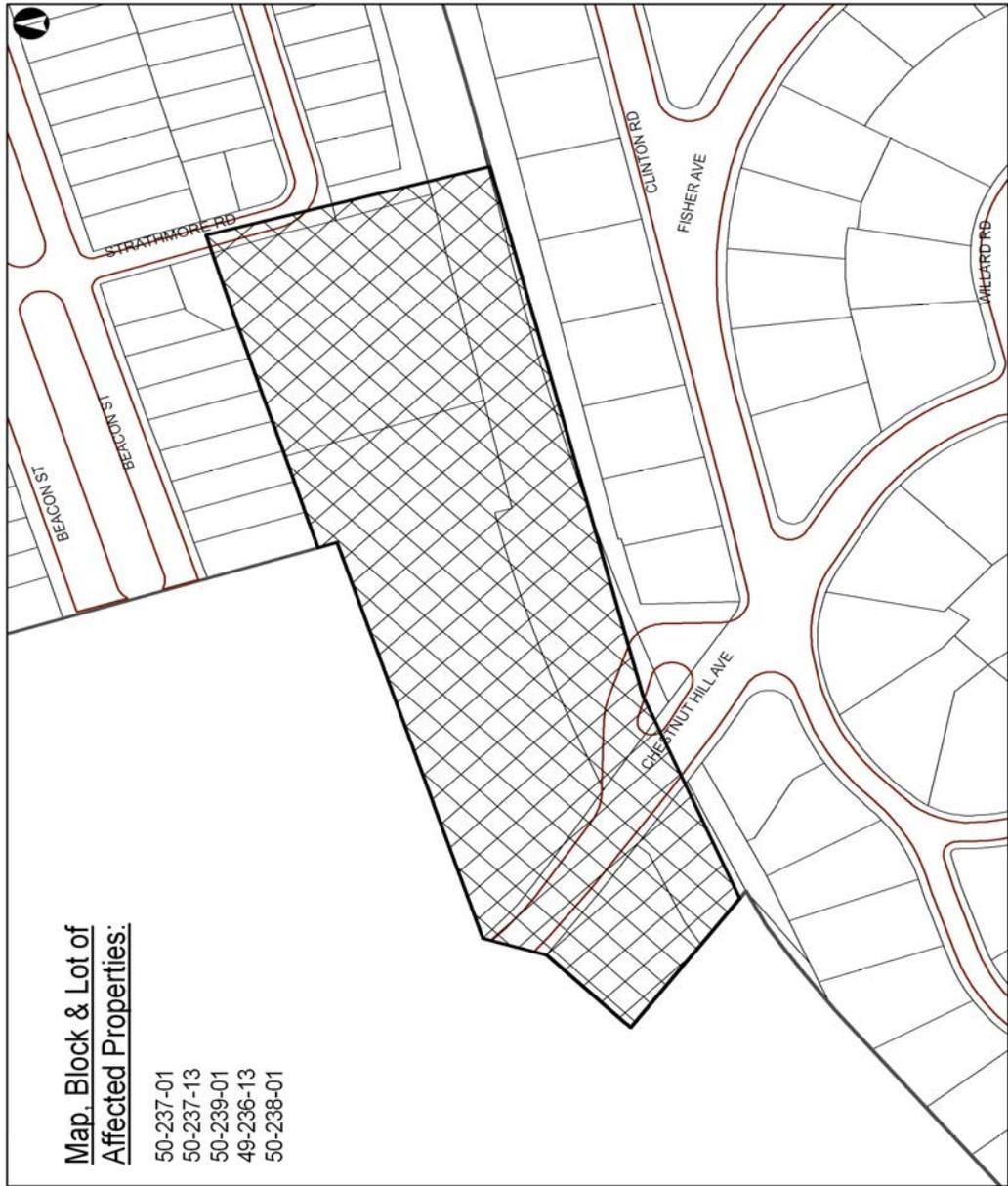
3. Amend Section 5.09.2.a. as follows:

“a. Any structure or outdoor use on a lot any part of which is located in the G-1.75(CC) or L-0.5 (CL) Districts or which fronts on or is within 100 feet of: Beacon Street, Commonwealth Avenue, Boylston Street, Harvard Street, Brookline Avenue, or Washington Street.”

4. Amend Table 5.01 (Table of Dimensional Requirements) to add the words “L-0.5 (CL)” immediately below the words “L-0.5” in the District column.



**L-0.5 (CL) Special District**



**Map, Block & Lot of  
Affected Properties:**

- 50-237-01
- 50-237-13
- 50-239-01
- 49-236-13
- 50-238-01

1 inch = 150 feet

 L-0.5 Special District

**ROLL CALL VOTE:**

Favorable Action

- Daly
- DeWitt
- Benka
- Goldstein

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ADVISORY COMMITTEE'S RECOMMENDATIONBACKGROUND:

This article is being submitted by the Planning and Community Development Department with the support of the Zoning By-law Committee. The Planning Board, unanimously recommended favorable action on the article as submitted. The article was drafted in response to development pressures in Cleveland Circle due to the future sale of the Circle Cinema, the bulk of which is located in Boston, as well as potential redevelopment of the Reservoir MBTA station yards. This article will establish a Special District under Section 5.06 of the Zoning By-Law that will be known as the Cleveland Circle Local Business District L-0.5 (CL). The purpose of the district will be to clarify that all projects in the district will require design review; and all Major Impact Projects will require a Traffic Impact and Access Study. Further, it will clarify that redevelopment of a site that is partially outside Brookline would still be viewed as if the entire development were in Brookline.

The Zoning By-law Committee and the Planning Board are supportive of this article because it will ensure there is review of design issues and traffic impacts from any redevelopment of either the Circle Cinema site or the Reservoir MBTA station yards in the special district. As much of the Circle Cinema site is in Boston, where a higher density is permitted, the special district will help mitigate any adverse effects the redevelopment could have on Brookline.

DISCUSSION:

The Advisory Committee heard a presentation from the Planning and Community Development Department, and received a report from the Planning and Regulation Subcommittee concerning the information presented at their public hearing on Article 10. A spokesperson for the Planning Community Development Department stated that the purpose of this Article was to deal with potential negative development impact in the Cleveland Circle area. The proposed Special District comprises two (2) parcels, one of which is within both the Town and the City of Boston. Much of the Circle Cinema property is in Boston, but an important street access point is in Brookline thus giving Brookline some leverage over development decisions at the property. The goal is to give the Town the tools necessary to fully assess the impact on Brookline, not just the portion of the project(s) in Brookline. The committee expressed its support for the proposal, and discussed whether there were additional tools the Town could consider to address large scale development that occurs on parcels around the town's borders. The Planning and Community Development Department plans to review other mechanisms to mitigate development on the town's borders.

RECOMMENDATION:

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

XXX

ARTICLE 11

ELEVENTH ARTICLE

[**bold** is new language, strike-out is deletion]

To see if the Town will amend Section 4. of the Zoning By-law as follows:

1. Delete Uses 15A and 15B from the Principal Uses section of Table 4.07 and add the following footnote to Use 15 (moved from Use 15B):

“\* A day care center shall be licensed in accordance with **M.G.L. chapter 28A, §10**. If such a 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.”

2. Add new Accessory Uses 60A and 60B to Table 4.07 as follows:

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
60A. Family child care home or Family child care plus home operated by an occupant of that household, as defined in draft 102 CMR 8.02 or its successor regulations, provided that no more than 6 children of less than school age, or up to 8 children if 2 are of school age, shall be cared for at one time, inclusive of children of the operator.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
60B. Large family child care home operated by an occupant of that household, as defined in draft 102 CMR 8.02 or its successor regulations, provided that no more than 10 children shall be cared for at one time, inclusive of children of the operator.	SP	SP	SP	SP	SP	Yes	Yes	Yes	Yes

3. Amend Section 4.05 as follows:

**“§4.05 - RESTRICTIONS ON ACCESSORY USES IN RESIDENCE DISTRICTS**

1. In any residence district, no accessory use shall be permitted which involves or requires any of the following:
  - a. The employment of any persons who is not resident in the dwelling unit, other than a domestic employee, except:
    - 1) Attendant or attendants to an accessory garage or parking space;

- 2) Employee or employees of Uses 13, 14, 19, 20, 52, 63, 64, 66, 68 as permitted under §4.07 and Uses 58, 58A, ~~or 59~~, **60A or 60B** as permitted hereunder and in §4.07.
  - b. The maintenance of a stock in trade, except for Uses 63, 64, and 68 in §4.07, or the use of show windows or displays or advertising visible outside the premises to attract customers or clients, other than professional announcement signs, except as provided for Use 64 in §4.07.
2. An accessory use in a dwelling unit in any residence district as permitted under §4.07, Uses 58 or 59, which requires a special permit shall be subject to the office parking provisions of §6.02 unless otherwise modified by the Board of Appeals, by special permit.
3. An accessory use in a dwelling unit in any residence district as permitted under §4.07, Uses 58, 58A or 59, shall not:
  - a. occupy space which exceeds in area the area of the ground floor; occupy 25% or more of the total floor area in an S, SC, or T district, or occupy 50% or more of the total floor area in an M district;
  - b. permit the employment of more than two persons not resident in the dwelling unit;
  - c. be in operation or be open to clients, pupils or other members of the general public (except those seeking emergency professional services of a physician or member of the clergy) between the hours of 10:00 p.m. and 7:00 a.m.; or
  - d. create any objectionable impact in terms of noise, traffic, parking or other nuisance.
4. **For Family Child Care Homes, Family Child Care Plus Homes, and Large Family Child Care Homes (uses 60A and 60B), the following materials must be submitted:**
  - **Site plans showing existing and as-built conditions;**
  - **Hours of operation;**
  - **A parking and circulation plan that provides for safe dropoff and pickup areas for parents and adequate parking for employees, where necessary;**
  - **If an outdoor play area is to be provided, a site plan showing the area so screened from any lot line and from any residential structure on an adjoining lot to avoid a significant noise nuisance;**
  - **Information on other Family Child Care facilities, or other accessory uses, existing or known to be proposed on the same parcel as the proposed facility. For all such facilities, all of the above information shall also be provided and reviewed in the context of the new application;**

- **Documentation of application for appropriate licensing in accordance with M.G.L. chapter 28A, §10 and its implementing regulations. The Building Commissioner or Board of Appeals may condition any approval of such a facility on the owner providing documentation of appropriate licensing prior to receiving a Certificate of Occupancy.**

**For use 60A , the Building Commissioner must find that the conditions as described in these submissions serve the facility and the neighborhood adequately and may condition a Certificate of Occupancy on continued compliance with these submissions. For use 60B, the conditions as described in these submissions will be considered in an application for a Special Permit, which may be conditioned on continued compliance with the conditions described in these submissions.**

**Under no circumstances shall such a facility cause a significant negative impact on the surrounding neighborhood in terms of traffic, parking, noise, or other factors relating to quality of life. The Building Commissioner shall condition a Certificate of Occupancy for Uses 60A and 60B, and the Board of Appeals shall condition a Special Permit for Use 60B, on compliance with this requirement. This requirement shall also apply to any facility under Uses 60A and 60B that predates the adoption of this zoning language.**

**Any Special Permit issued for Use 60B shall automatically expire if the operator’s state license at the permitted location for a Large Family Child Care Home is terminated.”**

5. Amend Section 6.02.4. as follows:

“4. Institutions shall include Uses 10, 11, 15, ~~15A~~, 17, and 19 as listed in Article IV.”

or act on anything relative thereto.

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**PETITIONER’S ARTICLE DESCRIPTION**

Prior to the fall of 2008, the Town of Brookline permitted “family day care homes” provided that the number of children did not exceed 6. At the same time, the state permitted family day care facilities with up to 10 children under certain conditions. A warrant article was proposed for the Special Town Meeting in 2008 that would permit these “large family day care homes” in certain zones by right and in others by Special Permit. This amendment allowed the several large family day care facilities in Town, most of which have been operating without issues, to come to the Town for legalization. However, due to concerns that this might not be the best approach to regulating large family day care facilities, and also due to the fact that the state was in the process of

amending its own regulations related to these facilities, this amendment will sunset in June of 2010.

The Zoning Bylaw Committee (ZBL) met several times since the fall of 2008 to discuss this issue. First, it looked at some basic issues related to regulating large family day care homes. Next, it delineated the basic issues that would need to be addressed in any final zoning language. Finally, it reviewed and commented on a staff draft of revised zoning language. At its February meeting, it recommended unanimously to submit this proposal. This proposed language would:

- Clarify that such facilities are accessory uses, and therefore are limited in size and scale;
- Update the terminology to bring it in line with the new state regulations;
- Provide the Building Commissioner with clear submission requirements and allow him/her some discretion with respect to whether the smaller facilities can meet basic requirements that protect neighbors from impacts;
- Require Special Permits for Large Family Child Care Homes in residential districts, with a set of criteria to be used by the Board of Appeals in reviewing these facilities.
- Make other clarifications, such as stating that children who live in the building must also count towards the total number of children served.
- Provide the Town with enforcement ability if a Family Child Care Home produces excessive noise or other impacts on the neighborhood.

This language is fairly similar to the language that was submitted for the Annual Town Meeting last spring. However, that language had some formatting errors that could not be resolved within the scope of the article. This new language resolves those issues and also has benefited from the extra discussion at the Zoning Bylaw Committee.

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### **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.

Prior to the Fall 2008 Town Meeting, only small family home day cares (Use 15A) for up to six children were allowed by the Zoning By-Law. This was not consistent with state license regulations, which allows large home day cares for up to ten children. At the Fall 2008 Town Meeting, Article 14, submitted by Citizen Petitioner Alexander Shabelsky, proposed to make the zoning consistent with state regulations by adding a new use to allow large family day care homes of six to ten children, except in single family districts. Town Meeting passed this warrant article, but added an expiration date of June 1, 2010, in anticipation of an amended warrant article being submitted that would be consistent with any new state regulations.

At Spring 2009 Town Meeting, Article 17 was submitted to address home childcare in the long term. However, due to an error in the numbering and lettering in the language of the Warrant Article as submitted, no action was taken to allow for another article to be drafted to correct legislative intent as well as the numbering and lettering issues.

The Planning Board supports this article and feels the new language of the article has benefitted from additional discussion at the Zoning By-Law Committee. The current article addresses the previous issues with numbering and lettering, while identifying the daycare as an accessory use which limits the operation in terms of size and scale. The article also establishes submission requirements for daycare operators to obtain permits, requires special permits for Large Family Daycare Homes in residential districts, and provides the Town with enforcement capabilities should any of the daycares prove to be a nuisance to their neighbors.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 11 as submitted.

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SELECTMEN'S RECOMMENDATION

Article 11, which was submitted by the Planning and Community Development Department with the support of the Zoning By-Law Committee, is designed as a permanent replacement to the zoning amendment approved last fall that permitted Large Family Child Care Homes by right or by special permit in all zoning districts except S (single family) zones. The amendment approved last fall was amended to sunset after 18 months, in order to allow Town Meeting time to review and approve a more comprehensive set of zoning regulations for Family Child Care Homes in Brookline.

The language developed by the Zoning By-Law Committee and Town staff would permit both Family Child Care Homes (of up to 6 children) and Large Family Child Care Homes (of 7 to 10 children) in all zones in Town. However, it would require that Large Family Child Care Homes seek a special permit in residential zones, and would also set forth a system of review by the Building Commissioner for any by-right Family Child Care Home. Such a system of review is designed to make sure that these facilities have adequate parking, pickup and drop off plans, and otherwise do not burden the neighborhood with negative impacts.

A similar version of this zoning language was submitted the Annual Town Meeting last Spring. Unfortunately, there were some formatting errors in that submission that could not be resolved within the scope of then-Article 17. That article was referred back to the Zoning By-Law Committee to repair the formatting errors and also to explore the issue further. As a result of this extra time, the Zoning By-Law Committee discussed this issue at several meetings over the summer and made some excellent changes to the original language. Most importantly, the language in this article makes it explicit that any Special Permit issued for a Large Family Child Care Home run with the currently licensed

operator, and not with the property. That arrangement will allow for a new permitting process should a facility change operators.

Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2009, on the vote offered by the Advisory Committee.

**ROLL CALL VOTE:**

Favorable Action

Daly

DeWitt

Benka

Goldstein

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**ADVISORY COMMITTEE'S RECOMMENDATION**

**BACKGROUND:**

At Spring 2009 Town Meeting, Article 17 was submitted to address and adopt a permanent zoning treatment for home child day care. Prior to the fall of 2008, the Town of Brookline had permitted "family day care homes" provided that the number of children did not exceed six. At that time, however, State regulations permitted family day care facilities with up to ten children under certain conditions. A warrant article was proposed for the Special Town Meeting in 2008 that would have permitted these "large family day care homes" in certain zones by right and in others by Special Permit. That amendment allowed the several large family day care facilities in the Town, most of which had been operating without issues, to come to the Town for legalization. However, due to concerns that this might not be the best approach to regulating large family day care facilities, and also due to the fact that the state was in the process of amending its own regulations related to these facilities, Town Meeting passed the warrant article, but added an expiration date of June 1, 2010, in anticipation of an amended warrant article being submitted at a subsequent Town Meeting that would be consistent with any new state regulations.

M. G. L. CHAPTER 40A, Section 3 establishes limitations on the Town's authority to restrict the operation of child care facilities in residential zones. Relevant to the background of Article 11, the statute provides that

Family child care home [up to 6 children] and large family child care home [up to 10 children] ... shall be an allowable use unless a city or town prohibits or specifically regulates such use in its zoning ordinances or by-laws.

Emphasis added. Accordingly, the establishment and operation of a “family day care home” or a “large family day care home” is an allowable, “by right” use in residential zones “unless [the Town] prohibits or specifically regulates such use in its zoning ordinances or by-laws.” Thus, absent action by Town Meeting to “regulate such use,” State law appears to confer “by right” status on such facilities. Town Meeting needs to take action if it wishes to impose any conditions beyond what the state requires.

The amended warrant article was submitted and considered as Article 17 at the Spring 2009 Town Meeting. However, as submitted, Article 17 contained a drafting error in the numbering and lettering in the language of the Warrant Article. As a result, no action was taken at that time so as to allow for another article to be drafted to conform to the correct legislative intent as well as the numbering and lettering issues. The current Article 11 represents a resubmission of Article 17 from the Spring 2009 Town Meeting, and proposes to create a method for the permitting of large family day care facilities.

#### DISCUSSION:

This proposed language would:

- Clarify that such facilities are accessory uses, and therefore are limited in size and scale;
- Update the terminology to bring it in line with the new state regulations;
- Provide the Building Commissioner with clear submission requirements and allow him/her some discretion with respect to whether the smaller facilities can meet basic requirements that protect neighbors from impacts;
- Require Special Permits for Large Family Child Care Homes in residential districts, with a set of criteria to be used by the Board of Appeals in reviewing these facilities;
- Provide that the Special Permit terminate at the same time as the state license terminates;
- Provide the Town with enforcement ability if a Family Child Care Home produces excessive noise or other impacts on the neighborhood; and
- Make other clarifications, such as stating that children who live in the building must also count towards the total number of children served.

If approved, this language would require that any existing facilities that haven’t already received a special permit come before the Board of Appeals for Special Permits. Other smaller facilities would continue to be able to operate by right, provided that they continue to meet these requirements.

#### RECOMMENDATION:

Unlike the last two times the substance of this warrant article has come before us, the vetting process has produced no controversy. Finally, the defects highlighted in the previous incarnations of this article appear to have been cured.

The Advisory Committee by 21-0 vote recommends FAVORABLE ACTION on the following motion, which represents Article 11 as submitted:

VOTED: That the Town amend Section 4. of the Zoning By-Law as follows:

1. Delete Uses 15A and 15B from the Principal Uses section of Table 4.07 and add the following footnote to Use 15 (moved from Use 15B):

“\* A day care center shall be licensed in accordance with **M.G.L. chapter 28A, §10**. If such a 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.”

2. Add new Accessory Uses 60A and 60B to Table 4.07 as follows:

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
60A. Family child care home or Family child care plus home operated by an occupant of that household, as defined in draft 102 CMR 8.02 or its successor regulations, provided that no more than 6 children of less than school age, or up to 8 children if 2 are of school age, shall be cared for at one time, inclusive of children of the operator.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
60B. Large family child care home operated by an occupant of that household, as defined in draft 102 CMR 8.02 or its successor regulations, provided that no more than 10 children shall be cared for at one time, inclusive of children of the operator.	SP	SP	SP	SP	SP	Yes	Yes	Yes	Yes

3. Amend Section 4.05 as follows:

**“§4.05 – RESTRICTIONS ON ACCESSORY USES IN RESIDENCE DISTRICTS**

1. In any residence district, no accessory use shall be permitted which involves or requires any of the following:
  - a. The employment of any persons who is not resident in the dwelling unit, other than a domestic employee, except:
    - 1) Attendant or attendants to an accessory garage or parking space;
    - 2) Employee or employees of Uses 13, 14, 19, 20, 52, 63, 64, 66, 68 as permitted under §4.07 and Uses 58, 58A, ~~or~~ 59, **60A or 60B** as permitted hereunder and in §4.07.

- b. The maintenance of a stock in trade, except for Uses 63, 64, and 68 in §4.07, or the use of show windows or displays or advertising visible outside the premises to attract customers or clients, other than professional announcement signs, except as provided for Use 64 in §4.07.
2. An accessory use in a dwelling unit in any residence district as permitted under §4.07, Uses 58 or 59, which requires a special permit shall be subject to the office parking provisions of §6.02 unless otherwise modified by the Board of Appeals, by special permit.
  3. An accessory use in a dwelling unit in any residence district as permitted under §4.07, Uses 58, 58A or 59, shall not:
    - a. occupy space which exceeds in area the area of the ground floor; occupy 25% or more of the total floor area in an S, SC, or T district, or occupy 50% or more of the total floor area in an M district;
    - b. permit the employment of more than two persons not resident in the dwelling unit;
    - c. be in operation or be open to clients, pupils or other members of the general public (except those seeking emergency professional services of a physician or member of the clergy) between the hours of 10:00 p.m. and 7:00 a.m.; or
    - d. create any objectionable impact in terms of noise, traffic, parking or other nuisance.
  4. **For Family Child Care Homes, Family Child Care Plus Homes, and Large Family Child Care Homes (uses 60A and 60B), the following materials must be submitted:**
    - **Site plans showing existing and as-built conditions;**
    - **Hours of operation;**
    - **A parking and circulation plan that provides for safe dropoff and pickup areas for parents and adequate parking for employees, where necessary;**
    - **If an outdoor play area is to be provided, a site plan showing the area so screened from any lot line and from any residential structure on an adjoining lot to avoid a significant noise nuisance;**
    - **Information on other Family Child Care facilities, or other accessory uses, existing or known to be proposed on the same parcel as the proposed facility. For all such facilities, all of the above information shall also be provided and reviewed in the context of the new application;**
    - **Documentation of application for appropriate licensing in accordance with M.G.L. chapter 28A, §10 and its implementing regulations. The Building Commissioner or Board of Appeals may condition any approval of such a**

11-  
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**facility on the owner providing documentation of appropriate licensing prior to receiving a Certificate of Occupancy.**

**For use 60A , the Building Commissioner must find that the conditions as described in these submissions serve the facility and the neighborhood adequately and may condition a Certificate of Occupancy on continued compliance with these submissions. For use 60B, the conditions as described in these submissions will be considered in an application for a Special Permit, which may be conditioned on continued compliance with the conditions described in these submissions.**

**Under no circumstances shall such a facility cause a significant negative impact on the surrounding neighborhood in terms of traffic, parking, noise, or other factors relating to quality of life. The Building Commissioner shall condition a Certificate of Occupancy for Uses 60A and 60B, and the Board of Appeals shall condition a Special Permit for Use 60B, on compliance with this requirement. This requirement shall also apply to any facility under Uses 60A and 60B that predates the adoption of this zoning language.**

**Any Special Permit issued for Use 60B shall automatically expire if the operator's state license at the permitted location for a Large Family Child Care Home is terminated."**

5. Amend Section 6.02.4. as follows:

"4. Institutions shall include Uses 10, 11, 15, ~~15A~~, 17, and 19 as listed in Article IV."

**XXX**

ARTICLE 12

TWELFTH ARTICLE

To see if the Town will amend the Zoning Bylaw as follows:

1. Amend Section under 2.03 by inserting two new definitions (“C” Definitions):

**“2) CAR SHARING ORGANIZATION** - A Car Sharing Organization (CSO) is a membership-based entity with a distributed fleet of private motor vehicles that are made available to its members primarily for hourly or other short term use through a self-service fully automated reservation system. A CSO does not include any arrangement where a separate written agreement is entered into each time a vehicle is transferred from a rental company to its customer.

**3) COMMERCIAL MOTOR VEHICLE** - Any motor vehicle that is not otherwise defined as a Non-Commercial Motor Vehicle.

**4) ~~2)~~ COURT”**

2. Amend Section under 2.14 by inserting one new definition (“N” Definitions):

**“1) NON-COMMERCIAL MOTOR VEHICLE** - Any motor vehicle, regardless of what kind of license plates they have, which is an Antique Motor Car, Low Speed Vehicle, Limited Use Vehicle, Moped, Motorcycle, Private Passenger Motor Vehicle, School Bus, School Pupil Transport Vehicle, or Vanpool Vehicle as defined by the Massachusetts Registry of Motor Vehicles, and any vehicle owned by a Car Sharing Organization with a Gross Vehicle Weight Rating (GVWR) of no more than 6,000 pounds.

**2) ~~1)~~ NONCONFORMING BUILDING OR LOT**

**3) ~~2)~~ NONCONFORMING USE”**

3. Amend Section under 2.16 (“P” Definitions):

**“1) PARKING GARAGE OR PARKING AREA, NON-RESIDENTIAL** – A building, structure, lot or part of a lot designed or used for the shelter or storage of commercial or non-commercial motor vehicles used by the occupants or users of a lot or lots devoted to a use or uses not permitted in a residential district. ~~in which space is available either to long term or to transient or casual parkers.~~

**2) PARKING GARAGE OR PARKING AREA, RESIDENTIAL** – A building, structure, part of a building or structure, lot or part of a lot designed or used for the shelter or storage of non-commercial motor vehicles used by the occupants or users of a lot or lots devoted to a use or uses permitted in a residence district. ~~and in which no space is rented for casual or transient parkers.~~

or act on anything relative thereto.

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**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. This amendment facilitates the provision of motor vehicles conveniently located throughout Brookline that are shared by multiple individuals through a membership-based Car Sharing Organization (CSO) available to the general public for hourly or similar short term rental. This will allow Brookline to advance its environmental goals by (a) reducing the need for individuals, households and businesses to own, park and store privately owned vehicles and (b) encouraging people to travel less by single-occupancy motor vehicles.

This zoning amendment differentiates vehicles based on type and use rather than the type of plates issued by the state. The Zoning By-Law does not currently define commercial and non-commercial motor vehicles. Additionally, passenger vehicles belonging to Car Sharing Organizations are expressly identified as non-commercial vehicles for purposes of zoning. This amendment permits CSO vehicles and other passenger type vehicles that may have commercial plates to be located in residentially zoned areas.

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article is being submitted by the Planning and Community Development Department with the support of the Zoning By-Law Committee.

The article was drafted in response to the recent increase in demand for ZipCar parking, for which the Zoning By-Law lacks the appropriate definitions and regulations to be able to adequately address. The new definitions established in this article differentiate between commercial and non-commercial vehicles as well as residential and non-residential parking. This article will also create a definition for membership-based Car Sharing Organizations (CSO). The new definitions will facilitate the provisions for which CSOs may make their vehicles available to the general public.

The Planning Board is supportive of this article as it differentiates vehicles based on type and actual use rather than by type of plates issued by the state, which will be more effective in providing the language to craft use regulations pertaining to CSO parking as proposed by related Warrant Article 13.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 12 as submitted.

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SELECTMEN'S RECOMMENDATION

The Board has reviewed and discussed the issues involved under Article 12 but has not taken a vote yet. The Board will include its recommendation in a Supplemental Report that will be sent to Town Meeting Members prior to the commencement of Town Meeting.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

The purpose of this Article is to amend the zoning bylaw to provide a clear definition as to what types of motor vehicles can lawfully be parked off-street in residential zoning districts. Currently, any vehicle having commercial license plates is ipso facto defined to be a commercial vehicle and, according to the Town's zoning bylaw, is not allowed to be parked in driveways or parking lots in residential districts. However, Registry of Motor Vehicle regulations (540 CMR 2.05) define several types of vehicles that by choice or requirement have commercial plates to be, in fact, non-commercial vehicles. For example, real estate brokers that use their sedans in part to conduct business may choose, for tax and parking purposes, to acquire commercial plates. And those pickup trucks chosen by folks as their personal, non-commercially used vehicles (in contrast to pickup trucks with signage and other features indicating their utilization for business purposes) are nonetheless required to have commercial plates. One objective of this Article is to allow vehicles that are essentially used as private passenger vehicles to be legally parked in residential districts regardless of their license plate designations.

A further objective is to provide a definition for vehicles belonging to Car Sharing Organizations (CSOs), such as ZipCars – which bear commercial plates and which have a well-regarded and successful presence in the Town – and to modify existing definitions of residential and non-residential parking facilities so that CSO-owned vehicles can be legally parked therein. These definitions will be needed in conjunction with the proposed zoning change in Article 13 that specifies a new principal use regulation for CSO vehicles and states how they are to be allowed in the Town's various zoning districts .

DISCUSSION:

The proposal for a newly added definition of a Car Sharing Organization: – “A Car Sharing Organization (CSO) is a membership-based entity with a distributed fleet of private motor vehicles that are made available to its members primarily for hourly or other short term use through a self-service fully automated reservation system. A CSO does not include any arrangement where a separate written agreement is entered into each time a vehicle is transferred from a rental company to its customer.” – seemed reasonable and was non-controversial, as was the newly added definition of a Commercial Motor Vehicle – “Any motor vehicle that is not otherwise defined as a Non-Commercial Motor Vehicle.”

There were a few problems, however, with the proposed new language that defined a Non-Commercial Motor Vehicle – “Any motor vehicle, regardless of what kind of license plates they have, which is an Antique Motor Car, Low Speed Vehicle, Limited Use Vehicle, Moped, Motorcycle, Private Passenger Motor Vehicle, School Bus, School Pupil Transport Vehicle, or Vanpool Vehicle as defined by the Massachusetts Registry of Motor Vehicles, and any vehicle owned by a Car Sharing Organization with a Gross Vehicle Weight Rating (GVWR) of no more than 6,000 pounds.”

School Busses, School Transport Vehicles and Vanpool Vehicle were included in this proposed list in order to allow them to be parked legally on school grounds even if the schools were located in residential districts. But such parking is allowed in any case under the Dover Amendment and it did not seem desirable to allow these vehicles to park on actual residential property as would be permitted if these vehicles were to be defined to be non-commercial as originally proposed. The Zoning Bylaw Commission (ZBC), which had urged the Planning Department to insert Article 12 in the Warrant, recommended eliminating these three types of vehicles from the non-commercial definition and the Advisory Committee agrees.

There was also no need to propose defining CSO-owned vehicles as non-commercial and then have to debate this problematic definition. CSO vehicles are typically marked with corporate signage and are in any case an integral part of a profit making enterprise and thus are arguably commercial in nature. The intent to allow CSO vehicles to be garaged in residential districts, as proposed in the definition of residential parking facilities as a part of this Article to be discussed below, and embodied in the usage regulations to be considered in Article 13, can be accomplished simply by explicitly allowing CSO vehicles to be garaged in residential districts even if they are considered to be commercial vehicles. Hence the wording of the definition of a non-residential garage or parking area in this Article can be altered to explicitly allow CSO vehicles, and the language of Article 13 can similarly be modified to allow such usage without needing to designate these CSO vehicles as non-commercial. The Advisory Committee favors this approach and the ZBC has concurred.

In order to make the zoning bylaw receptive to allowing CSO vehicles to park in the Town, the Article proposes reasonable changes to the existing the definition of: Parking Garage or Parking Area, Non-Residential – “A building, structure, lot or part of a lot designed or used for the shelter or storage of commercial or non-commercial motor vehicles used by the ~~occupants~~ or users of a lot or lots devoted to a use or uses not permitted in a residential district. ~~in which space is available either to long term or to transient or casual parkers.~~”

Similarly, the Article proposes reasonable CSO-friendly changes to the existing definition of: Parking Garage or Parking Area, Residential – “A building, structure, part of a building or structure, lot or part of a lot designed or used for the shelter or storage of non-commercial motor vehicles used by the ~~occupants~~ or users of a lot or lots devoted to a use or uses permitted in a residence district. ~~and in which no space is rented for casual or transient parkers.~~” However, under the recommended omission of CSO vehicles from the proposed listing of non-commercial vehicles discussed above, new language would

have to be added to the residential parking facility definition in order to explicitly allow CSO vehicles in residential districts. This additional language, explicitly allowing in residential parking facilities, “any vehicle owned by a Car Sharing Organization with a Gross Vehicle Weight Rating (GVWR) of no more than 6,000 pounds,” has been endorsed by the ZBC and appears as part of the Advisory Committee’s recommended vote below.

**RECOMMENDATION:**

The Advisory Committee supports the effort to bring the zoning bylaw’s definition of non-commercial vehicles into conformity with the definition contained in RMV regulations, and to allow vehicles that are essentially used as private passenger vehicles to park off-street in residential districts as long as their appearance and utilization do not degrade the residential character of these neighborhoods.

The Advisory Committee, understanding the importance and usefulness of CSO-owned vehicles to many Town residents and recognizing the desirability of having these vehicles conveniently located for resident usage, also supports enacting new zoning bylaw definitions and modifying existing definitions in order that in certain circumstances and subject to reasonable controls and regulation, CSO vehicles can be allowed in residential and in non-residential districts, a purpose that can be accomplished without having to problematically define CSO vehicles to be non-commercial.

By a unanimous vote, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

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

1. Amend Section under 2.03 by inserting two new definitions (“C” Definitions):

**2) CAR SHARING ORGANIZATION** - A Car Sharing Organization (CSO) is a membership-based entity with a distributed fleet of private motor vehicles that are made available to its members primarily for hourly or other short term use through a self-service fully automated reservation system. A CSO does not include any arrangement where a separate written agreement is entered into each time a vehicle is transferred from a rental company to its customer.

**3) COMMERCIAL MOTOR VEHICLE** - Any motor vehicle that is not otherwise defined as a Non-Commercial Motor Vehicle.

**4) ~~2~~ COURT**”

2. Amend Section under 2.14 by inserting one new definition (“N” Definitions):

**1) NON-COMMERCIAL MOTOR VEHICLE** - Any motor vehicle, regardless of what kind of license plates ~~it has they have~~, which is an Antique Motor Car, Low Speed Vehicle, Limited Use Vehicle, Moped, Motorcycle, or Private Passenger Motor Vehicle, ~~School Bus, School Pupil Transport Vehicle, or Vanpool Vehicle~~ as defined by the

Massachusetts Registry of Motor Vehicles, ~~and any vehicle owned by a Car Sharing Organization with a Gross Vehicle Weight Rating (GVWR) of no more than 6,000 pounds.~~

2) ~~1) NONCONFORMING BUILDING OR LOT~~

3) ~~2) NONCONFORMING USE~~

3. Amend Section under 2.16 ("P" Definitions):

~~"1) PARKING GARAGE OR PARKING AREA, NON-RESIDENTIAL – A building, structure, lot or part of a lot designed or used for the shelter or storage of commercial or non-commercial motor vehicles used by the occupants or users of a lot or lots devoted to a use or uses not permitted in a residential district. in which space is available either to long term or to transient or casual parkers.~~

**2) PARKING GARAGE OR PARKING AREA, RESIDENTIAL – A building, structure, part of a building or structure, lot or part of a lot designed or used for the shelter or storage of non-commercial motor vehicles, or any vehicle owned by a Car Sharing Organization with a Gross Vehicle Weight Rating (GVWR) of no more than 6,000 pounds, used by the occupants or users of a lot or lots devoted to a use or uses permitted in a residence district. ~~and in which no space is rented for casual or transient parkers.~~**

Additionally, the Advisory Committee recognizes that the definitions of Commercial and Non-Commercial Motor Vehicles in the above motion contain no references to CSO-owned vehicles and we believe that they deserve to be considered on their own, independently of deliberations regarding zoning changes that deal with CSO vehicles. On the other hand, the remaining definitions in the motion are closely tied to the regulations regarding CSO vehicles to be considered in Article 13, and we believe that it would not be sensible to approve these definitions without also approving CSO regulations under Article 13, or to do the reverse, approving CSO regulations without also approving these CSO-related definitions in Article 12. Therefore the Advisory Committee unanimously recommends the following procedural motion:

That the question under Article 12 be divided such that one vote be taken regarding approval of the definitions of Commercial Motor Vehicle and Non-Commercial Motor Vehicle, and that a subsequent single vote be taken regarding approval of the remaining definitions in Article 12 and of the regulations to be considered in Article 13, considered together.

ARTICLE 12

BOARD OF SELECTMEN SUPPLEMENTAL RECOMMENDATION

Article 12 establishes new definitions for Car Sharing Organizations (“CSO’s” such as Zipcar), defines commercial and non-commercial vehicles, and amends the definitions of residential and non-residential parking garage or parking areas. “Car Sharing Organization” is defined to facilitate the provisions further described in Article 13, and borrows language from the Department of Revenue.

Without a definition in our Zoning By-Law, commercial vehicles are assumed to be any vehicle that has a commercial plate. Some vehicles are required by the Registry of Motor Vehicles (RMV) to have commercial plates. However, commercial plates are available for purchase from the RMV for any vehicle, and may not reflect whether the vehicle has the characteristics of a commercial vehicle. This article differentiates vehicles based on type and use rather than by the type of plates issued by the RMV. The distinction between commercial and non-commercial vehicles reflects language from the RMV regulations that *requires* vehicles to have commercial plates. Additionally, this article limits signage on non-commercial vehicles to three signs, two of which may be no larger than two square feet in area and one that may not be larger than one square foot in area.

The original article as drafted would have additionally defined school buses, school pupil transport vehicles, vanpool vehicles, and CSO vehicles as non-commercial. However, the school-related vehicles would be allowed to be parked on school grounds in residential areas by the Dover Amendment. Additionally, language was added to the definition of “Residential Parking Garage or Parking Area” to allow CSO vehicles in residential parking areas (subject to Article 13) without requiring these vehicles to be defined as residential vehicles.

Finally, this Article amends the definitions for “Residential Parking Garage or Parking Area” and “Non-Residential Parking Garage or Parking Area” to allow CSO vehicles to be parked in the Town.

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on November 10, 2009, on the following language:

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

1. Amend Section under 2.03 by inserting two new definitions (“C” Definitions):

**“2) CAR SHARING ORGANIZATION** - A Car Sharing Organization (CSO) is a membership-based entity with a distributed fleet of private motor vehicles that are made available to its members primarily for hourly or other short term use through a self-service fully automated reservation

system. A CSO does not include any arrangement where a separate written agreement is entered into each time a vehicle is transferred from a rental company to its customer.

**3) COMMERCIAL MOTOR VEHICLE** - Any motor vehicle that is not otherwise defined as a Non-Commercial Motor Vehicle.

**4) COURT**”

2. Amend Section under 2.14 by inserting one new definition (“N” Definitions):

**“1) NON-COMMERCIAL MOTOR VEHICLE** - Any motor vehicle, regardless of what kind of license plates ~~it has they have~~, which is an Antique Motor Car, Low Speed Vehicle, Limited Use Vehicle, Moped, Motorcycle as defined by the Massachusetts Registry of Motor Vehicles; any Private Passenger Motor Vehicle that is a sport utility vehicle or passenger van; any Private Passenger Motor Vehicle that is a pickup truck or cargo van and of the 1 TON class or less, registered or leased to an individual and is used exclusively for personal, recreational, or commuter purposes; any other Private Passenger Motor Vehicle that has a Gross Vehicle Weight Rating (GVWR) of 6,000 pounds or less, ~~School Bus, School Pupil Transport Vehicle, or Vanpool Vehicle as defined by the Massachusetts Registry of Motor Vehicles, and any vehicle owned by a Car Sharing Organization with a Gross Vehicle Weight Rating (GVWR) of no more than 6,000 pounds,~~ and which:

(a) unless owned by a corporation whose personal property is exempt from taxation under M.G.L. c.59, § 5, Clause Third or Tenth, has no more than three signs displayed on each vehicle, identifying the name and/or logo and contact information of the company, two of which may be no larger than two (2) square feet in area and one of which may be no larger than one (1) square foot in area, measured by multiplying the greatest dimension from top to bottom times the greatest dimension side to side;

(b) has no more than four wheels on the ground;

(c) does not store tools, supplies, materials or equipment on the roof, sides, or bed of a vehicle for use at a job site where compensation is received;

(d) is not used for hire to plow; and

(e) if used for transporting or storing goods, wares or merchandise for business purposes, is used for such purposes not more than 40% of the total usage of the vehicle, is owned by an individual and has a maximum load carrying capacity of 1,000 pounds or less.

- 2) ~~1)~~ NONCONFORMING BUILDING OR LOT
- 3) ~~2)~~ NONCONFORMING USE”

3. Amend Section under 2.16 (“P” Definitions):

**“1) PARKING GARAGE OR PARKING AREA, NON-RESIDENTIAL** – A building, structure, lot or part of a lot designed or used for the shelter or storage of commercial or non-commercial motor vehicles used by the ~~occupants or~~ users of a lot or lots devoted to a use or uses not permitted in a residential district. ~~in which space is available either to long term or to transient or casual parkers.~~

**2) PARKING GARAGE OR PARKING AREA, RESIDENTIAL** – A building, structure, part of a building or structure, lot or part of a lot designed or used for the shelter or storage of non-commercial motor vehicles, or any vehicle owned or leased by a Car Sharing Organization with a Gross Vehicle Weight Rating (GVWR) of 6,000 pounds or less and which satisfies paragraphs (a) to (e) of the definition of non-commercial motor vehicles, used by the ~~occupants or~~ users of a lot or lots devoted to a use or uses permitted in a residence district. ~~and in which no space is rented for casual or transient parkers.~~

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ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

The purpose of this Article is to amend the zoning bylaw to provide a clear definition as to what types of motor vehicles can lawfully be parked off-street in residential zoning districts. Currently, any vehicle having commercial license plates is ipso facto defined to be a commercial vehicle and, according to the Town’s zoning bylaw, is not allowed to be parked in driveways or parking lots in residential districts. However, Registry of Motor Vehicle regulations (540 CMR 2.05) define several types of vehicles that by choice or requirement have commercial plates to be, in fact, non-commercial vehicles. For example, real estate brokers that use their sedans in part to conduct business may choose, for tax and parking purposes, to acquire commercial plates. And those pickup trucks chosen by folks as their personal, non-commercially used vehicles (in contrast to pickup trucks with signage and other features indicating their utilization for business purposes) are nonetheless required to have commercial plates. One objective of this Article is to allow vehicles that are essentially used as private passenger vehicles to be legally parked in residential districts regardless of their license plate designations.

A further objective is to provide a definition for vehicles belonging to Car Sharing Organizations (CSOs), such as ZipCars – which bear commercial plates and which have a

well-regarded and successful presence in the Town – and to modify existing definitions of residential and non-residential parking facilities so that CSO-owned vehicles can be legally parked therein. These definitions will be needed in conjunction with the proposed zoning change in Article 13 that specifies a new principal use regulation for CSO vehicles and states how they are to be allowed in the Town’s various zoning districts .

DISCUSSION:

The proposal for a newly added definition of a Car Sharing Organization: – “A Car Sharing Organization (CSO) is a membership-based entity with a distributed fleet of private motor vehicles that are made available to its members primarily for hourly or other short term use through a self-service fully automated reservation system. A CSO does not include any arrangement where a separate written agreement is entered into each time a vehicle is transferred from a rental company to its customer.” – seemed reasonable and was non-controversial, as was the newly added definition of a Commercial Motor Vehicle – “Any motor vehicle that is not otherwise defined as a Non-Commercial Motor Vehicle.”

There were a few problems, however, with the proposed new language that defined a Non-Commercial Motor Vehicle – “Any motor vehicle, regardless of what kind of license plates they have, which is an Antique Motor Car, Low Speed Vehicle, Limited Use Vehicle, Moped, Motorcycle, Private Passenger Motor Vehicle, School Bus, School Pupil Transport Vehicle, or Vanpool Vehicle as defined by the Massachusetts Registry of Motor Vehicles, and any vehicle owned by a Car Sharing Organization with a Gross Vehicle Weight Rating (GVWR) of no more than 6,000 pounds.”

School Busses, School Transport Vehicles and Vanpool Vehicle were included in this proposed list in order to allow them to be parked legally on school grounds even if the schools were located in residential districts. But such parking is allowed in any case under the Dover Amendment and it did not seem desirable to allow these vehicles to park on actual residential property as would be permitted if these vehicles were to be defined to be non-commercial as originally proposed. The Zoning Bylaw Commission (ZBC), which had urged the Planning Department to insert Article 12 in the Warrant, recommended eliminating these three types of vehicles from the non-commercial definition and the Advisory Committee agrees.

There was also no need to propose defining CSO-owned vehicles as non-commercial and then have to debate this problematic definition. CSO vehicles are typically marked with corporate signage and are in any case an integral part of a profit making enterprise and thus are arguably commercial in nature. The intent to allow CSO vehicles to be garaged in residential districts, as proposed in the definition of residential parking facilities as a part of this Article to be discussed below, and embodied in the usage regulations to be considered in Article 13, can be accomplished simply by explicitly allowing CSO vehicles to be garaged in residential districts even if they are considered to be commercial vehicles. Hence the wording of the definition of a non-residential garage or parking area in this Article can be altered to explicitly allow CSO vehicles, and the language of Article 13 can similarly be modified to allow such usage without needing to designate these CSO

vehicles as non-commercial. The Advisory Committee favors this approach and the ZBC has concurred.

In order to make the zoning bylaw receptive to allowing CSO vehicles to park in the Town, the Article proposes reasonable changes to the existing the definition of: Parking Garage or Parking Area, Non-Residential – “A building, structure, lot or part of a lot designed or used for the shelter or storage of commercial or non-commercial motor vehicles used by the ~~occupants~~ or users of a lot or lots devoted to a use or uses not permitted in a residential district. ~~in which space is available either to long term or to transient or casual parkers.~~”

Similarly, the Article proposes reasonable CSO-friendly changes to the existing definition of: Parking Garage or Parking Area, Residential – “A building, structure, part of a building or structure, lot or part of a lot designed or used for the shelter or storage of non-commercial motor vehicles used by the ~~occupants~~ or users of a lot or lots devoted to a use or uses permitted in a residence district. ~~and in which no space is rented for casual or transient parkers.~~” However, under the recommended omission of CSO vehicles from the proposed listing of non-commercial vehicles discussed above, new language would have to be added to the residential parking facility definition in order to explicitly allow CSO vehicles in residential districts. This additional language, explicitly allowing in residential parking facilities, “any vehicle owned by a Car Sharing Organization with a Gross Vehicle Weight Rating (GVWR) of no more than 6,000 pounds,” has been endorsed by the ZBC and appears as part of the Advisory Committee’s recommended vote below.

**RECOMMENDATION:**

The Advisory Committee supports the effort to bring the zoning bylaw’s definition of non-commercial vehicles into conformity with the definition contained in RMV regulations, and to allow vehicles that are essentially used as private passenger vehicles to park off-street in residential districts as long as their appearance and utilization do not degrade the residential character of these neighborhoods.

The Advisory Committee, understanding the importance and usefulness of CSO-owned vehicles to many Town residents and recognizing the desirability of having these vehicles conveniently located for resident usage, also supports enacting new zoning bylaw definitions and modifying existing definitions in order that in certain circumstances and subject to reasonable controls and regulation, CSO vehicles can be allowed in residential and in non-residential districts, a purpose that can be accomplished without having to problematically define CSO vehicles to be non-commercial.

By a unanimous vote, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Board of Selectmen.

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ARTICLE 12

**Amendment Offered by Nancy Heller, TMM Prec-8**

At the end of paragraph a) in the definition of non-commercial motor vehicles, immediately after the words side to side, add the words:

,provided however that no such sign shall be mounted on the rooftop of a motor vehicle

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ARTICLE 12

On Tuesday, prior to the commencement of Town Meeting, both the Board of Selectmen and the Advisory Committee plan on considering an amendment to the language originally voted by both bodies under Article 12 so that it reads as follows:

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

1. Amend Section under 2.03 by inserting two new definitions (“C” Definitions):

“2) CAR SHARING ORGANIZATION - A Car Sharing Organization (CSO) is a membership-based entity with a distributed fleet of private motor vehicles that are made available to its members primarily for hourly or other short term use through a self-service fully automated reservation system. A CSO does not include any arrangement where a separate written agreement is entered into each time a vehicle is transferred from a rental company to its customer.

3) COMMERCIAL MOTOR VEHICLE - Any motor vehicle that is not otherwise defined as a Non-Commercial Motor Vehicle.

4) COURT”

2. Amend Section under 2.14 by inserting one new definition (“N” Definitions):

“1) NON-COMMERCIAL MOTOR VEHICLE - Any motor vehicle, regardless of what kind of license plates it has, which is either an Antique Motor Car, Low Speed Vehicle, Limited Use Vehicle, Moped, or Motorcycle, all as defined by the Massachusetts Registry of Motor Vehicles (RMV),; or aany Private Passenger Motor Vehicle as defined by the RMV that is a sport utility vehicle or passenger van,; or aany Private Passenger Motor Vehicle as defined by the RMV that is a pickup truck or cargo van and of the 1 TON class or less, registered or leased to an individual and is used exclusively for personal, recreational, or commuter purposes;-, or any other Private Passenger Motor Vehicle as defined by the RMV that has a Gross Vehicle Weight Rating (GVWR) of 6,000 pounds or less, and which also:

(a) unless owned by a corporation whose personal property is exempt from taxation under M.G.L. c.59, § 5, Clause Third or Tenth, has no more than three signs displayed on each vehicle, identifying the name and/or logo and contact information of the company, two of which may be no larger than two (2) square feet in area and one of which may be no larger than one (1) square foot in area, measured by multiplying the greatest dimension from top to bottom times the greatest dimension side to side;

- (b) has no more than four wheels on the ground;
- (c) does not store tools, supplies, materials or equipment on the roof, sides, or bed of a vehicle for use at a job site where compensation is received;
- (d) is not used for hire to plow; and
- (e) if used for transporting or storing goods, wares or merchandise for business purposes, is used for such purposes not more than 40% of the total usage of the vehicle, is owned by an individual and has a maximum load carrying capacity of 1,000 pounds or less.

- 2) NONCONFORMING BUILDING OR LOT
- 3) NONCONFORMING USE”

3. Amend Section under 2.16 (“P” Definitions):

“1) PARKING GARAGE OR PARKING AREA, NON-RESIDENTIAL – A building, structure, lot or part of a lot designed or used for the shelter or storage of commercial or non-commercial motor vehicles used by the users of a lot or lots devoted to a use or uses not permitted in a residential district.

2) PARKING GARAGE OR PARKING AREA, RESIDENTIAL – A building, structure, part of a building or structure, lot or part of a lot designed or used for the shelter or storage of non-commercial motor vehicles, or any vehicle owned or leased by a Car Sharing Organization with a Gross Vehicle Weight Rating (GVWR) of 6,000 pounds or less and which satisfies paragraphs (a) to (e) of the definition of non-commercial motor vehicles, used by the users of a lot or lots devoted to a use or uses permitted in a residence district.

ARTICLE 12

**Amendment Offered by Nancy Heller, TMM Prec-8**

MOVED: to amend subparagraph 1)(a), in paragraph 2 of the main motion, by changing the word "and" in the fifth line of subparagraph (a) to a comma and by adding the following after the words "side by side" at the end of such subparagraph: ", and none of which is mounted on the roof of such vehicle"

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ARTICLE 13

THIRTEENTH ARTICLE

To see if the Town will amend the Zoning Bylaw as follows:

1. Add a new principal use regulation in Section 4.07, Table of Use Regulations, 22A, as follows:

**§4.07 – TABLE OF USE REGULATIONS**

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
<i>AUTOMOTIVE SERVICE USES (SUBJECT TO ARTICLE VI)</i>									
22A. Parking garage or parking area for noncommercial vehicles owned by a Car Sharing Organization (CSO), whether as the sole use of a lot or as a secondary use, for up to 25 parking spaces or 20% of the total on-site parking spaces, whichever is less. Additional CSO parking spaces may be permitted by special permit per <b>§6.01.5.</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

2. Amend Section under 6.01.4 under *General Regulations Applying to Required Off-Street Parking Facilities* as follows:

“4. All required parking facilities shall be provided and maintained so long as the use exists which the facilities were designed to serve. Off-street parking facilities shall not be reduced in total extent after their provision, except when such reduction is in conformity with the requirements of this Article. Reasonable precautions shall be taken by the owner or sponsor of particular uses to assure the availability of required facilities to the employees or other persons whom the facilities are designed to serve. Required parking spaces shall not be assigned to specific persons or tenants nor rented or leased so as to render them in effect unavailable to the persons whom the facilities are designed to serve, **except as described below in §6.01.5.** Such facilities shall be designed and used in such a manner as at no time to constitute a nuisance, or a hazard, or unreasonable impediment to traffic.”

3. Add a new Section 6.01.5 under *General Regulations Applying to Required Off-Street Parking Facilities*:

“5. Surplus parking spaces beyond any required parking spaces, but no more than 25 spaces, may be rented or leased to a Car Sharing Organization (CSO) as of right. Additionally, up to 20% of the total on-

site parking spaces, or 25 spaces, whichever is less, may be rented or leased to a CSO as of right. Additional CSO parking spaces may be permitted by special permit. In the case of a Special Permit, in addition to the conditions for approval described in §9.05, a demonstration must be made, through utilization surveys and other techniques where appropriate, that previous on-site parking demand will not be shifted to parking spaces on adjacent public streets to the detriment of the neighborhood as a whole. All parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) shall have non-illuminated signage not to exceed three square feet per parking facility that includes the name and phone number of the property owner or lessor to be contacted for any nuisance issues that may arise. Such signage is not subject to the design review process as described in §7.03, paragraph 2.”

4. Amend Section 7.00.1.e under *Signs in All Districts*, as follows:

“e. Signs or advertising devices not attached to the building shall not exceed 20 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 12 feet in height, except gasoline service station signs as regulated by §7.03, paragraph 1., subparagraph h. **Except for signs regulated by paragraphs 3 and 4 below**, all permitted signs in excess of one square foot in area shall be set back one-half the depth of the required front yard setback from all street lot lines. Except for signs regulated by paragraph 2 below, any freestanding sign of nonconforming use, or a freestanding sign of any size for a gasoline service station shall be subject to the requirements of §7.03, paragraph 2. **Except for signs regulated by paragraph 3 below**, there shall be not more than one freestanding sign, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.

5. Add two new Sections under 7.00, *Signs in All Districts*:

“3. Non-illuminated signage that does not exceed 1.5 square feet in area and that identifies allowed users of individual parking spaces is allowed in all zoning districts.

4. Required signage for parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) as described in §6.01, paragraph 5 is allowed in all zoning districts.”

6. Amend Section 7.03.2 under *Signs in L, G, I and O Districts* as follows:

“2. All signs permitted in §§7.02 and 7.03, except temporary signs or advertising devices permitted in §7.03, paragraph 2, subparagraphs f. and

**g. or signs permitted in §7.00, paragraphs 2, 3, and 4**, shall be subject to the following design review process:

or act on anything relative thereto.

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**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. This amendment facilitates the provision of motor vehicles conveniently located throughout Brookline that are shared by multiple individuals through a membership-based Car Sharing Organization (CSO) available to the general public for hourly or similar short term rental. This will allow Brookline to advance its environmental goals by (a) reducing the need for individuals, households and businesses to own, park and store privately owned vehicles and (b) encouraging people to travel less by single-occupancy motor vehicles.

This zoning amendment allows up to 20%, but no more than 25 of required parking spaces to be rented or leased to a CSO by right in all zoning districts, and more parking spaces allowed by special permit. Currently, CSO vehicles are only allowed as an accessory by-right use in nonresidential districts that have more parking spaces than otherwise required by zoning and limited to four spaces. This amendment requires contact information to be posted for all parking facilities that rent or lease to a CSO. Additionally, this zoning amendment allows and regulates signage for individual parking spaces.

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article was submitted by the Planning and Community Development Department with the support of the Zoning By-Law Committee. It would amend the Table of Use Regulations to include a new principal use. The use would be known as 22A. The originally submitted article would have allowed, by-right, the parking or garaging of vehicles owned by a Car Sharing Organization (CSO) for up to 25 parking spaces or 20% of the total on-site parking spaces, whichever is less. After hearing concerns from citizens about potential negative impacts from too many zip cars in one location, the Planning Board supported reducing the number of CSO cars allowed by-right to 4 parking spaces or 15%, with additional spaces allowed by special permit. In addition, this article would clarify that signage no larger than 1.5 square feet, similar to handicap parking signs, may be installed and exempted from Planning Board design review.

Currently, as-of-right CSO parking is limited to four spaces on lots in non-residential zones and only where there is an excess of parking required by zoning. The Planning Board is supportive of this article as it will allow for the expansion of CSOs, thus

contributing to the advancement of Brookline’s environmental goals by reducing the need for privately maintained vehicles and increasing transportation options of its residents and at the same time minimizes any impacts to residents by allowing citizen impact for more than four CSO cars in any one location.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 13 with revisions from the originally submitted warrant article as follows.

**ARTICLE 13**

To see if the Town will amend the Zoning Bylaw as follows:

1. Add a new principal use regulation in Section 4.07, Table of Use Regulations, 22A, as follows:

**§4.07 – TABLE OF USE REGULATIONS**

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
<i>AUTOMOTIVE SERVICE USES (SUBJECT TO ARTICLE VI)</i>									
22A. Parking garage or parking area for noncommercial vehicles owned by a Car Sharing Organization (CSO), whether as the sole use of a lot or as a secondary use, for up to 4 <del>25</del> parking spaces or 15% <del>20%</del> of the total on-site parking spaces, whichever is less, <u>subject to the provisions of §6.01.5.</u>	<u>Yes</u> <u>No</u>	<u>Ye</u> <u>s</u> <u>No</u>	<u>Yes</u> <u>SP*</u>	<u>Yes</u> <u>SP*</u>	Yes*	Yes*	Yes*	Yes*	Yes*
*Additional CSO parking spaces may be permitted by special permit per <b>§6.01.5.</b>									

2. Amend Section under 6.01.4 under *General Regulations Applying to Required Off-Street Parking Facilities* as follows:

“4. All required parking facilities shall be provided and maintained so long as the use exists which the facilities were designed to serve. Off-street parking facilities shall not be reduced in total extent after their provision, except when such reduction is in conformity with the requirements of this Article. Reasonable precautions shall be taken by the owner or sponsor of particular uses to assure the availability of required facilities to the employees or other persons whom the facilities are designed to serve. Required parking spaces shall not be assigned to specific persons or tenants nor rented or leased so as to render them in effect unavailable to the persons whom the facilities are designed to serve, **except as described**

**below in §6.01.5.** Such facilities shall be designed and used in such a manner as at no time to constitute a nuisance, or a hazard, or unreasonable impediment to traffic.”

3. Add a new Section 6.01.5 under *General Regulations Applying to Required Off-Street Parking Facilities*:

~~“5. Surplus parking spaces beyond any required parking spaces, but no more than 25 spaces, may be rented or leased to a Car Sharing Organization (CSO) as of right. Additionally, up to 20% of the total on-site parking spaces, or 25 spaces, whichever is less, Parking spaces may be rented or leased to a CSO as of right per Use 22A of §4.07. Additional CSO parking spaces may be permitted by special permit. In the case of a Special Permit, in addition to the conditions for approval described in §9.05, a demonstration must be made, through utilization surveys and other techniques where appropriate, that previous on-site parking demand will not be shifted to parking spaces on adjacent public streets to the detriment of the neighborhood as a whole. All parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) shall have non-illuminated signage not to exceed three square feet per parking facility that includes the name and phone number of the property owner or lessor to be contacted for any nuisance issues that may arise. Such signage is not subject to the design review process as described in §7.03, paragraph 2.”~~

4. Amend Section 7.00.1.e under *Signs in All Districts*, as follows:

“e. Signs or advertising devices not attached to the building shall not exceed 20 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 12 feet in height, except gasoline service station signs as regulated by §7.03, paragraph 1., subparagraph h. **Except for signs regulated by paragraphs 3 and 4 below**, all permitted signs in excess of one square foot in area shall be set back one-half the depth of the required front yard setback from all street lot lines. Except for signs regulated by paragraph 2 below, any freestanding sign of nonconforming use, or a freestanding sign of any size for a gasoline service station shall be subject to the requirements of §7.03, paragraph 2. **Except for signs regulated by paragraph 3 below**, there shall be not more than one freestanding sign, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.

5. Add two new Sections under 7.00, *Signs in All Districts*:

“3. Non-illuminated signage that does not exceed 1.5 square feet in area and that identifies allowed users of individual parking spaces is allowed in all zoning districts.

4. Required signage for parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) as described in §6.01, paragraph 5 is allowed in all zoning districts.”

6. Amend Section 7.03.2 under *Signs in L, G, I and O Districts* as follows:

“2. All signs permitted in §§7.02 and 7.03, except temporary signs or advertising devices permitted in §7.03, paragraph 2, subparagraphs f. and g. **or signs permitted in §7.00, paragraphs 2, 3, and 4**, shall be subject to the following design review process:

or act on anything relative thereto.

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SELECTMEN’S RECOMMENDATION

The Board has reviewed and discussed the issues involved under Article 13 but has not taken a vote yet. The Board will include its recommendation in a Supplemental Report that will be sent to Town Meeting Members prior to the commencement of Town Meeting.

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ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND

Car sharing has grown in popularity over the past few years. Under a car sharing arrangement, a company such as Zipcar secures parking spaces for a car that it fully maintains for its members including supplying fuel and insurance. Members can purchase various levels of membership for blocks of vehicle time or pay by the day or hour for use of the car. Reservations are typically made through an Internet website. At the appointed time, the member uses a smart card to gain access to the vehicle. A contract is not signed with every use of the car as occurs with a traditional rental.

Zipcar currently has 78 cars located in the more densely populated parts of town. 17 cars are located on Town-owned spaces with the remaining 61 cars being parked in privately owned spaces through arrangements negotiated with each space owner. A listing of the car locations and the current zoning of the locations follows. The cars are parked in

clusters (or “pods”) of 1,2,3 or 4 Zipcars. As of the date of this is written, the largest cluster is 4 cars.

According to statistics provided by the Zipcar company, there are about 3,300 Zipcar members with permanent addresses in Brookline. The majority of reservations are between 8am and 8pm and local Zipcar members must be 21. On average, members walk 0.23 miles from their address to a reserved Zipcar. The subcommittee did hear from a ZipCar member who stated that they could take public transportation to a car located convenient to an MBTA line.

### Current Zoning

There is no explicit mention of car sharing in the Brookline Zoning By-law as it currently exists. Car sharing is thus permitted by accident through the application of loopholes rather through an explicit policy voted on by Town Meeting.

Here is how the current zoning provisions play out:

In commercial and industrial zones, they are allowed by right but only in private lots that have surplus parking spaces beyond those required by the zoning bylaw.

In residential zones, car-sharing vehicles are allowed by special permit only on lots that have surplus parking space and have more than 10 dwelling units on the same lot, at a rate of 1 per 10 parking spaces. Additionally, because car-sharing vehicles are currently considered an accessory use and not a change of use, lots with buildings that were built prior to parking requirements would tend to have more surplus parking spaces than other lots.

The recent ZBA case at 110 Babcock St is the only special permit issued for CSO purposes. The case also highlighted the lack of explicit regulation of car sharing in the current bylaw.

The bottom line is that all of the current CSOs parked in on private property in residential zones are illegal (except those at 110 Babcock St.) and would need to be removed if a change is not made to the zoning bylaw. Once issued a cease and desist order, the property owner could appeal the order to the Zoning Board of Appeals (ZBA) and only if the property were accidentally eligible for a Special Permit as described above could the ZBA grant it. Therefore, we have a problem which needs a solution.

### DISCUSSION

This article has received widespread interest. The two Planning and Regulation subcommittee hearings were extremely well attended. Members of the subcommittee received over 50 emails regarding this Article (mostly in favor of less restrictive CSO placements) in addition to many active discussion threads on the TMMA list serve.

There seems to be widespread agreement that car sharing is a good idea. The Zipcar company is currently the only CSO provider in Brookline. Zipcar began operations in

Cambridge, MA in 2001 and now operates in over 50 cities in North America plus the United Kingdom. Brookline was one of the earliest adopters of Zipcars with the town providing parking early on for Zipcars in Town-owned spaces. Other companies have indicated that they would like to enter the CSO market (though not specifically in Brookline) including traditional car rental companies. Of course, any changes to zoning would affect any CSO provider, not just Zipcar.

Car sharing proponents claim that each car sharing automobile supplants up to 20 automobiles which otherwise would take space and resources. For each fewer car, reduced space is needed for parking, resources to build the car aren't used and for each mile not driven, fuel usage is reduced along with emissions. The Planning and Regulation Subcommittee did hear an argument that in some instances, a CSO may be driven by a customer who would not have owned an automobile and would have otherwise used mass transit, thus increasing miles driven. Each time a CSO is used, the driver incurs an explicit marginal cost so intuitively, a CSO user would think twice before driving in a way that a car owner wouldn't.

For light to moderate users of automobiles, using a CSO could be less expensive than owning a car. There is clearly an economic break-even point. Beyond the economic advantage, there is a lifestyle choice in that while even if a CSO is close by, one is still sharing the automobile and its use would be subject to availability.

Many commenters, via email and statements made at the subcommittee hearings, indicated that the existing convenient availability of CSOs has allowed them to not own a car or alleviated the need for a second car. Additional commenters indicated that their ability to afford to live in Brookline is dependant on not owning an automobile. They said that having a CSO available makes not owning an automobile possible in a practical sense.

Many commenters indicated that for the CSO model to work for them, the CSO needs to be convenient to where they live. This corresponds to the current Zipcar placement pattern of cars scattered throughout town in small "pods" primarily in residential areas (or in commercial districts adjacent to residential areas) and to the statistic Zipcar provided that the average user walks 0.23 miles to use the Zipcar.

For all these reasons, CSO proponents argue that it should be the Town's policy to encourage CSO use and make it as easy as possible to place CSOs throughout the Town in all its zoning districts. They further argue that CSOs should be allowed by right in generous allowances in all zoning districts. The language proposed in the original warrant article does just that; it permits the lesser of 20% of all available spaces or 25 be allowed for CSO use by right in all zoning districts with higher numbers to be allowed under a special permit.

#### Concerns about the Zoning Change

Many commenters both at the public hearings and via email have expressed concerns the not so much about CSOs as a concept but about where the CSO parking spaces should be,

the number of parking spaces used for CSOs plus the amount of oversight prior to the CSOs being placed and in operation after they are placed. These commenters have argued for a reduction of the allowed spaces for this use and the imposition of a special permit requirement for all CSO placements.

The concerns voiced include:

1. Having a large number of CSOs in one place near a Town border adjacent to a college or university (such as Dexter Park) could serve as a magnet for students of those universities who would not otherwise have reason to enter Brookline. This could potentially be disruptive to the affected neighborhoods.

A number of commenters indicated that the area especially around Dexter Park has had problems with noise from resident students. Any additional students being drawn into the area could make the problem worse. Furthermore, students drawn into the area could increase traffic late at night and also be parking and slamming doors late at night at hours when most non students tend to sleep.

2. Commercial ventures such as ZipCar should be limited to commercial districts.

Some commenters argued that Zipcar and other CSO organizations are commercial ventures. They argue that commercial ventures have no place in a residential district and should thus be limited to commercial districts as a matter of principle. The placement of CSO's in residential districts constitutes the first slide down the proverbial "slippery slope" of allowing commercial ventures such as fast food restaurants in residential zones.

Additionally, placement of CSO cars in commercial districts would draw CSO users to those districts thus potentially increasing patronage of Town merchants. (It would also decrease the amount of parking available to non-CSO users in those commercial districts.)

3. Spaces used by CSO will supplant spaces needed by residents thus decreasing the supply of those spaces and increasing their cost to residents.

In the denser sections of town, there are shortages of parking spaces for existing residents. Many of those residents need to own cars for practical or economic reasons. Permitting CSOs to scoop up parking spaces, will displace Brookline residents who need cars and drive up the cost of automobile ownership for those needing cars.

#### Advisory Committee Position

The Advisory Committee recognizes the importance and usefulness of CSO-owned vehicles to many Town residents and agrees with the desirability of having these vehicles conveniently located for resident usage. As many of the existing CSO placements as possible should be legalized.

The Committee also recognizes and is attempting to address the concerns expressed by residents near the town borders and believes that there should be reasonable protections and oversight to help maintain the current character of the neighborhoods. CSO usage has grown to current levels without much adverse affect so we do have a base of experience with CSOs. But much growth especially in the areas near the colleges and universities is new and we should proceed slowly. In the end, most Committee members felt that all Zipcars in residential districts should be required to undergo public process to placement.

#### Licensing vs. Special Permits

The Committee was frustrated that the only process presented by the Warrant Article construction was that of requiring a Special Permit. The Committee heard that even an uncontested Special Permit can take 3-6 months from start to finish plus the expense for the Town (estimated at \$2,000 to \$3,000 in staff time), the expense to applicants, and time of Planning Board and Zoning Board of Appeals. Additionally, once a Special Permit is granted there is normally no subsequent review. There is precedent though in Article 11 where a Special Permit is conditioned upon the continued existence of a license. A Special Permit could even be granted for a period of time requiring a reapplication after a certain number of years. Even if Special Permits for CSOs were subject to periodic review, given the nature of the process, it will be time consuming and expensive for all concerned.

A more effective alternative would be putting in place a licensing process which is renewed yearly and subject to a public process where complaints could be addressed. Fortunately such a process exists for "open air" parking facilities. This process is similar to the process for restaurants ("Common Victuallers") and liquor stores. When a license is first applied for, all abutters within 200 feet are notified and can speak at a public hearing conducted by the Selectmen. The license is renewed every July 1 and residents can speak for or against renewal of the license. Admittedly, once a license is granted it is difficult to revoke but the Selectmen have a pretty good track record of using the process to resolve conflicts.

Unfortunately, not all Open Air parking lots have been licensed and subject to the public hearing process. **The Committee is highlighting this in the hope that the Selectmen will step up to the plate and offer an effective licensing process for open air lots containing CSOs which could be an alternative to the cumbersome Special Permits process.**

Many Advisory Committee members believe that the high limits allowed by right in all districts was far too overreaching. The Committee proposal places limits on CSO placements to allow, in effect, CSOs at a level similar to how they are currently placed. In other words, it is an attempt to zone to current conditions but does allow for some growth should the demand exist, but it requires a public process (via the Special Permit process) before any CSO can be placed in a residential district. A preliminary analysis shows that only 2 of the existing Zipcar placements would not be eligible for the Special Permit process under this framework.

The Committee proposal does the following:

1. In Commercial Districts, the lesser of 10% or 4 spaces can be used by CSOs by right. An additional 2 spaces can be granted by Special Permit as long as the total CSO spaces does not exceed the 10% limitation.
2. In M Districts, 2 CSO spaces can be allowed by Special Permit without regard to the 10% of total space limitations, 2 additional spaces can be allowed by Special Permit as long as the total CSO spaces does not exceed the 10% limitation.
3. In S, SC, T and F Districts, 10% or 1 space (whichever is less) can be used by a CSO with a Special Permit. An exception is made for parcels not used as a residence (ie., church, store, etc.) Those parcels can have 2 spaces by Special Permit without regard to the 10% limit.
4. The language in 6.01.5 is changed to explicitly require non-tandem parking for CSO's.
5. Language was added section 6.01.5 in the warrant article to clarify that when the computation of allowed CSO parking spaces results in a fractional number, only the fraction of one-half or more shall be counted as one."

We estimate that over 97% of the existing CSO placements would be eligible for legalization. About 42% would be allowed by right (those on town owned property and most in commercial districts); roughly 56% would be required to obtain a Special Permit in order to remain.

As stated earlier, 2 spaces would be eliminated. They are located at:

- 1 CSO at 724 Washington St
- 1 CSO at 186 Naples Rd

The proposal does not permit CSO density in any one parcel much beyond the existing conditions. It recognizes that in the denser sections of town, (M and Commercial Districts) we have experience with CSOs and while they have not been disruptive in how they have been placed and managed thus far, a level of regulatory oversight is desirable. For the most part, residents are receptive to CSOs at the current level to the point that a large number of Brookline residents in those areas rely on CSOs and are passionate about their necessity. Thus we expect that most Special Permits will be unopposed.

In the less dense sections of town, (S, SC, T and F zones) we have little experience with CSOs and how they might affect the neighborhood. In those neighborhoods, fewer CSOs will be allowed.

#### RECOMMENDATION

The Advisory Committee, by a vote of 16-1-4 (after a number of amendment iterations) recommends FAVORABLE ACTION on the following motion:

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

1. Add a new principal use regulation in Section 4.07, Table of Use Regulations, 22A, as follows:

**§4.07 – TABLE OF USE REGULATIONS**

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
<i>AUTOMOTIVE SERVICE USES (SUBJECT TO ARTICLE VI)</i>									
<p>22A. Parking garage or parking area for <del>noncommercial</del> vehicles owned by a Car Sharing Organization (CSO) <u>with a Gross Vehicle Weight Rating (GVWR) of no more than 6,000 pounds</u>, whether as the sole use of a lot or as a secondary use, <u>and no more than 10% of the total on-site parking spaces. See §6.01.5.</u></p> <p><u>* 1 parking space may be approved by special permit, subject to the limitation of occupying no more than 10% of the total on-site parking spaces. In those cases only where the use of the lot is not a single-, two-, or three-family dwelling, up two 2 parking spaces may be approved by special permit, which may be granted without regard to the limitation of occupying no more than 10% of the total on-site parking spaces</u></p> <p><u>** 2 parking spaces may be approved by special permit, which may be granted without regard to the limitation of occupying no more than 10% of the total on-site parking spaces. Further, a maximum of 2 additional parking spaces may be approved by special permit, provided that any such additional parking spaces so approved results in a combined total number of approved parking spaces that occupies no more than 10% of the total on-site parking spaces.</u></p> <p><u>*** No more than 4 parking spaces by right, subject to the limitation of occupying no more than 10% of the total on-site parking spaces. In addition to any such parking spaces that may be allowed by right, no more than 2 parking spaces may be approved by special permit, which may be granted without regard to the limitation of occupying no more than 10% of the total on-site parking spaces.</u></p> <p><del>— for up to 25 parking spaces or 20% of the total on-site parking spaces,</del></p>	Yes SP*	Yes SP *	Yes SP*	Yes SP *	Yes SP**	Yes** *	Yes** *	Yes** *	Yes** *

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
<del>whichever is less. Additional CSO parking spaces may be permitted by special permit per §6.01.5.</del>									

2. Amend Section under 6.01.4 under *General Regulations Applying to Required Off-Street Parking Facilities* as follows:

“4. All required parking facilities shall be provided and maintained so long as the use exists which the facilities were designed to serve. Off-street parking facilities shall not be reduced in total extent after their provision, except when such reduction is in conformity with the requirements of this Article. Reasonable precautions shall be taken by the owner or sponsor of particular uses to assure the availability of required facilities to the employees or other persons whom the facilities are designed to serve. Required parking spaces shall not be assigned to specific persons or tenants nor rented or leased so as to render them in effect unavailable to the persons whom the facilities are designed to serve, except as described below in §6.01.5. Such facilities shall be designed and used in such a manner as at no time to constitute a nuisance, or a hazard, or unreasonable impediment to traffic.”

3. Add a new Section 6.01.5 under *General Regulations Applying to Required Off-Street Parking Facilities*:

~~“5. Surplus parking spaces beyond any required parking spaces, but no more than 25 spaces, may be rented or leased to a Car Sharing Organization (CSO) as of right. Additionally, up to 20% of the total on-site parking spaces, or 25 spaces, whichever is less, Parking spaces that do not require the moving of any other motor vehicle to access such spaces may be rented or leased to a CSO per Use 22A of §4.07. Where the computation of allowed CSO parking spaces results in a fractional number, only the fraction of one-half or more shall be counted as one. Additional CSO parking spaces may be permitted by special permit.~~ In the case of a Special Permit, in addition to the conditions for approval described in §9.05, a demonstration must be made, through utilization surveys and other techniques where appropriate, that previous on-site parking demand will not be shifted to parking spaces on adjacent public streets to the detriment of the neighborhood as a whole. All parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) shall have non-illuminated signage not to exceed three square feet per parking facility that includes the name and phone number of the property owner or lessor to be contacted for any nuisance issues that may arise. Such signage is not subject to the design review process as described in §7.03, paragraph 2.”

4. Amend Section 7.00.1.e under *Signs in All Districts*, as follows:

“e. Signs or advertising devices not attached to the building shall not exceed 20 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 12 feet in height, except gasoline service station signs as regulated by §7.03, paragraph 1., subparagraph h. Except for signs regulated by paragraphs 3 and 4 below, all permitted signs in excess of one square foot in area shall be set back one-half the depth of the required front yard setback from all street lot lines. Except for signs regulated by paragraph 2 below, any freestanding sign of nonconforming use, or a freestanding sign of any size for a gasoline service station shall be subject to the requirements of §7.03, paragraph 2. Except for signs regulated by paragraph 3 below, there shall be not more than one freestanding sign, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.

5. Add two new Sections under 7.00, *Signs in All Districts*:

“3. Non-illuminated signage that does not exceed 1.5 square feet in area and that identifies allowed users of individual parking spaces is allowed in all zoning districts.

4. Required signage for parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) as described in §6.01, paragraph 5 is allowed in all zoning districts.”

6. Amend Section 7.03.2 under *Signs in L, G, I and O Districts* as follows:

“2. All signs permitted in §§7.02 and 7.03, except temporary signs or advertising devices permitted in §7.03, paragraph 2, subparagraphs f. and g. or signs permitted in §7.00, paragraphs 2, 3, and 4, shall be subject to the following design review process:

ARTICLE 13

BOARD OF SELECTMEN SUPPLEMENTAL RECOMMENDATION

Article 13 would amend the Table of Use Regulations to include a new principal use, known as 22A, relative to the parking or garaging of vehicles owned by a Car Sharing Organization (CSO's). CSO's (such as Zipcar) have shown themselves to be a viable and efficient mechanism by which Brookline residents may avoid the costs of traditional car ownership and still benefit from the convenience of ready access to a car. The Town and community at large benefit from increased CSO usage. CSO subscribers have been shown to make fewer vehicle trips compared to car owners. Parking demand and traffic are decreased. As a community our carbon footprint is reduced because the overall demands for motor vehicles and fuel are less.

In the years since a CSO has been operating within the Town, only two formal complaints have ever been lodged against its operation. In both instances the complaints were readily addressed and rectified. It follows that the Town would seek to encourage the use of shared cars and that reasonable controls be enacted. In the most appropriate locations, the ability to have parking for CSO vehicles should be made easier, not harder.

The proposed version of Article 13 is the product of extensive input and revision by Town boards, commissions, citizens and staff members. It creates the possibility of a single CSO parking space by Special Permit in the areas where the use is less likely to be common; lots where the use is a single, two, or three-family dwelling and which have 5 or more non-tandem parking spaces. For other areas, where CSOs are more likely to be cost effective, no more than Ten (10%) Percent of the parking spaces on site would be allowed by right to be allocated for CSO vehicles, with two additional CSO spaces available by Special Permit, but in no case would more than four total CSO parking spaces be allowed per lot. The proposal describes issues to be considered for Special Permits and includes general requirements and restrictions for appropriate signage to identify the CSO vehicles and spaces, and for such vehicles to be non-tandem parking spaces.

It should be noted that the Town has a further regulatory control over most CSO spaces through the granting, by the Board of Selectmen, of Open Air Parking Lot Licenses. The Board of Selectmen recognizes that, in the future, this requirement will be enforced with respect to CSO parking spaces. Attached is a document that summarizes the Open Air Parking Lot License Process, including additional requirements related to CSO vehicles.

As proposed, Article 13 and the attached Open Air Parking Lot License adds six important requirements to the Selectmen's existing Open Air Parking Lot License process:

- 1) A cross-reference in zoning to the open air licensing that explicitly gives the Building Commissioner authority to use zoning enforcement for CSO parking spaces if an open air license has not been properly issued or is out of compliance from any conditions issued by the Selectmen.
- 2) Currently, the Building Commissioner, Fire and Police sign off on open air lot applications. For CSOs, there is additional language that has the Building Commissioner copy the Planning and Community Development Director, followed by a list of specific items that should be addressed in both the Building Commissioner and the Planning Director's comments (and potentially used for conditions by the Selectmen), including screening, traffic circulation, and other site-specific issues that may arise.
- 3) Proof that the vehicles are registered in Brookline for excise tax purposes;
- 4) Specific information required on the sketch plan with the application (items drawn to scale such as zoning lines, property lines, buildings, etc.)
- 5) A commitment that the Selectmen's Office will review CSO websites (or other information available) annually to check up on any unlicensed lots.
- 6) The Selectmen's Office currently sends letters to Town Meeting Members of any new open air parking lot license application. The attached process also includes a requirement to email Town Meeting Members reminders when open air parking lot licenses are coming up for renewal with the scheduled hearing date and a list of properties that have current open air parking lot licenses (usually the third week in June).

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on November 10, 2009, on the following language:

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

1. Add a new principal use regulation in Section 4.07, Table of Use Regulations, 22A, as follows:

**§4.07 – TABLE OF USE REGULATIONS**

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
<i>AUTOMOTIVE SERVICE USES (SUBJECT TO ARTICLE VI)</i>									
22A. Parking garage or parking area for <del>noncommercial</del> vehicles <u>with a Gross Vehicle Weight Rating (GVWR) of no more than 6,000 pounds and satisfies paragraphs (a) to (e) of the definition of non-commercial motor vehicles.</u> owned by a Car Sharing Organization (CSO), <u>allowed</u> whether as the sole use of a lot or as a secondary use, for up to <del>25</del> <u>10%</u> parking spaces or <del>20%</del> <u>10%</u> of the total on-site parking spaces, <u>unless otherwise noted, whichever is less.</u> <del>Additional CSO parking spaces may be permitted by special permit per</del> <u>All open air parking lots with CSO vehicles require an Open Air Parking Lot License to be valid for zoning purposes. A special permit is required for any CSO spaces that are not in an open air parking lot. See §6.01.5.</u> <u>* Where the use of a lot is a single, two, or three-family dwelling, one CSO parking space may be allowed by special permit only. For other uses, up to 10% of parking spaces on a lot are allowed by right for CSO vehicles, and an additional 2 CSO spaces are allowed by special permit beyond the 10% cap, but in no case shall there be a total of more than 4 CSO vehicles allowed.</u>	Yes or <u>SP*</u>								

2. Amend Section under 6.01.4 under *General Regulations Applying to Required Off-Street Parking Facilities* as follows:

“4. All required parking facilities shall be provided and maintained so long as the use exists which the facilities were designed to serve. Off-street parking facilities shall not be reduced in total extent after their provision, except when such reduction is in conformity with the requirements of this Article. Reasonable precautions shall be taken by the owner or sponsor of particular uses to assure the availability of required facilities to the employees or other persons whom the facilities are designed to serve. Required parking spaces shall not be assigned to specific persons or tenants nor rented or leased so as to render them in effect unavailable to the persons whom the facilities are designed to serve, **except as described below in §6.01.5.** Such facilities shall be designed and used in such a manner as at no time to constitute a nuisance, or a hazard, or unreasonable impediment to traffic.”

3. Add a new Section 6.01.5 under *General Regulations Applying to Required Off-Street Parking Facilities*:

~~“5. Surplus parking spaces beyond any required parking spaces, but no more than 25 spaces, may be rented or leased to a Car Sharing Organization (CSO) as of right. Additionally, up to 20% of the total on-site parking spaces, or 25 spaces, whichever is less, Parking spaces that do not require the moving of any other motor vehicle to access such spaces may be rented or leased to a CSO per Use 22A of §4.07. Where the computation of allowed CSO parking spaces results in a fractional number, only the fraction of one-half or more shall be counted as one. as of right. Additional CSO parking spaces may be permitted by special permit. The Building Commissioner, in reviewing any open air parking lot license for zoning purposes, shall forthwith transmit a copy to the Planning and Community Development Director. Comments from these departments to the Selectmen shall include, but are not limited to, issues such as screening, nuisance issues, hours of cleaning or other operations, circulation of vehicles, traffic concerns, or other site-specific concerns, and may include recommended conditions to the Board of Selectmen.~~

In the case of a Special Permit, in addition to the conditions for approval described in §9.05, a demonstration must be made, through utilization surveys and other techniques where appropriate, that previous on-site parking demand will not be shifted to parking spaces on adjacent public streets to the detriment of the neighborhood as a whole. All parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) shall have non-illuminated signage not to exceed three square feet per parking facility that includes the name and phone number of the property owner or lessor to be contacted for any nuisance issues that may arise. Such signage is not subject to the design review process as described in §7.03, paragraph 2.”

4. Amend Section 7.00.1.e under *Signs in All Districts*, as follows:

“e. Signs or advertising devices not attached to the building shall not exceed 20 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 12 feet in height, except gasoline service station signs as regulated by §7.03, paragraph 1., subparagraph h. **Except for signs regulated by paragraphs 3 and 4 below**, all permitted signs in excess of one square foot in area shall be set back one-half the depth of the required front yard setback from all street lot lines. Except for signs regulated by paragraph 2 below, any freestanding sign of nonconforming use, or a freestanding sign of any size for a gasoline service station shall be subject to the requirements of §7.03, paragraph 2. **Except for signs regulated by paragraph 3 below**, there shall be not more than one freestanding sign, except that the Board of Appeals by

special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.

5. Add two new Sections under 7.00, *Signs in All Districts*:

“3. Non-illuminated signage that does not exceed 1.5 square feet in area and that identifies allowed users of individual parking spaces is allowed in all zoning districts.

4. Required signage for parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) as described in §6.01, paragraph 5 is allowed in all zoning districts.”

6. Amend Section 7.03.2 under *Signs in L, G, I and O Districts* as follows:

“2. All signs permitted in §§7.02 and 7.03, except temporary signs or advertising devices permitted in §7.03, paragraph 2, subparagraphs f. and g. **or signs permitted in §7.00, paragraphs 2, 3, and 4**, shall be subject to the following design review process:

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ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

A new proposal has emerged under Article 13 which addresses many of the concerns Advisory Committee members had with the motion proposed in our original write-up for the Combined Reports. As explained, committee members are supportive of CSOs and agree with the desire to allow for placement of reasonable numbers of CSOs conveniently located for resident uses. To address issues raised by many TMMs about potential adverse effects that some specific CSO parking locations could raise, especially near universities and colleges, a majority of the Committee felt that CSO parking spaces should be subject to a public process which would allow affected residents to voice their concerns, should they have any. However, the Special Permit process as the sole process to air these concerns was problematic in that the Special Permit process is slow, expensive and cumbersome.

In its write-up, the Committee drew attention to the already existing Open Air Parking License process that the Selectmen administer as a potentially more suitable vehicle to provide the public process in most instances. However, the Open Air Parking License requirement hasn't been effectively enforced for CSOs to date. The license process is less expensive for all concerned, takes a shorter time from start to finish and, most importantly, provides for a yearly renewal so that if problems arise during the year, they can be addressed in the context of the yearly license

renewal. (The licenses are issued on a town fiscal year basis and must be renewed every July 1.) The question then became, how can Town Meeting members be assured that the Open Air Parking license process will effectively address the concerns raised.

The motion the Advisory Committee is recommending is structured to tie the validity of the parking space to the existence of either an Open Air Parking License or a Special Permit depending on the circumstance. Simply put, if the space has not undergone one of these public processes, the space is not legal. A description of the procedures the Town will be using for the license application and renewal process is attached as Appendix 1.

In summary, under this proposed motion, the limits for CSO's are the same across all zones and are tied to the land use as follows:

Singles, twos and threes can have 1 CSO space by special permit if the lot has 5 or more parking space. (The construction in the bylaw is 10% of the spaces with a maximum of 1 can be used by CSOs. Thus, these properties need to have at least 5 spaces on the lot to have 1 CSO space.) All other uses can have the lesser of 10% or 4 by right only if they have an open air parking license. If the spaces are indoors, the same limits are in effect but the property owner must obtain a Special Permit.

Additionally, all others (non singles, twos and threes) can have 2 spaces without regard to the 10% limitation by Special Permit. There is a maximum of 4 CSOs per lot whether by right or Special Permit.

According to the Planning Department, under this proposal, all existing CSO spaces will be eligible to apply for either an Open Air License or a Special Permit. It appears that approximately 21 spaces will need to undergo the Special Permit process.

The proposal does not abandon the Special Permit process entirely for at least two reasons. First, the committee wanted to insure that all spaces would undergo a public process and the Open Air License is not available for all parking lots. Second, to stay within the scope of the warrant, any bylaw construction that could allow more than 20% of the spaces to be used by CSOs needed to have a Special Permit.

Lastly, the language below the use chart governing signage, non tandem spaces, how fractional spaces are computed, etc. is unchanged from the original proposal

#### RECOMMENDATION

The Advisory Committee believes that the proposed motion strikes the right balance of allowing a reasonable number of CSOs to be located where residents need them with the assurance of an available process to handle any local concerns and issues that may arise. The Advisory Committee with a 23-0-2 voted recommends FAVORABLE ACTION on the motion offered by the Board of Selectmen.

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**Open Air Parking Lot License Process**

November 10, 2009

1. Applicant prepares:
  - a. the attached application;
  - b. the attached Interview Form;
  - c. for any open air parking lot that leases individual spaces to Car Sharing Organizations or to other vehicles for more than 30 days in a calendar year, proof that the vehicles are registered in Brookline for excise tax purposes;
  - d. Three (3) letters of reference;
  - e. photos of the existing parking lot; and
  - f. an 8 ½ x 11 plan that shows the manner in which the cars are to be parked. This plan does not need to be a survey plan, but must be to scale, show the property line, zoning, any adjacent buildings or structures and their land use, fences, and entrance to the public road.
2. The applicant may choose to meet with the Building Department prior to submitting any application to the Board of Selectmen. Note that as a policy, the Board of Selectmen requires a Special Permit from the Board of Appeals for any open air parking lot with ten or more cars.
3. Submit the application to the Board of Selectmen with an advertising fee of \$10.50 payable to the TAB.
4. The Selectmen's Office forwards copies of the license to the Building Department, Fire Department, Police Department to be reviewed and approved by the Building Commissioner, Chief of Fire, and Chief of Police. Open air parking lot license applications related to vehicles owned by Car-Sharing Organizations (CSO) shall be forwarded by the Building Commissioner to the Planning Director. In addition to any comments from other departments, comments from the Building Commissioner and Planning Director for CSO open air parking lot licenses shall include, but are not limited to, issues such as screening, nuisance issues, hours of cleaning or other operations, circulation of vehicles, traffic concerns, or other site-specific concerns, and may include recommended conditions to the Board of Selectmen.
5. The Selectmen's Office advertises notice of the Selectmen's public hearing ten days prior in the Brookline TAB and prepares a list of abutters within 200' of the property.
6. The applicant sends out copies of the ad via certified mail to abutters.
7. The Selectmen's Office sends out letters to Town Meeting Members of precincts where the proposed open air parking lot is located.
8. Selectmen hold a public hearing and include any conditions from Building, Fire, and/or Police Departments.
9. Once a license is approved, the Selectmen's Office collects the fee for the license and sends the applicant's federal ID # to the state for tax purposes.
10. The Open Air Parking Lot License is valid through June of each year.

**Open Air Parking Lot License Renewal**

1. Open Air Parking Lot licenses run based on the fiscal year. In May of each year, the Selectmen's Office sends out renewal applications to everyone that currently has an open air parking lot license.
2. The Selectmen's Office emails a reminder to Town Meeting Members that open air parking lot licenses are coming up for renewal with the scheduled hearing date and a list of properties that have current open air parking lot licenses (usually the third week in June).

**Car-Sharing Organization Open Air Parking Lot License Enforcement**

1. In May of each year, the Selectmen's Office reviews any car sharing organization websites to see if there are unlicensed open air parking lots.
2. Proposed zoning Article 13 requires an open air parking lot license for any car sharing vehicle use to be valid, whether allowed as of right or by special permit.
3. Because open air parking lot licenses are required for as of right uses for Car-Sharing Vehicles, if there are any complaints at any time during the year to the Selectmen's Office and/or the Building Commissioner, the Building Commissioner can check whether the parking lot has a current open air parking lot license and issue a zoning enforcement order if the license is not current or if any on-going conditions are not being met.

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ARTICLE 14

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FOURTEENTH ARTICLE

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

Article 8.28      **MANDATORY BICYCLE REGISTRATION**

All Town residents who own bicycles shall be required to register their bicycle(s) with the Town by filling out a registration form provided by the Brookline Police Department Traffic Division. The registration form shall include among other things, information such as make, color, size, model and serial 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.

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PETITIONER'S ARTICLE DESCRIPTION

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

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SELECTMEN'S RECOMMENDATION

Article 14 is a petitioned article that would require all bicycle owners in town to register their bikes with the Police Department. It is identical to both Article 8 of the November, 2007 Special Town Meeting and Article 11 of the November, 2008 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 was stated last year, the proposed solution would not deter thefts. In fact, it would impose a burden on bicycle owners with no apparent benefit. The Chief of Police believes that 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. The petitioner supplied the Board with a copy of legislation adopted in

2008 that rescinded previous local option law allowing municipalities to license bicycles. This rescission further limits the likelihood of a statewide or even regional approach.

With no apparent benefit and quantifiable downsides (burden on bike owners, an administrative burden on the Police Department), the Selectmen recommend NO ACTION, by a vote of 5-0 taken on October 13, 2009 on Article 14.

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### ADVISORY COMMITTEE'S RECOMMENDATION

#### BACKGROUND:

This Fall Town Meeting marks the third time this warrant article comes before us. Town Meeting (TM) defeated the same article in 2007. In Fall 2008 TM voted to refer the warrant article to the Transportation Board which in turn brought it before the Bicycle Advisory Committee (BAC) for a recommendation. The BAC sent a memorandum to the Transportation Board recommending NO ACTION on the article.

The wording to amend the General By-Laws by adding 8.28 Mandatory Bicycle Registration is identical to the previous warrant articles, but this year the Petitioners have added to the third sentence of the explanation "this would be for the protection of bicycle owners, as a result or theft or any other occurrences that may take place" the phrase "and for the personal protection and the public's protection as well."

As in the past, the Petitioners bring this warrant article forward in response to the increasing number of bicycles on the roads but also out of a concern for the safety of cyclists as well as pedestrians and motorists. The Petitioners suggest that the regulation of bicycles through mandatory registration would encourage greater responsibility on the part of cyclists as a benefit to both cyclists and the public and would also help police identify such cyclists.

At one time Brookline offered a bicycle registration program administered by the Police Department. For a nominal registration fee of twenty-five cents, a resident could register a bicycle with the Town and was given a small green license plate to attach to the bicycle. The Town discontinued this program as a result of diminished community interest.

In 2008, the Police Department implemented a voluntary registration program. Registrants receive stickers which can be placed anywhere on the bicycle and are not readily visible. To date, seven residents have registered their bicycles with the Town.

#### DISCUSSION:

In the Advisory Committee discussion, those who spoke against the article cited the difficulty in enforcing such an article and the issue of non-resident commuters. Many of the bicyclists in Brookline do not live in Brookline, but commute through Brookline. Mandatory registration for Brookline residents would not affect those cyclists.

Those opposed to the article observed that cyclists who register are likely to be more compliant with traffic laws. The voluntary registration program has seen very little interest on the part of Brookline residents, however.

On April 15, 2009 the State Legislature repealed MGL Chapter 85, Section 11A that required the registration of bicycles "as long as a city or town accepted this section". The measure was part of a state-wide law to update bicycle laws. It also restricted our local Police's ability to enforce bicycle traffic violations.

This year the state Executive Office of Public Safety awarded nearly \$100,000 to police departments across the state to provide overtime funds for the enforcement of and education about pedestrian and bicycle safety. Brookline received and spent the \$7500 grant it was awarded issuing citations, especially in the Beacon St./Coolidge Corner area where 125 automobile and at least 6 bicycle warnings were issued.

There was clear consensus that the number of bicycles in Town is on the increase and there is an urgent need to redouble efforts to address safety concerns. Many cyclists unsafely weave in and out of traffic, run through red lights and course down sidewalks with pedestrians. In September, a 22-year old woman died from head injuries sustained from a fall from her bicycle on Longwood Ave.

Those who spoke in favor of the article said this would serve as a first step in the regulation of bicycles for the purpose of making Brookline's streets, crosswalks, and sidewalks safer for all who share them. They believe this could provide an easy means of identifying scofflaws. The discussion included remarks that although it was defeated, the article received significant support from TM in 2007. Some suggested the use of bicycle parades as a means of getting bicycles registered.

The creation of a mandatory registration/licensing program exclusively for Brookline residents would be administratively cumbersome and ineffective. Brookline's own population is transient and many bikes on our streets are in transit from other locales – and therefore would not be subject to the requirement of this article. A combination of enforceable state-wide regulations and bicycle safety education may better address the problems cited.

Although the Advisory Committee sympathized with the Petitioners in their concerns about bicycle scofflaws and their effects on public safety, there was widespread agreement that mandatory registration is not the way to proceed for providing greater public safety for bicyclists, pedestrians, and motorists.

RECOMMENDATION:

The Advisory Committee recommends by a vote of 17 in favor, 3 opposed and 1 abstention NO ACTION on Warrant Article 14.

**XXX**

ARTICLE 15

FIFTEENTH ARTICLE

To see if the Town will adopt the following resolution:

Whereas members of the Board of Selectmen in serving the Town carry heavy, time-demanding responsibilities;

Whereas stipends for members of the Board of Selectmen have remained the same (\$3,500 for the chair and \$2,500 for other members) for at least 30 years;

Whereas the purchasing power of the stipends has been eroded through inflation by more than 50% since the last time that they were increased;

Therefore be it resolved that:

1. The Town is encouraged to double the stipends for the Chair of the Board and other members of the Board of Selectmen;
2. Going forward, the Advisory Committee is encouraged at regular intervals to review the stipends for members of the Board of Selectmen and make recommendations for adjustments that are incorporated in the budget presented to Town Meeting;

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The stipends that members of the Board of Selectmen receive have not been increased for at least 30 years. If the stipends had been adjusted for inflation from 1980 to the present, the stipend for the chair would now be over \$9,000 and the stipend for other members of the Board would be over \$6,400.

The stipends for members of the Board of Selectmen came up at the Fall 2008 Town Meeting when elimination of health care benefits for long-serving members of the Board was discussed. The Town effectively decreased compensation for members of the Board of Selectmen in 2008 by eliminating eligibility for health insurance through the Town for long-serving members of the Board. A warrant article calling for the doubling of the stipends as compensation for the loss of health care benefits was introduced. This Article calling for adjustment to the stipends received little attention and Town Meeting voted "No Action." No increase in the stipends was included in the budget submitted to Town Meeting in the Spring of 2009.

The cost to the Town of doubling the stipends (\$13,500) would be nominal in the Town's overall budget. The health care benefits that were of concern in 2008 were costing the

Town \$70,000 per year. The cost to the Town of doubling the stipends would be less than the cost of providing health insurance for the family of one Town employee.

Members of the Board of Selectmen may be too polite to initiate requests themselves for increases in their stipends. The Advisory Committee is an appropriate body to initiate periodic reviews of the adequacy of stipends since it is responsible for making recommendations on Town Finances to Town Meeting. The Advisory Committee reviews budgets of all Town departments including the Board of Selectmen.

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SELECTMEN'S RECOMMENDATION

In previous instances that involved questions of compensation for the Selectmen, the Ethics Commission has advised that the Selectmen cannot deliberate as a Board in matters in which they have a distinct financial interest. In line with past practice in this regard, the Board of Selectmen is not presenting a recommendation on Article 15.

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ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee has not taken a vote yet on Article 15. Its recommendation will be included in a Supplemental Report that will be sent to Town Meeting Members prior to the commencement of Town Meeting.

**XXX**

ARTICLE 15

ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Article 15, submitted by Petitioner Frank Caro, proposes, in the form of a resolution, that a) the Board of Selectmen stipends be doubled and that b) the Advisory Committee is encouraged at regular intervals to review the stipends for members of the Board of Selectmen and make recommendations for adjustments that are incorporated in the budget presented to Town Meeting.

The petitioner submitted this article because, at the last Town Meeting, members voted that Selectmen will no longer have access to the Town's health insurance, and that Selectmen have not had an increase in the amount paid to them for at least the last 30 years.

The Petitioner conducted an informal survey of nearby towns and found wide variation in the treatment of stipends for members of the Board of Selectmen. Wellesley, Swampscott, and Concord provide no stipend. Framingham compensates for "expenses". Needham provides \$1500 for its chair and \$1200 for other members. Belmont provides \$5000 for its chair and \$4500 for other members. Therefore, Brookline is 2<sup>nd</sup> in its provisions of stipends among the surveyed communities.

The Board of Selectmen members have substantial responsibilities and put in considerable time. Their weekly meeting is the tip of the iceberg since they also participate in subcommittee meetings, community meetings, etc. They are expected to be exemplary citizens and attend community events, evening meetings, weekend events and provide financial contributions to local organizations.

There has been no increase in the stipend for at least 30 years. The Petitioner believes that, since the Town Administrator prepares the budget and works under the direction of the Board, the Board members are reluctant to ask for themselves. Furthermore, he believes that we always have budget problems and that there is never a good year to provide such an increase. He points out that there are 20,000 households in the town and the increase represents approximately 5 cents per household per month.

The petitioner proposes that the Advisory Committee review the stipends at regular intervals and make recommendations for periodic adjustments in stipends for members of the Board of Selectmen because it is awkward for members of the Board to propose adjustments for themselves. The petitioner believes that, because of its involvement with the Town's budget process, the Advisory Committee is well positioned to review the adequacy of Selectmen's stipends and make recommendations for changes.

DISCUSSION:

The members of the Advisory Committee discussed the timing of this Article in light of the Town's budget challenges. Some members believe that an increase in the stipend is not going to make any difference in the attraction of candidates. Even if the stipend is doubled, it will not be a livable wage so that there is no value in increasing this expenditure. At a time when we are asking town employees to cut back, why should we increase only the Selectmen stipends.

Certainly many years present the Town with difficult budget issues; a majority of members felt that this year and the next few years will be far worse than anything we have experienced in the past 20 years and that now is not the time to recommend such a large percentage increase in stipends for the members of the Board of Selectmen. However, a majority of members of the Advisory Committee did see some merit in having the Advisory Committee review the stipend situation during the regular budget cycle.

RECOMMENDATION:

At the Petitioner's request, the Advisory Committee voted separately on each part of Article 15. On the issue of doubling the stipends for members of the Board of Selectmen, the Advisory Committee, by a vote of 7-15-2, recommends No Action.

The Advisory Committee, by a vote of 13-11-2, did support the following:

VOTED: That the Town adopt the following resolution:

Whereas members of the Board of Selectmen in serving the Town carry heavy, time demanding responsibilities;

Whereas stipends for members of the Board of Selectmen have remained the same (\$3,500 for the chair and \$2,500 for other members) for at least 30 years;

Whereas the purchasing power of the stipends has been eroded through inflation by more than 50% since the last time that they were increased;

Therefore be it resolved that:

Going forward, the Advisory Committee is encouraged at regular intervals to review the stipends for members of the Board of Selectmen and make recommendations for adjustments that are incorporated in the budget presented to Town Meeting;

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ARTICLE 15

**Motion to be Offered by the Petitioner, Francis G. Caro, TMM Prec-8**

1. The Town is encouraged gradually over a period of several years to increase the stipend for the Chair of the Board of Selectmen from \$3,500 to \$7,000 and stipends for other members of the Board of Selectmen from \$2,500 to \$5,000;
2. Going forward, the Advisory Committee is encouraged at regular intervals to review the stipends for members of the Board of Selectmen and make recommendations for adjustments that are incorporated in the budget presented to Town Meeting;

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ARTICLE 16

SIXTEENTH ARTICLE

To see if the Town will adopt the following RESOLUTION:

WHEREAS, the Town's "Other Post Employment Benefit (OPEB) Task Force" whose mission was to assess methods for reducing and funding the Town's OPEB liability, cites in its June 2009 Report actuarial calculations projecting the Town's unfunded obligation to its share of the cost of health care for retired Town and School employees to be approximately \$225 to \$347 million as of June 30, 2010; and

WHEREAS, if the Town does not undertake substantial, timely, and sustained OPEB funding, as well as important cost containment measures, this massive unfunded obligation to its retired employees will multiply to over \$900 million over the next 30 years; and

WHEREAS, the OPEB Task Force unanimously concluded that ***"the Town needs to pre-fund its OPEB liability"***, and that ***"If the Town does not alter course with respect to OPEB funding, it will be faced with the stark choice of ballooning taxes or sharply reduced services (or both)"***; and

WHEREAS, the OPEB Task Force also concluded unanimously that ***"If we do not pre-fund the liability, it is highly likely that the Town will be unable to provide other Town and School services at the current levels, as most of the Town's and School's budget will be dedicated to paying for retiree health costs"*** and

WHEREAS, the OPEB Task Force unanimously recommended a specific annual schedule for the Town to fund its OPEB liabilities, which payment schedule would begin to slow and eventually reverse the further growth of this massive unpaid obligation amount; and

WHEREAS, the January 2008 Final Report of the Town of Brookline Override Study Committee, citing the massive and growing unpaid Town liability for retiree health care, states: ***"Ideally, the town should set aside \$4 million per year to finance future retiree health costs and increase this amount by 4% each year"***, and furthermore, ***"if the town receives other large one-time revenue increases, such as the proceeds from selling taxi licenses, the town should add these to the fund for retiree health"***;

NOW, THEREFORE, BE IT RESOLVED that this Town Meeting endorses the following actions in order to sustain the Town's current high quality of municipal and school services, to assure the fulfillment of the obligations it has made to its current and retired employees, and to avoid ballooning property taxes:

1. To budget for and to fund the amounts as unanimously recommended by the OPEB Task Force, which began at \$250,000 in FY2010, increasing by \$250,000 each year thereafter for the purpose of slowing the future growth of, and eventually reducing, the Town's unpaid obligation to provide health care benefits to its retired employees; and
2. Pursuant to the recommendation of the 2008 Override Study Committee, at any such future time as the Town may receive revenue proceeds from the sale of municipal taxicab licenses, to appropriate not less than 50 percent of any such proceeds for the purpose of funding the Town's unpaid obligation to provide health care benefits to its retired employees.

FURTHERMORE, BE IT RESOLVED that the Advisory Committee and Board of Selectmen should, in their respective annual budget deliberations, give serious consideration to the other funding and cost containment recommendations of the OPEB Task Force for managing and controlling the Town's retiree health care costs, which are a massive, growing unpaid debt of all Brookline's present and future citizens.

or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This Resolution is the result of an initiative by members of the Brookline Civic Association Steering Committee. Steering Committee members attending the BCA's August meeting agreed that such an initiative would be consistent with the BCA's ongoing commitment to "Good Government", the essence of which is to provide excellent Town and School services on a sustainable and fiscally responsible basis.

Over recent decades, Brookline has experienced a rapid growth in the total amount that it owes—but has not funded—for the future health care costs of retired employees of the Town and the Public School system (also known as "Other Post Employment Benefits" or "OPEBs").

A recent actuarial study performed for the Town projects that, as of June 30, 2010, the total retiree health cost owed by the Town for current and future retirees will fall within a range of \$231 to \$353 million. To date, Brookline has funded only about \$6 million of this massive obligation, including \$250,000 in the most recent fiscal year.

Meanwhile, the Town's total unpaid retiree health care obligation is continuing to grow and even accelerate. The total liability is projected to exceed \$950 million over the next 30 years; the currently funded amount plus interest provides only a minimal offset to this enormous obligation.

The 2008 Override Study Committee recognized that unfunded retiree health care obligations are placing the Town's financial stability in growing jeopardy. The

Committee's Report, recognizing the actuarial realities, stated that *"Ideally, the town should set aside \$4 million per year to finance future retiree health costs and increase this amount by 4% each year."*

While this \$4 million annual funding need correctly quantifies what it would take to fully fund retiree health care costs over time, it does not assume any other significant actions, such as may be needed and appropriate to contain the growth of this daunting figure.

Following the 2008 general override (which did not designate any of its \$6.2 million added annual revenues toward funding OPEBs), the Selectmen appointed a special OPEB Task Force to examine this growing issue and to make appropriate recommendations.

The April 2009 OPEB Task Force Report concluded that *"the Town needs to pre-fund its OPEB liability"* that *"if the Town does not alter course with respect to OPEB funding, it will be faced with the stark choice of ballooning taxes or sharply reduced services (or both)"*. The OPEB Task Force Report further concluded, *"If we do not pre-fund the liability, it is highly likely that the Town will be unable to provide other Town and School services at the current levels, as most of the Town's and School's budget will be dedicated to paying for retiree health costs"*.

In addition to recommending a number of cost containment measures, the OPEB Task Force urged the Town to adopt a specific, sustained schedule for funding its OPEB obligations, beginning in FY2010 with a \$250,000 allocation, which amount should be increased by \$250,000 annually each year thereafter.

In addition to annual funding, the 2008 Override Study Committee also recommended that *"if the town receives other large one-time revenue increases, such as the proceeds from selling taxi licenses, the town should add these to the fund for retiree health."*

This non-binding Resolution would put Town Meeting—representing the Brookline citizenry that is ultimately obligated to pay this massive outstanding debt—on record as endorsing present and future commitments by responsible Town officials to fund a significant portion of this huge obligation, including both annual appropriations and a one-time set-aside from anticipated taxi license sales proceeds.

The OPEB-recommended funding schedule endorsed by this Resolution is modest when compared to the actuarially projected requirement of over \$4 million per year. Totaling about \$116 million over 30 years, it would at first only begin to slow the rapid growth of this unfunded debt and then gradually to reduce the total. Various other funding and cost containment measures will also be needed in order, eventually, to fully fund this health care obligation to our retired employees.

Over the years, some individuals have argued that this accumulated retiree health care obligation—not just in Brookline, but in other Massachusetts cities and towns and beyond—is so massive and daunting that eventually the state and/or 'the feds' will have to "bail us out". While such a happy outcome is not inconceivable, recent financial

distress at the state and national level, and the responses to such severe stress, do not bode well for their being able or willing to rescue financially stressed cities and towns—especially those considered affluent.

A fundamental principle behind this proposal is that the fiscal impact of public employees' hiring, including their retiree health insurance, should be borne by those who benefit from their services as they are being provided; that it is unfair to impose such a huge debt burden upon future Brookline taxpayers who will receive no benefit from public services provided many years earlier.

This Resolution encourages our Selectmen and Advisory Committee, from this point forward, to fund the Town's retiree health care obligation and take other related measures that will assure fiscal stability in order that Brookline may be able to sustain our current excellent quality of Town and School services.

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SELECTMEN'S RECOMMENDATION

The Board of Selectmen unanimously supports Article 16, a resolution calling for the Town to continue to address its Other Post-Employment Benefit (OPEB) obligation. The OPEB Task Force was established by the Board of Selectmen and many thanks should be given to the residents who volunteered their talents and time to assist the Town with developing a plan to address the massive obligation of health insurance for Town and School retirees. It is the recommendations of the OPEB Task Force which the Town resolves to implement through Article 16. Specifically, the resolution calls for the Town to:

- (1) budget for and fund the amounts as unanimously recommended by the OPEB Task Force, which began at \$250,000 in FY2010 and increases by \$250,000 each year thereafter;
- (2) appropriate a significant percentage of any future one time revenues for the purpose of funding the Town's unpaid obligation to provide health care benefits to its retired employees; and
- (3) give serious consideration to the other funding and cost containment recommendations of the OPEB Task Force for managing and controlling the Town's retiree health care costs.

The Board recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 20, 2009, on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

This Warrant Article seeks Town Meeting's approval of a resolution regarding the spiraling unfunded obligations -- approximately between \$231 million and \$353 million at present<sup>1</sup> -- that the Town will soon have to start paying for its retirees. While this resolution is not binding (and, as we've experienced recently, may end up being altogether disregarded) and does not seek to have this Town Meeting bind the actions of future Town Meetings, the resolution represents a cogent, early-stage response to several years of focused study of this looming crisis.

The resolution addresses the Town's OPEB liabilities -- OPEB being short for "Other Post Employment Benefits." When the Town provides (whether in a union contract, as required by State law, or otherwise) health insurance and related benefits to Town and School Dept employees or managers or their families upon retirement (rights which may be triggered by as few as ten years of employment with Brookline or a combination of Brookline or other municipalities), Brookline incurs a liability it has to pay in the future.<sup>2</sup> OPEB liabilities differ from unfunded pension liabilities, the latter being amounts the Town owes the retirement fund because of the recent poor performance of the stock market (and thus negative rates of return in the fund); the Town's fiscal management is making a substantial effort on its own initiative to make catch-up payments by the required 2012 target date by devoting all monies received from the recently-approved increases in the increased meals and lodging taxes to the deficit in the Pension line-item.

The amount of the OPEB liability is, at best, an estimate that reflects actuarial data, assumptions about the rate at which health insurance costs will increase, assumptions about interest rates, and the retirees' life expectancies, retirement options available to current employees, and the like. As mentioned, because of these variables, the most recent actuarial study performed for the Town estimated that the OPEB liabilities for current and future retirees is between \$231 million and \$353 million.

Brookline has thus far funded only \$6 million of the OPEB liability. Reversing a 2005 decision to suspend contributions toward reducing the OPEB liability, Town Meeting wisely concurred with a proposed funding strategy by designating \$250,000 in this fiscal year's already challenging budget to address this crisis. While this decision is laudable, simple math indicates that an ongoing structured commitment is needed to address the issue -- and that commitment must come from the Town as well as its School and municipal employees. Even with \$250,000 contributed in this fiscal year, the gap has further increased during this fiscal year. Over the next thirty years, the total of Brookline's total OPEB liabilities could potentially exceed \$900 million.

Recognizing this reality, several members of the Board of Selectmen and other concerned

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<sup>1</sup> There are a number of accounting and actuarial assumptions that determine how this figure is calculated. The range stated reflects calculations based on various sets of current assumptions and related factors.

<sup>2</sup> The Town remains liable for the ex-employee's health insurance costs even if s/he becomes Medicaid eligible as the Town offers, among other benefits, Parts B and D coverage.

citizens have attempted to address this issue by raising awareness of it and making known the fact that, left unchecked, the obligations could well cripple the Town's ability to provide services. In April of this year, the OPEB Task Force issued its report and noted the following (reprinted in the text of the subject resolution):

**[I]f the Town does not alter course with respect to OPEB funding, it will be faced with the stark choice of ballooning taxes or sharply reduced services (or both).... If we do not pre-fund the liability, it is highly likely that the Town will be unable to provide other Town and School services at the current levels, as most of the Town's and School's budget will be dedicated to paying for retiree health costs.**

Certainly, Brookline is not alone in facing down this monster; other cities and towns in Massachusetts and elsewhere face similarly grim – if not even grimmer – realities. However, Brookline (along with Wellesley) seems to be proactively addressing these issues. The OPEB Committee did a thorough job of analyzing the issue and making recommendations as to how to start paying off the accumulated tab. There seems consensus that the problem is very real and very pressing, although complete solutions seem lacking.

The resolution calls on Town Meeting to express its sense that it's time to start addressing the problem. The resolution calls on the Town to budget monies annually to pay off the OPEB tab and to devote monies realized by one-time cash infusions (e.g., monies received from the sale of taxi medallions or sales of land) to the OPEB liability. Because pending federal health care initiatives are unlikely to significantly reduce the Town's insurance costs, the petitioner and others urge that steps be taken and continue to be taken to contain costs (such as, joining the GIC).

DISCUSSION:

The Advisory Committee strongly lauded the initiatives of both the petitioner and the OPEB Study Committee, and learned more about the challenges faced by the Town in dealing with this issue. Town managers expressed the view that even the most optimistic forecasts of the effect of federal health care reforms will not materially affect the amount of the liabilities.

Several members of the Advisory Committee expressed concern about the language in the resolution urging that the Town "appropriate not less than 50 percent of" the proceeds of any extraordinary cash receipts to address the OPEB liability gap. The majority of the members of the Advisory Committee felt that while the situation is quite serious, it was prudent to remove the recommendation and substitute a "*a significant portion*" in its place. Additionally, the Advisory Committee's consensus was that the resolution ought to more clearly define what is a one-time revenue source from which monies would be used to reduce the increasing OPEB gap. Several members of the Advisory Committee believe that, given the magnitude of the situation, the reference to the fifty percent figure

was not strong enough and that ideally all of such monies arguably ought to be devoted to the problem.

RECOMMENDATION:

By a vote of 18 in favor and none opposed (with one member abstaining), the Advisory Committee recommends FAVORABLE ACTION on Amended Warrant Article 16, as amended (**emphasis in the original**):

VOTED: That the Town adopt the following resolution:

WHEREAS, the Town's "Other Post Employment Benefit (OPEB) Task Force" whose mission was to assess methods for reducing and funding the Town's OPEB liability, cites in its June 2009 Report actuarial calculations projecting the Town's unfunded obligation to its share of the cost of health care for retired Town and School employees to be approximately \$225 to \$347 million as of June 30, 2010; and

WHEREAS, if the Town does not undertake substantial, timely, and sustained OPEB funding, as well as important cost containment measures, this massive unfunded obligation to its retired employees will multiply to over \$900 million over the next 30 years; and

WHEREAS, the OPEB Task Force unanimously concluded that "*the Town needs to pre-fund its OPEB liability*", and that "*If the Town does not alter course with respect to OPEB funding, it will be faced with the stark choice of ballooning taxes or sharply reduced services (or both)*"; and

WHEREAS, the OPEB Task Force also concluded unanimously that "*If we do not pre-fund the liability, it is highly likely that the Town will be unable to provide other Town and School services at the current levels, as most of the Town's and School's budget will be dedicated to paying for retiree health costs*" and

WHEREAS, the OPEB Task Force unanimously recommended a specific annual schedule for the Town to fund its OPEB liabilities, which payment schedule would begin to slow and eventually reverse the further growth of this massive unpaid obligation amount; and

WHEREAS, the January 2008 Final Report of the Town of Brookline Override Study Committee, citing the massive and growing unpaid Town liability for retiree health care, states: "*Ideally, the town should set aside \$4 million per year to finance future retiree health costs and increase this amount by 4% each year*", and furthermore, "*if the town receives other large one-time revenue increases, such as the proceeds from selling taxi licenses, the town should add these to the fund for retiree health*";

NOW, THEREFORE, BE IT RESOLVED that this Town Meeting endorses the following actions in order to sustain the Town's current high quality of municipal and

school services, to assure the fulfillment of the obligations it has made to its current and retired employees, and to avoid ballooning property taxes:

1. To budget for and to fund the amounts as unanimously recommended by the OPEB Task Force, which began at \$250,000 in FY2010, increasing by \$250,000 each year thereafter for the purpose of slowing the future growth of, and eventually reducing, the Town's unpaid obligation to provide health care benefits to its retired employees; and
2. To appropriate a significant percentage of any future one time revenues for the purpose of funding the Town's unpaid obligation to provide health care benefits to its retired employees.

FURTHERMORE, BE IT RESOLVED that the Advisory Committee and Board of Selectmen should, in their respective annual budget deliberations, give serious consideration to the other funding and cost containment recommendations of the OPEB Task Force for managing and controlling the Town's retiree health care costs, which are a massive, growing unpaid debt of all Brookline's present and future citizens.

*XXX*

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ARTICLE 17

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SEVENTEENTH ARTICLE

That the Town adopt the following resolution:

**Whereas** the U. S. Conference of Mayors in 2008 voted unanimously to urge the President to negotiate for a verifiable treaty to abolish nuclear weapons because there is no adequate municipal response to a nuclear attack, and

**Whereas** President Obama has asked for our support in his effort to rid the world of nuclear weapons,

**Be it resolved that** we the voters support the unanimous, urgent call of The U. S. Conference of Mayors to the President of the United States to commence negotiations for a verifiable treaty to eliminate nuclear weapons, and call on the Board of Selectman of the Town of Brookline, Massachusetts, to send a message of support for these negotiations to the President of the United States, and to our members of Congress.

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PETITIONER'S ARTICLE DESCRIPTION

Supporting the U.S. Conference of Mayors' call to President Obama to abolish nuclear weapons by engaging local community leadership in this effort is a powerful way to add vital grassroots momentum to the global movement for substantial reduction of nuclear arsenals worldwide. The Non-Proliferation Treaty Review Conference (NPT) will be held at the United Nations headquarters this spring, and that makes this a particularly important time for public action on this issue.

To this end United for Justice with Peace has enlisted the support of municipal bodies throughout the country. As a member of The Women's International League for Peace and Freedom (an organization included in the UJP consortium) I present this Article with the hope that Brookline will join in this effort.

By now, most of us have read the story of President Roosevelt's response to the constituent who urged him to take action on a certain question: "That's a good idea. Build a movement and make me do it." Our leaders need public support to take the kind of actions we want to see. Our mayors have taken a big step in this regard; the rest of us must join with them.

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SELECTMEN'S RECOMMENDATION

Article 17 is a proposed resolution asking for the support of the unanimous recommendation of the U. S. Conference of Mayors to President Obama to commence

negotiations for a verifiable treaty to eliminate nuclear weapons. It also asks the Board of Selectman to send a message of support for these negotiations to the President and to our Congressional delegation. Ending the potential for a nuclear war is a worthy goal that this Board fully supports. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote taken on October 6, 2009, on the following resolution:

VOTED: That the Town adopt the following resolution:

**Whereas** the U. S. Conference of Mayors in 2008 voted unanimously to urge the President to negotiate for a verifiable treaty to abolish nuclear weapons because there is no adequate municipal response to a nuclear attack, and

**Whereas** President Obama has asked for our support in his effort to rid the world of nuclear weapons,

**Be it resolved that** we the voters support the unanimous, urgent call of the U. S. Conference of Mayors to the President of the United States to commence negotiations for a verifiable treaty to eliminate nuclear weapons, and call on the Board of Selectman of the Town of Brookline, Massachusetts, to send a message of support for these negotiations to the President of the United States, and to our members of Congress.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

The United States Conference of Mayors adopted a resolution in 2008 in support of global elimination of nuclear weapons by 2020. In April 2009 President Obama declared the commitment of the United States to "seek the peace and security of a world without nuclear weapons".

Article 17 is a resolution to support our President's efforts to eliminate nuclear weapons.

DISCUSSION:

Medical leaders in The Boston Community have repeatedly warned that if a nuclear explosion would ever occur near Boston, we would be immobilized and unable to provide an adequate response. The United States Conference of Mayors has stated that cities around the world are vulnerable to instantaneous devastation on a scale exceeding the devastation of Hiroshima and Nagasaki in 1945. President Obama stated on April 5, 2009 in Prague "One nuclear weapon exploded in one city -- be it New York or Moscow, Islamabad or Mumbai, Tokyo or Tel Aviv, Paris or Prague -- could kill hundreds of thousands of people. And no matter where it happens, there is no end to what the consequences might be -- for our global safety, our security, our society, our economy, to our ultimate survival." The President also stated "Just as we stood for freedom in the 20th century, we must stand together for the right of people everywhere to live free from

fear in the 21st century. And as nuclear power -- as a nuclear power, as the only nuclear power to have used a nuclear weapon, the United States has a moral responsibility to act. We cannot succeed in this endeavor alone, but we can lead it, we can start it.

So today, I state clearly and with conviction America's commitment to seek the peace and security of a world without nuclear weapons. I'm not naive. This goal will not be reached quickly -- perhaps not in my lifetime. It will take patience and persistence. But now we, too, must ignore the voices who tell us that the world cannot change. We have to insist, "Yes, we can."

The petitioner Sue Gracey filed this resolution to support the work of President Obama and the over 3000 mayors worldwide who have committed their cities to the effort to abolish nuclear weapons.

The Advisory Committee made a friendly amendment to this resolution, which is reflected in the recommended vote. Through the acceptance of this resolution Brookline will continue to promote its belief in a safe and peaceful future.

RECOMMENDATION:

The committee recommends Favorable Action on the following amended resolution by a vote of 17-4-1:

VOTED: That the Town adopt the following resolution:

**Whereas** the U.S. Conference of Mayors in 2008 voted unanimously to urge the President to negotiate for a verifiable treaty to abolish nuclear weapons because there is no adequate municipal response to a nuclear attack,

**Whereas** the U.S. Conference of Mayors at its annual meeting in June, 2009 urged "the International Commission on Nuclear Non-proliferation and Disarmament to adopt 2020 as the target date for the achievement of a nuclear-weapon-free world"

AND

**Whereas** President Obama in April 2009 declared "America's commitment to seek the peace and security of a world without nuclear weapons", and further stated that "the United States will take concrete steps towards a world without nuclear weapons."

**Be it resolved that** we the voters support the unanimous, urgent call of the U.S. Conference of Mayors to the President of the United States to commence negotiations for a verifiable treaty to eliminate nuclear weapons, and call on the Board of Selectmen of the Town of Brookline, Massachusetts, to send a message of support for these negotiations to the President of the United States, and to our members of Congress.

ARTICLE 17

BOARD OF SELECTMEN SUPPLEMENTAL RECOMMENDATION

By a vote of 5-0 taken on November 3, 2009, the Board of Selectmen recommends FAVORABLE ACTION on the following revised motion. The red-lined changes show what is different from the Advisory Committee's vote as contained in the Combined Reports.

VOTED: That the Town adopt the following resolution:

**Whereas** the U.S. Conference of Mayors in 2008 voted unanimously to urge the President to negotiate for a verifiable treaty to abolish nuclear weapons because there is no adequate municipal response to a nuclear attack,

**Whereas** the U.S. Conference of Mayors at its annual meeting in June, 2009 urged "the International Commission on Nuclear Non-proliferation and Disarmament to adopt 2020 as the target date for the achievement of a nuclear-weapon-free world"

AND

**Whereas** President Obama in April 2009 declared "America's commitment to seek the peace and security of a world without nuclear weapons", and further stated that "the United States will take concrete steps towards a world without nuclear weapons."

**Be it resolved that** ~~we the voters~~ the Town of Brookline, Massachusetts supports the unanimous, urgent call of the U.S. Conference of Mayors to the President of the United States to commence negotiations for a verifiable treaty to eliminate nuclear weapons, and calls on the Board of Selectmen of the Town ~~of Brookline, Massachusetts,~~ to send a message of support for these negotiations to the President of the United States, and to our members of Congress.

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ADVISORY COMMITTEE SUPPLEMENTAL RECOMMENDATION

At its November 10 meeting, the Advisory Committee adopted the changes recommended by the Board of Selectmen.

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ARTICLE 18

EIGHTEENTH ARTICLE

Reports of Town Officers and Committees

## **SELECTMEN'S CLIMATE ACTION COMMITTEE REPORT TO TOWN MEETING FALL 09**

### **I. INTRODUCTION**

In conjunction with a Resolution passed by Town Meeting in May 2008 (Appendix 1), the Board of Selectmen established the Selectmen's Climate Action Committee (CAC). The CAC has 15 members, 12 representing various boards and commissions, and three citizens appointed by the Selectmen (Appendix 2).

The CAC held its first meeting on November 6, 2008, and has met monthly since then. Early on, we organized ourselves into working subcommittees, which also meet approximately monthly (Appendix 3).

The charge of the CAC is as follows:

“The responsibilities of the committee shall include:

1. To recommend programs that reduce the net production of greenhouse gases in Brookline, such as energy efficiency measures, green energy sources, and additional greenspace;
2. To monitor, measure, and assess efforts of the Town to reduce net greenhouse gas emissions;
3. To monitor promising relevant programs in other municipalities;
4. To monitor relevant technological developments;
5. To serve as liaison between the Town and the public with regard to information and programs related to reducing net production of greenhouse gases;
6. To report annually to the Annual Town Meeting and to report from time to time to the Board of Selectmen, the Town Administrator, and the public; and
7. Such other responsibilities as may be determined from time to time by the Board of Selectmen.”

### **II. ACCOMPLISHMENTS**

- Successfully encouraged Town to join ICLEI (International Council for Local Environmental Initiatives). ICLEI provides greenhouse gas (GHG) inventory software that is recognized by many governmental agencies, including the Commonwealth's Department of Energy Resources (DOER). An earlier version of this software was used in compiling the Town's Climate Action Plan (2002), including the Brookline greenhouse gas inventory for 1995. Perhaps more importantly, ICLEI provides a wealth of consulting and other resources to its member communities.
- Co-sponsored (with CCAB) a December 2008 meeting with Rep. Frank Smizik, Meg Lusardi of the Green Communities Division, and Courtney Feeley Karp of DOER to discuss evolving Green Communities criteria as they might relate to Brookline and our potential to qualify as a Green Community.
- Co-sponsored (with CCAB) the Brookline Climate Summit, held on January 27, 2009. This meeting of about 80 representatives from the Town, Schools,

businesses, neighborhood associations, and faith communities established partnerships and developed strategies to significantly reduce Brookline's carbon footprint.

- Completed a draft Brookline greenhouse gas inventory for 2008. (See Findings.)
- Served in advisory capacity to the Department of Planning and Community Development and the Board of Selectmen regarding the successful federal grant application for \$494,400 from the Energy and Efficiency Community Block Grant program (Appendix 4). Using the findings from the 2008 GHG Inventory, CAC advised that significant efforts need to be directed to the residential sector, which accounts for about 80 percent of Brookline's GHG emissions, both from heating of buildings (oil and natural gas) and personal transportation (gasoline).
- Established as a priority, through a unanimous vote of the CAC, to pursue the designation of Brookline as a Green Community under the Commonwealth's Green Communities Act (Appendix 5). Such designation would qualify Brookline for a share in \$10 million competitive grant monies, provide the community with a valuable green identity, and achieve the environmental benefits associated with meeting the five qualifying criteria.
- Applied for and received a Planning Assistance Grant from the Green Communities Division for assistance with achieving the five Green Communities criteria. The consultant is expected to begin working with the CAC in January 2010.
- Requested a Merck Foundation Municipal Assistance grant from the Green Roundtable in Boston for technical assistance with planning for and evaluating the impacts of adopting the BBRs Stretch Energy Code. Adoption of the stretch code would meet criteria #3 of the Green Communities Act.
- Established the "Brookline 2010" Campaign. This is a major initiative to establish partnerships with virtually every identifiable organization in Brookline: schools, businesses, neighborhood associations, civic organizations, houses of worship, Town departments, etc. The goal is to get a commitment from each partner to take at least minimal action to reduce carbon during the calendar year 2010.
- Established a close working relationship with the nonprofit Climate Change Action Brookline, in support of important carbon cutting initiatives, including Brookline 2010 and CCAB's 85/25 initiative, to contact 85 percent of Brookline households by the end of 2012, and achieve an average 25 percent GHG reduction from 2008 levels.

### **III. FINDINGS**

1. Brookline Town Meeting, the Board of Selectmen, and the voters have on multiple occasions affirmed their commitment to ambitious GHG-reducing goals:
  - a. Town Meeting voted in May 2008 for favorable action on Warrant Article 29 to establish a committee to monitor the implementation of

- the Town's Local Climate Action Plan. This followed previous resolutions by Town Meeting in 2007 supporting legislative incentives for property owners using wind and solar power and fuel-efficient vehicles.
- b. Precincts in State Representative Frank Smizik's District voted overwhelmingly in favor of a non-binding resolution to reduce greenhouse gas emissions by 80 percent by 2020, and to redirect state incentives from non-sustainable energy endeavors to job-creation programs for businesses involved locally in renewable energy and conservation.
  - c. The Board of Selectmen in 2008 and 2009 supported the use of funds for several climate-minded projects, including the EECBG program funds for several energy-efficiency projects, the Clean Energy Choice grant for the installation of photovoltaic solar panels on Putterham Library, and the continued purchasing of hybrid vehicles for Town employees.
2. Comparison of Brookline GHG inventories for the years 1995 and 2008 show a slight decrease in Brookline's emissions (Appendix 6). We are not prepared to say why the numbers have gone down, and the reduction may well be within the margin of error, but there is cautious hope that the community of Brookline is moving in the right direction regarding energy use.
  3. Approximately 80 percent of Brookline's GHG emissions are due to the residential sector, reflecting Brookline's relatively small commercial sector and even smaller industrial sector. The municipal sector, commendable in its energy management, accounts for only about 3 percent of the town's total emissions.
  4. Within the residential sector, close to 60 percent of emissions come from the heating and cooling of homes (oil, natural gas, electricity), and about 40 percent come from driving.

#### **IV. WORK PLAN**

The CAC has identified the following tasks for the coming year:

1. Employ community education and engagement activities to promote lifestyle changes that lead to greenhouse gas reduction.
2. Organize and implement the Brookline 2010 Initiative, including organizing a kickoff event on January 10, 2010, recruiting partner organizations, and developing a website.
3. Organize and implement municipal efforts to meet the five criteria of the Green Communities Act application.
4. Monitor and support the Town's implementation of the EECBG program.
5. Collect and refine data on town energy use and GHG emissions, by sector and source.
6. Design and create a Town GHG Meter.

**V. APPENDICES****1. Town Meeting Resolution** (Article 29, May 27, 2008 Annual Town Meeting)

VOTED: That the Selectmen establish a committee, the purpose of which is to reduce the total emission of greenhouse gases by the Brookline community, including Town government. The name of the committee shall be the Selectmen's Climate Action Committee. The responsibilities of the committee shall include:

1. To recommend programs that reduce the net production of greenhouse gases in Brookline, such as energy efficiency measures, green energy sources, and additional greenspace;
2. To monitor, measure, and assess efforts of the Town to reduce net greenhouse gas emissions;
3. To monitor promising relevant programs in other municipalities;
4. To monitor relevant technological developments;
5. To serve as liaison between the Town and the public with regard to information and programs related to reducing net production of greenhouse gases;
6. To report annually to the Annual Town Meeting and to report from time to time to the Board of Selectmen, the Town Administrator, and the public; and
7. Such other responsibilities as may be determined from time to time by the Board of Selectmen.

The committee shall consist of the following members appointed by the Board of Selectmen:

1. A member of the Board of Selectmen
2. The Chair of the Advisory Committee or her/his nominee
3. The Chair of the School Committee or her/his nominee
4. The Chair of the Transportation Board or her/his nominee
5. The Chair of the Conservation Commission, or her/his nominee
6. The Chair of the Planning Board, or her/his nominee
7. The Chair of the Building Commission, or her/his nominee
8. The Chair of the Advisory Council on Public Health, or her/his nominee
9. A Co-Chair of Climate Change Action Brookline, or their nominee
10. The President of the Brookline GreenSpace Alliance, or her/his nominee
11. A Co-Chair of the Brookline Neighborhood Alliance, or their nominee
12. The President of the Brookline Chamber of Commerce, or her/his nominee
13. Three members at large with special consideration given to people with the following skills:
  - Relevant scientific and/or academic expertise
  - Relevant engineering expertise

- Knowledge of and/or experience with green businesses
- Relevant public health expertise.

All members shall serve three-year terms, which may be renewed. Initial appointments shall be for terms of one, two, and three years so that terms will expire at staggered intervals. No member shall be disqualified because she or he is not a resident of the Town. The committee shall have two co-chairpersons, one of whom shall be the selectman member and one of whom shall be elected annually by the committee. The staffing of the committee shall be determined by the Selectmen and the Town Administrator. The committee shall be established by November 30, 2008, and shall be evaluated by the Board of Selectmen before December 31, 2011 to determine whether it should be made permanent or dissolved.

## 2. CAC Membership

Carey Bergeron	at-large
Mary Dewart	Brookline GreenSpace Alliance
Jon Cody Haines	at-large
Alan Leviton	Climate Change Action Brookline
Werner Lohe	Conservation Commission
Patricia Maher	Department of Public Health
Linda Pehlke	Brookline Neighborhood Alliance
Josh Safer	Transportation Board
Barbara Scotto	School Committee
Michael Shepard	Building Commission
Jim Solomon	at-large
Mark Zarrillo	Planning Board
Don Weitzman, Co-chair	Advisory Board
Jesse Mermell, Co-chair	Board of Selectmen
Lara Curtis, Staff	Department of Planning and Community Development

(There is currently one vacancy, due to the resignation of the Chamber of Commerce designee.)

## 3. CAC Organization

The Climate Action Committee was initially organized into five subcommittees:

- Buildings & Infrastructure Strategies & Technologies
- Funding, Finance, Policy & Legislation
- Sustainable Land Use & Transportation
- Measurement and Goals
- Communications, Education & Engagement

Recently, we re-organized into four subcommittees centered on our current projects:

- Brookline 2010 Initiative
- Green Communities Act

- Buildings and Infrastructure
- Metrics

**4. EECBG Program**

The Department of Energy has approved the Town's proposal to use Energy Efficiency and Conservation Block Grant (EECBG) monies on the following projects:

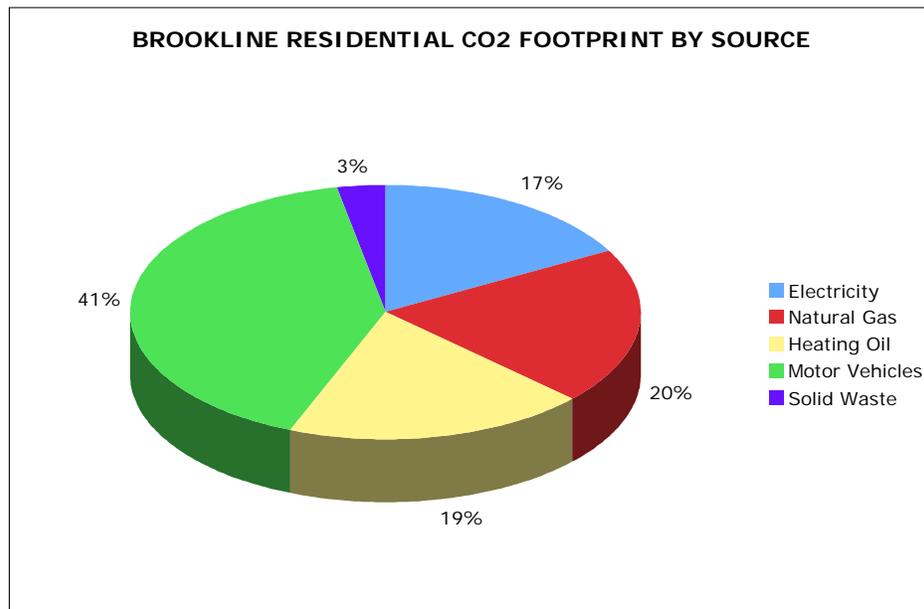
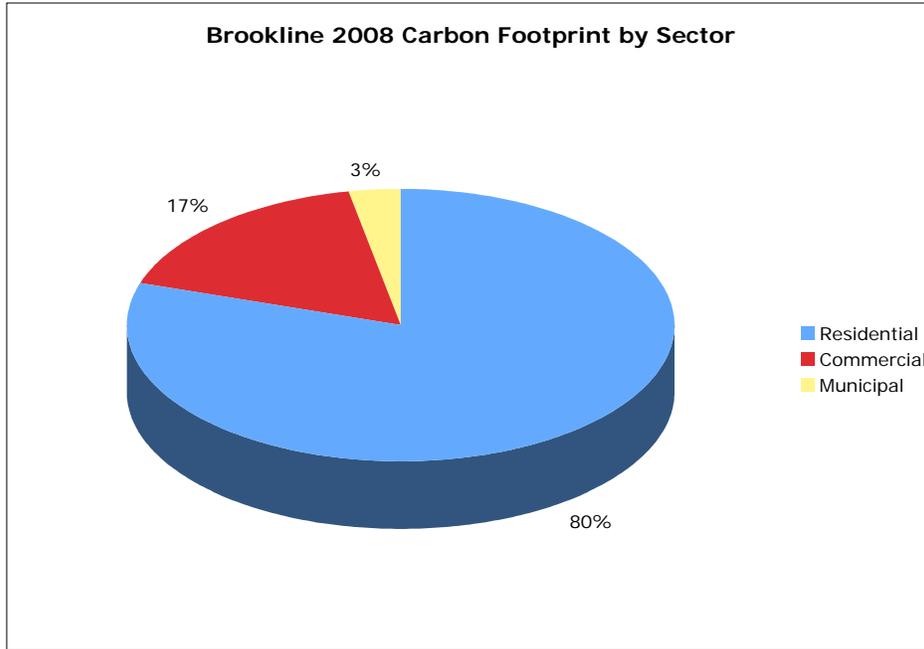
- Install energy efficiency improvements in several municipal buildings;
- Begin two LED street light pilot projects in a neighborhood of South Brookline and in Brookline Village;
- Establish a residential energy efficiency program to provide enhanced energy audits for Brookline homes;
- Provide supporting funds to CCAB for a public education campaign;
- Establish an energy-focused web site to provide timely updated energy and climate change information.

**5. Green Communities Act**

To qualify as a Green Community, a municipality must meet all five of the following criteria:

- Provide for the as-of-right siting of renewable or alternative energy generating facilities, renewable or alternative energy research and development (R&D) facilities, or renewable or alternative energy manufacturing facilities in designated locations.
- Adopt an expedited application and permitting process under which these energy facilities may be sited within the municipality and which shall not exceed 1 year from the date of initial application to the date of final approval.
- Establish an energy use baseline inventory for municipal buildings, vehicles, street and traffic lighting, and put in place a comprehensive program designed to reduce this baseline by 20 percent within 5 years of initial participation in the program.
- Purchase only fuel-efficient vehicles for municipal use whenever such vehicles are commercially available and practicable.
- Require all new residential construction over 3,000 square feet and all new commercial and industrial real estate construction to minimize, to the extent feasible, the life-cycle cost of the facility by utilizing energy efficiency, water conservation and other renewable or alternative energy technologies.

## 6. Metrics Findings



Greenhouse Gas Inventory Brookline, Massachusetts Calendar Year 2008		Units	Usage, Stated Units		Total	Greenhouse Gas Emissions CO2e	
			Residential	Commercial		2008	1995
Electricity	kwh	130,806,405	162,580,455	293,386,860	134,258	144,842	
Natural Gas	Therms	12,322,292	9,188,753	21,511,045	126,643	119,888	
Heating Oil	Gallons			9,264,995	103,679	126,268	
VMT	Miles			211,769,113	122,697	134,474	
Solid Waste	Tons			21,135	22,764	23,829	
Sewage Treatment					4,500	3,207	
<b>Total</b>					<b>514,541</b>	<b>552,508</b>	
<b>Notes</b>							
1) 1995 CO2e from electricity adjusted to reflect emission factor change from 1.5 to .91 lbs CO2e per kwh							
2) Heating oil use adjusted based on DOE trendline							
3) 1995 CO2e from solid waste adjusted to reflect emission factor change from 0.1 to 1.006 tons CO2e per ton							
Brookline GHG Inventory 2008						April 11, 2009 AEL	

